

HOUSE BILL No. 4119

January 29, 2015, Introduced by Reps. Garcia, Iden, Pagel, McCready, Leutheuser, Poleski and Webber and referred to the Committee on Commerce and Trade.

A bill to amend 1961 PA 236, entitled
"Revised judicature act of 1961,"
by amending section 4012 (MCL 600.4012), as amended by 2012 PA 304.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 4012. (1) ~~Except for garnishment of a tax refund under~~
2 ~~section 4061a or garnishment of wages, salary, commissions, or~~
3 ~~other earnings, and subject to subsection (2), a~~ writ of
4 garnishment ~~of periodic payments~~ remains in effect for the period
5 prescribed by the Michigan court rules. ~~A writ of garnishment of~~
6 ~~wages, salary, commissions, or other earnings remains in effect for~~
7 ~~182 days.~~ **UNTIL THE BALANCE OF THE JUDGMENT IS SATISFIED.**

8 (2) A garnishee is not liable for a writ of garnishment ~~of~~
9 ~~periodic payments~~ under subsection (1) to the extent that the
10 garnishee is required to satisfy another writ of garnishment
11 against the same defendant having a higher priority or having the

1 same priority but received at an earlier date. For purposes of this
2 subsection, writs of garnishment have priority in the following
3 order:

4 (a) A garnishment resulting from an obligation of court
5 ordered support as defined in section 2 of the support and
6 parenting time enforcement act, 1982 PA 295, MCL 552.602.

7 (b) A levy of the state or a governmental unit of the state to
8 satisfy a tax liability.

9 (c) Any other garnishments, in the order in which they are
10 served.

11 (3) IF A GARNISHMENT IS SUSPENDED PURSUANT TO AN ORDER UNDER
12 SECTION 6201 AND THE ORDER IS SUBSEQUENTLY SET ASIDE, THE
13 GARNISHMENT RETAINS ITS PRIORITY.

14 (4) A WRIT OF GARNISHMENT IS NOT VALID OR ENFORCEABLE UNLESS
15 THE WRIT IS SERVED ON THE GARNISHEE IN ACCORDANCE WITH THE MICHIGAN
16 COURT RULES.

17 (5) WHILE A WRIT OF GARNISHMENT IS IN EFFECT, THE PLAINTIFF
18 SHALL DO BOTH OF THE FOLLOWING:

19 (A) AT LEAST ONCE EVERY 6 MONTHS AFTER THE PLAINTIFF RECEIVES
20 THE FIRST PAYMENT UNDER THE GARNISHMENT, PROVIDE TO THE GARNISHEE
21 AND DEFENDANT A STATEMENT SETTING FORTH THE BALANCE REMAINING ON
22 THE JUDGMENT, INCLUDING INTEREST AND COSTS. A FAILURE TO SEND A
23 TIMELY STATEMENT UNDER THIS SUBDIVISION DOES NOT AFFECT THE
24 GARNISHMENT OR ANY OBLIGATION OF THE GARNISHEE UNDER THE
25 GARNISHMENT.

26 (B) WITHIN 14 DAYS AFTER THE BALANCE OF THE JUDGMENT HAS BEEN
27 PAID IN FULL, INCLUDING ALL INTEREST AND COSTS, PROVIDE TO THE

1 GARNISHEE AND DEFENDANT A RELEASE OF GARNISHMENT.

2 (6) A PLAINTIFF SHALL NOT REQUEST THAT A DEFAULT BE ENTERED
3 AGAINST A GARNISHEE UNDER A GARNISHMENT UNLESS BOTH OF THE
4 FOLLOWING APPLY:

5 (A) IF THE GARNISHEE FAILS TO FILE A DISCLOSURE WITHIN 14 DAYS
6 AFTER SERVICE OF A WRIT OF GARNISHMENT OR FAILS TO PERFORM ANY
7 OTHER REQUIRED ACT, THE PLAINTIFF HAS SERVED ON THE GARNISHEE A
8 NOTICE OF FAILURE SETTING FORTH THE REQUIRED ACT OR ACTS THAT THE
9 GARNISHEE HAS FAILED TO PERFORM.

10 (B) THE GARNISHEE HAS FAILED, WITHIN 28 DAYS AFTER THE DATE OF
11 SERVICE OF THE NOTICE OF FAILURE UNDER SUBDIVISION (A), TO CURE THE
12 IDENTIFIED FAILURE BY MAILING TO THE PLAINTIFF AND DEFENDANT A
13 DISCLOSURE CERTIFYING THAT THE GARNISHEE HAS BEGUN TO WITHHOLD ANY
14 AVAILABLE MONEY PURSUANT TO THE WRIT OF GARNISHMENT AS PROVIDED BY
15 STATUTE OR COURT RULE, OR HAS COMMENCED PERFORMING ANY OTHER
16 REQUIRED ACT.

17 (7) THE PLAINTIFF SHALL ATTACH TO A REQUEST FOR ENTRY OF A
18 DEFAULT AS ALLOWED UNDER SUBSECTION (6) PROOF OF SERVING THE NOTICE
19 OF FAILURE. THE PLAINTIFF SHALL SEND A COPY OF THE REQUEST FOR
20 ENTRY OF A DEFAULT BY CERTIFIED MAIL TO THE GARNISHEE AT THE
21 GARNISHEE'S PRINCIPAL PLACE OF BUSINESS OR REGISTERED AGENT.

22 (8) AFTER ENTRY OF A DEFAULT UNDER SUBSECTION (6) AND BEFORE
23 ENTRY OF A DEFAULT JUDGMENT, THE GARNISHEE MAY CURE THE IDENTIFIED
24 FAILURE BY MAILING TO THE COURT, PLAINTIFF, AND DEFENDANT A
25 DISCLOSURE CERTIFYING THAT THE GARNISHEE HAS BEGUN TO WITHHOLD ANY
26 AVAILABLE MONEY PURSUANT TO THE WRIT OF GARNISHMENT AS PROVIDED BY
27 STATUTE OR COURT RULE OR THAT IT HAS COMMENCED PERFORMING ANY OTHER

1 REQUIRED ACT.

2 (9) AFTER A DEFAULT HAS BEEN ENTERED UNDER SUBSECTION (6), THE
3 PLAINTIFF MAY FILE WITH THE COURT A REQUEST FOR DEFAULT JUDGMENT
4 FOR AN AMOUNT THAT DOES NOT EXCEED THE FULL AMOUNT OF THE UNPAID
5 JUDGMENT, INTEREST, AND COSTS, AS STATED IN THE REQUEST AND WRIT
6 FOR GARNISHMENT. THE PLAINTIFF SHALL SEND A COPY OF THE REQUEST FOR
7 DEFAULT JUDGMENT BY CERTIFIED MAIL TO THE GARNISHEE AT THE
8 GARNISHEE'S PRINCIPAL PLACE OF BUSINESS OR RESIDENT AGENT.

9 (10) ON MOTION OF THE GARNISHEE FILED WITHIN 21 DAYS AFTER
10 ENTRY OF A DEFAULT JUDGMENT UNDER SUBSECTION (9), THE COURT SHALL
11 DO 1 OR MORE OF THE FOLLOWING, AS APPLICABLE:

12 (A) IF THE GARNISHEE CERTIFIES BY AFFIDAVIT THAT ITS FAILURE
13 TO COMPLY WITH THE WRIT OF GARNISHMENT WAS INADVERTENT OR CAUSED BY
14 AN ADMINISTRATIVE ERROR, MISTAKE, OR OTHER OVERSIGHT AND IT HAS
15 BEGUN TO WITHHOLD ANY AVAILABLE MONEY PURSUANT TO THE WRIT OF
16 GARNISHMENT AS PROVIDED BY STATUTE OR COURT RULE, REDUCE THE
17 DEFAULT JUDGMENT TO NOT MORE THAN THE AMOUNT THAT WOULD HAVE BEEN
18 WITHHELD IF THE WRIT OF GARNISHMENT HAD BEEN IN EFFECT FOR 56 DAYS.

19 (B) IF ANY OF THE FOLLOWING CIRCUMSTANCES EXIST, SET ASIDE THE
20 DEFAULT JUDGMENT:

21 (i) THE GARNISHEE WAS NOT LIABLE TO THE DEFENDANT FOR ANY
22 PERIODIC PAYMENTS AFTER SERVICE OF THE WRIT OF GARNISHMENT.

23 (ii) THE WRIT OF GARNISHMENT, NOTICE OF FAILURE, REQUEST FOR
24 ENTRY OF A DEFAULT, OR REQUEST FOR DEFAULT JUDGMENT WAS NOT
25 PROPERLY SERVED OR SENT AS REQUIRED BY THIS SECTION.

26 (iii) THE NOTICE OF FAILURE WAS MATERIALLY INACCURATE OR
27 INCOMPLETE.

1 (11) A GARNISHEE MAY RECOVER AN AMOUNT FOR WHICH THE GARNISHEE
2 IS LIABLE BECAUSE OF THE ENTRY OF A DEFAULT JUDGMENT UNDER
3 SUBSECTION (9) OR (10) FROM FUTURE PERIODIC PAYMENTS TO THE
4 DEFENDANT AS PROVIDED IN SECTION 7 OF 1978 PA 390, MCL 408.477.

5 (12) ~~(3)~~ Except as otherwise provided by statute, a plaintiff
6 shall pay a fee of ~~\$6.00~~ **\$35.00 TO THE GARNISHEE** at the time a writ
7 ~~to the garnishee of garnishment of periodic payments is served upon~~
8 **ON** the garnishee.

9 (13) AS USED IN THIS SECTION, "GARNISHMENT" MEANS ANY COURT
10 ORDER DIRECTED TO A THIRD PARTY TO WITHHOLD PERIODIC PAYMENTS.

11 (14) ~~(4)~~ As used in this section and section 8410a, "periodic
12 payments" means wages, salary, commissions, and other earnings,
13 land contract payments, rent, and other periodic debt or contract
14 payments that are or become payable during the effective period of
15 the writ of garnishment. Periodic payments do not mean any of the
16 following:

17 (a) Payments by a financial institution of interest on a
18 deposit account.

19 (b) Charges made by a financial institution automatically
20 against an account ~~which applies~~ **THAT ARE APPLIED** to a debt under
21 an automatic payment authorization executed by the account owner.

22 (c) Payments made by a financial institution to honor a check
23 or draft or to comply with an account holder's order of withdrawal
24 of funds from an account.

25 (d) Interest earned on a certificate of deposit that is paid
26 into a deposit account.

27 Enacting section 1. This amendatory act applies to a writ of

1 garnishment issued 90 days after the date this amendatory act is
2 enacted into law.

3 Enacting section 2. This amendatory act does not take effect
4 unless Senate Bill No. ____ or House Bill No. 4120 (request no.
5 01249'15) of the 98th Legislature is enacted into law.