Legislative Analysis

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SERVICE OF EXECUTION

Senate Bill 420 as reported from House committee
Sponsor: Sen. Peter J. Lucido
House Committee: Judiciary
Senate Committee: Judiciary and Public Safety
Complete to 12-7-20

SUMMARY:

Senate Bill 420 would amend the Revised Judicature Act to make the following changes to a process used in seizing property to pay for a judgment:

- Extend, from 90 to 180 days, the maximum number of days after the effective date of the execution that the execution must be made returnable.
- Allow an officer who serves an execution to physically or constructively seize property that is subject to execution and specify how a constructive seizure would be effected.
- Require the officer to post a notice to the property that the property has been seized under an execution.
- Retain the current fee structure for executing an execution but modify certain circumstances under which a fee is allowed.

The Revised Judicature Act provides a process by which an officer (usually a sheriff or deputy or a court officer) is directed by a court (under a writ of execution) to seize and sell as much of a debtor's property that is eligible to be seized as is necessary to satisfy a judgment imposed by the court.

Currently, upon receipt of an execution, the officer receiving it is required to indorse on the execution the year, month, day, and hour of receipt, and that time is the date of the execution. The bill would specify that that time is the effective date of the execution.

Currently, an execution must be made returnable not less than 20 days or more than 90 days from the date of the execution. Under the bill, an execution would have to be made returnable not less than 20 and not more than 180 days after the effective date of the execution.

The bill would also clarify that, if an execution is issued against the property of a person, the person's goods and chattels, and lands and tenements, levied on by the execution, are bound from the effective date of the execution.

Serving an execution

The bill would allow an ***officer*** who serves an ***execution*** to physically or constructively seize property subject to execution. To effect a constructive seizure, the officer would have to prominently post or attach to the property a notice stating that the property has been seized under an execution, the date the seizure commenced, and the name, address, and

phone number of the officer. The officer could immobilize or disable property that is constructively seized.

Execution would mean an order for the seizure of property, which, under the bill, would include an order to seize property, a writ of attachment, and a writ of execution.

Officer would mean a person that is either of the following:

- A sheriff or deputy sheriff, acting in the county the sheriff or deputy sheriff serves or under section 582(a) of the act.
- A person acting at the direction of the court that issued the execution and that, before the execution was issued, appointed the person a court officer in accordance with the general court rules or by ex parte motion and order.

Under the bill, if an execution was received by a person that is not an officer, the person could not serve the execution but would have to promptly deliver the execution to the issuing court.

Fee schedule for seizing property

Currently, a person who seizes property under a court order in an action in which a judgment was entered against the owner of the property is entitled to receive 7% of the first $8,000 of the payment or settlement amount and 3% of the payment or settlement amount that exceeds the first $8,000.

The bill would retain this payment amount, but would apply the payment to physically or constructively seized property and also would apply the fee schedule whether the judgment was satisfied in whole or in part before the sale of the seized property.

In addition, for sale of property seized under an order for the seizure of property, the fee is 7% of the first $8,000 of the amount received and 3% of any amount received exceeding the first $8,000.

The bill would instead refer to money seized or received or for property seized and sold.

MCL 600.2559, 600.6002, and 600.6012

BACKGROUND AND DISCUSSION:

If a court issues a judgment against a person (debtor/defendant) who owes money to another (creditor/plaintiff), the creditor/plaintiff has several options for collecting. One of the options is to obtain a court order to seize and sell personal property belonging to the debtor/defendant to pay off the judgment. In the case of a large item, such as a boat or farming equipment that would be cumbersome to physically seize and store until it was sold, the item may be "constructively" seized, meaning that the item is identified as being seized to satisfy a judgment but is not actually taken into physical custody by the court officer or sheriff's deputy executing the order.

It is not uncommon for a debtor to come up with enough money to satisfy a judgment, in whole or in part, when an order to seize personal property is executed, especially if the item named in the order holds a particular value to the debtor. A restaurant owner, for example, may find enough cash resources to avoid having silverware or cooking utensils necessary to prepare food and serve customers from being seized and removed from the restaurant's premises. It is reported that debtors, in some situations, have asked the officer executing the order if they could pay the judgment in installments rather than have the property seized. However, according to a 2019 memo issued by the State Court Administrative Office (SCAO) to trial court judges and administrators, the order to seize property authorizes a court officer, sheriff, or sheriff's deputy to seize and sell personal property, but it is "not an order to negotiate a payment plan." Although statute does allow for money to be seized, the memo states that "there is no authority for a court officer to enter into an agreement with a civil defendant for payments." (Payment plans may, however, be worked out between a debtor and a creditor.)

An order to seize property must be served no sooner than 20 days from the date the court officer receives the order (the "date of execution") and be returned to the court no later than 90 days from that date. According to the memo, the request and order to seize form is served just one time and then returned to the court and "does not mean the officer can use the order to go back and seize more property *after* the initial execution on the seizure order." This interpretation of the statute means that an officer could not make multiple trips to collect money owed on the debt in lieu of seizing the property named in the order.

The memo also clarifies that although court officers are entitled by law to receive a percentage of personal property seized and sold, the statute currently does not entitle them to receive a percentage of cash that is seized because it is generally considered as money collected and paid on the judgment, not as property seized and sold.

Senate Bill 420 would address these issues. First, the bill would extend the maximum duration of an order from 90 days to 180 days and allow a court officer to make multiple trips, which could give a debtor more time to pay the judgment rather than have property taken away. According to committee testimony, a cash payment is often preferable to having property seized because the amount paid on the judgment is only reduced by the fee paid to the officer executing the order, while property seized is sold at a reduced price that is then further reduced by the officer's fee. Allowing the debtor to pay a portion of the judgment upon execution of the order, and then pay the rest the following week or until the judgment was satisfied or the 180 days expired, could enable some debtors to continue earning money to pay on the judgment by avoiding having property seized that is needed to operate a business. Although debtors can work out installment payments directly with the creditor, sometimes debtors initially refuse to do so because they are angry with the judgment amount. When presented with an execution order to seize one or more items of their property, many would prefer to pay off the judgment rather than lose the property named in the order.

The bill would also specifically state that a person (court officer) executing an order would be entitled to a percentage of money seized or received. Currently, even if the debtor is

willing to pay on the judgment when a seizure order is executed, there is no incentive for the officer to accept a cash payment, as the officer gets a portion only of the sale of any property seized. The bill would also specifically state that the person serving an order would be entitled to a percentage of payment whether the judgment was satisfied in whole or in part before the property was sold and whether the property was seized physically or constructively.

However, concerns have been raised that allowing an officer to return an unlimited number of times before the 180-day period runs out, coupled with entitling officers to receive a percentage of cash payments (which likely would be higher than their cut of the sale price of property seized), could lead to abuses where the threat of loss of property is used to force cash payments from debtors. In addition, rather than execution of the seizure order being a "one-and-done" event, an officer could come back every week or multiple days of each week for up to six months, which would be an unacceptable intrusion on a debtor's home or business.

FISCAL IMPACT:

Senate Bill 420 would have no fiscal impact on the state or on local units of government.

POSITIONS:

Representatives of the following entities testified in support of the bill (5-19-20):

- Foster Swift
- Michigan Court Officers, Deputy Sheriffs and Process Servers Association

A representative of the State Court Administrative Office (SCAO) testified in opposition to the bill. (5-19-20)

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Robin Risko

■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.