

## SERVICE OF EXECUTION

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**Senate Bill 420 as passed by the Senate**  
**Sponsor: Sen. Peter J. Lucido**  
**House Committee: Judiciary**  
**Senate Committee: Judiciary and Public Safety**  
**Complete to 3-15-20**

Analysis available at  
<http://www.legislature.mi.gov>

## 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) is directed by a court (under a writ of execution) to seize and sell as much as 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.

#### **FISCAL IMPACT:**

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

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