

REVISED JUDICATURE ACT OF 1961 (EXCERPT)

Act 236 of 1961

CHAPTER 40

ATTACHMENT AND GARNISHMENT

600.4001 Attachment; ex parte application; service of writ; jurisdiction.

Sec. 4001. Upon ex parte application showing that the person against whom a claim is asserted is not subject to the judicial jurisdiction of the state or, after diligent effort, cannot be served with process as required to subject him to the judicial jurisdiction of the state, the circuit court shall have the power by attachment to apply to the satisfaction of the claim due or to become due any interest in things which are subject to the judicial jurisdiction of the state and belonging to the person against whom the claim is asserted. A copy of the writ of attachment shall be served upon the person against whom the claim is made in the same manner as provided by rules of the supreme court for service of process in other civil actions in which personal jurisdiction over the defendant is not required. The court may exercise the jurisdiction granted in this section only if action is taken in accordance with rules adopted by the supreme court to protect the parties.

History: 1961, Act 236, Eff. Jan. 1, 1963;—Am. 1974, Act 371, Eff. Apr. 1, 1975.

Compiler's note: Section 3 of Act 371 of 1974 provides: "The provisions of this act shall apply to all actions pending or commenced on or after the effective date of this act."

600.4011 Garnishment; property or obligation applicable to satisfaction of claim; jurisdiction; state and governmental units as garnishees; ex parte application for writ of garnishment; service; conditions to commencement of garnishment proceeding; immunity of sheriff or other public officer; fee; conveyance of money or property.

Sec. 4011. (1) Subject to sections 4061 and 4061a, and the conditions in subsections (2) to (10), the court has power by garnishment to apply the following property or obligation, or both, to the satisfaction of a claim evidenced by contract, judgment of this state, or foreign judgment, whether or not the state has jurisdiction over the person against whom the claim is asserted:

(a) Personal property belonging to the person against whom the claim is asserted but which is in the possession or control of a third person if the third person is subject to the judicial jurisdiction of the state and the personal property to be applied is within the boundaries of this state.

(b) An obligation owed to the person against whom the claim is asserted if the obligor is subject to the judicial jurisdiction of the state.

(2) Except as provided in sections 4061 and 4061a, the court may exercise the jurisdiction granted in this section only in accordance with the Michigan court rules. Except as otherwise provided by sections 4061 and 4061a and the Michigan court rules, the state and each governmental unit within the state, including but not limited to a public, municipal, quasi-municipal, or governmental corporation, unincorporated board, public body, or political subdivision, may be proceeded against as a garnishee in the same manner and with the same effect as a proceeding against an individual garnishee.

(3) A writ of garnishment may be issued before judgment only as provided in this subsection. Upon ex parte application showing that the person against whom the claim is asserted is not subject to the judicial jurisdiction of the state or, after diligent effort, cannot be served with process as required to subject the person to the judicial jurisdiction of the state, a copy of the writ of garnishment shall be served upon the person against whom the claim is made in the same manner as provided by the Michigan court rules for service of process in other civil actions in which personal jurisdiction over the defendant is not required. Upon entry of judgment in the principal action, the obligation or property garnished shall be applied to the satisfaction of the judgment.

(4) A garnishment proceeding shall not be commenced against the state or a governmental unit of the state, including but not limited to a public, municipal, quasi-municipal, or governmental corporation, unincorporated board, public body, or political subdivision, until after the plaintiff's claim has been reduced to judgment.

(5) A garnishment proceeding shall not be commenced against a person for money owing to a defendant on account of labor performed by the defendant until after the plaintiff's claim has been reduced to judgment.

(6) A sheriff or other public officer is not subject to garnishment for money or things received or collected by him or her pursuant to an execution or other legal process in the favor of the defendant or because of any money in his or her hands for which he or she is accountable merely as a public officer to the defendant.

(7) A garnishment proceeding shall not be commenced if the commencement of such a proceeding is forbidden by a statute of this state.

(8) Except as otherwise provided in sections 4012 and 4061, a plaintiff shall pay a fee of \$1.00 to the garnishee at the time the garnishee is served with a writ of garnishment.

(9) If the court or garnishee possesses money or property pursuant to a writ of garnishment after the court releases the garnishee from liability under that writ, the court shall convey or order the conveyance of the money or property to any of the following, as the court determines appropriate:

- (a) The defendant's attorney, if the defendant is represented by counsel in the garnishment proceeding.
- (b) The defendant, if the defendant is not represented by counsel in the garnishment proceeding.
- (c) The plaintiff.

(10) A writ of garnishment is not effective if both of the following conditions are met:

(a) The plaintiff fails to provide the garnishee with information sufficient for the garnishee to identify the defendant.

(b) The garnishee provides the court with written notice of the insufficiency described in subdivision (a).

History: 1961, Act 236, Eff. Jan. 1, 1963;—Am. 1974, Act 371, Eff. Apr. 1, 1975;—Am. 1994, Act 346, Eff. Mar. 1, 1995.

Compiler's note: Section 3 of Act 371 of 1974 provides: "The provisions of this act shall apply to all actions pending or commenced on or after the effective date of this act."

600.4012 Garnishment of periodic payments; duration; priority; service; duties of plaintiff; entry of default; request for default judgment; duties of court; recovery of amount by garnishee; fee; inapplicability; "periodic payments" defined.

Sec. 4012. (1) A garnishment of periodic payments remains in effect until the balance of the judgment is satisfied.

(2) A garnishee is not liable for a garnishment of periodic payments under subsection (1) to the extent that the garnishee is required to satisfy another garnishment against the same defendant having a higher priority or having the same priority but received at an earlier date. For purposes of this subsection, garnishments have priority in the order in which they are received. Both of the following have priority over a garnishment, regardless of the order in which they are received:

(a) An order of income withholding as that term is defined in section 2 of the support and parenting time enforcement act, 1982 PA 295, MCL 552.602.

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

(3) If a garnishment of periodic payments is suspended pursuant to an order under sections 6201 to 6251 and the order is subsequently set aside, the garnishment retains its priority.

(4) A garnishment of periodic payments or a notice of failure is not valid or enforceable unless the garnishment is served on the garnishee in accordance with the Michigan court rules.

(5) While a garnishment of periodic payments is in effect, the plaintiff shall do both of the following:

(a) At least once every 6 months after the plaintiff receives the first payment under the garnishment, provide to the garnishee and defendant a statement setting forth the balance remaining on the judgment, including interest and costs. A failure to send a timely statement under this subdivision does not affect the garnishment or any obligation of the garnishee under the garnishment.

(b) Within 21 days after the balance of the judgment has been paid in full, including all interest and costs, provide to the garnishee and defendant a release of garnishment.

(6) A plaintiff shall not request that a default be entered against a garnishee under a garnishment of periodic payments unless both of the following apply:

(a) If the garnishee fails to file a disclosure within 14 days after service of the garnishment or fails to perform any other required act, the plaintiff has served on the garnishee a notice of failure setting forth the required act or acts that the garnishee has failed to perform.

(b) The garnishee has failed, within 28 days after the date of service of the notice of failure under subdivision (a), to cure the identified failure by mailing to the plaintiff and defendant a disclosure certifying that the garnishee will immediately begin withholding any available funds pursuant to the garnishment as provided by statute or court rule, or has commenced performing any other required act.

(7) The plaintiff shall attach to a request for entry of a default as allowed under subsection (6) proof of serving the notice of failure. The plaintiff shall send a copy of the request for entry of a default by certified mail to the garnishee at the garnishee's principal place of business or registered agent.

(8) After entry of a default under subsection (6) and before entry of a default judgment, the garnishee may cure the identified failure by mailing to the court, plaintiff, and defendant a disclosure certifying that the garnishee will immediately begin withholding any available funds pursuant to the garnishment as provided by statute or court rule or that it has commenced performing any other required act.

(9) After a default has been entered under subsection (6), the plaintiff may file with the court a request for default judgment for an amount that does not exceed the full amount of the unpaid judgment, interest, and

costs, as stated in the request and garnishment. The plaintiff shall send a copy of the request for default judgment by certified mail to the garnishee at the garnishee's principal place of business or resident agent.

(10) On motion of the garnishee filed within 21 days after entry of a default judgment under subsection (9), the court shall do 1 or more of the following, as applicable:

(a) If the garnishee certifies by affidavit that its failure to comply with the garnishment was inadvertent or caused by an administrative error, mistake, or other oversight and it will immediately begin withholding any available funds or immediately begin performing any other required act pursuant to the garnishment as provided by statute or court rule, reduce the default judgment to not more than the amount that would have been withheld if the garnishment had been in effect for 56 days.

(b) If any of the following circumstances exist, set aside the default judgment:

(i) The garnishee was not liable to the defendant for any periodic payments after service of the garnishment.

(ii) The garnishment, notice of failure, request for entry of a default, or request for default judgment was not properly served or sent as required by this section.

(iii) The notice of failure was materially inaccurate or incomplete.

(11) A garnishee may recover an amount for which the garnishee is liable because of the entry of a default judgment under subsection (9) or (10) from future periodic payments to the defendant as provided in section 7 of 1978 PA 390, MCL 408.477.

(12) Except as otherwise provided by statute, a plaintiff shall pay a fee of \$35.00 to the garnishee at the time a garnishment of periodic payments is served on the garnishee.

(13) This section does not apply to any of the following:

(a) An order of income withholding as that term is defined in section 2 of the support and parenting time enforcement act, 1982 PA 295, MCL 552.602.

(b) A levy for tax liability.

(c) A levy under section 15(m) of the Michigan employment security act, 1936 (Ex Sess) PA 1, MCL 421.15.

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

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

(b) Charges made by a financial institution automatically against an account that are applied to a debt under an automatic payment authorization executed by the account owner.

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

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

History: Add. 1991, Act 67, Eff. Dec. 31, 1991;—Am. 1994, Act 175, Imd. Eff. June 20, 1994;—Am. 1994, Act 346, Eff. Mar. 1, 1995;—Am. 1996, Act 10, Eff. June 1, 1996;—Am. 2012, Act 304, Imd. Eff. Sept. 25, 2012;—Am. 2015, Act 14, Imd. Eff. Apr. 14, 2015.

Compiler's note: Enacting section 1 of Act 14 of 2015 provides:

"Enacting section 1. This amendatory act applies to a writ of garnishment issued after September 30, 2015."

600.4015 Actions as cause of discipline or discharge of principal defendant from employment; reinstatement; civil action.

Sec. 4015. A garnishee defendant shall not use the fact that the principal defendant has had 1 or more actions brought against him under the provisions of this chapter or section 8306 as a cause of discipline or discharge of the principal defendant from employment. A garnishee defendant who violates the provisions of this section shall be required to reinstate the principal defendant to employment and reimburse all compensation lost by the discipline or discharge. The principal defendant may enforce his rights under this section by appropriate civil action.

History: Add. 1974, Act 371, Eff. Apr. 1, 1975.

Compiler's note: Section 3 of Act 371 of 1974 provides: "The provisions of this act shall apply to all actions pending or commenced on or after the effective date of this act."

600.4021 Attachment; venue.

Sec. 4021. The county in which some of the property to be attached is situated is a proper county of venue for attachment.

History: 1961, Act 236, Eff. Jan. 1, 1963;—Am. 1974, Act 371, Eff. Apr. 1, 1975.

Compiler's note: Section 3 of Act 371 of 1974 provides: "The provisions of this act shall apply to all actions pending or commenced on or after the effective date of this act."

600.4025 Venue; garnishment.

Sec. 4025. The county which would be a proper county of venue as designated in RJA chapter 16 of an action against the defendant who is garnisheed is a proper county of venue for garnishment if

- (1) the county is designated in RJA chapter 16 as a proper county of venue of the action against the principal defendant; or
- (2) there is no common proper county of venue designated in RJA chapter 16 of an action against the principal and garnishee defendant; or
- (3) personal jurisdiction cannot be obtained over the principal defendant.

History: 1961, Act 236, Eff. Jan. 1, 1963.

600.4027 Writ of garnishment; filing; additional garnishee defendants; actions.

Sec. 4027. (1) If after a hearing officer orders the payment of a civil fine or costs under section 4q of the home rule city act, 1909 PA 279, MCL 117.4q, the defendant does not appeal the order within the time allowed under section 4q(17) of the home rule city act, 1909 PA 279, MCL 117.4q, and if the city has not obtained a lien under section 4r of the home rule city act, 1909 PA 279, MCL 117.4r, for the fine or costs, the city may file an action for a writ of garnishment in the appropriate court. The initial papers filed with the court shall include a properly authenticated copy of the applicable order.

(2) A court in which an action is filed under this section shall, immediately after the action is filed, issue a writ of garnishment. A writ of garnishment issued under this section serves in lieu of a summons and complaint in the action, and the time for the defendant and an initial garnishee defendant to respond is the same as for a response under statutes and court rules applicable to other garnishments.

(3) An action under this section may name more than 1 initial garnishee defendant. After the issuance of an initial writ of garnishment in an action under this section, the city may, without leave of court, obtain subsequent writs of garnishment against the same or additional garnishee defendants.

(4) A defendant or garnishee defendant in an action under this section may not raise in the action any issue that could have been appealed under section 4q(17) of the home rule city act, 1909 PA 279, MCL 117.4q.

(5) Except as provided in this section and in any rules adopted by the supreme court to apply to actions under this section, an action under this section shall proceed according to the statutes and court rules applicable to other garnishment actions.

History: Add. 2013, Act 191, Eff. Mar. 14, 2014.

600.4031 Exemptions; attachment and garnishment; partial exemptions.

Sec. 4031. (1) The provisions of the statutes relating to exemptions from execution, and the manner of levying upon property belonging to a class or species in which exemptions are by law allowed, shall be applicable to the application of property and obligations to claims by attachment and garnishment.

(2) In any garnishment proceeding where the indebtedness of the garnishee to the principal defendant is money owed to the principal defendant on account of

(a) the sale to the garnishee of milk or cream or both produced on the farm or farms of the principal defendant, the garnishee's liability to the plaintiff is limited to 40% of such money;

(b) personal labor performed by the principal defendant or his family, the garnishee's liability to the plaintiff is limited by the exemptions allowed under section 7511.

History: 1961, Act 236, Eff. Jan. 1, 1963.

600.4035 Attachment; effect; personalty; realty.

Sec. 4035. An attachment shall bind goods and chattels from the time they were attached. An attachment of realty or any right or interest therein shall constitute a lien thereon, effective from the time when a certified copy of the attachment including a description of the realty shall be deposited in the office of the register of deeds in the county where the realty is situated.

History: 1961, Act 236, Eff. Jan. 1, 1963.

600.4041 Attachment on realty; discharge.

Sec. 4041. Any attachment on realty or any right or interest therein shall be discharged upon the record thereof by the register of deeds whenever there shall be presented to him a certificate executed by the sheriff, and approved by the plaintiff, his personal representatives or assigns, or his attorney of record in said cause, duly acknowledged; specifying that the attachment has been removed or otherwise satisfied or discharged; or upon the presentation to the register of deeds of the certificate of the circuit court for the county, signed by the

sheriff and the clerk of the court and seal thereof, certifying that it has been made to appear to the court that the attachment has been duly removed or otherwise settled.

History: 1961, Act 236, Eff. Jan. 1, 1963;—Am. 1965, Act 284, Imd. Eff. July 22, 1965.

600.4045 Attachment or garnishment; dissolution by bond.

Sec. 4045. In every case where property is attached or garnishment is served, the attachment or garnishment may be dissolved by the posting of a bond in accordance with the rules of the supreme court.

History: 1961, Act 236, Eff. Jan. 1, 1963.

600.4051 False answer by garnishee or agent; civil liability.

Sec. 4051. Any person summoned as a garnishee or any officer, agent, or other person who appears and answers for a corporation summoned as a garnishee, who knowingly and wilfully answers falsely upon his disclosure or examination on oath is liable to the plaintiff in garnishment, or to his executors or administrators, to pay out of his own goods and estate the full amount due on the judgment recovered with interest, to be recovered in a civil action.

History: 1961, Act 236, Eff. Jan. 1, 1963.

600.4061 Garnishment against state; employees designated to receive process; procedures.

Sec. 4061. (1) A plaintiff shall serve garnishment process issued from a court in Michigan against the state of Michigan upon the state treasurer or other state employee designated by the state treasurer to receive garnishment process. The state treasurer shall designate as many employees as he or she considers necessary to receive garnishment process, at least 2 of whom shall have offices in Lansing.

(2) The state treasurer shall designate the employees under subsection (1) in writing and maintain a copy of the written designation in the state treasurer's office. If the state treasurer revokes the designation, the revocation shall be made in the same manner as the designation. If a designated employee ceases to be employed by the state treasurer to receive process under subsection (1), the designation of that person is revoked immediately upon termination of his or her employment.

(3) In a garnishment proceeding in which the state is the garnishee, a plaintiff shall do all of the following:

(a) Serve upon the state treasurer or designated employee a writ of garnishment that includes a verified statement signed by the plaintiff, or his or her attorney or agent, identifying the full amount including interest and taxed costs, claimed by the plaintiff to be due upon the judgment against the defendant.

(b) At the time of service of the writ of garnishment, pay to the state treasurer or designated employee a fee of \$6.00.

(c) Within 7 days after service of the writ of garnishment on the state treasurer or designated employee, do both of the following:

(i) If the writ of garnishment is for a state tax refund or credit, serve a copy of the writ of garnishment upon the defendant in the manner prescribed by the Michigan court rules.

(ii) Serve upon the state treasurer any discovery request for information related to the garnishment proceeding that may be in the possession of the department of treasury.

(4) After receiving a discovery request pursuant to subsection (3)(c), the state treasurer shall provide only that information in the possession of the department of treasury that is not otherwise exempted by law from disclosure. The plaintiff shall pay to the state treasurer the reasonable costs incurred by the state treasurer in providing the requested information.

(5) After receiving service of a writ of garnishment as provided in subsection (3), the state treasurer or designated employee shall do 1 of the following:

(a) If the writ is not for the garnishment of a state tax refund or credit, respond in the manner prescribed for garnishment procedures under the Michigan court rules.

(b) If the writ is for garnishment of a state tax refund, respond in the manner prescribed by section 4061a.

History: 1961, Act 236, Eff. Jan. 1, 1963;—Am. 1994, Act 346, Eff. Mar. 1, 1995.

600.4061a Interception of state tax refund or credit.

Sec. 4061a. (1) The state treasurer shall intercept a state tax refund or credit that is subject to a writ of garnishment served upon the state treasurer pursuant to section 4061. Upon intercepting a state tax refund or credit pursuant to a writ of garnishment, the state treasurer shall do all of the following:

(a) Calculate the amount available from the interception to satisfy all or part of the garnishment, and within 90 days after establishing other liability for which the state tax refund or credit may be applied under section 30a of Act No. 122 of the Public Acts of 1941, being section 205.30a of the Michigan Compiled Laws, do both of the following:

(i) File with the court a verified disclosure that identifies the intercepted amount, less any setoff, counterclaim, or other demand of the state against the defendant.

(ii) Serve upon the plaintiff and defendant a copy of the disclosure described in subparagraph (i).

(b) Unless notified by the court that objections to the writ of garnishment have been filed, deposit the amount available for the garnishment with either of the following pursuant to the terms of the writ not less than 28 days after filing the disclosure pursuant to subdivision (a):

(i) The clerk of the court.

(ii) The plaintiff's attorney of record in the garnishment action, or, if the plaintiff is not represented by counsel, the plaintiff or the plaintiff's designee.

(2) Objections to the writ of garnishment of a tax refund shall be filed with the court within 14 days after the date of service of the disclosure on the defendant.

(3) If an interception of a state tax refund or credit does not occur before October 31 of the year during which a writ of garnishment for a state tax refund or credit is to be processed, both of the following apply:

(a) The state treasurer is not required to provide to the defendant or file with the court a disclosure.

(b) The state treasurer is not required to provide to the plaintiff a disclosure unless the plaintiff provides the state treasurer with a written request for a disclosure between November 1 and December 31 of the tax year following the tax year for which a writ of garnishment of a state tax refund or credit was filed.

(4) A disclosure described in subsection (1) is not required to be made under oath.

(5) The state's liability to the plaintiff under a writ of garnishment issued under this section is limited to the amount of the tax refund or credit due to the defendant for the period the writ is in effect, less any setoff, counterclaim, or other demand of the state against the defendant. As used in this subsection, "state" includes the state treasurer.

(6) If all or a portion of an intercepted state tax refund or credit is deposited with the clerk of the court under subsection (1), the court shall convey the deposited amount to the plaintiff's attorney of record in the garnishment action or, if the plaintiff is not represented by counsel, to the plaintiff.

(7) Michigan court rules that do not conflict with this section or section 4061 govern a garnishment in which the state is a garnishee.

(8) As used in this section, "state treasurer" includes an employee designated by the state treasurer to act on his or her behalf.

History: Add. 1994, Act 346, Eff. Mar. 1, 1995.

600.4065 Evidence in criminal proceedings; disclosure.

Sec. 4065. No disclosure made under the provisions of the garnishment statutes or rules shall be used in evidence upon a criminal prosecution except upon a prosecution of the garnishee for perjury in making his disclosure.

History: 1961, Act 236, Eff. Jan. 1, 1963.