

Legislative Analysis



EXTEND PERIOD FOR WRIT OF WAGE GARNISHMENT

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House Bill 5592 (Substitute H-1)

Sponsor: Rep. Marilyn Lane

1st Committee: Judiciary

2nd Committee: Local, Intergovernmental, and Regional Affairs

First Analysis (6-6-12)

BRIEF SUMMARY: The bill specifies that a writ of garnishment of wages, salary, commissions, or other earnings would remain in effect for 182 days instead of 91 days, which is the current length of time.

FISCAL IMPACT: The bill would have no fiscal impact on the judiciary.

THE APPARENT PROBLEM:

A garnishment is a court order allowing someone to collect a debt by putting a claim on money owed to a debtor that is in the hands of a third person. The most common garnishments are claims on wages owed to a debtor, or money held in a debtor's bank account. Other examples are rent or land contract payments a debtor is collecting, or insurance money owed to the debtor. Some forms of a debtor's income are not subject to garnishment. See **Background Information** below.

In order to collect debt through the court-supervised garnishment process, generally a court judgment has been issued, indicating that a defendant owes money, and at least 21 days have elapsed during which the debtor has not paid the debt. Then, the person to whom the judgment is owed can file for a "writ of garnishment" with the court. The third party served with the writ who has control over the debtor's money is being ordered to give the person who is owed the judgment all or part of the money he or she controls.

There are three types of garnishment writs—periodic, non-periodic, and an income tax refund writ. A periodic writ of garnishment is used to garnish a debtor's wages, rent payments, land contract payments, or other money which is paid to the debtor on a periodic basis. A non-periodic writ of garnishment is used to garnish the debtor's bank account or other property. And an income tax writ is used to garnish the debtor's Michigan income tax.

To get money from the debtor in order to collect a judgment, the person owed the money files for the appropriate writ of garnishment with the court. Non-periodic writs and income tax writs are episodic; that is, once money is collected, the writs are invalid. If money is still owed another writ must be issued by the court to collect more money.

A periodic writ of garnishment differs. Under Michigan Court Rule 3.101, a periodic writ of garnishment is valid for up to 91 days, or until the judgment, interest, and costs

are paid off, whichever occurs first. See **Background Information**. After the 91 day period runs, the periodic writ of garnishment must be renewed, in order to collect more of the debtor's money. Each time the writ of garnishment is renewed, court clerks must complete the paperwork, and those seeking money owed to them must file court fees.

Legislation has been introduced to extend the validity of a periodic writ of garnishment from 91 days to 182 days.

THE CONTENT OF THE BILL:

House Bill 5592 (H-1) would amend the Revised Judicature Act (MCL 600.4012) to specify that a writ of garnishment of wages, salary, commissions, or other earnings would remain in effect for 180 days.

The act currently says that a writ of garnishment of 'periodic payments' remains in effect for the period of time that is prescribed by the Michigan court rules. (Michigan Court Rule 3.101 now says 91 days.) That provision would still apply to garnishments of other kinds of periodic payments but not to wages, salary, commissions, and other earnings.

BACKGROUND INFORMATION:

Garnishment. For an overview of the garnishment process, including the necessary forms that must be filed with the court, see the Michigan Courts Self-Help Center which is located in the State Court Administrative Office (SCAO) by visiting their website at: http://www.courts.michigan.gov/scao/selfhelp/collection/garnishment_help.htm

There, examples of a debtor's income not subject to garnishment are listed, including (but not limited to) individual retirement accounts, Social Security benefits, supplemental security income benefits, aid to families with dependent children payments, general assistance benefits, unemployment compensation benefits, veterans assistance benefits, workers' compensation benefits, the first \$500 on deposit in a savings and loan savings account, cash value or proceeds of life insurance or annuity payable to the spouse or children of the insured, income benefits under the Michigan Civil Service and Michigan Retirement Acts, and U. S. civil service retirement benefits.

Michigan Court Rule 3.101. To read Michigan Court Rule 3.101, visit the website of Michigan Courts: One Court of Justice at <http://courts.mi.gov/> and scroll down the topic list, selecting Court Rules in the left-hand column.

ARGUMENTS:

For:

Proponents of the bill note that the many 91-day writs of garnishment must be renewed serially, in order to collect judgments that courts have awarded. Each time a writ of garnishment is extended an additional 91 days, applicants must file multiple copies of the periodic writ of garnishment forms, serve the debtors to let them know their income will

once again be attached, and pay the court filing fees. Then court clerks must process the paperwork. This legislation would extend the validity of a writ of garnishment from three months to six months—91 days to 182 days—thus saving local courts administrative costs by reducing the "counter time" for court clerks. The bill would also reduce the paperwork and costs for those who must file writs of garnishment in order to satisfy the judgments already awarded them by the courts.

POSITIONS:

The Rental Property Owners Association of Michigan supports the bill. (5-31-12)

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