

Legislative Analysis



GARNISHMENT

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House Bill 5390 (Substitute H-1)
Sponsor: Rep. Kevin Cotter

House Bill 5391 (Substitute H-1)
Sponsor: Rep. Michael D. McCready

Committee: Commerce
Complete to 9-17-14

A SUMMARY OF HOUSE BILLS 5390 & 5391 AS REPORTED FROM COMMITTEE

The two bills revise provisions in law that deal with garnishment, which is defined as an order directed to a third party to withhold periodic or nonperiodic payment of assets. For example, an employer (as "garnishee") may be required to garnish wages of an employee to pay debts of that employee to a creditor, or child support payments owed, or tax liabilities.

House Bill 5390 would amend Section 4012 of the Revised Judicature Act (MCL 600.4012). House Bill 5391 would amend Public Act 390 of 1978 (MCL 408.477), which regulates the payment of wages and fringe benefits to employees. The two bills are tie-barred, meaning both must be enacted for either to take effect.

House Bill 5390 would amend the RJA to specify the following:

A writ of garnishment or periodic payment would not be valid or enforceable unless the writ is served on the garnishee (the third person, such as an employer, withholding money to pay a debt) in accordance with the Michigan Court Rules.

While a writ of garnishment for periodic payments is in effect, the plaintiff must do both of the following: (1) every six months provide the court, garnishee, and defendant with a statement setting forth the balance remaining on the judgment, including interest and costs; and (2) within seven days after satisfaction of the judgment, including all interest and costs, file with the court and send to the garnishee and defendant a satisfaction of judgment.

Entry of Default against Garnishee

A plaintiff could not request that a default be entered against a garnishee (e.g., an employer) under a garnishment of periodic payments unless both of the following apply: (1) the garnishee fails to file a disclosure within 14 days after service of a writ of garnishment or fails to perform any other required act and the plaintiff has filed with the court and served on the garnishee a notice of failure, setting forth the required act or acts that the garnishee has failed to perform; and (2) the garnishee has failed within 28 days after the date of service of the notice of failure to cure the identified failure by mailing to

the court, plaintiff, and defendant a disclosure certifying that the garnishee has begun to withhold under the writ of garnishment as provided by statute or court rule and has begun performing any required act.

The plaintiff would have to attach to a request for entry of a default proof of serving the notice of failure. The plaintiff would have to 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 the garnishee's registered agent.

Garnishee Could Cure Failure

After entry of a default and before entry of a default judgment, the garnishee could cure the identified failure by mailing to the court, plaintiff, and defendant a disclosure certifying that the garnishee has begun to withhold under the writ of garnishment as provided by statute or court rule and has begun performing any required act.

Request for Default Judgment

After a default had been entered, the plaintiff could file with the court a request for a default judgment for an amount that did not exceed the full amount of the unpaid judgment, interest, and costs, as stated in the request and writ of garnishment. The plaintiff would have to send a copy of the request for default judgment by certified mail to the garnishee at the garnishee's principal place of business or the garnishee's registered agent.

On motion of the garnishee filed within 21 days after entry of a default judgment, the court would do one or more of the following:

- Reduce the default judgment to not more than the amount that would have been withheld if the writ of garnishment had been in effect for 56 days, if the garnishee certifies that its failure to comply with the writ of garnishment was inadvertent or caused by an administrative error, mistake, or other oversight,.
- Set aside the judgment, if any of the following circumstances existed: (1) the garnishee was not liable to the defendant for any periodic payments after service of the writ of garnishment; (2) the writ of garnishment, notice of failure, request for entry of a default, or request for default judgment was not properly served or sent as required; or (3) the notice of failure was materially inaccurate or incomplete.

A garnishee could recover an amount for which the garnishee is liable from future periodic payments to the defendant as provided under Public Act 390 of 1978 (the bill that House Bill 5391 is amending).

Also under House Bill 5390, a writ of garnishment of wages, salary, commissions, or other earnings would remain in effect until the balance of the judgment is satisfied. Currently, the RJA says such a writ is in effect for 182 days. The garnishment of tax refunds is dealt with elsewhere in the statute.

Also, the fee paid by the plaintiff to the garnishee at the time a writ of garnishment is served would be increased from \$6 to \$35.

Under House Bill 5391, if an employer is ordered to pay any part of the employee's debt under Section 4012 of the Revised Judicature Act, the employer could deduct that amount from the employee's regularly scheduled wage payment without the written consent of the employee if all of the following conditions are met:

(a) The employer provides the employee with a written explanation of the deduction at least one pay period before the wage payment affected by the deduction is made.

(b) The deduction is not greater than 15% of the gross wages earned in the pay period in which the deduction is made.

(c) The deduction is made after the employer has made all deductions expressly permitted or required by law or a collective bargaining agreement, and after any employee-authorized deduction.

(d) The deduction does not reduce the regularly scheduled gross wages otherwise due the employee to a rate that is less than the greater of either the minimum rate as prescribed by minimum wage law or the minimum rate as prescribed by the federal Fair Labor Standards Act.

FISCAL IMPACT:

The bill does not appear to have significant fiscal impact on the state.

POSITIONS:

The following indicated support to the Commerce Committee for the bills on 9-10-14: the Michigan Chamber of Commerce, the Michigan Manufacturers Association, the National Federation of Independent Business, and the Michigan Creditors Bar Association.

Legislative Analyst: Chris Couch
Fiscal Analyst: Paul Holland

■ 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.