



**House
Legislative
Analysis
Section**

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GARNISHMENT INVOLVING STATE

House Bill 4702 (Substitute H-2)
First Analysis (12-1-93)

Sponsor: Rep. Kirk A. Profit
Committee: Judiciary

THE APPARENT PROBLEM:

When a creditor wishes to have a Michigan debtor's wages garnished, he or she must first obtain a judgment in the appropriate court, and then a writ of garnishment. Special provisions apply when the state is the garnishee or "garnishee defendant" (that is, when the state is under court order to withhold someone's wages or intercept his or her tax refund on behalf of a creditor). However, it has recently become evident that procedures followed by the Department Treasury in garnishing wages or intercepting garnished tax refunds are not specifically authorized by statute. Legislation has been proposed to revise statute to reflect treasury procedures and to further update and clarify the law.

THE CONTENT OF THE BILL:

The bill would amend the Revised Judicature Act to revise statutory procedures applying when the state is the garnishee. In addition, for one-time garnishments that did not involve interception of state tax refunds, including garnishments of bank accounts, the bill would reinstate a \$1 fee that a plaintiff/creditor is to pay a garnishee at the time a writ of garnishment is served. Additional details on procedural provisions follow.

Proof of service. The bill would delete a requirement that a copy of the proof of service of a writ of garnishment on the principal defendant be mailed to the state treasurer. (The state treasurer, as well as the defendant/debtor, is served with a writ.)

Garnishment disclosures. After receiving a writ, the state files with the circuit court a notice of disclosure of the amount of indebtedness. (The filing of this disclosure triggers the deadline for paying the garnishment.) The bill would specify that a disclosure also be served on the plaintiff/creditor and the defendant/debtor, and would specify various deadlines for filing the

disclosure, depending on the type of garnishment involved. For garnishment of wages or earnings, the deadline would be 30 days after the writ was served. For garnishment of vendor payments, lottery payments, or other types of indebtedness specified by the state treasurer (but not tax intercepts), the deadline would be 45 days after the writ was served. For tax intercepts, the deadline for filing the disclosure would be 90 days after interception. However, if interception had not occurred before December 1 of the year following the tax year for which the writ was obtained, the Department of Treasury would file a disclosure within 60 days after December 1 stating that no individual income tax refund or credit was intercepted.

Payments of indebted amounts. Current law requires payment to occur within a "reasonable time" after filing of the disclosure; the bill would specify that payment occur within 14 days. Current law provides for the sum to be deposited with the court, which then transfers it to the plaintiff/creditor; the bill would retain this option, but also would provide for payment to be made directly to the plaintiff, if ordered by the court.

Notices mailed by court. The bill would delete a requirement for the court to notify the defendant/debtor when the state files a disclosure and deposits the indebted amount. (Under the bill, the defendant/debtor would receive a copy of the disclosure from the state treasurer.)

Excess amounts. Current law specifies that any amount deposited with the court in excess of the amount owed be returned to the state. The bill would instead specify that it be returned to the defendant/debtor.

Dismissals. The bill would delete a provision that says that if a garnishment action is dismissed for any reason, the order of dismissal must direct the court clerk to return the full amount deposited to the state treasurer. Under the bill, the treasurer

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would specify the period of time within which the dismissal of a garnishment action or notice of bankruptcy would have to be received in order to be effective for the processing cycle for each type of garnishment. Upon dismissing a garnishment action, a court would order one or both of the following, as applicable: the court clerk to convey any money deposited to the defendant/debtor; the state to convey to the defendant/debtor any money or property withheld under the garnishment. However, such orders would not be required for a dismissal following an agreement between the parties; for such dismissals, the court could include the terms of the agreement in the dismissal order.

Administrative rules. The state treasurer could promulgate rules to carry out the bill.

Court rules. For garnishments where the state is the garnishee defendant, the bill's procedures and those otherwise provided by law would apply as supplemented by the Michigan Court Rules.

MCL 600.4011

FISCAL IMPLICATIONS:

The House Fiscal Agency reports that garnishment fees currently collected by the treasury department are more than sufficient to cover the costs of the garnishment program, and that the bill would present no additional costs to the state. (11-30-93)

ARGUMENTS:

For:

The bill would update statute and legitimize various procedures employed by the treasury department in processing garnishments against amounts that the state pays out to state employees, vendors, lottery winners, and taxpayers. It would clarify procedures and deadlines, and would enable the court to remove itself from the role of cashier, allowing the court to order the state to pay a creditor directly.

Against:

There are a number of inconsistencies between the bill and the court rules on garnishment. For example, the court rule calls for the treasury department to serve process on the defendant, while the bill calls for the plaintiff to do so. The bill also extends the amount of time that the department has to respond to writs of garnishment. Absent a compelling reason, the inconsistencies may create

unnecessary administrative complexity and undermine uniformity. While special procedures for tax intercepts may be justified, it is not clear why the state should be treated differently from any other employer in wage garnishments.

Response:

Inconsistencies between the bill and the court rules would be academic, as the bill would supersede court rule where the two conflict.

POSITIONS:

The Department of Treasury supports the bill. (11-30-93)

The Michigan Association of Collection Agencies does not have any objections to the bill. (11-30-93)