

REVISED JUDICATURE ACT OF 1961 (EXCERPT)
Act 236 of 1961

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 Notes: 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."