

SUBSTITUTE FOR  
HOUSE BILL NO. 5390

A bill to amend 1961 PA 236, entitled  
"Revised judicature act of 1961,"  
by amending section 4012 (MCL 600.4012), as amended by 2012 PA 304.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Sec. 4012. (1) ~~Except for garnishment of a tax refund under~~  
2 ~~section 4061a or garnishment of wages, salary, commissions, or~~  
3 ~~other earnings, and subject to subsection (2), a~~ writ of  
4 garnishment of periodic payments remains in effect ~~for the period~~  
5 ~~prescribed by the Michigan court rules. A writ of garnishment of~~  
6 ~~wages, salary, commissions, or other earnings remains in effect for~~  
7 ~~182 days.~~ **AS FOLLOWS:**

8       **(A) A WRIT OF GARNISHMENT OF A TAX REFUND REMAINS IN EFFECT AS**  
9 **PROVIDED IN SECTION 4061A.**

1           **(B) A WRIT OF GARNISHMENT OF OTHER PERIODIC PAYMENTS REMAINS**  
2 **IN EFFECT UNTIL THE BALANCE OF THE JUDGMENT IS SATISFIED.**

3           (2) A garnishee is not liable for a writ of garnishment of  
4 periodic payments under subsection (1) to the extent that the  
5 garnishee is required to satisfy another writ of garnishment  
6 against the same defendant having a higher priority or having the  
7 same priority but received at an earlier date. For purposes of this  
8 subsection, writs of garnishment have priority in the following  
9 order:

10           (a) A garnishment resulting from an obligation of court  
11 ordered support as defined in section 2 of the support and  
12 parenting time enforcement act, 1982 PA 295, MCL 552.602.

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

15           (c) Any other garnishments, in the order in which they are  
16 served.

17           **(3) IF A GARNISHMENT IS SUSPENDED PURSUANT TO AN ORDER UNDER**  
18 **SECTION 6201 AND THE ORDER IS SUBSEQUENTLY SET ASIDE, THE**  
19 **GARNISHMENT RETAINS ITS PRIORITY.**

20           **(4) A WRIT OF GARNISHMENT OF PERIODIC PAYMENTS IS NOT VALID OR**  
21 **ENFORCEABLE UNLESS THE WRIT IS SERVED ON THE GARNISHEE IN**  
22 **ACCORDANCE WITH THE MICHIGAN COURT RULES.**

23           **(5) WHILE A WRIT OF GARNISHMENT FOR PERIODIC PAYMENTS IS IN**  
24 **EFFECT, THE PLAINTIFF SHALL DO BOTH OF THE FOLLOWING:**

25           **(A) EVERY 6 MONTHS, PROVIDE THE COURT, GARNISHEE, AND**  
26 **DEFENDANT WITH A STATEMENT SETTING FORTH THE BALANCE REMAINING ON**  
27 **THE JUDGMENT, INCLUDING INTEREST AND COSTS.**

1 (B) WITHIN 7 DAYS AFTER SATISFACTION OF THE JUDGMENT,  
2 INCLUDING ALL INTEREST AND COSTS, FILE WITH THE COURT AND SEND TO  
3 THE GARNISHEE AND DEFENDANT A SATISFACTION OF JUDGMENT.

4 (6) A PLAINTIFF SHALL NOT REQUEST THAT A DEFAULT BE ENTERED  
5 AGAINST A GARNISHEE UNDER A GARNISHMENT OF PERIODIC PAYMENTS UNLESS  
6 BOTH OF THE FOLLOWING APPLY:

7 (A) IF THE GARNISHEE FAILS TO FILE A DISCLOSURE WITHIN 14 DAYS  
8 AFTER SERVICE OF A WRIT OF GARNISHMENT OR FAILS TO PERFORM ANY  
9 OTHER REQUIRED ACT, THE PLAINTIFF HAS FILED WITH THE COURT AND  
10 SERVED ON THE GARNISHEE A NOTICE OF FAILURE SETTING FORTH THE  
11 REQUIRED ACT OR ACTS THAT THE GARNISHEE HAS FAILED TO PERFORM.

12 (B) THE GARNISHEE HAS FAILED, WITHIN 28 DAYS AFTER THE DATE OF  
13 SERVICE OF THE NOTICE OF FAILURE UNDER SUBDIVISION (A), TO CURE THE  
14 IDENTIFIED FAILURE BY MAILING TO THE COURT, PLAINTIFF, AND  
15 DEFENDANT A DISCLOSURE CERTIFYING THAT THE GARNISHEE HAS BEGUN TO  
16 WITHHOLD PURSUANT TO THE WRIT OF GARNISHMENT AS PROVIDED BY STATUTE  
17 OR COURT RULE, OR HAS COMMENCED PERFORMING ANY OTHER REQUIRED ACT.

18 (7) THE PLAINTIFF SHALL ATTACH TO A REQUEST FOR ENTRY OF A  
19 DEFAULT UNDER SUBSECTION (6) PROOF OF SERVING THE NOTICE OF  
20 FAILURE. THE PLAINTIFF SHALL SEND A COPY OF THE REQUEST FOR ENTRY  
21 OF A DEFAULT BY CERTIFIED MAIL TO THE GARNISHEE AT THE GARNISHEE'S  
22 PRINCIPAL PLACE OF BUSINESS OR REGISTERED AGENT.

23 (8) AFTER ENTRY OF A DEFAULT UNDER SUBSECTION (6) AND BEFORE  
24 ENTRY OF A DEFAULT JUDGMENT, THE GARNISHEE MAY CURE THE IDENTIFIED  
25 FAILURE BY MAILING TO THE COURT, PLAINTIFF, AND DEFENDANT A  
26 DISCLOSURE CERTIFYING THAT THE GARNISHEE HAS BEGUN TO WITHHOLD  
27 PURSUANT TO THE WRIT OF GARNISHMENT AS PROVIDED BY STATUTE OR COURT

1 RULE OR THAT IT HAS COMMENCED PERFORMING ANY OTHER REQUIRED ACT.

2 (9) AFTER A DEFAULT HAS BEEN ENTERED UNDER SUBSECTION (6), THE  
3 PLAINTIFF MAY FILE WITH THE COURT A REQUEST FOR DEFAULT JUDGMENT  
4 FOR AN AMOUNT THAT DOES NOT EXCEED THE FULL AMOUNT OF THE UNPAID  
5 JUDGMENT, INTEREST, AND COSTS, AS STATED IN THE REQUEST AND WRIT  
6 FOR GARNISHMENT. THE PLAINTIFF SHALL SEND A COPY OF THE REQUEST FOR  
7 DEFAULT JUDGMENT BY CERTIFIED MAIL TO THE GARNISHEE AT THE  
8 GARNISHEE'S PRINCIPAL PLACE OF BUSINESS OR RESIDENT AGENT.

9 (10) ON MOTION OF THE GARNISHEE FILED WITHIN 21 DAYS AFTER  
10 ENTRY OF A DEFAULT JUDGMENT UNDER SUBSECTION (9), THE COURT SHALL  
11 DO 1 OR MORE OF THE FOLLOWING, AS APPLICABLE:

12 (A) IF THE GARNISHEE CERTIFIES THAT ITS FAILURE TO COMPLY WITH  
13 THE WRIT OF GARNISHMENT WAS INADVERTENT OR CAUSED BY AN  
14 ADMINISTRATIVE ERROR, MISTAKE, OR OTHER OVERSIGHT, REDUCE THE  
15 DEFAULT JUDGMENT TO NOT MORE THAN THE AMOUNT THAT WOULD HAVE BEEN  
16 WITHHELD IF THE WRIT OF GARNISHMENT HAD BEEN IN EFFECT FOR 56 DAYS.

17 (B) IF ANY OF THE FOLLOWING CIRCUMSTANCES EXIST, SET ASIDE THE  
18 DEFAULT JUDGMENT:

19 (i) THE GARNISHEE WAS NOT LIABLE TO THE DEFENDANT FOR ANY  
20 PERIODIC PAYMENTS AFTER SERVICE OF THE WRIT OF GARNISHMENT.

21 (ii) THE WRIT OF GARNISHMENT, NOTICE OF FAILURE, REQUEST FOR  
22 ENTRY OF A DEFAULT, OR REQUEST FOR DEFAULT JUDGMENT WAS NOT  
23 PROPERLY SERVED OR SENT AS REQUIRED BY THIS SECTION.

24 (iii) THE NOTICE OF FAILURE WAS MATERIALLY INACCURATE OR  
25 INCOMPLETE.

26 (11) A GARNISHEE MAY RECOVER AN AMOUNT FOR WHICH THE GARNISHEE  
27 IS LIABLE UNDER THIS SECTION FROM FUTURE PERIODIC PAYMENTS TO THE

1 **DEFENDANT AS PROVIDED IN SECTION 7 OF 1978 PA 390, MCL 408.477.**

2 (12) ~~(3)~~ Except as otherwise provided by statute, a plaintiff  
3 shall pay a fee of ~~\$6.00~~ **\$35.00 TO THE GARNISHEE** at the time a writ  
4 ~~to the garnishee~~ of garnishment of periodic payments is served ~~upon~~  
5 **ON** the garnishee.

6 (13) **AS USED IN THIS SECTION, "GARNISHMENT" MEANS ANY COURT**  
7 **ORDER DIRECTED TO A THIRD PARTY TO WITHHOLD PERIODIC PAYMENTS.**

8 (14) ~~(4)~~ As used in this section and section 8410a, "periodic  
9 payments" means wages, salary, commissions, and other earnings,  
10 land contract payments, rent, and other periodic debt or contract  
11 payments that are or become payable during the effective period of  
12 the writ of garnishment. Periodic payments do not mean any of the  
13 following:

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

16 (b) Charges made by a financial institution automatically  
17 against an account ~~which applies~~ **THAT ARE APPLIED** to a debt under  
18 an automatic payment authorization executed by the account owner.

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

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

24 Enacting section 1. This amendatory act takes effect April 1,  
25 2015.

26 Enacting section 2. This amendatory act does not take effect  
27 unless House Bill No. 5391 of the 97th Legislature is enacted into

1 law.