



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS



Telephone: (517) 373-5383
Fax: (517) 373-1986

House Bill 5390 (Substitute S-1 as reported)
House Bill 5391 (Substitute S-1 as reported)
Sponsor: Representative Kevin Cotter (H.B. 5390)
Representative Michael D. McCready (H.B. 5391)
House Committee: Commerce
Senate Committee: Reforms, Restructuring and Reinventing

CONTENT

The bills would amend provisions of the law dealing with garnishment (a legal process in which a plaintiff can collect a defendant's debt from a third party, the garnishee, who is in control of property belonging to the defendant or money, such as wages or rental payments, due to the defendant).

House Bill 5390 (S-1) would Section 4012 of the Revised Judicature Act, which governs writs of garnishment of periodic payments, to do the following:

- Provide that a writ of garnishment would remain in effect until the balance of the judgment was satisfied.
- Require a plaintiff to pay a \$35 fee, rather than the current \$6 fee, to the garnishee at the time a writ of garnishment was served on the garnishee.
- Require a plaintiff to give the garnishee and defendant a statement of the remaining balance of the judgment at least once every six months while a writ of garnishment was in effect.
- Require a plaintiff to give the garnishee and defendant a release of garnishment within 14 days after the balance of the judgment had been paid.
- Prohibit a plaintiff from requesting a default to be entered against a garnishee unless the garnishee failed to file a disclosure or otherwise perform a required act, and did not cure the failure, as provided in the bill.
- Allow a plaintiff to file with the court a request for default judgment after a default had been entered.
- Require the court, on the garnishee's motion, to reduce and/or set aside a default judgment under certain circumstances.
- Allow a garnishee to recover an amount for which the garnishee was liable because of a default judgment under the bill from future periodic payments to the defendant, as provided in the section of law that House Bill 5391 (S-1) would amend.
- Provide that a writ of garnishment of periodic payments would not be valid or enforceable unless it were served on the garnishee in accordance with the Michigan Court Rules.

House Bill 5391 (S-1) would amend Public Act 390 of 1978, which regulates the payment of wages and fringe benefits, to allow an employer to deduct amounts from the wages of an employee without his or her consent, if the employer paid any amount of the employee's debt under a default judgment for failure to comply with a writ of garnishment, and certain conditions were met.

As a rule, the Act prohibits an employer from deducting any amount from the wages of an employee without his or her full, free, and written consent, and requires written consent from the employee for each wage payment subject to a deduction for the benefit of the employer.

Under the bill, if an employer paid any amount of an employee's debt under a default judgment entered under Section 4012 of the Revised Judicature Act (as provided in House Bill 5390 (S-1)), the employer could deduct that amount from the regularly scheduled wage payment of the employee without his or her written consent if all of the following conditions were met:

- The employer gave the employee a written explanation of the deduction at least one pay period before the wage payment affected by the deduction was made.
- The deduction was not greater than 15% of the gross wages earned in the pay period in which the deduction was made.
- The deduction was made after the employer had made all deductions expressly permitted or required by law or a collective bargaining agreement, and after any employee-authorized deduction.
- The deduction did not reduce the regularly scheduled gross wages otherwise due the employee to a rate that was less than the minimum rate prescribed by the Workforce Opportunity Wage Act or the Fair Labor Standards Act, whichever was greater.

The bill also would allow an employee to file a complaint with the Department of Licensing and Regulatory Affairs if the employee believed that his or her employer had violated the provisions proposed by the bill.

The bills are tie-barred. House Bill 5390 (S-1) would apply to writs of garnishment of periodic payments issued after March 31, 2015.

MCL 600.4012 (H.B. 5390)
408.477 (H.B. 5391)

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

House Bill 5390 (S-1) would have no fiscal impact on State or local government except to the extent the State or a local unit of government was a plaintiff in a garnishment proceeding or a garnishee. If the State or local unit were a plaintiff, it would have to pay the increased fee to the garnishee, and would have to comply with the bill's requirements to give periodic statements and a release of garnishment to a garnishee and defendant. If the State or a local unit were a garnishee, it would receive increased fee revenue. Also, as a plaintiff or garnishee, the State or a local unit could be affected by the provisions concerning entry of a default and default judgments.

House Bill 5391 (S-1) could have a very minor, but likely negative, fiscal impact on the Department of Licensing and Regulatory Affairs and would have no fiscal impact on local units of government. Statute allows an employee to file a complaint with the Wage and Hour Division within the Department if an employer improperly deducts an amount from the employee's wages. The bill would create additional conditions that employers would have to follow before garnishing wages, which could result in additional complaints being filed with the Wage and Hour Division.

Date Completed: 12-10-14

Fiscal Analyst: Josh Sefton

Floor/hb5390

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.