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BILL ANALYSIS



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House Bill 5390 (Substitute H-2 as passed by the House)
House Bill 5391 (Substitute H-1 as passed by the House)
Sponsor: Representative Kevin Cotter (H.B. 5390)
Representative Michael D. McCreedy (H.B. 5391)
House Committee: Commerce
Senate Committee: Reforms, Restructuring and Reinventing

Date Completed: 10-21-14

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 (H-2) 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.
- 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 (H-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 were subject to a writ of garnishment of periodic payments and other conditions were met.

The bills are tie-barred. House Bill 5390 (H-2) would apply to writs of garnishment of periodic payments issued after March 31, 2015.

House Bill 5390 (H-2)

Writ of Garnishment: Duration, Validity, Priority

The Revised Judicature Act authorizes courts, by garnishment, to apply the following to satisfy a claim evidenced by contract or judgment: personal property that belongs to the person against whom the claim is asserted but is in the control or possession of a third party, or an obligation owed to the person against whom the claim is asserted, or both.

Section 4012 provides for garnishment of periodic payments. The bill would define "garnishment", as used in Section 4012, as any court order directed to a third party to withhold periodic payments. (Section 4012 defines "periodic payments" as 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 writ of garnishment. The term does not include certain payments or charges by a financial institution.)

Except for garnishment of a tax refund or garnishment of wages, salary, commissions, or other earnings, a writ of garnishment of periodic payments remains in effect for the period prescribed by the Michigan Court Rules. A writ of garnishment of wages, salary, commissions, or other earnings remains in effect for 182 days.

The bill provides, instead, that a writ of garnishment of periodic payments would remain in effect until the balance of the judgment was satisfied.

(Michigan Court Rule (MCR) 3.101 governs garnishment after a judgment has been entered, including garnishments of periodic payments. Under MCR 3.101, a writ of garnishment of periodic payments remains in effect until the expiration of 182 days after the date the writ was issued, or, generally speaking, until the judgment has been satisfied, whichever occurs first.)

Plaintiff's Statement & Release

While a writ of garnishment for periodic payments was in effect, the bill would require the plaintiff to give the garnishee and the defendant a statement setting forth the balance remaining on the judgment, including interest and costs, at least once every six months after the plaintiff received the first payment under the garnishment. A plaintiff's failure to send a timely statement would not affect the garnishment or any obligation of the garnishee under it.

In addition, within 14 days after the balance of the judgment, including all interest and costs, had been paid in full, the plaintiff would have to give a release of garnishment to the garnishee and the defendant.

Default

The bill would prohibit a plaintiff from requesting a default to be entered against a garnishee under a garnishment of periodic payments unless both of the following applied:

- The plaintiff had served on the garnishee a notice of failure setting forth the required act or acts that the garnishee had failed to perform, if the garnishee failed to file a disclosure within 14 days after service of a writ of garnishment or failed to perform any other required act.
- The garnishee had failed, within 28 days after that notice was served, to cure the identified failure by mailing to the plaintiff and defendant a disclosure certifying that the garnishee had begun to withhold any available money pursuant to the writ of

garnishment as provided by statute or court rule, or had begun to perform any other required act.

The plaintiff would have to attach to a request for entry of a default proof of serving the notice of failure.

After a default had been entered, the plaintiff could file with the court a request for 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 for garnishment.

The plaintiff would have to send a copy of a request for entry of default and a request for default judgment by certified mail to the garnishee at garnishee's principal place of business or registered agent.

After entry of a default and before a default judgment was entered, the garnishee could cure the identified failure by mailing to the court, the plaintiff, and the defendant a disclosure certifying that the garnishee had begun to withhold any available money pursuant to the writ of garnishment as provided by statute or court rule or that it had begun performing any other required act.

(Michigan Court Rule 3.101 sets forth various obligations of a garnishee, which include mailing or delivering to the court, the plaintiff, and the defendant a verified disclosure of the garnishee's liability within 14 days after being served with the writ of garnishment.

If a garnishee fails to disclose or do a required act within the time limit imposed, a default may be taken as in other civil actions.)

Default Judgment Reduction or Set Aside

The bill would require the court to do one or both of the following, as applicable, on motion of a garnishee filed within 21 days after entry of a default judgment.

If the garnishee certified by affidavit that its failure to comply with the writ of garnishment was inadvertent or caused by an administrative error, mistake, or other oversight and it had begun to withhold any available money pursuant to the writ as provided by statute or court rule, the court would have to 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 any of the following circumstances existed, the court would have to set aside the default judgment:

- The garnishee was not liable to the defendant for any periodic payments after the writ of garnishment was served.
- The writ of garnishment, notice of failure, request for entry of a default, or request for default judgment had not been properly served or sent as required by Section 4012.
- The notice of failure was materially inaccurate or incomplete.

Priority

The Act states that a garnishee is not liable for a writ of garnishment of periodic payments to the extent that the garnishee is required to satisfy another writ of garnishment against the same defendant having a higher priority or having the same priority or received earlier. For this purpose, writs of garnishment have the order of priority specified in the Act.

The bill provides that a writ of garnishment would retain its priority if a garnishment were suspended pursuant to an order under Section 6201 and the order were subsequently set aside.

(Section 6201 allows a judge, when rendering a judgment, to enter an order permitting the defendant to pay the judgment in installments, at the times and in the amounts the defendant is able to pay, in the opinion of the judge. A judge also may permit a defendant to pay a previously rendered judgment in installments. According to MCR 3.101, an order for installment payments under Section 6201 suspends the effectiveness of a writ of garnishment of periodic payments for work and labor performed by the defendant from the time the order is served on the garnishee. If an order terminating the installment payment order is entered and served on the garnishee, the writ of garnishment becomes effective again.)

Garnishee Recovery

The bill would allow a garnishee to recover an amount for which the garnishee was liable under Section 4012 from future periodic payments to the defendant as provided in Section 7 of Public Act 390 of 1978 (the section that House Bill 5391 (H-1) would amend).

House Bill 5391 (H-1)

Except for deductions required or expressly permitted by law or by a collective bargaining agreement, Public Act 390 of 1978 prohibits an employer from deducting any amount from the wages of an employee without his or her full, free, and written consent. Also, as a rule, the Act provides that a deduction for the benefit of the employer requires written consent from the employee for each wage payment subject to the deduction, and the cumulative amount of the deductions may not reduce the gross wages paid to a rate less than the minimum rate prescribed by the Workforce Opportunity Wage Act (the minimum wage under State law).

Under the bill, if an employer were ordered to pay any part of an employee's debt under Section 4012 of the Revised Judicature Act (i.e., pursuant to a writ of garnishment of periodic payments), 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 minimum rate prescribed by the Fair Labor Standards Act, whichever was greater.

Currently, if an employee believes that his or her employer violated the requirement for written consent to a deduction for the employer's benefit, the employee may file a complaint with the Department of Licensing and Regulatory Affairs within 12 months after the date of the alleged violation. Under the bill, this also would apply if an employee believed that his or her employer had violated the provisions proposed by the bill.

FISCAL IMPACT

House Bill 5390 (H-2)

The bill 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 (H-1)

The bill could have a very minor, but likely negative, fiscal impact on the Department of Licensing and Regulatory Affairs (LARA) 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 LARA 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.

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