



CONTINUOUS GARNISHMENT FOR 6 MONTHS

House Bill 5071 (Substitute H-1) First Analysis
(11-13-90)

Sponsor: Rep. Kirk A. Profit
Committee: Judiciary

THE APPARENT PROBLEM:

When a creditor wishes to have a Michigan debtor's wages garnisheed, he or she must obtain first a judgment in the appropriate court (circuit or district), and then a writ of garnishment. A separate writ must be obtained from the court clerk and served on the employer for each time a creditor wishes to secure a portion of the debtor's pay. Within seven days after receiving a writ, an employer must file with the court and serve on the creditor-plaintiff a disclosure statement indicating the amount the employer owed the employee-debtor at the time of service of the writ of garnishment. This process, which basically must be repeated each time a paycheck is to be garnisheed, strikes many as unnecessarily cumbersome and expensive for all concerned. To remedy the situation, it has been suggested that writs of garnishment operate continuously for a limited period of time.

THE CONTENT OF THE BILL:

The bill would amend the Revised Judicature Act to provide for a writ of garnishment to remain effective for up to six months. The garnishment would be dissolved sooner if the debt (including interest and costs) was paid or if a change in the debtor's financial condition warranted dissolution. In the latter case, the debtor would have the burden of proving the change in financial condition to the court. The bill would apply to procedures in both circuit and district court, including small claims court.

MCL 600.4011 and 600.8410a

FISCAL IMPLICATIONS:

Fiscal information is not available. (11-13-90)

ARGUMENTS:

For:

The bill would effect a long-overdue streamlining of garnishment procedures by allowing writs of garnishment to have continuous effect for a limited period of time; other states that provide for continuous garnishment are reported to include California, Indiana, and Florida. Obviously, the bill would be beneficial for creditor-plaintiffs, who would be relieved from having to obtain and serve a separate writ for each paycheck to be affected, and for employers, who would be relieved from the additional filing and service of the disclosure statement that must follow each writ. The difficulty of timing writs also would be eased: under the current system, the money to be garnished is taken from pay owed at the time the writ is served on the employer; creditors thus need to carefully time the serving of the writ, typically having it served on a payday before the debtor-employee is paid. Courts would be relieved of additional paperwork that, while routine, also occupies a significant portion of clerical time in a period when courts throughout the state are struggling with inadequate funding and crowded dockets.

Debtors also would benefit under the bill by being relieved of the additional court costs and legal fees, including process servers' fees, that accrue each time a writ is obtained and served; those costs can increase significantly the amount owed. There may be an additional indirect benefit for employees' reputations: an employer who does not have to complete a garnishment disclosure form each pay period may not be so strongly reminded that the employee in question has incurred more debt than he or she can or will pay. The bill would replace a cumbersome and expensive process with one that is more efficient and less costly for all involved. While some may be concerned about smaller creditors being "squeezed out" under continuous garnishment, the six-month period provided by the bill is a compromise between shorter periods that would afford less savings and longer periods (including open-ended) that would have a greater effect on other creditors.

Against:

The bill is open to criticism on a number of points, including:

- its effect on other creditors. The portion of a paycheck that is subject to garnishment is limited. With six-month operation of a writ, the ability of other creditors to gain a portion of the debtor's wages may be impaired, and the bill could work to the benefit primarily of large and well-organized creditors and collection agencies.
- its effect on debtors. With continuous operation, there could be increased possibility of overpayment. Also, many consider garnishment of wages to be a severe remedy that should have limited effect.
- its effect on the system. The cumbersome and expensive nature of the current garnishment system can serve as an incentive for creditors to work out a settlement or installment plan prior to going to court, and by reducing that incentive, the bill could encourage creditors to bring more cases to court, increasing burdens for the judicial system. Faced with continual garnishment, more debtors might be prompted to seek bankruptcy or take other action to avoid garnishment. In addition, the bill could reduce the perceived opportunity to work out an installment plan in place of garnishment; under the current system, a debtor-employee has 14 days after the employer files the disclosure statement to contest the garnishment before the wages being held by the employer are transmitted to the court clerk. It is at this point in the process that some debtors may be moved to respond to creditors and work out an installment plan. Finally, current court rules on garnishment are complex and specific, and it may be that the bill's effect should be delayed to afford adequate time to revise court rules in response to it.

11-10-2017, Friday

OVER

POSITIONS:

The Michigan Association of Collection Agencies supports the concept of the bill, but has no formal position on the substitute at this time. (11-9-90)

The Michigan Court Administrators Association supports the concept of the bill, but has not yet reviewed the substitute and does not have a formal position at this time. (11-13-90)

The Michigan Women's Commission issued a letter of support (11-29-90) for the original bill, which differed from the substitute in not having the six-month limit and in not applying to small claims court.