

# HOUSE BILL No. 5428

January 31, 1990, Introduced by Reps. Walberg, Willis Bullard, O'Connor, DeLange, Nye, Dolan and Bankes and referred to the Committee on Judiciary.

A bill to amend sections 4011, 4031, and 4061 of Act No. 236 of the Public Acts of 1961, entitled as amended "Revised judicature act of 1961," being sections 600.4011, 600.4031, and 600.4061 of the Michigan Compiled Laws; and to add section 4071.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 4011, 4031, and 4061 of Act No. 236 of  
2 the Public Acts of 1961, being sections 600.4011, 600.4031, and  
3 600.4061 of the Michigan Compiled Laws, are amended and section  
4 4071 is added to read as follows:

5 Sec. 4011. (1) Subject to the conditions in ~~subsections~~  
6 ~~(2), (3), (4), (5), (6), and (7)~~ THIS SECTION, the circuit court  
7 ~~shall have power~~ MAY APPLY by garnishment ~~to apply~~ 1 OR MORE  
8 OF the following ~~property or obligation, or both,~~ to the  
9 satisfaction of a claim evidenced by contract, judgment of this

1 state, or foreign judgment: ~~whether or not the state has~~  
 2 ~~jurisdiction over the person against whom the claim is asserted.~~

3 (a) Personal property belonging to the person against whom  
 4 the claim is asserted but which is in the possession or control  
 5 of a third person if the third person is subject to the judicial  
 6 jurisdiction of the state and the personal property to be applied  
 7 is within the boundaries of this state.

8 (b) An obligation owed to the person against whom the claim  
 9 is asserted if the obligor is subject to the judicial jurisdic-  
 10 tion of the state.

11 (C) AN OBLIGATION TO PAY WAGES OR SALARY TO THE PERSON  
 12 AGAINST WHOM THE CLAIM IS ASSERTED THAT IS ACCRUED AT THE TIME OF  
 13 SERVICE OF THE GARNISHMENT WRIT OR THAT ACCRUES AFTER SERVICE OF  
 14 THE GARNISHMENT WRIT, IF THE OBLIGOR IS SUBJECT TO THE JUDICIAL  
 15 JURISDICTION OF THE STATE.

16 (2) The court may exercise the jurisdiction granted in this  
 17 section only if action is taken in accordance with rules adopted  
 18 by the supreme court to protect the parties. Except as otherwise  
 19 provided by court rule, ~~the~~ THIS state ~~of Michigan~~ and every  
 20 governmental unit ~~therein~~ IN THIS STATE, including but not  
 21 limited to a public, municipal, quasi-municipal, or governmental  
 22 corporation; ~~an~~ unincorporated board; ~~a~~ public body; ~~a~~ or  
 23 political subdivision, may be proceeded against as garnishees in  
 24 the same manner and with like effect as individuals.

25 (3) ~~A writ of garnishment may be issued before judgment~~  
 26 ~~only as provided in this subsection. Upon ex parte application~~  
 27 ~~showing that the person against whom the claim is asserted is not~~

~~1 subject to the judicial jurisdiction of the state or, after~~  
~~2 diligent effort, cannot be served with process as required to~~  
~~3 subject him to the judicial jurisdiction of the state, a copy of~~  
~~4 the writ of garnishment shall be served upon the person against~~  
~~5 whom the claim is made in the same manner as provided by rules of~~  
~~6 the supreme court for service of process in other civil actions~~  
~~7 in which personal jurisdiction over the defendant is not~~  
~~8 required. Upon rendition of judgment in the principal action,~~  
~~9 the obligation or property garnished shall be applied to the sat-~~  
~~10 isfaction of the judgment.~~ BEFORE JUDGMENT, A COURT MAY ISSUE A  
11 WRIT OF GARNISHMENT UPON THE PLAINTIFF'S FILING OF A MOTION AND  
12 AFFIDAVIT SETTING FORTH SPECIFIC FACTS SHOWING EITHER OF THE  
13 FOLLOWING:

14 (A) IN AN ACTION COMMENCED FOR MONEY OWED, ALL OF THE  
15 FOLLOWING:

16 (i) THAT THE PRINCIPAL DEFENDANT IS INDEBTED TO THE PLAIN-  
17 TIFF ON A CONTRACT IN A STATED AMOUNT IN EXCESS OF SETOFFS.

18 (ii) THAT THE PRINCIPAL DEFENDANT IS SUBJECT TO THE JURIS-  
19 DICTION OF THE COURT.

20 (iii) THAT, AFTER DILIGENT EFFORT, THE PLAINTIFF CANNOT  
21 SERVE THE PRINCIPAL DEFENDANT WITH PROCESS.

22 (iv) THAT THE PLAINTIFF KNOWS OR HAS GOOD REASON TO BELIEVE  
23 THAT AN OBLIGOR IS INDEBTED TO THE PRINCIPAL DEFENDANT OR THAT A  
24 THIRD PERSON HAS CONTROL OVER PROPERTY BELONGING TO THE PRINCIPAL  
25 DEFENDANT.

26 (B) IN AN ACTION COMMENCED TO ENFORCE A FOREIGN JUDGMENT,  
27 ALL OF THE FOLLOWING:

1 (i) THAT THE PRINCIPAL DEFENDANT IS INDEBTED TO THE  
2 PLAINTIFF ON A FOREIGN JUDGMENT IN A STATED AMOUNT IN EXCESS OF  
3 SETOFFS.

4 (ii) EITHER THAT THE PRINCIPAL DEFENDANT IS NOT SUBJECT TO  
5 THE JURISDICTION OF THE COURT OR THAT AFTER DILIGENT EFFORT THE  
6 PLAINTIFF CANNOT SERVE THE PRINCIPAL DEFENDANT WITH PROCESS.

7 (iii) THAT THE PLAINTIFF KNOWS OR HAS GOOD REASON TO BELIEVE  
8 EITHER THAT AN OBLIGOR IS INDEBTED TO THE PRINCIPAL DEFENDANT OR  
9 THAT A THIRD PERSON HAS CONTROL OVER PROPERTY BELONGING TO THE  
10 PRINCIPAL DEFENDANT.

11 (4) A garnishment proceeding shall not be commenced against  
12 ~~the~~ THIS state ~~of Michigan~~ or ~~any~~ A governmental unit  
13 ~~therein~~ IN THIS STATE, including but not limited to a public,  
14 municipal, quasi-municipal, or governmental corporation; ~~—~~  
15 unincorporated board; ~~—~~ public body; ~~—~~ or political subdivi-  
16 sion, until after the plaintiff's claim ~~has been~~ IS reduced to  
17 judgment.

18 (5) A garnishment proceeding shall not be commenced against  
19 ~~any~~ A person for money owing to a principal defendant on  
20 account of labor performed by the principal defendant until after  
21 the plaintiff's claim ~~has been~~ IS reduced to judgment.

22 (6) A sheriff or other public officer is not subject to gar-  
23 nishment for ~~any~~ money or things received or collected by him  
24 OR HER by virtue of an execution or other legal process in the  
25 favor of the principal defendant or because of ~~any~~ money in his  
26 OR HER hands for which he OR SHE is accountable TO THE PRINCIPAL

1 DEFENDANT merely as a public officer. ~~to the principal~~  
2 ~~defendant.~~

3 (7) IF AN OBLIGATION TO PAY WAGES OR SALARY TO THE PRINCIPAL  
4 DEFENDANT IS GARNISHEED, THE GARNISHMENT WRIT REMAINS EFFECTIVE  
5 UNTIL THE GARNISHEE DEFENDANT IS NOTIFIED BY THE CLERK OF THE  
6 COURT THAT THE WRIT IS DISSOLVED. WHEN THE AMOUNT WITHHELD BY  
7 THE GARNISHEE DEFENDANT AND PAID OVER TO THE CLERK OF THE COURT  
8 EQUALS OR EXCEEDS THE AMOUNT OF THE JUDGMENT, INTEREST, AND  
9 COSTS, OR, IF THE GARNISHEE DEFENDANT DOES NOT PAY THE INDEBTED-  
10 NESS TO THE COURT, WHEN THE AMOUNT REQUIRED TO BE WITHHELD BY THE  
11 GARNISHEE DEFENDANT EQUALS OR EXCEEDS THE AMOUNT OF THE JUDGMENT,  
12 INTEREST, AND COSTS, THE CLERK OF THE COURT SHALL NOTIFY THE GAR-  
13 NISHEE DEFENDANT THAT THE GARNISHMENT WRIT IS DISSOLVED.

14 (8) ~~(7)~~ A garnishment proceeding shall not be commenced if  
15 the commencement of such a proceeding is forbidden by a statute  
16 of this state.

17 Sec. 4031. (1) The provisions of the statutes relating to  
18 exemptions from execution ~~—~~ and the manner of levying upon  
19 property belonging to a class or species in which exemptions are  
20 by law allowed ~~—, shall be applicable~~ APPLY to the application  
21 of property and obligations to claims by attachment and  
22 garnishment.

23 (2) ~~In any garnishment proceeding where~~ IF the indebted-  
24 ness of the garnishee DEFENDANT ~~to the principal defendant~~ is  
25 money owed ~~to the principal defendant~~ on account of ~~(a)~~ the  
26 sale to the garnishee DEFENDANT of milk or cream, or both,  
27 produced on the farm or farms of the principal defendant, the

1 garnishee's liability to the plaintiff is limited to 40% of such  
2 money. ~~—~~

3 (3) ~~(b)~~ IF THE INDEBTEDNESS OF THE GARNISHEE DEFENDANT TO  
4 THE PRINCIPAL DEFENDANT IS MONEY OWED ON ACCOUNT OF personal  
5 labor performed by the principal defendant or his OR HER family,  
6 the ~~garnishee's~~ GARNISHEE DEFENDANT'S liability to the plain-  
7 tiff is limited by the exemptions allowed under section ~~7511~~  
8 6023 AND RESTRICTIONS UNDER APPLICABLE FEDERAL LAW.

9 Sec. 4061. (1) Garnishment process issued from a ~~circuit~~  
10 court against ~~the~~ THIS state ~~of Michigan~~ shall be served upon  
11 the state treasurer or any other state employee designated by him  
12 OR HER to receive such process. The state treasurer shall desig-  
13 nate as many such employees as he OR SHE deems necessary, at  
14 least 2 of whom shall have their offices in Lansing.

15 (2) The designation of ~~such employees~~ AN EMPLOYEE shall be  
16 in writing and filed with the secretary of state, and revocation  
17 of the designation shall be made in like manner. ~~Ipsa facto~~  
18 AUTOMATIC revocation of the designation ~~shall occur~~ OCCURS when  
19 ~~any such~~ THE employee ceases to be employed by the state.

20 (3) The garnishment writ shall be served upon the state  
21 treasurer or designated employee, together with a sworn statement  
22 by the plaintiff ~~his~~ OR THE PLAINTIFF'S attorney or agent ~~—~~  
23 stating the full amount including interest and taxed costs ~~—~~  
24 claimed by the plaintiff to be THEN due upon the judgment against  
25 the principal defendant. Within 5 days after such service is  
26 accomplished, a copy of the garnishment writ shall be served upon  
27 the principal defendant in the manner provided in the rules of

1 the supreme court. A copy of the proof of service upon the  
2 principal defendant shall be mailed to the state treasurer.

3 (4) Within 15 days after receiving proof of service of the  
4 garnishment writ upon the principal defendant, the state trea-  
5 surer shall make and file in behalf of the state a disclosure of  
6 the indebtedness of the state to the principal defendant ~~as of~~  
7 ~~the time of service of the garnishment writ upon the state trea-~~  
8 ~~surer or designated employee,~~ over and above any setoff, coun-  
9 terclaim, or other demand of the state against the principal  
10 defendant. THE DISCLOSURE SHALL REPORT THE INDEBTEDNESS AS OF  
11 THE TIME OF SERVICE OF THE GARNISHMENT WRIT AND, IN CASE OF AN  
12 OBLIGATION TO PAY WAGES OR SALARY, THE DATE ON WHICH THE OBLIGA-  
13 TION NEXT ACCRUES, THE LENGTH OF THE PAY PERIOD, AND THE AMOUNT  
14 OF THE OBLIGATION THAT ACCRUES DURING A PAY PERIOD. The disclo-  
15 sure need not be under oath.

16 (5) When the disclosure is filed or within a reasonable time  
17 ~~thereafter~~ AFTERWARD, the state treasurer shall deposit with  
18 the clerk of the court the amount of ACCRUED indebtedness so dis-  
19 closed less the statutory exemptions of the principal defendant  
20 as computed by the state treasurer, securing a receipt for the  
21 deposit. ~~The~~ IF THE INDEBTEDNESS IS AN OBLIGATION TO PAY WAGES  
22 OR SALARY, THE STATE TREASURER SHALL UPON OR WITHIN A REASONABLE  
23 TIME AFTER THE ACCRUAL OF THE OBLIGATION FOR EACH SUCCEEDING PAY  
24 PERIOD DEPOSIT WITH THE CLERK OF THE COURT THE AMOUNT OF ACCRUED  
25 INDEBTEDNESS FOR THAT PAY PERIOD AND SECURE A RECEIPT FOR THE  
26 DEPOSIT, UNTIL NOTIFIED BY THE CLERK OF THE COURT UNDER SECTION  
27 4011 THAT THE WRIT OF GARNISHMENT IS DISSOLVED. A deposit and

1 receipt shall release and discharge the state of Michigan and the  
2 state treasurer from ~~all~~ liability to the plaintiff, the prin-  
3 cipal defendant, and ~~any~~ A third person having or claiming  
4 ~~any~~ AN interest in the indebtedness. ~~The amount deposited~~  
5 ~~shall not exceed the amount claimed by the plaintiff in his sworn~~  
6 ~~statement.~~

7 (6) Upon the filing of the disclosure and depositing of  
8 ~~the~~ AN indebtedness by the state treasurer, the clerk of court  
9 shall give notice ~~thereof~~ to the principal defendant by mailing  
10 or otherwise delivering ~~a copy of the disclosure and receipt~~ to  
11 the principal defendant A COPY OF THE RECEIPT AND, IF NOT ALREADY  
12 DELIVERED, A COPY OF THE DISCLOSURE.

13 (7) Upon the presentation of satisfactory proofs at the  
14 hearing of the garnishment action, the court may make and enter  
15 an order directing the clerk of court to pay to THE plaintiff the  
16 amount deposited OR TO BE DEPOSITED, not in excess of the amount  
17 found to be actually due THE plaintiff on his OR HER judgment,  
18 including interest and taxed costs. ~~, as of the time of service~~  
19 ~~of the garnishment writ upon the state treasurer or designated~~  
20 ~~employee.~~ ~~Any~~ A residue of the deposit over the amount paid to  
21 THE plaintiff shall be ordered returned to the state treasurer.

22 (8) If the garnishment action is dismissed, ~~for any~~  
23 ~~reason,~~ the order of dismissal shall direct the clerk of court  
24 to return the ~~full~~ amount deposited to the state treasurer.

25 SEC. 4071. IF AN OBLIGATION TO PAY WAGES OR SALARY IS GAR-  
26 NISHEED, THE PLAINTIFF SHALL PAY THE GARNISHEE DEFENDANT A FEE OF

1 \$2.00 WHEN THE WRIT OF GARNISHMENT IS SERVED. OTHER COSTS AND  
2 FEES ARE AS PROVIDED BY LAW OR COURT RULE.