



American Payroll Association

Government Relations • Washington, DC

House Commerce Committee
June 4, 2014, 10:30 a.m.
House Office Building, Room 519

Statement in Support of HB 5390 and HB 5391

The American Payroll Association (APA) appreciates the opportunity to submit the following statement in support of House Bill 5390 and its companion House Bill 5391. If enacted, the bills will provide comprehensive wage garnishment reform. The current wage garnishment process is needlessly complex, costly to administer, and subjects employers to severe liability, even in the case of administrative errors. House Bills 5390 and 5391 will reduce the administrative burden on employers, provide fair compensation for garnishment administration, limit employer liability for administrative errors and provide for economic recovery where an employer pays part of an employee's debt. Importantly, HBs 5390 and 5391 do not eliminate employer liability, thereby promoting proper garnishment processing. HBs 5390 and 5391 strike an appropriate balance between the needs of employers who process garnishments and creditors who rely on the garnishment process to collect outstanding debts.

About the American Payroll Association

The APA is a nonprofit professional association representing more than 20,000 payroll professionals and their companies in the United States. The APA's primary mission is to educate its members and the payroll industry regarding best practices associated with paying America's workers while complying with applicable federal, state, and local laws. In addition, the APA's Government Affairs Task Force works with the legislative and executive branches of government to find ways to help employers satisfy their legal obligations, while minimizing the administrative burden on government, employers, and individual workers.

The APA strives to educate its members so that they comply with applicable federal, state, and local laws. Proper processing of garnishments is a high priority for the APA and its members, and a major focus of the APA's educational program involves garnishment processing. The burden reduction for payroll professionals provided in HBs 5390 and 5391 is a welcome development that is strongly supported by the APA.

Support for Michigan HB 5390

Under the current law, a garnishment is effective for 182 days. Not only must employers set-up their payroll systems so that the garnishment properly expires, they must also watch for a reissue of the garnishment. Once reissued, the employer must modify the payroll information to

account for the new expiration date. This process may continue for years and creates an unnecessary burden for employers. House Bill 5390 addresses this issue by providing that a garnishment remains in effect until the balance is paid or released. This will greatly reduce the administrative burden faced by employers by allowing for a one-time set-up of a garnishment in the payroll system.

House Bill 5390 contains two provisions that provide clarity to employers and, when legal controversies arise, courts concerning the validity of garnishments. House Bill 5390 adds a definition of garnishment that should help eliminate confusion over orders that may not be called "garnishments" but have the same legal effect as a garnishment. House Bill 5390 also provides that a garnishment is not enforceable if it is not "served on the garnishee in accordance with the Michigan Court Rules." This provision renders garnishments that are sent to local or branch offices unenforceable. This will promote timely processing of garnishments because employers with proper notice can process the garnishment correctly, whereas a garnishment sent to a local office may be mishandled. If disputes arise about the validity of the type of garnishment or the proper service of the garnishment, HB 5390 provides clear rules to help courts resolve the dispute.

Currently, creditors pay \$6.00 to employers to process a garnishment. House Bill 5390 raises that amount to \$35.00. The increased fee is in line with the actual administrative costs an employer incurs when processing a garnishment. The one-time fee also accounts for the fact that garnishments will be valid until the debt is paid or released rather than the current situation where an employer receives a \$6.00 fee each time a garnishment is reissued.

House Bill 5390 limits the liability of an employer that incorrectly handles a garnishment. Currently, employers may be liable for the entire debt, even in the case of an administrative error. While a penalty provision may be appropriate, subjecting all employers to such a harsh liability is unnecessary and unfair. House Bill 5390 corrects this situation by instituting a penalty of the greater of \$100.00 or an amount equivalent to the proper withholding for 60 days. The provision should provide employers with an incentive to process garnishments properly, while alleviating unfair penalties.

Beyond limiting the liability to which employers are currently subject, HB 5390 provides for a process whereby employers have the opportunity to correct administrative errors. HB 5390 provides that an employer will not be liable for a penalty unless the creditor takes certain actions. The creditor has 14 days from the deadline to process the garnishment to inform the employer of its error. The creditor must also inform the employer that it has seven calendar days to correct the problem. This process will allow employers to correct their errors and process the garnishment properly without the need for additional court action and the fear of liability for the entire debt.

Support for Michigan HB 5391

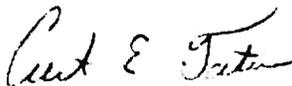
House Bill 5391 provides that if an employer is assessed a penalty under the provision in HB 5390 (described above), the employer may recover that amount by withholding funds from

future wage payments. The employer may do this without obtaining the written consent of the employee provided certain conditions are met. These conditions include providing the employee with written notice of the deduction, the deduction does not reduce the wages below the minimum wage nor exceed 15% of gross wages. Because the employer's penalty payment is applied to the employee's liability – essentially a payment made by the employer on behalf of the employee – this is simply a matter of fairness to the employer.

Conclusion

The APA urges you to support House Bill 5390 and House Bill 5391. Michigan's current wage garnishment laws are unnecessarily complex and subject employers to unfair liability. The legislation currently under consideration provides badly needed administrative burden reduction for employers by expanding the duration of garnishments and by providing appropriate compensation for garnishment processing. It also provides clearer definitions to employers and courts. The legislation provides employers the opportunity to fix administrative errors prior to being subject to reasonable liability. If an employer pays a penalty that is then applied to the employee's liability, the employer may seek recovery of those funds from the employee. This legislation benefits both employers who process garnishments and creditors who maintain the right to collect outstanding debts via garnishments.

Please feel free to contact Curtis Tatum (202) 601-4349 or Lisa Poole (404) 813-7847 with any questions that you may have.



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