

HOUSE BILL No. 6534

October 15, 2008, Introduced by Reps. Robert Jones, Leland, Alma Smith, Cushingberry, Tobocman, Coulouris and Dean and referred to the Committee on Judiciary.

A bill to amend 1961 PA 236, entitled "Revised judicature act of 1961," by amending sections 4031, 4061, 4061a, 6215, 6231, and 6245 (MCL 600.4031, 600.4061, 600.4061a, 600.6215, 600.6231, and 600.6245), section 4061 as amended and section 4061a as added by 1994 PA 346.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 4031. (1) ~~The STATUTORY provisions of the statutes~~
2 relating to exemptions from execution ~~,~~ and the manner of levying
3 ~~upon~~ **ON** property belonging to a class or species ~~in~~ **FOR** which
4 exemptions are ~~by law allowed , shall be applicable~~ **BY LAW APPLY** to
5 the application of property and obligations to claims by attachment
6 and garnishment.

7 (2) In ~~any~~ **A** garnishment proceeding, ~~where the indebtedness~~

1 ~~LIABILITY~~ of the garnishee to the ~~principal defendant is money owed~~
 2 ~~to the principal defendant on account of~~ **PLAINTIFF IS LIMITED TO**
 3 **THE FOLLOWING, AS APPLICABLE:**

4 (a) **IF THE INDEBTEDNESS OF THE GARNISHEE TO THE PRINCIPAL**
 5 **DEFENDANT IS BECAUSE OF** the sale to the garnishee of milk, ~~or~~
 6 cream, or both produced on ~~the~~ **A** farm ~~or farms~~ of the principal
 7 defendant, ~~the garnishee's liability to the plaintiff is limited to~~
 8 40% of ~~such money;~~ **THE INDEBTEDNESS.**

9 (b) ~~personal labor performed by the principal defendant or his~~
 10 ~~family, the garnishee's liability to the plaintiff is limited by~~
 11 ~~the exemptions allowed under section 7511.~~ **IF THE INDEBTEDNESS OF**
 12 **THE GARNISHEE TO THE PRINCIPAL DEFENDANT IS BECAUSE THE GARNISHEE**
 13 **IS A FINANCIAL INSTITUTION HOLDING MONEY IN AN ACCOUNT WHOLLY OR**
 14 **PARTIALLY OWNED BY THE PRINCIPAL DEFENDANT, 25% OF THE MONEY OWNED**
 15 **BY THE PRINCIPAL DEFENDANT.**

16 (3) **THE FOLLOWING ARE EXEMPT FROM AND SHALL NOT BE APPLIED TO**
 17 **CLAIMS BY ATTACHMENT AND GARNISHMENT:**

18 (A) **A STATE TAX CREDIT REFUND.**

19 (B) **MONEY IN AN INDIVIDUAL DEVELOPMENT ACCOUNT ESTABLISHED**
 20 **UNDER SECTION 57K OF THE SOCIAL WELFARE ACT, 1939 PA 280, MCL**
 21 **400.57K.**

22 (C) **MONEY HELD IN AN ACCOUNT WITH A FINANCIAL INSTITUTION THAT**
 23 **IS ATTRIBUTABLE TO EARNINGS, AS THAT TERM IS DEFINED IN 15 USC**
 24 **1672, OF THE PRINCIPAL DEFENDANT.**

25 Sec. 4061. (1) A plaintiff shall serve garnishment process
 26 issued from a court in ~~Michigan~~ **THIS STATE** against ~~the~~ **THIS** state
 27 ~~of Michigan upon~~ **ON** the state treasurer or other state employee

1 designated by the state treasurer to receive garnishment process.
2 The state treasurer shall designate as many employees as he or she
3 considers necessary to receive garnishment process, at least 2 of
4 whom shall have offices in Lansing.

5 (2) The state treasurer shall designate the employees under
6 subsection (1) in writing and maintain a copy of the written
7 designation in the state treasurer's office. If the state treasurer
8 revokes the designation, the revocation shall be made in the same
9 manner as the designation. If a designated employee ceases to be
10 employed by the state treasurer to receive process under subsection
11 (1), the designation of that person is revoked immediately upon
12 termination of his or her employment.

13 (3) In a garnishment proceeding in which ~~the~~ **THIS** state is the
14 garnishee, a plaintiff shall do all of the following:

15 (a) Serve upon the state treasurer or designated employee a
16 writ of garnishment that includes a verified statement signed by
17 the plaintiff, or his or her attorney or agent, identifying the
18 full amount including interest and taxed costs, claimed by the
19 plaintiff to be due upon the judgment against the defendant.

20 (b) At the time of service of the writ of garnishment, pay to
21 the state treasurer or designated employee a fee of \$6.00.

22 (c) Within 7 days after service of the writ of garnishment on
23 the state treasurer or designated employee, do both of the
24 following:

25 (i) If the writ of garnishment is for a state tax refund, ~~or~~
26 ~~credit,~~ serve a copy of the writ of garnishment upon the defendant
27 in the manner prescribed by the Michigan court rules.

1 (ii) Serve upon the state treasurer any discovery request for
2 information related to the garnishment proceeding that may be in
3 the possession of the department of treasury.

4 (4) After receiving a discovery request pursuant to subsection
5 (3)(c), the state treasurer shall provide only that information in
6 the possession of the department of treasury that is not otherwise
7 exempted by law from disclosure. The plaintiff shall pay to the
8 state treasurer the reasonable costs incurred by the state
9 treasurer in providing the requested information.

10 (5) After receiving service of a writ of garnishment as
11 provided in subsection (3), the state treasurer or designated
12 employee shall do 1 of the following:

13 (a) If the writ is not for the garnishment of a state tax
14 refund, ~~or credit,~~ respond in the manner prescribed for ~~garnishment~~
15 ~~procedures~~ **GARNISHMENTS** under the Michigan court rules.

16 (b) If the writ is for garnishment of a state tax refund,
17 respond in the manner prescribed by section 4061a.

18 Sec. 4061a. (1) The state treasurer shall intercept a state
19 tax refund ~~or credit~~ that is subject to a writ of garnishment
20 served upon the state treasurer pursuant to section 4061. Upon
21 intercepting a state tax refund ~~or credit~~ pursuant to a writ of
22 garnishment, the state treasurer shall do all of the following:

23 (a) Calculate the amount available from the interception to
24 satisfy all or part of the garnishment, and within 90 days after
25 establishing other liability for which the state tax refund ~~or~~
26 ~~credit~~ may be applied under section 30a of ~~Act No. 122 of the~~
27 ~~Public Acts of 1941, being section 205.30a of the Michigan Compiled~~

1 ~~Laws 1941 PA 122, MCL 205.30A~~, do both of the following:

2 (i) File with the court a verified disclosure that identifies
3 the intercepted amount, less any **AMOUNT PAID OR REFUNDED BECAUSE OF**
4 **A STATE TAX CREDIT AND ANY** setoff, counterclaim, or other demand of
5 the state against the defendant.

6 (ii) Serve upon the plaintiff and defendant a copy of the
7 disclosure described in subparagraph (i).

8 (b) Unless notified by the court that objections to the writ
9 of garnishment have been filed, deposit the amount available for
10 the garnishment with either of the following pursuant to the terms
11 of the writ not less than 28 days after filing the disclosure
12 pursuant to subdivision (a):

13 (i) The clerk of the court.

14 (ii) The plaintiff's attorney of record in the garnishment
15 action, or, if the plaintiff is not represented by counsel, the
16 plaintiff or the plaintiff's designee.

17 (2) Objections to the writ of garnishment of a tax refund
18 shall be filed with the court within 14 days after the date of
19 service of the disclosure on the defendant.

20 (3) If an interception of a state tax refund ~~or credit~~ does
21 not occur before October 31 of the year during which a writ of
22 garnishment for a state tax refund ~~or credit~~ is to be processed,
23 both of the following apply:

24 (a) The state treasurer is not required to provide to the
25 defendant or file with the court a disclosure.

26 (b) The state treasurer is not required to provide to the
27 plaintiff a disclosure unless the plaintiff provides the state

1 treasurer with a written request for a disclosure between November
2 1 and December 31 of the tax year following the tax year for which
3 a writ of garnishment of a state tax refund ~~or credit~~ was filed.

4 (4) A disclosure described in subsection (1) is not required
5 to be made under oath.

6 (5) ~~The~~ **THIS** state's liability to the plaintiff under a writ
7 of garnishment issued under this section is limited to the amount
8 of the tax refund ~~or credit~~ due to the defendant for the period the
9 writ is in effect, **NOT INCLUDING ANY AMOUNT PAID OR REFUNDED**
10 **BECAUSE OF A STATE TAX CREDIT**, less any setoff, counterclaim, or
11 other demand of ~~the~~ **THIS** state against the defendant. As used in
12 this subsection, "state" includes the state treasurer.

13 (6) If all or a portion of an intercepted state tax refund ~~or~~
14 ~~credit~~ is deposited with the clerk of the court under subsection
15 (1), the court shall convey the deposited amount to the plaintiff's
16 attorney of record in the garnishment action or, if the plaintiff
17 is not represented by counsel, to the plaintiff.

18 (7) Michigan court rules that do not conflict with this
19 section or section 4061 govern a garnishment in which ~~the~~ **THIS**
20 state is a garnishee.

21 (8) As used in this section, "state treasurer" includes an
22 employee designated by the state treasurer to act on his or her
23 behalf.

24 Sec. 6215. (1) ~~On the date set for~~ **AT** the hearing **ON A MOTION**
25 **UNDER SECTION 6205**, the plaintiff may cross-examine the moving
26 party ~~as to the facts set forth~~ **ON THE ALLEGATIONS** in the motion,
27 and the judge may then enter an order requiring the defendant to

1 pay to the clerk of the court or **DIRECTLY** to the plaintiff ~~direct,~~
2 ~~a certain sum~~ **A SPECIFIED AMOUNT** of money weekly, biweekly, or
3 monthly, to apply on the judgment.

4 (2) ~~The order shall stay~~ **AN ORDER UNDER THIS SECTION STAYS** the
5 issuance of ~~any~~ **A writ of garnishment for work and labor OR FOR**
6 **MONEY IN AN ACCOUNT WITH A FINANCIAL INSTITUTION** during the period
7 that the defendant complies with the order. The order ~~shall~~ **DOES**
8 not stay garnishment if the defendant fails to comply with its
9 terms.

10 Sec. 6231. (1) ~~The garnishment of any money~~ **SUBJECT TO**
11 **SUBSECTION (3), IF A COURT HAS ORDERED OR THE PARTIES HAVE AGREED**
12 **THAT A JUDGMENT IS PAYABLE IN INSTALLMENTS, THE FOLLOWING ARE NOT**
13 **SUBJECT TO GARNISHMENT:**

14 (A) **MONEY** due or to become due for the personal work and labor
15 of the defendant. ~~upon a judgment made payable in installments~~
16 ~~either by the court order or agreement of parties is prohibited,~~
17 ~~excepting upon the written order of the judge. Any writ of~~
18 ~~garnishment issued without the order is void. The order may be made~~
19 ~~following due notice to the defendant if installments are due.~~

20 (B) **MONEY IN AN ACCOUNT WITH A FINANCIAL INSTITUTION.**

21 (2) **SUBJECT TO SUBSECTION (3), A WRIT OF GARNISHMENT**
22 **SPECIFICALLY ISSUED AGAINST MONEY OR A RIGHT TO RECEIVE MONEY**
23 **DESCRIBED IN SUBSECTION (1) IS VOID.**

24 (3) **IF INSTALLMENTS DESCRIBED IN SUBSECTION (1) ARE OVERDUE,**
25 **AND FOLLOWING NOTICE TO THE DEFENDANT, A JUDGE MAY ISSUE A WRITTEN**
26 **ORDER ALLOWING THE GARNISHMENT OF MONEY OR A RIGHT TO RECEIVE MONEY**
27 **DESCRIBED IN SUBSECTION (1).**

1 Sec. 6245. ~~Nothing contained in this chapter shall be~~
2 ~~construed to prohibit and shall~~ **THIS CHAPTER DOES** not prohibit a
3 plaintiff from taking any legal means ~~for the collection of~~ **TO**
4 **COLLECT** a judgment, ~~excepting the~~ **EXCEPT FOR A** garnishment of money
5 due or to become due the defendant for the **DEFENDANT'S** personal
6 work and labor ~~of the said defendant~~ **OR FOR MONEY HELD IN AN**
7 **ACCOUNT WITH A FINANCIAL INSTITUTION.**

8 Enacting section 1. This amendatory act does not take effect
9 unless Senate Bill No. ____ or House Bill No. 6535 (request no.
10 04264'07 a) of the 94th Legislature is enacted into law.