

GARNISHMENT, EXECUTION OF JUDGMENT, AND BANKRUPTCY PROCEDURES

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

Senate Bill 408 (S-4) as passed by the Senate
Sponsor: Sen. Jeff Irwin

Analysis available at
<http://www.legislature.mi.gov>

Senate Bill 409 (S-2) passed by the Senate
Sponsor: Sen. Mary Cavanagh

House Committee: Government Operations
Senate Committee: Finance, Insurance, and Consumer Protection
Complete to 12-19-24

SUMMARY:

Senate Bill 408 would amend the Revised Judicature Act to modify various provisions relating to garnishment of wages and executions of judgments, including, but not limited to, provisions regarding the wages or property that are exempt from seizure to settle a debt, the amount of wages that can be garnished, and the process required for serving a writ of garnishment or execution. Senate Bill 409 would make similar modifications to the provisions regarding bankruptcy.

Senate Bill 408 would add provisions exempting the following money from ***garnishment***:

- Any money that a debtor receives as payment of any means-tested public assistance benefits, unemployment compensation benefits, the federal Earned Income Tax Credit (EITC), the Michigan EITC,¹ a similar program of the state or a local government providing an EITC, disability benefits, or worker's compensation.
- Any earnings for a week that are less the smaller of the following:
 - 35 times the greater of the state or federal minimum wage in effect at the time.²
 - Fifteen percent of the individual's garnishable earnings for the week (prorated for pay periods longer than a week).

Garnishment would mean a legal or equitable procedure through which earnings, property, or money of an individual are withheld by another person as payment for any debt to a creditor.

Garnishable earnings would mean that part of the ***earnings*** of any individual remaining after the deduction from the earnings of any amounts required by law to be withheld, such as taxes, Social Security, or alternative pension and Medicare withholdings, and a further deduction of up to 15% of the remainders of the earnings for amounts withheld for contributions for health insurance or a medical expense account.

¹ https://www.house.mi.gov/hfa/PDF/FiscalSnapshot/Tax_Earned_Income_Tax_Credit_Jan2023.pdf

² Currently, the higher minimum wage is Michigan's wage of \$10.10 per hour. Using this rate, the bill would exempt \$808 of earnings from garnishment per week.

Earnings would mean compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, payment for skilled, personal, or professional services, or otherwise, whether earned as an employee or as an independent contractor, and would include spousal support.

The bill also provides that the amount of garnishable wages that can be garnished for the support of a person would be subject to the laws governing child support and spousal support.

These exemptions would apply to all debtors whose physical place of employment is in Michigan, regardless of whether their employer has offices or other places of business in other states.

A financial institution holding money for a debtor served with a garnishment would have to calculate the amount deposited, based on information provided by the payor, in the debtor's account from any source that is exempt from garnishment in the 90 days preceding the service of the garnishment. This amount could not be paid or ordered to be paid to the plaintiff under the garnishment. The institution's calculation would be included in its disclosure. The bill would also prohibit a financial institution from charging the debtor a fee for any action taken by the institution in connection with a garnishment, unless the fee was reasonable and was disclosed by the institution as part of the regular fee schedule.

If a plaintiff serves writs of garnishment on multiple financial institutions and receives disclosures from multiple financial institutions that are holding a debtor's money in deposit accounts, the plaintiff would have to calculate the amount of money in each account that would be exempt, and the amount not exempt, under the bill. Copies of the calculations and disclosures would have to be filed with the court and served on the debtor and each relevant financial institution.

If a debtor does not file an objection to the calculations and serve them on a financial institution within seven days, the financial institution would be required to pay nonexempt money held in the accounts in accordance with the writ of garnishment.

Garnishing money owed for personal labor

Currently, the act allows money owed by a garnishee (i.e., employer, etc.) to a personal defendant (i.e., the debtor) because of personal labor performed by the principal defendant or their family to be garnished, subject to certain exemptions. Senate Bill 408 would eliminate the ability to garnish these wages.

Intercepting tax refund or credit

Currently, the act requires that the state treasurer intercept a debtor's state tax refund or credit that is subject to a writ of garnishment served on them and provide this amount to the plaintiff under the writ of garnishment, subject to certain conditions.

Under Senate Bill 408, beginning after October 31, 2026, if the writ of garnishment is to recover a consumer debt, the state treasurer would be required, to the extent practicable, to reduce the amount of the state tax refund or credit due to the plaintiff by the amount that is payment of the Michigan EITC.

The bill would not affect the ability of the state to recover a setoff, a counter claim, or other demand from a tax credit described above.

Notice to garnishees

Senate Bill 408 would require the State Court Administrative Office, under the direction of the Michigan Supreme Court, to develop, and make publicly available, a notice to garnishees that describes the exemptions applicable to particular types of garnishment. The notice would also have to instruct the garnishee not to turn over money or other property that they can reasonably identify as exempt, but instead to report back that the money or property is exempt.

Order of garnishment priority

Under Senate Bill 408, writs of garnishment served to the same debtor would follow the order of priority established in section 4012 of the act. If the garnishments with greater priority fully consume the garnishable wages available for garnishment, no other earnings could be garnished for those garnishments with lower priority.

Penalties for using garnishment actions as reason to discipline or fire employee

Currently, the act prohibits a garnishee defendant (i.e., a person, such as an employer, who is ordered to withhold funds or payment to the principal defendant) from using the fact that the principal defendant has had garnishment actions brought against them as a reason to discipline or discharge the individual from employment. The act allows the principal defendant to file a civil action against the garnishee defendant and requires the court to order an individual who violates these provisions to reinstate the employee and reimburse them for all compensation lost by the discipline or discharge.

Senate Bill 408 would add that a garnishee defendant is prohibited from using the existence of garnishment actions against an individual as a reason to discharge them from an independent contract or to not hire them or contract with them. Under the bill, all compensation ordered to be reimbursed by a court would include wages, earnings, and employment benefits lost as a failure to hire or contract. In addition, the bill would provide that, when a garnishee defendant is found to have violated the bill’s provisions, the court must order them to pay reasonable actual attorney fees and costs.

Property exempt from sale under execution³

Senate Bill 408 would amend the property of a judgment debtor and their *dependents* that is exempt from levy and sale under *execution*. These changes are shown in the table below.

Category	Current Exempt Amount	Proposed Exemption
Household goods, furniture, utensils, books, and appliances	Up to \$1,000 in value	Up to \$5,000 in <i>value</i>
Interest in a <i>motor vehicle</i>	None	Up to \$5,000 in value (or \$3,000 in specific circumstances)

³ Execution is a process in which a court orders law enforcement to take possession of a debtor’s property to be sold or turned over to a creditor to satisfy a debt.

Category	Current Exempt Amount	Proposed Exemption
Livestock and crops	10 sheep, 2 cows, 5 swine, 100 hens, 5 roosters, and sufficient hay and grain, growing or otherwise, for properly keeping the animals and poultry for six months per householder	The previous exemption or up to \$10,000 in value of crops, farm animals, and feed for the farm animals at the election of the debtor
Tools, implements, materials, stock apparatus, team, farm equipment, farm vehicles, construction equipment, construction vehicles, limousines, taxicabs, horses, harness, or other things to enable the debtor to carry on the profession, trade, occupation, or business in which they are principally engaged ⁴	Up to \$1,000 in value	Up to \$10,000 in value
Computers, including mobile computing devices, mobile phones, and computer accessories	None	Up to \$5,000 in value
Professionally prescribed hearing aids	None	All
<i>Homestead (except mobile homes)</i>	Up to 40 acres of land and the dwelling house and appurtenances on that homestead that is not included in a recorded plat, city, or village, or, at the option of the owner, a quantity of land that consists of not more than one lot that is within a recorded town plat, city, or village, and the dwelling house and appurtenances on that land, owned and occupied by any resident of this state, not exceeding \$3,500	Up to \$120,000 or, if the debtor or one of their dependents is 65 years of age or older or is disabled, up to \$200,000 in value

⁴ Limousine and taxicab would mean those terms as defined in MCL 254.2102

Category	Current Exempt Amount	Proposed Exemption
Money paid or to be paid because the debtor or one of their dependents was a crime victim	None	All
An account established under the Michigan Achieving a Better Life Experience (MiABLE) Program Act	None	Up to \$2,000 in value plus up to \$15,000 for any unused amount of the exemption for a homestead
Money held in one or more deposit account with one or more financial institutions	None	Up to the greater of \$800 or the amount in the accounts calculated as exempt as described above

The act also exempts all family pictures, all arms and accouterments required by law to be kept by any person, all wearing apparel of every person and their family, and provisions and fuel for comfortable subsistence of each householder and their family for six months. The bill would amend this to include all household pets, companion animals, and service animals. It would also specify that the exempt wearing apparel does not include furs.

A debtor's interest in a motor vehicle would be exempt up to \$3,000 if all of the following apply:

- The writ of execution or order to seize property is issued for a judgment for debt owed to a financial institution that was not assigned by another person to that institution.
- The financial institution made an offer in writing to the judgment debtor to stipulate to an order for payments in installments under Chapter 62 of the act.
- The debtor rejected the offer or did not respond within 14 days.

For a homestead that is a mobile home in a mobile home park, as those terms are defined in the Mobile Home Commission Act, the exemption would be half of the homestead's fair market value if all of the following apply:

- A court has entered a judgment or order under Chapter 57 or 57A of the Revised Judicature Act restoring possession of the premises to the mobile home park owner.
- The mobile home has been continuously unoccupied for at least 90 days after entry of the judgment or order described above.
- An indebtedness that is related to a lease agreement or terms of the tenancy between the mobile home park owner and the mobile home owner is delinquent, and an order to seize property or a writ of execution or eviction was issued because of the indebtedness.
- The mobile home park owner has a license to operate the mobile home park under the Mobile Home Commission Act.

A person would be prohibited from levying an execution or attaching property unless they were appointed by the court and executing a writ or order of the court that states the value of the property to be seized and the manner of levy.

The bill would also provide that the exemption does not apply to any mortgage of, setoff, or security interest in the exempt property that is excluded from exemption by law or that is consensually given or lawfully obtained unless the lien is obtained by judgment, attachment, levy, or similar legal process in connection with a court action or proceeding against the debtor.

The exemptions would not apply to any of the following:

- The enforcement of a support order or order of income withholding as defined in the Support and Parenting Time Enforcement Act.
- The enforcement of a judgment regarding the division of property between spouses or former spouses or domestic partners entered by a court in accordance with an administrative or civil procedure that is established by state or federal law, that affords substantial due process, and that is subject to judicial review.
- A levy of the federal government, the state, or a governmental unit of the state to satisfy a tax liability.
- A levy under the Michigan Employment Security Act.

These exemptions would be available to *residents*, regardless of where the property is located. In an action to collect a debt from an individual who is not a resident, the court would apply the laws of the state with which the individual has the most significant contacts.

Dependent would mean an individual who relies in whole or in significant part on a debtor for support and maintenance.

Execution would include a levy or other disablement, freeze, or seizure of property for debt collection or for restitution or another equitable claim. It would not include self-help repossession of collateral, the exercise of a right of setoff, or any means of collecting a tax indebtedness available under 1941 PA 122. If there were a legal distinction between a setoff and an offset, the term setoff would include an offset.

Value would mean current fair market value of accounts, goods, or property less the amount of any liens or security interests in the accounts, goods, or property, based on the price that would be paid, assuming a willing buyer and a willing seller, for accounts, goods, or property of similar age and condition. A debtor's testimony as to the value of property the debtor owns or as to the advertised value of property similar to that claimed as exempt would be admissible as evidence of an item's value.

Homestead would mean one of the following owned or being purchased under an executory contract by the debtor that the debtor or a dependent of the debtor occupies as the debtor's or the dependent's principal residence:

- If the land is located outside of a recorded plat, city, or village, a residence and appurtenances and the land on which they are situated, not exceeding 40 acres.
- If the land is located within a recorded plat, city, or village, a residence and appurtenances and the land on which they are situated, not exceeding one lot or parcel.

- A residence situated on land not owned by the debtor.
- A condominium unit.
- A unit in a cooperative.
- A motor home.
- A boat or other watercraft.

Motor vehicle would not include any of the following:

- A watercraft, off-road vehicle, or snowmobile as defined the Natural Resources and Environmental Protection Act (NREPA).
- A recreational vehicle as defined in section 49a of the Michigan Vehicle Code.
- An aircraft as defined in section 2 of the Aeronautics Code.
- A vehicle that is a registered historic vehicle under section 803a or 803p of the Michigan Vehicle Code.

Homestead appraised in excess of exemption

If a debtor's homestead is appraised for more than the exempt amount, the debtor would not lose the benefit of the exemption. The officer who levies the execution would have to deliver a notice and copy of the appraisal to the debtor or a member of their family of suitable age to understand the nature of the notice. The notice would have to state that, unless the debtor pays the officer the amount in excess of the exemption within 60 days, the premises will be sold.

If the surplus is not paid during this 60-day period, the officer could advertise and sell the property. The property could only be sold if a bid above the exempt amount is placed. If the property is sold, the officer would have to pay the debtor the amount of the exemption and apply the balance to the execution. Any amount paid to the debtor from the sale of a homestead would remain exempt in the same manner as money received from the sale or transfer of property described below.

Competing ownership claims and joint bank accounts

If another person claims an interest in property with or instead of a debtor, a judgment creditor would need to establish through a hearing that the debtor's share exceeds the amount exempted under the bill. The name the property is titled or maintained in would not be dispositive as to ownership or interests in the property. In addition, a debtor's interest in a joint bank or similar account would be subject to any ownership presumption created by law and, to the extent a presumption is rebutted, would be based on their contributions to the account, as determined by the first-in, first-out tracing rule.⁵ Each person with an interest in property would be able to claim the full exemption amount applicable to that type of property.

Determining whether property is exempt

If an item of property falls into a category that is fully exempt under this chapter or for which the exemption depends on its value, or if an exemption depends on the judgment debtor's designation of the property to which the exemption will apply but the exemption appears to the executing officer to be sufficient to exempt all of the property, the executing officer would report that fact to the court and the judgment creditor and not execute on the property. The property would be presumed fully exempt unless the judgment creditor requests a hearing within 21 business days at which they establish that the property does not fall into a fully

⁵ <https://www.investopedia.com/terms/f/fifo.asp>

exempt category or includes significant value in excess of the amount exempt, or that the exemption is not sufficient to exempt all of the judgment debtor's property. If a hearing is requested, the debtor would have to be mailed, or otherwise served, a notice of the hearing that describes the steps they can take to contest the judgment creditor's claims, including by appearing in person or through an attorney.

If an exemption of property depends on the judgment debtor's designation of the property, and the exemption does not appear to the executing officer to be sufficient to exempt all of the property, they would have to provide the debtor a form and written instructions for designating the property to which the exemption will apply. If the debtor does not file the designation with the court within seven business days after receiving the form, the executing officer would designate the items that will be exempt. If the debtor files a designation, the clerk of the court would notify the judgment creditor. The items designated by the judgment debtor would be presumed to be exempt unless the judgment creditor requests a hearing within 10 business days and establishes at the hearing that the value of the property exceeds the exemption. The hearing would be conducted in the same manner as described above.

Sale, damage, or loss of exempt property

Money received from the sale or transfer of property that was exempt before the sale or transfer would remain exempt to the extent applicable before the sale or transfer for 18 months while in the debtor's possession, in a checking or similar account, in a savings account, or in a certificate of deposit with a term that does not extend past the 18 months.

If property, or a part of property, that could have been claimed as exempt or partially exempt is sold or taken by condemnation, or is lost, damaged, or destroyed and the owner was compensated or indemnified for it, the traceable proceeds of the property would be exempt for 18 months to the extent previously allowed after the proceeds are received. However, if the money received was transferred out of the account it was originally deposited in, it would not remain exempt unless converted into another type of exempt property or asset.

Money and the exempt property would be traceable by the first-in, first-out tracing rule.

Debtor's right to a prompt hearing

Senate Bill 408 would require that, if a judgment creditor obtains a writ of execution or order to seize property, the debtor is entitled to a prompt hearing to claim exemptions, contest the seizure of exempt property, or seek to set aside the judgement.

Paying costs from a levy, garnishment, or attachment

Senate Bill 408 would require the costs incurred by making, or proposing to make, a levy, garnishment, or attachment on property to be paid out of the proceed from the sale of the property. If the sale proceeds were insufficient to pay cover the costs, the judgment creditor would have to pay the costs and could not recover them from the debtor or garnishee, notwithstanding any agreement between the parties to the contrary.

Required notices for execution proceedings

Under Senate Bill 408, upon the entry of a judgment in an action to collect a consumer debt, the clerk of the court would have to mail a notice to the last known address of each judgment debtor (noting this address in the record) that says that they are responsible for paying the

judgment but that the court will not require it to be paid with exempt income, assets, or property. The clerk would have to note in the record a judgment returned undelivered.

The notice would have to provide information about how the debtor could file a request for installment payments.

If a judgment creditor obtains a writ of execution or order to seize property, the clerk of the court, court officer, sheriff, or other agent of the court would have to give a notice to the judgment debtor and to any person in possession of the property involved. The notice would have to state the person's right to a hearing to claim exemptions that are not self-executing, to contest the seizure of exempt or *necessary property*, or to seek to set aside the judgment, and the steps the person may take to assert these rights. If documents are served on the person in connection with the execution, the notice would be included with the documents and would have to be sent by first-class mail.

Necessary property would mean property that is or provisions that are reasonably essential to or needed for everyday living, including any special needs because of health or physical or mental infirmity.

When a judgment creditor subpoenas an individual to appear for examination relating to the money or property of a judgment debtor, they would have to also provide a notice, in a form prescribed by the court, that the debtor is responsible for paying the judgment; that the court will not require the judgment to be paid with exempt income, assets, or property; and that the individual has the right to a hearing to claim exemptions, to contest the seizure of exempt or necessary property, or to seek to set aside the judgment.

All notices required by the bill would have to list the most common federal and state exemptions; give examples of income, assets, and property that are commonly exempt; and list sources of additional related information, such as this state's law libraries or the court's website. They would also be required to state that the judgment debtor may file a motion to set aside the judgment and list the most common grounds for such a motion, including improper service or being in active duty military service at the time of the suit.

Each notice would be developed and made available by the State Court Administrative Office, acting under the direction of the Michigan Supreme Court.

Adjusting for inflation

The dollar amounts for property exempt by the bill would be adjusted for inflation using the *Consumer Price Index*, except that the exemption for homestead would be adjusted using the *home price index*. Each adjustment would be rounded to the nearest \$25.

Consumer Price Index would mean the Consumer Price Index for all urban consumers in the area of Detroit-Warren-Dearborn, Michigan, published by the United States Department of Labor or, if the United States Department of Labor ceases publishing that index, the most similar index available.

Home price index would mean the FHFA Expanded Data House Price Index for the United States, calculated and published by the Federal Housing Finance Agency, or, if that index is no longer calculated and published, the most similar index available.

The adjustment would be made on March 1 of each third year and would apply to cases filed after March 31 of that year. Each adjustment would reflect the cumulative change in the relevant index over the three-year period.

The state treasurer would have to publish the adjusted amounts.

Other changes

Finally, Senate Bill 408 would prohibit a court from permitting execution proceedings if the result would be to allow the enforcement of a judgment in a manner that was expressly prohibited by the act or would result in the evasion of express prohibitions under the act.

The bill would take effect 180 days after it is enacted

MCL 600.2807 et al. and proposed MCL 600.4001a et seq.

Senate Bill 409 would amend the Revised Judicature Act to modify the maximum value of the maximum exemptions for various categories of property that are exempt from the estate property (i.e., property that cannot be sold to pay creditors) during bankruptcy proceedings and make related changes.

Currently, the act provides that a debtor may choose to exempt property that is exempt under federal law⁶ or exempt up to a maximum value of certain categories of items during bankruptcy proceedings. These amounts are adjusted every three years for inflation using the Consumer Price Index.⁷

The new maximum exempt amounts proposed by the bill, and the current inflation-adjusted maximums, are shown in the table below. The value of exempt property and the value of the exemption would be determined on the date that the bankruptcy petition is filed.

Category	Current Exempt Amount ⁸	Proposed Exemption
Household goods, furniture, utensils, books, appliances, and jewelry (up to \$700 per item)	Up to \$4,625 in value	Up to \$5,000 in value
Interest in one motor vehicle	Up to \$4,250 in value	Up to \$15,000 in value
Crops, farm animals, and feed for farm animals	Up to \$3,075 in value	Up to \$10,000 in value

⁶ <https://www.law.cornell.edu/uscode/text/11/522>

⁷ Specifically, the Consumer Price Index for all urban consumers in the area of Detroit-Ann Arbor-Flint, Michigan, published by the United States Department of Labor or, if the United States Department of Labor ceases publishing that index, the most similar index available.

⁸ https://www.michigan.gov/treasury/-/media/Project/Websites/treasury/Uncategorized/2023/Economic-Reports-and-Notices-2023/Notice_BankruptcyExemptions2023_Signed.pdf

Tools, implements, materials, stock apparatus, team, vehicle, motor vehicle, horses, harness, or other things to enable a person to carry on the profession, trade, occupation, or business in which they are principally engaged	Up to \$3,075 in value	Up to \$10,000 in value
Computers and computing devices, including mobile computing devices and mobile phones	Up to \$800 in value (the act now limits this category to one computer and its accessories)	Up to \$5,000 in value
Homestead	Up to \$46,125 in value, or if the debtor or a dependent is 65 years or older or is <i>disabled</i> , up to \$69,200 in value	Up to \$125,000 in value, or if the debtor or one of their dependents is 65 years of age or older or is disabled, up to \$200,000 in value.
Money paid or to be paid because the debtor or one of their dependents was a crime victim	None (this category would be added by the bill)	All
The debtor's aggregate interest in any property, in addition to all other exemptions	None (this category would be added by the bill)	Up to \$1,475 in value plus up to \$13,950 for any unused amount of the exemption for a homestead

As under current law, these new amounts would continue to be adjusted for inflation at the end of each three-year period (rounded to the nearest \$25).

However, under the bill, the adjustments would be done on March 1, not the current April 1, and take effect for cases file after March 1 for those years. In addition, adjustments would be made using the Consumer Price Index for urban consumers in Detroit-Warren-Dearborn, versus the current use of the Detroit-Ann Arbor-Flint index. Finally, the exemption amount for homesteads would be made using the home price index.

Disabled means unable to engage in substantial gainful activity, as defined by 42 USC 1382c(a)(3)(E), as a result of a physical or mental impairment and receiving supplemental security income under 42 USC 1382c(a)(3)(A) and (C).⁹

⁹ <https://www.law.cornell.edu/uscode/text/42/1382c>

The bill would also eliminate the maximum exempt amounts for the following categories and allow a debtor to retain their full interest in them:

- A seat, pew, or slip occupied by the debtor or their family in a house or place of public worship.
- Household pets, companion animals, and service animals.

In addition, the bill would exempt the debtor's interest in or money held in a bank account that they received in the last 18 months from any means-tested public assistance benefits, unemployment compensation benefits, the federal EITC, the Michigan EITC, a similar program of the state or a local government providing an EITC, disability benefits, or worker's compensation. The source of any money held in a bank account would be determined using the first-in, first-out assumption.¹⁰

Under the bill, the exemptions would apply fully to each debtor in cases of joint bankruptcy and would also apply to all property held in a revocable trust for which the debtor is the settlor to the same extent as property not held in the trust.

Finally, the bill would provide that if a debtor's interest in a homestead is less than the exemption amount when the bankruptcy petition is filed, any increase in the value of their interest in the property during the pendency of the case would remain exempt.

The bill would only apply to bankruptcy cases filed on or after its effective date.

MCL 600.5451

FISCAL IMPACT:

The bills would have an indeterminate fiscal impact on the state and on local court funding units. Under HB 4900, SCAO would be required to develop, and make publicly available, various notices and forms. It is anticipated these administrative costs could be absorbed within existing appropriations. Costs to local courts would depend on how provisions of the bills affected court caseloads and related administrative costs.

Legislative Analyst: Alex Stegbauer
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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.

¹⁰ <https://www.investopedia.com/terms/f/fifo.asp>