American Payroll Association

Government Relations • Washington, DC

Senate Committee on
Reforms, Restructuring and Reinventing

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Capitol Building, Rooms 402 and 403

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. On September 18, 2014, the Michigan House of Representatives passed these bills by votes of 102 to 6 and 101 to 7, respectively. 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 more equitable 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. There are over 550 APA members and 3 local chapters (Detroit, Great Lakes Bay, and West Michigan) in Michigan. 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 Relations 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.

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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 satisfied. 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 several provisions that provide clarity concerning the validity of garnishments. House Bill 5390 clarifies the definition of a garnishment. This should help eliminate confusion over orders that are not called "garnishments," but have the same legal effect. 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. House Bill 5390 also requires that the creditor report the balance of the debt at least every six months. This provision will help employers know when the debt is likely to be satisfied and to expect a release of the garnishment. House Bill 5390 requires the creditor to file a release of the garnishment within 14 days after the judgment has been satisfied. From the service of the garnishment to its release, HB 5390 provides clear rules to help all parties understand their rights and responsibilities.

House Bill 5390 limits the liability of an employer that inadvertently fails to properly process a garnishment. Currently a creditor can seek a default judgment against an employer, for the full amount of the debt, as soon as the employer mishandles a garnishment. House Bill 5390 addresses this problem by continuing to allow for default judgments, but offering an employer several opportunities to cure the problem before a default judgment may be entered. Once a default judgment has been entered, an employer has the opportunity to have the judgment reduced, upon a timely appeal showing subsequent compliance with the garnishment order. The reduced judgment is limited to an amount at or below the amount that would have been withheld for 56 days, if the garnishment was handled properly. This provision provides 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 opportunities for employers to correct administrative errors before a creditor may seek an entry of default or a default judgment. HB 5390 provides that a creditor may not request an entry of default unless it takes certain steps. First, the creditor must provide notice to the employer that it has failed to comply with the writ of garnishment. The employer then has 28 days to begin proper withholding. If the employer still is not in compliance, the creditor may seek an entry of

default. Once the default is entered, the creditor may seek a default judgment for an amount up to the entire liability, including interests and costs. However, HB 5390 provides that the employer may still cure the problem if it initiates proper withholding after the entry of default, but before the court grants a default judgment. Finally, if a default judgment is granted, the employer has an opportunity to have the judgment reduced provided it begins proper withholding and can show that previous non-compliance was due to administrative error or mistake. This process will allow employers to correct their errors and begin proper compliance with the garnishment orders.

Proposed Amendment

House Bill 5390 raises that amount that a creditor must pay to the employer when a garnishment is served from $6.00 to $35.00. The one-time fee is intended to account 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. While this is a more equitable fee than currently exists, the amount does not cover the actual costs incurred by the employer for each garnishment payment. The APA requests that you amend this provision so that, in addition to the one-time $35.00 fee, employers may also collect an administrative fee of $2.00 per payment, not to exceed $4.00 per month or, for electronic payments $1.00 per payment, not to exceed $2.00 per month. This fee should be withheld from the amount that would otherwise have been sent to the court or creditor rather than an additional deduction from wages. This fee arrangement is much closer to the employer's actual cost and the amounts are consistent with the fees employers may charge for processing child support payments. The APA strongly supports the proposed amendment.

Support for Michigan HB 5391

House Bill 5391 provides that if an employer is ordered to pay part of the employee's debt, 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 and that the deduction may not reduce the wages below the minimum wage nor exceed 15% of gross wages. Because the employer's payments are 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 makes payments that are 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 wage garnishments.

Please feel free to contact Lisa Poole (404) 813-7847 or Curtis Tatum (202) 248-4650 with any questions that you may have.

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