

SB 408/HB 4900 Undermine Judgment Enforcement and Recovery of All Types of Debt: Consumer, Commercial and Government

SB 408/HB 4900 negatively impact the collection and judgment enforcement of all types of debt: consumer, commercial and government. They create extreme exemptions from the garnishment/seizure of judgment debtors' deposit accounts, income, real estate and motor vehicles. The bills would substantially impede recovery of overdue loans, delinquent state and local taxes, court fines, money judgments, including small claims and personal liability for business debts. It is not limited to consumer debt, except for its elimination of state tax garnishments.



\$17,000 cash EXEMPTED



\$60,000 income EXEMPTED



SHIELDS equity in \$1M home

Extreme Bank Garnishment exemptions: SB 408/HB 4900 would exempt from garnishment the bank or credit union deposits of any commercial or consumer debtor up to \$17,000.

15 day notice of garnishment: The bills require notifying the debtor 15 days before a writ of garnishment is issued, which will encourage debtors to withdraw deposits and avoid seizure.

Income Garnishment exemptions: The bills would prohibit garnishing annual income of \$60,000 or less. The exemption increases to \$89,000 if the minimum wage is raised to \$15 per hour.

Homestead exemptions: SB 408/HB 4900 homestead exemptions of \$250,000 and \$350,000 would shield the debtor's equity in million-dollar homes and frustrate judgment against wealthy debtors.

Nullifies Notice of Judgment Lien Act: SB 408/HB 490 invalidate Michigan's unique and well-balanced law enacted in 2004 with bi-partisan support. A Notice of Judgment Lien is not a seizure and does not permit foreclosure or sale of a debtor's homestead. Payment on a Notice of Judgment Lien is required only upon the debtor's voluntary sale or refinance. Exemptions for a homestead should only apply to court orders for seizure and sale. Accordingly, Notices of Judgment Liens should not be subject to the proposed \$250K - \$350K exemptions.

Motor vehicles exemptions: The bills create a \$25,000 exemption for one motor vehicle and \$15,000 for any other vehicles owned by a debtor. The \$15,000 is not limited to motor vehicles necessary for work, so debtors could shield multiple cars and even recreational motor vehicles.

Eliminates state tax garnishments for consumer debt: The bills prohibit the MI Department of Treasury from intercepting any refunds for tax garnishments based on judgments for consumer debt.

SB 408/HB 4900: Debtors Earning \$60K Annually Could Not Be Garnished

\$89K Would Be Exempt When Michigan's Minimum Wage Increases to \$15/Hour

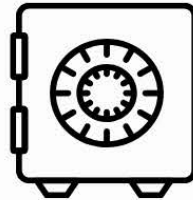
Should SB 408/HB 4900 become law, "garnishable earnings" are only 70% of gross income due to increased deductions that amount to 30% of the debtor's gross earnings.

Section 4001.a (h) defines "garnishable earnings" as "...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 alternate pension and Medicare withholdings, and after further deduction of up to 15% of the remainder for contributions for health insurance, medical expense account, a pension, or a retirement account."

Under the current \$10.10 minimum wage, SB 408/HB 4900 would shield \$808.00 a week in "garnishable earnings" by exempting from garnishment 80 times the state minimum wage of \$10.10/hour = \$808.00 exemption per week -- exempting \$60,000/year. Should Michigan's minimum wage increase to \$15.00/hour, the exemption would increase to \$1,200/week, exempting \$89,000/year.

\$60,000/YEAR

EXEMPTION ON CURRENT MIN WAGE



\$89,000/YEAR

EXEMPTION ON BIGGER MIN WAGE

\$60,000 ANNUAL EARNINGS FULLY EXEMPT FROM GARNISHMENT:

- Annual income of \$60,000.00 would generate a weekly gross income of \$1,153.85.
- After deductions of 30%, the net (70%) garnishable earnings would be \$807.69 per week.
- SB 408 exempts \$808 per week, so the **debtor's weekly earnings of \$807.89 is fully exempt.**

\$89,000 ANNUAL EARNINGS FULLY EXEMPT FROM GARNISHMENT:

- Annual income of \$89,000 would generate weekly gross income of \$1,711.53.
- After deductions of 30%, the net (70%) earnings would be \$1,198 per week.
- SB 408 exempts \$1,200 per week, so the **debtor's weekly earnings of \$1,198 is exempt.**

SB 408/HB 4900 Create Strict Liability Risk for Banks and Credit Unions

SB 408/HB 4900 create increased risks for banks and credit unions who fail to comply with its new requirements when customers' deposits are garnished. The bill mandates a "90-day account review" and the 18-month "look back" rule, which will encourage frivolous lawsuits for non-compliance, since the proposed legislation includes a strict liability provision.

90-day account review rule:

The bills would require every Michigan financial institution, when served with a "non-periodic garnishment," to review the customer/judgment debtor's deposit account and "calculate the amount of money deposited in the account in the 90 days preceding service..." (of the writ) to determine if any funds are "exempt" from garnishment. Exempt funds "must not be paid...to the plaintiff" under the garnishment. Furthermore, the financial institution "shall not charge a debtor a fee for any actions taken by the financial institution in connection with a garnishment..."

18-month "look back" rule:

The bills expand the definition of exempt funds to include "any money received from the sale or transfer of property that is exempt under this chapter or other law remains exempt for 18 months while in the debtor's possession, in a checking or similar account, in a savings account, in a certificate of deposit..." The section provides that such exempt funds are traceable under the "first-in, first-out rule."

Risk of law suits:

SB 408/HB 4900 authorize debtors to sue the bank or credit union for actual damages, statutory damages up to \$2000.00 and attorney fees for failure to review an account under the 90-day rule, for paying "exempt" funds to the plaintiff, including payment of any "traceable exempt funds" under the 18 month "look back" rule, or for charging a debtor a fee for the time and expense necessary to review the deposits in the garnished account.

Strict liability & frivolous claims:

Moreover, SB 408/HB 4900 would subject banks and credit unions to **strict liability** for violation of either rule. The financial institution would have the burden of proving that the error was "not intentional and resulted from a bona fide error of fact notwithstanding the maintenance of procedures reasonably adapted to avoid the error." Strict liability laws with attorney fee provisions encourage frivolous lawsuits designed to force defendants to settle to avoid the expense of defending and establishing bona fide error.