



# American Payroll Association

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## Government Relations • Washington, DC

House Commerce and Trade Committee

February 3, 2015, 10:30 a.m.  
House Office Building, Room 519

### **Statement in Support of HB 4119 and HB 4120**

The American Payroll Association (APA) appreciates the opportunity to submit the following statement in support of House Bill 4119 and its companion House Bill 4120. 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 4119 and 4120 will reduce the administrative burden on employers, limit employer liability for administrative errors, and provide for economic recovery where an employer pays part of an employee's debt. Importantly, HBs 4119 and 4120 do not eliminate employer liability, thereby promoting proper garnishment processing. HBs 4119 and 4120 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. APA has more than 550 members in Michigan, in three local chapters (Detroit, Great Lakes Bay, and West 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 4119 and 4120 is a welcome development.

#### **Support for Michigan HB 4119**

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 4119 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 4119 contains several provisions that provide clarity concerning the validity of garnishments.

- HB 4119 clarifies the definition of a garnishment. This should help eliminate confusion over orders that are not called “garnishments” but have the same legal effect.
- HB 4119 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.
- HB 4119 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.
- HB 4119 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 4119 provides clear rules to help all parties understand their rights and responsibilities.

House Bill 4119 limits the liability of an employer that inadvertently fails to properly process a garnishment. Currently a creditor may seek a default judgment against an employer, for the full amount of the debt, as soon as the employer mishandles a garnishment. House Bill 4119 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 4119 provides opportunities for employers to correct administrative errors before a creditor may seek an entry of default or a default judgment. HB 4119 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 4119 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 noncompliance was due to administrative error or mistake. This process will allow employers to correct their errors and begin proper compliance with the garnishment orders.

### **Support for Michigan HB 4120**

House Bill 4120 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 4119 and House Bill 4120. 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. It also provides clearer definitions to employers and courts. The legislation provides employers the opportunity to fix administrative errors prior to being subject to unreasonable 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 contact Lisa Poole (404) 813-7847 or Curtis Tatum (202) 248-4650 with any questions that you may have.



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