

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 365
Economic Matters

(Delegates Dumais and Charkoudian)

Finance

Debt Collection - Exemptions From Attachment and Execution

This bill alters the amount of wages of a judgment debtor that are exempt from attachment. Under the bill, the following is exempt from attachment: the greater of 75% of the disposable wages due or 30 times the State minimum hourly wage in effect at the time the wages are due, multiplied by the number of weeks during which the wages due were earned. The bill also repeals provisions that only apply in Caroline, Kent, Queen Anne's, and Worcester counties. The bill applies prospectively and may not be applied or interpreted to affect or apply to any writ of garnishment or writ of execution issued before its October 1, 2020 effective date.

Fiscal Summary

State Effect: Potential significant decrease in general fund revenues due to the bill's changes to the amount of wages exempt by law from attachment. The bill can be implemented with existing resources.

Local Effect: Local revenues likely decline due to the greater value of wages exempt from attachment. Expenditures are not affected.

Small Business Effect: Potential meaningful.

Analysis

Current Law:

Exemptions from Attachment

Under the Commercial Law Article, the following are exempt from attachment: (1) the greater of the product of \$145 multiplied by the number of weeks in which the wages due

were earned, or 75% of the disposable wages due; or (2) in Caroline, Kent, Queen Anne’s, and Worcester counties, for each workweek, the greater of 75% of the disposable wages due, or 30 times the federal minimum hourly wages under the Fair Labor Standards Act (FLSA) in effect at the time the wages are due. Medical insurance payments deducted from an employee’s wages by the employer are also exempt. Under § 13-811 of the Tax-General Article, the amount exempt from the attachment under the Commercial Law Article is also exempt from a wage lien for unpaid income taxes.

Money Judgments

Under the Courts and Judicial Proceedings Article, a “money judgment” is a judgment that a specified amount of money is immediately payable to the judgment creditor. A money judgment constitutes a lien on the debtor’s interest in real or personal property located where the judgment was rendered. A judgment may be executed by a writ. A sheriff or constable may then seize the legal or equitable interest of the debtor in real or personal property. A writ of execution on a money judgment does not become a lien on the personal property of the debtor until an actual levy is made. The lien then extends only to the property included in the levy. Statute specifies several items that are exempt from execution on a money judgment, including money payable or paid in accordance with an agreement or court order for alimony to the same extent that wages are exempt from attachment under the Commercial Law Article.

Maryland Wage and Hour Law

The Maryland Wage and Hour Law is the State complement to the federal FLSA, which specifies minimum wage and overtime requirements for employers and employees in the State. Chapters 10 and 11 of 2019 increase the State minimum wage rate for employers with 15 or more employees in six increments until the full phase-in of \$15.00 per hour on January 1, 2025. For employers with 14 or fewer employees, the wage rate reaches full phase-in after eight increments on July 1, 2026.

The Board of Public Works (BPW), however, may temporarily suspend one scheduled increase in the State minimum wage for one year between October 1, 2020, and October 1, 2024, if it determines that the seasonally adjusted total employment is negative as compared with the previous six-month period. If total adjusted employment is negative, BPW may also consider the recent performance of State revenues in making its determination.

The Acts specify that, unless the federal minimum wage is set at a higher rate, the State minimum wage for employers with 15 or more employees is as follows:

- \$11.00 per hour as of January 1, 2020;
- \$11.75 per hour as of January 1, 2021;

- \$12.50 per hour as of January 1, 2022;
- \$13.25 per hour as of January 1, 2023;
- \$14.00 per hour as of January 1, 2024; and
- \$15.00 per hour as of January 1, 2025.

The State minimum wage for an employer that employs 14 or fewer employees is as follows:

- \$11.00 per hour as of January 1, 2020;
- \$11.60 per hour as of January 1, 2021;
- \$12.20 per hour as of January 1, 2022;
- \$12.80 per hour as of January 1, 2023;
- \$13.40 per hour as of January 1, 2024;
- \$14.00 per hour as of January 1, 2025;
- \$14.60 per hour as of January 1, 2026; and
- \$15.00 per hour as of July 1, 2026.

An employer may pay 85% of the State minimum wage rate to employees younger than age 18. Exceptions to the minimum wage requirement also exist for a training wage and a disabled employee of a sheltered workshop under specified conditions.

The Maryland Wage and Hour Law and minimum wage requirements do not apply to certain categories of employees, including those defined as administrative, executive, or professional; certain seasonal employees; part-time employees younger than age 16; salesmen and those who work on commission; an employer's immediate family; drive-in theater employees; employees training in a special education program in a public school; employees of an establishment that sells food and drink for on-premises consumption and has an annual gross income of \$400,000 or less; employees employed by an employer who is engaged in canning, freezing, packing, or first processing of perishable or seasonal fresh fruits, vegetables, poultry, or seafood; and certain farm workers.

The employer of a tipped employee is allowed a tip credit that can be applied against the direct wages paid by the employer. The employee can be paid tipping wages so long as the wages plus the tips received equal at least the minimum wage, the employee retains all tips, and the employee customarily receives more than \$30.00 a month in tips. The tip credit is equal to the State minimum wage, less \$3.63. Thus, the tip credit increases as the minimum wage increases, and the wage paid by employers to tipped employees remains \$3.63, as long as their wages plus tips equal the minimum wage. The State and local governments are not considered employers under the tip credit provisions of the Maryland Wage and Hour Law.

If an employer pays less than the wages required, the employee may bring an action against the employer to recover (1) the difference between the wage paid to the employee and the wage required; (2) an additional amount equal to the difference as liquidated damages; and (3) legal fees. The court must award these differences in wages, damages, and counsel fees if the court determines that an employee is entitled to recovery. However, if an employer shows to the satisfaction of the court that the employer acted in good faith and reasonably believed that the wages paid to the employee were not less than the required wages, then the court must award liquidated damages of an amount less than the difference in wages or no liquidated damages.

A person who violates the Maryland Wage and Hour Law is guilty of a misdemeanor and on conviction is subject to a fine of up to \$1,000.

State Fiscal Effect: General fund revenues decline, potentially significantly, due to the increased value of wages exempt from wage attachments and reduced tax revenues as a result. The Comptroller's Office uses wage attachments to collect on tax arrearages. However, the Comptroller's Office has historically advised that it does not have data on which to base an exact estimate. The bill is not expected to have a significant fiscal or operational impact on the District Court.

Small Business Effect: Small businesses that offer goods or services on credit and pursue debt collection through wage attachments may encounter difficulties due to the bill's increases to the amount of wages exempt from attachment.

Additional Comments: This analysis assumes, for purposes of determining the amount of wages exempt from attachment, that the bill applies to the State minimum hourly wage in effect rather than the federal minimum hourly wages under FLSA.

Additional Information

Prior Introductions: Bills with similar provisions have been considered in recent legislative sessions. HB 1256 of 2019 received an unfavorable report by the House Economic Matters Committee. Its cross file, SB 772, received a hearing in the Senate Finance Committee, but no further action was taken. HB 673 of 2018 received an unfavorable report by the House Judiciary Committee. Its cross file, SB 22, received an unfavorable report by the Senate Finance Committee. SB 950 of 2017 received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken. SB 678 of 2015 was heard in the Senate Judicial Proceedings Committee but was subsequently withdrawn.

Designated Cross File: SB 425 (Senator Beidle, *et al.*) - Finance..

Information Source(s): Comptroller's Office; Judiciary (Administrative Office of the Courts); Maryland Department of Labor; Maryland Insurance Administration; Department of Legislative Services

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