

# A Judgment Lien Statute

*“Speaking Out” is a feature of the Michigan Bar Journal that offers personal opinions on issues of interest and concern to our readership.*

## IT MAKES GOOD SENSE FOR MICHIGAN

*By Michael H. R. Buckles*

Representative Charles LaSata has introduced House Bill 5381<sup>1</sup> in the Michigan House of Representatives. Designed to create a simple, inexpensive procedure for recording judgment liens against real property in order to secure and enforce judgments, this bill amends MCL 600.101 to 600.9947 by adding a new Chapter 28.

Forty-four states have statutes providing for true judgment liens under which a judgment creditor may record a judgment lien against real property by simply filing a notice with a county official.<sup>2</sup> True judgment liens are filed by name only and do not require legal descriptions. Michigan, however, is one of the few remaining states that still requires execution and levy (with a legal description) to create a judicial lien; a procedure that is cumbersome and more expensive than a true judgment lien.

The proposed law incorporates provisions from judgment lien statutes in other states. It will bring Michigan in line with more efficient and modern techniques to create a cost-effective method for recording judgment liens, which will benefit judgment creditors, debtors, and the courts.

### Current Michigan Law Regarding Judgment Enforcement

In Michigan, after a party has prevailed in a lawsuit and obtained a judgment (judgment creditor), he/she has only two options to enforce a judgment against the assets of a judgment debtor, namely, writs of garnishment and execution.

Garnishments are filed with the court and then served on a third party (garnishee). The writs require the garnishee to pay the judgment creditor money that is owed to the judgment debtor, e.g. garnishing wages from an employer or funds from the judgment debtor's bank account.<sup>3</sup>

Execution and levy require the services of a court officer or sheriff deputy to serve the execution writ, demand payment from the judgment debtor, and then seize and sell (levy) the personal and real property in possession of the judgment debtor.<sup>4</sup>

The majority of states, however, provide the judgment creditor with a third option, namely, judgment liens that are created by simply recording a document with a county official. These judicial liens create an encumbrance on all real property owned by the judgment debtor. The judgment is then paid when the property is sold, refinanced, or probated.

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## ADVISABILITY OF PROPOSED LEGISLATION

*By Lawrence M. Dudek*

Remedies available under Michigan law to a judgment creditor include creditor's examinations, injunctive relief, garnishment, execution against personal property owned by the judgment debtor, levy on real property owned by the judgment debtor, and proceedings to set aside fraudulent conveyances.

Michigan law requires a judgment creditor to first exhaust collection efforts against the debtor's personal property prior to seeking collection from realty owned by the judgment debtor.<sup>1</sup> A judgment creditor seeking to levy against real property owned by the judgment debtor must first obtain issuance of a writ of execution directed to the sheriff or other court officer, who is obligated to first seek to enforce the writ of execution against the personal property of the judgment debtor that is not otherwise exempt from execution.<sup>2</sup> This will typically be accomplished through the court officer or sheriff paying a personal visit to the judgment debtor inquiring as to the availability of any personal property available to satisfy the judgment. In most instances, the court officer will not be able to secure any non-exempt personal property and will return the writ of execution as unsatisfied.

Once the writ of execution is returned unsatisfied, the judgment creditor may obtain issuance of a levy against any real estate owned by the judgment debtor, which is not otherwise exempt. This is accomplished by preparation of a Notice of Levy that is signed by the court officer or sheriff and delivered to the Register of Deeds for recording. The notice of levy is required to be in recordable form and must include a legal description of the parcel of real estate to which the levy will attach.

The levy will expire unless it is foreclosed through an execution sale within five years of the date of recording.<sup>3</sup> The priority of the levy over other interests claimed in the subject real estate is determined as of the date of the recording of the notice of levy.<sup>4</sup> Sale of the subject real estate on execution is accomplished through publication and posting followed by a sheriff or court officer's sale.<sup>5</sup> The procedure for foreclosure of a levy is the same as for judicial foreclosure of a mortgage.<sup>6</sup>

Judgment creditors have voiced a number of meritorious concerns regarding deficiencies in the procedures applicable to the ability to collect a judgment from real property owned by the judgment debtor.

First, the statute requires judgment creditors to seek satisfaction of the judgment from personal property of the judgment debtor

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Michigan is one of only six states that has no provision for a true judgment lien. Accordingly, if a judgment creditor cannot locate assets to garnish, he or she must resort to a writ of execution, even if the goal is only to obtain a judicial lien on real estate.

### Execution v True Judgment Lien

Execution in Michigan is a regulated procedure that requires service or posting of the writ only by designated court officers, bailiffs, deputy sheriffs, state police, and local police officers (collectively referred to below as officers).<sup>5</sup>

Michigan Court Rule 3.106 requires that the officer prepare and file an inventory with the court clerk, dispose of the property according to the law, deposit any money received into a court trust account, and file a report summarizing collection activities including accounting of all money or property collected.

Moreover, current law requires that the officer *first* seize and sell the personal property of the debtor before the officer may record a notice of levy with the register of deeds to create a judicial lien on the debtor's real property.<sup>6</sup>

While some judgment creditors in Michigan may want to employ the aggressive tool of execution, many judgment creditors *do not* want to seize and sell the debtor's personal property, nor do they want to liquidate the real property. Instead, they only want to secure the judgment and be paid when the real property is sold, refinanced, or probated.

The proposed judgment lien law would provide this third option in Michigan by allowing the judgment creditor to simply record a notice of judgment lien with the register of deeds, without the intervention of an officer or the expense of service. Moreover, only minimal court involvement would be necessary for certification of the notice of judgment lien, unlike MCR 3.106 that requires detailed court management of officers serving writs of execution.

### Problems with the Current Law

Since Michigan does not have a true judgment lien procedure, judgment creditors have to resort to writs of execution to place a judicial lien on real estate. Although this procedure is effective for seizure and sale, it creates unnecessary expense, intrusiveness, and delay.

First, the judgment creditor must pay the court officer a service fee and costs for mileage.<sup>7</sup> These expenses are added to the debtor's taxable court costs.<sup>8</sup>

Second, after the real property has been levied on, the officer is entitled to another fee from the "receipts" of the property, namely seven percent of the first \$5,000 and three percent of receipts exceeding \$5,000.<sup>9</sup> The officer is paid this percentage *even* if the receipts are generated by a *voluntary* sale or refinance. The debtor is required to bear this financial burden also.<sup>10</sup>

Third, writs of execution intrude upon the debtor's privacy. Since the law requires the officer to first execute against the personal prop-

erty before levying on the real property,<sup>11</sup> it is not uncommon for an officer to confront the debtor personally, demand payment, and, if not paid, seize and sell the debtor's motor vehicle, watercraft, etc.

The "personal property first" rule can be traced back to 1816, when the Territory of Michigan adopted the various laws of Pennsylvania and Vermont regarding judgment enforcement.<sup>12</sup> Although this personal property first rule was designed to protect the homestead of the judgment debtor, it is unnecessary in the case of a true judgment lien that is intended only to *secure* the judgment, not liquidate assets to satisfy the judgment. The personal property first provision is *not* found in the other state statutes that provide for true judgment liens.

Fourth, unlike a true judgment lien, writs of execution require more court involvement and administrative costs for filing and processing of writs, inventory, receipts, collection reports, and managing of the trust account.<sup>13</sup>

Finally, timeliness of the service of the writ and recording of the notice of levy with the register of deeds varies widely among the many officers. Some are prompt, but priorities, budgets, and workload may result in delays of several weeks or, in some cases, several months before a levy is properly recorded, if ever.

### The Proposed Judgment Lien Statute

House Bill 5381 synthesizes provisions from judgment lien statutes of other states to create a law that addresses the rights of debtors, creditors, and other interested parties. The current language has been discussed with court administrators, the Register of Deeds Association, various sections of the State Bar, judges, and legislators. Moreover, the Michigan Land Title Association, an organization of 150 title companies in Michigan, worked cooperatively with the drafters to create mutually acceptable language for the bill. Its salient points include the following:

- **Judgment lien, Section 2801 and 2803:** Final judgments in a court of record will attach as judgment liens on any interest in real property (including after acquired property) of the judgment debtor located in the county in which the notice of judgment lien is recorded.
- **Certification by the court, Section 2805(1):** The notice of judgment lien must first be filed and certified with the court that issued the judgment. This ensures that the information on the notice (i.e., names, addresses, phone numbers, and expiration date of the judgment) is confirmed by the issuing court prior to recording with the register of deeds.
- **Identifier, Section 2805(1)(C):** The proposed law requires that the last four digits *only* of the debtor's social security number or taxpayer identification number be included on the notice. Michigan is the first state to include this important feature in a judgment lien statute, although the Florida judgment lien statute requires the entire social security number.<sup>14</sup> This four-digit "identifier" ensures that the lien attaches only to property owned by the judgment debtor and not some unrelated party with a similar name. Also, using only the last four digits protects the privacy of the judgment debtor.



- **Recording with the register of deeds, Section 2805(2):** Notices of judgment liens will not require a real property description, rather they will be recorded in the land title records of the register of deeds in the same manner as a state tax lien,<sup>15</sup> by name in the grantor/grantee index, not in the tract index by legal description. This will simplify the recording procedure and facilitate the filing of judgment liens for judgment creditors.

Most creditors have the social security number necessary for the identifier, but it is often difficult, time consuming, and expensive to determine the location and legal description of a judgment debtor's property. The cost of the title search and the risk of incorrect legal descriptions, especially meets and bounds, have frustrated many attorneys.

The 44 states that have true judgment liens require name filing only; none require a legal description. Moreover, in Michigan, when title searches are conducted, title companies regularly search by name in the grantor/grantee index for tax liens, federal court judgments, and other encumbrances that are only recorded by name. Accordingly, there is no compelling reason to include a legal description on a judgment lien.

- **Notice to the debtor, Section 2805(3):** A copy of the certified notice of judgment lien must be served on the judgment debtor by first-class mail. This requirement is an improvement

over the current law, which does not provide for any actual notice to the judgment debtor when a notice of levy is recorded with the register of deeds.

- **Priority with regard to purchase money mortgages and refinancing, Section 2807:** The drafters of the bill and the Michigan Land Title Association have created provisions to ensure that judgment liens do not impair first mortgages or the refinancing of prior recorded mortgages. Accordingly, judgment liens shall be junior to purchase money mortgages and mortgages to the extent proceeds are used to pay off purchase money mortgage debt, or subsequent refinances of that debt. They will also be junior to mortgages to the extent proceeds are used to pay off non-purchase money mortgages recorded prior to the judgment liens, or advances made pursuant to a prior recorded future advanced mortgage (equity loan with a line of credit). This order of priority protects and facilitates bona fide new purchases and refinancing.

Moreover, a judgment lien shall be limited to the amount of equity due the judgment debtor after all property taxes, costs, and fees necessary to the sale or refinancing are paid or extinguished. Again, this provision protects and facilitates bona fide transactions by subordinating the judgment lien to closing costs, realtor fees, etc. The judgment creditor is entitled only to the debtor's equity proceeds. If the amount of the

judgment exceeds the equity, the judgment creditor cannot demand full payment and frustrate the transaction. Instead, the equity would be paid to the judgment creditor who would then file a partial discharge for that amount only pursuant to Section 2811.

- **Entireties, Section 2807:** A judgment lien does not attach to entireties property unless the underlying judgment is against both husband and wife.
- **Expiration and discharge, Section 2809:** A judgment lien is valid for five years and may be renewed for an additional five years. Furthermore, it can be discharged by the judgment creditor, by the filing of a satisfaction of judgment, by the judgment debtor, by affidavit and proof of payment, or by order of the court.
- **Penalties, Section 2811 and 2813:** Judgment creditors are required to discharge judgment liens within 28 days of payment. Those who fail to timely discharge judgment liens are subject to a fine of \$300 and actual damages for neglect or refusal. This encourages prompt discharge after payment.
- **Erroneously identified property owners, Section 2815:** Although HB 5381 includes an identifier to ensure the lien is filed against the correct person, the bill also has a provision to correct situations in the event that a notice of judgment lien incorrectly identifies a person who is not the judgment debtor. The proposed law provides a procedure for demand for removal, reasonable proof, discharge, and damages for non-compliance, including reasonable attorney fees.
- **Writs of Execution preserved, Section 2817:** The proposed judgment lien law would *not* eliminate writs of execution. Judgment creditors who want to seize and sell personal property or levy and sell real estate could still file a writ of execution, but judgment creditors that only want a judicial lien will not be forced to resort to this remedy.

### Beneficiaries of a Judgment Lien Statute

A true judgment lien will provide judgment creditors in Michigan with a more effective method of securing judgments and collecting overdue debt, without incurring the expense and problems that accompany a writ of execution.

Judgment debtors will not have to pay unnecessary court costs and fees, especially the seven–three percent fee on receipts discussed above.

The courts will benefit because more judgments will be paid and files closed at a better rate with less administrative costs than those attributable to writs of execution.

Title companies, financial institutions, and realtors will benefit from the unique priority protection and equity limitation of Section 2807. No other judgment lien statute in the nation has this provision.

### Similar Legislation Has Proven Successful

Judgment liens have been in effect in many states since the mid nineteenth century.<sup>16</sup> Moreover the simple recording of a notice of

lien in the grantor/grantee index of the register of deeds has been the established method for recording tax liens in the federal tax scheme since 1954<sup>17</sup> and in Michigan since 1968.<sup>18</sup>

Issues have been raised and addressed concerning the potential pitfalls of this bill. The possibility that a notice of judgment lien may incorrectly identify the wrong person has been eliminated by requiring the last four digits of the debtor's social security number on the notice of judgment lien.

Some have voiced concerns that the multitude of newly recorded judgment liens will delay real estate closings because of the need for verification of the balance due, obtaining the discharge, and clarification if there is still an issue of identity. The fact is that judgment lien laws have worked in 44 states for many years. Moreover, judgment creditors and their attorneys are highly motivated to get paid. A simple phone call to an attorney can resolve questions. Payoff letters can be faxed within minutes.

Some opponents of the bill have objected to the liens being recorded in the grantor/ grantee index. They argue that a legal description is "necessary" for judgment liens. Moreover, they claim that it is "easy" to determine the legal description of the judgment debtor's property by obtaining tax billing information from local governmental units or going online.

This is not true. None of the 44 states that have judgment lien statutes require legal descriptions. The established method is by name only. A legal description is not necessary because title companies in Michigan already search the grantor/grantee index for encumbrances, including tax liens filed by the state of Michigan and the Internal Revenue Service.

Furthermore, it is not "easy" to obtain legal descriptions. The only accurate method is to obtain a professional title search, which costs approximately \$200 for each search. This is cost prohibitive for small judgments. It is a waste of money when the title search does not locate any property. The expense is not recoverable by the judgment creditor because it is not a cost that can be "taxed" to the judgment debtor.

Information from local assessors and treasurers can be one to two years old. Tax bills list only the "taxpayer," not the owners. The data is often incomplete and outdated. Relying on information from these secondary governmental units creates the risk of misidentifying the property and owners, or placing a lien on a parcel that has already been conveyed. Trying to get correct information for a parcel from one of the 1,242 Michigan townships is time consuming and frustrating. Online availability to the public is severely limited.

The real reason that the opponents demand a legal description is to increase the expense and difficulty of filing judgment liens. This is quite clear in Lawrence Dudek's article, "*Advisability of Proposed Legislation*," when the author says, "If the judgment creditor is able to easily acquire a judgment lien against all of the debtor's real property by merely recording a notice of the judgment, it is to be anticipated that all judgment creditors will use this expeditious and inexpensive remedy."

Of course! That is the intent of the law. That is what 44 other states allow. Any attorney who has spent the time and money to file

suit and obtain a judgment knows how frustrating it is to not be able to enforce a judgment. True judgment liens are a time proven method to facilitate this.

Allegations of problems with real estate closings, shifted costs, and interference with deeds in lieu of foreclosure are unfounded fears and red herrings. There is no evidence of this happening in the other 44 states.

Judgment liens will not create problems with deeds in lieu of foreclosure anymore than second mortgages, tax liens, or construction liens do. Judgment liens are not elevated to the status of a tax lien for the simple reason that the state or federal taxing authorities can levy these liens without filing suit or obtaining a judgment. Construction liens can also be filed without a judgment. They require a legal description because the debt relates to labor or material that benefited a certain parcel of land.

A judgment lien can only be filed after a judgment has been entered. It is a personal debt and should be enforced against any real property that the person owns. The truth is that judgment liens work well in other states and make good sense for Michigan.

Michigan has an opportunity to step forward and create a law that will provide judgment creditors with a remedy that is recognized in the vast majority of states.

The proposed law is a vehicle for modernization that is long overdue. It will provide a simple, cost-effective procedure for the recording of judgment liens without intruding on the privacy of the judgment debtor. It will save time and money for the court system. It preserves writs of execution for seizure and sale.

A judgment lien law will put Michigan on par with judgment enforcement in other states so that lenders in this state will not be

at a competitive disadvantage when it comes to enforcing judgments to collect debt.

Accordingly, a judgment lien statute makes good sense for Michigan. ◆

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#### FOOTNOTES

1. HB 5381. See <http://www.michiganlegislature.org/>.
2. To view a chart that indicates the states, the statutory citation, the method of perfection, etc., see [www.michbar.org/e-journal/bar\\_journal/buckles\\_Appendix.pdf](http://www.michbar.org/e-journal/bar_journal/buckles_Appendix.pdf).
3. MCL 600.4011 et seq.; MCR 3.101.
4. MCL 600.6004; MCR 3.106 (2003).
5. MCR 2.103(B) and MCR 3.106(G) (2003).
6. MCL 600.6004 (2002).
7. MCL 600.2559(j) (2002).
8. MCL 600.2405 (2002).
9. MCL 600.2559(j) (2002).
10. MCL 600.2405 (2002).
11. MCL 600.6004 (2002).
12. The Cass Code or Digest of Laws of the Territory of Michigan in force in 1816.
13. MCR 3.106(G) (2003).
14. Fla Stat 55.203 (2002).
15. Chapter 211 Taxation of Real and Personal Property; State Tax Lien Registration Act Places for recording and filing. MCL 211.682 (2002).
16. Mississippi's judgment lien recordation section was first enacted in 1848 and has withstood significant changes since. Miss. Code Ann. 11-7-195.
17. IRC sec. 6323 (2003).
18. MCL 211.682 (2002).

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prior to filing a levy on real property owned by the judgment debtor. This can result in unnecessary delay and expense as in many instances the court officer will conclude that no personal property exists. Moreover, if the sheriff does seize personal property, the procedure for sale can be time consuming, complex, and expensive relative to the proceeds realized.<sup>7</sup>

Second, the fees on a levy on real estate include a fee payable to the sheriff or court officer for conducting the execution sale in an amount equal to 7 percent of the \$5,000 of proceeds received and 3 percent of proceeds received in excess of \$5,000.<sup>8</sup> These amounts are taxable as costs and must be paid by the debtor if the property is redeemed from the execution sale.<sup>9</sup> The fees are also typically collected if the judgment debtor voluntarily makes payment of the levy. Judgment creditors argue that the imposition of these fees imposes an unfair burden on judgment debtors.

In Michigan, judgment creditors have proposed legislation that would permit the filing of a judgment lien against real estate owned by a judgment debtor. This lien would attach to any real property owned by the judgment debtor at the time of recording the lien as

well as any later-acquired real property of the judgment debtor. Significantly, the judgment creditor would not be required to include a legal description of the property against which the creditor acquires a lien. The proposed lien would also attach to after-acquired property of the judgment debtor without the need for any further action on the part of the judgment creditor. The granting of a lien on real estate enforceable against later acquired interests without requiring a legal description is not allowed to any class of consensual or non-consensual creditor under Michigan law, with the exception of liens filed by taxing authorities.

With the exception of taxing authorities, any other party seeking to acquire an interest in real estate is required to include in the instrument recorded with the Register of Deeds a legal description of the subject property. Under existing levy procedure, a judgment creditor must include in the notice of levy a legal description of the property against which the judgment creditor is seeking to levy. Such a legal description can be obtained through a search of the grantor-grantee index maintained by the register of deeds. A legal description will also typically be available from the tax billing information on file with the local unit of government that assesses property taxes. In some instances, a legal description may also be available through an online computer database. It is anticipated that

such online availability will increase with expanded electronic recording procedures likely to be used in the future.

Other creditors, such as construction lien claimants, are permitted to acquire an interest in real estate as security for the obligations owed to them, but must include in their claim of lien a legal description of the property that is subject to the lien.

In proposed pending judgment lien legislation, judgment creditors seek the right to acquire liens against real estate without the need to identify the subject real estate on the grounds that it is an unfair burden, as a matter of public policy, to require judgment creditors to bear the expense of securing this information from the available public records. In many instances, the credit files of the judgment creditor will include the address of the debtor. The judgment creditor is able to easily ascertain, as set forth above, a legal description of the subject property.

A procedure to grant judgment liens without requiring a legal description of the property, and the additional granting of a lien on after-acquired property by the debtor, may have the undesirable effect of increasing real estate transaction costs. Title companies will be required, as part of their underwriting, to search for judgment liens. Title insurers will incur additional expense in expanding the scope of title searches and will have increased exposure resulting from insuring against judgment liens. The costs of expanded searches and increased liability may be shifted to lenders and/or borrowers who may ultimately be asked to bear the increased expense of the additional search as well as additional risks being assumed by the title insurer.

A procedure that enables a judgment creditor to require a judgment lien may interfere with the rights of a mortgage lender to realize on its real estate collateral in the event of default. One remedy available to a mortgagee is to accept a deed-in-lieu-of-foreclosure. This permits the borrower to convey his or her interest in the mortgaged real estate to the lender without requiring the lender to proceed forward with foreclosure proceedings, allows the parties to save the expense of a foreclosure proceeding, and minimize potential embarrassment to the defaulting debtor.

A deed-in-lieu-of-foreclosure, however, is effective only in those instances where there are no subordinate liens on the mortgaged property. The existence of a subordinate lien will require the mortgage lender to proceed with foreclosure of the mortgage in order to terminate the subordinate lien. If the judgment creditor is able to easily acquire a judgment lien against all of the debtor's real property merely by recording a notice of the judgment, it is to be anticipated that all judgment creditors will use this expeditious and inexpensive remedy. The existing procedure does discourage the filing of a levy against real estate in those instances where the creditor determines that the debtor likely has no equity.

A judgment creditor holding a judgment lien may impair the ability of a lender to accept a deed-in-lieu and require the lender to engage in the more costly and time-consuming process of foreclosure of its mortgage. The creditor may do by refusing to discharge its judgment lien, even if the debtor has no equity in the property or lacks sufficient equity to satisfy the lien. Similarly, the judgment lien creditor may be able to interfere with refinancing of the prop-

erty by the debtor by insisting upon payment of its lien even in the absence of any sufficient equity in the property to satisfy the lien. The judgment lien legislation seeks to avoid this problem by providing that the judgment lien will attach only to the judgment debtor's "equity" in the property. However, the proposed legislation does not describe the method by which the amount of the debtor's equity is to be determined, the identity of the person who will make such a determination, or the recourse available to the parties if they are not in agreement with the determination as to the debtor's equity. Moreover, the time delays associated with employing some process to determine the debtor's equity will impair timely closing of real estate transactions.

Under existing procedures, the judgment lien creditor is required to obtain a legal description of the property. There is a cost associated with the judgment creditor securing a legal description for the debtor's property. The effect of the proposed legislation may be to shift the cost from the judgment creditor to the real estate industry, including title insurers, sellers and purchasers of real estate, and banks and other lenders. The proposed legislation will also impose costs upon court clerks who will be required to provide certifications regarding outstanding judgments. In addition, the proposed legislation will impair the timely closing of real estate transactions in those instances where there is some need to determine the amount of the judgment debtor's equity in the property.

The proposed judgment lien legislation does not include any procedure for foreclosure of the proposed judgment liens nor is there any intent that the liens be foreclosed. Judgment creditors are seeking an expeditious manner (at the expense of other parties) to utilize the recording system as a mechanism for collecting judgments. Judgment creditors have identified a number of deficiencies in the existing procedures to realize upon real estate owned by the judgment debtor. These objections can be resolved with less adverse impact on third parties than through the proposed judgment lien legislation. For example, the fees payable to the sheriff on an execution sale could be reduced. The requirement in existing legislation that the sheriff first attempt execution against personal property could be eliminated. Amendment of the existing legislation would achieve the desired result of making it easier for judgment creditors to enforce their judgments, while at the same time maintaining the integrity of the recording system and not permitting judgment creditors to shift the cost of collecting judgments to third parties. ♦

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#### FOOTNOTES

1. MCL 600.6004.
2. MCL 600.6004.
3. MCL 600.6051(2).
4. MCL 600.6051(1).
5. MCL 600.6052.
6. MCL 600.3125; MCL 600.6091.
7. MCL 600.6004 and MCR 3.106.
8. MCL 600.2559(j).
9. MCL 600.2405.