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HOUSE BILL 1426

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State of Washington

55th Legislature

1997 Regular Session

By Representatives Bush, McMorris and Dickerson; by request of Department of Social and Health Services

Read first time 01/27/97. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to liens filed by the department of social and  
2 health services; amending RCW 43.20B.720, 43.20B.730, 43.20B.735,  
3 43.20B.740, 74.20A.070, and 74.20A.080; and repealing RCW 43.20B.725.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 43.20B.720 and 1985 c 245 s 7 are each amended to read  
6 as follows:

7 ((By accepting)) (1) A recipient of public assistance from the  
8 department of social and health services((, the recipient thereof shall  
9 be)) is deemed to have subrogated ((said)) to the department ((to)) the  
10 ((recipient's)) right to recover time loss compensation due to ((such))  
11 the recipient and ((his or her)) the recipient's dependents ((pursuant  
12 to the provisions of)) under Title 51 RCW, to the extent of such  
13 assistance or compensation, whichever is less, ((furnished to the  
14 recipient and his or her dependents for or during the period for which  
15 time loss compensation is payable: PROVIDED, That)) to avoid a  
16 duplicate payment of benefits. The amount to be repaid to the  
17 department of social and health services shall bear its proportionate  
18 share of attorney's fees and costs, if any, incurred by the ((injured  
19 worker)) recipient or the ((worker's)) recipient's dependents.

1       (2) The department of social and health services may assert and  
2 enforce a lien and notice to withhold and deliver (~~as hereinafter~~  
3 ~~provided~~) to secure reimbursement (~~of any public assistance paid for~~  
4 ~~or during the period and for the purposes expressed in this section~~).  
5 The department shall identify in the lien and notice to withhold and  
6 deliver the recipient of public assistance and time loss compensation  
7 and the amount claimed by the department.

8       **Sec. 2.** RCW 43.20B.730 and 1987 c 75 s 34 are each amended to read  
9 as follows:

10       The effective date of the (~~statement of~~) lien and notice to  
11 withhold and deliver provided in RCW (~~43.20B.725, shall be~~)  
12 43.20B.720 is the day that it is received by the (director of the)  
13 department of labor and industries(, an employee of the director's  
14 office of suitable discretion,)) or a self-insurer as defined in  
15 chapter 51.08 RCW(: PROVIDED, That)). Service of (~~such statement~~  
16 ~~of~~) the lien and notice to withhold and deliver may be made personally  
17 (or), by regular mail(,) with postage prepaid(: PROVIDED,  
18 FURTHER, That a copy of the)), or by electronic device. A statement of  
19 lien and notice to withhold and deliver shall be mailed to the  
20 recipient at the recipient's last known address by certified mail,  
21 return receipt requested, no later than (the next) two business days  
22 after (such statement of) the department mails, delivers, or  
23 transmits the lien and notice to withhold and deliver (has been mailed  
24 or delivered)) to the department of labor and industries or (to) a  
25 self-insurer as defined in chapter 51.08 RCW.

26       **Sec. 3.** RCW 43.20B.735 and 1973 1st ex.s. c 102 s 4 are each  
27 amended to read as follows:

28       The director of (~~the department of~~) labor and industries or the  
29 director's designee, following receipt of the (statement of) lien and  
30 notice to withhold and deliver, shall deliver to the secretary of (the  
31 department of) social and health services or (his) the secretary's  
32 designee any (funds) time loss compensation payable to the recipient  
33 named in the lien and notice to withhold and deliver up to the amount  
34 claimed (he may hold, or which may at any time come into his  
35 possession,)). The director of labor and industries shall withhold and  
36 deliver from funds currently in the director's possession or from any  
37 funds that may at any time come into the director's possession on

1 account of time loss compensation payable to ((said)) the recipient  
2 ((for or during the period stated, immediately upon a final  
3 determination of the recipient's entitlement to the time loss  
4 compensation in accordance with the provisions of Title 51 RCW)) named  
5 in the lien and notice to withhold and deliver.

6 **Sec. 4.** RCW 43.20B.740 and 1989 c 175 s 101 are each amended to  
7 read as follows:

8 ((Any person)) A recipient feeling aggrieved by the action of the  
9 department of social and health services in ((impounding)) recovering  
10 his or her time loss compensation as provided in RCW 43.20B.720 through  
11 43.20B.745 shall have the right to an adjudicative proceeding.

12 ((Any such person who desires a hearing shall,)) A recipient  
13 seeking an adjudicative proceeding shall file an application with the  
14 secretary within twenty-eight days after the statement of lien and  
15 notice to withhold and deliver ((has been)) was mailed to ((or served  
16 upon the director of the department of labor and industries and said  
17 appellant, file with the secretary an application for an adjudicative  
18 proceeding)) the recipient. If the recipient files an application more  
19 than twenty-eight days after but within one year of the date the  
20 statement of lien and notice to withhold and deliver was mailed, the  
21 recipient is entitled to a hearing if the recipient shows good cause  
22 for the recipient's failure to file a timely application. The filing  
23 of a late application does not affect prior collection action pending  
24 the final adjudicative order. Until good cause for failure to file a  
25 timely application is decided, the department may continue to collect  
26 under the lien and notice to withhold and deliver.

27 The proceeding shall be governed by chapter 34.05 RCW, the  
28 Administrative Procedure Act.

29 **Sec. 5.** RCW 74.20A.070 and 1973 1st ex.s. c 183 s 8 are each  
30 amended to read as follows:

31 (1) The secretary may at any time after filing of a support lien  
32 serve a copy of ((said)) the lien upon any person, firm, corporation,  
33 association, political subdivision, or department of the state in  
34 possession of earnings, or deposits or balances held in any bank  
35 account of any nature which are due, owing, or belonging to said  
36 debtor. ((Said))

1       (2) The support lien shall be served upon the person, firm,  
2 corporation, association, political subdivision, or department of the  
3 state ((either)):

4       (a) In the manner prescribed for the service of summons in a civil  
5 action ((or)):

6       (b) By certified mail, return receipt requested; or

7       (c) By electronic means if there is an agreement between the  
8 secretary and the person, firm, corporation, association, political  
9 subdivision, or department of the state to accept service by electronic  
10 means.

11       (3) No lien filed under RCW 74.20A.060 shall have any effect  
12 against earnings or bank deposits or balances unless it states the  
13 amount of the support debt accrued and unless service upon ((said)) the  
14 person, firm, corporation, association, political subdivision, or  
15 department of the state in possession of earnings or bank accounts,  
16 deposits or balances is accomplished pursuant to this section.

17       **Sec. 6.** RCW 74.20A.080 and 1994 c 230 s 20 are each amended to  
18 read as follows:

19       (1) The secretary may issue to any person, firm, corporation,  
20 association, political subdivision, department of the state, or agency,  
21 subdivision, or instrumentality of the United States, an order to  
22 withhold and deliver property of any kind, including but not restricted  
23 to earnings which are or might become due, owing, or belonging to the  
24 debtor, when the secretary has reason to believe that there is in the  
25 possession of such person, firm, corporation, association, political  
26 subdivision, department of the state, or agency, subdivision, or  
27 instrumentality of the United States property which is or might become  
28 due, owing, or belonging to said debtor. Such order to withhold and  
29 deliver may be issued:

30       (a) When a support payment is past due, if a responsible parent's  
31 support order:

32       (I) Contains language directing the parent to make support payments  
33 to the Washington state support registry; and

34       (ii) Includes a statement that other income-withholding action  
35 under this chapter may be taken without further notice to the  
36 responsible parent, as provided for in RCW 26.23.050(1);

37       (b) Twenty-one days after service of a notice of support debt under  
38 RCW 74.20A.040;

1 (c) Twenty-one days after service of a notice and finding of  
2 parental responsibility under RCW 74.20A.056;

3 (d) Twenty-one days after service of a notice of support owed under  
4 RCW 26.23.110;

5 (e) Twenty-one days after service of a notice and finding of  
6 financial responsibility under RCW 74.20A.055; or

7 (f) When appropriate under RCW 74.20A.270.

8 (2) The order to withhold and deliver shall:

9 (a) State the amount of the support debt accrued;

10 (b) State in summary the terms of RCW 74.20A.090 and 74.20A.100;

11 (c) Be served:

12 (I) In the manner prescribed for the service of a summons in a  
13 civil action ((or));

14 (ii) By certified mail, return receipt requested; or

15 (iii) By electronic means if there is an agreement between the  
16 secretary and the person, firm, corporation, association, political  
17 subdivision, department of the state, or agency, subdivision, or  
18 instrumentality of the United States to accept service by electronic  
19 means.

20 (3) Any person, firm, corporation, association, political  
21 subdivision, department of the state, or agency, subdivision, or  
22 instrumentality of the United States upon whom service has been made is  
23 hereby required to:

24 (a) Answer said order to withhold and deliver within twenty days,  
25 exclusive of the day of service, under oath and in writing, and shall  
26 make true answers to the matters inquired of therein; and

27 (b) Provide further and additional answers when requested by the  
28 secretary.

29 (4) Any such person, firm, corporation, association, political  
30 subdivision, department of the state, or agency, subdivision, or  
31 instrumentality of the United States in possession of any property  
32 which may be subject to the claim of the department of social and  
33 health services shall:

34 (a)(I) Immediately withhold such property upon receipt of the order  
35 to withhold and deliver; and

36 (ii) Deliver the property to the secretary as soon as the twenty-  
37 day answer period expires;

38 (iii) Continue to withhold earnings payable to the debtor at each  
39 succeeding disbursement interval as provided for in RCW 74.20A.090, and

1 deliver amounts withheld from earnings to the secretary on the date  
2 earnings are payable to the debtor;

3 (iv) Inform the secretary of the date the amounts were withheld as  
4 requested under this section; or

5 (b) Furnish to the secretary a good and sufficient bond,  
6 satisfactory to the secretary, conditioned upon final determination of  
7 liability.

8 (5) An order to withhold and deliver served under this section  
9 shall not expire until:

10 (a) Released in writing by the office of support enforcement;

11 (b) Terminated by court order; or

12 (c) The person or entity receiving the order to withhold and  
13 deliver does not possess property of or owe money to the debtor for any  
14 period of twelve consecutive months following the date of service of  
15 the order to withhold and deliver.

16 (6) Where money is due and owing under any contract of employment,  
17 express or implied, or is held by any person, firm, corporation, or  
18 association, political subdivision, or department of the state, or  
19 agency, subdivision, or instrumentality of the United States subject to  
20 withdrawal by the debtor, such money shall be delivered by remittance  
21 payable to the order of the secretary.

22 (7) Delivery to the secretary of the money or other property held  
23 or claimed shall satisfy the requirement and serve as full acquittance  
24 of the order to withhold and deliver.

25 (8) A person, firm, corporation, or association, political  
26 subdivision, department of the state, or agency, subdivision, or  
27 instrumentality of the United States that complies with the order to  
28 withhold and deliver under this chapter is not civilly liable to the  
29 debtor for complying with the order to withhold and deliver under this  
30 chapter.

31 (9) The secretary may hold the money or property delivered under  
32 this section in trust for application on the indebtedness involved or  
33 for return, without interest, in accordance with final determination of  
34 liability or nonliability.

35 (10) Exemptions contained in RCW 74.20A.090 apply to orders to  
36 withhold and deliver issued under this section.

37 (11) The secretary shall also, on or before the date of service of  
38 the order to withhold and deliver, mail or cause to be mailed a copy of  
39 the order to withhold and deliver to the debtor at the debtor's last

1 known post office address, or, in the alternative, a copy of the order  
2 to withhold and deliver shall be served on the debtor in the same  
3 manner as a summons in a civil action on or before the date of service  
4 of the order or within two days thereafter. The copy of the order  
5 shall be mailed or served together with a concise explanation of the  
6 right to petition for judicial review. This requirement is not  
7 jurisdictional, but, if the copy is not mailed or served as in this  
8 section provided, or if any irregularity appears with respect to the  
9 mailing or service, the superior court, in its discretion on motion of  
10 the debtor promptly made and supported by affidavit showing that the  
11 debtor has suffered substantial injury due to the failure to mail the  
12 copy, may set aside the order to withhold and deliver and award to the  
13 debtor an amount equal to the damages resulting from the secretary's  
14 failure to serve on or mail to the debtor the copy.

15 (12) An order to withhold and deliver issued in accordance with  
16 this section has priority over any other wage assignment, garnishment,  
17 attachment, or other legal process, except for another wage assignment,  
18 garnishment, attachment, or other legal process for child support.

19 (13) The office of support enforcement shall notify any person,  
20 firm, corporation, association, or political subdivision, department of  
21 the state, or agency, subdivision, or instrumentality of the United  
22 States required to withhold and deliver the earnings of a debtor under  
23 this action that they may deduct a processing fee from the remainder of  
24 the debtor's earnings, even if the remainder would otherwise be exempt  
25 under RCW 74.20A.090. The processing fee shall not exceed ten dollars  
26 for the first disbursement to the department and one dollar for each  
27 subsequent disbursement under the order to withhold and deliver.

28 NEW SECTION. **Sec. 7.** RCW 43.20B.725 and 1987 c 75 s 33, 1985 c  
29 245 s 8, & 1973 1st ex.s. c 102 s 2 are each repealed.

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