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SENATE BILL 5533

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State of Washington

62nd Legislature

2011 Regular Session

By Senators Hargrove, Fraser, and Carrell

Read first time 01/28/11. Referred to Committee on Human Services & Corrections.

1 AN ACT Relating to court-ordered legal financial obligations  
2 collected by the county clerks; and amending RCW 2.56.190, 4.56.190,  
3 9.94A.7606, 9.94A.7607, 9.94A.7608, and 9.94A.7609.

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

5 **Sec. 1.** RCW 2.56.190 and 2003 c 379 s 21 are each amended to read  
6 as follows:

7 By October 1, 2003, and annually thereafter, the administrative  
8 office of the courts shall distribute such funds to counties for county  
9 clerk collection budgets as are appropriated by the legislature for  
10 this purpose, using the funding formula recommended by the Washington  
11 association of county officials. The administrative office of the  
12 courts shall not deduct any amount for indirect or direct costs, and  
13 shall distribute the entire amount appropriated by the legislature to  
14 the counties for county clerk collection budgets. The legal financial  
15 obligations funds shall not be subject to the administrative office of  
16 the courts administrative budget reductions or other budget reductions  
17 by the administrative office of the courts. Said funds shall not be  
18 deemed to have been reduced unless specifically identified by the  
19 legislature. The administrative office of the courts shall report on

1 the amounts distributed to counties to the appropriate committees of  
2 the legislature no later than December 1, 2003, and annually  
3 thereafter.

4 The administrative office of the courts may expend for the purposes  
5 of billing for legal financial obligations, such funds as are  
6 appropriated for the legislature for this purpose.

7 **Sec. 2.** RCW 4.56.190 and 1994 c 189 s 3 are each amended to read  
8 as follows:

9 The real estate of any judgment debtor, and such as the judgment  
10 debtor may acquire, not exempt by law, shall be held and bound to  
11 satisfy any judgment of the district court of the United States  
12 rendered in this state and any judgment of the supreme court, court of  
13 appeals, superior court, or district court of this state, and every  
14 such judgment shall be a lien thereupon to commence as provided in RCW  
15 4.56.200 and to run for a period of not to exceed ten years from the  
16 day on which such judgment was entered unless the ten-year period is  
17 extended in accordance with RCW 6.17.020(3), or unless the judgment  
18 results from a criminal sentence for a crime that was committed on or  
19 after July 1, 2000, in which case the lien will remain in effect until  
20 the judgment is fully satisfied. As used in this chapter, real estate  
21 shall not include the vendor's interest under a real estate contract  
22 for judgments rendered after August 23, 1983. If a judgment debtor  
23 owns real estate, subject to execution, jointly or in common with any  
24 other person, the judgment shall be a lien on the interest of the  
25 defendant only.

26 Personal property of the judgment debtor shall be held only from  
27 the time it is actually levied upon.

28 **Sec. 3.** RCW 9.94A.7606 and 1991 c 93 s 7 are each amended to read  
29 as follows:

30 (1) The department or county clerk may issue to any person or  
31 entity, except to the department, an order to withhold and deliver  
32 property of any kind, including but not restricted to, earnings that  
33 are due, owing, or belonging to the offender, if the department or  
34 county clerk has reason to believe that there is in the possession of  
35 such person or entity, property that is due, owing, or belonging to the

1 offender. Such order to withhold and deliver may be issued when a  
2 court-ordered legal financial obligation payment is past due:

3 (a) If an offender's judgment and sentence or a subsequent order to  
4 pay includes a statement that other income-withholding action under  
5 this chapter may be taken without further notice to the offender.

6 (b) If a judgment and sentence or a subsequent order to pay does  
7 not include the statement that other income-withholding action under  
8 this chapter may be taken without further notice to the offender but  
9 the department or county clerk has served a notice on the offender  
10 stating such requirements and authorizations. The service shall have  
11 been made by personal service or any form of mail requiring a return  
12 receipt.

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

14 (a) Include the amount of the court-ordered legal financial  
15 obligation;

16 (b) Contain a summary of moneys that may be exempt from the order  
17 to withhold and deliver and a summary of the civil liability upon  
18 failure to comply with the order; and

19 (c) Be served by personal service or by any form of mail requiring  
20 a return receipt.

21 (3) The department or county clerk shall also, on or before the  
22 date of service of the order to withhold and deliver, mail or cause to  
23 be mailed by any form of mail requiring a return receipt, a copy of the  
24 order to withhold and deliver to the offender at the offender's last  
25 known post office address, or, in the alternative, a copy of the order  
26 shall be personally served on the offender on or before the date of  
27 service of the order or within two days thereafter. The copy of the  
28 order shall be mailed or served together with an explanation of the  
29 right to petition for judicial review. If the copy is not mailed or  
30 served as this section provides, or if any irregularity appears with  
31 respect to the mailing or service, the superior court, in its  
32 discretion on motion of the offender promptly made and supported by  
33 affidavit showing that the offender has suffered substantial injury due  
34 to the failure to mail the copy, may set aside the order to withhold  
35 and deliver.

36 **Sec. 4.** RCW 9.94A.7607 and 1991 c 93 s 8 are each amended to read  
37 as follows:

1 (1) A person or entity upon whom service has been made is hereby  
2 required to:

3 (a) Answer the order to withhold and deliver within twenty days,  
4 exclusive of the day of service, under oath and in writing, and shall  
5 make true answers to the matters inquired of in the order; and

6 (b) Provide further and additional answers when requested by the  
7 department or county clerk.

8 (2) Any person or entity in possession of any property that may be  
9 subject to the order to withhold and deliver shall:

10 (a)(i) Immediately withhold such property upon receipt of the order  
11 to withhold and deliver;

12 (ii) Deliver the property to the appropriate clerk of the court as  
13 soon as the twenty-day answer period expires;

14 (iii) Continue to withhold earnings payable to the offender at each  
15 succeeding disbursement interval and deliver amounts withheld from  
16 earnings to the appropriate clerk of the court within ten days of the  
17 date earnings are payable to the offender;

18 (iv) Inform the department or county clerk of the date the amounts  
19 were withheld as requested under this section; or

20 (b) Furnish the appropriate clerk of the court a good and  
21 sufficient bond, satisfactory to the clerk, conditioned upon final  
22 determination of liability.

23 (3) Where money is due and owing under any contract of employment,  
24 expressed or implied, or other employment arrangement, or is held by  
25 any person or entity subject to withdrawal by the offender, the money  
26 shall be delivered by remittance payable to the order of the  
27 appropriate clerk of the court.

28 (4) Delivery to the appropriate clerk of the court of the money or  
29 other property held or claimed shall satisfy the requirement and serve  
30 as full acquittance of the order to withhold and deliver.

31 (5) The person or entity required to withhold and deliver the  
32 earnings of a debtor under this action may deduct a processing fee from  
33 the remainder of the offender's earnings, even if the remainder would  
34 otherwise be exempt under RCW 9.94A.761. The processing fee may not  
35 exceed:

36 (a) Ten dollars for the first disbursement to the appropriate clerk  
37 of the court; and

38 (b) One dollar for each subsequent disbursement.

1 (6) A person or entity shall be liable to the obligee in an amount  
2 equal to one hundred percent of the value of the court-ordered legal  
3 financial obligation that is the basis of the order to withhold and  
4 deliver, or the amount that should have been withheld, whichever amount  
5 is less, together with costs, interest, and reasonable attorneys' fees  
6 if that person or entity fails or refuses to deliver property under the  
7 order.

8 The department or county clerk is authorized to issue a notice of  
9 debt pursuant to and to take appropriate action to collect the debt  
10 under this chapter if a judgment has been entered as the result of an  
11 action by the court against a person or entity based on a violation of  
12 this section.

13 (7) Persons or entities delivering money or property to the  
14 appropriate clerk of the court under this chapter shall not be held  
15 liable for wrongful delivery.

16 (8) Persons or entities withholding money or property under this  
17 chapter shall not be held liable for wrongful withholding.

18 **Sec. 5.** RCW 9.94A.7608 and 1991 c 93 s 9 are each amended to read  
19 as follows:

20 An order to withhold and deliver or any other income-withholding  
21 action authorized by this chapter may be served on the main office of  
22 a bank, savings and loan association, or credit union or on a branch  
23 office of the financial institution. Service on the main office shall  
24 be effective to attach the deposits of an offender in the financial  
25 institution and compensation payable for personal services due the  
26 offender from the financial institution. Service on a branch office  
27 shall be effective to attach the deposits, accounts, credits, or other  
28 personal property of the offender, excluding compensation payable for  
29 personal services, in the possession or control of the particular  
30 branch served.

31 Notwithstanding any other provision of RCW 9.94A.760 and 9.94A.7601  
32 through 9.94A.761, if the department or county clerk initiates  
33 collection action against a joint bank account, with or without the  
34 right of survivorship, or any other funds which are subject to the  
35 community property laws of this state, notice shall be given to all  
36 affected parties that the account or funds are subject to potential  
37 withholding. Such notice shall be by first-class mail, return receipt

1 required, or by personal service and be given at least twenty calendar  
2 days before withholding is made. Upon receipt of such notice, the  
3 nonobligated person shall have ten calendar days to file a petition  
4 with the department or the superior court contesting the withholding of  
5 his or her interest in the account or funds. The department or county  
6 clerk shall provide notice of the right of the filing of the petition  
7 with the notice provided in this paragraph. If the petition is not  
8 filed within the period provided for herein, the department or county  
9 clerk is authorized to proceed with the collection action.

10 **Sec. 6.** RCW 9.94A.7609 and 1991 c 93 s 10 are each amended to read  
11 as follows:

12 (1) The department or county clerk may issue a notice of debt in  
13 order to enforce and collect a court-ordered legal financial obligation  
14 debt through either a notice of payroll deduction or an order to  
15 withhold and deliver.

16 (2) The notice of debt may be personally served upon the offender  
17 or be mailed to the offender at his or her last known address by any  
18 form of mail requiring a return receipt, demanding payment within  
19 twenty days of the date of receipt.

20 (3) The notice of debt shall include:

21 (a) A statement of the total court-ordered legal financial  
22 obligation and the amount to be paid each month.

23 (b) A statement that earnings are subject to a notice of payroll  
24 deduction.

25 (c) A statement that earnings or property, or both, are subject to  
26 an order to withhold and deliver.

27 (d) A statement that the net proceeds will be applied to the  
28 satisfaction of the court-ordered legal financial obligation.

29 (4) Action to collect a court-ordered legal financial obligation by  
30 notice of payroll deduction or an order to withhold and deliver shall  
31 be lawful after twenty days from the date of service upon the offender  
32 or twenty days from the receipt or refusal by the offender of the  
33 notice of debt.

34 (5) The notice of debt will take effect only if the offender's  
35 monthly court-ordered legal financial obligation payment is not paid  
36 when due, and an amount equal to or greater than the amount payable for  
37 one month is owned.

1           (6) The department or county clerk shall not be required to issue  
2 or serve the notice of debt in order to enforce and collect a court-  
3 ordered legal financial obligation debt through either a notice of  
4 payroll deduction or an order to withhold and deliver if either the  
5 offender's judgment and sentence or a subsequent order to pay includes  
6 a statement that income-withholding action under this chapter may be  
7 taken without further notice to the offender.

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