

SENATE BILL 5363

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By Senators Thorsness, Rasmussen, Nelson, Newhouse, Hayner, Madsen, A. Smith, Erwin and L. Kreidler; by request of Department of Corrections.

Read first time January 29, 1991. Referred to Committee on Law & Justice.

1 AN ACT Relating to legal financial obligations; amending RCW
2 9.94A.145; adding new sections to chapter 9.94A RCW; creating new
3 sections; prescribing penalties; and declaring an emergency.

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

5 **Sec. 1.** RCW 9.94A.145 and 1989 c 252 s 3 are each amended to read
6 as follows:

7 (1) Whenever a person is convicted of a felony, the court may order
8 the payment of a legal financial obligation as part of the sentence.
9 The court must on either the judgment and sentence or on a subsequent
10 order to pay, designate the total amount of a legal financial
11 obligation and segregate this amount among the separate assessments
12 made for restitution, costs(~~(+)~~), fines, and other assessments
13 required by law. On the same order, the court is also to set a sum
14 that the offender is required to pay on a monthly basis towards
15 satisfying the legal financial obligation. If the court fails to set

1 the offender monthly payment amount, the department shall set the
2 amount.

3 (2) The court may add to the judgment and sentence or subsequent
4 order to pay a statement that a notice of payroll deduction is to be
5 immediately issued. If the court chooses not to order the immediate
6 issuance of a notice of payroll deduction at sentencing, the court
7 shall add to the judgment and sentence or subsequent order to pay a
8 statement that a notice of payroll deduction may be issued or other
9 income-withholding action may be taken, without further notice to the
10 offender if a monthly court-ordered legal financial obligation payment
11 is not paid when due, and an amount equal to or greater than the amount
12 payable for one month is owed.

13 If a judgment and sentence or subsequent order to pay does not
14 include the statement that a notice of payroll deduction may be issued
15 or other income-withholding action may be taken if a monthly legal
16 financial obligation payment is past due, the department may serve a
17 notice on the offender stating such requirements and authorizations.
18 Service shall be by personal service or any form of mail requiring a
19 return receipt.

20 (3) All legal financial obligations that are ordered as a result of
21 a conviction for a felony, may also be enforced in the same manner as
22 a judgment in a civil action by the party or entity to whom the legal
23 financial obligation is owed. These obligations may be enforced at any
24 time during the ten-year period following the offender's release from
25 total confinement or within ten years of entry of the judgment and
26 sentence, whichever period is longer. Independent of the department,
27 the party or entity to whom the legal financial obligation is owed
28 shall have the authority to utilize any other remedies available to the
29 party or entity to collect the legal financial obligation.

1 (~~(3)~~) (4) In order to assist the court in setting a monthly sum
2 that the offender must pay during the period of supervision, the
3 offender is required to report to the department for purposes of
4 preparing a recommendation to the court. When reporting, the offender
5 is required, under oath, to truthfully and honestly respond to all
6 questions concerning present, past, and future earning capabilities and
7 the location and nature of all property or financial assets. The
8 offender is further required to bring any and all documents as
9 requested by the department.

10 (~~(4)~~) (5) After completing the investigation, the department
11 shall make a report to the court on the amount of the monthly payment
12 that the offender should be required to make towards a satisfied legal
13 financial obligation.

14 (~~(5)~~) (6) During the period of supervision, the department may
15 make a recommendation to the court that the offender's monthly payment
16 schedule be modified so as to reflect a change in financial
17 circumstances. If the department sets the monthly payment amount, the
18 department may modify the monthly payment amount without the matter
19 being returned to the court. Also, during the period of supervision,
20 the offender may be required at the request of the department to report
21 to the department for the purposes of reviewing the appropriateness of
22 the collection schedule for the legal financial obligation. During this
23 reporting, the offender is required under oath to truthfully and
24 honestly respond to all questions concerning earning capabilities and
25 the location and nature of all property or financial assets. Also, the
26 offender is required to bring any and all documents as requested by the
27 department in order to prepare the collection schedule.

28 (~~(6)~~) (7) After the judgment and sentence or payment order is
29 entered, the department shall for any period of supervision be
30 authorized to collect the legal financial obligation from the offender.

1 Any amount collected by the department shall be remitted daily to the
2 county clerk for the purposes of disbursements. The department is
3 authorized to accept credit cards as payment for a legal financial
4 obligation, and any costs incurred related to accepting credit card
5 payments shall be the responsibility of the offender.

6 ~~((+7+))~~ (8) The department or any obligee of the legal financial
7 obligation may seek a mandatory wage assignment for the purposes of
8 obtaining satisfaction for the legal financial obligation pursuant to
9 RCW 9.94A.2001.

10 ~~((+8+))~~ (9) The requirement that the offender pay a monthly sum
11 towards a legal financial obligation constitutes a condition ~~((and term
12 of community supervision))~~ or requirement of a sentence and the
13 offender is subject to the penalties as provided in RCW 9.94A.200 for
14 noncompliance.

15 ~~((+9+))~~ (10) The county clerk shall provide the department with
16 individualized monthly billings for each offender with an unsatisfied
17 legal financial obligation and shall provide the department with
18 ~~((written))~~ notice of payments by such offenders no less frequently
19 than weekly.

20 NEW SECTION. **Sec. 2.** LEGAL FINANCIAL OBLIGATION--NOTICE OF
21 PAYROLL DEDUCTION--ISSUANCE AND CONTENT. (1) The department may
22 issue a notice of payroll deduction in a criminal action if:

23 (a) The court at sentencing orders its immediate issuance; or

24 (b) The offender is more than thirty days past due in monthly
25 payments in an amount equal to or greater than the amount payable for
26 one month, provided:

27 (i) The judgment and sentence or subsequent order to pay contains
28 a statement that a notice of payroll deduction may be issued without
29 further notice to the offender; or

1 (ii) The department has served a notice on the offender stating
2 such requirements and authorization. Service of such notice shall be
3 made by personal service or any form of mail requiring a return
4 receipt.

5 (2) The notice of payroll deduction is to be in writing and
6 include:

7 (a) The name, social security number, and identifying court case
8 number of the offender/employee;

9 (b) The amount to be deducted from the offender/employee's
10 disposable earnings each month, or alternative amounts and frequencies
11 as may be necessary to facilitate processing of the payroll deduction
12 by the employer;

13 (c) A statement that the total amount withheld on all payroll
14 deduction notices for payment of court-ordered legal financial
15 obligations combined shall not exceed twenty-five percent of the
16 offender/employee's disposable earnings; and

17 (d) The address to which the payments are to be mailed or
18 delivered.

19 (3) An informational copy of the notice of payroll deduction shall
20 be mailed to the offender's last known address by regular mail or shall
21 be personally served.

22 (4) Neither the department nor any agents of the department shall
23 be held liable for actions taken under RCW 9.94A.145 and sections 2
24 through 11 of this act.

25 NEW SECTION. **Sec. 3.** LEGAL FINANCIAL OBLIGATIONS--NOTICE OF
26 PAYROLL DEDUCTION--AMOUNTS TO BE WITHHELD. (1) The total amount to be
27 withheld from the offender/employee's earnings each month, or from each
28 earnings disbursement, shall not exceed twenty-five percent of the
29 disposable earnings of the offender.

1 (2) If the offender is subject to two or more notices of payroll
2 deduction for payment of a court-ordered legal financial obligation
3 from different obligees, the employer or entity shall, if the nonexempt
4 portion of the offender's earnings is not sufficient to respond fully
5 to all notices of payroll deduction, apportion the offender's nonexempt
6 disposable earnings between or among the various obligees equally.

7 NEW SECTION. **Sec. 4.** LEGAL FINANCIAL OBLIGATIONS--NOTICE OF
8 PAYROLL DEDUCTION--EMPLOYER OR ENTITY RESPONSIBILITIES. (1) An
9 employer or entity upon whom a notice of payroll deduction is served,
10 shall make an answer to the department within twenty days after the
11 date of service. The answer shall confirm compliance and institution
12 of the payroll deduction or explain the circumstances if no payroll
13 deduction is in effect. The answer shall also state whether the
14 offender is employed by or receives earnings from the employer or
15 entity, whether the employer or entity anticipates paying earnings, and
16 the amount of earnings. If the offender is no longer employed, or
17 receiving earnings from the employer or entity, the answer shall state
18 the present employer or entity's name and address, if known.

19 (2) Service of a notice of payroll deduction upon an employer or
20 entity requires an employer or entity to immediately make a mandatory
21 payroll deduction from the offender/employee's unpaid disposable
22 earnings. The employer or entity shall thereafter at each pay period
23 deduct the amount stated in the notice divided by the number of pay
24 periods per month. The employer or entity must remit the proper amounts
25 to the appropriate clerk of the court on each date the
26 offender/employee is due to be paid.

27 (3) The employer or entity may combine amounts withheld from the
28 earnings of more than one employee in a single payment to the clerk of

1 the court, listing separately the amount of the payment that is
2 attributable to each individual employee.

3 (4) The employer or entity may deduct a processing fee from the
4 remainder of the employee's earnings after withholding under the notice
5 of payroll deduction, even if the remainder is exempt under section 10
6 of this act. The processing fee may not exceed:

7 (a) Ten dollars for the first disbursement made by the employer to
8 the clerk of the court; and

9 (b) One dollar for each subsequent disbursement made under the
10 notice of payroll deduction.

11 (5) The notice of payroll deduction shall remain in effect until
12 released by the department or the court enters an order terminating the
13 notice.

14 (6) An employer shall be liable to the obligee for the amount of
15 court-ordered legal financial obligation moneys that should have been
16 withheld from the offender/employee's earnings, if the employer:

17 (a) Fails or refuses, after being served with a notice of payroll
18 deduction, to deduct and promptly remit from unpaid earnings the
19 amounts of money required in the notice; or

20 (b) Fails or refuses to submit an answer to the notice of payroll
21 deduction after being served. In such cases, liability may be
22 established in superior court. Awards in superior court shall include
23 costs, interest under RCW 19.52.020 and 4.56.110, reasonable attorney
24 fees, and staff costs as part of the award.

25 (7) No employer who complies with a notice of payroll deduction
26 under this chapter may be liable to the employee for wrongful
27 withholding.

28 (8) No employer may discipline or discharge an employee or refuse
29 to hire a person by reason of an action authorized in this chapter. If
30 an employer disciplines or discharges an employee or refuses to hire a

1 person in violation of this section, the employee or person shall have
2 a cause of action against the employer. The employer shall be liable
3 for double the amount of lost wages and any other damages suffered as
4 a result of the violation and for costs and reasonable attorney fees,
5 and shall be subject to a civil penalty of not more than two thousand
6 five hundred dollars for each violation. The employer may also be
7 ordered to hire, rehire, or reinstate the aggrieved individual.

8 NEW SECTION. **Sec. 5.** MOTION TO QUASH, MODIFY, OR TERMINATE
9 PAYROLL DEDUCTION--GROUNDS FOR RELIEF. (1) The offender subject to a
10 payroll deduction under this chapter, may file a motion in superior
11 court to quash, modify, or terminate the payroll deduction. The court
12 may grant relief if:

13 (a) It is demonstrated that the payroll deduction causes extreme
14 hardship or substantial injustice; or

15 (b) In cases where the court did not immediately order the issuance
16 of a notice of payroll deduction at sentencing, that a court-ordered
17 legal financial obligation payment was not more than thirty days past
18 due in an amount equal to or greater than the amount payable for one
19 month.

20 (2) Satisfaction by the offender of all past-due payments
21 subsequent to the issuance of the notice of payroll deduction is not
22 grounds to quash, modify, or terminate the notice of payroll deduction.
23 If a notice of payroll deduction has been in operation for twelve
24 consecutive months and the offender's payment towards a court-ordered
25 legal financial obligation is current, upon motion of the offender, the
26 court may order the department to terminate the payroll deduction,
27 unless the department can show good cause as to why the notice of
28 payroll deduction should remain in effect.

1 NEW SECTION. **Sec. 6.** LEGAL FINANCIAL OBLIGATIONS--ORDER TO

2 WITHHOLD AND DELIVER--ISSUE AND CONTENTS. (1) The department may
3 issue to any person or entity an order to withhold and deliver property
4 of any kind, including but not restricted to, earnings that are due,
5 owing, or belonging to the offender, if the department has reason to
6 believe that there is in the possession of such person or entity,
7 property that is due, owing, or belonging to the offender. Such order
8 to withhold and deliver may be issued when a court-ordered legal
9 financial obligation payment is past due:

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

13 (b) If a judgment and sentence or a subsequent order to pay does
14 not include the statement that other income-withholding action under
15 this chapter may be taken without further notice to the offender but
16 the department has served a notice on the offender stating such
17 requirements and authorizations. The service shall have been made by
18 personal service or any form of mail requiring a return receipt.

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

20 (a) Include the amount of the court-ordered legal financial
21 obligation;

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

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

27 (3) The department shall also, on or before the date of service of
28 the order to withhold and deliver, mail or cause to be mailed by any
29 form of mail requiring a return receipt, a copy of the order to
30 withhold and deliver to the offender at the offender's last known post

1 office address, or, in the alternative, a copy of the order shall be
2 personally served on the offender on or before the date of service of
3 the order or within two days thereafter. The copy of the order shall
4 be mailed or served together with an explanation of the right to
5 petition for judicial review. If the copy is not mailed or served as
6 this section provides, or if any irregularity appears with respect to
7 the mailing or service, the superior court, in its discretion on motion
8 of the offender promptly made and supported by affidavit showing that
9 the offender has suffered substantial injury due to the failure to mail
10 the copy, may set aside the order to withhold and deliver.

11 (4) Neither the department nor any agents of the department shall
12 be held liable for actions taken under RCW 9.94A.145 or sections 2
13 through 11 of this act.

14 NEW SECTION. **Sec. 7.** LEGAL FINANCIAL OBLIGATIONS--ORDER TO
15 WITHHOLD AND DELIVER--DUTIES OF PERSON OR ENTITY SERVED. (1) A
16 person or entity upon whom service has been made is hereby required to:

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

20 (b) Provide further and additional answers when requested by the
21 department.

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

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

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

28 (iii) Continue to withhold earnings payable to the offender at each
29 succeeding disbursement interval and deliver amounts withheld from

1 earnings to the appropriate clerk of the court within ten days of the
2 date earnings are payable to the offender;

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

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

8 (3) Where money is due and owing under any contract of employment,
9 expressed or implied, or is held by any person or entity subject to
10 withdrawal by the offender, the money shall be delivered by remittance
11 payable to the order of the appropriate clerk of the court.

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

15 (5) The person or entity required to withhold and deliver the
16 earnings of a debtor under this action may deduct a processing fee from
17 the remainder of the offender's earnings, even if the remainder would
18 otherwise be exempt under section 10 of this act. The processing fee
19 may not exceed:

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

22 (b) One dollar for each subsequent disbursement.

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

1 The department is authorized to issue a notice of debt pursuant to
2 and to take appropriate action to collect the debt under this chapter
3 if a judgment has been entered as the result of an action by the court
4 against a person or entity based on a violation of this section.

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

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

10 NEW SECTION. **Sec. 8.** LEGAL FINANCIAL OBLIGATIONS--BANKS, SAVINGS
11 AND LOAN ASSOCIATIONS, CREDIT UNIONS--SERVICE ON MAIN OFFICE OR BRANCH,
12 EFFECT--COLLECTION ACTIONS AGAINST COMMUNITY BANK ACCOUNT, RIGHT TO
13 COURT HEARING. An order to withhold and deliver or any other income-
14 withholding action authorized by this chapter may be served on the main
15 office of a bank, savings and loan association, or credit union or on
16 a branch office of the financial institution. Service on the main
17 office shall be effective to attach the deposits of an offender in the
18 financial institution and compensation payable for personal services
19 due the offender from the financial institution. Service on a branch
20 office shall be effective to attach the deposits, accounts, credits, or
21 other personal property of the offender, excluding compensation payable
22 for personal services, in the possession or control of the particular
23 branch served.

24 If the department initiates collection action under this chapter
25 against a community bank account, the offender or the offender's spouse
26 upon service on the department of a timely written application, has the
27 right to a hearing before the court to establish that the funds in the
28 account, or a portion of those funds, were the earnings of the

1 nonobligated spouse, and are exempt from the satisfaction of the court-
2 ordered legal financial obligation of the offender.

3 NEW SECTION. Sec. 9. LEGAL FINANCIAL OBLIGATIONS--NOTICE OF DEBT-
4 -SERVICE OR MAILING--CONTENTS--ACTION ON, WHEN. (1) The department
5 may issue a notice of debt in order to enforce and collect a court-
6 ordered legal financial obligation debt through either a notice of
7 payroll deduction or an order to withhold and deliver.

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

12 (3) The notice of debt shall include:

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

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

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

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

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

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

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

8 NEW SECTION. **Sec. 10.** LEGAL FINANCIAL OBLIGATIONS--CERTAIN AMOUNT
9 OF EARNINGS EXEMPT FROM NOTICE OF PAYROLL DEDUCTION OR ORDER TO
10 WITHHOLD AND DELIVER. Whenever a notice of payroll deduction or order
11 to withhold and deliver is served upon a person or entity asserting a
12 court-ordered legal financial obligation debt against earnings and
13 there is in the possession of the person or entity any of the earnings,
14 RCW 6.27.150 shall not apply, but seventy-five percent of the
15 disposable earnings shall be exempt and may be disbursed to the
16 offender whether such earnings are paid, or to be paid weekly, monthly,
17 or at other intervals and whether there is due the offender earnings
18 for one week or for a longer period. The notice of payroll deduction
19 or order to withhold and deliver shall continue to operate and require
20 said person or entity to withhold the nonexempt portion of earnings, at
21 each succeeding earnings disbursement interval until the entire amount
22 of the court-ordered legal financial obligation debt has been withheld.

23 NEW SECTION. **Sec. 11.** "EARNINGS" AND "DISPOSABLE EARNINGS"
24 DEFINED. As used in this chapter, the term earnings means
25 compensation paid or payable for personal services, whether denominated
26 as wages, salary, commission, hours, or otherwise, and notwithstanding
27 any other provision of law making such payments exempt from
28 garnishment, attachment, or other process to satisfy court-ordered

1 legal financial obligations, specifically includes periodic payments
2 pursuant to pension or retirement programs, or insurance policies of
3 any type. Earnings shall specifically include all gain derived from
4 capital, from labor, or from both, not including profit gained through
5 sale or conversion of capital assets. The term "disposable earnings"
6 means that part of the earnings of any individual remaining after the
7 deduction from those earnings of any amount required by law to be
8 withheld.

9 NEW SECTION. **Sec. 12.** Captions as used in this act constitute
10 no part of the law.

11 NEW SECTION. **Sec. 13.** Sections 2 through 11 of this act are
12 each added to chapter 9.94A RCW.

13 NEW SECTION. **Sec. 14.** The code reviser shall codify sections
14 2 through 11 of this act between RCW 9.94A.200 and 9.94A.2001.

15 NEW SECTION. **Sec. 15.** The provisions of this act are
16 retroactive and apply to any actions commenced but not final before the
17 effective date of this act.

18 NEW SECTION. **Sec. 16.** This act is necessary for the immediate
19 preservation of the public peace, health, or safety, or support of the
20 state government and its existing public institutions, and shall take
21 effect immediately.