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**SUBSTITUTE HOUSE BILL 1426**

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**State of Washington**

**55th Legislature**

**1997 Regular Session**

**By** House Committee on Commerce & Labor (originally sponsored by Representatives Bush, McMorris and Dickerson; by request of Department of Social and Health Services)

Read first time 02/24/97.

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, 43.20B.030, 74.20A.070, and 74.20A.080; and repealing RCW  
4 43.20B.725.

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

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

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

1 any, incurred under Title 51 RCW by the (~~injured worker~~) recipient or  
2 the (~~worker's~~) recipient's dependents.

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

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

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

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

30 The director of (~~the department of~~) labor and industries or the  
31 director's designee, or a self-insurer as defined in chapter 51.08 RCW,  
32 following receipt of the (~~statement of~~) lien and notice to withhold  
33 and deliver, shall deliver to the secretary of (~~the department of~~)  
34 social and health services or (~~his~~) the secretary's designee any  
35 (~~funds~~) temporary total disability compensation payable to the  
36 recipient named in the lien and notice to withhold and deliver up to  
37 the amount claimed ((he may hold, or which may at any time come into

1 ~~his possession,)).~~ The director of labor and industries or self-  
2 insurer shall withhold and deliver from funds currently in the  
3 director's or self-insurer's possession or from any funds that may at  
4 any time come into the director's or self-insurer's possession on  
5 account of ((time-loss)) temporary total disability compensation  
6 payable to ((said)) the recipient ((for or during the period stated,  
7 immediately upon a final determination of the recipient's entitlement  
8 to the time loss compensation in accordance with the provisions of  
9 Title 51 RCW)) named in the lien and notice to withhold and deliver.

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

12 ((Any person)) A recipient feeling aggrieved by the action of the  
13 department of social and health services in ((impounding)) recovering  
14 his or her ((time-loss)) temporary total disability compensation as  
15 provided in RCW 43.20B.720 through 43.20B.745 shall have the right to  
16 an adjudicative proceeding.

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

32 The proceeding shall be governed by chapter 34.05 RCW, the  
33 Administrative Procedure Act.

34 **Sec. 5.** RCW 43.20B.030 and 1989 c 78 s 4 are each amended to read  
35 as follows:

36 (1) Except as otherwise provided by law, there will be no  
37 collection of overpayments and other debts due the department after the

1 expiration of six years from the date of notice of such overpayment or  
2 other debt unless the department has commenced recovery action in a  
3 court of law or unless an administrative remedy authorized by statute  
4 is in place. However, any amount due in a case thus extended shall  
5 cease to be a debt due the department at the expiration of ten years  
6 from the date of the notice of the overpayment or other debt unless a  
7 court-ordered remedy would be in effect for a longer period.

8 (2)(a) The department, at any time, may accept offers of compromise  
9 of disputed claims or may grant partial or total write-off of any debt  
10 due the department if it is no longer cost-effective to pursue. The  
11 department shall adopt rules establishing the considerations to be made  
12 in the granting or denial of a partial or total write-off of debts.

13 (b) Beginning December 1, 1997, the department shall report by  
14 December 1 each year to the commerce and labor committees of the senate  
15 and house of representatives, the senate ways and means committee, and  
16 the house appropriations committee, or successor committees, the  
17 following information:

18 (i) The cumulative amount of debt due the department;

19 (ii) The cumulative amount of debt that has been written off by the  
20 department as no longer cost-effective to pursue;

21 (iii) The amount of debt due the department that has accrued in  
22 each of the previous five fiscal years; and

23 (iv) The amount of debt that has been written off in each of the  
24 previous five fiscal years as no longer cost-effective to pursue.

25 **Sec. 6.** RCW 74.20A.070 and 1973 1st ex.s. c 183 s 8 are each  
26 amended to read as follows:

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

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

36 (a) In the manner prescribed for the service of summons in a civil  
37 action ~~((or))~~;

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

1       (c) By electronic means if there is an agreement between the  
2 secretary and the person, firm, corporation, association, political  
3 subdivision, or department of the state to accept service by electronic  
4 means.

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

11       **Sec. 7.** RCW 74.20A.080 and 1994 c 230 s 20 are each amended to  
12 read as follows:

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

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

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

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

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

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

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

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

1 (f) When appropriate under RCW 74.20A.270.  
2 (2) The order to withhold and deliver shall:  
3 (a) State the amount of the support debt accrued;  
4 (b) State in summary the terms of RCW 74.20A.090 and 74.20A.100;  
5 (c) Be served:  
6 (I) In the manner prescribed for the service of a summons in a  
7 civil action ((or));  
8 (ii) By certified mail, return receipt requested; or  
9 (iii) By electronic means if there is an agreement between the  
10 secretary and the person, firm, corporation, association, political  
11 subdivision, department of the state, or agency, subdivision, or  
12 instrumentality of the United States to accept service by electronic  
13 means.  
14 (3) Any person, firm, corporation, association, political  
15 subdivision, department of the state, or agency, subdivision, or  
16 instrumentality of the United States upon whom service has been made is  
17 hereby required to:  
18 (a) Answer said order to withhold and deliver within twenty days,  
19 exclusive of the day of service, under oath and in writing, and shall  
20 make true answers to the matters inquired of therein; and  
21 (b) Provide further and additional answers when requested by the  
22 secretary.  
23 (4) Any such person, firm, corporation, association, political  
24 subdivision, department of the state, or agency, subdivision, or  
25 instrumentality of the United States in possession of any property  
26 which may be subject to the claim of the department of social and  
27 health services shall:  
28 (a)(I) Immediately withhold such property upon receipt of the order  
29 to withhold and deliver; and  
30 (ii) Deliver the property to the secretary as soon as the twenty-  
31 day answer period expires;  
32 (iii) Continue to withhold earnings payable to the debtor at each  
33 succeeding disbursement interval as provided for in RCW 74.20A.090, and  
34 deliver amounts withheld from earnings to the secretary on the date  
35 earnings are payable to the debtor;  
36 (iv) Inform the secretary of the date the amounts were withheld as  
37 requested under this section; or

1 (b) Furnish to the secretary a good and sufficient bond,  
2 satisfactory to the secretary, conditioned upon final determination of  
3 liability.

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

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

7 (b) Terminated by court order; or

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

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

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

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

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

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

33 (11) The secretary shall also, on or before the date of service of  
34 the order to withhold and deliver, mail or cause to be mailed a copy of  
35 the order to withhold and deliver to the debtor at the debtor's last  
36 known post office address, or, in the alternative, a copy of the order  
37 to withhold and deliver shall be served on the debtor in the same  
38 manner as a summons in a civil action on or before the date of service  
39 of the order or within two days thereafter. The copy of the order

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

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

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

24 NEW SECTION. **Sec. 8.** RCW 43.20B.725 and 1987 c 75 s 33, 1985 c  
25 245 s 8, & 1973 1st ex.s. c 102 s 2 are each repealed.

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