
SUBSTITUTE SENATE BILL 5378

State of Washington

56th Legislature

1999 Regular Session

By Senate Committee on Labor & Workforce Development (originally sponsored by Senators Wojahn, Fairley and Oke; by request of Department of Social and Health Services)

Read first time 02/25/1999.

1 AN ACT Relating to service and expiration of child support
2 documents on employers and others; amending RCW 26.09.175, 26.18.170,
3 26.18.180, 26.23.130, and 74.20A.080; adding a new section to chapter
4 26.18 RCW; and adding a new section to chapter 74.20A RCW.

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

6 **Sec. 1.** RCW 26.09.175 and 1992 c 229 s 3 are each amended to read
7 as follows:

8 (1) A proceeding for the modification of an order of child support
9 shall commence with the filing of a petition and worksheets. The
10 petition shall be in the form prescribed by the administrator for the
11 courts. There shall be a fee of twenty dollars for the filing of a
12 petition for modification of dissolution.

13 (2) The petitioner shall serve upon the other party the summons, a
14 copy of the petition, and the worksheets in the form prescribed by the
15 administrator for the courts. If the modification proceeding is the
16 first action filed in this state, service shall be made by personal
17 service. If the decree to be modified was entered in this state,
18 service shall be by personal service or by any form of mail requiring
19 a return receipt. If the support obligation has been assigned to the

1 state pursuant to RCW 74.20.330 or the state has a subrogated interest
2 under RCW 74.20A.030, the summons, petition, and worksheets shall also
3 be served on the attorney general or the prosecuting attorney, as set
4 forth in RCW 26.23.130. Proof of service shall be filed with the
5 court.

6 (3) The responding party's answer and worksheets shall be served
7 and the answer filed within twenty days after service of the petition
8 or sixty days if served out of state. The responding party's failure
9 to file an answer within the time required shall result in entry of a
10 default judgment for the petitioner.

11 (4) At any time after responsive pleadings are filed, either party
12 may schedule the matter for hearing.

13 (5) Unless both parties stipulate to arbitration or the presiding
14 judge authorizes oral testimony pursuant to subsection (6) of this
15 section, a petition for modification of an order of child support shall
16 be heard by the court on affidavits, the petition, answer, and
17 worksheets only.

18 (6) A party seeking authority to present oral testimony on the
19 petition to modify a support order shall file an appropriate motion not
20 later than ten days after the time of notice of hearing. Affidavits
21 and exhibits setting forth the reasons oral testimony is necessary to
22 a just adjudication of the issues shall accompany the petition. The
23 affidavits and exhibits must demonstrate the extraordinary features of
24 the case. Factors which may be considered include, but are not limited
25 to: (a) Substantial questions of credibility on a major issue; (b)
26 insufficient or inconsistent discovery materials not correctable by
27 further discovery; or (c) particularly complex circumstances requiring
28 expert testimony.

29 **Sec. 2.** RCW 26.18.170 and 1995 c 34 s 7 are each amended to read
30 as follows:

31 (1) Whenever an obligor parent who has been ordered to provide
32 health insurance coverage for a dependent child fails to provide such
33 coverage or lets it lapse, the department or the obligee may seek
34 enforcement of the coverage order as provided under this section.

35 (2)(a) If the obligor parent's order to provide health insurance
36 coverage contains language notifying the obligor that failure to
37 provide such coverage or proof that such coverage is unavailable may
38 result in direct enforcement of the order and orders payments through,

1 or has been submitted to, the Washington state support registry for
2 enforcement, then the department may, without further notice to the
3 obligor, send a notice of enrollment to the obligor's employer or union
4 (~~by certified mail, return receipt requested~~). The notice shall be
5 served:

6 (i) By regular mail;

7 (ii) In the manner prescribed for the service of a summons in a
8 civil action;

9 (iii) By certified mail, return receipt requested; or

10 (iv) By electronic means if there is an agreement between the
11 secretary and the person, firm, corporation, association, political
12 subdivision, department of the state, or agency, subdivision, or
13 instrumentality of the United States to accept service by electronic
14 means.

15 (b) The notice shall require the employer or union to enroll the
16 child in the health insurance plan as provided in subsection (3) of
17 this section.

18 ~~((b))~~ (c) The returned answer to the division of child support by
19 the employer constitutes proof of service of the notice of enrollment
20 in the case where the notice was served by regular mail.

21 (d) The division of child support may use uniform interstate forms
22 adopted by the United States department of health and human services to
23 take insurance enrollment actions under this section.

24 (e) If the obligor parent's order to provide health insurance
25 coverage does not order payments through, and has not been submitted
26 to, the Washington state support registry for enforcement:

27 (i) The obligee may, without further notice to the obligor send a
28 certified copy of the order requiring health insurance coverage to the
29 obligor's employer or union by certified mail, return receipt
30 requested; and

31 (ii) The obligee shall attach a notarized statement to the order
32 declaring that the order is the latest order addressing coverage
33 entered by the court and require the employer or union to enroll the
34 child in the health insurance plan as provided in subsection (3) of
35 this section.

36 (3) Upon receipt of an order that provides for health insurance
37 coverage, or a notice of enrollment:

1 (a) The obligor's employer or union shall answer the party who sent
2 the order or notice within (~~(thirty-five))~~ twenty days and confirm that
3 the child:

4 (i) Has been enrolled in the health insurance plan;

5 (ii) Will be enrolled; or

6 (iii) Cannot be covered, stating the reasons why such coverage
7 cannot be provided;

8 (b) The employer or union shall withhold any required premium from
9 the obligor's income or wages;

10 (c) If more than one plan is offered by the employer or union, and
11 each plan may be extended to cover the child, then the child shall be
12 enrolled in the obligor's plan. If the obligor's plan does not provide
13 coverage which is accessible to the child, the child shall be enrolled
14 in the least expensive plan otherwise available to the obligor parent;

15 (d) The employer or union shall provide information about the name
16 of the health insurance coverage provider or issuer and the extent of
17 coverage available to the obligee or the department and shall make
18 available any necessary claim forms or enrollment membership cards.

19 (4) If the order for coverage contains no language notifying the
20 obligor that failure to provide health insurance coverage or proof that
21 such coverage is unavailable may result in direct enforcement of the
22 order, the department or the obligee may serve a written notice of
23 intent to enforce the order on the obligor by certified mail, return
24 receipt requested, or by personal service. If the obligor fails to
25 provide written proof that such coverage has been obtained or applied
26 for or fails to provide proof that such coverage is unavailable within
27 twenty days of service of the notice, the department or the obligee may
28 proceed to enforce the order directly as provided in subsection (2) of
29 this section.

30 (5) If the obligor ordered to provide health insurance coverage
31 elects to provide coverage that will not be accessible to the child
32 because of geographic or other limitations when accessible coverage is
33 otherwise available, the department or the obligee may serve a written
34 notice of intent to purchase health insurance coverage on the obligor
35 by certified mail, return receipt requested. The notice shall also
36 specify the type and cost of coverage.

37 (6) If the department serves a notice under subsection (5) of this
38 section the obligor shall, within twenty days of the date of service:

39 (a) File an application for an adjudicative proceeding; or

1 (b) Provide written proof to the department that the obligor has
2 either applied for, or obtained, coverage accessible to the child.

3 (7) If the obligee serves a notice under subsection (5) of this
4 section, within twenty days of the date of service the obligor shall
5 provide written proof to the obligee that the obligor has either
6 applied for, or obtained, coverage accessible to the child.

7 (8) If the obligor fails to respond to a notice served under
8 subsection (5) of this section to the party who served the notice, the
9 party who served the notice may purchase the health insurance coverage
10 specified in the notice directly. The amount of the monthly premium
11 shall be added to the support debt and be collectible without further
12 notice. The amount of the monthly premium may be collected or accrued
13 until the obligor provides proof of the required coverage.

14 (9) The signature of the obligee or of a department employee shall
15 be a valid authorization to the coverage provider or issuer for
16 purposes of processing a payment to the child's health services
17 provider. An order for health insurance coverage shall operate as an
18 assignment of all benefit rights to the obligee or to the child's
19 health services provider, and in any claim against the coverage
20 provider or issuer, the obligee or the obligee's assignee shall be
21 subrogated to the rights of the obligor. Notwithstanding the
22 provisions of this section regarding assignment of benefits, this
23 section shall not require a health care service contractor authorized
24 under chapter 48.44 RCW or a health maintenance organization authorized
25 under chapter 48.46 RCW to deviate from their contractual provisions
26 and restrictions regarding reimbursement for covered services. If the
27 coverage is terminated, the employer shall mail a notice of termination
28 to the department or the obligee at the obligee's last known address
29 within thirty days of the termination date.

30 (10) This section shall not be construed to limit the right of the
31 obligor or the obligee to bring an action in superior court at any time
32 to enforce, modify, or clarify the original support order.

33 (11) Where a child does not reside in the issuer's service area, an
34 issuer shall cover no less than urgent and emergent care. Where the
35 issuer offers broader coverage, whether by policy or reciprocal
36 agreement, the issuer shall provide such coverage to any child
37 otherwise covered that does not reside in the issuer's service area.

38 (12) If an obligor fails to pay his or her portion of any
39 deductible required under the health insurance coverage or fails to pay

1 his or her portion of medical expenses incurred in excess of the
2 coverage provided under the plan, the department or the obligee may
3 enforce collection of the obligor's portion of the deductible or the
4 additional medical expenses through a wage assignment order. The
5 amount of the deductible or additional medical expenses shall be added
6 to the support debt and be collectible without further notice if the
7 obligor's share of the amount of the deductible or additional expenses
8 is reduced to a sum certain in a court order.

9 **Sec. 3.** RCW 26.18.180 and 1989 c 416 s 9 are each amended to read
10 as follows:

11 (1) An obligated parent's employer or union shall be liable for a
12 fine of up to one thousand dollars per occurrence, if the employer or
13 union fails or refuses, within (~~thirty-five~~) twenty days of receiving
14 the order or notice for health insurance coverage to:

15 (a) Promptly enroll the obligated parent's child in the health
16 insurance plan; or

17 (b) Make a written answer to the person or entity who sent the
18 order or notice for health insurance coverage stating that the child:

19 (i) Will be enrolled in the next available open enrollment period;
20 or

21 (ii) Cannot be covered and explaining the reasons why coverage
22 cannot be provided.

23 (2) Liability may be established and the fine may be collected by
24 the office of support enforcement under chapter 74.20A or 26.23 RCW
25 using any of the remedies contained in those chapters.

26 (3) Any employer or union who enrolls a child in a health insurance
27 plan in compliance with chapter 26.18 RCW shall be exempt from
28 liability resulting from such enrollment.

29 NEW SECTION. **Sec. 4.** A new section is added to chapter 26.18 RCW
30 to read as follows:

31 If this chapter requires service in the manner prescribed for
32 service of a summons in a civil action or by certified mail, valid
33 service also includes delivery by a parcel delivery service that
34 requires signature or return receipt.

35 **Sec. 5.** RCW 26.23.130 and 1991 c 367 s 43 are each amended to read
36 as follows:

1 The department shall be given twenty calendar days prior notice of
2 the entry of any final order and five days prior notice of the entry of
3 any temporary order in any proceeding involving child support or
4 maintenance if the department has a financial interest based on an
5 assignment of support rights under RCW 74.20.330 or the state has a
6 subrogated interest under RCW 74.20A.030. Service of this notice upon
7 the department shall be by personal service on, or mailing by any form
8 of mail requiring a return receipt to, the office of the attorney
9 general; except that notice shall be given to the office of the
10 prosecuting attorney for the county in which the action is filed in
11 lieu of the office of the attorney general in those counties and in the
12 types of cases as designated by the office of the attorney general by
13 letter sent to the presiding superior court judge of that county. The
14 department shall not be entitled to terms for a party's failure to
15 serve the department within the time requirements for this section,
16 unless the department proves that the party knew that the department
17 had an assignment of support rights or a subrogated interest and that
18 the failure to serve the department was intentional.

19 **Sec. 6.** RCW 74.20A.080 and 1998 c 160 s 1 are each amended to read
20 as follows:

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

32 (a) At any time, if a responsible parent's support order:

33 (i) Contains notice that withholding action may be taken against
34 earnings, wages, or assets without further notice to the parent; or

35 (ii) Includes a statement that other income-withholding action
36 under this chapter may be taken without further notice to the
37 responsible parent;

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

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

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

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

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

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

11 (a) State the amount to be withheld on a periodic basis if the
12 order to withhold and deliver is being served to secure payment of
13 monthly current support;

14 (b) State the amount of the support debt accrued;

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

16 (d) Be served:

17 (i) In the manner prescribed for the service of a summons in a
18 civil action;

19 (ii) By certified mail, return receipt requested;

20 (iii) By electronic means if there is an agreement between the
21 secretary and the person, firm, corporation, association, political
22 subdivision, department of the state, or agency, subdivision, or
23 instrumentality of the United States to accept service by electronic
24 means; or

25 (iv) By regular mail to a responsible parent's employer unless the
26 division of child support reasonably believes that service of process
27 in the manner prescribed in (d)(i) or (ii) of this subsection is
28 required for initiating an action to ensure employer compliance with
29 the withholding requirement.

30 (3) The division of child support may use uniform interstate
31 withholding forms adopted by the United States department of health and
32 human services to take withholding actions under this section when the
33 responsible parent is owed money or property that is located in another
34 state.

35 (4) Any person, firm, corporation, association, political
36 subdivision, department of the state, or agency, subdivision, or
37 instrumentality of the United States upon whom service has been made is
38 hereby required to:

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

4 (b) Provide further and additional answers when requested by the
5 secretary.

6 (5) The returned answer or a payment remitted to the division of
7 child support by the employer constitutes proof of service of the
8 (~~notice of payroll deduction~~) order to withhold and deliver in the
9 case where the (~~notice~~) order was served by regular mail.

10 (6) Any such person, firm, corporation, association, political
11 subdivision, department of the state, or agency, subdivision, or
12 instrumentality of the United States in possession of any property
13 which may be subject to the claim of the department shall:

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

16 (ii) Within seven working days deliver the property to the
17 secretary;

18 (iii) Continue to withhold earnings payable to the debtor at each
19 succeeding disbursement interval as provided for in RCW 74.20A.090, and
20 deliver amounts withheld from earnings to the secretary within seven
21 working days of the date earnings are payable to the debtor;

22 (iv) Deliver amounts withheld from periodic payments to the
23 secretary within seven working days of the date the payments are
24 payable to the debtor;

25 (v) Inform the secretary of the date the amounts were withheld as
26 requested under this section; or

27 (b) Furnish to the secretary a good and sufficient bond,
28 satisfactory to the secretary, conditioned upon final determination of
29 liability.

30 (7) An order to withhold and deliver served under this section
31 shall not expire until:

32 (a) Released in writing by the division of child support;

33 (b) Terminated by court order; (~~or~~)

34 (c) (~~The~~) A person or entity (~~receiving~~), other than an
35 employer as defined in Title 50 RCW, who has received the order to
36 withhold and deliver does not possess property of or owe money to the
37 debtor; or

1 (d) An employer who has received the order to withhold and deliver
2 no longer employs, contracts, or owes money to the debtor under a
3 contract of employment, express or implied.

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

10 (9) Delivery to the secretary of the money or other property held
11 or claimed shall satisfy the requirement and serve as full acquittance
12 of the order to withhold and deliver.

13 (10) A person, firm, corporation, or association, political
14 subdivision, department of the state, or agency, subdivision, or
15 instrumentality of the United States that complies with the order to
16 withhold and deliver under this chapter is not civilly liable to the
17 debtor for complying with the order to withhold and deliver under this
18 chapter.

19 (11) The secretary may hold the money or property delivered under
20 this section in trust for application on the indebtedness involved or
21 for return, without interest, in accordance with final determination of
22 liability or nonliability.

23 (12) Exemptions contained in RCW 74.20A.090 apply to orders to
24 withhold and deliver issued under this section.

25 (13) The secretary shall also, on or before the date of service of
26 the order to withhold and deliver, mail or cause to be mailed a copy of
27 the order to withhold and deliver to the debtor at the debtor's last
28 known post office address, or, in the alternative, a copy of the order
29 to withhold and deliver shall be served on the debtor in the same
30 manner as a summons in a civil action on or before the date of service
31 of the order or within two days thereafter. The copy of the order
32 shall be mailed or served together with a concise explanation of the
33 right to petition for judicial review. This requirement is not
34 jurisdictional, but, if the copy is not mailed or served as in this
35 section provided, or if any irregularity appears with respect to the
36 mailing or service, the superior court, in its discretion on motion of
37 the debtor promptly made and supported by affidavit showing that the
38 debtor has suffered substantial injury due to the failure to mail the
39 copy, may set aside the order to withhold and deliver and award to the

1 debtor an amount equal to the damages resulting from the secretary's
2 failure to serve on or mail to the debtor the copy.

3 (14) An order to withhold and deliver issued in accordance with
4 this section has priority over any other wage assignment, garnishment,
5 attachment, or other legal process.

6 (15) The division of child support shall notify any person, firm,
7 corporation, association, or political subdivision, department of the
8 state, or agency, subdivision, or instrumentality of the United States
9 required to withhold and deliver the earnings of a debtor under this
10 action that they may deduct a processing fee from the remainder of the
11 debtor's earnings, even if the remainder would otherwise be exempt
12 under RCW 74.20A.090. The processing fee shall not exceed ten dollars
13 for the first disbursement to the department and one dollar for each
14 subsequent disbursement under the order to withhold and deliver.

15 NEW SECTION. **Sec. 7.** A new section is added to chapter 74.20A RCW
16 to read as follows:

17 If this chapter requires service in the manner prescribed for
18 service of a summons in a civil action or by certified mail, valid
19 service also includes delivery by a parcel delivery service that
20 requires signature or return receipt.

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