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**SUBSTITUTE HOUSE BILL 2304**

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**State of Washington                      59th Legislature                      2005 Regular Session**

**By** House Committee on Appropriations (originally sponsored by Representatives Sommers, McCoy and Williams; by request of Office of Financial Management)

READ FIRST TIME 04/05/05.

1            AN ACT Relating to debts owed to the department of social and  
2 health services for medical assistance and recovery of those debts;  
3 amending RCW 65.04.050, 6.13.080, and 43.20B.080; adding a new section  
4 to chapter 74.04 RCW; and adding a new section to chapter 64.04 RCW.

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

6            NEW SECTION.    **Sec. 1.** A new section is added to chapter 74.04 RCW  
7 to read as follows:

8            (1) When an individual receives medical assistance subject to  
9 recovery under RCW 43.20B.080 and the individual is the holder of  
10 record title to real property or the purchaser under a land sale  
11 contract, the department of social and health services may present to  
12 the county clerk for recording in the deed and mortgage records of a  
13 county a request for notice of transfer or encumbrance of the real  
14 property. The department shall adopt a rule providing prior notice and  
15 hearing rights to the record title holder or purchaser under a land  
16 sale contract.

17            (2) The department shall present to the county clerk for recording  
18 a termination of request for notice of transfer or encumbrance when, in

1 the judgment of the department, it is no longer necessary or  
2 appropriate for the department to monitor transfers or encumbrances  
3 related to the real property.

4 (3) The department shall adopt by rule a form for the request for  
5 notice of transfer or encumbrance and the termination of request for  
6 notice of transfer or encumbrance that, at a minimum:

7 (a) Contains the name of the public assistance recipient and a  
8 departmental case identifier or other appropriate information that  
9 links the individual who is the holder of record title to real property  
10 or the purchaser under a land sale contract to the individual's public  
11 assistance records;

12 (b) Contains the legal description of the real property;

13 (c) Contains a mailing address for the department to receive the  
14 notice of transfer or encumbrance; and

15 (d) Complies with the requirements for recording in RCW 36.18.010  
16 for those forms intended to be recorded.

17 (4) The department shall pay the recording fee required by the  
18 county clerk under RCW 36.18.010.

19 (5) The request for notice of transfer or encumbrance described in  
20 this section does not affect title to real property and is not a lien  
21 on, encumbrance of, or other interest in the real property.

22 NEW SECTION. **Sec. 2.** A new section is added to chapter 64.04 RCW  
23 to read as follows:

24 (1) If the department of social and health services has filed a  
25 request for notice of transfer or encumbrance under section 1 of this  
26 act:

27 (a) A title insurance company or agent that discovers the presence  
28 of a request for notice of transfer or encumbrance when performing a  
29 title search on real property shall disclose the presence of the  
30 request for notice of transfer or encumbrance in any report preliminary  
31 to, or any commitment to offer, a certificate of title insurance for  
32 the real property; and

33 (b) Any individual who transfers or encumbers real property shall  
34 provide the department of social and health services with a notice of  
35 transfer or encumbrance. The department of social and health services  
36 shall adopt by rule a model form for notice of transfer or encumbrance

1 required by (a) of this subsection to be used by a purchaser or lender  
2 when notifying the department.

3 (2) If the department of social and health services has caused to  
4 be recorded a termination of request for notice of transfer or  
5 encumbrance in the deed and mortgage records under section 1 of this  
6 act, an individual transferring or encumbering the real property is not  
7 required to provide the notice of transfer or encumbrance required by  
8 subsection (1)(b) of this section.

9 **Sec. 3.** RCW 65.04.050 and 1996 c 143 s 4 are each amended to read  
10 as follows:

11 Every auditor or recording officer must keep a general index,  
12 direct and inverted. The index may be either printed on paper or  
13 produced on microfilm or microfiche, or it can be created from a  
14 computerized data base and displayed on a video display terminal. Any  
15 reference to a prior record location number may be entered in the  
16 remarks column. Any property legal description contained in the  
17 instrument must be entered in the description of property column of the  
18 general index. The direct index shall be divided into eight columns,  
19 and with heads to the respective columns, as follows: Date of  
20 reception, grantor, grantee, nature of instrument, volume and page  
21 where recorded and/or the auditor's file number, remarks, description  
22 of property, assessor's property tax parcel or account number. The  
23 auditor or recording officer shall correctly enter in such index every  
24 instrument concerning or affecting real estate which by law is required  
25 to be recorded, the names of grantors being in alphabetical order. The  
26 inverted index shall also be divided into eight columns, precisely  
27 similar, except that "grantee" shall occupy the second column and  
28 "grantor" the third, the names of grantees being in alphabetical order.  
29 The auditor or recording officer may combine the direct and indirect  
30 indexes into a single index if it contains all the information required  
31 to be contained in the separate direct and indirect indexes and the  
32 names of all grantors and grantees can be found by a person searching  
33 the combined index. For the purposes of this chapter, the term  
34 "grantor" means any person conveying or encumbering the title to any  
35 property, or any person against whom any lis pendens, judgment, notice  
36 of lien, order of sale, execution, writ of attachment, (~~or~~) claims of  
37 separate or community property, or notice for request of transfer or

1 encumbrance under section 1 of this act shall be placed on record. The  
2 auditor or recording officer shall also enter in the general index, the  
3 name of the party or parties platting a town, village, or addition in  
4 the column prescribed for "grantors," describing the grantee in such  
5 case as "the public." However, the auditor or recording officer shall  
6 not receive or record any such plat or map until it has been approved  
7 by the mayor and common council of the municipality in which the  
8 property so platted is situated, or if the property be not situated  
9 within any municipal corporation, then the plat must be first approved  
10 by the county legislative authority. The auditor or recording officer  
11 shall not receive for record any plat, map, or subdivision of land  
12 bearing a name the same or similar to the name of any map or plat  
13 already on record in the office. The auditor or recording officer may  
14 establish a name reservation system to preclude the possibility of  
15 duplication of names.

16 **Sec. 4.** RCW 6.13.080 and 1993 c 200 s 4 are each amended to read  
17 as follows:

18 The homestead exemption is not available against an execution or  
19 forced sale in satisfaction of judgments obtained:

20 (1) On debts secured by mechanic's, laborer's, construction,  
21 maritime, automobile repair, materialmen's or vendor's liens arising  
22 out of and against the particular property claimed as a homestead;

23 (2) On debts secured (a) by security agreements describing as  
24 collateral the property that is claimed as a homestead or (b) by  
25 mortgages or deeds of trust on the premises that have been executed and  
26 acknowledged by the husband and wife or by any unmarried claimant;

27 (3) On one spouse's or the community's debts existing at the time  
28 of that spouse's bankruptcy filing where (a) bankruptcy is filed by  
29 both spouses within a six-month period, other than in a joint case or  
30 a case in which their assets are jointly administered, and (b) the  
31 other spouse exempts property from property of the estate under the  
32 bankruptcy exemption provisions of 11 U.S.C. Sec. 522(d);

33 (4) On debts arising from a lawful court order or decree or  
34 administrative order establishing a child support obligation or  
35 obligation to pay spousal maintenance; (~~or~~)

36 (5) On debts owing to the state of Washington for recovery of

1 medical assistance correctly paid on behalf of an individual consistent  
2 with 42 U.S.C. Sec. 1396p; or

3 (6) On debts secured by a condominium's or homeowner association's  
4 lien. In order for an association to be exempt under this provision,  
5 the association must have provided a homeowner with notice that  
6 nonpayment of the association's assessment may result in foreclosure of  
7 the association lien and that the homestead protection under this  
8 chapter shall not apply. An association has complied with this notice  
9 requirement by mailing the notice, by first class mail, to the address  
10 of the owner's lot or unit. The notice required in this subsection  
11 shall be given within thirty days from the date the association learns  
12 of a new owner, but in all cases the notice must be given prior to the  
13 initiation of a foreclosure. The phrase "learns of a new owner" in  
14 this subsection means actual knowledge of the identity of a homeowner  
15 acquiring title after June 9, 1988, and does not require that an  
16 association affirmatively ascertain the identity of a homeowner.  
17 Failure to give the notice specified in this subsection affects an  
18 association's lien only for debts accrued up to the time an association  
19 complies with the notice provisions under this subsection.

20 **Sec. 5.** RCW 43.20B.080 and 1999 c 354 s 2 are each amended to read  
21 as follows:

22 (1) The department shall file liens, seek adjustment, or otherwise  
23 effect recovery for medical assistance correctly paid on behalf of an  
24 individual consistent with 42 U.S.C. Sec. 1396p. The department shall  
25 adopt a rule providing for prior notice and hearing rights to the  
26 record title holder or purchaser under a land sale contract.

27 (2) Liens may be adjusted by foreclosure in accordance with chapter  
28 61.12 RCW.

29 (3) In the case of an individual who was fifty-five years of age or  
30 older when the individual received medical assistance, the department  
31 shall seek adjustment or recovery from the individual's estate, and  
32 from nonprobate assets of the individual as defined by RCW 11.02.005,  
33 but only for medical assistance consisting of nursing facility  
34 services, home and community-based services, other services that the  
35 department determines to be appropriate, and related hospital and  
36 prescription drug services. Recovery from the individual's estate,

1 including foreclosure of liens imposed under this section, shall be  
2 undertaken as soon as practicable, consistent with 42 U.S.C. Sec.  
3 1396p.

4 (4) The department shall apply the medical assistance estate  
5 recovery law as it existed on the date that benefits were received when  
6 calculating an estate's liability to reimburse the department for those  
7 benefits.

8 (5)(a) The department shall establish procedures consistent with  
9 standards established by the federal department of health and human  
10 services and pursuant to 42 U.S.C. Sec. 1396p to waive recovery when  
11 such recovery would work an undue hardship.

12 (b) Recovery of medical assistance from a recipient's estate shall  
13 not include property made exempt from claims by federal law or treaty,  
14 including exemption for tribal artifacts that may be held by individual  
15 Native Americans.

16 (6) A lien authorized under (~~(subsections (1) through (5) of)~~) this  
17 section relates back to attach to any real property that the decedent  
18 had an ownership interest in immediately before death and is effective  
19 as of that date or date of recording, whichever is earlier.

20 (7) The department may enforce a lien authorized under this section  
21 against a decedent's life estate or joint tenancy interest in real  
22 property held by the decedent immediately prior to his or her death.  
23 Such a lien enforced under this subsection shall not end and shall  
24 continue as provided in this subsection until the department's lien has  
25 been satisfied.

26 (a) The value of the life estate subject to the lien shall be the  
27 value of the decedent's interest in the property subject to the life  
28 estate immediately prior to the decedent's death.

29 (b) The value of the joint tenancy interest subject to the lien  
30 shall be the value of the decedent's fractional interest the recipient  
31 would have owned in the jointly held interest in the property had the  
32 recipient and the surviving joint tenants held title to the property as  
33 tenants in common on the date of the recipient's death.

34 (c) The department may not enforce the lien provided by this  
35 subsection against a bona fide purchaser or encumbrancer that obtains  
36 an interest in the property after the death of the recipient and before  
37 the department records either its lien or the request for notice of  
38 transfer or encumbrance as provided by section 1 of this act.

1       (d) The department may not enforce a lien provided by this  
2 subsection against any property right that vested prior to July 1,  
3 2005.

4       (8) In the case of an individual who is an inpatient in a nursing  
5 facility, intermediate care facility for individuals with mental  
6 retardation, or other medical institution, with respect to whom the  
7 department has determined after notice and opportunity for a hearing  
8 that the individual cannot reasonably be expected to be discharged from  
9 the medical institution and to return home, the department shall file  
10 liens and seek adjustment and recovery from the individual's estate or  
11 upon sale of the property subject to a lien imposed on account of  
12 medical assistance paid on behalf of the individual.

13       (9) The department is authorized to adopt rules to effect recovery  
14 under this section. The department may adopt by rule later enactments  
15 of the federal laws referenced in this section.

16       ~~((+8))~~ (10) It is the responsibility of the department to fully  
17 disclose in advance verbally and in writing, in easy to understand  
18 language, the terms and conditions of estate recovery to all persons  
19 offered long-term care services subject to recovery of payments.

20       ~~((+9))~~ (11) In disclosing estate recovery costs to potential  
21 clients, and to family members at the consent of the client, the  
22 department shall provide a written description of the community service  
23 options.

24       ~~((+10) The department of social and health services shall develop~~  
25 ~~an implementation plan for notifying the client or his or her legal~~  
26 ~~representative at least quarterly of the types of services used and the~~  
27 ~~cost of those services (debt) that will be charged against the estate.~~  
28 ~~The estate planning implementation plan shall be submitted by December~~  
29 ~~12, 1999, to the appropriate standing committees of the house of~~  
30 ~~representatives and the senate, and to the joint legislative and~~  
31 ~~executive task force on long term care.))~~

32       (12) A twenty-year statute of limitations shall run against the  
33 department for recovery of medical assistance as provided in this  
34 section and shall begin on the date the department's lien was recorded.

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