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HOUSE BILL 2304

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State of Washington

59th Legislature

2005 Regular Session

By Representatives Sommers, McCoy and Williams; by request of Office of Financial Management

Read first time 03/24/2005. Referred to Committee on Appropriations.

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, 43.20B.010, 43.20B.030, and  
4 43.20B.080; adding a new section to chapter 74.04 RCW; adding a new  
5 section to chapter 64.04 RCW; and adding a new section to chapter  
6 43.20B RCW.

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

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

10 (1) When an individual receives public assistance as defined in RCW  
11 74.04.005 and the individual is the holder of record title to real  
12 property or the purchaser under a land sale contract, the department of  
13 social and health services may present to the county clerk for  
14 recording in the deed and mortgage records of a county a request for  
15 notice of transfer or encumbrance of the real property.

16 (2) A title insurance company or agent shall provide the department  
17 with a notice of transfer or encumbrance as required in section 2 of  
18 this act.

1 (3) If the department has caused a request for notice of transfer  
2 or encumbrance to be recorded in the deed and mortgage records, the  
3 department shall present to the county clerk for recording a  
4 termination of request for notice of transfer or encumbrance when, in  
5 the judgment of the department, it is no longer necessary or  
6 appropriate for the department to monitor transfers or encumbrances  
7 related to the real property.

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

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

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

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

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

21 (5) The department shall pay the recording fee required by the  
22 county clerk under RCW 36.18.010.

23 (6) The request for notice of transfer or encumbrance described in  
24 this section does not affect title to real property and is not a lien  
25 on, encumbrance of, or other interest in the real property.

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

28 (1) A title insurance company or agent that discovers the presence  
29 of a request for notice of transfer or encumbrance under section 1 of  
30 this act in the deed and mortgage records when performing a title  
31 search on real property shall:

32 (a) Provide the department of social and health services with a  
33 notice of transfer or encumbrance of the real property within thirty  
34 days of a transfer or encumbrance that results in the issuance of a  
35 certificate of title insurance; and

36 (b) Disclose the presence of the request for notice of transfer or

1 encumbrance in any report preliminary to, or any commitment to offer,  
2 a certificate of title insurance for the real property.

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, a title insurance company  
6 or agent is no longer required to provide the notice of transfer or  
7 encumbrance required by subsection (1)(a) of this section for the  
8 affected real property.

9 (3) The department of social and health services shall adopt by  
10 rule a model form for notice of transfer or encumbrance required by  
11 subsection (1)(a) of this section. A title insurance company or agent  
12 shall use the model form or a form substantially similar to the model  
13 form when notifying the department under subsection (1)(a) of this  
14 section.

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

17 Every auditor or recording officer must keep a general index,  
18 direct and inverted. The index may be either printed on paper or  
19 produced on microfilm or microfiche, or it can be created from a  
20 computerized data base and displayed on a video display terminal. Any  
21 reference to a prior record location number may be entered in the  
22 remarks column. Any property legal description contained in the  
23 instrument must be entered in the description of property column of the  
24 general index. The direct index shall be divided into eight columns,  
25 and with heads to the respective columns, as follows: Date of  
26 reception, grantor, grantee, nature of instrument, volume and page  
27 where recorded and/or the auditor's file number, remarks, description  
28 of property, assessor's property tax parcel or account number. The  
29 auditor or recording officer shall correctly enter in such index every  
30 instrument concerning or affecting real estate which by law is required  
31 to be recorded, the names of grantors being in alphabetical order. The  
32 inverted index shall also be divided into eight columns, precisely  
33 similar, except that "grantee" shall occupy the second column and  
34 "grantor" the third, the names of grantees being in alphabetical order.  
35 The auditor or recording officer may combine the direct and indirect  
36 indexes into a single index if it contains all the information required  
37 to be contained in the separate direct and indirect indexes and the

1 names of all grantors and grantees can be found by a person searching  
2 the combined index. For the purposes of this chapter, the term  
3 "grantor" means any person conveying or encumbering the title to any  
4 property, or any person against whom any lis pendens, judgment, notice  
5 of lien, order of sale, execution, writ of attachment, ((~~or~~)) claims of  
6 separate or community property, or notice for request of transfer or  
7 encumbrance under section 1 of this act shall be placed on record. The  
8 auditor or recording officer shall also enter in the general index, the  
9 name of the party or parties platting a town, village, or addition in  
10 the column prescribed for "grantors," describing the grantee in such  
11 case as "the public." However, the auditor or recording officer shall  
12 not receive or record any such plat or map until it has been approved  
13 by the mayor and common council of the municipality in which the  
14 property so platted is situated, or if the property be not situated  
15 within any municipal corporation, then the plat must be first approved  
16 by the county legislative authority. The auditor or recording officer  
17 shall not receive for record any plat, map, or subdivision of land  
18 bearing a name the same or similar to the name of any map or plat  
19 already on record in the office. The auditor or recording officer may  
20 establish a name reservation system to preclude the possibility of  
21 duplication of names.

22 NEW SECTION. **Sec. 4.** A new section is added to chapter 43.20B RCW  
23 to read as follows:

24 Consistent with 42 U.S.C. Sec. 1396(p), in the case of an  
25 individual who is an inpatient in a nursing facility, intermediate care  
26 facility for individuals with mental retardation, or other medical  
27 institution, with respect to whom the department has determined after  
28 notice and opportunity for a hearing that the individual cannot  
29 reasonably be expected to be discharged from the medical institution  
30 and to return home, the department shall file liens and seek adjustment  
31 and recovery from the individual's estate or upon sale of the property  
32 subject to a lien imposed on account of medical assistance paid on  
33 behalf of the individual.

34 **Sec. 5.** RCW 6.13.080 and 1993 c 200 s 4 are each amended to read  
35 as follows:

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

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

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

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

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

19 (5) On debts owing to the state of Washington for recovery of  
20 medical assistance correctly paid on behalf of an individual consistent  
21 with 42 U.S.C. Sec. 1396p; or

22 (6) On debts secured by a condominium's or homeowner association's  
23 lien. In order for an association to be exempt under this provision,  
24 the association must have provided a homeowner with notice that  
25 nonpayment of the association's assessment may result in foreclosure of  
26 the association lien and that the homestead protection under this  
27 chapter shall not apply. An association has complied with this notice  
28 requirement by mailing the notice, by first class mail, to the address  
29 of the owner's lot or unit. The notice required in this subsection  
30 shall be given within thirty days from the date the association learns  
31 of a new owner, but in all cases the notice must be given prior to the  
32 initiation of a foreclosure. The phrase "learns of a new owner" in  
33 this subsection means actual knowledge of the identity of a homeowner  
34 acquiring title after June 9, 1988, and does not require that an  
35 association affirmatively ascertain the identity of a homeowner.  
36 Failure to give the notice specified in this subsection affects an  
37 association's lien only for debts accrued up to the time an association  
38 complies with the notice provisions under this subsection.

1       **Sec. 6.** RCW 43.20B.010 and 1987 c 75 s 42 are each amended to read  
2 as follows:

3       The definitions in this section apply throughout this chapter:

4       (1) "Department" means the department of social and health  
5 services.

6       (2) "Secretary" means the secretary of the department of social and  
7 health services.

8       (3) "License" means that exercise of regulatory authority by the  
9 secretary to grant permission, authority, or liberty to do or to  
10 forbear certain activities. The term includes licenses, permits,  
11 certifications, registrations, and other similar terms.

12       (4) "Vendor" means an entity that provides goods or services to or  
13 for clientele of the department and that controls operational  
14 decisions.

15       (5) "Overpayment" means any payment or benefit to a recipient or to  
16 a vendor in excess of that to which is entitled by law, rule, or  
17 contract, including amounts in dispute.

18       (6) "Recipient" means any individual or entity receiving benefits,  
19 either directly or indirectly, from the department or other state  
20 agency.

21       **Sec. 7.** RCW 43.20B.030 and 2003 c 207 s 1 are each amended to read  
22 as follows:

23       (1) Except as otherwise provided by law, there will be no  
24 collection of overpayments and other debts due the department after the  
25 expiration of ~~((six))~~ twenty years from the date of notice of such  
26 overpayment or other debt ~~((unless the department has commenced~~  
27 ~~recovery action in a court of law or unless an administrative remedy~~  
28 ~~authorized by statute is in place. However, any amount due in a case~~  
29 ~~thus extended shall cease to be a debt due the department at the~~  
30 ~~expiration of ten years from the date of the notice of the overpayment~~  
31 ~~or other debt unless a court ordered remedy would be in effect for a~~  
32 ~~longer period)).~~

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

1       **Sec. 8.** RCW 43.20B.080 and 1999 c 354 s 2 are each amended to read  
2 as follows:

3       (1) The department shall file liens, seek adjustment, or otherwise  
4 effect recovery for medical assistance correctly paid on behalf of an  
5 individual consistent with 42 U.S.C. Sec. 1396p.

6       (2) Liens may be adjusted by foreclosure in accordance with chapter  
7 61.12 RCW.

8       (3) In the case of an individual who was fifty-five years of age or  
9 older when the individual received medical assistance, the department  
10 shall seek adjustment or recovery from the individual's estate, and  
11 from nonprobate assets of the individual as defined by RCW 11.02.005,  
12 but only for medical assistance consisting of nursing facility  
13 services, home and community-based services, other services that the  
14 department determines to be appropriate, and related hospital and  
15 prescription drug services. Recovery from the individual's estate,  
16 including foreclosure of liens imposed under this section, shall be  
17 undertaken as soon as practicable, consistent with 42 U.S.C. Sec.  
18 1396p.

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

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

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

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

35       (b) A lien authorized under this section shall be enforceable  
36 against a decedent's life estate or joint tenancy interest in real  
37 property immediately prior to the decedent's death, shall not end, and

1 shall continue as provided in this section. Such a lien shall be  
2 effective whether filed prior or subsequent to the recipient's death.

3 (i) The value of the life estate subject to the lien shall be the  
4 value of the decedent's interest in the property subject to the life  
5 estate immediately prior to the decedent's death.

6 (ii) The value of the joint tenancy interest subject to the lien  
7 shall be the value of the decedent's fractional interest the recipient  
8 would have owned in the jointly held interest in the property had the  
9 recipient and the surviving joint tenants held title to the property as  
10 tenants in common on the date of the recipient's death.

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

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

18 (9) In disclosing estate recovery costs to potential clients, and  
19 to family members at the consent of the client, the department shall  
20 provide a written description of the community service options.

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

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