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**SUBSTITUTE SENATE BILL 6095**

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**State of Washington**

**59th Legislature**

**2005 Regular Session**

**By** Senate Committee on Ways & Means (originally sponsored by Senator Prentice; by request of Office of Financial Management)

READ FIRST TIME 04/06/05.

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

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

7       NEW SECTION. **Sec. 1.** A new section is added to chapter 43.20B RCW  
8 to read as follows:

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

18       (2) The department shall present to the county auditor for  
19 recording a termination of request for notice of transfer or

1 encumbrance when, in the judgment of the department, it is no longer  
2 necessary or appropriate for the department to monitor transfers or  
3 encumbrances 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  
37 to be used by a purchaser or lender when notifying the department.

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

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

9 Every auditor or recording officer must keep a general index,  
10 direct and inverted. The index may be either printed on paper or  
11 produced on microfilm or microfiche, or it can be created from a  
12 computerized data base and displayed on a video display terminal. Any  
13 reference to a prior record location number may be entered in the  
14 remarks column. Any property legal description contained in the  
15 instrument must be entered in the description of property column of the  
16 general index. The direct index shall be divided into eight columns,  
17 and with heads to the respective columns, as follows: Date of  
18 reception, grantor, grantee, nature of instrument, volume and page  
19 where recorded and/or the auditor's file number, remarks, description  
20 of property, assessor's property tax parcel or account number. The  
21 auditor or recording officer shall correctly enter in such index every  
22 instrument concerning or affecting real estate which by law is required  
23 to be recorded, the names of grantors being in alphabetical order. The  
24 inverted index shall also be divided into eight columns, precisely  
25 similar, except that "grantee" shall occupy the second column and  
26 "grantor" the third, the names of grantees being in alphabetical order.  
27 The auditor or recording officer may combine the direct and indirect  
28 indexes into a single index if it contains all the information required  
29 to be contained in the separate direct and indirect indexes and the  
30 names of all grantors and grantees can be found by a person searching  
31 the combined index. For the purposes of this chapter, the term  
32 "grantor" means any person conveying or encumbering the title to any  
33 property, or any person against whom any lis pendens, judgment, notice  
34 of lien, order of sale, execution, writ of attachment, ((~~or~~)) claims of  
35 separate or community property, or notice for request of transfer or  
36 encumbrance under section 1 of this act shall be placed on record. The  
37 auditor or recording officer shall also enter in the general index, the

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

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

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

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

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

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

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

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

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

18       **Sec. 5.** RCW 43.20B.030 and 2003 c 207 s 1 are each amended to read  
19      as follows:

20       (1) Except as otherwise provided by law, including subsection (2)  
21      of this section, there will be no collection of overpayments and other  
22      debts due the department after the expiration of six years from the  
23      date of notice of such overpayment or other debt unless the department  
24      has commenced recovery action in a court of law or unless an  
25      administrative remedy authorized by statute is in place. However, any  
26      amount due in a case thus extended shall cease to be a debt due the  
27      department at the expiration of ten years from the date of the notice  
28      of the overpayment or other debt unless a court-ordered remedy would be  
29      in effect for a longer period.

30       (2) There will be no collection of debts due the department after  
31      the expiration of twenty years from the date a lien is recorded  
32      pursuant to RCW 43.20B.080.

33       (3) 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. 6.** 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. The department shall  
6 adopt a rule providing for prior notice and hearing rights to the  
7 record title holder or purchaser under a land sale contract.

8       (2) Liens may be adjusted by foreclosure in accordance with chapter  
9 61.12 RCW.

10       (3) In the case of an individual who was fifty-five years of age or  
11 older when the individual received medical assistance, the department  
12 shall seek adjustment or recovery from the individual's estate, and  
13 from nonprobate assets of the individual as defined by RCW 11.02.005,  
14 but only for medical assistance consisting of nursing facility  
15 services, home and community-based services, other services that the  
16 department determines to be appropriate, and related hospital and  
17 prescription drug services. Recovery from the individual's estate,  
18 including foreclosure of liens imposed under this section, shall be  
19 undertaken as soon as practicable, consistent with 42 U.S.C. Sec.  
20 1396p.

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

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

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

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

37       (7) The department may enforce a lien authorized under this section  
38 against a decedent's life estate or joint tenancy interest in real

1 property held by the decedent immediately prior to his or her death.  
2 Such a lien enforced under this subsection shall not end and shall  
3 continue as provided in this subsection until the department's lien has  
4 been satisfied.

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

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

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

18 (d) The department may not enforce a lien provided by this  
19 subsection against any property right that vested prior to July 1,  
20 2005.

21 (8)(a) Subject to the requirements of 42 U.S.C. Sec. 1396p(a) and  
22 the conditions of this subsection (8), the department is authorized to  
23 file a lien against the property of an individual prior to his or her  
24 death, and to seek adjustment and recovery from the individual's estate  
25 or sale of the property subject to the lien, if:

26 (i) The individual is an inpatient in a nursing facility,  
27 intermediate care facility for individuals with mental retardation, or  
28 other medical institution; and

29 (ii) The department has determined after notice and opportunity for  
30 a hearing that the individual cannot reasonably be expected to be  
31 discharged from the medical institution and to return home.

32 (b) If the individual is discharged from the medical facility and  
33 returns home, the department shall dissolve the lien.

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

37 ((+8)) (10) It is the responsibility of the department to fully

1 disclose in advance verbally and in writing, in easy to understand  
2 language, the terms and conditions of estate recovery to all persons  
3 offered long-term care services subject to recovery of payments.

4 ~~((9))~~ (11) In disclosing estate recovery costs to potential  
5 clients, and to family members at the consent of the client, the  
6 department shall provide a written description of the community service  
7 options.

8 ~~((10) The department of social and health services shall develop  
9 an implementation plan for notifying the client or his or her legal  
10 representative at least quarterly of the types of services used and the  
11 cost of those services (debt) that will be charged against the estate.  
12 The estate planning implementation plan shall be submitted by December  
13 12, 1999, to the appropriate standing committees of the house of  
14 representatives and the senate, and to the joint legislative and  
15 executive task force on long term care.))~~

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