
Judiciary Committee

SSB 5423

Title: An act relating to legal financial obligations.

Brief Description: Modifying legal financial obligation provisions.

Sponsors: Senate Committee on Human Services & Corrections (originally sponsored by Senators Regala, Hargrove, Chase and Kline).

Brief Summary of Substitute Bill

- Revises the standards for the reduction or waiver of interest on legal financial obligations imposed as part of a criminal judgment and sentence.
- Allows county clerks to issue orders to withhold and deliver notices of debt to offenders for enforcement of past-due legal financial obligations.
- Requires the Administrative Office of the Courts to issue periodic, rather than monthly, individualized billing statements for legal financial obligations.
- Specifies that a judgment resulting from a crime committed on or after July 1, 2000, remains a lien on non-exempt real property of the judgment debtor until the judgment is fully satisfied.

Hearing Date: 3/14/11

Staff: Edie Adams (786-7180).

Background:

Legal Financial Obligations.

When a defendant is convicted of a crime, the court may impose legal financial obligations (LFOs) as part of the judgment and sentence. Legal financial obligations include: victim restitution; crime victims' compensation fees; court costs; defense costs; fines; and other costs.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

An offender's payments towards LFOs are applied first to restitution, and then proportionally to other monetary obligations after restitution has been satisfied.

Interest on Legal Financial Obligations.

Legal financial obligation judgments bear interest from the date of judgment at the same rate that applies to civil judgments. The rate of interest generally applicable to civil judgments is the greater of 12 percent or four points above the 26-week treasury bill rate. As a result of low treasury bill rates, 12 percent has been the applicable interest rate on LFOs for over two decades.

Interest that accrues on the restitution portion of the LFO is paid to the victim of the offense. All other accrued interest is split between the state and the county as follows: 25 percent to the state General Fund; 25 percent to the state Judicial Information System Account; and 50 percent to the county, 25 percent of which must be used to fund local courts.

Waiver of Interest on Legal Financial Obligations.

An offender may petition a court to reduce or waive the interest on the LFO as an incentive for the offender to pay the principal. The court may grant the petition only if the offender has made a good faith effort to pay and shows that interest accrual is causing a significant hardship and that he or she won't be able to fully pay the LFO unless interest is waived or reduced. "Good faith effort" means that the offender has paid the principal in full or has made 24 consecutive monthly payments under a payment plan. Interest on restitution may not be waived, but may be reduced if the offender has paid the restitution principal in full.

Enforcement of Legal Financial Obligations.

An offender's LFO that is based on a judgment and sentence for a crime committed before July 1, 2000, may be enforced for 10 years from the date of the judgment and sentence or the offender's release from total confinement, whichever is later, and can be extended by the court for an additional 10-year period. For crimes committed on or after July 1, 2000, the LFO can be enforced until it is satisfied.

An offender's compliance with LFOs is supervised by the Department of Corrections (DOC) during any period the offender is incarcerated or under DOC supervision after release, and then by the county clerk for the remaining period the offender is under the jurisdiction of the court. When an offender's term of supervision ends, the DOC must notify the Administrative Office of the Courts (AOC) and provide information to enable the county clerk to monitor the payment of the remaining LFOs. The AOC issues individualized monthly billing statements to offenders subject to LFOs and maintains a statewide database of offender payments.

The LFO statutes authorize the DOC to issue "orders to withhold and deliver" and "notices of debt" in order collect past-due LFOs. County clerks do not have similar authority. An order to withhold and deliver directs any person or entity who may possess property of the offender to withhold the property and deliver it to the appropriate clerk of the court, upon expiration of a 20-day answer period. A notice of debt notifies an offender that income withholding action will be taken to enforce and collect past-due LFO payments. When the DOC takes collection action against a joint bank account or any other funds subject to community property laws, special

notice requirements apply and the non-obligated party is given the opportunity to contest the withholding of his or her interest in the funds.

Judgment Liens.

A judgment is generally enforceable for a period of 10 years, but may be extended for an additional 10-year period. Upon entry, a judgment may become a lien on nonexempt real property owned or later acquired by the judgment debtor. The judgment lien runs for a period not to exceed 10 years from entry of judgment unless the 10-year period is extended. The judgment lien statute does not provide an exception from this 20-year maximum for LFO judgments resulting from crimes committed on or after July 1, 2000, which, under other law, remain enforceable until the judgment is satisfied.

Summary of Bill:

Waiver of Interest Legal Financial Obligations.

The standards for the reduction or waiver of interest on LFOs are revised. The court must waive interest on the non-restitution portion of the LFO that accrued while the offender was in total confinement for the conviction that gave rise to the LFO if the offender shows the interest creates a hardship.

For all other interest that accrues on the non-restitution portion of the LFO, the court may waive or reduce the interest if the offender has made a good faith effort to pay and the interest accrual is causing a significant hardship. The definition of "good faith effort" is revised to require 15 payments within 18 months, rather than 24 consecutive monthly payments. The offender is no longer required to show that he or she will be able to pay the LFO in full only if interest is waived.

Enforcement of Legal Financial Obligations.

The county clerks are granted authority to issue and serve orders to withhold and deliver for the purpose of collecting past-due LFOs and notices of debt for the purpose of notifying the offender that income-withholding action may be taken to satisfy past-due LFO payments. County clerks are also granted authority and obligations with respect to collection actions affecting joint bank accounts.

The AOC is required to issue periodic, rather than monthly, individualized billing statements to offenders.

Judgment Liens.

The statute governing judgment liens on real property is amended to provide that a judgment resulting from a criminal sentence for a crime committed on or after July 1, 2000, remains a lien on non-exempt real property of the judgment debtor until the judgment is fully satisfied.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on March 10, 2011.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.