
SENATE BILL 5401

State of Washington

63rd Legislature

2013 Regular Session

By Senators Carrell and Darneille; by request of Department of Social and Health Services and Health Care Authority

Read first time 01/29/13. Referred to Committee on Human Services & Corrections.

1 AN ACT Relating to empowering the department of social and health
2 services, the department of early learning, and the health care
3 authority to establish and enforce debts against vendors who attempt to
4 avoid their obligation to repay overpayment debts by creating new
5 entities and yet continue to do business with those state agencies;
6 amending RCW 43.20B.010, 43.20B.675, 41.05A.010, and 41.05A.170; adding
7 a new section to chapter 43.20B RCW; adding a new section to chapter
8 41.05A RCW; and creating a new section.

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

10 NEW SECTION. **Sec. 1.** (1) The legislature finds that certain
11 vendors who contract with the department of social and health services,
12 the department of early learning, or the health care authority engage
13 in the practice of strategic successorship, with the intent to restrict
14 or eliminate the ability of those agencies to collect overpayments
15 assessed against those vendors. In many instances, vendors who are
16 responsible for overpayments to the agencies dissolve a business and
17 then transfer its assets to one or more successor entities, which
18 subsequently seek to contract with those same agencies and serve the
19 same clients as the prior vendor-entity, but without satisfying the

1 overpayment obligation. The legislature finds that, through this
2 practice, certain vendors obstruct and impair the ability of the
3 agencies to collect legally established overpayments, which constitutes
4 a wrongful avoidance of liability to the state of Washington.

5 (2) To address this problem, the legislature intends to provide the
6 department of social and health services, the department of early
7 learning, and the health care authority with the authority to determine
8 that a successor entity is liable for a vendor overpayment, and to
9 enforce the liability against the successor entity. It is intended
10 that, under this new process, the agencies will apply the legal theory
11 of successor liability, as articulated under *Cambridge Townhomes, LLC*
12 *v. Pacific Star Roofing, Inc.*, 166 Wn.2d 475, 209 P.3d 863 (2009) and
13 *Hall v. Armstrong Cork, Inc.*, 103 Wn.2d 258, 261, 692 P.2d 787 (1984).

14 (3) The legislature further intends to provide those agencies named
15 in this section with the authority to assess and enforce a vendor
16 overpayment against a successor entity when an audit or other agency
17 review discovers that the overpayment could have been assessed against
18 the original vendor.

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

21 The definitions in this section apply throughout this chapter:

22 (1) "Department" means the department of social and health
23 services.

24 (2) "Secretary" means the secretary of the department of social and
25 health services.

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

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

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

36 (6) "Successor" means a person, business, corporation, partnership,
37 or other entity that receives or purchases all or part of the business

1 or property of another person, business, corporation, partnership, or
2 entity where: (a) There is an express or implied agreement for the
3 transferee to assume liability; (b) the transfer is a de facto merger
4 or consolidation; (c) the transferee is a mere continuation of the
5 transferor; or (d) the transfer of assets is for the fraudulent purpose
6 of escaping liability.

7 NEW SECTION. Sec. 3. A new section is added to chapter 43.20B RCW
8 to read as follows:

9 (1) The department may collect overpayments from a vendor or from
10 a vendor's successor when:

11 (a) The department has established a vendor overpayment as a final
12 debt under RCW 43.20B.675;

13 (b) The department has established a final vendor overpayment debt
14 on behalf of the department of early learning or the health care
15 authority; or

16 (c) The department is requested by the department of early learning
17 to collect an overpayment established under chapter 43.215 RCW and
18 Title 170 WAC.

19 (2) Where the department seeks to enforce an established vendor
20 overpayment liability against a successor, the department must serve a
21 notice of successor liability on the successor. The notice of
22 successor liability must: (a) Include a statement of the final debt
23 owed by the vendor; (b) state the specific reasons why the department
24 finds the entity to be a successor liable for the vendor's overpayment;
25 (c) cite to relevant statutory and regulatory provisions regarding
26 establishment of successor liability; (d) notify the entity of its
27 right to request an adjudicative proceeding; and (e) include a
28 statement that the debt may be collected in accordance with RCW
29 43.20B.675 through 43.20B.695 and this section.

30 (3) A notice of successor liability must be served in the manner
31 prescribed for the service of summons in a civil action or may be
32 served by certified mail, return receipt requested.

33 (4) An application for an adjudicative proceeding must be filed
34 with the secretary, or the secretary's designee, within twenty-eight
35 calendar days from the date of service of such notice and finding of
36 successor liability. The application must be written and served on the
37 secretary by registered or certified mail, or by personal service.

1 (5) If an application for an adjudicative proceeding is timely
2 filed, any collection action against the alleged successor entity is
3 stayed pending the final adjudicative order. The proceeding is
4 governed by the administrative procedure act, chapter 34.05 RCW.

5 (6) If no application for an adjudicative proceeding is timely
6 filed, the notice and finding of successor liability becomes final and
7 the successor entity is liable for the amount claimed in the notice.
8 In addition, the department may charge the successor with any costs
9 associated with the collection of any final overpayment or debt
10 established against the successor.

11 (7) In consultation with the health care authority, the department
12 may adopt any rules it deems necessary in order to implement this
13 section.

14 **Sec. 4.** RCW 43.20B.675 and 1998 c 66 s 2 are each amended to read
15 as follows:

16 (1) When the department determines that a vendor was overpaid by
17 the department for either goods or services, or both, provided to
18 department clients, except nursing homes under chapter 74.46 RCW, the
19 department will give written notice to the vendor. The notice will
20 include the amount of the overpayment, the basis for the claim, and the
21 rights of the vendor under this section.

22 (2) The notice may be served upon the vendor in the manner
23 prescribed for the service of a summons in civil action or be mailed to
24 the vendor at the last known address by certified mail, return receipt
25 requested, demanding payment within twenty days of the date of receipt.

26 (3) The vendor has the right to an adjudicative proceeding governed
27 by the administrative procedure act, chapter 34.05 RCW, and the rules
28 of the department. The vendor's application for an adjudicative
29 proceeding must be in writing, state the basis for contesting the
30 overpayment notice, and include a copy of the department's notice. The
31 application must be served on and received by the department within
32 twenty-eight days of the vendor's receipt of the notice of overpayment.
33 The vendor must serve the department in a manner providing proof of
34 receipt.

35 (4) Where an adjudicative proceeding has been requested, the
36 presiding or reviewing office will determine the amount, if any, of the
37 overpayment received by the vendor.

1 (5) If the vendor fails to attend or participate in the
2 adjudicative proceeding, upon a showing of valid service, the presiding
3 or reviewing officer may enter an administrative order declaring the
4 amount claimed in the notice to be assessed against the vendor and
5 subject to collection action by the department.

6 (6) Failure to make an application for an adjudicative proceeding
7 within twenty-eight days of the date of notice will result in the
8 establishment of a final debt against the vendor in the amount asserted
9 by the department and that amount is subject to collection action. The
10 department may also charge the vendor with any costs associated with
11 the collection of any final overpayment or debt established against the
12 vendor.

13 (7) The department may enforce a final overpayment or debt through
14 lien and foreclosure, distraint, seizure and sale, order to withhold
15 and deliver, or other collection action available to the department to
16 satisfy the debt due.

17 (8) Debts determined under this chapter are subject to collection
18 action without further necessity of action by a presiding or reviewing
19 officer. The department may collect the debt in accordance with RCW
20 43.20B.635, 43.20B.640, and 43.20B.680. In addition, a vendor lien may
21 be subject to distraint and seizure and sale in the same manner as
22 prescribed for support liens in RCW 74.20A.130.

23 (9) Chapter 66, Laws of 1998 applies to overpayments for goods or
24 services provided on or after July 1, 1998.

25 (10) When the department, the health care authority, or the
26 department of early learning discovers through an audit or other review
27 that a vendor overpayment should have been imposed against a vendor
28 that has ceased doing business, the department, the health care
29 authority, or the department of early learning may assess, establish,
30 and enforce the overpayment against another vendor that the department
31 determines is a successor as defined under RCW 43.20B.010.

32 (a) Before the vendor overpayment may be assessed, the department
33 must serve a notice of successor liability as described in section 3 of
34 this act.

35 (b) If the department establishes that the alleged successor entity
36 is indeed a successor entity, the department, the health care
37 authority, or the department of early learning may seek to establish

1 the overpayment against the successor entity as provided under RCW
2 43.20B.675.

3 (11) In consultation with the department of early learning, the
4 department may adopt any rules ((consistent with)) it deems necessary
5 in order to implement this section.

6 **Sec. 5.** RCW 41.05A.010 and 2011 1st sp.s. c 15 s 89 are each
7 amended to read as follows:

8 The definitions in this section apply throughout this chapter
9 unless the context clearly requires otherwise:

10 (1) "Assistance" means all programs administered by the authority.

11 (2) "Authority" means the Washington state health care authority.

12 (3) "Director" means the director of the Washington state health
13 care authority.

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

17 (5) "Vendor" means a person or entity that provides goods or
18 services to or for clientele of the authority and that controls
19 operational decisions.

20 (6) "Successor" means a person, business, corporation, partnership,
21 or other entity that receives or purchases all or part of the business
22 or property of another person, business, corporation, partnership, or
23 other entity where: (a) There is an express or implied agreement for
24 the transferee to assume liability; (b) the transfer is a de facto
25 merger or consolidation; (c) the transferee is a mere continuation of
26 the transferor; or (d) the transfer of assets is for the fraudulent
27 purpose of escaping liability.

28 NEW SECTION. **Sec. 6.** A new section is added to chapter 41.05A RCW
29 to read as follows:

30 (1) When the authority has established a vendor overpayment as a
31 final debt under RCW 41.05A.010 or establishes a final vendor
32 overpayment debt on behalf of another agency, the authority may collect
33 that debt from the vendor or from a successor.

34 (2) Where the authority seeks to enforce an established vendor
35 overpayment liability against a successor, the authority must serve a
36 notice of successor liability on the successor. The notice of

1 successor liability must: (a) Include a statement of the final debt
2 owed by the vendor; (b) state the specific reasons why the authority
3 finds the entity to be a successor liable for the vendor's overpayment;
4 (c) cite to relevant statutory and regulatory provisions regarding
5 establishment of successor liability; (d) notify the entity of its
6 right to request an adjudicative proceeding; and (e) include a
7 statement that the debt may be collected in accordance with RCW
8 41.05A.170 through 41.05A.220 and this section.

9 (3) A notice of successor liability must be served in the manner
10 prescribed for the service of summons in a civil action or may be
11 served by certified mail, return receipt requested.

12 (4) An application for an adjudicative proceeding must be filed
13 with the director, or the director's designee, within twenty-eight
14 calendar days from the date of service of such notice and finding of
15 successor liability. The application must be written and served on the
16 director by registered or certified mail, or by personal service.

17 (5) If an application for an adjudicative proceeding is timely
18 filed, any collection action against the alleged successor entity is
19 stayed pending the final adjudicative order. The proceeding is
20 governed by the administrative procedure act, chapter 34.05 RCW.

21 (6) If no application for adjudicative proceeding is timely filed,
22 the notice and finding of successor liability becomes final and the
23 successor entity is liable for the amount claimed in the notice. In
24 addition, the authority may charge the successor with any costs
25 associated with the collection of any final overpayment or debt
26 established against the successor.

27 (7) The authority has authority to adopt any rules it deems
28 necessary in order to implement this section.

29 **Sec. 7.** RCW 41.05A.170 and 2011 1st sp.s. c 15 s 104 are each
30 amended to read as follows:

31 (1) When the authority determines that a vendor was overpaid by the
32 authority for either goods or services, or both, provided to authority
33 clients, except nursing homes under chapter 74.46 RCW, the authority
34 shall give written notice to the vendor. The notice must include the
35 amount of the overpayment, the basis for the claim, and the rights of
36 the vendor under this section.

1 (2) The notice may be served upon the vendor in the manner
2 prescribed for the service of a summons in civil action or be mailed to
3 the vendor at the last known address by certified mail, return receipt
4 requested, demanding payment within twenty days of the date of receipt.

5 (3) The vendor has the right to an adjudicative proceeding governed
6 by the administrative procedure act, chapter 34.05 RCW, and the rules
7 of the authority. The vendor's application for an adjudicative
8 proceeding must be in writing, state the basis for contesting the
9 overpayment notice, and include a copy of the authority's notice. The
10 application must be served on and received by the authority within
11 twenty-eight days of the vendor's receipt of the notice of overpayment.
12 The vendor must serve the authority in a manner providing proof of
13 receipt.

14 (4) Where an adjudicative proceeding has been requested, the
15 presiding or reviewing (~~(office [officer])~~) officer shall determine the
16 amount, if any, of the overpayment received by the vendor.

17 (5) If the vendor fails to attend or participate in the
18 adjudicative proceeding, upon a showing of valid service, the presiding
19 or reviewing officer may enter an administrative order declaring the
20 amount claimed in the notice to be assessed against the vendor and
21 subject to collection action by the authority.

22 (6) Failure to make an application for an adjudicative proceeding
23 within twenty-eight days of the date of notice results in the
24 establishment of a final debt against the vendor in the amount asserted
25 by the authority and that amount is subject to collection action. The
26 authority may also charge the vendor with any costs associated with the
27 collection of any final overpayment or debt established against the
28 vendor.

29 (7) The authority may enforce a final overpayment or debt through
30 lien and foreclosure, distraint, seizure and sale, order to withhold
31 and deliver, or other collection action available to the authority to
32 satisfy the debt due.

33 (8) Debts determined under this chapter are subject to collection
34 action without further necessity of action by a presiding or reviewing
35 officer. The authority may collect the debt in accordance with RCW
36 41.05A.120, 41.05A.130, and 41.05A.180. In addition, a vendor lien may
37 be subject to distraint and seizure and sale in the same manner as
38 prescribed for support liens in RCW 74.20A.130.

1 (9) Chapter 66, Laws of 1998 applies to overpayments for goods or
2 services provided on or after July 1, 1998.

3 (10) When the health care authority discovers through an audit or
4 other review that a vendor overpayment should have been imposed against
5 a vendor that has ceased doing business, the authority may assess,
6 establish, and enforce the fine or civil penalty against another vendor
7 that the authority determines is a successor as defined under RCW
8 41.05A.010.

9 (a) Before the overpayment may be assessed, the authority must
10 serve a notice of successor liability as described in section 6 of this
11 act.

12 (b) If the authority establishes that the alleged successor entity
13 is indeed a successor entity, the authority or the department of social
14 and health services may seek to establish the overpayment against the
15 successor entity as provided in chapters 41.05A and 43.20B RCW.

16 (11) The authority may adopt any rules (~~(consistent with)~~) it deems
17 necessary in order to implement this section.

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