
SENATE BILL 5403

State of Washington

63rd Legislature

2013 Regular Session

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

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

1 AN ACT Relating to the enforcement powers of the office of
2 financial recovery; amending RCW 43.20B.010 and 43.20B.030; and adding
3 new sections to chapter 43.20B RCW.

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

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

7 The definitions in this section apply throughout this chapter:

8 (1) "Department" means the department of social and health
9 services.

10 (2) "Secretary" means the secretary of the department of social and
11 health services.

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

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

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

4 (6) "Child welfare training and advancement program" means the
5 program administered in partnership between the department's children's
6 administration and participating universities in Washington to provide
7 educational benefits for students accepted into a masters of social
8 work program at one of the participating universities. Participation
9 in the program includes a stipend for tuition and specialized practicum
10 placement within the department. Students participating in the child
11 welfare training and advancement program agree to seek employment with
12 the department after graduation. If selected, child welfare training
13 and advancement program recipients must agree to work for the
14 department for a period roughly commensurate with the amount of time
15 they received educational assistance.

16 (7) "Child welfare training and advancement program participant
17 agreement" means an agreement signed by a participant in order to
18 participate in the child welfare training and advancement program and
19 receive financial assistance from the department in a masters of social
20 work degree program.

21 (8) "Employee overpayment" means an obligation owed by a current or
22 former state employee to reimburse the department for: (a) An
23 overpayment of salary to a current or former state employee occurring
24 in the current or a past pay period, which results from errors in
25 calculating an employee's pay such as using the wrong pay level, paying
26 a part-time employee as a full-time employee, or other intentional or
27 unintentional errors; (b) nonsalary payments made to the employee when
28 such payments are later determined to have been made in error; (c)
29 personal usage of state resources; or (d) payments made by the
30 department to a third party on the employee's behalf.

31 **Sec. 2.** RCW 43.20B.030 and 2012 c 258 s 1 are each amended to read
32 as follows:

33 (1) Except as otherwise provided by law, including subsection (2)
34 of this section, there will be no collection of overpayments and other
35 debts due the department after the expiration of six years from the
36 date of notice of such overpayment or other debt unless the department
37 has commenced recovery action in a court of law or unless an

1 administrative remedy authorized by statute is in place. However, any
2 amount due in a case thus extended shall cease to be a debt due the
3 department at the expiration of ten years from the date of the notice
4 of the overpayment or other debt unless a court-ordered remedy would be
5 in effect for a longer period.

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

9 (3) The department, may, at any time, (~~may~~) accept offers of
10 compromise of disputed claims or may grant partial or total write-off
11 of any debt due the department or the department of early learning, if
12 it is no longer cost-effective to pursue. The department shall enter
13 into agreements with the department of early learning and shall, in
14 consultation with the department of early learning, adopt rules
15 establishing the considerations to be made in the granting or denial of
16 a partial or total write-off of debts.

17 (4) Notwithstanding the requirements of RCW 43.20B.630, 43.20B.635,
18 43.20B.640, and 43.20B.645, the department may waive all efforts to
19 collect overpayments from a client when the department determines that
20 the elements of equitable estoppel as set forth in WAC 388-02-0495, as
21 it existed on January 1, 2012, are met.

22 (5) Notwithstanding the requirements of section 3 of this act, the
23 department may waive efforts to collect financial assistance payments
24 from persons who received financial assistance through the child
25 welfare training and advancement program if the person meets certain
26 exemptions specified in the rules adopted by the department.

27 (6) Notwithstanding the requirements of section 4 of this act, the
28 department may waive efforts to collect overpayments from current or
29 former employees of the department who received employee overpayments.

30 (7) The department, through the office of financial recovery, has
31 rule-making authority to implement this section.

32 NEW SECTION. Sec. 3. (1) The department may establish and recover
33 financial assistance payments received by persons under the child
34 welfare training and advancement program who subsequently failed to
35 comply with the terms of their child welfare training and advancement
36 program participant agreement.

1 (2) The department may establish and recover any amounts owing
2 under a child welfare training and advancement program participant
3 agreement to repay the department for financial assistance paid on
4 behalf of the participant.

5 (3) If the child welfare training and advancement program
6 participant is a current department employee, any amounts owing may be
7 recovered in the same way as a salary overpayment, as provided in
8 section 4 of this act.

9 (4) If the child welfare training and advancement program
10 participant is not a department employee, the department may recover
11 financial assistance payments through lien and foreclosure, distraint,
12 seizure and sale, order to withhold and deliver, or other legal action
13 available to the department to satisfy the debt due.

14 (5) The department, through the office of financial recovery, has
15 rule-making authority to implement this section.

16 NEW SECTION. **Sec. 4.** (1) The department may recover overpayments
17 made to current or former employees.

18 (2) The procedures for establishment and recovery of employee
19 overpayments may vary depending on whether the employee is currently
20 employed by the department.

21 (a) The department may establish overpayments for current employees
22 and may recover those overpayments as salary overpayments, by
23 withholding money from future paychecks.

24 (b) The department may establish overpayments for former employees
25 and may recover those employee overpayments through lien and
26 foreclosure, distraint, seizure and sale, order to withhold and
27 deliver, or other legal action available to the department to satisfy
28 the debt due.

29 (3) The department, through the office of financial recovery, has
30 rule-making authority to implement this section.

31 NEW SECTION. **Sec. 5.** (1) After the department of early learning
32 has imposed a fine or civil penalty against a child care provider or
33 facility under chapter 43.215 RCW and Title 170 WAC, and a final debt
34 has been established, the department of social and health services,
35 through the office of financial recovery, may enforce the final debt.

1 (2) The office of financial recovery may enforce the debt through
2 lien and foreclosure, distraint, seizure and sale, order to withhold
3 and deliver, or other legal action available to the department of
4 social and health services to satisfy the debt due.

5 (3) Debts determined under this chapter or chapter 43.215 RCW are
6 subject to collection action without further necessity of action by a
7 presiding or reviewing officer. The office of financial recovery may
8 collect the debt in accordance with RCW 43.20B.635, 43.20B.640, and
9 43.20B.680 and sections 10 through 13 of this act. In addition, a lien
10 based on a fine or civil penalty against a child care provider or
11 facility may be subject to distraint, seizure, and sale in the same
12 manner as prescribed for support liens in RCW 74.20A.130.

13 (4) The department, through the office of financial recovery, has
14 rule-making authority to implement this section.

15 NEW SECTION. **Sec. 6.** The department may, at the secretary's
16 discretion, secure the repayment of any outstanding employee
17 overpayment, plus interest, if any, through the filing of a lien
18 against the debtor's real property, or by requiring the posting of a
19 bond, assignment of deposit, or some other form of security acceptable
20 to the department.

21 (1) Any lien is effective from the date of filing for record with
22 the county auditor of the county in which the property is located and
23 the lien claim has preference over the claims of all unsecured
24 creditors.

25 (2) The department shall review and determine the acceptability of
26 all other forms of security.

27 (3) Any bond must be issued by a company licensed as a surety in
28 the state of Washington.

29 NEW SECTION. **Sec. 7.** Liens created under section 6 of this act
30 bind the affected property for a period of ten years after the lien has
31 been recorded or six years after the resolution of all good faith
32 disputes as to the amount of overpayment, whichever is later.

33 NEW SECTION. **Sec. 8.** Any action to enforce an employee
34 overpayment debt must be commenced within six years from the date of

1 the department's notice to the debtor, unless a lien is recorded
2 pursuant to section 6 of this act, in which case such action must be
3 commenced within ten years from the date of notice of the debt.

4 NEW SECTION. **Sec. 9.** The remedies under sections 7 and 8 of this
5 act are nonexclusive and nothing contained in this chapter may be
6 construed to impair or affect the right of the department to maintain
7 a civil action or to pursue any other remedies available to it under
8 the laws of this state to recover the debt.

9 NEW SECTION. **Sec. 10.** The department of social and health
10 services may, at the secretary's discretion, secure the repayment of
11 any outstanding fine or civil penalty, or both, established by the
12 department of early learning, plus interest, if any, through the filing
13 of a lien against the child care provider or facility's real property,
14 or by requiring the posting of a bond, assignment of deposit, or some
15 other form of security acceptable to the department of social and
16 health services, or by doing both.

17 (1) Any lien is effective from the date of filing for record with
18 the county auditor of the county in which the property is located and
19 the claim under the lien has preference over the claims of all
20 unsecured creditors.

21 (2) The department of social and health services shall review and
22 determine the acceptability of all other forms of security.

23 (3) Any bond must be issued by a company licensed as a surety in
24 the state of Washington.

25 NEW SECTION. **Sec. 11.** Liens created under section 5 of this act
26 bind the affected property for a period of ten years after the lien has
27 been recorded or six years after the resolution of all good faith
28 disputes as to the amount of fine or civil penalty, or both, whichever
29 is later.

30 NEW SECTION. **Sec. 12.** Any action to enforce a fine or civil
31 penalty, or both, assessed by the department of early learning must be
32 commenced by the department of early learning or the department of
33 social and health services within six years from the date of the
34 department of early learning's notice to the child care provider or

1 facility, unless a lien is recorded pursuant to section 5 of this act,
2 in which case such action must be commenced within ten years from the
3 date of notice of the debt.

4 NEW SECTION. **Sec. 13.** The remedies under sections 5 and 10
5 through 12 of this act and this section are nonexclusive and nothing
6 contained in this chapter may be construed to impair or affect the
7 right of the department of social and health services to maintain a
8 civil action or to pursue any other remedies available to it under the
9 laws of this state to recover the debt.

10 NEW SECTION. **Sec. 14.** The department, through the office of
11 financial recovery, has rule-making authority to adopt rules to allow
12 the office of financial recovery to develop administrative processes
13 for establishing overpayments or debts owed to the department or the
14 department of early learning, consistent with due process requirements.

15 NEW SECTION. **Sec. 15.** Sections 3 through 14 of this act are each
16 added to chapter 43.20B RCW.

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