
SENATE BILL 5400

State of Washington

54th Legislature

1995 Regular Session

By Senators Smith, C. Anderson, Haugen and Winsley; by request of Department of Labor & Industries

Read first time 01/23/95. Referred to Committee on Law & Justice.

1 AN ACT Relating to compensation for victims of crimes; and amending
2 RCW 7.68.120, 7.68.125, and 7.68.130.

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

4 **Sec. 1.** RCW 7.68.120 and 1973 1st ex.s. c 122 s 12 are each
5 amended to read as follows:

6 Any person who has committed a criminal act which resulted in
7 injury compensated under this chapter may be required to make
8 reimbursement to the department as (~~hereinafter~~) provided in this
9 section.

10 (1) Any payment of benefits to or on behalf of a victim under this
11 chapter creates a debt due and owing to the department by any person
12 found to have committed (~~such~~) the criminal act in either a civil or
13 criminal court proceeding in which he or she is a party(~~PROVIDED,~~
14 ~~That where~~). If the department issues an order establishing a debt
15 due and owing under this section, the order is not subject to chapter
16 51.52 RCW but may be directly appealed to the superior court in the
17 county where the criminal act took place within thirty days of service
18 of the order establishing a debt due and owing. The notice of the
19 order establishing a debt due and owing may be served by certified mail

1 or in the same manner of process of other civil actions. The director
2 or the director's designee may file with the clerk of any county within
3 the state a warrant in the amount of the sum representing the debt plus
4 interest accruing from the date the order became final. The clerk of
5 the county in which the warrant is filed shall immediately designate a
6 superior court cause number for the warrant and the clerk shall cause
7 to be entered in the judgment docket under the superior court cause
8 number assigned to the warrant, the name of the person mentioned in the
9 warrant, the amount of the debt plus interest accrued, and the date
10 when the warrant was filed. The amount of the warrant as docketed
11 becomes a lien upon the title to and interest in all real and personal
12 property of the person named against whom the warrant is issued, the
13 same as a judgment in a civil case docketed in the office of the clerk.
14 The sheriff shall then proceed in the same manner and with like effect
15 as prescribed by law with respect to execution or other process issued
16 against rights or property upon judgment in the superior court. The
17 warrant so docketed must be sufficient to support the issuance of writs
18 of garnishment in favor of the department in the manner provided by law
19 in the case of judgment, wholly or partially unsatisfied. The clerk of
20 the court is entitled to a filing fee of five dollars, which must be
21 added to the amount of the warrant. A copy of the warrant must be
22 mailed to the person named within three days of filing with the clerk.

23 The director, or the director's designee, may issue to any person,
24 firm, corporation, municipal corporation, political subdivision of the
25 state, public corporation, or agency of the state a notice and order to
26 withhold and deliver property of any kind if he or she has reason to
27 believe that there is in the possession of the person, firm,
28 corporation, municipal corporation, political subdivision of the state,
29 public corporation, or agency of the state, property that is due,
30 owing, or belonging to any person upon whom an order establishing a
31 debt due and owing has been served by the department for payments due
32 to the department. The notice and order to withhold and deliver must
33 be served by certified mail or served by the sheriff of the county or
34 by the sheriff's deputy, or by any authorized representatives of the
35 director. Any person, firm, corporation, municipal corporation,
36 political subdivision of the state, public corporation, or agency of
37 the state upon whom service has been made shall answer the notice
38 within twenty days exclusive of the day of service, under oath and in
39 writing, and shall make true answers to the matters inquired of in the

1 notice and order to withhold and deliver. If there is in the
2 possession of the party named and served with the notice and order any
3 property that might be subject to the claim of the department, the
4 property must be delivered without delay to the director or the
5 director's authorized representative upon demand. If the party served
6 and named in the notice and order fails to answer the notice and order
7 within the time prescribed in this section, the court may, after the
8 time to answer the order has expired, render judgment by default
9 against the party named in the notice for the full amount claimed by
10 the director in the notice together with costs. If a notice to
11 withhold and deliver is served upon an employer and the property found
12 to be subject to the notice is wages, the employer may assert in the
13 answer to all exemptions provided for by chapter 6.27 RCW to which the
14 wage earner might be entitled.

15 If there has been a superior or district court order, or an order
16 of the ~~indeterminate sentence review board ((of prison terms and~~
17 ~~paroles)) or the department of social and health services, as~~
18 ((hereinafter)) provided in this section, the debt shall be limited to
19 the amount provided for in ((said)) the order. A court order shall
20 prevail over any other order.

21 (2) Upon being placed on work release pursuant to chapter 72.65
22 RCW, or upon release from custody of a state correctional facility on
23 parole, any convicted person who owes a debt to the department as a
24 consequence of a criminal act may have the schedule or amount of
25 payments therefor set as a condition of work release or parole by the
26 department of social and health services or indeterminate sentence
27 review board ((of prison terms and paroles)) respectively, subject to
28 modification based on change of circumstances. Such action shall be
29 binding on the department.

30 (3) Any requirement for payment due and owing the department by a
31 convicted person under this chapter may be waived, modified downward or
32 otherwise adjusted by the department in the interest of justice and the
33 rehabilitation of the individual.

34 **Sec. 2.** RCW 7.68.125 and 1975 1st ex.s. c 176 s 8 are each amended
35 to read as follows:

36 (1) Whenever any payment under this chapter is made because of
37 clerical error, mistake of identity, innocent misrepresentation by or
38 on behalf of the recipient thereof mistakenly acted upon, or any other

1 circumstance of a similar nature, all not induced by fraud, the
2 recipient thereof shall repay it and recoupment may be made from any
3 future payments due to the recipient under this chapter: PROVIDED,
4 That the department must make claim for such repayment or recoupment
5 within one year of the making of any such payment or it will be deemed
6 that any claim therefor has been waived: PROVIDED FURTHER, That the
7 department may exercise its discretion to waive, in whole or in part,
8 the amount of any such timely claim.

9 (2) Whenever any payment under this chapter has been made pursuant
10 to an adjudication by the department, board, or any court and timely
11 appeal therefrom has been made and the final decision is that any such
12 payment was made pursuant to an erroneous adjudication, the recipient
13 thereof shall repay it and recoupment may be made from any future
14 payments due to the recipient under this chapter: PROVIDED, That the
15 department may exercise its discretion to waive, in whole or in part,
16 the amount thereof. If the department issues an order contending a
17 debt due and owing under this section, the order is subject to chapter
18 51.52 RCW. If the order becomes final under chapter 51.52 RCW, the
19 director or the director's designee may file with the clerk of any
20 county within the state a warrant in the amount of the sum representing
21 the debt plus interest accruing from the date the order became final.
22 The clerk of the county in which the warrant is filed shall immediately
23 designate a superior court cause number for the warrant and the clerk
24 shall cause to be entered in the judgment docket under the superior
25 court cause number assigned to the warrant, the name of the person
26 mentioned in the warrant, the amount of the debt plus interest accrued,
27 and the date when the warrant was filed. The amount of the warrant as
28 docketed becomes a lien upon the title to and interest in all real and
29 personal property of the person named against whom the warrant is
30 issued, the same as a judgment in a civil case docketed in the office
31 of the clerk. The sheriff shall then proceed in the same manner and
32 with like effect as prescribed by law with respect to execution or
33 other process issued against rights or property upon judgment in the
34 superior court. The warrant so docketed must be sufficient to support
35 the issuance of writs of garnishment in favor of the department in the
36 manner provided by law in the case of judgment, wholly or partially
37 unsatisfied. The clerk of the court is entitled to a filing fee of
38 five dollars, which must be added to the amount of the warrant. The

1 clerk shall mail a copy of the warrant to the person named within three
2 days of filing with the clerk.

3 (3) Whenever any payment under this chapter has been induced by
4 fraud the recipient thereof shall repay any such payment together with
5 a penalty of fifty percent of the total of any such payments and the
6 amount of such total sum may be recouped from any future payments due
7 to the recipient under this chapter and the amount of the penalty shall
8 be placed in the fund or funds established pursuant to RCW 7.68.090 as
9 now or hereafter amended.

10 **Sec. 3.** RCW 7.68.130 and 1985 c 443 s 16 are each amended to read
11 as follows:

12 Benefits payable pursuant to this chapter shall be reduced by the
13 amount of any other public or private insurance available, less a
14 proportionate share of reasonable attorneys' fees and costs incurred in
15 obtaining the insurance. The department may require court approval of
16 costs and attorneys' fees or may petition a court for determination of
17 the reasonableness of costs and attorneys' fees. Recoveries by victims
18 against their own insurers, if benefits have been paid on the victim's
19 claim, constitute an overpayment of benefits and the provisions of RCW
20 51.32.240 apply to the overpayments. Benefits payable after 1980 to
21 victims injured or killed before 1980 shall be reduced by any other
22 public or private insurance including but not limited to social
23 security. Payment by the department under this chapter shall be
24 secondary to such other insurance benefits, notwithstanding the
25 provision of any contract or coverage to the contrary: PROVIDED, That
26 in the case of private life insurance proceeds, the first forty
27 thousand dollars of such proceeds shall not be considered for purposes
28 of any such reduction in benefits.

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