
SENATE BILL 5710

State of Washington

54th Legislature

1995 Regular Session

By Senators Bauer, Newhouse and Long; by request of Department of Retirement Systems

Read first time 02/02/95. Referred to Committee on Ways & Means.

1 AN ACT Relating to collection of state retirement system
2 overpayments; and adding new sections to chapter 41.50 RCW.

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

4 NEW SECTION. **Sec. 1.** (1) If the department finds that any member,
5 beneficiary, or other person or entity has been paid an amount of
6 retirement benefits to which that person or entity is not entitled, the
7 department may issue an order and notice of assessment specifying the
8 amount due, including interest, to be remitted to the department. The
9 order and notice of assessment shall be served upon any person or
10 entity who may have received benefits to which the person or entity is
11 not entitled. The order and notice of assessment shall be served by
12 the department in the manner prescribed for the service of a summons in
13 a civil action, or by certified mail to the last known address of the
14 obligor as shown by the records of the department.

15 (2) The department may issue an order and notice of assessment
16 under this section only after it has notified the person of the
17 department's decision that an amount is due, and of the person's right
18 to seek a review of the department's decision within sixty days. The
19 order and notice of assessment may be served after the end of the

1 sixty-day period if the person does not seek a review of the decision,
2 or upon completion of the review, if the department's decision is
3 upheld on review.

4 (3) Any notice of assessment under subsection (1) of this section
5 shall constitute a determination of liability from which the member,
6 beneficiary, or other person or entity served may appeal by filing a
7 petition for adjudicative proceedings with the director personally or
8 by mail within thirty days from the date the assessment was served. If
9 a petition for adjudicative proceedings is not filed within thirty days
10 of the delivery of the notice of assessment, the determination that was
11 the basis for establishing the overpayment debt and the assessment is
12 conclusive and final.

13 NEW SECTION. **Sec. 2.** Whenever a notice of determination of
14 liability becomes conclusive and final under section 1 of this act, the
15 director, upon giving at least twenty days notice by certified mail
16 return receipt requested to the individual's last known address of the
17 intended action, may file with the superior court clerk of any county
18 within the state a warrant in the amount of the notice of determination
19 of liability plus a filing fee of five dollars. The clerk of the
20 county where the warrant is filed shall immediately designate a
21 superior court cause number for the warrant, and the clerk shall cause
22 to be entered in the judgment docket under the superior court cause
23 number assigned to the warrant, the name of the person mentioned in the
24 warrant, the amount of the notice of determination of liability, and
25 the date when the warrant was filed. The amount of the warrant as
26 docketed shall become a lien upon the title to, and any interest in,
27 all real and personal property of the person against whom the warrant
28 is issued, the same as a judgment in a civil case duly docketed in the
29 office of such clerk. A warrant so docketed shall be sufficient to
30 support the issuance of writs of execution and writs of garnishment in
31 favor of the state in the manner provided by law for a civil judgment.
32 A copy of the warrant shall be mailed to the person mentioned in the
33 warrant by certified mail to the person's last known address within
34 five days of its filing with the clerk.

35 NEW SECTION. **Sec. 3.** (1) The director is authorized to issue to
36 any person, firm, corporation, or political subdivision or department
37 of the state a notice and order to withhold and deliver property of any

1 kind whatsoever when the director has reason to believe that there is
2 in the possession of the person, firm, corporation, or political
3 subdivision or department of the state, property which is due, owing,
4 or belonging to any person upon whom the department has served a notice
5 and order of assessment for benefit overpayment and that assessment has
6 become final under section 1 of this act. The effect of a notice to
7 withhold and deliver shall be continuous from the date the notice and
8 order to withhold and deliver is first made until the liability is
9 satisfied or becomes unenforceable because of a lapse of time.

10 (2) In the event there is in the possession of any such person,
11 firm, or corporation any property which may be subject to the claim of
12 the department, such property shall be delivered forthwith to the
13 director or the director's authorized representative upon demand to be
14 held in trust by the director for application on the indebtedness
15 involved or for return, without interest, in accordance with final
16 determination of liability or nonliability, or in the alternative,
17 there shall be furnished a good and sufficient bond satisfactory to the
18 director conditioned upon final determination of liability.

19 (3) The notice and order to withhold and deliver may be served by
20 any duly authorized representative of the department or may also be
21 made by certified mail, return receipt requested. Any person, firm,
22 corporation, or political subdivision or department of the state upon
23 whom service has been made is required to answer the notice within
24 twenty calendar days exclusive of the day of service, under oath and in
25 writing, and shall make true answers to the matters inquired of in the
26 notice. Should any person, firm, or corporation fail to make answer to
27 an order to withhold and deliver within the time prescribed, it is
28 lawful for a court, after the time to answer the order has expired, to
29 render judgment by default against the person, firm, or corporation for
30 the full amount claimed by the department in the notice to withhold and
31 deliver, together with cost.

32 NEW SECTION. **Sec. 4.** The department may issue subpoenas to compel
33 the statement of witnesses and the production of any books, records, or
34 documents necessary or relevant to the department's administration of
35 duties under this chapter. It is unlawful for any person or entity,
36 without just cause, to fail to comply with any subpoena issued under
37 this section.

1 NEW SECTION. **Sec. 5.** (1) The director may waive collection of all
2 or part of an overpayment under RCW 41.50.130 only if the director
3 finds both that the overpayment was not the result of fraud,
4 misrepresentation, willful or negligent nondisclosure, or fault
5 attributable to the individual or entity, and that the recovery of the
6 overpayment would be against equity and good conscience.

7 (2) An individual will be considered at fault for the purposes of
8 subsection (1) of this section when an overpayment is the result of
9 incorrect information provided by the individual, or the failure to
10 provide information that the individual should have provided, as
11 outlined in written communications issued by the department, or
12 information which the individual caused another to fail to disclose.
13 An individual may also be considered at fault if he or she knew, or
14 reasonably should have known, prior to correction by the department,
15 that an overpayment had been made.

16 (3) Whenever an overpayment is waived, in whole or in part, there
17 shall be placed on file with the department a statement of the amount
18 owed and a complete record of the overpayment recovery waiver agreement
19 and any amount actually paid in accordance with the terms of the
20 agreement.

21 NEW SECTION. **Sec. 6.** Sections 1 through 5 of this act are each
22 added to chapter 41.50 RCW.

--- END ---