

SENATE BILL REPORT

SB 5401

As of February 3, 2013

Title: An act relating to empowering the department of social and health services, the department of early learning, and the health care authority to establish and enforce debts against vendors who attempt to avoid their obligation to repay overpayment debts by creating new entities and yet continue to do business with those state agencies.

Brief Description: Concerning the ability of the department of social and health services, the department of early learning, and the health care authority to establish and enforce debts against vendors who attempt to avoid responsibility for satisfying overpayment debts by creating new entities.

Sponsors: Senators Carrell and Darneille; by request of Department of Social and Health Services and Health Care Authority.

Brief History:

Committee Activity: Human Services & Corrections: 1/21/13.

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Staff: Shani Bauer (786-7468)

Background: The Office of Financial Recovery (OFR) within the Department of Social and Health Services (DSHS) collects debts owed the state by businesses and individuals that are contracted to provide services for DSHS clients. Some of these debts include overpayments from federal, state, and local government agencies, child care and employee overpayments, civil fines, referrals from county Regional Support Networks (RSN) that provide mental health services, and debts referred by administrations within DSHS.

Some overpayments to vendors are difficult to collect because assets of the business have been transferred to a successor entity, sometimes in an effort to avoid repaying the overpayment. To collect the overpayment from the successor entity, DSHS, on behalf of itself or other agencies, has to attempt to “pierce the corporate veil” in order to recoup the overpayment to the successor entities.

Summary of Bill: When DSHS has established a vendor overpayment as a final debt or establishes a final vendor overpayment debt on behalf of DEL or the Health Care Authority (HCA), DSHS may collect the debt from the vendor or from a successor. A successor is

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defined as a person, business, corporation, partnership, or other entity that receives or purchases all or part of the business or property of another person, business, corporation, partnership, or entity where:

- there is an express or implied agreement for the successor to assume liability;
- the transfer is a de facto merger or consolidation;
- the successor is a mere continuation of the previous entity; or
- the transfer of assets is for the fraudulent purpose of escaping liability.

If DSHS or HCA seeks to enforce an established vendor overpayment liability against a successor, DSHS or HCA must serve upon the successor a notice of successor liability. The notice of successor liability must include the following:

- the vendor's final debt amount;
- the specific reasons why DSHS finds the successor liable for the vendor's overpayment;
- the relevant statutory and regulatory provisions regarding the establishment of successor liability;
- notice of the entity's right to request a hearing; and
- a statement that the debt can be collected by OFR pursuant to the appropriate statutes.

A notice of successor liability must be personally served or served by certified mail, return receipt requested. If the successor entity wants to have a hearing, it must file an application for one within 28 calendar days from the date the notice was served. The application for hearing must be in writing and served upon the Secretary of DSHS or the Director of HCA by personal service or by registered or certified mail.

If the application for a hearing is timely filed, any collection action against the successor is stayed pending the outcome of the proceeding. If the successor does not file an application for a hearing, or does not file one within the 28 day period, the notice and finding of successor liability becomes final, and the successor is liable for the amount claimed in the notice. DSHS may also charge the successor with any costs associated with the collection of the debt.

When DSHS, HCA, or DEL determines through an audit, or other review, that a vendor overpayment should have been imposed against a vendor that has ceased doing business, DSHS, HCA, or DEL may assess, establish, and enforce the overpayment against another vendor that DSHS determines is a successor. DSHS must serve the successor entity with a notice of successor liability.

Appropriation: None.

Fiscal Note: Requested on January 29, 2013.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This bill represents a combined effort of three agencies, DSHS, HCA and DEL, to recover debts owed the departments. There are instances

in which vendors engage in strategic successorship in order to avoid paying the departments back. The debtor or vendor changes names and becomes a different business but is still located in the same place and provides the same service to the departments or its clients. The departments do not have any collection remedies past a lawsuit in which the departments must pierce the corporate veil in order to collect the debt, which is very difficult to accomplish. DSHS is currently pursuing ten to 40 cases at any given time in which successor liability is an issue. This bill would make it easier to pursue these businesses while also providing the businesses with appropriate processes to challenge the departments' efforts to collect a debt.

Persons Testifying: PRO: David Stillman, Brice Montgomery, DSHS; Heidi Robbins Brown, Health Care Authority.