

ASSEMBLY BILL

No. 2619

Introduced by Assembly Member Block

February 19, 2010

An act to amend Sections 706.011, 706.020, and 706.031 of the Code of Civil Procedure, and to add Section 15657.8 to the Welfare and Institutions Code, relating to elder and dependent adult abuse.

LEGISLATIVE COUNSEL'S DIGEST

AB 2619, as introduced, Block. Elder and dependent adult abuse: restitution: earnings assignment orders.

Existing law provides for the award of attorney's fees and costs, and damages to a plaintiff when it is proven by a preponderance of the evidence that the defendant is liable for financial abuse of an elder or dependent adult. Existing law authorizes the remedy of attachment against a defendant's property to secure the amount of the claimed indebtedness to the plaintiff in connection with cases involving financial abuse of an elder or dependent adult.

This bill would authorize the court to order a defendant who is found liable for financial abuse of an elder or dependent adult to make restitution to that person, and to issue an earnings assignment order for elder abuse restitution, as defined.

Existing law provides that, except for earnings assignment orders for support, the provisions governing earnings withholding orders provide the exclusive procedure by which a judgment creditor can execute against the wages of a judgment debtor. Existing law provides that if an employer is served with 2 or more earnings withholding orders, the employer is required to comply with the order issued pursuant to the judgment first entered.

This bill would exempt earnings assignment orders for elder abuse restitution from the provisions governing earnings withholding orders, and require that they be given priority over earnings withholding orders. The bill would also require, however, that earnings assignment orders for support be given priority over earnings assignment orders for elder abuse restitution.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 706.011 of the Code of Civil Procedure
- 2 is amended to read:
- 3 706.011. As used in this chapter:
- 4 (a) "Earnings" means compensation payable by an employer to
- 5 an employee for personal services performed by such employee,
- 6 whether denominated as wages, salary, commission, bonus, or
- 7 otherwise.
- 8 (b) "*Earnings assignment order for elder abuse restitution*"
- 9 *means an order, made pursuant to Section 15657.8 of the Welfare*
- 10 *and Institutions Code, which requires an employer to withhold*
- 11 *earnings for restitution.*
- 12 ~~(b)~~
- 13 (c) "Earnings assignment order for support" means an order,
- 14 made pursuant to Chapter 8 (commencing with Section 5200) of
- 15 Part 5 of Division 9 of the Family Code or Section 3088 of the
- 16 Probate Code, which requires an employer to withhold earnings
- 17 for support.
- 18 ~~(c)~~
- 19 (d) "Employee" means a public officer and any individual who
- 20 performs services subject to the right of the employer to control
- 21 both what shall be done and how it shall be done.
- 22 ~~(d)~~
- 23 (e) "Employer" means a person for whom an individual performs
- 24 services as an employee.
- 25 ~~(e)~~
- 26 (f) "Judgment creditor," as applied to the state, means the
- 27 specific state agency seeking to collect a judgment or tax liability.
- 28 ~~(f)~~

1 (g) “Judgment debtor” includes a person from whom the state
2 is seeking to collect a tax liability under Article 4 (commencing
3 with Section 706.070), whether or not a judgment has been
4 obtained on such tax liability.

5 ~~(g)~~

6 (h) “Person” includes an individual, a corporation, a partnership
7 or other unincorporated association, a limited liability company,
8 and a public entity.

9 SEC. 2. Section 706.020 of the Code of Civil Procedure is
10 amended to read:

11 706.020. Except for an earning assignment order for support
12 *or for elder abuse restitution*, the earnings of an employee shall
13 not be required to be withheld by an employer for payment of a
14 debt by means of any judicial procedure other than pursuant to
15 this chapter.

16 SEC. 3. Section 706.031 of the Code of Civil Procedure is
17 amended to read:

18 706.031. (a) Nothing in this chapter affects an earnings
19 assignment order for support *or for elder abuse restitution*.

20 (b) An earnings assignment order for support *or for elder abuse*
21 *restitution* shall be given priority over any earnings withholding
22 order. *If both an earnings assignment order for support and an*
23 *earnings assignment order for elder abuse restitution are served*
24 *on an employer concurrently, the earnings assignment order for*
25 *support shall take priority until terminated*. An employer upon
26 whom an earnings assignment order for support *or for elder abuse*
27 *restitution* is served shall withhold and pay over the earnings of
28 the employee pursuant to the assignment order notwithstanding
29 the requirements of any earnings withholding order. When an
30 employer is required to cease withholding earnings pursuant to an
31 earnings withholding order, the employer shall notify the levying
32 officer who served the earnings withholding order that a
33 supervening earnings assignment order for support is in effect.

34 (c) Subject to subdivisions (b), (d), and (e), an employer shall
35 withhold earnings of an employee pursuant to both an earnings
36 assignment order for support and an earnings withholding order.

37 (d) The employer shall withhold pursuant to an earnings
38 withholding order only to the extent that the sum of the amount
39 withheld pursuant to any earnings assignment order for support
40 and the amount withheld pursuant to the earnings withholding

1 order does not exceed the amount that may be withheld under
2 Article 3 (commencing with Section 706.050).

3 (e) The employer shall withhold pursuant to an earnings
4 withholding order for taxes only to the extent that the sum of the
5 amount withheld pursuant to any earnings assignment order for
6 support and the amount withheld pursuant to the earnings
7 withholding order for taxes does not exceed the amount that may
8 be withheld under Article 4 (commencing with Section 706.070).

9 SEC. 4. Section 15657.8 is added to the Welfare and
10 Institutions Code, to read:

11 15657.8. (a) A court may order a defendant who has been
12 found liable for financial abuse of an elder or dependent adult, as
13 defined in Section 15610.30, to make restitution to that person.

14 (b) When the court orders a defendant to pay an amount for
15 restitution, the court may include in its order an earnings
16 assignment order for elder abuse restitution that orders the
17 employer of the defendant to pay the plaintiff that portion of the
18 defendant's earnings due or to become due in the future as will be
19 sufficient to satisfy the order of restitution.

20 (c) An earnings assignment order for elder abuse restitution
21 shall be effective and enforceable notwithstanding the absence of
22 the name, address, or other identifying information regarding the
23 defendant's employer.