

AMENDED IN ASSEMBLY APRIL 6, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 2619

Introduced by Assembly Member Block
(Coauthor: Assembly Member Hill)

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 amended, 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~~ *require the court to issue an earnings assignment order for elder or dependent adult financial abuse restitution, as defined, for a defendant who has been found liable for financial abuse of an elder or dependent adult, as specified.*

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 *or dependent adult financial abuse* ~~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 *or dependent adult financial abuse* ~~abuse—restitution~~. *These provisions would apply retroactively, as specified.*

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~~” *or*
- 9 *dependent adult financial abuse*” means an order, made pursuant
- 10 to Section 15657.8 of the Welfare ~~and Institutions Code, which~~
- 11 ~~requires an employer to withhold earnings for restitution. and~~
- 12 *Institutions Code.*
- 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 (d) “Employee” means a public officer and any individual who
- 19 performs services subject to the right of the employer to control
- 20 both what shall be done and how it shall be done.
- 21 (e) “Employer” means a person for whom an individual performs
- 22 services as an employee.

1 (f) “Judgment creditor,” as applied to the state, means the
2 specific state agency seeking to collect a judgment or tax liability.

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

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

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

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

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

19 706.031. (a) Nothing in this chapter affects an earnings
20 assignment order for support or for elder ~~abuse restitution~~ *or*
21 *dependent adult financial abuse*.

22 (b) An earnings assignment order for support or for elder ~~abuse~~
23 ~~restitution~~ *or dependent adult financial abuse* shall be given
24 priority over any earnings withholding order. If both an earnings
25 assignment order for support and an earnings assignment order for
26 elder ~~abuse restitution~~ *or dependent adult financial abuse* are
27 served on an employer concurrently, the earnings assignment order
28 for support shall take priority until terminated. An employer upon
29 whom an earnings assignment order for support or for elder ~~abuse~~
30 ~~restitution~~ *or dependent adult financial abuse* is served shall
31 withhold and pay over the earnings of the employee pursuant to
32 the assignment order notwithstanding the requirements of any
33 earnings withholding order. When an employer is required to cease
34 withholding earnings pursuant to an earnings withholding order,
35 the employer shall notify the levying officer who served the
36 earnings withholding order that a supervening earnings assignment
37 order for support is in effect. *This subdivision shall apply*
38 *retroactively to all outstanding cases of elder or dependent adult*
39 *financial abuse in which a money judgment has been filed and has*
40 *not been satisfied.*

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

4 (d) The employer shall withhold pursuant to an earnings
5 withholding order only to the extent that the sum of the amount
6 withheld pursuant to any earnings assignment order for support
7 and the amount withheld pursuant to the earnings withholding
8 order does not exceed the amount that may be withheld under
9 Article 3 (commencing with Section 706.050).

10 (e) The employer shall withhold pursuant to an earnings
11 withholding order for taxes only to the extent that the sum of the
12 amount withheld pursuant to any earnings assignment order for
13 support and the amount withheld pursuant to the earnings
14 withholding order for taxes does not exceed the amount that may
15 be withheld under Article 4 (commencing with Section 706.070).

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

18 15657.8. (a) A court ~~may order~~ shall issue an earnings
19 assignment order for elder or dependent adult financial abuse for
20 a defendant who has been found liable for financial abuse of an
21 elder or dependent adult, ~~as defined in Section 15610.30, to make~~
22 ~~restitution to that person.~~

23 (b) ~~When the court orders a defendant to pay an amount for~~
24 ~~restitution, the court may include in its order an earnings~~
25 ~~assignment order for elder abuse restitution that orders the~~
26 ~~employer of the defendant to pay the plaintiff that portion of the~~
27 ~~defendant's earnings due or to become due in the future as will be~~
28 ~~sufficient to satisfy the order of restitution.~~

29 (c) ~~An earnings assignment order for elder abuse restitution~~
30 ~~pursuant to Section 15657.5 or Section 15657.6.~~

31 (b) *The court may include in its earnings assignment order for*
32 *elder or dependent adult financial abuse that the employer of the*
33 *defendant pay that portion of the defendant's earnings due or to*
34 *become due in the future as will be sufficient to satisfy the order.*

35 (c) *An earnings assignment order for elder or dependent adult*
36 *financial abuse shall be effective and enforceable notwithstanding*
37 *the absence of the name, address, or other identifying information*
38 *regarding the defendant's employer.*

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2 CORRECTIONS:
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