

AMENDED IN ASSEMBLY APRIL 28, 2010

AMENDED IN ASSEMBLY APRIL 6, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2619**

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**Introduced by Assembly Member Block**  
**(~~Coauthor: Assembly Member Hill~~ Coauthors: Assembly Members**  
***Blumenfeld, Hill, Jones, and Torrico*)**

February 19, 2010

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An act to amend Sections 706.011, ~~706.020, and 706.031~~ 706.023, 706.121, and 706.125 of the Code of Civil Procedure, and to ~~add Section 15657.8~~ to amend Section 15657.5 of 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 *withholding* 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 require the court to issue an earnings-assignment *withholding* order for elder or dependent adult financial abuse, 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~~ *require that earnings withholding orders for elder or dependent adult financial abuse from the provisions governing earnings withholding orders, and require that they be given priority over any other earnings withholding orders, as provided.* The bill would also require, however, that earnings ~~assignment~~ *withholding orders for support or for taxes be given priority over earnings assignment withholding orders for elder or dependent adult financial abuse. These provisions would apply retroactively, as specified* *The bill would require that the application for issuance of an earnings withholding order and the earnings withholding order include how much of the judgment arises from that claim.*

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~~ *withholding order for elder or*
- 9 *dependent adult financial abuse” means an earnings withholding*
- 10 *order, made pursuant to Section 15657.8 Article 5 (commencing*
- 11 *with Section 706.100) and based on a money judgment in an action*
- 12 *for elder or adult dependent financial abuse under Section 15657.5*
- 13 *of the Welfare and Institutions Code.*
- 14 (c) “Earnings assignment order for support” means an order,
- 15 made pursuant to Chapter 8 (commencing with Section 5200) of
- 16 Part 5 of Division 9 of the Family Code or Section 3088 of the

1 Probate Code, which requires an employer to withhold earnings  
2 for support.

3 (d) “Employee” means a public officer and any individual who  
4 performs services subject to the right of the employer to control  
5 both what shall be done and how it shall be done.

6 (e) “Employer” means a person for whom an individual performs  
7 services as an employee.

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

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

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

17 ~~SEC. 2. Section 706.020 of the Code of Civil Procedure is~~  
18 ~~amended to read:~~

19 ~~706.020. Except for an earning assignment order for support~~  
20 ~~or for elder or dependent adult financial abuse, the earnings of an~~  
21 ~~employee shall not be required to be withheld by an employer for~~  
22 ~~payment of a debt by means of any judicial procedure other than~~  
23 ~~pursuant to this chapter.~~

24 ~~SEC. 3. Section 706.031 of the Code of Civil Procedure is~~  
25 ~~amended to read:~~

26 ~~706.031. (a) Nothing in this chapter affects an earnings~~  
27 ~~assignment order for support or for elder or dependent adult~~  
28 ~~financial abuse.~~

29 ~~(b) An earnings assignment order for support or for elder or~~  
30 ~~dependent adult financial abuse shall be given priority over any~~  
31 ~~earnings withholding order. If both an earnings assignment order~~  
32 ~~for support and an earnings assignment order for elder or dependent~~  
33 ~~adult financial abuse are served on an employer concurrently, the~~  
34 ~~earnings assignment order for support shall take priority until~~  
35 ~~terminated. An employer upon whom an earnings assignment order~~  
36 ~~for support or for elder or dependent adult financial abuse is served~~  
37 ~~shall withhold and pay over the earnings of the employee pursuant~~  
38 ~~to the assignment order notwithstanding the requirements of any~~  
39 ~~earnings withholding order. When an employer is required to cease~~  
40 ~~withholding earnings pursuant to an earnings withholding order,~~

1 the employer shall notify the levying officer who served the  
2 earnings withholding order that a supervening earnings assignment  
3 order for support is in effect. This subdivision shall apply  
4 retroactively to all outstanding cases of elder or dependent adult  
5 financial abuse in which a money judgment has been filed and has  
6 not been satisfied.

7 (e) Subject to subdivisions (b), (d), and (e), an employer shall  
8 withhold earnings of an employee pursuant to both an earnings  
9 assignment order for support and an earnings withholding order.

10 (d) The employer shall withhold pursuant to an earnings  
11 withholding order only to the extent that the sum of the amount  
12 withheld pursuant to any earnings assignment order for support  
13 and the amount withheld pursuant to the earnings withholding  
14 order does not exceed the amount that may be withheld under  
15 Article 3 (commencing with Section 706.050).

16 (e) The employer shall withhold pursuant to an earnings  
17 withholding order for taxes only to the extent that the sum of the  
18 amount withheld pursuant to any earnings assignment order for  
19 support and the amount withheld pursuant to the earnings  
20 withholding order for taxes does not exceed the amount that may  
21 be withheld under Article 4 (commencing with Section 706.070).

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

24 15657.8.—(a) A court shall issue an earnings assignment order  
25 for elder or dependent adult financial abuse for a defendant who  
26 has been found liable for financial abuse of an elder or dependent  
27 adult pursuant to Section 15657.5 or Section 15657.6.

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

32 (c) An earnings assignment order for elder or dependent adult  
33 financial abuse shall be effective and enforceable notwithstanding  
34 the absence of the name, address, or other identifying information  
35 regarding the defendant’s employer.

36 SEC. 2. Section 706.023 of the Code of Civil Procedure is  
37 amended to read:

38 706.023. Except as otherwise provided in this chapter:

39 (a) An employer shall comply with the first earnings withholding  
40 order served upon the employer.

1 (b) If the employer is served with two or more earnings  
2 withholding orders on the same day, the employer shall comply  
3 with the order issued pursuant to the judgment first entered. If two  
4 or more orders served on the same day are based on judgments  
5 entered upon the same day, the employer shall comply with  
6 whichever one of ~~such~~ *the* orders the employer selects.

7 (c) If an earnings withholding order is served while an employer  
8 is required to comply with another earnings withholding order  
9 with respect to the earnings of the same employee, the subsequent  
10 order is ineffective and the employer shall not withhold earnings  
11 pursuant to the subsequent order, *except as provided in subdivision*  
12 *(d)*.

13 *(d) Notwithstanding any other provisions of this section, a*  
14 *withholding order for elder or dependent adult financial abuse*  
15 *has priority over any other earning withholding order except for*  
16 *a withholding order for support under Section 706.030 and a*  
17 *withholding order for taxes under Section 706.072.*

18 *(1) An employer upon whom a withholding order for elder or*  
19 *dependent adult financial abuse is served shall withhold and pay*  
20 *over earnings of the employee pursuant to that order*  
21 *notwithstanding the requirements of another earnings withholding*  
22 *order except as provided in paragraph (2).*

23 *(2) An employer shall not withhold earnings of an employee*  
24 *pursuant to an earnings withholding order for elder or dependent*  
25 *adult financial abuse if a withholding order for support or for*  
26 *taxes is in effect or if a prior withholding order for elder or*  
27 *dependent adult financial abuse is in effect. In that case, the*  
28 *subsequent withholding order for elder or dependent financial*  
29 *abuse is ineffective.*

30 *(3) When an employer is required to cease withholding earnings*  
31 *pursuant to a prior earnings withholding order, the employer shall*  
32 *notify the levying officer who served the prior earnings withholding*  
33 *order that a supervening earnings withholding order for elder or*  
34 *dependent financial abuse is in effect.*

35 *SEC. 3. Section 706.121 of the Code of Civil Procedure is*  
36 *amended to read:*

37 706.121. The “application for issuance of earnings withholding  
38 order” shall be executed under oath and shall include all of the  
39 following:

- 1 (a) The name, the last known address, and, if known, the social
- 2 security number of the judgment debtor.
- 3 (b) The name and address of the judgment creditor.
- 4 (c) The court where the judgment was entered and the date the
- 5 judgment was entered.
- 6 (d) *Whether the judgment is based in whole or in part on a claim*
- 7 *for elder or dependent adult financial abuse and, if in part, how*
- 8 *much of the judgment arises from that claim.*
- 9 ~~(d)~~
- 10 (e) The date of issuance of a writ of execution to the county
- 11 where the earnings withholding order is sought.
- 12 ~~(e)~~
- 13 (f) The total amount required to satisfy the order on the date of
- 14 issuance (which may not exceed the amount required to satisfy the
- 15 writ of execution on the date of issuance of the order plus the
- 16 levying officer’s statutory fee for service of the order).
- 17 ~~(f)~~
- 18 (g) The name and address of the employer to whom the order
- 19 will be directed.
- 20 ~~(g)~~
- 21 (h) The name and address of the person to whom the withheld
- 22 money is to be paid by the levying officer.
- 23 *SEC. 4. Section 706.125 of the Code of Civil Procedure is*
- 24 *amended to read:*
- 25 706.125. The “earnings withholding order” shall include all of
- 26 the following:
- 27 (a) The name, address, and, if known, the social security number
- 28 of the judgment debtor.
- 29 (b) The name and address of the employer to whom the order
- 30 is directed.
- 31 (c) The court where the judgment was entered, the date the
- 32 judgment was entered, and the name of the judgment creditor.
- 33 (d) *Whether the judgment is based in whole or in part on a claim*
- 34 *for elder or dependent adult financial abuse and, if in part, how*
- 35 *much of the judgment arises from the claim.*
- 36 ~~(d)~~
- 37 (e) The date of issuance of the writ of execution to the county
- 38 where the earnings withholding order is sought.
- 39 ~~(e)~~

1 (f) The total amount required to satisfy the order on the date of  
2 issuance (which may not exceed the amount required to satisfy the  
3 writ of execution on the date of issuance of the order plus the  
4 levying officer's statutory fee for service of the order).

5 ~~(f)~~

6 (g) A description of the withholding period and an order to the  
7 employer to withhold from the earnings of the judgment debtor  
8 for each pay period the amount required to be withheld under  
9 Section 706.050 or the amount specified in the order subject to  
10 Section 706.024, as the case may be, for the pay periods ending  
11 during the withholding period.

12 ~~(g)~~

13 (h) An order to the employer to pay over to the levying officer  
14 at a specified address the amount required to be withheld and paid  
15 over pursuant to the order in the manner and within the times  
16 provided by law.

17 ~~(h)~~

18 (i) An order that the employer fill out the "employer's return"  
19 and return it by first-class mail, postage prepaid, to the levying  
20 officer at a specified address within 15 days after service of the  
21 earnings withholding order.

22 ~~(i)~~

23 (j) An order that the employer deliver to the judgment debtor a  
24 copy of the earnings withholding order and the "notice to employee  
25 of earnings withholding order" within 10 days after service of the  
26 earnings withholding order; but, if the judgment debtor is no longer  
27 employed by the employer and the employer does not owe the  
28 employee any earnings, the employer is not required to make ~~such~~  
29 *the* delivery.

30 ~~(j)~~

31 (k) The name and address of the levying officer.

32 *SEC. 5. Section 15657.5 of the Welfare and Institutions Code*  
33 *is amended to read:*

34 15657.5. (a) Where it is proven by a preponderance of the  
35 evidence that a defendant is liable for financial abuse, as defined  
36 in Section 15610.30, in addition to compensatory damages and all  
37 other remedies otherwise provided by law, the court shall award  
38 to the plaintiff reasonable attorney's fees and costs. The term  
39 "costs" includes, but is not limited to, reasonable fees for the

1 services of a conservator, if any, devoted to the litigation of a claim  
2 brought under this article.

3 (b) Where it is proven by a preponderance of the evidence that  
4 a defendant is liable for financial abuse, as defined in Section  
5 15610.30, and where it is proven by clear and convincing evidence  
6 that the defendant has been guilty of recklessness, oppression,  
7 fraud, or malice in the commission of the abuse, in addition to  
8 reasonable attorney’s fees and costs set forth in subdivision (a),  
9 compensatory damages, and all other remedies otherwise provided  
10 by law, the limitations imposed by Section 377.34 of the Code of  
11 Civil Procedure on the damages recoverable shall not apply.

12 (c) The standards set forth in subdivision (b) of Section 3294  
13 of the Civil Code regarding the imposition of punitive damages  
14 on an employer based upon the acts of an employee shall be  
15 satisfied before any punitive damages may be imposed against an  
16 employer found liable for financial abuse as defined in Section  
17 15610.30. This subdivision shall not apply to the recovery of  
18 compensatory damages or attorney’s fees and costs.

19 (d) Nothing in this section affects the award of punitive damages  
20 under Section 3294 of the Civil Code.

21 (e) *Any money judgment in an action under this section shall*  
22 *include a statement that the damages are awarded based on a*  
23 *claim for financial abuse of an elder or dependent adult, as defined*  
24 *in Section 15610.30. If only part of the judgment is based on that*  
25 *a claim, the judgment shall specify what amount was awarded on*  
26 *that basis.*

27 SEC. 6. *This act shall become operative on January 1, 2012.*