

Assembly Bill No. 2619

Passed the Assembly May 10, 2010

Chief Clerk of the Assembly

Passed the Senate June 24, 2010

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2010, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 706.011, 706.023, 706.121, and 706.125 of the Code of Civil Procedure, and to amend Section 15657.5 of the Welfare and Institutions Code, relating to elder and dependent adult abuse.

LEGISLATIVE COUNSEL'S DIGEST

AB 2619, Block. Elder and dependent adult abuse: restitution: earnings 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 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 require that earnings withholding orders for elder or dependent adult financial abuse be given priority over any other earnings withholding orders, as provided. The bill would also require, however, that earnings withholding orders for support or for taxes be given priority over earnings withholding orders for elder or dependent adult financial abuse. 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.

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

SECTION 1. Section 706.011 of the Code of Civil Procedure is amended to read:

706.011. As used in this chapter:

(a) “Earnings” means compensation payable by an employer to an employee for personal services performed by such employee, whether denominated as wages, salary, commission, bonus, or otherwise.

(b) “Earnings withholding order for elder or dependent adult financial abuse” means an earnings withholding order, made pursuant to Article 5 (commencing with Section 706.100) and based on a money judgment in an action for elder or adult dependent financial abuse under Section 15657.5 of the Welfare and Institutions Code.

(c) “Earnings assignment order for support” means an order, made pursuant to Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code or Section 3088 of the Probate Code, which requires an employer to withhold earnings for support.

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

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

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

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

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

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

706.023. Except as otherwise provided in this chapter:

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

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

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

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

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

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

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

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

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

(a) The name, the last known address, and, if known, the social security number of the judgment debtor.

(b) The name and address of the judgment creditor.

(c) The court where the judgment was entered and the date the judgment was entered.

(d) Whether the judgment is based in whole or in part on a claim for elder or dependent adult financial abuse and, if in part, how much of the judgment arises from that claim.

(e) The date of issuance of a writ of execution to the county where the earnings withholding order is sought.

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

(g) The name and address of the employer to whom the order will be directed.

(h) The name and address of the person to whom the withheld money is to be paid by the levying officer.

SEC. 4. Section 706.125 of the Code of Civil Procedure is amended to read:

706.125. The "earnings withholding order" shall include all of the following:

(a) The name, address, and, if known, the social security number of the judgment debtor.

(b) The name and address of the employer to whom the order is directed.

(c) The court where the judgment was entered, the date the judgment was entered, and the name of the judgment creditor.

(d) Whether the judgment is based in whole or in part on a claim for elder or dependent adult financial abuse and, if in part, how much of the judgment arises from the claim.

(e) The date of issuance of the writ of execution to the county where the earnings withholding order is sought.

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

(g) A description of the withholding period and an order to the employer to withhold from the earnings of the judgment debtor for each pay period the amount required to be withheld under

Section 706.050 or the amount specified in the order subject to Section 706.024, as the case may be, for the pay periods ending during the withholding period.

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

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

(j) An order that the employer deliver to the judgment debtor a copy of the earnings withholding order and the “notice to employee of earnings withholding order” within 10 days after service of the earnings withholding order; but, if the judgment debtor is no longer employed by the employer and the employer does not owe the employee any earnings, the employer is not required to make the delivery.

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

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

15657.5. (a) Where it is proven by a preponderance of the evidence that a defendant is liable for financial abuse, as defined in Section 15610.30, in addition to compensatory damages and all other remedies otherwise provided by law, the court shall award to the plaintiff reasonable attorney’s fees and costs. The term “costs” includes, but is not limited to, reasonable fees for the services of a conservator, if any, devoted to the litigation of a claim brought under this article.

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

(c) The standards set forth in subdivision (b) of Section 3294 of the Civil Code regarding the imposition of punitive damages

on an employer based upon the acts of an employee shall be satisfied before any punitive damages may be imposed against an employer found liable for financial abuse as defined in Section 15610.30. This subdivision shall not apply to the recovery of compensatory damages or attorney's fees and costs.

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

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

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

Approved _____, 2010

Governor