

RCW 41.05A.120 Order to withhold and deliver. (1) After service of a notice of debt for an overpayment as provided for in RCW 41.05A.110 or 41.05A.170, stating the debt accrued, the director may issue to any person, firm, corporation, association, political subdivision, or department of the state an order to withhold and deliver property of any kind including, but not restricted to, earnings which are due, owing, or belonging to the debtor, when the director has reason to believe that there is in the possession of such person, firm, corporation, association, political subdivision, or department of the state property which is due, owing, or belonging to the debtor. The order to withhold and deliver must state the amount of the debt, and must state in summary the terms of this section, RCW 6.27.150 and 6.27.160, chapters 6.13 and 6.15 RCW, 15 U.S.C. Sec. 1673, and other state or federal exemption laws applicable generally to debtors. The order to withhold and deliver must be served in the manner prescribed for the service of a summons in a civil action or by certified mail, with return receipt service. Any person, firm, corporation, association, political subdivision, or department of the state upon whom service has been made shall answer the order to withhold and deliver within twenty days, exclusive of the day of service, under oath and in writing, and shall make true answers to the matters inquired of therein. The director may require further and additional answers to be completed by the person, firm, corporation, association, political subdivision, or department of the state. If any such person, firm, corporation, association, political subdivision, or department of the state possesses any property which may be subject to the claim of the authority, such property must be withheld immediately upon receipt of the order to withhold and deliver and must, after the twenty-day period, upon demand, be delivered forthwith to the director. The director shall hold the property in trust for application on the indebtedness involved or for return, without interest, in accordance with final determination of liability or nonliability. In the alternative, there may be furnished to the director a good and sufficient bond, satisfactory to the director, conditioned upon final determination of liability. Where money is due and owing under any contract of employment, express or implied, or is held by any person, firm, corporation, association, political subdivision, or department of the state subject to withdrawal by the debtor, such money must be delivered by remittance payable to the order of the director. Delivery to the director, subject to the exemptions under RCW 6.27.150 and 6.27.160, chapters 6.13 and 6.15 RCW, 15 U.S.C. Sec. 1673, and other state or federal law applicable generally to debtors, of the money or other property held or claimed satisfies the requirement of the order to withhold and deliver. Delivery to the director serves as full acquittance, and the state warrants and represents that it shall defend and hold harmless for such actions persons delivering money or property to the director pursuant to this chapter. The state also warrants and represents that it shall defend and hold harmless for such actions persons withholding money or property pursuant to this chapter.

(2) The director shall also, on or before the date of service of the order to withhold and deliver, mail or cause to be mailed by certified mail a copy of the order to withhold and deliver to the debtor at the debtor's last known post office address or, in the alternative, a copy of the order to withhold and deliver must be served on the debtor in the same manner as a summons in a civil action on or before the date of service of the order or within two days

thereafter. The copy of the order must be mailed or served together with a concise explanation of the right to petition for a hearing on any issue related to the collection. This requirement is not jurisdictional, but, if the copy is not mailed or served as provided in this section, or if any irregularity appears with respect to the mailing or service, the superior court, on its discretion on motion of the debtor promptly made and supported by affidavit showing that the debtor has suffered substantial injury due to the failure to mail the copy, may set aside the order to withhold and deliver and award to the debtor an amount equal to the damages resulting from the director's failure to serve on or mail to the debtor the copy. [2023 c 51 s 26; 2011 1st sp.s. c 15 s 99.]

~~Effective date—Findings—Intent—Report—Agency transfer—References to head of health care authority—Draft legislation—2011 1st sp.s. c 15: See notes following RCW 74.09.010.~~