

SENATE BILL NO. 26—COMMITTEE ON GOVERNMENT AFFAIRS

(ON BEHALF OF THE STATE CONTROLLER)

PREFILED DECEMBER 20, 2014

Referred to Committee on Government Affairs

SUMMARY—Revises provisions governing the collection of debts by the State Controller. (BDR 31-499)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to state financial administration; authorizing the State Controller to withhold income from the wages of a person who owes a debt to a state agency after a judgment has been obtained against the person; authorizing the imposition of a fine and punitive damages against an employer under certain circumstances; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides a procedure by which the Administrator of the Employment Security Division of the Department of Employment, Training and Rehabilitation may require any employer to withhold income from a person's wages to satisfy certain judgments. (NRS 612.7102-612.7116) This bill authorizes the State Controller to use the same procedure to withhold income from the wages of certain persons who owe a debt to a state agency.

Existing law requires the State Controller to act as the collection agent for each agency, bureau, board, commission, department and division of the Executive Department of State Government. (NRS 353C.195) In doing so, the State Controller is authorized to request the Attorney General to bring an action against a person who owes a debt to such an agency, bureau, board, commission, department or division or, in certain circumstances, request a court to enter summary judgment against such a debtor. (NRS 353C.140, 353C.150) **Section 2** of this bill provides that if the State Controller obtains a judgment against a person for a debt, the State Controller may, in addition to any other manner of executing the judgment provided by law, require each employer of the person to withhold income from the person's wages and pay it over to the State Controller. **Section 3** of this bill requires the State Controller to provide notice of certain information to a person whose income is being withheld, including the fact that the person's income is



being withheld. **Section 4** of this bill requires the State Controller to provide to the employer of such a person notice to withhold income, which must include the amount of income to be withheld and certain other information. **Section 5** of this bill requires an employer to withhold the amount of income specified in the notice and deliver the money to the State Controller, and **section 6** of this bill prescribes procedures concerning the delivery of the money. **Section 7** of this bill: (1) prohibits an employer from using the withholding of income to collect an obligation to pay money to the State Controller as a basis for refusing to hire a potential employee, discharging an employee or taking disciplinary action against an employee; and (2) provides an administrative fine of \$1,000 for the violation of this prohibition. **Section 7** also provides for the imposition of punitive damages against an employer who wrongfully refuses to withhold income after receiving a notice from the State Controller requiring the employer to do so or knowingly misrepresents the income of an employee. **Section 8** of this bill authorizes a court to issue an order directing such an employer to appear and show cause why he or she should not be subject to the imposition of certain penalties and, after such a hearing, to take certain action against the employer, including requiring the employer to pay those penalties. **Section 9** of this bill exempts certain persons from civil liability under certain circumstances. **Section 10** of this bill authorizes an agency, bureau, board, commission, department or division of the Executive Department of State Government to exercise any right or remedy conferred on the State Controller pursuant to **sections 2-9** if the State Controller waives certain provisions or if the agency, bureau, board, commission, department or division does not assign a debt to the State Controller for collection.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 353C of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 9, inclusive, of this act.

Sec. 2. *If an agency or the State Controller obtains a judgment against a person for a debt owed to an agency that has been assigned to the State Controller for collection pursuant to NRS 353C.195, the State Controller may, in addition to any other manner of executing the judgment provided by law, require each employer of the person to withhold income from the person's wages and pay it over to the State Controller in accordance with the provisions of sections 2 to 9, inclusive, of this act.*

Sec. 3. *The State Controller shall provide to a person who is subject to the withholding of income pursuant to section 2 of this act a notice, sent by first-class mail to the person's last known address:*

- 1. That his or her income is being withheld;*
- 2. That a notice to withhold income applies to any current or subsequent employer;*
- 3. That a notice to withhold income has been mailed to his or her employer;*



4. Of the information provided to his or her employer pursuant to section 4 of this act;

5. That he or she may contest the withholding; and

6. Of the grounds and procedures for contesting the withholding.

Sec. 4. 1. The State Controller shall send, by first-class mail, a notice to withhold income pursuant to section 2 of this act to each employer of the person who is subject to the withholding.

2. If an employer does not begin to withhold income from the person in accordance with section 5 of this act after receiving the notice to withhold income that was mailed pursuant to subsection 1, the State Controller shall send to the employer, by certified mail, return receipt requested, another notice to withhold income.

3. A notice to withhold income pursuant to section 2 of this act must:

(a) Contain the social security number of the person who is subject to the withholding;

(b) Specify the total amount to be withheld from the income of the person, including any interest, penalties or assessments provided by law or costs incurred by the agency or State Controller in collecting the debt;

(c) Describe the limitation for withholding income prescribed in NRS 31.295;

(d) Describe the prohibition against terminating the employment of a person because of withholding and the penalties for wrongfully refusing to withhold in accordance with the notice to withhold income; and

(e) Explain the duties of an employer upon the receipt of the notice to withhold income.

Sec. 5. An employer who receives a notice to withhold income pursuant to section 2 of this act shall:

1. Withhold the amount stated in the notice from the income due to the person beginning with the first pay period that occurs within 14 days after the date the notice was mailed to the employer and continuing until:

(a) The State Controller notifies the employer to discontinue the withholding; or

(b) The full amount required to be paid to the State Controller has been paid, as indicated by a written statement to the employer from the State Controller;

2. Calculate the amount of income to be withheld from a person's wages during each pay period in accordance with the provisions of NRS 31.295 and subject to the limitation on withholding prescribed in that section. For the purposes of this



subsection, a withholding of income shall be deemed a garnishment of earnings;

3. Deliver the money withheld to the State Controller within 7 days after the date of each payment of the regularly scheduled payroll of the employer; and

4. Notify the State Controller when the person subject to withholding terminates his or her employment and provide the last known address of the person and the name of any new employer of the person, if known.

Sec. 6. 1. A notice to withhold income pursuant to section 2 of this act is binding upon any employer of the person to whom it is mailed. To reimburse the employer for his or her costs in making the withholding, the employer may deduct \$3 from the amount paid to the person each time the employer makes a withholding.

2. Except as otherwise provided in subsection 3:

(a) An employer may deliver money withheld to the State Controller by check or electronic transfer of money.

(b) If an employer receives notices to withhold income pursuant to section 2 of this act for more than one employee, the employer may consolidate the amounts of money that are payable to the State Controller and pay those amounts with one check, but the employer shall attach to each check a statement identifying by name and social security number each person for whom payment is made and the amount transmitted for that person.

3. If the provisions of NRS 353.1467 apply, the employer shall make payment to the State Controller by any method of electronic transfer of money allowed by the State Controller. If an employer makes such payment by electronic transfer of money, the employer shall transmit separately the name and appropriate identification number, if any, of each person for whom payment is made and the amount transmitted for that person.

4. As used in this section, "electronic transfer of money" has the meaning ascribed to it in NRS 353.1467.

Sec. 7. 1. It is unlawful for an employer to use the withholding of income to collect an obligation to pay money to the State Controller as a basis for refusing to hire a potential employee, discharging an employee or taking disciplinary action against an employee. Any employer who violates this section shall hire or reinstate any such employee with no loss of pay or benefits, is liable for any amounts not withheld and must be fined \$1,000. If an employee prevails in an action based on this section, the employer is liable, in an amount not less than \$2,500, for payment of the employee's costs and attorney's fees incurred in that action.



2. If an employer wrongfully refuses to withhold income as required pursuant to sections 2 to 9, inclusive, of this act or knowingly misrepresents the income of an employee, the employer shall pay the amount the employer refused to withhold to the State Controller and may be ordered to pay punitive damages to the State Controller in an amount not to exceed \$1,000 for each pay period the employer failed to withhold income as required or knowingly misrepresented the income of the employee.

Sec. 8. 1. If an employer wrongfully refuses to withhold income as required pursuant to sections 2 to 9, inclusive, of this act after receiving a notice to withhold income that was sent by certified mail pursuant to section 4 of this act, or knowingly misrepresents the income of an employee, the State Controller may apply for and the court may issue an order directing the employer to appear and show cause why he or she should not be subject to the penalties prescribed in subsection 2 of section 7 of this act.

2. At the hearing on the order to show cause, the court, upon a finding that the employer wrongfully refused to withhold income as required or knowingly misrepresented an employee's income:

(a) May order the employer to comply with the requirements of sections 2 to 9, inclusive, of this act;

(b) May order the employer to provide accurate information concerning the employee's income;

(c) May impose penalties against the employer pursuant to subsection 2 of section 7 of this act; and

(d) Shall require the employer to pay the amount the employer failed or refused to withhold from the employee's income.

Sec. 9. 1. An employer who complies with a notice to withhold income pursuant to section 2 of this act that is regular on its face may not be held liable in any civil action for any conduct taken in compliance with the notice.

2. Compliance by an employer with a notice to withhold income pursuant to section 2 of this act is a discharge of the employer's liability to the person as to that portion of the income affected.

3. If a court issues an order to stay a withholding of income, the State Controller may not be held liable in any civil action to the person who is the subject of the withholding of income for any money withheld before the stay becomes effective.

Sec. 10. NRS 353C.195 is hereby amended to read as follows:
353C.195 Except as otherwise provided in this section or by a specific statute or federal law:

1. The State Controller shall act as the collection agent for each agency.



2. An agency shall coordinate all its debt collection efforts through the State Controller.

3. Unless an agency and the State Controller agree on a different time, an agency shall assign a debt to the State Controller for collection not later than 60 days after the debt becomes past due.

4. An agency shall not assign a debt to the State Controller for collection if the debt is administratively contested by the debtor. For the purposes of this subsection, a debt is not administratively contested if:

(a) The debtor and the agency have agreed on the existence and amount of the debt;

(b) The debtor has failed to contest timely the existence or amount of the debt in accordance with the administrative procedures prescribed by the agency; or

(c) The debtor has timely contested the debt in accordance with the administrative procedures prescribed by the agency and the agency has issued a final decision concerning the existence and amount of the debt.

5. Upon the request of an agency, the State Controller shall waive a requirement of this section:

(a) If the State Controller determines that the agency has the resources to engage in its own debt collection efforts; or

(b) For good cause shown.

6. If the State Controller waives the requirements of subsection 1 or 2 for an agency, the agency may exercise any right or remedy conferred on the State Controller pursuant to the provisions of NRS 353C.130 to 353C.180, inclusive, and 353C.200 to 353C.230, inclusive, *and sections 2 to 9, inclusive, of this act* to collect a debt.

7. An agency that is authorized by specific statute to collect a debt on behalf of or in trust for a particular person or entity may assign the debt to the State Controller for collection pursuant to this section. If such an agency does not assign a debt to the State Controller pursuant to this section, the agency may, in addition to any right or remedy conferred on the agency by specific statute to collect a debt, exercise any right or remedy conferred on the State Controller pursuant to the provisions of NRS 353C.130 to 353C.180, inclusive, and 353C.200 to 353C.230, inclusive, *and sections 2 to 9, inclusive, of this act* to collect the debt.

Sec. 11. NRS 353C.224 is hereby amended to read as follows:

353C.224 1. If the State Controller collects any money owed to an agency from a debtor or receives any money from *the employer of a debtor or* a private debt collector or other person to whom the State Controller has assigned the collection of a debt owed to an agency, the State Controller shall, unless prohibited by federal law, transfer the net amount of money owed to the agency:



(a) Except as otherwise provided in paragraph (c), to the Debt Recovery Account created by NRS 353C.226 if the debt is owed to an agency whose budget is supported exclusively or in part from the State General Fund.

(b) Except as otherwise provided in paragraph (c), to an account specified by the agency if the debt is owed to an agency whose budget is supported exclusively from sources other than the State General Fund.

(c) If a specific statute requires the money to be deposited in a specific account or used for a specific purpose, to the specific account required by statute or to the account from which money is expended for the purpose specified.

2. If the State Controller is unable to determine where to transfer the net amount of money collected pursuant to subsection 1, the money must be deposited in the Debt Recovery Account. If an agency disputes the decision to deposit the money in the Debt Recovery Account pursuant to this subsection, the agency may, not later than 60 days after the money is deposited in the Debt Recovery Account, submit a written request to the Interim Finance Committee seeking its determination of where the money collected pursuant to subsection 1 should be deposited. If an agency fails to submit such a written request timely, the money must remain in the Debt Recovery Account and be used in accordance with NRS 353C.226.

3. As used in this section, "net amount of money owed to the agency" means the money owed to an agency by a debtor that is collected or received by the State Controller minus:

(a) Any fees owed pursuant to a specific statute to the State Controller for collection of the debt;

(b) Any costs incurred or fees paid by the State Controller to collect any debt assigned to the State Controller for collection by the agency; and

(c) Any interest on the debt collected by the State Controller under the terms of an agreement with the debtor, pursuant to NRS 353C.130, for the payment of the debt on an installment basis.

Sec. 12. This act becomes effective upon passage and approval.

