

2007 DRAFTING REQUEST

Bill

Received: **10/05/2006**

Received By: **pkahler**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget 6-8219**

By/Representing: **Harshner**

This file may be shown to any legislator: **NO**

Drafter: **pkahler**

May Contact:

Addl. Drafters:

Subject: **Dom. Rel. - child support**

Extra Copies:

Submit via email: **NO**

Pre Topic:

DOA:.....Harshner, BB0111 -

Topic:

High-volume automated enforcement for interstate child support cases

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	pkahler 10/16/2006	jdyer 10/17/2006		_____			S&L
/1			rschluet 10/17/2006	_____	lparisi 10/17/2006		S&L
/2	pkahler 12/20/2006	jdyer 12/21/2006	sherritz 12/21/2006	_____	mbarman 12/21/2006		

FE Sent For:

<END>

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/?	pkahler 10/16/2006	jdyer 10/17/2006		_____			S&L
/1		1/2 12/21 jld	rschluet 10/17/2006	Sh/pg 12/21	lparisi 10/17/2006		

Sh 12/21

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/?

pkahler

1/10/17 jld

SS
10/13/06

FE Sent For:

<END>

2007-09 Budget Bill Statutory Language Drafting Request

- Topic: High-Volume Automated Enforcement for Interstate Child Support Cases
- Tracking Code: SBO 111
- SBO team: Education
- SBO analyst: Sam Harshner
 - Phone: 266-8219
 - Email: Samuel.Harshner@wisconsin.gov
- Agency acronym: DWD
- Agency number: 445
- Priority (Low, Medium, High): Medium

STATUTORY MODIFICATIONS

Department of Workforce Development
2007-2009 Biennial Budget Request

DI Number: 5502

Topic: High-Volume Automated Enforcement for Interstate Child Support Cases

Description of Change

Review s. 49.854. It is suggested that s.49.854 (5)(b) be amended as shown:

"To enforce a lien under this section, or a lien from another state, by levying against an account at a financial institution...."

Justification

The federal Deficit Reduction Act (DRA) of 2005 requires all states to implement interstate enforcement through their Financial Institution Data Match (FDIM) programs, and to give full faith and credit to other states' due-process rights instead of their own state processes. This will require a change in Wisconsin Statutes at s. 49.854. The drafter should compare current Wisconsin law to the requirements of the DRA to ensure that the above suggestion is sufficient to comply with the federal requirements.



State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-0485/1

PJK.:...

JLD

DOA:.....Harshner, BB0111 - High-volume automated enforcement for interstate child support cases

FOR 2007-09 BUDGET -- NOT READY FOR INTRODUCTION

D-note

do not
you cut

1 AN ACT relating to: the budget.

Analysis by the Legislative Reference Bureau

HEALTH AND HUMAN SERVICES

OTHER HEALTH AND HUMAN SERVICES

Under current law, if a person (obligor) who has been ordered by a court to pay child or family support, maintenance, medical expenses of a child, or birth expenses (support) fails to pay any of the court-ordered amount, the amount not paid becomes a lien against all of the obligor's property in favor of DWD. DWD may enforce the lien by levying against an account in which the obligor has an interest at a financial institution. DWD must follow certain notice procedures and the obligor may request a hearing in the circuit court that rendered the support order.

This bill provides that the procedure DWD uses for enforcing a lien in favor of DWD by levying against an obligor's financial account also applies if the lien is in favor of another state and based on a support obligation.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

LPS
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one
"1"

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 SECTION 1. 49.854 (5) (a) 3. of the statutes is created to read:

2 49.854 (5) (a) 3. "Lien" means a lien under this section or a lien in favor of
3 another state based on a support obligation, including a lien placed under s. 769.305
4 (2) (g).

5 SECTION 2. 49.854 (5) (b) of the statutes is amended to read:

6 49.854 (5) (b) *Notice to the financial institution.* To enforce a lien under this
7 section by levying against an account at a financial institution, the department shall
8 send a notice of levy to the financial institution instructing the financial institution
9 to prohibit the closing of or withdrawals from one or more accounts that the obligor
10 owns in whole or in part, up to a total amount that is sufficient to pay the support
11 owed, financial institution fees under par. (e), and estimated levy fees and costs
12 under sub. (11), until further notice from the department or a court. The financial
13 institution shall comply with the notice of levy and shall hold the amount specified
14 in the notice until the financial institution receives further instructions from the
15 department or a court.

History: 1997 a. 191; 1999 a. 9; 2001 a. 61; 2003 a. 33.

16

(END)

D - vote

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0485/3dn

PJK:A:...

Jld

date

I have some misgivings about this change. The definition of "obligor" in s. 49.854 (1) (d) does not limit the obligor to a person in this state, so "obligor" could include persons who live in other states, or who lived in another state when the support obligation was incurred. Any hearing under s. 49.854 (5) (f), however, is supposed to be conducted before the court that rendered the support order. Is this a problem if the support order was rendered in another state? I assume liens from other states are enforced in this state generally because the obligor lives here now but lived in the other state when the support obligation was incurred, so the hearing would be conducted in the other state. An obligor could have incurred a support obligation in another state and still live in the other state, but have a bank account in this state. Perhaps some states routinely send liens to all other states just in case an obligor, who might still live in the first state, happens to have a bank account in another state.

This draft only expands the types of liens for levying against financial accounts. Please review the following paragraphs in s. 49.854 to make sure you do not want to expand those liens, too: 49.854 (6) (a), (7) (a), (12) (a) and (b), and (13) (b).

Pamela J. Kahler
Senior Legislative Attorney
Phone: (608) 266-2682
E-mail: pam.kahler@legis.wisconsin.gov

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0485/1dn
PJK:jld:rs

October 17, 2006

I have some misgivings about this change. The definition of "obligor" in s. 49.854 (1) (d) does not limit the obligor to a person in this state, so "obligor" could include persons who live in other states, or who lived in another state when the support obligation was incurred. Any hearing under s. 49.854 (5) (f), however, is supposed to be conducted before the court that rendered the support order. Is this a problem if the support order was rendered in another state? I assume liens from other states are enforced in this state generally because the obligor lives here now but lived in the other state when the support obligation was incurred, so the hearing would be conducted in the other state. An obligor could have incurred a support obligation in another state and still live in the other state, but have a bank account in this state. Perhaps some states routinely send liens to all other states just in case an obligor, who might still live in the first state, happens to have a bank account in another state.

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Pamela J. Kahler
Senior Legislative Attorney
Phone: (608) 266-2682
E-mail: pam.kahler@legis.wisconsin.gov

Kahler, Pam

From: Harshner, Samuel - DOA
Sent: Tuesday, December 19, 2006 11:22 AM
To: Kahler, Pam
Subject: RE: LRB Draft: 07-0485/1 High-volume automated enforcement for interstate child support cases

Pam,

I believe you are the author of this draft, but please let me know if I'm sending this to the wrong person.

In any case, DOA and DWD have the following comments on the above referenced draft and the questions you posed in the drafters note.

The sense is that financial Institutions in this state are likely to be pretty "skittish" about accepting requests directly from another state.

The Bureau of Child Support suggests that a process requiring the notice come from the department, as drafted, is preferable. However, they suggest we would want the notice to simply forward a request from the other state with a cover letter from the department certifying that due process was met in the other state and asking the Financial Institution to honor the request.

You would modify the draft so that the provisions of s. 49.854(5)(d) and s. 49.854(5)(f) relating to notice and right to hearing don't apply in the case of interstate requests.

It was also noted that s. 49.854 doesn't specifically address where the Financial Institution's are supposed to send money they seize, although there are references to it being sent to DWD. In the case of interstate requests, DWD would suggest the banks send the money directly to the other states, which we believe would also require some language in the statutes.

✓ In response to your second question -- "This draft only expands the types of liens for levying against financial accounts. Please review the following paragraphs in s. 49.854 to make sure you do not want to expand those liens, too: 49.854(6)(a), (7)(a), 12(a) and (b), and 13 (b)." We do not wish to expand the liens to these paragraphs.

Let me know if you have any questions or comments Pam.

Thanks
Sam

From: Hanaman, Cathlene [mailto:Cathlene.Hanaman@legis.wisconsin.gov]
Sent: Tuesday, October 17, 2006 11:51 AM
To: Harshner, Samuel - DOA
Cc: Hanle, Bob - DOA; Hanaman, Cathlene; Palchik, Laurie A - DOA
Subject: LRB Draft: 07-0485/1 High-volume automated enforcement for interstate child support cases

Following is the PDF version of draft 07-0485/1.



State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-0485/A

PJK:jld:rs

2
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DOA:.....Harshner, BB0111 - High-volume automated enforcement for interstate child support cases

FOR 2007-09 BUDGET -- NOT READY FOR INTRODUCTION

(in 12-20)

D - vote

do not
you cut

1 AN ACT *✓*; relating to: the budget.

Analysis by the Legislative Reference Bureau

HEALTH AND HUMAN SERVICES

OTHER HEALTH AND HUMAN SERVICES

Under current law, if a person (obligor) who has been ordered by a court to pay child or family support, maintenance, medical expenses of a child, or birth expenses (support) fails to pay any of the court-ordered amount, the amount not paid becomes a lien against all of the obligor's property in favor of DWD. DWD may enforce the lien by levying against an account in which the obligor has an interest at a financial institution. DWD must follow certain notice procedures and the obligor may request a hearing in the circuit court that rendered the support order. *→ Inset 1-A ✓*

This bill provides that the procedure DWD uses for enforcing a lien in favor of DWD by levying against an obligor's financial account also applies if the lien is in favor of another state and based on a support obligation.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 SECTION 1. 49.854 (5) (a) 3. of the statutes is created to read:

2 49.854 (5) (a) 3. "Lien" means a lien under this section or a lien in favor of
3 another state based on a support obligation, including a lien placed under s. 769.305
4 (2) (g).

5 SECTION 2. 49.854 (5) (b) of the statutes is amended to read:

6 49.854 (5) (b) *Notice to the financial institution.* To enforce a lien under this
7 section by levying against an account at a financial institution, the department shall
8 send a notice of levy to the financial institution instructing the financial institution
9 to prohibit the closing of or withdrawals from one or more accounts that the obligor
10 owns in whole or in part, up to a total amount that is sufficient to pay the support
11 owed, financial institution fees under par. (e), and estimated levy fees and costs
12 under sub. (11), until further notice from the department or a court. The financial
13 institution shall comply with the notice of levy and shall hold the amount specified
14 in the notice until the financial institution receives further instructions from the
15 department or a court.

16

(END)

↗
Inset 2-15 ✓

D - vote

Vertical handwritten notes on the right margin.

2007-2008 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0485/2ins
PJK:jld:rs

INSERT 1-A

Both DWD and the financial institution may assess collection fees, which are charged against the obligor's account.

This bill provides that, if the lien based on delinquent support is in favor of another state, DWD may send the other state's request for enforcement to a financial institution, along with DWD's certification that any necessary due process requirements in the other state have been met and a request for the financial institution to honor the other state's request for enforcement by sending the amount specified in the request directly to the other state. The notice and hearing requirements for levying against a financial account when the lien arose in this state do not apply to a lien in favor of another state. DWD and the financial institution, however, may still assess collection fees.

(END OF INSERT 1-A)

INSERT 2-15

SECTION 1. 49.854 (5) (c) of the statutes is created to read:

49.854 (5) (c) *Liens in favor of other states.* Notwithstanding par. (b), if a lien under par. (b) is in favor of another state, the notice sent by the department to the financial institution may consist of the request from the other state to enforce the lien, a certification by the department that any necessary due process requirements were met in the other state, a request that the financial institution honor the request from the other state by sending the amount specified in the request directly to the other state, and the address to which the financial institution shall send the funds. Notice and hearing requirements under pars. (d) and (f) do not apply to a lien in favor of another state.

SECTION 2. 49.854 (5) (e) of the statutes is amended to read:

49.854 (5) (e) *Financial institution fees.* A financial institution may continue to collect fees, under the terms of the account agreement, on accounts frozen under this subsection. In addition to the levy fee authorized under sub. (11) (a), a financial institution may collect any early withdrawal penalty incurred under the terms of an

Ins 2-15 contd

1 account as a result of the levy. Financial institution fees authorized under this
2 paragraph may be charged to the account immediately prior to the remittance of the
3 amount to the department or the other state ✓ and may be charged even if the amounts
4 in the obligor's accounts are insufficient to pay the total amount of support owed and
5 the department's levy costs under sub. (11) (b).

History: 1997 a. 191; 1999 a. 9; 2001 a. 61; 2003 a. 33.

(END OF INSERT 2-15)

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0485/2dn
PJK:jld:rs

date

I wasn't sure if DWD or the other state would be charging collection fees if DWD forwards a request to enforce a lien to a financial institution. I think the draft allows for this if the amount specified in the request from the other state includes that state's collection fees. Although the fees are not mentioned specifically in proposed s. 49.854 (5) (c), s. 49.854 (11) (b) would still allow DWD to impose collection fees and s. 49.854 (5) (e) would still allow the financial institution to charge its own fees. Let me know, however, if you think that something more needs to be added.

and (11)(a)

Pamela J. Kahler
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E-mail: pam.kahler@legis.wisconsin.gov

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0485/2dn
PJK:jld:sh

December 21, 2006

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E-mail: pam.kahler@legis.wisconsin.gov



State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-0485/2

PJK:jld:sh

DOA:.....Harshner, BB0111 - High-volume automated enforcement for
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14 in the notice until the financial institution receives further instructions from the
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18 under par. (b) is in favor of another state, the notice sent by the department to the
19 financial institution may consist of the request from the other state to enforce the

1 lien, a certification by the department that any necessary due process requirements
2 were met in the other state, a request that the financial institution honor the request
3 from the other state by sending the amount specified in the request directly to the
4 other state, and the address to which the financial institution shall send the funds.
5 Notice and hearing requirements under pars. (d) and (f) do not apply to a lien in favor
6 of another state.

7 **SECTION 4.** 49.854 (5) (e) of the statutes is amended to read:

8 49.854 (5) (e) *Financial institution fees.* A financial institution may continue
9 to collect fees, under the terms of the account agreement, on accounts frozen under
10 this subsection. In addition to the levy fee authorized under sub. (11) (a), a financial
11 institution may collect any early withdrawal penalty incurred under the terms of an
12 account as a result of the levy. Financial institution fees authorized under this
13 paragraph may be charged to the account immediately prior to the remittance of the
14 amount to the department or the other state and may be charged even if the amounts
15 in the obligor's accounts are insufficient to pay the total amount of support owed and
16 the department's levy costs under sub. (11) (b).

17 **(END)**