

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:

- 1 Existing law provides a procedure by which the Administrator of the
- 2 Employment Security Division of the Department of Employment, Training and
- 3 Rehabilitation may require any employer to withhold income from a person’s
- 4 wages to satisfy certain judgments. (NRS 612.7102-612.7116) This bill authorizes
- 5 the State Controller to use the same procedure to withhold income from the wages
- 6 of certain persons who owe a debt to a state agency.
- 7 Existing law requires the State Controller to act as the collection agent for each
- 8 agency, bureau, board, commission, department and division of the Executive
- 9 Department of State Government. (NRS 353C.195) In doing so, the State
- 10 Controller is authorized to request the Attorney General to bring an action against a
- 11 person who owes a debt to such an agency, bureau, board, commission, department
- 12 or division or, in certain circumstances, request a court to enter summary judgment
- 13 against such a debtor. (NRS 353C.140, 353C.150) **Section 2** of this bill provides
- 14 that if the State Controller obtains a judgment against a person for a debt, the State
- 15 Controller may, in addition to any other manner of executing the judgment
- 16 provided by law, require each employer of the person to withhold income from the
- 17 person’s wages and pay it over to the State Controller. **Section 3** of this bill
- 18 requires the State Controller to provide notice of certain information to a person
- 19 whose income is being withheld, including the fact that the person’s income is



20 being withheld. **Section 4** of this bill requires the State Controller to provide to the
21 employer of such a person notice to withhold income, which must include the
22 amount of income to be withheld and certain other information. **Section 5** of this
23 bill requires an employer to withhold the amount of income specified in the notice
24 and deliver the money to the State Controller, and **section 6** of this bill prescribes
25 procedures concerning the delivery of the money. **Section 7** of this bill: (1)
26 prohibits an employer from using the withholding of income to collect an
27 obligation to pay money to the State Controller as a basis for refusing to hire a
28 potential employee, discharging an employee or taking disciplinary action against
29 an employee; and (2) provides an administrative fine of \$1,000 for the violation of
30 this prohibition. **Section 7** also provides for the imposition of punitive damages
31 against an employer who wrongfully refuses to withhold income after receiving a
32 notice from the State Controller requiring the employer to do so or knowingly
33 misrepresents the income of an employee. **Section 8** of this bill authorizes a court
34 to issue an order directing such an employer to appear and show cause why he or
35 she should not be subject to the imposition of certain penalties and, after such a
36 hearing, to take certain action against the employer, including requiring the
37 employer to pay those penalties. **Section 9** of this bill exempts certain persons from
38 civil liability under certain circumstances. **Section 10** of this bill authorizes an
39 agency, bureau, board, commission, department or division of the Executive
40 Department of State Government to exercise any right or remedy conferred on the
41 State Controller pursuant to **sections 2-9** if the State Controller waives certain
42 provisions or if the agency, bureau, board, commission, department or division does
43 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:

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

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

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

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



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

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

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

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

9 2. If an employer does not begin to withhold income from the
10 person in accordance with section 5 of this act after receiving the
11 notice to withhold income that was mailed pursuant to subsection
12 1, the State Controller shall send to the employer, by certified mail,
13 return receipt requested, another notice to withhold income.

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

16 2. Except as otherwise provided in subsection 3:

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

40 **Sec. 10.** *NRS 353C.195 is hereby amended to read as follows:*
41 353C.195 *Except as otherwise provided in this section or by a*
42 *specific statute or federal law:*

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



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

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

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

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

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

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

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

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

23 (b) For good cause shown.

24 6. If the State Controller waives the requirements of subsection
25 1 or 2 for an agency, the agency may exercise any right or remedy
26 conferred on the State Controller pursuant to the provisions of NRS
27 353C.130 to 353C.180, inclusive, and 353C.200 to 353C.230,
28 inclusive, *and sections 2 to 9, inclusive, of this act* to collect a debt.

29 7. An agency that is authorized by specific statute to collect a
30 debt on behalf of or in trust for a particular person or entity may
31 assign the debt to the State Controller for collection pursuant to this
32 section. If such an agency does not assign a debt to the State
33 Controller pursuant to this section, the agency may, in addition to
34 any right or remedy conferred on the agency by specific statute to
35 collect a debt, exercise any right or remedy conferred on the State
36 Controller pursuant to the provisions of NRS 353C.130 to
37 353C.180, inclusive, and 353C.200 to 353C.230, inclusive, *and*
38 *sections 2 to 9, inclusive, of this act* to collect the debt.

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

40 353C.224 1. If the State Controller collects any money owed
41 to an agency from a debtor or receives any money from *the*
42 *employer of a debtor or* a private debt collector or other person to
43 whom the State Controller has assigned the collection of a debt
44 owed to an agency, the State Controller shall, unless prohibited by
45 federal law, transfer the net amount of money owed to the agency:



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

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

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

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

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

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

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

32 (c) Any interest on the debt collected by the State Controller
33 under the terms of an agreement with the debtor, pursuant to NRS
34 353C.130, for the payment of the debt on an installment basis.

35 **Sec. 12.** This act becomes effective upon passage and
36 approval.



