

By: Madden

H.B. No. 1612

A BILL TO BE ENTITLED

AN ACT

1
2 relating to garnishment of wages for court-ordered restitution in a
3 criminal judgment.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Article 42.037(g)(1), Code of Criminal
6 Procedure, is amended to read as follows:

7 (g)(1) The court may require a defendant to make restitution
8 under this article within a specified period or in specified
9 installments or in the manner provided by Article 42.039. If the
10 court requires the defendant to make restitution in specified
11 installments, in addition to the installment payments, the court
12 may require the defendant to pay a one-time restitution fee of \$12,
13 \$6 of which the court shall retain for costs incurred in collecting
14 the specified installments and \$6 of which the court shall order to
15 be paid to the compensation to victims of crime fund.

16 SECTION 2. Article 42.037(h), Code of Criminal Procedure,
17 is amended to read as follows:

18 (h) If a defendant, other than a defendant ordered to pay
19 restitution in the manner provided by Article 42.039, is placed on
20 community supervision or is paroled or released on mandatory
21 supervision, the court or the parole panel shall order the payment
22 of restitution ordered under this article as a condition of
23 community supervision, parole, or mandatory supervision. The court
24 may revoke community supervision and the parole panel may revoke

1 parole or mandatory supervision if the defendant fails to comply
2 with the order. In determining whether to revoke community
3 supervision, parole, or mandatory supervision, the court or parole
4 panel shall consider:

- 5 (1) the defendant's employment status;
- 6 (2) the defendant's current and future earning
7 ability;
- 8 (3) the defendant's current and future financial
9 resources;
- 10 (4) the willfulness of the defendant's failure to pay;
- 11 (5) any other special circumstances that may affect
12 the defendant's ability to pay; and
- 13 (6) the victim's financial resources or ability to pay
14 expenses incurred by the victim as a result of the offense.

15 SECTION 3. Article 42.0371(b), Code of Criminal Procedure,
16 is amended to read as follows:

17 (b) The court shall, after considering the financial
18 circumstances of the defendant, specify in a restitution order
19 issued under Subsection (a) the manner in which the defendant must
20 pay the restitution. The court may require the defendant to pay the
21 restitution in the manner provided by Article 42.039.

22 SECTION 4. Chapter 42, Code of Criminal Procedure, is
23 amended by adding Article 42.039 to read as follows:

24 Art. 42.039. WITHHOLDING FROM EARNINGS FOR
25 RESTITUTION. (a) A court that, under Article 42.037 or 42.0371,
26 orders a defendant to make restitution to the victim of the offense
27 may order that income be withheld from the disposable earnings of

1 the defendant for restitution and be paid to a community
2 supervision and corrections department.

3 (b) The court has continuing jurisdiction of a defendant
4 whose income is the subject of an income withholding order to
5 administer and enforce the order.

6 (c) An income withholding order must direct any employer of
7 the defendant obligated to pay restitution to withhold from the
8 defendant's disposable earnings an amount that is equal to all or a
9 portion of the amount specified in the restitution order, but that
10 is not more than 50 percent of the defendant's disposable earnings.
11 The order must state:

12 (1) the style, docket number, and the court assessing
13 punishment;

14 (2) the name, address, and, if available, the social
15 security number of the defendant;

16 (3) the amount of the restitution;

17 (4) the name and address of the community supervision
18 and corrections department to which payments are to be made; and

19 (5) any other matter necessary to effect the order.

20 (d) The defendant whose income is subject to a withholding
21 order or the attorney prosecuting the offense may request the clerk
22 of the court making the order to deliver a certified copy of the
23 income withholding order to any employer of the defendant. The
24 request must include the name and address of the employer. The
25 clerk shall issue a certified copy of the order and make a copy of
26 this article for each employer of the defendant whose income is the
27 subject of the order and shall deliver them not later than the

1 fourth working day after the date the order is signed by the court
2 or a request under this subsection is filed, whichever is later.
3 The order and a copy of this article shall be delivered to the
4 employer by certified or registered mail, return receipt requested,
5 to the person authorized to receive service of process in civil
6 cases generally, or to a person designated by the employer to
7 receive notices of delinquency by written notice to the clerk of the
8 appropriate court, or by the service of citation as provided by the
9 Texas Rules of Civil Procedure. The clerk may charge the defendant
10 whose income is subject to withholding a reasonable fee of not more
11 than \$15 for each copy of the order mailed by the clerk. The amount
12 to be withheld shall be remitted to the community supervision and
13 corrections department named in the order on each regular due date
14 or pay date. The employer may deduct an administrative fee of not
15 more than \$10 each month from the defendant's disposable earnings
16 in addition to the amount to be withheld as restitution.

17 (e) The employer shall begin to withhold income in
18 accordance with an order issued under this article not later than
19 the first pay period following the date on which the order is
20 delivered to the employer and shall continue to withhold income as
21 long as the defendant whose income is subject to the order is
22 employed by the employer.

23 (f) Not later than the 20th day after receipt of an income
24 withholding order, the employer may make a motion to the court that
25 made the order for hearing on the applicability of the order to the
26 employer. The hearing shall be held not later than the 15th day
27 after the date of the filing of the motion. The order remains

1 binding and the employer shall continue to make the payments
2 pending further order of the court.

3 (g) An employer receiving an order under this article who
4 complies with the order is not liable to the defendant whose income
5 is subject to the order for the amount of income withheld and paid
6 as provided in the order. An employer who receives an income
7 withholding order and who does not comply with the order is liable
8 for the amount not paid in compliance with the order. That amount
9 and reasonable attorney's fees and court costs may be collected by
10 the prosecuting attorney or by the victim for whose benefit the
11 withholding is to be made. An employer who receives an income
12 withholding order and who does not comply with the order is also
13 liable to the defendant whose income is subject to the order for any
14 amount withheld but not paid in compliance with the order and for
15 reasonable attorney's fees and court costs.

16 (h) An employer receiving more than one order on the same
17 defendant shall comply with each order to the maximum extent
18 possible. If the total amount in the orders exceeds 50 percent of
19 the defendant's disposable earnings, the employer shall pay an
20 equal amount on each order until each order is individually
21 satisfied. An employer who is ordered to withhold from more than
22 one defendant may combine the amounts withheld and make a single
23 payment to each appropriate community supervision and corrections
24 department requesting withholding if the employer separately
25 identifies the amount of the payment that is attributable to each
26 department.

27 (i) An employer may not use an order authorized by this

1 article as grounds in whole or part for the termination of
2 employment or for any other disciplinary action against an
3 employee. An employer may not refuse to hire an employee because of
4 an order withholding income. If an employer intentionally
5 discharges an employee in violation of this subsection, the
6 employer is liable to the employee for continuing wages and other
7 benefits and for reasonable attorney's fees and court costs
8 incurred by the employee in enforcing the employee's rights under
9 this subsection. An action under this subsection may be brought
10 only by the employee.

11 (j) In addition to the civil remedies provided by
12 Subsections (g) and (i) of this article or to any other remedy
13 provided by law, an employer who knowingly violates Subsection (g)
14 or (i) is subject to a fine not to exceed \$200 for each occurrence in
15 which the employer fails to withhold and pay in compliance with the
16 withholding order. The amount of a fine recovered under this
17 subsection shall be paid to the community supervision and
18 corrections department to which withholding is required to be paid
19 and credited against the amount of restitution ordered.

20 (k) When the employment of a defendant whose income is
21 withheld by the employer under an income withholding order is
22 terminated, both the defendant and the employer shall notify the
23 court of that fact not later than the seventh day after the
24 termination of employment and shall provide the defendant's last
25 known address and the name and address of the defendant's new
26 employer, if known. The defendant has a continuing duty to inform
27 each subsequent employer of the income withholding order after

1 obtaining employment. The defendant shall promptly notify the
2 court of any other change in the defendant's status that may affect
3 the income withholding order.

4 (1) A payment received by a community supervision and
5 corrections department under an income withholding order shall be
6 accounted for and distributed in the same manner as a payment
7 received directly from the defendant required to pay the
8 restitution.

9 SECTION 5. The change in law made by this Act applies only
10 to restitution for an offense committed on or after the effective
11 date of this Act. Restitution for an offense committed before the
12 effective date of this Act is governed by the law in effect when the
13 offense was committed, and the former law is continued in effect for
14 that purpose. For purposes of this section, an offense is committed
15 before the effective date of this Act if any element of the offense
16 occurs before that date.

17 SECTION 6. This Act takes effect January 1, 2008, but only
18 if the constitutional amendment proposed by the 80th Legislature,
19 Regular Session, 2007, relating to authorizing garnishment of wages
20 for court-ordered restitution in a criminal judgment, is approved
21 by the voters. If that constitutional amendment is not approved,
22 this Act has no effect.