

By: Madden

H.B. No. 2373

A BILL TO BE ENTITLED

AN ACT

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

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

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

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

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

(h) If a defendant, other than a defendant ordered to pay restitution in the manner provided by Article 42.039, is placed on community supervision or is paroled or released on mandatory supervision, the court or the parole panel shall order the payment of restitution ordered under this article as a condition of community supervision, parole, or mandatory supervision. The court 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, 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) or to any other remedy provided by law, an  
13 employer who knowingly violates Subsection (g) or (i) is subject to  
14 a fine not to exceed \$200 for each occurrence in which the employer  
15 fails to withhold and pay in compliance with the withholding order.  
16 The amount of a fine recovered under this subsection shall be paid  
17 to the community supervision and corrections department to which  
18 withholding is required to be paid and credited against the amount  
19 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 was  
15 committed before the effective date of this Act if any element of  
16 the offense occurred before that date.

17 SECTION 6. This Act takes effect January 1, 2010, but only  
18 if the constitutional amendment proposed by the 81st Legislature,  
19 Regular Session, 2009, 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.