

# MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

**Legislative Document**

**No. 1463**

H. P. 1238

House of Representatives, March 24, 1981

Referred to the Committee on Taxation. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Representative Nelson of Portland.

Cosponsors: Representative Brenerman of Portland and Representative Benoit of South Portland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

**AN ACT to Recover Overdue Student Loan and Child Support Payments.**

Be it enacted by the People of the State of Maine, as follows:

36 MRSA c. 841 is enacted to read:

**CHAPTER 841**

**SETOFF DEBT COLLECTION**

**§ 5351. Definitions**

As used in this chapter, unless the context indicates otherwise, the following terms have the following meanings.

1. **Claimant agency.** "Claimant agency" means either the Department of Human Services or the Department of Educational and Cultural Services.

2. **Debt.** "Debt" means any liquidated sum due and owing a claimant agency which has accrued through contract, subrogation, tort, operation of law or any other legal theory regardless of whether there is an outstanding judgment for that sum and which:

A. If the claimant agency is the Department of Human Services, results from the payment of public assistance for the benefit of a dependent child; or

**B. If the claimant agency is the Department of Educational and Cultural Services, results from the payment of a loan to a student.**

**3. Debtor. "Debtor" means an individual owing money to or having a delinquent account with a claimant agency, which obligation has not been adjudicated, satisfied by court order, set aside by court order or discharged in bankruptcy.**

**§ 5352. Scope of remedy**

**1. Remedy additional. The collection remedy under this chapter is in addition to and not in substitution for any other remedy available by law.**

**2. Mandatory usage. A claimant agency shall submit, for collection under the procedure established by this chapter, all debts which they are owed, except in cases where the agency is advised by the Attorney General not to submit a claim because the validity of the debt is legitimately in dispute, because an alternative means of collection is pending and believed to be adequate or because such a collection attempt would result in a loss of federal funds.**

**3. Obtaining information. A claimant agency shall, whenever possible, obtain the full name, social security number, address and any other identifying information required by rules promulgated by the assessor pursuant to the authority of section 5365 from any person for whom the agency provides any service or transacts any business and who the claimant agency can foresee may become a debtor under the terms of this chapter.**

**§ 5353. Minimum sum collectible**

**A claimant agency shall not be allowed to effect final setoff and collect debts through use of the remedy established under this chapter unless both the debt and the refund, if any, are at least \$50.**

**§ 5354. Collection of sums due claimant agencies through setoff**

**Subject to the limitations contained in this chapter, the assessor shall, upon request, render assistance in the collection of any delinquent account or debt owing to any claimant agency. This assistance shall be provided by setting off any refunds due the debtor under this Part from the assessor by the sum certified by claimant agency as due and owing.**

**§ 5355. Procedure for setoff**

**1. Notification. A claimant agency seeking to attempt collection of a debt through setoff shall notify in writing the assessor and supply information necessary to identify the debtor whose refund is sought to be setoff. Notification to the assessor and the furnishing of identifying information must occur on or before a date specified by the assessor in the year preceding the calendar year during which the refund would be paid. Additionally, subject to the notification deadline specified in this chapter, the notification shall be effective only to initiate setoff for claims against refunds that would be made in the calendar year subsequent to the year in which notification is made to the assessor.**

2. **Determination.** The assessor, upon receipt of notification, shall determine whether the debtor to the claimant agency is entitled to a refund of at least \$50. Upon determination by the assessor that a debtor specified by a claimant agency qualifies for such a refund, the assessor shall notify in writing the claimant agency that a refund is pending, specify its sum and indicate the debtor's address as listed on the tax return.

3. **Action.** Unless stayed by court order, the assessor shall, upon certification as provided in this chapter, set off the certified debt against the refund to which the debtor would otherwise be entitled.

#### § 5356. Notification of intention to setoff

1. **Notice to debtor.** The claimant agency, upon receipt of notification from the assessor that a debtor is entitled to a refund, shall within 10 days send a written notification to the debtor and a copy of same to the assessor of its assertion of rights to the refund or any part thereof. The notification shall inform the debtor of the claimant agency's intention to direct the assessor to apply the refund or any portion thereof against the debt certified as due and owing. For the assessor to be obligated to continue holding refunds until receipt of certification of the debt, if any, pursuant to section 5359, the copy of the notification to the debtor by the claimant agency of its intention to set off must be received by the assessor within 15 days of the date of the assessor's mailing to the respective claimant agency the notification of the debtor's entitlement to a refund.

2. **Contents; right to hearing.** The contents of the written notification to the debtor and the assessor's copy of the setoff claim shall clearly set forth the basis for the claim to the refund, the intention to apply the refund against the debt to the claimant agency, the debtor's opportunity to give written notice of intent to contest the validity of the claim before the claimant agency within 30 days of the date of the mailing of the notice, the mailing address to which the application for a hearing must be sent and the fact that failure to apply for a hearing in writing within the 30-day period will be deemed a waiver of the opportunity to contest the claim causing final setoff by default.

3. **Request for hearing.** The written application by the debtor for a hearing shall be effective upon mailing the application postage prepaid and properly addressed to the claimant agency.

#### § 5357. Hearing procedure

If a claimant agency receives written application of the debtor's intention to contest at hearing the claim upon which the intended setoff is based, it shall grant a hearing according to procedures established under the Maine Administrative Procedure Act, Title 5, chapter 375, to determine whether the claim is valid. Additionally, it shall be determined at the hearing whether the claimed sum asserted as due and owing is correct and, if not, an adjustment to the claim shall be made.

Pending final determination at hearing of the validity of the debt asserted by the claimant agency, no action shall be taken in furtherance of collection through the set-off procedure allowed under this chapter.

No issues may be considered at the hearing which have been previously litigated.

**§ 5358. Appeal**

Appeals from action taken at hearings allowed under this chapter shall be in accordance with the provisions of Title 5, chapter 375, except that the place of initial judicial review shall be the Superior Court for the county in which the debtor resides.

**§ 5359. Certification of debt; finalization of order**

Upon final determination through hearing provided by section 5357 of the debt due and owing the claimant agency or upon the debtor's default for failure to comply with section 5356 mandating timely request for review of the asserted basis for setoff, the claimant agency shall within 20 days certify the debt to the assessor and, in default thereof, the assessor shall no longer be obligated to hold the refund for setoff.

Upon receipt by the assessor of a certified debt from the claimant agency, the assessor shall finalize the setoff by transferring the net proceeds collected for credit or payment in accordance with the provisions of section 5363 and by refunding any remaining balance to the debtor as if setoff had not occurred.

**§ 5360. Notice of final setoff**

Upon the finalization of setoff under the provisions of this chapter, the assessor shall notify the debtor in writing of the action taken along with an accounting of the action taken on any refund. If there is an outstanding balance after setoff, the notice under this section shall accompany the balance when disbursed.

**§ 5361. Priorities in claims to setoff**

Priority in multiple claims to refunds allowed to be set off under the provisions of this chapter shall be in the order in time which a claimant agency has filed a written notice with the assessor of its intention to effect collection through setoff under this chapter. Notwithstanding the priority set forth according to time of filing, the assessor has priority over all other claimant agencies for collection by setoff whenever it is a competing agency for a refund.

**§ 5362. Disposition of proceeds collected**

Upon effecting final setoffs, the assessor shall periodically cause funds to be disbursed to the respective claimant agency for the net proceeds collected on its behalf.

From the gross proceeds collected by the assessor through setoff he shall retain 10%, which shall be charged to the respective claimant agency as a collection assistance fee.

**§ 5363. Accounting to the claimant agency; credit to debtor's obligation**

Simultaneously with the transmittal of funds net proceeds collected to a claimant agency, the assessor shall provide the agency with an accounting of the setoffs finalized for which payment is being made. The accounting shall, whenever possible, include the full names of the debtors, the debtors' social security numbers; the gross proceeds collected per individual setoff, the net proceeds collected per setoff and the collection assistance fee charged per setoff.

Upon receipt by a claimant agency of funds representing net proceeds collected on a claimant agency's behalf by the assessor and an accounting of the proceeds as specified under this section, the claimant agency shall credit the debtor's obligation with the gross proceeds collected.

**§ 5364. Confidentiality exemption; nondisclosure**

Notwithstanding section 191 or any other provision of law prohibiting disclosure by the assessor of the contents of taxpayer records or information and notwithstanding any confidentiality statute of any claimant agency, all information exchanged among the assessor, claimant agency and the debtor necessary to accomplish and effectuate the intent of this chapter is lawful.

The information obtained by a claimant agency from the assessor in accordance with the exemption allowed by this section may only be used by a claimant agency in the pursuit of its debt collection duties and practices and any person employed by, or formerly employed by, a claimant agency who discloses any such information for any other purpose, except as otherwise allowed by law; shall be penalized in accordance with the terms of that law.

**§ 5365. Rules**

The assessor may prescribe forms and make rules which he deems necessary to accomplish the purposes of this chapter.

**STATEMENT OF FACT**

This bill permits the Department of Educational and Cultural Services or the Department of Human Services to recover debts owed to them for student loans or child support payments by applying against any state income tax refund due the debtor. This approach has worked with great success in other states.