

MAINE STATE LEGISLATURE

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115th MAINE LEGISLATURE

FIRST REGULAR SESSION-1991

Legislative Document

No. 1611

S.P. 607

In Senate, April 22, 1991

Submitted by the Department of Human Services pursuant to Joint Rule 24.
Reference to the Committee on Human Resources suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator WEBSTER of Franklin
Cosponsored by Representative HEPBURN of Skowhegan.

STATE OF MAINE

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

An Act to More Effectively Recover Overpayments of Public Assistance.



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

2
4 22 MRSA c. 1055-A is enacted to read:

6 CHAPTER 1055-A

8 PUBLIC ASSISTANCE OVERPAYMENTS

10 §3811. Definitions

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

14 1. Debtor. "Debtor" means a person who owes a debt to the
department as the result of an overpayment established pursuant
to section 3813.

18 2. Public assistance program. "Public assistance program"
means any program administered by the department that provides
aid to or for the benefit of people. "Public assistance program"
includes Aid to Dependent Children, chapter 1053; Additional
Support for People in Retraining and Education, chapter 1054-A;
Emergency Assistance Program for Needy Families with Children,
chapter 1053-A; food stamp program, section 3104; general
assistance, chapter 1161; and the Medicaid program, chapter 855.

26 §3812. Nonexclusive remedy

28 This chapter provides additional remedies for the collection
of overpayments of public assistance by establishing collection
methods directed to the real and personal property of former
recipients. These remedies are in addition to, not in lieu of,
those provided by existing state and federal laws.

34 §3813. Establishment of overpayment

36 A person owes a debt to the department if a public
assistance program provides aid to the person or to another on
that person's behalf and the person is not eligible for such
aid. The debt is collectible by the department 31 days after
notice of overpayment, described in section 3814, is provided to
the debtor or, if a fair hearing is requested to review liability
for the debt, as soon as a fair hearing decision is rendered in
the department's favor, or, if judicial review is sought, as soon
as a court order is rendered in the department's favor.

46 §3814. Notice of debt

48 The department shall issue notice of overpayment to the
debtor that must include:

50 1. Debt accrued. A statement of the debt accrued;

2 2. Time period. A statement of the time period throughout
4 which the overpayment was provided;

6 3. Reasons for ineligibility. The reasons why the debtor
8 was not eligible for the aid provided;

10 4. Notice of right to hearing. Notice of the debtor's
12 right to request a fair hearing within 30 days of receipt of the
14 notice of debt;

16 5. Property subject to actions. A statement that any
18 property of the debtor may be subject to lien and foreclosure,
20 administrative seizure and disposition, order to withhold and
22 deliver or other collection actions and that any debt determined
24 to be owed by the debtor may be reported to a consumer reporting
26 agency;

28 6. Wages subject to withholding. A statement that the
30 department may require the debtor's employer to withhold and
32 deliver wages due to the debtor up to a maximum of 25% of such
34 wages as exceed the amount exempted from collection in section
36 3815; and

38 7. Stay of collection action. A statement that the
40 department will stay collection action upon receipt of a request
42 for fair hearing.

44 **§3815. Property exempt from collection**

46 Property exempt from collection of child support debts under
48 Title 19, section 502 is also exempt from collection of debts
50 resulting from overpayments of public assistance. For purposes
52 of this chapter, reference to a support order in Title 19,
54 section 502 is a reference to a debt resulting from an
56 overpayment of public assistance.

58 **§3816. Assertion of a lien**

60 Thirty-one days after receipt of the notice of debt under
62 section 3814, or upon the rendering of a fair hearing decision or
64 court order in the department's favor, the amount stated in the
66 notice of debt is a lien in favor of the department against all
68 nonexempt property of the debtor. This lien is separate and in
70 addition to any other lien created by or provided for in this
72 Title.

74 1. Filing. The lien attaches to all nonexempt real and
76 personal property of the debtor when the department files, in the
78 registry of deeds of any county or with any office appropriate
80 for a notice with respect to personal property, a certificate
82 that states the name of the debtor, the debtor's address, the

2 amount of the debt accrued, the date of the notice of debt by
4 which the debt was assessed and the name and address of the
6 authorized agent of the department who issues the lien.

8 2. Effect. Whenever the lien has been filed and there is
10 in the possession of any person having notice of the lien any
12 property that may be subject to the lien, that property may not
14 be paid over, released, sold, transferred, encumbered or conveyed
16 unless:

18 A. A release or waiver signed by the commissioner has been
20 delivered to the person in possession; or

22 B. A court has ordered the release of the lien.

24 **§3817. Order to withhold and deliver**

26 The commissioner shall proceed as follows with respect to
28 any order to withhold and deliver.

30 1. Service of order. The commissioner may serve on any
32 person an order to withhold and deliver any property, including
34 wages, that is due or belongs to the debtor when:

36 A. A lien has been filed pursuant to section 3816; or

38 B. Thirty-one days have elapsed from the date of receipt of
40 the notice of debt under section 3814 or a final fair
42 hearing decision has been rendered or a final court order
44 entered.

46 2. Service on debtor. The order must be served on the
48 debtor.

50 3. Order; contents. The order to withhold and deliver must
52 include the amount of the debt accrued, the terms of sections
54 3816 and 3823 and a demand for listing of property, including
56 wages, that is due or belongs to the debtor.

58 4. Answer. Any person served with an order to withhold and
60 deliver must answer the order within 20 days of receipt of the
62 order.

64 5. Withhold and deliver. Any person served with an order
66 to withhold and deliver shall withhold immediately any property,
68 including wages, due to or belonging to the debtor. After 20
70 days from the date of receipt of this order and upon demand of
72 the commissioner, the property of the debtor must be delivered
74 immediately to the commissioner.

76 6. Delivery of money. If the money is due under an express
78 or implied contract, or if money is held subject to withdrawal by

2 the debtor, the money must be delivered payable to the Treasurer
3 of State.

4 7. Bond as alternative. In lieu of the property of the
5 debtor, the commissioner may accept a bond conditioned upon final
6 determination of liability.

8 8. Effect of honoring order. Any person who honors an
9 order to withhold and deliver is immune from any civil liability
10 to the debtor.

12 9. Term of order. The order to withhold and deliver
13 remains in effect, requiring withholding of each successive
14 earnings disbursement, until the amount of debt stated in the
15 order has been withheld.

16 10. Priority of order. Notwithstanding any other provision
17 of law, the order to withhold and deliver is 2nd in priority only
18 to previously filed orders against assets, earnings and
19 assignments of earnings for the enforcement of a child support
20 obligation under Title 19, section 504.

22 **§3818. Income withholding**

24 1. Administrative order of income withholding. The
25 commissioner may direct any employer to withhold wages that are
26 due to the debtor through an administrative order of income
27 withholding.

30 A. In establishing an amount of wages to be withheld, the
31 department may request a maximum of 25% of the disposable
32 income available as wages to the debtor remaining after the
33 amount exempt from collection pursuant to section 3815.

34 B. In all cases in which income withholding is sought, the
35 department shall provide notice of the request in the notice
36 of debt. The notice must contain the following:

38 (1) A statement of the amount that will be withheld or
39 the formula by which that amount is determined;

42 (2) A statement that the withholding applies to any
43 current or subsequent period of employment;

44 (3) A statement that the debtor may contest the
45 withholding by requesting a fair hearing within 30 days;

48 (4) A statement that the only basis for contesting the
49 withholding is a mistake of fact; and

50 (5) A statement that the request for review must be
51 filed within 30 days of receipt of the notice of
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2 intention to withhold income and that failure to
3 request a review within 30 days results in the
4 department notifying the debtor's employer or other
5 person holding property belonging to the debtor to
6 begin withholding.

7 C. The debtor has the right to administrative review of the
8 department's request for income withholding.

9 D. At the hearing the debtor has an opportunity to present
10 the debtor's case. The hearing officer shall consider all
11 legal and factual defenses to the request for income
12 withholding. If the hearing officer determines that income
13 withholding is appropriate, the hearing officer shall order
14 an amount to be withheld under the formula set forth in
15 paragraph A. The hearing officer may order an amount lower
16 than that provided in paragraph A in cases of extreme
17 hardship. The debtor must be informed of the decisions and,
18 if withholding is to occur, the time within which the
19 withholding begins.

20 E. Upon receipt of an order to withhold issued by the
21 department, the employer or other payor shall immediately
22 begin withholding from the income of the debtor the amount
23 specified in the order. Sums withheld must be remitted to
24 the department within 10 days of the date the debtor is
25 paid. Any person who honors an order to withhold and
26 deliver is immune from any civil liability to the debtor for
27 the action of implementing the withholding order.

28 F. Withholding initiated under this section has priority
29 over all other legal process under state law with the
30 exception of wages withheld for payment of child support.

31 G. The withholding must be terminated if the debt is paid
32 in full or if the obligation has been eliminated by a
33 subsequent administrative or court order.

34 2. Assignment of earnings. Any person employing a person
35 owing a debt under this chapter must honor a duly executed
36 assignment of earnings presented by the commissioner. This
37 requirement to honor the assignment of earnings is applicable
38 whether the earnings are paid presently or in the future and
39 continues in force until released in writing by the
40 commissioner. Payment pursuant to an assignment of earnings
41 presented by the commissioner serves as full acquittance under
42 any contract of employment. The commissioner is not liable for
43 improper receipt of money under an assignment of earnings upon
44 return of any money so received.

45 Notwithstanding any other provision of law, an assignment of
46 earnings presented by the commissioner has priority over
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2 previously filed orders against earnings and assignments of
3 earnings, with the exception of withholding for child support.

4 An employee may not be discharged by reason of a presentation of
5 an assignment of earnings. An employer may not be held civilly
6 liable for any action taken by the employer to honor a duly
7 executed assignment of earnings.

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9 3. Employer; payor compensation. The commission may
10 establish by rule a processing fee that an employer or individual
11 possessing property belonging to the debtor may charge for
12 implementation of an order to withhold and deliver, assignment of
13 earnings or withholding of wages.

14 **§3819. Release of excess withheld**

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16 If any person has, subject to an order to withhold and
17 deliver, earnings, deposits, accounts or balances in excess of
18 the amount of the debt claimed by the department plus \$100, that
19 person may, without liability under this chapter, release the
20 excess to the debtor.

21 **§3820. Enforcement of administrative order**

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23 The commissioner may seek enforcement of administrative
24 orders establishing a debt under this chapter under the
25 provisions of Title 14, chapter 502. The final administrative
26 order is a debt enforceable under that chapter. The procedures
27 set forth in Title 14, chapter 502 are fully applicable to the
28 enforcement of an administrative order of debt under this chapter.

29 **§3821. Foreclosure on liens**

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31 The commissioner shall proceed as follows regarding
32 foreclosures on filed liens.

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34 1. Liens on real property. Actions to foreclose liens on
35 real property filed under section 3816 may be brought in the
36 county where the lien is filed pursuant to the procedures of
37 Title 14, chapter 713, subchapter VI. For purposes of
38 foreclosure by civil action as described in Title 14, chapter
39 713, subchapter VI, a lien filed in accordance with section 3816
40 is considered a mortgage claim of the department on any or all
41 real property owned by the debtor. Failure to pay the debt owed
42 to the department is considered a breach of condition in the
43 mortgage.

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45 2. Liens on personal property. Actions to foreclose liens
46 on personal property filed under section 3816 may be brought in
47 the county in which the lien is filed pursuant to the procedures
48 of Title 14, chapter 509, subchapter III.

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§3822. Employer responsibility and liability

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Any person who fails to honor an order to withhold and deliver, an order for expediting withholding or a duly executed assignment of earnings, or fails to surrender property under section 3820, is liable to the department in an amount equal to that which should have been withheld pursuant to the order to withhold and deliver, demand for surrender or assignment of earnings. The court shall order the payment of that amount, as well as costs, interest and reasonable attorney's fees to the department for the cost of bringing any action to enforce this section.

When any withholding order or assignment of earnings is in effect and the debtor's employment is terminated or the periodic payment terminates, the debtor's employer or other payor of funds shall notify the department of the termination within 30 days of the termination date. The notice must include the debtor's home address and the name and address of the debtor's new employer or payor of funds, if known.

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§3823. Employee protected

An employer may not discharge an employee because a lien or order to withhold and deliver has been served against the employee's earnings. An aggrieved employee may maintain a civil action against the employer for violation of this section.

Any employer who, in contravention of this section, discharges from employment, refuses to employ or takes disciplinary action against any debtor because of the existence of any lien, order to withhold and deliver or assignment of earnings and the obligations or additional obligations that these impose on the employer is subject to a fine in an amount not to exceed \$5,000.

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STATEMENT OF FACT

This bill creates an administrative process to liquidate and recover debts owed to the State as a result of overpayments of public assistance benefits. In many instances, recovery of overpayments is made by benefit reduction. However, benefit reduction is not possible in situations when the recipient of the overpayment no longer receives public assistance. Presently, the only methods to recover overpayments in closed public assistance cases is through a voluntary repayment agreement on the part of the debtor or by initiating recovery action in court. Both of these options are time consuming and do not lend themselves to cost-effective, timely recovery of money owed to the State.