

MAINE STATE LEGISLATURE

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L.D. 1463

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Reported by: Senator Conley of Cumberland

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STATE OF MAINE
SENATE
116TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 471, L.D. 1463, Bill, "An Act to Permit Collection of Public Assistance Overpayments by Administrative Process"

Amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

'Sec. 1. 22 MRSA c. 1055-A is enacted to read:

CHAPTER 1055-A

COLLECTION OF OVERPAYMENTS

§3811. Definitions

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

1. Assistance unit. "Assistance unit" means the individuals whose need the department considers when determining whether an applicant or recipient is eligible for program benefits.

2. Obligor. "Obligor" means an individual who receives an overpayment or an adult individual who is a member of an assistance unit that receives an overpayment.

3. Overpayment. "Overpayment" means program benefits that an individual or assistance unit receives that exceed the amount of program benefits for which the individual or assistance unit is eligible when the department or a court has determined that the benefits were received as a result of an intentional program violation.

COMMITTEE AMENDMENT

R.d.s

2 4. Program benefits. "Program benefits" means money
3 payments or food coupons issued by the department pursuant to an
4 application for benefits made by an individual to either Aid to
5 Families with Dependent Children established in chapter 1053 or
6 the food stamp program established in chapter 851.

8 §3812. Notice to recipient

10 A notice of overpayment issued by a payor of program
11 benefits must inform the recipient of the collection remedies
12 available under this chapter.

14 §3813. Notice to repay

16 1. Repayment. The department may serve a notice to repay
17 upon an individual or other member of an assistance unit that
18 received an overpayment that has not been recouped, repaid or
19 otherwise recovered by the department if the individual or other
20 member of the assistance unit no longer receives benefits from
21 the benefit program that issued the overpayment.

22 2. Notice. A notice to repay must state the following:

24 A. The name of the obligor;

26 B. The amount of the overpayment, when the overpayment was
28 made and when it was established;

30 C. The name of the benefit program that issued the
32 overpayment;

34 D. The amount of the overpayment that has not been
35 recouped, repaid or otherwise recovered by the department;

36 E. That the obligor may contact the department to execute
37 an assignment of earnings or enter into an agreement to
38 repay the overpayment that has not been recouped, repaid or
39 otherwise recovered by the department;

40 F. That if the amount of the overpayment that has not been
41 recouped, repaid or otherwise recovered by the department is
42 not repaid within 21 days, the department may collect the
43 amount owed by income withholding, may file liens against
44 the obligor's real and personal property for the amount owed
45 and may report the obligor to a consumer credit reporting
46 agency; and

48 G. That the obligor has the right to request a hearing
50 within 21 days of service of the notice and that if the

obligor requests a hearing, collection action is stayed pending a decision after hearing.

3. Collection action. The department may use the remedies available under this chapter to collect the amount of an overpayment that has not been recouped, repaid or otherwise recovered by the department 21 days after service of a notice to repay, unless the obligor timely requests a hearing. The department may execute an assignment of earnings with the obligor's consent at any time for repayment of the amount of an overpayment that has not been recouped, repaid or otherwise recovered by the department.

4. Hearing. An obligor served with a notice to repay may request a hearing within 21 days of the date of service of the notice. The obligor may contest at hearing the accuracy of the notice to repay and whether the notice was issued in accordance with the requirements of this section. The obligor may not contest the amount of an overpayment that the obligor previously had an opportunity to contest or the amount of an overpayment that was established by judicial or administrative action, by agreement of the obligor and the department or by operation of law. The obligor may raise the issue of and the department shall determine whether the obligor is entitled to receive any credits, including credits for underpayments, that would reduce the amount of the overpayment that has not been recouped, repaid or otherwise recovered by the department. The department shall conduct the hearing in accordance with the requirements of Title 5, chapter 375, subchapter IV.

5. Decision after hearing. The department shall render a decision after hearing without undue delay. The decision must be based on the hearing record and rules adopted by the commissioner. The decision must include a finding of the amount of the overpayment that has not been recouped, repaid or otherwise recovered by the department. The decision must inform the obligor that the obligor may file a petition for judicial review of the decision within 30 days of the date of the decision. The department shall send an attested copy of the decision to the obligor by regular mail to the obligor's most recent address of record. If the finding contained in the decision is that the obligor has received an overpayment that has not been recouped, repaid or otherwise recovered by the department, the department may use the remedies available under this chapter to collect the amount not recouped, repaid or otherwise recovered 30 days after the decision is issued.

6. Stay. If the obligor named in a notice to repay timely requests a hearing to contest the notice to repay, the department shall stay all collection action pending a decision after hearing.

Rds

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§3814. Service

The department may serve a notice to repay by certified mail, return receipt requested, by personal service by an authorized representative of the commissioner, or as specified by the Maine Rules of Civil Procedure.

§3815. Exempt property

An obligor's weekly income equal to 30 times the federal minimum wage as prescribed by the United States Code, Title 29, Section 206(a)(1), is exempt from collection by income withholding. Property otherwise exempt from trustee process, attachment and execution is exempt from collection by lien and foreclosure.

§3816. Income withholding

1. Payor duty. Twenty-one days after the department has served a notice to repay, the department may serve an income withholding order upon the obligor's employer or other payor of income to collect the amount of the overpayment not recouped, repaid or otherwise recovered by the department, unless collection action is stayed in accordance with section 3813, subsection 6. Upon receipt of an income withholding order issued by the department, the employer or other payor of income shall begin withholding immediately from the obligor's income the amount specified in the withholding order. Income withheld must be sent to the department within 10 days of the date of the withholding. The department shall send the obligor a copy of an income withholding order issued under this section to the obligor's most recent address of record.

2. Withholding order; payor notice. An income withholding order must state:

- A. The name of the obligor;
- B. The amount owed to the department;
- C. The amount of income that the employer or other payor of income is required to withhold;
- D. That withholding must take place when the obligor is normally paid and that income withheld must be sent to the department within 10 days of each withholding;
- E. That the withholding order applies to current and subsequent periods of employment;

2 F. The income exemption amount and limitation on
4 withholding provided for by this chapter; and

6 G. The substance of any other rights, obligations and
8 liabilities of the employer or other payor of income
provided for or imposed by this chapter.

10 3. Limitation of amount. An income withholding order may
12 not exceed 25% of the obligor's gross income and is subject to
the income exemption amounts specified in section 3815.

14 4. Hearing. An obligor may request a hearing to contest
16 the issuance of an income withholding order. A request for
18 hearing must be received by the department within 30 days of the
20 date of mailing of the obligor's copy of the withholding order.
22 The department shall notify the obligor in writing of the right
24 to hearing at the time of mailing of the obligor's copy of the
withholding order. At hearing the obligor may contest the
accuracy of the income withholding order and whether the order
was issued in accordance with the requirements of this section.
The department shall conduct the hearing in accordance with the
requirements of Title 5, chapter 375, subchapter IV.

26 5. Decision after hearing. The department shall render a
28 decision after hearing without undue delay as to the accuracy of
30 the terms of the withholding order and whether the order was
32 issued in accordance with the requirements of this section. The
34 decision must be based on the hearing record and rules adopted by
the commissioner. A copy of the decision must be sent to the
obligor's most recent address of record. The decision must state
that the obligor may file a petition for judicial review of the
decision within 30 days of the date of the decision.

36 6. Duration of withholding. An income withholding order
38 remains in effect until:

40 A. Released in writing by the department; or

42 B. The order is released or superseded by a subsequent
44 court order.

46 **§3817. Assignment of earnings**

48 The department may seek to collect an overpayment by
50 executing an assignment of earnings with the obligor. An
employer or other payor of income shall honor an assignment of
earnings executed by the department and an obligor. An
assignment of earnings continues until released in writing by the
department. Income withheld from an obligor pursuant to an

2 assignment of earnings must be sent to the department within 10
4 days of withholding. The department shall provide an employer or
6 other payor of income served with an assignment of earnings the
8 same payor notice the department is required to provide under
10 section 3816, subsection 2.

12 **§3818. Payor compensation**

14 The department may establish by rule a fee that an employer
16 or other payor of income may deduct from the obligor's income as
18 compensation for honoring an income withholding order or
20 assignment of earnings.

22 **§3819. Payor protected**

24 An employer or other payor of income may not be held liable
26 for action taken to honor a duly executed income withholding
28 order or assignment of earnings issued by the department.

30 **§3820. Failure to honor**

32 An employer or other payor of income who knowingly fails to
34 honor an income withholding order or assignment of earnings is
36 liable to the department for the amount of income not withheld or
38 the amount of income withheld and not sent to the department, as
40 applicable. A court may award the department costs, interest and
42 attorney's fees in an action brought under this section.

44 **§3821. Employee protected**

46 An employer may not discharge, refuse to hire, discipline or
48 otherwise discriminate against an employee because of action by
50 the department under this chapter. An employer who violates this
52 section is subject to a fine of up to \$5,000 payable to the State
54 to be recovered in a civil action. The employer is also subject
56 to an action by the employee for compensatory and punitive
58 damages, plus attorney's fees and court costs.

60 **§3822. Liens**

62 The department may issue a certificate of lien 21 days after
64 service of a notice to repay, unless collection action is stayed
66 in accordance with section 3813, subsection 6. A lien issued by
68 the department under this section attaches to all nonexempt real
70 and personal property of the person named in the notice to
72 repay. The department shall send the obligor a copy of a
74 certificate of lien issued under this section to the obligor's
76 most recent address of record.

Refs

1. Filing. The department may file a certificate of lien issued under this section in the registry of deeds of any county in which the obligor may own real property or with the Secretary of State. The certificate must state the name of the obligor named in the notice to repay, the obligor's most recent address of record, the amount of the overpayment that has not been recouped, repaid or otherwise recovered, the date of the notice to repay and the name and address of the department's agent who issued the lien.

2. Effect. If the department has issued a certificate of lien in accordance with the requirements of this section, no person having notice of the lien or in possession of any property that may be subject to the lien may pay over, release, sell, transfer, encumber or convey such property, unless:

A. An authorized representative of the commissioner executes a release or waiver and delivers it to the person in possession; or

B. A court of competent jurisdiction orders the department to release the lien.

3. Hearing. An obligor may request a hearing to contest the issuance of a certificate of lien. A request for hearing must be received by the department within 30 days of the date of mailing of the obligor's copy of the certificate of lien. The department shall notify the obligor in writing of the right to hearing at the time of mailing of the obligor's copy of the certificate of lien. At hearing the obligor may contest the accuracy of the certificate of lien and whether the lien was implemented in accordance with the requirements of this section. The department shall conduct the hearing in accordance with the requirements of Title 5, chapter 375, subchapter IV.

4. Decision after hearing. The department shall render a decision after hearing without undue delay as to the accuracy of the terms of the certificate of lien and whether the lien was issued in accordance with the requirements of this section. The decision must be based on the hearing record and rules adopted by the commissioner. A copy of the decision must be sent to the obligor at the obligor's most recent address of record. The decision must inform the obligor that the obligor may file a petition for judicial review of the decision within 30 days of the date of the decision.

§3823. Foreclosure on liens

The commissioner shall proceed as follows with respect to foreclosures on liens filed pursuant to section 3822.

2 1. Liens on real property. Actions to foreclose liens on
3 real property issued under section 3822 may be brought in the
4 county where the property is located pursuant to the procedures
5 of Title 14, chapter 403, subchapter II.

6
7 2. Liens on personal property. Actions to foreclose liens
8 on personal property issued under section 3822 may be brought in
9 the county where the obligor resides or the county where the
10 property is located pursuant to the procedures of Title 14,
11 chapter 509, subchapter III.

12 **§3824. Credit reporting**

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15 The department may submit the names of obligors and the
16 amounts of overpayments not recouped, repaid or otherwise
17 recovered to a consumer credit reporting agency. The department
18 may submit the name of an obligor and the amount owed only if the
19 amount owed was established by judicial or administrative action,
20 by agreement of the obligor and the department or by operation of
21 law.'

22
23 Further amend the bill by inserting at the end before the
24 statement of fact the following:

25 **FISCAL NOTE**

26
27
28 The Department of Human Services will experience General
29 Fund and Federal Expenditure Fund savings as a result of the
30 department's ability to administratively recoup overpayment of
31 program benefits from people who no longer receive benefits. The
32 exact amount of savings can not be determined. The department
33 will also incur some minor additional costs related to the
34 administrative proceedings. These costs can be absorbed within
35 the department's existing budgeted resources.

36
37 The additional workload and administrative costs associated
38 with the minimal number of new cases filed in the court system
39 can be absorbed within the budgeted resources of the Judicial
40 Department. The collection of additional fines may increase
41 General Fund revenue by minor amounts.'

42
43 **STATEMENT OF FACT**

44
45 This amendment replaces the bill to correct a section
46 numbering problem.

2 This amendment makes several changes in the definitions set
3 out in the bill. The definition of "assistance unit" is changed
4 to reflect current criteria for determining eligibility, which is
5 based on need as opposed to income. The definition of "obligor"
6 is modified to include only adult members of an assistance unit
7 to avoid possible collection actions against children who are
8 members of the assistance unit. The definition of "overpayment"
9 is revised to include only overpayments that are determined by
10 the Department of Human Services or a court to be the result of
11 intentional program violations; inadvertent errors are not
12 subject to the Maine Revised Statutes, Title 22, chapter 1055-A.
13 The definition of "program benefits" is changed to include only
14 Aid to Families with Dependent Children and food stamp benefits.

15 A new section is added to require overpayment notices to
16 include mention of the collection remedies available.

17 If the obligor requests a hearing, the obligor may raise the
18 issue of whether the obligor is entitled to receive any credits
19 for any reason to offset the overpayment. The department shall
20 make a decision on the issue. The obligor has 30 days to appeal
21 the department's decision after its issuance. The department may
22 use the collection remedies 30 days after the decision is issued.

23 Because the collection remedies are limited to overpayments
24 resulting from intentional program violations, the limit on
25 income withholding orders is raised from 10% to 25% of the
26 obligor's gross income.

27 The language relating to filing of liens is clarified.

28 This amendment also adds a fiscal note to the bill.