

MAINE STATE LEGISLATURE

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116th MAINE LEGISLATURE

FIRST REGULAR SESSION-1993

Legislative Document

No. 1463

S.P. 471

In Senate, May 6, 1993

**An Act to Permit Collection of Public Assistance Overpayments by
Administrative Process.**

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 BUTLAND of Cumberland. (GOVERNOR'S BILL).
Cosponsored by Senator: CAREY of Kennebec, Representatives: BARTH of Bethel, KERR of
Old Orchard Beach.

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

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Sec. 1. 22 MRSA c. 1054-C is enacted to read:

CHAPTER 1054-C

COLLECTION OF OVERPAYMENTS

§3801. 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 income 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 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 or program benefits that are paid out or issued by a program in error.

4. Program benefits. "Program benefits" means money payments or food coupons issued by the department pursuant to an application for benefits made by an individual to any of the following programs: Aid to Families with Dependent Children established in chapter 1053; the Additional Support for People in Retraining and Education program established in chapter 1504-A and other programs the department may administer to comply with federal Job Opportunity and Basic Skills training program requirements; the emergency assistance program for needy families with children established in chapter 1053-A; the food stamp program established in chapter 851; the Maine Health Program established in chapter 855; and the Medicaid program established in chapter 855.

§3802. Notice to repay

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

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

4 A. The name of the obligor;

6 B. The amount of the overpayment, when the overpayment was
8 made and when it was established;

10 C. The name of the benefit program that issued the
12 overpayment;

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

18 E. That the obligor may contact the department to execute
20 an assignment of earnings or enter into an agreement to
22 repay the overpayment that has not been recouped, repaid or
24 otherwise recovered by the department;

26 F. That if the amount of the overpayment that has not been
28 recouped, repaid or otherwise recovered by the department is
30 not repaid within 21 days, the department may collect the
32 amount owed by income withholding, may file liens against
34 the obligor's real and personal property for the amount owed
36 and may report the obligor to a consumer credit reporting
38 agency; and

40 G. That the obligor has the right to request a hearing
42 within 21 days of service of the notice and that if the
44 obligor requests a hearing, collection action is stayed
46 pending a decision after hearing.

48 3. Collection action. The department may use the remedies
50 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

2 agreement of the obligor and the department or by operation of
3 law. The department shall conduct the hearing in accordance with
4 the requirements of Title 5, chapter 375, subchapter IV.

5 5. Decision after hearing. The department shall render a
6 decision after hearing without undue delay. The decision must be
7 based on the hearing record and rules adopted by the
8 commissioner. The decision must include a finding of the amount
9 of the overpayment that has not been recouped, repaid or
10 otherwise recovered by the department. The decision must inform
11 the obligor that the obligor may file a petition for judicial
12 review of the decision within 30 days of the date of the
13 decision. The department shall send an attested copy of the
14 decision to the obligor by regular mail to the obligor's most
15 recent address of record. If the finding contained in the
16 decision is that the obligor has received an overpayment that has
17 not been recouped, repaid or otherwise recovered by the
18 department, the department may use the remedies available under
19 this chapter to collect the amount not recouped, repaid or
20 otherwise recovered 10 days after the decision is issued.

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

24 **§3803. Service**

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

29 **§3804. Exempt property**

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

36 **§3805. Income withholding**

37 1. Payor duty. Twenty-one days after the department has
38 served a notice to repay, the department may serve an income
39 withholding order upon the obligor's employer or other payor of
40 income to collect the amount of the overpayment not recouped,
41 repaid or otherwise recovered by the department, unless
42 collection action is stayed in accordance with section 3802,
43 subsection 6. Upon receipt of an income withholding order issued
44

2 by the department, the employer or other payor of income shall
4 begin withholding immediately from the obligor's income the
6 amount specified in the withholding order. Income withheld must
8 be sent to the department within 10 days of the date of the
10 withholding. The department shall send the obligor a copy of an
12 income withholding order issued under this section to the
14 obligor's most recent address of record.

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

20 A. The name of the obligor;

22 B. The amount owed to the department;

24 C. The amount of income that the employer or other payor of
26 income is required to withhold;

28 D. That withholding must take place when the obligor is
30 normally paid and that income withheld must be sent to the
32 department within 10 days of each withholding;

34 E. That the withholding order applies to current and
36 subsequent periods of employment;

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

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

48 3. Limitation of amount. An income withholding order may
50 not exceed 10% of the obligor's gross income and is subject to
the income exemption amounts specified in section 3804.

4. Hearing. An obligor may request a hearing to contest
the issuance of an income withholding order. 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 withholding order.
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
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.

5. Decision after hearing. The department shall render a
decision after hearing without undue delay as to the accuracy of

2 the terms of the withholding order and whether the order was
3 issued in accordance with the requirements of this section. The
4 decision must be based on the hearing record and rules adopted by
5 the commissioner. A copy of the decision must be sent to the
6 obligor's most recent address of record. The decision must state
7 that the obligor may file a petition for judicial review of the
8 decision within 30 days of the date of the decision.

9
10 6. Duration of withholding. An income withholding order
11 remains in effect until:

12 A. Released in writing by the department; or

13
14 B. The order is released or superseded by a subsequent
15 court order.

16 **§3806. Assignment of earnings**

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18 The department may seek to collect an overpayment by
19 executing an assignment of earnings with the obligor. An
20 employer or other payor of income shall honor an assignment of
21 earnings executed by the department and an obligor. An
22 assignment of earnings continues until released in writing by the
23 department. Income withheld from an obligor pursuant to an
24 assignment of earnings must be sent to the department within 10
25 days of withholding. The department shall provide an employer or
26 other payor of income served with an assignment of earnings the
27 same payor notice the department is required to provide under
28 section 3805, subsection 2.

29
30 **§3807. Payor compensation**

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32 The department may establish by rule a fee that an employer
33 or other payor of income may deduct from the obligor's income as
34 compensation for honoring an income withholding order or
35 assignment of earnings.

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37 **§3808. Payor protected**

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

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43 **§3809. Failure to honor**

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45 An employer or other payor of income who knowingly fails to
46 honor an income withholding order or assignment of earnings is
47 liable to the department for the amount of income not withheld or
48 the amount of income withheld and not sent to the department, as
49 applicable. A court may award the department costs, interest and
50 attorney's fees in an action brought under this section.

2 **§3810. Employee protected**

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

12 **§3811. Liens**

14 The department may issue a certificate of lien 21 days after
16 service of a notice to repay, unless collection action is stayed
18 in accordance with section 3802, subsection 6. A lien issued by
20 the department under this section attaches to all nonexempt real
 and personal property of the person named in the notice to
 repay. The department shall send the obligor a copy of a
 certificate of lien issued under this section to the obligor's
 most recent address of record.

22 1. Filing. The department may file a certificate of lien
24 issued under this section in the registry of deeds of any county
26 in which the obligor may own property with the Secretary of State
28 or with any other appropriate office. The certificate must state
30 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.

32 2. Effect. If the department has issued a certificate of
34 lien in accordance with the requirements of this section, no
36 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:

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

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

46 3. Hearing. An obligor may request a hearing to contest
48 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
50 department shall notify the obligor in writing of the right to

2 hearing at the time of mailing of the obligor's copy of the
3 certificate of lien. At hearing the obligor may contest the
4 accuracy of the certificate of lien and whether the lien was
5 implemented in accordance with the requirements of this section.
6 The department shall conduct the hearing in accordance with the
7 requirements of Title 5, chapter 375, subchapter IV.

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

18 **§3812. Foreclosure on liens**

19 The commissioner shall proceed as follows with respect to
20 foreclosures on liens filed pursuant to section 3811.

21 1. Liens on real property. Actions to foreclose liens on
22 real property issued under section 3811 may be brought in the
23 county where the property is located pursuant to the procedures
24 of Title 14, chapter 403, subchapter II.

25 2. Liens on personal property. Actions to foreclose liens
26 on personal property issued under section 3811 may be brought in
27 the county where the obligor resides or the county where the
28 property is located pursuant to the procedures of Title 14,
29 chapter 509, subchapter III.

30 **§3813. Credit reporting**

31 The department may submit the names of obligors and the
32 amounts of overpayments not recouped, repaid or otherwise
33 recovered to a consumer credit reporting agency. The department
34 may submit the name of an obligor and the amount owed only if the
35 amount owed was established by judicial or administrative action,
36 by agreement of the obligor and the department or by operation of
37 law.

38 **STATEMENT OF FACT**

39 The purpose of the bill is to establish an administrative
40 method for the collection of overpayments made by benefit
41 programs administered by the Department of Human Services after
42 the hearing.

2 the individuals who have been overpaid stop receiving benefits.
3 The bill would permit the Department of Human Services to collect
4 overpayments by issuing income withholding orders to employers,
5 executing wage assignments, filing liens against the obligor's
6 property and reporting unpaid amounts to consumer credit
7 reporting agencies. Necessary due process requirements for prior
8 notice, opportunity for hearing and right to judicial review are
9 included in the bill.

10 Currently, the department's Fraud Investigations and
11 Recovery Unit attempts to recover benefit program overpayments
12 after an individual stops receiving benefits. The unit's ability
13 to collect overpayments is currently limited to negotiating
14 voluntary repayment agreements, recovering the debts through
15 court action, and to submitting the obligors' names and debt
16 amounts to the State Tax Assessor for setoff of the debt against
17 a state income tax refund.