

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from electronic originals
(may include minor formatting differences from printed original)

LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND SIXTEENTH LEGISLATURE

SECOND REGULAR SESSION

January 5, 1994 to April 14, 1994

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
JULY 14, 1994

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Company
Augusta, Maine
1993

<u>(b) Mem-</u> <u>bers</u>	<u>4,957</u>	<u>5,056</u>
<u>(2) Treasurer</u>	<u>5,724</u>	<u>5,838</u>
<u>(3) Sheriff</u>	<u>31,110</u>	<u>31,110</u>
<u>(4) Judge of</u> <u>Probate</u>	<u>13,770</u>	<u>14,320</u>
<u>(5) Register of</u> <u>Probate</u>	<u>22,032</u>	<u>22,583</u>
<u>(6) Register of</u> <u>Deeds</u>	<u>22,032</u>	<u>22,583</u>

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect when approved and applies retroactively to January 1, 1994.

Effective April 8, 1994.

CHAPTER 654

S.P. 471 - L.D. 1463

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

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

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. "Overpayment" includes any overpayment made before or after the effective date of this subsection.

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 either Aid to Families with Dependent Children established in chapter 1053 or the food stamp program established in chapter 851.

§3812. Notice to recipient

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

§3813. 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. Notice. A notice to repay must state the following:

A. The name of the obligor;

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

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

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

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

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

G. That the obligor has the right to request a hearing within 21 days of service of the notice and that if the obligor requests a hearing, col-

lection 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.

§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;
- F. The income exemption amount and limitation on withholding provided for by this chapter; and
- G. The substance of any other rights, obligations and liabilities of the employer or other

payor of income provided for or imposed by this chapter.

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

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 the terms of the withholding order and whether the order 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'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.

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

- A. Released in writing by the department; or
- B. The order is released or superseded by a subsequent court order.

§3817. Assignment of earnings

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

§3818. Payor compensation

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

§3819. Payor protected

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

§3820. Failure to honor

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

§3821. Employee protected

An employer may not discharge, refuse to hire, discipline or otherwise discriminate against an employee because of action by the department under this chapter. An employer who violates this 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.

§3822. Liens

The department may issue a certificate of lien 21 days after service of a notice to repay, unless collection action is stayed in accordance with section 3813, subsection 6. A lien issued by 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.

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.

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

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

§3824. Credit reporting

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

See title page for effective date.

CHAPTER 655

S.P. 555 - L.D. 1591

An Act to Clarify the Maine Banking Code as it Pertains to Service Corporations Serving Credit Unions

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

Sec. 1. 9-B MRSA §864, sub-§2, ¶B, as enacted by PL 1993, c. 99, §2, is amended to read:

B. The service corporation primarily serves credit unions and the membership of affiliated credit unions. A service corporation formed after July 31, 1994 primarily serves credit unions and the membership of affiliated credit unions within the meaning of this paragraph if at least 75% of the services provided within this State are to credit unions and members of credit unions.

See title page for effective date.

CHAPTER 656

H.P. 1223 - L.D. 1642

An Act to Establish a Financial Assistance Program for Utilities Burdened as a Result of State Highway Construction

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

Sec. 1. 23 MRSA §256, as enacted by PL 1991, c. 860, §1, is repealed and the following enacted in its place:

§256. Financial assistance program for utilities

In order to assist water utilities and combination water and sewer utilities that have annual revenues of