

A Bill for an Act Relating to Recovery of Payments.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 346-29, Hawaii Revised Statutes, is amended to read as follows:

**“§346-29 Applications for public assistance; manner, form, conditions.**

(a) Applications for public assistance under this chapter shall be made by the applicant, or by someone acting in the applicant's behalf, in the manner, place, and form prescribed by the department.

(b) No applicant shall be entitled to public assistance under this chapter who has sufficient income or other resources to provide a standard above that provided in this chapter, or who is an inmate of any public institution as long as the Social Security Act precludes the use of federal funds to provide public assistance to an inmate of such an institution, except that any inmate of a public institution who is otherwise eligible for medical assistance and who has been determined by the medical director of the institution as having a major illness or medical condition requiring the provision of medical care outside of the institution may receive assistance under this chapter. An inmate of an institution mentioned in this section may apply for assistance to begin after the inmate's discharge from the institution. In determining the needs of an applicant or recipient for public assistance by the department, the department shall:

- (1) [Shall disregard] Disregard such amounts of earned or unearned income and resources as required by the Social Security Act or other federal acts, to receive federal matching funds and may disregard such additional amounts as these acts permit, now or in the future, to be disregarded[.];
- (2) [Shall consider] Consider as net income in all cases such income as the Social Security Act or other federal acts may require the department to consider for receipt of federal matching funds and may consider such additional income and resources as these acts may permit, now or in the future, to be considered[.];
- (3) [Shall disregard] Disregard a total of \$1,000 in assets in determining the needs of persons for financial assistance; provided that the amount to be disregarded<sup>1</sup> shall not exceed standards under federally funded financial assistance programs. This [provision] paragraph shall not apply to persons eligible for Federal Supplemental Security Income benefits. In determining the needs of such persons, the department shall apply the resource retention requirements under the Federal Supplemental Security Income Program[.];
- (4) [Shall apply] Apply the resource retention requirements under the Federal Supplemental Security Income Program in determining the needs of a single person for medical assistance only[.];
- (5) [Shall apply] Apply the resource retention requirements under the Federal Supplemental Security Income Program in determining the needs of a family of two persons for medical assistance only and an additional \$250 for each additional person included in an application for medical assistance only[.];
- (6) [Shall disregard] Disregard amounts of emergency assistance granted under section 346-65[.];

- (7) [Shall not] Not consider as income or resources any payment for services to or on behalf of, or any benefit received by, a participant under the [workfare program of part IX,] JOBS program of part XI, other than wages. Wages earned by a participant while participating in the [workfare] JOBS program shall be considered income of the participant, unless the wages are excluded or disregarded under any other law[.];
- (8) [Shall not] Not consider as income or resources payment made to eligible individuals, eligible surviving spouses, surviving children or surviving parents as specified under Title I of the Civil Liberties Act of 1988, Public Law 100-383, which made restitution to individuals of Japanese ancestry who were interned during World War II[.];
- (9) [Shall allow] Allow the community spouse of an individual residing in a medical institution to maintain countable resources to the maximum allowed by federal statutes or regulations with provisions for increases, as allowed by the Secretary of Health and Human Services by means of indexing, court order, or fair hearing decree, without jeopardizing the eligibility of the institutionalized spouse for medical assistance[.];
- (10) [Shall allow] Allow an individual residing in a medical institution to contribute toward the support of the individual's community spouse, thereby enabling the community spouse to maintain the monthly maximum income allowed by federal statutes or regulations, with provisions for increases as allowed by the Secretary of Health and Human Services by means of indexing, court order, or fair hearing decree[.]; and
- (11) Consider the transfer of assets from the applicant's name to another name within the specified time period as required by federal regulations, known as the "lookback" period, prior to the application for medical assistance for care in a nursing home or other long-term care facility. Pursuant to rules adopted under chapter 91, the director may attribute any assets that have been transferred within the required federal "lookback" period from the applicant if the director determines that the transfer of certain assets was made solely to make the applicant eligible for assistance under this chapter.

(c) In determining eligibility for medical assistance, the department shall require from all applicants and recipients the assignment of any benefits due to a third party liability. Any rights or amounts so assigned shall be applied against the cost of medical care paid under this chapter.

(d) The director shall adopt rules pursuant to chapter 91 defining assets and to determine eligibility for medical assistance; provided that the cash surrender value of life insurance policies owned by persons included in an application shall be treated as assets."

SECTION 2. Section 346-29.5, Hawaii Revised Statutes, is amended to read as follows:

**"§346-29.5 Real property liens.** (a) The department of human services may require of any person applying for or currently receiving assistance under the department's programs, including but not limited to [aid to families with dependent children, medicaid,] social service payments, financial assistance, medical assistance, and food stamps, [and general assistance,] who owns or has any interest in real property, that the person shall enter into an agreement with the

department that future grants of assistance shall be and constitute a lien against the interest in real property, and shall remain a lien until satisfied and discharged, with the exception of home property lived on by the assistance household.

(b) The department may place a lien against the real property of any recipient receiving medical assistance who is an inpatient in a nursing facility, intermediate care facility for the mentally retarded, or other medical institution, after a state determination, pursuant to notice and hearing requirements of chapter 91, that the recipient cannot reasonably be expected to be discharged from the medical institution and returned home.

The department may not place a lien on the recipient's home if the recipient's:

- (1) Spouse;
- (2) Minor, blind, or disabled child; or
- (3) Sibling who has an equity interest in the home and who was residing in the home for a period of at least one year immediately before the date of the recipient's admission to the medical institution;

is lawfully residing in the home.

The department shall not recover funds from the lien on the recipient's home when:

- (1) A sibling who was residing in the home for a period of at least one year immediately before the date of the recipient's admission to the medical institution; or
- (2) A son or daughter who was residing in the recipient's home for a period of at least two years immediately before the date of the recipient's admission to the medical institution, and who establishes to the satisfaction of the State that he or she provided care to the recipient which permitted such recipient to reside at home rather than in an institution;

lawfully resides in the home and has lawfully resided in the home on a continuous basis since the date of the recipient's admission to the medical institution.

The department also shall not recover funds from the lien if the recipient has a surviving spouse; or surviving minor, blind, or disabled child.

Any lien imposed with respect to this subsection shall be dissolved upon the individual's discharge from the medical institution and return home.

[(b)] (c) The agreement in subsection (a) shall be recorded in the bureau of conveyances, or filed in the office of the assistant registrar of the land court. When the agreement for the lien is recorded in the bureau of conveyances, the registrar shall forthwith cause the same to be indexed in the general indexes of the bureau of conveyances. From and after the recording in the bureau of conveyances the lien shall attach to all interests in real property then owned by the person and not registered in the land court, and from and after the filing thereof in the office of the assistant registrar of the land court the lien shall attach to any such interest in land then registered therein. The lien shall be for all amounts of assistance, unless otherwise provided by rules adopted pursuant to chapter 91, then or thereafter paid in accordance with the programs from which the person receives assistance. The department shall be obligated to annually update the actual amount of the lien recorded in the bureau of conveyances.

[(c)] (d) The department shall issue certificates of release or partial release upon satisfaction or partial satisfaction of the lien. Certificates of release or partial release of any real property lien issued by the director of the department or the director's authorized representative shall be recorded in the bureau of conveyances. The director shall consider issuing conditional certificates of release

in cases of extreme hardship as set out in rules adopted under chapter 91. The registrar shall forthwith cause the same to be indexed in the general indexes in a like manner as the original lien. No fee shall be charged for any of the recording. The lien herein provided for shall take priority over any other lien subsequently acquired or recorded except tax liens and except that, in the estate of a beneficiary, the actual funeral expenses, the expenses of the last sickness, the cost of administration of the estate, and any allowance made to the surviving spouse and children for their support during administration of the estate, shall have priority and preference over the lien herein imposed, and over any claim against an estate filed under section 346-37.

The lien shall be enforceable by the department by suit in the appropriate court or shall be enforceable as a claim against the estate of the recipient under section 346-37, having priority over all other debts except taxes, the actual funeral expenses, the expenses of last sickness, the cost of administration of the estate, and any allowance made to the surviving spouse and children for their support during administration of the estate.

The lien shall be enforceable as a claim under section 346-37 against the estate of a recipient under any circumstances if the estate is admitted to probate at the instance of any interested party other than the department.

Whenever the department is satisfied that the collection of the amount of assistance paid a recipient will not be jeopardized or that the release or waiver of the priority of the lien against the recipient's property, in whole or in part, is necessary to provide for the maintenance or support of the recipient, the recipient's spouse, or any minor or incapacitated child, it may release or waive the priority of the lien with respect to all or any part of the real property.

The recipient, the recipient's heirs, personal representatives, or assigns may discharge the lien at any time by paying the amount thereof to the department which shall execute a satisfaction thereof. The department may at its discretion compromise the collection of any such lien, but such compromise shall be made only when the recipient, the recipient's heirs, personal representatives or assigns prove that the collection of the full amount of the lien or claim would cause undue hardship or the lien or claim is otherwise uncollectible.

The proceeds from the enforcement, payment, or compromise of the lien shall be paid into the treasury of the State. If the amount of assistance reflected by the proceeds was paid in part by federal funds, the proper portion of these funds shall be paid by the director of finance to the treasury of the United States. The director of finance shall thereupon report such payment to the department. If the federal funds are not paid directly into the treasury of the United States, these federal funds shall be credited by the director of finance to the department for expenditure for assistance without need for further appropriation.

If at any time the federal government, or any agency or instrumentality thereof, requires, as a condition to any grant of assistance, the performance of conditions inconsistent with this section, or desisting from actions provided by this section, the governor may suspend, upon a finding to that effect and to the extent of such requirement, any provisions of this section to the end that such federal assistance may be received.

The department shall submit an annual report to the legislature, which shall include a list of liens held by the department on real property. This report shall include, but not be limited to a description of the value of the liens, the legal status of the liens and when the liens were initiated.

The department shall adopt rules pursuant to chapter 91 necessary for the purposes of this section."

SECTION 3. Section 346-34, Hawaii Revised Statutes, is amended to read as follows:

“§346-34 **Frauds, penalties.** (a) Any recipient who buys or disposes of real property or any person who knowingly aids or abets a recipient in the purchase or sale of real property without the consent of the department of human services shall be guilty of fraud.

(b) If, at any time while the recipient of public assistance is receiving such assistance, the recipient’s living requirements are reduced and the recipient willfully fails to report the reduction within thirty days from the date of the reduction to the department, or the recipient acquires from any source real property, funds, income, or other resources and wilfully fails to report the amount of same together with the source of the resources to the department within thirty days of receipt of same, or prior to spending or otherwise disposing of all or any portion of the same, the recipient shall be guilty of fraud and be subject to the penalties provided by this section.

(c) No person shall knowingly obtain or attempt to obtain, or aid or abet another person in obtaining or attempting to obtain, any food commodity under a food distribution program or any food stamp or coupon under a food stamp plan, to which the person or the other person is not entitled to receive or use under any law, or under any rule adopted pursuant to section 346-14(10) or chapter 91.

(d) No person shall knowingly give, sell, trade, or otherwise dispose of to another person not entitled to receive or use the same pursuant to any law, or pursuant to any rule adopted pursuant to section 346-14(10) or chapter 91:

- (1) Any food commodity received under a food distribution program;
- (2) Any food stamp or coupon received under a food stamp plan; or
- (3) Any food commodity received wholly or partially in exchange for a food stamp or coupon received under a food stamp plan.

(e) No person shall knowingly obtain or attempt to obtain emergency assistance under section 346-65 to which the person is not entitled. No person shall knowingly aid or abet another person in obtaining or attempting to obtain emergency assistance to which that other person is not entitled. No person shall expend emergency assistance granted to the person for other than the purpose approved by the department to eliminate or alleviate the emergency situation.

(f) No person shall knowingly transfer assets from that person’s name to another person or entity’s name for the purpose of qualifying for public assistance under this chapter or chapter 346D. It shall be prima facie evidence of such a transfer if there was a transfer of assets for less than fair market value of the assets within the federally required time period, or “lookback” period, from the date of the application for public assistance.

(g) Any person convicted under this section shall be guilty of a misdemeanor. Any portion of assistance obtained by any fraudulent device, and any assistance paid after receipt of resources which have not been reported to the department as herein required shall be recoverable by the State for the use of the department as a debt due the State, or, restitution of the amount may be ordered by the court following conviction.

(h) The term “recipient” includes any person to whom a grant of public assistance is made by direct payment, and any person for whose use and benefit a grant of public assistance is made by payment to a relative or other person. Prosecution under this section shall not be considered an exclusive remedy but shall be in addition to any other criminal, civil, or administrative remedy or sanction authorized by law.”

SECTION 4. Section 346-37, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) If a recipient under this chapter dies leaving an estate and does not have a surviving spouse, child, father, mother, grandfather, grandmother, grandchild, stepfather, stepmother, or any designated heir, the department may file a claim against the estate for the amount of social services [payments,] overpayments, financial assistance[,], overpayments, or burial payments granted, and the claim shall be allowed. The department [may] shall file a claim against the estate of a deceased recipient of medical assistance for the amount of medical assistance granted, only if the recipient was age [sixty-five] fifty-five or over when such medical assistance was received and there is no [dependent] surviving spouse, or [dependent] surviving child who is under twenty-one years of age, or [is] blind, or disabled. The department shall file a claim against the estate of a recipient of medical assistance who was an inpatient in a nursing facility, intermediate care facility for the mentally retarded, or other medical institution only if there is no surviving spouse or surviving child who is under twenty-one years of age, or blind, or disabled.”

SECTION 5. Section 346-37, Hawaii Revised Statutes, is amended by amending subsections (d) and (e) to read as follows:

“(d) [Where legal proceedings are instituted] When a claim is made by the claimant against a third person, the claimant shall give timely notice of such action to the department. An attorney representing a claimant shall make reasonable inquiry as to whether the claimant has received or is receiving medical assistance related to the incident involved in the action from the department. Upon obtaining a judgment or reaching a settlement through negotiation or legal proceedings, but before the release of any award or settlement proceeds to any person:

- (1) The claimant’s attorney, if the attorney has received actual notice from the department of a lien or if the attorney has reason to know that a lien exists, or
- (2) The claimant or the claimant’s heirs, representatives, or beneficiaries, if not represented by an attorney who has received actual notice of the lien,

shall notify the department immediately.

(e) Where third party liability is found to exist, or where the issue of such third party liability is settled or compromised without a finding of liability, regardless of who institutes legal proceedings or seeks other means of recovering, the department shall have a lien in the amount of medical assistance and burial payment made against the proceeds from special damages awarded in a suit or settlement. The lien shall attach as provided in subsection (f). Where a notice of lien is properly served upon the attorney representing the claimant as provided in subsection (f), that attorney shall satisfy the lien prior to disbursing any of the proceeds of the suit or settlement to the attorney’s client. Where a notice of lien is properly served upon the third person described in subsection (c), the third person’s agent or attorney, or upon the third person’s insurance company, as provided in subsection (f), it shall be the responsibility of the third person to satisfy the lien prior to disbursing any of the proceeds to the claimant’s attorney. This section is not intended to restrict or diminish the right of the department to settle or compromise its subrogation or lien rights provided herein.”

## **ACT 187**

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 7. This Act shall take effect upon its approval and apply only to settlements and judgments which occur after the effective date.

(Approved June 21, 1994.)

### **Note**

1. Prior to amendment, comma appeared here.