

ACT 150

S.B. NO. 1113

A Bill for an Act Relating to Public Assistance.

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

PART I

SECTION 1. The legislature finds there is a need to clarify the law with respect to the requirement that the department of human services annually update the actual amount of the medical assistance liens recorded in the bureau of conveyances. Consequently, one of the purposes of this Part is to clarify that the update is an internal departmental accounting measure intended to track expenditures by the department and not burden the bureau of conveyances by essentially recording the same lien against the same property year after year. Filing the same lien annually does not attach more interest in the real property than claimed in the first recorded or filed lien, and the issue of an increase in the amount of the lien is already addressed in section 346-29.5(c), Hawaii Revised Statutes (HRS).

This Part further clarifies that in addition to an agreement that future grants of assistance constitute a real property lien, there is a statutory provision for the placement of real property liens.

In the enforcement of a lien as a claim under section 346-37, HRS, against the estate of a recipient, there are instances the department may need to initiate probate proceedings. Therefore, the proposed amendment clarifies that the department may initiate probate proceedings.

Finally, other technical and grammatical corrections have been made.

SECTION 2. Section 346-29.5, Hawaii Revised Statutes, is amended by amending subsections (b), (c), and (d) to read as follows:

“(b) The department may also 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. There is a rebuttable presumption that the recipient cannot reasonably be expected to be discharged from the facility and return home if the recipient or a representative of the recipient declares that there is no intent to return home or if the recipient has been institutionalized for six months or longer without a discharge plan.

(1) The department may not place a lien on the recipient’s home if the recipient’s:

- (A) Spouse;
- (B) Minor, blind, or disabled child; or
- (C) 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.

(2) The department shall not recover funds from the lien on the recipient’s home when:

- (A) 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
- (B) 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.

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

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

(c) The agreement in subsection (a) or the lien in subsection (b) 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~~] or 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] liens 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] liens shall attach to any such interest in land then registered therein. The [lien] liens 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, as an accounting measure, the actual amount of the [lien] liens recorded in the bureau of conveyances.

(d) The department shall issue certificates of release or partial release upon satisfaction or partial satisfaction of the [lien] liens. 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] liens. No fee shall be charged for any of the recording. The [lien] liens 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] liens herein imposed, and over any claim against an estate filed under section 346-37.

The [lien] liens 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] liens 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] liens 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] liens 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] liens 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] liens, 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] liens or claim would cause undue hardship or the [lien] liens or claim is are otherwise uncollectible.

The proceeds from the enforcement, payment, or compromise of the [lien] liens 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.”

PART II

SECTION 3. The purpose of this Part is to authorize the department of human services to create a welfare safety net program called “Keeping Hope Alive” to assist families that will stop receiving public assistance.

SECTION 4. Chapter 346, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§346- Welfare safety net program; department of human services. The department of human services may create a welfare safety net program entitled “Keeping Hope Alive” to assist working families that will be disqualified from receiving further public assistance as a consequence of reaching the five-year time limit set by the federal Personal Responsibility and Work Opportunity Act of 1996.”

PART III

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 6. This Act shall take effect upon its approval.

(Approved May 24, 2001.)

Note

1. Edited pursuant to HRS §23G-16.5.