

## **Part 1**

### **Office of Recovery Services**

#### **62A-11-101 Legislative intent -- Liberal construction.**

It is the intent of the Legislature that the integrity of the public assistance programs of this state be maintained and that the taxpayers support only those persons in need and only as a resource of last resort. To this end, this part should be liberally construed.

Enacted by Chapter 1, 1988 General Session

#### **62A-11-102 Office of Recovery Services -- Creation.**

- (1) There is created within the department the Office of Recovery Services which has the powers and duties provided by law.
- (2) The office is under the administrative and general supervision of the executive director.

Enacted by Chapter 1, 1988 General Session

#### **62A-11-103 Definitions.**

As used in this part:

- (1) "Account" means a demand deposit account, checking or negotiable withdrawal order account, savings account, time deposit account, or money-market mutual fund account.
- (2) "Cash medical support" means an obligation to equally share all reasonable and necessary medical and dental expenses of children.
- (3) "Child support services" or "IV-D child support services" means services provided pursuant to Part D of Title IV of the Social Security Act, 42 U.S.C. Sec. 651, et seq.
- (4) "Director" means the director of the Office of Recovery Services.
- (5) "Disposable earnings" means that part of the earnings of an individual remaining after the deduction of all amounts required by law to be withheld.
- (6) "Financial institution" means:
  - (a) a depository institution as defined in Section 7-1-103 or the Federal Deposit Insurance Act, 12 U.S.C. Sec. 1813(c);
  - (b) an institution-affiliated party as defined in the Federal Deposit Insurance Act, 12 U.S.C. Sec. 1813(u);
  - (c) any federal credit union or state credit union as defined in the Federal Credit Union Act, 12 U.S.C. Sec. 1752, including an institution-affiliated party of such a credit union as defined in 12 U.S.C. Sec. 1786(r);
  - (d) a broker-dealer as defined in Section 61-1-13; or
  - (e) any benefit association, insurance company, safe deposit company, money-market mutual fund, or similar entity authorized to do business in the state.
- (7) "Financial record" is defined in the Right to Financial Privacy Act of 1978, 12 U.S.C. Sec. 3401.
- (8) "Income" means earnings, compensation, or other payment due to an individual, regardless of source, whether denominated as wages, salary, commission, bonus, pay, or contract payment, or denominated as advances on future wages, salary, commission, bonus, pay, allowances, contract payment, or otherwise, including severance pay, sick pay, and incentive pay. "Income" includes:
  - (a) all gain derived from capital assets, labor, or both, including profit gained through sale or conversion of capital assets;

- (b) interest and dividends;
  - (c) periodic payments made under pension or retirement programs or insurance policies of any type;
  - (d) unemployment compensation benefits;
  - (e) workers' compensation benefits; and
  - (f) disability benefits.
- (9) "IV-D" means Part D of Title IV of the Social Security Act, 42 U.S.C. Sec. 651 et seq.
- (10) "New hire registry" means the centralized new hire registry created in Section 35A-7-103.
- (11) "Obligee" means an individual, this state, another state, or other comparable jurisdiction to whom a debt is owed or who is entitled to reimbursement of child support or public assistance.
- (12) "Obligor" means a person, firm, corporation, or the estate of a decedent owing money to this state, to an individual, to another state, or other comparable jurisdiction in whose behalf this state is acting.
- (13) "Office" means the Office of Recovery Services.
- (14) "Provider" means a person or entity that receives compensation from any public assistance program for goods or services provided to a public assistance recipient.
- (15) "Public assistance" or "assistance" means:
- (a) services or benefits provided under Title 35A, Chapter 3, Employment Support Act;
  - (b) medical assistance provided under Title 26, Chapter 18, Medical Assistance Act;
  - (c) foster care maintenance payments under Part E of Title IV of the Social Security Act, 42 U.S.C. Sec. 670, et seq.;
  - (d) SNAP benefits as defined in Section 35A-1-102; or
  - (e) any other public funds expended for the benefit of a person in need of financial, medical, food, housing, or related assistance.
- (16) "State case registry" means the central, automated record system maintained by the office and the central, automated district court record system maintained by the Administrative Office of the Courts, that contains records which use standardized data elements, such as names, Social Security numbers and other uniform identification numbers, dates of birth, and case identification numbers, with respect to:
- (a) each case in which services are being provided by the office under the state IV-D child support services plan; and
  - (b) each support order established or modified in the state on or after October 1, 1998.

Amended by Chapter 41, 2012 General Session

**62A-11-104 Duties of office.**

- (1) The office has the following duties:
- (a) except as provided in Subsection (2), to provide child support services if:
    - (i) the office has received an application for child support services;
    - (ii) the state has provided public assistance; or
    - (iii) a child lives out of the home in the protective custody, temporary custody, or custody or care of the state;
  - (b) to carry out the obligations of the department contained in this chapter and in Title 78B, Chapter 12, Utah Child Support Act; Chapter 14, Utah Uniform Interstate Family Support Act; and Chapter 15, Utah Uniform Parentage Act, for the purpose of collecting child support;
  - (c) to collect money due the department which could act to offset expenditures by the state;
  - (d) to cooperate with the federal government in programs designed to recover health and social service funds;

- (e) to collect civil or criminal assessments, fines, fees, amounts awarded as restitution, and reimbursable expenses owed to the state or any of its political subdivisions, if the office has contracted to provide collection services;
  - (f) to implement income withholding for collection of child support in accordance with Part 4, Income Withholding in IV-D Cases, of this chapter;
  - (g) to enter into agreements with financial institutions doing business in the state to develop and operate, in coordination with such financial institutions, a data match system in the manner provided for in Section 62A-11-304.5;
  - (h) to establish and maintain the state case registry in the manner required by the Social Security Act, 42 U.S.C. Sec. 654a, which shall include a record in each case of:
    - (i) the amount of monthly or other periodic support owed under the order, and other amounts, including arrearages, interest, late payment penalties, or fees, due or overdue under the order;
    - (ii) any amount described in Subsection (1)(h)(i) that has been collected;
    - (iii) the distribution of collected amounts;
    - (iv) the birth date of any child for whom the order requires the provision of support; and
    - (v) the amount of any lien imposed with respect to the order pursuant to this part;
  - (i) to contract with the Department of Workforce Services to establish and maintain the new hire registry created under Section 35A-7-103;
  - (j) to determine whether an individual who has applied for or is receiving cash assistance or Medicaid is cooperating in good faith with the office as required by Section 62A-11-307.2;
  - (k) to finance any costs incurred from collections, fees, General Fund appropriation, contracts, and federal financial participation; and
  - (l) to provide notice to a noncustodial parent in accordance with Section 62A-11-304.4 of the opportunity to contest the accuracy of allegations by a custodial parent of nonpayment of past-due child support, prior to taking action against a noncustodial parent to collect the alleged past-due support.
- (2) The office may not provide child support services to the Division of Child and Family Services for a calendar month when the child to whom the child support services relate is:
- (a) in the custody of the Division of Child and Family Services; and
  - (b) lives in the home of a custodial parent of the child for more than seven consecutive days, regardless of whether:
    - (i) the greater than seven consecutive day period starts during one month and ends in the next month; and
    - (ii) the child is living in the home on a trial basis.
- (3) The Division of Child and Family Services is not entitled to child support, for a child to whom the child support relates, for a calendar month when child support services may not be provided under Subsection (2).

Amended by Chapter 45, 2015 General Session

**62A-11-104.1 Disclosure of information regarding employees.**

- (1) Upon request by the office, for purposes of an official investigation made in connection with its duties under Section 62A-11-104, the following disclosures shall be made to the office:
  - (a) a public or private employer shall disclose an employee's name, address, date of birth, income, social security number, and health insurance information pertaining to the employee and the employee's dependents;

- (b) an insurance organization subject to Title 31A, Insurance Code, or the insurance administrators of a self-insured employer shall disclose health insurance information pertaining to an insured or an insured's dependents, if known; and
  - (c) a financial institution subject to Title 7, Financial Institutions Act, shall disclose financial record information of a customer named in the request.
- (2) The office shall specify by rule the type of health insurance and financial record information required to be disclosed under this section.
  - (3) All information received under this section is subject to Title 63G, Chapter 2, Government Records Access and Management Act.
  - (4) An employer, financial institution, or insurance organization, or its agent or employee, is not civilly or criminally liable for providing information to the office in accordance with this section, whether the information is provided pursuant to oral or written request.

Amended by Chapter 382, 2008 General Session

**62A-11-105 Adjudicative proceedings.**

The office and the department shall comply with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act, in their adjudicative proceedings.

Amended by Chapter 382, 2008 General Session

**62A-11-106 Office may file as real party in interest -- Written consent to payment agreements -- Money judgment in favor of obligee considered to be in favor of office to extent of right to recover.**

- (1) The office may file judicial proceedings as a real party in interest to establish, modify, and enforce a support order in the name of the state, any department of the state, the office, or an obligee.
- (2) No agreement between an obligee and an obligor as to past, present, or future obligations, reduces or terminates the right of the office to recover from that obligor on behalf of the department for public assistance provided, unless the department has consented to the agreement in writing.
- (3) Any court order that includes a money judgment for support to be paid to an obligee by any person is considered to be in favor of the office to the extent of the amount of the office's right to recover public assistance from the judgment debtor.

Amended by Chapter 140, 1994 General Session

**62A-11-107 Director -- Powers of office -- Representation by county attorney or attorney general -- Receipt of grants -- Rulemaking and enforcement.**

- (1) The director of the office shall be appointed by the executive director.
- (2) The office has power to administer oaths, certify to official acts, issue subpoenas, and to compel witnesses and the production of books, accounts, documents, and evidence.
- (3) The office has the power to seek administrative and judicial orders to require an obligor who owes past-due support and is obligated to support a child receiving public assistance to participate in appropriate work activities if the obligor is unemployed and is not otherwise incapacitated.

- (4) The office has the power to enter into reciprocal child support enforcement agreements with foreign countries consistent with federal law and cooperative enforcement agreements with Indian Tribes.
- (5) The office has the power to pursue through court action the withholding, suspension, and revocation of driver's licenses, professional and occupational licenses, and recreational licenses of individuals owing overdue support or failing, after receiving appropriate notice, to comply with subpoenas or orders relating to paternity or child support proceedings pursuant to Section 78B-6-315.
- (6) It is the duty of the attorney general or the county attorney of any county in which a cause of action can be filed, to represent the office. Neither the attorney general nor the county attorney represents or has an attorney-client relationship with the obligee or the obligor in carrying out the duties arising under this chapter.
- (7) The office, with department approval, is authorized to receive any grants or stipends from the federal government or other public or private source designed to aid the efficient and effective operation of the recovery program.
- (8) The office may adopt, amend, and enforce rules as may be necessary to carry out the provisions of this chapter.

Amended by Chapter 3, 2008 General Session

**62A-11-108 Office designated as criminal justice agency -- Access by IV-D agencies to motor vehicle and law enforcement data through the office.**

- (1) The office is designated as a criminal justice agency for the purpose of requesting and obtaining access to criminal justice information, subject to appropriate federal, state, and local agency restrictions governing the dissemination of that information.
- (2) All federal and state agencies conducting activities under Title IV-D of the Social Security Act shall have access through the office to any system used by this state to locate an individual for purposes relating to motor vehicles or law enforcement.

Amended by Chapter 232, 1997 General Session

**62A-11-111 Lien provisions.**

Provisions for collection of any lien placed as a condition of eligibility for any federally or state-funded public assistance program are as follows:

- (1) Any assistance granted after July 1, 1953 to the spouse of an old-age recipient who was not eligible for old-age assistance but who participated in the assistance granted to the family is recoverable in the same manner as old-age assistance granted to the old-age recipient.
- (2) At the time of the settlement of a lien given as a condition of eligibility for the old-age assistance program, there shall be allowed a cash exemption of \$1,000, less any additional money invested by the department in the home of an old-age recipient or recipients of other assistance programs either as payment of taxes, home and lot improvements, or to protect the interest of the state in the property for necessary improvements to make the home habitable, to be deducted from the market or appraised value of the real property. When it is necessary to sell property or to settle an estate the department may grant reasonable costs of sale and settlement of an estate as follows:
  - (a) When the total cost of probate, including the sale of property when it is sold, and the cost of burial and last illness do not exceed \$1,000, the exemption of \$1,000 shall be the total

- exemption, which shall be the only amount deductible from the market or appraised value of the property.
- (b) Subject to Subsection (2)(c), when \$1,000 is not sufficient to pay for the costs of probate, the following expenditures are authorized:
    - (i) cost of funeral expenses not exceeding \$1,500;
    - (ii) costs of terminal illness, provided the medical expenses have not been paid from any state or federally-funded assistance program;
    - (iii) realty fees, if any;
    - (iv) costs of revenue stamps, if any;
    - (v) costs of abstract or title insurance, whichever is the least costly;
    - (vi) attorney fees not exceeding the recommended fee established by the Utah State Bar;
    - (vii) administrator's fee not to exceed \$150;
    - (viii) court costs; and
    - (ix) delinquent taxes, if any.
  - (c) An attorney, who sells the property in an estate that the attorney is probating, is entitled to the lesser of:
    - (i) a real estate fee; or
    - (ii) an attorney fee.
- (3) The amounts listed in Subsection (2)(b) are to be considered only when the total costs of probate exceed \$1,000, and those amounts are to be deducted from the market or appraised value of the property in lieu of the exemption of \$1,000 and are not in addition to the \$1,000 exemption.
  - (4) When both husband and wife are recipients and one or both of them own an interest in real property, the lien attaches to the interests of both for the reimbursement of assistance received by either or both spouses. Only one exemption, as provided in this section, is allowed.
  - (5) When a lien was executed by one party on property that is owned in joint tenancy with full rights of survivorship, the execution of the lien severs the joint tenancy and a tenancy in common results, insofar as a department lien is affected, unless the recipients are husband and wife. When recipients are husband and wife who own property in joint tenancy with full rights of survivorship, the execution of a lien does not sever the joint tenancy, insofar as a department lien might be affected, and settlement of the lien shall be in accordance with the provisions of Subsection (4).
  - (6) The amount of the lien given for old-age assistance shall be the total amount of assistance granted up to the market or appraised value of the real or personal property, less the amount of the legal maximum property limitations from the execution of the lien until settlement thereof. There shall be no exemption of any kind or nature allowed against real or personal property liens granted for old-age assistance except assistance in the form of medical care, and nursing home care, other types of congregate care, and similar plans for persons with a physical or mental disability.
  - (7) When it is necessary to sell property or to settle an estate, the department is authorized to approve payment of the reasonable costs of sale and settlement of an estate on which a lien has been given for old-age assistance.
  - (8) The amount of reimbursement of all liens held by the department shall be determined on the basis of the formulas described in this section, when they become due and payable.
  - (9) All lien agreements shall be recorded with the county recorder of the county in which the real property is located, and that recording has the same effect as a judgment lien on any real property in which the recipient has any title or interest. All such real property including but not limited to, joint tenancy interests, shall, from the time a lien agreement is recorded, be

and become charged with a lien for all assistance received by the recipient or his spouse as provided in this section. That lien has priority over all unrecorded encumbrances. No fees or costs shall be paid for such recording.

- (10) Liens shall become due and payable, and the department shall seek collection of each lien now held:
- (a) when the property to which the lien attaches is transferred to a third party prior to the recipient's death, provided, that if other property is purchased by the recipient to be used by the recipient as a home, the department may transfer the amount of the lien from the property sold to the property purchased;
  - (b) upon the death of the recipient and the recipient's spouse, if any. When the heirs or devisees of the property are also recipients of public assistance, or when other hardship circumstances exist, the department may postpone settlement of the lien if that would be in the best interest of the recipient and the state;
  - (c) when a recipient voluntarily offers to settle the lien; or
  - (d) when property subject to a lien is no longer used by a recipient and appears to be abandoned.
- (11) When a lien becomes due and payable, a certificate in a form approved by the department certifying to the amount of assistance provided to the recipient and the amount of the lien, shall be mailed to the recipient, the recipient's heirs, or administrators of the estate, and the same shall be allowed, approved, filed, and paid as a preferred claim, as provided in Subsection 75-3-805(1)(e) in the administration of the decedent's estate. The amount so certified constitutes the entire claim, as of the date of the certificate, against the real or personal property of the recipient or the recipient's spouse. Any person dealing with the recipient, heirs, or administrators, may rely upon that certificate as evidence of the amount of the existing lien against that real or personal property. That amount, however, shall increase by accruing interest until time of final settlement, at the rate of 6% per annum, commencing six months after the lien becomes due and payable, or at the termination of probate proceedings, whichever occurs later.
- (12) If heirs are unable to make a lump-sum settlement of the lien at the time it becomes due and payable, the department may permit settlement based upon periodic repayments in a manner prescribed by the department, with interest as provided in Subsection (11).
- (13) All sums so recovered, except those credited to the federal government, shall be retained by the department.
- (14) The department is empowered to accept voluntary conveyance of real or personal property in satisfaction of its interest therein. All property acquired by the department under the provisions of this section may be disposed of by public or private sale under rules prescribed by the department. The department is authorized to execute and deliver any document necessary to convey title to all property that comes into its possession, as though the department constituted a corporate entity.
- (15) Any real property acquired by the department, either by foreclosure or voluntary conveyance, is tax exempt, so long as it is so held.

Amended by Chapter 366, 2011 General Session