

**WORKFORCE SERVICES OVERPAYMENT  
AMENDMENTS**

2003 GENERAL SESSION

STATE OF UTAH

**Sponsor: Jeff Alexander**

**This act modifies provisions related to public assistance overpayments by transferring the recovery of overpayments responsibility from the Office of Recovery Services to the Department of Workforce Services. The act provides for an appeal from an initial department determination of overpayment. The act makes certain technical changes and provides a repealer. The act has a July 1, 2003 effective date.**

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

**26-18-8**, as last amended by Chapter 174, Laws of Utah 1997

**35A-3-111**, as last amended by Chapter 58, Laws of Utah 2002

**62A-11-104**, as last amended by Chapter 147, Laws of Utah 2002

**76-8-1201**, as last amended by Chapter 174, Laws of Utah 1997

**76-8-1205**, as last amended by Chapters 174 and 375, Laws of Utah 1997

**78-27-50**, as last amended by Chapter 297, Laws of Utah 2000

RENUMBERS AND AMENDS:

**35A-3-601**, (Renumbered from 62A-11-201, as enacted by Chapter 1, Laws of Utah 1988)

**35A-3-602**, (Renumbered from 62A-11-202, as last amended by Chapter 174, Laws of Utah 1997)

**35A-3-603**, (Renumbered from 35A-1-502, as last amended by Chapter 132, Laws of Utah 1999)

**35A-3-604**, (Renumbered from 62A-11-203, as last amended by Chapter 174, Laws of Utah 1997)

**35A-3-605**, (Renumbered from 62A-11-204.1, as last amended by Chapter 174, Laws of Utah 1997)

**35A-3-606**, (Renumbered from 62A-11-207, as last amended by Chapter 198, Laws of Utah 1996)

**35A-3-607**, (Renumbered from 62A-11-208, as enacted by Chapter 1, Laws of Utah 1988)

**35A-3-608**, (Renumbered from 62A-11-209, as last amended by Chapter 174, Laws of Utah 1997)

**35A-3-609**, (Renumbered from 62A-11-210, as enacted by Chapter 1, Laws of Utah 1988)

**35A-3-610**, (Renumbered from 62A-11-211, as enacted by Chapter 1, Laws of Utah 1988)

**REPEALS:**

**35A-1-107**, as last amended by Chapter 161, Laws of Utah 2000

**62A-11-110**, as last amended by Chapter 174, Laws of Utah 1997

*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section **26-18-8** is amended to read:

**26-18-8. Enforcement of public assistance statutes.**

(1) The department shall enforce or contract for the enforcement of Sections ~~[35A-1-502,]~~ 35A-1-503, 35A-3-108, 35A-3-110, 35A-3-111, ~~[and]~~ 35A-3-112, and 35A-3-603 insofar as these sections pertain to benefits conferred or administered by the division under this chapter.

(2) The department may contract for services covered in ~~[Title 62A, Chapter 11, Part 1, Office of Recovery Services,]~~ Section 35A-3-111 insofar as that ~~[chapter]~~ section pertains to benefits conferred or administered by the division under this chapter.

Section 2. Section **35A-3-111** is amended to read:

**35A-3-111. Collection of overpayments.**

(1) The ~~[division, through the Office of Recovery Services as provided in Section 35A-1-107,]~~ department is responsible for ~~[collecting all funds due or that become due to the state under Section 62A-11-110]~~ the recovery of overpayments required in Section 35A-3-603.

(2) Excess property liens required in the various programs not transferred to the federal government shall remain a condition of eligibility in public assistance programs.

(3) A client can appeal an initial department determination that there has been an overpayment under rules made by the department in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

Section 3. Section **35A-3-601**, which is renumbered from Section 62A-11-201 is renumbered and amended to read:

**Part 6. Administrative Determination of Overpayment Act**

~~[62A-11-201].~~      **35A-3-601. Title.**

This part shall be known as the "Administrative Determination of Overpayments Act."

Section 4. Section **35A-3-602**, which is renumbered from Section 62A-11-202 is renumbered and amended to read:

~~[62A-11-202].~~      **35A-3-602. Definitions.**

As used in this part:

(1) "Adjudicative proceeding" means an action or proceeding of the ~~[office]~~ department described in Section 63-46b-1.

(2) "Administrative order" means an order issued by the ~~[office or the]~~ department involving an overpayment of public assistance.

(3) "Court order" means a judgment or order of any court of this state, another state, or the federal government that involves an overpayment of public assistance.

~~[(4) "Director" means the director of the Office of Recovery Services.]~~

(4) "Department" means the Department of Workforce Services.

(5) "Notice of agency action" means the notice required to commence an adjudicative proceeding as described in Section 63-46b-3.

(6) "Obligor" means an individual who is liable to the state under Section ~~[35A-1-502]~~ 35A-3-603 and applicable federal statutes and regulations, or an individual against whom an administrative or judicial order determining overpayment has been obtained.

~~[(7) "Office" means the Office of Recovery Services.]~~

~~[(8)] (7) (a) "Overpayment" means [the same as that term is defined in Section 35A-1-502.] money, public assistance, or any other thing of value provided under a state or federally funded benefit program to the extent that the person receiving the thing of value is not entitled to receive it or is not entitled to receive it at the level provided.~~

~~(b) It includes money paid to a provider under this title in connection with public assistance or any other publicly funded assistance program to the extent that the provider receives payment:~~

- ~~(i) for goods or services not provided; or~~
- ~~(ii) in excess of the amount to which the provider is entitled.~~

Section 5. Section **35A-3-603**, which is renumbered from Section 35A-1-502 is renumbered and amended to read:

~~[35A-1-502].~~            **35A-3-603. Civil liability for overpayment.**

(1) As used in this section ~~[(a) "Intentionally"]~~, "intentionally, knowingly, and recklessly" mean the same as those terms are defined in Section 76-2-103.

~~[(b) (i) "Overpayment" means money, public assistance, or any other thing of value provided under a state or federally funded benefit program to the extent that the person receiving the thing of value is not entitled to receive it or is not entitled to receive it at the level provided.]~~

~~[(ii) "Overpayment" includes money paid to a provider under this title in connection with public assistance; Title 62A, Chapter 11, Part 3, Public Support of Children Act; Title 78, Chapter 45, Uniform Civil Liability for Support Act; Title 78, Chapter 45a, Uniform Act on Paternity; or any other publicly funded assistance benefit program to the extent that the provider receives payment:]~~

~~[(A) for goods or services not provided; or]~~

~~[(B) in excess of the amount to which the provider is entitled.]~~

~~[(c) "Provider" means the same as that term is defined in Section 62A-11-103.]~~

(2) Each provider, client, or other person who receives an overpayment shall, regardless of fault, return the overpayment or repay its value to the department immediately:

- (a) upon receiving written notice of the overpayment from the department; or

(b) upon discovering the overpayment, if that occurs prior to receiving notice.

(3) (a) Except as provided under Subsection (3)(b), interest on the unreturned balance of the overpayment shall accrue at the rate of [~~10% a year until an administrative or judicial judgment is entered~~] 1% a month.

(b) If the overpayment was not the fault of the person receiving it, that person is not liable for interest on the unreturned balance.

(c) In accordance with federal law and rules [adopted] made by the department, an overpayment may be recovered through deductions from cash assistance, general assistance, food stamps, [~~or~~] other cash-related assistance provided to a client under [~~Chapter 3, Employment Support Act~~] this chapter, or any other means provided by federal law.

(4) Each person who knowingly assists a client, provider, or other person in obtaining an overpayment is jointly and severally liable for the overpayment.

(5) (a) In proving civil liability for overpayment under this section or [~~Subsection 62A-11-204.1(2)(a)(i)] Section 35A-3-605 when fault is alleged, the department shall prove by clear and convincing evidence that the overpayment was obtained intentionally, knowingly, recklessly, by false statement, misrepresentation, impersonation, or other fraudulent means, such as by committing any of the acts or omissions described in Sections 76-8-1203 through 76-8-1205.~~

(b) If fault is established under Subsection (5)(a), Section [~~62A-11-204.1~~] 35A-3-605, or Title 76, Chapter 8, Part 12, Public Assistance Fraud, any person who obtained or helped another obtain an overpayment shall be subject to:

(i) a civil penalty of 10% of the amount of the overpayment; and

(ii) disqualification from receiving cash assistance from the Family Employment Program and the general assistance program, if the overpayment was obtained from either of those programs, for 12 months for the first offense, 24 months for the second offense, and permanently for the third offense, or as otherwise provided by federal law; or

(iii) disqualification from the food stamp program, if that is the program from which the overpayment was received, for 12 months for the first offense, 24 months for the second offense,

and permanently for the third offense, or as otherwise provided by federal law.

(6) If an action is filed, the department may recover, in addition to the principal sum plus interest, reasonable attorneys' fees and costs unless the repayment obligation arose from an administrative error by the department.

(7) If a court finds that funds or benefits were secured, in whole or part, by fraud by the person from whom repayment is sought, the court shall assess an additional sum as considered appropriate as punitive damages up to the amount of repayment being sought.

(8) Criminal actions for public assistance fraud are governed by Title 76, Chapter 8, Part 12, Public Assistance Fraud.

(9) Jurisdiction over benefits is continuous.

(10) This chapter does not preclude the Department of Health from carrying out its responsibilities under Title 26, Chapter 19, Medical Benefits Recovery Act, and Chapter 20, False Claims Act.

Section 6. Section **35A-3-604**, which is renumbered from Section 62A-11-203 is renumbered and amended to read:

~~[62A-11-203].~~      **35A-3-604. Obligor presumed to have notice of department's rights -- Authority to administer oaths, issue subpoenas, and compel witnesses and production of documents -- Recovery of attorneys' fees, costs, and interest -- Rulemaking authority -- Administrative procedures.**

(1) An obligor is presumed to have received notice of the rights of the ~~[office]~~ department under this part upon engaging in this state in any of the acts described in Subsections 35A-1-502(4) and (5) or Section 76-8-1203, 76-8-1204, or 76-8-1205.

(2) For the purposes of this part, the ~~[director or his authorized representative]~~ department may administer oaths and certify official acts, issue subpoenas, and compel witnesses and the production of business records, documents, and evidence.

(3) (a) Except when an overpayment results from administrative error, the ~~[office]~~ department may recover from the obligor:

(i) reasonable attorneys' fees;

(ii) costs incurred in pursuing administrative remedies under this part; and  
(iii) interest at the rate of 1% a month accruing from the date an administrative or judicial order is issued determining the amount due under this part.

(b) The ~~[office]~~ department may recover interest, attorneys' fees, and costs, if notice of the assessment has been included in a notice of agency action issued in conformity with Title 63, Chapter 46b, Administrative Procedures Act.

(4) ~~[The office]~~ In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the department may ~~[adopt]~~ make, amend, and enforce rules to carry out the provisions of this part.

(5) Service of all notices and orders under this part shall comply with Title 63, Chapter 46b, Administrative Procedures Act, the Utah Rules of Civil Procedure, or rules ~~[adopted]~~ made by the ~~[office]~~ department that meet standards required by due process ~~[and that do not conflict with the requirements of the Administrative Procedures Act].~~

Section 7. Section **35A-3-605**, which is renumbered from Section 62A-11-204.1 is renumbered and amended to read:

~~[62A-11-204.1].~~      **35A-3-605. Issuance or modification of administrative order -- Voluntary acknowledgment of overpayment -- Court orders supersede administrative orders -- Notification requirement.**

(1) As used in Subsection (2)(a)(i), "intentional program violation" means obtaining an "overpayment" as defined in Section ~~[35A-1-502]~~ 35A-3-602.

(2) (a) Through an adjudicative proceeding, the ~~[office]~~ department may issue or modify an administrative order that:

(i) determines whether an overpayment was made, the amount of the overpayment, and whether benefits were obtained by an intentional program violation;

(ii) reduces the overpayment to an administrative judgment; or

(iii) renews an administrative judgment.

(b) The ~~[office]~~ department shall commence an adjudicative proceeding to renew a judgment by serving notice of agency action on the obligor before the judgment is barred by the

applicable statute of limitations.

(3) The [office] department may accept voluntary acknowledgment of an overpayment obligation and enter into stipulated agreements to issue orders and judgments.

(4) (a) A provision of an administrative order is enforceable against an obligor, unless it is in direct conflict with or is superseded by a provision of a court order.

(b) To the extent of any conflict, the court order governs.

(5) After being properly served with a notice of agency action under this part, an obligor shall notify the [office] department of any subsequent change of address or employment.

Section 8. Section **35A-3-606**, which is renumbered from Section 62A-11-207 is renumbered and amended to read:

**~~[62A-11-207].~~        35A-3-606. Docketing abstract of final administrative order -- Real property and personal property liens -- Effect of order -- Execution.**

(1) (a) An abstract of a final administrative order may be docketed in the district court of any county in the state.

(b) The time of receipt of the abstract shall be noted by the clerk on the abstract and entered in the docket.

(2) From the time the abstract is docketed in the judgment docket of a district court, any administrative judgment included in the order abstracted constitutes a lien upon the real property of the obligor situated in that county for a period of eight years from the date the order is entered unless previously satisfied.

(3) The final administrative order fixing the liability of the obligor shall have the same effect as any other money judgment entered in a district court.

(4) Attachment, garnishment, or execution on a judgment included in or accruing under an administrative order filed and docketed [~~in accordance with~~] under this section shall be in the same manner and with the same effect as an attachment, garnishment, or execution on a judgment of a district court, except that a writ of garnishment on earnings shall continue to operate and require the garnishee to withhold the nonexempt portion of the earnings at each succeeding earnings disbursement interval until released in writing by the [office] department or



by court order.

(5) The lien and enforcement remedies provided by this section are in addition to any other lien or remedy provided by law.

Section 9. Section **35A-3-607**, which is renumbered from Section 62A-11-208 is renumbered and amended to read:

~~[62A-11-208].~~        **35A-3-607. Property subject to execution or lien -- Restriction on transfer or conveyance -- Release of excess amount above liability to obligor.**

(1) After receiving notice that an abstract has been docketed and a lien established under this part, a person in possession of any property which may be subject to execution or lien may not pay over, release, sell, transfer, encumber, or convey that property to any person other than the ~~[office]~~ department, unless the person in possession first receives a release or waiver from the ~~[office]~~ department, or a court order releasing the lien or stating that the liability does not exist or has been satisfied.

(2) If a person has in his possession earnings, deposits, accounts, or balances owed to the obligor in excess of \$100 over the amount of the liability claimed by the ~~[office]~~ department, that person may, without liability under this part, release the excess to the obligor.

Section 10. Section **35A-3-608**, which is renumbered from Section 62A-11-209 is renumbered and amended to read:

~~[62A-11-209].~~        **35A-3-608. Schedule of payments to be paid upon liability -- Establishment -- Cancellation.**

(1) At any time, the ~~[office]~~ department may~~;~~:

(a) consistent with the income, earning capacity, and resources of the obligor, set or reset the level and schedule of payments to be paid upon the liability~~;~~; and ~~[may;]~~

(b) at any time, cancel the schedule of payments and demand immediate payment in full.

(2) The ~~[office]~~ department may recover an overpayment through deductions from cash assistance or food stamps pursuant to Section 35A-1-502.

Section 11. Section **35A-3-609**, which is renumbered from Section 62A-11-210 is renumbered and amended to read:

~~[62A-11-210].~~            **35A-3-609. Statute of limitations -- Enforcement of lien or order.**

No action for the enforcement of an order or lien issued under this part may be maintained unless it is commenced within eight years after the date of the order.

Section 12. Section **35A-3-610**, which is renumbered from Section 62A-11-211 is renumbered and amended to read:

~~[62A-11-211].~~            **35A-3-610. Legal representation at hearings.**

(1) A party may be represented by legal counsel at any hearing held under this part.

(2) At the request of the ~~[office]~~ department it is the duty of the attorney general or the county attorney to represent the department in any proceeding commenced under this part.

Section 13. Section **62A-11-104** is amended to read:

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

The office has the following duties:

(1) to provide child support services if:

(a) the office has received an application for child support services;

(b) the state has provided public assistance; or

(c) a child lives out of the home in the protective custody, temporary custody, or custody or care of the state or another party for at least 30 days;

(2) to carry out the obligations of the department contained in this chapter and in Title 78, Chapters 45, Uniform Civil Liability for Support Act, Chapter 45a, Uniform Act on Paternity, and Chapter 45f, Uniform Interstate Family Support Act, for the purpose of collecting child support;

~~[(3) to recover public assistance provided to persons for which they were ineligible;]~~

~~[(4)]~~ (3) to collect money due the department which could act to offset expenditures by the state;

~~[(5)]~~ (4) to cooperate with the federal government in programs designed to recover health and social service funds;

~~[(6)]~~ (5) 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;

~~[(7)]~~ (6) to implement income withholding for collection of child support in accordance with Part 4 of this chapter;

~~[(8)]~~ (7) 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;

~~[(9)]~~ (8) 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:

(a) 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;

(b) any amount described in Subsection ~~[(9)]~~ (8)(a) that has been collected;

(c) the distribution of collected amounts;

(d) the birth date of any child for whom the order requires the provision of support; and

(e) the amount of any lien imposed with respect to the order pursuant to this part;

~~[(10)]~~ (9) to contract with the Department of Workforce Services to establish and maintain the new hire registry created under Section 35A-7-103;

~~[(11)]~~ (10) 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;

~~[(12)]~~ (11) to finance any costs incurred from collections, fees, General Fund appropriation, contracts, and federal financial participation; and

~~[(13)]~~ (12) 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.

Section 14. Section **76-8-1201** is amended to read:

**76-8-1201. Definitions.**

As used in this part:

- (1) "Client" means a person who receives or has received public assistance.
- (2) "Overpayment" means the same as that term is defined in Section ~~[35A-1-502]~~

35A-3-602.

- (3) "Provider" means the same as that term is defined in Section 62A-11-103.
- (4) "Public assistance" means the same as that term is defined in Section 35A-1-102.

Section 15. Section **76-8-1205** is amended to read:

**76-8-1205. Public assistance fraud defined.**

Each of the following persons, who intentionally, knowingly, or recklessly commits any of the following acts, is guilty of public assistance fraud:

(1) any person who uses, transfers, acquires, traffics in, falsifies, or possesses any food stamp, food stamp identification card, certificate of eligibility for medical services, Medicaid identification card, fund transfer instrument, payment instrument, or public assistance warrant in a manner not allowed by law;

(2) any person who fraudulently misappropriates any funds exchanged for food stamps, any food stamp, food stamp identification card, certificate of eligibility for medical services, Medicaid identification card, or other public assistance with which he has been entrusted or that has come into his possession in connection with his duties in administering any state or federally funded public assistance program;

(3) any person who receives an unauthorized payment as a result of acts described in this section;

(4) any provider who receives payment or any client who receives benefits after failing to comply with any applicable requirement in Sections 76-8-1203 and 76-8-1204;

(5) any provider who files a claim for payment under any state or federally funded public assistance program for goods or services not provided to or for a client of that program;

(6) any provider who files or falsifies a claim, report, or document required by state or federal law, rule, or provider agreement for goods or services not authorized under the state or

federally funded public assistance program for which the goods or services were provided;

(7) any provider who fails to credit the state for payments received from other sources;

(8) any provider who bills a client or a client's family for goods or services not provided, or bills in an amount greater than allowed by law or rule;

(9) any client who, while receiving public assistance, acquires income or resources in excess of the amount he previously reported to the state agency administering the public assistance, and fails to notify the state agency to which the client previously reported within ten days after acquiring the excess income or resources;

(10) any person who fails to act as required under Section 76-8-1203 or 76-8-1204 with intent to obtain or help another obtain an "overpayment" as defined in Section ~~[35A-1-502]~~ 35A-3-602; and

(11) any person who obtains an overpayment by violation of Section 76-8-1203 or 76-8-1204.

Section 16. Section **78-27-50** is amended to read:

**78-27-50. Financial information privacy -- Inapplicable to certain official investigations.**

(1) Sections 78-27-45 through 78-27-47 do not apply when an examination of records is a part of an official investigation by:

(a) local police;

(b) a sheriff;

(c) a peace officer;

(d) a city attorney;

(e) a county attorney;

(f) a district attorney;

(g) the attorney general;

(h) the Department of Public Safety;

(i) the Office of Recovery Services of the Department of Human Services;

(j) the Insurance Department;

- (k) the Department of Commerce;
- (l) the state auditor; or
- (m) the State Tax Commission.

(2) Except for the Office of Recovery Services, if a governmental entity listed in Subsection (1) seeks a record, the entity shall obtain the record as follows:

(a) if the record is a nonprotected record, by request in writing that:

- (i) certifies that an official investigation is being conducted; and
- (ii) is signed by a representative of the governmental entity that is conducting the official investigation; or

(b) if the record is a protected record, by obtaining:

- (i) a subpoena authorized by statute; or
- (ii) other legal process:
  - (A) ordered by a court of competent jurisdiction; and
  - (B) served upon the financial institution.

(3) If the Office of Recovery Services seeks a record, it shall obtain the record pursuant to:

- (a) Subsection 62A-11-104[~~(8)~~] (7);
- (b) Section 62A-11-304.1;
- (c) Section 62A-11-304.5; or
- (d) Title IV, Part D of the Social Security Act as codified in 42 U.S.C. 651 et seq.

(4) A financial institution may not give notice to any person named or referenced within the record disclosed pursuant to Subsection (2)(a).

(5) In accordance with Section 78-27-48, the agency conducting the official investigation that obtains a record from a financial institution under this section shall reimburse the financial institution for costs reasonably and directly incurred by the financial institution.

**Section 17. Repealer.**

This act repeals:

**Section 35A-1-107, Contract with Office of Recovery Services.**

Section **62A-11-110, Collection of cash assistance repayments.**

Section 18. **Effective date.**

This act takes effect on July 1, 2003.