

1                                   **WORKFORCE SERVICES OVERPAYMENT**

2   **AMENDMENTS**

3   2003 GENERAL SESSION

4   STATE OF UTAH

5   **Sponsor: Jeff Alexander**

6   **This act modifies provisions related to public assistance overpayments by transferring**  
7   **the recovery of overpayments responsibility from the Office of Recovery Services to the**  
8   **Department of Workforce Services. The act provides for an appeal from an initial**  
9   **department determination of overpayment. The act provides for collection of an**  
10   **overpayment by a warrant issued to a county sheriff by the department which becomes a**  
11   **lien against the delinquent obligor's property. The act makes certain technical changes**  
12   **and provides a repealer. The act has a July 1, 2003 effective date.**

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

14   AMENDS:

15                   **26-18-8**, as last amended by Chapter 174, Laws of Utah 1997

16                   **35A-3-111**, as last amended by Chapter 58, Laws of Utah 2002

17                   **62A-11-104**, as last amended by Chapter 147, Laws of Utah 2002

18                   **76-8-1201**, as last amended by Chapter 174, Laws of Utah 1997

19                   **76-8-1205**, as last amended by Chapters 174 and 375, Laws of Utah 1997

20                   **78-27-50**, as last amended by Chapter 297, Laws of Utah 2000

21   ENACTS:

22                   **35A-3-606**, Utah Code Annotated 1953

23   RENUMBERS AND AMENDS:

24                   **35A-3-601**, (Renumbered from 62A-11-201, as enacted by Chapter 1, Laws of Utah  
25   1988)

26                   **35A-3-602**, (Renumbered from 62A-11-202, as last amended by Chapter 174, Laws of  
27   Utah 1997)



28           **35A-3-603**, (Renumbered from 35A-1-502, as last amended by Chapter 132, Laws of  
29 Utah 1999)

30           **35A-3-604**, (Renumbered from 62A-11-203, as last amended by Chapter 174, Laws of  
31 Utah 1997)

32           **35A-3-605**, (Renumbered from 62A-11-204.1, as last amended by Chapter 174, Laws  
33 of Utah 1997)

34           **35A-3-607**, (Renumbered from 62A-11-207, as last amended by Chapter 198, Laws of  
35 Utah 1996)

36           **35A-3-608**, (Renumbered from 62A-11-208, as enacted by Chapter 1, Laws of Utah  
37 1988)

38           **35A-3-609**, (Renumbered from 62A-11-209, as last amended by Chapter 174, Laws of  
39 Utah 1997)

40           **35A-3-610**, (Renumbered from 62A-11-210, as enacted by Chapter 1, Laws of Utah  
41 1988)

42           **35A-3-611**, (Renumbered from 62A-11-211, as enacted by Chapter 1, Laws of Utah  
43 1988)

44 REPEALS:

45           **35A-1-107**, as last amended by Chapter 161, Laws of Utah 2000

46           **62A-11-110**, as last amended by Chapter 174, Laws of Utah 1997

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

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

49           **26-18-8. Enforcement of public assistance statutes.**

50           (1) The department shall enforce or contract for the enforcement of Sections  
51 [~~35A-1-502~~], 35A-1-503, 35A-3-108, 35A-3-110, 35A-3-111, [~~and~~] 35A-3-112, and  
52 35A-3-603 insofar as these sections pertain to benefits conferred or administered by the  
53 division under this chapter.

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

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

58           **35A-3-111. Collection of overpayments.**

59 (1) The ~~[division, through the Office of Recovery Services as provided in Section~~  
 60 ~~35A-1-107;]~~ department is responsible for ~~[collecting all funds due or that become due to the~~  
 61 ~~state under Section 62A-11-110]~~ the recovery of overpayments required in Section 35A-3-603.

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

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

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

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

70 ~~[62A-11-201].~~ **35A-3-601. Title.**

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

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

74 ~~[62A-11-202].~~ **35A-3-602. Definitions.**

75 As used in this part:

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

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

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

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

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

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

86 (6) "Obligor" means an individual who is liable to the state under Section ~~[35A-1-502]~~  
 87 35A-3-603 and applicable federal statutes and regulations, or an individual against whom an  
 88 administrative or judicial order determining overpayment has been obtained.

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

90 ~~[(8)] (7) (a) "Overpayment" means [the same as that term is defined in Section~~  
91 ~~35A-1-502.] money, public assistance, or any other thing of value provided under a state or~~  
92 ~~federally funded benefit program to the extent that the person receiving the thing of value is not~~  
93 ~~entitled to receive it or is not entitled to receive it at the level provided.~~

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

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

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

101 ~~[35A-1-502].~~ **35A-3-603. Civil liability for overpayment.**

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

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

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

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

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

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

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

- 118 (a) upon receiving written notice of the overpayment from the department; or
- 119 (b) upon discovering the overpayment, if that occurs prior to receiving notice.

120 (3) (a) Except as provided under Subsection (3)(b), interest on the unreturned balance

121 of the overpayment shall accrue at the rate of [~~10% a year until an administrative or judicial~~  
122 ~~judgment is entered~~] 1% a month.

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

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

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

131 (5) (a) In proving civil liability for overpayment under this section or [~~Subsection~~  
132 ~~62A-11-204.1(2)(a)(i)~~] Section 35A-3-605 when fault is alleged, the department shall prove by  
133 clear and convincing evidence that the overpayment was obtained intentionally, knowingly,  
134 recklessly, by false statement, misrepresentation, impersonation, or other fraudulent means,  
135 such as by committing any of the acts or omissions described in Sections 76-8-1203 through  
136 76-8-1205.

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

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

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

145 (iii) disqualification from the food stamp program, if that is the program from which  
146 the overpayment was received, for 12 months for the first offense, 24 months for the second  
147 offense, and permanently for the third offense, or as otherwise provided by federal law.

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

151 (7) If a court finds that funds or benefits were secured, in whole or part, by fraud by the

152 person from whom repayment is sought, the court shall assess an additional sum as considered  
153 appropriate as punitive damages up to the amount of repayment being sought.

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

156 (9) Jurisdiction over benefits is continuous.

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

159 ~~[62A-11-203].~~ **35A-3-604. Obligor presumed to have notice of department's**  
160 **rights -- Authority to administer oaths, issue subpoenas, and compel witnesses and**  
161 **production of documents -- Recovery of attorneys' fees, costs, and interest -- Rulemaking**  
162 **authority -- Administrative procedures.**

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

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

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

- 171 (i) reasonable attorneys' fees;
- 172 (ii) costs incurred in pursuing administrative remedies under this part; and
- 173 (iii) interest at the rate of 1% a month accruing from the date an administrative or  
174 judicial order is issued determining the amount due under this part.

175 (b) The [office] department may recover interest, attorneys' fees, and costs, if notice of  
176 the assessment has been included in a notice of agency action issued in conformity with Title  
177 63, Chapter 46b, Administrative Procedures Act.

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

181 (5) Service of all notices and orders under this part shall comply with Title 63, Chapter  
182 46b, Administrative Procedures Act, the Utah Rules of Civil Procedure, or rules [~~adopted~~]

183 made by the [office] department that meet standards required by due process [~~and that do not~~  
184 ~~conflict with the requirements of the Administrative Procedures Act~~].

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

187 ~~[62A-11-204.1]~~. **35A-3-605. Issuance or modification of administrative order**  
188 **-- Voluntary acknowledgment of overpayment -- Court orders supersede administrative**  
189 **orders -- Notification requirement.**

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

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

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

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

197 (iii) renews an administrative judgment.

198 (b) The [office] department shall commence an adjudicative proceeding to renew a  
199 judgment by serving notice of agency action on the obligor before the judgment is barred by the  
200 applicable statute of limitations.

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

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

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

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

209 Section 8. Section **35A-3-606** is enacted to read:

210 **35A-3-606. Collection by warrant.**

211 (1) (a) In addition and as an alternative to any other remedy provided in this chapter  
212 and provided that no appeal or other proceeding for review is pending and the time for taking it  
213 has expired, the department may issue a warrant in duplicate, under its official seal, directed to

214 the sheriff of any county of the state, commanding the sheriff to levy upon and sell the real and  
215 personal property of an obligor found within the sheriff's county for the payment of an  
216 overpayment, penalties, and costs.

217 (b) The sheriff shall return the money collected under the warrant to the department by  
218 a time specified in the warrant, not to exceed 60 days from the date of the warrant.

219 (2) (a) Immediately upon receipt of the warrant in duplicate, the sheriff shall file the  
220 duplicate with the clerk of the district court in the sheriff's county.

221 (b) The clerk shall enter in the judgment docket, in the column for judgment debtors,  
222 the name of the delinquent obligor listed on the warrant and in the appropriate columns the  
223 amount of overpayment, penalties, and costs for which the warrant is issued and the date when  
224 the duplicate is filed.

225 (3) (a) The amount of the warrant docketed under Subsection (2)(b) shall:

226 (i) act as an execution against all personal property of the delinquent obligor; and

227 (ii) become a lien upon the real property of the obligor in the same manner and to the  
228 same extent as a judgment rendered by any district court and docketed in the office of the clerk.

229 (b) After docketing, the sheriff shall:

230 (i) proceed in the same manner as is prescribed by law with respect to execution issued  
231 against property upon judgments of a court of record; and

232 (ii) be entitled to the same fees for the sheriff's service in executing the warrant, to be  
233 collected in the same manner.

234 (4) If any person liable to repay an overpayment imposed by this chapter neglects or  
235 refuses to make the repayment after demand, the amount, including any interest and additional  
236 assessable penalty, together with any additional accruable costs, shall be a lien in favor of the  
237 department upon all property and rights to property, whether real or personal, belonging to the  
238 person.

239 (5) The lien imposed by Subsection (4):

240 (a) arises at the time the assessment, as defined in department rules, is made; and

241 (b) continues until the liability for the amount assessed, or a judgment against the  
242 obligor arising out of the liability, is satisfied.

243 Section 9. Section **35A-3-607**, which is renumbered from Section 62A-11-207 is  
244 renumbered and amended to read:



245            ~~[62A-11-207].~~            35A-3-607.    **Docketing abstract of final administrative order**  
246 **-- Real property and personal property liens -- Effect of order -- Execution.**

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

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

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

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

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

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

266            Section 10. Section **35A-3-608**, which is renumbered from Section 62A-11-208 is  
267 renumbered and amended to read:

268            ~~[62A-11-208].~~            35A-3-608.    **Property subject to execution or lien --**  
269 **Restriction on transfer or conveyance -- Release of excess amount above liability to**  
270 **obligor.**

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

276 liability does not exist or has been satisfied.

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

280 Section 11. Section **35A-3-609**, which is renumbered from Section 62A-11-209 is  
281 renumbered and amended to read:

282 ~~[62A-11-209].~~ **35A-3-609. Schedule of payments to be paid upon liability --**  
283 **Establishment -- Cancellation.**

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

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

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

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

291 Section 12. Section **35A-3-610**, which is renumbered from Section 62A-11-210 is  
292 renumbered and amended to read:

293 ~~[62A-11-210].~~ **35A-3-610. Statute of limitations -- Enforcement of lien or**  
294 **order.**

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

297 Section 13. Section **35A-3-611**, which is renumbered from Section 62A-11-211 is  
298 renumbered and amended to read:

299 ~~[62A-11-211].~~ **35A-3-611. Legal representation at hearings.**

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

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

303 Section 14. Section **62A-11-104** is amended to read:

304 **62A-11-104. Duties of office.**

305 The office has the following duties:

306 (1) to provide child support services if:

- 307 (a) the office has received an application for child support services;
- 308 (b) the state has provided public assistance; or
- 309 (c) a child lives out of the home in the protective custody, temporary custody, or
- 310 custody or care of the state or another party for at least 30 days;
- 311 (2) to carry out the obligations of the department contained in this chapter and in Title
- 312 78, Chapters 45, Uniform Civil Liability for Support Act, Chapter 45a, Uniform Act on
- 313 Paternity, and Chapter 45f, Uniform Interstate Family Support Act, for the purpose of
- 314 collecting child support;
- 315 ~~[(3) to recover public assistance provided to persons for which they were ineligible;]~~
- 316 ~~[(4)]~~ (3) to collect money due the department which could act to offset expenditures by
- 317 the state;
- 318 ~~[(5)]~~ (4) to cooperate with the federal government in programs designed to recover
- 319 health and social service funds;
- 320 ~~[(6)]~~ (5) to collect civil or criminal assessments, fines, fees, amounts awarded as
- 321 restitution, and reimbursable expenses owed to the state or any of its political subdivisions, if
- 322 the office has contracted to provide collection services;
- 323 ~~[(7)]~~ (6) to implement income withholding for collection of child support in
- 324 accordance with Part 4 of this chapter;
- 325 ~~[(8)]~~ (7) to enter into agreements with financial institutions doing business in the state
- 326 to develop and operate, in coordination with such financial institutions, a data match system in
- 327 the manner provided for in Section 62A-11-304.5;
- 328 ~~[(9)]~~ (8) to establish and maintain the state case registry in the manner required by the
- 329 Social Security Act, 42 U.S.C. Sec. 654a, which shall include a record in each case of:
- 330 (a) the amount of monthly or other periodic support owed under the order, and other
- 331 amounts, including arrearages, interest, late payment penalties, or fees, due or overdue under
- 332 the order;
- 333 (b) any amount described in Subsection ~~[(9)]~~ (8)(a) that has been collected;
- 334 (c) the distribution of collected amounts;
- 335 (d) the birth date of any child for whom the order requires the provision of support; and
- 336 (e) the amount of any lien imposed with respect to the order pursuant to this part;
- 337 ~~[(10)]~~ (9) to contract with the Department of Workforce Services to establish and

338 maintain the new hire registry created under Section 35A-7-103;

339 ~~[(11)]~~ (10) to determine whether an individual who has applied for or is receiving cash  
340 assistance or Medicaid is cooperating in good faith with the office as required by Section  
341 62A-11-307.2;

342 ~~[(12)]~~ (11) to finance any costs incurred from collections, fees, General Fund  
343 appropriation, contracts, and federal financial participation; and

344 ~~[(13)]~~ (12) to provide notice to a noncustodial parent in accordance with Section  
345 62A-11-304.4 of the opportunity to contest the accuracy of allegations by a custodial parent of  
346 nonpayment of past-due child support, prior to taking action against a noncustodial parent to  
347 collect the alleged past-due support.

348 Section 15. Section **76-8-1201** is amended to read:

349 **76-8-1201. Definitions.**

350 As used in this part:

351 (1) "Client" means a person who receives or has received public assistance.

352 (2) "Overpayment" means the same as that term is defined in Section ~~[35A-1-502]~~  
353 35A-3-602.

354 (3) "Provider" means the same as that term is defined in Section 62A-11-103.

355 (4) "Public assistance" means the same as that term is defined in Section 35A-1-102.

356 Section 16. Section **76-8-1205** is amended to read:

357 **76-8-1205. Public assistance fraud defined.**

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

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

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

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

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

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

375 (6) any provider who files or falsifies a claim, report, or document required by state or  
376 federal law, rule, or provider agreement for goods or services not authorized under the state or  
377 federally funded public assistance program for which the goods or services were provided;

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

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

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

385 (10) any person who fails to act as required under Section 76-8-1203 or 76-8-1204 with  
386 intent to obtain or help another obtain an "overpayment" as defined in Section [~~35A-1-502~~]  
387 35A-3-602; and

388 (11) any person who obtains an overpayment by violation of Section 76-8-1203 or  
389 76-8-1204.

390 Section 17. Section **78-27-50** is amended to read:

391 **78-27-50. Financial information privacy -- Inapplicable to certain official**  
392 **investigations.**

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

395 (a) local police;

396 (b) a sheriff;

397 (c) a peace officer;

398 (d) a city attorney;

399 (e) a county attorney;

- 400 (f) a district attorney;
  - 401 (g) the attorney general;
  - 402 (h) the Department of Public Safety;
  - 403 (i) the Office of Recovery Services of the Department of Human Services;
  - 404 (j) the Insurance Department;
  - 405 (k) the Department of Commerce;
  - 406 (l) the state auditor; or
  - 407 (m) the State Tax Commission.
- 408 (2) Except for the Office of Recovery Services, if a governmental entity listed in
- 409 Subsection (1) seeks a record, the entity shall obtain the record as follows:
- 410 (a) if the record is a nonprotected record, by request in writing that:
    - 411 (i) certifies that an official investigation is being conducted; and
    - 412 (ii) is signed by a representative of the governmental entity that is conducting the
    - 413 official investigation; or
  - 414 (b) if the record is a protected record, by obtaining:
    - 415 (i) a subpoena authorized by statute; or
    - 416 (ii) other legal process:
      - 417 (A) ordered by a court of competent jurisdiction; and
      - 418 (B) served upon the financial institution.
  - 419 (3) If the Office of Recovery Services seeks a record, it shall obtain the record pursuant
  - 420 to:
    - 421 (a) Subsection 62A-11-104[~~(8)~~] (7);
    - 422 (b) Section 62A-11-304.1;
    - 423 (c) Section 62A-11-304.5; or
    - 424 (d) Title IV, Part D of the Social Security Act as codified in 42 U.S.C. 651 et seq.
  - 425 (4) A financial institution may not give notice to any person named or referenced
  - 426 within the record disclosed pursuant to Subsection (2)(a).
  - 427 (5) In accordance with Section 78-27-48, the agency conducting the official
  - 428 investigation that obtains a record from a financial institution under this section shall reimburse
  - 429 the financial institution for costs reasonably and directly incurred by the financial institution.
- 430 Section 18. **Repealer.**

431 This act repeals:  
432 Section **35A-1-107, Contract with Office of Recovery Services.**  
433 Section **62A-11-110, Collection of cash assistance repayments.**  
434 Section 19. **Effective date.**  
435 This act takes effect on July 1, 2003.

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**Legislative Review Note**  
as of 11-20-02 4:17 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**

**Interim Committee Note**  
as of 12-12-02 4:05 PM

The Workforce Services and Community and Economic Development Interim Committee recommended this bill.

**State Impact**

This bill transfers the budget for recovery of Workforce Services public assistance overpayments from the Office of Recovery Services to the Department of Workforce Services. Some of the federal funds were originally appropriated to Workforce Services and transferred to the Office of Recovery Services so the funding is not a mirror image but does agree in total.

	<u>FY 04 Approp.</u>	<u>FY 05 Approp.</u>	<u>FY 04 Revenue</u>	<u>FY 05 Revenue</u>
General Fund	\$1,135,300	\$1,135,300	\$0	\$0
General Fund	(\$1,135,300)	(\$1,135,300)	\$0	\$0
Federal Funds	\$862,400	\$862,400	\$0	\$0
Federal Funds	(\$156,600)	(\$156,600)	\$0	\$0
Transfers	\$287,500	\$287,500	\$0	\$0
Transfers	(\$993,300)	(\$993,300)	\$0	\$0
<b>TOTAL</b>	<u><u>\$0</u></u>	<u><u>\$0</u></u>	<u><u>\$0</u></u>	<u><u>\$0</u></u>

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**Individual and Business Impact**

No fiscal impact

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