

A Bill for an Act Relating to Public Assistance.

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

SECTION 1. Section 346-37, Hawaii Revised Statutes, is amended to read:

**“Sec. 346-37 Recovery of payments.** (a) If a recipient under this chapter dies leaving an estate and does not have a surviving spouse, child, father, mother, grandfather, grandmother, grandchild, stepfather, stepmother, or any designated heir, the department may file a claim against the estate for the amount of social services payments, money payments, or burial payments granted, and the claim shall be allowed. The department may file a claim against the estate of a deceased recipient of medical assistance for the amount of medical assistance granted, only if the recipient was age sixty-five or over when such medical assistance was received and there is no dependent surviving spouse, or dependent child under twenty-one years of age, or is blind, or disabled.

(b) If any portion of any public assistance, including medical assistance, food

stamps, or burial payment, was obtained by any fraudulent device, including but not limited to those mentioned in section 346-34, or if any public assistance, including medical assistance, food stamps, or burial payment, was furnished or provided after receipt of income or resources which were not reported to the department as required by this chapter or by the department, the department may file a claim against the estate of the deceased recipient notwithstanding the provisions in subsection (a).

(c) If the department has provided medical assistance or burial payment to a person who was injured, suffered a disease, or died under circumstances creating a tort or other liability against some third person, the department shall have a right to recover from the third person an amount not to exceed the amount of medical assistance or burial payment furnished or to be furnished by the department. The department shall as to this right be subrogated to any right or claim that a claimant, defined in subsection (k), has against such third person for special damages to the extent of the amount of medical assistance or burial payment furnished or to be furnished by the department.

To enforce such rights, the department may intervene or join in any action or proceeding brought by a claimant against the third person who is liable. If such action or proceeding is not commenced within six months after the first day on which medical assistance or burial payment is furnished by the department in connection with the injury, disease, or death involved, the department may institute and prosecute legal proceedings against the third person who is liable for the injury, disease, or death, in a state court, either alone (in its own name or in the name of a claimant) or in conjunction with the claimant.

(d) Where legal proceedings are instituted by the claimant against a third person, the claimant shall give timely notice of such action to the department.

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

(f) The lien of the department for reimbursement of medical or burial payments, provided in subsection (e), shall not attach unless and until a notice of lien is served upon the claimant's attorney or upon the third person, his agent, attorney, or insurance company. The method of service shall be by registered mail, return receipt requested, or by delivery of the notice of lien personally to the individuals referred to. Service by registered mail is complete upon receipt. The notice of lien shall state the name of the injured, diseased, or deceased person, the amount of the lien, and the date of the accident or incident which caused the injuries, disease, or death which necessi-

tated the department's medical or burial payments. Where the notice of lien is served upon the claimant's attorney, the notice of lien shall state that the claimant's attorney shall pay the amount of the lien from the proceeds of any judgment, settlement, or compromise based on the incident or accident. Where the notice of lien is served upon the third person described in subsection (c), his agent, attorney, or insurance company, the notice of lien shall state that he shall satisfy the lien prior to disbursing any of the proceeds to the claimant or to the claimant's attorney. A notice of lien may be amended from time to time until extinguished, each amendment taking effect upon proper service.

(g) In the event that there is a dispute between the claimant, his agent, or his attorney, and the department concerning the existence of the lien or the amount of the lien, the claimant, his agent, or his attorney may request in writing a hearing on the dispute. After receipt by the department of such a written request, the department shall conduct an administrative hearing within a reasonable period of time. The provisions of chapter 91 shall apply to such a hearing. Funds sufficient to extinguish the lien rights of the department shall be either retained by the person or entity served with the notice of lien, or shall be paid to the department pending its decision.

(h) Upon the recovery of any claim as provided in this section, the amount so recovered shall be paid into the treasury of the State, and if the amount for which claim was paid in part from federal funds, the proper portion thereof shall be paid by the director of finance into the treasury of the United States, and the director of finance shall report the payment to the department.

(i) Any person failing to satisfy the lien as required by subsections (e) and (f), although able to do so from the proceeds of such suit or settlement, shall be personally liable to the department for any damage proximately caused to the department by such failure.

(j) No action taken by the department in connection with the rights afforded under this section shall operate to deny to the claimant the recovery for that portion of his damage not covered hereunder.

(k) For purposes of this section the term "claimant" shall include an injured or diseased person, his guardian, or the personal representative, estate, dependents, or survivors, of the deceased person."

**SECTION 2. Severability.** If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

**SECTION 3.** Statutory material to be repealed is bracketed. New material is underscored.\*

**SECTION 4.** This Act shall take effect upon its approval.

(Approved June 6, 1980.)

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\*The text has been edited pursuant to HRS §23G-16.5, authorizing omission of the brackets, bracketed material, and underscoring.