

1999 DRAFTING REQUEST

Bill

Received: **09/22/98**

Received By: **yacketa**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Geisler**

This file may be shown to any legislator: **NO**

Drafter: **yacketa**

May Contact: **Richard Chao, DHFS**

Alt. Drafters:

Subject: **Public Assistance - med. assist.**

Extra Copies: **DAK**

Topic:

DOA:.....Geisler - Estate recovery program; estate liens

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P1	yacketa 11/9/98			_____			S&L
/1	yacketa 12/16/98	gilfokm 11/10/98 chanaman 12/17/98	jfrantze 11/10/98	_____	lrb_docadmin 11/10/98		S&L
/2			martykr 12/18/98	_____	lrb_docadmin 12/18/98		S&L

FE Sent For:

<END>

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/1		gilfokm 11/10/98	jfrantze 11/10/98	_____	lrb_docadmin 11/10/98		S&L

FE Sent For:

CMM
 12/17 12
 12-12-17
 kmg
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 <END>

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See Attached *priority: medium*

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1?	yacketa	1-11-10 King	10/11/10	10/11/10			

FE Sent For:

<END>

DHFS

Department of Health and Family Services
1999-2001 Biennial Budget Statutory Language Request
August 10, 1998

Estate Recovery Program Statutory Language Change - Estate Liens

Current Language

Current law provides that the Department receives a lien on the home as satisfaction of its estate claim when a spouse or minor or disabled child survives the deceased recipient. This provision only applies when the home property is solely owned by the recipient or is owned as a tenant in common. A probate proceeding must be started to transfer ownership of the home. This does not apply to homes owned in joint tenancy with right of survivorship. However, current law may limit the forms of probate with which the Department receives a lien.

Proposed Change

Amend state law to clarify those provisions that award the Department a lien in certain estates applies to all forms of probate. Specifically, change language in ss. 49.496 (3)(c), 46.27 (7g) (c) 5., 49.682 (2) (e), Wis. Stats. to state that "the court exercising probate jurisdiction shall, in the final judgement or summary findings and order" and "the personal representative or person who petitioned the court for summary settlement or summary assignment of the estate shall record the final judgement or summary findings and order as provided in ss. 863.29, 867.01 and 867.02".

(3)(h) (2)(h)

Effect of the Change

This change would address an inconsistency in the provisions that award the Department a lien in certain estates but not in others. The change would affect only estates valued at \$30,000 or less that are settled by summary assignment or summary settlement.

Rationale for the Change

State law states that the lien is to be recorded in the estate's final judgement. Wisconsin has four forms of court-supervised probate. Two have provisions for a final judgement. The other two, summary assignment and summary settlement, do not. The Estate Recovery Program recently experienced a situation where a circuit court judge declined to award the Department a lien on home property in an estate. The judge's reasoning was that since the estate was settled by

summary assignment, which has no final judgement, the judge had no statutory authority to assign the property subject to the Department's lien. State law should be changed to clarify that a lien can be obtained in all types of estate proceedings. This will result in equitable application of the estate recovery provisions. It is unlikely that this proposal would meet strong opposition.

Desired Effective Date: Upon passage of the Bill
Agency: DHFS
Agency Contact: Richard T. Chao
Phone: 267-0356



(Soon)
State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-0260/PA
TAY.....

RMR
Kmg & CMH

DOA:.....Geisler - Estate recovery program; estate liens

FOR 1999-01 BUDGET - NOT READY FOR INTRODUCTION

1 AN ACT ^{don't} ^{for} ^{cat.} relating to: the budget.

Analysis by the Legislative Reference Bureau

HEALTH AND HUMAN SERVICES

OTHER HEALTH AND HUMAN SERVICES

Under current law, the department of health and family services (DHFS) must file a claim against the estate of a recipient of certain health aids for the amount of aid paid to the recipient. If the recipient's spouse or minor or disabled child survives the recipient, and the recipient's estate includes an interest in a home, the probate court must, in the final judgement, assign the interest in the home subject to a lien in favor of the department for the amount of the department's claim. Currently, ~~in~~ certain situations, estates are settled or assigned summarily and therefore a final judgement is not entered. Instead, a summary order is entered. Current law does not require that the assignment of the home be subject to a lien in cases in which there is no final judgement.

DHFS'

Small
DHFS

This bill extends the lien requirement to cases in which assignment of the home is made by summary order.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 46.27 (7g) (c) 5. of the statutes is amended to read:

2 46.27 (7g) (c) 5. If the department's claim is not allowable because of subd. 4.
3 and the estate includes an interest in a home, the court exercising probate
4 jurisdiction shall, in the final judgment or summary findings and order, assign the
5 interest in the home subject to a lien in favor of the department for the amount
6 described in subd. 1. The personal representative or petitioner for summary
7 settlement or summary assignment of the estate shall record the final judgment as
8 provided in s. 863.29, 867.01 (3) (h) or 867.02 (2) (h).

History: 1981 c. 20; 1983 a. 27; 1983 a. 189 s. 329 (5); 1983 a. 192, 239; 1985 a. 29 ss. 876s to 896am, 3200 (56); 1985 a. 120, 176; 1987 a. 27, 399; 1989 a. 31, 77, 336, 359; 1991 a. 32, 39, 235, 274; 1993 a. 16, 27, 437; 1995 a. 27; 1997 a. 13, 27, 39, 79, 237.

9 **SECTION 2.** 49.496 (3) (c) of the statutes is amended to read:

10 49.496 (3) (c) If the department's claim is not allowable because of par. (b) and
11 the estate includes an interest in a home, the court exercising probate jurisdiction
12 shall, in the final judgment or summary findings and order, assign the interest in the
13 home subject to a lien in favor of the department for the amount described in par. (a).
14 The personal representative or petitioner for summary settlement or summary
15 assignment of the estate shall record the final judgment as provided in s. 863.29,
16 867.01 (3) (h) or 867.02 (2) (h).

History: 1991 a. 39, 269; 1993 a. 301, 437, 491; 1995 a. 27; 1997 a. 27.

17 **SECTION 3.** 49.682 (2) (e) of the statutes is amended to read:

18 49.682 (2) (e) If the department's claim is not allowable because of par. (d) and
19 the estate includes an interest in a home, the court exercising probate jurisdiction
20 shall, in the final judgment or summary findings and order, assign the interest in the
21 home subject to a lien in favor of the department for the amount described in par. (a).
22 The personal representative or petitioner for summary settlement or summary

- 1 assignment of the estate shall record the final judgment as provided in s. 863.29,
- 2 867.01 (3) (h) or 867.02 (2) (h).

History: 1995 a. 27 ss. 3044b to 3044j; Stats. 1995 s. 49.682; 1995 a. 225 ss. 127, 128.

- 3 (END)

Kennedy, Debora

From: Geisler, Jeffrey [jeffrey.geisler@doa.state.wi.us]
Sent: Tuesday, November 24, 1998 3:50 PM
To: Kennedy, Debora
Subject: FW: Estate Recovery Statutory Language Request



StatlangComments

Debora,
Here are the DHFS comments on LRB-0260/1.
If it will be convenient, I will call you tomorrow to discuss my thoughts on what to incorporate in the draft.

DHFS MEMO FOLLOWS

=====

=====

November 20, 1998

To: Jeff Geisler
State Budget Office

From: Richard Chao
Office of Strategic Finance

Re: LRB-0260/1 Draft

We have reviewed the draft of changes to the statutory language that pertains to liens that result from estate claims and have the following comments.

* The analysis does not accurately describe how the current law is being interpreted. The Department has received liens on homes assigned through Summary Assignment and Summary Settlement. The judges in those estates apparently read the law to extend to summary proceedings even though these types of proceedings do not have a final judgement. Recently, however, a judge in a populous county refused to award the Department a lien in a summary proceeding because there was no final judgement. The Department feels that this interpretation is contrary to legislative intent and hopes to prevent this view from becoming widespread. It was decided that pursuing statutory clarification was preferable to appeal and litigation. The Department feels that the analysis would be more accurate by changing the last sentence in the first paragraph and the second paragraph to the following:

Currently, small estates are settled or assigned summarily by the term "order". Current law is unclear on whether the assignment of the home is subject to a lien in these cases because there is no final judgement.

This bill clarifies that the lien requirement extends to cases in which assignment of the home is made by summary order or sworn statement.

* This amendment was proposed both to clarify that the lien provision extends to all forms of probate and to increase administrative efficiency. Upon review, the Department thinks that additional language should be added to describe the process to be used when a personal representative closes an

Jeffrey A. Geisler
267-7980
DOA State Budget Office

> -----Original Message-----
> From: Chao, Richard
> Sent: Friday, November 20, 1998 4:12 PM
> To: Geisler, Jeffrey
> Subject: Estate Recovery Statutory Language Request
>
> Greetings Jeff:
> Attached are our comments regarding the Estate Recovery Statutory Language
> Request. If you would prefer we can work directly with the drafter.
> Otherwise
> I will continue to funnel our comments through you. Have a good weekend.
> Rich
>
> Richard T. Chao
> Budget Section
> Department of Health and Family Services
> (608) 267-0356
> <<StatlangComments>>

estate in informal administration by sworn statement rather than filing a final account.

Section 1. 46.27 (7g) (c) 5. of the statutes is amended to read:

46.27 (7g) (c) 5. If the department's claim is not allowable because of subd. 4. and the estate includes an interest in a home, the court exercising probate jurisdiction shall, in the final judgement or summary findings and order assign the interest in the home subject to a lien in favor of the department for the amount described in subd. 1. The personal representative who closes an estate by sworn statement as provided in s. 865.16 shall stipulate in the statement that the home is assigned subject to a lien in favor of the department. The amount of the lien is for the amount described in subd. 1. The personal representative or petitioner for summary settlement or summary assignment of the estate shall record the final judgement or summary findings and order as provided in s. 863.29, 867.01 (3) (h) or 867.02 (2) (h). If an estate is closed by sworn statement, the personal representative shall record the statement in the same manner as described in s. 863.29.

Section 2. 49.496 (3) (c) of the statutes is amended to read:

49.496 (3) (c) If the department's claim is not allowable because of par. (b) and the estate includes an interest in a home, the court exercising probate jurisdiction shall, in the final judgement or summary findings and order assign the interest in the home subject to a lien in favor of the department for the amount described in par. (a). The personal representative who closes an estate by sworn statement as provided in s. 865.16 shall stipulate in the statement that the home is assigned subject to a lien in favor of the department. The amount of the lien is for the amount described in par. (a). The personal representative or petitioner for summary settlement or summary assignment of the estate shall record the final judgement or summary findings and order as provided in s. 863.29, 867.01 (3) (h) or 867.02 (2) (h). If an estate is closed by sworn statement, the personal representative shall record the statement in the same manner as described in s. 863.29.

Section 3. 49.682 (2) (e) of the statutes is amended to read:

49.682 (2) (e) If the department's claim is not allowable because of par. (d) and the estate includes an interest in a home, the court exercising probate jurisdiction shall, in the final judgement or summary findings and order assign the interest in the home subject to a lien in favor of the department for the amount described in par. (a). The personal representative who closes an estate by sworn statement as provided in s. 865.16 shall stipulate in the statement that the home is assigned subject to a lien in favor of the department. The amount of the lien is for the amount described in par. (a). The personal representative or petitioner for summary settlement or summary assignment of the estate shall record the final judgement or summary findings and order as provided in s. 863.29, 867.01 (3) (h) or 867.02 (2) (h). If an estate is closed by sworn statement, the personal representative shall record the statement in the same manner as described in s. 863.29.

Any questions regarding these proposed changes may be directed to Peggy Wichmann at 266-9727.

=====

DFHS MEMO ENDS



(Soon) (D-NOTE)
State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-0260/2
TAY:kmg&cmh:jf
stays
Redraft NOT
Run

DOA:.....Geisler - Estate recovery program; estate liens

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1 AN ACT...; relating to: the budget.

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For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

renumbered 46.27(7g)(c)5.a. and

WPO for component
①
②

SECTION 1. 46.27 (7g) (c) 5. of the statutes is amended to read:

46.27 (7g) (c) 5.^a If the department's claim is not allowable because of subd. 4. and the estate includes an interest in a home, the court exercising probate jurisdiction shall, in the final judgment or summary findings and order, assign the interest in the home subject to a lien in favor of the department for the amount described in subd. 1. The personal representative or petitioner for summary settlement or summary assignment of the estate shall record the final judgment as provided in s. 863.29, 867.01 (3) (h) or 867.02 (2) (h).

SEC. # 7
8
INSERT 8-9

SECTION 2. 49.496 (3) (c) of the statutes is amended to read:

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WPO for component
⑩
⑪
⑫

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SEC. # 16
17
INSERT 8-16

WPO for component
⑱
⑳
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867.01 (3) (h) or 867.02 (2) (h).

SEC. # 24
25
INSERT 8-24

(END)

1999-2000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0260/2ins
TAY.....

Insert 8-9 ✓

✓ 46.27 (7g) (c) 5. b. If the department's claim is not allowable because of subd. 4., the estate includes an interest in a home and the personal representative closes the estate by sworn statement under s. 865.16, the personal representative shall stipulate in the statement that the home is assigned subject to a lien in favor of the department for the amount described in subd. 1. The personal representative shall record the statement in the same manner as described in s. 863.29, as if the statement were a final judgement. *J*

Insert 8-16 ✓

49.496 (3) (c) 2. If the department's claim is not allowable because of par. (b), ✓ the estate includes an interest in a home and the personal representative closes the estate by sworn statement under s. 865.16, the personal representative shall stipulate in the statement that the home is assigned subject to a lien in favor of the department for the amount described in par. (a). ✓ The personal representative shall record the statement in the same manner as described in s. 863.29, as if the statement were a final judgement. *J*

Insert 8-24 ✓

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end of inserts

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0260/2dn

TAY.....

King, Emily

Jeff Geisler:

Please review this draft to ensure that I adequately captured the department's intent. Note the change to the analysis, which is not quite as promotional as the department's suggestion, but which I believe captures the idea of conflicting interpretations of the current statutes.

If you have any questions, please call me.

Tina A. Yacker
Legislative Attorney
261-6927

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0260/2dn
TAY:cmh&kmg:km

December 17, 1998

Jeff Geisler:

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Legislative Attorney
261-6927



State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-0260/2
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3 46.27 (7g) (c) 5. a. If the department's claim is not allowable because of subd.
4 4. and the estate includes an interest in a home, the court exercising probate
5 jurisdiction shall, in the final judgment or summary findings and order, assign the
6 interest in the home subject to a lien in favor of the department for the amount
7 described in subd. 1. The personal representative or petitioner for summary
8 settlement or summary assignment of the estate shall record the final judgment as
9 provided in s. 863.29, 867.01 (3) (h) or 867.02 (2) (h).

10 **SECTION 2.** 46.27 (7g) (c) 5. b. of the statutes is created to read:

11 46.27 (7g) (c) 5. b. If the department's claim is not allowable because of subd.
12 4., the estate includes an interest in a home and the personal representative closes
13 the estate by sworn statement under s. 865.16, the personal representative shall
14 stipulate in the statement that the home is assigned subject to a lien in favor of the
15 department for the amount described in subd. 1. The personal representative shall
16 record the statement in the same manner as described in s. 863.29, as if the
17 statement were a final judgment.

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21 and the estate includes an interest in a home, the court exercising probate
22 jurisdiction shall, in the final judgment or summary findings and order, assign the
23 interest in the home subject to a lien in favor of the department for the amount
24 described in par. (a). The personal representative or petitioner for summary

1 settlement or summary assignment of the estate shall record the final judgment as
2 provided in s. 863.29, 867.01 (3) (h) or 867.02 (2) (h).

3 **SECTION 4.** 49.496 (3) (c) 2. of the statutes is created to read:

4 49.496 (3) (c) 2. If the department's claim is not allowable because of par. (b),
5 the estate includes an interest in a home and the personal representative closes the
6 estate by sworn statement under s. 865.16, the personal representative shall
7 stipulate in the statement that the home is assigned subject to a lien in favor of the
8 department for the amount described in par. (a). The personal representative shall
9 record the statement in the same manner as described in s. 863.29, as if the
10 statement were a final judgment.

11 **SECTION 5.** 49.682 (2) (e) of the statutes is renumbered 49.682 (2) (e) 1. and
12 amended to read:

13 49.682 (2) (e) 1. If the department's claim is not allowable because of par. (d)
14 and the estate includes an interest in a home, the court exercising probate
15 jurisdiction shall, in the final judgment or summary findings and order, assign the
16 interest in the home subject to a lien in favor of the department for the amount
17 described in par. (a). The personal representative or petitioner for summary
18 settlement or summary assignment of the estate shall record the final judgment as
19 provided in s. 863.29, 867.01 (3) (h) or 867.02 (2) (h).

20 **SECTION 6.** 49.682 (2) (e) 2. of the statutes is created to read:

21 49.682 (2) (e) 2. If the department's claim is not allowable because of par. (d),
22 the estate includes an interest in a home and the personal representative closes the
23 estate by sworn statement under s. 865.16, the personal representative shall
24 stipulate in the statement that the home is assigned subject to a lien in favor of the
25 department for the amount described in par. (a). The personal representative shall

1 record the statement in the same manner as described in s. 863.29, as if the
2 statement were a final judgment.

3 (END)