



# State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

## Appendix A

### LRB BILL HISTORY RESEARCH APPENDIX

 The drafting file for

2013 LRB-4561/P1 (For: DCF)


has been transferred to the drafting file for

**2015 LRB-0132** (For: DCF)



**RESEARCH APPENDIX -**  
**PLEASE KEEP WITH THE DRAFTING FILE**

Date Transfer Requested: 09/10/2014 (Per: PJK)

 The attached draft was incorporated into the new draft listed above. For research purposes the attached materials were added, as a appendix, to the new drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.

**2013 DRAFTING REQUEST**

**Bill**

Received: **8/25/2014** Received By: **pkahler**  
Wanted: **As time permits** Same as LRB:  
For: **Children and Families** By/Representing: **Kim Swissdorf**  
May Contact: Drafter: **pkahler**  
Subject: **Public Assistance - misc** Addl. Drafters:  
Extra Copies:

Submit via email: **YES**  
Requester's email: **KimM.Swissdorf@wisconsin.gov**  
Carbon copy (CC) to: **Elisabeth.Shea@legis.wisconsin.gov**

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Authority to collect overpayments of emergency assistance

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**Instructions:**

See attached

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**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>
/?	pkahler 8/26/2014	kfollett 9/3/2014		_____			
/P1			rschluet 9/3/2014	_____	lparisi 9/3/2014		State

FE Sent For:

<END>

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/? pkahler

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9/3  
1P1K5F  
9/3  
9/3/14

FE Sent For:

<END>

**Kahler, Pam**

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**From:** Swissdorf, Kim M - DCF <KimM.Swissdorf@wisconsin.gov>  
**Sent:** Thursday, August 21, 2014 5:45 PM  
**To:** Kahler, Pam  
**Subject:** another drafting request  
**Attachments:** Emergency Assistance 2015-17 stat change request.doc

Hi Pam—

Mark typed up this request. Please forward if it's not you and let me know if you have any questions. Thanks much. And, welcome back!

**Kim Swissdorf**  
*Budget and Policy Manager*  
Department of Children and Families

201 East Washington Avenue  
Madison, WI 53703

T: (608) 261-0616  
E: [KimM.Swissdorf@wisconsin.gov](mailto:KimM.Swissdorf@wisconsin.gov)

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**Department of Children and Families  
2015-17 Biennial Budget  
Statutory Language Request**

**Topic:** Authority to collect overpayments of Emergency Assistance

**Current Language:**

None. (Program statute is at s.49.138)

**Proposed Change:**

Create explicit statutory authority for the Department to recover an overpayment of Emergency Assistance granted under s.49.138. The drafter may consider various approaches, but since the EA program is considered separate from W-2, an approach similar to that taken under s.49.163 (5) (The Transform Milwaukee Jobs and Transitional Jobs Program), by creating authority in the program statute, where “users” of the statute will naturally look) is recommended. It is also useful to consider the provision for collection of delinquent Job Access Loans in its program statute at s.49.147 (6) (cm) 1., which provides by cross-reference to s.49.85 explicit authority to use certification to DOR for tax-refund set-off, and to other collection methods.

- For example, create s.49.138 (5) RECOVERY OF OVERPAYMENTS. “(a) The department shall recover an overpayment of emergency assistance provided under this section, if the overpayment resulted from misrepresentation by the individual applying regarding any fact that would have affected the individual’s eligibility or the amount of aid granted.
- (b) If an overpayment of emergency assistance provided under this section resulted from error by a Wisconsin Works agency, the department shall recover the overpayment from the Wisconsin Works agency and may offset the amount from amounts otherwise due the agency under its contract under s.49.143.
- (c) The department may collect overpayments of emergency assistance under par. (a) or (b) in the manner provided in s.49.85. Use of the process under s.49.85 does not preclude the department from collecting overpayments of emergency assistance under this section through other legal means.
- (d) The department shall credit recoveries of emergency assistance overpayments to the appropriation under s.20.437 (2) (me).

Since the program is administered by W-2 agencies, it would make sense to add a cross-reference to the new provision to the list of programs at s.49.85 (1) that a W-2 agency should notify DCF about if it determines, as well as the parallel lists of programs at s.49.85 (2) (b) that DCF shall certify to DOR at least annually for tax-refund offset, and the notice requirements at s.49.85 (3). (Omission of s.49.163 from these lists may have been an oversight). For example,

**49.85 Certification of certain public assistance overpayments, payment recoveries, and delinquent loan repayments.** ...If a Wisconsin Works agency determines that the department of children and families may recover an amount under s.49.138, s. 49.161 or 49.195 (3), or collect an amount under s. 49.147 (6) (cm), the Wisconsin Works agency shall notify the department of children and families of the determination.

↙  
(5)

**Justification:**

The Emergency Assistance program at s.49.138 pre-dated the W-2 program and therefore is not included in the references for collection of overpayments for programs that are part of W-2 (cash benefits, Job Access Loans, and child-care subsidies). However, like those programs, the Emergency Assistance program is funded by federal Temporary Assistance for Needy Families (TANF) funds and state funds expended as TANF Maintenance-of-Effort. In general, DCF has a responsibility in the administration of federal funds to attempt to recover incorrect payments, and doing so is part of a framework of program integrity thought to discourage fraudulent applications. However, when attempts to collect overpayments are disputed, advocates for the parties that received the overpayments will sometimes employ a tactic of questioning the Department's authority for the collection action. Having an explicit statute to cite for this authority strengthens the Department's position in these situations.

Collecting overpayments also provides additional revenues that can help to support the needs of those legitimately benefiting from these programs, although the amount of overpayment recoveries under this new authority is anticipated to be small at first.

**Desired Effective Date:** Upon enactment

**Agency Contact:** Mark Mansfield  
266-9475



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KJF  
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**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

D-note  
(in 8-26)

1

**AN ACT**; relating to: authority of the Department of Children and Families to

2

collect overpayments of emergency assistance.  
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***Analysis by the Legislative Reference Bureau***

Under current law, the Department of Children and Families (DCF) provides emergency assistance to needy persons in cases of fire, flood, natural disaster, homelessness or impending homelessness, or energy crisis. The assistance is provided with federal Temporary Assistance to Needy Families (TANF) funds. This bill authorizes DCF to recover overpayments of emergency assistance resulting from a misrepresentation by an individual applying for the assistance with respect to a fact affecting the individual's eligibility for or the amount of the assistance granted. If an overpayment of emergency assistance results from an error by a Wisconsin Works (W-2) agency, DCF must recover the overpayment from the W-2 agency. Overpayments may be recovered by any legal means, including by a certification of the amount to the Department of Revenue for collection through intercepting a state income tax refund.

For further information see the *state* 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:***

3

**SECTION 1.** 49.138 (5) of the statutes is created to read:

1           49.138 (5) (a) The department shall recover an overpayment of emergency  
2 assistance provided under this section if the overpayment resulted from a  
3 misrepresentation by the individual applying for the assistance with respect to any  
4 fact having an effect on the individual's eligibility for, or the amount of, the assistance  
5 granted.

6           (b) If an overpayment of emergency assistance provided under this section  
7 resulted from an error made by a Wisconsin Works agency, the department shall  
8 recover the overpayment from the Wisconsin Works agency and may do so by  
9 offsetting the amount from amounts otherwise due the agency under a contract  
10 under s. 49.143.

11           (c) The department may recover overpayments of emergency assistance under  
12 par. (a) or (b) in the manner provided in s. 49.85. Nothing in this paragraph or par.  
13 (b) precludes the department from recovering emergency assistance overpayments  
14 through any other legal means.

15           **SECTION 2.** 49.85 (1) of the statutes is amended to read:

16           49.85 (1) DEPARTMENT NOTIFICATION REQUIREMENT. If a county department under  
17 s. 46.215, 46.22, or 46.23 or a governing body of a federally recognized American  
18 Indian tribe or band determines that the department of health services may recover  
19 an amount under s. 49.497, 49.793, or 49.847, or that the department of children and  
20 families may recover an amount under s. 49.138 (5), 49.161, or 49.195 (3) or collect  
21 an amount under s. 49.147 (6) (cm), the county department or governing body shall  
22 notify the affected department of the determination. If a Wisconsin Works agency  
23 determines that the department of children and families may recover an amount  
24 under s. 49.138 (5), 49.161, or 49.195 (3), or collect an amount under s. 49.147 (6) (cm),



1 the Wisconsin Works agency shall notify the department of children and families of  
2 the determination.

History: 1993 a. 437, 1995 a. 27 ss. 2143 to 2157, 3212, 9126 (19), 9130 (4); Stats. 1995 s. 49.85; 1995 a. 289; 1997 a. 3; 2001 a. 16; 2003 a. 33; 2005 a. 25; 2007 a. 20 ss. 1685 to 1694, 9121 (6) (a); 2013 a. 20; 2013 a. 173 s. 33.

3 **SECTION 3.** 49.85 (2) (b) of the statutes is amended to read:

4 49.85 (2) (b) At least annually, the department of children and families shall  
5 certify to the department of revenue the amounts that, based on the notifications  
6 received under sub. (1) and on other information received by the department of  
7 children and families, the department of children and families has determined that  
8 it may recover under ss. 49.138 (5), 49.161, and 49.195 (3) and collect under s. 49.147  
9 (6) (cm), except that the department of children and families may not certify an  
10 amount under this subsection unless it has met the notice requirements under sub.  
11 (3) and unless its determination has either not been appealed or is no longer under  
12 appeal.

History: 1993 a. 437, 1995 a. 27 ss. 2143 to 2157, 3212, 9126 (19), 9130 (4); Stats. 1995 s. 49.85; 1995 a. 289; 1997 a. 3; 2001 a. 16; 2003 a. 33; 2005 a. 25; 2007 a. 20 ss. 1685 to 1694, 9121 (6) (a); 2013 a. 20; 2013 a. 173 s. 33.

13 **SECTION 4.** 49.85 (3) (b) 1. of the statutes is amended to read:

14 49.85 (3) (b) 1. Inform the person that the department of children and families  
15 intends to certify to the department of revenue an amount that the department of  
16 children and families has determined to be due under s. 49.138 (5), 49.161, or 49.195  
17 (3) or to be delinquent under a repayment agreement for a loan under s. 49.147 (6),  
18 for setoff from any state tax refund that may be due the person.

History: 1993 a. 437, 1995 a. 27 ss. 2143 to 2157, 3212, 9126 (19), 9130 (4); Stats. 1995 s. 49.85; 1995 a. 289; 1997 a. 3; 2001 a. 16; 2003 a. 33; 2005 a. 25; 2007 a. 20 ss. 1685 to 1694, 9121 (6) (a); 2013 a. 20; 2013 a. 173 s. 33.

19 **SECTION 5.** 71.93 (1) (a) 4. of the statutes is amended to read:

1           71.93 (1) (a) 4. An amount that the department of children and families may  
2 recover under s. 49.138 (5), 49.161, or 49.195 (3) or collect under s. 49.147 (6) (cm),  
3 if the department of children and families has certified the amount under s. 49.85.

**History:** 1987 a. 312; 1989 a. 31; 1993 a. 437; 1995 a. 27 ss. 3427 to 3429, 9126 (19), 9130 (4); 1995 a. 404; 1997 a. 3, 27; 2001 a. 16; 2003 a. 33; 2005 a. 25, 59, 254; 2007 a. 20 ss. 2141 to 2142, 9121 (6) (a); 2007 a. 97, 200; 2009 a. 28; 2013 a. 20, 308.

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**(END)**

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

LRB-4561/2dn  
PJK:...  
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*Date*

I did not include language specifically crediting overpayment recoveries to the appropriation under s. 20.437 (2) (me) because that is an appropriation to which federal moneys are credited. Technically, even though the recoveries represent the recovery of moneys that originally came from the federal government, the moneys recovered are not coming from the federal government.

Pamela J. Kahler  
Senior Legislative Attorney  
Phone: (608) 266-2682  
E-mail: [pam.kahler@legis.wisconsin.gov](mailto:pam.kahler@legis.wisconsin.gov)

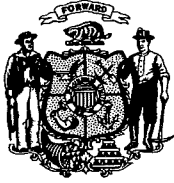
**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-4561/P1dn  
PJK:kjfrs

September 3, 2014

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State of Wisconsin  
2013 - 2014 LEGISLATURE



LRB-4561/P1  
PJK:kjf:rs

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

1     **AN ACT to amend** 49.85 (1), 49.85 (2) (b), 49.85 (3) (b) 1. and 71.93 (1) (a) 4.; and  
2             **to create** 49.138 (5) of the statutes; **relating to:** authority of the Department  
3             of Children and Families to recover overpayments of emergency assistance.

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23

(END)