

Accompanying the fourth recommendation of the Department of Public Welfare (House, No. 164). Human Services and Elderly Affairs.

**The Commonwealth of Massachusetts**

In the Year One Thousand Nine Hundred and Eighty-Two.

AN ACT ESTABLISHING A SET-OFF DEBT COLLECTION PROCEDURE TO COLLECT SUPPORT DEBTS.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. The General Laws are hereby amended by insert-  
2 ing after chapter 62D of the General Laws the following chapter: —

3 **CHAPTER 62E**

4 **SET-OFF DEBT COLLECTION.**

5 *Section 1.* The following words and phrases when used in this  
6 chapter shall, unless the context otherwise requires, be construed  
7 as follows: —

8 “claimant”, an individual who has failed to receive payment  
9 from another individual who has been ordered by a court of proper  
10 jurisdiction to pay spouse support or child support, whether or not  
11 said child was born in or out of wedlock;

12 “claimant agency”, the department of public welfare, in the  
13 exercise of its duty to collect support owed to the department for  
14 past public assistance paid, pursuant to section twenty-one of  
15 chapter eighteen and section three of chapter one hundred and  
16 eighteen;

17 “debt”, any liquidated sum due and owing to the claimant as  
18 reimbursement for failure to pay court ordered support or the  
19 claimant agency as reinforcement for past assistance paid to the  
20 debtor’s spouse or children, whether or not there is an outstanding  
21 judgment for that sum;

22 “debtor”, any individual owing money for support payments to a  
23 claimant or the claimant agency, which obligation has not been  
24 adjudged satisfied by court order, set aside by court order, or  
25 discharged in bankruptcy.

26 “department”, the department of revenue;

27 “refund”, an individual’s income tax refund from the common-  
28 wealth.

1 SECTION 2. The purpose of this chapter shall be to establish a  
2 policy that the department of revenue and the department of public  
3 welfare and claimants shall cooperate in identifying debtors who  
4 qualify for income tax refunds from the department of revenue and  
5 who owe money for support payments either to the commonwealth  
6 or to individual claimants and further to establish procedures for  
7 setting off against any such refund the sum of the debt owed to the  
8 commonwealth or individual claimants. It is the legislative intent  
9 that this chapter be liberally construed so as to effectuate these  
10 purposes as far as is legally and practically possible.

11 *Section 3.* The claimant or claimant agency shall not be allowed  
12 to effect final set-off and collect debts through the remedy estab-  
13 lished under this chapter unless both the debt and the refund, if  
14 any, are at least fifty dollars.

15 *Section 4.* Subject to the limitations contained in this chapter,  
16 the department shall, upon the request of a claimant or the claim-  
17 ant agency, render assistance in the collection of the delinquent  
18 accounts or debts owed to the claimant or claimant agency. This  
19 assistance shall be provided by setting off refunds due the debtor  
20 from the department by the sum certified by the claimant or  
21 claimant agency as due and owing.

22 *Section 5.* The department, on the first three business days of  
23 each December, shall publish, throughout the commonwealth in  
24 papers of general circulation, a notice which shall clearly set forth,  
25 at a minimum, the following information: An explanation of who  
26 has the right to claim the refund of a debtor; the procedure for  
27 claiming said refund; the data necessary for completing the claim  
28 which shall include the full name of the debtor, the social security  
29 number of the debtor if known by the claimant, the address and  
30 any other identifying information required by regulations promul-

31 gated by the department; the address where the claim must be sent;  
32 the date by which the claim must be filed, which shall be the last  
33 business day of December, the need to apply for the refund each  
34 year that the debtor fails to pay support to the claimant; and the  
35 right of the debtor to appeal any set-off as determined by the  
36 department. If the claimant's claim is incomplete or incorrect, the  
37 claimant shall be notified of the lack of information or errors and  
38 shall have until the last business day in January, or until twenty  
39 days after receipt of said notification, whichever is later, to com-  
40 plete or reform said claim. The department when notifying the  
41 public of its rights shall make a good faith effort to place the  
42 notification as a general news item.

43 Any claimant filing a claim for the refund of a debtor, shall at  
44 that time, certify the amount of the debt, that the debt is due and  
45 owing and whether or not the claimant has received any public  
46 assistance in lieu of support, and the amount of public assistance, if  
47 any, which the claimant has received. The claimant shall further  
48 certify that the debtor is under a court order to pay support to the  
49 claimant, and said court must be identified and the date and terms  
50 of said order identified, that the debtor is in arrears on said court  
51 ordered support payments, either in whole or in part, and said  
52 certification must be signed under the pains and penalties of per-  
53 jury.

54 The claimant agency seeking to collect a debt through set-off  
55 shall notify the department in writing of its intent, certify the  
56 amount of the debt, identify the source of the debt, including,  
57 where necessary, the name of the court and the date and terms of its  
58 order, and supply information necessary to identify the debtor  
59 whose refund is sought to be set-off. Whenever possible, such  
60 identifying information shall include the full name of the debtor,  
61 social security number, address, and any other information re-  
62 quired by regulations promulgated by the department. The notifi-  
63 cation and the furnishing of information by the claimant agency to  
64 the department must occur on or before a date specified by the  
65 department in the year preceding the calendar year in which the  
66 refund would be paid. Subject to said notification deadline, the  
67 notification shall be effective only to initiate set-off for claims  
68 against refunds that would be made in the calendar year subse-

69 quent to the year in which notification is made to the department.

70 *Section 6.* The department, upon receipt of notification from  
71 any claimant or the claimant agency, shall determine whether the  
72 debtor is entitled to a refund of at least fifty dollars and shall notify  
73 all claimants and the claimant agency whether or not a sufficient  
74 refund is pending, provided, however, that the department shall  
75 not reveal the amount of the refund pending until such refund is  
76 awarded to the claimant or the claimant agency.

77 The department, upon the determination that the refund of a  
78 debtor, or any part thereof, shall be set-off, shall within ten days of  
79 such determination notify the debtor that a claim has been filed  
80 against such refund and that the claimant or the claimant agency  
81 has asserted his, her, or its right against such refund.

82 The content of the written notification to the debtor of the set-off  
83 claim shall clearly set forth the basis for the claim to the refund, the  
84 intention of the department to apply the refund against the debt to  
85 the claimant or the claimant agency, the opportunity of the debtor  
86 to give written notice of intent to contest the validity of the claim  
87 within thirty days of the date of the mailing of the notice, the  
88 mailing address to which the application for a hearing must be sent,  
89 and the fact that failure to apply for a hearing in writing within the  
90 thirty day period shall be deemed to be a waiver of the opportunity  
91 to contest the claim and that said claim shall be set-off by default.  
92 The written application by the debtor shall be effective upon the  
93 mailing of the application postage prepaid and properly addressed  
94 to the department.

95 *Section 7.* If the department receives a written application from  
96 the debtor contesting the claim upon which the proposed set-off is  
97 based, an administrative hearing shall be granted pursuant to the  
98 provisions of chapter thirty A. The purpose of said hearing shall be  
99 to determine whether the claim is valid and if so, whether the  
100 claimed sum asserted as due and owing is correct. No issue pre-  
101 viously litigated by the same parties in a court of competent  
102 jurisdiction and upon which a final decision on the merits has been  
103 rendered shall be considered at the hearing. If the amount due is  
104 incorrect, a proper adjustment shall be made. Pending the finding  
105 of the hearing, the debt set-off collection shall be stayed.

106 *Section 3.* Any debtor not satisfied with the action taken at the  
107 hearing shall have the right to appeal said action in accordance

108 with the provisions of chapter thirty A. Unless stayed by court  
109 order, the department shall set-off the certified debt against the  
110 refund to which the debtor would otherwise be entitled.

111 *Section 9.* Upon the final determination of hearing pursuant to  
112 section seven or upon the default of the debtor to request, in a  
113 timely manner, a hearing pursuant to section six, the department  
114 shall finalize the set-off by transferring the proceeds collected for  
115 payment in accordance with the provisions of this chapter and by  
116 refunding any remaining balance to the debtor as if set-off had not  
117 occurred. If a claimant who is eligible for a payment under this  
118 chapter has received public assistance, the refund shall be paid to  
119 both the claimant and the claimant agency on a pro rata basis. The  
120 department shall provide the claimant or the claimant agency with  
121 an accounting of the set-off finalized for which payment is being  
122 made. Where payment is made to the claimant agency, the ac-  
123 counting shall, whenever possible, include the full names of the  
124 debtors, the social security numbers of the debtor, and the gross  
125 proceeds collected per individual set-off. Upon receipt by the  
126 claimant agency of a check representing the proceeds collected on  
127 the behalf of the claimant agency the department, the claimant  
128 agency shall credit the obligation of the debtor with the gross  
129 proceeds collected.

130 *Section 10.* Upon the finalization of set-off, the department  
131 shall notify the debtor in writing of the action taken along with an  
132 account of the section taken on any refund. If there is an outstand-  
133 ing balance after set-off, the notice under this section shall accom-  
134 pany the balance when disbursed.

135 *Section 11.* Notwithstanding section twenty-one of chapter six-  
136 ty-two C or any other provision of law prohibiting disclosure by  
137 the department of the contents of taxpayers' records of informa-  
138 tion and notwithstanding any confidentiality statute of the claim-  
139 ant agency, all information exchanged among the department, the  
140 claimant, the claimant agency, and the debtor, necessary to ac-  
141 complish and effectuate the intent of this chapter is lawful.

142 The information obtained by the claimant agency from the  
143 department in accordance with the aforementioned exemption  
144 allowed shall only be used by the claimant agency in the pursuit of  
145 its debt collection duties and practices and any person employed

146 by, or formerly employed by, the claimant agency who discloses  
147 any such information for any other purpose, except as otherwise  
148 allowed by section forty-three of chapter two hundred and seven-  
149 ty-one, shall be penalized in accordance with the terms of that  
150 statute.

151 *Section 12.* The commissioner of the department shall prescribe  
152 forms and establish all rules and regulations which he shall deem  
153 necessary in order to effectuate the intent of this chapter.

154 *Section 13.* The collection remedy under this chapter shall be in  
155 addition to and not in substitution of any other remedy available at  
156 law.

1 SECTION 2. Subparagraph (b) of section 21 of chapter 62C of  
2 the General Laws, as amended by section 5 of chapter 403 of the  
3 acts of 1980, is hereby further amended by striking the period at the  
4 end of clause (11) and by inserting the following: — or (12) the  
5 disclosure to a claimant or to the claimant agency of information  
6 necessary to effect a set-off for debt collection pursuant to chapter  
7 sixty-two E.

1 SECTION 3. Section 17A of chapter 66 of the General Laws, as  
2 amended by sections 54C and 72 of chapter 367 of the acts of 1978,  
3 is hereby further amended, in line 11, by inserting after the word  
4 “assistance” the following: — and including the use of said records  
5 by the department of public welfare in set-off debt collections  
6 under chapter sixty-two E.

1 SECTION 4. Section 28 of chapter 208 of the General Laws, as  
2 amended by section 1 of chapter 279 of the acts of 1976, is hereby  
3 further amended by adding thereto the following sentence: —  
4 Any order for support shall list the right of the custodian to seek  
5 annually set-off debt collection pursuant to chapter sixty-two E  
6 against the person required to support the children if said person  
7 fails to support the children.

1 SECTION 5. Section 34 of said chapter 208, as most recently  
2 amended by chapter 467 of the acts of 1977, is hereby amended by  
3 inserting at the end of the first paragraph of said section the  
4 following sentence: —

5 Any order of alimony shall list the right of the party to be  
6 supported annually to seek set-off debt collection pursuant to  
7 chapter sixty-two E against the person required to support the  
8 former spouse if the person ordered to pay alimony fails to support  
9 the former spouse.

1 SECTION 6. Section 32 of chapter 209 of the General Laws, as  
2 amended by section 1 of chapter 984 of the acts of 1977, is hereby  
3 further amended by inserting at the end of the third paragraph the  
4 following: — Any order for support shall list the right of the spouse  
5 to be supported or the custodian or the next friend of the child  
6 annually to seek set-off debt collection pursuant to chapter sixty-  
7 two E if the spouse ordered to pay support fails to do so.

1 SECTION 7. Section 43 of chapter 271 of the General Laws, as  
2 most recently amended by sections 54E and 72 of chapter 367 of the  
3 acts of 1978, is hereby further amended by striking the period at the  
4 end of the second sentence and adding the following: — and no-  
5 thing herein shall prevent the disclosure of information necessary  
6 for set-off debt collection pursuant to chapter sixty-two E.

1 SECTION 8. Section 5 of chapter 273 of the General Laws, as  
2 most recently amended by section 1 of chapter 621 of the acts of  
3 1979, is hereby further amended by adding to the first paragraph  
4 the following sentence: — Any order of support shall list the right  
5 of the party to be supported or of the custodian or next friend of a  
6 child to seek annually set-off debt collection pursuant to chapter  
7 62E if the spouse or parent fails to pay support.

1 SECTION 9. Section 12 of chapter 273 of the General Laws, is  
2 hereby further amended by chapter 325 of the acts of 1981, is  
3 hereby amended, by inserting at the end of the first paragraph, the  
4 following: —

5 At any adjudication of paternity, the custodian of the child shall  
6 be informed of the right annually to seek set-off debt collection  
7 pursuant to chapter sixty-two E if the parent required to support  
8 the child fails to do so.

