

By Mr. Card of Holbrook, petition of Andrew H. Card, Jr., Argeo P. Cellucci and Edward P. Kirby for legislation to establish a set-off debt collection procedure for the purpose of collecting support debts. 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 agency," the department of public welfare, in the
9 exercise of its duty to collect spouse and child support owed to the
10 department for past public assistance paid, pursuant to section
11 twenty-one of chapter eighteen and section three of chapter one
12 hundred and eighteen;

13 "debt," any liquidated sum due and owing to the claimant agen-
14 cy as reimbursement only for the amount of past assistance paid to
15 the debtor's spouse or children, whether or not there is an out-
16 standing judgement for that sum.

17 "debtor," any individual owing money for support payment to
18 the claimant agency, which obligation has not been adjudged
19 satisfied by court order, set aside by court order, or discharged in
20 bankruptcy;

21 “department,” the department of revenue;
22 “refund,” an individual’s income tax refund from the common-
23 wealth.

24 *Section 2.* The purpose of this chapter shall be to establish a
25 policy that the department of revenue and the department of public
26 welfare shall cooperate in identifying debtors who qualify for
27 income tax refunds from the department of revenue and who owe
28 money for support payments and further to establish procedure for
29 setting off against any such refund the sum of the debt owed to the
30 commonwealth, only to the amount of the past assistance paid. It is
31 the legislative intent that this chapter be liberally construed so as to
32 effectuate these purposes as far as is legally and practically possi-
33 ble.

34 *Section 3.* The claimant agency shall not be allowed to effect
35 final set-off and collect debts through the remedy established under
36 this chapter unless both the debt and the refund, if any, are at least
37 fifty dollars.

38 *Section 4.* Subject to the limitations contained in this chapter,
39 the department shall, upon the request of the claimant agency,
40 render assistance in the collection of the delinquent accounts or
41 debts owed to the claimant agency. This assistance shall be pro-
42 vided by setting off refunds due the debtor from the department by
43 the sum certified by the claimant agency as due and owing.

44 *Section 5.* The claimant agency seeking to collect a debt
45 through set-off shall notify the department in writing of its intent,
46 certify the amount of the debt, identify the source of the debt,
47 including, where necessary, the name of the court and the date and
48 terms of its order, and supply information necessary to identify the
49 debtor whose refund is sought to be set-off. Whenever possible,
50 such identifying information shall include the full name of the
51 debtor, social security number, address, and any other information
52 required by regulations promulgated by the department. The noti-
53 fication and the furnishing of information by the claimant agency
54 to the department must occur on or before a date specified by the
55 department in the year preceding the calendar year in which the
56 refund would be paid. Subject to said notification deadline, the
57 notification shall be effective only to initiate set-off for claims
58 against refunds that would be made in the calendar year subse-
59 quent to the year in which notification is made to the department.

60 *Section 6.* The department, upon the receipt of notification

61 from the claimant agency, shall determine whether the debtor is
62 entitled to a refund of at least fifty dollars and shall notify the
63 claimant agency whether or not a sufficient refund is pending,
64 provided, however, that the department shall not reveal the
65 amount of the refund pending until such refund is awarded to the
66 claimant agency.

67 The department, upon the determination that the refund of a
68 debtor, or any part thereof, shall be set-off, shall within ten days of
69 such determination notify the debtor that a claim has been filed
70 against such refund and that the claimant agency has asserted its
71 right against such refund.

72 The content of the written notification to the debtor of the set-off
73 claim shall clearly set forth the basis for the claim to the refund, the
74 intention of the department to apply the refund against the debt to
75 the claimant agency, the opportunity of the debtor to give written
76 notice of intent to contest the validity of the claim within thirty
77 days of the date of the mailing of the notice, the mailing address to
78 which the application for a hearing must be sent, and the fact that
79 failure to apply for a hearing in writing within the thirty day period
80 shall be deemed to be a waiver of the opportunity to contest the
81 claim and that said claim shall be set-off by default. The written
82 application by the debtor shall be effective upon the mailing of the
83 application postage prepaid and properly addressed to the depart-
84 ment.

85 *Section 7.* If the department receives a written application from
86 the debtor contesting the claim upon which the proposed set-off is
87 based, an administrative hearing shall be granted pursuant to the
88 provisions of chapter thirty-A. The purpose of said hearing shall be
89 to determine whether the claim is valid and, if so, whether the
90 claimed sum asserted as due and owing is correct. No issue pre-
91 viously litigated by the same parties in a court of competitive
92 jurisdiction and upon which a final decision on the merits has been
93 rendered shall be considered at the hearing. If the amount due is
94 incorrect, a proper adjustment shall be made. Pending the finding
95 of the hearing, the debt set-off collection shall be stayed.

96 *Section 8.* Any debtor not satisfied with the action taken at the
97 hearing shall have the right to appeal said action in accordance
98 with the provisions of chapter thirty-A. Unless stayed by court
99 order, the department shall set-off the certified debt against the
100 refund to which the debtor would otherwise be entitled.

101 *Section 9.* Upon the final determination of the hearing pursuant
102 to section seven or upon the default of the debtor to request in a
103 timely manner, a hearing pursuant to section six, the department
104 shall finalize the set-off by transferring the proceeds collected for
105 payment in accordance with the provisions of this chapter and be
106 refunding any remaining balance to the debtor as if set-off had not
107 occurred. The intention of this chapter is to provide a source of
108 funds for the collection only of the amount of past assistance paid
109 to the debtor's spouse or children. The department shall provide
110 the claimant agency with an accounting of the set-off finalized for
111 which payment is being made. Where payment is made to the
112 claimant agency, the accounting shall, whenever possible, include
113 the full names of the debtors, the social security numbers of the
114 debtor, and the gross proceeds collected per individual set-off.
115 Upon receipt by the claimant agency of a check representing the
116 proceeds collected on the behalf of the claimant agency by the
117 department, the claimant agency shall credit the obligation of the
118 debtor with the gross proceeds collected.

119 *Section 10.* Upon the finalization of set-off, the department
120 shall notify the debtor and the recipient of public assistance of the
121 action taken along with an accounting of the action taken on any
122 refund. If there is an outstanding balance after set-off, the notice
123 under this section shall accompany the balance when disbursed.

124 *Section 11.* Notwithstanding section twenty-one of chapter six-
125 ty-two C or any other provision of law prohibiting disclosure by
126 the department of the contents of taxpayer's records of informa-
127 tion and notwithstanding any confidentiality statute of the claim-
128 ant agency, all information exchanged among the department, the
129 recipient of public assistance, the claimant agency, and the debtor,
130 necessary to accomplish and effectuate the intent of this chapter is
131 lawful.

132 The information obtained by the claimant agency from the
133 department in accordance with the aforementioned exemption
134 allowed shall only be used by the claimant agency in the pursuit of
135 its debt collection duties and practices and any person employed
136 by, or formerly employed by, the claimant agency who discloses
137 any such information for any other purpose, except as otherwise
138 allowed by section forty-three of chapter two hundred and seventy-
139 one, shall be penalized in accordance with the terms of that statute.

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

143 *Section 13.* The collection remedy under this chapter shall be in
144 addition to and not in substitution of any other remedy available at
145 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

5 (12) the disclosure to the claimant agency of information neces-
6 sary 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 section 54C and 72 of chapter 367 of the acts of 1978, is
3 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 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.



