

Bill as
Introduced

HB 360 - AS INTRODUCED

2013 SESSION

13-0645

08/01

HOUSE BILL

360

AN ACT

relative to overpayments caused by arbitration awards, back pay awards, settlement agreements, or jury verdicts.

SPONSORS:

Rep. A. White, Graf 13

COMMITTEE:

Labor, Industrial and Rehabilitative Services

ANALYSIS

This bill requires former and current employers to make joint restitution to the unemployment compensation fund in certain situations.

This bill is a request of the department of employment security.

Explanation:

Matter added to current law appears in ***bold italics***.

Matter removed from current law appears [~~in brackets and struck through.~~]

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Thirteen

AN ACT relative to overpayments caused by arbitration awards, back pay awards, settlement agreements, or jury verdicts.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 Total and Partial Unemployment. Amend RSA 282-A:14, III(b) to read as follows:

2 (b) The **former or current employee and the** employing unit shall be **jointly** liable to
3 make restitution to the unemployment compensation fund in full for any and all unemployment
4 benefits paid to ~~an~~ **a former or current** employee for a period covered by or reasonably deemed to
5 be included in any arbitration award, back pay award, settlement agreement, or jury verdict.

6 **RSA 282-A:165 shall not apply to this subparagraph. The commissioner shall:**

7 (1) **Collect any liability created under this subparagraph by civil action in**
8 **any manner provided for the collection of contributions in RSA 282-A:141 through RSA 282-**
9 **A:156;**

10 (2) **Withhold, in whole or in part as determined by the commissioner, any**
11 **future benefits payable to the former or current employee and credit such amount withheld**
12 **against the liability until it is repaid in full; and**

13 (3) **Withhold, in whole or in part as determined by the commissioner, any**
14 **future adjustment or refund to the employing unit under RSA 282-A:149 and credit such**
15 **amount withheld against the liability until it is repaid in full.**

16 2 Effective Date. This act shall take effect January 1, 2014.

Speakers

Hearing Minutes

HOUSE COMMITTEE ON LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

PUBLIC HEARING ON HB 360

BILL TITLE: relative to overpayments caused by arbitration awards, back pay awards, settlement agreements, or jury verdicts.

DATE: 2/5/13

LOB ROOM: 307 **Time Public Hearing Called to Order:** 10:45 am

Time Adjourned: 11:00 am

(please circle if present)

Committee Members: Reps. A. White, S. Kelly, Coulombe, C. Rice, Weed, J. Schmidt, DiSilvestro, Andrews, Cahill, Lev, Tanner, Daniels, Burchell, H. Richardson, Infantine, Pellegrino, Flanagan, Emerick, Sedensky and St. James.

Bill Sponsors: Rep. A. White, Graf 13

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Rep Andy White, Sponsor – Opposed – Recommends ITL

This bill was late in drafting period. Gave approval without seeing it and now feels it is not clear on several things.

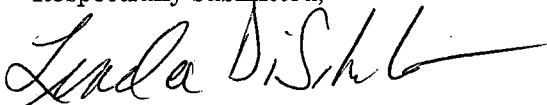
Line 2 – uses word “jointly”

Line 10 & 13 – in whole or in part

Dan Feltes, NH Legal assistance – Opposed

This bill makes workers automatically at fault to re pay unemployment benefits, if they had properly notified the Unemployment but Unemployment failed to deduct appropriate amounts.

Respectfully submitted,



Rep. Linda DiSilvestro, Clerk

HOUSE COMMITTEE ON LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

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Bill Sponsors: Rep. A. White, Graf 13

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

1. Rep Andy White - Sponsor - Oppose

Recom: I TL

This bill was late in drafting period. I am opposed if not successful now feel it is not clear several things:

line 2 - users was "jointly" -
line 10 + 13 - in whole or in part

2. Dan Feltus - Oppose

This bill makes users automatically at fault for unemployment benefits - if they had properly notified the unemployment - but

unemployment of which to deduct appropriate amounts.

Testimony

Statutes cited in HB 360

282-A:14 Total and Partial Unemployment. –

I. (a) An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to him and during which he performs no services. An individual who is not entitled to vacation pay from his employer shall be deemed to be in "total unemployment" during the entire period of any general closing of his employer's place of business for vacation purposes, notwithstanding his prior assent, direct or indirect, to the establishment of such vacation period by his employer.

(b) An individual who is seeking only part-time work shall be deemed to be partially unemployed only in any week during which the individual was employed fewer than 20 hours.

II. An individual shall be deemed to be "partially unemployed" in any week of less than full-time work if the wages computed to the nearest dollar payable to him with respect to such week fail to equal his weekly benefit amount.

III. (a) For the purposes of paragraphs I and II, the term "wages" shall include compensation for temporary partial disability under the workers' compensation law of any state or under a similar law of the United States, payments in lieu of notice, a sickness or separation allowance, payment of accrued leave or sums of whatever type or nature, except those specifically excluded elsewhere in this subparagraph, payments upon discharge from military service from either the state or federal government, or both, and earnings from self-employment. "Wages" shall not mean and shall not include payments from a supplemental unemployment plan as defined in RSA 282-A:3-a or any portion of a lump sum payment for workers' compensation made pursuant to RSA 281-A:37. Wages or earnings or both shall be deemed to have been received for such week or weeks as the commissioner may find can be reasonably said to apply. The application of longevity, stay, retention, attendance, and similar payments commencing with a period of one or more weeks of partial or total unemployment shall be presumed reasonable if such payment was received 90 or fewer days prior to the commencement of such period. An individual's maximum weekly benefit amount shall be reduced by all wages and earnings in excess of 30 percent, rounded to the nearest dollar, of the individual's weekly benefit amount. Wages shall not include any payment made to an individual by reason of the individual's permanent separation from employment, for reasons other than retirement, under a prior existing plan maintained by employer contributions vested in the individual before the date of separation.

(b) ~~The employing unit shall be liable to make restitution to the unemployment compensation fund in full for any and all unemployment benefits paid to an employee for a period covered by or reasonably deemed to be included in any arbitration award, back pay award, settlement agreement, or jury verdict.~~

Source. 1937, 178:1. 1939, 138:1-7. 1941, 103:1-11. RL 218:1. 1943, 56:1. 1945, 16:1; 58:1; 138:1-7. 1947, 59:1-6. 1949, 185:1-4; 262:1. 1950, 5, part 18. 1951, 34:1; 36:1; 105; 140:1, 2. 1953, 209:1. RSA 282:1(M). 1955, 141:1-6. 1957, 118:1; 313:1-3. 1961, 88:1-6. 1963, 194:1, 2. 1967, 400:2, 3. 1969, 460:1, 3. 1971, 156:1, 2, 4-16. 1973, 118:1; 589:7. 1975, 90:1; 393:1. 1979, 348:3, 10. 1981, 408:3; 416:2. 1983, 457:1. 1985, 340:2. 1987, 243:1. 1989, 267:1. 1995, 249:1. 2005, 239:10. 2006, 130:2. 2008, 297:4, eff. Aug. 26, 2008.

Collection of Contributions

Section 282-A:141

282-A:141 Interest on Past-Due Contributions. – Contributions unpaid on the date on which they are due and payable, as prescribed by the commissioner of the department of employment security in a rule, shall bear interest at the rate of one percent per month or part thereof until payment plus accrued interest is received by the commissioner. Interest collected pursuant to this paragraph shall be paid into the contingent fund provided in RSA 282-A:140.

Source. 1937, 178:1. 1941, 103:35-43. RL 218:11. 1945, 138:21, 22. 1947, 59:23. 1949, 185:16, 17; 201:1. 1951, 140:9. 1953, 209:9-12. RSA 282:12(A). 1955, 141:17-19. 1957, 118:14. 1969, 460:21. 1973, 589:9, 10. 1975, 393:4. 1981, 408:3, eff. Oct. 1, 1981.

Section 282-A:142

282-A:142 Late-Filing Fee; Filing Extensions. – Commencing with reports due beginning with the third calendar quarter of 2001:

I. If any employer subject to payment of contributions as provided in RSA 282-A:69, I, fails to file any required report on the date on which it is due, as prescribed by the commissioner of the department of employment security in a rule, the employer shall pay a fee for such failure equal to 10 percent of the contributions due thereon but not less than \$25 for each such failure.

II. If any employer electing to reimburse the fund as provided in RSA 282-A:69, II fails to file any required report on the date on which it is due, as prescribed by the commissioner of the department of employment security in a rule, the employer shall pay a fee for such failure equal to .001 of the gross wages paid during the quarter covered by such report but not less than \$25 for each such failure.

III. The state, county, city, town, or other political subdivision that elects to reimburse the fund pursuant to RSA 282-A:70 and RSA 282-A:71, I shall pay a fee of \$25 for each failure to file any report on the date on which it is due as prescribed by the commissioner of the department of employment security in a rule.

IV. Upon timely application and payment of a fee of \$50, the time for filing any such report may be extended 30 days. All fees shall be paid into the contingent fund provided in RSA 282-A:140.

V. All filing fees may be collected in any manner provided for the collection of contributions in this subdivision or in RSA 282-A:161-168 or by RSA 80.

Source. 1937, 178:1. 1941, 103:35-43. RL 218:11. 1945, 138:21, 22. 1947, 59:23. 1949, 185:16, 17; 201:1. 1951, 140:9. 1953, 209:9-12. RSA 282:12(B). 1955, 141:17-19. 1957, 118:14. 1969, 460:21. 1973, 589:9, 10. 1975, 393:4. 1981, 408:3. 1991, 311:13. 2001, 133:4, eff. July 1, 2001.

Section 282-A:143

282-A:143 Property Lien. – If any employer required to pay contributions under this chapter neglects or refuses to pay contributions after demand, the amount, together with all penalties, fees, and interest and any costs that may accrue becomes a lien in favor of the state upon all property and rights to property whether real or personal, belonging to the employer. The lien arises at the time demand is made by the commissioner and continues until the liability for the sum, with interest and costs, is satisfied. Certificates of release of such lien shall be issued on the satisfaction of the lien. For the purposes of RSA 282-A:141-155, "employer" in the case of corporations or limited liability companies includes the president, treasurer, members, or any other person in a managerial capacity of said corporation or limited liability company. No lien against real property under this section shall be effective until it is recorded at the registry of deeds for the county in which the real property lies. Liens against personal property shall be filed in the office of the secretary of state. Fees for recording and filing such liens and any certificates of release thereof shall be in accordance with RSA 478:17-g.

Source. 1937, 178:1. 1941, 103:35-43. RL 218:11. 1945, 138:21, 22. 1947, 59:23. 1949, 185:16, 17; 201:1. 1951, 140:9. 1953, 209:9-12. RSA 282:12(C). 1955, 141:17-19. 1957, 118:14. 1969, 460:21. 1973, 589:9, 10. 1975, 393:4. 1977, 424:9. 1978, 40:27. 1981, 408:3. 1995, 249:6. 1997, 211:3. 2001, 102:30, eff. July 1, 2001.

Section 282-A:144

282-A:144 Injunction. – Any employer or employing unit refusing or failing to make and file required reports or to pay any contributions, interest or penalties when due under the provisions of this chapter, after 10 days' written notice sent by the commissioner or his authorized representative to the employer's or employing unit's last known address by registered mail, may be enjoined from operating any business in the state while in violation of the provisions of this chapter upon the complaint of the commissioner of the department of employment security in the superior court of the county in which the employer or employing unit has or had a place of business within the state, and any temporary injunction enjoining the continuance of such business may be granted without notice. Such injunction may enjoin any employer or employing unit from operating his or its business until such reports or contributions (including interest and penalties) or both shall have been made and filed or paid. The provisions of this section shall be deemed as cumulative and in addition to any other provisions of this chapter relating to the collection of contributions by the commissioner.

Source. 1937, 178:1. 1941, 103:35-43. RL 218:11. 1945, 138:21, 22. 1947, 59:23. 1949, 185:16, 17; 201:1. 1951, 140:9. 1953, 209:9-12. RSA 282:12(C-1). 1955, 141:17-19. 1957, 118:14. 1969, 460:21. 1973, 589:9, 10. 1975, 393:4. 1981, 408:3, eff. Oct. 1, 1981.

Section 282-A:145

282-A:145 Time Limitation. – No action may be maintained under this chapter unless commenced within 6 years of the time the cause arose or 2 years after the department is put on notice that the cause exists, whichever is later.

Source. 1937, 178:1. 1941, 103:35-43. RL 218:11. 1945, 138:21, 22. 1947, 59:23. 1949, 185:16, 17; 201:1. 1951, 140:9. 1953, 209:9-12. RSA 282:12(D). 1955, 141:17-19. 1957, 118:14. 1969, 460:21. 1973, 589:9, 10. 1975, 393:4. 1981, 408:3, eff. Oct. 1, 1981.

Section 282-A:146

282-A:146 Collection, Distraint. – If, after due notice, any employer shall fail to make any payment of contributions or interest thereon, the amount due, with interest thereon pursuant to RSA 282-A:141, shall be collectible by any means provided by law for the collection of any tax due to the state of New Hampshire or to any subdivision thereof, including any means provided by RSA 80:2. Tax warrants referred to in said chapter may be signed by either the commissioner of the department of employment security or the duly authorized counsel for such department.

Source. 1937, 178:1. 1941, 103:35-43. RL 218:11. 1945, 138:21, 22. 1947, 59:23. 1949, 185:16, 17; 201:1. 1951, 140:9. 1953, 209:9-12. RSA 282:12(E). 1955, 141:17-19. 1957, 118:14. 1969, 460:21. 1973, 589:9, 10. 1975, 393:4. 1981, 408:3, eff. Oct. 1, 1981.

Section 282-A:147

282-A:147 Priorities Under Legal Dissolution or Distributions. – In the event of any distribution of an employer's assets pursuant to an order of any court under the laws of this state, or any receivership, assignment for benefit of creditors, adjudicated insolvency, composition, or similar proceeding, contributions then or thereafter due shall be paid in full prior to all other claims except taxes and claims for wages of not more than \$250 to each claimant, earned within 6 months of the commencement of the proceeding. In the event of any employer's adjudication in bankruptcy, judicially confirmed extension proposal, or composition, under the Federal Bankruptcy Act of 1898, as amended, contributions then or hereafter due shall be entitled to such priority as is provided in section 64(b) of that act, U.S.C., Title 11, section 104(b), as amended.

Source. 1937, 178:1. 1941, 103:35-43. RL 218:11. 1945, 138:21, 22. 1947, 59:23. 1949, 185:16, 17; 201:1. 1951, 140:9. 1953, 209:9-12. RSA 282:12(F). 1955, 141:17-19. 1957, 118:14. 1969, 460:21. 1973, 589:9, 10. 1975, 393:4. 1981, 408:3, eff. Oct. 1, 1981.

Section 282-A:148

282-A:148 Adjustment of Contribution by Compromise. –

I. The commissioner of the department of employment security may, with the approval of the attorney general, effect by written stipulation such settlement of the contribution or interest due under the provisions of this chapter as he or she may deem to be for the best interests of the state, and the payment of the sum so agreed upon shall be a full satisfaction of such contribution and interest.

II. Payment by a debtor of interest, penalties, fees, and legal costs due under the provisions of this chapter totaling \$50 or less may be waived by the commissioner of the department of employment security as he or she may deem to be for the best interests of the state.

Source. 1937, 178:1. 1941, 103:35-43. RL 218:11. 1945, 138:21, 22. 1947, 59:23. 1949, 185:16, 17; 201:1. 1951, 140:9. 1953, 209:9-12. RSA 282:12(G). 1955, 141:17-19. 1957, 118:14. 1969, 460:21. 1973, 589:9, 10. 1975, 393:4. 1981, 408:3. 2003, 116:18, eff. Aug. 8, 2003.

Section 282-A:149

282-A:149 Adjustments and Refunds. – If not later than 4 years from the last day of the period with respect to which a payment of any contributions or interest thereon was made, or one year from the date on which such payment was made, whichever shall be the later, an employing unit or employer who has paid such contribution or interest thereon shall make application for an adjustment thereof in connection with subsequent contribution payments, or for a refund thereof because such adjustment cannot be made, and the commissioner shall determine that such contributions or interest or any portion thereof was erroneously collected, the commissioner shall allow such employing unit or employer to make an adjustment thereof, without interest, in connection with subsequent contribution payments by him; or, if such adjustment cannot be made, the commissioner shall refund said amount, without interest, from the fund, unless such payments are to be refunded from the contingent fund as provided in RSA 282-A:140. The commissioner, on his own initiative, may, in any case, for like cause and within the same period, allow either adjustment or refund, as he in his discretion may deem to be for the best interests of the state. Nothing in this chapter or in any part thereof shall be construed to authorize any refund or credit of monies due and payable under the law and rules in effect at the time such monies were paid. It being further provided that the amount to be refunded or adjusted shall be reduced by the amount of unemployment compensation benefits which would not have been paid except for the erroneously reported employment and wages.

Source. 1937, 178:1. 1941, 103:35-43. RL 218:11. 1945, 138:21, 22. 1947, 59:23. 1949, 185:16, 17; 201:1. 1951, 140:9. 1953, 209:9-12. RSA 282:12(H). 1955, 141:17-19. 1957, 118:14. 1969, 460:21. 1973, 589:9, 10. 1975, 393:4. 1981, 408:3, eff. Oct. 1, 1981.

Section 282-A:150

282-A:150 Jeopardy Assessment. –

I. If the commissioner believes that the collection of contributions will be jeopardized by delay, he shall immediately assess on the basis of whatever information he may have such contributions together with all interest and penalties, whether or not the time prescribed by RSA 282-A:69 through 98 and this subdivision or by the rules adopted by the commissioner for making return and paying such contributions has expired. Such contributions, interest and penalties shall thereupon become immediately due and payable; and immediate notice and demand, either in person or in writing, shall be made by the commissioner or his duly authorized representatives for the payment thereof. Upon failure or refusal to pay immediately such contributions, interest and penalties, collection thereof by any means provided in this subdivision shall be lawful without regard to the period prescribed in RSA 282-A:151 or by the rules of the commissioner and proceedings may also be instituted under RSA 282-A:161-168 for such failure or refusal.

II. The collection of the whole or any part of the amount of such assessment may be stayed by filing with the commissioner a bond in such amount as is equal to the amount to which the stay is desired and with such sureties as the commissioner deems necessary conditioned on payment of the amount collection of which is stayed, at the time at which, but for this section, such amount would be due.

III. An assessment under this section shall not finally fix the amount of such contributions, interest and penalties. Where the amount due is subsequently discovered to be greater than that assessed, the balance shall be collected by any means provided in this subdivision. If the amount due is subsequently discovered to be less than that assessed, it shall be adjusted in the manner provided by RSA 282-A:149.

Source. 1937, 178:1. 1941, 103:35-43. RL 218:11. 1945, 138:21, 22. 1947, 59:23. 1949, 185:16, 17; 201:1. 1951, 140:9. 1953, 209:9-12. RSA 282:12(H-1). 1955, 141:17-19. 1957, 118:14. 1969, 460:21. 1973, 589:9, 10. 1975, 393:4. 1981, 408:3, eff. Oct. 1, 1981.

Section 282-A:151

282-A:151 Failure of Employer to File Report of Contributions Due. –

I. If an employer shall fail to file a report for the purpose of determining the amount of contributions due under this chapter, or if such report when filed shall be incorrect or insufficient and the employer shall fail to file a correct or sufficient report within 20 days after the commissioner of the department of employment security shall have required the same by written notice, the commissioner shall determine the amount of contribution due, with interest thereon pursuant to RSA 282-A:141, from such employer on the basis of such information as he may be able to obtain; and he shall give written notice of such determination to the employer. Such determination shall finally fix the amount of contribution unless the employer shall initiate an appeal in the manner provided in RSA 282-A:94-98. The determination of the commissioner shall be deemed to be prima facie correct, and the burden of proving error therein shall be upon the employer. Except for good cause shown, no ground of error shall be considered unless set forth in the petition of appeal.

II. If on appeal the determination of the commissioner shall be confirmed, or the amount of the contribution originally determined by the commissioner shall be increased, the cost of such proceedings, as in civil actions, shall be assessed against the employer. No costs shall be assessed against the state on such appeal.

Source. 1937, 178:1. 1941, 103:35-43. RL 218:11. 1945, 138:21, 22. 1947, 59:23. 1949, 185:16, 17; 201:1. 1951, 140:9. 1953, 209:9-12. RSA 282:12(I). 1955, 141:17-19. 1957, 118:14. 1969, 460:21. 1973, 589:9, 10. 1975, 393:4. 1981, 408:3, eff. Oct. 1, 1981.

Section 282-A:152

282-A:152 Collection of State Contributions. –

I. Whenever used in this subdivision, unless the context shall otherwise require, or unless otherwise specifically provided, the word "contribution" shall include not only the principal of any contribution but also all interest, penalties, fees and other charges added thereto by law; and the term "serving officer" shall include any sheriff, deputy sheriff, constable or other officer authorized to serve any civil process. Delivery of written notice by an authorized representative of the commissioner shall be deemed proper service of process.

II. Upon the failure of any person to pay any contribution due to the state within 30 days from its due date, the commissioner of the department of employment security or his duly authorized representative charged by law with its collection shall add thereto such penalty or interest or both as shall be prescribed by law. The attorney general may collect any such contribution by a civil action, or the commissioner or his duly authorized representative charged by law with the collection of such contribution may make out and sign a warrant directed to any serving officer for distraint upon the goods, realty or body of such person. Each serving officer so receiving a warrant shall make return to the party making out such warrant within a period of 30 days from its receipt by him. To each warrant placed in the hands of any serving officer shall be attached an itemized bill, certified by the party making out such warrant to be a true and correct statement of the total amount of contribution due from such person. Any serving officer deputed to serve a warrant drawn under the provisions of this law shall, so far as such warrant is concerned, have, mutatis mutandis, all the powers vested in tax collectors and sheriffs under the provisions of RSA 80; shall proceed pursuant to the terms of one or more of said statutes; shall make return to the party making out such warrant within 10 days of the completion of service and shall collect from such person, in addition to the amount shown on such warrant, his fees and charges, which shall be those authorized by statute for serving officers, as in all other civil actions.

Source. 1937, 178:1. 1941, 103:35-43. RL 218:11. 1945, 138:21, 22. 1947, 59:23. 1949, 185:16, 17; 201:1. 1951, 140:9. 1953, 209:9-12. RSA 282:12(J). 1955, 141:17-19. 1957, 118:14. 1969, 460:21. 1973, 589:9, 10. 1975, 393:4. 1981, 408:3. 2003, 116:10, eff. Aug. 8, 2003.

Section 282-A:152-a

282-A:152-a Garnishment. –

I. Definitions. In this section:

- (a) "Commissioner" means commissioner of the department of employment security.
- (b) "Date that the determination creating the overpayment becomes final" means the date a person has no appeal or appeal period pending under RSA 282-A:164, RSA 282-A:165, and RSA 282-A:42-68.
- (c) "Department" means the department of employment security.

(d) "Disposable earnings" means that part of the earnings of any individual remaining after the deduction from those earnings of any amount required by law to be withheld or required by the employer to be withheld as a condition of employment.

(e) "Earnings" means any form of payment to a person for his or her labor including, but not limited to, salary, wages, commission, or other compensation.

(f) "Employer" means any person, business, organization, employing unit, firm, corporation, or association, or any political subdivision or department of the state or federal government, which employs a person or pays income or any other compensation to a person for his or her labor.

(g) "Individual debtor" means a person determined to have been overpaid under RSA 282-A:164, provided the department provided to such person notice of the determination that he or she was overpaid, provided an opportunity for appeal, and opportunities for appeal have been exhausted.

(h) "Notice of garnishment" means a notice requiring an employer to garnish an individual debtor's earnings without a court order.

(i) "Notice of court-ordered garnishment" means a notice requiring an employer to garnish an individual debtor's earnings based on a court order for payments.

II. Upon the failure of any individual debtor to pay any overpayment due to the state under RSA 282-A:164 within 90 days of the date that the determination creating the fraud overpayment becomes final, the department may serve duplicate notices of garnishment upon any employer that owes, or may owe in the future, earnings to such individual debtor. Any notice of garnishment served upon any employer shall be simultaneously served upon the individual debtor by first-class mail to his or her last known address. The department shall send the individual debtor by first-class mail to his or her last known address a notice of intent to garnish earnings 14 days before serving any notice of garnishment. No individual debtor shall be deemed under this section to have failed to pay any fraud overpayment due to the state within 90 days of the date that the determination creating the overpayment becomes final, if the debtor:

(a) Has agreed to a payment plan approved by the department; and

(b) Is in substantial compliance with such payment plan.

III. The notice of garnishment shall advise the individual debtor and individual debtor's employer:

(a) Of the employer's obligation to provide one of the duplicate copies of the notice of garnishment to the individual debtor upon receipt;

(b) Of the amount which may be garnished for any week;

(c) Of the total amount subject to garnishment;

(d) That the garnishment applies to any current or subsequent earnings paid 21 or more days after the date of mailing of the notice of garnishment;

(e) Of the individual debtor's right to file, at any time, for suspension of the notice of garnishment;

(f) That any amounts which the employer is obligated to withhold pursuant to RSA 458-B have priority over amounts subject to garnishment under this section;

(g) That, including any fee added and retained under paragraph VII, the amount garnished pursuant to this section when added to the amount withheld pursuant to RSA 458-B may not exceed 25 percent of the individual debtor's weekly disposable earnings, or the amount by which the individual debtor's weekly disposable earnings exceed 50 times the minimum hourly wage as established by the Fair Labor Standards Act, whichever is less;

(h) That the employer must implement garnishment no later than the first earnings that are paid 21 days after the notice was mailed;

(i) That the garnishment is binding upon the employer until payment in full is made of the total amount subject to garnishment;

(j) That the employer must send the garnished amount to the commissioner at the same time the individual debtor is paid;

(k) Of the provisions, liabilities, and penalties in paragraphs IV-IX; and

(l) Of the employer's right to add and retain a fee of \$1.00 for each garnishment for the administrative cost incurred as a result of the garnishment procedures.

IV. With respect to the individual debtor's right to file for suspension of the notice of garnishment, the notice of garnishment shall state as follows, in at least 12-point type:

This notice of garnishment requires your employer to garnish (take) some of your earnings for work and send them to the department of employment security to repay overpaid unemployment insurance benefits. Once earnings for a week have been garnished, you will not be able to get them back.

You have the right, at any time, to file for suspension (stopping) of this garnishment. If you file for suspension of garnishment, the department of employment security has the right to take you to court to ask a judge to decide how

much, if any, of your earnings should be garnished. Instead of going to court, you and the department may be able to agree to a different amount of garnishment. If you want to file for suspension or make an agreement with the department, you must call the department of employment security at _____.

V. The amount which may be garnished for each week shall be determined by the department based on the individual debtor's financial circumstances known to the department, including but not limited to the individual debtor's financial affidavit, if available.

VI. Garnishment under this section shall have priority over any other legal process under state law against the same earnings except withholding under RSA 458-B.

VII. In addition to the amount garnished under this section, the employer may add and retain a fee of \$1.00 for each garnishment for the administrative cost incurred as a result of the garnishment procedures.

VIII. An employer shall:

- (a) Provide one of the duplicate copies of the notice of garnishment to the individual debtor upon receipt;
- (b) Apply the garnishment to any current or subsequent earnings paid 21 or more days after the date of issuance of the notice of garnishment;
- (c) Not garnish for any week more than the amount allowed;
- (d) Suspend garnishment of earnings paid not later than 8 days following receipt of notice from the department of the requirement to do so;
- (e) Give priority to any amounts that the employer is obligated to withhold pursuant to RSA 458-B over amounts subject to garnishment under this section;
- (f) Not allow the amount garnished pursuant to this section, including any fee added and retained under paragraph VII, when added to the amount withheld pursuant to RSA 458-B to exceed 25 percent of the individual debtor's weekly disposable earnings, or the amount by which the individual debtor's weekly disposable earnings exceed 50 times the minimum hourly wage as established by the Fair Labor Standards Act, whichever is less;
- (g) Implement garnishment no later than the first payment of earnings that occurs 21 or more days after the notice was mailed;
- (h) Treat the garnishment as binding upon the employer until payment in full is made of the total amount subject to garnishment;
- (i) Send the garnished amount to the commissioner at the same time the individual debtor is paid;
- (j) Notify the commissioner within 20 days of the individual debtor's termination of employment, and shall provide the individual debtor's last known address and the name and address of the present employer, if known.
- (k) Be liable for the accumulated amount it should have garnished if it fails to garnish in accordance with the provisions of the notice.

IX. The employer shall be liable for an administrative fine of \$100 per pay period for each individual debtor with respect to whom the employer has willfully failed to comply with the provisions of subparagraphs VIII(g) and VIII(j). For other willful violations of this section an administrative fine of not less than \$100 or more than \$500 may be imposed. Prior to assessing such fine against the employer, the commissioner shall notify the employer of its intent to assess the fine, the amount of the fine, the date by which the fine is payable, and shall provide the employer with the opportunity to appeal the imposition of the fine.

X. An employer shall be guilty of a misdemeanor and subject to a fine of up to \$1,000:

- (a) For discharging, refusing to employ, or taking any disciplinary action against an individual debtor because of the garnishment procedures.
- (b) For failure to comply with the provisions of paragraph VIII.

XI. Notwithstanding the 90 day limitation in paragraph II an individual debtor may, subject to the approval of the department, agree to voluntary garnishment at any time.

XII. An individual debtor may file for suspension of the notice of garnishment at any time. If the individual debtor files for suspension of the notice of garnishment, the department may file a motion for periodic payments in the Merrimack county sixth Circuit court seeking establishment of an order for payments.

XIII. If an individual debtor files for suspension of the notice of garnishment, the department shall suspend the notice of garnishment and advise any employer upon which the notice of garnishment was served to suspend garnishment of earnings paid not later than 8 days following receipt of notice to suspend.

XIV. If an individual debtor who filed for suspension of the notice of garnishment and the department reach an agreement as to the amount which may be garnished for any week, the department may issue a new notice of garnishment consistent with such agreement.

XV. Following the expiration of 90 days after the date a determination which finds an individual debtor overpaid under RSA 282-A:164 becomes final, such determination with interest under RSA 282-A:141, shall be for purposes of RSA 524:6-a the judgment of any circuit court-district division in which the department files a motion for

periodic payments.

XVI. Following the issuance of an order for payments by any circuit court-district division on any overpayment due to the state under RSA 282-A:164 for more than 90 days, the department may serve a notice of court-ordered garnishment upon any employer that owes, or may owe in the future, earnings to such individual debtor. Any notice of court-ordered garnishment served upon any employer shall be simultaneously served upon the individual debtor by certified mail to his or her last known address. The amount which may be garnished for any week shall not exceed that amount, applied weekly, deemed appropriate by the circuit court-district division in its order for payments.

XVII. The notice of court-ordered garnishment shall advise the individual debtor and individual debtor's employer:

(a) Of the information required by III(a)-(d) and (f)-(l) of this section; and

(b) Of the individual debtor's right to file a motion with the Merrimack county sixth circuit court seeking a change in the amount of the payments based on a change in financial circumstances;

XVIII. With respect to the individual debtor's right to file a motion with the Merrimack county sixth circuit court, the notice of court-ordered garnishment shall state as follows, in at least 12-point type:

This notice of court-ordered garnishment requires your employer to garnish (take) some of your earnings for work and send them to the department of employment security to repay overpaid unemployment insurance benefits. The amount of the garnishment is based on an order of the Merrimack county sixth circuit court. Once earnings for a week have been garnished, you will not be able to get them back.

You have the right, at any time, to file a motion with the Merrimack county sixth circuit court asking for the amount of the garnishment to be changed based on a change in your financial circumstances. If you want to file a motion, you should contact the Merrimack county sixth circuit court. Nothing in this paragraph prevents you and the department of employment security from agreeing to a greater or lesser amount of garnishment and filing the agreement with the Merrimack county sixth circuit court. If the department of employment security does not agree, you still have the right to file a motion.

XIX. The department may agree to a greater or lesser periodic amount than that amount deemed appropriate by the Merrimack county sixth circuit court in its order for payments, whether or not the individual debtor has requested a hearing before the court to obtain a change in the court's order, and any such agreement shall be filed with the Merrimack county sixth circuit court.

XX. Within 7 days of receiving written notice that the individual debtor has filed a motion to request a change in the court's order, the department shall suspend or modify its notice of court-ordered garnishment consistent with the individual's request to the court.

Source. 2012, 176:1, eff. Aug. 10, 2012.

Section 282-A:153

282-A:153 Secretary of State Their Agent for Receipt of Service. –

I. Any nonresident employing unit who acquires the status of an employer under the provisions of this chapter or any resident employing unit who, after having acquired the status of an employer under the provisions of this chapter, removes himself from the state shall be deemed to have appointed the secretary of state or his successor in office to be his true and lawful agent upon whom may be served all lawful processes in any action or proceeding against him under the provisions of this chapter; and such acquirement shall be a signification of his agreement that any such process against him which is so served shall be of the same legal force and validity as if served on him personally.

II. Service of such process shall be made by leaving a copy of the process in the hands of the secretary of state or in his office, and such service shall be sufficient service upon said employing unit; provided, that notice of such service and a copy of the process are forthwith sent by registered mail by the plaintiff to the defendant, and the defendant's return receipt and the plaintiff's affidavit of compliance therewith are appended to the writ and entered therewith. The secretary of state shall keep a record of all such processes, which shall show the date and hour of service.

Source. 1937, 178:1. 1941, 103:35-43. RL 218:11. 1945, 138:21, 22. 1947, 59:23. 1949, 185:16, 17; 201:1. 1951, 140:9. 1953, 209:9-12. RSA 282:12(K). 1955, 141:17-19. 1957, 118:14. 1969, 460:21. 1973, 589:9, 10. 1975, 393:4. 1981, 408:3, eff. Oct. 1, 1981.

Section 282-A:154

282-A:154 Continuance of Action. – The court in which the action is pending may order such continuances as may be necessary to afford the defendant reasonable opportunity to defend the action.

Source. 1937, 178:1. 1941, 103:35-43. RL 218:11. 1945, 138:21, 22. 1947, 59:23. 1949, 185:16, 17; 201:1. 1951, 140:9. 1953, 209:9-12. RSA 282:12(L). 1955, 141:17-19. 1957, 118:14. 1969, 460:21. 1973, 589:9, 10. 1975, 393:4. 1981, 408:3, eff. Oct. 1, 1981.

Section 282-A:155

282-A:155 Interstate Collections. – The courts of this state shall entertain actions in the name of the commissioner to collect benefits, contributions or interest thereon for which liability has accrued under the employment security law of any other state or of the federal government. The commissioner shall have the authority to collect any such debt by civil action in any manner provided for the collection of contributions in RSA 282-A:141-156.

Source. 1937, 178:1. 1941, 103:35-43. RL 218:11. 1945, 138:21, 22. 1947, 59:23. 1949, 185:16, 17; 201:1. 1951, 140:9. 1953, 209:9-12. RSA 282:12(M). 1955, 141:17-19. 1957, 118:14. 1969, 460:21. 1973, 589:9, 10. 1975, 393:4. 1981, 408:3. 2003, 116:11, eff. Aug. 8, 2003.

Section 282-A:156

282-A:156 Delinquent Payments. – In addition to any other remedies under this subdivision, if the commissioner finds that any county, city, town or other political subdivision has become delinquent with respect to payments due under this chapter and following the commissioner's written request for such payment, has for 60 days thereafter refused or neglected to pay the amount due, the commissioner shall notify the commissioner of administrative services of such delinquency and the total amount due. The commissioner of administrative services shall authorize the transfer of such amount to the department of employment security from any funds which would otherwise be due from the state to such county, city, town or other political subdivision.

Source. 1937, 178:1. 1941, 103:35-43. RL 218:11. 1945, 138:21, 22. 1947, 59:23. 1949, 185:16, 17; 201:1. 1951, 140:9. 1953, 209:9-12. RSA 282:12(N). 1955, 141:17-19. 1957, 118:14. 1969, 460:21. 1973, 589:9, 10. 1975, 393:4. 1979, 328:7. 1981, 408:3. 1985, 399:3, I, eff. July 1, 1985.

Voting Sheets

HOUSE COMMITTEE ON LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

EXECUTIVE SESSION on HB 360

BILL TITLE: relative to overpayments caused by arbitration awards, back pay awards, settlement agreements, or jury verdicts.

DATE: February 12, 2013

LOB ROOM: 307

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep. Cahill

Seconded by Rep. Flanagan

Vote: 13-0 (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: YES

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Linda A. DiSilvestro, Clerk

HOUSE COMMITTEE ON LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

EXECUTIVE SESSION on HB 360

BILL TITLE: relative to overpayments caused by arbitration awards, back pay awards, settlement agreements, or jury verdicts.

DATE: 2/12/13

LOB ROOM: 307

Amendments:

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

(Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

(Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: 13/0

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Linda A. DiSilvestro, Clerk



STATE OF NEW HAMPSHIRE
OFFICE OF THE HOUSE CLERK

1/10/2013 9:29:31 AM
Roll Call Committee Registers
Report

2013 SESSION

LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

Bill #: 360 Title: overpayments currently
PH Date: 2/5/13 Exec Session Date: 2/12/13
Motion: FTL Amendment #: _____

MEMBER	YEAS	NAYS
White, Andrew A, Chairman	Y	
Kelly, Sally H, V Chairman	A	
Weed, Charles F	A	
Rice, Chip L	A	
Coulombe, Gary M	A	
Andrews, Christopher R	A	
Cahill, Michael D	Y	
DiSilvestro, Linda A, Clerk	Y	
Ley, Douglas A	Y	
Schmidt, Janice E	Y	
Tanner, Linda L	Y	
Daniels, Gary L,	Y	
Infantine, William J,	A	
Richardson, Herbert D	Y	
Pellegrino, Tony J	Y	
Sedensky, John B,	Y	
Flanagan, Jack B	Y	
Burchell, Richard B	Y	
Emerick, J. Tracy	Y	
St.James, Kevin P	A	
TOTAL VOTE:		

13

Committee Report

CONSENT CALENDAR

February 14, 2013

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

**The Committee on LABOR, INDUSTRIAL AND
REHABILITATIVE SERVICES to which was referred
HB360,**

**AN ACT relative to overpayments caused by arbitration
awards, back pay awards, settlement agreements, or
jury verdicts. Having considered the same, report the
same with the following Resolution: RESOLVED, That it
is INEXPEDIENT TO LEGISLATE.**

Rep. Michael D Cahill

FOR THE COMMITTEE

COMMITTEE REPORT

Committee:	LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES
Bill Number:	HB360
Title:	relative to overpayments caused by arbitration awards, back pay awards, settlement agreements, or jury verdicts.
Date:	February 14, 2013
Consent Calendar:	YES
Recommendation:	INEXPEDIENT TO LEGISLATE

STATEMENT OF INTENT

This bill was requested by the Department of Employment Security and would establish joint liability for employers and employees regarding restitution in the event of overpayment in certain situations. After additional consideration and consultation with the Department, the sponsor requested the committee find it inexpedient to legislate.

Vote 13-0.

Rep. Michael D Cahill
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

CONSENT CALENDAR

LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

HB360, relative to overpayments caused by arbitration awards, back pay awards, settlement agreements, or jury verdicts. **INEXPEDIENT TO LEGISLATE.**

Rep. Michael D Cahill for LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES: This bill was requested by the Department of Employment Security and would establish joint liability for employers and employees regarding restitution in the event of overpayment in certain situations. After additional consideration and consultation with the Department, the sponsor requested the committee find it inexpedient to legislate. **Vote 13-0.**

HB 360, relative to overpayments caused by arbitration awards, back pay awards, settlement agreements or jury verdicts **INEXPEDIENT TO LEGISLATE**

Rep. Michael Cahill for Labor, Industrial and Rehabilitative Services: This bill was requested by the Department of Employment Security and would establish joint liability for employers and employees regarding restitution in the event of overpayment in certain situations. After additional consideration and consultation with the Department, the sponsor requested the committee find it inexpedient to legislate. **Vote 13/0**