

DEBT COLLECTION AMENDMENTS

2002 GENERAL SESSION

STATE OF UTAH

Sponsor: Sheryl L. Allen

This act modifies the Administrative Services and the Judicial Codes and makes changes to provisions related to the Office of State Debt Collection. The act modifies certain definitions. The act defines the parameters in which the office may use information obtained through access to private, controlled, or protected records. The act makes technical corrections.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

63A-8-101, as enacted by Chapter 354, Laws of Utah 1995

63A-8-201, as last amended by Chapter 279, Laws of Utah 1999

63A-8-301, as last amended by Chapter 279, Laws of Utah 1999

76-3-201.1, as last amended by Chapter 279, Laws of Utah 1999

78-7-33, as enacted by Chapter 279, Laws of Utah 1999

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **63A-8-101** is amended to read:

63A-8-101. Definitions.

As used in this chapter:

(1) (a) "Accounts receivable" or "receivables" means any amount due the state from an entity for which payment has not been received by the state agency that is servicing the debt.

(b) "Accounts receivable" includes unpaid fees, licenses, taxes, loans, overpayments, fines, forfeitures, surcharges, costs, contracts, interest, penalties, restitution to victims, third-party claims, sale of goods, sale of services, claims, and damages.

(2) "Administrative offset" means:

(a) a reduction of an individual's tax refund or other payments due to the individual to reduce or eliminate accounts receivable that the individual owes to the state; and

(b) a reduction of an entity's tax refund or other payments due to the entity to reduce or eliminate accounts receivable that the entity owes to the state.

(3) "Board" means the advisory board created by this chapter.

(4) "Entity" means an individual, a corporation, partnership, or other organization that pays taxes to or does business with the state.

(5) "Office" means the Office of State Debt Collection established by this chapter.

(6) "Past due" means any accounts receivable that the state has not received by the payment due date.

(7) (a) "State agency" includes any department, division, commission, council, board, bureau, committee, office, or other administrative subunit of Utah state government, including the legislative and judicial branches of state government.

(b) "State agency" does not include:

(i) any institution of higher education[-]; or

(ii) except in Subsection 63A-8-201(7)(g), the State Tax Commission.

(8) "Writing-off" means the removal of an accounts receivable from an agency's accounts receivable records but does not necessarily eliminate further collection efforts.

Section 2. Section **63A-8-201** is amended to read:

63A-8-201. Office of State Debt Collection created -- Duties.

(1) The state and each state agency shall comply with the requirements of this chapter and any rules established by the Office of State Debt Collection.

(2) There is created the Office of State Debt Collection in the Department of Administrative Services.

(3) The office shall:

(a) have overall responsibility for collecting and managing state receivables;

(b) develop consistent policies governing the collection and management of state receivables;

(c) oversee and monitor state receivables to ensure that state agencies are:

(i) implementing all appropriate collection methods;

(ii) following established receivables guidelines; and

(iii) accounting for and reporting receivables in the appropriate manner;

- (d) develop policies, procedures, and guidelines for accounting, reporting, and collecting monies owed to the state;
 - (e) provide information, training, and technical assistance to all state agencies on various collection-related topics;
 - (f) write an inclusive receivables management and collection manual for use by all state agencies;
 - (g) prepare quarterly and annual reports of the state's receivables;
 - (h) create or coordinate a state accounts receivable database;
 - (i) develop reasonable criteria to gauge state agencies' efforts in maintaining an effective accounts receivable program;
 - (j) identify those state agencies that are not making satisfactory progress toward implementing collection techniques and improving accounts receivable collections;
 - (k) coordinate information, systems, and procedures between state agencies to maximize the collection of past-due accounts receivable;
 - (l) establish an automated cash receipt process between state agencies;
 - (m) establish procedures for writing off accounts receivable for accounting and collection purposes;
 - (n) establish standard time limits after which an agency will delegate responsibility to collect state receivables to the office or its designee;
 - (o) be a real party in interest for an account receivable referred to the office by any state agency; and
 - (p) allocate monies collected for judgments registered under Section 77-18-6 in accordance with Sections 63-63a-2, 63A-8-302, and 78-3-14.5.
- (4) The office may:
- (a) recommend to the Legislature new laws to enhance collection of past-due accounts by state agencies;
 - (b) collect accounts receivables for higher education entities, if the higher education entity agrees;

- (c) prepare a request for proposal for consulting services to:
 - (i) analyze the state's receivable management and collection efforts; and
 - (ii) identify improvements needed to further enhance the state's effectiveness in collecting its receivables;
- (d) contract with private or state agencies to collect past-due accounts;
- (e) perform other appropriate and cost-effective coordinating work directly related to collection of state receivables;
- (f) obtain access to records of any state agency that are necessary to the duties of the office by following the procedures and requirements of Section 63-2-206;
- (g) by following the procedures and requirements of Section 63-38-3.2 establish:
 - (i) a fee to cover the administrative costs of collection, on accounts administered by the office;
 - (ii) a late penalty fee that may not be more than 10% of the account receivable on accounts administered by the office;
 - (iii) an interest charge that is:
 - (A) the postjudgment interest rate established by Section 15-1-4 in judgments established by the courts; or
 - (B) not more than 2% above the prime rate as of July 1 of each fiscal year for accounts receivable for which no court judgment has been entered;
 - (iv) fees to collect accounts receivable for higher education;
- (h) make rules that allow accounts receivable to be collected over a reasonable period of time and under certain conditions with credit cards;
- (i) file a satisfaction of judgment in the district court by following the procedures and requirements of the Utah Rules of Civil Procedure; [~~and~~]
- (j) ensure that judgments for which the office is the judgment creditor are renewed, as necessary[-]; and
- (k) notwithstanding Section 63-2-206, share records obtained under Subsection (4)(f) with private sector vendors under contract with the state to assist state agencies in collecting debts owed

to the state agencies without changing the classification of any private, controlled, or protected record into a public record.

(5) The office shall ensure that:

(a) a record obtained by the office or a private sector vendor as referred to in Subsection (4)(k):

(i) is used only for the limited purpose of collecting accounts receivable; and

(ii) is subject to federal, state, and local agency records restrictions; and

(b) any person employed by, or formerly employed by, the office or a private sector vendor as referred to in Subsection (4)(k) is subject to:

(i) the same duty of confidentiality with respect to the record imposed by law on officers and employees of the state agency from which the record was obtained; and

(ii) any civil or criminal penalties imposed by law for violations of lawful access to a private, controlled, or protected record.

~~[(5)]~~ (6) (a) The office shall collect accounts receivable ordered by the district court as a result of prosecution for a criminal offense that have been transferred to the office under Subsection 76-3-201.1(5)(h) or (8).

(b) The office may not assess the interest charge established by the office under Subsection (4) on an account receivable subject to the postjudgment interest rate established by Section 15-1-4.

~~[(6)]~~ (7) The office shall require state agencies to:

(a) transfer collection responsibilities to the office or its designee according to time limits established by the office;

(b) make annual progress towards implementing collection techniques and improved accounts receivable collections;

(c) use the state's accounts receivable system or, with the consent of the board, develop systems that are adequate to properly account for and report their receivables;

(d) develop and implement internal policies and procedures that comply with the collections policies and guidelines established by the office;

(e) provide internal accounts receivable training to staff involved in their management and

collection of receivables as a supplement to statewide training;

(f) bill for and make initial collection efforts of its receivables up to the time the accounts must be transferred; and

(g) submit quarterly receivable reports to the office that identify the age, collection status, and funding source of each receivable.

~~[(†)]~~ (8) The office shall use the information provided by the agencies and any additional information from the office's records to compile a one-page summary report of each agency.

~~[(†)]~~ (9) The summary shall include:

~~[(A)]~~ (a) the type of revenue that is owed to the agency;

~~[(B)]~~ (b) any attempted collection activity; and

~~[(C)]~~ (c) any costs incurred in the collection process.

~~[(††)]~~ (10) The office shall annually provide copies of each agency's summary to the governor and to the Legislature.

Section 3. Section **63A-8-301** is amended to read:

63A-8-301. State Debt Collection Fund.

(1) There is created an internal service fund entitled the "State Debt Collection Fund."

(2) The fund shall be governed by the provisions for internal service funds in Section 63-38-3.5.

(3) The fund consists of:

(a) all amounts appropriated to the fund under this chapter;

(b) fees and interest established by the office under ~~[Section]~~ Subsection 63A-8-201(4)(g);
and

(c) except as otherwise provided by law, all postjudgment interest collected by the office or the state except postjudgment interest on restitution.

(4) Monies in this fund shall be used to offset systems, administrative, legal, and other collection costs of the office or the state agency.

(5) (a) The fund may collect interest.

(b) All interest earned from the fund shall be deposited in the General Fund.

(6) The office shall ensure that monies remaining in the fund at the end of the fiscal year that are not committed to offsets are deposited into the General Fund.

Section 4. Section **76-3-201.1** is amended to read:

76-3-201.1. Collection of criminal judgment accounts receivable.

(1) As used in this section:

(a) "Criminal judgment accounts receivable" means any amount due the state arising from a criminal judgment for which payment has not been received by the state agency that is servicing the debt.

(b) "Accounts receivable" includes unpaid fees, overpayments, fines, forfeitures, surcharges, costs, interest, penalties, restitution to victims, third party claims, claims, and damages.

(2) (a) A criminal judgment account receivable ordered by the court as a result of prosecution for a criminal offense may be collected by any means authorized by law for the collection of a civil judgment.

(b) (i) The court may permit a defendant to pay a criminal judgment account receivable in installments.

(ii) In the district court, if the criminal judgment account receivable is paid in installments, the total amount due shall include all fines, surcharges, postjudgment interest, and fees.

(c) Upon default in the payment of a criminal judgment account receivable or upon default in the payment of any installment of that receivable, the criminal judgment account receivable may be collected as provided in this section or Subsection 77-18-1(9) or (10), and by any means authorized by law for the collection of a civil judgment.

(3) When a defendant defaults in the payment of a criminal judgment account receivable or any installment of that receivable, the court, on motion of the prosecution, victim, or upon its own motion may:

(a) order the defendant to appear and show cause why the default should not be treated as contempt of court; or

(b) issue a warrant of arrest.

(4) (a) Unless the defendant shows that the default was not attributable to an intentional

refusal to obey the order of the court or to a failure to make a good faith effort to make the payment, the court may find that the default constitutes contempt.

(b) Upon a finding of contempt, the court may order the defendant committed until the criminal judgment account receivable, or a specified part of it, is paid.

(5) If it appears to the satisfaction of the court that the default is not contempt, the court may enter an order for any of the following or any combination of the following:

(a) require the defendant to pay the criminal judgment account receivable or a specified part of it by a date certain;

(b) restructure the payment schedule;

(c) restructure the installment amount;

(d) except as provided in Section 77-18-8, execute the original sentence of imprisonment;

(e) start the period of probation anew;

(f) except as limited by Subsection (6), convert the criminal judgment account receivable or any part of it to community service;

(g) except as limited by Subsection (6), reduce or revoke the unpaid amount of the criminal judgment account receivable; or

(h) in the district court, record the unpaid balance of the criminal judgment account receivable as a civil judgment and transfer the responsibility for collecting the judgment to the Office of State Debt Collection.

(6) In issuing an order under this section, the court may not modify the amount of the judgment of complete restitution.

(7) Whether or not a default constitutes contempt, the court may add to the amount owed the fees established under Subsection 63A-8-201(4)(g) and postjudgment interest.

(8) (a) (i) If a criminal judgment account receivable is past due in a case supervised by the Department of Corrections, the judge shall determine whether or not to record the unpaid balance of the account receivable as a civil judgment.

(ii) If the judge records the unpaid balance of the account receivable as a civil judgment, the judge shall transfer the responsibility for collecting the judgment to the Office of State Debt

Collection.

(b) If a criminal judgment account receivable in a case not supervised by the Department of Corrections is past due, the district court may, without a motion or hearing, record the unpaid balance of the criminal judgment account receivable as a civil judgment and transfer the responsibility for collecting the account receivable to the Office of State Debt Collection.

(c) If a criminal judgment account receivable in a case not supervised by the Department of Corrections is more than 90 days past due, the district court shall, without a motion or hearing, record the unpaid balance of the criminal judgment account receivable as a civil judgment and transfer the responsibility for collecting the criminal judgment account receivable to the Office of State Debt Collection.

(9) (a) When a fine, forfeiture, surcharge, cost permitted by statute, fee, or an order of restitution is imposed on a corporation or unincorporated association, the person authorized to make disbursement from the assets of the corporation or association shall pay the obligation from those assets.

(b) Failure to pay the obligation may be held to be contempt under Subsection (3).

(10) The prosecuting attorney may collect restitution in behalf of a victim.

Section 5. Section **78-7-33** is amended to read:

78-7-33. Collection of accounts receivable.

(1) As used in this section:

(a) "Accounts receivable" means any amount due the state from an entity for which payment has not been received by the state agency that is servicing the debt.

(b) "Accounts receivable" includes unpaid fees, licenses, taxes, loans, overpayments, fines, forfeitures, surcharges, costs, contracts, interest, penalties, restitution to victims, third party claims, sale of goods, sale of services, claims, and damages.

(2) If the Department of Corrections does not have responsibility under [~~Section~~] Subsection 77-18-1(9) for collecting an account receivable and if the Office of State Debt Collection does not have responsibility under Subsection 63A-8-201[~~(5)~~] (6), the district court shall collect the account receivable.

(3) (a) In the juvenile court, monies collected by the court from past-due accounts receivable may be used to offset system, administrative, legal, and other costs of collection.

(b) The juvenile court shall allocate monies collected above the cost of collection on a pro rata basis to the various revenue types that generated the accounts receivable.

(4) The interest charge established by the Office of State Debt Collection under Subsection 63A-8-201(4)(g)(iii) may not be assessed on an account receivable subject to the postjudgment interest rate established by Section 15-1-4.