

STATE DEBT COLLECTIONS AMENDMENTS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lyle W. Hillyard

House Sponsor: Melvin R. Brown

LONG TITLE

General Description:

This bill modifies provisions relating to the Office of State Debt Collection and the Division of Finance.

Highlighted Provisions:

This bill:

- ▶ modifies definitions;
- ▶ moves the Office of State Debt Collection from the Department of Administrative Services to the Division of Finance;
- ▶ modifies procedures for the collection of accounts receivable by the Division of Finance;
- ▶ requires a party to file a complaint in court within one year of the creation of the lien;
- ▶ allows the Office of State Debt Collection to obtain records and databases by entering into written agreements with other government agencies for the purpose of collecting state accounts receivable; and
- ▶ provides technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None



28 **Utah Code Sections Affected:**

29 AMENDS:

- 30 **15-1-4**, as last amended by Laws of Utah 2010, Chapter 102
- 31 **63A-1-109**, as last amended by Laws of Utah 2006, Chapter 139
- 32 **63A-1-109.5**, as enacted by Laws of Utah 2010, Chapter 341
- 33 **63A-3-103**, as last amended by Laws of Utah 2010, Chapter 341
- 34 **63A-3-301**, as renumbered and amended by Laws of Utah 1993, Chapter 212
- 35 **63A-3-303**, as renumbered and amended by Laws of Utah 1993, Chapter 212
- 36 **63A-3-304**, as renumbered and amended by Laws of Utah 1993, Chapter 212
- 37 **63A-3-307**, as renumbered and amended by Laws of Utah 1993, Chapter 212
- 38 **63A-3-308**, as renumbered and amended by Laws of Utah 1993, Chapter 212
- 39 **76-3-201.1**, as last amended by Laws of Utah 2009, Chapter 356
- 40 **78A-2-214**, as renumbered and amended by Laws of Utah 2008, Chapter 3
- 41 **78B-8-201**, as last amended by Laws of Utah 2010, Chapter 345

42 RENUMBERS AND AMENDS:

- 43 **63A-3-501**, (Renumbered from 63A-8-101, as last amended by Laws of Utah 2009,
- 44 Chapter 288)
- 45 **63A-3-502**, (Renumbered from 63A-8-201, as last amended by Laws of Utah 2009,
- 46 Chapter 183)
- 47 **63A-3-503**, (Renumbered from 63A-8-203, as last amended by Laws of Utah 2005,
- 48 Chapter 23)
- 49 **63A-3-504**, (Renumbered from 63A-8-204, as last amended by Laws of Utah 2008,
- 50 Chapter 382)
- 51 **63A-3-505**, (Renumbered from 63A-8-301, as last amended by Laws of Utah 2006,
- 52 Chapter 65)
- 53 **63A-3-506**, (Renumbered from 63A-8-302, as last amended by Laws of Utah 1999,
- 54 Chapter 279)



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

57 Section 1. Section **15-1-4** is amended to read:

58 **15-1-4. Interest on judgments.**

59 (1) As used in this section, "federal postjudgment interest rate" means the interest rate
60 established for the federal court system under 28 U.S.C. Sec. 1961, as amended.

61 (2) (a) Except as provided in Subsection (2)(b), a judgment rendered on a lawful
62 contract shall conform to the contract and shall bear the interest agreed upon by the parties,
63 which shall be specified in the judgment.

64 (b) A judgment rendered on a deferred deposit loan subject to Title 7, Chapter 23,
65 Check Cashing and Deferred Deposit Lending Registration Act, shall bear interest at the rate
66 imposed under Subsection (3) on an amount not exceeding the sum of:

67 (i) the total of the principal balance of the deferred deposit loan;

68 (ii) interest at the rate imposed by the deferred deposit loan agreement for a period not
69 exceeding 10 weeks as provided in Subsection 7-23-401(4);

70 (iii) costs;

71 (iv) attorney fees; and

72 (v) other amounts allowed by law and ordered by the court.

73 (3) (a) Except as otherwise provided by law, other civil and criminal judgments of the
74 district court and justice court shall bear interest at the federal postjudgment interest rate as of
75 January 1 of each year, plus 2%.

76 (b) The postjudgment interest rate in effect at the time of the judgment shall remain the
77 interest rate for the duration of the judgment.

78 (c) The interest on criminal judgments shall be calculated on the total amount of the
79 judgment.

80 (d) Interest paid on state revenue shall be deposited in accordance with Section
81 ~~[63A-8-301]~~ 63A-3-505.

82 (e) Interest paid on revenue to a county or municipality shall be paid to the general
83 fund of the county or municipality.

84 Section 2. Section **63A-1-109** is amended to read:

85 **63A-1-109. Divisions of department -- Administration.**

86 (1) The department shall be composed of the following divisions:

87 (a) administrative rules;

88 (b) archives and records;

89 (c) facilities construction and management;

- 90 (d) finance;
- 91 (e) fleet operations;
- 92 [~~(f) office of state debt collection;~~]
- 93 [~~(g)~~] (f) state purchasing and general services;
- 94 [~~(h)~~] (g) risk management; and
- 95 [~~(i)~~] (h) office of child welfare parental defense.

96 (2) Each division shall be administered and managed by a division director.

97 Section 3. Section **63A-1-109.5** is amended to read:

98 **63A-1-109.5. Department authority to operate a division as an internal service**
99 **fund agency -- Exception.**

100 [~~(1) Except as provided in Subsection (2) and subject~~] Subject to Section 63A-1-114
101 and provisions governing internal service funds or internal service fund agencies under Title
102 63J, Chapter 1, Budgetary Procedures Act, the department may operate a division described in
103 Section 63A-1-109 as an internal service fund agency.

104 [~~(2) The department may not operate the division described in Subsection~~
105 ~~63A-1-109(1)(f) as an internal service fund agency.~~]

106 Section 4. Section **63A-3-103** is amended to read:

107 **63A-3-103. Duties of director of division -- Application to institutions of higher**
108 **education.**

- 109 (1) The director of the Division of Finance shall:
 - 110 (a) define fiscal procedures relating to approval and allocation of funds;
 - 111 (b) provide for the accounting control of funds;
 - 112 (c) approve proposed expenditures for the purchase of supplies and services;
 - 113 (d) promulgate rules that:
 - 114 (i) establish procedures for maintaining detailed records of all types of leases;
 - 115 (ii) account for all types of leases in accordance with generally accepted accounting
116 principles;
 - 117 (iii) require the performance of a lease with an option to purchase study by state
118 agencies prior to any lease with an option to purchase acquisition of capital equipment; and
 - 119 (iv) require that the completed lease with an option to purchase study be approved by
120 the director of the Division of Finance;

121 (e) if the department operates the Division of Finance as an internal service fund
122 agency in accordance with Section 63A-1-109.5, submit to the Rate Committee established in
123 Section 63A-1-114:

- 124 (i) the proposed rate and fee schedule as required by Section 63A-1-114; and
- 125 (ii) other information or analysis requested by the Rate Committee; [~~and~~]
- 126 (f) oversee the Office of State Debt Collection; and
- 127 [~~(f)~~] (g) prescribe other fiscal functions required by law or under the constitutional
128 authority of the governor to transact all executive business for the state.

129 (2) (a) Institutions of higher education are subject to the provisions of Title 63A,
130 Chapter 3, Part 1, General Provisions, and Part 2, Accounting System, only to the extent
131 expressly authorized or required by the State Board of Regents under Title 53B, State System
132 of Higher Education.

133 (b) Institutions of higher education shall submit financial data for the past fiscal year
134 conforming to generally accepted accounting principles to the director of the Division of
135 Finance.

136 (3) The Division of Finance shall prepare financial statements and other reports in
137 accordance with legal requirements and generally accepted accounting principles for the state
138 auditor's examination and certification:

- 139 (a) not later than 60 days after a request from the state auditor; and
- 140 (b) at the end of each fiscal year.

141 Section 5. Section **63A-3-301** is amended to read:

142 **63A-3-301. Definitions.**

143 As used in this part, "account receivable" means any amount due the state or any other
144 governmental entity as a result of a court or administrative order, or for which materials or
145 services have been provided but for which payment has not been received by the servicing unit.

146 Section 6. Section **63A-3-303** is amended to read:

147 **63A-3-303. Notice to debtor -- Contents.**

148 (1) Upon default in payment of any account receivable that is not due pursuant to final
149 administrative order or judgment, the entity responsible for collecting the account shall send a
150 notice by certified mail to the debtor at the debtor's last-known address.

151 (2) The notice shall state:

- 152 (a) the date and amount of the receivable;
- 153 (b) a demand for immediate payment of the amount;
- 154 (c) a statement of the right of the debtor to file a written response to the notice, to have
- 155 a hearing, to be represented at the hearing, and to appeal any decision of the hearing examiner;
- 156 (d) the time within which a written response must be filed; and
- 157 (e) a statement notifying the debtor that the state may obtain an order under this part
- 158 and execute upon income tax overpayments or refunds of the debtor if:
- 159 (i) the debtor fails to respond to the notice; or
- 160 (ii) a hearing is held and the hearing officer decides against the debtor.

161 Section 7. Section **63A-3-304** is amended to read:

162 **63A-3-304. Effect of nonpayment or failure to respond.**

163 If a written response or payment of delinquent receivable is not received by the state
164 within 15 days from the date of receipt of the notice by the debtor, the debtor is in default and
165 the state may determine the balance due and collect the balance as provided in Section
166 63A-3-307.

167 Section 8. Section **63A-3-307** is amended to read:

168 **63A-3-307. Abstract of order and nonpayment or failure to respond -- Liens.**

169 (1) [~~An abstract of an order of a hearing examiner stating a default may be filed with~~
170 ~~the State Tax Commission, and when filed, constitutes a lien to the extent]~~ The following shall
171 constitute a lien in the amount of the receivable plus interest and collection costs allowed by
172 law against any state income tax refund or overpayment due or to become due the debtor [~~for a~~
173 ~~period of eight years from the date of the order, unless satisfied or otherwise released in writing~~
174 ~~by the state.];~~

175 (a) an abstract of an administrative order; or

176 (b) nonpayment or failure to respond as provided under Section 63A-3-304.

177 (2) The lien created by this section shall, for the purposes of Section 59-10-529 only,
178 be considered a judgment, but no credit of a tax refund or overpayment may be made on
179 account of this lien until 20 days after the date of the [~~hearing examiner's]~~ administrative order.

180 (3) The lien created by this section shall remain effective for eight years.

181 Section 9. Section **63A-3-308** is amended to read:

182 **63A-3-308. Judicial review -- Effect on lien.**

183 (1) A judicial review of [~~an order of a hearing examiner~~] a lien created under Section
184 63A-3-307 may be obtained by any party within one year of the creation of the lien by filing a
185 complaint with the district court.

186 (2) (a) A notice of the filing of a complaint may be filed with the State Tax
187 Commission.

188 (b) If notice is filed, the tax commission may take no action with respect to the lien
189 created by Section 63A-3-307 until the matter is finally disposed of by the courts, except as
190 provided in this part.

191 Section 10. Section **63A-3-501**, which is renumbered from Section 63A-8-101 is
192 renumbered and amended to read:

193 **Part 5. Office of State Debt Collection**

194 [~~63A-8-101~~]. **63A-3-501. Definitions.**

195 As used in this [~~chapter~~] part:

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

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

201 (2) "Administrative offset" means:

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

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

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

208 (4) "Office" means the Office of State Debt Collection established by this [~~chapter~~]
209 part.

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

212 (6) (a) "State agency" includes any department, division, commission, council, board,
213 bureau, committee, office, or other administrative subunit of Utah state government, including

214 the legislative and judicial branches of state government.

215 (b) "State agency" does not include:

216 (i) any institution of higher education;

217 (ii) except in Subsection [~~63A-8-201~~] 63A-3-502(7)(g), the State Tax Commission; or

218 (iii) the administrator of the Uninsured Employers' Fund appointed by the Labor

219 Commissioner under Section 34A-2-704, solely for the purposes of collecting money required

220 to be deposited into the Uninsured Employers' Fund under:

221 (A) Section 34A-1-405;

222 (B) Title 34A, Chapter 2, Workers' Compensation Act;

223 (C) Title 34A, Chapter 3, Utah Occupational Disease Act; or

224 (D) Title 34A, Chapter 8a, Utah Injured Worker Reemployment Act.

225 (7) "Writing-off" means the removal of an accounts receivable from an agency's

226 accounts receivable records but does not necessarily eliminate further collection efforts.

227 Section 11. Section ~~63A-3-502~~, which is renumbered from Section 63A-8-201 is

228 renumbered and amended to read:

229 [~~63A-8-201~~]. **63A-3-502. Office of State Debt Collection created -- Duties.**

230 (1) The state and each state agency shall comply with the requirements of this chapter

231 and any rules established by the Office of State Debt Collection.

232 (2) There is created the Office of State Debt Collection in the [~~Department of~~

233 ~~Administrative Services~~] Division of Finance.

234 (3) The office shall:

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

236 (b) assist the Division of Finance to develop consistent policies governing the

237 collection and management of state receivables;

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

239 (i) implementing all appropriate collection methods;

240 (ii) following established receivables guidelines; and

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

242 (d) assist the Division of Finance to develop policies, procedures, and guidelines for

243 accounting, reporting, and collecting money owed to the state;

244 (e) provide information, training, and technical assistance to all state agencies on

- 245 various collection-related topics;
- 246 (f) write an inclusive receivables management and collection manual for use by all
247 state agencies;
- 248 (g) prepare quarterly and annual reports of the state's receivables;
- 249 (h) create or coordinate a state accounts receivable database;
- 250 (i) develop reasonable criteria to gauge state agencies' efforts in maintaining an
251 effective accounts receivable program;
- 252 (j) identify those state agencies that are not making satisfactory progress toward
253 implementing collection techniques and improving accounts receivable collections;
- 254 (k) coordinate information, systems, and procedures between state agencies to
255 maximize the collection of past-due accounts receivable;
- 256 (l) establish an automated cash receipt process between state agencies;
- 257 (m) assist the Division of Finance to establish procedures for writing off accounts
258 receivable for accounting and collection purposes;
- 259 (n) establish standard time limits after which an agency will delegate responsibility to
260 collect state receivables to the office or its designee;
- 261 (o) be a real party in interest for an account receivable referred to the office by any
262 state agency; and
- 263 (p) allocate money collected for judgments registered under Section 77-18-6 in
264 accordance with Sections 51-9-402, [~~63A-8-302~~] 63A-3-506, and 78A-5-110.
- 265 (4) The office may:
- 266 (a) recommend to the Legislature new laws to enhance collection of past-due accounts
267 by state agencies;
- 268 (b) collect accounts receivables for higher education entities, if the higher education
269 entity agrees;
- 270 (c) prepare a request for proposal for consulting services to:
- 271 (i) analyze the state's receivable management and collection efforts; and
272 (ii) identify improvements needed to further enhance the state's effectiveness in
273 collecting its receivables;
- 274 (d) contract with private or state agencies to collect past-due accounts;
- 275 (e) perform other appropriate and cost-effective coordinating work directly related to

276 collection of state receivables;

277 (f) obtain access to records and databases of any state agency that are necessary to the
278 duties of the office by following the procedures and requirements of Section 63G-2-206;

279 (g) collect interest and fees related to the collection of receivables under this chapter,
280 and establish, by following the procedures and requirements of Section 63J-1-504:

281 (i) a fee to cover the administrative costs of collection, on accounts administered by the
282 office;

283 (ii) a late penalty fee that may not be more than 10% of the account receivable on
284 accounts administered by the office;

285 (iii) an interest charge that is:

286 (A) the postjudgment interest rate established by Section 15-1-4 in judgments
287 established by the courts; or

288 (B) not more than 2% above the prime rate as of July 1 of each fiscal year for accounts
289 receivable for which no court judgment has been entered; and

290 (iv) fees to collect accounts receivable for higher education;

291 (h) collect reasonable attorney fees and reasonable costs of collection that are related to
292 the collection of receivables under this chapter;

293 (i) make rules that allow accounts receivable to be collected over a reasonable period
294 of time and under certain conditions with credit cards;

295 (j) file a satisfaction of judgment in the district court by following the procedures and
296 requirements of the Utah Rules of Civil Procedure;

297 (k) ensure that judgments for which the office is the judgment creditor are renewed, as
298 necessary; [~~and~~]

299 (l) notwithstanding Section 63G-2-206, share records obtained under Subsection (4)(f)
300 with private sector vendors under contract with the state to assist state agencies in collecting
301 debts owed to the state agencies without changing the classification of any private, controlled,
302 or protected record into a public record[~~;~~]; and

303 (m) enter into written agreements with other governmental agencies to obtain
304 information for the purpose of collecting state accounts receivable.

305 (5) The office shall ensure that:

306 (a) a record obtained by the office or a private sector vendor as referred to in

307 Subsection (4)(l):

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

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

310 (b) any person employed by, or formerly employed by, the office or a private sector

311 vendor as referred to in Subsection (4)(l) is subject to:

312 (i) the same duty of confidentiality with respect to the record imposed by law on

313 officers and employees of the state agency from which the record was obtained; and

314 (ii) any civil or criminal penalties imposed by law for violations of lawful access to a

315 private, controlled, or protected record.

316 (6) (a) The office shall collect accounts receivable ordered by the district court as a

317 result of prosecution for a criminal offense that have been transferred to the office under

318 Subsection 76-3-201.1(5)(h) or (8).

319 (b) The office may not assess the interest charge established by the office under

320 Subsection (4) on an account receivable subject to the postjudgment interest rate established by

321 Section 15-1-4.

322 (7) The office shall require state agencies to:

323 (a) transfer collection responsibilities to the office or its designee according to time

324 limits established by the office;

325 (b) make annual progress towards implementing collection techniques and improved

326 accounts receivable collections;

327 (c) use the state's accounts receivable system or develop systems that are adequate to

328 properly account for and report their receivables;

329 (d) develop and implement internal policies and procedures that comply with the

330 collections policies and guidelines established by the office;

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

332 and collection of receivables as a supplement to statewide training;

333 (f) bill for and make initial collection efforts of its receivables up to the time the

334 accounts must be transferred; and

335 (g) submit quarterly receivable reports to the office that identify the age, collection

336 status, and funding source of each receivable.

337 (8) The office shall use the information provided by the agencies and any additional

338 information from the office's records to compile a one-page summary report of each agency.

339 (9) The summary shall include:

340 (a) the type of revenue that is owed to the agency;

341 (b) any attempted collection activity; and

342 (c) any costs incurred in the collection process.

343 (10) The office shall annually provide copies of each agency's summary to the governor
344 and to the Legislature.

345 Section 12. Section **63A-3-503**, which is renumbered from Section 63A-8-203 is
346 renumbered and amended to read:

347 ~~[63A-8-203].~~ **63A-3-503. Legal services.**

348 The Office of the Attorney General shall:

349 (1) provide to the office all legal services and advice related to the collection of
350 accounts receivable owed to the state; and

351 (2) establish policies governing:

352 (a) legal matters involving accounts receivable; and

353 (b) litigation of past-due accounts receivable.

354 Section 13. Section **63A-3-504**, which is renumbered from Section 63A-8-204 is
355 renumbered and amended to read:

356 ~~[63A-8-204].~~ **63A-3-504. Rulemaking authority -- Collection techniques.**

357 In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
358 office shall make rules:

359 (1) providing details, as necessary, for the distribution of debts collected in accordance
360 with the priorities under Subsection ~~[63A-8-301]~~ 63A-3-505(3); and

361 (2) to govern collection techniques, which may include the use of:

362 (a) credit reporting bureaus;

363 (b) collection agencies;

364 (c) garnishments;

365 (d) liens;

366 (e) judgments; and

367 (f) administrative offsets.

368 Section 14. Section **63A-3-505**, which is renumbered from Section 63A-8-301 is

369 renumbered and amended to read:

370 ~~[63A-8-301].~~ **63A-3-505. State Debt Collection Fund.**

371 (1) There is created a restricted special revenue fund entitled the "State Debt Collection
372 Fund."

373 (2) The fund consists of:

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

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

376 63A-3-502(4)(g); and

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

379 (3) Monies in this fund shall be used to pay for:

380 (a) the costs of the office in the performance of its duties under this chapter;

381 (b) restitution to victims to whom the debt is owed;

382 (c) interest accrued that is associated with the debt;

383 (d) principal on the debt to the state agencies or other entities that placed the receivable
384 for collection; and

385 (e) other legal obligations including those ordered by a court.

386 (4) (a) The fund may collect interest.

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

388 (5) The office shall ensure that monies remaining in the fund at the end of the fiscal
389 year that are not committed under the priorities established under Subsection (3) are deposited
390 into the General Fund.

391 (6) (a) The office shall report at least annually to the appropriations subcommittee
392 assigned to review the budget of the Department of Administrative Services on the fund
393 balance and its revenues and expenditures and administrative offsets.

394 (b) The report shall include the amounts paid under each provision under Subsection
395 (3).

396 Section 15. Section **63A-3-506**, which is renumbered from Section 63A-8-302 is
397 renumbered and amended to read:

398 ~~[63A-8-302].~~ **63A-3-506. Allocation of funds.**

399 (1) Except as provided in Subsection (2), the money collected by the office less the

400 office's fees shall be allocated on a prorated basis to the various revenue types that generated
401 the accounts receivable.

402 (2) Notwithstanding the requirements of Subsection (1):

403 (a) federal cost allocation requirements for specific accounts receivable related to
404 programs that are supported by federal funds take precedence over other cost allocation
405 methods provided in this section; and

406 (b) the office shall use interest and fees collected on past due accounts receivable as
407 provided in Section [~~63A-8-304~~] 63A-3-505.

408 Section 16. Section **76-3-201.1** is amended to read:

409 **76-3-201.1. Collection of criminal judgment accounts receivable.**

410 (1) As used in this section:

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

414 (b) "Accounts receivable" includes unpaid fees, overpayments, fines, forfeitures,
415 surcharges, costs, interest, penalties, restitution to victims, third party claims, claims,
416 reimbursement of a reward, and damages.

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

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

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

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

429 (3) When a defendant defaults in the payment of a criminal judgment account
430 receivable or any installment of that receivable, the court, on motion of the prosecution, victim,

431 or upon its own motion may:

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

434 (b) issue a warrant of arrest.

435 (4) (a) Unless the defendant shows that the default was not attributable to an
436 intentional refusal to obey the order of the court or to a failure to make a good faith effort to
437 make the payment, the court may find that the default constitutes contempt.

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

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

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

444 (b) restructure the payment schedule;

445 (c) restructure the installment amount;

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

448 (e) start the period of probation anew;

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

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

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

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

458 (7) Whether or not a default constitutes contempt, the court may add to the amount
459 owed the fees established under Subsection [~~63A-8-201~~] 63A-3-502(4)(g) and postjudgment
460 interest.

461 (8) (a) (i) If a criminal judgment account receivable is past due in a case supervised by

462 the Department of Corrections, the judge shall determine whether or not to record the unpaid
463 balance of the account receivable as a civil judgment.

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

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

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

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

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

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

483 Section 17. Section **78A-2-214** is amended to read:

484 **78A-2-214. Collection of accounts receivable.**

485 (1) As used in this section:

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

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

491 (2) If the Department of Corrections does not have responsibility under Subsection
492 77-18-1(9) for collecting an account receivable and if the Office of State Debt Collection does

493 not have responsibility under Subsection [~~63A-8-201~~] 63A-3-502(6), the district court shall
494 collect the account receivable.

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

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

499 (4) The interest charge established by the Office of State Debt Collection under
500 Subsection [~~63A-8-201~~] 63A-3-502(4)(g)(iii) may not be assessed on an account receivable
501 subject to the postjudgment interest rate established by Section 15-1-4.

502 Section 18. Section **78B-8-201** is amended to read:

503 **78B-8-201. Basis for punitive damages awards -- Section inapplicable to DUI**
504 **cases or providing illegal controlled substances -- Division of award with state.**

505 (1) (a) Except as otherwise provided by statute, punitive damages may be awarded only
506 if compensatory or general damages are awarded and it is established by clear and convincing
507 evidence that the acts or omissions of the tortfeasor are the result of willful and malicious or
508 intentionally fraudulent conduct, or conduct that manifests a knowing and reckless indifference
509 toward, and a disregard of, the rights of others.

510 (b) The limitations, standards of evidence, and standards of conduct of Subsection
511 (1)(a) do not apply to any claim for punitive damages arising out of the tortfeasor's:

512 (i) operation of a motor vehicle or motorboat while voluntarily intoxicated or under the
513 influence of any drug or combination of alcohol and drugs as prohibited by Section 41-6a-502;

514 (ii) causing death of another person by providing or administering an illegal controlled
515 substance to the person under Section 78B-3-801; or

516 (iii) providing an illegal controlled substance to any person in the chain of transfer that
517 connects directly to a person who subsequently provided or administered the substance to a
518 person whose death was caused in whole or in part by the substance.

519 (c) The award of a penalty under Section 78B-3-108 regarding shoplifting is not
520 subject to the prior award of compensatory or general damages under Subsection (1)(a) whether
521 or not restitution has been paid to the merchant prior to or as a part of a civil action under
522 Section 78B-3-108.

523 (2) Evidence of a party's wealth or financial condition shall be admissible only after a

524 finding of liability for punitive damages has been made.

525 (a) Discovery concerning a party's wealth or financial condition may only be allowed
526 after the party seeking punitive damages has established a prima facie case on the record that
527 an award of punitive damages is reasonably likely against the party about whom discovery is
528 sought and, if disputed, the court is satisfied that the discovery is not sought for the purpose of
529 harassment.

530 (b) Subsection (2)(a) does not apply to any claim for punitive damages arising out of
531 the tortfeasor's:

532 (i) operation of a motor vehicle or motorboat while voluntarily intoxicated or under the
533 influence of any drug or combination of alcohol and drugs as prohibited by Section 41-6a-502;

534 (ii) causing death of another person or causing a person to be addicted by providing or
535 administering an illegal controlled substance to the person under Section 78B-3-801; or

536 (iii) providing an illegal controlled substance to any person in the chain of transfer that
537 connects directly to a person who subsequently provided or administered the substance to a
538 person whose death was caused in whole or in part by the substance.

539 (3) (a) In any case where punitive damages are awarded, the court shall enter judgment
540 as follows:

541 (i) for the first \$50,000, judgment shall be in favor of the injured party; and

542 (ii) any amount in excess of \$50,000 shall be divided equally between the state and the
543 injured party, and judgment to each entered accordingly.

544 (b) (i) The actual and bona fide attorney fees and costs incurred in obtaining and
545 collecting the judgment for punitive damages shall be considered to have been incurred by the
546 state and the injured party in proportion to the judgment entered in each party's behalf.

547 (A) The state and injured party shall be responsible for each one's proportionate share
548 only.

549 (B) The state is liable to pay its proportionate share only to the extent it receives
550 payment toward its judgment.

551 (ii) If the court awards attorney fees and costs to the injured party as a direct result of
552 the punitive damage award, the state shall have a corresponding credit in a proportionate
553 amount based on the amounts of the party's respective punitive damage judgments. This credit
554 may be applied as an offset against the amount of attorney fees and costs charged to the state

555 for obtaining the punitive damage judgment.

556 (c) The state shall have all rights due a judgment creditor to collect the full amounts of
557 both punitive damage judgments until the judgments are fully satisfied.

558 (i) Neither party is required to pursue collection.

559 (ii) In pursuing collection, the state may exercise any of its collection rights under
560 Section 63A-3-301 et seq., Section [~~63A-8-201~~] 63A-3-502 et seq., and any other statutory
561 provisions. Any amounts collected on these judgments by either party shall be held in trust and
562 distributed as set forth in Subsection (3)(e).

563 (d) Unless all affected parties, including the state, expressly agree otherwise, collection
564 on the punitive damages judgment shall be deferred until all other judgments have been fully
565 paid. Any payment by or on behalf of any judgment debtor, whether voluntary, by execution,
566 or otherwise, shall be distributed and applied in the following order:

567 (i) to the judgment for compensatory damage and any applicable judgment for attorney
568 fees and costs;

569 (ii) to the initial \$50,000 of the punitive damage judgment;

570 (iii) to any judgment for attorney fees and costs awarded as a direct result of the
571 punitive damages; and

572 (iv) to the remaining judgments for punitive damages.

573 (e) Any partial payments shall be distributed equally between the state and injured
574 party.

575 (f) After the payment of attorney fees and costs, all amounts paid on the state's
576 judgment shall be remitted to the state treasurer to be deposited into the General Fund.

Legislative Review Note
as of 2-9-11 3:45 PM

Office of Legislative Research and General Counsel

FISCAL NOTE

S.B. 200

SHORT TITLE: **State Debt Collections Amendments**

SPONSOR: **Hillyard, L.**

2011 GENERAL SESSION, STATE OF UTAH

STATE GOVERNMENT (UCA 36-12-13(2)(b))

Enactment of this bill likely will not materially impact the state budget.

LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

Enactment of this bill likely will not result in direct, measurable costs for local governments.

DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))

Enactment of this bill likely will not result in direct, measurable expenditures by Utah residents or businesses.