

## SB0119S01 compared with SB0119

~~deleted text~~ shows text that was in SB0119 but was deleted in SB0119S01.

inserted text shows text that was not in SB0119 but was inserted into SB0119S01.

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Representative R. Curt Webb proposes the following substitute bill:

### DEBT COLLECTION AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Lyle W. Hillyard**

House Sponsor: ~~\_\_\_\_\_~~ Jack R. Draxler

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#### LONG TITLE

##### General Description:

This bill ~~modifies the Utah Administrative Services Code by amending~~ amends provisions relating to debt collection.

##### Highlighted Provisions:

This bill:

- ▶ provides definitions;
- ▶ provides that a political subdivision may proceed to collect certain delinquent accounts receivable;
- ▶ authorizes the Office of State Debt Collection to collect accounts receivable for a political subdivision of the state in certain circumstances;
- ▶ clarifies that certain limitations on garnishment for disposable earnings only apply to earnings that are held by an employer;

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- ▶ provides that tax refunds owing to a defendant in an action that are under the control of the state or any subdivision, agency, or institution of the state are subject to attachment, garnishment, and execution; and
- ▶ makes technical changes.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

~~{ None }~~ This bill provides retrospective operation.

### Utah Code Sections Affected:

AMENDS:

**63A-3-302**, as enacted by Laws of Utah 1993, Chapter 212

**63A-3-501**, as last amended by Laws of Utah 2014, Chapter 286

**63A-3-502**, as last amended by Laws of Utah 2015, Chapters 193 and 258

**70C-7-103**, as last amended by Laws of Utah 2014, Chapter 84

**78B-5-808**, as renumbered and amended by Laws of Utah 2008, Chapter 3

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

Section 1. Section **63A-3-302** is amended to read:

**63A-3-302. Unpaid accounts receivable due the state.**

If any account receivable has been unpaid for more than 90 days, any agency, department, division, commission, committee, board, council, institution, [or] any other authority of state government, or any political subdivision, as defined in Section 63G-7-102, of the state responsible for collection of the account may proceed under this part to collect the delinquent amount.

Section 2. Section **63A-3-501** is amended to read:

**63A-3-501. Definitions.**

As used in this part:

(1) (a) "Accounts receivable" or "receivables" means any amount due to a state agency 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,

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finances, 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 a state agency; 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 a state agency.

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

(4) "Office" means the Office of State Debt Collection established by this part.

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

(6) "Political subdivision" means the same as that term is defined in Section 63G-7-102.

~~[(6)]~~ (7) "Restitution to victims" means restitution ordered by a court to be paid to a victim of an offense in a criminal or juvenile proceeding.

~~[(7)]~~ (8) (a) "State agency" includes:

(i) any department, division, commission, council, board, bureau, committee, office, or other administrative subunit of Utah state government;

(ii) the legislative branch of state government; and

(iii) the judicial branches of state government, including justice courts.

(b) "State agency" does not include:

(i) any institution of higher education;

(ii) except in Subsection 63A-3-502(7)(g), the State Tax Commission; or

(iii) the administrator of the Uninsured Employers' Fund appointed by the Labor Commissioner under Section 34A-2-704, solely for the purposes of collecting money required to be deposited into the Uninsured Employers' Fund under:

(A) Section 34A-1-405;

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

(C) Title 34A, Chapter 3, Utah Occupational Disease Act.

~~[(8)]~~ (9) "Writing-off" means the removal of an accounts receivable from an agency's

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

Section 3. Section **63A-3-502** is amended to read:

### **63A-3-502. 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 Division of Finance.

(3) The office shall:

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

(b) assist the Division of Finance to 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) assist the Division of Finance to develop policies, procedures, and guidelines for accounting, reporting, and collecting money owed to the state;

(e) provide information, training, and technical assistance to each state agency on various collection-related topics;

(f) write an inclusive receivables management and collection manual for use by each state agency;

(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 any state agency that is not making satisfactory progress toward implementing collection techniques and improving accounts receivable collections;

(k) coordinate information, systems, and procedures between each state agency to maximize the collection of past-due accounts receivable;

(l) establish an automated cash receipt process between each state agency;

(m) assist the Division of Finance to establish procedures for writing off accounts receivable for accounting and collection purposes;

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(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 or for any restitution to victims referred to the office by a court; and

(p) allocate money collected for judgments registered under Section 77-18-6 in accordance with Sections 51-9-402, 63A-3-506, and 78A-5-110.

(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 and databases of any state agency that are necessary to the duties of the office by following the procedures and requirements of Section 63G-2-206, including the financial disclosure form described in Section 77-38a-204;

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

(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

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receivable for which no court judgment has been entered; and

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

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

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

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

(k) ensure that judgments for which the office is the judgment creditor are renewed, as necessary;

(l) notwithstanding Section 63G-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; ~~and~~

(m) enter into written agreements with other governmental agencies to obtain information for the purpose of collecting state accounts receivable and restitution for victims; and

(n) collect accounts receivable for a political subdivision of the state, if the political subdivision enters into an agreement or contract with the office under Title 11, Chapter 13, Interlocal Cooperation Act, for the office to collect the political subdivision's accounts receivable.

(5) The office shall ensure that:

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

(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)(l) 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

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private, controlled, or protected record.

(6) (a) The office shall collect accounts receivable ordered by a 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.

(7) The office shall require a state agency 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 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 the 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) the type of revenue that is owed to the agency;

(b) any attempted collection activity; and

(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.

(11) All interest, fees, and other amounts authorized to be charged by the office under

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Subsection (4):

- (a) are penalties that may be charged by the office; and
- (b) are not compensation for actual pecuniary loss.

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### Legislative Review Note

~~Office of Legislative Research and General Counsel~~ Section 4. Section 70C-7-103 is amended to read:

#### 70C-7-103. Definitions -- Limitation on garnishment.

(1) As used in this part:

(a) "Disposable earnings" means that part of the earnings of an individual held by an employer remaining after the deduction from those earnings of amounts required by law to be withheld.

(b) "Education loan" means a loan subject to this title, or notwithstanding Subsection 70C-1-202(2)(h)(ii)(B)(II), made by a depository institution that:

(i) is closed end;

(ii) is a qualified education loan as defined in 26 U.S.C. Sec. 221(d);

(iii) expressly states in the original loan documents that it is a qualified education loan or the proceeds will be used solely for qualified higher education expenses as defined in 26 U.S.C. Sec 221(d); and

(iv) in a bankruptcy filing, the loan or any indebtedness relating to the loan is subject to the provisions of 11 U.S.C. Sec. 523(a)(8).

(c) "Garnishment" means a legal or equitable procedure through which the earnings of an individual are required to be withheld for payment of a debt.

(2) [The] For a garnishment of disposable earnings issued to an employer, the maximum part of the aggregate disposable earnings of an individual for any pay period that is subjected to garnishment to enforce payment of a judgment arising from a consumer credit agreement may not exceed the lesser of:

(a) 25% of the individual's disposable earnings for that pay period;



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(b) the amount by which the individual's disposable earnings for that pay period exceed 30 hours per week multiplied by the federal minimum hourly wage prescribed by Section 6(a)(1) of the Fair Labor Standards Act of 1938, 29 U.S.C. Sec. 206(a)(1), in effect at the time the earnings are payable; or

(c) 15% of the individual's disposable earnings for that pay period if the judgment relates to an education loan.

(3) A court may not make, execute, or enforce an order or process in violation of this section.

Section 5. Section 78B-5-808 is amended to read:

**78B-5-808. Salaries of public officers subject to garnishment -- Tax refunds subject to garnishment.**

[The state and any subdivision, agency, or institution of the state which has in its possession or under its control]

(1) Subject to the requirements in Subsection (2), the following are subject to attachment, garnishment, and execution:

(a) any credits or other personal property of, or owing any debt to, the defendant in any action, whether as salary or wages, as a public official or employee [may be subject to] that are under the control of the state or any subdivision, agency, or institution of the state; or

(b) any tax refunds owing to a defendant in an action that are under the control of the state or any subdivision, agency, or institution of the state.

(2) Except as provided in Section 78B-5-809, an attachment, garnishment, [and] or execution [in accordance with] authorized under this section is subject to any rights, remedies, and procedures applicable to attachment, garnishment, and execution, respectively[~~, except as provided in Section 78B-5-809~~].

Section 6. **Retrospective operation.**

The amendments to Section 78B-5-808 in this bill have retrospective operation beginning on December 1, 2015.