

Senator Lyle W. Hillyard proposes the following substitute bill:

ACCOUNTS RECEIVABLE COLLECTION REVISIONS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lyle W. Hillyard

House Sponsor: Val K. Potter

LONG TITLE

General Description:

This bill modifies accounts receivable collection provisions.

Highlighted Provisions:

This bill:

- ▶ provides and amends definitions;
- ▶ amends notification procedures for the state or a governmental entity to execute a lien for certain receivables;
- ▶ authorizes the Office of State Debt Collection to send notification of the execution of a lien for a governmental entity in certain circumstances;
- ▶ amends procedures for the state or another governmental entity to levy a tax overpayment or refund for the collection of a delinquent receivable;
- ▶ amends hearing procedures and requirements regarding the collection of a delinquent receivable;
- ▶ amends the types of receivables that constitute a lien against a state tax overpayment or refund;
- ▶ amends procedures for seeking agency and judicial review of a hearing decision regarding the collection of a delinquent receivable;
- ▶ repeals certain bond requirements for seeking judicial review;



26 ▶ grants the Division of Finance, rather than the Board of Examiners, rulemaking
27 authority to adopt rules regarding the collection of certain account receivables; and

28 ▶ makes technical changes.

29 **Money Appropriated in this Bill:**

30 None

31 **Other Special Clauses:**

32 None

33 **Utah Code Sections Affected:**

34 AMENDS:

35 **63A-3-301**, as last amended by Laws of Utah 2011, Chapter 79

36 **63A-3-302**, as last amended by Laws of Utah 2016, Chapters 129 and 298

37 **63A-3-303**, as last amended by Laws of Utah 2011, Chapter 79

38 **63A-3-304**, as last amended by Laws of Utah 2011, Chapter 79

39 **63A-3-305**, as renumbered and amended by Laws of Utah 1993, Chapter 212

40 **63A-3-306**, as last amended by Laws of Utah 2008, Chapter 382

41 **63A-3-307**, as last amended by Laws of Utah 2011, Chapter 79

42 **63A-3-308**, as last amended by Laws of Utah 2011, Chapter 79

43 **63A-3-310**, as renumbered and amended by Laws of Utah 1993, Chapter 212

44 REPEALS:

45 **63A-3-309**, as renumbered and amended by Laws of Utah 1993, Chapter 212



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

48 Section 1. Section **63A-3-301** is amended to read:

49 **63A-3-301. Definitions.**

50 As used in this part[;]:

51 (1) [~~account~~] "Account receivable" or "receivable" means any amount due the state or
52 any other governmental entity within the state as a result of a [~~court~~] judgment, citation, or
53 administrative order, or for which materials or services have been provided but for which
54 payment has not been received by the servicing unit.

55 (2) "Debtor" means a party that owes, or is alleged to owe, an account receivable.

56 (3) "Mail" means United States Postal Service first class mail to the intended

57 recipient's last known address.

58 Section 2. Section **63A-3-302** is amended to read:

59 **63A-3-302. Unpaid accounts receivable due the state.**

60 If any account receivable at any point has been unpaid for [~~more than~~] 90 days or more,
61 any agency or other authority of [~~state government~~] the state, or any political subdivision, as
62 defined in Section **63G-7-102**, of the state responsible for collection of the account may
63 proceed under this part to collect the delinquent amount.

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

65 **63A-3-303. Notice to debtor -- Contents -- Joint filers.**

66 (1) [~~Upon default in payment of any account receivable that is not due pursuant to final~~
67 ~~court or administrative order or judgment, the entity responsible for collecting the account]~~
68 When the state or any governmental entity executes, or intends to execute, on a lien created by
69 Section **63A-3-307**, the state or entity to which the receivable is owed shall send a notice by
70 mail to the debtor at the debtor's last-known address.

71 (2) The notice required by Subsection (1) shall [~~state~~] contain:

72 (a) the date and amount of the receivable;

73 (b) a demand for immediate payment of the amount;

74 (c) a statement of the right of the debtor to file a written response to the notice, to
75 [~~have~~] request a hearing within 21 days of the date of the notice, to be represented at the
76 hearing, and to appeal any decision of the hearing examiner;

77 (d) the time within which a written response must be [~~filed; and~~] received from the
78 debtor;

79 (e) a statement notifying the debtor that the state may obtain an order [~~under this part~~]
80 and execute upon income tax overpayments or refunds of the debtor if:

81 (i) the debtor fails to timely respond to the notice; or

82 (ii) a hearing is held and the hearing officer decides against the debtor[~~;~~]; and

83 (f) the address to which the debtor may send a written request for a hearing.

84 (3) Notwithstanding Subsection (1), if the Office of State Debt Collection has agreed to
85 collect a receivable, the Office of State Debt Collection may send the notice required by
86 Subsection (1) instead of the entity to which the receivable is owed.

87 (4) Unless otherwise prohibited by law, the notice required by this section shall also be

88 sent to any individuals that are joint filers with a debtor of an affected tax filing, if the state
89 agency or other governmental entity attempting to levy a debtor's tax overpayment or refund is
90 aware of the joint filer.

91 Section 4. Section **63A-3-304** is amended to read:

92 **63A-3-304. Effect of nonpayment or failure to respond.**

93 If a written [~~response~~] request for a hearing, or payment of delinquent receivable, is not
94 received by the state or other governmental entity within [~~15~~] 21 days from the date of [~~receipt~~
95 ~~of~~] the notice [~~by the debtor~~] required by Section 63A-3-303, the debtor is in default and the
96 state [~~may determine the balance due~~] or other governmental entity may:

97 (1) levy the debtor's income tax overpayment or refund up to the amount of the
98 receivable, plus interest, penalties, and collection costs allowed by law; and

99 (2) collect the balance, including as provided in Section 63A-3-307.

100 Section 5. Section **63A-3-305** is amended to read:

101 **63A-3-305. Hearing requested -- Notice to debtor.**

102 (1) If a written response is received by the state or other governmental entity within 21
103 days from the date of the notice required by Section 63A-3-303 and a hearing is requested in
104 the written response, the state or other governmental entity shall:

105 [~~1~~] (a) set a hearing date within [~~30~~] 28 days of the receipt of the response; and

106 [~~2~~] (b) mail written notice of the hearing to the debtor at least [~~15~~] 14 days before the
107 date of the hearing.

108 (2) Notwithstanding Subsection (1), the state or other governmental entity is not
109 required to set a hearing if the state or governmental entity releases its lien.

110 Section 6. Section **63A-3-306** is amended to read:

111 **63A-3-306. Hearing examiner -- Procedures -- Adjudicative proceedings.**

112 (1) (a) [~~The~~] A hearing requested under this part shall be held before a hearing
113 examiner designated by the state or other governmental entity setting the hearing.

114 (b) The hearing examiner may not be an officer or employee of the entity in state
115 government responsible for collecting or administering the account.

116 (2) The state or other governmental entity shall comply with the procedures and
117 requirements of Title 63G, Chapter 4, Administrative Procedures Act, in its adjudicative
118 proceedings.

119 (3) If a hearing examiner determines a receivable is owed, in whole or in part:

120 (a) the state or other governmental entity may levy the debtor's income tax
 121 overpayment or refund up to the amount of the receivable determined to be owed, plus interest,
 122 penalties, and collection costs allowed by law and collect the balance, including as provided in
 123 Section 63A-3-307; and

124 (b) the state or other governmental entity may charge the debtor reasonable, actual
 125 collection costs for amounts charged by the hearing examiner for the debtor's hearing.

126 Section 7. Section 63A-3-307 is amended to read:

127 **63A-3-307. Liens.**

128 (1) The following shall constitute a lien in the amount of the receivable plus interest,
 129 penalties, and collection costs allowed by law against any state income tax [refund or
 130 overpayment] overpayment or refund due or to become due the debtor:

131 (a) ~~[an abstract of an]~~ a judgment, citation, or administrative order issued by any
 132 agency, court, or other authority of the state, or by any political subdivision, as defined in
 133 Section 63G-7-102; or

134 ~~[(b) nonpayment or failure to respond as provided under Section 63A-3-304.]~~

135 (b) an amount, that has at any point been unpaid for 90 days or more, due the state or
 136 other governmental entity for which materials or services have been provided but for which
 137 payment has not been received by the servicing unit.

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

141 ~~[(3) The lien created by this section shall remain effective for eight years.]~~

142 Section 8. Section 63A-3-308 is amended to read:

143 **63A-3-308. Judicial review -- Effect on lien.**

144 (1) ~~[A]~~ Agency and judicial review [of a lien created under Section 63A-3-307 may be
 145 obtained by any party within one year of the creation of the lien by filing a complaint with the
 146 district court] of decisions from hearings conducted under this part are subject to review in
 147 accordance with Title 63G, Chapter 4, Administrative Procedures Act.

148 ~~[(2) (a) A notice of the filing of a complaint may be filed with the State Tax~~
 149 ~~Commission.]~~

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

153 (2) The state or other governmental entity may retain in its possession a debtor's tax
154 overpayment or refund while a decision from a hearing conducted under this part is being
155 reviewed by an agency, court, or other authority of the state pursuant to Title 63G, Chapter 4,
156 Administrative Procedures Act.

157 Section 9. Section **63A-3-310** is amended to read:

158 **63A-3-310. Rules for implementing part.**

159 The [~~Board of Examiners~~] Division of Finance may adopt rules for the implementation
160 of this part, including rules for the conduct of hearings, injured spouse claims, and appointment
161 of hearing examiners.

162 Section 10. **Repealer.**

163 This bill repeals:

164 Section **63A-3-309, Bond required -- Terms -- Expenses of debtor.**