

CHAPTER 252

GOVERNMENT - STATE

SENATE BILL 06-202

BY SENATOR(S) Traylor;
also REPRESENTATIVE(S) Vigil, and Garcia.

AN ACT

CONCERNING THE COLLECTION BY THE STATE OF DEBTS DUE TO A GOVERNMENTAL ENTITY.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 12-14-113, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

12-14-113. Civil liability. (10) (a) NO PROVISION OF THIS SECTION IMPOSING ANY LIABILITY SHALL APPLY TO ANY EFFORTS BY A STATE AGENCY OR STATE EMPLOYEE TO RECOVER MONEYS OWED TO THE STATE AS PROVIDED IN SECTION 24-30-202.4, C.R.S.

(b) IF THE STATE CONTROLLER, OR SUCH DESIGNEE AS HE OR SHE DESIGNATES TO RECOVER MONEYS OWED TO THE STATE, FAILS TO COMPLY WITH ANY PROVISION OF THIS ARTICLE, THE CONTROLLER, OR SUCH DESIGNEE, SHALL BE SUBJECT TO DISCIPLINARY ACTION AS SPECIFIED IN THE RULES PROMULGATED BY THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF PERSONNEL PURSUANT TO ARTICLE 4 OF TITLE 24, C.R.S.

SECTION 2. 24-30-202.4 (1), (2), (3) (c), (3) (d), and (5), Colorado Revised Statutes, are amended, and the said 24-30-202.4 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

24-30-202.4. Collection of debts due the state - controller's duties - creation of debt collection fund - definitions. (1) The STATE controller shall advise and assist the various state agencies concerning the collection of debts due the state through such agencies, in accordance with rules ~~and regulations~~ promulgated by the executive director of the department of personnel, to achieve the prompt collection

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

of debts due such agencies. THE CONTROLLER MAY DELEGATE THE RESPONSIBILITY FOR THE COLLECTION OF DEBTS TO THE CENTRAL COLLECTION SERVICES SECTION OF THE DIVISION OF FINANCE AND PROCUREMENT, OR ANY SUCCESSOR SECTION, IN THE DEPARTMENT.

(2) Except for those debts under the jurisdiction of the department of revenue ~~which are referred to in section 24-35-108 (1) (a), beginning January 1, 1992~~ UNDER THE JURISDICTION OF THE JUDICIAL DEPARTMENT REFERRED TO IN SECTION 16-11-101.6, C.R.S., AND UNDER THE JURISDICTION OF THE DEPARTMENT OF LABOR AND EMPLOYMENT RELATED TO OVERPAYMENT OF UNEMPLOYMENT INSURANCE BENEFITS AND DELINQUENT TAXES REFERRED TO IN SECTION 8-79-102, C.R.S., all state agencies shall refer to the STATE controller debts due the state ~~which~~ THAT the agency has been unable to collect within thirty days after such debts have become past due, together with the data and information necessary for the controller to institute collection procedures. DEBTS ARE NOT SUBJECT TO REFERRAL PURSUANT TO THIS SUBSECTION (2) IF PAYMENT ARRANGEMENTS HAVE BEEN MADE AND PAYMENTS DUE IN ACCORDANCE WITH THE TERMS OF THE ARRANGEMENTS ARE NOT DELINQUENT. The controller may grant ~~an exception~~ A WAIVER to the requirement that a state agency refer debts within such thirty-day period based upon a documented REQUEST and ~~justified need~~ JUSTIFICATION provided by a state agency, ~~Until July 1, 1992, the controller shall have up to one hundred twenty days, and thereafter the controller shall have ninety days, after receipt of a debt to~~ PURSUANT TO RULES PROMULGATED BY THE DEPARTMENT OF PERSONNEL UNDER ARTICLE 4 OF THIS TITLE. A WAIVER MAY INCLUDE BUT SHALL NOT BE LIMITED TO EXTENDED PERIODS TO COLLECT DELINQUENT DEBTS. FOR ACCOUNTS WHERE NO WAIVER TO ASSIGNMENT HAS BEEN GRANTED, THE CONTROLLER SHALL use all state collection capabilities to collect ~~such~~ THAT debt, including, but not limited to, the certification of ~~such~~ THAT debt to the department of revenue for offset of ~~such~~ THAT debt against any tax refund due the debtor under the provisions of subparagraph (II) of paragraph (a) of subsection (3) of this section. No later than one hundred twenty days ~~until July 1, 1992, and thereafter no later than ninety days~~ after receipt by the controller, the controller or the controller's designee shall legally assign all debts ~~which~~ THAT are not claims in process of collection to private counsel or private collection agencies ~~which~~ THAT appear on the list of private counsel or private collection agencies. For the purposes of this section, "claims in process of collection" means any debts ~~which have been in the controller's hands for less than one hundred twenty days until July 1, 1992, and thereafter have been in the controller's hands for less than ninety days,~~ debts on which payments are being made, ~~or~~ on which payments have been promised, ~~and debts~~ on which suit has been brought, OR ANY OTHER DEBTS AS DEFINED IN RULES PROMULGATED BY THE DEPARTMENT OF PERSONNEL PURSUANT TO ARTICLE 4 OF THIS TITLE. The private counsel or private collection agencies included in the list of private counsel or private collection agencies shall be selected through competition pursuant to the provisions of the "Procurement Code", articles 101 to 112 of this title. Criteria for selection of the private counsel or private collection agencies shall be developed by the executive director of the department of personnel in consultation with the controller, affected state agencies, and the private collection community. ~~Such criteria shall include, but shall not be limited to, a component based on geography.~~ In addition, a state-supported institution of higher education may utilize the provisions of section 23-5-113, C.R.S., for the collection of any loan or other outstanding obligation owed to such institution.

(2.5) THE DEPARTMENT OF PERSONNEL MAY PROVIDE DEBT COLLECTION SERVICES FOR POLITICAL SUBDIVISIONS OF THE STATE. THE PROVISIONS OF THIS SECTION GOVERNING THE TIME FOR REFERRAL OF ACCOUNTS TO PRIVATE COLLECTION AGENCIES, WRITE OFF, RELEASE, OR COMPROMISE OF DEBTS SHALL NOT GOVERN THE DEBT COLLECTION SERVICES PROVIDED TO POLITICAL SUBDIVISIONS EXCEPT AS AGREED BETWEEN THE DEPARTMENT AND SUCH POLITICAL SUBDIVISIONS OR STATE AGENCIES AND INSTITUTIONS.

(3) (c) The STATE controller, with the consent of the state treasurer, is authorized to write off, release, or compromise any debt due the state, but only in accordance with the rules ~~and regulations~~ applicable thereto. SUCH RULES MAY PROVIDE DELEGATED AUTHORITY AND CRITERIA FOR WRITE OFF, RELEASE, AND COMPROMISE OF DEBTS AND MAY INCLUDE PROVISIONS TO PROHIBIT THE REFERRAL OF DEBTS FOR TAX OFFSET BASED ON THE AGE OR AMOUNTS OF DEBTS. THE RULES GOVERNING WRITE OFF, RELEASE, AND COMPROMISE OF DEBTS MAY INCLUDE PROVISIONS AUTHORIZING THE COLLECTION OF PRINCIPAL, INTEREST, AND OTHER COLLECTION FEES AND COSTS, INCLUDING THE FEES REQUIRED IN SUBSECTION (8) OF THIS SECTION.

(d) ~~Net~~ Proceeds of debts collected by the STATE controller or by a private counsel or private collection agency shall be accounted for and paid into the fund from which the receivable was derived, and if the fund is no longer in existence, it shall be paid into the general fund. ~~Net~~ Revenues collected by the controller to pay for state collection activities shall be deposited in the debt collection fund.

(5) No contract for the collection of state debts under the provisions of this section shall be awarded for a term in excess of ~~three years~~ THAT PERMITTED BY THE PROVISIONS OF THE "PROCUREMENT CODE", ARTICLES 101 TO 112 OF THIS TITLE.

(8) (a) THE DEPARTMENT OF PERSONNEL MAY ADD A COLLECTION FEE TO THE AMOUNT OF A DEBT'S PRINCIPAL AND INTEREST REFERRED TO THE STATE CONTROLLER PURSUANT TO THIS SECTION EXCEPT WHERE OTHER SPECIFIC STATUTORY AUTHORITY, REQUIREMENTS UNDER FEDERAL PROGRAMS, OR WRITTEN AGREEMENT WITH THE DEBTOR PROVIDE OTHERWISE. THE DEPARTMENT SHALL DETERMINE UPON ANNUAL REVIEW THE AMOUNT OF THE COLLECTION FEE, WHICH SHALL APPROXIMATE THE REASONABLE COSTS INCURRED BY THE CONTROLLER IN COLLECTING DEBTS. THE COLLECTION FEE MAY INCLUDE A FEE TO RECOVER THE COLLECTION COSTS INCURRED BY EITHER THE CONTROLLER, PRIVATE COUNSEL, OR PRIVATE COLLECTION AGENCIES, BUT IN NO CASE SHALL THE AGGREGATE FEE FOR THE CONTROLLER OR PRIVATE COLLECTION AGENCIES EXCEED TWENTY-ONE PERCENT AND IN NO CASE SHALL THE AGGREGATE FEE FOR PRIVATE COUNSEL EXCEED TWENTY-FIVE PERCENT.

(b) THE DEBTOR SHALL BE LIABLE FOR REPAYMENT OF THE TOTAL AMOUNT OF A DEBT DUE TO THE STATE, INCLUDING THE COLLECTION FEE.

(c) IF SUCH A DEBT DUE TO THE STATE IS LITIGATED AND THE STATE PREVAILS, IN ADDITION TO THE COLLECTION FEE, THE DEBTOR SHALL ALSO BE LIABLE FOR THE FOLLOWING:

(I) REASONABLE ATTORNEY FEES AS MAY BE DETERMINED BY THE COURT;

(II) COURT COSTS AS DESCRIBED IN SECTION 13-16-122, C.R.S.; AND

(III) FEES INCURRED BY THE STATE'S ATTORNEY IN PROCESSING THE LITIGATION AND COLLECTION OF ANY JUDGMENT.

(d) IF SUCH A DEBT DUE TO THE STATE IS IN THE FORM OF A CHECK, DRAFT, OR ORDER NOT PAID UPON PRESENTMENT AND REFERRED TO THE DEPARTMENT OF PERSONNEL FOR COLLECTION, THE DEPARTMENT IS ENTITLED, IN ADDITION TO THE COLLECTION FEE, TO COLLECT DAMAGES AS SPECIFIED IN SECTION 13-21-109 (1) (b) (II) AND (2) (a), C.R.S.

(9) EXCEPT AS PROVIDED IN THE "COLORADO FAIR DEBT COLLECTION PRACTICES ACT", ARTICLE 14 OF TITLE 12, C.R.S., WITHIN FIVE DAYS AFTER THE INITIAL COMMUNICATION WITH A DEBTOR IN CONNECTION WITH THE COLLECTION OF ANY DEBT, THE CONTROLLER, PRIVATE COUNSEL, OR PRIVATE COLLECTION AGENCY SHALL, UNLESS THE INFORMATION IS CONTAINED IN THE INITIAL COMMUNICATION OR THE DEBTOR HAS PAID THE DEBT, SEND THE DEBTOR A WRITTEN NOTICE WITH THE DISCLOSURES SPECIFIED IN PARAGRAPHS (a) AND (b) OF THIS SUBSECTION (9). IF SUCH DISCLOSURES ARE PLACED ON THE BACK OF THE NOTICE, THE FRONT OF THE NOTICE SHALL CONTAIN A STATEMENT NOTIFYING DEBTORS OF THAT FACT. SUCH DISCLOSURES SHALL STATE:

(a) THE AMOUNT OF THE DEBT, INCLUDING AN ITEMIZATION OF ANY FEES ASSESSED AS PROVIDED FOR IN PARAGRAPH (a) OF SUBSECTION (8) OF THIS SECTION; AND

(b) THE NAME OF THE CREDITOR TO WHOM THE DEBT IS OWED.

SECTION 3. Applicability. This act shall apply to debts referred to the department of personnel for collection on or after the effective date of this act.

SECTION 4. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 25, 2006