

State of South Dakota

NINETIETH SESSION
LEGISLATIVE ASSEMBLY, 2015

982W0675

SENATE APPROPRIATIONS

ENGROSSED NO. **HB 1228** - 03/09/2015

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: Representatives Cronin, Dryden, Gosch, Mickelson, and Wink

1 FOR AN ACT ENTITLED, An Act to establish an obligation recovery center.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. There is hereby created the obligation recovery center. The obligation recovery
4 center is attached to the Bureau of Administration for budgeting and reporting purposes. The
5 purpose of the obligation recovery center is to be a central repository for identification,
6 registration, and oversight of debts owed to any agency or department of the State of South
7 Dakota. The center shall act to collect the state's debt during the state's account receivable cycle.

8 Section 2. Terms used in this Act mean:

9 (1) "Account receivable cycle," the period of time, not to exceed one hundred eighty
10 days, during which the center or any agency, department, or system of the State of
11 South Dakota may attempt to collect on a debt before the debt is forwarded to a
12 collection agency or agencies pursuant to section 14 of this Act;

13 (2) "Center," the obligation recovery center;

14 (3) "Debt," a legal obligation to pay money, including any principal, any interest that has



1 accrued or will accrue until the debt is paid, any penalties, any costs, and any other
2 charges permitted by law. The term, debt, includes any obligation of any kind
3 referred to the obligation recovery center for collection by any state government
4 agency, by the Unified Judicial System, by the Board of Regents, or by a
5 constitutional office;

6 (4) "Debtor," a person who is indebted to the state or a state agency for any delinquent
7 accounts, charges, fees, loans, taxes, or other indebtedness due the state, or any
8 person that owes any obligation being collected by the obligation recovery center;

9 (5) "Bad debt," any debt due a state executive branch agency, the Board of Regent's
10 system, or a constitutional office that is no longer subject to an administrative appeal
11 or judicial review following an administrative appeal, or any costs, fines, fees, or
12 restitution ordered in any adult criminal proceeding through the Unified Judicial
13 System no longer subject to direct appeal pursuant to § 23A-32-2;

14 (6) "Final notification," the notification provided by section 7 of this Act; and

15 (7) "Referring entity," the entity referring the debt to the state obligation recovery center
16 for collection.

17 Section 3. The center shall work to collect each bad debt referred to the center during the
18 account receivable cycle. The character of the debt in the hands of the referring entity does not
19 change by the referral of the debt to the center for collection. Among other powers granted by
20 this Act, the center may:

21 (1) Sue;

22 (2) File liens;

23 (3) Enter into payment agreements with debtors;

24 (4) Impose a cost recovery fee;

- 1 (5) Collect data for debt collection purposes;
- 2 (6) Establish and maintain a centralized electronic debt management system;
- 3 (7) Exercise settlement authority granted by the referring entity;
- 4 (8) Setoff against any moneys to be paid by the State of South Dakota or any referring
5 entity to a debtor;
- 6 (9) Contract with multiple collection agencies for the collection of debt on behalf of the
7 center;
- 8 (10) Except for the debt collection powers vested in the Unified Judicial System, the
9 center may use the referring entity's statutory collection authority to collect the bad
10 debt owed to the referring entity; and
- 11 (11) Utilize all debt collection methods authorized by state law.

12 The office may determine which method or combination is most suitable to collect the debt.

13 Section 4. For any bad debt referred to the center for collection after July 1, 2015, the center
14 shall collect a cost recovery fee in addition to the debt referred to the center for collection. The
15 cost recovery fee is calculated by multiplying the principal amount of the debt referred to the
16 center by twenty percent. All debt collection methods available to collect any bad debt referred
17 to the center may be used by the center to collect the cost recovery fee. The cost recovery fee
18 shall be deposited into a fund to be used to fund the operations of the center which shall be set
19 forth in an informational budget and shall be subject to the annual budgeting process specified
20 in chapter 4-7.

21 Section 5. The center shall retain the cost recovery fee and transfer any other moneys
22 collected from a debtor to the referring entity within thirty days after the end of the month in
23 which the moneys were collected. If the amount collected is less than the principal amount of
24 the debt referred to the center and the cost recovery fee imposed by this Act, the amount

1 collected shall be prorated between the principal amount of the debt referred and the cost
2 recovery fee.

3 If more than one referring entity has referred a debt to the center regarding the same debtor,
4 or if the same referring entity has referred multiple debts to the office regarding the same debtor,
5 the center shall collect the first referred debt before proceeding to the collection of the
6 subsequent referred debt in the order referred.

7 Section 6. The center may be used as follows during the account receivable cycle:

- 8 (1) Any executive branch agency may use the center to collect bad debt owed to an
9 executive branch agency;
- 10 (2) The Unified Judicial System may use the center to collect any costs, fines, fees, or
11 restitution, constituting final debt, ordered in any adult criminal proceeding;
- 12 (3) The Board of Regents may use the center to collect any final debt owed within the
13 South Dakota Board of Regents' system; and
- 14 (4) Any constitutional office may use the center to collect final debt owed to the
15 constitutional office.

16 Section 7. Prior to transferring any debt to the center for collection, the referring entity shall
17 provide a final notification to the debtor that the debt will be referred to the center for collection.

18 The final notification to the debtor may be sent by regular mail or by electronic means. The
19 final notification shall contain all of the following:

- 20 (1) The name of the referring entity;
- 21 (2) Contact information for the referring entity;
- 22 (3) The name of the debtor;
- 23 (4) The nature of the debt;
- 24 (5) The principal amount of the debt;

1 (6) The total amount of the debt;

2 (7) A statement that the debt will not be turned over for collection to the center until a
3 time at least fourteen days after the date the final notification is sent to the debtor;
4 and

5 (8) A statement that if the debt is turned over to the center, a cost recovery fee of twenty
6 percent of the principal, in the amount of \$ _____, will be added to the total debt
7 owed by the debtor to the referring entity.

8 Section 8. All data, records, and files utilized for debt collection as provided for in this Act
9 shall be confidential and privileged, and no person may divulge or disclose any information
10 obtained from such records and files except in the administration and enforcement of this Act,
11 or as otherwise required by law.

12 Section 9. The center may collect data for purposes of collecting any debt referred to the
13 center. Notwithstanding any law to the contrary, referring entities are authorized to transmit data
14 to the center deemed necessary by the center to aid in the collection of the referred debt and the
15 center may share, request, and shall receive from any state agency any data to collect any debt
16 referred to the center. Any information provided by a referring entity or a state agency may only
17 be used for the purpose of collecting the debts referred to the center.

18 Section 10. The center shall establish and maintain a centralized electronic debt management
19 system to compile the information provided by referring entities, to track the collection efforts
20 for all debt referred to the center, to cross-reference and identify debtors for collection purposes,
21 and to maintain all information provided or collected from all sources concerning addresses,
22 financial records, and any other information useful to the center.

23 The center may designate a third party to establish and maintain the centralized electronic
24 debt management system. Any such third party shall keep all information it obtains from any

1 source confidential, and any employee, agent, or representative of that third party is prohibited
2 from disclosing that information to anyone other than the center.

3 Section 11. No person that owes a debt that is referred to the center may renew, obtain, or
4 maintain:

5 (1) Any registration for any motor vehicle, motorcycle, or boat, in which the person's
6 name appears on the title of the motor vehicle, motorcycle, or boat;

7 (2) Any driver license as defined by subdivision 32-12-1(1); or

8 (3) Any hunting license, fishing license, state park permit, or camping permit;

9 unless the debt and cost recovery fee is either paid in full or the debtor has entered into a
10 payment plan with the center and payment pursuant to the plan is current.

11 Section 12. No agency, board, or entity of the State of South Dakota may issue, renew, or
12 allow an individual to maintain any motor vehicle, motorcycle, or boat registration, driver
13 license, hunting license, fishing license, state park permit, or camping permit, after receiving
14 notice from the center that the applicant, registrant, or licensee has a debt that is being collected
15 by the center, unless the applicant, registrant, or licensee has paid the debt and cost recovery fee
16 in full or the debtor has entered into a payment plan with the center and payment pursuant to the
17 plan is current.

18 An applicant, registrant, or licensee who disputes a determination by the center that the
19 applicant, registrant, or licensee has a debt that has been referred to the center for collection
20 shall, upon request, be given a due process hearing by the center. Upon recommendation by the
21 center, the agency or entity may issue a temporary license, registration, certification, or permit
22 to the applicant, registrant, or licensee pending final resolution of the due process hearing.

23 Section 13. Unless preempted by other law, any payment of any kind to be made to a debtor
24 by the State of South Dakota or any referring entity, when the debtor has a debt that is referred

1 to the center, is subject to offset by the center unless the debt and cost recovery fee is either paid
2 in full or the debtor has entered into a payment plan with the center and payment pursuant to the
3 plan is current.

4 Section 14. If the center is unable to collect any debt referred to it within the account
5 receivable cycle, the center shall forward the debt to a collection agency or agencies for
6 collection for a period of no less than one year, or as otherwise stipulated in the contract
7 between the center and the collection agency. The debt collection agency shall be permitted to
8 add a collection charge, not to exceed twenty percent of the debt, to the debt forwarded to the
9 collection agency as payment for its collection services. The center or a collection agency may
10 retain debt beyond the account receivable cycle or other applicable collection period if the entity
11 is actively engaged in substantive collection efforts, or based on other good cause. The Bureau
12 of Administration shall promulgate rules pursuant to chapter 1-26 concerning the process of
13 contracting with and referring debt to debt collection agencies.

14 Section 15. The Bureau of Administration may promulgate rules, pursuant to chapter 1-26,
15 in the following areas:

- 16 (1) Definitions;
- 17 (2) Procedure for remitting moneys collected to referring entities;
- 18 (3) Processes and procedures for entering into payment agreements with debtors;
- 19 (4) A process for the imposition of the cost recovery fee;
- 20 (5) The data collection system;
- 21 (6) The centralized electronic debt management system;
- 22 (7) The settlement authority process;
- 23 (8) The procedure for sending information to the Division of Motor Vehicles concerning
24 the nonrenewal of registrations for motor vehicles, motorcycles, and boats;

- 1 (9) The procedure for sending information to the Department of Public Safety
- 2 concerning the nonrenewal of driver licenses;
- 3 (10) The procedure for sending information to the Department of Game, Fish and Parks
- 4 concerning the nonissuance of hunting licenses, fishing licenses, state park permits,
- 5 and camping permits; and
- 6 (11) The setoff of debt process.

7 Section 16. The center shall annually report after conclusion of the prior fiscal year to the

8 Government Operations and Audit Committee concerning the activity of the center including

9 the number of debts referred to the entity, the annual amount and nature of the debt obligations

10 recovered by the center, the number of debts referred from the center to private collection

11 agencies and the results of those referrals, and the costs and expenditures incurred by the center.

12 Section 17. The obligation recovery center advisory group is established to assist the Bureau

13 of Administration to implement this Act. The advisory group is attached to the Bureau of

14 Administration and will meet at the call of the commissioner as often as necessary to furnish

15 advice, gather information, and make recommendations to the Bureau of Administration

16 regarding management and administration of the obligation recovering center. However, the

17 advisory group shall meet at least once every quarter. The advice and recommendations include

18 such things as:

- 19 (1) Planning, developing, and implementing programs;
- 20 (2) Organizing the internal structure of the obligation recovery center;
- 21 (3) Managing personnel;
- 22 (4) Developing, reviewing, and selecting requests for proposals;
- 23 (5) Reviewing activities assigned to the obligation recovery center; or
- 24 (6) Budgeting and expending funds.

1 The advisory group, through the commissioner, will report periodically to the Government
2 Operations and Audit Committee regarding its progress in implementing this Act.

3 The advisory group consists of six members: two appointed by the Speaker of the House,
4 two appointed by the President Pro Tempore of the Senate, the commissioner of the Bureau of
5 Administration, and the commissioner of Budget and Finance. Not all of the members may be
6 of the same political party. The advisory group will solicit advice and recommendations from
7 the Unified Judicial System and the Board of Regents regarding the implementation of the
8 obligation recovery center.

9 This section is repealed June 30, 2017.