

REPORTS OF STANDING COMMITTEES

MR. SPEAKER:

The Committee on **Judiciary** recommends **SB 184** be amended on page 2, following line 17, by inserting:

"Sec. 2. K.S.A. 2014 Supp. 75-719 is hereby amended to read as follows: 75-719. (a) ~~The attorney general~~ judicial administrator is authorized to enter into contracts in accordance with this section for collection services for debts owed to courts or restitution owed under an order of restitution. On and after July 1, 1999, the cost of collection shall be paid by the defendant as an additional court cost in all criminal, traffic and juvenile offender cases where the defendant fails to pay any amount ordered by the court and the court utilizes the services of a contracting agent pursuant to this section. The cost of collection shall be deemed an administrative fee to pay the actual costs of collection made necessary by the defendant's failure to pay court debt and restitution.

(b) As used in this section:

(1) "Beneficiary under an order of restitution" means the victim or victims of a crime to whom a district court has ordered restitution be paid;

(2) "contracting agent" means a person, firm, agency or other entity who contracts hereunder to provide collection services;

(3) "cost of collection" means the fee specified in contracts hereunder to be paid to or retained by a contracting agent for collection services. Cost of collection also includes any filing fee required under K.S.A. 60-4303, and amendments thereto, or administrative costs prescribed by ~~the attorney general pursuant to rules and regulations~~ rules of the supreme court; and

(4) "debts owed to courts" means any assessment of court costs, fines, fees, moneys expended by the state in providing counsel and other defense services to indigent defendants or other charges which a district court judgment has ordered to be paid to the court, and which remain unpaid in whole or in part, and includes any interest or penalties on such unpaid amounts as provided for in the judgment or by law. "Debts owed to courts" also includes: (A) The cost of collection when collection services of a contracting agent hereunder are utilized; and (B) court costs, fines, fees or other charges arising from failure to comply with a traffic citation within 30 days from the date of the mailing of the notice pursuant to K.S.A. 8-2110(b)(1), and amendments thereto.

(c) (1) Contracts authorized by this section may be entered into with state or federal agencies or political subdivisions of the state of Kansas, including contracts for participation in the collection program authorized by K.S.A. 75-6201 et seq., and amendments thereto. Such contracts also may be entered into with private firms or individuals selected by a procurement negotiation committee in accordance with K.S.A. 75-37,102, and amendments thereto, except that ~~the attorney general~~ judicial administrator shall designate a representative to serve as the chief administrative officer member of such committee and that the other two members of such committee shall be designated by the director of purchases and the judicial administrator.

(2) Prior to negotiating any contract for collection services, this procurement negotiation committee shall advertise for proposals, negotiate with firms and individuals submitting proposals and select among those submitting such proposals the party or parties to contract with for the purpose of collection services.

(3) ~~The attorney general~~ supreme court may adopt rules ~~and regulations~~ as deemed appropriate for the administration of this section, including procedures to be used in the negotiation and execution of contracts pursuant to this section and procedures to be followed by those who utilize collection services under such contracts.

(4) For purposes of this section, the agencies, firms or individuals with whom contracts are entered under this section shall be known as contracting agents. ~~The attorney general~~ judicial administrator shall publish a list of the contracting agents for use by courts or beneficiaries under orders of restitution who desire to utilize the collection services of such agents.

(5) Each contract entered pursuant to this section shall provide for a fee to be paid to or retained by the contracting agent for collection services. Such fee shall be designated as the cost of collection hereunder, and shall not exceed 33% of the amount collected. The cost of collection shall be paid from the amount collected, but shall not be deducted from the debts owed to courts or restitution. If a contracting agent uses the debt setoff procedures pursuant to K.S.A. 75-6202 et seq., and amendments thereto, to recover debts owed to the courts, the contracting agent's cost of collection for debt recovered through that program shall be the amount established by contract minus the collection assistance fee imposed by the director of accounts and reports of the department of administration pursuant to K.S.A. 75-6210, and amendments thereto.

(d) Judicial districts of the state of Kansas are authorized to utilize the collection services of contracting agents pursuant to this section for the purpose of collecting all outstanding debts owed to courts. Subject to rules and orders of the Kansas supreme court, each judicial district may establish by local rule guidelines for the compromise of court costs, fines, attorney fees and other charges assessed in district court cases.

(e) Any beneficiary under an order of restitution entered by a court after this section takes effect is authorized to utilize the collection services of contracting agents pursuant to this section for the purpose of collecting all outstanding amounts owed under such order of restitution.

(f) Contracts entered hereunder shall provide for the payment of any amounts collected to the clerk of the district court for the court in which the debt being collected originated, after first deducting the collection fee. In accounting for amounts collected from any person pursuant to this section, the

district court clerk shall credit the person's amount owed in the amount of the net proceeds collected and shall not reduce the amount owed by any person by that portion of any payment which constitutes the cost of collection pursuant to this section.

(g) With the appropriate cost of collection paid to the contracting agent as agreed upon in the contract hereunder, the clerk shall then distribute amounts collected hereunder as follows:

(1) When collection services are utilized pursuant to subsection (d), all amounts shall be applied against the debts owed to the court as specified in the original judgment creating the debt;

(2) when collection services are utilized pursuant to subsection (e), all amounts shall be paid to the beneficiary under the order of restitution designated to receive such restitution, except where that beneficiary has received recovery from the Kansas crime victims compensation board and such board has subrogation rights pursuant to K.S.A. 74-7312, and amendments thereto, in which case all amounts shall be paid to the board until its subrogation lien is satisfied.

(h) Whenever collection services are being utilized against the same debtor pursuant to both subsections (d) and (e), any amounts collected by a contracting agent shall be first applied to satisfy subsection (e) debts, debts pursuant to an order of restitution. Upon satisfaction of all such debts, amounts received from the same debtor shall then be applied to satisfy subsection (d) debts, debts owed to courts.

Sec. 3. K.S.A. 2014 Supp. 75-6202 is hereby amended to read as follows: 75-6202. As used in this act:

(a) "Debtor" means any person who:

(1) Owes a debt to the state of Kansas or any state agency or any municipality;

(2) owes support to an individual, or an agency of another state, who is receiving assistance in collecting that support under K.S.A. 39-756 or K.S.A. 2014 Supp. 20-378, and amendments thereto, or under part D of title IV of the federal social security act, 42 U.S.C. § 651 et seq., as amended; or

(3) owes a debt to a foreign state agency.

(b) "Debt" means:

(1) Any liquidated sum due and owing to the state of Kansas, or any state agency, municipality or foreign state agency which has accrued through contract, subrogation, tort, operation of law, or any other legal theory regardless of whether there is an outstanding judgment for that sum. A debt shall not include special assessments except when the owner of the property assessed petitioned for the improvement and any successor in interest of such owner of property;~~or~~

(2) any amount of support due and owing an individual, or an agency of another state, who is receiving assistance in collecting that support under K.S.A. 39-756 or K.S.A. 2014 Supp. 20-378, and amendments thereto, or under part D of title IV of the federal social security act, 42 U.S.C. § 651 et seq., as amended, which amount shall be considered a debt due and owing the district court trustee or the Kansas department for children and families for the purposes of this act;or

(3) any assessment of court costs, fines, fees, moneys expended by the state in providing counsel and other defense services to indigent defendants or other charges which a district court judgment has ordered to be paid to the court and which remain unpaid in whole or in part, and includes any interest or penalties on such unpaid amounts as provided for in the judgment or by law. Such amount also includes the cost of collection when the collection services of a contracting agent are utilized.

(c) "Refund" means any amount of ~~Kansas~~ income tax refund due to any person as a result of an overpayment of tax, and for this purpose, a refund due to a husband and wife resulting from a joint return shall be considered to be separately owned by each individual in the proportion of each such spouse's contribution to income, as the term "contribution to income" is defined by rules and regulations of the secretary of revenue.

(d) "Net proceeds collected" means gross proceeds collected through final setoff against a

debtor's earnings, refund or other payment due from the state or any state agency minus any collection assistance fee charged by the director of accounts and reports of the department of administration.

(e) "State agency" means any state office, officer, department, board, commission, institution, bureau, agency or authority or any division or unit thereof and any judicial district of this state or the clerk or clerks thereof. "State agency" also shall include any: (1) District court utilizing collection services pursuant to K.S.A. 75-719, and amendments thereto, to collect debts owed to such court; and (2) contracting agent, as defined in K.S.A. 75-719, and amendments thereto, with which a district court contracts to collect debts owed to such court. Such contracting agent may directly establish a debt setoff account with the director for the sole purpose of collecting debts owed to courts.

(f) "Person" means an individual, proprietorship, partnership, limited partnership, association, trust, estate, business trust, corporation, other entity or a governmental agency, unit or subdivision.

(g) "Director" means the director of accounts and reports of the department of administration.

(h) "Municipality" means any municipality as defined by K.S.A. 75-1117, and amendments thereto.

(i) "Payor agency" means any state agency which holds money for, or owes money to, a debtor.

(j) "Foreign state or foreign state agency" means the states of Colorado, Missouri, Nebraska or Oklahoma or any agency of such states which has entered into a reciprocal agreement pursuant to K.S.A. 75-6215, and amendments thereto.

Sec. 4. K.S.A. 2014 Supp. 75-6204 is hereby amended to read as follows: 75-6204. (a) Subject to the limitations provided in this act, if a debtor fails to pay to the state of Kansas or any state agency, foreign state agency, municipality or the federal department of the treasury an amount owed, the director may setoff such amount and a reasonable collection assistance fee determined in accordance with K.S.A. 75-6210, and amendments thereto, against any money held for, or any money

owed to, such debtor by the state or any state agency.

(b) The director may enter into an agreement with a municipality for participation in the setoff program for the purpose of assisting in the collection of a debt as defined by K.S.A. 75-6202, and amendments thereto. The director shall include in any such agreement a provision requiring the municipality to certify that the municipality has made at least three attempts to collect a debt prior to submitting such debt to setoff pursuant to this act.

(c) (1) Except as provided in subsection (c)(2), the director shall add the cost of collection and the debt for a total amount subject to setoff against a debtor.

(2) Any debts due and owing to an individual, the state of Kansas or an agency of another state that are being enforced by the Kansas department for children and families under part D of title IV of the federal social security act, 42 U.S.C. § 651 et seq., as amended, shall not have the cost of collection added to the debt owed and subject to setoff. Such cost of collection shall be paid by the Kansas department for children and families.

Sec. 5. K.S.A. 75-6209 is hereby amended to read as follows: 75-6209. (a) In accordance with the applicable times under K.S.A. 75-6208 and amendments thereto, the director shall complete the setoff by adding and retaining the collection assistance fee permitted by K.S.A. 75-6210, and amendments thereto, and transferring the net proceeds collected for credit or payment and by refunding any outstanding balance to the debtor.

(b) Upon completing the setoff, the director shall notify the debtor in writing of the action taken along with an accounting of the action taken. If there is an outstanding balance after setoff, the notice under this section shall accompany the balance when refunded.

(c) When a setoff is completed against earnings of an employee for any pay period and the setoff does not fully liquidate the debt due, further setoff in subsequent pay periods may be made without further certifications or notice to the debtor, except that the director shall notify the debtor in

writing of the action taken and give an accounting thereof. The debtor may request an opportunity for hearing in regard to any further setoff in subsequent pay periods by making a written request therefor to the director. Any such request shall not stay future setoffs, but such hearing shall be held within a reasonable time, not to exceed 15 days after the request, unless a longer time has been agreed to by the debtor. Hearings under this subsection shall be conducted in accordance with the provisions of the Kansas administrative procedure act. Orders resulting from hearings under this subsection shall not be subject to administrative review.

Sec. 6. K.S.A. 2014 Supp. 75-6210 is hereby amended to read as follows: 75-6210. (a) Upon completion of a setoff transaction, the director shall transfer the net proceeds collected to the account or fund of the state agency, foreign state agency or municipality to which the debt was owed.

(b) (1) From the gross proceeds collected by the director through setoff, the director shall retain a reasonable collection assistance fee in an amount based on cost, as determined by generally accepted cost allocation techniques, except that in the case of transactions for collection of debts arising from the employment security law such fee shall not exceed \$300 for any transaction. Except as provided further, the director shall add the collection assistance fee to the debt after the debt is submitted to the director in accordance with K.S.A. 75-6206, and amendments thereto. Any debts due and owing to an individual, the state of Kansas or an agency of another state that are being enforced by the Kansas department for children and families under part D of title IV of the federal social security act, 42 U.S.C. § 651 et seq., as amended, shall not have the collection assistance fee added to the debt owed and subject to setoff, and such fee shall be paid by the Kansas department for children and families.

(2) The director shall retain a reasonable collection assistance fee from the gross proceeds of collections through setoff on behalf of a municipality as specified in an agreement entered into pursuant to K.S.A. 75-6204, and amendments thereto, or foreign state agency in such amount as

specified in the reciprocal agreement entered into pursuant to K.S.A. 75-6215, and amendments thereto.

(3) The collection assistance fee shall be paid as an additional cost for all debts owed to the court when the court utilizes debt setoff procedures pursuant to K.S.A. 75-6202 et seq., and amendments thereto. The collection assistance fee shall be retained from the amount collected, but shall not be deducted from the debts owed to the court.

(4) The director may credit a portion of the collection assistance fee to the appropriate account or fund of any other state agency that has incurred expenses in assisting in the collection of the debt.

(5) The amount of the collection assistance fee retained by the director shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the accounting services recovery fund.

(c) Upon receipt by the state agency, foreign state agency or municipality of the net proceeds collected, the state agency, foreign state agency or municipality shall credit the debtor's obligation in the amount of the gross proceeds collected.

(d) Except as otherwise prescribed by the director or the secretary of administration, any state agency, foreign state agency or municipality which receives any payment from a debtor after notification to the debtor under K.S.A. 75-6206, and amendments thereto, other than payments collected pursuant to K.S.A. 44-718, and amendments thereto, or collected through the federal government or judicial process, shall remit the collection assistance fee imposed under subsection (b) to the director which shall be credited to the accounting services recovery fund. If a state agency fails to remit the collection assistance fee as required by this subsection, the director may transfer an amount equal to such collection assistance fee from the appropriate account or fund of the state agency to the accounting services recovery fund. If a foreign state agency or municipality fails to remit the collection

assistance fee as required by this subsection, the director may seek collection of such fee in such manner as may be allowed by law.

(e) In cases involving the collection of debts arising from the employment security law, the entire amount collected shall be credited to the employment security fund and the collection assistance fee shall be transferred from the special employment security fund to the accounting services recovery fund.";

Also on page 2, in line 18, before "K.S.A." by inserting "K.S.A. 75-6209 and"; also in line 18, by striking "is" and inserting ", 75-719, 75-6202, 75-6204 and 75-6210 are";

And by renumbering sections accordingly;

On page 1, in the title, in line 1, by striking all after "concerning"; in line 2, by striking "dormancy" and inserting "courts; relating to court costs, fees, fines and restitution; debts owed to courts"; also in line 2, after "amending" by inserting "K.S.A. 75-6209 and"; also in line 2, after "60-2403" by inserting ", 75-719, 75-6202, 75-6204 and 75-6210"; in line 3, by striking "section" and inserting "sections"; and the bill be passed as amended.

Chairperson