

1 State of Arkansas
2 92nd General Assembly
3 Regular Session, 2019
4

A Bill

HOUSE BILL 1930

5 By: Representative M. Gray
6

For An Act To Be Entitled

8 AN ACT TO CREATE THE BAD DEBT COLLECTION PILOT
9 PROGRAM; TO CREATE THE BAD DEBT COLLECTION PILOT
10 PROGRAM FUND; TO AUTHORIZE THE DIRECTOR OF THE
11 DEPARTMENT OF FINANCE AND ADMINISTRATION TO DELEGATE
12 CERTAIN DEBT COLLECTION AUTHORITY TO A THIRD PARTY;
13 TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.
14

Subtitle

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16
17 TO AUTHORIZE THE DIRECTOR OF THE
18 DEPARTMENT OF FINANCE AND ADMINISTRATION
19 TO DELEGATE CERTAIN DEBT COLLECTION
20 AUTHORITY TO A THIRD PARTY; AND TO
21 DECLARE AN EMERGENCY.
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24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
25

26 SECTION 1. Arkansas Code Title 19, Chapter 6, Subchapter 8, is amended
27 to add an additional section to read as follows:

28 19-6-840. Bad Debt Collection Pilot Program Fund.

29 (a) There is created on the books of the Treasurer of State, the
30 Auditor of State, and the Chief Fiscal Officer of the State a special revenue
31 fund to be known as the "Bad Debt Collection Pilot Program Fund".

32 (b) The Bad Debt Collection Pilot Program Fund shall consist of all
33 moneys collected under the Bad Debt Collection Pilot Program, § 26-17-601 et
34 seq.

35 (c) The Director of the Department of Finance and Administration shall
36 use the Bad Debt Collection Pilot Program Fund to provide the compensation



1 required under the Bad Debt Collection Pilot Program, § 26-17-601 et seq.

2 (d) On the last day of each month, the Treasurer of State shall:

3 (1) First, transfer to the contractor with which the director
 4 enters into an agreement under the Bad Debt Collection Pilot Program, § 26-
 5 17-601 et seq., the amount certified under § 26-17-605; and

6 (2) Next, transfer the remaining moneys in the Bad Debt
 7 Collection Pilot Program Fund to the credit of the General Revenue Fund
 8 Account of the State Apportionment Fund to be allocated as provided by the
 9 Revenue Stabilization Law, § 19-5-101 et seq.

10
 11 SECTION 2. Arkansas Code Title 26, Chapter 17, is amended to add an
 12 additional subchapter to read as follows:

13 Subchapter 6 – Bad Debt Collection Pilot Program

14
 15 26-17-601. Title.

16 This subchapter shall be known and may be cited as the "Bad Debt
 17 Collection Pilot Program".

18
 19 26-17-602. Definitions.

20 As used in this subchapter:

21 (1) "Bad debt" means a tax liability, including without
 22 limitation any interest and penalties:

23 (A) For which the Director of the Department of Finance
 24 and Administration has issued a certificate of indebtedness under § 26-18-
 25 701;

26 (B) For which the time for the judicial relief under § 26-
 27 18-406 has expired;

28 (C) That the director has determined to be uncollectible;
 29 and

30 (D) For which the director assigns the collection
 31 authority to a contractor under this subchapter.

32 (2) "Contractor" means the same as defined in § 19-11-203; and

33 (3) "Debtor" means a taxpayer against whom a certificate of
 34 indebtedness arising out of a bad debt has been recorded.

35
 36 26-17-603. Authority to enter into pilot program.

1 (a) Notwithstanding any state law to the contrary, the Director of the
2 Department of Finance and Administration may enter into an agreement under
3 this subchapter with a contractor for the contractor to collect bad debts.

4 (b) The director:

5 (1) Shall have only one (1) agreement under this subchapter at a
6 time; and

7 (2) May enter into an agreement under this subchapter only in
8 accordance with the requirements of the Arkansas Procurement Law, § 19-11-201
9 et seq.

10 (c) Notwithstanding the confidentiality restrictions under § 26-18-
11 303, the director or his or her agent may disclose to a contractor with which
12 the director has entered into an agreement under this subchapter the amounts
13 due from a debtor under a bad debt.

14
15 26-17-604. Restrictions on terms of agreement.

16 An agreement authorized under § 26-17-603 shall contain at least the
17 following terms:

18 (1) The term of the agreement with the contractor shall be for
19 the 2020 calendar year;

20 (2) The contractor shall report and remit any amount of bad debt
21 collected to the Director of the Department of Finance and Administration;

22 (3) The director shall not guarantee, promise, or warranty the
23 number of bad debts to be assigned or the likelihood of collection on any bad
24 debt to be assigned to the contractor;

25 (4) The contractor shall not settle a bad debt or waive any
26 amount of bad debt without the written approval of the director;

27 (5) The director has the sole authority to release a certificate
28 of indebtedness under § 26-18-706 that is connected to a bad debt that has
29 been assigned to the contractor;

30 (6) Except as specifically provided in this subchapter, the
31 director shall not give to the contractor any information that is described
32 under § 26-18-303;

33 (7) The contractor shall not engage in any conduct the natural
34 consequence of which is to harass, oppress, or abuse a person in connection
35 with the collection of a bad debt, including without limitation:

36 (A) The use or threat of use of violence or other criminal

1 means to harm the physical person, reputation, or property of a person;

2 (B) The use of obscene or profane language or language the
3 natural consequence of which is to abuse the hearer or reader;

4 (C) The publication of a list of debtors who allegedly
5 refuse to pay debts;

6 (D) The advertisement for sale of any bad debt to coerce
7 payment of the bad debt;

8 (E) Causing a telephone to ring or engaging a person in
9 telephone conversation repeatedly or continuously with intent to annoy,
10 abuse, or harass a person at the called number; and

11 (F) The placement of telephone calls without meaningful
12 disclosure of the caller's identity;

13 (8) The contractor shall not use a false, deceptive, or
14 misleading representation or means in connection with the collection of a bad
15 debt, including without limitation:

16 (A) The false representation or implication that the
17 contractor is vouched for, bonded by, or affiliated with the United States or
18 any state, including without limitation the use of any badge, seal, uniform,
19 or facsimile of a badge, seal, or uniform;

20 (B) The false representation of:

21 (i) The character, amount, or legal status of a bad
22 debt; or

23 (ii) Any services rendered or compensation that may
24 be lawfully received by a contractor for the collection of a bad debt;

25 (C) The false representation or implication that an
26 individual is an attorney or that a communication is from an attorney;

27 (D) The representation or implication that nonpayment of a
28 bad debt will result in the arrest or imprisonment of a person or the
29 seizure, garnishment, attachment, or sale of any property or wages of a
30 person unless such action is lawful and the contractor or director intends to
31 take such action;

32 (E) The threat to take any action that cannot legally be
33 taken or that is not intended to be taken by the director of the contractor;

34 (F) The false representation or implication that a sale,
35 referral, or other transfer of an interest in a bad debt shall cause the
36 debtor to:

1 (i) Lose a claim or defense to payment of the bad
 2 debt; or

3 (ii) Become subject to any practice prohibited by
 4 this subdivision (8);

5 (G) The false representation or implication that the
 6 debtor committed a crime or other conduct in order to disgrace the debtor;

7 (H) Communicating or threatening to communicate to another
 8 person credit information that is known or that should be known to be false,
 9 including without limitation the failure to communicate that a disputed bad
 10 debt is disputed;

11 (I) The use or distribution of a written communication
 12 that simulates or is falsely represented to be a document authorized, issued,
 13 or approved by a court, official, or agency of the United States or any state
 14 or that creates a false impression as to the source, authorization, or
 15 approval of the document;

16 (J) The use of a false representation or deceptive means
 17 to collect or attempt to collect a bad debt or to obtain information
 18 concerning a debtor;

19 (K)(i) The failure to disclose:

20 (a) In the initial written communication with
 21 a debtor, that the contractor is attempting to collect a debt and that any
 22 information obtained will be used for the purpose of collecting the debt; and

23 (b) In subsequent communications with the
 24 debtor, that the communication is from a debt collector.

25 (ii) This subdivision (8)(K) does not apply to a
 26 formal pleading made in connection with a legal action;

27 (L) The false representation or implication that accounts
 28 have been turned over to innocent purchasers for value;

29 (M) The false representation or implication that documents
 30 are legal process forms;

31 (N) The use of a business, company, or organization name
 32 other than the true name of the contractor's business, company, or
 33 organization;

34 (O) The false representation or implication that documents
 35 are not legal process forms or do not require action by the debtor; and

36 (P) The false representation or implication that the

1 contractor operates or is employed by a consumer reporting agency, as defined
 2 by the Fair Debt Collection Practices Act, 15 U.S.C. § 1601 et seq., as it
 3 existed on January 1, 2019;

4 (9)(A) The contractor shall include with its initial written
 5 communication with a debtor the letter required under § 26-17-608.

6 (B) The contractor shall not initiate any oral
 7 communication with the debtor until the expiration of seven (7) calendar days
 8 after the letter required under § 26-17-608 has been mailed to the last known
 9 address of the debtor; and

10 (10) If the director finds that the contractor during the term
 11 of the agreement engages in any of the prohibited conduct described in this
 12 section, the director shall immediately terminate the agreement.

13
 14 26-17-605. Authority of contractor.

15 The contractor with which the Director of the Department of Finance and
 16 Administration enters into an agreement under this subchapter may:

17 (1) Levy upon the real and personal property of the taxpayer to
 18 the same extent as the director under § 26-18-701; and

19 (2) Request the appointment of a receiver to the same extent as
 20 the director under § 26-18-703.

21
 22 26-17-606. Disposition of revenues collected.

23 On the last day of each month, the Director of the Department of
 24 Finance and Administration shall deposit all moneys received under this
 25 chapter into the Bad Debt Collection Pilot Program Fund.

26
 27 26-17-607. Compensation of contractor.

28 (a) The contractor with which the Director of the Department of
 29 Finance and Administration enters into an agreement under this chapter shall
 30 be compensated out of the Bad Debt Collection Pilot Program Fund as follows:

31 (1) For the first two hundred fifty thousand dollars (\$250,000)
 32 that the contractor reports and remits to the director, the contractor shall
 33 be compensated in an amount equal to eight percent (8%) of the moneys
 34 reported and remitted;

35 (2) For all moneys in excess of two hundred fifty thousand
 36 dollars (\$250,000) but less than or equal to one million dollars (\$1,000,000)

1 that the contractor reports and remits to the director, the contractor shall
2 be compensated in an amount equal to seven percent (7%) of the moneys
3 reported and remitted;

4 (3) For all moneys in excess of one million dollars (\$1,000,000)
5 but less than or equal to two million five hundred thousand dollars
6 (\$2,500,000) that the contractor reports and remits to the director, the
7 contractor shall be compensated in an amount equal to six percent (6%) of the
8 moneys reported and remitted;

9 (4) For all moneys in excess of two million five hundred
10 thousand dollars (\$2,500,000) but less than or equal to five million dollars
11 (\$5,000,000) that the contractor reports and remits to the director, the
12 contractor shall be compensated in an amount equal to five percent (5%) of
13 the moneys reported and remitted;

14 (5) For all moneys in excess of five million dollars
15 (\$5,000,000) but less than or equal to ten million dollars (\$10,000,000) that
16 the contractor reports and remits to the director, the contractor shall be
17 compensated in an amount equal to four percent (4%) of the moneys reported
18 and remitted;

19 (6) For all moneys in excess of ten million dollars
20 (\$10,000,000) but less than or equal to twenty-five million dollars
21 (\$25,000,000) that the contractor reports and remits to the director, the
22 contractor shall be compensated in an amount equal to three percent (3%) of
23 the moneys reported and remitted; and

24 (7) For all moneys in excess of twenty-five million dollars
25 (\$25,000,000) that the contractor reports and remits to the director, the
26 contractor shall be compensated in an amount equal to two percent (2%) of the
27 moneys reported and remitted.

28 (b) The Chief Fiscal Officer of the State shall certify to the
29 Treasurer of State by the last day of each month the amount of the moneys
30 that are reported and remitted under this subchapter.

31
32 26-17-608. Letter from Director of Department of Finance and
33 Administration.

34 For each bad debt that is assigned to a contractor under this
35 subchapter, the Director of Department of Finance and Administration shall
36 create a letter that states:

1 (1) The amount owed under the certificate of indebtedness that
 2 constitutes the bad debt;

3 (2) That the contractor is authorized to collect the amount
 4 owed;

5 (3) The identity of the contractor;

6 (4) That no other contractor is authorized to collect the
 7 amounts owed under the certificate of indebtedness that constitutes the bad
 8 debt; and

9 (5) Contact information within the Department of Finance and
 10 Administration that the debtor may use to confirm that the contractor has the
 11 authority to collect the amounts owed under the certificate of indebtedness
 12 that constitutes the bad debt.

13
 14 26-17-609. Bond.

15 (a) Before a contractor submits an offer to perform services under
 16 this chapter, the contractor shall file with the Director of Department of
 17 Finance and Administration a surety bond.

18 (b) A person suffering damage by reason of the acts or omissions of a
 19 contractor under this chapter may bring an action on the surety bond for
 20 damages.

21 (c) The amount of the surety bond required under this section shall be
 22 one million dollars (\$1,000,000) and shall be to the benefit of the
 23 contractor and the director.

24
 25 26-17-610. Report.

26 By March 1, 2021, the Director of the Department of Finance and
 27 Administration shall submit a written report to the House Committee on
 28 Revenue and Taxation and the Senate Committee on Revenue and Taxation on the
 29 effectiveness of the pilot program established under this subchapter.

30
 31 SECTION 3. EMERGENCY CLAUSE. It is found and determined by the
 32 General Assembly of the State of Arkansas that the state is not receiving the
 33 full amount of rightfully owed tax revenues necessary for the preservation of
 34 the public peace, health, and safety of the state because tax assessments are
 35 being determined to be uncollectible; that hiring a third party to assist
 36 with the collection of bad debts could increase the collection of rightfully

1 owed tax revenues; and that this act is immediately necessary because it is
2 in the best interest of the state to pursue all methods of increasing the
3 collection of rightfully owed tax revenues. Therefore, an emergency is
4 declared to exist, and this act being immediately necessary for the
5 preservation of the public peace, health, and safety shall become effective
6 on:

7 (1) The date of its approval by the Governor;

8 (2) If the bill is neither approved nor vetoed by the Governor,
9 the expiration of the period of time during which the Governor may veto the
10 bill; or

11 (3) If the bill is vetoed by the Governor and the veto is
12 overridden, the date the last house overrides the veto.

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