

SENATE BILL NO. 500—COMMITTEE ON GOVERNMENT AFFAIRS

(ON BEHALF OF ATTORNEY GENERAL)

MARCH 22, 1999

Referred to Committee on Government Affairs

SUMMARY—Provides procedures for collection of certain debts owed to state agencies.
(BDR 31-293)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: Yes.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~for omitted material~~ is material to be omitted.

AN ACT relating to public financial administration; providing procedures for the collection of certain debts owed to state agencies; requiring certain reporting by state agencies; providing for the adoption of necessary regulations; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE
AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 **Section 1.** Title 31 of NRS is hereby amended by adding thereto a
- 2 new chapter to consist of the provisions set forth as sections 2 to 24,
- 3 inclusive, of this act.
- 4 **Sec. 2.** *As used in this chapter, unless the context otherwise requires,*
- 5 *the words and terms defined in sections 3 to 9, inclusive, of this act have*
- 6 *the meanings ascribed to them in those sections.*
- 7 **Sec. 3.** *“Agency” means an agency, bureau, board, commission,*
- 8 *department or division of the executive department of state government.*
- 9 **Sec. 4.** *“Agreement” means a transaction between one or more*
- 10 *persons and an agency or the State of Nevada whereby each party to the*
- 11 *transaction becomes obligated to the other with reciprocal rights to*
- 12 *demand performance of what is promised by the other.*
- 13 **Sec. 5.** *“Debt” means a tax, fee, fine or other obligation:*
- 14 1. *That is owed to an agency or the State of Nevada; and*
- 15 2. *The payment of which is past due.*

1 **Sec. 6.** *"Fee" means a charge fixed by law for services or for the use*
2 *of a privilege within the control of an agency or the State of Nevada.*

3 **Sec. 7.** *"Fine" means a requirement to pay a sum of money that is*
4 *imposed on a person for an act of wrongdoing.*

5 **Sec. 8.** *"Person" includes any political subdivision of this state or*
6 *other governmental entity which is not an agency.*

7 **Sec. 9.** *"Tax" means any compulsory charge levied by an agency or*
8 *the State of Nevada against the wealth of a person for the common*
9 *benefit of the general public.*

10 **Sec. 10.** *The provisions of this chapter apply to an agency only to the*
11 *extent that no other specific statute exists which provides for the*
12 *collection of debts due the agency. To the extent that the provisions of*
13 *this chapter conflict with such a specific statute, the provisions of the*
14 *specific statute control.*

15 **Sec. 10.5.** (Deleted by amendment.)

16 **Sec. 11.** *For the purposes of this chapter, a debt is past due if the*
17 *debt has not been remitted and paid to an agency or the State of Nevada*
18 *as required by law, or as agreed upon by the debtor and the agency or the*
19 *State of Nevada, as appropriate.*

20 **Sec. 12.** *The director of the department of administration and the*
21 *attorney general may jointly adopt such regulations as are necessary to*
22 *carry out the provisions of this chapter.*

23 **Sec. 13.** *Each agency shall submit to the state controller periodic*
24 *reports of the debts owed to the agency. The state controller shall*
25 *maintain the reports to the extent that resources are available. The*
26 *director of the department of administration and the attorney general*
27 *shall jointly prescribe the time, form and manner of the reports.*

28 **Sec. 14.** *An agency may enter into an agreement with a debtor*
29 *which provides for the payment of a debt owed by the debtor to the*
30 *agency on an installment basis over a 12-month or lesser period. Upon*
31 *good cause shown by the debtor, the agency may extend the period*
32 *during which installment payments will be made for more than a*
33 *12-month period.*

34 **Sec. 15.** *If a person has not paid a debt that the person owes to an*
35 *agency, the attorney general, upon the request of the agency:*

36 1. *Except as otherwise provided in this section, shall bring an action*
37 *in a court of competent jurisdiction; or*

38 2. *If the action is a small claim subject to chapter 73 of NRS, may*
39 *bring an action in a court of competent jurisdiction,*
40 *on behalf of this state and the agency to collect the debt, plus any*
41 *applicable penalties and interest. The action must be brought not later*
42 *than 4 years after the date on which the debt became due or within 5*

1 years after the date on which a certificate of liability was last recorded
2 pursuant to section 19 of this act, as appropriate.

3 **Sec. 16. 1.** In addition to any other remedy provided for in this
4 chapter, if a person who owes a debt to an agency:

5 (a) Fails to pay the debt when it is due, or fails to pay an agreed upon
6 amount in satisfaction of the debt; or

7 (b) Defaults on a written or other agreement with an agency relating
8 to the payment of the debt,

9 the agency may, within 4 years after the date on which the debt became
10 due or the date on which the debtor defaulted, as appropriate, file with
11 the office of the clerk of a court of competent jurisdiction an application
12 for the entry of summary judgment against the debtor for the amount
13 due.

14 2. An agency that intends to file an application for the entry of
15 summary judgment pursuant to this section shall, not less than 15 days
16 before the date on which the agency intends to file the application, notify
17 the debtor of its intention to file the application. The notification must be
18 sent by certified mail to the last known address of the debtor and must
19 include the name of the agency, the amount sought to be recovered and
20 the date on which the application will be filed with the court.

21 3. An application for the entry of summary judgment must:

22 (a) Be accompanied by a certificate that specifies:

23 (1) The amount of the debt, including any interest and penalties
24 due;

25 (2) The name and address of the debtor, as the name and address of
26 the debtor appear on the records of the agency;

27 (3) The basis for the determination by the agency of the amount
28 due; and

29 (4) That the agency has complied with the applicable provisions of
30 law relating to the determination of the amount required to be paid; and

31 (b) Include:

32 (1) A request that judgment be entered against the debtor for the
33 amount specified in the certificate; and

34 (2) Evidence that the debtor was notified of the application for the
35 entry of summary judgment in accordance with subsection 2.

36 **Sec. 17.** The court clerk, upon the filing of an application for the
37 entry of summary judgment which complies with the requirements set
38 forth in section 16 of this act, shall forthwith enter a judgment for the
39 agency against the debtor in the amount of the debt, plus any penalties
40 and interest, as set forth in the certificate. The agency shall serve a copy
41 of the judgment, together with a copy of the application and the
42 certificate, upon the debtor against whom the judgment is entered, either

1 *by personal service or by mailing a copy to the last known address of the*
2 *debtor as it appears in the records of the agency.*

3 **Sec. 18. 1.** *An abstract of the judgment entered pursuant to section*
4 *17 of this act, or a copy thereof, may be recorded in the office of the*
5 *county recorder of any county.*

6 *2. From the time of its recordation, the judgment becomes a lien*
7 *upon all real and personal property situated in the county that is owned*
8 *by the judgment debtor, or which the debtor may afterward acquire, until*
9 *the lien expires. The lien has the force, effect and priority of a judgment*
10 *lien and continues for 5 years after the date of the judgment so entered*
11 *by the court clerk unless sooner released or otherwise discharged.*

12 *3. Within 5 years after the date of the recording of the judgment or*
13 *within 5 years after the date of the last extension of the lien pursuant to*
14 *this subsection, the lien may be extended by recording an affidavit of*
15 *renewal in the office of the county recorder. From the date of recording,*
16 *the lien is extended for 5 years to all real and personal property situated*
17 *in the county that is owned by the judgment debtor or acquired by the*
18 *judgment debtor afterwards, unless the lien is sooner released or*
19 *otherwise discharged.*

20 **Sec. 19. 1.** *In addition to any other remedy provided for in this*
21 *chapter, an agency may, within 4 years after the date that a debt becomes*
22 *due, record a certificate of liability in the office of a county recorder*
23 *which states:*

24 *(a) The amount of the debt, together with any interest or penalties due*
25 *thereon;*

26 *(b) The name and address of the debtor as the name and address of*
27 *the debtor appear on the records of the agency;*

28 *(c) That the agency has complied with all procedures required by law*
29 *for determining the amount of the debt; and*

30 *(d) That the agency has notified the debtor in accordance with*
31 *subsection 2.*

32 *2. An agency that intends to file a certificate of liability pursuant to*
33 *this section shall, not less than 15 days before the date on which the*
34 *agency intends to file the certificate, notify the debtor of its intention to*
35 *file the certificate. The notification must be sent by certified mail to the*
36 *last known address of the debtor and must include the name of the*
37 *agency, the amount sought to be recovered and the date on which the*
38 *certificate will be filed with the county recorder.*

39 *3. From the time of the recording of the certificate, the amount of*
40 *the debt, including interest which accrues on the debt after the recording*
41 *of the certificate, constitutes a lien upon all real and personal property*
42 *situated in the county in which the certificate was recorded that is owned*
43 *by the debtor or acquired by the debtor afterwards and before the lien*

1 expires. The lien has the force, effect and priority of a judgment lien on
2 all real and personal property situated in the county in which the
3 certificate was recorded and continues for 5 years after the date of
4 recording unless sooner released or otherwise discharged.

5 4. Within 5 years after the date of the recording of the certificate or
6 within 5 years after the date of the last extension of the lien pursuant to
7 this subsection, the lien may be extended by recording a new certificate
8 in the office of the county recorder. From the date of recording, the lien
9 is extended for 5 years to all real and personal property situated in the
10 county that is owned by the debtor or acquired by the debtor afterwards,
11 unless the lien is sooner released or otherwise discharged.

12 **Sec. 20. 1.** The state controller may, to the extent that resources
13 are available, offset any amount due an agency from a debtor against
14 any amount owing to that debtor by any agency, regardless of whether
15 the agency which owes the amount is the same agency to which the
16 debtor owes the debt. Whenever the combined amount owing to a debtor
17 by all agencies is insufficient to offset all the amounts due the agencies
18 from the debtor, the state controller shall allocate the amount available
19 from the debtor among the agencies in such a manner as the state
20 controller determines is appropriate.

21 2. If a debtor who owes a debt to an agency has a claim against that
22 agency or another agency and refuses or neglects to file his claim with
23 the agency within a reasonable time, the head of the agency to which the
24 debtor owes the debt may file the claim on behalf of the debtor. If the
25 state controller approves the claim, it has the same force and effect as
26 though filed by the debtor. The amount due the debtor from the agency is
27 the net amount otherwise owing to the debtor after any offset as provided
28 in this section.

29 3. The state controller shall adopt such regulations as are necessary
30 to carry out the provisions of this section, including, without limitation,
31 the manner in which offsets will be allocated among agencies.

32 **Sec. 21. 1.** Except as otherwise provided in subsection 2, an
33 agency may enter into a contract with a private debt collector or any
34 other person for the assignment of the collection of a debt if the agency:

35 (a) Determines the assignment is likely to generate more net revenue
36 than equivalent efforts by the agency to collect the debt, including
37 collection efforts pursuant to this chapter;

38 (b) Determines the assignment will not compromise future collections
39 of state revenue; and

40 (c) Notifies the debtor in writing at his address of record that the debt
41 will be turned over for private collection unless the debt is paid.

1 2. An agency shall not enter into a contract with a private debt
2 collector or any other person for the assignment of the collection of a
3 debt if the debt has been contested by the debtor.

4 3. Any contract entered into pursuant to this section is subject to
5 approval by the director of the department of administration and the state
6 controller.

7 **Sec. 22.** 1. Notwithstanding any specific statute to the contrary, an
8 agency to which a debt is owed may, in addition to any other remedy
9 provided for in this chapter, give notice of the amount of the debt and a
10 demand to transmit to any person, including, without limitation, any
11 officer, agency or political subdivision of this state, who has in his
12 possession or under his control any credits or other personal property
13 belonging to the debtor, or who owes any debts to the debtor that remain
14 unpaid. The notice and demand to transmit must be delivered personally
15 or by certified or registered mail:

16 (a) Not later than 4 years after the debt became due; or

17 (b) Not later than 5 years after the last recording of an abstract of
18 judgment pursuant to section 18 of this act or a certificate of liability
19 pursuant to section 19 of this act.

20 2. If such notice is given to an officer or agency of this state, the
21 notice must be delivered before the agency which sent the notice may file
22 a claim with the state controller pursuant to section 20 of this act on
23 behalf of the debtor.

24 3. An agency that receives a notice and demand to transmit pursuant
25 to this section may satisfy any debt owed to it by the debtor before it
26 honors the notice and demand to transmit. If the agency is holding a
27 bond or other property of the debtor as security for debts owed or that
28 may become due and owing by the debtor, the agency is not required to
29 transmit the amount of the bond or other property unless the agency
30 determines that holding the bond or other property of the debtor as
31 security is no longer required.

32 4. Except as otherwise provided by specific statute, a person who
33 receives a demand to transmit pursuant to this section shall not
34 thereafter transfer or otherwise dispose of the credits or other personal
35 property of, or debts owed to, the person who is the subject of the demand
36 to transmit without the consent of the agency which sent the demand to
37 transmit.

38 5. Except as otherwise provided by specific statute, a person who
39 receives from an agency a demand to transmit pursuant to this section
40 shall, within 10 days thereafter, inform the agency of, and transmit to the
41 agency within the time and in the manner requested by the agency, all
42 credits or other personal property in his possession or control that belong
43 to, and all debts that he owes to, the person who is the subject of the

1 demand to transmit. Except as otherwise provided in subsection 6, no
2 further notice is required to be served on such persons.

3 6. Except as otherwise provided by specific statute, if the property of
4 the debtor consists of a series of payments owed to him, the person who
5 owes or controls the payments shall transmit the payments to the agency
6 which sent the demand to transmit until otherwise notified by the agency.
7 If the debt of the debtor is not paid within 1 year after the date on which
8 the agency issued the original demand to transmit, the agency shall:

9 (a) Issue another demand to transmit to the person responsible for
10 making the payments that informs him to continue transmitting
11 payments to the agency; or

12 (b) Notify the person that his duty to transmit the payments to the
13 agency has ceased.

14 7. If the notice and demand to transmit is intended to prevent the
15 transfer or other disposition of a deposit in a bank or other depository
16 institution, or of any other credit or personal property in the possession
17 or under the control of the bank or depository institution, the notice must
18 be delivered or mailed to the branch or office of the bank or depository
19 institution at which the deposit is carried or the credit or personal
20 property is held.

21 8. If any person to whom an agency delivers a notice and demand to
22 transmit transfers or otherwise disposes of any property or debts required
23 by this chapter to be transmitted to the agency, the person is, to the extent
24 of the value of the property or the amount of the debts so transferred or
25 disposed of, liable to the agency for any portion of the debt that the
26 agency is unable to collect from the debtor solely by reason of the
27 transfer or other disposition of the property or debt.

28 9. A debtor who owes a debt to an agency which delivers a notice and
29 demand to transmit concerning the debtor pursuant to this section is
30 entitled to an administrative hearing before that agency to challenge the
31 collection of the debt pursuant to the demand to transmit. Each agency
32 may adopt such regulations as are necessary to provide an administrative
33 hearing for the purposes of this subsection.

34 Sec. 23. 1. If an agency determines that it is impossible or
35 impractical to collect a debt, the agency may request the state board of
36 examiners to designate the debt as a bad debt. The state board of
37 examiners, by an affirmative vote of the majority of the members of the
38 board, may designate the debt as a bad debt if the board is satisfied that
39 the collection of the debt is impossible or impractical.

40 2. Upon the designation of a debt as a bad debt pursuant to this
41 section, the state board of examiners shall immediately notify the state
42 controller thereof. Upon receiving the notification, the state controller
43 shall direct the removal of the debt from the records and books or

1 *account of the agency to which the debt is owed or the State of Nevada,*
2 *as appropriate. A bad debt that is removed pursuant to this section*
3 *remains a legal and binding obligation owed by the debtor to the agency*
4 *or the State of Nevada, as appropriate.*

5 *3. If resources are available, the state controller shall keep a master*
6 *file of all debts that are designated as bad debts pursuant to this section.*
7 *If such a file is established and maintained, for each such debt, the state*
8 *controller shall record the name of the debtor, the amount of the debt,*
9 *the date on which the debt was incurred and the date on which it was*
10 *removed from the records and books of account of the agency or the*
11 *State of Nevada, and any other information concerning the debt that the*
12 *state controller determines is necessary.*

13 **Sec. 24.** *The remedies of this state provided for in this chapter are*
14 *intended to supplement existing remedies applicable to the collection of*
15 *debts. Nothing contained in this chapter shall be construed to limit or*
16 *repeal additional remedies agreed to by any person or an agency in any*
17 *written agreement or contract with this state.*

18 **Sec. 25.** NRS 227.150 is hereby amended to read as follows:

19 227.150 1. The state controller shall:

20 (a) Open and keep an account with each county, charging the counties
21 with the revenue collected, as shown by the auditor's statements, and also
22 with their proportions of the salaries of the district judges, and crediting
23 them with the amounts paid to the state treasurer.

24 (b) Keep and state all accounts between the State of Nevada and the
25 United States, or any state or territory, or any person or public officer of
26 this state, indebted to the state or entrusted with the collection,
27 disbursement or management of any money, funds or interests arising
28 therefrom, belonging to the state, of every character and description, if the
29 accounts are derivable from or payable into the state treasury.

30 (c) Settle the accounts of all county treasurers, and other collectors and
31 receivers of all state revenues, taxes, tolls and incomes, levied or collected
32 by any act of the legislature and payable into the state treasury.

33 (d) Keep fair, clear, distinct and separate accounts of all the revenues
34 and incomes of the state, and also all the expenditures, disbursements and
35 investments thereof, showing the particulars of every expenditure,
36 disbursement and investment.

37 2. The state controller may:

38 (a) Direct the collection of all accounts or money due the state, *except*
39 *as otherwise provided in sections 2 to 24, inclusive, of this act*, and if there
40 is no time fixed or stipulated by law for the payment of any such accounts
41 or money, they are payable at the time set by the state controller.

42 (b) Upon approval of the attorney general, direct the cancellation of any
43 accounts or money due the state.

1 (c) Except as otherwise provided in subsection 3, withhold from the
2 compensation of an employee of the state any amount due the state for the
3 overpayment of the salary of the employee.

4 3. Before any amounts may be withheld from the compensation of an
5 employee pursuant to paragraph (c) of subsection 2, the state controller
6 shall:

7 (a) Give written notice to the employee of the state controller's intent to
8 withhold such amounts from the compensation of the employee; and

9 (b) If requested by the employee within 10 working days after receipt of
10 the notice, conduct a hearing and allow the employee the opportunity to
11 contest the state controller's determination to withhold such amounts from
12 the compensation of the employee.

13 If the overpayment was not obtained by the employee's fraud or willful
14 misrepresentation, any withholding from the compensation of the employee
15 must be made in a reasonable manner so as not to create an undue hardship
16 to the employee.

17 4. The state controller may adopt such regulations as are necessary to
18 carry out the provisions of this section.

19 **Sec. 26.** NRS 227.230 is hereby amended to read as follows:

20 227.230 ~~{The}~~ *Except as otherwise provided in sections 2 to 24,*
21 *inclusive, of this act, the* state controller shall:

22 1. Direct the attorney general to institute and prosecute, in the name of
23 the state, all proper suits for the recovery of any debts, ~~{moneys}~~ *money* or
24 property of the state, or for the ascertainment of any right or liability
25 concerning the same.

26 2. Direct and superintend the collection of all ~~{moneys due to}~~ *money*
27 *due* the state.

28 **Sec. 27.** This act becomes effective on July 1, 1999.