

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas  
92nd General Assembly  
Regular Session, 2019

# A Bill

HOUSE BILL 1930

By: Representative M. Gray

## For An Act To Be Entitled

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

## Subtitle

TO AUTHORIZE THE DIRECTOR OF THE DEPARTMENT OF FINANCE AND ADMINISTRATION TO DELEGATE CERTAIN DEBT COLLECTION AUTHORITY TO A THIRD PARTY; AND TO DECLARE AN EMERGENCY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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

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

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

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

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



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

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

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

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

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

Subchapter 6 – Bad Debt Collection Pilot Program

26-17-601. Title.

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

26-17-602. Definitions.

As used in this subchapter:

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

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

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

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

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

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

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

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

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

(b) The director:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) The false representation of:

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

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

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

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

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

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

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

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

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

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

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

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

(K)(i) The failure to disclose:

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

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

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

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

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

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

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

(P) The false representation or implication that the

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

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

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

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

26-17-605. Authority of contractor.

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

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

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

26-17-606. Disposition of revenues collected.

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

26-17-607. Compensation of contractor.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) The identity of the contractor;

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

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

26-17-609. Bond.

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

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

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

26-17-610. Report.

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

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

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

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

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

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