

# State of South Dakota

NINETIETH SESSION  
LEGISLATIVE ASSEMBLY, 2015

982W0675

## HOUSE ENGROSSED NO. **HB 1228** - 02/25/2015

**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.

5 Section 2. Terms used in this Act mean:

6 (1) "Center," the obligation recovery center;

7 (2) "Debt," a legal obligation to pay money, including any principal, any interest that has  
8 accrued or will accrue until the debt is paid, any penalties, any costs, and any other  
9 charges permitted by law. The term, debt, includes any obligation of any kind  
10 referred to the obligation recovery center for collection by any state government  
11 agency, by the Unified Judicial System, by the Board of Regents, or by a  
12 constitutional office;

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



- 1 (4) "Final debt," any debt due a state executive branch agency, the Board of Regent's  
2 system, or a constitutional office that is no longer subject to an administrative appeal  
3 or judicial review following an administrative appeal, or any costs, fines, fees, or  
4 restitution ordered in any adult criminal proceeding through the Unified Judicial  
5 System no longer subject to direct appeal pursuant to § 23A-32-2;
- 6 (5) "Final notification," the notification provided by section 7 of this Act; and
- 7 (6) "Referring entity," the entity referring the debt to the state obligation recovery center  
8 for collection.

9 Section 3. The center shall work to collect each final debt referred to the center. The  
10 character of the debt in the hands of the referring entity does not change by the referral of the  
11 debt to the center for collection. Among other powers granted by this Act, the center may:

- 12 (1) Sue;
- 13 (2) File liens;
- 14 (3) Enter into payment agreements with debtors;
- 15 (4) Impose a cost recovery fee;
- 16 (5) Collect data for debt collection purposes;
- 17 (6) Establish and maintain a centralized electronic debt management system;
- 18 (7) Exercise settlement authority granted by the referring entity;
- 19 (8) Setoff against any moneys to be paid by the State of South Dakota or any referring  
20 entity to a debtor;
- 21 (9) Contract with multiple collection agencies for the collection of debt on behalf of the  
22 center;
- 23 (10) Except for the debt collection powers vested in the Unified Judicial System, the  
24 center may use the referring entity's statutory collection authority to collect the final

1 debt owed to the referring entity; and

2 (11) Utilize all debt collection methods authorized by state law.

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

4 Section 4. For any final debt referred to the center for collection after July 1, 2015, the center  
5 shall collect a cost recovery fee in addition to the debt referred to the center for collection. The  
6 cost recovery fee is calculated by multiplying the principal amount of the debt referred to the  
7 center by twenty percent. All debt collection methods available to collect any final debt referred  
8 to the center may be used by the center to collect the cost recovery fee. The cost recovery fee  
9 shall be deposited into a fund to be used to fund the operations of the center which shall be set  
10 forth in an informational budget and shall be subject to the annual budgeting process specified  
11 in chapter 4-7.

12 Section 5. The center shall retain the cost recovery fee and transfer any other moneys  
13 collected from a debtor to the referring entity within thirty days after the end of the month in  
14 which the moneys were collected. If the amount collected is less than the principal amount of  
15 the debt referred to the center and the cost recovery fee imposed by this Act, the amount  
16 collected shall be prorated between the principal amount of the debt referred and the cost  
17 recovery fee.

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

22 Section 6. The center may be used as follows:

23 (1) Any executive branch agency may use the center to collect final debt owed to an  
24 executive branch agency;

- 1       (2)    The Unified Judicial System may use the center to collect any costs, fines, fees, or  
2            restitution, constituting final debt, ordered in any adult criminal proceeding;
- 3       (3)    The Board of Regents may use the center to collect any final debt owed within the  
4            South Dakota Board of Regents' system; and
- 5       (4)    Any constitutional office may use the center to collect final debt owed to the  
6            constitutional office.

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

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

- 11       (1)    The name of the referring entity;
- 12       (2)    Contact information for the referring entity;
- 13       (3)    The name of the debtor;
- 14       (4)    The nature of the debt;
- 15       (5)    The principal amount of the debt;
- 16       (6)    The total amount of the debt;
- 17       (7)    A statement that the debt will not be turned over for collection to the center until a  
18            time at least fourteen days after the date the final notification is sent to the debtor;  
19            and
- 20       (8)    A statement that if the debt is turned over to the center, a cost recovery fee of twenty  
21            percent of the principal, in the amount of \$ \_\_\_\_\_, will be added to the total debt  
22            owed by the debtor to the referring entity.

23       Section 8. All data, records, and files utilized for debt collection as provided for in this Act  
24       shall be confidential and privileged, and no person may divulge or disclose any information

1 obtained from such records and files except in the administration and enforcement of this Act,  
2 or as otherwise required by law.

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

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

14 The center may designate a third party to establish and maintain the centralized electronic  
15 debt management system. Any such third party shall keep all information it obtains from any  
16 source confidential, and any employee, agent, or representative of that third party is prohibited  
17 from disclosing that information to anyone other than the center.

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

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

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

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

24 unless the debt and cost recovery fee is either paid in full or the debtor has entered into a

1 payment plan with the center and payment pursuant to the plan is current.

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

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

14 Section 13. Unless preempted by other law, any payment of any kind to be made to a debtor  
15 by the State of South Dakota or any referring entity, when the debtor has a debt that is referred  
16 to the center, is subject to offset by the center unless the debt and cost recovery fee is either paid  
17 in full or the debtor has entered into a payment plan with the center and payment pursuant to the  
18 plan is current.

19 Section 14. If the center is unable to collect the debt referred to it, the center, with the  
20 approval of the referring entity, may forward the debt to a collection agency or agencies for  
21 collection. The debt collection agency shall be permitted to add a collection charge, not to  
22 exceed twenty percent of the debt, to the debt forwarded to the collection agency as payment for  
23 its collection services. The center shall promulgate rules pursuant to chapter 1-26 concerning  
24 the process of contracting with and referring debt to debt collection agencies.

1 Section 15. The center may promulgate rules, pursuant to chapter 1-26, in the following  
2 areas:

- 3 (1) Definitions;
- 4 (2) Procedure for remitting moneys collected to referring entities;
- 5 (3) Processes and procedures for entering into payment agreements with debtors;
- 6 (4) A process for the imposition of the cost recovery fee;
- 7 (5) The data collection system;
- 8 (6) The centralized electronic debt management system;
- 9 (7) The settlement authority process;
- 10 (8) The procedure for sending information to the Division of Motor Vehicles concerning  
11 the nonrenewal of registrations for motor vehicles, motorcycles, and boats;
- 12 (9) The procedure for sending information to the Department of Public Safety  
13 concerning the nonrenewal of driver licenses;
- 14 (10) The procedure for sending information to the Department of Game, Fish and Parks  
15 concerning the nonissuance of hunting licenses, fishing licenses, state park permits,  
16 and camping permits; and
- 17 (11) The setoff of debt process.

18 Section 16. The center shall annually report after conclusion of the prior fiscal year to the  
19 Government Operations and Audit Committee concerning the activity of the center including  
20 the number of debts referred to the entity, the annual amount and nature of the debt obligations  
21 recovered by the center, the number of debts referred from the center to private collection  
22 agencies and the results of those referrals, and the costs and expenditures incurred by the center.