

## CHAPTER 16D

### DEBT COLLECTION

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#### 16D.01 CITATION AND SCOPE.

Subdivision 1. **Citation.** This chapter may be cited as the “debt collection act.”

Subd. 2. **Scope.** The collection procedures and remedies under this chapter are in addition to any other procedure or remedy available by law. If the referring agency’s applicable state or federal law provides for the use of a particular remedy or procedure for the collection of a debt, that particular remedy or procedure governs the collection of that debt to the extent the procedure or remedy is inconsistent with this chapter.

**History:** 1994 c 632 art 3 s 35

#### 16D.02 DEFINITIONS.

Subdivision 1. **Application.** The definitions in this section apply to this chapter.

Subd. 2. **Commissioner.** “Commissioner” means the commissioner of finance.

Subd. 3. **Debt.** “Debt” means an amount owed to the state directly, or through a state agency, on account of a fee, duty, lease, direct loan, loan insured or guaranteed by the state, rent, service, sale of real or personal property, overpayment, fine, assessment, penalty, restitution, damages, interest, tax, bail bond, forfeiture, reimbursement, liability owed, an assignment to the state including assignments under sections 256.72 to 256.87, the Social Security Act, or other state or federal law, recovery of costs incurred by the state, or any other source of indebtedness to the state. Debt also includes amounts owed to individuals for which the state or state agency acts in a fiduciary capacity in providing collection services in accordance with the regulations adopted under the Social Security Act at Code of Federal Regulations, title 45, section 302.33. Debt also includes an amount owed to the courts or University of Minnesota for which the commissioner provides collection services pursuant to contract.

Subd. 4. **Debtor.** “Debtor” means an individual, corporation, partnership, an unincorporated association, a limited liability company, a trust, an estate, or any other public or private entity, including a state, local, or federal government, or an Indian tribe, that is liable for a debt or against whom there is a claim for a debt.

Subd. 5. **Debt qualification plan.** “Debt qualification plan” means an agreement entered into between a referring agency and the commissioner that defines the terms and conditions by which the commissioner will provide collection services to the referring agency.

Subd. 6. **Referring agency.** “Referring agency” means a state agency, the University of Minnesota, or a court that has entered into a debt qualification plan with the commissioner to refer debts to the commissioner for collection.

Subd. 7. **State agency.** “State agency” means a state office, officer, board, commission, bureau, division, department, authority, agency, public corporation, or other unit of state government.

**History:** 1994 c 632 art 3 s 36

#### 16D.03 SUPERVISION OF STATE DEBT COLLECTION.

Subdivision 1. **Responsibility.** The commissioner of finance shall supervise and report on state debt collection.

**Subd. 2. State agency reports.** State agencies shall report quarterly to the commissioner the debts owed to them. The commissioner, in consultation with the commissioners of revenue and human services, and the attorney general, shall establish internal guidelines for the recognition, tracking, reporting, and collection of debts owed the state. The internal guidelines must include accounting standards, performance measurements, and uniform reporting requirements applicable to all state agencies.

**Subd. 3. Report of the commissioner.** By January 15 of each year, the commissioner shall report on the management of debts owed the state, including performance measurements and progress of the debt collection efforts undertaken by state agencies and the commissioner. The report must be made to the governor and the chairs of the committee on finance of the senate and the committee on ways and means of the house of representatives.

*History: 1994 c 632 art 3 s 37*

#### **16D.04 COLLECTION ACTIVITIES.**

**Subdivision 1. Duties.** The commissioner shall provide services to the state and its agencies to collect debts owed the state. The commissioner is not a collection agency as defined by section 332.31, subdivision 3, and is not licensed, bonded, or regulated by the commissioner of commerce under sections 332.31 to 332.35 or 332.38 to 332.45. The commissioner is subject to section 332.37, except clause (9) or (10). The commissioner may contract with the commissioner of revenue for collection services.

**Subd. 2. Agency participation.** A state agency may, at its option, refer debts to the commissioner for collection. The ultimate responsibility for the debt, including the reporting of the debt to the commissioner and the decision with regard to the continuing collection and uncollectibility of the debt, remains with the referring state agency.

**Subd. 3. Services.** The commissioner shall provide collection services for a state agency, and may provide for collection services for the University of Minnesota or a court, in accordance with the terms and conditions of a signed debt qualification plan.

**Subd. 4. Authority to contract.** The commissioner may contract with credit bureaus, private collection agencies, and other entities as necessary for the collection of debts. A private collection agency acting under a contract with the commissioner is subject to sections 332.31 to 332.45, except that the private collection agency may indicate that it is acting under a contract with the commissioner. The commissioner may not delegate the powers provided under section 16D.08 to any nongovernmental entity.

*History: 1994 c 632 art 3 s 38*

#### **16D.05 PRIORITY OF SATISFACTION OF DEBTS.**

**Subdivision 1. Multiple debts.** If two or more debts owed by the same debtor are submitted to the commissioner, amounts collected on those debts must be applied as prescribed in this section.

**Subd. 2. Enforcement of liens.** If the money received is collected on a judgment lien under chapter 550, a lien provided by chapter 514, a consensual lien or security interest, protection of an interest in property through chapter 570, by collection process provided by chapters 551 and 571, or by any other process by which the commissioner is enforcing rights in a particular debt, the money must be applied to that particular debt.

**Subd. 3. Other methods of collection.** If the money is collected in any manner not specified in subdivision 2, the money collected must apply first to the satisfaction of any debts for child support. Any debts other than child support must be satisfied in the order in time in which the commissioner received the debts from the referring agency.

*History: 1994 c 632 art 3 s 39*

#### **16D.06 DEBTOR INFORMATION.**

**Subdivision 1. Access to government data not public.** Notwithstanding chapter 13 or any other state law classifying or restricting access to government data, upon request

from the commissioner, state agencies, political subdivisions, and statewide systems shall disseminate not public data to the commissioner for the sole purpose of collecting debt. Not public data disseminated under this subdivision is limited to financial data of the debtor or data related to the location of the debtor or the assets of the debtor.

Subd. 2. **Disclosure of data.** Data received, collected, created, or maintained by the commissioner to collect debts are classified as private data on individuals under section 13.02, subdivision 12, or nonpublic data under section 13.02, subdivision 9. The commissioner may disclose not public data:

- (1) under section 13.05;
- (2) under court order;
- (3) under a statute specifically authorizing access to the not public data;
- (4) to provide notices required or permitted by statute;
- (5) to an agent of the commissioner, including a law enforcement person, attorney, or investigator acting for the commissioner in the investigation or prosecution of a criminal or civil proceeding relating to collection of a debt;
- (6) to report names of debtors, amount of debt, date of debt, and the agency to whom debt is owed to credit bureaus; and
- (7) when necessary to locate the debtor, locate the assets of the debtor, or to enforce or implement the collection of a debt.

The commissioner may not disclose data that is not public to a private collection agency or other entity with whom the commissioner has contracted under section 16D.04, subdivision 4, unless disclosure is otherwise authorized by law.

*History: 1994 c 632 art 3 s 40*

#### **16D.07 NOTICE TO DEBTOR.**

The referring agency shall send notice to the debtor by United States mail or personal delivery at the debtor's last known address at least 20 days before the debt is referred to the commissioner. The notice must state the nature and amount of the debt, identify to whom the debt is owed, and inform the debtor of the remedies available under this chapter.

*History: 1994 c 632 art 3 s 41*

#### **16D.08 COLLECTION DUTIES AND POWERS.**

Subdivision 1. **Duties.** The commissioner shall take all reasonable and cost-effective actions to collect debts referred to the commissioner.

Subd. 2. **Powers.** In addition to the collection remedies available to private collection agencies in this state, the commissioner, with legal assistance from the attorney general, may utilize any statutory authority granted to a referring agency for purposes of collecting debt owed to that referring agency.

*History: 1994 c 632 art 3 s 42*

#### **16D.09 UNCOLLECTIBLE DEBTS.**

When a debt is determined by a state agency to be uncollectible, the debt may be written off by the state agency from the state agency's financial accounting records and no longer recognized as an account receivable for financial reporting purposes. A debt is considered to be uncollectible when (1) all reasonable collection efforts have been exhausted, (2) the cost of further collection action will exceed the amount recoverable, (3) the debt is legally without merit or cannot be substantiated by evidence, (4) the debtor cannot be located, (5) the available assets or income, current or anticipated, that may be available for payment of the debt are insufficient, (6) the debt has been discharged in bankruptcy, (7) the applicable statute of limitations for collection of the debt has expired, or (8) it is not in the public interest to pursue collection of the debt. The determination of the uncollectibility of a debt must be reported by the state agency along with the basis for that decision as part of its quarterly reports to the commis-

sioner. Determining that the debt is uncollectible does not cancel the legal obligation of the debtor to pay the debt.

**History:** *1994 c 632 art 3 s 43*

**16D.10 CASE REVIEWER.**

The commissioner shall make a case reviewer available to debtors. The reviewer must be available to answer a debtor's questions concerning the collection process and to review the collection activity taken. If the reviewer reasonably believes that the particular action being taken is unreasonable or unfair, the reviewer may make recommendations to the commissioner in regard to the collection action.

**History:** *1994 c 632 art 3 s 44*