

CHAPTER 192**(SB 228)**

AN ACT relating to debts owed to the Commonwealth and declaring an emergency.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 45 IS CREATED TO READ AS FOLLOWS:

(1) As used in Sections 1 to 3 of this Act:

- (a) "Agency" means an organizational unit or administrative body in the executive branch of state government as defined in KRS 12.010;**
- (b) "Cabinet" means the Revenue Cabinet;**
- (c) "Court of Justice" means the Administrative Office of the Courts, all courts, and all clerks of the courts;**
- (d) "Improper payment" means a payment made to a vendor, provider, or recipient due to error, fraud, or abuse; and**
- (e) "Debt" means:**
 - 1. A sum certain which has been certified by an agency as due and owing; and**
 - 2. For the Court of Justice, "debt" means a legal debt, including any fine, fee, court costs, or restitution due the Commonwealth, which have been imposed by a final sentence of a trial court of the Commonwealth and for which the time permitted for payment pursuant to the provisions of KRS 23A.205(3) or 24A.175(4) has expired.**

(2) The Finance and Administration Cabinet shall develop for the executive branch of state government a system of internal controls and preaudit policies and procedures applicable to disbursement transactions for the purpose of prevention and detection of errors or fraud and abuse prior to the issuance of a check or warrant. The initial policies and procedures shall be established and implemented no later than October 1, 2004, and shall focus first on programs or activities that expend the most federal and general fund dollars. The Finance and Administration Cabinet shall develop preaudit procedures that meet the unique needs of each agency.

(3) In establishing these systems of internal control and preaudit policies and procedures, the Finance and Administration Cabinet shall:

- (a) Consult with each agency within the executive branch to ascertain its unique fraud risks;**
- (b) Establish policies and procedures for agency-level oversight of fraud risks, including risk assessment, risk tolerance, and management policies, and fraud-prevention processing controls;**
- (c) Establish systems and procedures for detecting both unintentional errors and fraudulent misrepresentations that may have occurred in vendor invoices submitted for payment, applications submitted for benefits, claims for refunds of amounts previously paid or withheld, and other disbursements;**

- (d) Establish systems and procedures for preventing and detecting unintentional errors and the fraudulent disbursement of funds by state government employees in the processing, approving and paying of invoices, refunds, vouchers, benefit payments and other disbursements; and*
- (e) Consult with the state Auditor of Public Accounts, the Governor's Office for Technology, the American Institute of Certified Public Accountants, the Association of Certified Fraud Examiners, law enforcement agencies, or any other entity with knowledge and expertise in the detection and prevention of fraud.*
- (4) Each agency shall diligently attempt to collect amounts paid to a vendor, provider, or recipient due to error, fraud, or abuse for sixty (60) days after the improper payment is discovered. If the improper payment has not been recovered after sixty (60) days, the agency shall certify the improper payment as a debt of the agency and shall refer all certified debts to the cabinet.*
- (5) Any funds recovered by an agency within the sixty (60) day collection period allowed under subsection (4) of this section and prior to referral to the cabinet shall be allocated to the fund from which the improper payment was expended.*
- (6) Each agency shall submit annual summaries of debts due to error, fraud, or abuse, improper payments discovered, and certified debts referred to the cabinet to the Legislative Research Commission. These summaries shall include but not be limited to:
 - (a) Debts owed the Commonwealth that have been identified by the agency, in accordance with the preaudit procedures established under this section, as those resulting from error, fraud, or abuse, of either the payee or the state agency;*
 - (b) The aggregate amount of money collected by the agency on those debts during the sixty (60) day period allowed under subsection (4) of this section; and*
 - (c) The aggregate amount of certified debts that the agency referred to the cabinet.**
- (7) Each agency shall provide information about each debt due to error, fraud, or abuse that is certified under this section to the State Treasurer for the Treasurer's action under subsection (1) of Section 4 of this Act.*

SECTION 2. A NEW SECTION OF KRS CHAPTER 45 IS CREATED TO READ AS FOLLOWS:

- (1) Debts that are certified by an agency as provided in Section 1 of this Act shall be referred to the cabinet for collection. The cabinet shall be vested with all the powers necessary to collect any referred debts.*
- (2) For those debts deemed unfeasible or cost ineffective to pursue, the cabinet shall maintain written records of the debt and the reason the debt was deemed unfeasible or cost ineffective to pursue. These debts shall be written off in accordance with administrative regulations promulgated under the authority of subsection (6) of this section.*
- (3) All certified debts received by the cabinet after the sixty (60) day collection period allowed in subsection (4) of Section 1 of this Act shall be subject to interest at the tax interest rate determined under KRS 131.183, on the amount of the debt from the date the debt is certified to the cabinet until it is satisfied, and a twenty-five percent (25%) collection fee. The cabinet may retain the collection fee and shall deposit the interest and recovered*

funds in the budget reserve trust fund established in KRS 48.705, except for Medicaid benefits and funds required by law to be remitted to a federal agency.

- (4) *The secretary of the cabinet may refer to the Attorney General any unsatisfied claim, demand, account, or judgment in favor of the Commonwealth for further civil or criminal action under KRS 15.060.*
- (5) (a) *The cabinet shall report annually by October 1 to the Legislative Research Commission on all referred certified debts, including at least a summary of the debts by agency, fund type, and age, the latter compiled in the following four (4) categories:*
1. *Debts from ninety (90) to one hundred seventy-nine (179) days old;*
 2. *Debts from one hundred eighty (180) to three hundred sixty-four (364) days old;*
 3. *Debts over one (1) year old but less than three (3) years old; and*
 4. *Debts three (3) years old or older.*
- (b) *The annual report shall also include the collection amount of the debts in paragraph (a) of this subsection and the accounts to which the amounts are credited.*
- (6) *The cabinet shall promulgate administrative regulations in accordance with KRS Chapter 13A to establish standards that agencies shall use in determining when to write debts off the books.*

SECTION 3. A NEW SECTION OF KRS CHAPTER 45 IS CREATED TO READ AS FOLLOWS:

- (1) *The Court of Justice shall initiate, by October 1, 2004, fully implement by October 1, 2005, and thereafter maintain a system for tracking and identifying debts.*
- (2) *The Court of Justice shall establish and operate a system for collecting debt.*
- (3) *In establishing the systems required by this section, the Court of Justice shall consider technology that could assist in the accurate, timely, and efficient delivery of payments of debts.*
- (4) *The Court of Justice, Justice Cabinet, and Revenue Cabinet shall collaborate to implement a system, if feasible, to identify and collect debts in existence prior to the implementation date of the system required by subsection (1) of this section. Confidential information shared among these entities to identify and collect debts shall not be divulged to any unauthorized person. Debts collected under this subsection shall be reported annually and designated separately as part of the report required pursuant to Section 2 of this Act beginning on October 1, 2005, and ending with the report filed on or before October 1, 2009.*

Section 4. KRS 44.030 is amended to read as follows:

- (1) No money shall be paid to any person on a claim against the state in his own right, or as an assignee of another, when he or his assignor is indebted to the state. The claim, to the extent it is allowed, shall be credited to the account of the person so indebted, and if there is any balance due him after settling the whole demand of the state *that[such]* balance shall be paid to him.

- (2) The Finance and Administration Cabinet shall provide the Cabinet for Families and Children with a quarterly report of all tort claims made against the state by individuals that the Cabinet for Families and Children shall compare with the child support database to match individuals who have a child support arrearage and may receive a settlement from the state.
- (3) *Each agency and the Court of Justice shall provide information to the State Treasurer concerning any debt referred to the Revenue Cabinet for collection under Section 1 of this Act.*

Section 5. KRS 45.240 is amended to read as follows:

- (1) Whenever any payment from public money is made in error, or for an amount in excess of the amount found to be properly due and payable, and the payment or excess amount is ~~later~~ recovered *within sixty (60) days from the date the erroneous or excess payment was identified, the funds shall be allocated to the fund from which the improper payment was expended*, the balance in the appropriation from which the payment was made shall be increased by the amount recovered, and the amount recovered shall be deducted from the disbursements from that appropriation.
- (2) If the payment or excess amount which is later recovered is in the form of an unnegotiated State Treasurer's check, said check shall be transmitted direct to the State Treasurer who shall void it. After voiding the check, the State Treasurer shall notify the appropriate agency of the action taken concerning the check.
- (3) *Whenever any payment from public money is made in error, or for an amount in excess of the amount found to be properly due and payable, and the payment or excess amount is recovered after sixty (60) days from the date the erroneous or excess payment was identified, the provisions set forth in Sections 1 to 2 of this Act shall apply, and the funds shall be allocated as provided in those sections.*

Section 6. KRS 15.060 is amended to read as follows:

Upon written request of the Revenue Cabinet, the Attorney General shall:

- (1) With the assistance of the Auditor of Public Accounts and the Revenue Cabinet, investigate the condition of ~~any~~ ~~all~~ unsatisfied *claim, demand, account, and judgment* ~~{claims, demands, accounts and judgments}~~ in favor of the Commonwealth.
- (2) When he believes that any fraudulent, erroneous or illegal fee bill, account, credit, charge or claim has been erroneously or improperly approved, allowed or paid out of the Treasury to any person, institute the necessary actions to recover the same. To this end he may employ assistants and experts to assist in examining the fee bills, accounts, settlements, credits and claims, and the books, records and papers of any of the officers of the Commonwealth.
- (3) Institute the necessary actions to collect and cause the payment into the Treasury of all unsatisfied claims, demands, accounts and judgments in favor of the Commonwealth, except where specific statutory authority is given the Revenue Cabinet to do so.
- (4) Comply with KRS 48.005, if any funds of any kind or nature whatsoever are recovered by or on behalf of the Commonwealth, in any legal action, including an ex rel. action in which the Attorney General has entered an appearance or is a party under statutory or common law authority.

Section 7. Whereas the financial condition of the Commonwealth and the revenue shortfall in the current year have necessitated budget cuts and reduction in government services, and it is vital that the Commonwealth collect outstanding debts as expeditiously as possible, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Approved April 22, 2004