

**CHAPTER 44****(HB 610)**

AN ACT relating to collections.

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

➔Section 1. KRS 45.238 is amended to read as follows:

- (1) Debts that are certified by an agency as provided in KRS 45.237 shall be referred to the department for collection. The department 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 department 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)
  - (a) All certified debts received by the department after the sixty (60) day collection period allowed in KRS 45.237(4) 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 department until it is satisfied, and a twenty-five percent (25%) collection fee.
  - (b) The department may retain the collection fee.
  - (c) ***Recovered funds and interest may, at the discretion of the secretary of the Finance and Administration Cabinet, be returned to the agency certifying the debt or improper payment or to the Court of Justice for allocation as otherwise provided by law. If the recovered funds and interest are not returned to the agency or Court of Justice, the amounts shall be deposited***~~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 commissioner of the department 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 department 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 department 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 2. KRS 45.241 is amended to read as follows:

- (1) As used in this section:
  - (a) "Debt" means a sum certain which has been certified by an agency as due and owing;
  - (b) "Liquidated debt" means a legal debt for a sum certain which has been certified by an agency as final due and owing, all appeals and legal actions having been exhausted; and for the Court of Justice 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 KRS 24A.175(4) has expired;
  - (c) "Agency" means an organizational unit or administrative body in the executive branch of state government, as defined in KRS 12.010;

- (d) "Department" means the Department of Revenue;
  - (e) "Court of Justice" means the Administrative Office of the Courts, all courts, and all clerks of the courts;
  - (f) "Forgivable loan agreement" means a loan agreement entered into between an agency and a borrower that establishes specific conditions, which, if satisfied by the borrower, allows the agency to forgive a portion or all of the loan; and
  - (g) "Improper payment" means a payment made to a vendor, provider, or recipient due to error, fraud, or abuse.
- (2) Each agency and the Court of Justice shall develop, maintain, and update in a timely manner an ongoing inventory of each debt owed to it, including debts due to improper payments, and shall make every reasonable effort to collect each debt. Within sixty (60) days after the identification of a debt, each agency shall begin administrative action to collect the debt.
- (3) The Auditor of Public Accounts shall review each agency's debt identification and collection procedures as part of the annual audit of state agencies.
- (4) An agency shall not forgive any debt owed to it unless that agency has entered into a forgivable loan agreement with a borrower, or unless otherwise provided by statute.
- (5) For those agencies without statutory procedures for collecting debts, the Department of Revenue shall promulgate administrative regulations in accordance with KRS Chapter 13A to prescribe standards and procedures with which those agencies shall comply regarding collection of debts, notices to persons owing debt, information to be monitored concerning the debts, and an appeals process.
- (6) Each agency and the Court of Justice shall identify all liquidated debts, including debts due to improper payments, and shall submit a list of those liquidated debts in the form and manner prescribed by the department to the department for review. The department shall review the information submitted by the agencies and the Court of Justice and shall, within ninety (90) days of receipt of the information, determine whether it would be cost-effective for the department to further pursue collection of the liquidated debts.
- (a) The department may, after consultation with the agency or the Court of Justice, return the liquidated debt to the entity submitting the liquidated debt if:
    - 1. The request for review contains insufficient information; or
    - 2. The debt is not feasible to collect.
 Any return of a liquidated debt shall be in writing, and shall state why the debt is being returned.
  - (b) The department shall identify in writing, to the submitting agency or the Court of Justice, the liquidated debts it has determined that it can pursue in a cost-effective manner, and the agency or Court of Justice shall officially refer the identified liquidated debts to the cabinet for collection.
  - (c) The agency and the Court of Justice shall retain a complete record of all liquidated debts referred to the department for collection until the debt is collected or forgiven.
  - (d) Each agency and the Court of Justice shall make appropriate accounting of any uncollected debt as prescribed by law.
- (7) (a) If the agency recovers the debt funds prior to referral to the Department of Revenue, the agency shall retain the collected funds in accordance with its statutory authority.
- (b) *1.* Upon referral of a liquidated debt to the Department of Revenue, the liquidated debt shall accrue interest from the time of referral until paid, and a twenty-five percent (25%) collection fee shall attach unless the interest and collection fee are waived by the Department of Revenue.
  - 2.* The collection fee and interest shall be in addition to any other costs accrued prior to the time of referral.
  - 3.* The department may deduct and retain from the liquidated debt recovered an amount equal to the lesser of the collection fee or the actual expenses incurred in the collection of the debt.

4. Any funds recovered by the Department of Revenue after the deduction of the department's cost of collection expenses *may, at the discretion of the secretary of the Finance and Administration Cabinet, be returned to the agency identifying the liquidated debt or to the Court of Justice for allocation as otherwise provided by law. If the recovered funds and interest are not returned to the agency or Court of Justice, the amounts* shall be deposited in the general fund, except for Medicaid benefits funds and funds required by law to be remitted to a federal agency, which shall be remitted as required by law.
- (c) Nothing in this section shall prohibit the Department of Revenue from entering into a memorandum of agreement with an agency pursuant to KRS 131.130(11), for collection of debts prior to liquidation. If an agency enters into an agreement with the department, the agency shall retain funds collected according to the provisions of the agreement.
  - (d) This section shall not affect any agreement between the department and an agency entered into under KRS 131.130(11) that is in effect on July 13, 2004, that provides for the collection of liquidated debts by the department on behalf of the agency.
  - (e) This section shall not affect the collection of delinquent taxes by county attorneys under KRS 134.500.
  - (f) This section shall not affect the collection of performance or reclamation bonds.
- (8) Upon receipt of a referred liquidated debt and after its determination that the debt is feasible and cost-effective to collect, the Department of Revenue shall pursue collection of the referred debt in accordance with KRS 131.030.
- (9) By administrative regulation promulgated under KRS Chapter 13A, the Department of Revenue shall prescribe the electronic format and form of, and the information required in, a referral.
- (10) (a) The Department of Revenue shall report annually by October 1 to the Interim Joint Committee on Appropriations and Revenue on the collection of debts, including debts due to improper payments. The report shall include the total amount by agency and fund type of liquidated debt that has been referred to the department; the amount of each referring agency's liquidated debt, by fund type, that has been collected by the department; and the total amount of each referring agency's liquidated debt, by fund type, that the department determined to be cost-ineffective to collect, including the reasons for the determinations.
- (b) Each cabinet shall report annually by October 1 to the Interim Joint Committee on Appropriations and Revenue on:
- 1. The amount of previous fiscal year unliquidated debt by agency, including debts due to improper payments, fund type, category, and age, the latter to be categorized as less than one (1) year, less than five (5) years, less than ten (10) years, and over ten (10) years; and
  - 2. The amount, by agency, of liquidated debt, including debts due to improper payments, not referred to the Department of Revenue; a summary, by criteria listed in subsection (6)(a) of this section, of reasons the Department of Revenue provided for not requesting referral of those liquidated debts; and a summary of the actions each agency is taking to collect those liquidated debts.
- (c) Beginning on October 1, 2005, the Court of Justice shall report annually by October 1 of each year to the Interim Joint Committee on Appropriations and Revenue the amount of previous fiscal year unliquidated debt by county and whether in the Circuit Court or District Court; and fund type and age, the latter categorized as less than one (1) year, less than five (5) years, less than ten (10) years, and over ten (10) years. The first year for which the Court of Justice shall be required to report is the fiscal year beginning on July 1, 2004 and ending on June 30, 2005. The Court of Justice shall not be required to report unliquidated debts in existence prior to July 1, 2004.
- (d) The Finance and Administration Cabinet shall report annually by October 1 to the Interim Joint Committee on Appropriations and Revenue on the amount of the General Government Cabinet's unliquidated debt by agency, fund type, and age, the latter categorized as less than one (1) year, less than five (5) years, less than ten (10) years, and over ten (10) years.

- (11) At the time of submission of a liquidated debt to the Department of Revenue for review, the referring agency or the Court of Justice shall provide information about the debt to the State Treasurer for the Treasurer's action under KRS 44.030(1).

**Signed by Governor April 9, 2008.**