

**REPORT OF THE
OFFICE OF THE ATTORNEY GENERAL**

**Most Cost-Effective Strategies
for Improving Virginia's
Collections of Receivables,
Including Both General and
Nongeneral Fund Receivables**

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



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COMMONWEALTH of VIRGINIA

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October 16, 2006

His Excellency Timothy M. Kaine
Governor, Commonwealth of Virginia
Office of the Governor
Patrick Henry Building, 3rd Floor
1111 East Broad Street
Richmond, Virginia 23219

The Honorable Vincent F. Callahan, Jr.
Chairman, Appropriations Committee
Virginia House of Delegates
Post Office Box 406
Richmond, Virginia 23218

The Honorable John F. Chichester
Chairman, Finance Committee
Senate of Virginia
Post Office Box 396
Richmond, Virginia 23218

The Honorable Harry R. Purkey
Chairman, Finance Committee
Virginia House of Delegates
Post Office Box 406
Richmond, Virginia 23218

Dear Governor Kaine, Senator Chichester, Delegate Callahan, and Delegate Purkey:

In compliance with § 1-18, Item (52)(D) of the 2006 Appropriation Act, I respectfully submit the following special Report on the Most Cost Effective Strategies for Improving Virginia's Collections of Accounts Receivable, including Both General and Nongeneral Fund Receivables. This report outlines the findings, conclusions, and recommendations of the Office of the Attorney General, and particularly the Division of Debt Collection.

Thank you for your consideration.

Sincerely,

Robert F. McDonnell

cc: The Honorable Jody M. Wagner
Secretary of Finance

Division of Automated Legislative Services
Attention: Legislative Documents and Reports Processing

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EXECUTIVE SUMMARY

The Attorney General was directed to provide this special report by § 1-18, Item (52)(D) of the 2006 Appropriation Act, which states:

The Attorney General shall provide a report on the most cost-effective strategies for improving Virginia's collections of accounts receivable, including both general and nongeneral fund receivables. The Secretary of Finance shall provide assistance as necessary in the preparation of this report. Copies of this report shall be provided to the Governor and the Chairmen of the House Appropriations and Senate Finance Committees by October 16, 2006.

This issue was studied by analyzing the current practices and controlling legislation of the four agencies with broad legislative mandates to oversee the collection of the Commonwealth's receivables and by sampling the collection practices of other states and Virginia law firms that specialize in collection of receivables. As the study of legislation and collection practices progressed, promising areas for improvement were noted. Thus, this special report concludes with the Attorney General's broad recommendations in the areas of technology, legislation, and collection processes.

Specifically, the Attorney General makes two recommendations that involve collaborative efforts between his Office and other entities with related missions. These recommendations are:

- *Establish an ongoing task force comprised of representatives from the different entities charged with collecting the Commonwealth's receivables and legislative staff members to address common vulnerabilities in the areas of technology, legislation, and processes.*
- *The Attorney General will explore the feasibility of partnering with Better Business Bureaus throughout the Commonwealth to publish a current list of companies with unsatisfied judgments in favor of the Commonwealth.*

In addition, the Attorney General offers two recommendations regarding legislative action. These recommendations propose specific statutory amendments and suggest future legislative initiatives. The recommendations are:

- *Statutory changes are required to clarify the unique nature of all debts to the Commonwealth.*

- Under this recommendation, specific amendments are proposed to the Appropriation Act and *Code of Virginia* to enhance the Commonwealth's collection of accounts receivable.
- *The Attorney General will work with the Department of Planning and Budget to study the fiscal impact of certain initiatives.*
 - This recommendation proposes a study to determine whether certain initiatives will result in a significant positive fiscal impact.
 - These initiatives include conforming administrative processes to allow agencies that issue final administrative orders to docket and enforce the orders as circuit court judgments; establishing oversight for collection agencies within the Office of the Attorney General; amending § 8.01-66.9 of the *Code of Virginia* regarding collection of Medicaid liens; amending § 46.2-110 of the *Code* to establish strict liability for damage to highway property maintained by the Commonwealth; and formation of a statewide "lien depository" for administrative and judicial liens of the Commonwealth.

INTRODUCTION

Pursuant to § 1-18, Item 52(D) of the 2006 Appropriation Act, the General Assembly directed the Attorney General to prepare this special Report on the Most Cost-Effective Strategies for Improving Virginia's Collections of Accounts Receivable, including Both General and Nongeneral Fund Receivables for the Governor and the Chairs of the Finance and Appropriations Committees.

The Attorney General is established as the chief executive officer of the Department of Law by § 2.2-500 of the *Code of Virginia*. In 1990, the General Assembly enacted § 2.1-133.4 (recodified at § 2.2-518 in 2001), which created the Division of Debt Collection (DDC) in the Department of Law.¹ Section 2.2-518 authorizes DDC “to provide all legal services and advice related to the collection of funds owed to the Commonwealth.” However, the General Assembly has authorized several other entities to collect specific receivables of the Commonwealth, including the Department of Taxation (§§ 58.1–1803–1806), the Department of Social Services, Division of Child Support Enforcement (§ 63.2-1901), and the Commonwealth's Attorneys (§ 19.2-349).² The General Assembly also approved the use of collection agencies by these entities and DDC. In addition, § 2.2-4806 enables other agencies and institutions of the Commonwealth to use collection agencies for smaller debts in lieu of or prior to referring them to DDC for collection.³

To address the General Assembly's directive regarding this special report, the Attorney General analyzed the current practices and controlling legislation of the four agencies with broad legislative collection mandates and analyzed the collection practices of a sample of other states and Virginia law firms that specialize in collection of receivables similar to those of the Commonwealth. The Attorney General's Special Report on the Most Cost-Effective Strategies for Improving Virginia's Collections of Accounts Receivable, including Both General and Nongeneral Fund Receivables

¹ In 1982, the General Assembly added an appropriation for collection services to the Attorney General's appropriation. 1982 VA. ACTS CH. 684. The DDC became a separate agency within the Department of Law with the enactment of § 2.1-133.4. 1990 VA. ACTS CH. 71.

² Pursuant to § 4-5.02(d) of the 2006 Appropriation Act, the Commonwealth's two teaching hospitals have the option of collecting their accounts receivable by contracting with private attorneys and collection agencies or by using the services of the Division of Debt Collection. Under this provision, these entities can also independently compromise, settle, and discharge accounts receivable claims.

³ The Division of Purchases and Supply in the Department of General Services (DGS) administers an optional-use statewide term contract for collection services for accounts receivable for use by the Commonwealth's agencies. Because it is an optional-use contract, agencies can negotiate with and refer appropriate accounts receivable to collection agencies that are not contractors under the DGS contract. <http://www.dgs.virginia.gov/DPS.aspx>.

summarizes the results of these efforts. The manner in which data is collected and reported by the various entities does not always allow meaningful comparisons to be made among the collection methods or results. This special report identifies vulnerabilities in technology, legislation, and processes. Because of their impact on the Commonwealth's ability to collect its receivables by the most cost-effective means, these vulnerabilities are incorporated in the recommendations at the end of this special report.

The texts of cited statutory provisions and court decisions are included in the Appendix. Published agency reports are not included because of their size. These reports are accessible via the links cited for the agencies' websites or via the Virginia General Assembly's Legislative Information Services website at <http://leg1.state.va.us/>.

COLLECTION PRACTICES OF THE COMMONWEALTH

THE DIVISION OF DEBT COLLECTION IN THE DEPARTMENT OF LAW

Background

The Division of Debt Collection is authorized pursuant to § 2.2-518 of the *Code of Virginia* to provide all legal services and advice related to the collection of funds owed to the Commonwealth. The mission of DDC is to provide all appropriate and cost-effective, professional debt collection services on behalf of all State agencies. This mission is based on the statutory policy established in § 2.2-4800 of the Virginia Debt Collection Act,⁴ which states in part:

It shall be the policy of the Commonwealth that all state agencies and institutions shall take all appropriate and cost-effective actions to aggressively collect all accounts receivable. All state agencies and institutions shall be subject to this chapter and shall establish internal policies and procedures for the management and collection of accounts receivable.

⁴ VA. CODE ANN. TIT. 2.2, CH. 48, §§ 2.2-4800 to 2.2-4808 (2005).

DDC does not receive general fund revenue to fund its operations. Rather, DDC is self-funded through the fees it retains from amounts collected.⁵ In the past two fiscal years, the Appropriation Act required DDC to retain a 30% fee on its collections. In the last General Assembly session, a more flexible fee structure was approved. Accordingly, § 1-18, Item 52(B)(5) of the 2006 Appropriation Act authorizes DDC to charge a fee *up* to 30%.

DDC physically is located in the Office of the Attorney General. When fully staffed, DDC employs 24 people, consisting of 6 attorneys, 9 claims representatives, 1 paralegal, 3 financial, and 5 administrative positions. Currently, DDC provides debt collection services to 45 agencies. In addition to providing legal collection services, DDC advises agencies on matters that impact the Commonwealth's collection of receivables, for example, legislation, contract provisions, and bankruptcies. One of DDC's six attorneys physically is located in another state office building serving as agency counsel to the Division of Unclaimed Property in the Department of Treasury. DDC also provides collection services and advice to other divisions in the Office of the Attorney General. Due to its existing working relationships with a large portion of the Commonwealth's agencies and institutions, and the diverse nature of such representation, DDC is uniquely situated to fulfill the requirements of § 2.2-518 by managing consolidated collection efforts for the Commonwealth.

DDC agency clients are located throughout Virginia. Strategic considerations may lead DDC to refer matters to private attorneys appointed by the Attorney General on a contingency fee or hourly basis. Such considerations may include venue, claim amount, special expertise required by nature of claim, and, as a last resort, temporary case load management.

DDC manages its referrals with an off-the-shelf case management system developed by a local vendor and customized to accommodate DDC's requirements. System support is provided via a maintenance contract with the vendor and by the information technology department in the Attorney General's office. DDC also utilizes several external databases maintained by other state agencies to locate debtors and their assets. These databases are administered by the Division of Motor Vehicles (address and vehicle ownership), the Virginia Employment Commission (employer and earnings), the Department of Taxation (addresses), the Virginia Commonwealth University Health System (limited read-only access to patient accounts), and the State Corporation Commission (corporate data). Two commercial databases compiled by Equifax (credit report) and LexisNexis (locator and real property ownership) are also utilized. Further, DDC uses the PACER Service Center for electronic access to the federal courts, primarily bankruptcy courts.

⁵ The DDC does not receive a fee on payments received under the Setoff Debt Collection Act, which requires creditor agencies to submit delinquent debts to the Department of Taxation for setoff against any refunds belonging to the debtor by the Department of Taxation. *See generally* TIT. 58.1, CH. 3, §§ 58.1-520 to 58.1-535.

The DDC's collection efforts are enhanced by several statutory provisions, primarily in the litigation area, that inure to the benefit of the Commonwealth only. For instance, statutes of limitations generally do not run against the Commonwealth (§ 8.01-231); the Commonwealth is exempt from payment of state court costs and fees (§ 17.1-629); and the Commonwealth has a priority lien in certain third-party recovery cases (§ 8.01-66.9).⁶ Then, like other judgment creditors, the Commonwealth can request the suspension of a judgment debtor's driver's license when certain conditions are met (§ 46.2-417). Likewise, with proper notice, the Commonwealth can assess prejudgment interest, administrative costs, and late penalty fees (§ 2.2-4805).

DDC's Comprehensive Review

DDC currently is conducting a comprehensive review of its operations and procedures on three levels – people, processes, and technology – to ensure that its operations comply with the mandates of the Virginia Debt Collection Act. As a result of the review, certain initiatives already have been implemented: development of a new Procedures Manual; purchases of new laptop computers, portable printers, and portable scanners to increase effective communication between the office and traveling attorneys and staff members, whether in court or while conducting training for a client agency; development of document management and retention policies and purchase of a high volume scanner to support DDC's compliance with these policies; creation of and funding for a new financial specialist position who will provide accounting, budgeting, forecasting, and benchmarking expertise; systematic status reporting to clients; and new collaborations with divisions in the Office of the Attorney General, such as the Tobacco Section, on collections and bankruptcy matters.

Other initiatives currently under review by DDC include: client development and training; in-house staff development, particularly in collection methodology and ability to communicate in Spanish as necessary; additional purchases of technology to automate some manual processes; increased utilization of satellite offices currently staffed by the Attorney General; greater participation in creditor bar associations and the National Association of Attorneys General; creation of a fee schedule based on budget and forecasting benchmarks; and review of position descriptions and development of industry-tested performance and salary matrices for all DDC personnel.

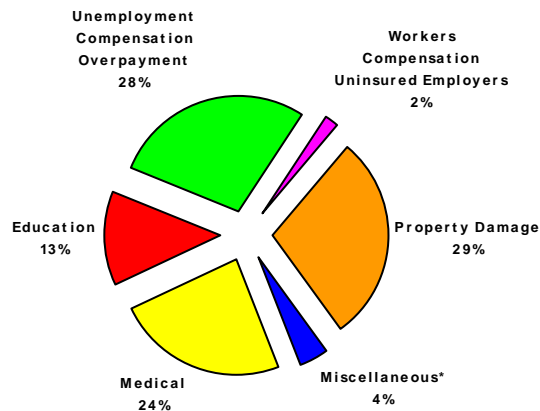
DDC Collection Statistics

At the end of FY 2006, DDC had a case inventory of 9,197. This figure includes active accounts; however, it does not include voluminous inactive judgment accounts that

⁶ Earlier this year, the United States Supreme Court decided Ark. Dep't of Health & Human Servs. v. Ahlborn, 126 S. Ct. 1752 (2006). The Ahlborn decision places limits on the collection of Medicaid liens against third-party recoveries. It is, however, too soon to predict the fiscal impact of Ahlborn on the Commonwealth's collection of Medicaid liens.

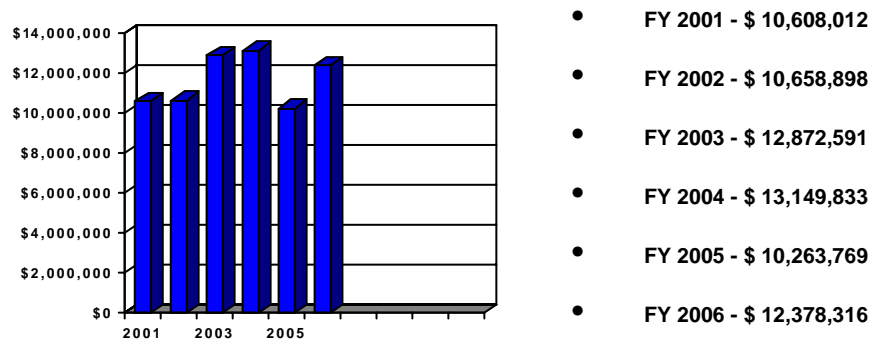
DDC continues to monitor for future payment. When required by a change in collectibility status, inactive accounts are reactivated for further collection action. Table 1 shows the types of accounts in DDC's inventory of referred accounts.

TABLE 1
ACCOUNTS PROFILE



***Miscellaneous Debt includes defaulted small business loans, breach of contract, OSHA penalties, environmental and natural resource violations, professional occupation conduct violations, and veterinary hospital bills.**

Receivables placed with DDC totaled \$167,715,874 as of June 30, 2006. In FY 2006, DDC's annual collections totaled \$12,378,316.⁷ Table 2 highlights DDC's annual collections since 2001.⁸

TABLE 2**DDC ANNUAL COLLECTIONS**

Historically, medical claims from the Commonwealth's teaching hospitals, mental health facilities, and Medicaid programs comprise more than 50% of DDC's annual collections. When claims arising from overpayments of unemployment benefits are also included, approximately 60% of DDC's collection efforts are directed against a largely indigent population without health insurance or jobs. Moreover, debtors that owe civil penalties often are defunct corporations, debtors owing workers' compensation benefits are uninsured corporations, and debtors owing property damages frequently are uninsured drivers or nonresidents traveling through the Commonwealth. As noted by the Department of Accounts in its quarterly report, "state receivables largely consist of unemployment taxes, tuition and fees, and billings for several indigent care programs, which present numerous special problems in collection."⁹

⁷ The DDC receives payments on accounts receivable in numerous ways: by mail, walk-ins (usually cash payments), internet credit card payments and electronic transfers, and via direct payments to DDC's client agencies. The DDC also utilizes involuntary judgment enforcement methods, such as garnishment and levy, to obtain payment.

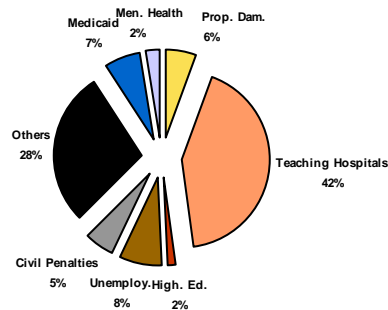
⁸ The Report on Statewide Financial Management and Compliance for the Quarter Ended March 31, 2006 (March 31, 2006 Quarterly Report), compiled by the Department of Accounts, indicates that DDC contributed \$298,579 in collections during the quarter ended December 31, 2005.

http://www.doa.virginia.gov/General_Accounting/Quarterly_Report/2006/March_2006.pdf. This figure grossly understates DDC's collections for that quarter, which were \$2,978,069. The discrepancy reveals a disparity in reporting formats that was also noted by the Compensation Board in its annual report on court fines and fees, which is discussed later in this special report.

⁹ March 31, 2006 Quarterly Report.

Accounts receivable referred to DDC are the most difficult to collect based on industry standards, and they lack the statutory priorities afforded other types of debts of the Commonwealth, such as taxes and child support. Table 3 indicates the receivables in DDC's inventory by type as of June 30, 2006.

TABLE 3
RECEIVABLES PROFILE



The five agencies with the highest recoveries by DDC since 2001 are the Virginia Commonwealth University Health System (VCUHS), the University of Virginia Medical Center (UVAMC), the Department of Medical Assistance Services (DMAS), the Virginia Employment Commission (VEC), and the Virginia Department of Transportation (VDOT). Of these agencies, three primarily refer medical debt, and the other two agencies refer overpayment of employment benefits and highway property damage claims. All but DMAS extensively use in-house collection practices and collection agencies. Therefore, claims are not referred to DDC until these initial efforts are exhausted and the claim is deemed “uncollectible” at the agency level. Thus, when referred to DDC, these claims significantly are older than the 60 days past due timeline referenced in § 2.2-4806.¹⁰

The Debt Collection Recovery Fund and the General Fund

Because of its impact on DDC operations, it is necessary to address § 1-18, Item 52(B)(1) of the 2006 Appropriation Act, which creates a special nonreverting fund called the Debt Collection Recovery Fund (Fund). This requirement first became effective in the 2004 interim budget. All receivables collected by DDC, minus its fees, are deposited into the Fund on a monthly basis. The 2006 Appropriation Act further requires 30% of the amounts collected for the Fund must be returned to the client agency. By fiscal year

¹⁰ For example, at least two universities have referred student debts that were more than 25 years past due at the time of referral, and one agency has referred property damage claims more than 10 years old.

end, the State Comptroller must transfer an amount up to a specified cap from the Fund balance into the general fund. Any excess is returned *pro rata* to the client agencies based on their contributions to the Fund. This general fund deposit requirement does not extend to accounts receivable collected by private collection agencies. Table 4 shows DDC's total collections, fees, and agency transfers, and the general fund deposits since the deposit requirement began in 2004.

TABLE 4**DDC DISTRIBUTION OF RECEIVABLES**

FISCAL YEAR	TOTAL COLLECTIONS*	DDC FEES	AGENCY TRANSFERS	GENERAL FUND DEPOSITS
2004	\$13,149,833	\$1,800,000 (fee cap)	\$7,531,905	\$1,570,000
2005	\$10,263,769	\$1,788,852	\$4,411,818	\$1,249,649
2006	\$12,378,316	\$1,800,000 (fee cap)	\$5,553,182	\$1,139,454

***Total Collections include payments made directly to agencies, which are not otherwise indicated on Table 4**

When the general fund deposits were first required in the 2004 interim budget, DDC's client agencies expressed immediate concerns about this requirement. The most pressing concern of many agencies was that the fund sources for their accounts receivable were either special state funds or federal funds, which were not appropriate for transfer to the general fund. Agencies also were concerned about the deposit requirement's fiscal impact on their operations.

DDC worked closely with its client agencies to identify and exclude special fund and federal fund source receivables from the deposit requirement. This process either eliminated in part or in full several agencies' receivables from the general fund deposit requirement, including the receivables for the VEC (federal funds), DMAS (partly federal funds), and the state universities for their guaranteed student loans (federal funds). The Virginia State Bar and UVAMC obtained exemptions from the Secretary of Finance based on the Secretary's determination that collections for these agencies are more appropriately returned to the agencies, as authorized by § 1.18, Item 52(B)(2). Other agencies currently are seeking an similar exemption.

Because of the general fund deposit requirement, agencies without a fund source exemption or an exemption from the Secretary of Finance were inclined to use collection services other than DDC. The referral statistics for VDOT vividly demonstrate that agency's negative response to the general fund deposit requirement. In FY 2003, VDOT

referred 1,830 accounts to DDC for collection activity, primarily legal action. The next year, in FY 2004, when the general fund deposit requirement was introduced in the interim budget, VDOT referred 1,593 accounts. In FY 2005, when VDOT developed new in-house procedures in response to the general fund deposit requirement, and referred cases to a private collection agency, VDOT referred only 1,039 cases to DDC. In FY 2006, VDOT referred a mere 175 cases to DDC. Presumably, the balance of VDOT's accounts receivable were retained in-house or referred to a collection agency.

At VDOT's request, the Secretary of Finance granted VDOT an exemption from the general fund deposit requirement effective FY 2007. Since VDOT has been the largest annual contributor to the general fund deposit, it is anticipated there will be a significant decrease in Fund transfers to the general fund in FY 2007 as compared to prior fiscal year transfers. Table 5 indicates the five agencies with the highest contributions to the general fund since FY 2005, the first full year of the general fund deposit requirement.

TABLE 5**AGENCIES WITH HIGHEST CONTRIBUTIONS TO GENERAL FUND***

FY 05		FY 06	
Dep't of Transp.	\$389,146	Dep't of Transp.	\$429,414
Dep't of Mental Health	\$277,382	Dep't of Mental Health	\$310,319
Dep't of Medical Assist. Serv.	\$206,370	Workers' Comp. Comm'n	\$ 86,355
Workers' Comp. Comm'n	\$203,693	Dep't of Forestry	\$ 49,143
Dep't of State Police	\$ 84,264	Virginia State Univ.	\$ 31,398

***Individual Agency Figures for FY 04 Not Available**

THE DEPARTMENT OF TAXATION

Pursuant to § 58.1-1803 of the *Code* and § 4-5.02(d)(3) of the 2006 Appropriation Act, the Department of Taxation (Tax) is exempt from debt collection practices of the Office of the Attorney General and can hire collection agencies and collectors, including attorneys. Tax employs approximately 500 staff to enforce compliance with tax laws. Most of these employees are auditors and examiners, but this number also includes staff devoted to in-house, central, and field collections, and collection of court fines. The tax collection staff numbers about 95, and the court fines collection staff is about 50. Within prescribed guidelines, these staff members are authorized to deal with bankruptcies and setoff debt, issue levies, respond to offers of compromise, revoke sales tax certificates, order padlocks, and initiate criminal prosecutions in conjunction with a Commonwealth's Attorney. Tax also utilizes several collection agencies.

Tax's collections process is outlined in the Virginia Taxpayer's Bill of Rights, a statutory directive under § 58.1-1845 that lists taxpayers' options when faced with collection actions on their accounts. In addition to collection practices generally

available to all creditors and the practices specifically available to the Commonwealth, the General Assembly has granted Tax additional and extraordinary collection authority. For instance, Tax can issue a Memorandum of Lien that acts as a judgment against a taxpayer's real property and personal assets; issue a bank account lien or wage garnishment without first obtaining judgment; convert a business tax liability into personal liability of responsible officers; padlock businesses; and seize assets without judgment. Further, Tax can utilize the United States Department of Treasury's offset program to submit state income tax debt for offset against debtors' federal income tax refunds.

Pursuant to §§ 58.1-1821 through 58.1-1825, the taxpayer is afforded an appeals process to contest the accuracy of an assessment or action by Tax. The appellate process begins with an informal review. If the taxpayer is not successful, the taxpayer can appeal directly to the Tax Commissioner. The Tax Commissioner's decision then can be appealed to the appropriate circuit court.

According to Tax's Annual Report for Fiscal Year 2005,¹¹ Tax is one of the largest sources of annual general fund revenue to the Commonwealth. Eighty-five percent of this general fund revenue comes from individual income tax and from sales and use tax. Corporation income tax runs a distant third. In FY 2005, the aggregate collections of all revenues administered by Tax totaled \$13,179,562,000. The most recent statistics available for setoff debt collections by Tax indicate that in FY 2003 Tax collected \$23,755,975 through setoff debt and that it collected an additional \$21,137,386 through its Refund Match program.

In addition to its "super" lien on taxpayers' property, Tax has benefited from other statutory enhancements to its collections process. For example, § 58.1-202.2 authorizes Tax to enter into public-private partnership contracts to finance Tax's technology needs. Pursuant to this provision, Tax entered into a partnership in 1998 with CGI-AMS, a Canadian company, which resulted in an advanced computer system for Tax that integrated existing software with new proprietary software designed to accomplish specific collections purposes. As required by § 58.1-202.2, the increased revenues generated by the partnership were benchmarked and then used to fund the contract until paid. This benefits-funded contract was implemented in stages. The initial projects were designed to generate quickly seed money to fund the larger elements of the project. Full system conversion was completed in 2005 and as of June 30, 2006, the partnership contract is complete except for ongoing maintenance. As a result, Tax now enjoys several technological advancements, including software that scores accounts and makes automatic initial collection action decisions and an automated telephone-based payment plan system.

Additionally, Tax can publish the names of delinquent business taxpayers. Another effective tool that Tax has offered twice is the tax amnesty program that allowed

¹¹ http://www.tax.virginia.gov/Web_PDFs/AnnualReportFY2005.pdf.

taxpayers to pay back taxes with reduced penalties and interest. This amnesty program is authorized by § 58.1-1840.1. According to the Federation of Tax Administrators, Virginia's amnesty program brought in \$32.2 million in 1993 and more than triple that amount, \$98.3 million, in 2003. <http://www.taxadmin.org/fta/rate/amnesty1.html>.

THE DIVISION OF CHILD SUPPORT ENFORCEMENT IN THE DEPARTMENT OF SOCIAL SERVICES

Similar to Tax, the Department of Social Services' Division of Child Support Enforcement (DCSE) is charged by statute with collection responsibilities. Section 63.2-1901 of the *Code* establishes a purpose "to promote the efficient and accurate collection, accounting and receipt of support for financially dependent children and their custodians." In the absence of a court order, § 63.2-1903 establishes DCSE's authority to issue various support orders. Additionally, the provision authorizes DCSE to issue subpoenas for financial records of noncustodial parents and to summons noncustodial parents to appear for questioning in the course of support establishment or enforcement activities.

The DCSE is authorized to contract with private entities, including collection agencies, to facilitate the collection of child support arrearages, and to perform certain administrative functions in the field and in the central office under § 63.2-1907. In addition, § 63.2-1950 directs the Attorney General to "provide and supervise legal services to the [DCSE] in child support enforcement cases to establish, obligate, enforce and collect child support." This section also authorizes the Attorney General to contract with private counsel to serve as special counsel, to contract with collection agencies, and to evaluate the costs and benefits of privatization of the legal services. Privatization alternatives have proven problematic, however, due in part to private counsels' lack of experience with DCSE's unique legal issues and large caseloads.

According to its website, DCSE collected more than \$587,000,000 in child support arrearages last year. More than \$8,000,000 of that total was recovered directly pursuant to incarceration via civil contempt orders of approximately 3,300 delinquent payers. The following statistics also appear on the website: "Currently, there are 363,000 child support cases in Virginia. Collectively, 484,000 of Virginia's children are owed more than \$2.2 billion." <http://www.dss.virginia.gov/family/dcse.html>.

Like Tax, DCSE has a powerful and unique tool in its arsenal – § 63.2-1927 creates a priority lien with the force of judgment when docketed. The lien can be based on an administrative support order (with service of notice sufficient under § 63.2-1916) or on a court or foreign support order. Once the lien is filed, any person or entity, including any department of the Commonwealth, who has notice of the lien and who holds property that may be subject to the lien, shall not pay out, release, transfer, encumber, or convey the property without written authorization from the Commissioner of the Department of Social Services or unless an administrative or judicial order releases the support lien.

Nevertheless, approximately 60% of revenues collected by DCSE require attorney appearances in judicial enforcement proceedings.

In addition to this powerful “super” lien, DCSE also benefits from other extraordinary enforcement tools. For example, DCSE is authorized by § 63.2-1932 to enter into data exchange agreements with financial institutions doing business in the Commonwealth. Under such agreements, the financial institution periodically shall provide to DCSE the account title, record address, social security number, or other taxpayer identification number if DCSE has provided the social security number or other taxpayer identification number in its request. The actual costs incurred by the financial institution in complying with the data match requests can be recovered by DCSE from noncustodial parents identified as the result of a data match. The DCSE can benefit from data matches, as well as asset seizures, on an interstate basis, pursuant to § 63.2-1932.1. Further, DCSE benefits from the ability to track employment status of its debtors via continuously updated “new hire” data obtained from federal government databases.

Moreover, once the notice and appeals process is exhausted, DCSE can enforce its lien with an order to withhold and deliver property of any kind, including income, pursuant to § 63.2-1929. If a person or entity fails to deliver the property sought by an order issued pursuant to § 63.2-1929, then § 63.2-1930 makes that person or entity liable to the DCSE in an amount equal to 100% of the value of the underlying debt that forms “the basis of the lien, order to withhold and deliver, distraint, or an income withholding order or voluntary assignment of wages.”

Pursuant to the support lien, DCSE can collect by distraint, seizure and sale of the property subject to the lien (§ 63.2-1933), or foreclosure (§ 63.2-1934); petition the appropriate court for “an order suspending any license, certificate, registration or other authorization to engage in a business, trade, profession or occupation, or recreational activity” (§ 63.2-1937); notify consumer credit reporting agencies of support payment arrearages (§ 63.2-1940); publish a most wanted delinquent parents list and conduct coordinated arrests of delinquent parents with state and local criminal justice agencies (§ 63.2-1940.1); attach unemployment and workers’ compensation benefits; and suspend an individual’s driver’s license (§ 63.2-1941).

THE COMMONWEALTH’S ATTORNEYS

Section 19.2-349 of the *Code* requires circuit and district court clerks to report monthly on the fines, costs, forfeitures, and penalties, including court-ordered restitution, assessed within their courts that are more than 30 days delinquent, including those with delinquent installment payments. The report goes to the appropriate court, the Department of Taxation, the State Compensation Board, and the appropriate Commonwealth’s Attorney. For clerks who participate in the Supreme Court’s automated information system, the Executive Secretary handles the reporting requirement.

This same *Code* provision requires a Commonwealth's Attorney to institute proper proceedings to collect delinquent fines, costs, forfeitures, penalties, and restitution. A Commonwealth's Attorney can render collection services from his office or, if he determines it is impractical or uneconomical to do so, he can contract with private attorneys or private collection agencies, enter into an agreement with a local governing body or a county or city treasurer, or use Tax. Guidelines and procedures are the joint responsibility of the Office of the Attorney General, the Executive Secretary of the Supreme Court in conjunction with Tax, and the Compensation Board. These guidelines, however, cannot supercede contracts between a Commonwealth's Attorney and private attorneys or collection agencies that have active collection efforts.

Section 19.2-349 authorizes contingency fees for private attorneys and collection agencies, except on amounts collected by Tax under its setoff program. Section 58.1-3958 authorizes local treasurers to charge an administrative fee for their efforts and Tax and the Commonwealth to charge a fee for amounts collected for violations of local ordinances.

According to the Fiscal Year 2005 Assessment and Collection of Fines and Fees Report (2005 Fines and Fees Report), which is prepared by the State Compensation Board, court clerks collected almost \$322 million in fines and fees. Commonwealth's Attorneys collected a little over \$56 million. Of the 14 collection agencies used, Tax was the collection agency with the highest number of localities (102, which equals selection by 5 out of every 6 Commonwealth's Attorneys), the lowest contingency fee (17%), and the best collection rate (73%). <http://www.scb.virginia.gov/docs/fy05finesandfees.pdf>.

Tax and the Compensation Board, and the Auditor of Public Accounts have various reporting requirements under § 19.2-349. It is noteworthy that the 2005 Fines and Fees Report declines to report on methodology or to attest to the accuracy of the data included in the report because of variances in data collection methods and reporting.

Section 19.2-354 establishes the court's authority to order the defendant to pay a sentence of fines, costs, forfeiture, or penalty in deferred payments or installments. The *Code* offers many inducements to the defendant to comply with the payment plan. Under § 19.2-354, default will end a defendant's participation in a work release, home/electronic incarceration, or non-consecutive days program until the debts are satisfied. The money due can be withheld from amounts due the defendant by the Department of Corrections or sheriff, second in priority only to child support. In addition, the defendant's privilege to operate a motor vehicle will be suspended, and the defendant may be fined or imprisoned pursuant to § 19.2-358. Section 19.2-358 requires a defendant that defaults on a payment plan to show cause why he should not be confined in jail or fined for nonpayment. Following the show cause hearing or pursuant to a *capias* issued for the defendant's failure to comply with a court order to appear, the court may order a defendant confined for contempt for up to 60 days or fined up to \$500, unless the defendant satisfactorily can show the court that his failure is excusable.

COLLECTION PRACTICES OF OTHERS

OTHER STATES

In 2005, the National Association of Attorneys General (“NAAG”) sent out a questionnaire to member states seeking information on how each state collected its accounts receivables. Among other things, NAAG inquired whether a state had a department specifically devoted to collections/recovery work, the effectiveness of that department, how that department charged its client agencies, and whether the states outsourced portions of their collections work to third party vendors.

While the members’ responses ranged from detailed to monosyllabic, several trends were discerned from the two states that reported the most success in recovering receivables, Ohio and Texas. Similar to the Commonwealth, both states designate collections/recovery departments and require their state agencies to turn over all delinquent and unpaid debts to the Attorney General within a time period specified by statute. The collections departments in Ohio and Texas have different, yet competitive, fee structures. Ohio charges below-market fees and Texas does not charge fees on its collections.

Designated Collections/Recovery Department

Both states have designated departments that are tasked with collections/recovery matters for all their respective agencies. Unlike Virginia, both Ohio and Texas permit their attorneys general to collect delinquent tax payments, which dramatically increases their annual collection totals.

Ohio’s Collection Enforcement Section employs 10 attorneys and 110 staff members, and it recovered a record \$204 million in 2004, up from \$162 million in 2003. Like Virginia, Ohio’s fiscal year runs from July 1 to June 30.

Texas’s Bankruptcy and Collection Division, which has 17 attorneys and 33 staff members, collected approximately \$64 million during the last fiscal year. Texas’s fiscal year runs from September 1 to August 31.

Required Turnover/Mandatory Deadline

Each state also has statutes directing all state agencies to turn over delinquent and unpaid debts to their respective attorney general’s collection department.¹² Ohio directs

¹² See Ohio Rev. Code Ann. § 131.02 (2006) and 1 Tex. Admn. Code § 59.2 (2006).

that this turnover take place within 45 days after the payment is due. Texas agencies are required to turn over debt once it is 120 days delinquent. Both Ohio and Texas enforce the prompt turnover of delinquent debts by requiring that state auditors evaluate and report on each agency's compliance with these requirements. These statutory provisions ensure that a delinquent debt will receive early attention thereby increasing the likelihood of repayment.

Competitive Pricing

Coupled with mandated debt referral, Ohio and Texas have provided another powerful incentive for their agencies expeditiously to deal with delinquent debt. In both states, each referring agency is allowed to keep most, if not all, of the receivables collected on its behalf. The Texas collection department does not charge for collection services and returns all money recovered to the referring agency. The department's operations are funded by a budget appropriation.

On the other hand, the Ohio collection department funds its operations by charging a nine percent fee and it returns the net amount to the originating agency. Pursuant to *Ohio Code* § 131.02(A), the Ohio collection department has the additional statutory option of collecting its attorney's fees and costs expended in pursuit of recovery. None of the receivables collected by Ohio or Texas are returned to the states' general funds.

On occasion, Ohio and Texas retain private collection agencies and attorneys; the fees for these private collectors range from 15% to 33%. Cases are referred to private collectors and monitored by the collection departments in each attorney general's office, not by the creditor agency. Ohio reports that it employs private collectors only after the state has exhausted its efforts to collect fully on a debt. Texas refers cases to private collectors only for debts under \$1,000 and when the state does not have adequate staffing resources to meet current demand.

PRIVATE COLLECTION FIRMS

Four private law firms that provide various collection services to the Commonwealth were interviewed during the preparation of this report. Because of the proprietary nature of the information solicited in the interviews, these law firms will not be identified by name.

One firm has a national presence and the other three operate only in the Commonwealth. One firm operates solely in the metropolitan Richmond area. Two firms specialize in government collections, one of which represents a variety of local, state, and federal governmental entities, and the other of which represents Commonwealth's Attorneys in the collection of court fines, costs, restitution, and penalties. The other two firms have general collections practices that include some work for the Commonwealth.

Although one office is associated with and supported by a large national law firm and collection agency, it is small, employing only one attorney and two staff members. The other three offices have similar staffing. Each office employs two attorneys, and the total collection and administrative staff members in each office range from eight to ten. Typical of collections firms, each operates a volume business. Because each firm defines active accounts in a different way, we have elected not to compare these numbers.

Unlike collection agencies, each of these firms is able to and does provide litigation services for its clients when necessary. The contingency fees charged vary by client and type of debt; the fees range from 22% to 33.3%. Not surprisingly, the lowest percentage fee is charged for debts that have been reduced to judgment prior to referral.

The firms also use similar technology tools. For example, each firm has a case management system. Two of the firms use an off-the-shelf case management system created by a local vendor with limited customization provided for each firm's practice.¹³ One firm taps into the case management system of its national office, and the fourth firm has a custom-built system to manage its specialized case load. Each of the firms receives electronic referrals of accounts from clients. The electronic referrals create a new file, fully populate the relevant fields, and insert "ticklers" to indicate the next course of action. Based on client preference or when litigation requires it, the firms request hardcopy files from their client. The firms also use similar debtor and asset locator services. Some of the services are internet-based and free; most require a user fee. Depending on the nature of their representation for the Commonwealth, some of the firms have access to the VEC database.

Except when the debt already has been reduced to judgment, each of the firms initiates prejudgment contact with the debtor, usually by letter and occasionally by telephone. If prejudgment contact does not result in satisfactory payment, each firm initiates litigation. The firms have established timelines to determine when to start the litigation process. In the interviews, each firm emphasized that, in the collections world, success generally is based on swift action when debtors and their assets are most available. Following judgment, each firm utilizes enforcement methods ranging from wage garnishments to property attachments. The firms that use debtor interrogatories indicate that this is the least effective enforcement weapon in their arsenal; garnishment is the most effective. Each firm accepts payments via mail or by walk-in. Two firms use a lockbox or dedicated post office box for payments. Three accept credit card payments over the telephone; the remaining firm was initiating this payment method at the time of the interview. None of the firms currently utilizes direct bank drafts or electronic money transfers.

¹³ This case management system is also used by DDC.

CONCLUSION

The Commonwealth has established a variety of initiatives to maximize the collection of its receivables. Many of these initiatives are successful. Nevertheless, DDC, Tax, DCSE, the Commonwealth's Attorneys, VCUHS, UVAMC, individual agencies, private law firms and collection agencies all play significant roles in collecting Virginia's money. Although they have related missions, each of these entities operates independently of the others, with little exchange of information or coordination of resources. As a result, efforts, services, and resources may be duplicated or less than efficient.

For example, technology is the foundation of each entity's operations. During the data gathering stage of this special report, each entity emphasized the necessity and expense of technological investments in the field of collections. Smart enhancements in technology ratchet up operational efficiencies. Yet, there is little, if any, communication among the entities as they study the role of technology in their operations, bid for hardware, software, and database access, or maintain, configure, and update information systems. Consequently, each entity incurs high costs to build custom systems or modify off-the-shelf systems and incurs additional expense to further adapt these systems when they need to interface on an interagency basis.

In addition, variances in reporting standards often make it difficult to compare methodologies and to evaluate their effectiveness. There is a need for coordination of reporting efforts among the collection entities, including collection reporting formats and processes, so comparisons of methodologies and effectiveness will be accurate and have statistical meaning.

Finally, legislative changes are needed to maximize collections, in some cases at the agency level, and in other cases, across the Commonwealth. Some amendments would require only slight modification of existing provisions to clarify a procedure; others may require an in-depth study to determine the overall impact on the Commonwealth and its receivables.

RECOMMENDATIONS

ESTABLISH AN ONGOING TASK FORCE COMPRISED OF REPRESENTATIVES FROM THE ENTITIES CHARGED WITH COLLECTING THE COMMONWEALTH'S RECEIVABLES AND LEGISLATIVE STAFF MEMBERS TO ADDRESS COMMON VULNERABILITIES IN THE AREAS OF TECHNOLOGY, LEGISLATION, AND PROCESSES

While in-house technical support will continue to be required for the foreseeable future, it makes fiscal and operational sense to create communication bridges among the entities that collect the Commonwealth's receivables. Therefore, information and innovations may be implemented within the framework of what already exists and what should exist across the Commonwealth. These bridges will ensure that, along with implementing new technologies, the Commonwealth will develop policies and governing systems to manage the technologies.

This task force also should collaborate with the financial arms of the Commonwealth – the Secretary of Finance, the Auditor of Public Accounts, the Comptroller, the Treasurer, and the Tax Commissioner – to evaluate and define the \$1.29 billion in accounts receivables due the Commonwealth.¹⁴ A shared understanding of the nature of this debt will enhance reporting, collectibility, and write-off status accuracies.

DDC WILL EXPLORE THE FEASIBILITY OF PARTNERING WITH BETTER BUSINESS BUREAUS THROUGHOUT THE COMMONWEALTH TO PUBLISH A CURRENT LIST OF COMPANIES WITH UNSATISFIED JUDGMENTS IN FAVOR OF THE COMMONWEALTH

This initiative parallels reporting procedures utilized by Tax and DCSE. Tax publishes a list of delinquent business taxpayers, and DCSE publishes a most wanted list of delinquent parents. According to its website, the Better Business Bureau network publishes reliability reports that contain information on actions against companies or their principals “brought by government agencies that allege violations of laws or regulations relevant to marketplace activities and that are relevant to consumer's buying decisions.” <http://www.bbb.org/about/faq.asp#faq15>. This criterion fits many of the judgments obtained by this Office on behalf of the Commonwealth.

¹⁴ This figure is documented in the Report on Statewide Financial Management and Compliance for the Quarter Ended June 30, 2006, prepared by the Office of the Comptroller, Department of Accounts. http://www.doa.virginia.gov/General_Accounting/Quarterly_Report/2006/June_2006.pdf.

STATUTORY CHANGES ARE REQUIRED TO CLARIFY THE UNIQUE NATURE OF ALL DEBTS TO THE COMMONWEALTH

Public policy considerations have resulted in powerful statutory tools for Tax and DCSE. Both Tax and DCSE collect priority debt, stepping ahead of other creditors who would otherwise be first in line for payment. Tax collections benefit from the Memorandum of Lien that carries the force of judgment, places the burden on the debtor to disprove the delinquency, and allows Tax to utilize additional collection tools. For example, Tax may convert a business liability from the company to the responsible officers, revoke sales tax certificates, padlock businesses, and enforce jeopardy assessments. Similarly, DCSE can issue an administrative support order that forms a priority lien on a debtor's real and personal property without a judgment. Commonwealth's Attorneys also have a powerful tool in the collection of referred court fines, costs, forfeitures, and penalties, which are docketed as civil judgments without further legal action.

Policy concerns regarding the nature of other debt to the Commonwealth may prevent the full extension of the referenced statutory tools to the collection of some of the Commonwealth's debt, for example, medical bills or highway damage. Nevertheless, the source of payment for these debts will always be the taxpayers unless charged back to the appropriate debtor. Thus, legislative amendments are recommended for the following statutory provisions, in order to ensure a maximum return to the public coffers, both general and nongeneral:

- Section 2.2-4804 mandates an annual joint report by the Department of Accounts (DOA) and the Office of the Attorney General on the agencies that are not satisfactorily implementing the Virginia Debt Collection Act and not establishing effective accounts receivable programs. The joint report is due by October 1 of each year pursuant to § 2.2-608, which establishes October 1 of each year as the due date on all reports, unless otherwise specified. On a monthly basis, DDC supplies data to DOA for compilation in its quarterly report. The cumulative fourth quarter report is submitted in compliance with § 2.2-4804. The DOA, however, cannot issue its fourth quarter report until all reporting agencies have closed their books and submitted their data, and the DOA has analyzed the data. According to DOA, § 2.2-4804 should be amended to specify a due date on or before November 15 of each year to ensure timely compliance. While this recommendation does not have a direct impact on collections, it does eliminate a timing problem in the collections reporting process.
- Section 1-18, Item 52(B)(1) of the 2006 Appropriation Act requires a transfer to the general fund of effectively 40% of receivables collected by DDC for non-exempt agencies. Amendment to the Appropriation Act should be considered to remove this general fund deposit requirement and to clarify that

all receivables net fees collected by DDC shall be transferred to the referring agency.

- Section 8.01-382 authorizes judgment interest on any jury award or judgment or decree of the court, but is silent regarding final administrative orders that can be recorded and enforced as judgments. Amendment of this provision is recommended to clarify that such interest also will accrue on final administrative orders. Agencies that will benefit from this amendment include the Workers' Compensation Commission, the Department of Forestry, the Department of Agriculture and Consumer Services, and the Virginia State Bar.
- Sections 60.2-619 through 60.2-635 of the *Code* (TIT. 60.2, CH. 6, ART. 5 AND 6) impact the enforceability of final orders issued by VEC regarding overpayment of benefits. Recommended legislation is intended to change several statutory provisions of Articles 5 and 6 to allow the final orders to be docketed in the circuit court as judgments. Such legislation would mirror the statutory scheme available to the Workers' Compensation Commission (WCC) to ensure that the Attorney General can represent VEC in its collection of benefits overpayments in an efficient manner that also affords due process to claimants. This legislative change would allow DDC to focus its efforts on actual collection of enforceable debt, rather than on reestablishing liability in court following a final administrative determination of liability.
- Section 37.2-721 allows the Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS) to record a lien on the real and personal estate of a deceased patient (consumer). Currently, the notice of lien must be filed within four months of the consumer's death. It is recommended that § 37.2-721 be amended to extend the time for filing the notice of lien to conform with the timeframe for disbursement of estate assets without liability under Title 64.1, Wills and Decedent's Estates.
- Section 37.2-719 assesses \$5 per week against the person responsible for the support of a mental health facility consumer when the responsible person is nonresponsive and uncooperative in providing asset information. Because this enforcement tool is ineffective, it is recommended that the statute be amended to authorize DMHMRSAS to issue a Formal Notice to Appear (a prejudgment equivalent of Debtor Interrogatories) to the responsible person under § 37.2-715 to answer questions and provide information so DMHMRSAS can make the Ability to Pay Determination required by § 37.2-717. The amendment should authorize DMHMRSAS to request court-issued subpoenas to compel attendance for anyone failing to appear on a Formal Notice to Appear. Tax and DCSE currently have similar enforcement tools.

**FURTHER STUDY BY DDC IN CONJUNCTION WITH THE DEPARTMENT OF
PLANNING AND BUDGET IS REQUIRED ON THE FISCAL IMPACT OF OTHER
POTENTIAL LEGISLATIVE INITIATIVES**

- Review the administrative processes that result in final administrative orders for state agencies to conform the various procedures regarding notice and appeal to ensure due process requirements are met and consider legislation that allows agencies with a statutory hearing and appeals process to docket and enforce final administrative orders as circuit court judgments.
- Create a centralized state collection process within DDC to monitor and oversee private collection agencies currently utilized by agencies of the Commonwealth.
- Consider amending § 8.01-66.9 of the *Code* in response to the United States Supreme Court's limitation on the collection of Medicaid liens in Ahlborn.
- Consider amending § 46.2-1110 of the *Code* to establish strict liability without regard to negligence for drivers who damage highway property maintained by the Commonwealth, similar to the strict liability that currently exists for exceeding tunnel height requirements or colliding with overhead bridge structures.
- Form a statewide "lien depository" for docketing of claims adjudicated (administratively or judicially) in favor of the Commonwealth to reach all assets of the debtor that are located in the Commonwealth.

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Item	Item Details(\$)		Appropriations(\$)	
	First Year	Second Year	First Year	Second Year
§ 1-22. ATTORNEY GENERAL AND DEPARTMENT OF LAW Attorney General (141)				
38.	Legal Advice (3200000)		\$5,411,850	\$5,654,840
	State Agency/Local Legal Assistance and Advice (3200200)	\$5,411,850	\$5,854,840	
	Fund Sources : General	\$5,369,850	\$5,814,340	
	Federal Trust	\$42,000	\$40,500	
	Authority : Title 2.1, Chapter 11, Code of Virginia.			
	Out of the amounts for State Agency/Local Legal Assistance and Advice shall be paid:			
	1. The salary of the Attorney General, \$56,000 the first year and \$56,000 the second year.			
	2. Expenses of the Attorney General not otherwise reimbursed \$6,000 each year in equal monthly installments of \$500.			
	3. Salary expenses necessary to provide legal services pursuant to Title 2.1, Chapter 11, Code of Virginia.			
	Expenditures out of this general fund appropriation on behalf of programs which are funded wholly or partially from nongeneral fund appropriations shall be recovered to the general fund. If the recovery is not expressly provided by other items in this act, the Department of Law shall bill the affected agencies for legal services and pay the receipts into the general fund.			
39.	Regulation of Business Practices (5520000)		\$276,400	\$293,100
	Anti-Trust Monitoring and Regulation (5520190)	\$276,400	\$293,100	
	Fund Sources : General	\$276,400	\$293,100	
	Authority : § 2.1-117, Code of Virginia.			
40.	Adjudication Training, Education and Standards (3260000)		\$143,900	\$152,800
	Specialized Adjudicatory Training (3260500)	\$143,900	\$152,800	
	Fund Sources : General	\$143,900	\$152,800	
	Authority : § 2.1-117, Code of Virginia.			
41.	Consumer Affairs Clearinghouse Services (5500000)		\$337,500	\$359,700
	Fund Sources : General	\$337,500	\$359,700	
	Authority : §§ 2.1-133.1, 2.1-133.2, and 2.1-133.3, Code of Virginia.			
41.1.	Administrative and Support Services (7190000)		\$284,500	\$147,700
	Computer Services (7190200)	\$284,500	\$147,700	
	Fund Sources : General	\$284,500	\$147,700	
	Authority : Title 2.1, Chapter 11, Code of Virginia.			
41.2.	Collection Services (7400000)		\$238,200	\$216,400
	Fund Sources : General	\$238,200	\$216,400	

Item	Item Details(\$)		Appropriations(\$)	
	First Year	Second Year	First Year	Second Year
<u>Authority</u> : Title 2.1, Chapter 11, Code of Virginia.				
41.3. Medical Assistance Services (456000)			\$391,150	\$361,600
<u>Fund Sources</u> : General	\$39,100	\$36,200		
Federal Trust	\$352,050	\$325,400		
41.4. Tort Claims Act				
Any judgment rendered pursuant to the Virginia Tort Claims Act shall be paid out of the state treasury under the direction of the Attorney General. Claims against agencies funded solely from the general fund shall be paid from the general fund. Claims against agencies funded by nongeneral-general funds shall be paid from a combination of funds based upon the appropriations from such funds.				
Total for Attorney General and Department of Law			\$7,083,500	\$7,186,140
Maximum Employment Level	204.00	204.00		
<u>Fund Sources</u> : General	\$6,689,450	\$6,820,240		
Federal Trust	\$394,050	\$365,900		
Division of War Veterans' Claims (144)				
42. Continuing Income Assistance Services (4610000)			\$1,566,900	\$1,602,300
Veterans and Dependents Assistance Services (4610400)	\$1,566,900	\$1,602,300		
<u>Fund Sources</u> : General	\$1,566,900	\$1,602,300		
<u>Authority</u> : § 2.1-129, Code of Virginia.				
43. Higher Education Student Financial Assistance (1080000)			\$400	\$400
Scholarships and Loans (1081000)	\$400	\$400		
<u>Fund Sources</u> : General	\$400	\$400		
<u>Authority</u> : § 23-7.1, Code of Virginia.				
It is provided that:				
1. The maximum amount payable from this item in any year for a child eligible under provisions of the Code is \$400.				
2. The sum paid to any child from this item shall be reduced by the value of free tuition in State institutions and by the amount of aid payable to the child pursuant to federal law.				
3. No child may receive benefits of this or similar state appropriations for more than four school years.				
Total for Division of War Veterans' Claims			\$1,567,300	\$1,602,700
Maximum Employment Level	76.00	76.00		
<u>Fund Sources</u> : General	\$1,567,300	\$1,602,700		
Grand Total for Attorney General and Department of Law			\$8,650,800	\$8,788,840
Maximum Employment Level	280.00	280.00		
<u>Fund Sources</u> : General	\$8,256,750	\$8,422,940		

Item	Item Detail(\$)		Appropriation(\$)	
	First Year	Second Year	First Year	Second Year
Federal Trust	\$394,050	\$365,900		
TOTAL FOR STATEWIDE ELECTED OFFICERS			\$10,159,430	\$10,316,070
Maximum Employment Level	319.00	319.00		
<u>Fund Sources</u> : General	\$9,765,380	\$9,951,070		
Federal Trust	\$394,050	\$365,900		

received annually by the Commonwealth from the Tennessee Valley Authority in lieu of taxes shall be apportioned among the cities and counties in which the Tennessee Valley Authority owns property or where Tennessee Valley Authority power is distributed. The ~~Department of Taxation~~ *Department of Accounts* is hereby authorized and directed to make annual payments to the localities in the following manner: three-fourths of such payments shall be apportioned by paying to each locality its percentage of total sales in Virginia by distributors of Tennessee Valley Authority power during the preceding fiscal year as determined pursuant to paragraph B of this section; the remaining one-fourth of such payment shall be apportioned by paying to each locality its percentage of the net book value of the power property held in Virginia by the Tennessee Valley Authority as determined pursuant to paragraph C of this section.

B. The determination of each locality's percentage of sales in Virginia by distributors of Tennessee Valley Authority power shall be based upon reports filed by the distributors, which reports shall be filed with the Department of Taxation by September 1 of each year. Such reports shall contain the number of kilowatt hours of power sold by the distributor in each Virginia locality during the preceding year.

C. The determination of each locality's percentage of the net book value of the power property held in Virginia by the Tennessee Valley Authority shall be based upon the most recent figures provided by the Tennessee Valley Authority to the Department of Taxation.

CHAPTER 71

An Act to amend the Code of Virginia by adding in Chapter 11 of Title 2.1 a section numbered 2.1-133.4, creating the Division of Debt Collection within the Department of Law.

[H 612]

Approved March 4, 1990

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 11 of Title 2.1 a section numbered 2.1-133.4 as follows:

§ 2.1-133.4. Division of Debt Collection.—There is hereby created in the Department of Law a Division of Debt Collection which shall provide all legal services and advice related to the collection of funds owed to the Commonwealth, pursuant to § 2.1-121 and the Virginia Debt Collection Act (§ 2.1-726 et seq.).

The Attorney General may appoint and fix the salaries of such attorneys and employees as may be necessary to carry out the functions of the Division, within the amounts appropriated to the Division, and may supplement such funds from appropriations made to his office for the provision of legal services to the Commonwealth.

CHAPTER 72

An Act to amend and reenact § 54.1-907 of the Code of Virginia, relating to branch pilot license and license renewal fees.

[H 625]

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Division of Debt Collection (143)

52.	Collection Services (74000)	1,665,104	1,663,972
	State Collection Services (74001)	1,665,104	1,663,972
Fund Sources:	Special	1,665,104	1,663,972

Authority: Title 2.2, Chapter 5, Code of Virginia.

A. All agencies and institutions shall follow the procedures for collection of funds owed the Commonwealth as specified in §§2.2-518 and 2.2-4806 of the Code of Virginia, except as provided otherwise therein or in this act.

B.1. There is hereby created on the books of the Comptroller a special nonreverting fund known as the "Debt Collection Recovery Fund." The Division of Debt Collection shall deposit to the Fund all revenues generated by it, less any cost of recovery, from receivables collected on behalf of state agencies, pursuant to §§ 2.2-518 and 2.2-4806 of the Code of Virginia. This deposit provision shall also apply to state agencies for any direct payment received by an agency on an account that has been referred for collection to the Division of Debt Collection. Upon making a deposit into the Fund, the state agency shall report the deposit to the Division of Debt Collection.

2. The Secretary of Finance may make exemptions from the required deposits to the Fund, as specified in B.1. above, upon his determination that such collections are more appropriately returned to the fund source in which such receivables are due. Any such exemptions shall be reported by the Secretary of Finance to the Division of Debt Collection and to the Chairmen of the Senate Finance and House Appropriations Committees within 30 days of such approval.

3.a. The Division of Debt Collection is entitled to retain as fees up to 30 percent of any revenues generated by it pursuant to paragraph B.1. to pay operating costs supported by the appropriation in this item.

b. Upon closing its books at the end of the fiscal year, after the execution of all transfers as required by paragraph B.5. of this item, the Division of Debt Collection shall transfer to the general fund all retained fees in excess of a \$400,000 balance in its operating accounts after payment of all fiscal year operating costs.

4. The Director, Department of Planning and Budget, may grant an exception to the provisions in paragraph B.3.b. if the Division of Debt Collection can show just cause.

5. From the amounts collected for the Fund, 30 percent shall be returned to the state agency for which the claim was collected. Out of the balance in the Fund, the State Comptroller shall transfer up to \$3,444,000 to the general fund on or before June 30, 2007, and up to \$3,444,000 on or before June 30, 2008. Any amount in excess of the transfer which remains in the Debt Collection Recovery Fund each year after the transfer shall be returned on a pro rata basis to all state agencies having claims collected by the Division of Debt Collection during the course of the year, to the extent that such collections contributed to the balance in the Fund.

C. The Division of Debt Collection may contract with private collection agents for the collection of

debts amounting to less than \$15,000.

D. The Attorney General shall provide a report on the most cost-effective strategies for improving Virginia's collections of accounts receivable, including both general and nongeneral fund receivables. The Secretary of Finance shall provide assistance as necessary in the preparation of this report. Copies of this report shall be provided to the Governor and the Chairmen of the House Appropriations and Senate Finance Committees by October 16, 2006.

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§ 2.2-500. Attorney General to be chief executive officer; duties generally.

The Attorney General shall be the chief executive officer of the Department of Law, and shall perform such duties as may be provided by law.

(Code 1950, § 2-85; 1966, c. 677, § 2.1-117; 2001, c. 844.)

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§ 2.2-518. Division of Debt Collection.

There is created in the Department of Law a Division of Debt Collection that shall provide all legal services and advice related to the collection of funds owed to the Commonwealth, pursuant to § [2.2-507](#) and the Virginia Debt Collection Act (§ [2.2-4800](#) et seq.).

The Attorney General may appoint and fix the salaries of such attorneys and employees as may be necessary to carry out the functions of the Division, within the amounts appropriated to the Division, and may supplement such funds from appropriations made to his office for the provision of legal services to the Commonwealth.

The Division may retain as special revenue up to 30 percent of receivables collected on behalf of state agencies and may contract with private collection agents for the collection of debts amounting to less than \$15,000, as provided in the appropriation act.

(1990, c. 71, § 2.1-133.4; 2001, c. 844; 2004, c. 919.)

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§ 58.1-1803. Department of Taxation may appoint collectors of delinquent state taxes; Contract Collector Fund established.

A. The Department of Taxation may appoint a collector in any county or city, including the treasurer thereof, to collect delinquent state taxes therein, or elsewhere in the Commonwealth, and may allow him a reasonable compensation, to be agreed on before the service is commenced. Where the appointed collector is a local government treasurer, any actions taken pursuant to this section shall be considered part of the official duties of such treasurer.

B. The Department of Taxation may appoint collectors or contract with collection agencies to collect delinquent state taxes and allow reasonable compensation for such services, to be agreed on before the service is commenced. Delinquent claims for state taxes may be assigned to collectors or collection agencies so designated for the purpose of litigation in the Department of Taxation's name and at the Department of Taxation's expense.

C. Such collectors who are attorneys-at-law shall have authority to institute actions at law or suits in equity for the recovery of state taxes. For the purpose of this section, the term "state taxes" shall include any penalty and interest and shall also include the local sales and use tax imposed under the authority of §§ [58.1-605](#) and [58.1-606](#) and any penalty and interest applicable thereto. Each collector so appointed or collection agency so contracted with shall give bond to the Commonwealth for the faithful performance of the duties placed upon him by this section, in a penalty to be fixed by the Tax Commissioner, in whose office the bond shall be filed. Notwithstanding any other provision of law, any local government treasurer so appointed may collect any delinquent state taxes pursuant to the provisions of Article 2 (§ [58.1-3910](#) et seq.) of Chapter 39 of this title. Any county or city treasurer turning over delinquent tax tickets to any such collector in pursuance of orders issued by the Department of Taxation shall receive credit on the Comptroller's books for the amount so turned over.

D. There is hereby established a special fund in the state treasury to be known as the Contract Collector Fund, hereinafter referred to as the Fund. All moneys collected by collectors and collection agencies appointed by or under contract with the Department of Taxation pursuant to this section shall be placed in the Fund. Compensation of such collectors and collection agencies shall be paid out of the Fund on warrant of the Comptroller. The Comptroller shall transfer to the appropriate general, nongeneral, or local fund all moneys in the Fund in excess of that required to be paid to persons under contract, as determined by the Department, no later than June 30 each year.

(Code 1950, § 58-997; 1984, c. 675; 1985, c. 464; 1994, c. 932; 1996, cc. 362, 391; 2004, c. 546.)

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§ 58.1-1804. Collection out of estate in hands of or debts due by third party.

The Tax Commissioner may apply in writing to any person indebted to or having in his hands estate of a taxpayer for payment of any taxes assessed under § [58.1-313](#) or § [58.1-631](#), or of any taxes more than thirty days delinquent, out of such debt or estate. Payment by such person of such taxes, penalties and interest, either in whole or in part, shall entitle him to a credit against such debt or estate. The taxes, penalties and interest shall constitute a lien on the debt or estate due the taxpayer from the time the application is received. For each application served, the person applied to shall be entitled to a fee of twenty dollars which shall constitute a charge or credit against the debt to or estate of the taxpayer.

The Tax Commissioner shall send a copy of the application to the taxpayer, with a notice informing him of the remedies provided in this chapter.

If the person applied to does not pay so much as ought to be recovered out of such debt or estate, the Tax Commissioner shall procure a summons directing such person to appear before the appropriate court, where the proper payment may be enforced. Any person so summoned shall have the same rights of removal and appeal as are applicable to disputes among individuals.

(Code 1950, § 58-1010; 1960, c. 573; 1983, c. 481; 1984, c. 675.)

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§ 58.1-1805. Memorandum of lien for collection of taxes; release of lien.

A. If any taxes or fees, including penalties and interest, assessed by the Department of Taxation in pursuance of law against any person, are not paid within thirty days after the same become due, the Tax Commissioner may file a memorandum of lien in the circuit court clerk's office of the county or city in which the taxpayer's place of business is located, or in which the taxpayer resides. If the taxpayer has no place of business or residence within the Commonwealth, such memorandum may be filed in the Circuit Court of the City of Richmond. A copy of such memorandum may also be filed in the clerk's office of all counties and cities in which the taxpayer owns real estate. Such memorandum shall be recorded in the judgment docket book and shall have the effect of a judgment in favor of the Commonwealth, to be enforced as provided in Article 19 (§ [8.01-196](#) et seq.) of Chapter 3 of Title 8.01, except that a writ of fieri facias may issue at any time after the memorandum is filed. The lien on real estate shall become effective at the time the memorandum is filed in the jurisdiction in which the real estate is located. No memorandum of lien shall be filed unless the taxpayer is first given ten or more days' prior notice of intent to file a lien; however, in those instances where the Tax Commissioner determines that the collection of any tax, penalties or interest required to be paid pursuant to law will be jeopardized by the provision of such notice, notification may be provided to the taxpayer concurrent with the filing of the memorandum of lien. Such notice shall be given to the taxpayer at his last known address. For purposes of this section, "last known address" means the address shown on the most recent return filed by or on behalf of the taxpayer or the address provided in correspondence by or on behalf of the taxpayer indicating that it is a change of the taxpayer's address.

B. Recordation of a memorandum of lien hereunder shall not affect the right to a refund or exoneration under this chapter, nor shall an application for correction of an erroneous assessment affect the power of the Tax Commissioner to collect the tax, except as specifically provided in this title.

C. If after filing a memorandum of lien as required by subsection A, the Tax Commissioner determines that it is in the best interest of the Commonwealth, the Tax Commissioner may place padlocks on the doors of any business enterprise that is delinquent in either filing or paying any tax owed to the Commonwealth, or both. He shall also post notices of distraint on each of the doors so padlocked. If after three business days, the tax deficiency has not been satisfied or satisfactory arrangements for payment made, the Tax Commissioner may cause a writ of fieri facias to be issued.

It shall be a Class 1 misdemeanor for anyone to enter the padlocked premises without prior approval of the Tax Commissioner.

In the event that the taxpayer against whom the distraint has been applied subsequently makes application for correction of the assessment under § [58.1-1821](#), the taxpayer shall have the right to post bond equaling the amount of the tax liability in lieu of payment until the application is acted upon.

The provisions of subsection C shall be enforceable only after the promulgation, by the Tax Commissioner, of regulations under the Administrative Process Act (§ [2.2-4000](#) et seq.) setting forth the circumstances under which this subsection can be used.

D. A taxpayer may appeal to the Tax Commissioner after a memorandum of lien has been filed under this section if the taxpayer alleges an error in the filing of the lien. The Tax Commissioner shall make a determination of such an appeal within fourteen days. If the Tax Commissioner determines that the filing was erroneous, he shall issue a certificate of release of the lien within seven days after such

determination is made.

(Code 1950, §§ 58-41 to 58-43; 1971, Ex. Sess., c. 155; 1984, c. 675; 1985, c. 221; 1989, cc. 629, 642; 1993, c. 384; 1996, c. 634.)

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§ 58.1-1806. Additional proceedings for the collection of taxes; jurisdiction and venue.

The payment of any state taxes and the filing of returns may, in addition to the remedies provided in this chapter be enforced by action at law, suit in equity or by attachment in the same manner, to the same extent and with the same rights of appeal as now exist or may hereafter be provided by law for the enforcement of demands between individuals. The venue for any such proceeding under this section shall be as specified in subdivision 13 a of § [8.01-261](#). Such proceedings shall be instituted and conducted in the name of the Commonwealth of Virginia.

(Code 1950, §§ 58-44, 58-1014, 58-1016; 1954, c. 333; 1977, c. 624; 1981, c. 421; 1984, c. 675.)

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§ 63.2-1901. Purpose of chapter; powers and duties of the Department.

It is the purpose of this chapter to promote the efficient and accurate collection, accounting and receipt of support for financially dependent children and their custodians, and to further the effective and timely enforcement of such support while ensuring that all functions in the Department are appropriate or necessary to comply with applicable federal law.

When so ordered by the court or the Department, support for financially dependent children and their custodians shall be paid by obligors to the Department's State Disbursement Unit (SDU) or in district offices located within the Commonwealth for processing by the SDU. The Department shall have authority to enter into contracts with any appropriate public or private entities to enforce, collect, account for and disburse payments for child or spousal support.

The Division of Child Support Enforcement within the Department shall be authorized to issue payments to implement the disbursement of funds pursuant to the provisions of this section.

(1974, c. 413, § 63.1-249; 1975, c. 596; 1976, c. 357; 1987, cc. 658, 706; 1998, c. 727; 2001, c. 573; 2002, c. 747.)

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§ 19.2-349. Responsibility for collections; clerks to report unsatisfied fines, etc.; duty of attorneys for Commonwealth; duties of Department of Taxation.

A. The clerk of the circuit court and district court of every county and city shall submit to the judge of his court, the Department of Taxation, the State Compensation Board and the attorney for the Commonwealth of his county or city a monthly report of all fines, costs, forfeitures and penalties which are delinquent more than 30 days, including court-ordered restitution of a sum certain, imposed in his court for a violation of state law or a local ordinance which remain unsatisfied, including those which are delinquent in installment payments. The monthly report shall include the social security number or driver's license number of the defendant, if known, and such other information as the Department of Taxation and the Compensation Board deem appropriate. The Executive Secretary shall make the report required by this subsection on behalf of those clerks who participate in the Supreme Court's automated information system.

B. It shall be the duty of the attorney for the Commonwealth to cause proper proceedings to be instituted for the collection and satisfaction of all fines, costs, forfeitures, penalties and restitution. The attorney for the Commonwealth shall determine whether it would be impractical or uneconomical for such service to be rendered by the office of the attorney for the Commonwealth. If the defendant does not enter into an installment payment agreement under § 19.2-354, the attorney for the Commonwealth and the clerk may agree to a process by which collection activity may be commenced 15 days after judgment.

If the attorney for the Commonwealth does not undertake collection, he shall contract with (i) private attorneys or private collection agencies, (ii) enter into an agreement with a local governing body, (iii) enter into an agreement with the county or city treasurer, or (iv) use the services of the Department of Taxation, upon such terms and conditions as may be established by guidelines promulgated by the Office of the Attorney General, the Executive Secretary of the Supreme Court with the Department of Taxation and the Compensation Board. If the attorney for the Commonwealth undertakes collection, he shall follow the procedures established by the Department of Taxation and the Compensation Board. Such guidelines shall not supersede contracts between attorneys for the Commonwealth and private attorneys and collection agencies when active collection efforts are being undertaken.

The fees of any private attorneys or collection agencies shall be paid on a contingency fee basis out of the proceeds of the amounts collected. However, in no event shall such attorney or collection agency receive a fee for amounts collected by the Department of Taxation under the Setoff Debt Collection Act (§ 58.1-520 et seq.). A local treasurer undertaking collection pursuant to an agreement with the attorney for the Commonwealth may collect the administrative fee authorized by § 58.1-3958.

C. The Department of Taxation and the State Compensation Board shall be responsible for the collection of any judgment which remains unsatisfied or does not meet the conditions of § 19.2-354. Persons owing such unsatisfied judgments or failing to comply with installment payment agreements under § 19.2-354 shall be subject to the delinquent tax collection provisions of Title 58.1. The Department of Taxation and the State Compensation Board shall establish procedures to be followed by clerks of courts, attorneys for the Commonwealth, other state agencies and any private attorneys or collection agents and may employ private attorneys or collection agencies, or engage other state agencies to collect the judgment. The Department of Taxation and the Commonwealth shall be entitled to deduct a fee for services from amounts collected for violations of local ordinances.

The Department of Taxation and the State Compensation Board shall annually report to the Governor and the General Assembly the total of fines, costs, forfeitures and penalties assessed, collected, and unpaid and those which remain unsatisfied or do not meet the conditions of § 19.2-354 by each circuit and district court. The report shall include the procedures established by the Department of Taxation and the State Compensation Board pursuant to this section and a plan for increasing the collection of unpaid fines, costs, forfeitures and penalties. The Auditor of Public Accounts shall annually report to the Governor, the Executive Secretary of the Supreme Court and the General Assembly as to the adherence of clerks of courts, attorneys for the Commonwealth and other state agencies to the procedures established by the Department of Taxation and the State Compensation Board.

(Code 1950, § 19.1-341.2; 1960, c. 366; 1975, c. 495; 1979, c. 469; 1983, cc. 415, 499; 1988, cc. 742, 750, 770, 852; 1991, c. 202; 1992, c. 623; 1993, c. 269; 1994, cc. 841, 945; 2001, c. 414; 2003, c. 262; 2006, c. 359.)

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§ 2.2-4806. Utilization of certain collection techniques.

A. Each state agency and institution shall take all appropriate and cost-effective actions to aggressively collect its accounts receivable. Each agency and institution shall utilize, but not be limited to, the following collection techniques, according to the policies and procedures adopted by the Department of Accounts and the Attorney General: (i) credit reporting bureaus, (ii) collection agencies, (iii) garnishments, liens and judgments, and (iv) administrative offset.

B. Except as provided otherwise herein, for collection of accounts receivable of \$3,000 or more that are 60 days or more past due, each agency and institution shall forward those claims to the Office of Attorney General, Division of Debt Collection for collection. The Attorney General shall review forwarded accounts, determine the appropriate collection efforts, if any, for each account, and take such actions on the accounts as he may so determine.

C. Except as provided otherwise herein, for collection of accounts receivable under \$3,000 that are 60 days or more past due, each agency and institution shall contract with a private collection agency for the collection of those debts. Prior to referring accounts receivable of less than \$3,000, agencies and institutions may refer such accounts to the Office of Attorney General, Division of Debt Collection. The Attorney General may accept the account for collection or return it to the agency or institution for collection by a private collection agency.

D. Where an agency or institution has procedures to secure payment, or the debtor is paying a debt in periodic payments satisfactory to the agency or institution, it may elect to retain the claim in excess of 60 days pending results of such procedures, or until the account is satisfied.

(1988, c. 544, § 2.1-733; 2001, c. 844; 2004, c. 919.)

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5.02 (language only)

§4-5.02 THIRD PARTY TRANSACTIONS

a. EMPLOYMENT OF ATTORNEYS:

1. All attorneys authorized by this act to be employed by any state agency and all attorneys compensated out of any moneys appropriated in this session of the General Assembly shall be appointed by the Attorney General and be in all respects subject to the provisions of Title 2.2, Chapter 5, Code of Virginia, to the extent not to conflict with Title 12.1, Chapter 4, Code of Virginia; provided, however, that if the Governor certifies the need for independent legal counsel for any Executive Department agency, such agency shall be free to act independently of the Office of the Attorney General in regard to selection, and provided, further, that compensation of such independent legal counsel shall be paid from the moneys appropriated to such Executive Department agency or from the moneys appropriated to the Office of the Attorney General.

2. This section does not apply to attorneys employed by state agencies in the Legislative Department, Judicial Department or Independent Agencies.

3. Reporting on employment of attorneys shall be in accordance with § 4-8.00, Reporting Requirements.

b. STUDIES AND CONSULTATIVE SERVICES REQUIRED BY GENERAL ASSEMBLY: No expenditure for payments on third party nongovernmental contracts for studies or consultative services shall be made out of any appropriation to the General Assembly or to any study group created by the General Assembly, nor shall any such expenditure for third party nongovernmental contracts be made by any Executive Department agency in response to a legislative request for a study, without the prior approval of two of the following persons: the Chairman of the House Appropriations Committee; the Chairman of the Senate Finance Committee; the Speaker of the House of Delegates; the President pro tempore of the Senate. All such expenditures shall be made only in accordance with the terms of a written contract approved as to form by the Attorney General.

c. USE OF CONSULTING SERVICES: All state agencies and institutions of higher education shall make a determination of "return on investment" as part of the criteria for awarding contracts for consulting services.

d. DEBT COLLECTION SERVICES:

1. Notwithstanding any provision of the Code of Virginia or this act to the contrary, the Virginia Commonwealth University Health System Authority shall have the option to participate in the Office of the Attorney General's debt collection process. Should the Authority choose not to participate, the Authority shall have the authority to collect its accounts receivable by engaging private collection agents and attorneys to pursue collection actions, and to independently compromise, settle, and discharge accounts receivable claims.

2. Notwithstanding any provision of the Code of Virginia or this act to the contrary, the University of Virginia Medical Center shall have the authority to collect its accounts receivable by engaging private collection agents and attorneys to pursue collection actions, and to independently compromise, settle, and discharge accounts receivable claims, provided that the University of Virginia demonstrates to the

Secretary of Finance that debt collection by an agent other than the Office of the Attorney General is anticipated to be more cost effective. Nothing in this paragraph is intended to limit the ability of the University of Virginia Medical Center from voluntarily contracting with the Office of the Attorney General's Division of Debt Collection in cases where the Center would benefit from the expertise of legal counsel and collection services offered by the Office of the Attorney General.

3. Notwithstanding any provision of the Code of Virginia or this act to the contrary, the Department of Taxation shall be exempt from participating in the debt collection process of the Office of the Attorney General.

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§ 2.2-4800. Policy of the Commonwealth; collection of accounts receivable.

This chapter establishes the policy of the Commonwealth as it relates to the accounting for, management and collection of all accounts receivable due to the Commonwealth. It shall be the policy of the Commonwealth that all state agencies and institutions shall take all appropriate and cost-effective actions to aggressively collect all accounts receivable. All state agencies and institutions shall be subject to this chapter and shall establish internal policies and procedures for the management and collection of accounts receivable that are in accordance with regulations adopted by the Department of Accounts and the Office of the Attorney General.

(1988, c. 544, § 2.1-727; 2001, c. 844.)

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§ 58.1-520. Definitions.

As used in this article:

"Claimant agency" means any administrative unit of state, county, city or town government, including department, institution, commission, authority, or the office of Executive Secretary of the Supreme Court, any circuit or district court and the Internal Revenue Service. All state agencies and institutions shall participate in the setoff program.

"Debtor" means any individual having a delinquent debt or account with any claimant agency which obligation has not been satisfied by court order, set aside by court order, or discharged in bankruptcy.

"Delinquent debt" means any liquidated sum due and owing any claimant agency, or any restitution ordered paid to a clerk of the court pursuant to Title 19.2, including any amount of court costs or fines which have accrued through contract, subrogation, tort, operation of law, or any other legal theory regardless of whether there is an outstanding judgment for that sum which is legally collectible and for which a collection effort has been or is being made.

"Mailing date of notice" means the date of notice appearing thereon.

"Refund" means any individual's Virginia state or local income tax refund payable pursuant to §§ [58.1-309](#) and [58.1-546](#). This term also includes any refund belonging to a debtor resulting from the filing of a joint income tax return or a refund belonging to a debtor resulting from the filing of a return where husband and wife have elected to file a combined return and separately state their Virginia taxable incomes under the provisions of § [58.1-324 B 2](#).

(Code 1950, § 58-19.7; 1981, c. 408; 1982, c. 621; 1983, c. 545; 1984, cc. 269, 675; 1986, c. 322; 1988, c. 544; 1989, cc. 77, 245; 1994, c. 197; 1996, cc. 363, 413.)

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§ 8.01-231. Commonwealth not within statute of limitations.

No statute of limitations which shall not in express terms apply to the Commonwealth shall be deemed a bar to any proceeding by or on behalf of the same.

(Code 1950, § 8-35; 1958, c. 221; 1977, c. 617; 1988, c. 544.)

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§ 17.1-629. No judgment for costs against Commonwealth; exception.

In no case, civil or criminal, whether in a court of record or a court not of record, except when otherwise specially provided, shall there be a judgment for costs against the Commonwealth.

(Code 1950, § 14-197; 1964, c. 386, § 14.1-201; 1998, c. 872.)

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§ 8.01-66.9. Lien in favor of Commonwealth, its programs, institutions or departments on claim for personal injuries.

Whenever any person sustains personal injuries and receives treatment in any hospital, public or private, or nursing home, or receives medical attention or treatment from any physician, or receives nursing services or care from any registered nurse in this Commonwealth, or receives pharmaceutical goods or any type of medical or rehabilitative device, apparatus, or treatment which is paid for pursuant to the Virginia Medical Assistance Program, the State/Local Hospitalization Program and other programs of the Department of Medical Assistance Services, the Maternal and Child Health Program, or the Children's Specialty Services Program, or provided at or paid for by any hospital or rehabilitation center operated by the Commonwealth, the Department of Rehabilitative Services or any state institution of higher education, the Commonwealth shall have a lien for the total amount paid pursuant to such program, and the Commonwealth or such Department or institution shall have a lien for the total amount due for the services, equipment or devices provided at or paid for by such hospital or center operated by the Commonwealth or such Department or institution, or any portion thereof compromised pursuant to the authority granted under § 2.2-514, on the claim of such injured person or of his personal representative against the person, firm, or corporation who is alleged to have caused such injuries.

The Commonwealth or such Department or institution shall also have a lien on the claim of the injured person or his personal representative for any funds which may be due him from insurance moneys received for such medical services under the injured party's own insurance coverage or through an uninsured or underinsured motorist insurance coverage endorsement. The lien granted to the Commonwealth for the total amounts paid pursuant to the Virginia Medical Assistance Program, the State/Local Hospitalization Program and other programs of the Department of Medical Assistance Services, the Maternal and Child Health Program, or the Children's Specialty Services Program shall have priority over the lien for the amounts due for services, equipment or devices provided at a hospital or center operated by the Commonwealth. The Commonwealth's or such Department's or institution's lien shall be inferior to any lien for payment of reasonable attorney's fees and costs, but shall be superior to all other liens created by the provisions of this chapter and otherwise. Expenses for reasonable legal fees and costs shall be deducted from the total amount recovered. The amount of the lien may be compromised pursuant to § 2.2-514.

The court in which a suit by an injured person or his personal representative has been filed against the person, firm or corporation alleged to have caused such injuries or in which such suit may properly be filed, may, upon motion or petition by the injured person, his personal representative or his attorney, and after written notice is given to all those holding liens attaching to the recovery, reduce the amount of the liens and apportion the recovery, whether by verdict or negotiated settlement, between the plaintiff, the plaintiff's attorney, and the Commonwealth or such Department or institution as the equities of the case may appear, provided that the injured person, his personal representative or attorney has made a good faith effort to negotiate a compromise pursuant to § 2.2-514. The court shall set forth the basis for any such reduction in a written order.

(Code 1950, § 32-139.1; 1972, c. 481; 1974, c. 518; 1979, c. 722; 1981, c. 562; 1982, c. 491; 1983, c. 263; 1984, c. 767; 1985, c. 580; 1986, c. 238; 1988, c. 544; 1989, c. 624; 1992, c. 104; 2003, c. 525.)

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§ 46.2-417. Suspension for failure to satisfy motor vehicle accident judgment; exceptions; insurance in liquidated company; insurer obligated to pay judgment.

A. Upon the application of any judgment creditor, the Commissioner shall suspend the driver's license and all of the registration certificates and license plates of any person who has failed for 30 days to satisfy any judgment (i) in an amount and on a cause of action as hereinafter stated in this subsection or (ii) in an amount and on a cause of action pursuant to §§ [15.2-1716](#) or [15.2-1716.1](#), immediately upon receiving an authenticated judgment order or abstract thereof in an action for damages in a motor vehicle accident or pursuant to §§ [15.2-1716](#) or [15.2-1716.1](#), if the order or abstract is received by the Commissioner within 10 years of the date of judgment or if the judgment has been revived. However, if judgment is marked satisfied on the court records on or before the Commissioner's issuance of suspension, the order of suspension shall be invalid.

B. The Commissioner shall not, however, suspend the license of an owner or driver if the insurance carried by him was in a company which was authorized to transact business in this Commonwealth and which subsequent to an accident involving the owner or driver and prior to settlement of the claim therefor went into liquidation, so that the owner or driver is thereby unable to satisfy the judgment arising out of the accident.

C. The Commissioner shall not suspend the driver's license or driving privilege or any registration certificate, license plates, or decals under clause (i) of subsection A of this section or § [46.2-418](#), if the Commissioner finds that an insurer authorized to do business in the Commonwealth was obligated to pay the judgment upon which suspension is based, or that a policy of the insurer covers the person subject to the suspension, if the insurer's obligation or the limits of the policy are in an amount sufficient to meet the minimum amounts required by § [46.2-472](#), even though the insurer has not paid the judgment for any reason. A finding by the Commissioner that an insurer is obligated to pay a judgment, or that a policy of an insurer covers the person, shall not be binding upon the insurer and shall have no legal effect whatever except for the purpose of administering this article. Whenever in any judicial proceeding it is determined by any final judgment, decree, or order that an insurer is not obligated to pay the judgment, the Commissioner, notwithstanding any contrary finding made by him, forthwith shall suspend the driver's license or driving privilege, or any registration card, license plates or decals of any person against whom the judgment was rendered, as provided in subsection A of this section.

(Code 1950, § 46-430; 1958, c. 541, § 46.1-442; 1973, c. 394; 1974, cc. 49, 360; 1984, c. 780; 1988, c. 860; 1989, c. 727; 1992, c. 109; 2004, c. 998.)

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§ 2.2-4805. Interest, administrative charges and penalty fees.

Each state agency and institution may charge interest on all past due accounts receivable in accordance with guidelines adopted by the Department of Accounts and at the underpayment rate prescribed in § [58.1-15](#). Each past due accounts receivable may also be charged an additional amount that shall approximate the administrative costs, excluding attorneys' fees not authorized by contract, arising under § [2.2-4806](#). Agencies and institutions may also assess late penalty fees, not in excess of ten percent of the past-due account on past-due accounts receivable. The Department of Accounts shall adopt regulations concerning the imposition of administrative charges and late penalty fees.

(1988, c. 544, § 2.1-732; 2001, c. 844.)

§ 58.1-1845. Virginia Taxpayer Bill of Rights.

There is created the Virginia Taxpayer Bill of Rights to guarantee that (i) the rights, privacy, and property of Virginia taxpayers are adequately safeguarded and protected during tax assessment, collection, and enforcement processes administered under the revenue laws of the Commonwealth and (ii) the taxpayer is treated with dignity and respect. The Taxpayer Bill of Rights compiles, in one document, brief but comprehensive statements which explain, in simple, nontechnical terms, the rights and obligations of the Department and taxpayers. The rights afforded taxpayers to assure that their privacy and property are safeguarded and protected during tax assessment and collections are available only insofar as they are implemented in other sections of the Code of Virginia or rules of the Department. The rights so guaranteed Virginia taxpayers in the Code of Virginia and the Department's rules and regulations are:

1. The right to available information and prompt, courteous, accurate responses to questions and requests for tax assistance.
2. The right to request assistance from a taxpayers' rights advocate of the Department, in accordance with § [58.1-1818](#), who shall be responsible for facilitating the resolution of taxpayer complaints and problems not resolved through the normal administrative channels within the Department.
3. The right to be represented or advised by counsel or other qualified representatives at any time in administrative interactions with the Department; the right to procedural safeguards with respect to recording of meetings during tax determination or collection processes conducted by the Department in accordance with § [58.1-1834](#); and the right to have audits, inspections of records, and meetings conducted at a reasonable time and place except in criminal and internal investigations, in accordance with § [58.1-307](#).
4. The right to abatement of tax, interest, and penalties, in accordance with § [58.1-1835](#), attributable to any taxes administered by the Department, when the taxpayer reasonably relies upon binding written advice furnished to the taxpayer by the Department through authorized representatives in response to the taxpayer's specific written request which provided adequate and accurate information.
5. The right to obtain simple, nontechnical statements which explain the procedures, remedies, and rights available during audit, appeals, and collection proceedings, including, but not limited to, the rights pursuant to this Taxpayer Bill of Rights and the right to be provided with an explanation for denials of refunds as well as the basis of the audit, assessments, and denials of refunds which identify any amount of tax, interest, or penalty due and which explain the consequences of the taxpayer's failure to comply with the notice, in accordance with § [58.1-1805](#).
6. The right to be informed of impending collection actions which require sale or seizure of property or freezing of assets, except jeopardy assessments, and the right to at least fourteen days' notice in which to pay the liability or seek further review.
7. After a jeopardy assessment, the right to have an immediate review of the jeopardy assessment, in accordance with § [58.1-313](#).
8. The right to seek review, through formal or informal proceedings, of any adverse decisions relating to determinations in the audit or collections processes.

9. The right to have the taxpayer's tax information kept confidential unless otherwise specified by law, in accordance with § 58.1-3.
10. The right to procedures for retirement of tax obligations by installment payment agreements, in accordance with § 58.1-1817, which recognize both the taxpayer's financial condition and the best interests of the Commonwealth, provided that the taxpayer gives accurate, current information and meets all other tax obligations on schedule.
11. The right to procedures, in accordance with § 58.1-1805, for requesting release of liens filed by the Department and for requesting that any lien which is filed in error be so noted on the lien cancellation filed by the Department and in a notice to any credit agency at the taxpayer's request, provided such request is made within three years of the release of the lien by the Department.
12. The right to procedures which assure that the individual employees of the Department are not paid, evaluated, or promoted on the basis of the amount of assessments or collections from taxpayers, in accordance with subdivision 13 of § 58.1-202.
13. The right to have the Department begin and complete its audits in a timely and expeditious manner after notification of intent to audit.

(1996, c. 634.)

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§ 58.1-1821. Application to Tax Commissioner for correction.

Any person assessed with any tax administered by the Department of Taxation may, within ninety days from the date of such assessment, apply for relief to the Tax Commissioner. Such application shall be in the form prescribed by the Department, and shall fully set forth the grounds upon which the taxpayer relies and all facts relevant to the taxpayer's contention. The Tax Commissioner may also require such additional information, testimony or documentary evidence as he deems necessary to a fair determination of the application.

On receipt of a notice of intent to file under this section, the Tax Commissioner shall refrain from collecting the tax until the time for filing hereunder has expired, unless he determines that collection is in jeopardy.

Any person whose tax assessment has been improperly collected by the Department may apply hereunder to assert a claim that any amount so collected was exempt from process.

(Code 1950, § 58-1118; 1950, p. 597; 1956, c. 502; 1971, Ex. Sess., c. 13; 1972, c. 721; 1973, c. 446; 1980, c. 633; 1984, c. 675.)

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§ 58.1-1822. Action of Tax Commissioner on application for correction.

If the Tax Commissioner is satisfied, by evidence submitted to him or otherwise, that an applicant is erroneously or improperly assessed with any tax administered by the Department of Taxation, the Tax Commissioner may order that such assessment be corrected. If the assessment exceeds the proper amount, the Tax Commissioner shall order that the applicant be exonerated from the payment of so much as is erroneously or improperly charged, if not already paid into the state treasury, and, if paid, that it be refunded to him. If the assessment is less than the proper amount, the Tax Commissioner shall order that the applicant pay the proper taxes. He shall refund to the taxpayer any exempt funds which have been improperly collected. The Tax Commissioner shall refrain from collecting a contested assessment until he has made a final determination under this section unless he determines that collection is in jeopardy. In any action on an application for correction, the Tax Commissioner shall state in writing the facts and law supporting the action on such application.

(Code 1950, § 58-1119; 1972, c. 721; 1980, c. 633; 1984, c. 675; 1997, c. 428.)

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§ 58.1-1823. Reassessment and refund upon the filing of amended return or the payment of an assessment.

A. Any person filing a tax return or paying an assessment required for any tax administered by the Department of Taxation may file an amended return with the Department within the later of: (i) three years from the last day prescribed by law for the timely filing of the return; (ii) one year from the final determination of any change or correction in the liability of the taxpayer for any federal tax upon which the state tax is based, provided that the refund does not exceed the amount of the decrease in Virginia tax attributable to such federal change or correction; (iii) two years from the filing of an amended Virginia return resulting in the payment of additional tax, provided that the amended return raises issues relating solely to such prior amended return and that the refund does not exceed the amount of the payment with such prior amended return; (iv) two years from the payment of an assessment, provided that the amended return raises issues relating solely to such assessment and that the refund does not exceed the amount of such payment; or (v) one year from the final determination of any change or correction in the income tax of the taxpayer for any other state, provided that the taxpayer previously claimed a credit for such tax pursuant to § 58.1-332 and that the refund does not exceed the amount of the decrease in Virginia tax attributable to such change or correction. If the Department is satisfied, by evidence submitted to it or otherwise, that the tax assessed and paid upon the original return exceeds the proper amount, the Department may reassess the taxpayer and order that any amount excessively paid be refunded to him. The Department may reduce such refund by the amount of any taxes, penalties and interest which are due for the period covered by the amended return, or any past-due taxes, penalties and interest which have been assessed within the appropriate period of limitations. Any order of the Department denying such reassessment and refund, or the failure of the Department to act thereon within three months shall, as to matters first raised by the amended return, be deemed an assessment for the purpose of enabling the taxpayer to pursue the remedies allowed under this chapter.

B. Notwithstanding the statute of limitations established in this section, any retired employee of a political subdivision of the Commonwealth, established pursuant to Chapter 627 of the 1958 Acts of Assembly, may file an amended individual income tax return until May 1, 1990, for taxable years beginning on and after January 1, 1985, and before January 1, 1986, for taxes paid on retirement income exempt pursuant to § 58.1-322.

C. Notwithstanding the statute of limitations contained in subsection A, any individual who claimed an age subtraction on his 1990 individual income tax return may file an amended individual income tax return on July 1, 1994, for taxable years beginning on and after January 1, 1990, and ending before January 1, 1991, to claim an income deduction as provided in § 58.1-322 D 5 in lieu of the income subtraction originally claimed.

(Code 1950, § 58-1118.1; 1972, c. 721; 1973, c. 446; 1979, c. 690; 1980, c. 633; 1984, c. 675; 1989, Sp. Sess., cc. 1, 2, 6; 1992, c. 678; 1994, c. 488; 1994, 1st Sp. Sess., cc. 2, 5; 1996, cc. 637, 654; 1998, cc. 358, 374; 2006, c. 234.)

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§ 58.1-1824. Protective claim for refund.

Any person who has paid an assessment of taxes administered by the Department of Taxation may preserve his judicial remedies by filing a claim for refund with the Tax Commissioner on forms prescribed by the Department within three years of the date such tax was assessed. Such taxpayer may, at any time before the end of one year after the date of the Tax Commissioner's decision on such claim, seek redress from the circuit court under § [58.1-1825](#). The Tax Commissioner may decide such claim on the merits in the manner provided in § [58.1-1822](#) for appeals under § [58.1-1821](#), or may, in his discretion, hold such claim without decision pending the conclusion of litigation affecting such claim. The fact that such claim is pending shall not be a bar to any other action under this chapter.

(Code 1950, § 58-1119.1; 1980, c. 633; 1984, c. 675.)

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§ 58.1-1825. Application to court for correction of erroneous or improper assessments of state taxes generally.

A. Any person assessed with any tax administered by the Department of Taxation and aggrieved by any such assessment may, unless otherwise specifically provided by law, within (i) three years from the date such assessment is made or (ii) one year from the date of the Tax Commissioner's determination under § [58.1-1822](#), whichever is later, apply to a circuit court for relief. The venue for such proceeding shall be as specified in subdivision 13 b of § [8.01-261](#). The application shall be before the court when it is filed in the clerk's office.

B. Except as provided in subsection C, the court shall require the applicant to pay the assessment before proceeding with its application upon granting a motion by the Tax Commissioner seeking to compel such payment and showing to the satisfaction of the court that the Department is likely to prevail on the merits of the case, that the application is (i) not well grounded in fact; (ii) not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; (iii) interposed for an improper purpose, such as to harass, to cause unnecessary delay in the collection of the revenue, or to create needless cost to the Commonwealth from the litigation; or (iv) otherwise frivolous.

C. In lieu of the payment required in subsection B, the taxpayer may, within 60 days of the court's ruling, (i) post a bond pursuant to the provisions of § [16.1-107](#), with a corporate surety licensed to do business in Virginia, or (ii) file an irrevocable letter of credit satisfactory to the Tax Commissioner as to the bank or savings institution, the form and substance, and payable to the Commonwealth in the face amount of the contested assessment increased by twice the interest rate for underpayments published by the Department and in effect at the time the application is filed. The letter of credit shall be from a bank incorporated or authorized to conduct banking business under the laws of this Commonwealth or authorized to do business in this Commonwealth under the banking laws of the United States, or a federally insured savings institution located in this Commonwealth. Such bond or irrevocable letter of credit shall be conditioned upon payment by the applicant of the amount of the taxes, penalty and interest ordered by the court pursuant to § [58.1-1826](#), if any.

D. Any person whose assessment has been improperly collected from property exempt from process may within three years from the date such assessment is made, or if later, within one year of the Tax Commissioner's decision on a process exemption claim under § [58.1-1821](#) apply to a circuit court for relief. The venue for such proceeding shall be as specified in subdivision 13 b of § [8.01-261](#).

The Department shall be named as defendant, and the proceedings shall be conducted as an action at law before the court sitting without a jury. It shall be the burden of the applicant in any such proceeding to show that the assessment or collection complained of is erroneous or otherwise improper. The court's order shall be entered pursuant to § [58.1-1826](#).

E. Nothing in this section shall prevent the Tax Commissioner from collecting the assessment if he determines that collection is in jeopardy.

(Code 1950, § 58-1130; 1950, p. 598; 1973, c. 280; 1976, c. 311; 1977, c. 624; 1980, c. 633; 1984, c. 675; 1985, c. 221; 1991, c. 714; 1998, c. 529; 2003, c. 908.)

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§ 58.1-202.2. Public-private partnerships; Public Private Partnership Oversight Committee.

A. The Tax Commissioner is hereby authorized through the Department of General Services in accordance with the Virginia Public Procurement Act to enter into public-private partnership contracts to finance agency technology needs. The Tax Commissioner may issue a request for information to seek out potential private partners interested in providing programs pursuant to an agreement under this section. The compensation for such services shall be computed with reference to and paid from the increased revenue attributable to the successful implementation of the technology program for the period specified in the contract.

B. The Public Private Partnership Oversight Committee, hereinafter referred to as the "Committee" is established as an advisory committee in the executive branch of state government to review and approve the terms of contracts under this section relating to the measurement of the revenue attributable to the technology program. The Committee shall consist of five members as follows: one legislative employee appointed by the Senate Committee on Rules after the consideration of the recommendation of the President pro tempore of the Senate, if any; one legislative employee appointed by the Speaker of the House of Delegates; and the State Comptroller, the Director of the Department of Planning and Budget, and the State Internal Auditor, as ex officio voting members. All members shall be citizens of the Commonwealth.

Ex officio members shall serve terms coincident with their terms of office. Legislative employee members shall be appointed for a term of two years and may be reappointed for successive terms. Appointments to fill vacancies, other than by expiration of a term, shall be for the unexpired terms. Vacancies shall be filled in the same manner as the original appointments.

The Tax Commissioner shall preside over the meetings of the Committee. The Committee may select an alternative to preside in the absence of the Tax Commissioner. A majority of the members shall constitute a quorum. The meetings of the Committee shall be held at the call of the Tax Commissioner or whenever the majority of the members so request.

The Tax Commissioner shall submit an annual executive summary and report no later than November 30 to the Governor and General Assembly on all agreements under this section, describing each technology program, its progress, revenue impact, and such other information as may be relevant. The executive summary and report shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be posted on the General Assembly's website.

C. The Tax Commissioner shall determine annually the total amount of increased revenue attributable to the successful implementation of a technology program under this section and such amount shall be deposited in a special fund known as the Technology Partnership Fund (the Fund). The Tax Commissioner is authorized to use moneys deposited in the Fund to pay private partners pursuant to the terms of contracts under this section. All moneys in excess of that required to be paid to private partners, as determined by the Department, shall be reported to the Comptroller and transferred to the appropriate general or nongeneral fund.

(1996, cc. 643, 653; 2004, c. 1000.)

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§ 58.1-1840.1. Virginia Tax Amnesty Program established.

A. There is hereby established the Virginia Tax Amnesty Program. It is the intent of this program to improve voluntary compliance with the tax laws and to increase and to accelerate collections of certain taxes owed to the Commonwealth.

B. The Virginia Tax Amnesty Program shall be administered by the Department of Taxation, and any person, individual, corporation, estate, trust or partnership required to file a return or to pay any tax administered or collected by the Department of Taxation shall be eligible to participate, subject to the requirements set forth below and guidelines established by the Tax Commissioner.

C. The Tax Commissioner shall establish guidelines and rules for the procedures for participation and any other rules that are deemed necessary by the Tax Commissioner. The guidelines and rules issued by the Tax Commissioner regarding the Virginia Tax Amnesty Program shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq.).

D. The Virginia Tax Amnesty Program shall have the following features:

1. The program shall be conducted during the period July 1, 2003, through June 30, 2004, and shall not last less than 60 nor more than 75 days. The exact dates of the program shall be established by the Tax Commissioner.

2. All civil or criminal penalties assessed or assessable, as provided in this title, including the addition to tax under §§ 58.1-492 and 58.1-504, and one-half of the interest assessed or assessable, as provided in this title, which are the result of nonpayment, underpayment, nonreporting or underreporting of tax liabilities, shall be waived upon receipt of the payment of the amount of taxes and interest owed, with the following exceptions:

a. No person, individual, corporation, estate, trust or partnership currently under investigation or prosecution for filing a fraudulent return or failing to file a return with the intent to evade tax shall qualify to participate.

b. No person, individual, corporation, estate, trust or partnership shall be eligible to participate in the program with respect to any assessment outstanding for which the date of assessment is less than 90 days prior to the first day of the program or with respect to any liability arising from the failure to file a return for which the due date of the return is less than 90 days prior to the first day of the program.

c. No person, individual, corporation, estate, or trust shall be eligible to participate in the program with respect to any tax liability from the income taxes imposed by §§ 58.1-320, 58.1-360 and 58.1-400, if the tax liability is attributable to taxable years beginning on and after January 1, 2002.

E. For the purpose of computing the outstanding balance due because of the nonpayment, underpayment, nonreporting or underreporting of any tax liability that has not been assessed prior to the first day of the program, the rate of interest specified for omitted taxes and assessments under § 58.1-15 shall not be applicable. The Tax Commissioner shall, instead, establish one interest rate to be used for each taxable year that approximates the average "underpayment rate" specified under § 58.1-15 for the five-year period immediately preceding the program.

F. 1. If any taxpayer eligible for amnesty under this section and under the rules and guidelines established by the Tax Commissioner retains any outstanding balance after the close of the Virginia Tax Amnesty Program because of the nonpayment, underpayment, nonreporting or underreporting of any tax liability eligible for relief under the Virginia Tax Amnesty Program, then such balance shall be subject to a 20 percent penalty on the unpaid tax. This penalty is in addition to all other penalties that may apply to the taxpayer.

2. Any taxpayer who defaults upon any agreement to pay tax and interest arising out of a grant of amnesty is subject to reinstatement of the penalty and interest forgiven and the imposition of the penalty under this section as though the taxpayer retained the original outstanding balance at the close of the Virginia Tax Amnesty Program.

(2003, cc. 24, 52.)

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§ 63.2-1903. Authority to issue certain orders; civil penalty.

A. In the absence of a court order, the Department shall have the authority to issue orders directing the payment of child, and child and spousal support and, if available at reasonable cost as defined in § 63.2-1900, to require a provision for health care coverage for dependent children of the obligor, which shall include the requirements specified for employers pursuant to subdivision A 5 of § 20-79.3. If health care coverage is unavailable at a reasonable cost through employment, the Department shall refer the dependent children to the Family Access to Medical Insurance Security plan pursuant to § 32.1-351. Liability for child support shall be determined retroactively for the period measured from the date the order directing payment is delivered to the sheriff or process server for service upon the obligor.

In ordering the payment of child support, the Department shall set such support at the amount resulting from computation pursuant to the guideline set out in § 20-108.2, subject to the provisions of § 63.2-1918.

B. When a payee, as defined in § 63.2-1900, no longer has physical custody of a child, the Department shall have the authority to redirect child support payments to a custodial parent who has physical custody of the child when an assignment of rights has been made to the Department or an application for services has been made by such custodial parent with the Division of Child Support Enforcement.

C. The Department shall have the authority, upon notice from the Department of Medical Assistance Services, to use any existing enforcement mechanisms provided by this chapter to collect the wages, salary, or other employment income or to withhold amounts from state tax refunds of any obligor who has not used payments received from a third party to reimburse, as appropriate, either the other parent of such child or the provider of such services, to the extent necessary to reimburse the Department of Medical Assistance Services.

D. The Department may order the obligor and payee to notify each other or the Department upon request of current gross income as defined in § 20-108.2 and any other pertinent information which may affect child support amounts. For good cause shown, the Department may order that such information be provided to the Department and made available to the parties for inspection in lieu of the parties' providing such information directly to each other. The Department shall record the social security number of each party or control number issued to a party by the Department of Motor Vehicles pursuant to § 46.2-342 in the Department's file of the case.

E. The Department shall develop procedures governing the method and timing of periodic review and adjustment of child support orders established or enforced or both pursuant to Title IV-D of the Social Security Act, as amended. At the request of either parent subject to the order or of a state child support enforcement agency, the Department shall initiate a review of such order every three years without requiring proof or showing of a change in circumstances, and shall initiate appropriate action to adjust such order in accordance with the provisions of § 20-108.2 and subject to the provisions of § 63.2-1918.

F. In order to provide essential information for whatever establishment or enforcement actions are necessary for the collection of child support, the Commissioner, the Director of the Division of Child Support Enforcement and district managers of Division of Child Support Enforcement offices shall have the right to (i) subpoena financial records of, or other information relating to, the noncustodial parent and obligee from any person, firm, corporation, association, or political subdivision or department of the Commonwealth and (ii) summons the noncustodial parent and obligee to appear in the Division's

offices. The Commissioner, Director and district managers may also subpoena copies of state and federal income tax returns. The district managers shall be trained in the correct use of the subpoena process prior to exercising subpoena authority. A civil penalty not to exceed \$1,000 may be assessed by the Commissioner for a failure to respond to a subpoena issued pursuant to this subsection.

G. In the absence of a court order, the Department may establish an administrative support order on an out-of-state obligor if the obligor and the obligee maintained a matrimonial domicile within the Commonwealth. The Department may also take action to enforce an administrative or court order on an out-of-state obligor. Service of such actions shall be in accordance with the provisions of §§ 8.01-296, 8.01-327 or § 8.01-329, or by certified mail, return receipt requested, in accordance with § 63.2-1917.

H. If a support order has been issued in another state but the obligor, the obligee, and the child now live in the Commonwealth, the Department may (i) enforce the order without registration, using all enforcement remedies available under this chapter and (ii) register the order in the appropriate tribunal of the Commonwealth for enforcement or modification.

(1985, c. 488, § 63.1-250.1; 1986, c. 594; 1988, cc. 906, 907; 1989, c. 599; 1990, c. 836; 1991, cc. 651, 694; 1992, c. 716; 1994, cc. 729, 767; 1995, c. 595; 1996, cc. 491, 882, 925, 948; 1997, cc. 440, 467, 794, 796, 895, 898; 2002, cc. 747, 844.)

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§ 63.2-1907. Child support enforcement; private contracts.

A. Pursuant to the authority granted in § 63.2-1901, child support enforcement field work administrative functions and central office payment processing functions in the Commonwealth may be performed by private entities. The Department shall supervise the administration of the child support enforcement program, let and monitor all contracts with private entities and ensure compliance with applicable state and federal laws and regulations. The Department may also enter into contracts with private collection agencies and other entities to effect the collection of child support arrearages. Contracts entered into pursuant to this section shall be in accordance with the applicable laws and regulations governing public entities pursuant to the Public Procurement Act (§ 2.2-4300 et seq.). Any contract to perform child support enforcement field work administrative functions and central office payment processing functions entered into by the Department shall contain a provision that the entity to whom the contract is awarded shall give employment preference to qualified persons whose employment with the Division of Child Support Enforcement is terminated as a result of the privatization of child support enforcement functions. Notwithstanding any other provision of law, when hiring to fill vacant positions within the Department, preference shall be given to qualified persons who are unable to obtain employment with an entity who is awarded a contract to perform child support enforcement field work administrative functions and central office payment processing functions pursuant to this section and whose employment with the Division of Child Support Enforcement is terminated as a result of the privatization of child support enforcement functions.

B. The Board shall establish guidelines to implement the Department's responsibilities under this section. Such guidelines shall specify procedures by which child support enforcement funding mechanisms authorized by state and federal law are allocated to fund central office and privatized child support enforcement functions.

(1996, c. 1054, § 63.1-249.1; 1998, cc. 494, 499; 2002, cc. 262, 747.)

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§ 63.2-1950. Child support enforcement privatized legal services.

The Attorney General shall provide and supervise legal services to the Division of Child Support Enforcement in child support enforcement cases to establish, obligate, enforce and collect child support. In addition to other methods of providing legal services as may be authorized by law, the Attorney General may contract with private attorneys to provide such services as special counsel pursuant to § 2.2-510 or to conduct programs to evaluate the costs and benefits of the privatization of such legal services. The compensation for such special and private counsel shall be paid out of funds received by the Division of Child Support Enforcement as provided by state and federal law and such reasonable attorney's fees as may be recovered. The Attorney General may also use collection agencies as may be necessary and cost-effective to pursue fully the recovery of all costs and fees authorized by § 63.2-1960 in proceedings to enforce child support obligations.

(1996, c. 1054, § 63.1-249.1; 1998, cc. 494, 499; 2002, cc. 262, 747.)

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§ 63.2-1927. Assertion of lien; effect.

Ten days after service of the notice containing the proposed administrative support order as provided in § 63.2-1916, or immediately upon receipt by the Department of a court order or foreign support order, a lien may be asserted by the Commissioner upon the real or personal property of the debtor. The claim of the Department for a support debt, not paid when due, shall be a lien when docketed against all property of the debtor in the county or city where docketed with priority of a secured creditor. The Department's lien shall take priority over all other debts and creditors under state law of such debtor including the proceeds or anticipated proceeds of a personal injury or wrongful death award or settlement except that the Department's lien shall be inferior to those liens created under § 8.01-66.2 or § 8.01-66.9, any statutory right of subrogation accruing to a health insurance provider, and the lien of the attorney representing the injured person in the personal injury or wrongful death action. However, the lien of the Department shall be subordinate to the lien of any prior mortgagee. The Department shall have the sole authority to negotiate settlement of its liens. Settlement of the Department's support liens does not affect the remaining support arrearages. This lien shall be separate and apart from, and in addition to, any other lien created by, or provided for, in this title. Such order, when an abstract thereof is docketed with the circuit court, shall have the same effect as a docketed abstract of judgment from another Virginia court.

Whenever a support lien has been filed and there is in the possession of any person, firm, corporation, association, political subdivision or department of the Commonwealth having notice of such lien, any property which may be subject to the support lien, such property shall not be paid over, released, sold, transferred, encumbered or conveyed, except as provided for by the exemptions contained in § 63.2-1933, unless a written release or waiver signed by the Commissioner has been delivered to such person, firm, corporation, association, political subdivision or department of the Commonwealth or unless a determination has been made in a hearing pursuant to § 63.2-1916 or by a court ordering release of such support lien on the basis that no debt exists or that the debt has been satisfied.

(1974, c. 413, § 63.1-254; 1976, c. 357; 1988, c. 906; 2002, c. 747; 2003, cc. 929, 942.)

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§ 63.2-1916. Notice of administrative support order; contents; hearing; modification.

The Commissioner may proceed against a noncustodial parent whose support debt has accrued or is accruing based upon subrogation to, assignment of, or authorization to enforce a support obligation. Such obligation may be created by a court order for support of a child or child and spouse or decree of divorce ordering support of a child or child and spouse. In the absence of such a court order or decree of divorce, the Commissioner may, pursuant to this chapter, proceed against a person whose support debt has accrued or is accruing based upon payment of public assistance or who has a responsibility for the support of any dependent child or children and their custodial parent. The administrative support order shall also provide that support shall continue to be paid for any child over the age of 18 who is (i) a full-time high school student, (ii) not self-supporting, and (iii) living in the home of the parent seeking or receiving child support, until such child reaches the age of 19 or graduates from high school, whichever comes first. The Commissioner shall initiate proceedings by issuing notice containing the administrative support order which shall become effective unless timely contested. The notice shall be served upon the debtor (a) in accordance with the provisions of §§ [8.01-296](#), [8.01-327](#) or § [8.01-329](#) or (b) by certified mail, return receipt requested, or the debtor may accept service by signing a formal waiver. A copy of the notice shall be sent to the obligee by first-class mail. The notice shall include the following:

1. A statement of the support debt or obligation accrued or accruing and the basis and authority under which the assessment of the debt or obligation was made. The initial administrative support order shall be effective on the date of service and the first monthly payment shall be due on the first of the month following the date of service and the first of each month thereafter. A modified administrative support order shall be effective the date that notice of the review is served on the nonrequesting party, and the first monthly payment shall be due on the first day of the month following the date of such service and on the first day of each month thereafter. In addition, an amount shall be assessed for the partial month between the effective date of the order and the date that the first monthly payment is due. The assessment for the initial partial month shall be prorated from the effective date through the end of that month, based on the current monthly obligation;
2. A statement of the name of the child or children and custodial parent for whom support is being sought;
3. A statement that support shall continue to be paid for any child over the age of 18 who is (i) a full-time high school student, (ii) not self-supporting, and (iii) living in the home of the parent seeking or receiving child support, until such child reaches the age of 19 or graduates from high school, whichever comes first;
4. A demand for immediate payment of the support debt or obligation or, in the alternative, a demand that the debtor file an answer with the Commissioner within 10 days of the date of service of the notice stating his defenses to liability;
5. A statement of each party's name, residential and, if different, mailing address, telephone number, driver's license number, and the name, address and telephone number of his employer; however, when a protective order has been issued or the Department otherwise finds reason to believe that a party is at risk of physical or emotional harm from the other party, information other than the name of the party at risk shall not be included in the notice;
6. A statement that if no answer is made on or before 10 days from the date of service of the notice, the

administrative support order shall be final and enforceable, and the support debt shall be assessed and determined subject to computation, and is subject to collection action;

7. A statement that the property of the debtor will be subject to lien and foreclosure, distraint, seizure and sale or an order to withhold and deliver or withholding of earnings;

8. A statement that the obligor shall keep the Department informed regarding access to health insurance coverage and health insurance policy information and a statement that health care coverage shall be required for the debtor's dependent children if available at reasonable cost as defined in § 63.2-1900, or pursuant to subsection A of § 63.2-1903;

9. A statement of each party's right to appeal and the procedures applicable to appeals from the decision of the Commissioner;

10. A statement that the obligor's income shall be immediately withheld to comply with this order unless the obligee, or the Department, if the obligee is receiving public assistance, and obligor agree to an alternative arrangement;

11. A statement that any determination of a support obligation under this section creates a judgment by operation of law and as such is entitled to full faith and credit in any other state or jurisdiction;

12. A statement that each party shall give the Department written notice of any change in his address or phone number within 30 days;

13. A statement that each party shall keep the Department informed of the name, telephone number and address of his current employer; and

14. A statement that if any arrearages for child support, including interest or fees, exist at the time the youngest child included in the order emancipates, payments shall continue in the total amount due (current support plus amount applied toward arrearages) at the time of emancipation until all arrearages are paid.

If no answer is received by the Commissioner within 10 days of the date of service or acceptance, the administrative support order shall be effective as provided in the notice. The Commissioner may initiate collection procedures pursuant to this chapter, Chapter 11 (§ 16.1-226 et seq.) of Title 16.1 or Title 20. The debtor and the obligee have 10 days from the date of receipt of the notice to file an answer with the Commissioner to exercise the right to an administrative hearing.

Any changes in the amount of the administrative order must be made pursuant to this section. In no event shall an administrative hearing alter or amend the amount or terms of any court order for support or decree of divorce ordering support. No support order may be retroactively modified, but may be modified with respect to any period during which there is a pending petition for modification in any court, but only from the date that notice of the review has been served on the nonrequesting party. Notice of the review shall be served for each review (1) in accordance with the provisions of §§ 8.01-296, 8.01-327 or § 8.01-329, or (2) by certified mail, with proof of actual receipt by the addressee, or (3) by the nonrequesting party executing a waiver. The existence of an administrative order shall not preclude either an obligor or obligee from commencing appropriate proceedings in a juvenile and domestic relations district court or a circuit court.

(1985, c. 488, § 63.1-252.1; 1986, c. 594; 1987, cc. 640, 649; 1988, c. 906; 1991, cc. 651, 694; 1993, c.

534; 1994, c. 764; 1995, cc. 593, 600; 1996, cc. 879, 884, 889; 1997, cc. 796, 895; 1998, cc. 107, 885; 2002, cc. 747, 844; 2004, c. 204; 2006, cc. 720, 869.)

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§ 63.2-1932. Data exchange agreements authorized; immunity.

The Commissioner is authorized and shall, as feasible, enter into agreements with financial institutions doing business in the Commonwealth to develop and operate, in conjunction with such financial institutions, a data match system using automated data exchanges to the maximum extent feasible. Pursuant to a data match system, a financial institution shall provide on a periodic basis, but no more frequently than every three months, the account title, record address, social security number or other taxpayer identification number, for any person in arrears in the payment of child support who is identified by the Department in the request by social security number or other taxpayer identification number.

Any such agreement shall provide for the following:

1. The financial institution shall be obligated to match only those accounts for which a social security number or taxpayer identification number is provided by the Department, and shall have no obligation to match or identify any account based on a person's name or any other identifying information;
2. The financial institution shall provide the account title, record address, social security number or taxpayer identification number for any account matching the social security number and taxpayer identification number provided by the Department. It shall be the Department's responsibility to determine whether such account is an account subject to a lien, or order to withhold and deliver in accordance with the provisions of this chapter;
3. The financial institution shall be given a reasonable time in which to respond to each data match request, based upon the capabilities of the financial institution to handle the data match system, but in no event less than thirty days; and
4. The financial institution shall have no obligation to hold, encumber, or surrender assets in any account based on a match until it is served with a lien or order to withhold and deliver in accordance with the provisions of this chapter.

The Department is authorized to pay a reasonable fee to a financial institution for conducting the data match, not to exceed the actual costs incurred by such financial institution and may assess and recover actual costs incurred from noncustodial parents identified as a result of the data match.

A financial institution providing information in accordance with this section shall not be liable to any account holder or other person for any disclosure of information to the Department, for encumbering or surrendering any assets held by such financial institution in response to a lien or order to withhold and deliver issued by the Department, or for any other action taken pursuant to this section, including individual or mechanical errors, provided such action does not constitute gross negligence or willful misconduct.

For purposes of this section, "account" means a demand deposit account, checking or negotiable withdrawal order account, savings account, time deposit account, share account, share draft account or money market mutual fund account maintained in this Commonwealth.

(1997, cc. 796, 895, § 63.1-260.3; 2002, c. 747.)

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§ 63.2-1932.1. Automated administrative enforcement in interstate cases.

A. The Department shall use high-volume automated administrative enforcement, to the same extent as used for intrastate cases, in response to a request made by another state to enforce support orders, and shall promptly report the results of such enforcement procedure to the requesting state. For purposes of this section, "high volume automated administrative enforcement" in interstate cases means, on the request of another state, the identification by the Department, through automated data matches with financial institutions and other entities where assets may be found, of assets owned by persons who owe child support in other states, and the seizure of such assets by the Department through levy or other appropriate processes.

B. The Department may, by electronic or other means, transmit to another state a request for assistance in enforcing child support orders through high-volume automated administrative enforcement. The request shall (i) include such information as will enable the state to which the request is transmitted to compare the information about the cases to the information in the data bases of the state; and (ii) shall constitute a certification by the Department of the amount of support in arrears and of the Department's compliance with all procedural due process requirements applicable to each case.

C. If the Department provides assistance to another state pursuant to this section, neither the Department nor the state shall consider the case to be transferred to the caseload of the other state.

D. The Department shall maintain records of (i) the number of such requests for assistance pursuant to this section; (ii) the number of cases for which the Department collected support in response to such a request; and (iii) the amount of such collected support.

(2002, c. 112, § 63.1-260.4.)

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§ 63.2-1929. Orders to withhold and to deliver property of debtor; issuance and service; contents; right to appeal; answer; effect; delivery of property; bond to release; fee; exemptions.

A. After notice containing an administrative support order has been served or service has been waived or accepted, an opportunity for a hearing has been exhausted and a copy of the order furnished as provided for in § 63.2-1916, or whenever a court order for child or child and spousal support has been entered, the Commissioner is authorized to issue to any person, firm, corporation, association, political subdivision or department of the Commonwealth, orders to withhold and to deliver property of any kind including, but not restricted to, income of the debtor, when the Commissioner has reason to believe that there is in the possession of such person, firm, corporation, association, political subdivision or department of the Commonwealth, property that is due, owing, or belonging to such debtor. The orders to withhold and to deliver shall take priority over all other debts and creditors under state law of such debtor including the proceeds or anticipated proceeds of a personal injury or wrongful death award or settlement except that the Department's lien shall be inferior to those liens created under § 8.01-66.2 or § 8.01-66.9, any statutory right of subrogation accruing to a health insurance provider, and the lien of the attorney representing the injured person in the personal injury or wrongful death action. However, orders to withhold and to deliver shall not take priority with respect to a prior payroll deduction or income withholding order pursuant to §§ 20-79.1, 20-79.2, 63.2-1923 or § 63.2-1924. The Department shall have the sole authority to negotiate settlement of its liens. Settlement of the Department's support liens does not affect the remaining support arrearages.

B. The order to withhold shall also be served upon the debtor within a reasonable time thereafter, and shall state the amount of the support debt accrued. The order shall state in summary the terms of §§ 63.2-1925 and 63.2-1930 and shall be served in the manner prescribed for the service of a warrant in a civil action or by certified mail, return receipt requested. The order to withhold shall advise the debtor that this order has been issued to cause the property of the debtor to be taken to satisfy the debt and advise of property that may be exempted from this order. The order shall also advise the debtor of a right to appeal such order based upon a mistake of fact and that if no appeal is made within ten days of being served, his property is subject to be taken.

C. If the debtor believes such property is exempt from this debt, within 10 days of the date of service of the order to withhold, the debtor may file an appeal to the Commissioner stating any exemptions that may be applicable. If the Commissioner receives a timely appeal, a hearing shall be promptly scheduled before a hearing officer upon reasonable notice to the obligee. The Commissioner may delegate authority to conduct the hearing to a duly qualified hearing officer who shall consider the debtor's appeal. Action by the Commissioner under the provisions of this chapter to collect such support debt shall be valid and enforceable during the pendency of any appeal.

The decision of the hearing officer shall be in writing and shall set forth the debtor's rights to appeal an adverse decision of the hearing officer pursuant to § 63.2-1943. The decision shall be served upon the debtor in accordance with the provisions of §§ 8.01-296, 8.01-327 or § 8.01-329 or mailed to the debtor at his last known address by certified mail, return receipt requested, or service may be waived. A copy of such decision shall also be mailed to the obligee. Such decision shall establish whether the debtor's property is exempt under state or federal laws and regulations.

D. Any person, firm, corporation, association, political subdivision or department of the Commonwealth upon whom service has been made is hereby required to answer such order to withhold within 10 days, exclusive of the day of service, under oath and in writing, and shall file true answers to the matters

inquired of therein. In the event there is in the possession of any such person, firm, corporation, association, political subdivision or department of the Commonwealth, any property that may be subject to the claim of the Department, such property shall be withheld immediately upon receipt of the order to withhold, together with any additional property received by such person, firm, corporation, association, political subdivision, or department of the Commonwealth valued up to the amount of the order until receipt of an order to deliver or release. The property shall be delivered to the Commissioner upon receipt of an order to deliver; however, distribution of the property shall not be made during pendency of all appeals. Where money is due and owing under any contract of employment, express or implied, or is held by any person, firm, corporation, or association, political subdivision or department of the Commonwealth subject to withdrawal by the debtor, such money shall be delivered by remittance payable to the order of the Treasurer of Virginia. The person, firm, corporation, political subdivision or department of the Commonwealth herein specified shall be entitled to receive from such debtor a fee of \$5 for each answer or remittance on account of such debtor. The foregoing is subject to the exemptions contained in §§ [63.2-1925](#) and [63.2-1933](#).

E. Delivery to the Commissioner shall serve as full acquittance and the Commonwealth warrants and represents that it shall defend and hold harmless for such actions persons delivering money or property to the Commissioner pursuant to this chapter.

F. An order issued to an employer for withholding from the earnings of an employee pursuant to this section shall conform to § [20-79.3](#). The rights and obligations of an employer with respect to the order are set out in § [20-79.3](#).

(1974, c. 413, § 63.1-256; 1975, cc. 54, 311; 1976, c. 357; 1977, c. 662; 1980, c. 243; 1983, c. 481; 1984, c. 652; 1985, c. 488; 1987, c. 640; 1988, c. 906; 1990, cc. 896, 950; 1992, c. 716; 1998, c. 727; 2002, c. 747; 2003, cc. 929, 942.)

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§ 63.2-1930. Civil liability upon failure to comply with lien, order, etc.

Should any person, firm, corporation, association, political subdivision or department of this Commonwealth fail to answer an order to withhold and deliver within the time prescribed herein, or fail or refuse to deliver property pursuant to said order, or after actual notice of filing of a support lien, pay over, release, sell, transfer, or convey real or personal property subject to a support lien to or for the benefit of the debtor or any other person, or fail or refuse to surrender upon demand property distrained under § [63.2-1933](#) or fail or refuse to honor a voluntary assignment of wages under § [63.2-1945](#) presented by the Commissioner, such person, firm, corporation, association, political subdivision or department of this Commonwealth shall be liable to the Department in an amount equal to 100 percent of the value of the debt which is the basis of the lien, order to withhold and deliver, distraint, or an income withholding order or voluntary assignment of wages. A noncustodial parent's employer issued an income withholding order by first-class mail pursuant to § [63.2-1923](#) or § [63.2-1924](#) shall not be liable to the Department unless the Department shows that such employer had actual notice of the withholding order.

(1974, c. 413, § 63.1-258; 1976, c. 357; 1985, c. 488; 2002, c. 747; 2003, c. 469.)

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§ 63.2-1933. Distraint, seizure and sale of property subject to liens.

Whenever a support lien has been filed pursuant to § [63.2-1927](#), the Commissioner may collect the support debt stated in such lien by distraint, seizure and sale of the property subject to such lien. The Commissioner shall give notice to the debtor and any person known to have or claim an interest therein of the general description of the property to be sold and the time and place of sale of such property. Such notice shall be given to such persons by certified mail, return receipt requested. A notice specifying the property to be sold shall be posted in at least two public places in the jurisdiction wherein the distraint has been made. The time of sale shall not be less than ten nor more than twenty days from the date of posting of such notices. Such sale shall be conducted by the Commissioner, who shall proceed to sell such property by parcel or by lot at a public auction, and who may set a minimum reasonable price to include the expenses of making a levy and of advertising the sale, and if the amount bid for such property at the sale is not equal to the price so fixed, the Commissioner may declare such property to be purchased by the Department for such price, or may conduct another sale of such property pursuant to the provisions of this section. In the event of sale, the debtor's account shall be credited with the amount for which the property has been sold. Property acquired by the Department as herein prescribed may be sold by the Commissioner at public or private sale, and the amount realized shall be placed in the state general fund to the credit of the Department. In all cases of sale, as aforesaid, the Commissioner shall issue a bill of sale or a deed to the purchaser and such bill of sale or deed shall be prima facie evidence of the right of the Commissioner to make such sale and conclusive evidence of the regularity of his proceeding in making the sale and shall transfer to the purchaser all right, title, and interest of the debtor in such property. The proceeds of any such sale, except in those cases wherein the property has been acquired by the Department, shall be first applied by the Commissioner to reimbursement of the costs of distraint and the sale, and thereafter in satisfaction of the delinquent account. Any excess which shall thereafter remain in the hands of the Commissioner shall be refunded to the debtor. Sums so refundable to a debtor may be subject to seizure or distraint by any taxing authority of the Commonwealth or its political subdivisions or by the Commissioner for new sums due and owing subsequent to the subject proceeding. Except as specifically provided in this chapter, there shall be exempt from attachment, distraint, seizure, execution and sale under this chapter such property as is exempt therefrom under the laws of this Commonwealth.

(1974, c. 413, § 63.1-261; 1975, cc. 311, 596; 1976, c. 357; 2002, c. 747.)

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§ 63.2-1934. Action for foreclosure of lien; satisfaction.

Whenever a support lien has been filed, an action in foreclosure of lien upon real or personal property may be brought in the circuit court of the jurisdiction wherein such real or personal property is or was located and the lien was filed. Judgment if rendered in favor of the Department shall be for the amount due, with costs, and the court shall allow, as part of the costs, the moneys paid for making and filing the claim of lien, and a reasonable attorney's fee. The court shall order any property upon which any lien provided for by this chapter is established, to be sold by the sheriff of the proper jurisdiction to satisfy the lien and costs. The payment of the lien debt, costs and reasonable attorney's fees, at any time before sale, shall satisfy the judgment of foreclosure. Where the net proceeds of sale upon application to the debt claimed do not satisfy the debt in full, the Department shall have judgment over any deficiency remaining unsatisfied and further levy upon other property of the judgment debtor may be made under the same execution. In all sales contemplated under this section, advertising of notice shall only be necessary for two weeks in a newspaper published in the jurisdiction where such property is located, and if there be no newspaper therein, then in the most convenient newspaper having a circulation in such jurisdiction. Remedies provided for herein are alternatives to remedies provided for in other sections of this chapter.

(1974, c. 413, § 63.1-262; 1976, c. 357; 1988, c. 906; 2002, c. 747.)

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§ 63.2-1937. Applications for occupational or other license to include social security number; suspension upon delinquency; procedure.

Every initial application for or application for renewal of a license, certificate, registration or other authorization to engage in a business, trade, profession or occupation issued by the Commonwealth pursuant to Titles 22.1, 38.2, 46.2 or 54.1 or any other provision of law shall require that the applicant provide his social security number or a control number issued by the Department of Motor Vehicles pursuant to § 46.2-342.

Upon thirty days' notice to an obligor who (i) has failed to comply with a subpoena, summons or warrant relating to paternity or child support proceedings or (ii) is alleged to be delinquent in the payment of child support by a period of ninety days or more or for \$5,000 or more, an obligee or the Department on behalf of an obligee, may petition either the court that entered or the court that is enforcing the order for child support for an order suspending any license, certificate, registration or other authorization to engage in a business, trade, profession or occupation, or recreational activity issued to the obligor by the Commonwealth pursuant to Titles 22.1, 29.1, 38.2, 46.2 or 54.1 or any other provision of law. The notice shall be sent by certified mail, with proof of actual receipt. The notice shall specify that (a) the obligor has thirty days from the date of receipt to comply with the subpoena, summons or warrant or pay the delinquency or to reach an agreement with the obligee or the Department to pay the delinquency and (b) if compliance is not forthcoming or payment is not made or an agreement cannot be reached within that time, a petition will be filed seeking suspension of any license, certificate, registration or other authorization to engage in a business, trade, profession or occupation, or recreational license issued by the Commonwealth to the obligor.

The court shall not suspend a license, certificate, registration or authorization upon finding that an alternate remedy is available to the obligee or the Department that is likely to result in collection of the delinquency. Further, the court may refuse to order the suspension upon finding that (1) suspension would result in irreparable harm to the obligor or employees of the obligor or would not result in collection of the delinquency or (2) the obligor has made a demonstrated, good faith effort to reach an agreement with the obligee or the Department.

If the court finds that the obligor is delinquent in the payment of child support by ninety days or more or in an amount of \$5,000 or more and holds a license, certificate, registration or other authority to engage in a business, trade, profession or occupation or recreational activity issued by the Commonwealth, it shall order suspension. The order shall require the obligor to surrender any license, certificate, registration or other such authorization to the issuing entity within ninety days of the date on which the order is entered. If at any time after entry of the order the obligor (A) pays the delinquency or (B) reaches an agreement with the obligee or the Department to satisfy the delinquency within a period not to exceed ten years and makes at least one payment, representing at least five percent of the total delinquency or \$500, whichever is greater, pursuant to the agreement, or (C) complies with the subpoena, summons or warrant or reaches an agreement with the Department with respect to the subpoena, summons or warrant, upon proof of payment or certification of the compliance or agreement, the court shall order reinstatement. Payment shall be proved by certified copy of the payment record issued by the Department or notarized statement of payment signed by the obligee. No fee shall be charged to a person who obtains reinstatement of a license, certificate, registration or authorization pursuant to this section.

(1994, c. 764, § 63.1-263.1; 1997, cc. 794, 857, 898; 2002, c. 747.)

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§ 63.2-1940. Reporting payment arrearage information to consumer credit reporting agencies.

The Division of Child Support Enforcement shall provide support payment arrearage information on noncustodial parents, as defined in § [63.2-100](#), to consumer credit reporting agencies. Advance notice shall be sent to the noncustodial parent of the proposed release of arrearage information. The notice shall include information on the procedures available to the noncustodial parent for contesting the accuracy of the arrearage information.

(1988, c. 906, § 63.1-274.6; 1990, c. 836; 1991, cc. 545, 588; 1994, c. 665; 1997, cc. 796, 895; 2001, c. 573; 2002, c. 747.)

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§ 63.2-1940.1. Publishing a most wanted delinquent parent list; coordinated arrests.

The Division of Child Support Enforcement shall (i) publish at regular intervals a list of the most wanted delinquent parents as determined by the Commissioner together with arrearage information and other identifying information, including but not limited to, a photograph, occupation and last known address for the purpose of locating such delinquent parents and (ii) periodically conduct coordinated arrests of delinquent parents in conjunction with state and local criminal justice agencies pursuant to § [16.1-278.16](#).

(2003, cc. 929, 942.)

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§ 63.2-1941. Additional enforcement remedies.

In addition to its other enforcement remedies, the Division of Child Support Enforcement is authorized to:

1. Attach unemployment benefits through the Virginia Employment Commission pursuant to § [60.2-608](#) and workers' compensation benefits through the Workers' Compensation Commission pursuant to § [65.2-531](#); and
2. Suspend an individual's driver's license pursuant to § [46.2-320](#).

(2002, c. 747.)

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§ 58.1-3958. Payment of administrative costs, etc.

The governing body of any county, city or town may impose, upon each person chargeable with delinquent taxes or other delinquent charges, fees to cover the administrative costs and reasonable attorney's or collection agency's fees actually contracted for. The attorney's or collection agency's fees shall not exceed 20 percent of the taxes or other charges so collected. The administrative costs shall be in addition to all penalties and interest, and shall not exceed \$30 for taxes or other charges collected subsequent to 30 or more days after notice of delinquent taxes or charges pursuant to § [58.1-3919](#) but prior to the taking of any judgment with respect to such delinquent taxes or charges, and \$35 for taxes or other charges collected subsequent to judgment. If the collection activity is to collect on a nuisance abatement lien, the fee for administrative costs shall be \$150 or 25 percent of the cost, whichever is less; however, in no event shall the fee be less than \$25.

No tax assessment or tax bill shall be deemed delinquent and subject to the collection procedures prescribed herein during the pendency of any administrative appeal under § [58.1-3980](#), so long as the appeal is filed within 90 days of the date of the assessment, and for 30 days after the date of the final determination of the appeal, provided that nothing in this paragraph shall be construed to preclude the assessment or refund, following the final determination of such appeal, of such interest as otherwise may be provided by general law as to that portion of a tax bill that has remained unpaid or was overpaid during the pendency of such appeal and is determined in such appeal to be properly due and owing.

(Code 1950, § 58-1020.1; 1982, c. 620; 1984, c. 675; 1991, c. 271; 1994, c. 932; 1995, c. 395; 1997, c. 496; 1998, c. 648; 1999, c. 389; 2000, cc. 389, 453; 2003, c. 170.)

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§ 19.2-354. Authority of court to order payment of fine, costs, forfeitures, penalties or restitution in installments or upon other terms and conditions; community work in lieu of payment.

A. Whenever (i) a defendant, convicted of a traffic infraction or a violation of any criminal law of the Commonwealth or of any political subdivision thereof, or found not innocent in the case of a juvenile, is sentenced to pay a fine, restitution, forfeiture or penalty and (ii) the defendant is unable to make payment of the fine, restitution, forfeiture, or penalty and costs within fifteen days of sentencing, the court shall order the defendant to pay such fine, restitution, forfeiture or penalty and any costs which the defendant may be required to pay in deferred payments or installments. The court may authorize the clerk to establish and approve the conditions of all deferred or installment payment agreements, pursuant to guidelines established by the court. As a condition of every such agreement, a defendant who enters into an installment or deferred payment agreement shall promptly inform the court of any change of mailing address during the term of the agreement. If the defendant is unable to make payment within fifteen days of sentencing, the court may assess a one-time fee not to exceed ten dollars to cover the costs of management of the defendant's account until such account is paid in full. This one-time fee shall not apply to cases in which costs are assessed pursuant to §§ [17.1-275.1](#), [17.1-275.2](#), [17.1-275.3](#), [17.1-275.4](#), [17.1-275.7](#), [17.1-275.8](#) or § [17.1-275.9](#). Installment or deferred payment agreements shall include terms for payment if the defendant participates in a program as provided in subsection B or C. The court, if such sum or sums are not paid in full by the date ordered, shall proceed in accordance with § [19.2-358](#).

B. When a person sentenced to the Department of Corrections or a local correctional facility owes any fines, costs, forfeitures, restitution or penalties, he shall be required as a condition of participating in any work release, home/electronic incarceration or nonconsecutive days program as set forth in §§ [53.1-60](#), [53.1-131](#), [53.1-131.1](#) or § [53.1-131.2](#) to either make full payment or make payments in accordance with his installment or deferred payment agreement while participating in such program. If, after the person has an installment or deferred payment agreement, the person fails to pay as ordered, his participation in the program may be terminated until all fines, costs, forfeitures, restitution and penalties are satisfied. The Director of the Department of Corrections and any sheriff or other administrative head of any local correctional facility shall withhold such ordered payments from any amounts due to such person. Distribution of the money collected shall be made in the following order of priority to:

1. Meet the obligation of any judicial or administrative order to provide support and such funds shall be disbursed according to the terms of such order;
2. Pay any fines, restitution or costs as ordered by the court;
3. Pay travel and other such expenses made necessary by his work release employment or participation in an education or rehabilitative program, including the sums specified in § [53.1-150](#); and
4. Defray the offender's keep.

The balance shall be credited to the offender's account or sent to his family in an amount the offender so chooses.

The Board of Corrections shall promulgate regulations governing the receipt of wages paid to persons participating in such programs, the withholding of payments and the disbursement of appropriate funds.

C. The court shall establish a program to provide an option to any person upon whom a fine and costs

have been imposed to discharge all or part of the fine or costs by earning credits for the performance of community service work before or after imprisonment. The program shall specify the rate at which credits are earned and provide for the manner of applying earned credits against the fine or costs. The court shall have such other authority as is reasonably necessary for or incidental to carrying out this program.

D. When the court has authorized deferred payment or installment payments, the clerk shall give notice to the defendant that upon his failure to pay as ordered he may be fined or imprisoned pursuant to § 19.2-358 and his privilege to operate a motor vehicle will be suspended pursuant to § 46.2-395.

E. The failure of the defendant to enter into a deferred payment or installment payment agreement with the court or the failure of the defendant to make payments as ordered by the agreement shall allow the Tax Commissioner to act in accordance with § 19.2-349 to collect all fines, costs, forfeitures and penalties.

(Code 1950, § 19.1-347.1; 1971 Ex. Sess., c. 250; 1975, c. 495; 1977, c. 585; 1982, c. 244; 1984, c. 32; 1986, c. 230; 1988, cc. 770, 852; 1994, cc. 841, 945; 1995, cc. 380, 441; 1996, c. 273; 1998, c. 831; 1999, c. 9; 2001, c. 414; 2002, c. 831.)

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§ 19.2-358. Procedure on default in deferred payment or installment payment of fine, costs, forfeiture, restitution or penalty.

A. When an individual obligated to pay a fine, costs, forfeiture, restitution or penalty defaults in the payment or any installment payment, the court upon the motion of the Commonwealth in the case of a conviction of a violation of a state law, or attorney for a locality or for the Commonwealth in the event of a conviction of a violation of a local law or ordinance, or upon its own motion, may require him to show cause why he should not be confined in jail or fined for nonpayment. A show cause proceeding shall not be required prior to issuance of a *capias* if an order to appear on a date certain in the event of nonpayment was issued pursuant to subsection A of § [19.2-354](#) and the defendant failed to appear.

B. Following the order to show cause or following a *capias* issued for a defendant's failure to comply with a court order to appear issued pursuant to subsection A of § [19.2-354](#), unless the defendant shows that his default was not attributable to an intentional refusal to obey the sentence of the court, or not attributable to a failure on his part to make a good faith effort to obtain the necessary funds for payment, or unless the defendant shows that any failure to appear was not attributable to an intentional refusal to obey the order of the court, the court may order the defendant confined as for a contempt for a term not to exceed sixty days or impose a fine not to exceed \$500. The court may provide in its order that payment or satisfaction of the amounts in default at any time will entitle the defendant to his release from such confinement or, after entering the order, may at any time reduce the sentence for good cause shown, including payment or satisfaction of such amounts.

C. If it appears that the default is excusable under the standards set forth in subsection B hereof, the court may enter an order allowing the defendant additional time for payment, reducing the amount due or of each installment, or remitting the unpaid portion in whole or in part.

D. Nothing in this section shall be deemed to alter or interfere with the collection of fines by any means authorized for the enforcement of money judgments rendered in favor of the Commonwealth or any locality within the Commonwealth.

(Code 1950, § 19.1-347.6; 1973, c. 342; 1975, c. 495; 1977, c. 223; 1987, c. 238; 1988, cc. 770, 852; 1992, c. 485; 1994, c. 546.)

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* CURRENT THROUGH LEGISLATION PASSED BY THE 126TH OHIO GENERAL ASSEMBLY *
 * AND FILED WITH THE SECRETARY OF STATE THROUGH SEPTEMBER 12, 2006 *
 * ANNOTATIONS CURRENT THROUGH JULY 1, 2006 *

TITLE 1. STATE GOVERNMENT
 CHAPTER 131. REVENUES AND FUNDS

GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION

ORC Ann. 131.02 (2006)

§ 131.02. Collection of amounts due state; compromise or payment-over-time agreement; cancellation of claim or transfer for collection

(A) Except as otherwise provided in section 4123.37 and division (J) of *section 4123.511 [4123.51.1] of the Revised Code*, whenever any amount is payable to the state, the officer, employee, or agent responsible for administering the law under which the amount is payable shall immediately proceed to collect the amount or cause the amount to be collected and shall pay the amount into the state treasury or into the appropriate custodial fund in the manner set forth pursuant to *section 113.08 of the Revised Code*. Except as otherwise provided in this division, if the amount is not paid within forty-five days after payment is due, the officer, employee, or agent shall certify the amount due to the attorney general, in the form and manner prescribed by the attorney general, and notify the director of budget and management thereof. In the case of an amount payable by a student enrolled in a state institution of higher education, the amount shall be certified within the later of forty-five days after the amount is due or the tenth day after the beginning of the next academic semester, quarter, or other session following the session for which the payment is payable. The attorney general may assess the collection cost to the amount certified in such manner and amount as prescribed by the attorney general.

For the purposes of this section, the attorney general and the officer, employee, or agent responsible for administering the law under which the amount is payable shall agree on the time a payment is due, and that agreed upon time shall be one of the following times:

- (1) If a law, including an administrative rule, of this state prescribes the time a payment is required to be made or reported, when the payment is required by that law to be paid or reported.
- (2) If the payment is for services rendered, when the rendering of the services is completed.
- (3) If the payment is reimbursement for a loss, when the loss is incurred.
- (4) In the case of a fine or penalty for which a law or administrative rule does not prescribe a time for payment, when the fine or penalty is first assessed.
- (5) If the payment arises from a legal finding, judgment, or adjudication order, when the finding, judgment, or order is rendered or issued.
- (6) If the payment arises from an overpayment of money by the state to another person, when the overpayment is discovered.
- (7) The date on which the amount for which an individual is personally liable under section 5735.35, section 5739.33, or division (G) of *section 5747.07 of the Revised Code* is determined.

(8) Upon proof of claim being filed in a bankruptcy case.

(9) Any other appropriate time determined by the attorney general and the officer, employee, or agent responsible for administering the law under which the amount is payable on the basis of statutory requirements or ordinary business processes of the state agency to which the payment is owed.

(B) (1) The attorney general shall give immediate notice by mail or otherwise to the party indebted of the nature and amount of the indebtedness.

(2) If the amount payable to this state arises from a tax levied under Chapter 5733., 5739., 5741., 5747., or 5751. of the Revised Code, the notice also shall specify all of the following:

- (a) The assessment or case number;
- (b) The tax pursuant to which the assessment is made;
- (c) The reason for the liability, including, if applicable, that a penalty or interest is due;
- (d) An explanation of how and when interest will be added to the amount assessed;

(e) That the attorney general and tax commissioner, acting together, have the authority, but are not required, to compromise the claim and accept payment over a reasonable time, if such actions are in the best interest of the state.

(C) The attorney general shall collect the claim or secure a judgment and issue an execution for its collection.

(D) Each claim shall bear interest, from the day on which the claim became due, at the rate per annum required by *section 5703.47 of the Revised Code*.

(E) The attorney general and the chief officer of the agency reporting a claim, acting together, may do any of the following if such action is in the best interests of the state:

- (1) Compromise the claim;
- (2) Extend for a reasonable period the time for payment of the claim by agreeing to accept monthly or other periodic payments. The agreement may require security for payment of the claim.
- (3) Add fees to recover the cost of processing checks or other draft instruments returned for insufficient funds and the cost of providing electronic payment options.

(F) (1) Except as provided in division (F)(2) of this section, if the attorney general finds, after investigation, that any claim due and owing to the state is uncollectible, the attorney general, with the consent of the chief officer of the agency reporting the claim, may do the following:

- (a) Sell, convey, or otherwise transfer the claim to one or more private entities for collection;
- (b) Cancel the claim or cause it to be canceled.

(2) The attorney general shall cancel or cause to be canceled an unsatisfied claim on the date that is forty years after the date the claim is certified.

(3) No action shall be commenced to collect any tax payable to the state that is administered by the tax commissioner, whether or not such tax is subject to division (B) of this section, or any penalty, interest, or additional charge on such tax, after the expiration of the period ending on the later of the dates specified in divisions (F)(3)(a) and (b) of this section, provided that such period shall be extended by the period of any stay to such collection or by any other period to which the parties mutually agree:

- (a) Seven years after the assessment of the tax, penalty, interest, or additional charge is issued.
- (b) Four years after the assessment of the tax, penalty, interest, or additional charge becomes final. For the purposes of division (F)(3)(b) of this section, the assessment becomes final at the latest of the following: upon expiration of the period to petition for reassessment, or if applicable, to appeal a final determination of the commissioner or decision of the board of tax appeals or a court, or, if applicable, upon decision of the United States supreme court.

For the purposes of division (F)(3) of this section, an action to collect a tax debt is commenced at the time when any action, including any action in aid of execution on a judgment, commences after a certified copy of the tax commissioner's entry making an assessment final has been filed in the office of the clerk of court of common pleas in the county

in which the taxpayer resides or has its principal place of business in this state, or in the office of the clerk of court of common pleas of Franklin county, as provided in *section 5739.13, 5741.14, 5747.13, or 5751.09 of the Revised Code* or in any other applicable law requiring such a filing. If an assessment has not been issued and there is no time limitation on the issuance of an assessment under applicable law, an action to collect a tax debt commences when the action is filed in the courts of this state to collect the liability.

(4) If information contained in a claim that is sold, conveyed, or transferred to a private entity pursuant to this section is confidential pursuant to federal law or a section of the Revised Code that implements a federal law governing confidentiality, such information remains subject to that law during and following the sale, conveyance, or transfer.

HISTORY: GC § 24-1; 106 v 500; Bureau of Code Revision, 10-1-53; 129 v 1110 (Eff 1-1-62); 132 v S 97 (Eff 1-1-68); 135 v S 174 (Eff 12-4-73); 136 v H 122 (Eff 8-11-75); 137 v H 590 (Eff 7-1-79); 141 v H 201 (Eff 7-1-85); 143 v S 147 (Eff 1-1-90); 149 v H 396. Eff 6-13-2002; 150 v H 95, § 1, eff. 9-26-03; 151 v H 16, § 1, eff. 5-6-05; 151 v H 66, § 101.01, eff. 6-30-05; 151 v H 530, § 101.01, eff. 6-30-06; 151 v H 390, § 1, eff. 9-28-06.

NOTES:

The provisions of § 3 of 151 v H 390 read as follows:

SECTION 3. The amendment or enactment by this act of *sections 109.082, 131.02, 5703.06, and 5703.58 of the Revised Code* apply to assessments made, or if no assessment was made, to liabilities arising, before, on, or after the effective date of this act. However, the statute of limitations to collection in *section 131.02 of the Revised Code*, as amended by this act, and to assessment in *section 5703.58 of the Revised Code*, as enacted by this act, expire not earlier than three years after the effective date of this act, notwithstanding any provisions in such sections to the contrary.

The effective date is set by § 812.03 of 151 v H 530.

The effective date is set by § 612.12 of 151 v H 66.

The effective date is set by section 179 of H.B. 95 (150 v --).

EFFECT OF AMENDMENTS

151 v H 390, effective September 28, 2006, in the introductory language of (B)(2), inserted "or 5751"; inserted (F)(3) and redesignated former (F)(3) as (F)(4); and made minor stylistic changes.

151 v H 530, effective June 30, 2006, added the exception to the beginning of the first paragraph of (A), and the second paragraph and (A)(1) through (9); and made minor stylistic changes.

151 v H 66, effective June 30, 2005, rewrote (A); and added (F)(3).

Section 1, 151 v H 16, effective May 6, 2005, added (F).

H.B. 95, Acts 2003, effective September 26, 2003, in (A), inserted "or into the appropriate custodial fund", and added the last sentence; substituted "rate per annum required by *section 5703.47 of the Revised Code*" for "base rate per annum for advances and discounts to member banks in effect at the federal reserve bank in the second federal reserve district" in (D); substituted "any" for "either or both" in the introductory language of (E); and added (E)(3).

CROSS-REFERENCES TO RELATED STATUTES

Agricultural financing, *RC § § 902.04, 902.05.*

Aid to local government improvements funds, *RC § 164.09.*

Capital facilities funds, *RC § 154.08.*

Coal research and development funds, *RC § 1555.08.*

County transit board funds, *RC § 306.09.*

Economic development program, *RC § 166.08.*

Egg production and distribution fines, *RC § 925.13.*

Hospital agencies revenue obligations, *RC § 141.04.*

Housing finance agency, *RC § 175.07.*

Industrial development bonds, *RC § 165.04.*

Medicare beneficiaries balance billing, *RC § 4769.10.*

Ohio building authority funds, *RC § 152.10.*

Ohio higher educational facility commission funds, *RC § 3377.07.*

Parks and natural resources projects, *RC § 1557.03.*

Pay supplements; state shall not seek reimbursement for overpayments, *RC § 124.18.1.*

Personal property taxes; collection remedies, *RC § 5703.51.*

Petition for release from, or modification of, payment charges, *RC § 5121.07*.
 Petroleum underground storage tank financial assurance fund, *RC § 3737.91*.
 Proceedings on delinquent claim, *RC § 131.03*.
 Public facilities commission funds, *RC § 151.01*.
 Rail development commission funds, *RC § 4981.15*.
 Refund owed to a state-administered governmental health care program, *RC § 4731.71*.
 Sanitary district funds, *RC § 6115.52*.
 School facilities funds, *RC § 3318.26*.
 State highway bonds, *RC § 5528.54*.
 State infrastructure projects, *RC § 5531.10*.
 State university funds, *RC § 3345.12*.
 Use, custody and insurance of funds due state by departments--
 Mental health, *RC § 5119.33*.
 Mental retardation and developmental disabilities, *RC § 5123.26*.
 Agreement with contractor for payment of money, *RC § 5123.05.1*
 Rehabilitation and correction, *RC § 5120.26*.

CASE NOTES AND OAGS

ANALYSIS

Fees
 Public moneys
 Unemployment compensation

FEES.

If the State Dental Board chooses not to compel the attendance of a witness, the Board may request the Treasurer of State to stop payment on warrant which was issued in payment for the witness fees and mileage or, if such request is not timely made, shall initiate the procedure for collection of the moneys set forth in *RC § 131.02*: OAG No. 86-066 (1986).

PUBLIC MONEYS.

Pursuant to *RC § § 9.38* and *131.02*, moneys that are collected by the Ohio Student Loan Commission on behalf of lenders and are to be remitted to lenders are public moneys that must be paid to the Treasurer of State: OAG No. 87-027 (1987).

UNEMPLOYMENT COMPENSATION.

The Director of Job and Family Services is authorized: (1) to certify to the Attorney General, for collection pursuant to *RC § 131.02*, any amounts of nonfraudulent unemployment compensation benefit overpayments required by order of the Director under *RC § 4141.35(B)* to be repaid, if those amounts are not paid within forty-five days after payment is due; and (2) in this manner, to initiate legal action to recover non-fraudulent unemployment compensation benefit overpayments. Opinion No. 2006-014 (2006).

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TEXAS ADMINISTRATIVE CODE

*** THIS DOCUMENT REFLECTS ALL RULES IN EFFECT AS OF AUGUST 31, 2006 ***

TITLE 1. ADMINISTRATION
PART 3. OFFICE OF THE ATTORNEY GENERAL
CHAPTER 59. COLLECTIONS

1 TAC § 59.2 (2006)

§ 59.2. Collection Process: Uniform Guidelines and Referral of Delinquent Collections

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Attorney general--The Office of the Attorney General of Texas, acting through the Bankruptcy and Collections Division of the agency.

(2) Debtor--Any person or entity liable or potentially liable for an obligation owed to the state or a state agency or against whom a claim or demand for payment has been made.

(3) Delinquent--Payment is past due by law or by customary business practice, and all conditions precedent to payment have occurred or been performed.

(4) Make demand--To deliver or cause to be delivered by United States mail, first class, a writing setting forth the nature and amount of the obligation owed to the agency. A writing making demand is a "demand letter."

(5) Obligation--A debt, judgment, claim, account, fee, fine, tax, penalty, interest, loan, charge, or grant.

(6) Security--Any right to have property owned by an entity with an obligation to a state agency sold or forfeited in satisfaction of the obligation; and any instrument granting a cause of action in favor of the State of Texas and/or the agency against another entity and/or that entity's property, such as a bond, letter of credit, or other collateral that has been pledged to the agency to secure an obligation.

(7) State agency--Any agency, board, commission, institution, or other unit of state government.

(b) Uniform guidelines for state agencies in collecting delinquent obligations.

(1) A state agency shall adopt procedures to establish and determine the liability of each person responsible for the obligation, whether that liability can be established by statutory or common law. Agency records shall contain and reflect the identity of all persons liable on the obligation or any part thereof. All agency collection procedures shall apply to every debtor, subject to reasonable tolerances established by the agency. (See paragraph (8) of this subsection.)

(2) A state agency shall adopt procedures to ensure that agency records reflect the correct physical address of the debtor's place of business, and, where applicable, the debtor's residence. Where a fiduciary or trust relationship exists between the agency (or the state) as principal and the debtor as trustee, an accurate physical address shall be maintained. A post office box address should not be used. Agency records may reflect a post office box where it is impractical to obtain a physical address, or where the post office box address is in addition to a correct physical address maintained on the agency's books and records.

(3) All demand letters should be mailed in an envelope bearing the notation "address correction requested" in conformity with 39 Code of Federal Regulations, Chapter III, Subchapter A, Part 3001, Subpart C, Appendix A, § 911. If an address correction is provided by the United States Postal Service, the demand letter should be re-sent to that address prior to the referral procedures described herein. Demand should be made upon every debtor prior to referral of the account to the attorney general. The final demand letter should include a statement, where practical, that the debt, if not paid, will be referred to the attorney general.

(4) Where state law allows an agency to record a lien securing the obligation, the agency shall file the lien in the appropriate records of the county where the debtor's principal place of business, or, where appropriate, the debtor's residence, is located or in such county as may be required by law. The lien shall be filed as soon as the obligation becomes delinquent or as soon as is practicable. After referral of the delinquency to the attorney general, any lien securing the indebtedness may not be released, except on full payment of the obligation, without the approval of the attorney representing the agency in the matter.

(5) Where practicable, agencies shall maintain individual collection histories of each account in order to document attempted contacts with the debtor, the substance of communications with the debtor, efforts to locate the debtor and his assets, and other information pertinent to collection of the delinquent account.

(6) Prior to referral of the obligation to the attorney general, the agency shall:

(A) verify the debtor's address and telephone number;

(B) transmit no more than two demand letters to the debtor at the debtor's verified address. The first demand letter should be sent no later than 30 days after the obligation becomes delinquent. The second demand letter should be sent no sooner than 30 days, but not more than 60 days, after the first demand letter. Where agency procedures, statutory mandates, or the requirements

(C) verify that the obligation is not legally uncollectible or uncollectible as a practical matter. Agencies shall adopt procedures to ensure that referred obligations are not uncollectible. By way of example, the following illustrations apply.

(i) Bankruptcy. Agencies should prepare and timely file a proof of claim, when appropriate, in the bankruptcy case of each debtor, subject to reasonable tolerances adopted by the agency. Copies of all such proofs of claims filed should be sent to the attorney general absent the granting of a variance. Agencies shall maintain records of notices of bankruptcy filings, dismissals and discharge orders received from the United States bankruptcy courts to enable the agency to ascertain whether the collection of the claim is subject to the automatic stay provisions of the bankruptcy code or whether the debt has been discharged. Agencies may seek the assistance of the attorney general in bankruptcy collection matters where necessary, including the filing of a notice of appearance and preparation of a proof of claim.

(ii) Limitations. If the obligation is subject to an applicable limitations provision that would prevent suit as a matter of law, the obligation should not be referred unless circumstances indicate that limitations has been tolled or is otherwise inapplicable.

(iii) Corporations. If a corporation has been dissolved, has been in liquidation under Chapter 7 of the United States Bankruptcy Code, or has forfeited its corporate privileges or charter, or, in the case of a foreign corporation, had its certificate of authority revoked, the obligation should be referred unless circumstances indicate that the account is clearly uncollectible.

(iv) Out-of-state debtors. If the debtor is an individual and is located out-of-state, or outside the United States, the matter should not be referred unless a determination is made that the domestication of a Texas judgment in the foreign forum would more likely than not result in collection of the obligation, or that the expenditure of agency funds to retain foreign counsel to domesticate the judgment and proceed with collection attempts is justified.

(v) Deceased debtors. If the debtor is deceased, agencies should file a claim in each probate proceeding administering the decedent's estate. If such probate proceeding has concluded and there are no remaining assets of the decedent available for distribution, the delinquent obligation should be classified as uncollectible and not be referred. In cases where a probate administration is pending, or where no administration has been opened, all referred obligations should include an explanation of any circumstances indicating that the decedent has assets available to apply toward satisfaction of the obligation.

(7) Not later than the 120th day after the date an obligation becomes delinquent, the agency shall report the uncollected and delinquent obligation to the attorney general for further collection efforts as hereinafter provided. See § 2107.004, *Texas Government Code*.

(8) Agencies shall adopt reasonable tolerances, subject to review by the attorney general, below which an obligation shall not be referred. Factors to be considered in establishing tolerances include the size of the debt; the existence of any security; the likelihood of collection through passive means such as the filing of a lien where applicable; expense to

the agency and to the attorney general in attempting to collect the obligation; and the availability of resources both within the agency and within the Office of the Attorney General to devote to the collection of the obligation.

(9) An agency should utilize the "warrant hold" procedures of the Comptroller of Public Accounts authorized by the Texas *Government Code*, § 403.055, to ensure that no treasury warrants are issued to debtors until the debt is paid. Please see Accounting Policy Statement 28, "Reporting of Debts and Certain Tax Delinquencies to the State," issued April 16, 1999 and reissued October 6, 2000 available on the Comptroller of Public Accounts' website at www.cpa.state.tx.us.

(c) Referral to attorneys.

(1) Suit on the obligation by in-house attorneys.

(A) Agencies seeking to use in-house attorneys to collect delinquent obligations through court proceedings must submit a written request to the attorney general's Bankruptcy and Collections Division. Upon written approval, a state agency may file suit to collect a delinquent obligation through an attorney serving as a full-time employee of the agency. Where circumstances make it impractical to secure attorney general approval for every delinquent obligation upon which a lawsuit is to be filed, a state agency may apply to the attorney general for an authorization to bring suit on particular types of obligations through attorneys employed full-time by the agency. Such authorization, if given, must be renewed at the beginning of each fiscal year. A state agency shall comply with reporting requirements adopted by the attorney general in 1 TAC § 59.3.

(B) After an obligation is referred to agency attorneys employed as in-house counsel, the obligation shall be reduced to judgment against all entities legally responsible for the obligation where the lawsuit and judgment will make collection of the obligation more likely and the expenditure of agency resources in recovering judgment on the obligation is justified.

(C) Where authorized by law, the agency shall plead for and recover attorney's fees, investigative costs, and court costs in addition to the obligation.

(D) Every judgment taken on a delinquent obligation should be abstracted and recorded by the agency in every county where the debtor: owns real property; operates an active business; is likely to inherit real property; owns any mineral interest; or has maintained a residence for more than one year.

(2) Referral to the attorney general.

(A) Agencies are encouraged to explore the exchange of accounts with the Attorney General by computer tape or other electronic data transfer and to discuss any variances as may be appropriate. The agency and the Attorney General may agree upon an exchange of certain minimum account information necessary for collection efforts by the Attorney General.

(B) Agencies may refer individual accounts to the attorney general after the procedures set forth in subsection (a)(6)-(8) of this section. Individual accounts referred to the attorney general should include by the following:

(i) copies of all correspondence between the agency and the debtor;

(ii) a log sheet (see subsection (a)(5) of this section) documenting all attempted contacts with the debtor and the result of such attempts;

(iii) a record of all payments made by the debtor and, where practicable, copies of all checks tendered as payment;

(iv) any information pertaining to the debtor's residence and his assets; and

(v) copies of any permit application, security, final orders, contracts, grants, or instrument giving rise to the obligation.

(C) Delinquent accounts upon which a bond or other security is held shall be referred to the attorney general no later than 60 days after becoming delinquent. All such accounts where the principal has filed for relief under federal bankruptcy laws shall be referred immediately, since collection of the security may obviate the need to file a claim or to appear in the bankruptcy case.

(D) The attorney general may decide that a particular obligation or class of obligations may be assigned after referral to the appropriate division within the Office of the Attorney General.

(3) Referral to collection firms or private attorneys.

(A) Prior approval of attorney general. Except as provided by § 2107.003, *Texas Government Code*, no agency may contract with, retain, or employ any person other than a full-time employee of the agency to collect a delinquent obligation without prior written approval of the attorney general. Any existing arrangements must receive the written approval of the attorney general to be renewed or extended in any fashion.

(i) Approval of contract with private firm or attorney. Prior to contracting with, retaining, or employing a person other than a full-time employee of the agency to collect a delinquent obligation, an agency must submit a proposal to the attorney general requesting the attorney general to collect the obligation(s). Any agency contracting with any person other than a full-time employee of the agency for the collection of a delinquent obligation must submit the proposed contract to the attorney general for written approval. The proposal must disclose any fee that the agency proposes to pay the private collection firm or attorney. The attorney general may elect to undertake representation of the agency on the same or similar terms as contained in the proposed contract. If the attorney general declines or is unable to perform the services requested, the attorney general may approve the contract. If the attorney general decides that the agency has not complied with this subsection, the attorney general may:

(I) decline to approve the contract; or

(II) require the agency to submit or resubmit a proposal to the attorney general for collection of the obligation in accordance with this subsection.

(ii) If the attorney general fails to act as set forth in subsection (a) of this section within 60 days of receipt of the proposed contract or receipt of additional information requested, the attorney general is deemed to have approved the contract in accordance with this rule.

(B) Requirements of proposed contracts with private persons presented for attorney general approval. In addition to information required by other state laws, all contracts for collection of delinquent obligations must contain or be supported by a proposal containing the following:

(i) a description of the obligations to be collected sufficient to enable the attorney general to determine what measures are necessary to attempt to collect the obligation(s);

(ii) explicit terms of the basis of any fee or payment for the collection of the obligation(s);

(iii) a description of the individual accounts to be collected in the following respects:

(I) the total number of delinquent accounts;

(II) the dollar range;

(III) the total dollar amount;

(IV) a summary of the collection efforts previously made by the agency; and

(V) the legal basis of the delinquent obligations to be collected.

(C) Suggested requirements of proposed contracts with private persons presented for attorney general approval. All contracts for collection of delinquent obligations should contain provisions stating the following:

(i) that litigation on the delinquent account is prohibited unless the private person obtains specific written authorization from the agency and the attorney general and complies with the requirements of this rule;

(ii) that the person is required to place any funds collected in an interest bearing account with amounts collected, plus interest, less collections costs, payable to the agency on a monthly basis or by direct deposit to the agency's account on a weekly basis with the agency billing once a month; in either case a listing of the accounts and amounts collected per account should be submitted to the agency upon deposit of the funds;

(iii) that the person refer any bankruptcy notice to the agency within three working days of receipt;

(iv) that the agency may recall any account without charge;

(v) that the person may not settle or compromise the account for less than the full amount owed (including collection costs where authorized by statute or terms of the obligation) without written authority from the agency;

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(vi) that the person is not an agent of the agency but is an independent contractor; and providing further that the person will indemnify the agency for any loss incurred by his violation of state and federal debt collection statutes or by the negligence of the person, his employees or agents;

(vii) that any dispute arising under the contract be submitted to a court of competent jurisdiction in Texas, unless any other venue is statutorily mandated, in which case the specific venue statute will apply, subject to any alternative dispute resolution procedures adopted by the agency pursuant to Chapter 2009, Texas Government Code.

SOURCE: The provisions of this § 59.2 adopted to be effective December 11, 1992, 17 TexReg 8283; amended to be effective October 23, 2001, 26 TexReg 8339

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§ 2.2-4804. Annual reports.

The Department of Accounts and the Attorney General shall annually report to the Governor, the Secretary of Finance and the Chairmen of the Senate Committee on Finance and the House Committee on Appropriations those agencies and institutions that are not making satisfactory progress toward implementing the provisions of this chapter and establishing effective accounts receivable programs.

(1988, c. 544, § 2.1-730; 2001, c. 844.)

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§ 2.2-608. Furnishing reports; Governor authorized to require reports.

A. Agencies, institutions, collegial bodies, and other governmental entities that are specifically required by the Code of Virginia to report annually or biennially to the Governor and General Assembly shall submit their reports on or before October 1 of each year, unless otherwise specified. The Governor may require any agency to furnish an annual or biennial report.

B. Any agency, institution, collegial body, or other governmental entity outside of the legislative branch of government required to submit a report to the General Assembly or any committee, subcommittee, commission, agency, or other body within the legislative branch or to the chairman or agency head of such entity shall distribute a hard copy of such report to each member of the General Assembly who requests a copy in accordance with the provisions of § 30-34.4:1. The cost of printing and distributing reports shall be borne by the reporting entity or its supporting agency.

(1984, c. 734, § 2.1-2.1; 2001, c. 844; 2004, c. 650.)

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§ 8.01-382. Verdict, judgment or decree to fix period at which interest begins; judgment or decree for interest.

In any action at law or suit in equity, the verdict of the jury, or if no jury the judgment or decree of the court, may provide for interest on any principal sum awarded, or any part thereof, and fix the period at which the interest shall commence. The judgment or decree entered shall provide for such interest until such principal sum be paid. If a judgment or decree be rendered which does not provide for interest, the judgment or decree awarded or jury verdict shall bear interest at the judgment rate of interest as provided for in § [6.1-330.54](#) from its date of entry or from the date that the jury verdict was rendered. Notwithstanding the provisions of this section, any judgment entered for a sum due under a negotiable instrument, as defined by § 8.3A-104, shall provide for interest on the principal sum in accordance with § 8.3A-112 at the rate specified in the instrument. If no such rate is specified, interest on the principal sum shall be at the judgment rate provided in § [6.1-330.54](#).

(Code 1950, § 8-223; 1964, c. 219; 1974, c. 172; 1975, c. 448; 1977, c. 617; 1979, c. 501; 1997, c. 551; 2004, c. 646.)

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§ 60.2-619. Determinations and decisions by deputy; appeals therefrom.

A. 1. A representative designated by the Commission as a deputy, shall promptly examine the claim. On the basis of the facts found by him, the deputy shall either:

a. Determine whether or not such claim is valid, and if valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and the maximum duration thereof; or

b. Refer such claim or any question involved therein to any appeal tribunal or to the Commission, which tribunal or Commission shall make its determination in accordance with the procedure described in § 60.2-620.

2. When the payment or denial of benefits will be determined by the provisions of subdivision 2 of § 60.2-612, the deputy shall promptly transmit his full finding of fact with respect to that subdivision to any appeal tribunal, which shall make its determination in accordance with the procedure described in § 60.2-620.

B. Upon the filing of an initial claim for benefits, the Commission shall cause an informatory notice of such filing to be mailed to the most recent thirty-day or 240-hour employing unit of the claimant and all subsequent employing units, and any reimbursable employing units which may be liable for reimbursement to the Commission for any benefits paid. However, the failure to furnish such notice shall not have any effect upon the claim for benefits.

C. Notice of determination upon a claim shall be promptly given to the claimant by delivering or by mailing such notice to the claimant's last known address. In addition, notice of any determination which involves the application of the provisions of § 60.2-618, together with the reasons therefor, shall be promptly given in the same manner to the most recent thirty-day or 240-hour employing unit by whom the claimant was last employed and any subsequent employing unit which is a party. The Commission may dispense with the giving of notice of any determination to any employing unit, and such employing unit shall not be entitled to such notice if it has failed to indicate prior to the determination, as required by regulation promulgated by the Commission, that the claimant may be ineligible or disqualified under any provision of this title. The deputy shall promptly notify the claimant of any decision made by him at any time which in any manner denies benefits to the claimant for one or more weeks.

D. Such determination or decision shall be final unless the claimant or any such employing unit files an appeal from such determination or decision (i) within thirty calendar days after the delivery of such notification, (ii) within thirty calendar days after such notification was mailed to his last known address, or (iii) within thirty days after such notification was mailed to the last known address of an interstate claimant. For good cause shown, the thirty-day period may be extended.

E. Benefits shall be paid promptly in accordance with a determination or redetermination under this chapter, or decision of an appeal tribunal, the Commission, the Board of Review or a reviewing court under §§ 60.2-625 and 60.2-631 upon the issuance of such determination, redetermination or decision, regardless of the pendency of the period to file an appeal or petition for judicial review that is provided in this chapter, or the pendency of any such appeal or review. Such benefits shall be paid unless or until such determination, redetermination or decision has been modified or reversed by a subsequent redetermination or decision, in which event benefits shall be paid or denied for weeks of unemployment thereafter in accordance with such modifying or reversing redetermination or decision. If a decision of

an appeal tribunal allowing benefits is affirmed in any amount by the Commission, benefits shall continue to be paid until such time as a court decision has become final so that no further appeal can be taken. If an appeal is taken from the Commission's decision, benefits paid shall result in a benefit charge to the account of the employer under § 60.2-530 only when, and as of the date on which, as the result of an appeal, the courts finally determine that the Commission should have awarded benefits to the claimant or claimants involved in such appeal.

(Code 1950, § 60-49; 1954, c. 203; 1966, c. 30; 1968, c. 738, § 60.1-61; 1970, c. 104; 1972, c. 692; 1974, c. 466; 1976, c. 708; 1980, cc. 408, 426; 1982, c. 363; 1986, c. 480; 1995, c. 515; 1997, c. 202; 1999, c. 79.)

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§ 60.2-620. Hearing and decision on appeal.

A. Appeals filed under § 60.2-619 shall be heard by an appeal tribunal appointed pursuant to § 60.2-621. Such appeal tribunal, after affording the claimant and any other parties reasonable opportunity for a fair hearing, shall have jurisdiction to consider all issues with respect to the claim since the initial filing thereof. Such tribunal shall affirm, set aside, reverse, modify, or alter the findings of fact and decision of the deputy, and may enter such order or decision with respect to the claim as such appeal tribunal finds should have been entered. However, no such order or decision shall affect benefits already paid except in accordance with the provisions of § 60.2-633.

B. The parties shall be duly notified of such tribunal's decision, together with its reasons therefor, which shall be deemed to be the final decision of the Commission, unless within thirty days after the date of notification or mailing of such decision, further appeal is initiated pursuant to § 60.2-622. However, for good cause shown the thirty-day period may be extended.

(Code 1950, § 60-50; 1968, c. 738, § 60.1-62; 1976, c. 708; 1980, c. 426; 1986, c. 480; 1995, c. 515; 1999, c. 79.)

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§ 60.2-621. Appeal tribunals.

In order to hear and decide disputed claims expeditiously, the Commissioner shall establish one or more impartial appeal tribunals consisting in each case of either (i) a salaried examiner or (ii) a tribunal consisting of three members, one of whom shall be a salaried examiner, who shall serve as chairman, one of whom shall be a representative of employers and the other of whom shall be a representative of employees. Each of the latter two members of the tribunal in (ii) of this section shall serve at the pleasure of the Commissioner and be paid a fee of not more than ten dollars per day of active service on such tribunal plus necessary expenses. No person shall participate on behalf of the Commission in any case in which he is an interested party. The Commissioner may designate alternates to serve in the absence or disqualification of any member of an appeal tribunal. The chairman shall act alone in the absence or disqualification of any other member and his alternates. In no case shall the hearings proceed unless the chairman of the appeal tribunal is present.

(Code 1950, § 60-51; 1968, c. 738, § 60.1-63; 1986, c. 480.)

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§ 60.2-622. Commission review.

A. The Commission (i) may on its own motion affirm, modify, or set aside any decision of an appeal tribunal on the basis of the evidence previously submitted in such case, or direct the taking of additional evidence by an appeal tribunal, or receive such evidence itself, or (ii) shall permit any of the parties to such decision to initiate further appeals before it. The Commission may remove to itself or transfer to another appeal tribunal the proceedings on any claim pending before an appeal tribunal. Any proceeding so removed to the Commission shall be heard in accordance with the requirements of § [60.2-620](#). The Commission shall promptly notify the interested parties of its findings and decision.

B. 1. Any decision of the Commission, upon a hearing on appeal, shall become final 10 days after the date of notification or mailing, and judicial review shall be permitted the claimant or any interested party claiming to be aggrieved. The Commission shall be deemed to be a party to any judicial action involving any such decision, and shall be represented in any such judicial action by the Office of the Attorney General.

2. Any such decision by the Commission involving (i) whether an employing unit constitutes an employer or (ii) whether services performed for or in connection with business of an employing unit constitute employment for such employing unit, from which no judicial review is had pursuant to subsections C and D of § [60.2-500](#), shall be conclusive in any subsequent judicial proceedings involving liability for taxes by the Commission against any employing unit which was a party to the proceedings held before the Commission.

C. The Commissioner shall have the power to designate a special examiner to hear appeals to the Commission under this section. The Commissioner may authorize and empower such special examiner to decide any appeal so heard, in which event the decision of the special examiner shall be the final decision of the Commission under this section, subject to judicial review under § [60.2-625](#).

(Code 1950, § 60-52; 1968, c. 738, § 60.1-64; 1977, c. 445; 1986, c. 480; 1995, c. 515; 1996, c. 106; 2005, cc. 47, 91.)

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§ 60.2-623. Procedure generally; confidentiality of information.

A. The manner in which disputed claims shall be presented, reports required from the claimant and from employers, the conduct of hearings and appeals before any deputy, appeal tribunal or the Commission, and transcripts prepared shall be in accordance with regulations prescribed by the Commission for determining the rights of the parties. Such regulations need not conform to common law or statutory rules of evidence and other technical rules of procedure. A full and complete record shall be kept of all proceedings in connection with a disputed claim. All testimony at any hearing upon a disputed claim shall be recorded, but need not be transcribed unless the disputed claim is further appealed and a timely request for a hearing before the Commission has been made in accordance with regulations prescribed by the Commission.

B. Information furnished the Commission under the provisions of this chapter shall not be published or be open to public inspection, other than to public employees in the performance of their public duties. Neither such information, nor any determination or decision rendered under the provisions of §§ [60.2-619](#), [60.2-620](#) or § [60.2-622](#), shall be used in any judicial or administrative proceeding other than one arising out of the provisions of this title; however, the Commission shall make its records about a claimant available to the Workers' Compensation Commission if it requests such records. The Commission may also, in its discretion, furnish copies of the transcript of hearings to any party.

C. Notwithstanding the provisions of subsection B, the Commission shall, on a reimbursable basis, furnish wage and unemployment compensation information contained in its records to the Secretary of Health and Human Services and Virginia's child support enforcement agency for their use as necessary for the purposes of the National Directory of New Hires established under § 453 (i) of the Social Security Act.

D. Notwithstanding the provisions of subsection B, the Commission shall, upon written request, furnish any agency or political subdivision of the Commonwealth such information as it may require for the purpose of collecting fines, penalties, and costs owed to the Commonwealth or its political subdivisions. Such information shall not be published or used in any administrative or judicial proceeding, except in matters arising out of the collection of fines, penalties, and costs owed to the Commonwealth or its political subdivisions.

(Code 1950, § 60-53; 1968, c. 738, § 60.1-65; 1972, c. 764; 1986, c. 480; 1988, c. 766; 1994, c. 203; 1996, cc. 108, 130; 1997, c. 385; 1998, cc. 91, 745.)

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§ 60.2-623.1. Party's recording of hearing.

A. Any party to a compensation hearing of the Virginia Employment Commission may employ the use of a court reporter to record for transcription the proceeding, provided it is done at the party's own expense.

B. In the event the Commission's transcript of the proceeding is lost, damaged, or parts are missing, a transcript existing as a result of subsection A of this section may be used in addition to any full or partial Commission transcript.

(1986, c. 129, § 60.1-65.1.)

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§ 60.2-624. Witness expenses.

Witnesses subpoenaed pursuant to this chapter shall be allowed expenses at a rate fixed by the Commission. Such expenses shall be deemed a part of the expense of administering this title.

(Code 1950, § 60-54; 1968, c. 738, § 60.1-66; 1986, c. 480.)

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§ 60.2-625. Judicial review.

A. Within thirty days after the decision of the Commission upon a hearing pursuant to § [60.2-622](#) has been mailed, any party aggrieved who seeks judicial review shall commence an action in the circuit court of the county or city in which the individual who filed the claim was last employed. In such action against the Commission, the Commission and any other party to the administrative procedures before the Commission shall be named a defendant in a petition for judicial review. Such petition shall also state the grounds upon which a review is sought; it shall be served upon a member of the Commission or upon such person as the Commission may designate, and such service shall be deemed completed service on all parties. There shall be left with the party so served as many copies of the petition as there are defendants, and the Commission shall forthwith mail one such copy to each such defendant. With its answer, the Commission shall certify and file with the court all documents and papers and a transcript of all testimony taken in the matter, together with its findings of fact and decision therein. In any judicial proceedings under this chapter, the findings of the Commission as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of the court shall be confined to questions of law. Such actions and the questions so certified shall be heard in a summary manner at the earliest possible date. An appeal may be taken from the decision of the court to the Court of Appeals in conformity with Part Five A of the Rules of Supreme Court and other applicable laws.

B. From any circuit court decision involving (i) the provisions of § [60.2-612](#) or § [60.2-618](#), (ii) whether an employing unit constitutes an employer or (iii) whether services performed for or in connection with the business of an employing unit constitute employment for such employing unit, the Court of Appeals shall have jurisdiction to review such decision regardless of the amount involved in any claim for benefits. It shall not be necessary, in any proceeding under this chapter, to enter exceptions to the rulings of the Commission or an appeal tribunal, and no bond shall be required upon an appeal to any court. Upon the final determination of such judicial proceeding, the Commission shall administer the Unemployment Compensation Fund in accordance with such determination.

C. The Commission shall have the right to appeal a decision of a circuit court in any proceeding under this chapter.

(1980, c. 463, § 60.1-67.1; 1982, c. 24; 1984, c. 703; 1986, c. 480; 1987, c. 567; 1988, c. 766; 1996, c. 573.)

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§ 60.2-626. Oaths and witnesses; subpoenas.

In the discharge of the duties imposed by this title, the chairman of an appeal tribunal and any duly authorized representative or member of the Commission shall have power to administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with a disputed claim or the administration of this title.

(Code 1950, § 60-36; 1968, c. 738, § 60.1-41; 1986, c. 480.)

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§ 60.2-627. Failure to obey subpoenas; orders of court.

In case of contumacy by, or refusal to obey a subpoena issued to any person, any court of this Commonwealth within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which such person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Commission or its duly authorized representative, shall have jurisdiction to issue to such person an order requiring such person to appear before an appeal tribunal, a commissioner, the Commission, or its duly authorized representative, in order to produce evidence or to give testimony concerning the matter under investigation or in question. Any failure to obey such court order may be punished by the court as contempt. Any person subpoenaed by the Commission who, without just cause, fails or refuses to attend and testify or to answer to any lawful inquiry or to produce books, papers, correspondence, memoranda and other records, when it is within his power to do so, shall be guilty of a Class 1 misdemeanor. Each day such violation continues shall be deemed to be a separate offense.

(Code 1950, § 60-37; 1968, c. 738, § 60.1-42; 1986, c. 480.)

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§ 60.2-628. Protection against self-incrimination.

No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda, and other records before the Commission in any cause or proceeding before the Commission, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture. However, no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(Code 1950, § 60-38; 1968, c. 738, § 60.1-43; 1986, c. 480.)

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§ 60.2-629. Redetermination of claims.

Notwithstanding any other provisions of this title, the Commission may, at any time within one year from the date the deputy's determination becomes final pursuant to § [60.2-619](#), redetermine any monetary determination issued by a deputy from which no appeal was taken by the claimant. Notice of any such redetermination shall be given promptly to the interested parties, and an appeal from such redetermination may be filed within the time and in the manner prescribed for an appeal from any original determination. If no such appeal is filed such redetermination shall be final. Any redetermination hereunder shall be limited to monetary determinations containing (i) an error in computation or (ii) newly discovered wages of the claimant pertinent to such determination.

(Code 1950, § 60-56; 1968, c. 738, § 60.1-68; 1986, c. 480.)

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§ 60.2-630. Authority to set aside or vacate determinations and decisions.

The Commission may, in its discretion, at any time before a determination or decision becomes final pursuant to §§ [60.2-619](#), [60.2-621](#), or § [60.2-622](#), with good cause set aside or modify any such determination or decision.

(1981, c. 74, § 60.1-68.1; 1986, c. 480.)

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§ 60.2-631. Board of Review.

A. The Commissioner, in his discretion, is hereby authorized to appoint a Board of Review consisting of three members, one of whom shall be designated chairman for a term of six years. The terms of the members first taking office shall be two, four, and six years, respectively, as designated by the Commissioner at the time of the appointment. Vacancies shall be filled by appointment by the Commissioner for the unexpired term. During his term of membership on the Board no member shall serve as an officer or committee member of any political organization. The members of the Board shall be compensated in a manner determined by the Commission. The Commission shall furnish the Board such stenographic and clerical assistance as the Board may require. All compensation of the members of the Board and all necessary expenses for the operation thereof shall be paid out of the administrative fund provided for in §§ [60.2-306](#) through [60.2-309](#) and §§ [60.2-311](#) through [60.2-313](#). The Commissioner may at any time, after notice and hearing, remove any member for cause. The Commissioner may, after thirty days' notice to the members of the Board and upon a finding that the Board is no longer needed, abolish the same.

B. 1. The Board shall meet upon the call of the chairman. It shall have the same powers and perform the same functions vested in the Commission in this title for review of decisions by an appeal tribunal, including the power to administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda and other records deemed necessary as evidence in connection with disputed claims.

2. The Board may hold its hearings in the county or city where the claimant was last employed, except that hearings involving the provisions of subdivision 2 of § [60.2-612](#) shall be held in the county or city where the claimant was last employed. When the same or substantially similar evidence is relevant and material to matters in issue in claims by more than one individual or in claims by a single individual with respect to two or more weeks of unemployment, the same time and place for considering each such claim may be fixed, hearings thereon jointly conducted, and a single record of the proceedings made.

C. The Commission may issue such regulations as it deems necessary for the procedure of the Board in the conduct of its hearings. During the time the Board is organized under authority of the Commissioner, the Commission shall have no jurisdiction under § [60.2-622](#). Any decision of the Board shall become final ten days after the date of notification or mailing and judicial review shall be permitted the claimant, the Commission or any interested party claiming to be aggrieved. In any judicial action involving any such decision the Commission shall be represented by the Office of the Attorney General. Any decision of the Board from which no judicial review is sought within the time prescribed in § [60.2-625](#) shall be conclusive against any party to the hearing before the Board and the Commission in any subsequent judicial proceedings involving liability for taxes under this title.

D. Within the time specified in § [60.2-625](#) the Commission, or any party to the proceedings before the Board, may obtain judicial review by filing in the circuit court of the county or city in which the individual who filed the claim was last employed, in the Commonwealth, a petition for review of such decision. In any such proceeding any other party to the proceeding shall be made a party respondent. The Commission shall be deemed to be a party to any such proceeding. The petition need not be verified. A copy of such petition shall be served upon the Commission and each party to the proceeding held before the Board at least thirty days prior to the placing of the petition upon the docket. The mailing of a copy of such petition to each party at his last known address shall be sufficient service. The

Commission shall file along with its petition or answer a certified copy of the record of the case, including all documents and papers and a transcript of all testimony taken in the matter, together with the Board's findings, conclusions and decision therein.

E. In any proceeding under this section the Board's findings of facts, if supported by the evidence and in the absence of fraud, shall be conclusive and the jurisdiction of the court shall be confined to questions of law. The court may order additional evidence to be taken by the Board, which such additional evidence, findings of fact or conclusions, together with the additional transcript of the record, shall be certified by the chairman of the Board and filed by him with the court. Such petition for review shall be heard in a summary manner and shall have preference over all other cases on the docket, except cases in which the Commonwealth is a party.

F. An appeal may be taken from the decision of such court to the Court of Appeals in conformity with Part Five A of the Rules of Supreme Court and other applicable laws. From any such decision involving (i) the provisions of § 60.2-612 or § 60.2-618, (ii) whether an employing unit constitutes an employer or (iii) whether services performed for or in connection with the business of an employing unit constitute employment for such employing unit, the Court of Appeals shall have jurisdiction to review such decision regardless of the amount involved in any claim for benefits. It shall not be necessary, in any proceeding before the Board, to enter exceptions to its ruling, and no bond shall be required upon any appeal to any court. Upon the final determination of such judicial proceeding, the Board shall enter an order in accordance with such determination.

(Code 1950, § 60-57; 1966, c. 30; 1968, c. 738, § 60.1-69; 1974, c. 466; 1984, c. 703; 1986, c. 480.)

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§ 60.2-632. False statements, etc., to obtain or increase benefits.

Whoever makes a false statement or representation knowing it to be false or knowingly fails to disclose a material fact, with intent to obtain or increase any benefit or other payment under this title, the unemployment compensation act of any other state, or any program of the federal government which is administered in any way under this title, either for himself or for any other person, shall be guilty of a Class 1 misdemeanor. Each such false statement or representation or failure to disclose a material fact shall constitute a separate offense.

(Code 1950, § 60-112; 1968, c. 738, § 60.1-129; 1970, c. 104; 1986, c. 480.)

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§ 60.2-633. Receiving benefits to which not entitled.

A. Any person who has received any sum as benefits under this title to which he was not entitled shall be liable to repay such sum to the Commission. In the event the claimant does not refund the overpayment, the Commission shall deduct from any future benefits such sum payable to him under this title unless overpayment occurred due to administrative error, in which case the Commission shall deduct only fifty percent of the payable amount for any future week of benefits claimed, rounded down to the next lowest dollar until the overpayment is satisfied. Administrative error shall not include decisions reversed in the appeals process. In addition, the overpayment may be collectible by civil action in the name of the Commission. Amounts collected in this manner may be subject to an interest charge as prescribed in § [58.1-15](#) from the date of judgment and may be subject to fees and costs. Collection activities for any benefit overpayment established of five dollars or less may be suspended. The Commission may, for good cause, determine as uncollectible and discharge from its records any benefit overpayment which remains unpaid after the expiration of seven years from the date such overpayment was determined, or immediately upon the death of such person or upon his discharge in bankruptcy occurring subsequently to the determination of overpayment. Any existing overpayment balance not equal to an even dollar amount shall be rounded to the next lowest even dollar amount.

B. The Commission is authorized to accept repayment of benefit overpayments by use of a credit card. The Virginia Employment Commission shall add to such payment a service charge for the acceptance of such card. Such service charge shall not exceed the percentage charged to the Virginia Employment Commission for use of such card.

(Code 1950, § 60-115; 1962, c. 138; 1968, c. 738, § 60.1-132; 1974, c. 466; 1979, c. 675; 1980, c. 751; 1981, c. 251; 1984, c. 458; 1985, c. 151; 1986, c. 480; 1988, c. 544; 1990, c. 687; 1996, c. 95.)

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§ 60.2-634. Receiving back pay after reinstatement.

Whenever the Commission finds that a discharged employee has received back pay at his customary wage rate from his employer after reinstatement such employee shall be liable to repay any benefits paid to such person during the time he was unemployed. When such an employee is liable to repay benefits to the Commission, such sum shall be collectible without interest by civil action in the name of the Commission.

(Code 1950, § 60-116; 1962, c. 138; 1968, c. 738, § 60.1-133; 1974, c. 466; 1986, c. 480.)

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§ 60.2-635. Deprivation of further benefits.

Any person who has been finally convicted under this chapter shall be deprived of any further benefits for the one-year period next ensuing after the date of conviction.

(Code 1950, § 60-117; 1962, c. 138; 1968, c. 738, § 60.1-134; 1974, c. 466; 1986, c. 480.)

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§ 37.2-721. Liability of estate of consumer.

Upon the death of any consumer or former consumer, his estate shall be liable only for the charges remaining unpaid and not more than five years past due and the unsatisfied portion of any judgment rendered by a court in a proceeding under this article. Upon the death of any consumer or former consumer, the provisions of § 37.2-717, which prohibit depleting the consumer's estate below \$500, shall after funeral expenses have no further application, and such sum may be applied to the charges of the Department remaining unpaid or may be applied to the unsatisfied portion of any judgment.

Upon the death of any consumer or former consumer in the event amounts remain unpaid for his care, treatment or training, and maintenance, the Department, having reason to believe that the consumer died possessed of real or personal property from which reimbursement may be had, shall prepare and acknowledge, as deeds are acknowledged, a notice showing the name of the consumer and the actual per diem cost of maintenance due and shall file the notice within four months of the date of the consumer's death in the office of the clerk of the court in which deeds are admitted to record in the county or city in which the real or personal property is located. The clerk of court shall record this notice as a lien is recorded, indexing it in the names of the consumer and the Department. The filing of this notice shall create a lien against the estate, both real and personal, of the deceased consumer prior to all other claims of the same class except prior liens. No such claim shall be enforced against any real estate of the deceased consumer while such real estate is occupied by the surviving spouse of the consumer or while such real estate is occupied by any dependent child of the consumer.

(Code 1950, § 37-125.14; 1952, c. 492; 1954, c. 445; 1968, c. 477, § 37.1-117; 1972, c. 383; 1976, c. 671; 2005, c. 716.)

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§ 37.2-719. Statement forms to be completed by the person liable for support of the consumer.

The Commissioner may prescribe statement forms that shall be completed by those persons liable under § 37.2-715 for the support of the consumer. The statement shall be sworn to by the person and returned to the Commissioner within 30 days from the time the statement was mailed to the person. Should the person fail to return the properly completed statement to the Commissioner within 30 days, the Commissioner shall send another statement by registered mail. If the statement is not then returned properly completed within 30 days, the person to whom it was sent by registered mail shall be assessed \$5 for each week or part of each week in excess of the 30-day period that the statement is overdue. The Department shall collect these assessments in the same manner as other sums due for the care, treatment or training, and maintenance of consumers from the persons whose duty it was to complete each statement. When collected, these assessments shall be paid into the same fund into which other collections are paid under this article.

A statement of liability imposed by this section shall be placed in a prominent place, in boldface type, upon each statement form.

(Code 1950, § 37-125.15; 1952, c. 492; 1956, c. 493; 1958, c. 472; 1962, c. 80; 1968, c. 477, § 37.1-118; 1976, c. 671; 2005, c. 716.)

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§ 37.2-715. Who liable for expenses; amount.

Any person who has been or who may be admitted to any state facility or who is the subject of counseling or receives treatment from the staff of a state facility shall be deemed to be a consumer for the purposes of this article.

The income and estate of a consumer shall be liable for the expenses of his care, treatment or training, and maintenance in a state facility. Any person responsible for holding, managing, or controlling the income and estate of the consumer shall apply the income and estate toward the expenses of the consumer's care, treatment or training, and maintenance.

Any person responsible for the support of a consumer pursuant to § 20-61 shall be liable for the expenses of his care, treatment or training, and maintenance in a state facility. Any such person shall no longer be financially liable, however, when a cumulative total of 1,826 days of (i) care and treatment or training for the consumer in a state facility, (ii) utilization by the consumer of services or facilities under the jurisdiction or supervision of any community services board or behavioral health authority, or (iii) a combination of (i) and (ii) has passed and payment for or a written agreement to pay the charges for 1,826 days of care and services has been made. Not less than three hours of service per day shall be required to include one day in the cumulative total of 1,826 days of utilization of services under the jurisdiction or supervision of a community services board or behavioral health authority. In order to claim this exemption, the person legally liable for the consumer shall produce evidence sufficient to prove eligibility for it.

Such expenses shall not exceed the average cost for the particular type of service rendered and shall be determined no less frequently than annually by the Department in accordance with generally accepted accounting principles applicable to the health care industry. In no event shall recovery be permitted for amounts more than five years past due. A certificate of the Commissioner or his designee shall be prima facie evidence of the actual charges for the particular type of service rendered.

(Code 1950, § 37-125.1; 1950, p. 917; 1952, c. 492; 1956, c. 493; 1960, c. 386; 1962, c. 80; 1968, c. 477, § 37.1-105; 1972, c. 342; 1974, c. 667; 1982, c. 50; 1988, c. 713; 2005, c. 716.)

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§ 37.2-717. Department to investigate financial ability to pay expenses; assessments and contracts by Department.

A. The Department shall investigate and determine which consumers or parents, guardians, conservators, trustees, or other persons legally responsible for consumers are financially able to pay the expenses of the care, treatment or training, and maintenance, and the Department shall notify these consumers or their parents, guardians, conservators, trustees, or other legally responsible persons of the expenses of care, treatment or training, and maintenance and, in general, of the provisions of this article.

B. The Department may assess or contract with any consumer or the parent, guardian, conservator, trustee, or other person liable for his support and maintenance to recover care, treatment or training, and maintenance expenses. In arriving at the amount to be paid, the Department shall have due regard for the financial condition and estate of the consumer, his present and future needs, and the present and future needs of his lawful dependents. Whenever it is deemed necessary to protect him or his dependents, the Department may assess or agree to accept a monthly sum for the consumer's care, treatment or training, and maintenance that is less than the actual per diem cost, provided that the estate of the consumer other than income shall not be depleted below the sum of \$500. Nothing contained in this title shall be construed as making any such contract permanently binding upon the Department or prohibiting it from periodically reevaluating the actual per diem cost of care, treatment or training, and maintenance and the financial condition and estate of any consumer, his present and future needs, and the present and future needs of his lawful dependents and entering into a new agreement with the consumer or the parent, guardian, conservator, trustee, or other person liable for his support and maintenance, increasing or decreasing the sum to be paid for the consumer's care, treatment or training, and maintenance.

C. All contracts made by and between the Department and any person acting in a fiduciary capacity for any consumer adjudicated to be incapacitated under the provisions of Article 1 (§ 37.2-1000 et seq.) of Chapter 10 of this title and all assessments made by the Department upon that consumer or his fiduciaries, providing for payment of the expenses of such consumer in any state facility, shall be subject to the approval of any circuit court having jurisdiction over the incapacitated person's estate or for the county or city in which he resides or from which he was admitted to the state facility.

(Code 1950, §§ 37-125.4, 37-125.5; 1950, p. 917; 1956, Ex. Sess., c. 14; 1960, c. 386; 1962, c. 80; 1968, c. 477, §§ 37.1-108, 37.1-109; 1971, Ex. Sess., c. 257; 1976, c. 671; 1997, cc. 801, 921; 2005, c. 716.)

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§ 46.2-1110. Height of vehicles; damage to overhead obstruction; penalty.

No loaded or unloaded vehicle shall exceed a height of 13 feet, six inches.

Nothing contained in this section shall require either the public authorities or railroad companies to provide vertical clearances of overhead bridges or structures in excess of 12 feet, six inches, or to make any changes in the vertical clearances of existing overhead bridges or structures crossing highways. The driver or owner of vehicles on highways shall be held financially responsible for any damage to overhead bridges or structures that results from collisions therewith.

The driver or owner of any vehicle colliding with an overhead bridge or structure shall immediately notify, either in person or by telephone, a law-enforcement officer or the public authority or railroad company, owning or maintaining such overhead bridge or structure of the fact of such collision, and his name, address, driver's license number, and the registration number of his vehicle. Failure to give such notice immediately, either in person or by telephone, shall constitute a Class 1 misdemeanor.

On any highway over which there is a bridge or structure having a vertical clearance of less than 14 feet, the Commonwealth Transportation Commissioner shall have at least two signs erected setting forth the height of the bridge or structure. Such signs shall be located at least 1,500 feet ahead of the bridge or structure.

The Virginia Department of Transportation may install and use overheight vehicle optical detection systems to identify vehicles that exceed the overhead clearance of the westbound tunnel of the Hampton Roads Bridge Tunnel on Interstate Route 64. When the optical system sensor located closest to the westbound tunnel entrance is used in identifying such vehicles, the system shall be installed at the specified height as determined by measurement standards that have been certified by the Commissioner of the Virginia Department of Agriculture and Consumer Services, and are traceable to national standards of measurement. Such identification by such system shall, for all purposes of law, be equivalent to having measured the height of the vehicle with a tape measure or other measuring device.

Any person who drives or attempts to drive any vehicle or combination of vehicles into or through any tunnel when the height of such vehicle, any vehicle in a combination of vehicles, or any load on any such vehicle exceeds that permitted for such tunnel, shall be guilty of a Class 3 misdemeanor and, in addition, shall be assessed three driver demerit points.

(Code 1950, § 46-327; 1950, p. 480; 1958, c. 541, § 46.1-329; 1962, c. 85; 1984, c. 780; 1989, c. 727; 2001, c. 94; 2005, cc. 542, 543.)

CITED COURT DECISIONS

1 of 11 DOCUMENTS

ARKANSAS DEPARTMENT OF HEALTH AND HUMAN SERVICES, ET AL.,
PETITIONERS v. HEIDI AHLBORN

No. 04-1506.

SUPREME COURT OF THE UNITED STATES

2006 U.S. LEXIS 3455

February 27, 2006, Argued
May 1, 2006, Decided

NOTICE: [*1] The LEXIS pagination of this document is subject to change pending release of the final published version.

PRIOR HISTORY: ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT. *Ahlborn v. Ark. Dep't of Human Servs.*, 397 F.3d 620, 2005 U.S. App. LEXIS 2015 (8th Cir. Ark., 2005)

DISPOSITION: Affirmed.

SYLLABUS: Federal Medicaid law requires participating States to "ascertain the legal liability of third parties . . . to pay for [an individual benefits recipient's] care and services available under the [State's] plan," 42 U.S.C. § 1396a(a)(25)(A); to "seek reimbursement for [medical] assistance to the extent of such legal liability," 1396a(a)(25)(B); to enact "laws under which, to the extent that payment has been made . . . for medical assistance for health care items or services furnished to an individual, the State is considered to have acquired the rights of such individual to payment by any other party for [*2] such health care items or services," § 1396a(a)(25)(H); to "provide that, as a condition of [Medicaid] eligibility . . . , the individual is required . . . (A) to assign the State any rights . . . to payment for medical care from any third party; . . . (B) to cooperate with the State . . . in obtaining [such] payments . . . and . . . (C) . . . in identifying, and providing information to assist the State in pursuing, any third party who may be liable," 1396k(a)(1). Finally, "any amount collected by the State under an assignment made" as described above "shall be retained by the State . . . to reimburse it for [Medicaid] payments made on behalf of" the recipient. § 1396k(b). "The remainder of such amount collected shall be paid" to the recipient. *Ibid.* Acting pursuant to its understanding of these provisions, Arkansas passed laws under which, when a state Medicaid recipient obtains a tort settlement following payment of medical costs on her behalf, a lien is automatically imposed on the settlement in an amount equal to Medicaid's costs. When that amount exceeds the portion of the settlement representing medical costs, satisfaction of the State's lien requires payment out [*3] of proceeds meant to compensate the recipient for damages distinct from medical costs, such as pain and suffering, lost wages, and loss of future earnings.

Following respondent Ahlborn's car accident with allegedly negligent third parties, petitioner Arkansas Department of Health Services (ADHS) determined that Ahlborn was eligible for Medicaid and paid providers \$ 215,645.30 on her behalf. She filed a state-court suit against the alleged tortfeasors seeking damages for past medical costs and for other items including pain and suffering, loss of earnings and working time, and permanent impairment of her future earning ability. The case was settled out of court for \$ 550,000, which was not allocated between categories of damages. ADHS did not participate or ask to participate in the settlement negotiations, and did not seek to reopen the judgment after the case was dismissed, but did intervene in the suit and assert a lien against the settlement proceeds for the full amount it had paid for Ahlborn's care. She filed this action in Federal District Court seeking a declaration that the State's lien violated federal law insofar as its satisfaction would require depletion of compensation [*4] for her injuries other than past medical expenses. The parties stipulated, *inter alia*, that the settlement amounted to approximately one-sixth of the reasonable value of Ahlborn's claim and that, if her construction of federal law was correct, ADHS would be entitled to

only the portion of the settlement (\$ 35,581.47) that constituted reimbursement for medical payments made. In granting ADHS summary judgment, the court held that under Arkansas law, which it concluded did not conflict with federal law, Ahlborn had assigned ADHS her right to recover the full amount of Medicaid's payments for her benefit. The Eighth Circuit reversed, holding that ADHS was entitled only to that portion of the settlement that represented payments for medical care.

Held: Federal Medicaid law does not authorize ADHS to assert a lien on Ahlborn's settlement in an amount exceeding \$ 35,581.47, and the federal anti-lien provision affirmatively prohibits it from doing so. Arkansas' third-party liability provisions are unenforceable insofar as they compel a different conclusion. Pp. 9-23.

(a) Arkansas' statute finds no support in the federal third-party liability provisions. That ADHS cannot claim [*5] more than the portion of Ahlborn's settlement that represents medical expenses is suggested by § 1396k(a)(1)(A), which requires that Medicaid recipients, as a condition of eligibility, "assign the State any rights . . . to payment for medical care from any third party" (emphasis added), not their rights to payment for, e.g., lost wages. The other statutory language ADHS relies on is not to the contrary, but reinforces the assignment provision's implicit limitation. First, statutory context shows that § 1396a(a)(25)(B)'s requirement that States "seek reimbursement for [medical] assistance to the extent of such legal liability" refers to "the legal liability of third parties . . . to pay for care and services available under the plan," § 1396a(a)(25)(A) (emphases added). Here, because the tortfeasors accepted liability for only one-sixth of Ahlborn's overall damages, and ADHS has stipulated that only \$ 35,581.47 of that sum represents compensation for medical expenses, the relevant "liability" extends no further than that amount. Second, § 1396a(a)(25)(H)'s requirement that the State enact laws giving it the right to recover from liable third parties "to the extent [*6] [it made] payment . . . for medical assistance for health care items or services furnished to an individual" does not limit the State's recovery only by the amount it paid out on the recipient's behalf, since the rest of the provision makes clear that the State must be assigned "the rights of [the recipient] to payment by any other party for such health care items or services." (Emphasis added.) Finally, § 1396k(b)'s requirement that, where the State actively pursues recovery from the third party, Medicaid be reimbursed fully from "any amount collected by the State under an assignment" before "the remainder of such amount collected" is remitted to the recipient does not show that the State must be paid in full from any settlement. Rather, because the State's assigned rights extend only to recovery of medical payments, what § 1396k(b) requires is that the State be paid first out of any damages for medical care before the recipient can recover any of her own medical costs. Pp. 9-13.

(b) Arkansas' statute squarely conflicts with the federal Medicaid law's anti-lien provision, § 1396p(a)(1), which prohibits States from imposing liens "against the property of any individual [*7] prior to his death on account of medical assistance paid . . . on his behalf under the State plan." Even if the State's lien is assumed to be consistent with federal law insofar as it encumbers proceeds designated as medical payments, the anti-lien provision precludes attachment or encumbrance of the remainder of the settlement. ADHS' attempt to avoid the anti-lien provision by characterizing the settlement proceeds as not Ahlborn's "property," but as the State's, fails for two reasons. First, because the settlement is not "received from a third party," as required by the state statute, until Ahlborn's chose in action has been reduced to proceeds in her possession, the assertion that any of the proceeds belonged to the State all along lacks merit. Second, the State's argument that Ahlborn lost her property rights in the proceeds the instant she applied for medical assistance is inconsistent with the creation of a statutory lien on those proceeds: ADHS would not need a lien on its own property. Pp. 13-17.

(c) The Court rejects as unpersuasive ADHS' and the United States' arguments that a rule permitting a lien on more than medical damages ought to apply here either because Ahlborn [*8] breached her duty to "cooperate" with ADHS or because there is an inherent danger of manipulation in cases where the parties to a tort case settle without judicial oversight or input from the State. As § 1396k(a)(1)(C) demonstrates, the duty to cooperate arises principally, if not exclusively, in proceedings initiated by the State to recover from third parties. In any event, the aspersions cast upon Ahlborn are entirely unsupported; all the record reveals is that ADHS neither asked to be nor was involved in the settlement negotiations. Whatever the bounds of the duty to cooperate, there is no evidence that it was breached here. Although more colorable, the alternative argument that a rule of full reimbursement is needed generally to avoid the risk of settlement manipulation also fails. The risk that parties to a tort suit will allocate away the State's interest can be avoided either by obtaining the State's advance agreement to an allocation or, if necessary, by submitting the matter to a court for decision. Pp. 17-19.

(d) Also rejected is ADHS' contention that the Eighth Circuit accorded insufficient weight to two decisions by the Departmental Appeals Board (Board) of the [*9] federal Department of Health and Human Services (HHS) rejecting appeals by two States from denial of reimbursement for costs they paid on behalf of Medicaid recipients who had settled tort claims. Although HHS generally has broad regulatory authority in the Medicaid area, the Court declines to treat the Board's reasoning in those cases as controlling because they address a different question from the one posed here, make no mention of the anti-lien provision, and rest on a questionable construction of the federal third-party liability provisions. Pp. 19-23.

397 F.3d 620, affirmed.

JUDGES: STEVENS, J., delivered the opinion for a unanimous Court.

OPINIONBY: STEVENS

OPINION:

JUSTICE STEVENS delivered the opinion of the Court.

When a Medicaid recipient in Arkansas obtains a tort settlement following payment of medical costs on her behalf by Medicaid, Arkansas law automatically imposes a lien on the settlement in an amount equal to Medicaid's costs. When that amount exceeds the portion of the settlement that represents medical costs, satisfaction of the State's lien requires payment out of proceeds meant to compensate the recipient for damages distinct from medical costs -- like pain [*10] and suffering, lost wages, and loss of future earnings. The Court of Appeals for the Eighth Circuit held that this statutory lien contravened federal law and was therefore unenforceable. *Ahlborn v. Ark. Dep't of Human Servs.*, 397 F.3d 620 (2005). Other courts have upheld similar lien provisions. See, e.g., *Houghton v. Dep't of Health*, 2002 UT 101, 57 P.3d 1067; *Wilson v. State*, 142 Wn.2d 40, 10 P.3d 1061 (2000) (en banc). We granted certiorari to resolve the conflict, 545 U.S. ___, 126 S. Ct. 35, 162 L. Ed. 2d 933 (2005), and now affirm.

I

On January 2, 1996, respondent Heidi Ahlborn, then a 19-year-old college student and aspiring teacher, suffered severe and permanent injuries as a result of a car accident. She was left brain damaged, unable to complete her college education, and incapable of pursuing her chosen career. Although she possessed a claim of uncertain value against the alleged tortfeasors who caused her injuries, Ahlborn's liquid assets were insufficient to pay for her medical care. Petitioner Arkansas Department of Health Services (ADHS) accordingly determined that she was eligible for medical assistance and paid providers [*11] \$ 215,645.30 on her behalf under the State's Medicaid plan.

ADHS required Ahlborn to complete a questionnaire about her accident, and sent her attorney periodic letters advising him about Medicaid outlays. These letters noted that, under Arkansas law, ADHS had a claim to reimbursement from "any settlement, judgment, or award" obtained by Ahlborn from "a third party who may be liable for" her injuries, and that no settlement "shall be satisfied without first giving [ADHS] notice and a reasonable opportunity to establish its interest." n1 ADHS has never asserted, however, that Ahlborn has a duty to reimburse it out of any other subsequently acquired assets or earnings.

n1 Affidavit of Wayne E. Olive, Exhs. 5 and 6 (Mar. 6, 2003).

On April 11, 1997, Ahlborn filed suit against two alleged tortfeasors in Arkansas state court seeking compensation for the injuries she sustained in the January 1996 car accident. She claimed damages not only for past medical costs, but also for permanent physical injury; future medical [*12] expenses; past and future pain, suffering, and mental anguish; past loss of earnings and working time; and permanent impairment of the ability to earn in the future.

ADHS was neither named as a party nor formally notified of the suit. Ahlborn's counsel did, however, keep ADHS informed of details concerning insurance coverage as they became known during the litigation.

In February 1998, ADHS intervened in Ahlborn's lawsuit to assert a lien on the proceeds of any third-party recovery Ahlborn might obtain. In October 1998, ADHS asked Ahlborn's counsel to notify the agency if there was a hearing in the case. No hearing apparently occurred, and the case was settled out of court sometime in 2002 for a total of \$

550,000. The parties did not allocate the settlement between categories of damages. ADHS did not participate or ask to participate in settlement negotiations. Nor did it seek to reopen the judgment after the case had been dismissed. ADHS did, however, assert a lien against the settlement proceeds in the amount of \$ 215,645.30 -- the total cost of payments made by ADHS for Ahlborn's care.

On September 30, 2002, Ahlborn filed this action in the United States District Court for the [*13] Eastern District of Arkansas seeking a declaration that the lien violated the federal Medicaid laws insofar as its satisfaction would require depletion of compensation for injuries other than past medical expenses. To facilitate the District Court's resolution of the legal questions presented, the parties stipulated that Ahlborn's entire claim was reasonably valued at \$ 3,040,708.18; that the settlement amounted to approximately one-sixth of that sum; and that, if Ahlborn's construction of federal law was correct, ADHS would be entitled to only the portion of the settlement (\$ 35,581.47) that constituted reimbursement for medical payments made. See App. 17-20.

Ruling on cross-motions for summary judgment, the District Court held that under Arkansas law, which it concluded did not conflict with federal law, Ahlborn had assigned to ADHS her right to any recovery from the third-party tortfeasors to the full extent of Medicaid's payments for her benefit. Accordingly, ADHS was entitled to a lien in the amount of \$ 215,645.30.

The Eighth Circuit reversed. It held that ADHS was entitled only to that portion of the judgment that represented payments for medical care. For the reasons that [*14] follow, we affirm.

II

The crux of the parties' dispute lies in their competing constructions of the federal Medicaid laws. The Medicaid program, which provides joint federal and state funding of medical care for individuals who cannot afford to pay their own medical costs, was launched in 1965 with the enactment of Title XIX of the Social Security Act (SSA), as added 79 Stat. 343, 42 U.S.C. § 1396 *et seq.* (2000 ed. and Supp. III). Its administration is entrusted to the Secretary of Health and Human Services (HHS), who in turn exercises his authority through the Centers for Medicare and Medicaid Services (CMS). n2

n2 Until 2001, CMS was known as the Health Care Financing Administration or HCFA. See 66 *Fed. Reg.* 35437.

States are not required to participate in Medicaid, but all of them do. The program is a cooperative one; the Federal Government pays between 50% and 83% of the costs the State incurs for patient care, n3 and, in return, the State pays its portion of the [*15] costs and complies with certain statutory requirements for making eligibility determinations, collecting and maintaining information, and administering the program. See § 1396a.

n3 The exact percentage of the federal contribution is calculated pursuant to a formula keyed to each State's per capita income. See 42 U.S.C. § 1396d(b).

One such requirement is that the state agency in charge of Medicaid (here, ADHS) "take all reasonable measures to ascertain the legal liability of third parties . . . to pay for care and services available under the plan." § 1396a(a)(25)(A) (2000 ed.). n4 The agency's obligation extends beyond mere identification, however;

"in any case where such a legal liability is found to exist after medical assistance has been made available on behalf of the individual and where the amount of reimbursement the State can reasonably expect to recover exceeds the costs of such recovery, the State or local agency will seek reimbursement for such assistance to the extent [*16] of such legal liability." § 1396a(a)(25)(B).

To facilitate its reimbursement from liable third parties, the State must,

"to the extent that payment has been made under the State plan for medical assistance in any case where a third party has a legal liability to make payment for such assistance, [have] in effect laws under which, to the extent that payment has been made under the State plan for medical assistance for health care items or services furnished to an individual, the State is considered to have acquired the rights of such individual to payment by any other party for such health care items or services." § 1396a(a)(25)(H).

The obligation to enact assignment laws is reiterated in another provision of the SSA, which reads as follows:

"(a) For the purpose of assisting in the collection of medical support payments and other payments for medical care owed to recipients of medical assistance under the State plan approved under this subchapter, a State plan for medical assistance shall --

"(1) provide that, as a condition of eligibility for medical assistance under the State plan to an individual who has the legal capacity to execute an assignment [*17] for himself, the individual is required -

"(A) to assign the State any rights . . . to support (specified as support for the purpose of medical care by a court or administrative order) and to payment for medical care from any third party;

"(B) to cooperate with the State . . . in obtaining support and payments (described in paragraph (A)) for himself . . . ; and

"(C) to cooperate with the State in identifying, and providing information to assist the State in pursuing, any third party who may be liable to pay for care and services available under the plan . . ." § 1396k(a).

Finally, "any amount collected by the State under an assignment made" as described above "shall be retained by the State as is necessary to reimburse it for medical assistance payments made on behalf of" the Medicaid recipient. § 1396k(b). "The remainder of such amount collected shall be paid" to the recipient. *Ibid.*

N4 A "third party" is defined by regulation as "any individual, entity or program that is or may be liable to pay all or part of the expenditures for medical assistance furnished under a State plan." 42 CFR § 433.136 (2005).

[*18]

Acting pursuant to its understanding of these third-party liability provisions, the State of Arkansas passed laws that purport to allow both ADHS and the Medicaid recipient, either independently or together, to recover "the cost of benefits" from third parties. *Ark. Code Ann. § 20-77-301 through 20-77-309* (2001). Initially, "as a condition of eligibility" for Medicaid, an applicant "shall automatically assign his or her right to any settlement, judgment, or award which may be obtained against any third party to [ADHS] to the full extent of any amount which may be paid by Medicaid for the benefit of the applicant." § 20-77-307(a). Accordingly, "when medical assistance benefits are provided" to the recipient "because of injury, disease, or disability for which another person is liable," ADHS "shall have a right to recover from the person the cost of benefits so provided." § 20-77-301(a). n5 ADHS' suit "shall" not, however, "be a bar to any action upon the claim or cause of action of the recipient." § 20-77-301(b). Indeed, the statute envisions that the recipient will sometimes sue together with ADHS, see § 20-77-303, or even alone. If the latter, the assignment described in § [*19] 20-77-307(a) "shall be considered a statutory lien on any settlement, judgment, or award received . . . from a third party." § 20-77-307(c); see also § 20-77-302(a) ("When an action or claim is brought by a medical assistance recipient . . . , any settlement, judgment, or award obtained is subject to the division's claim for reimbursement of the benefits provided to the recipient under the medical assistance program"). n6

n5 Under the Arkansas statute, ADHS' right to recover medical costs appears to be broader than that of the recipient. When ADHS sues, "no contributory or comparative fault of a recipient shall be attributed to the state, nor shall any restitution awarded to the state be denied or reduced by any amount or percentage of fault attributed to a recipient." § 20-77-301(d)(1) (2001).

n6 The Arkansas Supreme Court has held that ADHS has an independent, nonderivative right to recover the cost of benefits from a third-party tortfeasor under § 20-77-301 even when the Medicaid recipient also sues for recovery of medical expenses. See *National Bank of Commerce v. Quirk*, 323 Ark. 769, 792-794, 918 S.W.2d 138, 151-152 (1996).

[*20]

The State, through this statute, claims an entitlement to more than just that portion of a judgment or settlement that represents payment for medical expenses. It claims a right to recover the entirety of the costs it paid on the Medicaid recipient's behalf. Accordingly, if, for example, a recipient sues alone and settles her entire action against a third-party tortfeasor for \$ 20,000, and ADHS has paid that amount or more to medical providers on her behalf, ADHS gets the whole settlement and the recipient is left with nothing. This is so even when the parties to the settlement allocate damages between medical costs, on the one hand, and other injuries like lost wages, on the other. The same rule also would apply, it seems, if the recovery were the result not of a settlement but of a jury verdict. In that case, under the Arkansas statute, ADHS could recover the full \$ 20,000 in the face of a jury allocation of, say, only \$ 10,000 for medical expenses. n7

n7 ADHS denies that it would actually demand the full \$ 20,000 in such a case, see Brief for Petitioners 49, n. 13, but points to no provision of the Arkansas statute that would prevent it from doing so.

[*21]

That this is what the Arkansas statute requires has been confirmed by the State's Supreme Court. In *Arkansas Dep't of Human Servs. v. Estate of Ferrel*, 336 Ark. 297, 984 S.W.2d 807 (1999), the court refused to endorse an equitable, nontextual interpretation of the statute. Rejecting a Medicaid recipient's argument that he ought to retain some of a settlement that was insufficient to cover both his and Medicaid's expenses, the court explained:

"Given the clear, unambiguous language of the statute, it is apparent that the legislature intended that ADHS's ability to recoup Medicaid payments from third parties or recipients not be restricted by equitable subrogation principles such as the 'made whole' rule stated in [*Franklin v. Healthsource of Arkansas*, 328 Ark. 163, 942 S.W.2d 837 (1997)]. By creating an automatic legal assignment which expressly becomes a statutory lien, [*Ark. Code Ann. § 20-77-307* (1991)] makes an unequivocal statement that the ADHS's ability to recover Medicaid payments from insurance settlements, if it so chooses, is superior to that of the recipient even when the settlement does not pay all the recipient's medical costs. [*22] " *Id.*, at 308, 984 S. W. 2d, at 811.

Accordingly, the Arkansas statute, if enforceable against Ahlborn, authorizes imposition of a lien on her settlement proceeds in the amount of \$ 215,645.30. Ahlborn's argument before the District Court, the Eighth Circuit, and this Court has been that Arkansas law goes too far. We agree. Arkansas' statute finds no support in the federal third-party liability provisions, and in fact squarely conflicts with the anti-lien provision of the federal Medicaid laws.

III

We must decide whether ADHS can lay claim to more than the portion of Ahlborn's settlement that represents medical expenses. n8 The text of the federal third-party liability provisions suggests not; it focuses on recovery of payments for medical care. Medicaid recipients must, as a condition of eligibility, "assign the State any rights . . . to payment for medical care from any third party," 42 U.S.C. § 1396k(a)(1)(A) (emphasis added), not rights to payment for, for example, lost wages. The other statutory language that ADHS relies upon is not to the contrary; indeed, it reinforces the limitation implicit in the assignment provision.

n8 The parties here assume, as do we, that a State can fulfill its obligations under the federal third-party liability provisions by requiring an "assignment" of part of, or placing a lien on, the settlement that a Medicaid recipient procures on her own. Cf. § § 1396k(a)(1)(B)-(C) (the recipient has a duty to identify liable third parties and to "provide information to assist the State in pursuing" those parties (emphasis added)).

[*23]

First, ADHS points to § 1396a(a)(25)(B)'s requirement that States "seek reimbursement for [medical] assistance to the extent of such legal liability" (emphasis added) and suggests that this means that the entirety of a recipient's settlement is fair game. In fact, as is evident from the context of the emphasized language, "such legal liability" refers to "the legal liability of third parties . . . to pay for care and services available under the plan." § 1396a(a)(25)(A) (emphasis added). Here, the tortfeasor has accepted liability for only one-sixth of the recipient's overall damages, and ADHS has stipulated that only \$ 35,581.47 of that sum represents compensation for medical expenses. Under the circumstances, the relevant "liability" extends no further than that amount. n9

n9 The effect of the stipulation is the same as if a trial judge had found that Ahlborn's damages amounted to \$ 3,040,708.12 (of which \$ 215,645.30 were for medical expenses), but because of her contributory negligence, she could only recover one-sixth of those damages.

[*24]

Second, ADHS argues that the language of § 1396a(a)(25)(H) favors its view that it can demand full reimbursement of its costs from Ahlborn's settlement. That provision, which echoes the requirement of a mandatory assignment of rights in § 1396k(a), says that the State must have in effect laws that, "to the extent that payment has been made under the State plan for medical assistance for health care items or services furnished to an individual," give the State the right to recover from liable third parties. This must mean, says ADHS, that the agency's recovery is limited only by the amount it paid out on the recipient's behalf -- and not by the third-party tortfeasor's particular liability for medical expenses. But that reading ignores the rest of the provision, which makes clear that the State must be assigned "the rights of [the recipient] to payment by any other party for such health care items or services." § 1396a(a)(25)(H) (emphasis added). Again, the statute does not sanction an assignment of rights to payment for anything other than medical expenses -- not lost wages, not pain and suffering, not an inheritance.

Finally, ADHS points to the provision requiring that, [*25] where the State actively pursues recovery from the third party, Medicaid be reimbursed fully from "any amount collected by the State under an assignment" before "the remainder of such amount collected" is remitted to the recipient. § 1396k(b). In ADHS' view, this shows that the State must be paid in full from any settlement. See Brief for Petitioners 13. But, even assuming the provision applies in cases where the State does not actively participate in the litigation, ADHS' conclusion rests on a false premise: The "amount recovered . . . under an assignment" is not, as ADHS assumes, the entire settlement; as explained above, under the federal statute the State's assigned rights extend only to recovery of payments for medical care. Accordingly, what § 1396k(b) requires is that the State be paid first out of any damages representing payments for medical care before the recipient can recover any of her own costs for medical care. n10

n10 Implicit in ADHS' interpretation of this provision is the assumption that there can be no "remainder" to remit to the Medicaid recipient if all the State has been assigned is the right to damages for medical expenses. That view in turn seems to rest on an assumption either that Medicaid will have paid all the recipient's medical expenses or that Medicaid's expenses will always exceed the portion of any third-party recovery earmarked for medical expenses. Neither assumption holds up. First, as both the Solicitor General and CMS acknowledge, the recipient often will have paid medical expenses out of her own pocket. See Brief for United States as *Amicus Curiae* 12 (under § 1396k(b), "the beneficiary retains the right to payment for any additional medical expenses personally incurred either before or subsequent to Medicaid eligibility and for other damages"); CMS, State Medicaid Manual § 3907 (last modified Sept. 16, 2005) (envisioning that "medical insurance payments," for example, will be remitted to the recipient if possible). Second, even if Medicaid's outlays often exceed the portion of the recovery earmarked for medical expenses in tort cases, the third-party liability provisions were not drafted exclusively with tort settlements in mind. In the case of health insurance, for example, the funds available under the policy may be enough to cover both Medicaid's costs and the recipient's own medical expenses.

[*26]

At the very least, then, the federal third-party liability provisions *require* an assignment of no more than the right to recover that portion of a settlement that represents payments for medical care. n11 They did not mandate the enactment of the Arkansas scheme that we have described.

n11 ADHS concedes that, had a jury or judge allocated a sum for medical payments out of a larger award in this case, the agency would be entitled to reimburse itself only from the portion so allocated. See Brief for Petitioners 49, n. 13; see also Brief for United States as *Amicus Curiae* 22, n. 14 (noting that the Secretary of HHS "ordinarily accepts" a jury allocation of medical damages in satisfaction of the Medicaid debt, even where smaller than the amount of Medicaid's expenses). Given the stipulation between ADHS and Ahlborn, there is no textual basis for treating the settlement here differently from a judge-allocated settlement or even a jury award; all such awards typically establish a third party's "liability" for both "payment for medical care" and other heads of damages.

[*27]

IV

If there were no other relevant provisions in the federal statute, the State might plausibly argue that federal law supplied a recovery "floor" upon which States were free to build. In fact, though, the federal statute places express limits on the State's powers to pursue recovery of funds it paid on the recipient's behalf. These limitations are contained in 42 U.S.C. § 1396a(a)(18) and 1396p. Section 1396a(a)(18) requires that a State Medicaid plan comply with § 1396p, which in turn prohibits States (except in circumstances not relevant here) from placing liens against, or seeking recovery of benefits paid from, a Medicaid recipient:

"(a) Imposition of lien against property of an individual on account of medical assistance rendered to him under a State plan

"(1) No lien may be imposed against the property of any individual prior to his death on account of medical assistance paid or to be paid on his behalf under the State plan, except --

"(A) pursuant to the judgment of a court on account of benefits incorrectly paid on behalf of such individual, or

"(B) [in certain circumstances not relevant here] . . .

"(b) Adjustment or recovery of medical [*28] assistance correctly paid under a State plan

"(1) No adjustment or recovery of any medical assistance correctly paid on behalf of an individual under the State plan may be made, except [in circumstances not relevant here]." § 1396p.

Read literally and in isolation, the anti-lien prohibition contained in § 1396p(a) would appear to ban even a lien on that portion of the settlement proceeds that represents payments for medical care. n12 Ahlborn does not ask us to go so far, though; she assumes that the State's lien is consistent with federal law insofar as it encumbers proceeds designated as payments for medical care. Her argument, rather, is that the anti-lien provision precludes attachment or encumbrance of the remainder of the settlement.

n12 Likewise, *subsection (b)* would appear to forestall any attempt by the State to recover benefits paid, at least from the "individual." See, e.g., *Martin ex rel. Hoff v. Rochester*, 642 N.W.2d 1, 8, n. 6 (Minn. 2002); *Wallace v. Estate of Jackson*, 972 P.2d 446, 450 (Utah 1998) (Durham, J., dissenting) (reading § 1396p to "prohibit not only liens against Medicaid recipients but also any recovery for medical assistance correctly paid"). The parties here, however, neither cite nor discuss the anti-recovery provision of § 1396p(b). Accordingly, we leave for another day the question of its impact on the analysis.

[*29]

We agree. There is no question that the State can require an assignment of the right, or chose in action, to receive payments for medical care. So much is expressly provided for by §§ 1396a(a)(25) and 1396k(a). And we assume, as

do the parties, that the State can also demand as a condition of Medicaid eligibility that the recipient "assign" in advance any payments that may constitute reimbursement for medical costs. To the extent that the forced assignment is expressly authorized by the terms of § § 1396a(a)(25) and 1396k(a), it is an exception to the anti-lien provision. See *Wash. State Dep't of Soc. & Health Servs. v. Guardianship Estate of Keffeler*, 537 U.S. 371, 383-385, 123 S. Ct. 1017, 154 L. Ed. 2d 972, and n. 7 (2003). But that does not mean that the State can force an assignment of, or place a lien on, any other portion of Ahlborn's property. As explained above, the exception carved out by § § 1396a(a)(25) and 1396k(a) is limited to payments for medical care. Beyond that, the anti-lien provision applies.

ADHS tries to avoid the anti-lien provision by characterizing the settlement proceeds as not Ahlborn's "property." n13 Its argument appears to be that the automatic assignment effected [*30] by the Arkansas statute rendered the proceeds the property of the State. n14 See Brief for Petitioners 31 ("Under Arkansas law, the lien does not attach to the recipient's 'property' because it attaches only to those proceeds already assigned to the Department as a condition of Medicaid eligibility"). That argument fails for two reasons. First, ADHS insists that Ahlborn at all times until judgment retained her entire chose in action -- a right that included her claim for medical damages. The statutory lien, then, cannot have attached until the proceeds materialized. That much is clear from the text of the Arkansas statute, which says that the "assignment shall be considered a statutory lien on any settlement . . . received by the recipient from a third party." *Ark. Code Ann. § 20-77-307(c)* (2001) (emphasis added). The settlement is not "received" until the chose in action has been reduced to proceeds in Ahlborn's possession. Accordingly, the assertion that any of the proceeds belonged to the State all along lacks merit.

n13 "Property" is defined by regulation as "the homestead and all other personal and real property in which the recipient has a legal interest." *42 CFR § 433.36(b)* (2005).

[*31]

n14 The United States as *amicus curiae* makes the different argument that the proceeds never became Ahlborn's "property" because "to the extent the third party's payment passes through the recipient's hands en route to the State, it comes with the State's lien already attached." Brief as *Amicus Curiae* 18. Even if that reading were consistent with the Arkansas statute (and it is not, see *infra*, at 16), the United States' characterization of the "assignment" simply reinforces Ahlborn's point: This is a lien that attaches *to the property of the recipient*.

Second, the State's argument that Ahlborn lost her property rights in the proceeds the instant she applied for medical assistance is inconsistent with the creation of a statutory lien on those proceeds. Why, after all, would ADHS need a lien on its own property? A lien typically is imposed on the property of *another* for payment of a debt owed by that other. See *Black's Law Dictionary* 922 (6th ed. 1990). Nothing in the Arkansas statute defines the term otherwise.

That the lien is also called an "assignment" does not alter the [*32] analysis. The terms that Arkansas employs to describe the mechanism by which it lays claim to the settlement proceeds do not, by themselves, tell us whether the statute violates the anti-lien provision. See *United States v. Craft*, 535 U.S. 274, 279, 122 S. Ct. 1414, 152 L. Ed. 2d 437 (2002); *Drye v. United States*, 528 U.S. 49, 58-61, 120 S. Ct. 474, 145 L. Ed. 2d 466 (1999). Although denominated an "assignment," the effect of the statute here was not to divest Ahlborn of all her property interest; instead, Ahlborn retained the right to sue for medical care payments, and the State asserted a right to the fruits of that suit once they materialized. In effect, and as at least some of the statutory language recognizes, Arkansas has imposed a lien on Ahlborn's property. n15 Since none of the federal third-party liability provisions excepts that lien from operation of the anti-lien provision, its imposition violates federal law.

n15 Because ADHS insists that "Arkansas law did *not* require Ahlborn to assign her claim or her right to sue," Brief for Petitioners 33 (emphasis in original), we need not reach the question whether a State may force a recipient to assign a chose in action to receive as much of the settlement as is necessary to pay Medicaid's costs. The Eighth Circuit thought this would be impermissible because the State cannot "circumvent the restrictions of the federal anti-lien statute simply by requiring an applicant for Medicaid benefits to assign property rights to the State before the applicant liquidates the property to a sum certain." App. to Pet. for Cert. 6. Indeed, ADHS acknowledges that Arkansas cannot, for example, require a Medicaid applicant to assign in advance any right she

may have to recover an inheritance or an award in a civil case not related to her injuries or medical care. This arguably is no different; as with assignment of those other choses in action, assignment of the right to compensation for lost wages and other nonmedical damages is nowhere authorized by the federal third-party liability provisions.

[*33]

V

ADHS and its *amici* urge, however, that even if a lien on more than medical damages would violate federal law in some cases, a rule permitting such a lien ought to apply here either because Ahlborn breached her duty to "cooperate" with ADHS or because there is an inherent danger of manipulation in cases where the parties to a tort case settle without judicial oversight or input from the State. Neither argument is persuasive.

The United States proposes a default rule of full reimbursement whenever the recipient breaches her duty to "cooperate," and asserts that Ahlborn in fact breached that duty. n16 But, even if the Government's allegations of obstruction were supported by the record, its conception of the duty to cooperate strays far beyond the text of the statute and the relevant regulations. The duty to cooperate arises principally, if not exclusively, in proceedings initiated *by the State* to recover from third parties. See 42 U.S.C. § 1396k(a)(1)(C) (recipients must "cooperate with the State in identifying . . . and providing information to assist the State in pursuing" third parties). Most of the accompanying federal regulations simply echo [*34] this basic duty; all they add is that the recipient must "pay to the agency any support or medical care funds received that are covered by the assignment of rights." 42 CFR § 433.147(b)(4) (2005).

n16 See, e.g., Brief for United States as *Amicus Curiae* 14 (alleging that Ahlborn "omitted or understated the medical damages claim from her lawsuit and attempted to horde for herself the third-party liability payments"); *id.*, at 15 ("Having forsaken her federal and state statutory duties of candid and forthcoming cooperation . . . [,] respondent, rather than the taxpayers, must bear the financial consequences of her actions"); *id.*, at 21, 24 (referring to Ahlborn's "backdoor settlement" and "obstruction and attrition," as well as her "calculated evasion of her legal obligations").

In any event, the aspersions the United States casts upon Ahlborn are entirely unsupported; all the record reveals is that ADHS, despite having intervened in the lawsuit and asked to be apprised of any hearings, neither [*35] asked to be nor was involved in the settlement negotiations. Whatever the bounds of the duty to cooperate, there is no evidence that it was breached here.

ADHS' and the United States' alternative argument that a rule of full reimbursement is needed generally to avoid the risk of settlement manipulation is more colorable, but ultimately also unpersuasive. The issue is not, of course, squarely presented here; ADHS has stipulated that only \$ 35,581.47 of Ahlborn's settlement proceeds properly are designated as payments for medical costs. Even in the absence of such a post-settlement agreement, though, the risk that parties to a tort suit will allocate away the State's interest can be avoided either by obtaining the State's advance agreement to an allocation or, if necessary, by submitting the matter to a court for decision. n17 For just as there are risks in underestimating the value of readily calculable damages in settlement negotiations, so also is there a countervailing concern that a rule of absolute priority might preclude settlement in a large number of cases, and be unfair to the recipient in others. n18

n17 As one *amicus* observes, some States have adopted special rules and procedures for allocating tort settlements in circumstances where, for example, private insurers' rights to recovery are at issue. See Brief for Association of Trial Lawyers of America 20-21. Although we express no view on the matter, we leave open the possibility that such rules and procedures might be employed to meet concerns about settlement manipulation.

[*36]

n18 The point is illustrated by state cases involving the recovery of workers' compensation benefits paid to an employee (or the family of an employee) whose injuries were caused by a third-party tortfeasor. In *Flanigan*

v. Department of Labor and Industry, 123 Wn. 2d 418, 869 P.2d 14 (1994), for example, the court concluded that the state agency could not satisfy its lien out of damages the injured worker's spouse recovered as compensation for loss of consortium. The court explained that the department could not "share in damages for which it has provided no compensation" because such a result would be "absurd and fundamentally unjust." *Id.*, at 426, 869 P. 2d, at 17.

VI

Finally, ADHS contends that the Court of Appeals' decision below accords insufficient weight to two decisions by the Departmental Appeals Board of HHS (Board) rejecting appeals by the States of California and Washington from denial of reimbursement for costs those States paid on behalf of Medicaid recipients who had settled tort claims. See App. to Pet. for Cert. 45-67 (reproducing *In re Washington State Dept. of Social & Health Servs.*, Dec. No. 1561, 1996 WL 157123 [*37] (HHS Dept. App. Bd., Feb. 7, 1996)); App. to Pet. for Cert. 68-86 (reproducing *In re California Dept. of Health Servs.*, Dec. No. 1504, 1995 WL 66334 (HHS Dept. App. Bd., Jan. 5, 1995)). Because the opinions in those cases address a different question from the one posed here, make no mention of the anti-lien provision, and, in any event, rest on a questionable construction of the federal third-party liability provisions, we conclude that they do not control our analysis.

Normally, if a State recovers from a third party the cost of Medicaid benefits paid on behalf of a recipient, the Federal Government owes the State no reimbursement, and any funds already paid by the Federal Government must be returned. See 42 CFR § 433.140(a)(2) (2005) (federal financial participation "is not available in Medicaid payments if . . . the agency received reimbursement from a liable third party"); § 433.140(c). Washington and California both had adopted schemes according to which the State refrained from claiming full reimbursement from tort settlements and instead took only a portion of each settlement. (In California, the recipient typically could keep at least 50% of her settlement, [*38] see App. to Pet. for Cert. 72; in Washington, the proportion varied from case to case, see *id.*, at 48-51.) Each scheme resulted in the State's having to pay a portion of the recipient's medical costs -- a portion for which the State sought partial reimbursement from the Federal Government. CMS (then called HCFA) denied this partial reimbursement on the ground that the States had an absolute duty to seek full payment of medical expenses from third-party tortfeasors.

The Board upheld CMS' determinations. In California's appeal, which came first, the Board concluded that the State's duty to seek recovery of benefits "from available third party sources to the fullest extent possible" included demanding full reimbursement from the entire proceeds of a Medicaid recipient's tort settlement. *Id.*, at 76. The Board acknowledged that § 1396k(a) "refers to assignment only of 'payment for medical care,'" but thought that "the statutory scheme as a whole contemplates that the actual recovery might be greater and, if it is, that Medicaid should be paid first." *Ibid.* The Board gave two other reasons for siding with CMS: First, the legislative history of the third-party liability evinced [*39] a congressional intent that "the Medicaid program . . . be reimbursed from available third party sources to the fullest extent possible," *ibid.*; and, second, California had long been on notice that it would not be reimbursed for any shortfall resulting from failure to fully recoup Medicaid's costs from tort settlements, see *id.*, at 77. The Board also opined that the State could not escape its duty to seek full reimbursement by relying on the Medicaid recipient's efforts in litigating her claims. See *id.*, at 79-80.

Finally, responding to the State's argument that its scheme gave Medicaid recipients incentives to sue third-party tortfeasors and thus resulted in both greater recovery and lower costs for the State, the Board observed that "a state is free to allow recipients to retain the state's share" of any recovery, so long as it does not compromise the Federal Government's share. *Id.*, at 85.

The Board reached the same conclusion, by the same means, in the Washington case. See *id.*, at 53-64.

Neither of these adjudications compels us to conclude that Arkansas' statutory lien comports with federal law. First, the Board's rulings address a different question from [*40] the one presented here. The Board was concerned with the Federal Government's obligation to reimburse States that had, in its view, failed to seek full recovery of Medicaid's costs and had instead relied on recipients to act as private attorneys general. The Board neither discussed nor even so much as cited the federal anti-lien provision.

Second, the Board's acknowledgment that the assignment of rights required by § 1396k(a) is limited to payments for medical care only reinforces the clarity of the statutory language. Moreover, its resort to "the statutory scheme as a whole" as justification for muddying that clarity is nowhere explained. Given that the only statutory provisions CMS

relied on are § § 1396a(a)(25), 1396k(a), and 1396k(b), see *id.*, at 75-76; *id.*, at 54-55, and given the Board's concession that the first two of these limit the State's assignment to payments for medical care, the "statutory scheme" must mean § 1396k(b). But that provision does not authorize the State to demand reimbursement from portions of the settlement allocated or allocable to nonmedical damages; instead, it gives the State a priority disbursement from the medical expenses portion alone. [*41] See *supra*, at 12. In fact, in its adjudication in the Washington case, the Board conceded as much: "[CMS] may require a state to assert a collection priority over funds obtained by Medicaid recipients in [third-party liability] suits *even though the distribution methodology set forth in section [1396k(b)] refers only to payments collected pursuant to assignments for medical care.*" App. to Pet. for Cert. 54 (emphasis added). The Board's reasoning therefore is internally inconsistent.

Third, the Board's reliance on legislative history is misplaced. The Board properly observed that Congress, in crafting the Medicaid legislation, intended that Medicaid be a "payer of last resort." S. Rep. No. 99-146, p. 313 (1985). That does not mean, however, that Congress meant to authorize States to seek reimbursement from Medicaid recipients themselves; in fact, with the possible exception of a lien on payments for medical care, the statute expressly prohibits liens against the property of Medicaid beneficiaries. See 42 U.S.C. § 1396p(a). We recognize that Congress has delegated "broad regulatory authority to the Secretary [of HHS] in the Medicaid area," *Wis. Dep't of Health & Family Servs. v. Blumer*, 534 U.S. 473, 496, n. 13, 122 S. Ct. 962, 151 L. Ed. 2d 935 (2002), [*42] and that agency adjudications typically warrant deference. Here, however, the Board's reasoning couples internal inconsistency with a conscious disregard for the statutory text. Under these circumstances, we decline to treat the agency's reasoning as controlling.

VII

Federal Medicaid law does not authorize ADHS to assert a lien on Ahlborn's settlement in an amount exceeding \$ 35,581.47, and the federal anti-lien provision affirmatively prohibits it from doing so. Arkansas' third-party liability provisions are unenforceable insofar as they compel a different conclusion. The judgment of the Court of Appeals is affirmed.

It is so ordered.

Ark. HHS v. Ahlborn, 2006 U.S. LEXIS 3455, 74 U.S.L.W. 4214 (U.S. May 1, 2006)

SHEPARD'S Signal: Citing Refs. With Analysis Available

Restrictions: *Unrestricted*

FOCUS(TM) Terms: *No FOCUS terms*

Print Format: *FULL*

Citing Ref. Signal: *Hidden*

SHEPARD'S SUMMARY

Unrestricted *Shepard's* Summary

No subsequent appellate history. Prior history available.

Citing References: None

PRIOR HISTORY (4 citing references)

1. *Ahlborn v. Ark. Dep't of Human Servs.*, 280 F. Supp. 2d 881, 2003 U.S. Dist. LEXIS 15883 (E.D. Ark. 2003)
2. **Reversed by, Remanded by:**
Ahlborn v. Ark. Dep't of Human Servs., 397 F.3d 620, 2005 U.S. App. LEXIS 2015 (8th Cir. Ark. 2005)
3. **Writ of certiorari granted:**
Ark. Dep't of Human Servs. v. Ahlborn, 126 S. Ct. 35, 162 L. Ed. 2d 933, 2005 U.S. LEXIS 5417, 74 U.S.L.W. 3199 (U.S. 2005)
4. **Motion granted by:**
Ark. HHS v. Ahlborn, 126 S. Ct. 1184, 163 L. Ed. 2d 1126, 2006 U.S. LEXIS 926, 74 U.S.L.W. 3423 (U.S. 2006)

Affirmed by (CITATION YOU ENTERED):

Ark. HHS v. Ahlborn, 2006 U.S. LEXIS 3455, 74 U.S.L.W. 4214 (U.S. May 1, 2006)

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EXECUTIVE SUMMARY

The Attorney General was directed to provide this special report by § 1-18, Item (52)(D) of the 2006 Appropriation Act, which states:

The Attorney General shall provide a report on the most cost-effective strategies for improving Virginia's collections of accounts receivable, including both general and nongeneral fund receivables. The Secretary of Finance shall provide assistance as necessary in the preparation of this report. Copies of this report shall be provided to the Governor and the Chairmen of the House Appropriations and Senate Finance Committees by October 16, 2006.

This issue was studied by analyzing the current practices and controlling legislation of the four agencies with broad legislative mandates to oversee the collection of the Commonwealth's receivables and by sampling the collection practices of other states and Virginia law firms that specialize in collection of receivables. As the study of legislation and collection practices progressed, promising areas for improvement were noted. Thus, this special report concludes with the Attorney General's broad recommendations in the areas of technology, legislation, and collection processes.

Specifically, the Attorney General makes two recommendations that involve collaborative efforts between his Office and other entities with related missions. These recommendations are:

- *Establish an ongoing task force comprised of representatives from the different entities charged with collecting the Commonwealth's receivables and legislative staff members to address common vulnerabilities in the areas of technology, legislation, and processes.*
- *The Attorney General will explore the feasibility of partnering with Better Business Bureaus throughout the Commonwealth to publish a current list of companies with unsatisfied judgments in favor of the Commonwealth.*

In addition, the Attorney General offers two recommendations regarding legislative action. These recommendations propose specific statutory amendments and suggest future legislative initiatives. The recommendations are:

- *Statutory changes are required to clarify the unique nature of all debts to the Commonwealth.*

- Under this recommendation, specific amendments are proposed to the Appropriation Act and *Code of Virginia* to enhance the Commonwealth's collection of accounts receivable.
- *The Attorney General will work with the Department of Planning and Budget to study the fiscal impact of certain initiatives.*
 - This recommendation proposes a study to determine whether certain initiatives will result in a significant positive fiscal impact.
 - These initiatives include conforming administrative processes to allow agencies that issue final administrative orders to docket and enforce the orders as circuit court judgments; establishing oversight for collection agencies within the Office of the Attorney General; amending § 8.01-66.9 of the *Code of Virginia* regarding collection of Medicaid liens; amending § 46.2-110 of the *Code* to establish strict liability for damage to highway property maintained by the Commonwealth; and formation of a statewide "lien depository" for administrative and judicial liens of the Commonwealth.

INTRODUCTION

Pursuant to § 1-18, Item 52(D) of the 2006 Appropriation Act, the General Assembly directed the Attorney General to prepare this special Report on the Most Cost-Effective Strategies for Improving Virginia's Collections of Accounts Receivable, including Both General and Nongeneral Fund Receivables for the Governor and the Chairs of the Finance and Appropriations Committees.

The Attorney General is established as the chief executive officer of the Department of Law by § 2.2-500 of the *Code of Virginia*. In 1990, the General Assembly enacted § 2.1-133.4 (recodified at § 2.2-518 in 2001), which created the Division of Debt Collection (DDC) in the Department of Law.¹ Section 2.2-518 authorizes DDC “to provide all legal services and advice related to the collection of funds owed to the Commonwealth.” However, the General Assembly has authorized several other entities to collect specific receivables of the Commonwealth, including the Department of Taxation (§§ 58.1–1803–1806), the Department of Social Services, Division of Child Support Enforcement (§ 63.2-1901), and the Commonwealth's Attorneys (§ 19.2-349).² The General Assembly also approved the use of collection agencies by these entities and DDC. In addition, § 2.2-4806 enables other agencies and institutions of the Commonwealth to use collection agencies for smaller debts in lieu of or prior to referring them to DDC for collection.³

To address the General Assembly's directive regarding this special report, the Attorney General analyzed the current practices and controlling legislation of the four agencies with broad legislative collection mandates and analyzed the collection practices of a sample of other states and Virginia law firms that specialize in collection of receivables similar to those of the Commonwealth. The Attorney General's Special Report on the Most Cost-Effective Strategies for Improving Virginia's Collections of Accounts Receivable, including Both General and Nongeneral Fund Receivables

¹ In 1982, the General Assembly added an appropriation for collection services to the Attorney General's appropriation. 1982 VA. ACTS CH. 684. The DDC became a separate agency within the Department of Law with the enactment of § 2.1-133.4. 1990 VA. ACTS CH. 71.

² Pursuant to § 4-5.02(d) of the 2006 Appropriation Act, the Commonwealth's two teaching hospitals have the option of collecting their accounts receivable by contracting with private attorneys and collection agencies or by using the services of the Division of Debt Collection. Under this provision, these entities can also independently compromise, settle, and discharge accounts receivable claims.

³ The Division of Purchases and Supply in the Department of General Services (DGS) administers an optional-use statewide term contract for collection services for accounts receivable for use by the Commonwealth's agencies. Because it is an optional-use contract, agencies can negotiate with and refer appropriate accounts receivable to collection agencies that are not contractors under the DGS contract. <http://www.dgs.virginia.gov/DPS.aspx>.

summarizes the results of these efforts. The manner in which data is collected and reported by the various entities does not always allow meaningful comparisons to be made among the collection methods or results. This special report identifies vulnerabilities in technology, legislation, and processes. Because of their impact on the Commonwealth's ability to collect its receivables by the most cost-effective means, these vulnerabilities are incorporated in the recommendations at the end of this special report.

The texts of cited statutory provisions and court decisions are included in the Appendix. Published agency reports are not included because of their size. These reports are accessible via the links cited for the agencies' websites or via the Virginia General Assembly's Legislative Information Services website at <http://leg1.state.va.us/>.

COLLECTION PRACTICES OF THE COMMONWEALTH

THE DIVISION OF DEBT COLLECTION IN THE DEPARTMENT OF LAW

Background

The Division of Debt Collection is authorized pursuant to § 2.2-518 of the *Code of Virginia* to provide all legal services and advice related to the collection of funds owed to the Commonwealth. The mission of DDC is to provide all appropriate and cost-effective, professional debt collection services on behalf of all State agencies. This mission is based on the statutory policy established in § 2.2-4800 of the Virginia Debt Collection Act,⁴ which states in part:

It shall be the policy of the Commonwealth that all state agencies and institutions shall take all appropriate and cost-effective actions to aggressively collect all accounts receivable. All state agencies and institutions shall be subject to this chapter and shall establish internal policies and procedures for the management and collection of accounts receivable.

⁴ VA. CODE ANN. TIT. 2.2, CH. 48, §§ 2.2-4800 to 2.2-4808 (2005).

DDC does not receive general fund revenue to fund its operations. Rather, DDC is self-funded through the fees it retains from amounts collected.⁵ In the past two fiscal years, the Appropriation Act required DDC to retain a 30% fee on its collections. In the last General Assembly session, a more flexible fee structure was approved. Accordingly, § 1-18, Item 52(B)(5) of the 2006 Appropriation Act authorizes DDC to charge a fee *up* to 30%.

DDC physically is located in the Office of the Attorney General. When fully staffed, DDC employs 24 people, consisting of 6 attorneys, 9 claims representatives, 1 paralegal, 3 financial, and 5 administrative positions. Currently, DDC provides debt collection services to 45 agencies. In addition to providing legal collection services, DDC advises agencies on matters that impact the Commonwealth's collection of receivables, for example, legislation, contract provisions, and bankruptcies. One of DDC's six attorneys physically is located in another state office building serving as agency counsel to the Division of Unclaimed Property in the Department of Treasury. DDC also provides collection services and advice to other divisions in the Office of the Attorney General. Due to its existing working relationships with a large portion of the Commonwealth's agencies and institutions, and the diverse nature of such representation, DDC is uniquely situated to fulfill the requirements of § 2.2-518 by managing consolidated collection efforts for the Commonwealth.

DDC agency clients are located throughout Virginia. Strategic considerations may lead DDC to refer matters to private attorneys appointed by the Attorney General on a contingency fee or hourly basis. Such considerations may include venue, claim amount, special expertise required by nature of claim, and, as a last resort, temporary case load management.

DDC manages its referrals with an off-the-shelf case management system developed by a local vendor and customized to accommodate DDC's requirements. System support is provided via a maintenance contract with the vendor and by the information technology department in the Attorney General's office. DDC also utilizes several external databases maintained by other state agencies to locate debtors and their assets. These databases are administered by the Division of Motor Vehicles (address and vehicle ownership), the Virginia Employment Commission (employer and earnings), the Department of Taxation (addresses), the Virginia Commonwealth University Health System (limited read-only access to patient accounts), and the State Corporation Commission (corporate data). Two commercial databases compiled by Equifax (credit report) and LexisNexis (locator and real property ownership) are also utilized. Further, DDC uses the PACER Service Center for electronic access to the federal courts, primarily bankruptcy courts.

⁵ The DDC does not receive a fee on payments received under the Setoff Debt Collection Act, which requires creditor agencies to submit delinquent debts to the Department of Taxation for setoff against any refunds belonging to the debtor by the Department of Taxation. *See generally* TIT. 58.1, CH. 3, §§ 58.1-520 to 58.1-535.

The DDC's collection efforts are enhanced by several statutory provisions, primarily in the litigation area, that inure to the benefit of the Commonwealth only. For instance, statutes of limitations generally do not run against the Commonwealth (§ 8.01-231); the Commonwealth is exempt from payment of state court costs and fees (§ 17.1-629); and the Commonwealth has a priority lien in certain third-party recovery cases (§ 8.01-66.9).⁶ Then, like other judgment creditors, the Commonwealth can request the suspension of a judgment debtor's driver's license when certain conditions are met (§ 46.2-417). Likewise, with proper notice, the Commonwealth can assess prejudgment interest, administrative costs, and late penalty fees (§ 2.2-4805).

DDC's Comprehensive Review

DDC currently is conducting a comprehensive review of its operations and procedures on three levels – people, processes, and technology – to ensure that its operations comply with the mandates of the Virginia Debt Collection Act. As a result of the review, certain initiatives already have been implemented: development of a new Procedures Manual; purchases of new laptop computers, portable printers, and portable scanners to increase effective communication between the office and traveling attorneys and staff members, whether in court or while conducting training for a client agency; development of document management and retention policies and purchase of a high volume scanner to support DDC's compliance with these policies; creation of and funding for a new financial specialist position who will provide accounting, budgeting, forecasting, and benchmarking expertise; systematic status reporting to clients; and new collaborations with divisions in the Office of the Attorney General, such as the Tobacco Section, on collections and bankruptcy matters.

Other initiatives currently under review by DDC include: client development and training; in-house staff development, particularly in collection methodology and ability to communicate in Spanish as necessary; additional purchases of technology to automate some manual processes; increased utilization of satellite offices currently staffed by the Attorney General; greater participation in creditor bar associations and the National Association of Attorneys General; creation of a fee schedule based on budget and forecasting benchmarks; and review of position descriptions and development of industry-tested performance and salary matrices for all DDC personnel.

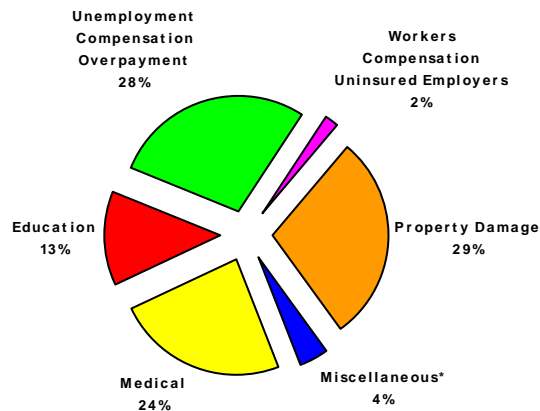
DDC Collection Statistics

At the end of FY 2006, DDC had a case inventory of 9,197. This figure includes active accounts; however, it does not include voluminous inactive judgment accounts that

⁶ Earlier this year, the United States Supreme Court decided Ark. Dep't of Health & Human Servs. v. Ahlborn, 126 S. Ct. 1752 (2006). The Ahlborn decision places limits on the collection of Medicaid liens against third-party recoveries. It is, however, too soon to predict the fiscal impact of Ahlborn on the Commonwealth's collection of Medicaid liens.

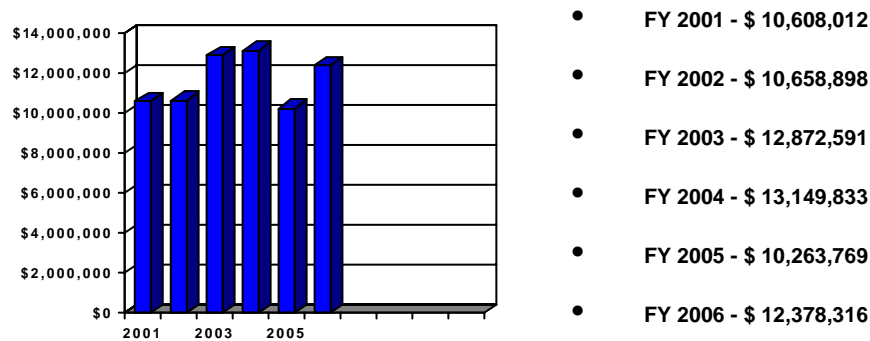
DDC continues to monitor for future payment. When required by a change in collectibility status, inactive accounts are reactivated for further collection action. Table 1 shows the types of accounts in DDC's inventory of referred accounts.

TABLE 1
ACCOUNTS PROFILE



***Miscellaneous Debt includes defaulted small business loans, breach of contract, OSHA penalties, environmental and natural resource violations, professional occupation conduct violations, and veterinary hospital bills.**

Receivables placed with DDC totaled \$167,715,874 as of June 30, 2006. In FY 2006, DDC's annual collections totaled \$12,378,316.⁷ Table 2 highlights DDC's annual collections since 2001.⁸

TABLE 2**DDC ANNUAL COLLECTIONS**

Historically, medical claims from the Commonwealth's teaching hospitals, mental health facilities, and Medicaid programs comprise more than 50% of DDC's annual collections. When claims arising from overpayments of unemployment benefits are also included, approximately 60% of DDC's collection efforts are directed against a largely indigent population without health insurance or jobs. Moreover, debtors that owe civil penalties often are defunct corporations, debtors owing workers' compensation benefits are uninsured corporations, and debtors owing property damages frequently are uninsured drivers or nonresidents traveling through the Commonwealth. As noted by the Department of Accounts in its quarterly report, "state receivables largely consist of unemployment taxes, tuition and fees, and billings for several indigent care programs, which present numerous special problems in collection."⁹

⁷ The DDC receives payments on accounts receivable in numerous ways: by mail, walk-ins (usually cash payments), internet credit card payments and electronic transfers, and via direct payments to DDC's client agencies. The DDC also utilizes involuntary judgment enforcement methods, such as garnishment and levy, to obtain payment.

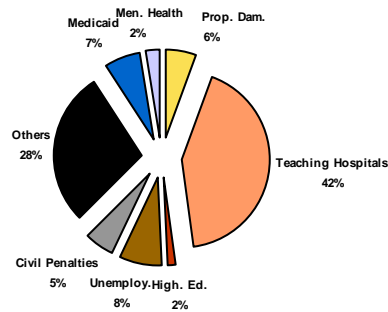
⁸ The Report on Statewide Financial Management and Compliance for the Quarter Ended March 31, 2006 (March 31, 2006 Quarterly Report), compiled by the Department of Accounts, indicates that DDC contributed \$298,579 in collections during the quarter ended December 31, 2005.

http://www.doa.virginia.gov/General_Accounting/Quarterly_Report/2006/March_2006.pdf. This figure grossly understates DDC's collections for that quarter, which were \$2,978,069. The discrepancy reveals a disparity in reporting formats that was also noted by the Compensation Board in its annual report on court fines and fees, which is discussed later in this special report.

⁹ March 31, 2006 Quarterly Report.

Accounts receivable referred to DDC are the most difficult to collect based on industry standards, and they lack the statutory priorities afforded other types of debts of the Commonwealth, such as taxes and child support. Table 3 indicates the receivables in DDC's inventory by type as of June 30, 2006.

TABLE 3
RECEIVABLES PROFILE



The five agencies with the highest recoveries by DDC since 2001 are the Virginia Commonwealth University Health System (VCUHS), the University of Virginia Medical Center (UVAMC), the Department of Medical Assistance Services (DMAS), the Virginia Employment Commission (VEC), and the Virginia Department of Transportation (VDOT). Of these agencies, three primarily refer medical debt, and the other two agencies refer overpayment of employment benefits and highway property damage claims. All but DMAS extensively use in-house collection practices and collection agencies. Therefore, claims are not referred to DDC until these initial efforts are exhausted and the claim is deemed “uncollectible” at the agency level. Thus, when referred to DDC, these claims significantly are older than the 60 days past due timeline referenced in § 2.2-4806.¹⁰

The Debt Collection Recovery Fund and the General Fund

Because of its impact on DDC operations, it is necessary to address § 1-18, Item 52(B)(1) of the 2006 Appropriation Act, which creates a special nonreverting fund called the Debt Collection Recovery Fund (Fund). This requirement first became effective in the 2004 interim budget. All receivables collected by DDC, minus its fees, are deposited into the Fund on a monthly basis. The 2006 Appropriation Act further requires 30% of the amounts collected for the Fund must be returned to the client agency. By fiscal year

¹⁰ For example, at least two universities have referred student debts that were more than 25 years past due at the time of referral, and one agency has referred property damage claims more than 10 years old.

end, the State Comptroller must transfer an amount up to a specified cap from the Fund balance into the general fund. Any excess is returned *pro rata* to the client agencies based on their contributions to the Fund. This general fund deposit requirement does not extend to accounts receivable collected by private collection agencies. Table 4 shows DDC's total collections, fees, and agency transfers, and the general fund deposits since the deposit requirement began in 2004.

TABLE 4**DDC DISTRIBUTION OF RECEIVABLES**

FISCAL YEAR	TOTAL COLLECTIONS*	DDC FEES	AGENCY TRANSFERS	GENERAL FUND DEPOSITS
2004	\$13,149,833	\$1,800,000 (fee cap)	\$7,531,905	\$1,570,000
2005	\$10,263,769	\$1,788,852	\$4,411,818	\$1,249,649
2006	\$12,378,316	\$1,800,000 (fee cap)	\$5,553,182	\$1,139,454

***Total Collections include payments made directly to agencies, which are not otherwise indicated on Table 4**

When the general fund deposits were first required in the 2004 interim budget, DDC's client agencies expressed immediate concerns about this requirement. The most pressing concern of many agencies was that the fund sources for their accounts receivable were either special state funds or federal funds, which were not appropriate for transfer to the general fund. Agencies also were concerned about the deposit requirement's fiscal impact on their operations.

DDC worked closely with its client agencies to identify and exclude special fund and federal fund source receivables from the deposit requirement. This process either eliminated in part or in full several agencies' receivables from the general fund deposit requirement, including the receivables for the VEC (federal funds), DMAS (partly federal funds), and the state universities for their guaranteed student loans (federal funds). The Virginia State Bar and UVAMC obtained exemptions from the Secretary of Finance based on the Secretary's determination that collections for these agencies are more appropriately returned to the agencies, as authorized by § 1.18, Item 52(B)(2). Other agencies currently are seeking an similar exemption.

Because of the general fund deposit requirement, agencies without a fund source exemption or an exemption from the Secretary of Finance were inclined to use collection services other than DDC. The referral statistics for VDOT vividly demonstrate that agency's negative response to the general fund deposit requirement. In FY 2003, VDOT

referred 1,830 accounts to DDC for collection activity, primarily legal action. The next year, in FY 2004, when the general fund deposit requirement was introduced in the interim budget, VDOT referred 1,593 accounts. In FY 2005, when VDOT developed new in-house procedures in response to the general fund deposit requirement, and referred cases to a private collection agency, VDOT referred only 1,039 cases to DDC. In FY 2006, VDOT referred a mere 175 cases to DDC. Presumably, the balance of VDOT's accounts receivable were retained in-house or referred to a collection agency.

At VDOT's request, the Secretary of Finance granted VDOT an exemption from the general fund deposit requirement effective FY 2007. Since VDOT has been the largest annual contributor to the general fund deposit, it is anticipated there will be a significant decrease in Fund transfers to the general fund in FY 2007 as compared to prior fiscal year transfers. Table 5 indicates the five agencies with the highest contributions to the general fund since FY 2005, the first full year of the general fund deposit requirement.

TABLE 5**AGENCIES WITH HIGHEST CONTRIBUTIONS TO GENERAL FUND***

FY 05		FY 06	
Dep't of Transp.	\$389,146	Dep't of Transp.	\$429,414
Dep't of Mental Health	\$277,382	Dep't of Mental Health	\$310,319
Dep't of Medical Assist. Serv.	\$206,370	Workers' Comp. Comm'n	\$ 86,355
Workers' Comp. Comm'n	\$203,693	Dep't of Forestry	\$ 49,143
Dep't of State Police	\$ 84,264	Virginia State Univ.	\$ 31,398

***Individual Agency Figures for FY 04 Not Available**

THE DEPARTMENT OF TAXATION

Pursuant to § 58.1-1803 of the *Code* and § 4-5.02(d)(3) of the 2006 Appropriation Act, the Department of Taxation (Tax) is exempt from debt collection practices of the Office of the Attorney General and can hire collection agencies and collectors, including attorneys. Tax employs approximately 500 staff to enforce compliance with tax laws. Most of these employees are auditors and examiners, but this number also includes staff devoted to in-house, central, and field collections, and collection of court fines. The tax collection staff numbers about 95, and the court fines collection staff is about 50. Within prescribed guidelines, these staff members are authorized to deal with bankruptcies and setoff debt, issue levies, respond to offers of compromise, revoke sales tax certificates, order padlocks, and initiate criminal prosecutions in conjunction with a Commonwealth's Attorney. Tax also utilizes several collection agencies.

Tax's collections process is outlined in the Virginia Taxpayer's Bill of Rights, a statutory directive under § 58.1-1845 that lists taxpayers' options when faced with collection actions on their accounts. In addition to collection practices generally

available to all creditors and the practices specifically available to the Commonwealth, the General Assembly has granted Tax additional and extraordinary collection authority. For instance, Tax can issue a Memorandum of Lien that acts as a judgment against a taxpayer's real property and personal assets; issue a bank account lien or wage garnishment without first obtaining judgment; convert a business tax liability into personal liability of responsible officers; padlock businesses; and seize assets without judgment. Further, Tax can utilize the United States Department of Treasury's offset program to submit state income tax debt for offset against debtors' federal income tax refunds.

Pursuant to §§ 58.1-1821 through 58.1-1825, the taxpayer is afforded an appeals process to contest the accuracy of an assessment or action by Tax. The appellate process begins with an informal review. If the taxpayer is not successful, the taxpayer can appeal directly to the Tax Commissioner. The Tax Commissioner's decision then can be appealed to the appropriate circuit court.

According to Tax's Annual Report for Fiscal Year 2005,¹¹ Tax is one of the largest sources of annual general fund revenue to the Commonwealth. Eighty-five percent of this general fund revenue comes from individual income tax and from sales and use tax. Corporation income tax runs a distant third. In FY 2005, the aggregate collections of all revenues administered by Tax totaled \$13,179,562,000. The most recent statistics available for setoff debt collections by Tax indicate that in FY 2003 Tax collected \$23,755,975 through setoff debt and that it collected an additional \$21,137,386 through its Refund Match program.

In addition to its "super" lien on taxpayers' property, Tax has benefited from other statutory enhancements to its collections process. For example, § 58.1-202.2 authorizes Tax to enter into public-private partnership contracts to finance Tax's technology needs. Pursuant to this provision, Tax entered into a partnership in 1998 with CGI-AMS, a Canadian company, which resulted in an advanced computer system for Tax that integrated existing software with new proprietary software designed to accomplish specific collections purposes. As required by § 58.1-202.2, the increased revenues generated by the partnership were benchmarked and then used to fund the contract until paid. This benefits-funded contract was implemented in stages. The initial projects were designed to generate quickly seed money to fund the larger elements of the project. Full system conversion was completed in 2005 and as of June 30, 2006, the partnership contract is complete except for ongoing maintenance. As a result, Tax now enjoys several technological advancements, including software that scores accounts and makes automatic initial collection action decisions and an automated telephone-based payment plan system.

Additionally, Tax can publish the names of delinquent business taxpayers. Another effective tool that Tax has offered twice is the tax amnesty program that allowed

¹¹ http://www.tax.virginia.gov/Web_PDFs/AnnualReportFY2005.pdf.

taxpayers to pay back taxes with reduced penalties and interest. This amnesty program is authorized by § 58.1-1840.1. According to the Federation of Tax Administrators, Virginia's amnesty program brought in \$32.2 million in 1993 and more than triple that amount, \$98.3 million, in 2003. <http://www.taxadmin.org/fta/rate/amnesty1.html>.

THE DIVISION OF CHILD SUPPORT ENFORCEMENT IN THE DEPARTMENT OF SOCIAL SERVICES

Similar to Tax, the Department of Social Services' Division of Child Support Enforcement (DCSE) is charged by statute with collection responsibilities. Section 63.2-1901 of the *Code* establishes a purpose "to promote the efficient and accurate collection, accounting and receipt of support for financially dependent children and their custodians." In the absence of a court order, § 63.2-1903 establishes DCSE's authority to issue various support orders. Additionally, the provision authorizes DCSE to issue subpoenas for financial records of noncustodial parents and to summons noncustodial parents to appear for questioning in the course of support establishment or enforcement activities.

The DCSE is authorized to contract with private entities, including collection agencies, to facilitate the collection of child support arrearages, and to perform certain administrative functions in the field and in the central office under § 63.2-1907. In addition, § 63.2-1950 directs the Attorney General to "provide and supervise legal services to the [DCSE] in child support enforcement cases to establish, obligate, enforce and collect child support." This section also authorizes the Attorney General to contract with private counsel to serve as special counsel, to contract with collection agencies, and to evaluate the costs and benefits of privatization of the legal services. Privatization alternatives have proven problematic, however, due in part to private counsels' lack of experience with DCSE's unique legal issues and large caseloads.

According to its website, DCSE collected more than \$587,000,000 in child support arrearages last year. More than \$8,000,000 of that total was recovered directly pursuant to incarceration via civil contempt orders of approximately 3,300 delinquent payers. The following statistics also appear on the website: "Currently, there are 363,000 child support cases in Virginia. Collectively, 484,000 of Virginia's children are owed more than \$2.2 billion." <http://www.dss.virginia.gov/family/dcse.html>.

Like Tax, DCSE has a powerful and unique tool in its arsenal – § 63.2-1927 creates a priority lien with the force of judgment when docketed. The lien can be based on an administrative support order (with service of notice sufficient under § 63.2-1916) or on a court or foreign support order. Once the lien is filed, any person or entity, including any department of the Commonwealth, who has notice of the lien and who holds property that may be subject to the lien, shall not pay out, release, transfer, encumber, or convey the property without written authorization from the Commissioner of the Department of Social Services or unless an administrative or judicial order releases the support lien.

Nevertheless, approximately 60% of revenues collected by DCSE require attorney appearances in judicial enforcement proceedings.

In addition to this powerful “super” lien, DCSE also benefits from other extraordinary enforcement tools. For example, DCSE is authorized by § 63.2-1932 to enter into data exchange agreements with financial institutions doing business in the Commonwealth. Under such agreements, the financial institution periodically shall provide to DCSE the account title, record address, social security number, or other taxpayer identification number if DCSE has provided the social security number or other taxpayer identification number in its request. The actual costs incurred by the financial institution in complying with the data match requests can be recovered by DCSE from noncustodial parents identified as the result of a data match. The DCSE can benefit from data matches, as well as asset seizures, on an interstate basis, pursuant to § 63.2-1932.1. Further, DCSE benefits from the ability to track employment status of its debtors via continuously updated “new hire” data obtained from federal government databases.

Moreover, once the notice and appeals process is exhausted, DCSE can enforce its lien with an order to withhold and deliver property of any kind, including income, pursuant to § 63.2-1929. If a person or entity fails to deliver the property sought by an order issued pursuant to § 63.2-1929, then § 63.2-1930 makes that person or entity liable to the DCSE in an amount equal to 100% of the value of the underlying debt that forms “the basis of the lien, order to withhold and deliver, distraint, or an income withholding order or voluntary assignment of wages.”

Pursuant to the support lien, DCSE can collect by distraint, seizure and sale of the property subject to the lien (§ 63.2-1933), or foreclosure (§ 63.2-1934); petition the appropriate court for “an order suspending any license, certificate, registration or other authorization to engage in a business, trade, profession or occupation, or recreational activity” (§ 63.2-1937); notify consumer credit reporting agencies of support payment arrearages (§ 63.2-1940); publish a most wanted delinquent parents list and conduct coordinated arrests of delinquent parents with state and local criminal justice agencies (§ 63.2-1940.1); attach unemployment and workers’ compensation benefits; and suspend an individual’s driver’s license (§ 63.2-1941).

THE COMMONWEALTH’S ATTORNEYS

Section 19.2-349 of the *Code* requires circuit and district court clerks to report monthly on the fines, costs, forfeitures, and penalties, including court-ordered restitution, assessed within their courts that are more than 30 days delinquent, including those with delinquent installment payments. The report goes to the appropriate court, the Department of Taxation, the State Compensation Board, and the appropriate Commonwealth’s Attorney. For clerks who participate in the Supreme Court’s automated information system, the Executive Secretary handles the reporting requirement.

This same *Code* provision requires a Commonwealth's Attorney to institute proper proceedings to collect delinquent fines, costs, forfeitures, penalties, and restitution. A Commonwealth's Attorney can render collection services from his office or, if he determines it is impractical or uneconomical to do so, he can contract with private attorneys or private collection agencies, enter into an agreement with a local governing body or a county or city treasurer, or use Tax. Guidelines and procedures are the joint responsibility of the Office of the Attorney General, the Executive Secretary of the Supreme Court in conjunction with Tax, and the Compensation Board. These guidelines, however, cannot supercede contracts between a Commonwealth's Attorney and private attorneys or collection agencies that have active collection efforts.

Section 19.2-349 authorizes contingency fees for private attorneys and collection agencies, except on amounts collected by Tax under its setoff program. Section 58.1-3958 authorizes local treasurers to charge an administrative fee for their efforts and Tax and the Commonwealth to charge a fee for amounts collected for violations of local ordinances.

According to the Fiscal Year 2005 Assessment and Collection of Fines and Fees Report (2005 Fines and Fees Report), which is prepared by the State Compensation Board, court clerks collected almost \$322 million in fines and fees. Commonwealth's Attorneys collected a little over \$56 million. Of the 14 collection agencies used, Tax was the collection agency with the highest number of localities (102, which equals selection by 5 out of every 6 Commonwealth's Attorneys), the lowest contingency fee (17%), and the best collection rate (73%). <http://www.scb.virginia.gov/docs/fy05finesandfees.pdf>.

Tax and the Compensation Board, and the Auditor of Public Accounts have various reporting requirements under § 19.2-349. It is noteworthy that the 2005 Fines and Fees Report declines to report on methodology or to attest to the accuracy of the data included in the report because of variances in data collection methods and reporting.

Section 19.2-354 establishes the court's authority to order the defendant to pay a sentence of fines, costs, forfeiture, or penalty in deferred payments or installments. The *Code* offers many inducements to the defendant to comply with the payment plan. Under § 19.2-354, default will end a defendant's participation in a work release, home/electronic incarceration, or non-consecutive days program until the debts are satisfied. The money due can be withheld from amounts due the defendant by the Department of Corrections or sheriff, second in priority only to child support. In addition, the defendant's privilege to operate a motor vehicle will be suspended, and the defendant may be fined or imprisoned pursuant to § 19.2-358. Section 19.2-358 requires a defendant that defaults on a payment plan to show cause why he should not be confined in jail or fined for nonpayment. Following the show cause hearing or pursuant to a *capias* issued for the defendant's failure to comply with a court order to appear, the court may order a defendant confined for contempt for up to 60 days or fined up to \$500, unless the defendant satisfactorily can show the court that his failure is excusable.

COLLECTION PRACTICES OF OTHERS

OTHER STATES

In 2005, the National Association of Attorneys General (“NAAG”) sent out a questionnaire to member states seeking information on how each state collected its accounts receivables. Among other things, NAAG inquired whether a state had a department specifically devoted to collections/recovery work, the effectiveness of that department, how that department charged its client agencies, and whether the states outsourced portions of their collections work to third party vendors.

While the members’ responses ranged from detailed to monosyllabic, several trends were discerned from the two states that reported the most success in recovering receivables, Ohio and Texas. Similar to the Commonwealth, both states designate collections/recovery departments and require their state agencies to turn over all delinquent and unpaid debts to the Attorney General within a time period specified by statute. The collections departments in Ohio and Texas have different, yet competitive, fee structures. Ohio charges below-market fees and Texas does not charge fees on its collections.

Designated Collections/Recovery Department

Both states have designated departments that are tasked with collections/recovery matters for all their respective agencies. Unlike Virginia, both Ohio and Texas permit their attorneys general to collect delinquent tax payments, which dramatically increases their annual collection totals.

Ohio’s Collection Enforcement Section employs 10 attorneys and 110 staff members, and it recovered a record \$204 million in 2004, up from \$162 million in 2003. Like Virginia, Ohio’s fiscal year runs from July 1 to June 30.

Texas’s Bankruptcy and Collection Division, which has 17 attorneys and 33 staff members, collected approximately \$64 million during the last fiscal year. Texas’s fiscal year runs from September 1 to August 31.

Required Turnover/Mandatory Deadline

Each state also has statutes directing all state agencies to turn over delinquent and unpaid debts to their respective attorney general’s collection department.¹² Ohio directs

¹² See Ohio Rev. Code Ann. § 131.02 (2006) and 1 Tex. Admn. Code § 59.2 (2006).

that this turnover take place within 45 days after the payment is due. Texas agencies are required to turn over debt once it is 120 days delinquent. Both Ohio and Texas enforce the prompt turnover of delinquent debts by requiring that state auditors evaluate and report on each agency's compliance with these requirements. These statutory provisions ensure that a delinquent debt will receive early attention thereby increasing the likelihood of repayment.

Competitive Pricing

Coupled with mandated debt referral, Ohio and Texas have provided another powerful incentive for their agencies expeditiously to deal with delinquent debt. In both states, each referring agency is allowed to keep most, if not all, of the receivables collected on its behalf. The Texas collection department does not charge for collection services and returns all money recovered to the referring agency. The department's operations are funded by a budget appropriation.

On the other hand, the Ohio collection department funds its operations by charging a nine percent fee and it returns the net amount to the originating agency. Pursuant to *Ohio Code* § 131.02(A), the Ohio collection department has the additional statutory option of collecting its attorney's fees and costs expended in pursuit of recovery. None of the receivables collected by Ohio or Texas are returned to the states' general funds.

On occasion, Ohio and Texas retain private collection agencies and attorneys; the fees for these private collectors range from 15% to 33%. Cases are referred to private collectors and monitored by the collection departments in each attorney general's office, not by the creditor agency. Ohio reports that it employs private collectors only after the state has exhausted its efforts to collect fully on a debt. Texas refers cases to private collectors only for debts under \$1,000 and when the state does not have adequate staffing resources to meet current demand.

PRIVATE COLLECTION FIRMS

Four private law firms that provide various collection services to the Commonwealth were interviewed during the preparation of this report. Because of the proprietary nature of the information solicited in the interviews, these law firms will not be identified by name.

One firm has a national presence and the other three operate only in the Commonwealth. One firm operates solely in the metropolitan Richmond area. Two firms specialize in government collections, one of which represents a variety of local, state, and federal governmental entities, and the other of which represents Commonwealth's Attorneys in the collection of court fines, costs, restitution, and penalties. The other two firms have general collections practices that include some work for the Commonwealth.

Although one office is associated with and supported by a large national law firm and collection agency, it is small, employing only one attorney and two staff members. The other three offices have similar staffing. Each office employs two attorneys, and the total collection and administrative staff members in each office range from eight to ten. Typical of collections firms, each operates a volume business. Because each firm defines active accounts in a different way, we have elected not to compare these numbers.

Unlike collection agencies, each of these firms is able to and does provide litigation services for its clients when necessary. The contingency fees charged vary by client and type of debt; the fees range from 22% to 33.3%. Not surprisingly, the lowest percentage fee is charged for debts that have been reduced to judgment prior to referral.

The firms also use similar technology tools. For example, each firm has a case management system. Two of the firms use an off-the-shelf case management system created by a local vendor with limited customization provided for each firm's practice.¹³ One firm taps into the case management system of its national office, and the fourth firm has a custom-built system to manage its specialized case load. Each of the firms receives electronic referrals of accounts from clients. The electronic referrals create a new file, fully populate the relevant fields, and insert "ticklers" to indicate the next course of action. Based on client preference or when litigation requires it, the firms request hardcopy files from their client. The firms also use similar debtor and asset locator services. Some of the services are internet-based and free; most require a user fee. Depending on the nature of their representation for the Commonwealth, some of the firms have access to the VEC database.

Except when the debt already has been reduced to judgment, each of the firms initiates prejudgment contact with the debtor, usually by letter and occasionally by telephone. If prejudgment contact does not result in satisfactory payment, each firm initiates litigation. The firms have established timelines to determine when to start the litigation process. In the interviews, each firm emphasized that, in the collections world, success generally is based on swift action when debtors and their assets are most available. Following judgment, each firm utilizes enforcement methods ranging from wage garnishments to property attachments. The firms that use debtor interrogatories indicate that this is the least effective enforcement weapon in their arsenal; garnishment is the most effective. Each firm accepts payments via mail or by walk-in. Two firms use a lockbox or dedicated post office box for payments. Three accept credit card payments over the telephone; the remaining firm was initiating this payment method at the time of the interview. None of the firms currently utilizes direct bank drafts or electronic money transfers.

¹³ This case management system is also used by DDC.

CONCLUSION

The Commonwealth has established a variety of initiatives to maximize the collection of its receivables. Many of these initiatives are successful. Nevertheless, DDC, Tax, DCSE, the Commonwealth's Attorneys, VCUHS, UVAMC, individual agencies, private law firms and collection agencies all play significant roles in collecting Virginia's money. Although they have related missions, each of these entities operates independently of the others, with little exchange of information or coordination of resources. As a result, efforts, services, and resources may be duplicated or less than efficient.

For example, technology is the foundation of each entity's operations. During the data gathering stage of this special report, each entity emphasized the necessity and expense of technological investments in the field of collections. Smart enhancements in technology ratchet up operational efficiencies. Yet, there is little, if any, communication among the entities as they study the role of technology in their operations, bid for hardware, software, and database access, or maintain, configure, and update information systems. Consequently, each entity incurs high costs to build custom systems or modify off-the-shelf systems and incurs additional expense to further adapt these systems when they need to interface on an interagency basis.

In addition, variances in reporting standards often make it difficult to compare methodologies and to evaluate their effectiveness. There is a need for coordination of reporting efforts among the collection entities, including collection reporting formats and processes, so comparisons of methodologies and effectiveness will be accurate and have statistical meaning.

Finally, legislative changes are needed to maximize collections, in some cases at the agency level, and in other cases, across the Commonwealth. Some amendments would require only slight modification of existing provisions to clarify a procedure; others may require an in-depth study to determine the overall impact on the Commonwealth and its receivables.

RECOMMENDATIONS

ESTABLISH AN ONGOING TASK FORCE COMPRISED OF REPRESENTATIVES FROM THE ENTITIES CHARGED WITH COLLECTING THE COMMONWEALTH'S RECEIVABLES AND LEGISLATIVE STAFF MEMBERS TO ADDRESS COMMON VULNERABILITIES IN THE AREAS OF TECHNOLOGY, LEGISLATION, AND PROCESSES

While in-house technical support will continue to be required for the foreseeable future, it makes fiscal and operational sense to create communication bridges among the entities that collect the Commonwealth's receivables. Therefore, information and innovations may be implemented within the framework of what already exists and what should exist across the Commonwealth. These bridges will ensure that, along with implementing new technologies, the Commonwealth will develop policies and governing systems to manage the technologies.

This task force also should collaborate with the financial arms of the Commonwealth – the Secretary of Finance, the Auditor of Public Accounts, the Comptroller, the Treasurer, and the Tax Commissioner – to evaluate and define the \$1.29 billion in accounts receivables due the Commonwealth.¹⁴ A shared understanding of the nature of this debt will enhance reporting, collectibility, and write-off status accuracies.

DDC WILL EXPLORE THE FEASIBILITY OF PARTNERING WITH BETTER BUSINESS BUREAUS THROUGHOUT THE COMMONWEALTH TO PUBLISH A CURRENT LIST OF COMPANIES WITH UNSATISFIED JUDGMENTS IN FAVOR OF THE COMMONWEALTH

This initiative parallels reporting procedures utilized by Tax and DCSE. Tax publishes a list of delinquent business taxpayers, and DCSE publishes a most wanted list of delinquent parents. According to its website, the Better Business Bureau network publishes reliability reports that contain information on actions against companies or their principals “brought by government agencies that allege violations of laws or regulations relevant to marketplace activities and that are relevant to consumer's buying decisions.” <http://www.bbb.org/about/faq.asp#faq15>. This criterion fits many of the judgments obtained by this Office on behalf of the Commonwealth.

¹⁴ This figure is documented in the Report on Statewide Financial Management and Compliance for the Quarter Ended June 30, 2006, prepared by the Office of the Comptroller, Department of Accounts. http://www.doa.virginia.gov/General_Accounting/Quarterly_Report/2006/June_2006.pdf.

STATUTORY CHANGES ARE REQUIRED TO CLARIFY THE UNIQUE NATURE OF ALL DEBTS TO THE COMMONWEALTH

Public policy considerations have resulted in powerful statutory tools for Tax and DCSE. Both Tax and DCSE collect priority debt, stepping ahead of other creditors who would otherwise be first in line for payment. Tax collections benefit from the Memorandum of Lien that carries the force of judgment, places the burden on the debtor to disprove the delinquency, and allows Tax to utilize additional collection tools. For example, Tax may convert a business liability from the company to the responsible officers, revoke sales tax certificates, padlock businesses, and enforce jeopardy assessments. Similarly, DCSE can issue an administrative support order that forms a priority lien on a debtor's real and personal property without a judgment. Commonwealth's Attorneys also have a powerful tool in the collection of referred court fines, costs, forfeitures, and penalties, which are docketed as civil judgments without further legal action.

Policy concerns regarding the nature of other debt to the Commonwealth may prevent the full extension of the referenced statutory tools to the collection of some of the Commonwealth's debt, for example, medical bills or highway damage. Nevertheless, the source of payment for these debts will always be the taxpayers unless charged back to the appropriate debtor. Thus, legislative amendments are recommended for the following statutory provisions, in order to ensure a maximum return to the public coffers, both general and nongeneral:

- Section 2.2-4804 mandates an annual joint report by the Department of Accounts (DOA) and the Office of the Attorney General on the agencies that are not satisfactorily implementing the Virginia Debt Collection Act and not establishing effective accounts receivable programs. The joint report is due by October 1 of each year pursuant to § 2.2-608, which establishes October 1 of each year as the due date on all reports, unless otherwise specified. On a monthly basis, DDC supplies data to DOA for compilation in its quarterly report. The cumulative fourth quarter report is submitted in compliance with § 2.2-4804. The DOA, however, cannot issue its fourth quarter report until all reporting agencies have closed their books and submitted their data, and the DOA has analyzed the data. According to DOA, § 2.2-4804 should be amended to specify a due date on or before November 15 of each year to ensure timely compliance. While this recommendation does not have a direct impact on collections, it does eliminate a timing problem in the collections reporting process.
- Section 1-18, Item 52(B)(1) of the 2006 Appropriation Act requires a transfer to the general fund of effectively 40% of receivables collected by DDC for non-exempt agencies. Amendment to the Appropriation Act should be considered to remove this general fund deposit requirement and to clarify that

all receivables net fees collected by DDC shall be transferred to the referring agency.

- Section 8.01-382 authorizes judgment interest on any jury award or judgment or decree of the court, but is silent regarding final administrative orders that can be recorded and enforced as judgments. Amendment of this provision is recommended to clarify that such interest also will accrue on final administrative orders. Agencies that will benefit from this amendment include the Workers' Compensation Commission, the Department of Forestry, the Department of Agriculture and Consumer Services, and the Virginia State Bar.
- Sections 60.2-619 through 60.2-635 of the *Code* (TIT. 60.2, CH. 6, ART. 5 AND 6) impact the enforceability of final orders issued by VEC regarding overpayment of benefits. Recommended legislation is intended to change several statutory provisions of Articles 5 and 6 to allow the final orders to be docketed in the circuit court as judgments. Such legislation would mirror the statutory scheme available to the Workers' Compensation Commission (WCC) to ensure that the Attorney General can represent VEC in its collection of benefits overpayments in an efficient manner that also affords due process to claimants. This legislative change would allow DDC to focus its efforts on actual collection of enforceable debt, rather than on reestablishing liability in court following a final administrative determination of liability.
- Section 37.2-721 allows the Department of Mental Health, Mental Retardation and Substance Abuse Services (DMHMRSAS) to record a lien on the real and personal estate of a deceased patient (consumer). Currently, the notice of lien must be filed within four months of the consumer's death. It is recommended that § 37.2-721 be amended to extend the time for filing the notice of lien to conform with the timeframe for disbursement of estate assets without liability under Title 64.1, Wills and Decedent's Estates.
- Section 37.2-719 assesses \$5 per week against the person responsible for the support of a mental health facility consumer when the responsible person is nonresponsive and uncooperative in providing asset information. Because this enforcement tool is ineffective, it is recommended that the statute be amended to authorize DMHMRSAS to issue a Formal Notice to Appear (a prejudgment equivalent of Debtor Interrogatories) to the responsible person under § 37.2-715 to answer questions and provide information so DMHMRSAS can make the Ability to Pay Determination required by § 37.2-717. The amendment should authorize DMHMRSAS to request court-issued subpoenas to compel attendance for anyone failing to appear on a Formal Notice to Appear. Tax and DCSE currently have similar enforcement tools.

FURTHER STUDY BY DDC IN CONJUNCTION WITH THE DEPARTMENT OF PLANNING AND BUDGET IS REQUIRED ON THE FISCAL IMPACT OF OTHER POTENTIAL LEGISLATIVE INITIATIVES

- Review the administrative processes that result in final administrative orders for state agencies to conform the various procedures regarding notice and appeal to ensure due process requirements are met and consider legislation that allows agencies with a statutory hearing and appeals process to docket and enforce final administrative orders as circuit court judgments.
- Create a centralized state collection process within DDC to monitor and oversee private collection agencies currently utilized by agencies of the Commonwealth.
- Consider amending § 8.01-66.9 of the *Code* in response to the United States Supreme Court's limitation on the collection of Medicaid liens in Ahlborn.
- Consider amending § 46.2-1110 of the *Code* to establish strict liability without regard to negligence for drivers who damage highway property maintained by the Commonwealth, similar to the strict liability that currently exists for exceeding tunnel height requirements or colliding with overhead bridge structures.
- Form a statewide "lien depository" for docketing of claims adjudicated (administratively or judicially) in favor of the Commonwealth to reach all assets of the debtor that are located in the Commonwealth.