

# VIRGINIA ACTS OF ASSEMBLY -- 2009 RECONVENED SESSION

## CHAPTER 797

*An Act to amend and reenact §§ 2.2-518, 2.2-4023, 2.2-4801, 2.2-4805, 2.2-4806, 8.01-220.2, 8.01-382, and 17.1-276 of the Code of Virginia, relating to collection of debt owed the Commonwealth.*

[H 2037]

Approved April 8, 2009

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 2.2-518, 2.2-4023, 2.2-4801, 2.2-4805, 2.2-4806, 8.01-220.2, 8.01-382, and 17.1-276 of the Code of Virginia are amended and reenacted as follows:**

§ 2.2-518. Division of Debt Collection.

A. 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.

B. *There is hereby created on the books of the Comptroller a special, nonreverting fund to be known as the Debt Collection Recovery Fund (Fund). The Division 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 §§ 2.2-4805 and 2.2-4806. The Division shall transfer the remaining funds to the appropriate state agencies on a periodic basis or such other period of time approved by the Division.*

C. *Any direct payment received by an agency on an account that has been referred for collection to the Division shall be reported to the Division upon receipt by the agency. The agency shall cause the fees due the Division for obtaining the recovery to be reported to and paid to the Division; however, no fees shall be paid to the Division on payments to the agency resulting from the agency's participation in the Setoff Debt Collection Act, Article 21 (§ 58.1-520 et seq.) of Chapter 3 of Title 58.1. The remaining portion of the direct payment shall be retained by the agency.*

§ 2.2-4023. Final orders.

The terms of any final agency case decision, as signed by it, shall be served upon the named parties by mail unless service otherwise made is duly acknowledged by them in writing. The signed originals shall remain in the custody of the agency as public records subject to judicial notice by all courts and agencies; and they, or facsimiles thereof, together with the full record or file in every case shall be made available for public inspection or copying except (i) so far as the agency may withhold the same in whole or part for the purpose of protecting individuals mentioned from personal embarrassment, obloquy, or disclosures of a private nature including statements respecting the physical, mental, moral, or financial condition of such individuals or (ii) for trade secrets or, so far as protected by other laws, other commercial or industrial information imparted in confidence. *Final orders may be recorded, enforced, and satisfied as orders or decrees of a circuit court upon certification of such orders by the agency head or his designee.*

§ 2.2-4801. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Administrative offset" includes, but is not limited to, offsetting any monies, except those specifically exempted by state or federal law, paid by agency or institution for a debt owed to any other state agency or institution.

"Accounts receivable" refers to the classification of debts due the Commonwealth, including judgments, fines, costs, and penalties imposed upon conviction for criminal and traffic offenses, and as defined in the guidelines adopted by the State Comptroller.

"Discharge" means the compromise and settlement of disputes, claims, and controversies of the Commonwealth by the Office of the Attorney General as authorized by § 2.2-514.

"Division" means the Division of Debt Collection of the Office of the Attorney General created pursuant to § 2.2-518.

"Past-due" means any account receivable for which payment has not been received by the payment due date.

"State agency and institution" means any authority, board, department, instrumentality, agency or other unit in any branch of state government. The term shall not include any county, city or town, or

any local or regional governmental authority or any "nonstate agency" as defined in the appropriation act.

"Write-off" means a transaction to remove from an agency's financial accounting records an account receivable that management has determined to be uncollectible.

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

A. 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.

*B. Failure to pay in full at the time goods, services, or treatment are rendered by the Commonwealth or when billed for a debt owed to any agency of the Commonwealth shall result in the imposition of interest at the judgment rate as provided in § 6.1-330.54 on the unpaid balance unless a higher interest rate is authorized by contract with the debtor or provided otherwise by statute. Interest shall begin to accrue on the 60th day after the date of the initial written demand for payment. A public institution of higher education in the Commonwealth may elect to impose a late fee in addition to, or in lieu of, interest for such time as the institution retains the claim pursuant to subsection D of § 2.2-4806. Returned checks or dishonored credit card or debit card payments shall incur a handling fee of \$50 unless a higher amount is authorized by statute to be added to the principal account balance.*

*C. If the matter is referred for collection to the Division, the debtor shall be liable for reasonable attorney fees unless higher attorney fees are authorized by contract with the debtor.*

*D. A request for or acceptance of goods or services from the Commonwealth, including medical treatment, shall be deemed to be acceptance of the terms specified in this section.*

§ 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 required by the Department of Accounts and the ~~Attorney General Division~~: (i) credit reporting bureaus, (ii) collection agencies, (iii) garnishments, liens and judgments, (iv) administrative offset, and (v) participation in the Treasury Offset Program of the United States under 31 U.S.C. § 3716.

B. Except as provided otherwise herein, for collection of accounts receivable of \$3,000 or more that are 60 days 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 Division~~ shall review forwarded accounts, determine the appropriate collection efforts, if any, for each account, and take such actions on the accounts as ~~he~~ *the Division* may so determine.

C. Except as provided otherwise herein, for collection of accounts receivable under \$3,000 that are 60 days 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 Division~~ 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, provided that such periodic payments are promptly paid until the account is satisfied. In the event the debtor is delinquent by 60 days in paying a periodic payment the account shall be handled in the manner provided by subsection C. Except as otherwise provided in this subsection, where a debtor is paying a debt in periodic payments to an agency or institution, the agency or institution may elect to retain the claim in excess of 60 days provided that such periodic payments are promptly paid until the account is satisfied. In the event the debtor is delinquent (i) by 60 days in paying a periodic payment or (ii) for such other period of time approved by the Division, the account shall be handled in the manner provided by subsections B and C of this section.*

*E. Each state agency and institution shall report and pay required fees to the Division as required by subsection C of § 2.2-518.*

§ 8.01-220.2. Spousal liability for medical care.

~~On and after July 1, 1984, each~~ Each spouse shall be jointly and severally liable for all emergency medical care furnished to the other spouse by a physician licensed to practice medicine in the Commonwealth; or by a hospital located in the Commonwealth, including all follow-up inpatient care provided during the initial emergency admission to any such hospital, which is furnished while the spouses are living together. For the purposes of this section, emergency medical care shall mean any care the attending physician or other health care professional deems necessary to preserve the patient's life or health and which, if not rendered timely, can be reasonably anticipated to adversely affect the patient's recovery or imperil his life or health.

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

In any Administrative Process Act (§ 2.2-4000 et seq.) action or action at law or suit in equity, the final order, 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 final order, judgment or decree entered shall provide for such interest until such principal sum be paid. If a final order, judgment or decree be rendered which does not provide for interest, the final order, 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. *Final orders may be recorded, enforced, and satisfied as orders or decrees of a circuit court upon certification of such orders by the agency head or his designee.*

§ 17.1-276. Fee allowed for providing secure remote access to land records.

A clerk of the circuit court who provides secure remote access to land records pursuant to § 17.1-294 may charge a fee established by the clerk to cover the operational expenses of such electronic access, including, but not limited to, computer support, maintenance, enhancements, upgrades, replacements, and consulting services. A flat fee may be assessed for each subscriber, as defined in § 17.1-295, in an amount not to exceed \$50 per month. The fee shall be paid to the clerk's office and deposited by the clerk into a special nonreverting local fund to be used to cover operational expenses of such electronic access, as defined herein. The circuit court clerk shall enter into an agreement with each person whom the clerk authorizes to have remote access, in accordance with the security standards established by the Virginia Information Technologies Agency.

*The Office of the Attorney General, Division of Debt Collection, shall be exempt from paying any fee for remote access to land records. If any clerk contracts with an outside vendor to provide remote access to land records to subscribers, such contract shall contain a provision exempting the Office of the Attorney General, Division of Debt Collection, from paying any access or subscription fee.*

**2. That the provisions of this act amending § 17.1-276 of the Code of Virginia shall not void any contractual provision in existence prior to July 1, 2009. The provisions of this act amending § 17.1-276 shall apply to all contracts entered into or renewed on or after July 1, 2009.**

**3. That no provisions of this act or any components of this act shall affect the collection of any amounts owed to the Commonwealth for taxes administered by the Department of Taxation.**