

SENATE BILL No. 183

By Committee on Judiciary

2-10

1 AN ACT concerning ~~debtors of the state courts~~; relating to **court costs,**
2 **fees, fines and restitution;** debts owed to courts; amending K.S.A. 75-
3 6209 and K.S.A. 2014 Supp. **60-2403, 75-719, 75-6202, 75-6204 and**
4 **75-6210** and repealing the existing sections.

5
6 *Be it enacted by the Legislature of the State of Kansas:*

7 **Section 1. K.S.A. 2014 Supp. 60-2403 is hereby amended to read**
8 **as follows: 60-2403. (a) (1) Except as provided in subsection (b) or (d),**
9 **if a renewal affidavit is not filed or if execution, including any**
10 **garnishment proceeding, support enforcement proceeding or**
11 **proceeding in aid of execution, is not issued, within five years from the**
12 **date of the entry of any judgment in any court of record in this state,**
13 **including judgments in favor of the state or any municipality in the**
14 **state, or within five years from the date of any order reviving the**
15 **judgment or, if five years have intervened between the date of the last**
16 **renewal affidavit filed or execution proceedings undertaken on the**
17 **judgment and the time of filing another renewal affidavit or**
18 **undertaking execution proceedings on it, the judgment, including**
19 **court costs and fees therein shall become dormant, and shall cease to**
20 **operate as a lien on the real estate of the judgment debtor. When a**
21 **judgment becomes and remains dormant for a period of two years, it**
22 **shall be the duty of the judge to release the judgment of record when**
23 **requested to do so.**

24 **(2) A "renewal affidavit" is a statement under oath, signed by the**
25 **judgment creditor or the judgment creditor's attorney, filed in the**
26 **proceedings in which the judgment was entered and stating the**
27 **remaining balance due and unpaid on the judgment.**

28 **(3) A "support enforcement proceeding" means any civil**
29 **proceeding to enforce any judgment for payment of child support or**
30 **maintenance and includes, but is not limited to, any income**
31 **withholding proceeding under the income withholding act, K.S.A.**
32 **2014 Supp. 23-3101 et seq., and amendments thereto, any contempt**
33 **proceeding and any civil proceeding under the uniform interstate**
34 **family support act, K.S.A. 2014 Supp. 23-36,101 et seq., and**

1 amendments thereto.

2 (b) Except for those judgments which have become void as of
3 July 1, 2007, no judgment for the support of a child shall be or become
4 dormant for any purpose except as provided in this subsection. *Except*
5 *for those judgments which have become void as of July 1, 2015, no*
6 *judgment for court costs, fees, fines or restitution shall be or become*
7 *dormant for any purpose except as provided in this subsection. If a*
8 **judgment would have become dormant under the conditions set forth**
9 **in subsection (a), the judgment shall cease to operate as a lien on the**
10 **real estate of the judgment debtor as of the date the judgment would**
11 **have become dormant, but the judgment shall not be released of**
12 **record pursuant to subsection (a).**

13 (c) The time within which action must be taken to prevent a
14 judgment from becoming dormant does not run during any period in
15 which the enforcement of the judgment by legal process is stayed or
16 prohibited.

17 ~~(d) If a renewal affidavit is not filed or if execution is not issued,~~
18 ~~within 10 years from the date of the entry of any judgment of restitution in~~
19 ~~any court of record in this state, the judgment, including court costs and~~
20 ~~fees therein shall become dormant, and shall cease to operate as a lien on~~
21 ~~the real estate of the judgment debtor. Except as provided in subsection~~
22 ~~(b), when a judgment becomes and remains dormant for a period of two~~
23 ~~years, it shall be the duty of the judge to release the judgment of record~~
24 ~~when requested to do so.~~

25 ~~Section 1.~~ **Sec. 2.** K.S.A. 2014 Supp. 75-719 is hereby amended to
26 read as follows: 75-719. (a) The ~~attorney general~~ **office of judicial**
27 **administration** **judicial administrator** is authorized to enter into contracts
28 in accordance with this section for collection services for debts owed to
29 courts or restitution owed under an order of restitution. On and after July
30 1, 1999, the cost of collection shall be paid by the defendant as an
31 additional court cost in all criminal, traffic and juvenile offender cases
32 where the defendant fails to pay any amount ordered by the court and the
33 court utilizes the services of a contracting agent pursuant to this section.
34 The cost of collection shall be deemed an administrative fee to pay the
35 actual costs of collection made necessary by the defendant's failure to pay
36 court debt and restitution.

37 (b) As used in this section:

38 (1) "Beneficiary under an order of restitution" means the victim or
39 victims of a crime to whom a district court has ordered restitution be paid;

40 (2) "contracting agent" means a person, firm, agency or other entity
41 who contracts hereunder to provide collection services;

42 (3) "cost of collection" means the fee specified in contracts hereunder
43 to be paid to or retained by a contracting agent for collection services.

1 Cost of collection also includes any filing fee required under K.S.A. 60-
2 4303, and amendments thereto, or administrative costs prescribed by ~~the~~
3 ~~attorney general pursuant to rules and regulations~~ **rules of the supreme**
4 **court**; and

5 (4) "debts owed to courts" means any assessment of court costs, fines,
6 fees, moneys expended by the state in providing counsel and other defense
7 services to indigent defendants or other charges which a district court
8 judgment has ordered to be paid to the court, and which remain unpaid in
9 whole or in part, and includes any interest or penalties on such unpaid
10 amounts as provided for in the judgment or by law. "Debts owed to courts"
11 also includes: (A) The cost of collection when collection services of a
12 contracting agent hereunder are utilized; and (B) *court costs, fines, fees or*
13 *other charges arising from failure to comply with a traffic citation within*
14 *30 days from the date of the mailing of the notice pursuant to K.S.A. 8-*
15 *2110(b)(1), and amendments thereto.*

16 (c) (1) Contracts authorized by this section may be entered into with
17 state or federal agencies or political subdivisions of the state of Kansas,
18 including contracts for participation in the collection program authorized
19 by K.S.A. 75-6201 et seq., and amendments thereto. Such contracts also
20 may be entered into with private firms or individuals selected by a
21 procurement negotiation committee in accordance with K.S.A. 75-37,102,
22 and amendments thereto, except that the ~~attorney general~~ **office of judicial**
23 **administration** **judicial administrator** shall designate a representative to
24 serve as the chief administrative officer member of such committee and
25 that the other two members of such committee shall be designated by the
26 director of purchases and the judicial administrator.

27 (2) Prior to negotiating any contract for collection services, this
28 procurement negotiation committee shall advertise for proposals, negotiate
29 with firms and individuals submitting proposals and select among those
30 submitting such proposals the party or parties to contract with for the
31 purpose of collection services.

32 (3) ~~The attorney general~~ **supreme court** may adopt ~~rules and~~
33 ~~regulations~~ as deemed appropriate for the administration of this section,
34 including procedures to be used in the negotiation and execution of
35 contracts pursuant to this section and procedures to be followed by those
36 who utilize collection services under such contracts.

37 (4) For purposes of this section, the agencies, firms or individuals
38 with whom contracts are entered under this section shall be known as
39 contracting agents. ~~The attorney general~~ **office of judicial administration**
40 **judicial administrator** shall publish a list of the contracting agents for use
41 by courts or beneficiaries under orders of restitution who desire to utilize
42 the collection services of such agents.

43 (5) Each contract entered pursuant to this section shall provide for a

1 fee to be paid to or retained by the contracting agent for collection
2 services. Such fee shall be designated as the cost of collection hereunder,
3 and shall not exceed 33% of the amount collected. The cost of collection
4 shall be paid from the amount collected, but shall not be deducted from the
5 debts owed to courts or restitution. *If a contracting agent uses the debt*
6 *setoff procedures pursuant to K.S.A. 75-6202 et seq., and amendments*
7 *thereto, to recover debts owed to the courts, the contracting agent's cost of*
8 *collection for debt recovered through that program shall be the amount*
9 *established by contract minus the collection assistance fee imposed by the*
10 *director of accounts and reports of the department of administration*
11 *pursuant to K.S.A. 75-6210, and amendments thereto.*

12 (d) Judicial districts of the state of Kansas are authorized to utilize the
13 collection services of contracting agents pursuant to this section for the
14 purpose of collecting all outstanding debts owed to courts. Subject to rules
15 and orders of the Kansas supreme court, each judicial district may
16 establish by local rule guidelines for the compromise of court costs, fines,
17 attorney fees and other charges assessed in district court cases.

18 (e) Any beneficiary under an order of restitution entered by a court
19 after this section takes effect is authorized to utilize the collection services
20 of contracting agents pursuant to this section for the purpose of collecting
21 all outstanding amounts owed under such order of restitution.

22 (f) Contracts entered hereunder shall provide for the payment of any
23 amounts collected to the clerk of the district court for the court in which
24 the debt being collected originated, after first deducting the collection fee.
25 In accounting for amounts collected from any person pursuant to this
26 section, the district court clerk shall credit the person's amount owed in the
27 amount of the net proceeds collected and shall not reduce the amount
28 owed by any person by that portion of any payment which constitutes the
29 cost of collection pursuant to this section.

30 (g) With the appropriate cost of collection paid to the contracting
31 agent as agreed upon in the contract hereunder, the clerk shall then
32 distribute amounts collected hereunder as follows:

33 (1) When collection services are utilized pursuant to subsection (d),
34 all amounts shall be applied against the debts owed to the court as
35 specified in the original judgment creating the debt;

36 (2) when collection services are utilized pursuant to subsection (e), all
37 amounts shall be paid to the beneficiary under the order of restitution
38 designated to receive such restitution, except where that beneficiary has
39 received recovery from the Kansas crime victims compensation board and
40 such board has subrogation rights pursuant to K.S.A. 74-7312, and
41 amendments thereto, in which case all amounts shall be paid to the board
42 until its subrogation lien is satisfied.

43 (h) Whenever collection services are being utilized against the same

1 debtor pursuant to both subsections (d) and (e), any amounts collected by a
2 contracting agent shall be first applied to satisfy subsection (e) debts, debts
3 pursuant to an order of restitution. Upon satisfaction of all such debts,
4 amounts received from the same debtor shall then be applied to satisfy
5 subsection (d) debts, debts owed to courts.

6 ~~Sec. 2.~~ **3.** K.S.A. 2014 Supp. 75-6202 is hereby amended to read as
7 follows: 75-6202. As used in this act:

8 (a) "Debtor" means any person who:

9 (1) Owes a debt to the state of Kansas or any state agency or any
10 municipality;

11 (2) owes support to an individual, or an agency of another state, who
12 is receiving assistance in collecting that support under K.S.A. 39-756 or
13 K.S.A. 2014 Supp. 20-378, and amendments thereto, or under part D of
14 title IV of the federal social security act, 42 U.S.C. § 651 et seq., as
15 amended; or

16 (3) owes a debt to a foreign state agency.

17 (b) "Debt" means:

18 (1) Any liquidated sum due and owing to the state of Kansas, or any
19 state agency, municipality or foreign state agency which has accrued
20 through contract, subrogation, tort, operation of law, or any other legal
21 theory regardless of whether there is an outstanding judgment for that sum.
22 A debt shall not include special assessments except when the owner of the
23 property assessed petitioned for the improvement and any successor in
24 interest of such owner of property; ~~or~~

25 (2) any amount of support due and owing an individual, or an agency
26 of another state, who is receiving assistance in collecting that support
27 under K.S.A. 39-756 or K.S.A. 2014 Supp. 20-378, and amendments
28 thereto, or under part D of title IV of the federal social security act, 42
29 U.S.C. § 651 et seq., as amended, which amount shall be considered a debt
30 due and owing the district court trustee or the Kansas department for
31 children and families for the purposes of this act; *or*

32 (3) *any assessment of court costs, fines, fees, moneys expended by the*
33 *state in providing counsel and other defense services to indigent*
34 *defendants or other charges which a district court judgment has ordered*
35 *to be paid to the court and which remain unpaid in whole or in part, and*
36 *includes any interest or penalties—~~or~~ on such unpaid amounts as provided*
37 *for in the judgment or by law. Such amount also includes the cost of*
38 *collection when the collection services of a contracting agent are utilized.*

39 (c) "Refund" means any amount of ~~Kansas~~ income tax refund due to
40 any person as a result of an overpayment of tax, and for this purpose, a
41 refund due to a husband and wife resulting from a joint return shall be
42 considered to be separately owned by each individual in the proportion of
43 each such spouse's contribution to income, as the term "contribution to

1 income" is defined by rules and regulations of the secretary of revenue.

2 (d) "Net proceeds collected" means gross proceeds collected through
3 final setoff against a debtor's earnings, refund or other payment due from
4 the state or any state agency minus any collection assistance fee charged
5 by the director of accounts and reports of the department of administration.

6 (e) "State agency" means any state office, officer, department, board,
7 commission, institution, bureau, agency or authority or any division or unit
8 thereof and any judicial district of this state or the clerk or clerks thereof.
9 "State agency" also shall include any: (1) District court utilizing collection
10 services pursuant to K.S.A. 75-719, and amendments thereto, to collect
11 debts owed to such court; and (2) *contracting agent, as defined in K.S.A.*
12 *75-719, and amendments thereto, with which a district court contracts to*
13 *collect debts owed to such court. Such contracting agent may directly*
14 *establish a debt setoff account with the director for the sole purpose of*
15 *collecting debts owed to courts.*

16 (f) "Person" means an individual, proprietorship, partnership, limited
17 partnership, association, trust, estate, business trust, corporation, other
18 entity or a governmental agency, unit or subdivision.

19 (g) "Director" means the director of accounts and reports of the
20 department of administration.

21 (h) "Municipality" means any municipality as defined by K.S.A. 75-
22 1117, and amendments thereto.

23 (i) "Payor agency" means any state agency which holds money for, or
24 owes money to, a debtor.

25 (j) "Foreign state or foreign state agency" means the states of
26 Colorado, Missouri, Nebraska or Oklahoma or any agency of such states
27 which has entered into a reciprocal agreement pursuant to K.S.A. 75-6215,
28 and amendments thereto.

29 ~~Sec. 4.~~ **4.** K.S.A. 2014 Supp. 75-6204 is hereby amended to read as
30 follows: 75-6204. (a) Subject to the limitations provided in this act, if a
31 debtor fails to pay to the state of Kansas or any state agency, foreign state
32 agency, municipality or the federal department of the treasury an amount
33 owed, the director may setoff such amount *and a reasonable collection*
34 *assistance fee determined in accordance with K.S.A. 75-6210, and*
35 *amendments thereto, against any money held for, or any money owed to,*
36 *such debtor by the state or any state agency.*

37 (b) The director may enter into an agreement with a municipality for
38 participation in the setoff program for the purpose of assisting in the
39 collection of a debt as defined by K.S.A. 75-6202, and amendments
40 thereto. The director shall include in any such agreement a provision
41 requiring the municipality to certify that the municipality has made at least
42 three attempts to collect a debt prior to submitting such debt to setoff
43 pursuant to this act.

1 (c) (1) **Except as provided in subsection (c)(2), the director shall add**
2 **the cost of collection and the debt for a total amount subject to setoff**
3 **against a debtor.**

4 (2) **Any debts due and owing to an individual, the state of Kansas or**
5 **an agency of another state that are being enforced by the Kansas**
6 **department for children and families under part D of title IV of the**
7 **federal social security act, 42 U.S.C. § 651 et seq., as amended, shall not**
8 **have the cost of collection added to the debt owed and subject to setoff.**
9 **Such cost of collection shall be paid by the Kansas department for**
10 **children and families.**

11 Sec. ~~4~~ 5. K.S.A. 75-6209 is hereby amended to read as follows: 75-
12 6209. (a) In accordance with the applicable times under K.S.A. 75-6208
13 and amendments thereto, the director shall complete the setoff by *adding*
14 *and retaining the collection assistance fee permitted by K.S.A. 75-6210,*
15 *and amendments thereto, and* transferring the net proceeds collected for
16 credit or payment and by refunding any outstanding balance to the debtor.

17 (b) Upon completing the setoff, the director shall notify the debtor in
18 writing of the action taken along with an accounting of the action taken. If
19 there is an outstanding balance after setoff, the notice under this section
20 shall accompany the balance when refunded.

21 (c) When a setoff is completed against earnings of an employee for
22 any pay period and the setoff does not fully liquidate the debt due, further
23 setoff in subsequent pay periods may be made without further
24 certifications or notice to the debtor, except that the director shall notify
25 the debtor in writing of the action taken and give an accounting thereof.
26 The debtor may request an opportunity for hearing in regard to any further
27 setoff in subsequent pay periods by making a written request therefor to
28 the director. Any such request shall not stay future setoffs, but such hearing
29 shall be held within a reasonable time, not to exceed 15 days after the
30 request, unless a longer time has been agreed to by the debtor. Hearings
31 under this subsection shall be conducted in accordance with the provisions
32 of the Kansas administrative procedure act. Orders resulting from hearings
33 under this subsection shall not be subject to administrative review.

34 Sec. ~~5~~ 6. K.S.A. 2014 Supp. 75-6210 is hereby amended to read as
35 follows: 75-6210. (a) Upon completion of a setoff transaction, the director
36 shall transfer the net proceeds collected to the account or fund of the state
37 agency, foreign state agency or municipality to which the debt was owed.

38 (b) (1) From the gross proceeds collected by the director through
39 setoff, the director shall retain a reasonable collection assistance fee in an
40 amount based on cost, as determined by generally accepted cost allocation
41 techniques, except that in the case of transactions for collection of debts
42 arising from the employment security law such fee shall not exceed \$300
43 for any transaction. **Except as provided further, the director shall add the**

1 *collection assistance fee to the debt after the debt is submitted to the*
2 *director in accordance with K.S.A. 75-6206, and amendments thereto. Any*
3 *debts due and owing to an individual, the state of Kansas or an agency*
4 *of another state that are being enforced by the Kansas department for*
5 *children and families under part D of title IV of the federal social*
6 *security act, 42 U.S.C. § 651 et seq., as amended, shall not have the*
7 *collection assistance fee added to the debt owed and subject to setoff,*
8 *and such fee shall be paid by the Kansas department for children and*
9 *families.*

10 (2) The director shall retain a reasonable collection assistance fee
11 from the gross proceeds of collections through setoff on behalf of a
12 municipality as specified in an agreement entered into pursuant to K.S.A.
13 75-6204, and amendments thereto, or foreign state agency in such amount
14 as specified in the reciprocal agreement entered into pursuant to K.S.A.
15 75-6215, and amendments thereto.

16 (3) The collection assistance fee shall be paid as an additional cost for
17 all debts owed to the court when the court utilizes debt setoff procedures
18 pursuant to K.S.A. 75-6202 et seq., and amendments thereto. The
19 collection assistance fee shall be retained from the amount collected, but
20 shall not be deducted from the debts owed to the court.

21 (4) The director may credit a portion of the collection assistance fee
22 to the appropriate account or fund of any other state agency that has
23 incurred expenses in assisting in the collection of the debt.

24 (5) The amount of the collection assistance fee retained by the
25 director shall be remitted to the state treasurer in accordance with the
26 provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of
27 each such remittance, the state treasurer shall deposit the entire amount in
28 the state treasury to the credit of the accounting services recovery fund.

29 (c) Upon receipt by the state agency, foreign state agency or
30 municipality of the net proceeds collected, the state agency, foreign state
31 agency or municipality shall credit the debtor's obligation in the amount of
32 the gross proceeds collected.

33 (d) Except as otherwise prescribed by the director or the secretary of
34 administration, any state agency, foreign state agency or municipality
35 which receives any payment from a debtor after notification to the debtor
36 under K.S.A. 75-6206, and amendments thereto, other than payments
37 collected pursuant to K.S.A. 44-718, and amendments thereto, or collected
38 through the federal government or judicial process, shall remit the
39 collection assistance fee imposed under subsection (b) to the director
40 which shall be credited to the accounting services recovery fund. If a state
41 agency fails to remit the collection assistance fee as required by this
42 subsection, the director may transfer an amount equal to such collection
43 assistance fee from the appropriate account or fund of the state agency to

1 the accounting services recovery fund. If a foreign state agency or
2 municipality fails to remit the collection assistance fee as required by this
3 subsection, the director may seek collection of such fee in such manner as
4 may be allowed by law.

5 (e) In cases involving the collection of debts arising from the
6 employment security law, the entire amount collected shall be credited to
7 the employment security fund and the collection assistance fee shall be
8 transferred from the special employment security fund to the accounting
9 services recovery fund.

10 ~~Sec. 6.~~ **7.** K.S.A. 75-6209 and K.S.A. 2014 Supp. **60-2403**, 75-719,
11 75-6202, 75-6204 and 75-6210 are hereby repealed.

12 ~~Sec. 7.~~ **8.** This act shall take effect and be in force from and after its
13 publication in the statute book.