

Fifty-sixth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1048

Introduced by

Legislative Council

(Legislative Audit and Fiscal Review Committee)

1 A BILL for an Act to create and enact sections 54-11-15, 54-11-16, 54-11-17, 54-11-18,
2 54-11-19, 54-11-20, 54-11-21, 54-11-22, 54-11-23, 54-11-24, 54-11-25, 54-11-26, 54-11-27,
3 54-11-28, 54-11-29, and 54-11-30 of the North Dakota Century Code, relating to debt collection
4 by the state treasurer; and to amend and reenact subsection 3 of section 54-44-04, sections
5 54-44-07, and 54-44-08 of the North Dakota Century Code, relating to debt collection.

6 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

7 **SECTION 1.** Section 54-11-15 of the North Dakota Century Code is created and
8 enacted as follows:

9 **54-11-15. Debt collection - Scope.** Any collection procedure or remedy under
10 sections 54-11-15 through 54-11-30 is in addition to any other procedure or remedy available
11 by law. If the law applicable to a referring agency provides for the use of a particular remedy or
12 procedure for the collection of a debt, that particular remedy or procedure governs the collection
13 of the debt to the extent the procedure or remedy is inconsistent with sections 54-11-15 through
14 54-11-30.

15 **SECTION 2.** Section 54-11-16 of the North Dakota Century Code is created and
16 enacted as follows:

17 **54-11-16. Definitions.** In sections 54-11-15 through 54-11-30, unless the context
18 otherwise requires:

19 1. "Debt" means any amount owed to the state directly, or through a state agency, on
20 account of a fee; a duty; a lease; a direct loan; a loan insured or guaranteed by the
21 state; rent; a service; a sale of property; an overpayment; a fine; an assessment; a
22 penalty; a restitution; damages; interest; a tax; a bail bond; a forfeiture; a
23 reimbursement; a liability owed; an assignment to the state including an
24 assignment under title 50, the Social Security Act, or any other state or federal law;

a recovery of costs incurred by the state; or any other source of indebtedness to the state. The term includes any amount owed to an individual for which the state or state agency acts in a fiduciary capacity in providing child support collection services under title 45, Code of Federal Regulations, section 302.33, and any amount owed to a state agency for which the state treasurer provides collection services under a contract.

2. "Debtor" means any person who is liable for a debt or against whom there is a claim for a debt.

3. "Debt qualification plan" means an agreement entered into between a referring agency and the state treasurer which defines the terms and conditions by which the state treasurer will provide collection services to the referring agency.

4. "Referring agency" means a state agency that enters into a debt qualification plan with the state treasurer to refer debts to the state treasurer for collection.

SECTION 3. Section 54-11-17 of the North Dakota Century Code is created and enacted as follows:

54-11-17. Reporting - Guidelines.

1. The state treasurer shall present an annual report to the governor and the legislative audit and fiscal review committee. The report must include information regarding the management of debts owed the state, including performance measurements and progress of the debt collection efforts undertaken by state agencies and the state treasurer.

2. Each state agency shall report quarterly to the state treasurer on the debts owed to the agency. The state treasurer, in consultation with the director of the office of management and budget, tax commissioner, executive director of the department of human services, and attorney general, shall adopt rules for recognizing, tracking, reporting, and collecting debts. The rules must include accounting standards, performance measurements, and uniform reporting requirements applicable to all state agencies. Each state agency shall recognize, track, report, and attempt to collect every debt according to the rules.

SECTION 4. Section 54-11-18 of the North Dakota Century Code is created and enacted as follows:

54-11-18. State treasurer - Collection activities.

1. In accordance with the terms and conditions of a signed debt qualification plan, the state treasurer shall provide services to a state agency to collect debts. The state treasurer is not a collection agency as defined under chapter 13-05. However, the state treasurer is subject to any provision under chapter 13-05 and any rule adopted by the department of banking and financial institutions which provide for prohibited acts of a collection agency. The state treasurer may operate under the name of the state treasurer, the state, or the state agency.
2. Any state agency may refer any debt to the state treasurer for collection. The ultimate responsibility for any debt referred to the state treasurer, including the reporting of the debt to the state treasurer and the decision with regard to the continuing collection and uncollectibility of the debt, remains with the referring agency.
3. The state treasurer may contract with any collection agency and any other entity necessary for the collection of debts. A collection agency acting under a contract with the state treasurer is subject to chapter 13-05, and the collection agency may indicate the collection agency is acting under contract with the state treasurer. The state treasurer may not delegate to any nongovernmental entity the state treasurer's debt collection powers and duties.
4. An audited financial statement is a condition precedent of debt placement with a collection agency unless the collection agency has errors and omissions coverage under a professional liability policy in an amount of at least one million dollars or has a fidelity bond to cover actions of the collection agency's employees in an amount of at least one hundred thousand dollars.

SECTION 5. Section 54-11-19 of the North Dakota Century Code is created and enacted as follows:

54-11-19. Priority of satisfaction of debts. If two or more debts owed by the same debtor are submitted to the state treasurer, any amount collected on the debts must be applied to the debt as follows:

1. If the money received is collected on a judgment lien, on a lien under title 35, on a security interest, by a protection of an interest in property through attachment, by

garnishment, by execution of a judgment, or by any other process by which the state treasurer may enforce rights in a particular debt, the money applies to that particular debt.

2. If the money is collected in any manner not specified in subsection 1, the money collected first applies to the satisfaction of any debt for child support. Any debt other than child support is satisfied in the order in time in which the state treasurer receives the debts from the referring agency.

SECTION 6. Section 54-11-20 of the North Dakota Century Code is created and enacted as follows:

54-11-20. Debtor information. Upon request, a state agency and a political subdivision shall provide to the state treasurer or attorney general confidential data for the sole purpose of collecting debt. Data provided to the state treasurer or attorney general under this section is limited to financial data of the debtor or data related to the location of the debtor or the assets of the debtor. Data received, collected, created, or maintained by the state treasurer or attorney general to collect debts is confidential and may not be disclosed except:

1. Under court order;
2. To provide any notice required or permitted by law;
3. To any agent of the state treasurer or the attorney general in the investigation or prosecution of a criminal or civil proceeding relating to collection of a debt;
4. To report the name of a debtor, amount of a debt, date of a debt, and the agency to whom a debt is owed to any collection agency under contract with the state treasurer;
5. When necessary to locate the debtor, locate the assets of the debtor, or to enforce or implement the collection of a debt; or
6. To the attorney general or the state treasurer.

SECTION 7. Section 54-11-21 of the North Dakota Century Code is created and enacted as follows:

54-11-21. Notice to debtor. A referring agency shall provide notice to a debtor by mail or personal delivery at the debtor's last-known address at least twenty days before the debt is referred to the state treasurer. The notice must state the nature and amount of the debt,

1 identify to whom the debt is owed, and inform the debtor of the remedies available under
2 sections 54-11-15 through 54-11-30.

3 **SECTION 8.** Section 54-11-22 of the North Dakota Century Code is created and
4 enacted as follows:

5 **54-11-22. Collection duties and powers.**

- 6 1. The state treasurer shall take all reasonable and cost-effective actions to collect
7 debts referred to the state treasurer.
- 8 2. In addition to the collection remedies available to a collection agency in this state,
9 the state treasurer, with legal assistance from the attorney general, may use any
10 statutory authority granted to a referring agency for purposes of collecting a debt
11 owed to the referring agency.
- 12 3. A debtor who qualifies for cancellation of the collection penalty under subdivision a
13 of subsection 3 of section 54-11-25 may apply to the state treasurer for reduction
14 or release of a continuing wage levy if the debtor establishes that the debtor needs
15 all or a portion of the wages levied upon to pay for essential living expenses,
16 including food, clothing, shelter, medical care, and expenses necessary for
17 maintaining employment.
- 18 a. The state treasurer's determination not to reduce or release a continuing
19 wage levy is appealable to district court.
- 20 b. The term tax, when used in any tax collection law applicable under this
21 subsection, also means debts referred to the state treasurer. For debts other
22 than state taxes or child support, any of the tax collection remedies listed in
23 this section may be used. However, if the referring agency has not already
24 obtained a judgment or filed a lien, the state treasurer first shall obtain a
25 judgment against the debtor.

26 **SECTION 9.** Section 54-11-23 of the North Dakota Century Code is created and
27 enacted as follows:

28 **54-11-23. Uncollectible debts.**

- 29 1. If a state agency determines a debt is uncollectible, the state agency may remove
30 the debt from the state agency's financial accounting records and the debt is no

longer recognized as an accounts receivable for financial reporting purposes. A debt is uncollectible if:

- a. All reasonable collection efforts are exhausted;
- b. The cost of further collection action exceeds the amount recoverable;
- c. The debt is legally without merit or cannot be substantiated by evidence;
- d. The debtor cannot be located;
- e. Any available asset or income, current or anticipated, that may be available for payment of the debt is insufficient;
- f. The debt is discharged in bankruptcy;
- g. The statute of limitations for collection of the debt is expired; or
- h. It is not in the public interest to pursue collection of the debt.

2. The determination of the uncollectibility of a debt must be reported by the state agency along with the basis for the determination as part of the agency's quarterly reports to the state treasurer. The determination a debt is uncollectible does not cancel the debtor's legal obligation to pay the debt.

SECTION 10. Section 54-11-24 of the North Dakota Century Code is created and enacted as follows:

54-11-24. Case reviewer. The state treasurer shall make a case reviewer available to debtors. The reviewer shall answer a debtor's questions concerning the collection process and review the collection activity taken. If the receiver reasonably believes a particular action is unreasonable or unfair, the reviewer may make recommendations to the state treasurer regarding the collection action.

SECTION 11. Section 54-11-25 of the North Dakota Century Code is created and enacted as follows:

54-11-25. Collection penalty - Priority.

1. As determined by the state treasurer, a penalty must be added to the debts referred to the state treasurer for collection. The penalty is collectible by the state treasurer or collection agency from the debtor at the same time and in the same manner as the referred debt. The referring agency shall advise the debtor of the penalty under this section and the debtor's right to cancellation of the penalty under this section at the time the agency sends notice to the debtor under section

54-11-21. If the state treasurer or collection agency collects an amount less than the total due, the payment is applied proportionally to the penalty and the underlying debt. Any penalty collected by the state treasurer under this subsection or retained under subsection 6 must be deposited in the general fund as a nondedicated receipt. Any penalty collected by a collection agency is appropriated to the referring agency to pay the collection fees charged by the collection agency. Any penalty collected in excess of a collection agency fee must be deposited in the general fund as a nondedicated receipt.

2. If a debt is referred and the state treasurer or collection agency takes enforced collection action by serving a summons and complaint on or entering judgment against the debtor or by utilizing any of the remedies authorized under section 54-11-22, except for the remedy of setoff or when referred by the state treasurer for additional collection activity by a collection agency, the amount of the penalty is equal to fifteen percent of the debt or twenty-five percent of the debt remaining unpaid. If, after referral of a debt to a collection agency, the debtor requests cancellation of the penalty under subsection 3, the debt must be returned to the state treasurer for resolution of the request.

3. A penalty imposed under subsection 1 must be canceled and subtracted from the amount due if:

- a. A debtor's household income for the twelve months before the date of referral is less than twice the annual federal poverty level;
- b. Within sixty days after the first contact with the debtor by the state treasurer or collection agency, a debtor establishes reasonable cause for the failure to pay the debt before referral of the debt;
- c. A good-faith dispute as to the legitimacy or the amount of the debt is made, and payment is remitted or a payment agreement is entered into within thirty days after resolution of the dispute;
- d. Good-faith litigation occurs and the debtor's position is substantially justified, and if the debtor does not totally prevail, the debt is paid or a payment agreement is entered into within thirty days after the judgment becomes final and nonappealable; or

e. A penalty has been added by the referring agency and is included in the amount of the referred debt.

4. A decision of the state treasurer denying an application to cancel the penalty under subsection 3 is subject to adjudicative procedure under chapter 28-32.

5. If a penalty is collected and then canceled, the amount of the penalty must be refunded to the debtor within thirty days. The amount necessary to pay the refund is annually appropriated to the state treasurer.

6. If the penalty is canceled under subsection 3, an amount equal to the penalty is retained by the state treasurer from the debt collected and is accounted for and subject to the same provisions of this Act as if the penalty had been collected from the debtor.

7. By June first of each year, the state treasurer shall determine the rate of the penalty for any debt referred during the next fiscal year. The rate is a percentage of the debt in an amount that most nearly equals the costs of the state treasurer necessary to process and collect referred debts. The rate of the penalty when a debt is first referred may not exceed three-fifths of the maximum penalty, and the rate of the maximum penalty may not exceed twenty-five percent of the debt.

SECTION 12. Section 54-11-26 of the North Dakota Century Code is created and enacted as follows:

54-11-26. Payment of collection agency fees. Unless otherwise expressly prohibited by law, a state agency may pay for the services of the state treasurer or a collection agency from the moneys collected.

SECTION 13. Section 54-11-27 of the North Dakota Century Code is created and enacted as follows:

54-11-27. Interest.

1. Unless otherwise provided by a contract out of which the debt arises or by state or federal law, a state agency shall charge simple interest on any debt owed to the state at the rate provided in subsection 2, if notice is given. Interest charged under this section begins to accrue on the thirtieth calendar day following the state agency's first written demand for payment which includes notification to the debtor that interest will begin to accrue on the debt under this section.

2. The rate of interest is payable at the rate of twelve percent per annum and may not be compounded.

3. A state agency may not charge interest under this section on any overpayment of assistance benefits under title 50. Notwithstanding this prohibition, any debt reduced to judgment under a program under title 50 is subject to the interest charges provided under section 28-20-34.

SECTION 14. Section 54-11-28 of the North Dakota Century Code is created and enacted as follows:

54-11-28. Venue.

1. The state treasurer or the attorney general may bring an action to recover any debt owed to the state in Burleigh County district court or Burleigh County small claims court at the discretion of the state. In order to bring a cause of action under this section in any county other than the county where the debtor resides or where the cause of action arose, the state treasurer or attorney general shall notify the debtor as provided under this section, unless the venue is authorized by other law.

2. Before bringing a small claims court action for a claim not exceeding two thousand five hundred dollars under this section in any county other than where the debtor resides or where the cause of action arose, the state treasurer or attorney general shall send a form by first-class mail to the debtor's last-known address notifying the debtor of the intent to bring an action in Burleigh County. The state treasurer or attorney general shall enclose a form for the debtor to use to request that the action not be brought in Burleigh County and a self-addressed, postage paid envelope. The form must advise the debtor of the right to request that the action not be brought in Burleigh County and that the debtor has thirty days from the date of the form to make this request. If the debtor timely returns the form requesting the action not be brought in Burleigh County, the state treasurer or attorney general may file the action in the county of the debtor's residence, the county where the cause of action arose, or as provided by other law. The state treasurer or attorney general shall notify the debtor of the action taken. If the debtor does not timely return the form, venue is as chosen by the state treasurer or attorney general as authorized under this section. If a judgment is obtained in Burleigh

County small claims court when the form was sent by first-class mail under this subsection and the debtor reasonably demonstrates that the debtor did not reside at the address where the form was sent or that the debtor did not receive the form, the state treasurer or attorney general shall vacate the judgment without prejudice and return any funds collected as a result of enforcement of the judgment.

Evidence of the debtor's correct address may include a driver's license, homestead declaration, school registration, utility bill, lease, or a rental agreement.

3. In order to bring a small claims court action exceeding two thousand five hundred dollars under this section in a county other than where the debtor resides or where the cause of action arose, the state treasurer or attorney general shall serve with the small claims court action a change of venue form for the debtor to use to request that venue be changed and a self-addressed, postage paid return envelope. This form must advise the debtor that the form must be returned within thirty days of the date of service or venue will remain in Burleigh County. If the debtor timely returns the change of venue form requesting a change of venue, the state treasurer or attorney general shall change the venue of the action to the county of the debtor's residence or the county where the cause of action arose, as provided by other law, or shall dismiss the action. The state treasurer or attorney general shall notify the debtor of the action taken. If the debtor does not timely return the form, venue is as chosen by the state treasurer or attorney general as authorized under this section. The state treasurer or attorney general shall file the signed return receipt card or the proof of service with the court.

4. In order to bring a district court action under this section in any county other than where the debtor resides or where the cause of action arose, the state treasurer or attorney general shall serve the change of venue form with the summons and complaint or petition commencing the collection action. Two copies of the form must be served along with a self-addressed, postage paid return envelope. The form must advise the debtor that the form must be returned within twenty days of the date of service or venue will remain in Burleigh County. If the debtor timely returns the change of venue form, the time to answer the summons and complaint or petition runs from the date of the debtor's request for change of venue. If the

debtor timely returns the change of venue form requesting that the action not be brought in Burleigh County, the state treasurer or attorney general shall change the venue of the action to the county of the debtor's residence or the county where the cause of action arose, as provided by other law, or shall dismiss the action. The state treasurer or attorney general shall notify the debtor of the action taken. If the debtor is served the form to change venue along with the district court summons and complaint or petition, in accordance with court rules, but does not return the form within the statutory timelines, venue is as chosen by the state treasurer or attorney general as authorized under this section. The state treasurer or attorney general shall file the proof of service along with the summons and complaint or petition commencing the lawsuit.

5. No fee for court filing, docketing, or release of judgment may be assessed against the state for any collection action filed under sections 54-11-15 through 54-11-30.

SECTION 15. Section 54-11-29 of the North Dakota Century Code is created and enacted as follows:

54-11-29. Compromise of debt. Unless expressly prohibited by other federal or state law, a state agency may compromise any debt owed to the state, whether reduced to judgment or not, if the state agency determines it is in the best interests of the state to compromise the debt.

SECTION 16. Section 54-11-30 of the North Dakota Century Code is created and enacted as follows:

54-11-30. Setoffs.

1. The state treasurer or a state agency may automatically deduct the amount of a debt owed to the state from any state payment due to the debtor. A tax refund, earned income tax credit, child care tax credit, prejudgment debt not exceeding five thousand dollars, any fund exempt under execution, redemption, or exemption, and any fund owed an individual who receives assistance under the provisions of title 50 is not subject to setoff under this section. If a debtor enters into a written payment plan for payment of a specified debt, the right of setoff may not be used to satisfy that debt. The state may deduct an amount from the wages due or earned by a state employee to collect a debt, subject to limitations on wage garnishment.

2. Before setoff, the state treasurer or state agency shall mail written notice by certified mail to the debtor, addressed to the debtor's last-known address, that the state treasurer or state agency intends to setoff a debt owed to the state by the debtor against future payments due the debtor from the state. For debts owed to the state which are not reduced to judgment, if no opportunity to be heard or administrative appeal process has been made available to the debtor to contest the validity or accuracy of the debt, before setoff for a prejudgment debt, the notice to the debtor must advise that the debtor has a right to make a written request for a hearing under chapter 28-32 on the validity of the debt or the right to setoff. The debtor has thirty days from the date of the notice to make a written request for a hearing under chapter 28-32 to contest the validity of the debt or the right to setoff. The debtor's request must state the debtor's reasons for contesting the debt or the right to setoff. If the state treasurer or state agency desires to pursue the right to setoff following receipt of the debtor's request for a hearing, the state treasurer or state agency shall schedule a hearing within thirty days of the receipt of the request for the hearing. If the state treasurer or state agency does not pursue the right to setoff, the debtor must be notified of that decision.

SECTION 17. AMENDMENT. Subsection 3 of section 54-44-04 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. Shall, acting as director of the office of the budget, process all claims for submittal to the office of management and budget, which may conduct the preaudit of all claims from the executive branch of the government before payment and the director shall conduct the current audit of all revenues, which must include ~~the supervision of a report on~~ a report on the collection of all moneys due the state. The director shall supervise the collection of all moneys due the state except any debts being collected by the state treasurer under sections 54-11-15 through 54-11-30.

SECTION 18. AMENDMENT. Section 54-44-07 of the North Dakota Century Code is amended and reenacted as follows:

54-44-07. Office to set up account against person who fails to render account.

~~Whenever~~ Except regarding any debt being collected by the state treasurer, if any person has received receives moneys or has moneys or other personal property ~~which belongs~~ belonging

1 to the state by escheat or otherwise, or ~~has been~~ is entrusted with the collection, management,
2 or disbursement of any moneys, bonds, or interest accruing ~~therefrom~~ from the debt, belonging
3 to or held in trust by the state, and fails to render an account ~~thereof~~ to and make settlement
4 with the office of management and budget within the time prescribed by law, or when no
5 particular time is specified, fails to render ~~such an~~ an account and make ~~such a~~ a settlement, or
6 fails, within twenty days after request by the office of management and budget to pay into the
7 state treasury any money belonging to the state, the office of management and budget shall
8 state an account with ~~such person~~ the debtor, charging interest at the rate of twelve percent per
9 annum from the time of the failure. A copy of ~~such the~~ the account is prima facie evidence in any
10 suit of the things ~~therein~~ stated within the account. If the office of management and budget, ~~for~~
11 ~~want~~ due to lack of information, cannot state an account, that fact may be alleged and the
12 amount of money or other property ~~which is~~ due or which belongs to the state may be stated
13 generally.

14 **SECTION 19. AMENDMENT.** Section 54-44-08 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **54-44-08. Director to institute suits in name of state.** The director of the office of
17 management and budget shall institute suit in the name of the state against:

- 18 ~~1. Officials~~ any official for ~~all any official delinquencies~~ delinquency in relation to the
19 assessment, collection, and payment of the revenue;
- 20 ~~2. Persons;~~ any person who by any means ~~have become~~ becomes possessed of
21 public moneys or property and who ~~fail~~ fails or ~~neglect~~ neglects to pay for or deliver
22 the ~~same~~.
- 23 ~~3. All persons~~ public moneys or property; and any person indebted to the state. This
24 section does not apply to any debt being collected by the state treasurer.