WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1981

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ENROLLED

HOUSE BILL No. 1167

(By Mr. Harman, 33rd Dist., and Mr. Tucker)

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Passed April 11, 1981

In Effect from Passage
ENROLLED

H. B. 1167
(By Mr. Harmon, 33rd Dist., and Mr. Tucker)

[Passed April 11, 1981; in effect from passage.]

AN ACT to amend and reenact sections one, eighteen, nineteen, twenty-four and twenty-six, article one, chapter fourteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article one by adding thereto three new sections, designated sections eighteen-a, eighteen-b and eighteen-c, all relating to empowering the state commissioner of finance and administration to collect or cause to be collected certain debts due the state by consigning the collection of said debts to certain debt collection agencies and agents; relating to who may prosecute certain proceedings; providing for a certain compromise, settlement and dismissal of certain claims; relating to the selection and responsibility of certain collection agencies and agents; requiring a certain list; providing for certain fees and a certain fee limitation, and relating to certain compensation to the state auditor's agents and certain reports.

Be it enacted by the Legislature of West Virginia:

That sections one, eighteen, nineteen, twenty-four and twenty-six, article one, chapter fourteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article one be further amended by adding thereto three new sections, designated sections eighteen-a, eighteen-b and eighteen-c, all to read as follows:

ARTICLE 1. CLAIMS DUE THE STATE.

§14-1-1. Who may prosecute debt proceedings.

1 The auditor, commissioner of finance and administration
and any other officer or body authorized by law shall cause appropriate proceedings, in the manner provided for in this article, to be instituted and prosecuted to enforce payment of any debt or liability due the state.

§14-1-18. Settlement or dismissal of claims.

The commissioner of finance and administration, auditor or other officer or official body having authority to collect the same may, with the advice of the attorney general, adjust and settle upon just and equitable principles without regard to strict legal rules any account or claim, in favor of the state, which may at the time have been standing upon the books of his or its office more than five years; and, with the like advice, may dismiss any proceedings instituted by him or it.

§14-1-18a. Collection of debts and prosecution of claims by commissioner of finance and administration; consignment to debt collector.

Any account, claim or debt that an agency of this state is not able to collect within three months after trying with due diligence to do so may be referred to the commissioner of finance and administration for consignment by the commissioner to a responsible licensed and bonded debt collection agency or similar other responsible agent for collection. The commissioner shall not handle or consign any such account, claim or debt unless he is satisfied that the referring agency has made a diligent effort to collect the debt on its own; that the account or claim is justly, properly and clearly due the state; and that the collection of any such debt would not impose an undue, unjust, unfair or unreasonable hardship or burden upon the health or general welfare of the party owing the debt. In any such case of undue, unjust, unfair or unreasonable hardship or burden, the commissioner may, in his discretion, and with the review and approval of the attorney general, compromise, settle or dismiss the debt or claim. If he is satisfied that the aforesaid terms of any conditions for collectibility have been met, the commissioner may consign the account, claim or debt to a responsible licensed and bonded debt collection
agency or similar other responsible agent for collection. In any such case, the collection agency or other agent shall stand in the place of the state as creditor and shall have the same claims, rights and remedies against the debtor as the state has, and the debtor shall have the same rights, claims, defenses and setoffs against the collection agency or other agent as he has against the state.

§14-1-18b. **Selection and responsibility of collection agency or agent by commissioner of finance and administration; limitation on fees.**

The commissioner of finance and administration shall promulgate rules and regulations for the determination and regulation of responsible licensed and bonded debt collection agencies and other responsible agents for collection. The commissioner shall determine the collection fees to be paid to any such agency or agent, which fees shall be a percentage of the amount of the debt recovered, but the commissioner shall not under any circumstances pay any agency or agent a fee of more than fifty percent of the amount of the debt recovered.

§14-1-18c. **State tax commissioner’s list; responsibility of debt collection agencies and agent; selection of responsible agencies and agents.**

The state tax commissioner shall establish and maintain a list of debt collection agencies bonded and licensed with the state. When choosing collection agencies under the provisions of sections eighteen-a and eighteen-b of this article, the commissioner of finance and administration shall select and use only those collection agencies on the state tax commissioner's list. In collecting debts under sections eighteen-a and eighteen-b of this article, each debt collection agency and agent shall strictly abide by the provisions of (a) sections one hundred twenty-two through one hundred twenty-nine, inclusive, of article two, chapter forty-six-a of this code; (b) sections one through five, inclusive, of article sixteen, chapter forty-seven of this code; and (c) the federal Fair Debt Collection Practices Act, being Public Law 95-109 of the United States Congress. If any debt collection agency or agent vio-
lates any provision of the aforesaid laws, the state tax commissioner shall remove the agency from his aforesaid list and the commissioner of finance and administration shall immediately stop his employment and use of the agency or agent.

§14-1-19. Appointment of agents to collect certain debts.

The auditor, subject to the approval of the commissioner of finance and administration, may appoint agents to superintend the collection of those debts to or claims of the state he is by law responsible for. The auditor may authorize them to secure payments thereof by installments or otherwise and give further credit in consideration of additional security or indemnity satisfactory to him.


For the service rendered to the auditor by any agent under the pertinent sections of this article, the auditor shall recommended such compensation as may seem to him reasonable, not exceeding in any case fifty percent of the money actually paid into the treasury. The governor shall authorize the payment of what may be so recommended or so much thereof as in his judgment may be proper.

§14-1-26. Reports to Legislature.

The commissioner of finance and administration and the auditor shall biennially report to the Legislature their proceedings under this article, setting forth particularly all the agents appointed by them, and the agents’ compensation, all debts collected and property purchased by them, and all arrangements made with public debtors.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

R. P. Baylen
Chairman Senate Committee

Tony E. Whitley
Chairman House Committee

Originated in the House.

Takes effect from passage.

Joel C. Willis
Clerk of the Senate

W. Blankenship
Clerk of the House of Delegates

R. C. Henry
President of the Senate

J. P. Redding, Jr.
Speaker House of Delegates

The within _______ approved _______ this the _______ day of _______, 1981.

John P. Dunlap
Governor