

APPROVED AND SIGNED BY THE GOVERNOR

Date 4-28-81

Time _____

70: 1167

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1981



ENROLLED

HOUSE BILL No. 1167

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



Passed April 11, 1981

In Effect From Passage



ENROLLED

H. B. 1167

(By MR. HARMAN, 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

2 and any other officer or body authorized by law shall cause
3 appropriate proceedings, in the manner provided for in this
4 article, to be instituted and prosecuted to enforce payment
5 of any debt or liability due the state.

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

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

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

1 Any account, claim or debt that an agency of this state
2 is not able to collect within three months after trying with
3 due diligence to do so may be referred to the commissioner
4 of finance and administration for consignment by the com-
5 missioner to a responsible licensed and bonded debt collec-
6 tion agency or similar other responsible agent for collec-
7 tion. The commissioner shall not handle or consign any
8 such account, claim or debt unless he is satisfied that the
9 referring agency has made a diligent effort to collect the
10 debt on its own; that the account or claim is justly, prop-
11 erly and clearly due the state; and that the collection of
12 any such debt would not impose an undue, unjust, unfair
13 or unreasonable hardship or burden upon the health or
14 general welfare of the party owing the debt. In any such
15 case of undue, unjust, unfair or unreasonable hardship or
16 burden, the commissioner may, in his discretion, and with the
17 review and approval of the attorney general, compromise,
18 settle or dismiss the debt or claim. If he is satisfied that
19 the aforesaid terms of any conditions for collectibility have
20 been met, the commissioner may consign the account, claim
21 or debt to a responsible licensed and bonded debt collection

22 agency or similar other responsible agent for collection.
23 In any such case, the collection agency or other agent shall
24 stand in the place of the state as creditor and shall have
25 the same claims, rights and remedies against the debtor as
26 the state has, and the debtor shall have the same rights,
27 claims, defenses and setoffs against the collection agency or
28 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.

1 The commissioner of finance and administration shall
2 promulgate rules and regulations for the determination and
3 regulation of responsible licensed and bonded debt collec-
4 tion agencies and other responsible agents for collection.
5 The commissioner shall determine the collection fees to be
6 paid to any such agency or agent, which fees shall be a per-
7 centage of the amount of the debt recovered, but the com-
8 missioner shall not under any circumstances pay any agency
9 or agent a fee of more than fifty percent of the amount of the
10 debt recovered.

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

1 The state tax commissioner shall establish and maintain
2 a list of debt collection agencies bonded and licensed with
3 the state. When choosing collection agencies under the pro-
4 visions of sections eighteen-a and eighteen-b of this article,
5 the commissioner of finance and administration shall select
6 and use only those collection agencies on the state tax com-
7 missioner's list. In collecting debts under sections eighteen-a
8 and eighteen-b of this article, each debt collection agency
9 and agent shall strictly abide by the provisions of (a) sec-
10 tions one hundred twenty-two through one hundred twenty-
11 nine, inclusive, of article two, chapter forty-six-a of this code;
12 (b) sections one through five, inclusive, of article sixteen, chap-
13 ter forty-seven of this code; and (c) the federal Fair Debt Col-
14 lection Practices Act, being Public Law 95-109 of the United
15 States Congress. If any debt collection agency or agent vio-

16 lates any provision of the aforesaid laws, the state tax com-
17 missioner shall remove the agency from his aforesaid list and
18 the commissioner of finance and administration shall immedi-
19 ately stop his employment and use of the agency or agent.

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

1 The auditor, subject to the approval of the commissioner
2 of finance and administration, may appoint agents to superin-
3 tend the collection of those debts to or claims of the state he
4 is by law responsible for. The auditor may authorize them to
5 secure payments thereof by installments or otherwise and give
6 further credit in consideration of additional security or in-
7 demnity satisfactory to him.

§14-1-24. Compensation of auditor's agents for collection of debts.

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

§14-1-26. Reports to Legislature.

1 The commissioner of finance and administration and the
2 auditor shall biennially report to the Legislature their pro-
3 ceedings under this article, setting forth particularly all the
4 agents appointed by them, and the agents' compensation, all
5 debts collected and property purchased by them, and all
6 arrangements made with public debtors.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

R. P. Baylor

Chairman Senate Committee

Tommy E. Whitlow

Chairman House Committee

Originated in the House.

Takes effect from passage.

Sadd C. Willis

Clerk of the Senate

W. Blankenship

Clerk of the House of Delegates

Walter R. Rife

President of the Senate

Walter G. Lee, Jr.

Speaker House of Delegates

The within *is approved* this the *20*
day of *April*, 1981.

John W. Dwyer

Governor

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SECY. OF STATE