

By: Keffer of Eastland

H.B. No. 74

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the collection of certain delinquent obligations by the  
3 office of the attorney general.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 2107.003, Government Code, is amended to  
6 read as follows:

7 Sec. 2107.003. COLLECTION BY ATTORNEY GENERAL,  
8 COMPTROLLER, OR OUTSIDE AGENT. (a) Except as provided by Section  
9 2107.004 [~~Subsection (c)~~], a state agency shall report an  
10 uncollected and delinquent obligation to [~~request~~] the attorney  
11 general for collection on or before the 120th day after the date the  
12 obligation becomes past due or delinquent [~~to collect an obligation~~  
13 ~~before the agency may employ, retain, or contract with a person~~  
14 ~~other than a full-time employee of the state agency to collect the~~  
15 ~~obligation~~].

16 (b) The attorney general:

17 (1) shall provide legal services for collection of the  
18 obligation;

19 (2) may authorize the requesting state agency to  
20 employ, retain, or contract, subject to approval by the attorney  
21 general, with one or more persons to collect the obligation; or

22 (3) if the attorney general determines it to be  
23 economical and in the best interest of the state, may contract with  
24 one or more persons [~~a person other than a full-time employee of the~~

1 agency] to collect the [~~an~~] obligation [~~that the attorney general~~  
2 ~~cannot collect~~].

3 (c) The comptroller may employ, retain, or contract with a  
4 person other than a full-time state employee to collect delinquent  
5 obligations that are owed the comptroller in the comptroller's  
6 official capacity, are not collected through normal collection  
7 procedures, and do not meet the guidelines adopted for collection  
8 by the attorney general. A proposed contract under this subsection  
9 shall be reviewed by the attorney general and may include a  
10 collection fee computed on the amounts collected under the  
11 contract.

12 (d) The agency contracting under Subsection (b) is entitled  
13 to recover from the obligor, in addition to the amount of the  
14 obligation, the costs incurred in undertaking the collection,  
15 including the costs of a contract under this section. The obligor  
16 is liable for costs of recovery under this section in an amount not  
17 to exceed 30 percent of the sum of the amount of the obligation and  
18 any penalty and interest due on the obligation.

19 (e) A contract formed under Subsection (b) must provide for  
20 the compensation due to the contractor. The amount of the  
21 compensation may not exceed 30 percent of the sum of the collected  
22 amount of:

- 23 (1) the obligation;  
24 (2) any penalty; and  
25 (3) any interest.

26 (f) A contract formed under Subsection (b) or (c) may permit  
27 or require the contractor to pursue a judicial action to collect the

1 amount of the obligation in a proper court in or outside of this  
2 state.

3 (g) In a suit in a Texas state court brought by a contractor  
4 to collect an obligation under this section, the state is not:

5 (1) required to post security for costs;

6 (2) liable for costs; and

7 (3) liable for fees for:

8 (A) service of process;

9 (B) attorneys ad litem;

10 (C) arbitration; or

11 (D) mediation.

12 (h) An amount collected under a contract formed under  
13 Subsection (b), including the costs of recovery and court costs or  
14 other costs, shall be deposited in the fund or account to which the  
15 obligation was required to be deposited. The contracting agency  
16 shall pay the compensation due under the contract to the contractor  
17 and shall pay to the applicable court any court costs collected.

18 (i) The contracting agency shall require a person  
19 contracting under Subsection (b) to post a bond or other security in  
20 an amount the contracting agency determines is sufficient to cover  
21 all revenue or other property of the state that is expected to come  
22 into the possession or control of the contractor in the course of  
23 providing contract services.

24 (j) A person who contracts under Subsection (b) is an agent  
25 of this state for purposes of determining priority of a claim to be  
26 collected under the contract with respect to claims of other  
27 creditors. The contractor does not exercise any sovereign power of

1 the state.

2 (k) The contracting state agency may provide a person  
3 contracting under Subsection (b) any information, including  
4 confidential information, that the agency is not prohibited from  
5 sharing under an agreement with another state or with the United  
6 States and that is:

7 (1) in the custody of the agency holding the claim; and

8 (2) necessary to the collection of the obligation.

9 (l) A person acting under a contract formed under Subsection  
10 (b) or (c) and each employee or agent of that person is subject to  
11 all prohibitions against the disclosure of confidential  
12 information obtained from the contracting agency, the reporting  
13 state agency, or their employees. A contractor or the contractor's  
14 employee or agent who discloses confidential information in  
15 violation of the prohibition is subject to the same penalties for  
16 that disclosure as would apply to the contracting agency or its  
17 employees.

18 (m) The contracting agency shall require a person who  
19 contracts under Subsection (b) to obtain and maintain insurance  
20 adequate to provide reasonable coverage for damages negligently,  
21 recklessly, or intentionally caused by the contractor or the  
22 contractor's employee or agent in the course of collecting an  
23 obligation under the contract and to protect this state from  
24 liability for those damages. The state is not liable for and may  
25 not indemnify a person acting under a contract under Subsection (b)  
26 for damages negligently, recklessly, or intentionally caused by the  
27 contractor or the contractor's employee or agent in the course of

1 collecting an obligation under the contract.

2 (n) In addition to grounds for termination provided by the  
3 contract terms, the attorney general or the contracting agency, as  
4 applicable, may terminate a contract formed under Subsection (b) if  
5 the contractor or the contractor's employee or agent:

6 (1) violates the federal Fair Debt Collection  
7 Practices Act (15 U.S.C. Section 1692 et seq.);

8 (2) discloses confidential information to a person not  
9 authorized to receive the information; or

10 (3) performs any act that results in a final judgment  
11 for damages against this state.

12 SECTION 2. Section 2254.102(c), Government Code, is amended  
13 to read as follows:

14 (c) This subchapter does not apply to a contract:

15 (1) with an agency to collect an obligation under  
16 Section 2107.003(b); or

17 (2) for legal services entered into by an institution  
18 of higher education under Section 153.006, Education Code.

19 SECTION 3. This Act takes effect December 1, 2005.