

KANSAS OFFICE *of*  
**REVISOR *of* STATUTES**  
LEGISLATURE *of* THE STATE *of* KANSAS  
*Legislative Attorneys transforming ideas into legislation.*

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**MEMORANDUM**

To: Chairman Waymaster and members of the House Appropriations Committee

From: Jill A. Wolters, First Assistant Revisor

Date: January 30, 2018

Subject: HB2402, Debt set off; allowing the director of accounts and reports to enter into an agreement with third party vendors to assist in collecting debts against the state.

Currently, pursuant to article 62 of chapter 75 in the Kansas Statutes Annotated, there is a procedure to collect debts owed to the state. Such debt may include violation of contract provisions, child support and courts costs and fees.

HB2402 requires the director of accounts and reports to enter into an agreement with a third party vendor for the purpose of assisting in the collection of a debt against any money held for the debtor by the third party vendor. The agreement shall include a provision agreeing to defend, indemnify and hold harmless a third party vendor with regard to all claims demands, suits, actions, damages, judgments, costs, charges and expenses, including attorney fees, that may be brought or asserted against a third party vendor and that arise from the third party vendor's performance of an agreement to facilitate the collection of debts. Such agreement shall not include such damages and fees, that may result from gross negligence or by willful or wanton acts or omissions on the part of the third party vendor. The sole remedy at law for persons who claim that moneys collected for a debt were wrongfully withheld pursuant to this section by a third party vendor shall be to submit an appeal to the department of administration pursuant to K.S.A. 75-6201 et seq., and amendments thereto. The third party vendor shall have access to debtor information to assist the vendor in collection of a debt. Third party vendor means any person that the director enters into an agreement with to execute the collection of a debt as required by article 62 of chapter 75 in the Kansas Statutes Annotated.

## House Appropriations Committee

Wednesday, January 31, 2018

Testimony Re: HB 2402

Members of the House Appropriations Committee:

I am John Milburn, Director of Legislative and Public Affairs for the Department of Administration, and I am here today to testify in opposition to HB 2402 regarding debt collection. The agency has numerous concerns about the language in the bill and the challenges that would be created by its enactment.

### **BACKGROUND:**

The Department of Administration previously spent numerous hours drafting and negotiating a standard agreement intended to be used with the current state-owned casinos for potential collection of Setoff Program debts. Payments to be made by the Casino to a prize winner when a W-2G is required to be filed with the IRS would be matched to the Setoff Program debtor and debts via an online access page created specifically for use by the Casino staff. The Casino staff would enter certain identifying information about the prize winner into the access page and would be provided information that the prize winner is or is not found in the debt database. If found the amount of the debt is provided to the Casino staff to be setoff/withheld from the prize payment. That amount is paid to the State Treasurer's Office for credit to the Setoff Clearing Fund and the balance of the prize payment is paid to the prize winner. The Casino staff is not provided any other debtor or debt information. If there is no match the entire prize is paid by the Casino to the prize winner.

This same process determined for the state-owned casinos, lottery gaming facility manager as defined in K.S.A. 74-8702 may be used for facility owner licensee as defined in K.S.A. 74-8802 and racetrack gaming facility manager as defined in K.S.A. 74-8702, when and if electronic gaming machines are operated at horse and greyhound racing facilities in Kansas.

**HB2402** would amend the Kansas Setoff statutes to:

- 1) add the term "third party vendor" to the list of defined terms;
- 2) require the Setoff debt database debtor and debt information be provided to any "third party vendor"; and
- 3) require agreements with any "third party vendor" to assist with collection of debts owed to state agencies and other entities authorized to submit debts to the program;

As written, the bill could potentially create volumes of agreements with third party vendors as the term third party vendor is broad. Third party vendors could include collection agencies, individuals, businesses, other governmental agencies and any other entities. Because of the potential volume additional Setoff staff would be needed to administer and monitor those agreements and to provide oversight of third party vendor collection activities and correspondence, process updates to the Setoff system (KDRS) for the additional collection activities, perform periodic review of third party collections, reporting, and process receipts, transfers,

billings, etc. Additional staff would also require costs for office space rents, PCs, telephones, and related service charges.

Third party vendor is very broad and doesn't restrict participation in the Setoff Program to a target population. Third party vendor as defined can mean any person and person is defined as an individual, proprietorship, partnership, limited partnership, association, trust, estate, business trust, corporation, other entity or a governmental agency, unit or subdivision. A defined target population would allow Department of Administration to limit and manage risks associated with the additional Setoff Program participants and processes required for those new users.

Providing the debtor and debt information to any third-party vendor creates a risk for the state as the bill doesn't address how third-party vendors may use the debtor and debt information. The bill also doesn't address what sources of funds may be setoff or collection methodologies to be used by third party vendors, how frequently collections would be remitted to the Setoff Program or fees that may be charged by the third-party vendors. No direction is provided as to how frequently the updated debtor and debt information must be provided to each third-party vendor or if the Department of Administration will have access to the third-party vendor collection methods.

Additional legal assistance to review all agreements with third party vendors would create additional expenses and legal assistance would be needed for any legal actions/challenges arising from third party vendor actions and issues relating to any indemnification.

Please see the fiscal note prepared during the 2017 Session for additional details.

I thank you for allowing the Department of Administration to express our concerns and we would be pleased to answer any of your questions.

John Milburn  
Director, Legislative and Public Affairs  
Kansas Department of Administration  
[john.milburn@ks.gov](mailto:john.milburn@ks.gov)  
785-296-6866

March 30, 2017

The Honorable Troy Waymaster, Chairperson  
House Committee on Appropriations  
Statehouse, Room 111-N  
Topeka, Kansas 66612

Dear Representative Waymaster:

SUBJECT: Fiscal Note for HB 2402 by House Committee on Appropriations

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2402 is respectfully submitted to your committee.

HB 2402 would require the Department of Administration to enter into an agreement with a third party vendor to assist with the collection of debt under the Setoff Program.

Estimated State Fiscal Effect				
	FY 2018 SGF	FY 2018 All Funds	FY 2019 SGF	FY 2019 All Funds
Revenue	--	--	--	--
Expenditure	--	\$299,191	--	\$184,191
FTE Pos.	--	3.00	--	3.00

The Department of Administration estimates that additional expenditures of \$299,191 in FY 2018 from special revenue funds would be needed to implement the bill. This amount includes \$157,430 for the salaries and wages costs of 3.00 FTE positions; \$11,761 for overhead costs such as office space and other operating expenses; \$100,000 for additional IT hardware and programming modifications; and \$30,000 for legal costs. The additional positions would be needed to administer third party vendor agreements; monitor third party vendor collection activities and correspondence; process Kansas Debt Recovery System updates for additional collection activities; review third party collections reporting; and process receipts, transfers, and billings. The programming costs would occur if there is a high volume of agreements with third party vendors and if modifications are needed to ensure compatibility with vendor data files. If the volume of agreements is low and there is compatibility with vendor files, the existing system could be used. The legal costs would be for drafting and reviewing contracts or agreements and

The Honorable Troy Waymaster, Chairperson  
March 30, 2017  
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for any legal actions or challenges arising from indemnification. For FY 2019, the Department estimates expenditures would include \$157,430 for salaries and wages; \$11,761 for overhead expenses; and \$15,000 for legal costs.

The Department estimates revenues would increase by allowing third party vendors to assist in the collection of debts; however, the Department is unable to estimate the dollar amount of the increase. Any fiscal effect associated with HB 2402 is not reflected in *The FY 2018 Governor's Budget Report*.

Sincerely,

A handwritten signature in black ink, appearing to read "Shawn Sullivan", with a horizontal line extending to the right.

Shawn Sullivan,  
Director of the Budget

cc: Colleen Becker, Department of Administration



## House Committee on Appropriations

January 31, 2018

### **Testimony Opposed for HB 2402**

Presented by:

Trisha Thomas

Director of Child Support Services

Kansas Department for Children and Families

Steve Greene II, Director of Policy and Legislative Affairs  
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**Testimony of:**

Trisha Thomas, Director of Child Support Services  
Kansas Department for Children and Families  
Topeka, Kansas

**Testimony on:**

HB 2402 – Debt set off; allowing the director of accounts and reports to enter into an agreement with third party vendors to assist in collecting debts against the state.

**Chairman Waymaster, Vice Chair Campbell, Ranking Member Moore and Members of the Committee:**

Good morning, I am Trisha Thomas, Director of Child Support Services (CSS) at the Kansas Department for Children and Families (DCF). I appreciate the opportunity to testify today regarding House Bill 2402.

Currently, the Child Support Services (CSS) program participates in the set-off program referenced by this bill, which collected \$3.78 million in FFY 2017 for families. These funds went to both the households of obligees and to the State of Kansas to pay off obligor's child support arrears. This bill is of great concern to our program in how it will impact our families directly as well as the funding for the program.

HB 2402 requires the Department of Administration (DoA) Director of Accounts and Reports to enter into agreements with third-party vendors to assist in collecting debts against the state. The bill amends K.S.A. 75-6202 to add a definition of "third party vendor" which would allow the Director of Accounts and Reports to enter agreements with anyone to collect State debts. The bill amends K.S.A. 75-6203 to require DoA to provide shared information regarding debtors with the third-party vendors. The information DoA is required to share includes confidential information about child support participants. This information is protected by the federal and State laws. The bill, however, does not have any requirements for third-party vendors to comply with State and federal confidentiality laws or have a provision for CSS to be a required party to agreements between DoA and third-party vendors. Should CSS fail to protect this confidential information, the State could face loss of, or a serious reduction in the amount of, the federal grant under part IV-D of the Social Security Act. Therefore, the child support program would have no choice but to opt out of participating.

If CSS is not able to participate in the set-off program due to data insecurity, the loss will be felt in the homes of obliges, as well as the coffers of the State of Kansas. If this legislation is implemented, State General Funds will need to be identified for the operation of the IV-D program to meet the federal financial requirements.

Thank you for the opportunity to testify regarding this bill today. I will be glad to stand for any questions you may have.