

Regular Session, 2013

ACT No. 399

HOUSE BILL NO. 629

BY REPRESENTATIVES BROADWATER, BARRAS, BURFORD, GUILLORY, HAZEL, HOFFMANN, JAMES, STOKES, THOMPSON, WHITNEY, AND PATRICK WILLIAMS AND SENATORS JOHNS AND WALSWORTH

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

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AN ACT

To amend and reenact R.S. 6:333(B)(introductory paragraph) and R.S. 36:451(C) and to enact R.S. 6:333(F)(18), R.S. 36:458(H) and R.S. 47:1508(B)(33), 1676, and 1677, relative to collections by the Department of Revenue; to establish the office of debt recovery within the Department of Revenue to collect certain delinquent debts owed to or collected by the state; to provide for the authority of the attorney general's office in collecting certain debts; to provide for the administration of the collection of certain debts; to provide relative to the procedure for collection of certain debts; to provide for certain requirements and limitations; to authorize the collection of a fee; to provide for the establishment of an electronic debt registry; to provide relative to the information maintained in the registry; to authorize the promulgation of rules and regulations; to authorize establishment of certain programs; to authorize the establishment and use of a financial institution data match system; to authorize the acquisition and use of certain information from a financial institution; to authorize the payment of certain fees for acquisition of data match request files; to provide for the confidentiality of certain information; to authorize the disclosure of certain financial records under certain circumstances; to provide for an effective date; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 6:333(B)(introductory paragraph) is hereby amended and reenacted and R.S. 6:333(F)(18) is hereby enacted to read as follows:

1 §333. Disclosure of financial records; reimbursement of costs

2 * * *

3 B. Notwithstanding any other provision of law to the contrary, except R.S.
4 9:151 et seq., R.S. 13:3921 et seq., Code of Civil Procedure Article 2411 et seq., and
5 R.S. 46:236.1.4, R.S. 47:1676(D)(2), and R.S. 47:1677, no bank or its affiliate shall
6 disclose any financial records to any person other than the customer to whom the
7 financial records pertain, unless such financial records are disclosed:

8 * * *

9 F. The following disclosures by a bank or any affiliate are hereby
10 specifically authorized and, except as otherwise provided in this Subsection, nothing
11 in this Section shall prohibit, restrict, or otherwise apply to:

12 * * *

13 (18) The disclosure by a bank or any of its subsidiaries or affiliates of data
14 match information on an account owner to the secretary of the Department of
15 Revenue, and his or her designee in the office of debt recovery, for use in attempting
16 to enforce a final tax or non-tax assessment or judgment against such individual or
17 entity. Such disclosure to the department or office shall be limited to the name,
18 record address, social security or taxpayer identification number, other identifying
19 information, and an average daily account balance for the most recent thirty-day
20 period, of a state tax or state non-tax debtor who maintains an account or is a
21 customer at such institution and who purportedly owes a final state tax or state non-
22 tax assessment or judgment.

23 * * *

24 Section 2. R.S. 36:451(C) is hereby amended and reenacted and R.S. 36:458(H) is
25 hereby enacted to read as follows:

26 §451. Department of Revenue; creation; domicile; composition; purposes and
27 functions

28 * * *

29 C. The Department of Revenue shall be composed of the executive office of
30 the secretary, the office of management and finance, the office of tax administration,

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 group I, the office of tax administration, group II, the office of tax administration,
 2 group III, the office of alcohol and tobacco control, the office of legal affairs, the
 3 office of charitable gaming, the office of debt recovery, and such other offices as
 4 shall be created by law. Whenever the secretary determines that the administration
 5 of the functions of the department may be more efficiently performed by eliminating,
 6 merging, or consolidating existing offices or establishing new offices, he shall
 7 present a plan therefor to the legislature for its approval by statute; provided that,
 8 whenever the secretary deems necessary, he may reassign the responsibility for the
 9 collection of a specific tax from one office to another office.

10 * * *

11 §458. Offices; purposes and functions

12 * * *

13 H. The office of debt recovery shall be responsible for, in accordance with
 14 applicable laws and under the direction of the secretary, the collection of a tax and
 15 may be responsible for the collection of certain delinquent debts, accounts, or claims
 16 due on behalf of other state agencies. Whenever the secretary deems necessary, he
 17 may reassign the responsibility for the collection of a tax, account, claims due, or
 18 other duty assigned by this Subsection to this office to another office within the
 19 department created by this Section.

20 Section 3. R.S. 47:1508(B)(33), 1676, and 1677 are hereby enacted to read as
 21 follows:

22 §1508. Confidential character of tax records

23 * * *

24 B. Nothing herein contained shall be construed to prevent:

25 * * *

26 (33) The sharing or furnishing, in the discretion of the secretary, of
 27 information to the Louisiana Department of Health and Hospital's tax filing unit for
 28 the purposes of complying with mandatory requirements in accordance with federal
 29 law.

30 * * *

1 §1676. Debt recovery

2 A.(1) It shall be the public policy of this state to aggressively pursue the
3 collection of accounts or claims due and payable to the state of Louisiana through all
4 reasonable means. The office of debt recovery, within the Department of Revenue
5 and the attorney general's office shall jointly serve as debt-collecting entities for any
6 agency of the state and in that capacity shall collect delinquent debts on behalf of all
7 agencies which refer delinquent debts to the office for collection. All debts owed to
8 the state shall be referred to either the attorney general's office or to the office of debt
9 recovery for collection. However, all agencies which do not have a contract with the
10 attorney general's office for debt collection on or before January 1, 2014, shall refer
11 all delinquent debts to the office for collection when the debt has been final for sixty
12 days.

13 (2) Each agency shall refer non-final delinquent debts requiring legal action
14 or legal proceedings, other than administrative proceedings within such agency, to
15 the attorney general's office for collection when the debt has been delinquent for
16 sixty days, or other time period as provided pursuant to the referral guidelines
17 established by the attorney general which are incorporated into agreements between
18 the attorney general and any such agency or pursuant to rules promulgated by the
19 attorney general pursuant to the Administrative Procedure Act.

20 B. For purposes of this Section, the following words shall have the following
21 meanings unless the context clearly indicates otherwise:

22 (1) "Agency" means any state office, department, board, commission,
23 institution, division officer or other person, or functional group, existing or created,
24 that is authorized to exercise, or that does exercise, any function of state government
25 in the executive branch.

26 (2) "Authenticated" means that the referring agency has certified the amount
27 of the delinquent debt, the debtor's liability, the debtor's name, address, telephone
28 number, social security number, and the federal or state taxpayer identification
29 number.

1 (3) "Debt" means any legally collectible liquidated sum due and owing an
2 agency, or due and owing a person and collectible by any agency, or a judgment,
3 order of the court, or bond forfeiture that is properly certified by the clerk and that
4 orders the payment of a fine or other court-ordered penalty. The legally collectible
5 and liquidated sum due includes principal and accruing interest, fees, and penalties,
6 if appropriate. For purposes of this Section, "debt" shall not include any legally
7 collectible liquidated sum due and owing to an agency or an individual pursuant to
8 the following federal programs: Title IV-A, Title IV-B, Title IV-D, Title IV-E, Title
9 XX of the federal Social Security Act, 7 United States Code (U.S.C.) 2011 et seq.,
10 42 U.S.C. 9858 et seq., 42 U.S.C. 5101 et seq., 42 U.S.C. 5116 et seq., 42 U.S.C.
11 10401 et seq.; or, any sums due on account of overpaid unemployment compensation
12 benefits or unpaid contributions or reimbursements pursuant to Louisiana
13 Employment Security Law under R.S. 23:1471 et seq.

14 (4) "Department" means the Louisiana Department of Revenue.

15 (5) "Delinquent debt" means a final debt that is sixty days or more past due.

16 (6) "Final" means the amount due is no longer negotiable and that the debtor
17 has no further right of administrative and judicial review.

18 (7) "Non-final delinquent debt" means any debt that an agency has notified
19 a debtor is owed but the debt remains unpaid, due, or negotiable for a period of sixty
20 days or more and such debt is not final and the debtor has further administrative or
21 judicial review rights to challenge the validity of the debt or the amount owed.

22 (8) "Office" means the office of debt recovery within the Department of
23 Revenue.

24 (9) "Secretary" means the secretary of the Department of Revenue.

25 C.(1) Notwithstanding any other provision of law to the contrary, in addition
26 to any duties, powers, or responsibilities otherwise conferred, the secretary of the
27 Department of Revenue, through the office of debt recovery, shall collect and
28 enforce certain delinquent debts due to agencies according to rules promulgated by
29 the department.

1 (2)(a) No later than January 1, 2014, agencies which do not have collection
2 contracts with the attorney general's office for the collection of delinquent debts shall
3 refer all delinquent debts to the office as provided by rule. Such referrals shall
4 include data and information in the required format necessary to institute collection
5 procedures. All delinquent debts shall be authenticated by the agency or
6 participating political subdivision or officer prior to being referred to the office.
7 Once the debt becomes final, and prior to referral to the office, the agency shall
8 notify the debtor that failure to pay the debt in full within sixty days shall subject the
9 debt to an additional collection fee as provided for in this Section. All agencies shall
10 refer non-final delinquent debts to the attorney general's office for collection when
11 the debt has been delinquent for sixty days pursuant to the referral guidelines
12 established by the attorney general as incorporated into agreements between the
13 attorney general and other agencies or pursuant to the rules promulgated by the
14 attorney general pursuant to the Administrative Procedure Act. Such non-final
15 delinquent debts shall be authenticated by the agency prior to their referral to the
16 attorney general.

17 (b) After transferring the debt to the office for collection, the referring
18 agency shall terminate all collection activities with respect to that debt except to
19 provide assistance to the office as may be requested. The department shall notify the
20 debtor by letter, within fifteen days of receiving the referral, that such debt has been
21 referred to the office for collection. Upon receipt of the debt referral, the office shall
22 assume all liability for its actions without recourse to the agency and shall comply
23 with all applicable state and federal laws governing the collection of the debt. For
24 purposes of this Section, the office shall not be considered a collection agency as
25 defined in R.S. 9:3534.1.

26 (3) At the discretion of the secretary, the department may contract with the
27 attorney general's office or a third-party collection contractor for the collection of
28 delinquent debt on behalf of the office. However, any contract entered into by the
29 secretary for the collection of delinquent debt on behalf of the state shall be subject
30 to review by the Cash Management Review Board. Additionally, the Legislative

1 Auditor shall have authority to conduct audits of such contracts in accordance with
2 the law.

3 (4) If, in the course of collecting delinquent debt, the secretary determines
4 that the office requires the additional assistance of legal counsel, the secretary shall
5 first seek assistance from the office of the attorney general. If the office of the
6 attorney general is unable to or declines to offer legal counsel, the secretary is
7 authorized to contract with a third-party for such services. Additionally, the
8 legislative auditor shall have authority to conduct audits of such contracts in
9 accordance with the law.

10 D.(1) Notwithstanding any other provision of law to the contrary, the
11 secretary of the Department of Revenue may treat a delinquent debt referral in the
12 same manner as an assessment that has become final without restriction or delay.
13 The secretary, through the office, may use any collection remedy provided by state
14 law to facilitate the collection of taxes to collect the delinquent debt; however, the
15 financial institution data match shall only be used in accordance with the provisions
16 of R.S. 47:1677. The office may use a participating agency's statutory collection
17 authority to collect the participating agency's or participating political subdivision's
18 delinquent debts owed to or being collected by the state or participating political
19 subdivision. The office may also use authority granted in R.S. 47:299.3 regarding
20 offset from income tax refunds or other accounts payable by the state for any
21 delinquent debt transferred by agencies and political subdivisions. The secretary has
22 the discretion to determine which method or combination thereof is most suitable to
23 collect the delinquent debt.

24 (2) The department and the office may establish and use an electronic
25 financial institution data match system as authorized in R.S. 47:1677 for comparison
26 of certain account information held by financial institutions with the department and
27 office's databases of state tax and state nontax debtors against whom an assessment
28 or judgment for debt owed to the state has become final.

29 (3)(a) The office shall be granted and may exercise the authority granted in
30 R.S. 47:296.2 and 296.3.

1 **(b)(i) The office may also submit a request for the suspension, revocation or**
2 **denial of any type of professional or other license, permit, or certification to a**
3 **Louisiana entity or body that governs, regulates, or issues such licenses, permits or**
4 **certifications for the exercise or practice of certain professions, trades, or any other**
5 **kind of work being performed in Louisiana.**

6 **(ii) In exercising the authority provided for in this Paragraph or in R.S.**
7 **47:296.2 or 296.3, the office may assume the obligation for the payment of such**
8 **services in order to collect delinquent debt.**

9 **(c) The legislature hereby recognizes the judicial power vested in the state**
10 **supreme court pursuant to Article V, Section I of the Constitution of Louisiana to**
11 **regulate the practice of law and accordingly, and requests that the supreme court**
12 **consider rules and regulations relative to attorneys licensed to practice law consistent**
13 **with the provisions of this Chapter.**

14 **E. The office shall charge the debtor a fee not to exceed twenty-five percent**
15 **of the total liability of debt which has become final after the initial effective date of**
16 **this Section. The amount of the fee shall be established by rule promulgated by the**
17 **department and shall be uniformly applied to all debts. Fees collected under this**
18 **Subsection shall be retained by the office after the debt is collected and shall be**
19 **divided in accordance with an agreement between the office and the office of the**
20 **attorney general after payment of costs set forth in the agreement. Monies collected**
21 **by the office pursuant to the provisions of this Section shall be transferred to the**
22 **referring agency within thirty days after the end of the month in which the monies**
23 **were collected and shall be used by such agency as they would have been had they**
24 **been timely collected. However, any monies collected for delinquent debt as a result**
25 **of nonpayment of tax liabilities pursuant to Title 47 of the Louisiana Revised**
26 **Statutes of 1950, as amended, after deposit into the state general fund, the first five**
27 **million dollars shall be appropriated by the legislature beginning in Fiscal Year**
28 **2013-2014, and for four consecutive fiscal years thereafter, to the Office of State**
29 **Police for a training academy class.**

1 F.(1) Notwithstanding any law to the contrary, agencies shall be authorized
2 to transmit data to the office of debt recovery deemed necessary by the secretary to
3 aid in the collection efforts of the office. The secretary shall establish a centralized
4 electronic debt registry to compile the information provided by agencies and shall
5 maintain all information provided from all sources within the state concerning
6 addresses, financial records, and any other information useful in assisting the office
7 in collection services of the centralized registry. The data compiled in the registry
8 from the department, referring agencies, and the office shall be available for cross-
9 referencing and for the identification of debtors necessary for the collection of
10 delinquent debt.

11 (2) All data, records, and files utilized for debt collection as provided herein
12 shall be deemed confidential and privileged, and no person shall divulge or disclose
13 any information obtained from such records and files except in the administration
14 and enforcement of these provisions. Compilation of tax data in the electronic
15 registry by the department shall not be a violation of R.S. 47:1508, and any
16 information or data gathered by the department and the office in accordance with the
17 law may be used for purposes of collecting tax and nontax debt. Except as provided
18 for in R.S. 47:1508 et seq., or in any other applicable provision of law, information
19 concerning the identity of a debtor, the amount of the debt owed, and the amount of
20 any collections or settlements shall be a public record subject to disclosure under the
21 Public Records Law, R.S. 44:1 et seq.

22 (3) The attorney general shall have access to all data and information
23 compiled which is needed for further debt collection and accounting pursuant to this
24 Section.

25 G. The secretary shall promulgate rules and regulations in accordance with
26 the Administrative Procedure Act to implement the provisions of this Section,
27 including rules authorizing any reasonable procedure or requirement for agencies
28 referring delinquent debt to the department for collection, requirements regarding
29 information necessary to collect the debt and the formatting of that information, and

1 the priority or ranking of debt payments against multiple agency debts. Any rule
2 promulgated by the department shall be construed in favor of the secretary.

3 H. Reciprocal debt collection agreement with federal government. The
4 secretary may enter into one or more reciprocal collection and offset of indebtedness
5 agreements with the federal government, pursuant to which the state shall agree to
6 offset from state tax refunds and payments otherwise due to vendors and contractors
7 providing goods or services to agencies, non-tax debt owed to the federal
8 government, and the federal government shall agree to offset from federal payments
9 to vendors, contractors, and taxpayers debt owed to the state. The secretary shall
10 include all eligible collection accounts placed with the attorney general's office for
11 all available offsets.

12 I. After the office exercises and employs its collection methods and tools, it
13 shall evaluate and recommend any uncollectible debt for sale or securitization in
14 accordance with the provisions of R.S. 39:88.2 and 88.3.

15 J. The operations of the office shall be subject to annual review by the Cash
16 Management Review Board.

17 §1677. Financial Institution Data Match

18 A. A financial institution or its processor shall provide to the department or
19 the office, the name, record address, social security number or other taxpayer
20 identification number, any other identifying information, and an average daily
21 account balance for the most recent thirty-day period, for each calendar quarter for
22 each account owner who maintains an account at such institution and who the office
23 purports is a tax or nontax debtor.

24 B. For purposes of this Section, the following words or phrases shall have
25 the following meanings unless the context clearly indicates otherwise:

26 (1) "Account" shall mean any money held in the name of an account owner,
27 individually or jointly with another, including but not limited to a deposit account,
28 demand account, savings account, negotiable order of withdrawal account (NOW
29 account), share account, member account, time certificate of deposit, or money
30 market account. "Account" shall not include money held by a financial institution

1 where the tax or nontax debtor is listed in a capacity other than owner, such as an
 2 authorized signer only, custodian, tutor, or agent.

3 (2) "Financial institution" shall mean a state or federally chartered bank,
 4 savings bank, savings and loan association, or credit union operating in this state
 5 with a main office or one or more branch offices.

6 (3) "Nontax debtor" shall mean an individual against whom an assessment
 7 or judgment for a debt owed to the state has become final and is currently
 8 enforceable in accordance with the law.

9 (4) "Tax debtor" shall mean an individual against whom an assessment or
 10 judgment for state taxes payable has become final and is currently enforceable in
 11 accordance with law.

12 C.(1) If a financial institution or its processor has a current data match
 13 system developed or used to comply with the child support data match system
 14 provided for in R.S. 46:236.1.4, the financial institution or its processor may use that
 15 system to comply with the provisions of this Section. The office shall not require a
 16 financial institution or its processor to change their data match system or file format
 17 established under R.S. 46: 236.1.4 in order to comply with this Section.

18 (2) For Louisiana domiciled financial institutions having no branch offices
 19 outside the state, the office or its data match vendor shall ensure that compliance
 20 with both the provisions of this Section and R.S. 46:236.1.4 may be accomplished
 21 with a single data match file. Louisiana domiciled institutions having no branch
 22 offices outside the state, or their processor, shall not be required to process multiple
 23 data match files to comply with this Section.

24 D. A financial institution may, but is not required to, disclose to its
 25 depositors or account holders that the department or the office has the authority to
 26 request and receive certain identifying information provided for in this Section for
 27 state tax and nontax debt collection purposes.

28 E.(1) No financial institution, including its directors, officers, employees,
 29 attorneys, accountants, or other agents, shall incur liability to any person, including
 30 any depositor or other customer, as a result of providing account information to the

1 department or office in compliance with a request that conforms to the provisions of
2 this Section.

3 (2) A financial institution, including any of its directors, officers, employees,
4 attorneys, accountants, or other agents, shall not be civilly or criminally liable to any
5 person, including any customer, for any disclosure of information made in
6 accordance with this Section, including any disclosure of account balances.

7 F.(1) Notwithstanding any other law or rule to the contrary, the department
8 or office shall pay a participation fee to each financial institution that actually
9 receives a data match request file. The participation fee to a financial institution
10 shall be for actual costs incurred for conducting the data match and otherwise
11 complying with the provisions of this Section. Actual costs incurred for complying
12 with this Section shall be the total cost incurred by the financial institution to process
13 all data match request files under R.S. 46:236.1.4 and this Section minus the costs
14 incurred to process data match request files under R.S. 46:236.1.4. In order to
15 receive the participation fee authorized by this Section, the financial institution must
16 be FDIC insured.

17 (2) Before a financial institution receives a participation fee, the financial
18 institution must show it has incurred costs under R.S. 46:236.1.4 and this Section.
19 The department or office may require a financial institution to submit paperwork
20 such as invoices and other documentation to substantiate the costs that have been
21 incurred. After actual costs are established by a financial institution under Paragraph
22 (1) of this Subsection through submitted paperwork, the office shall automatically
23 remit payment to the financial institution on a quarterly basis without the financial
24 institution having to resubmit additional paperwork each quarter thereafter.
25 However, the office may request additional paperwork from a financial institution
26 on a periodic basis, not to exceed once every two years, to verify their actual costs
27 in complying with this Section.

28 (3) Notwithstanding any other law or rule to the contrary, if a financial
29 institution assesses a fee to its customer for processing a state tax or state nontax levy
30 received from the office or the department, the fee shall be collected by the financial

1 institution from the proceeds of the customer's account before any account proceeds
2 are remitted to the office or the department to satisfy the state tax or state nontax
3 levy.

4 (4) Any fees paid under this Section shall not be comprised of or constitute
5 any amounts due to a financial institution for its compliance with R.S. 46:236.1.4.
6 The department or office shall be responsible for the reconciliation and tracking of
7 data and information regarding the number of sent data match request files, received
8 completed data match accounts, and amounts paid in accordance with this Section.
9 The department shall also be responsible for tracking and reporting all statistical
10 information regarding financial data match activities to the commissioner of
11 administration or his designee every six months and to report the information to the
12 Joint Legislative Committee on the Budget every session prior to the last day of each
13 legislative session.

14 G. The department, office, and their designated vendor for the data match
15 program, shall keep all information received from financial institutions pursuant to
16 this Section confidential, and any employee, agent, or representative of the
17 department, office, and their designated vendor is prohibited from disclosing that
18 information to any other third party.

19 H. The department or office shall generally conduct the data match program
20 provided for in this Section on a quarterly basis. However, if the department or
21 office decides to conduct data match with a particular financial institution less
22 frequently than every quarter, the department or office shall provide written notice
23 to the chief operating officer of the financial institution at least ninety days before
24 the next scheduled quarterly data match date. If the department or office provides
25 the required notice to change the frequency of data match, the department or office
26 shall not further change the frequency of data match with that financial institution
27 for at least one year from the date written notice was provided to the financial
28 institution originally changing the frequency of the data match schedule. After the
29 one year period has elapsed, any subsequent changes to the frequency of the data
30 match schedule with a financial institution shall also be done by the department or

1 office only after providing written notice to the chief operating officer of the
2 financial institution at least ninety days in advance of the next data match date.

3 Section 4. This Act shall become effective upon signature by the governor or, if not
4 signed by the governor, upon expiration of the time for bills to become law without signature
5 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
6 vetoed by the governor and subsequently approved by the legislature, this Act shall become
7 effective on the day following such approval.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____