



DEPARTMENT OF JUSTICE  
OFFICE OF THE ATTORNEY GENERAL

**MEMORANDUM**

DATE: February 24, 2015

TO: Honorable Phil Barnhart, Chair  
House Committee on Revenue

FROM: Aaron Knott, Legislative Director

SUBJECT: HB2089 – Debtors to the State

This testimony is presented to provide technical feedback regarding HB2089.

**BACKGROUND**

HB 2089 allows debtors to apply to the Department of Revenue for placement on a “currently not collectible list” for a one-year period, which may be extended for an additional period. Placement on this list would bar Revenue, private collection agencies, and other state agencies from attempting to collect certain debts. This bill also prohibits state agencies from requesting, advising, or requiring a debtor to sell exempt personal property. Finally, it requires agencies to add a specific notice to all written communications to debtors.

**TECHNICAL ISSUES**

Constitutional Concern

This bill would allow a criminal defendant to seek a determination that their restitution and other criminal money judgment obligations are not currently collectible. This may conflict with a victim's right to receive prompt restitution under the Oregon Constitution (Art. 1, Section 42(d)).

Prevent Other State Agencies From Collecting Debts.

HB 2089 could be construed to prohibit state agencies from collecting debts that have not been assigned to the Department of Revenue or a private collection agency for collection. The phrase “or another state agency” in Section 2(a) could be interpreted to prevent other state agencies from collecting any debts owed by the debtor—even those that have not been assigned to Revenue for collection. This concern would be alleviated if this phrase is removed from Section 2, paragraphs 2(a), 2(c) and 4.

Reversing a “Not Collectible” Determination.

This bill does not allow Revenue to remove a debtor from its not collectible list during the one-year period, even if Revenue later discovers that it was misled about the debtor’s financial condition or if the debtor’s financial situation improves. This concern could be resolved by allowing Revenue to remove a debtor from the not collectible list at any time, if it determines that the debtor has the ability to pay or submitted inaccurate information during the initial application.

Sale of Exempt Property Provision May Bar the Forced Sale of High Value Assets.

Section 2(c) states that the “Department of Revenue or another state agency...may not request, advise or require a debtor to sell [exempt] personal property.” This provision is problematic, especially because many items of personal property are partially exempt. This bill could prevent an agency from forcing the sale of a high value asset simply because it is partially exempt. For example, an agency may wish to force the sale of a \$30,000 motor vehicle but could be precluded from doing so due to the \$3,000 personal property exemption (*See* ORS 18.345(1)(d)).

Notice Provision Would Be Require Remodeling Document Processing Statewide.

Section 4 requires the inclusion of boilerplate language on “all written communications made to a debtor.” This language would be required on every letter, notice and email sent to a debtor. This would require state agencies to revise all applicable forms, and creates a potential conflict with other statutes that prescribe the form of notices and other documents that are sent to debtors.

Requires Child Support Program to Include a Notice when that Notice will not Apply

The Child Support Program (CSP) enforces child and spousal support judgments. As required by state and federal law, the CSP refers child and spousal support debt to the Department of Revenue for collection through state tax refund offset. ORS 293.250(5)(a) specifically provides that nothing in ORS 293.250 shall prohibit the collection of child and spousal support. To the extent this bill creates limitations on the collection of money owed to state agencies; those limitations would not apply to the collection of child and spousal support. However, the bill requires the CSP to add notices to its forms suggesting that those limitations would apply. This could be very confusing to CSP customers.

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