

FIRST EXTRAORDINARY SESSION

HOUSE BILL NO. 2

96TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES FLANIGAN (Sponsor), ALLEN AND KELLY (24) (Co-sponsors).

0010L.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 32.028, 32.087, and 105.716, RSMo, and to enact in lieu thereof thirteen new sections relating to collection of state money, with penalty provisions.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 32.028, 32.087, and 105.716, RSMo, are repealed and thirteen new sections enacted in lieu thereof, to be known as sections 32.028, 32.058, 32.087, 32.383, 32.385, 32.410, 32.420, 32.430, 32.440, 32.450, 32.460, 105.716, and 140.910, to read as follows:

32.028. 1. There is hereby created a department of revenue in charge of a director appointed by the governor, by and with the advice and consent of the senate. The department shall collect all taxes and fees payable to the state as provided by law **and may collect, upon referral by a state agency, debts owed to any state agency subject to section 32.420.**

2. The powers, duties and functions of the department of revenue, chapter 32 and others, are transferred by type I transfer to the department of revenue. All powers, duties and function of the collector of revenue are transferred to the director of the department by type I transfer and the position of collector of revenue is abolished.

3. The powers, duties and functions of the state tax commission, chapter 138 and others, are transferred by type III transfer to the department of revenue.

4. All of the powers, duties and functions of the state tax commission relating to administration of the corporation franchise tax, chapter 152, and others, are transferred by type I transfer to the department of revenue; provided, however, that the provision of section 138.430 relating to appeals from decisions of the director of revenue shall apply to these taxes.

5. All the powers, duties and functions of the highway reciprocity commission, chapter 301, are transferred by type II transfer to the department of revenue.

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

2 **32.058. For all years beginning after January 1, 2012, notwithstanding the certified**
3 **mail provisions contained in chapters 32, 140, 142, 143, 144, 147, 148, 149, and 302, the**
4 **director of revenue may choose to mail any document by first class mail.**

5 32.087. 1. Within ten days after the adoption of any ordinance or order in favor of
6 adoption of any local sales tax authorized under the local sales tax law by the voters of a taxing
7 entity, the governing body or official of such taxing entity shall forward to the director of revenue
8 by United States registered mail or certified mail a certified copy of the ordinance or order.

9 The ordinance or order shall reflect the effective date thereof.

10 2. Any local sales tax so adopted shall become effective on the first day of the second
11 calendar quarter after the director of revenue receives notice of adoption of the local sales tax,
12 except as provided in subsection 18 of this section.

13 3. Every retailer within the jurisdiction of one or more taxing entities which has imposed
14 one or more local sales taxes under the local sales tax law shall add all taxes so imposed along
15 with the tax imposed by the sales tax law of the state of Missouri to the sale price and, when
16 added, the combined tax shall constitute a part of the price, and shall be a debt of the purchaser
17 to the retailer until paid, and shall be recoverable at law in the same manner as the purchase
18 price. The combined rate of the state sales tax and all local sales taxes shall be the sum of the
19 rates, multiplying the combined rate times the amount of the sale.

20 4. The brackets required to be established by the director of revenue under the provisions
21 of section 144.285 shall be based upon the sum of the combined rate of the state sales tax and
22 all local sales taxes imposed under the provisions of the local sales tax law.

23 5. The ordinance or order imposing a local sales tax under the local sales tax law shall
24 impose upon all sellers a tax for the privilege of engaging in the business of selling tangible
25 personal property or rendering taxable services at retail to the extent and in the manner provided
26 in sections 144.010 to 144.525, and the rules and regulations of the director of revenue issued
27 pursuant thereto; except that the rate of the tax shall be the sum of the combined rate of the state
28 sales tax or state highway use tax and all local sales taxes imposed under the provisions of the
29 local sales tax law.

30 6. On and after the effective date of any local sales tax imposed under the provisions of
31 the local sales tax law, the director of revenue shall perform all functions incident to the
32 administration, collection, enforcement, and operation of the tax, and the director of revenue
33 shall collect in addition to the sales tax for the state of Missouri all additional local sales taxes
34 authorized under the authority of the local sales tax law. **The director shall retain one percent**
35 **of the amount of any local sales or use tax collected for cost of collection.** All local sales
36 taxes imposed under the local sales tax law together with all taxes imposed under the sales tax

33 law of the state of Missouri shall be collected together and reported upon such forms and under
34 such administrative rules and regulations as may be prescribed by the director of revenue.

35 7. All applicable provisions contained in sections 144.010 to 144.525 governing the state
36 sales tax and section 32.057, the uniform confidentiality provision, shall apply to the collection
37 of any local sales tax imposed under the local sales tax law except as modified by the local sales
38 tax law.

39 8. All exemptions granted to agencies of government, organizations, persons and to the
40 sale of certain articles and items of tangible personal property and taxable services under the
41 provisions of sections 144.010 to 144.525, as these sections now read and as they may hereafter
42 be amended, it being the intent of this general assembly to ensure that the same sales tax
43 exemptions granted from the state sales tax law also be granted under the local sales tax law, are
44 hereby made applicable to the imposition and collection of all local sales taxes imposed under
45 the local sales tax law.

46 9. The same sales tax permit, exemption certificate and retail certificate required by
47 sections 144.010 to 144.525 for the administration and collection of the state sales tax shall
48 satisfy the requirements of the local sales tax law, and no additional permit or exemption
49 certificate or retail certificate shall be required; except that the director of revenue may prescribe
50 a form of exemption certificate for an exemption from any local sales tax imposed by the local
51 sales tax law.

52 10. All discounts allowed the retailer under the provisions of the state sales tax law for
53 the collection of and for payment of taxes under the provisions of the state sales tax law are
54 hereby allowed and made applicable to any local sales tax collected under the provisions of the
55 local sales tax law.

56 11. The penalties provided in section 32.057 and sections 144.010 to 144.525 for a
57 violation of the provisions of those sections are hereby made applicable to violations of the
58 provisions of the local sales tax law.

59 12. (1) For the purposes of any local sales tax imposed by an ordinance or order under
60 the local sales tax law, all sales, except the sale of motor vehicles, trailers, boats, and outboard
61 motors, shall be deemed to be consummated at the place of business of the retailer unless the
62 tangible personal property sold is delivered by the retailer or his agent to an out-of-state
63 destination. In the event a retailer has more than one place of business in this state which
64 participates in the sale, the sale shall be deemed to be consummated at the place of business of
65 the retailer where the initial order for the tangible personal property is taken, even though the
66 order must be forwarded elsewhere for acceptance, approval of credit, shipment or billing. A
67 sale by a retailer's agent or employee shall be deemed to be consummated at the place of business
68 from which he works.

69 (2) For the purposes of any local sales tax imposed by an ordinance or order under the
70 local sales tax law, all sales of motor vehicles, trailers, boats, and outboard motors shall be
71 deemed to be consummated at the residence of the purchaser and not at the place of business of
72 the retailer, or the place of business from which the retailer's agent or employee works.

73 (3) For the purposes of any local tax imposed by an ordinance or under the local sales
74 tax law on charges for mobile telecommunications services, all taxes of mobile
75 telecommunications service shall be imposed as provided in the Mobile Telecommunications
76 Sourcing Act, 4 U.S.C. Sections 116 through 124, as amended.

77 13. Local sales taxes imposed pursuant to the local sales tax law on the purchase and sale
78 of motor vehicles, trailers, boats, and outboard motors shall not be collected and remitted by the
79 seller, but shall be collected by the director of revenue at the time application is made for a
80 certificate of title, if the address of the applicant is within a taxing entity imposing a local sales
81 tax under the local sales tax law.

82 14. The director of revenue and any of his **or her** deputies, assistants and employees who
83 have any duties or responsibilities in connection with the collection, deposit, transfer, transmittal,
84 disbursement, safekeeping, accounting, or recording of funds which come into the hands of the
85 director of revenue under the provisions of the local sales tax law shall enter a surety bond or
86 bonds payable to any and all taxing entities in whose behalf such funds have been collected
87 under the local sales tax law in the amount of one hundred thousand dollars for each such tax;
88 but the director of revenue may enter into a blanket bond covering himself **or herself** and all
89 such deputies, assistants and employees. The cost of any premium for such bonds shall be paid
90 by the director of revenue from the share of the collections under the sales tax law retained by
91 the director of revenue for the benefit of the state.

92 15. The director of revenue shall annually report on his **or her** management of each trust
93 fund which is created under the local sales tax law and administration of each local sales tax
94 imposed under the local sales tax law. He **or she** shall provide each taxing entity imposing one
95 or more local sales taxes authorized by the local sales tax law with a detailed accounting of the
96 source of all funds received by him for the taxing entity. Notwithstanding any other provisions
97 of law, the state auditor shall annually audit each trust fund. A copy of the director's report and
98 annual audit shall be forwarded to each taxing entity imposing one or more local sales taxes.

99 16. Within the boundaries of any taxing entity where one or more local sales taxes have
100 been imposed, if any person is delinquent in the payment of the amount required to be paid by
101 him **or her** under the local sales tax law or in the event a determination has been made against
102 him **or her** for taxes and penalty under the local sales tax law, the limitation for bringing suit for
103 the collection of the delinquent tax and penalty shall be the same as that provided in sections
104 144.010 to 144.525. Where the director of revenue has determined that suit must be filed against

105 any person for the collection of delinquent taxes due the state under the state sales tax law, and
106 where such person is also delinquent in payment of taxes under the local sales tax law, the
107 director of revenue shall notify the taxing entity in the event any person fails or refuses to pay
108 the amount of any local sales tax due so that appropriate action may be taken by the taxing entity.

109 17. Where property is seized by the director of revenue under the provisions of any law
110 authorizing seizure of the property of a taxpayer who is delinquent in payment of the tax imposed
111 by the state sales tax law, and where such taxpayer is also delinquent in payment of any tax
112 imposed by the local sales tax law, the director of revenue shall permit the taxing entity to join
113 in any sale of property to pay the delinquent taxes and penalties due the state and to the taxing
114 entity under the local sales tax law. The proceeds from such sale shall first be applied to all sums
115 due the state, and the remainder, if any, shall be applied to all sums due such taxing entity.

116 18. If a local sales tax has been in effect for at least one year under the provisions of the
117 local sales tax law and voters approve reimposition of the same local sales tax at the same rate
118 at an election as provided for in the local sales tax law prior to the date such tax is due to expire,
119 the tax so reimposed shall become effective the first day of the first calendar quarter after the
120 director receives a certified copy of the ordinance, order or resolution accompanied by a map
121 clearly showing the boundaries thereof and the results of such election, provided that such
122 ordinance, order or resolution and all necessary accompanying materials are received by the
123 director at least thirty days prior to the expiration of such tax. Any administrative cost or
124 expense incurred by the state as a result of the provisions of this subsection shall be paid by the
125 city or county reimposing such tax.

**32.383. 1. Notwithstanding the provisions of any other law to the contrary, with
2 respect to taxes administered by the department of revenue and imposed in chapters 143
3 and 144, an amnesty from the assessment or payment of all penalties, additions to tax, and
4 interest shall apply with respect to unpaid taxes or taxes due and owing reported and paid
5 in full from January 1, 2012, to June 30, 2012, regardless of whether previously assessed,
6 except for penalties, additions to tax, and interest paid before January 1, 2012. The
7 amnesty shall apply only to state tax liabilities due or due but unpaid on or before
8 December 31, 2010, and shall not extend to any taxpayer who at the time of payment is a
9 party to any criminal investigations or to any civil or criminal litigation that is pending in
10 any court of the United States or this state for nonpayment, delinquency, or fraud in
11 relation to any state tax imposed by this state.**

**12 2. Upon written application by the taxpayer, on forms prescribed by the director
13 of revenue, and upon compliance with the provisions of this section, the department of
14 revenue shall not seek to collect any penalty, addition to tax, or interest that may be
15 applicable. The department of revenue shall not seek civil or criminal prosecution for any**

16 taxpayer for the taxable period for which the amnesty has been granted, unless subsequent
17 investigation or audit shows that the taxpayer engaged in fraudulent or criminal conduct
18 in applying for amnesty.

19 3. Amnesty shall be granted only to those taxpayers who have applied for amnesty
20 within the period stated in this section, who have filed a tax return for each taxable period
21 for which amnesty is requested, who have paid the entire balance due within sixty days of
22 approval by the department of revenue, and who agree to comply with state tax laws for
23 the next eight years from the date of the agreement. No taxpayer shall be entitled to a
24 waiver of any penalty, addition to tax, or interest under this section unless full payment of
25 the tax due is made in accordance with rules established by the director of revenue.

26 4. All taxpayers granted amnesty under this section shall comply with this state's
27 tax laws for the eight years following the date of the amnesty agreement. If any such
28 taxpayer fails to comply with all of this state's tax laws at any time during the eight years
29 following the date of the agreement, all penalties, additions to tax, and interest that were
30 waived under the amnesty agreement shall become due and owing immediately.

31 5. If a taxpayer elects to participate in the amnesty program established in this
32 section as evidenced by full payment of the tax due as established by the director of
33 revenue, that election shall constitute an express and absolute relinquishment of all
34 administrative and judicial rights of appeal. No tax payment received under this section
35 shall be eligible for refund or credit.

36 6. Nothing in this section shall be interpreted to disallow the department of revenue
37 to adjust a taxpayer's tax return as a result of any state or federal audit.

38 7. All tax payments received as a result of the amnesty program established in this
39 section, other than revenues earmarked by state law, shall be deposited in the state general
40 revenue fund.

41 8. The department may promulgate rules as are necessary to implement the
42 provisions of this section. Any rule or portion of a rule, as that term is defined in section
43 536.010, that is created under the authority delegated in this section shall become effective
44 only if it complies with and is subject to all of the provisions of chapter 536 and, if
45 applicable, section 536.028. This section and chapter 536 are nonseverable and if any of
46 the powers vested with the general assembly under chapter 536 to review, to delay the
47 effective date, or to disapprove and annul a rule are subsequently held unconstitutional,
48 then the grant of rulemaking authority and any rule proposed or adopted after effective
49 date of this act, shall be invalid and void.

32.385. 1. The director of revenue and the commissioner of administration may
2 jointly enter into a reciprocal collection and offset of indebtedness agreement with the

3 federal government, under which the State will offset from state tax refunds and from
4 payments otherwise due to vendors and contractors providing goods or services to state
5 departments, agencies, or other state agencies nontax debt owed to the federal government;
6 and the federal government will offset from federal payments to vendors, contractors, and
7 taxpayers debt owed to the state of Missouri.

8 2. When used in this section, the following terms shall mean:

9 (1) "Federal official", a unit or official of the federal government charged with the
10 collection of non-tax liabilities payable to the federal government under 31 U.S.C. Section
11 3716, as amended;

12 (2) "Nontax liability due the state", a liability certified to the director of revenue
13 by a state agency which shall include, but shall not be limited to, fines, fees, penalties, and
14 other nontax assessments imposed by, or payable to, any state agency that is finally
15 determined to be due and owing;

16 (3) "Offset agreement", the agreement authorized by this section;

17 (4) "Person", an individual, partnership, society, association, joint stock company,
18 corporation, public corporation, or any public authority, estate, receiver, trustee, assignee,
19 referee, any other person acting in a fiduciary or representative capacity whether
20 appointed by a court or otherwise, or any combination thereof;

21 (5) "Refund", an amount described as a refund of tax under the provisions of state
22 tax law that authorized its payment;

23 (6) "State agency", any department, division, board, commission, office, or other
24 agency of the state of Missouri;

25 (7) "Vendor payment", any payment, other than a refund, made by the state to any
26 person or entity which shall include, but not be limited to, any expense reimbursement to
27 an employee of the state. The term "vendor payment" shall not include a person's salary,
28 wages, or pension.

29 3. Under the offset agreement, a federal official may:

30 (1) Certify to the state of Missouri the existence of a person's delinquent nontax
31 liability owed by such person to the federal government;

32 (2) Request that the state of Missouri withhold any refund or vendor payment to
33 which such person is entitled;

34 (3) Certify and request the state of Missouri to withhold a refund or vendor
35 payment only if the laws of the United States:

36 (a) Allow the state of Missouri to enter into a reciprocal agreement with the United
37 States, under which the federal official would be authorized to offset federal payments to
38 collect delinquent tax and nontax debts owed to the state; and

- 39 (b) Provide for the payment of the amount withheld to the state;
40 (4) Retain a portion of the proceeds of any collection setoff as provided under the
41 offset agreement.
- 42 4. Under the offset agreement, a certification by a federal official to the state of
43 Missouri shall include:
- 44 (1) The full name of the person and any other names known to be used by such
45 person;
- 46 (2) The social security number or federal tax identification number of such person;
- 47 (3) The amount of the nontax liability; and
- 48 (4) A statement that the debt is past due and legally enforceable in the amount
49 certified.
- 50 5. If a person for whom a certification is received from a federal official is due a
51 refund of Missouri tax or a vendor payment, the agreement may provide that the state of
52 Missouri shall:
- 53 (1) Withhold such refund or vendor payment;
- 54 (2) In accordance with the provisions of the offset agreement, notify such person
55 of the amount withheld in satisfaction of a liability certified by a federal official;
- 56 (3) Pay to the federal official the lesser of:
- 57 (a) The entire refund or vendor payment; or
- 58 (b) The amount certified; and
- 59 (4) Pay any refund or vendor payment in excess of the certified amount to the
60 person.
- 61 6. Under the agreement, the director of revenue shall:
- 62 (1) Certify to a federal official the existence of a person's delinquent tax or nontax
63 liability due the state;
- 64 (2) Request that the federal official withhold any eligible vendor payment to which
65 the person is entitled; and
- 66 (3) Provide for the payment of the amount withheld to the state.
- 67 7. Any certification by a state agency to the director of revenue, or by the director
68 of revenue to a federal official under the offset agreement shall include:
- 69 (1) The full name and address of the person and any other names known to be used
70 by such person;
- 71 (2) The social security number or tax identification number of such person;
- 72 (3) The amount of the tax or nontax liability;
- 73 (4) A statement that the debt is past due and legally enforceable in the amount
74 certified; and

75 (5) Any other information required by federal law or regulation applicable to the
76 collection of the debt by offset of federal payments.

77 8. Any other provisions of law to the contrary notwithstanding, the director of
78 revenue and the commissioner of administration shall have the authority to enter into
79 reciprocal agreements with any other state which extends a like comity to this state to set
80 off from state tax refunds and from payments otherwise due to vendors and contractors
81 providing goods or services to state departments, agencies, or other state agencies nontax
82 debt for debts due the such state.

 32.410. As used in sections 32.410 to 32.460, the following terms shall mean:

2 (1) "Debt", an amount owed to the state directly or through a state agency, on
3 account of a fee, duty, lease, direct loan, loan insured or guaranteed by the state, rent,
4 service, sale of real or personal property, overpayment, fine, assessment, penalty,
5 restitution, damages, interest, tax, bail bond, forfeiture, reimbursement, liability owed, an
6 assignment, recovery of costs incurred by the state, or any other source of indebtedness to
7 the state;

8 (2) "Debtor", an individual, a corporation, a partnership, an unincorporated
9 association, a limited liability company, a trust, an estate, or any other public or private
10 entity, including a state, local, or federal government, or an Indian tribe, that is liable for
11 a debt or against whom there is a claim for a debt;

12 (3) "Department", the department of revenue;

13 (4) "State agency", any division, board, commission, office, or other agency of the
14 state of Missouri, including public community college districts and any state or municipal
15 court.

 32.420. 1. Notwithstanding any other provision of law to the contrary, all state
2 agencies may refer to the department for collection debts owed to them. The department
3 may provide collection services on debts referred to the department by a state agency. This
4 authority shall not supersede the authority granted to the attorney general pursuant to
5 section 27.060 or any other statute.

6 2. A referring agency may refer the debt to the department for collection at any
7 time after a debt becomes delinquent and uncontested and the debtor shall have no further
8 administrative appeal of the amount of the debt. Methods and procedures for referral
9 shall be governed by an agreement between the referring agency and the department.

10 3. The collection procedures and remedies under this chapter are in addition to any
11 other procedure or remedy available by law. If the state agency's applicable state or
12 federal law requires the use of a particular remedy or procedure for the collection of a

13 debt, that particular remedy or procedure shall govern the collection of that debt to the
14 extent the procedure or remedy is inconsistent with this chapter.

15 4. The state agency shall send notice to the debtor by United States mail at the
16 debtor's last known address at least twenty days before the debt is referred to the
17 department. The notice shall state the nature and amount of the debt, identify to whom
18 the debt is owed, and inform the debtor of the remedies available under this chapter or the
19 state agency's own procedures.

32.430. 1. Except as otherwise provided in this section, the department shall have
2 the authority to use all general remedies afforded creditors of this state in collection of debt
3 as well as any remedies afforded the state agency referring the debt and to the state in
4 general as a creditor. The department shall not have authority to prosecute or defend civil
5 actions on behalf of any other state agency, except as necessary to defend any challenges
6 made to actions pursuant to sections 143.902 or 143.910 for a debt referred by a state
7 agency or to prosecute an action pursuant to subsection 10 of section 104.910.

8 2. In addition to the remedies identified in sections 32.410 to 32.460, the department
9 may use the collection remedies afforded under sections 143.902 and 140.910 in the
10 collection of any state debt referred to the department.

11 3. The department may employ department staff and attorneys, and at the
12 department's discretion, prosecuting attorneys and private collection agencies as
13 authorized in sections 136.150 and 140.850 in seeking collection of debts referred to the
14 department by a state agency.

32.440. 1. The department shall add to the amount of debt referred to the
2 department by a state agency the cost of collection which shall be ten percent of the total
3 debt referred by the state agency. The department shall have the same authority to collect
4 the cost of collection as the department has in collecting the debt referred by the state
5 agency.

6 2. The cost of collection shall only be waived when:

7 (1) Within thirty days after the initial notice to the debtor by the department, the
8 debtor establishes to the department reasonable cause for the failure to pay the debt prior
9 to referral of the debt to the department, enters into an agreement satisfactory to the
10 department to pay the debt in full, and fully abides by the terms of that agreement;

11 (2) A good faith dispute as to the legitimacy or the amount of the debt exists, and
12 payment is remitted or an agreement satisfactory to the department to pay the debt in full
13 is entered into within thirty days after resolution of the dispute, and the debtor fully abides
14 by the terms of that agreement; or

15 **(3) Collection costs have been added by the state agency and are included in the**
16 **amount of the referred debt.**

17 **3. If the department collects an amount less than the total due, the payment shall**
18 **be applied proportionally to collection costs and the underlying debt unless the department**
19 **has waived this requirement for certain categories of debt. Collection costs collected by the**
20 **department under this section shall be deposited in the general revenue fund.**

32.450. The department may compromise state debt referred to the department in
2 **accordance with section 32.378 and any agreement with the referring agency.**

32.460. The department and state agencies, including the judiciary, may exchange
2 **such information, including the debtor's Social Security number, as is necessary for the**
3 **successful collection of the state debt referred. The referring state agency shall follow all**
4 **applicable federal and state laws regarding the confidentiality of information and records**
5 **regarding the debtor. The confidentiality laws applicable to the particular information**
6 **received and retained by each agency shall apply to the employees of such state agency and**
7 **to the department when such information has been forwarded to the department.**

 105.716. 1. Any investigation, defense, negotiation, or compromise of any claim
2 covered by sections 105.711 to 105.726 shall be conducted by the attorney general; provided,
3 that in the case of any claim against the department of conservation, the department of
4 transportation or a public institution which awards baccalaureate degrees, or any officer or
5 employee of such department or such institution, any investigation, defense, negotiation, or
6 compromise of any claim covered by sections 105.711 to 105.726 shall be conducted by legal
7 counsel provided by the respective entity against which the claim is made or which employs the
8 person against whom the claim is made.
9 In the case of any payment from the state legal expense fund based upon a claim or judgment
10 against the department of conservation, the department of transportation or any officer or
11 employee thereof, the department so affected shall immediately transfer to the state legal expense
12 fund from the department funds a sum equal to the amount expended from the state legal expense
13 fund on its behalf.

14 2. All persons and entities protected by the state legal expense fund shall cooperate with
15 the attorneys conducting any investigation and preparing any defense under the provisions of
16 sections 105.711 to 105.726 by assisting such attorneys in all respects, including the making of
17 settlements, the securing and giving of evidence, and the attending and obtaining witness to
18 attend hearings and trials. Funds in the state legal expense fund shall not be used to pay claims
19 and judgments against those persons and entities who do not cooperate as required by this
20 subsection.

21 3. The provisions of sections 105.711 to 105.726 notwithstanding, the attorney general
22 may investigate, defend, negotiate, or compromise any claim covered by sections 105.711 to
23 105.726 against any public institution which awards baccalaureate degrees whose governing
24 body has declared a state of financial exigency.

25 4. Notwithstanding the provisions of subsection 2 of section 105.711, funds in the state
26 legal expense fund may be expended prior to the payment of any claim or any final judgment to
27 pay costs of defense, including reasonable attorney's fees for retention of legal counsel, when the
28 attorney general determines that a conflict exists or particular expertise is required, and also to
29 pay for related legal expenses including medical examination fees, expert witness fees, court
30 reporter expenses, travel costs and ancillary legal expenses incurred prior to the payment of a
31 claim or any final judgment.

32 **5. Notwithstanding any other provision of law to the contrary, except for payments**
33 **of less than ten thousand dollars for property damage, no funds shall be expended from**
34 **the state legal expense fund for settlement of any liability claim except upon the production**
35 **of a no tax due statement from the department of revenue by the party making claim or**
36 **having judgment under section 105.711, which shall be satisfied from such fund. If the**
37 **party is found by the director of revenue to owe a delinquent tax debt to the state of**
38 **Missouri under the revenue laws of this state, after the payment of attorneys fees and**
39 **expenses associated with liability of the fund to the party, any remaining funds to be paid**
40 **to the party from the state legal expense fund shall be offset to satisfy such tax debt before**
41 **payment is made to the party making claim or having judgment.**

140.910. 1. In addition to any other remedy provided by law for the collection of
2 **delinquent taxes due the state of Missouri, if the director has filed a certificate of lien in the**
3 **circuit court as provided by section 143.902, 144.380, or 144.690, the director or his or her**
4 **designee may issue an order directing any person, after the payment of attorney fees and**
5 **expenses associated with creating the proceeds belonging to, due to, or to become due to**
6 **the taxpayer, to withhold and pay over to the department assets belonging to, due, or to**
7 **become due the taxpayer. The director or his or her designee shall not issue the**
8 **administrative garnishment if the taxpayer has entered into a written agreement with the**
9 **department for an alternative payment arrangement and the taxpayer is in compliance**
10 **with the agreement.**

11 **2. An order entered under this section shall be served on the person or other legal**
12 **entity either by regular mail or by certified mail, return receipt requested, or may be issued**
13 **through electronic means, and shall be binding on the employer or other payor two weeks**
14 **after mailing or electronic issuance of such service. The person or other entity in**
15 **possession of assets belonging to, due, or to become due the taxpayer may deduct an**

16 additional sum not to exceed six dollars per month as reimbursement for costs, except that
17 the total amount withheld shall not exceed the limitations contained in the federal
18 Consumer Credit Protection Act, 15 U.S.C. Section 1673, as amended.

19 3. A copy of the order shall be mailed to the taxpayer at the taxpayer's last known
20 address. The notice shall advise the taxpayer that the administrative garnishment has
21 commenced and the procedures to contest such garnishment on the grounds that such
22 garnishment is improper due to a mistake of fact by requesting a hearing within thirty
23 days from mailing or electronic issuance of the notice. At such a hearing the certified
24 records of the department shall constitute prima facie evidence that the director's order
25 is valid and enforceable. If a prima facie case is established, the obligor may only assert
26 as a defense mistake as to the identity of the taxpayer, mistake as to payments made, or
27 existence of an alternative payment agreement for which no default has occurred. The
28 taxpayer shall have the burden of proof on such issues. The taxpayer may obtain relief
29 from the garnishment by paying the amount owed.

30 4. An employer or other payor shall withhold from the earnings or other income
31 of each taxpayer the amount specified in the order. The employer or other payor shall
32 transmit the payments as directed in the order within ten business days of the date the
33 earnings, money due, or other income was payable to the taxpayer. For purposes of this
34 section, "business day" means a day that state offices are open for regular business. The
35 employer or other payor shall, along with the amounts transmitted, provide the date the
36 amount was withheld from the taxpayer.

37 5. An order issued under subsection 1 of this section shall be a continuing order and
38 shall remain in effect and be binding upon any employer or other payor upon whom it is
39 directed until a further order of the director. The director shall notify an employer or
40 other payor upon whom such an order has been directed whenever the deficiency is paid
41 in full.

42 6. If the order is served on a person other than an employer or other payor, it shall
43 be a lien against any money belonging to the taxpayer that is in the possession of the person
44 on the date of service. The person other than an employer or other payor shall pay over
45 any assets within ten business days of the service date of the order. A financial institution
46 ordered to surrender an account shall be entitled to collect its normally scheduled account
47 activity surcharges to maintain the account during the period of time the account is
48 garnished. For purposes of this section, the interest of the taxpayer in any joint financial
49 accounts shall be presumed to be equal to all other joint owners.

50 7. An order issued under subsection 1 of this section shall have priority over any
51 other legal process under state law against the same income or other asset, except that

52 where the other legal process is an order issued under section 452.350, 454.505, or 454.507,
53 the withholding for child support shall have priority.

54 8. No person who complies with an order entered under this section shall be liable
55 to the taxpayer, or to any other person claiming rights derived from the taxpayer, for
56 wrongful withholding. A person who fails or refuses to withhold or pay the amounts as
57 ordered under this section shall be liable to the state in a sum equal to the value of the
58 wages or property not surrendered, but not to exceed the amount of tax deficiency. The
59 director is hereby authorized to bring an action in circuit court to determine the liability
60 of a person for failure to withhold or pay the amounts as ordered. If a court finds that a
61 violation has occurred, the court may fine the person in an amount not to exceed five
62 hundred dollars. The court may also enter a judgment against the person or other legal
63 entity for the amounts to be withheld or paid, court costs, and reasonable attorney's
64 surcharges.

65 9. The remedy provided by this section shall be available where the state or any of
66 its political subdivisions is the employer or other payor of the taxpayer in the same manner
67 and to the same extent as where the employer or other payor is a private party.

68 10. An employer shall not discharge, or refuse to hire or otherwise discipline, an
69 employee as a result of an order to withhold and pay over certain money authorized by this
70 section. If any such employee is discharged within thirty days of the date upon which an
71 order to withhold and pay over certain money is to take effect, there shall arise a
72 rebuttable presumption that such discharge was a result of such order. This presumption
73 shall be overcome only by clear, cogent and convincing evidence produced by the employer
74 that the employee was not terminated because of the order to withhold and pay over
75 certain money. The director or his or her designee is hereby authorized to bring an action
76 in circuit court to determine whether the discharge constitutes a violation of this
77 subsection. If the court finds that a violation has occurred, the court may enter an order
78 against the employer requiring reinstatement of the employee and may fine the employer
79 in an amount not to exceed five hundred dollars. Further, the court may enter judgment
80 against the employer for the back wages, costs, attorney's surcharges, and for the amount
81 of taxes that should have been withheld and paid over during the period of time the
82 employee was wrongfully discharged.

83 11. If a taxpayer for whom an order to withhold has been issued under subsection
84 1 of this section terminates the taxpayer's employment, the employer shall, within ten days
85 of the termination, notify the department of the termination, shall provide to the
86 department the last known address of the taxpayer, if known to the employer, and shall
87 provide to the department the name and address of the taxpayer's new employer, if known.

88 The director or his or her designee may issue an order to the new employer as provided in
89 subsection 1 of this section.

90 12. For purposes of this section, "assets" include, but are not limited to, currency,
91 any financial account or other liquid asset, and any income or other periodic form of
92 payment due to a taxpayer regardless of source, including, but not limited to, wages,
93 salaries, commissions, bonuses, workers' compensation benefits, disability benefits,
94 payments pursuant to a pension or a retirement program, and interest.

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