

House Bill 1319

By: Representatives Jamieson of the 22<sup>nd</sup>, Royal of the 140<sup>th</sup>, and Rogers of the 20<sup>th</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Article 7 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated,  
2 relating to setoff debt collection against state income tax refunds, so as to authorize such  
3 setoff with respect to certain debts owed to political subdivisions of the state; to change  
4 certain provisions regarding legislative purposes; to change certain provisions regarding  
5 definitions; to change certain provisions regarding procedures for setoff and taxpayer  
6 notification; to change certain provisions regarding setoff debt hearings and adjustments; to  
7 change certain provisions regarding setoff priority; to repeal conflicting laws; and for other  
8 purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 style="text-align:center">**SECTION 1.**

11 Article 7 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to  
12 setoff debt collection against state income tax refunds, is amended by striking Code Section  
13 48-7-160, relating to legislative purposes regarding setoff debt collection, and inserting in  
14 its place a new Code Section 48-7-160 to read as follows:

15 "48-7-160.

16 The purpose of this article is to establish a policy and to provide a system whereby all  
17 claimant agencies of this state or political subdivisions thereof in conjunction with the  
18 department shall cooperate in identifying debtors who owe money to the state or political  
19 subdivisions thereof through its various claimant agencies and who qualify for refunds  
20 from the department. It is also the purpose of this article to establish procedures for setting  
21 off against any such refund the sum of any debt owed to the state or political subdivisions  
22 thereof. It is the intent of the General Assembly that this article be liberally construed to  
23 effectuate these purposes."

**SECTION 2.**

Said article is further amended by striking Code Section 48-7-161, relating to definitions regarding setoff debt collection, and inserting in its place a new Code Section 48-7-161 to read as follows:

"48-7-161.

As used in this article, the term:

(1) 'Claimant agency' means and includes, in the order of priority set forth below:

(A) The Department of Human Resources with respect to collection of debts under Chapter 9 of Title 37, Article 1 of Chapter 11 of Title 19, and Code Section 49-4-15;

(B) The Georgia Student Finance Authority with respect to the collection of debts arising under Part 3 of Article 7 of Chapter 3 of Title 20;

(C) The Georgia Higher Education Assistance Corporation with respect to the collection of debts arising under Part 2 of Article 7 of Chapter 3 of Title 20;

(D) The State Medical Education Board with respect to the collection of debts arising under Part 6 of Article 7 of Chapter 3 of Title 20; ~~and~~

(E) The Department of Labor with respect to the collection of debts arising under Code Sections 34-8-254 and 34-8-255 and Article 5 of Chapter 8 of Title 34, with the exception of Code Sections 34-8-158 through 34-8-161; provided, however, that the Department of Labor establishes that the debtor has been afforded required due process rights by such Department of Labor with respect to the debt and all reasonable collection efforts have been exhausted; and

(F) Any political subdivision which contracts with a Georgia nonprofit corporation whose income is exempt from federal income tax pursuant to Section 115 of the Internal Revenue Code, as amended, as evidenced by a determination letter from the Internal Revenue Service, which nonprofit corporations shall be the sole entities through which any political subdivision may seek claims under this article.

(2) 'Debt' means:

(A) With respect to a claimant agency other than a political subdivision of the state, any liquidated sum due and owing any claimant agency, which sum has accrued through contract, subrogation, tort, or operation of law regardless of whether there is an outstanding judgment for the sum or any sum which is due and owing any person and is enforceable by the Department of Human Resources pursuant to subsection (b) of Code Section 19-11-8; and

(B) With respect to a claimant agency which is a political subdivision of the state, any liquidated sum of \$50.00 or greater due and owing any such claimant agency for utility charges levied by such claimant agency, payment on which has been delinquent for at least 12 months and shall not include such sums being repaid by the taxpayer over time

1 where the taxpayer has entered into a written agreement for such repayment in  
 2 accordance with the written policies of such claimant agency and has complied with the  
 3 terms of such agreement.

4 (3) 'Debtor' means any individual owing money to or having a delinquent account with  
 5 any claimant agency, which obligation has not been adjudicated as satisfied by court  
 6 order, set aside by court order, or discharged in bankruptcy.

7 (4) 'Political subdivision' means any county, municipality, or school district of this state  
 8 or any instrumentality or authority of such county, municipality, or school district,  
 9 including but not limited to public authority, commission, board, or similar agency which  
 10 is created by general, local, or special Act of the General Assembly. The term also  
 11 includes such bodies which are created or activated by an appropriate ordinance or  
 12 resolution of the governing body of a county, municipality, or school district individually  
 13 or jointly with other political subdivisions of this state.

14 ~~(4)~~(5) 'Refund' means the Georgia income tax refund which the department determines  
 15 to be due any individual taxpayer."

### 16 SECTION 3.

17 Said article is further amended by adding a new subsection at the end of Code Section  
 18 48-7-164, relating to procedures for setoffs and taxpayer notification, to be designated  
 19 subsection (f), to read as follows:

20 "(f) For purposes of claimant agencies which are political subdivisions, if, after appropriate  
 21 review, such claimant agency determines that it is not entitled to any part of the amount set  
 22 off, it shall refund the entire amount plus the amount retained by the department to defray  
 23 its costs. The portion of the refund reflecting the cost incurred by the department must be  
 24 paid from such claimant agency's funds."

### 25 SECTION 4.

26 Said article is further amended by adding a new subsection at the end of Code Section  
 27 48-7-165, relating to setoff debt hearings and adjustments, to be designated subsection (e),  
 28 to read as follows:

29 "(e)(1) Notwithstanding the provisions of subsections (a), (b), and (d) of this Code  
 30 section, for purposes of claimant agencies which are political subdivisions, if the claimant  
 31 agency receives written notice contesting the setoff or the sum upon which the setoff is  
 32 based, the sum due and owing shall not be subject to setoff pursuant to this article until  
 33 the political subdivision to whom the debt is owed has obtained a judgment on the debt  
 34 from magistrate, state, or superior court. Such written notice must be submitted to the

1 claimant agency no later than 30 days after the original notification of the proposed  
2 setoff.

3 (2) The losing party shall pay any filing fees established by local court rule and costs of  
4 service except that the governing authority of the county shall be authorized to waive  
5 such fees and costs. In addition, the claimant agency shall be responsible for attorneys  
6 fees of the taxpayer contesting the setoff where the court finds for the taxpayer.

7 (3) The hearing held in accordance with paragraph (1) of this subsection shall be  
8 conducted after notice of the hearing is provided to the debtor by registered mail, certified  
9 mail, statutory overnight delivery, or personal service. When personal service is utilized,  
10 in addition to service by other officers authorized by law to serve process, the officers of  
11 the county designated by the county governing authority may serve such notice or the  
12 officers of the municipality designated by the municipal governing authority may serve  
13 such notice."

#### 14 **SECTION 5.**

15 Said article is further amended by striking Code Section 48-7-168, relating to setoff priority,  
16 and inserting in its place a new Code Section 48-7-168 to read as follows:

17 "48-7-168.

18 The department has priority pursuant to subsection (c) of Code Section 48-2-35 over every  
19 claimant agency for collection by setoff under this article. Priority for multiple claims from  
20 political subdivisions for a refund setoff, when the amount of the setoff available for such  
21 political subdivision claims does not equal the combined total of the claims filed by  
22 political subdivisions under this article, shall be determined by distributing the available  
23 funds to each political subdivision in the order of the date that the claim is received by the  
24 department."

#### 25 **SECTION 6.**

26 All laws and parts of laws in conflict with this Act are repealed.