

House Bill 1000 (AS PASSED HOUSE AND SENATE)

By: Representatives Fleming of the 121st, Carter of the 175th, Oliver of the 82nd, Frye of the 118th, and Tankersley of the 160th

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 48 of the Official Code of Georgia Annotated, relating to revenue and
2 taxation, so as to provide for setoff debt collection against state income tax refunds for debts
3 owed to courts; to provide for a revision of setoff debt collection policies and systems
4 relating to state income tax refunds; to provide for definitions, procedures, conditions, and
5 limitations; to provide for related matters; to provide for an effective date; to repeal
6 conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is
10 amended by revising Article 7 of Chapter 7, relating to setoff debt collection, as follows:

11 "ARTICLE 7

12 48-7-160.

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

20 48-7-161.

21 As used in this article, the term:

22 (.1) 'Administrative Office of the Courts' means entity created pursuant to Code Section
23 15-5-22.

- 24 (1) 'Claimant agency' means and includes, in the order of priority set forth below:
- 25 (A) The Department of Human Services and the Department of Behavioral Health and
- 26 Developmental Disabilities with respect to collection of debts under Article 1 of
- 27 Chapter 11 of Title 19, Code Section 49-4-15, and Chapter 9 of Title 37;
- 28 (B) The Georgia Student Finance Authority with respect to the collection of debts
- 29 arising under Part 3 of Article 7 of Chapter 3 of Title 20;
- 30 (C) The Georgia Higher Education Assistance Corporation with respect to the
- 31 collection of debts arising under Part 2 of Article 7 of Chapter 3 of Title 20;
- 32 (D) The Georgia Board for Physician Workforce with respect to the collection of debts
- 33 arising under Part 6 of Article 7 of Chapter 3 of Title 20;
- 34 (E) The Department of Labor with respect to the collection of debts arising under Code
- 35 Sections 34-8-254 and 34-8-255 and Article 5 of Chapter 8 of Title 34, with the
- 36 exception of Code Sections 34-8-158 through 34-8-161; provided, however, that the
- 37 Department of Labor establishes that the debtor has been afforded required due process
- 38 rights by such Department of Labor with respect to the debt and all reasonable
- 39 collection efforts have been exhausted;
- 40 (F) The Department of Corrections with respect to probation fees arising under Code
- 41 Section 42-8-34 and restitution or reparation ordered by a court as a part of the sentence
- 42 imposed on a person convicted of a crime who is in the legal custody of the department;
- 43 (G) The State Board of Pardons and Paroles with respect to restitution imposed on a
- 44 person convicted of a crime and subject to the jurisdiction of the board; and
- 45 (H) The Department of Juvenile Justice with respect to restitution imposed on a
- 46 juvenile for a delinquent act which would constitute a crime if committed by an adult.
- 47 (2) 'Court' means all trial courts in this state, including but not limited to the superior,
- 48 state, juvenile, magistrate, probate, and municipal courts, whether called mayor's courts,
- 49 recorder's courts, police courts, civil courts, or traffic courts, and miscellaneous and
- 50 special courts.
- 51 ~~(2)~~(3) 'Debt' means:
- 52 (A) Any ~~any~~ liquidated sum due and owing any claimant agency, which sum has
- 53 accrued through contract, subrogation, tort, or operation of law regardless of whether
- 54 there is an outstanding judgment for the sum, any sum which is due and owing any
- 55 person and is enforceable by the Department of Human Services pursuant to subsection
- 56 (b) of Code Section 19-11-8, or any sum of restitution or reparation due pursuant to a
- 57 sentence imposed on a person convicted of a crime and sentenced to restitution or
- 58 reparation and probation; or
- 59 (B) Any liquidated sum that constitutes any and all court costs, surcharges, and fines
- 60 for which there is an outstanding court judgment.

61 ~~(3)~~(4) 'Debtor' means any individual owing money to or having a delinquent account
 62 with any claimant agency or court, which obligation has not been adjudicated as satisfied
 63 by court order, set aside by court order, or discharged in bankruptcy.

64 ~~(4)~~(5) 'Refund' means the Georgia income tax refund which the department determines
 65 to be due any individual taxpayer.

66 48-7-162.

67 The collection remedy authorized by this article is in addition to and not in substitution for
 68 any other remedy available by law.

69 48-7-162.1.

70 (a) Submission of debts through the Administrative Office of the Courts shall be the sole
 71 manner through which debts owed to courts may be submitted to the department for
 72 collection under this article. The Administrative Office of the Courts shall be authorized
 73 to enter into written contracts for the performance of administrative functions and duties
 74 under this article by one or more administrative entities consisting of nonprofit Georgia
 75 corporations, except for a public utility, in existence on or before January 1, 2012, whose
 76 income is exempt from federal income taxation pursuant to Section 115 of the Internet
 77 Revenue Code of 1986, or third party vendors approved by the department.

78 (b) Any claim submitted by a court through the Administrative Office of the Courts shall
 79 be subordinate to all claims submitted by claimant agencies.

80 48-7-163.

81 (a) A claimant agency or the Administrative Office of the Courts may submit any debt or
 82 debts when each such debt is in excess of \$25.00 owed in accordance with Code Section
 83 48-7-161 to the department for collection through setoff under the ~~procedure~~ procedures
 84 established by this article, except in cases where the validity of the debt is legitimately in
 85 dispute, an alternate means of collection is pending and believed to be adequate, or such
 86 collection would result in a loss of federal funds or federal assistance.

87 (b) Upon request of a claimant agency or the Administrative Office of the Courts, the
 88 department shall set off any refund as defined in Code Section 48-7-161 against the debt
 89 certified by the claimant agency or the Administrative Office of the Courts as provided in
 90 this article.

91 (c) An administrative collection assistance fee shall be imposed on each such debt
 92 submitted by the Administrative Office of the Courts to the department to recover the costs
 93 incurred by the Administrative Office of the Courts and the department in collecting debts
 94 under this article. The fee shall be in addition to the debt to be set off and shall be fixed

95 such that the proceeds of the fee shall not exceed the total direct and indirect costs to the
96 Administrative Office of the Courts and the department for administering such debt setoff
97 collection. In no event shall the amount of such fee exceed \$20.00 per debt. The
98 Administrative Office of the Courts shall reimburse the department from the proceeds of
99 such fee based upon the actual costs incurred by the department. Such proceeds shall be
100 retained and expended pursuant to Code Section 45-12-92.1.

101 48-7-164.

102 (a)(1) Within a time frame specified by the department, a claimant agency seeking to
103 collect a debt through setoff shall supply the information necessary to identify each
104 debtor whose refund is sought to be set off, including but not limited to such debtor's
105 social security number, and shall certify the amount of the debt or debts owed by each
106 debtor.

107 (2) The Administrative Office of the Courts shall supply the information necessary to
108 identify each debtor whose refund is sought to be set off, including but not limited to such
109 debtor's social security number, and shall certify the amount of the debt or debts owed
110 by each debtor.

111 (3) The department may rely upon the certification by a claimant agency or the
112 Administrative Office of the Courts that the debt is valid and owed by the debtor and that
113 such debt may be validly collected by the department under this article. No employee or
114 agent of the department shall be liable to any person for collecting any such debt that was
115 not valid and owed by the debtor.

116 (b)(1) If a debtor identified by a claimant agency or the Administrative Office of the
117 Courts is determined by the department to be entitled to a refund of at least \$25.00, the
118 department shall transfer an amount equal to the refund owed, not to exceed the amount
119 of the claimed debt certified, to the claimant agency or the Administrative Office of the
120 Courts. When the refund owed exceeds the claimed debt and administrative collection
121 assistance fee, the department shall send the excess amount to the debtor within a
122 reasonable time after the excess is determined.

123 (2) When the amount of the setoff available for claims is insufficient for the combined
124 total of the claims filed by courts, distribution of the available setoff funds shall be made
125 in the order of the date each court claim is received by the Administrative Office of the
126 Courts. Such claim shall remain active until sufficient additional setoff funds become
127 available to set off the remainder of the debt or until the claims themselves expire by law.

128 (3) If the department is able to collect only part of a debt through setoff under this article,
129 the administrative collection assistance fees shall have priority over the remainder of the
130 debt.

131 (c) At the time of the transfer of funds to a claimant agency or the Administrative Office
 132 of the Courts pursuant to ~~subsection (b)~~ of this Code section, the department shall notify
 133 the taxpayer or taxpayers whose refund is sought to be set off and the claimant agency or
 134 the Administrative Office of the Courts that the transfer has been made. The notice shall
 135 clearly set forth the name of the debtor, the manner in which the debt arose, the amount of
 136 the claimed debt, the transfer of funds to the claimant agency or the Administrative Office
 137 of the Courts pursuant to ~~subsection (b)~~ of this Code section and the intention to set off the
 138 refund against the debt, the amount of the refund in excess of the claimed debt, the
 139 taxpayer's opportunity to give written notice to contest the setoff within 30 days of the date
 140 of mailing of the notice, the name and mailing address of the claimant agency or the
 141 Administrative Office of the Courts to which the application for a hearing must be sent, and
 142 the fact that failure to apply for a hearing in writing within the 30 day period will be
 143 deemed a waiver of the opportunity to contest the setoff. In the case of a joint return, the
 144 notice shall also state the name of any taxpayer named in the return against whom no debt
 145 is claimed, the fact that a debt is not claimed against such taxpayer, the fact that such
 146 taxpayer is entitled to receive a refund if it is due him or her regardless of the debt asserted
 147 against his or her spouse, and that in order to obtain a refund due him or her such taxpayer
 148 must apply in writing for a hearing with the claimant agency or the Administrative Office
 149 of the Courts named in the notice within 30 days of the date of the mailing of the notice.
 150 If a taxpayer fails to apply in writing for a hearing within 30 days of the mailing of the
 151 notice, he or she will have waived his or her opportunity to contest the setoff.

152 (d) Upon receipt of funds transferred from the department pursuant to ~~subsection (b)~~ of
 153 this Code section, the claimant agency or the Administrative Office of the Courts shall
 154 deposit and hold the funds in an escrow account until a final determination of the validity
 155 of the debt. Any interest accruing on proceeds in such escrow account shall not constitute
 156 any part of the setoff funds being held in escrow and shall be retained by the claimant
 157 agency or the Administrative Office of the Courts to cover administrative costs.

158 (e) The claimant agency shall pay the department for all costs incurred by the department
 159 in setting off debts in the manner provided in this article.

160 48-7-165.

161 (a)(1) If the claimant agency receives written application contesting the setoff or the sum
 162 upon which the setoff is based, it shall grant a hearing to the taxpayer to determine
 163 whether the setoff is proper or the sum is valid according to the procedures established
 164 under Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.' If the sum
 165 asserted as due and owing is not correct, an adjustment of the claimed debt shall be made.

166 (2) A request for a hearing pursuant to the Internal Revenue Code to contest the
167 collection of past-due support may be consolidated with a request for a hearing under
168 paragraph (1) of this subsection. If the sum asserted as due and owing is not correct, an
169 adjustment of the claimed debt shall be made.

170 (b) The hearing established by subsection (a) of this Code section shall be in lieu of a
171 hearing before the department to determine the validity of the debt or the propriety of the
172 setoff.

173 (c) No issues which have been previously litigated shall be considered at the hearing.

174 (d) Appeals from actions taken at the hearing allowed under this Code section shall be in
175 accordance with Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.'

176 48-7-165.1.

177 (a)(1) Except as otherwise provided in subsection (d) of this Code section, if the
178 Administrative Office of the Courts receives written notice from the debtor contesting the
179 setoff or the sum upon which the setoff is based within 30 days of the debtor being
180 notified of the debt setoff, the Administrative Office of the Courts shall notify the court
181 to whom the debt is owed that the sum due and owing shall not be disbursed pursuant to
182 this article until the court to whom the debt is owed has granted a hearing to the debtor
183 and obtained a final determination on the debt under this Code section and provided
184 evidence of such final determination to the Administrative Office of the Courts. Such
185 sum due and owing shall not be disbursed to the debtor or the court to whom the debt is
186 owed prior to such final determination.

187 (2) The hearing required under this Code section shall be conducted after notice of such
188 hearing is provided to the debtor by certified mail or personal service. When personal
189 service is utilized, such personal service shall be made by the officers of the court
190 designated by the judges of that court or any other officers authorized by law to serve
191 process.

192 (b)(1) The officers of the court designated by the judges of that court submitting debts
193 to the Administrative Office of the Courts shall appoint a hearing officer for the purpose
194 of conducting hearings under this Code section. The officers of the court shall adopt
195 appropriate procedures to govern the conducting of hearings by the hearing officer. A
196 written or electronic copy of such procedures shall be provided to a debtor immediately
197 upon the receipt of notice from a debtor under subsection (a) of this Code section.

198 (2) Issues that have been previously litigated shall not be considered at a hearing. The
199 hearing officer shall determine whether the debt is owed to the court and the amount of
200 the debt. Such determination shall be in writing and shall be provided to the debtor and

201 the Administrative Office of the Courts within five days after the date the hearing is
 202 conducted.

203 (3) If the debtor or the court disagrees with the determination of the hearing officer,
 204 either party may appeal that determination by filing a petition in the superior court not
 205 later than ten days following the date of the hearing officer's written determination. The
 206 superior court judge shall conduct a hearing and shall render a final determination in
 207 writing and shall transmit a copy to the hearing officer, the debtor, and the Administrative
 208 Office of the Courts not later than ten days after the date of that hearing.

209 (4) The losing party to such proceeding as provided for in paragraph (3) of this
 210 subsection shall pay any filing fees and costs of service, except that the officers of the
 211 court designated by the judges of that court shall be authorized to waive such fees and
 212 costs. The court submitting the debt to the Administrative Office of the Courts shall be
 213 responsible for attorneys' fees of the debtor who is contesting the setoff in cases where
 214 the superior court finds in favor of the debtor.

215 (c) If a court submits a debt for collection under this article following final determination
 216 of the debt in accordance with this Code section and the Administrative Office of the
 217 Courts is notified by the department that no refund proceeds are available or sufficient for
 218 setoff of the entire debt, such claim shall remain valid until sufficient refund proceeds are
 219 available for setoff as provided in subsection (b) of Code Section 48-7-164 and are not
 220 subject to further appeal.

221 48-7-166.

222 (a)(1) Upon final determination of the amount of the debt due and owing by means of
 223 the hearing provided by Code Section 48-7-165 or by the taxpayer's default through
 224 failure to comply with subsection (c) of Code Section 48-7-164, the claimant agency shall
 225 remove the amount of the debt due and owing from the escrow account established
 226 pursuant to Code Section 48-7-164 and shall credit the amount to the debtor's obligation.

227 (2) Upon final determination of the amount of the debt due and owing as provided by
 228 Code Section 48-7-165.1, or by the taxpayer's default through failure to comply with
 229 subsection (c) of Code Section 48-7-164, the Administrative Office of the Courts shall
 230 remove the amount of the debt due and owing from the escrow account established
 231 pursuant to Code Section 48-7-164 and shall credit the amount to the debtor's obligation.

232 (b) Upon transfer of the debt due and owing from the escrow account to the credit of the
 233 debtor's account, the claimant agency or the Administrative Office of the Courts shall
 234 notify the debtor in writing of the finalization of the setoff. The department shall prepare
 235 a notice for use by the claimant agency or the Administrative Office of the Courts. Such
 236 notice shall include a final accounting of the refund which was set off, including the

237 amount of the refund to which the debtor was entitled prior to setoff, the amount of the debt
 238 due and owing, the amount of the refund in excess of the debt which has been returned to
 239 the debtor by the department pursuant to ~~subsection (b)~~ of Code Section 48-7-164, and the
 240 amount of the funds transferred to the claimant agency or the Administrative Office of the
 241 Courts pursuant to Code Section 48-7-164 in excess of the debt finally determined to be
 242 due and owing at a hearing held pursuant to Code Section 48-7-165 or 48-7-165.1, if such
 243 a hearing was held or the amount of the funds transferred to the Administrative Office of
 244 the Courts pursuant to Code Section 48-7-164 is in excess of the debt finally determined
 245 to be due and owing pursuant to Code Section 48-7-165.1 as determined in the filing of an
 246 appeal. At such time, the claimant agency or the Administrative Office of the Courts shall
 247 refund to the debtor the amount of the claimed debt originally certified and transferred to
 248 it by the department in excess of the amount of debt finally found to be due and owing.
 249 (c) Following finalization of the setoff pursuant to subsection (b) of this Code section, the
 250 Administrative Office of the Courts shall transfer the funds to the court. Any funds so
 251 transferred by the Administrative Office of the Courts shall be disbursed by the court in the
 252 same manner as if such funds had been originally collected by such court without having
 253 resorted to collection under this article.

254 48-7-167.

255 When the setoff authorized by this article is exercised, the refund which is set off shall be
 256 deemed granted.

257 48-7-168.

258 The department has priority pursuant to subsection (c) of Code Section 48-2-35 over every
 259 claimant agency and the Administrative Office of the Courts for collection by setoff under
 260 this article.

261 48-7-169.

262 The commissioner is authorized to prescribe forms and to promulgate rules and regulations
 263 which he or she deems necessary in order to effectuate this article.

264 48-7-170.

265 (a) Notwithstanding Code Section 48-7-60, which prohibits disclosure by the department
 266 of the contents of taxpayer records or information, and notwithstanding any other
 267 confidentiality statute, the commissioner may provide to a claimant agency or the
 268 Administrative Office of the Courts all information necessary to accomplish and effectuate
 269 the intent of this article.

270 (b) The information obtained by a claimant agency or the Administrative Office of the
271 Courts from the department in accordance with this article shall retain its confidentiality
272 and shall only be used by a claimant agency or the Administrative Office of the Courts in
273 the pursuit of its debt collection duties and practices. Any employee or prior employee of
274 any claimant agency or the Administrative Office of the Courts who unlawfully discloses
275 any such information for any other purpose, except as otherwise specifically authorized by
276 law, shall be subject to the same penalties specified by law for unauthorized disclosure of
277 confidential information by an agent or employee of the department."

278 **SECTION 2.**

279 This Act shall become effective on January 1, 2015.

280 **SECTION 3.**

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