

The Senate Finance Committee offered the following substitute to HB 1000:

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

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

59 ~~(3)~~(4) 'Debtor' means any individual owing money to or having a delinquent account
 60 with any claimant agency or court, which obligation has not been adjudicated as satisfied
 61 by court order, set aside by court order, or discharged in bankruptcy.

62 ~~(4)~~(5) 'Refund' means the Georgia income tax refund which the department determines
 63 to be due any individual taxpayer.

64 48-7-162.

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

67 48-7-162.1.

68 (a) Submission of debts through the Administrative Office of the Courts shall be the sole
 69 manner through which debts owed to courts may be submitted to the department for
 70 collection under this article.

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

73 48-7-163.

74 (a) A claimant agency or the Administrative Office of the Courts may submit any debt or
 75 debts when each such debt is in excess of \$25.00 ~~owed in accordance with Code Section~~
 76 ~~48-7-161~~ to the department for collection through setoff under the ~~procedure~~ procedures
 77 established by this article, except in cases where the validity of the debt is legitimately in
 78 dispute, an alternate means of collection is pending and believed to be adequate, or such
 79 collection would result in a loss of federal funds or federal assistance.

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

84 (c) An administrative collection assistance fee shall be imposed on each such debt
 85 submitted by the Administrative Office of the Courts to the department to recover the costs
 86 incurred by the Administrative Office of the Courts and the department in collecting debts
 87 under this article. The fee shall be in addition to the debt to be set off and shall be fixed
 88 such that the proceeds of the fee shall not exceed the total direct and indirect costs to the
 89 Administrative Office of the Courts and the department for administering such debt setoff
 90 collection. In no event shall the amount of such fee exceed \$20.00 per debt. The
 91 Administrative Office of the Courts shall reimburse the department from the proceeds of

92 such fee based upon the actual costs incurred by the department. Such proceeds shall be
93 retained and expended pursuant to Code Section 45-12-92.1.

94 48-7-164.

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

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

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

109 (b)(1) If a debtor identified by a claimant agency or the Administrative Office of the
110 Courts is determined by the department to be entitled to a refund of at least \$25.00, the
111 department shall transfer an amount equal to the refund owed, not to exceed the amount
112 of the claimed debt certified, to the claimant agency or the Administrative Office of the
113 Courts. When the refund owed exceeds the claimed debt and administrative collection
114 assistance fee, the department shall send the excess amount to the debtor within a
115 reasonable time after the excess is determined.

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

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

124 (c) At the time of the transfer of funds to a claimant agency or the Administrative Office
125 of the Courts pursuant to ~~subsection (b)~~ of this Code section, the department shall notify
126 the taxpayer or taxpayers whose refund is sought to be set off and the claimant agency or
127 the Administrative Office of the Courts that the transfer has been made. The notice shall

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

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

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

153 48-7-165.

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

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

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

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

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

169 48-7-165.1.

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

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

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

191 (2) Issues that have been previously litigated shall not be considered at a hearing. The
192 hearing officer shall determine whether the debt is owed to the court and the amount of
193 the debt. Such determination shall be in writing and shall be provided to the debtor and
194 the Administrative Office of the Courts within five days after the date the hearing is
195 conducted.

196 (3) If the debtor or the court disagrees with the determination of the hearing officer,
197 either party may appeal that determination by filing a petition in the superior court not
198 later than ten days following the date of the hearing officer's written determination. The

199 superior court judge shall conduct a hearing and shall render a final determination in
 200 writing and shall transmit a copy to the hearing officer, the debtor, and the Administrative
 201 Office of the Courts not later than ten days after the date of that hearing.

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

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

214 48-7-166.

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

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

225 (b) Upon transfer of the debt due and owing from the escrow account to the credit of the
 226 debtor's account, the claimant agency or the Administrative Office of the Courts shall
 227 notify the debtor in writing of the finalization of the setoff. The department shall prepare
 228 a notice for use by the claimant agency or the Administrative Office of the Courts. Such
 229 notice shall include a final accounting of the refund which was set off, including the
 230 amount of the refund to which the debtor was entitled prior to setoff, the amount of the debt
 231 due and owing, the amount of the refund in excess of the debt which has been returned to
 232 the debtor by the department pursuant to subsection (b) of Code Section 48-7-164, and the
 233 amount of the funds transferred to the claimant agency or the Administrative Office of the
 234 Courts pursuant to Code Section 48-7-164 in excess of the debt finally determined to be

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

247 48-7-167.

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

250 48-7-168.

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

254 48-7-169.

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

257 48-7-170.

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

263 (b) The information obtained by a claimant agency or the Administrative Office of the
 264 Courts from the department in accordance with this article shall retain its confidentiality
 265 and shall only be used by a claimant agency or the Administrative Office of the Courts in
 266 the pursuit of its debt collection duties and practices. Any employee or prior employee of
 267 any claimant agency or the Administrative Office of the Courts who unlawfully discloses

268 any such information for any other purpose, except as otherwise specifically authorized by
269 law, shall be subject to the same penalties specified by law for unauthorized disclosure of
270 confidential information by an agent or employee of the department."

271 **SECTION 2.**

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

273 **SECTION 3.**

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