

1 HB503
2 199434-1
3 By Representative McMillan
4 RFD: State Government
5 First Read: 23-APR-19

2
3
4
5
6
7
8 SYNOPSIS: Under existing law, state employee
9 retirement benefits are not subject to garnishment
10 except under certain circumstances for restitution,
11 fines, court costs, fees, or other financial
12 obligations in a criminal case ordered by a circuit
13 or district judge.

14 This bill would subject state employee
15 retirement benefits to garnishment for child
16 support and alimony.

17
18 A BILL
19 TO BE ENTITLED
20 AN ACT

21
22 Relating to state employee retirement benefits; to
23 amend Section 36-27-28, Code of Alabama 1975, to subject state
24 employee retirement benefits to garnishment for child support
25 and alimony.

26 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. Section 36-27-28, Code of Alabama 1975,
2 is amended to read as follows:

3 "§36-27-28.

4 "(a) Except as provided in ~~subsection~~ subsections
5 (b) and (c), the right of a person to a pension, an annuity, a
6 retirement allowance or to the return of contributions, the
7 pension, annuity or retirement allowance itself and any
8 optional benefit or any other right accrued or accruing to any
9 person under the provisions of this article and the monies in
10 the various funds created by this chapter are hereby exempt
11 from any state or municipal tax and exempt from levy and sale,
12 garnishment, attachment or any other process whatsoever and
13 shall be unassignable except as in this article specifically
14 otherwise provided.

15 "(b) (1) Restitution, fines, court costs, fees, or
16 any other financial obligations in a criminal case ordered by
17 a circuit or district court judge in this state are not
18 subject to the exemption set out in subsection (a), provided
19 all of the following are satisfied:

20 "a. The amount of the restitution ordered is in the
21 amount of one thousand dollars (\$1,000) or greater.

22 "b. The person subject to the order is a retiree or
23 beneficiary who is currently receiving benefits from the
24 Employees' Retirement System.

25 "c. The case has been assigned to the district
26 attorney's restitution recovery division.

1 "(2) If the requirements of subdivision (1) are met,
2 and upon motion filed by the district attorney, the circuit or
3 district court judge may order that the Employees' Retirement
4 System pay to the circuit clerk of the court no more than 25
5 percent of the retiree's or beneficiary's gross monthly
6 benefit less any deductions for child support or health
7 insurance for any dependents, to be applied to the balance of
8 the restitution, fines, court costs, fees, or other financial
9 obligations ordered in the criminal case.

10 "(3) An order under subdivision (2) shall set out
11 all of the following:

12 "a. The individual's name, date of birth, and Social
13 Security number.

14 "b. The amount of restitution ordered is in the
15 amount of one thousand dollars (\$1,000) or greater.

16 "c. The amounts of restitution, fines, court costs,
17 fees, or any other financial obligations owed, detailed
18 individually.

19 "d. The relevant case numbers.

20 "e. The county in which the case was brought.

21 "f. The circuit clerk's name and mailing address.

22 "g. That the restitution, fines, court costs, fees,
23 or other financial obligations are payable as a result of a
24 criminal disposition.

25 "h. The amount or the percentage of funds to be
26 paid.

1 "(4) The district attorney must notify the court
2 whenever the restitution, fines, court costs, fees, or other
3 financial obligations are paid in full. Thereafter, the court
4 shall issue an order to stop the diversion of the individual's
5 funds. Any payment received by the circuit clerk in an amount
6 over what was owed shall be paid back to the Employees'
7 Retirement System within 60 days with the specific identifying
8 information as to the retiree or the beneficiary to whom it is
9 owed.

10 "(c) Any decree, judgment, or order issued by a
11 court of this state for the payment of child support or
12 alimony is not subject to the exemption in subsection (a)
13 provided that the person subject to the order is a retiree or
14 beneficiary who is currently receiving benefits from the
15 Employees' Retirement System.

16 "(1) The amount withheld under this subsection shall
17 be subject to the lesser of the amounts allowed by the Federal
18 Consumer Credit Protection Act (CCPA), 15 United States Code
19 Section 1673(b), the law of the state of the obligor's
20 principal residence, or the tribal law of the obligor's
21 principal residence.

22 "(2) An order under this subsection shall set out
23 all of the following:

24 "a. The individual's name, date of birth, and Social
25 Security number.

26 "b. The amounts of the obligation detailed
27 individually.

1 "c. The relevant case numbers.
2 "d. The county in which the case was brought.
3 "e. The name and mailing address of the payee.
4 "(3) The payee or obligor must notify the court when
5 the child support or alimony obligation is terminated.
6 Thereafter, the court shall issue an order to stop the
7 diversion of the individual's funds. Any payment received by
8 the payee in an amount over what was owed shall be paid back
9 to the Employees' Retirement System within 60 days with the
10 specific identifying information as to the retiree or the
11 beneficiary to whom it is owed."

12 Section 2. This act shall become effective on the
13 first day of the third month following its passage and
14 approval by the Governor, or its otherwise becoming law.