

1 SB169  
2 156093-2  
3 By Senators Fielding, Marsh, Whatley and Allen  
4 RFD: Judiciary  
5 First Read: 14-JAN-14

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8 SYNOPSIS: Under existing law, certain state agencies  
9 are entitled to submit debts owed to them to the  
10 Department of Revenue for collection through  
11 setoff.

12 This bill would amend existing law to allow  
13 counties and municipalities within this state to  
14 set off from income tax returns with respect to the  
15 collection of debts and money owed to them as a  
16 result of any administrative or judicial  
17 proceeding.

18  
19 A BILL  
20 TO BE ENTITLED  
21 AN ACT  
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23 To amend Sections 40-18-100 and 40-18-103, Code of  
24 Alabama 1975, relating to setoff debt collection; to allow  
25 counties and municipalities within this state to set off from  
26 income tax returns with respect to the collection of debts and

1 money owed to them as a result of any administrative or  
2 judicial proceeding.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. Sections 40-18-100 and 40-18-103, Code of  
5 Alabama 1975, are amended to read as follows:

6 "§40-18-100.

7 "For the purposes of this article, the following  
8 terms shall have the respective meanings ascribed by this  
9 section:

10 "(1) CLAIMANT AGENCY. Only:

11 "a. The Alabama Commission on Higher Education with  
12 respect to the collection of debts under:

13 "1. The Alabama Student Grant Program provided for  
14 by Chapter 33A of Title 16; and

15 "2. The Alabama Guaranteed Student Loan Program  
16 provided for by Chapter 33B of Title 16.

17 "b. The Alabama Department of Human Resources with  
18 respect to the collection of debts and money owed under any  
19 and all of its public assistance programs and other programs  
20 administered by that department, including support programs  
21 administered pursuant to the requirements of Title IV-D of the  
22 Social Security Act.

23 "c. The Alabama Medicaid Agency with respect to the  
24 collection of debts and money owed under any and all of the  
25 programs it administers.

26 "d. The Alabama Department of Industrial Relations  
27 with respect to the collection or recovery, or both, of debts

1 owed as a result of overpayments of state unemployment  
2 compensation benefits.

3 "e. The Unified Judicial System with respect to the  
4 collection of fines and court costs owed as a result of any  
5 court or judicial proceeding.

6 "f. Counties and municipalities acting through a  
7 third-party provider or organization as provided in Section  
8 40-18-103, with respect to the collection of any debt owed and  
9 finalized by law, ordinance, or resolution. For purposes of  
10 this act, counties and municipalities shall include, without  
11 limitation, all corporations and other instrumentalities whose  
12 governing boards are comprised of a majority of members who  
13 are appointed or elected by counties or municipalities.

14 "(2) DEBTOR. Any individual owing money or having a  
15 delinquent account with any claimant agency, which obligation  
16 has not been adjudicated, satisfied by court order, set aside  
17 by court order, or discharged in bankruptcy.

18 "(3) DEBT. Any liquidated sum due and owing any  
19 claimant agency which has accrued through contract,  
20 subrogation, tort, or operation of law regardless of whether  
21 there is an outstanding judgment for that sum, or any  
22 liquidated sum of child or spousal support, or both child and  
23 spousal support, due and owing any individual eligible for and  
24 receiving child support enforcement services through the  
25 Alabama Department of Human Resources.

26 "(4) DEPARTMENT. The Department of Revenue of the  
27 State of Alabama.

1           "(5) REFUND. The Alabama income tax refund which the  
2 department determines to be due any individual taxpayer.

3           "§40-18-103.

4           "(a) A county or municipality may submit a debt of  
5 at least \$25 owed to it for collection under this chapter.  
6 Provided, however, that a county or municipality must submit  
7 the debt to the department through one of the following:

8           "(1) A third party provider representing more than  
9 20 counties or 50 municipalities in Alabama who has agreed to  
10 submit debts on behalf of a requesting county or municipality  
11 pursuant to a common service contract as provided in Chapter  
12 102 of Title 11 and who has been approved by the department to  
13 submit debts on behalf of counties and municipalities.

14           "(2) The Association of County Commissions of  
15 Alabama or an entity established through the Association of  
16 County Commissions of Alabama.

17           "(3) The Alabama League of Municipalities or an  
18 entity established through the Alabama League of  
19 Municipalities.

20           "The third party provider or organization which  
21 submits a debt on behalf of any county or municipality may  
22 assess a reasonable fee for submitting the debt. This fee may  
23 be assessed against the debtor and collected as the first  
24 amount set off against any tax refund. In no event shall any  
25 third party provider or organization which submits a debt  
26 pursuant to this chapter be liable in any claim, lawsuit, or  
27 action for more than the fee assessed for submitting the debt.

1           "~~(a)~~(b) Within a time frame specified by the  
2 department, a claimant agency seeking to collect a debt  
3 through setoff shall supply the information necessary to  
4 identify each debtor whose refund is sought to be set off and  
5 certify the amount of debt or debts owed by each such debtor.

6           "~~(b)~~(c) If a debtor identified by a claimant agency  
7 is determined by the department to be entitled to a refund of  
8 at least \$25 the department shall transfer an amount equal to  
9 the refund owed, not to exceed the amount of the claimed debt  
10 certified, to the claimant agency. When the income tax refund  
11 owed exceeds the claimed debt, the department shall send the  
12 excess amount to the debtor within a reasonable time after  
13 such excess is determined.

14           "~~(c)~~(d) At the time of the transfer of funds to a  
15 claimant agency pursuant to subsection ~~(b)~~(c) of this section,  
16 the department shall notify the taxpayer or taxpayers whose  
17 refund is sought to be set off that the transfer has been  
18 made. Such notice shall clearly set forth the name of the  
19 debtor, the manner in which the debt arose, the amount of the  
20 claimed debt, the transfer of funds to the claimant agency  
21 pursuant to subsection ~~(b)~~(c) of this section and the  
22 intention to set off the refund against the debt, the amount  
23 of the refund in excess of the claimed debt, the taxpayer's  
24 opportunity to give written notice to contest the setoff  
25 within 30 days of the date of mailing of the notice, the name  
26 and mailing address of the claimant agency to which the  
27 application for a hearing must be sent, and the fact that the

1 failure to apply for such a hearing, in writing, within the  
2 30-day period will be deemed a waiver of the opportunity to  
3 contest the setoff. In the case of a joint return or a joint  
4 refund, the notice shall also state the name of the taxpayer  
5 named in the return, if any, against whom no debt is claimed,  
6 the fact that a debt is not claimed against such taxpayer, the  
7 fact that such taxpayer is entitled to receive a refund if it  
8 is due him regardless of the debt asserted against his spouse,  
9 and that in order to obtain a refund due him such taxpayer  
10 must apply, in writing, for a hearing with the claimant agency  
11 named in the notice within 30 days of the date of the mailing  
12 of the notice. If a taxpayer fails to apply in writing for  
13 such a hearing within 30 days of the mailing of such notice,  
14 he will have waived his opportunity to contest the setoff.

15 "(e) Notwithstanding subsection (d), a claimant  
16 county or municipality as provided for in subsection (a)  
17 shall, at the time of the transfer of funds to the claimant  
18 county or municipality, notify the taxpayer or taxpayers whose  
19 refund is sought to be set off that the transfer has been  
20 made. Such notice shall clearly set forth the name of the  
21 debtor, the manner in which the debt arose, the amount of the  
22 claimed debt, the transfer of funds to the claimant county or  
23 municipality pursuant to subsection (c) and the intention to  
24 set off the refund against the debt, notice that any refund in  
25 excess of the claimed debt will be sent to the taxpayer, the  
26 taxpayer's opportunity to give written notice to contest the  
27 setoff within 30 days of the date of mailing of the notice,

1 the name and mailing address of the claimant county or  
2 municipality to which the application for a hearing must be  
3 sent, and the fact that the failure to apply for such a  
4 hearing, in writing, within the 30-day period will be deemed a  
5 waiver of the opportunity to contest the setoff. In the case  
6 of a joint return or a joint refund, the notice shall also  
7 state the name of the taxpayer named in the return, if any,  
8 against whom no debt is claimed, the fact that a debt is not  
9 claimed against such taxpayer, the fact that such taxpayer is  
10 entitled to receive a refund if it is due him regardless of  
11 the debt asserted against his spouse, and that in order to  
12 obtain a refund due him such taxpayer must apply, in writing,  
13 for a hearing with the claimant court or municipality named in  
14 the notice within 30 days of the date of the mailing of the  
15 notice. If a taxpayer fails to apply in writing for such a  
16 hearing within 30 days of the mailing of such notice, he will  
17 have waived his opportunity to contest the setoff.

18 "~~(d)~~(f) Upon receipt of funds transferred from the  
19 department pursuant to subsection ~~(b)~~(c) of this section, the  
20 claimant agency shall deposit and hold such funds in an escrow  
21 account until a final determination of the validity of the  
22 debt."

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