

House Bill 81 (COMMITTEE SUBSTITUTE)

By: Representatives McCall of the 33<sup>rd</sup>, Powell of the 32<sup>nd</sup>, Harden of the 148<sup>th</sup>, Greene of the 151<sup>st</sup>, Taylor of the 173<sup>rd</sup>, and others

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, so as to add the Department of Community Health as an  
3 agency authorized to collect debts owed to hospital authorities; to provide for related matters;  
4 to provide for an effective date; to repeal conflicting laws; and for other purposes.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

6 **SECTION 1.**

7 Article 7 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to  
8 setoff debt collection, is amended by revising such article to read as follows:

9 "ARTICLE 7

10 48-7-160.

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

19 48-7-161.

20 As used in this article, the term:

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

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

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24 (A) The Department of Human Services and the Department of Behavioral Health and  
 25 Developmental Disabilities with respect to collection of debts under Article 1 of  
 26 Chapter 11 of Title 19, Code Section 49-4-15, and Chapter 9 of Title 37;

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

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

31 (D) The Georgia Board for Physician Workforce with respect to the collection of debts  
 32 arising under Part 6 of Article 7 of Chapter 3 of Title 20;

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

39 (F) The Department of Community Supervision with respect to probation fees arising  
 40 under Code Section 42-8-34 and restitution or reparation ordered by a court as a part  
 41 of the sentence imposed on a person convicted of a crime who is in the legal custody  
 42 of the Department of Corrections or the Department of Community Supervision;

43 (G) 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 and

46 (H) The Georgia Lottery Corporation with respect to proceeds arising under Code  
 47 Section 50-27-21.

48 (2) 'Court' means all trial courts in this state, including but not limited to the superior,  
 49 state, juvenile, magistrate, probate, and municipal courts, whether called mayor's courts,  
 50 recorder's courts, police courts, civil courts, or traffic courts, and miscellaneous and  
 51 special courts.

52 (3) 'Debt' means:

53 (A) Any liquidated sum due and owing any claimant agency, which sum has accrued  
 54 through contract, subrogation, tort, or operation of law regardless of whether there is  
 55 an outstanding judgment for the sum, any sum which is due and owing any person and  
 56 is enforceable by the Department of Human Services pursuant to subsection (b) of Code  
 57 Section 19-11-8, ~~or~~ any sum of restitution or reparation due pursuant to a sentence  
 58 imposed on a person convicted of a crime and sentenced to restitution or reparation and  
 59 probation, or any sum due a hospital authority with respect to debts arising from the  
 60 provision of health care services; provided, however, that no such sum owed to a

61 hospital authority shall exceed the amount owed by the debtor under the hospital  
 62 authority's applicable financial assistance policy when the debtor meets all the  
 63 qualifications for financial assistance; or

64 (B) Any liquidated sum that constitutes any and all court costs, surcharges, and fines  
 65 for which there is an outstanding court judgment.

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

70 (5) 'Department of Community Health' means the entity created pursuant to Chapter 2  
 71 of Title 31.

72 (6) 'Hospital authority' means any health care facility which is operated by a hospital  
 73 authority established pursuant to Article 4 of Chapter 7 of Title 31.

74 ~~(6)~~(7) 'Refund' means the Georgia income tax refund which the department determines  
 75 to be due any individual taxpayer.

76 48-7-162.

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

79 48-7-162.1.

80 (a) Submission of debts through the Department of Community Health or the  
 81 Administrative Office of the Courts shall be the sole manner through which debts owed to  
 82 hospital authorities or courts may be submitted to the department for collection under this  
 83 article. The Department of Community Health or the Administrative Office of the Courts  
 84 shall be authorized to enter into written contracts for the performance of administrative  
 85 functions and duties under this article by one or more administrative entities consisting of  
 86 nonprofit Georgia corporations, except for a public utility, in existence on or before  
 87 January 1, 2012, whose income is exempt from federal income taxation pursuant to  
 88 Section 115 of the Internal Revenue Code of 1986, or third party vendors approved by the  
 89 department.

90 (b) Any claim submitted by a hospital authority through the Department of Community  
 91 Health or a court through the Administrative Office of the Courts shall be subordinate to  
 92 all claims submitted by claimant agencies.

93 (c) No claim submitted by a hospital authority shall exceed the amount owed by the debtor  
 94 under the hospital authority's applicable financial assistance policy when the debtor meets  
 95 all the qualifications for financial assistance.

96 48-7-163.

97 (a) A claimant agency, the Department of Community Health, or the Administrative Office  
 98 of the Courts may submit any debt or debts when each such debt is in excess of \$25.00 to  
 99 the department for collection through setoff under the procedures established by this article,  
 100 except in cases where the validity of the debt is legitimately in dispute, an alternate means  
 101 of collection is pending and believed to be adequate, or such collection would result in a  
 102 loss of federal funds or federal assistance.

103 (b) Upon request of a claimant agency, the Department of Community Health, or the  
 104 Administrative Office of the Courts, the department shall set off any refund against the debt  
 105 certified by the claimant agency, the Department of Community Health, or the  
 106 Administrative Office of the Courts as provided in this article.

107 (c) An administrative collection assistance fee shall be imposed on each such debt  
 108 submitted by the Department of Community Health or the Administrative Office of the  
 109 Courts to the department to recover the costs incurred by the Department of Community  
 110 Health or the Administrative Office of the Courts and the department in collecting debts  
 111 under this article. The fee shall be in addition to the debt to be set off and shall be fixed  
 112 such that the proceeds of the fee shall not exceed the total direct and indirect costs to the  
 113 Department of Community Health or the Administrative Office of the Courts and the  
 114 department for administering such debt setoff collection. In no event shall the amount of  
 115 such fee exceed \$20.00 per debt. The Department of Community Health or the  
 116 Administrative Office of the Courts shall reimburse the department from the proceeds of  
 117 such fee based upon the actual costs incurred by the department. Such proceeds shall be  
 118 retained and expended pursuant to Code Section 45-12-92.1.

119 48-7-164.

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

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

129 (3) The Department of Community Health shall supply the information necessary to  
 130 identify each debtor whose refund is sought to be set off, including but not limited to such

131 debtor's social security number, and shall certify the amount of the debt or debts owed  
132 by each debtor.

133 (4) The department may rely upon the certification by a claimant agency, the Department  
134 of Community Health, or the Administrative Office of the Courts that the debt is valid  
135 and owed by the debtor and that such debt may be validly collected by the department  
136 under this article. No employee or agent of the department shall be liable to any person  
137 for collecting any such debt that was not valid and owed by the debtor.

138 (b)(1) If a debtor identified by a claimant agency, the Department of Community Health,  
139 or the Administrative Office of the Courts is determined by the department to be entitled  
140 to a refund of at least \$25.00, the department shall transfer an amount equal to the refund  
141 owed, not to exceed the amount of the claimed debt certified, to the claimant agency, the  
142 Department of Community Health, or the Administrative Office of the Courts. When the  
143 refund owed exceeds the claimed debt and administrative collection assistance fee, the  
144 department shall send the excess amount to the debtor within a reasonable time after the  
145 excess is determined.

146 (2) When the amount of the setoff available for claims is insufficient for the combined  
147 total of the claims filed by hospital authorities or courts, distribution of the available  
148 setoff funds shall be made in the order of the date each hospital authority or court claim  
149 is received by the Department of Community Health or Administrative Office of the  
150 Courts, respectively. Such claim shall remain active until sufficient additional setoff  
151 funds become available to set off the remainder of the debt or until the claims themselves  
152 expire by law.

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

156 (c) At the time of the transfer of funds to a claimant agency, the Department of  
157 Community Health, or the Administrative Office of the Courts pursuant to this Code  
158 section, the department shall notify the taxpayer or taxpayers whose refund is sought to be  
159 set off and the claimant agency, the Department of Community Health, or the  
160 Administrative Office of the Courts that the transfer has been made. The notice shall  
161 clearly set forth the name of the debtor, the manner in which the debt arose, the amount of  
162 the claimed debt, the transfer of funds to the claimant agency, the Department of  
163 Community Health, or the Administrative Office of the Courts pursuant to this Code  
164 section and the intention to set off the refund against the debt, the amount of the refund in  
165 excess of the claimed debt, the taxpayer's opportunity to give written notice to contest the  
166 setoff within 30 days of the date of mailing of the notice, the name and mailing address of  
167 the claimant agency, the Department of Community Health, or the Administrative Office

168 of the Courts to which the application for a hearing must be sent, and the fact that failure  
169 to apply for a hearing in writing within the 30 day period will be deemed a waiver of the  
170 opportunity to contest the setoff. In the case of a joint return, the notice shall also state the  
171 name of any taxpayer named in the return against whom no debt is claimed, the fact that  
172 a debt is not claimed against such taxpayer, the fact that such taxpayer is entitled to receive  
173 a refund if it is due him or her regardless of the debt asserted against his or her spouse, and  
174 that in order to obtain a refund due him or her such taxpayer must apply in writing for a  
175 hearing with the claimant agency, the Department of Community Health, or the  
176 Administrative Office of the Courts named in the notice within 30 days of the date of the  
177 mailing of the notice. If a taxpayer fails to apply in writing for a hearing within 30 days  
178 of the mailing of the notice, he or she will have waived his or her opportunity to contest the  
179 setoff.

180 (d) Upon receipt of funds transferred from the department pursuant to this Code section,  
181 the claimant agency, the Department of Community Health, or the Administrative Office  
182 of the Courts shall deposit and hold the funds in an escrow account until a final  
183 determination of the validity of the debt. Any interest accruing on proceeds in such escrow  
184 account shall not constitute any part of the setoff funds being held in escrow and shall be  
185 retained by the claimant agency, the Department of Community Health, or the  
186 Administrative Office of the Courts to cover administrative costs.

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

189 48-7-165.

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

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

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

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

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

206 48-7-165.1.

207 (a)(1) Except as otherwise provided in subsection (d) of this Code section, if the  
208 Administrative Office of the Courts receives written notice from the debtor contesting the  
209 setoff or the sum upon which the setoff is based within 30 days of the debtor being  
210 notified of the debt setoff, the Administrative Office of the Courts shall notify the court  
211 to whom the debt is owed that the sum due and owing shall not be disbursed pursuant to  
212 this article until the court to whom the debt is owed has granted a hearing to the debtor  
213 and obtained a final determination on the debt under this Code section and provided  
214 evidence of such final determination to the Administrative Office of the Courts. Such  
215 sum due and owing shall not be disbursed to the debtor or the court to whom the debt is  
216 owed prior to such final determination.

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

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

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

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

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

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

251 48-7-166.

252 (a)(1) Upon final determination of the amount of the debt due and owing by means of  
 253 the hearing provided by Code Section 48-7-165 or by the taxpayer's default through  
 254 failure to comply with subsection (c) of Code Section 48-7-164, the Department of  
 255 Community Health or the claimant agency shall remove the amount of the debt due and  
 256 owing from the escrow account established pursuant to Code Section 48-7-164 and shall  
 257 credit the amount to the debtor's obligation.

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

263 (b) Upon transfer of the debt due and owing from the escrow account to the credit of the  
 264 debtor's account, the claimant agency, the Department of Community Health, or the  
 265 Administrative Office of the Courts shall notify the debtor in writing of the finalization of  
 266 the setoff. The department shall prepare a notice for use by the claimant agency, the  
 267 Department of Community Health, or the Administrative Office of the Courts. Such notice  
 268 shall include a final accounting of the refund which was set off, including the amount of  
 269 the refund to which the debtor was entitled prior to setoff, the amount of the debt due and  
 270 owing, the amount of the refund in excess of the debt which has been returned to the debtor  
 271 by the department pursuant to Code Section 48-7-164, and the amount of the funds  
 272 transferred to the claimant agency, the Department of Community Health, or the  
 273 Administrative Office of the Courts pursuant to Code Section 48-7-164 in excess of the  
 274 debt finally determined to be due and owing at a hearing held pursuant to Code Section



275 48-7-165 or 48-7-165.1, if such a hearing was held or the amount of the funds transferred  
 276 to the Administrative Office of the Courts pursuant to Code Section 48-7-164 is in excess  
 277 of the debt finally determined to be due and owing pursuant to Code Section 48-7-165.1  
 278 as determined in the filing of an appeal. At such time, the claimant agency, the Department  
 279 of Community Health, or the Administrative Office of the Courts shall refund to the debtor  
 280 the amount of the claimed debt originally certified and transferred to it by the department  
 281 in excess of the amount of debt finally found to be due and owing.

282 (c) Following finalization of the setoff pursuant to subsection (b) of this Code section, the  
 283 Department of Community Health or the Administrative Office of the Courts shall transfer  
 284 the funds to the hospital authority or court, respectively. Any funds so transferred by the  
 285 Department of Community Health or the Administrative Office of the Courts shall be  
 286 disbursed by the hospital authority or court in the same manner as if such funds had been  
 287 originally collected by such hospital authority or court without having resorted to collection  
 288 under this article.

289 48-7-167.

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

292 48-7-168.

293 The department has priority pursuant to subsection (c) of Code Section 48-2-35 over every  
 294 claimant agency, the Department of Community Health, and the Administrative Office of  
 295 the Courts for collection by setoff under this article.

296 48-7-169.

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

299 48-7-170.

300 (a) Notwithstanding Code Section 48-7-60, which prohibits disclosure by the department  
 301 of the contents of taxpayer records or information, and notwithstanding any other  
 302 confidentiality statute, the commissioner may provide to a claimant agency, the Department  
 303 of Community Health, or the Administrative Office of the Courts all information necessary  
 304 to accomplish and effectuate the intent of this article.

305 (b) The information obtained by a claimant agency, the Department of Community Health,  
 306 or the Administrative Office of the Courts from the department in accordance with this  
 307 article shall retain its confidentiality and shall only be used by a claimant agency, the

308 Department of Community Health, or the Administrative Office of the Courts in the pursuit  
309 of its debt collection duties and practices. Any employee or prior employee of any  
310 claimant agency, the Department of Community Health, or the Administrative Office of  
311 the Courts who unlawfully discloses any such information for any other purpose, except  
312 as otherwise specifically authorized by law, shall be subject to the same penalties specified  
313 by law for unauthorized disclosure of confidential information by an agent or employee of  
314 the department."

315 **SECTION 2.**

316 This Act shall become effective on July 1, 2018.

317 **SECTION 3.**

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