

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 761

Short Title: Local Debt Setoff.

(Public)

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Sponsors: Senator Conder.

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Referred to: Finance

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April 19, 1995

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE COUNTIES AND CITIES TO COLLECT DEBTS  
THROUGH THE SETOFF DEBT COLLECTION ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105A-1 reads as rewritten:

**"§ 105A-1. Purposes.**

The purpose of this Article is to establish as policy that all claimant agencies and the Department of Revenue shall cooperate in identifying debtors who owe money to the State through its various claimant agencies or to a local government and who qualify for refunds from the Department of Revenue. It is also the intent of this Article that procedures be established for setting off against any such refund the sum of any debt owed to the ~~State~~ State or a local government. Furthermore, it is the legislative intent that this Article be liberally construed so as to effectuate these purposes as far as legally and practically possible."

Sec. 2. G.S. 105A-2 reads as rewritten:

**"§ 105A-2. Definitions.**

~~As used in this Article:~~ The following definitions apply in this Article:

(1) ~~" Claimant agency" means and includes:~~ Claimant agency. – A State agency or a local agency.

- 1           (1a) Local agency. – A county or municipality in the collection of ad  
2           valorem taxes levied under Subchapter II of Chapter 105 of the General  
3           Statutes or in the collection of debts for ambulance services provided by  
4           or on behalf of the county or municipality.
- 5           (1b) State agency. – Any of the following:
- 6           a.       The State Education Assistance Authority as enabled by Article  
7           23 of Chapter 116 of the General Statutes;
- 8           b.       The North Carolina Department of Human Resources when in  
9           the exercise of its authority to collect health profession student  
10          loans made pursuant to G.S. 131-121;
- 11          c.       The North Carolina Department of Human Resources when in  
12          the performance of its duties under the Medical Assistance  
13          Program enabled by Chapter 108A, Article 2, Part 6, and any  
14          county operating the same Program at the local level, when and  
15          only to the extent such a county is in the performance of Medical  
16          Assistance Program collection functions;
- 17          d.       The North Carolina Department of Human Resources when in  
18          the performance of its duties, under the Child Support  
19          Enforcement Program as enabled by Chapter 110, Article 9 and  
20          Title IV, Part D of the Social Security Act to obtain  
21          indemnification for past paid public assistance or to collect child  
22          support arrearages owed to an individual receiving program  
23          services and any county operating the program at the local level,  
24          when and only to the extent that the county is engaged in the  
25          performance of those same duties;
- 26          e.       The University of North Carolina, including its constituent  
27          institutions as specified by G.S. 116-2(4);
- 28          f.       The University of North Carolina Hospitals at Chapel Hill in the  
29          conduct of its financial affairs and operations pursuant to G.S.  
30          116-37;
- 31          g.       The Board of Governors of the University of North Carolina and  
32          the State Board of Education through the College Scholarship  
33          Loan Committee when in the performance of its duties of  
34          administering the Scholarship Loan Fund for Prospective College  
35          Teachers enabled by Chapter 116, Article 5;
- 36          h.       The Office of the North Carolina Attorney General on behalf of  
37          any State agency when the claim has been reduced to a judgment;
- 38          i.       The State Board of Community Colleges through community  
39          colleges as enabled by Chapter 115D in the conduct of their  
40          financial affairs and operations;
- 41          j.       State facilities as listed in G.S. 122C-181(a), School for the Deaf  
42          at Morganton, North Carolina Sanatorium at McCain, Western  
43          Carolina Sanatorium at Black Mountain, Eastern North Carolina

- 1 Sanatorium at Wilson, and Gravely Sanatorium at Chapel Hill  
2 under Chapter 143, Article 7; Governor Morehead School under  
3 Chapter 115, Article 40; Central North Carolina School for the  
4 Deaf under Chapter 115, Article 41; Wright School for  
5 Treatment and Education of Emotionally Disturbed Children  
6 under Chapter 122C; and these same institutions by any other  
7 names by which they may be known in the future;
- 8 k. The North Carolina Department of Revenue;
- 9 l. The Administrative Office of the Courts;
- 10 m. The Division of Forest Resources of the Department of  
11 Environment, Health, and Natural Resources;
- 12 n. The Administrator of the Teachers' and State Employees'  
13 Comprehensive Major Medical Plan, established in Article 3 of  
14 General Statutes Chapter 135;
- 15 o. The State Board of Education through the Superintendent of  
16 Public Instruction when in the performance of his duties of  
17 administering the Scholarship Loan Fund for Prospective  
18 Teachers enabled by Chapter 115C, Article 32A and the  
19 scholarship loan and grant programs enabled by Chapter 115C,  
20 Article 24C, Part 1;
- 21 p. The Board of Trustees of the Teachers' and State Employees'  
22 Retirement System and the Board of Trustees of the Local  
23 Governmental Employees' Retirement System in the performance  
24 of their duties pursuant to Chapters 120, 128, 135 and 143 of the  
25 General Statutes;
- 26 q. The North Carolina Teaching Fellows Commission in the  
27 performance of its duties pursuant to Chapter 115C, Article 24C,  
28 Part 2;
- 29 r. The North Carolina Department of Human Resources when in  
30 the performance of its intentional program violation collection  
31 duties under the Food Stamp Program enabled by Chapter 108A,  
32 Article 2, Part 5, and any county operating the same Program at  
33 the local level, when and only to the extent such a county is in  
34 the performance of Food Stamp Program intentional program  
35 violation collection functions.
- 36 The North Carolina Department of Human Resources when, in  
37 the performance of its duties under the Aid to Families with  
38 Dependent Children Program or the Aid to Families with  
39 Dependent Children – Emergency Assistance Program provided  
40 in Part 2 of Article 2 of Chapter 108A or under the State-County  
41 Special Assistance for Adults Program provided in Part 3 of  
42 Article 2 of Chapter 108A, it seeks to collect public assistance  
43 payments obtained through an intentional false statement,

1 intentional misrepresentation, or intentional failure to disclose a  
2 material fact;

3 s. The Employment Security Commission of North Carolina;

4 t. Any State agency in the collection of salary overpayments from  
5 former employees.

6 (2) "~~Debtor~~" means ~~any Debtor~~. – An individual owing money to or having a  
7 delinquent account with any claimant agency which obligation has not  
8 been adjudicated satisfied by court order, set aside by court order, or  
9 discharged in bankruptcy.

10 (3) "~~Debt~~" means ~~any Debt~~. – A liquidated sum due and owing any claimant  
11 agency which ~~that~~ has accrued through contract, subrogation, tort,  
12 operation of law, or any other legal theory regardless of whether there is  
13 an outstanding judgment for that sum.

14 (4) "~~Department~~" means ~~the Department~~. – The North Carolina Department  
15 of Revenue.

16 (5) "~~Refund~~" means ~~any Refund~~. – An individual's North Carolina income  
17 tax refund.

18 (6) "~~Net proceeds collected~~" means ~~gross~~ Net proceeds collected. – Gross  
19 proceeds collected through final setoff against a debtor's refund minus  
20 any collection assistance fee charged by the Department."

21 Sec. 3. G.S. 105A-3 reads as rewritten:

22 "**§ 105A-3. Remedy additional; mandatory State usage; optional local usage;**  
23 **obtaining identifying information.**

24 (a) The collection remedy under this Article is in addition to and not in  
25 substitution for any other remedy available by law.

26 (b) All ~~claimant~~ State agencies shall submit, for collection under the procedure  
27 established by this Article, all debts ~~which~~ they are owed, except debts that they are  
28 advised by the Attorney General not to submit because the validity of the debt is  
29 legitimately in dispute, because an alternative means of collection is pending and  
30 believed to be adequate, or because such a collection attempt would result in a loss of  
31 federal funds.

32 (b1) A local agency may submit for collection under the procedure established in  
33 this Article all debts they are owed, other than debts the validity of which is in dispute  
34 and debts for which an alternate means of collection is pending and believed to be  
35 adequate. The local agency may act individually or jointly pursuant to an interlocal  
36 agreement adopted under Article 20 of Chapter 160A of the General Statutes.

37 (c) All claimant agencies shall whenever possible obtain the full name, social  
38 security number, address, and any other identifying information required by ~~rules~~  
39 ~~promulgated by the Department pursuant to G.S. 105A-16~~ from any person for whom the  
40 agencies provide any service or transact any business and who the claimant agencies can  
41 foresee may become a debtor under this Article.

1 (d) A ~~claimant~~ State agency must register with the Department and report annually  
2 to the Department the amount of debts owed to the agency for which the agency did not  
3 submit a claim for setoff and the reason for not submitting the claim."

4 Sec. 4. G.S. 105A-8 reads as rewritten:

5 **"§ 105A-8. Hearing procedure.**

6 (a) State Agency. – A hearing on a contested ~~claim,~~ claim of a State agency, other  
7 than a claim of a constituent institution of The University of North Carolina, or a claim of  
8 the Employment Security Commission of North Carolina, shall be conducted in  
9 accordance with Article 3 of Chapter 150B of the General Statutes. A hearing on a  
10 contested claim of a constituent institution of The University of North Carolina shall be  
11 conducted in accordance with administrative procedures approved by the Attorney  
12 General. A hearing on a contested claim of the Employment Security Commission of  
13 North Carolina shall be conducted in accordance with regulations adopted by the  
14 Employment Security Commission of North Carolina.

15 (b1) Local Agency. – If a debtor contests the claim of a local agency, the agency  
16 shall file a civil action to resolve the contested claim in the superior court for the county  
17 in which the debtor resides.

18 (b2) Determination. – ~~Additionally, it~~ It shall be determined at the hearing whether  
19 the claimed sum asserted as due and owing is correct, and if not, an adjustment to the  
20 claim shall be made.

21 (b) Setoff Stayed. – Pending final determination at hearing of the validity of the  
22 debt asserted by the claimant agency, no action shall be taken in furtherance of collection  
23 through the setoff procedure allowed under this Article.

24 (c) No Hearing of Issues Previously Litigated. – No issues may be considered at  
25 the hearing ~~which~~ that have been previously litigated."

26 Sec. 5. G.S. 105A-9 reads as rewritten:

27 **"§ 105A-9. Appeals from hearings.**

28 Appeals from action taken at hearings on State agency claims allowed under this  
29 Article shall be in accordance with the provisions of Chapter 150B of the General  
30 Statutes, the Administrative Procedure Act, except that the place of initial judicial review  
31 shall be the superior court for the county in which the debtor resides. Appeals from  
32 actions allowed under this Article conducted by the Employment Security Commission of  
33 North Carolina shall be in accordance with the provisions of Chapter 96 of the General  
34 Statutes.

35 Either the debtor or the local agency may appeal to the appellate division from the  
36 judgment of the superior court on a local agency claim. The procedure for the appeal  
37 shall be as provided by the rules of appellate procedure."

38 Sec. 6. G.S. 105A-13 reads as rewritten:

39 **"§ 105A-13. Disposition of proceeds collected; collection assistance fees.**

40 (a) Upon effecting final setoffs, the Department shall periodically write checks to  
41 the respective claimant agencies for the net proceeds collected on their behalf.

42 (b) Each year the Department shall calculate its actual cost of collection as a  
43 percentage of the immediately preceding year's collections under the Setoff Debt

1 ~~Collection Act and shall retain that percentage from the gross proceeds collected by the~~  
2 ~~Department Act. The Department shall add that percentage as a fee to each debt collected~~  
3 ~~through setoff for the current fiscal year. year, collect it as part of the debt, and retain it. If~~  
4 ~~the Department is able to collect only part of a debt through setoff, the collection~~  
5 ~~assistance fee has priority over the remainder of the debt."~~

6 Sec. 7. G.S. 105A-14 reads as rewritten:

7 "**§ 105A-14. Accounting to the claimant agency; credit to debtor's obligation.**

8 (a) Simultaneously with the transmittal of a check for net proceeds collected to a  
9 claimant agency, the Department shall provide the agency with an accounting of the  
10 setoffs finalized for which payment is being made. The accounting shall, whenever  
11 possible, include the full names of the debtors, the debtors' social security numbers, the  
12 gross proceeds collected per individual setoff, the net proceeds collected per setoff, and  
13 the collection assistance fee added to the debt and collected ~~charged~~ per setoff.

14 (b) Upon receipt by a claimant agency of a check representing net proceeds  
15 collected on a claimant agency's behalf by the Department and an accounting of the  
16 proceeds as specified under this section, the claimant agency shall credit the debtor's  
17 obligation with the gross-net proceeds collected."

18 Sec. 8. G.S. 105A-15(b) reads as rewritten:

19 "(b) The information obtained by a claimant agency from the Department in  
20 accordance with the exemption allowed by subsection (a) ~~shall only may~~ be used by a  
21 claimant agency only in the pursuit of its debt collection duties and ~~practices and any~~  
22 ~~person employed by, or formerly employed by, a claimant agency who discloses any such~~  
23 ~~information for any other purpose, except as otherwise allowed by G.S. 105-259, shall be~~  
24 ~~penalized in accordance with the terms of that statute. practices and may not be disclosed~~  
25 except as provided in G.S. 105-259, 153A-148.1, or 160A-208.1."

26 Sec. 9. Sections 6 and 7 of this act become effective January 1, 1996; the  
27 remainder of this act is effective upon ratification.