

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H

1

HOUSE BILL 1837

Short Title: Private Schools/Debt Setoff.

(Public)

Sponsors: Representatives Sherrill; and Cansler.

Referred to: Rules, Calendar, and Operations of the House.

May 30, 2000

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT PRIVATE COLLEGES, UNIVERSITIES, AND PROPRIETARY SCHOOLS MAY OBTAIN A SETOFF AGAINST STATE TAX REFUNDS FOR DEBTS.

The General Assembly of North Carolina enacts:

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

"§ 105A-1. Purposes.

The purpose of this Chapter 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 or to a local government through their various agencies or to a private institution of higher education and who qualify for refunds from the Department of Revenue. It is also the intent of this Chapter that procedures be established for setting off against any refund the sum of any debt owed to the ~~State or to a local government.~~ State, a local government, or a private institution of higher education. Furthermore, it is the legislative intent that this Chapter be liberally construed so as to effectuate these purposes as far as legally and practically possible."

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

"§ 105A-2. Definitions.

The following definitions apply in this Chapter:

(1) Claimant agency. — ~~Either~~ Any of the following:

- 1 a. A State agency.
- 2 b. A local agency acting through a clearinghouse or an organization
- 3 pursuant to G.S. 105A-3(b1).
- 4 c. A private institution of higher education.
- 5 (2) ~~Debt. — Any of the following: —~~ A sum owed to a private institution as a
- 6 result of a default on an authorized student loan made under Article 23
- 7 of Chapter 116 of the General Statutes or any of the following with
- 8 respect to a claimant agency other than a private institution of higher
- 9 education:
- 10 a. A sum owed to a claimant agency that has accrued through
- 11 contract, subrogation, tort, operation of law, or any other legal
- 12 theory regardless of whether there is an outstanding judgment for
- 13 the sum.
- 14 b. A sum a claimant agency is authorized or required by law to
- 15 collect, such as child support payments collectible under Title IV,
- 16 Part D of the Social Security Act.
- 17 c. A sum owed as a result of an intentional program violation or a
- 18 violation due to inadvertent household error under the Food
- 19 Stamp Program enabled by Chapter 108A, Article 2, Part 5.
- 20 d. Reserved for future codification purposes.
- 21 e. A sum owed as a result of having obtained public assistance
- 22 payments under any of the following programs through an
- 23 intentional false statement, intentional misrepresentation,
- 24 intentional failure to disclose a material fact, or inadvertent
- 25 household error:
- 26 1. The Aid to Families with Dependent Children Program or
- 27 the Aid to Families with Dependent Children –
- 28 Emergency Assistance Program, enabled by Chapter
- 29 108A, Article 2, Part 2.
- 30 2. The Work First Cash Assistance Program established
- 31 pursuant to federal waivers received by the Department of
- 32 Health and Human Services on February 5, 1996.
- 33 3. The State-County Special Assistance for Adults Program,
- 34 enabled by Chapter 108A, Article 2, Part 3.
- 35 4. A successor program of one of these programs.
- 36 (3) Debtor. – An individual who owes a debt.
- 37 (4) Department. – The Department of Revenue.
- 38 (5) Reserved.
- 39 (6) Local agency. – A county, to the extent it is not considered a State
- 40 agency, or a municipality.
- 41 (7) Net proceeds collected. – Gross proceeds collected through setoff
- 42 against a debtor's refund minus the collection assistance fee retained by
- 43 the Department.

1 (7a) Private institution of higher education. – The term includes a college, a
2 university, or a proprietary school.

3 (8) Refund. – An individual's North Carolina income tax refund.

4 (9) State agency. – Any of the following:

5 a. A unit of the executive, legislative, or judicial branch of State
6 government.

7 b. A county, to the extent it administers a program supervised by
8 the Department of Health and Human Services or it operates a
9 Child Support Enforcement Program, enabled by Chapter 110,
10 Article 9, and Title IV, Part D of the Social Security Act."

11 Section 3. G.S. 105A-3 reads as rewritten:

12 **"§ 105A-3. Remedy additional; mandatory State usage; optional local usage;**
13 **obtaining identifying information; registration.**

14 (a) Remedy Additional. – The collection remedy under this Chapter is in addition
15 to and not in substitution for any other remedy available by law.

16 (b) Mandatory State Usage. – A State agency must submit a debt owed to it for
17 collection under this Chapter unless the State Controller has waived this requirement or
18 the Attorney General has advised the State agency not to submit the debt because the
19 validity of the debt is legitimately in dispute, because an alternative means of collection
20 is pending and believed to be adequate, or because such a collection attempt would result
21 in a loss of federal funds. The State Controller may waive the requirement for a State
22 agency, other than the Department of Health and Human Services or a county acting on
23 behalf of that Department, to submit a debt owed to it for collection under this Chapter if
24 the State Controller finds that collection by this means would not be practical or cost
25 effective. A waiver may apply to all debts owed a State agency or a type of debt owed a
26 State agency.

27 (b1) Optional Local Usage. – A local agency may submit a debt owed to it for
28 collection under this Chapter. A local agency that decides to submit a debt owed to it for
29 collection under this Chapter must establish the debt by following the procedure set in
30 G.S. 105A-5 and must submit the debt through one of the following:

31 (1) A clearinghouse that is established pursuant to an interlocal agreement
32 adopted under Article 20 of Chapter 160A of the General Statutes and
33 has agreed to submit debts on behalf of any requesting local agency.

34 (2) The North Carolina League of Municipalities.

35 (3) The North Carolina Association of County Commissioners.

36 (b2) Optional Private Institution of Higher Education Usage. – A private institution
37 of higher education may submit a debt owed to it for collection under this Chapter. A
38 private institution of higher education that decides to submit a debt owed to it for
39 collection under this Chapter must establish the debt by following the procedure set in
40 G.S. 105A-5.1.

41 (c) Identifying Information. – All claimant agencies shall whenever possible
42 obtain the full name, social security number, address, and any other identifying
43 information required by the Department from any person for whom the agencies provide

1 any service or transact any business and who the claimant agencies can foresee may
2 become a debtor under this Chapter.

3 (d) Registration and Reports. – A State agency must register with the Department
4 and with the State Controller. Every State agency must report annually to the State
5 Controller the amount of debts owed to the agency for which the agency did not submit a
6 claim for setoff and the reason for not submitting the claim.

7 A clearinghouse or an organization that submits debts on behalf of a local agency
8 must register with the Department. Once a clearinghouse registers with the Department
9 under this subsection, no other clearinghouse may register to submit debts for collection
10 under this Chapter.

11 A private institution of higher education that submits debts on behalf of itself must
12 register with the Department."

13 Section 4. Article 1 of Chapter 105A is amended by adding a new section to
14 read:

15 **"§ 105A-5.1. Private institution of higher education notice, hearing, and decision.**

16 (a) Prerequisite. – A private institution of higher education may not submit a debt
17 for collection under this Chapter until it has given the notice required by this section and
18 the claim has been finally determined as provided in this section.

19 (b) Notice. – A private institution of higher education must send written notice to a
20 debtor that it intends to submit the debt owed by the debtor for collection by setoff. The
21 notice must explain the basis for the institution's claim to the debt and that the institution
22 intends to apply the debtor's refund against the debt. The notice must also inform the
23 debtor that the debtor has the right to contest the matter by filing a request for a hearing
24 with the private institution of higher education, must state the time limits and procedure
25 for requesting the hearing, and must state that failure to request a hearing within the
26 required time will result in setoff of the debt.

27 (c) Hearing. – A debtor who decides to contest a proposed setoff must file a
28 written request for a hearing with the private institution of higher education within 30
29 days after the date the private institution of higher education mails a notice of the
30 proposed action to the debtor. A request for a hearing is considered to be filed when it is
31 delivered for mailing with postage prepaid and properly addressed. The governing body
32 of the private institution of higher education or a person designated by the governing
33 body must hold the hearing.

34 In a hearing under this section, an issue that has previously been litigated in a court
35 proceeding cannot be considered.

36 (d) Decision. – A decision made after a hearing under this section must determine
37 whether a debt is owed to the private institution of higher education and the amount of
38 the debt.

39 (e) Return of Amount Set Off. – If a private institution of higher education submits
40 a debt for collection under this Chapter without sending the notice required by subsection
41 (b) of this section, the institution must send the taxpayer the entire amount set off plus the
42 collection assistance fee retained by the Department. Similarly, if a private institution of
43 higher education submits a debt for collection under this Chapter after sending the

1 required notice but before final determination of the debt, and a decision finds that the
2 private institution of higher education is not entitled to any part of the amount set off, the
3 institution must send the taxpayer the entire amount set off plus the collection assistance
4 fee retained by the Department. That portion of the amount returned that reflects the
5 collection assistance fee must be paid from the private institution of higher education's
6 funds.

7 If a private institution of higher education submits a debt for collection under this
8 Chapter after sending the required notice and the net proceeds collected that are credited
9 to the private institution of higher education for the debt exceed the amount of the debt,
10 the private institution of higher education must send the balance to the debtor. No part of
11 the collection assistance fee retained by the Department may be returned when a notice
12 was sent and a debt is owed but the debt is less than the amount set off.

13 Interest accrues on the amount of a refund returned to a taxpayer under this subsection
14 in accordance with G.S. 105-266. A private institution of higher education that returns a
15 refund to a taxpayer under this subsection must pay from the private institution of higher
16 education's funds any interest that has accrued since the fifth day after the Department
17 mailed the notice of setoff to the taxpayer."

18 Section 5. G.S. 105A-12 reads as rewritten:
19 **"§ 105A-12. Priorities in claims to setoff.**

20 The Department has priority over all other claimant agencies for collection by setoff
21 whenever it is a competing agency for a refund. State agencies have priority over local
22 agencies for collection by ~~setoff~~-setoff, and State agencies and local agencies both have
23 priority over private institutions of higher education for collection by setoff. When there
24 are multiple claims by State agencies other than the Department, the claims have priority
25 based on the date each agency registered with the Department under G.S. 105A-3. When
26 there are multiple claims by two or more organizations submitting debts on behalf of
27 local agencies, the claims have priority based on the date each organization registered
28 with the Department under G.S. 105A-3. When there are multiple claims among local
29 agencies whose debts are submitted by the same organization, the claims have priority
30 based on the date each local agency requested the organization to submit debts on its
31 behalf. When there are multiple claims by two or more private institutions of higher
32 education submitting debts, the claims have priority based on the date each institution
33 registered with the Department under G.S. 105A-3."

34 Section 6. There is appropriated from the General Fund to the Department of
35 Revenue the sum of one thousand dollars (\$1,000) for the 2000-2001 fiscal year to
36 implement procedural changes to implement this act.

37 Section 7. This act becomes effective January 1, 2001.