

1 SB428
2 167352-2
3 By Senator Albritton
4 RFD: Judiciary
5 First Read: 30-APR-15

2
3
4
5
6
7
8 SYNOPSIS: Under existing law, certain pension,
9 annuity, or retirement allowance benefits under the
10 Teachers' Retirement System and the Employees'
11 Retirement System are exempt from state or
12 municipal taxes, levy, sale, garnishment,
13 attachment, or any other related process.

14 This bill would provide that restitution,
15 fines, court costs, fees, or any other financial
16 obligations in a felony criminal case ordered by a
17 circuit or district court judge in this state are
18 not subject to this exemption.

19 This bill would allow the court and certain
20 licensing authorities to revoke or suspend certain
21 licenses, such as driver's licenses, hunting
22 licenses, fishing licenses, concealed carry
23 licenses, and other occupational, regulatory, or
24 professional licenses if a person is delinquent in
25 any criminal case in making certain payments to the
26 court or has an outstanding writ of arrest or alias
27 warrant.

1 This bill would allow a district attorney,
2 or his or her designee, to accept credit cards,
3 charge cards, or debit cards for payment of
4 restitution, fines, court costs, fees, or other
5 court ordered financial obligations under certain
6 conditions.

7 This bill would also require each county to
8 have at least one amnesty period during the 2016
9 Fiscal Year for those individuals who have
10 outstanding restitution, fines, court costs, fees,
11 or other financial obligations ordered by the court
12 in a criminal case or criminal cases for whom a
13 writ or warrant was issued.

14
15 A BILL
16 TO BE ENTITLED
17 AN ACT

18
19 To amend Sections 16-25-23 and 36-27-28, Code of
20 Alabama 1975, to provide that certain pension, annuity, or
21 retirement allowance benefits under the Teachers' Retirement
22 System and the Employees' Retirement System are subject to
23 certain recovery action; allow the court and certain licensing
24 authorities to revoke or suspend certain licenses; to provide
25 for notice and hearing under certain conditions; to provide
26 for restoration of the license; to allow a district attorney
27 to accept credit cards, charge cards, or debit cards for the

1 payment of certain court ordered financial obligations; to
2 provide for an amnesty period for certain court ordered
3 financial obligations during the 2016 Fiscal Year; and to
4 amend Section 12-17-225.2, Code of Alabama 1975, to further
5 provide for the notice requirements to the district attorney
6 relating to certain court ordered financial obligations.

7 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

8 Section 1. Sections 16-25-23 and 36-27-28, Code of
9 Alabama 1975, are amended to read as follows:

10 "§16-25-23.

11 "(a) The Except as provided in subsection (b), the
12 right of a person to a pension; an annuity, or a retirement
13 allowance; to the return of contributions; the pension,
14 annuity or retirement allowance itself; any optional benefit
15 or any other right accrued or accruing to any person under the
16 provisions of this chapter; and the ~~moneys~~ monies in the
17 various funds created by this chapter are hereby exempt from
18 any state or municipal tax and exempt from levy and sale,
19 garnishment, attachment or any other process whatsoever, and
20 shall be unassignable except as in this chapter specifically
21 otherwise provided.

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

1 "a. The amount of the restitution ordered is in the
2 amount of ten thousand dollars (\$10,000) or greater.

3 "b. The person subject to the order is a retiree or
4 beneficiary who is currently receiving benefits from the
5 Teachers' Retirement System.

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

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

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

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

21 "b. The amount of restitution ordered is in the
22 amount of ten thousand dollars (\$10,000) or greater.

23 "c. The amounts of restitution, fines, court costs,
24 fees, or any other financial obligations owed, detailed
25 individually.

26 "d. The relevant case numbers.

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

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

2 "g. That the restitution, fines, court costs, fees,
3 or other financial obligations are payable as a result of a
4 criminal disposition.

5 "h. The amount or the percentage of funds to be
6 paid.

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

16 "§36-27-28.

17 "(a) ~~The~~ Except as provided in subsection (b), the
18 right of a person to a pension, an annuity, a retirement
19 allowance or to the return of contributions, the pension,
20 annuity or retirement allowance itself and any optional
21 benefit or any other right accrued or accruing to any person
22 under the provisions of this article and the moneys in the
23 various funds created by this chapter are hereby exempt from
24 any state or municipal tax and exempt from levy and sale,
25 garnishment, attachment or any other process whatsoever and
26 shall be unassignable except as in this article specifically
27 otherwise provided.

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

6 "a. The amount of the restitution ordered is in the
7 amount of ten thousand dollars (\$10,000) or greater.

8 "b. The person subject to the order is a retiree or
9 beneficiary who is currently receiving benefits from the
10 Employees' Retirement System.

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

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

22 "(3) An order under subdivision (2) 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 amount of restitution ordered is in the
27 amount of ten thousand dollars (\$10,000) or greater.

1 "c. The amounts of restitution, fines, court costs,
2 fees, or any other financial obligations owed, detailed
3 individually.

4 "d. The relevant case numbers.

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

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

7 "g. That the restitution, fines, court costs, fees,
8 or other financial obligations are payable as a result of a
9 criminal disposition.

10 "h. The amount or the percentage of funds to be
11 paid.

12 "(4) The circuit clerk must notify the court
13 whenever the restitution, fines, court costs, fees, or other
14 financial obligations are paid in full. Thereafter, the court
15 shall issue an order to stop the diversion of the individual's
16 funds. Any payment received by the circuit clerk in an amount
17 over what was owed shall be paid back to the Employees'
18 Retirement System within 60 days with the specific identifying
19 information as to the retiree or the beneficiary to whom it is
20 owed."

21 Section 2. (a) For the purposes of this section, the
22 following terms shall have the following meanings:

23 (1) COURT. A court of competent jurisdiction having
24 the authority to issue and enforce court orders in a criminal
25 case.

26 (2) DELINQUENT OR DELINQUENCY. The failure to make a
27 court ordered payment on restitution, fines, court costs,

1 fees, or any other financial obligations ordered by a court in
2 a criminal case for a period of more than 90 days.

3 (3) LICENSE. Any license, certificate, registration,
4 or authorization issued by a licensing authority which grants
5 a person a right or privilege to engage in an occupational,
6 professional, sporting, or recreational activity, or to
7 operate a motor vehicle.

8 (4) LICENSING AUTHORITY. Any department, division,
9 board, agency, or instrumentality of the state or its
10 political subdivisions that issues a license.

11 (b) Upon a finding by the court that a defendant is
12 delinquent in any criminal case or has an outstanding writ of
13 arrest or alias warrant for a failure to appear in court in
14 any criminal case, the court may revoke or suspend the
15 defendant's driver's license, hunting license, fishing
16 license, or concealed carry pistol permit. This action does
17 not require a hearing, and may be done upon motion of the
18 state or upon motion of the court.

19 (c) (1) In any criminal case in which a defendant is
20 delinquent or has an outstanding writ of arrest or alias
21 warrant for a failure to appear in court, the court may
22 withhold, restrict use of, revoke, or suspend any license not
23 listed in subsection (b) issued by a licensing authority upon
24 motion of the state and after a hearing.

25 (2) A motion by the state may be served upon the
26 defendant personally, by certified mail, or by mail to the
27 last known address of the defendant or, if the case has not

1 been disposed of, served upon the defendant's attorney. The
2 motion shall state that the state is moving to withhold,
3 restrict use of, revoke, or suspend the defendant's license or
4 licenses based on delinquency or a writ of arrest or alias
5 warrant being issued due to failure to appear in court. The
6 license or licenses that are subject to this action pursuant
7 to this section shall be set out in the motion.

8 (d) A hearing date shall be set within 60 days of
9 the filing of the motion set out in subsection (c). At the
10 hearing, upon the court being reasonably satisfied that the
11 defendant is delinquent or that a writ of arrest or alias
12 warrant was issued for a failure to appear in court, the court
13 may withhold, restrict use of, revoke, or suspend any license
14 or licenses issued by a licensing authority. The court may
15 take action without the presence of the defendant if the state
16 establishes that the motion was served upon the defendant
17 personally, by certified mail, or by mail to the last known
18 address of the defendant or, if the case has not been disposed
19 of, served upon the defendant's attorney.

20 (e) For any license that is withheld, restricted,
21 revoked, or suspended pursuant to subsection (b) or (c), the
22 court shall send a notice to the licensing authority
23 instructing it to withhold, restrict use of, revoke, or
24 suspend the defendant's license. A determination of the court
25 is independent of any proceeding of the licensing authority to
26 withhold, restrict use of, suspend use of, revoke, renew, or
27 issue a license. Any process currently in place by a court or

1 circuit clerk's office to notify a licensing authority of a
2 revocation or suspension of a license may continue to be used.

3 (f) A license may not be withheld, restricted,
4 revoked, or suspended pursuant to this section if the
5 defendant does any of the following:

6 (1) Pays the entire amount of the delinquency.

7 (2) Enters into a payment agreement or payment order
8 with the court or the district attorney's office and complies
9 with the order or agreement.

10 (3) Appears in court or to the jail to turn himself
11 or herself in on the active writ of arrest or alias warrant.

12 (g) Upon receipt of an order from the court to
13 withhold, restrict use of, revoke, or suspend a license, a
14 licensing authority shall implement the withholding,
15 restricted use, revocation, or suspension of the license by
16 doing all of the following:

17 (1) Determining that it has issued a license to the
18 defendant whose name appears on the order.

19 (2) Entering the withholding, restriction,
20 revocation, or suspension on the appropriate records.

21 (3) If required by law, demanding surrender of the
22 revoked or suspended license.

23 (h) An order issued by the court to withhold,
24 restrict use of, revoke, or suspend a license shall be
25 processed by the licensing authority without any additional
26 review or hearing by the licensing authority. The licensing

1 authority shall have no jurisdiction to modify, reword,
2 reverse, vacate, or stay the decision of the court.

3 (i) Any order issued by the court to withhold,
4 restrict use of, revoke, or suspend a license continues until
5 the court notifies the licensing authority that the decision
6 to withhold, restrict use of, revoke, or suspend has been
7 stayed or is no longer in effect. While the court's order is
8 in effect, the licensing authority may not issue, reissue, or
9 renew the defendant's license.

10 (j) The licensing authority is exempt from any
11 liability to the licensee for activities conducted in
12 compliance with this section.

13 (k) After the issuance of any order to withhold,
14 restrict the use of, revoke, or suspend a license, the court,
15 on its own or at the request of the defendant, may send an
16 order authorizing the licensing authority to reinstate the
17 license if the defendant complies with the requirements of
18 subsection (f). Upon receipt of the order, the licensing
19 authority may issue a new license pursuant to the statutes or
20 regulations governing the reissuance of a license by the
21 licensing authority.

22 (l) Notwithstanding any other provision of law, the
23 licensing authority may charge the defendant a fee to cover
24 administrative costs incurred by the licensing authority in
25 carrying out this section to be used exclusively by the
26 licensing authority for the purpose of administering this
27 section. In the event that a license is withheld, its use

1 restricted, revoked, or suspended, any money paid by the
2 defendant to the licensing authority for costs related to its
3 issuance, reissuance, renewal, or maintenance may not be
4 refunded to the defendant.

5 (m) The remedies set out in this section are in
6 addition to, and shall not limit, any other remedies available
7 to the state.

8 (n) Nothing in this section shall prohibit a court
9 from suspending a driver's license pursuant to Alabama Rule of
10 Criminal Procedure 26.11(i)(3).

11 Section 3. (a) A district attorney or his or her
12 designee, which may include a third party contracting with the
13 district attorney to assist in the collection of restitution,
14 fines, court costs, fees, or other court ordered financial
15 obligations, is specifically authorized to accept credit
16 cards, charge cards, and debit cards for payment of
17 restitution, fines, court costs, fees, or any other court
18 ordered financial obligations for which the district
19 attorney's restitution recovery division is collecting or
20 attempting to collect. District attorneys or a district
21 attorney's designee may enter into appropriate agreements with
22 credit and debit card issuers or other appropriate parties as
23 needed to facilitate the acceptance of credit and debit card
24 payments.

25 (b)(1) A district attorney accepting payment by
26 credit or debit card pursuant to an agreement with a credit
27 card company or financial institution may impose a surcharge,

1 service charge, or convenience fee upon the person making a
2 payment by credit or debit card equal to, but not to exceed,
3 the amount of any charge, surcharge, fee, or other monetary
4 obligation imposed by the financial institution or credit card
5 company, which may include costs for any equipment supplied by
6 the financial institution or credit card company.

7 (2) A designee of a district attorney accepting or
8 facilitating credit or debit card payments on behalf of a
9 district attorney may impose a surcharge, service charge, or
10 convenience fee upon the person making a payment by credit or
11 debit card that may exceed the amount of any charge,
12 surcharge, fee, or other monetary obligation imposed by the
13 financial institution or credit card company, which may
14 include costs for any equipment supplied by the financial
15 institution or credit card company.

16 (3) A surcharge, service charge, or convenience fee
17 shall be deemed voluntary by the party making payment and is
18 not refundable.

19 (c) A person making any payment by credit or debit
20 card to a district attorney, or a district attorney's
21 designee, may not be relieved from liability for the
22 underlying obligation in full or part, except to the extent
23 that the district attorney realizes final payment of the
24 underlying obligation in the amount paid by credit or debit
25 card in cash or the equivalent. If the payment is not made by
26 the credit or debit card issuer or other guarantor of payment
27 in the credit or debit card transaction, the amount attempted

1 to be paid on the underlying obligation shall survive and the
2 district attorney shall retain all remedies for enforcement
3 that would have applied if the credit or debit card
4 transaction had not occurred. A contract may not modify the
5 provisions of this subsection.

6 (d) Each district attorney may adopt rules and
7 operating procedures concerning the acceptance of credit and
8 debit card payments. District attorneys are not required to
9 accept credit or debit card payments.

10 (e) A district attorney, a district attorney's
11 designee, or any employee for either a district attorney or
12 designee may not incur any personal liability for the final
13 collection of any payments by debit or credit card, if the
14 collection was in accordance with this section, or any
15 applicable rules, policies, or procedures adopted by the
16 district attorney.

17 (f) District attorneys are specifically authorized
18 to forward any amounts collected, as required by law, to the
19 circuit or district clerk by means of a check or other payment
20 method allowed by law, notwithstanding whether those funds are
21 paid to, or collected by, the district attorney's restitution
22 recovery division or the district attorney's designee by means
23 of a credit card or debit card as authorized by this section.

24 Section 4. (a) Each county must have at least one
25 amnesty period during the 2016 Fiscal Year for those
26 individuals who have outstanding restitution, fines, court
27 costs, fees, or other financial obligations ordered by the

1 court in a criminal case or criminal cases for whom a writ of
2 arrest or alias warrant was issued due to failure to appear or
3 failure to comply with a court order in regard to failure to
4 pay.

5 (b) The presiding judge in each circuit shall set an
6 amnesty period for each county during the same time for all
7 courts in that county, including municipal courts. Each county
8 may set its own amnesty period, which is not required to
9 coincide with other counties. However, counties may coordinate
10 with other counties to have that same amnesty period.

11 (c) The amnesty period must be at least one full
12 business day, but may encompass multiple consecutive days or
13 weeks. Individuals may appear before the court or the circuit,
14 district, or municipal court clerk during the amnesty period
15 in order to make payment, either full or partial, on the
16 unpaid restitution, fines, court costs, fees, or other
17 financial obligations ordered by the court.

18 (d) Upon appearing and making full or partial
19 payment, the writ of arrest or alias warrant shall not be
20 executed and shall be recalled. The court may set a new court
21 date as required.

22 (e) The requirements of this section shall expire on
23 the last day of the 2016 Fiscal Year unless renewed by the
24 Legislature during the 2016 Legislative Session.

25 Section 5. Section 12-17-225.2, Code of Alabama
26 1975, is amended to read as follows:

27 "§12-17-225.2.

1 "The court or the clerk of the court shall notify
2 the district attorney in writing when any bail bond
3 forfeitures, court costs, fines, penalty payments, crime
4 victims' restitution, or victims' compensation assessments or
5 like payments in any civil or criminal proceeding ordered by
6 the court to be paid to the state or to crime victims have not
7 been paid or are in default and the default has not been
8 vacated. Upon written notification to the district attorney,
9 the restitution recovery division of the office of the
10 district attorney may collect or enforce the collection of any
11 funds that have not been paid or that are in default which,
12 under the direction of the district attorney, are appropriate
13 to be processed. In no event shall a court or court clerk
14 notify the district attorney in less than 90 days from the
15 date the payments are due to be paid in full or from the date
16 of the last court ordered payment made, and in no event shall
17 a court or court clerk notify the district attorney later than
18 270 days from the date that the court ordered payment is due
19 to be paid in full or from the date that the last court
20 ordered payment was made. Payments of amounts that do not meet
21 the requirements of the court order or that are less than the
22 monthly court ordered amount shall not extend the notification
23 period. Such notification shall not be prevented or
24 prohibited."

25 Section 6. The provisions of this act are severable.
26 If any part of this act is declared invalid or

1 unconstitutional, that declaration shall not affect the part
2 which remains.

3 Section 7. This act shall become effective on the
4 first day of the third month following its passage and
5 approval by the Governor, or its otherwise becoming law.