

1 SB281
2 156284-2
3 By Senators Orr and Bussman
4 RFD: Finance and Taxation General Fund
5 First Read: 28-JAN-14

2
3
4
5
6
7
8 SYNOPSIS: This bill would establish the Office of
9 Debt Recovery within the Department of Revenue to
10 collect certain delinquent debts owed to or
11 collected by the state. This bill would provide for
12 the administration of the collection of certain
13 debts. This bill would authorize the office to
14 collect certain debt of political subdivisions
15 under certain circumstances. This bill would
16 authorize the collection of a fee. This bill would
17 provide for the establishment of an electronic debt
18 registry. This bill would authorize the
19 promulgation of rules and regulations. This bill
20 would provide for the waiver of penalty for
21 delinquent filing or delinquent payment under
22 certain circumstances.

23 This bill would establish the Debt Recovery
24 Fund as a special treasury fund. This bill would
25 provide for the deposit, use, and investment of the
26 monies in the fund. This bill would authorize the
27 establishment and use of a financial institution

1 data match system. This bill would authorize the
2 acquisition and use of certain information from a
3 financial institution. This bill would authorize
4 the payment of certain fees for acquisition of data
5 match request files. This bill would provide for
6 the confidentiality of certain information.

7
8 A BILL
9 TO BE ENTITLED
10 AN ACT

11
12 Relative to collections by the Department of
13 Revenue; to establish the Office of Debt Recovery within the
14 Department of Revenue to collect certain delinquent debts owed
15 to or collected by the state; to provide for definitions; to
16 provide for the administration of the collection of certain
17 debts, to authorize the office to collect certain debt of
18 political subdivisions under certain circumstances; to provide
19 relative to procedure for collection of certain debts; to
20 provide for certain requirements and limitations; to authorize
21 the collection of a fee; to provide for the establishment of
22 an electronic debt registry; to authorize the promulgation of
23 rules and regulations; to provide for the waiver of penalty
24 for delinquent filing or delinquent payment under certain
25 circumstances; to authorize establishment of certain programs;
26 to establish the Debt Recovery Fund as a special treasury
27 fund; to provide for the deposit, use, and investment of the

1 monies in the fund; to authorize the establishment and use of
2 a financial institution data match system; to authorize the
3 acquisition and use of certain information from a financial
4 institution; to authorize the payment of certain fees for
5 acquisition of data match request files; to provide for the
6 confidentiality of certain information; to provide for an
7 effective date; and to provide for related matters.

8 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

9 Section 1. (a) The Office of Debt Recovery is hereby
10 established within the Department of Revenue. The Office of
11 Debt Recovery shall be responsible for, in accordance with
12 applicable laws and under the direction of the Commissioner,
13 the collection of a tax and may be responsible for the
14 collection of delinquent debts, accounts, or claims due on
15 behalf of other state agencies. The Office of Debt Recovery
16 may collect delinquent debts, accounts, or claims due on
17 behalf of other state agencies. The Office of Debt Recovery
18 may collect delinquent debts, accounts, or claims due to
19 political subdivisions which are not statewide political
20 subdivisions pursuant to a formal agreement with the
21 Department of Revenue. Whenever the Commissioner deems
22 necessary, he or she may reassign the responsibility for the
23 collection of a tax, account, claims due, or other duty
24 assigned herein.

25 (b) It shall be the public policy of this state to
26 aggressively pursue the collection of accounts or claims due
27 and payable to the State of Alabama through all reasonable

1 means. The Office of Debt Recovery, within the Department of
2 Revenue, shall serve as a debt-collecting entity for the state
3 and in that capacity shall collect delinquent debts on behalf
4 of all state agencies which refer delinquent debt to the
5 office for collection. All debts owed to the state shall be
6 referred to the Office of Debt Recovery for collection with
7 the exception of any monies collected and/or recovered by the
8 Medicaid Fraud Unit, within the Attorney General's Office and
9 any and all court costs, fees, and fines, and amounts
10 collected pursuant to Division 4 of Article 6 of Chapter 17 of
11 Title 12 of the Code of Alabama 1975. Beginning January 1,
12 2015, all state agencies shall refer all delinquent debts to
13 the office for collection when the debt has been delinquent
14 for sixty days.

15 Section 2. For purpose of this act, the following
16 words shall have the following meanings unless the context
17 clearly indicates otherwise:

18 (1) "Agency" means any state office, department,
19 board, commission, institution, division officer or other
20 person, or functional group, existing or created, that is
21 authorized to exercise, or that does exercise, any function of
22 state government in the executive branch, but does not mean
23 any governing body or officer of any local government or
24 subdivision of the state.

25 (2) "Authenticated" means that the referring agency
26 has certified the amount of the delinquent debt, the debtor's
27 liability, the debtor's name, address, telephone number,

1 social security number, and the federal or state taxpayer
2 identification number.

3 (3) "Debt" means any legally collectible liquidated
4 sum due and owing an agency, or due and owing a person and
5 collectible by any agency, or a judgment. The legally
6 collectible and liquidated sum due includes principal and
7 accruing interest, fees, and penalties, if appropriate. For
8 purposes of this section, "debt" shall not include any legally
9 collectible liquidated sum due and owing to an agency or an
10 individual pursuant to the following federal programs: Title
11 IV-A, Title IV-B, Title IV-D, Title IV-E, Title XX of the
12 federal Social Security Act, 7 United States Code (U.S.C.)
13 2011 et seq., 42 U.S.C. 9858 et seq., 42 U.S.C. 5101 et seq.,
14 42 U.S.C. 5116 et seq., 42 U.S.C. 10401 et seq.; or any state
15 tax debt collected under Title 40 of the Code of Alabama 1975,
16 as amended; or, any sums due on account of overpaid
17 unemployment compensation benefits or unpaid contributions or
18 reimbursements pursuant to Chapter 4 of Title 25 of the Code
19 of Alabama 1975.

20 (4) "Department" means the Alabama Department of
21 Revenue.

22 (5) "Delinquent debt" means a final debt that is
23 sixty days or more past due.

24 (6) "Final" means the amount due is no longer
25 negotiable and the debtor has no further right of
26 administrative or judicial review.

1 (7) "Office" means the Office of Debt Recovery
2 within the Department of Revenue.

3 (8) "Commissioner" means the Commissioner of the
4 Department of Revenue.

5 Section 3. (a) Notwithstanding any other provision
6 of law to the contrary, in addition to any duties, powers, or
7 responsibilities otherwise conferred, the Commissioner,
8 through the Office of Debt Recovery, shall collect and enforce
9 certain delinquent debts due to state agencies according to
10 rules promulgated by the department.

11 (b) (1) Beginning January 1, 2015, state agencies
12 shall refer all delinquent debts to the office as provided by
13 rule. Such referrals shall include data and information in the
14 required format necessary to institute collection procedures.
15 All debts must be final and authenticated by the state agency
16 prior to being referred to the office.

17 (2) After transferring the debt to the office for
18 collection, the referring state agency or political
19 subdivision shall terminate all collection activities with
20 respect to that debt except to provide assistance to the
21 office as may be requested. The department shall notify the
22 debtor by letter, within fifteen days of receiving the
23 referral, that such debt has been referred to the office for
24 collection. Upon receipt of the debt referral, the office
25 shall assume all liability for its action without the recourse
26 to the agency or political subdivision and shall comply with

1 all applicable state and federal laws governing the collection
2 of debt.

3 (c) The office may collect delinquent debts owed to
4 political subdivisions that are not statewide political
5 subdivisions, pursuant to a formal agreement with the
6 department.

7 (d) At the discretion of the Commissioner, the
8 department may contract with the Attorney General's office or
9 a third-party collection contractor for the collection of
10 delinquent debt on behalf of the office. However, any contract
11 entered into by the Commissioner for the collection of
12 delinquent debt on behalf of the state shall be subject to
13 review by the Contract Review Committee. Additionally, the
14 Examiners of Public Accounts shall have authority to conduct
15 audits of such contracts in accordance with the law.

16 (e) If, in the course of collecting delinquent debt,
17 the Commissioner determines that the office requires the
18 additional assistance of legal counsel, the Commissioner shall
19 first seek assistance from the Office of the Attorney General.
20 If the Office of the Attorney General is unable to or declines
21 to offer legal counsel, the Commissioner is authorized to
22 contract with a third-party for such services. However, any
23 contract entered into by the Commissioner for legal services
24 shall be subject to review by the Contract Review Committee.
25 Additionally, the Examiners of Public Accounts shall have
26 authority to conduct audits of such contracts in accordance
27 with the law.

1 (f) (1) Notwithstanding any law to the contrary, the
2 Commissioner may treat a delinquent debt referral in the same
3 manner as an assessment that has become final without
4 restriction or delay. The Commissioner, through the office,
5 may use any collection remedy provided by state law to
6 facilitate the collection of taxes to collect the delinquent
7 debt. The office may use a participating agency's or political
8 subdivision's statutory collection authority to collect the
9 participating agency's or political subdivision's delinquent
10 debts owed to or being collected by the state. The office may
11 also used authority granted in Sections 40-18-100 et seq.,
12 Code of Alabama 1975, regarding offset from income tax refunds
13 or other accounts payable by the state for any delinquent debt
14 transferred by the state agencies or political subdivisions.
15 The Commissioner has the discretion to determine which method
16 or combination thereof is most suitable to collect delinquent
17 debt.

18 (2) The department and the office may establish and
19 use an electronic financial institution data match system
20 established under the provisions of this act for comparison of
21 certain account information held by financial institutions
22 with the department and office's databases of state tax and
23 state nontax debtors against whom an assessment or judgment
24 for debt owed to the state has become final.

25 (g) (1) The Office shall apply advanced statistical
26 and analytical methods to the debtor information to prioritize
27 debt case load, to identify the most cost-effective collection

1 remedy provided by state law, and to consolidate debtor
2 information across state agencies in an efficient manner. The
3 Office shall apply such methods to debtor information on a
4 periodic basis, not to exceed quarterly. The Office may apply
5 statistical optimization methods to assign cases to employees.

6 (2) The Office shall complete the initial advanced
7 statistical analysis no later than September 30, 2014. The
8 Office shall prepare and submit a written report of the
9 initial analysis to the Joint Fiscal Committee no later than
10 October 31, 2014.

11 Section 4. (a) The office shall charge the debtor a
12 fee not to exceed twenty-five percent of the total liability
13 of the delinquent debt. Fees collected under this section
14 shall be retained by the office after the debt is collected
15 and after all of the expenses incurred in the initial
16 establishment of the office are paid.

17 (b) (1) Monies collected by the office pursuant to
18 the provisions of this section shall be transferred to the
19 referring agency within thirty days after the end of the month
20 in which the monies were collected and shall be used by such
21 agency as they would have been had they been timely collected.

22 (2) Upon the transfer of any monies owed to a state
23 agency by the office, the agency shall be required, if
24 necessary, to use the monies transferred to satisfy any
25 federal reimbursement requirements. However, in no case shall
26 the amount of monies transferred to any state agency exceed

1 the actual amount of delinquent debt monies collected by the
2 Office of Debt Recovery on behalf of the state agency.

3 Section 5. Notwithstanding any law to the contrary,
4 state agencies shall be authorized to transmit data to the
5 Office of Debt Recovery deemed necessary by the Commissioner
6 to aid in the collection efforts of the office. The
7 Commissioner shall establish a centralized electronic debt
8 registry to compile and consolidate the information provided
9 by state agencies and participating political subdivisions and
10 shall maintain all information provided from all sources
11 within the state concerning addresses, financial records, and
12 any other information useful in assisting the office in
13 collection services of the centralized registry. The data
14 compiled in the registry from the department, referring
15 agencies, and the office shall be available for
16 cross-referencing, for consolidation of multiple debts for a
17 single debtor, and for the identification and prioritization
18 of debtors necessary for the collection of delinquent debt.
19 However, all data, records, and files utilized for debt
20 collection as provided herein shall be deemed confidential and
21 privileged, and no person shall divulge or disclose any
22 information obtained from such records and files except in the
23 administration and enforcement of these provisions.
24 Compilation of tax data in the electronic registry by the
25 department shall not be a violation of state law, and any
26 information or data gathered by the department and the office

1 in accordance with the law may be used for purposes of
2 collecting tax and nontax debt.

3 If, in the course of collecting delinquent debt, the
4 Commissioner determines that a debt is no longer collectable,
5 the Commissioner shall have the authority to remove the debt
6 from the centralized electronic debt collection registry. The
7 Commissioner shall remove a debt no sooner than five years
8 after the debt is referred to the Office of Debt Recovery.
9 Upon removal of a debt from the registry, the Commissioner
10 shall publish the debtor name, debt amount, reason for
11 removal, and other data determined by the Commissioner to be
12 appropriate to communicate the removal action.

13 Section 6. The Commissioner may enter into one or
14 more reciprocal collection and/or offset of indebtedness
15 agreements with the federal government, pursuant to which the
16 state shall agree to offset from state tax refunds and
17 payments otherwise due to vendors and contractors providing
18 goods or services to state agencies, non-tax debt owed to the
19 federal government, and the federal government shall agree to
20 offset from federal payments to vendors, contractors, and
21 taxpayers, debt owed to the state.

22 Section 7. The operations of the office shall be
23 subject to annual review by the Commissioner.

24 Section 8. (a) There is hereby created in the state
25 treasury a special fund to be known as the Debt Recovery Fund,
26 which shall be used exclusively for the operations of the
27 Office of Debt Recovery within the Department of Revenue. This

1 fund may receive general fund appropriations. All unobligated
2 amounts remaining in this special fund at the end of any
3 fiscal year of the State of Alabama shall remain in this
4 special fund and be available for use for the operations of
5 the office. No funds shall be expended for any purposes
6 whatsoever unless the same have been allotted and budgeted in
7 accordance with the provisions of Article 4 of Chapter 4 of
8 Title 41, Code of Alabama, 1975, and only in amounts and for
9 the purposes provided by the Legislature in the general
10 appropriation bill or as otherwise provided by statute. The
11 unobligated balance of the fund shall be invested by the State
12 Treasurer for the benefit of the fund. Any interest earnings
13 on the fund shall be credited only to the fund.

14 (b) Should the funds provided to the office through
15 the Debt Recovery Fund be insufficient to properly operate the
16 office, the Commissioner shall request a sufficient
17 appropriation from any state funds.

18 Section 9. (a) A financial institution or its
19 processor shall provide to the department or the office, the
20 name, record address, social security number or other taxpayer
21 identification number, any other identifying information, and
22 an average daily account balance for the most recent
23 thirty-day period, for each calendar quarter for each account
24 owner who maintains an account at such institution and who the
25 office purports is a tax or nontax debtor.

1 (b) For purposes of this section, the following
2 words or phrases shall have the following meanings unless the
3 context clearly indicates otherwise:

4 (1) "Account" shall mean any money held in the name
5 of an account owner, individually or jointly with another,
6 including but not limited to a deposit account, demand
7 account, savings account, negotiable order of withdrawal
8 account (NOW account), share account, member account, time
9 certificate of deposit, or money market account. "Account"
10 shall not include money held by a financial institution where
11 the tax or nontax debtor is listed in a capacity other than
12 owner, such as custodian, tutor, or agent.

13 (2) "Financial institution" shall mean a state or
14 federally chartered bank, savings bank, savings and loan
15 association, or credit union operating in this state with a
16 main office or one or more branch offices.

17 (3) "Nontax debtor" shall mean individual against
18 whom an assessment or judgment for a debt owed to the state
19 has become final and is currently enforceable in accordance
20 with the law.

21 (4) "Tax debtor" shall mean an individual against
22 whom an assessment or judgment for state taxes payable has
23 become final and is currently enforceable in accordance with
24 law.

25 (c)(1) If a financial institution or its processor
26 has a current data match system developed or used to comply
27 with the child support data match system provided for in

1 Sections 30-3-190 et seq., Code of Alabama 1975, the financial
2 institution or its processor may use that system to comply
3 with the provisions of this section. The office shall not
4 require a financial institution or its processor to change
5 their data match system or file format established under
6 Sections 30-3-190 et seq., Code of Alabama 1975 in order to
7 comply with this section.

8 (2) For Alabama domiciled financial institutions
9 having no branch offices outside the state, the office or its
10 data match vendor shall ensure that compliance with both the
11 provisions of this section and Sections 30-3-190 et seq., Code
12 of Alabama 1975 may be accomplished with a single data match
13 file. Alabama domiciled institutions having no branch offices
14 outside the state, or their processor, shall not be required
15 to process multiple data match files to comply with this
16 section.

17 (d) A financial institution may, but is not required
18 to, disclose to its depositors or account holders that the
19 department or the office has the authority to request and
20 receive certain identifying information provided for in this
21 section for state tax and nontax debt collection purposes.

22 (e) (1) No financial institutions, including its
23 directors, officers, employees, attorneys, accountants, or
24 other agents, shall incur liability to any person, including
25 any depositor or other customer, as a result of providing
26 account information to the department or office in compliance

1 with a request that conforms to the provisions of this
2 section.

3 (2) A financial institution, including any of its
4 directors, officers, employees, attorneys, accountants, or
5 other agents, shall not be civilly or criminally liable to any
6 person, including any customer, for any disclosure of
7 information made in accordance with this section, including
8 any disclosure of account balances.

9 (f)(1) Notwithstanding any other law or rule to the
10 contrary, the department or office shall pay a participation
11 fee to each financial institution that actually receives a
12 data match request file. The participation fee to a financial
13 institution shall be for actual costs incurred for conducting
14 the data match and otherwise complying with the provisions of
15 this section. Actual costs incurred for complying with this
16 section shall be the total cost incurred by the financial
17 institution to process all data match request files under
18 Sections 30-3-190 et seq., Code of Alabama 1975. In order to
19 receive the participation fee authorized by this section, the
20 financial institution must be FDIC insured.

21 (2) Before a financial institution receives a
22 participation fee, the financial institution must show it has
23 incurred costs under Sections 30-3-190 et seq., Code of
24 Alabama 1975 and this section. The department or office may
25 require a financial institution to submit paperwork such as
26 invoices and other documentation to substantiate the costs
27 that have been incurred. After actual costs are established by

1 a financial institution under paragraph (1) of this subsection
2 through submitted paperwork, the office shall automatically
3 remit payment to the financial institution on a quarterly
4 basis without the financial institution having to resubmit
5 additional paperwork each quarter thereafter. However, the
6 office may request additional paperwork from a financial
7 institution on a periodic basis, not to exceed once every two
8 years, to verify their actual costs in complying with this
9 section.

10 (3) Notwithstanding any other law or rule to the
11 contrary, if a financial institution assesses a fee to its
12 customers for processing a state tax or state nontax levy
13 received from the office or the department, the fee shall be
14 collected by the financial institution from the proceeds of
15 the customer's account before any account proceeds are
16 remitted to the office or the department to satisfy the state
17 tax or state nontax levy.

18 (4) Any fees paid under this section shall not be
19 comprised of or constitute any amounts due to a financial
20 institution for its compliance with Sections 30-3-190 et seq.,
21 Code of Alabama 1975. The department or office shall be
22 responsible for the reconciliation and tracking of data and
23 information regarding the number of sent data match request
24 files, received completed data match accounts, and amounts
25 paid in accordance with this section. The department shall
26 also be responsible for tracking and reporting all statistical
27 information regarding financial data match activities to the

1 Commissioner, or his or her designee, every six months and to
2 report the information to the Joint Fiscal Committee every
3 session prior to the last day of each legislative session.

4 Section 10. (a) The department, office, and their
5 designated vendor for the data match program, shall keep all
6 information received from financial institutions pursuant to
7 this section confidential, and any employee, agent, or
8 representative of the department, office, and their designated
9 vendor is prohibited from disclosing that information to any
10 third party.

11 (b) The department or office shall generally conduct
12 the data match program provided for in this section on a
13 quarterly basis. However, if the department or office decides
14 to conduct data match with a particular financial institution
15 less frequently than every quarter, the department or office
16 shall provide written notice to the Chief Operating Officer of
17 the financial institution at least ninety days before the next
18 scheduled quarterly data match date. If the department or
19 office provides the required notice to change the frequency of
20 data match, the department or office shall not further change
21 the frequency of data match with that financial institution
22 for at least one year from the date written notice was
23 provided to the financial institution originally changing the
24 frequency of the data match schedule. After the one year
25 period has accrued, any subsequent changes to the frequency of
26 the data match schedule with a financial institution shall
27 also only be done by the department or office after providing

1 written notice to the Chief Operating Officer of the financial
2 institution at least ninety days in advance of the next
3 quarterly data match date.

4 Section 11. The Commissioner shall promulgate rules
5 and regulations in accordance with the Administrative
6 Procedure Act to implement the provisions of this act,
7 including establishing a voluntary disclosure program and the
8 remittance or waiver of any portion of penalties provided for
9 in this act, rules authorizing any reasonable procedure or
10 requirement for agencies or political subdivisions referring
11 delinquent debt to the department for collection, requirements
12 regarding information necessary to collect the debt and the
13 formatting of that information, and the priority or ranking of
14 debt payments against multiple agency debts. Any rule
15 promulgated by the department shall be construed in favor of
16 the Commissioner.

17 Section 12. The provisions of this act are
18 severable. If any part of this act is declared invalid or
19 unconstitutional, that declaration shall not affect the part
20 which remains.

21 Section 13. This act shall become effective July 1,
22 2014 following its passage and approval of this act by the
23 Governor, or its otherwise becoming law.