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3 SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR SB428
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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

1 court or has an outstanding writ of arrest or alias
2 warrant.

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4 A BILL
5 TO BE ENTITLED
6 AN ACT
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8 To amend Sections 16-25-23 and 36-27-28, Code of
9 Alabama 1975, to provide that certain pension, annuity, or
10 retirement allowance benefits under the Teachers' Retirement
11 System and the Employees' Retirement System are subject to
12 certain recovery action; allow the court and certain licensing
13 authorities to revoke or suspend certain licenses; to provide
14 for notice and hearing under certain conditions; to provide
15 for restoration of the license; and to amend Section
16 12-17-225.2, Code of Alabama 1975, to further provide for the
17 notice requirements to the district attorney relating to
18 certain court ordered financial obligations.

19 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

22 "§16-25-23.

23 "(a) The Except as provided in subsection (b), the
24 right of a person to a pension; an annuity, or a retirement
25 allowance; to the return of contributions; the pension,
26 annuity or retirement allowance itself; any optional benefit

1 or any other right accrued or accruing to any person under the
2 provisions of this chapter; and the ~~moneys~~ monies in the
3 various funds created by this chapter are hereby exempt from
4 any state or municipal tax and exempt from levy and sale,
5 garnishment, attachment or any other process whatsoever, and
6 shall be unassignable except as in this chapter specifically
7 otherwise provided.

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

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

15 "b. The person subject to the order is a retiree or
16 beneficiary who is currently receiving benefits from the
17 Teachers' Retirement System.

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

20 "(2) If the requirements of subdivision (1) are met,
21 and upon motion filed by the district attorney, the circuit or
22 district court judge may order that the Teachers' Retirement
23 System pay to the circuit clerk of the court no more than 25
24 percent of the retiree's or beneficiary's gross monthly
25 benefit less any deductions for child support or health
26 insurance for any dependents, to be applied to the balance of

1 the restitution, fines, court costs, fees, or other financial
2 obligations ordered in the criminal case.

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

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

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

9 "c. The amounts of restitution, fines, court costs,
10 fees, or any other financial obligations owed, detailed
11 individually.

12 "d. The relevant case numbers.

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

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

15 "g. That the restitution, fines, court costs, fees,
16 or other financial obligations are payable as a result of a
17 criminal disposition.

18 "h. The amount or the percentage of funds to be
19 paid.

20 "(4) The district attorney must notify the court
21 whenever the restitution, fines, court costs, fees, or other
22 financial obligations are paid in full. Thereafter, the court
23 shall issue an order to stop the diversion of the individual's
24 funds. Any payment received by the circuit clerk in an amount
25 over what was owed shall be paid back to the Teachers'
26 Retirement System within 60 days with the specific identifying

1 information as to the retiree or the beneficiary to whom it is
2 owed.

3 "§36-27-28.

4 "(a) The Except as provided in subsection (b), the
5 right of a person to a pension, an annuity, a retirement
6 allowance or to the return of contributions, the pension,
7 annuity or retirement allowance itself and any optional
8 benefit or any other right accrued or accruing to any person
9 under the provisions of this article and the moneys in the
10 various funds created by this chapter are hereby exempt from
11 any state or municipal tax and exempt from levy and sale,
12 garnishment, attachment or any other process whatsoever and
13 shall be unassignable except as in this article specifically
14 otherwise provided.

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

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

22 "b. The person subject to the order is a retiree or
23 beneficiary who is currently receiving benefits from the
24 Employees' Retirement System.

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

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

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

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

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

16 "c. The amounts of restitution, fines, court costs,
17 fees, or any other financial obligations owed, detailed
18 individually.

19 "d. The relevant case numbers.

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

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

22 "g. That the restitution, fines, court costs, fees,
23 or other financial obligations are payable as a result of a
24 criminal disposition.

25 "h. The amount or the percentage of funds to be
26 paid.

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

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

12 (1) COURT. A court of competent jurisdiction having
13 the authority to issue and enforce court orders in a criminal
14 case.

15 (2) DELINQUENT OR DELINQUENCY. The failure to make a
16 court ordered payment on restitution, fines, court costs,
17 fees, or any other financial obligations ordered by a court in
18 a criminal case for a period of more than 90 days.

19 (3) LICENSE. Any license, certificate, registration,
20 or authorization issued by a licensing authority which grants
21 a person a right or privilege to engage in an occupational,
22 professional, sporting, or recreational activity, or to
23 operate a motor vehicle.

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

1 (b) Upon a finding by the court that a defendant is
2 delinquent in any criminal case or has an outstanding writ of
3 arrest or alias warrant for a failure to appear in court in
4 any criminal case, the court may revoke or suspend the
5 defendant's driver's license, hunting license, fishing
6 license, or concealed carry pistol permit. This action does
7 not require a hearing, and may be done upon motion of the
8 state or upon motion of the court.

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

15 (2) A motion by the state may be served upon the
16 defendant personally, by certified mail, or by mail to the
17 last known address of the defendant or, if the case has not
18 been disposed of, served upon the defendant's attorney. The
19 motion shall state that the state is moving to withhold,
20 restrict use of, revoke, or suspend the defendant's license or
21 licenses based on delinquency or a writ of arrest or alias
22 warrant being issued due to failure to appear in court. The
23 license or licenses that are subject to this action pursuant
24 to this section shall be set out in the motion.

25 (d) A hearing date shall be set within 60 days of
26 the filing of the motion set out in subsection (c). At the

1 hearing, upon the court being reasonably satisfied that the
2 defendant is delinquent or that a writ of arrest or alias
3 warrant was issued for a failure to appear in court, the court
4 may withhold, restrict use of, revoke, or suspend any license
5 or licenses issued by a licensing authority. The court may
6 take action without the presence of the defendant if the state
7 establishes that the motion was served upon the defendant
8 personally, by certified mail, or by mail to the last known
9 address of the defendant or, if the case has not been disposed
10 of, served upon the defendant's attorney.

11 (e) For any license that is withheld, restricted,
12 revoked, or suspended pursuant to subsection (b) or (c), the
13 court shall send a notice to the licensing authority
14 instructing it to withhold, restrict use of, revoke, or
15 suspend the defendant's license. A determination of the court
16 is independent of any proceeding of the licensing authority to
17 withhold, restrict use of, suspend use of, revoke, renew, or
18 issue a license. Any process currently in place by a court or
19 circuit clerk's office to notify a licensing authority of a
20 revocation or suspension of a license may continue to be used.

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

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

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

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

6 (g) Upon receipt of an order from the court to
7 withhold, restrict use of, revoke, or suspend a license, a
8 licensing authority shall implement the withholding,
9 restricted use, revocation, or suspension of the license by
10 doing all of the following:

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

13 (2) Entering the withholding, restriction,
14 revocation, or suspension on the appropriate records.

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

17 (h) An order issued by the court to withhold,
18 restrict use of, revoke, or suspend a license shall be
19 processed by the licensing authority without any additional
20 review or hearing by the licensing authority. The licensing
21 authority shall have no jurisdiction to modify, reword,
22 reverse, vacate, or stay the decision of the court.

23 (i) Any order issued by the court to withhold,
24 restrict use of, revoke, or suspend a license continues until
25 the court notifies the licensing authority that the decision
26 to withhold, restrict use of, revoke, or suspend has been

1 stayed or is no longer in effect. While the court's order is
2 in effect, the licensing authority may not issue, reissue, or
3 renew the defendant's license.

4 (j) The licensing authority is exempt from any
5 liability to the licensee for activities conducted in
6 compliance with this section.

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

16 (l) Notwithstanding any other provision of law, the
17 licensing authority may charge the defendant a fee to cover
18 administrative costs incurred by the licensing authority in
19 carrying out this section to be used exclusively by the
20 licensing authority for the purpose of administering this
21 section. In the event that a license is withheld, its use
22 restricted, revoked, or suspended, any money paid by the
23 defendant to the licensing authority for costs related to its
24 issuance, reissuance, renewal, or maintenance may not be
25 refunded to the defendant.

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

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

7 Section 3. Section 12-17-225.2, Code of Alabama
8 1975, is amended to read as follows:

9 "§12-17-225.2.

10 "The court or the clerk of the court shall notify
11 the district attorney in writing when any bail bond
12 forfeitures, court costs, fines, penalty payments, crime
13 victims' restitution, or victims' compensation assessments or
14 like payments in any civil or criminal proceeding ordered by
15 the court to be paid to the state or to crime victims have not
16 been paid or are in default and the default has not been
17 vacated. Upon written notification to the district attorney,
18 the restitution recovery division of the office of the
19 district attorney may collect or enforce the collection of any
20 funds that have not been paid or that are in default which,
21 under the direction of the district attorney, are appropriate
22 to be processed. In no event shall a court or court clerk
23 notify the district attorney in less than 90 days from the
24 date the payments are due to be paid in full or from the date
25 of the last court ordered payment made, and in no event shall
26 a court or court clerk notify the district attorney later than

1 270 days from the date that the court ordered payment is due
2 to be paid in full or from the date that the last court
3 ordered payment was made. Payments of amounts that do not meet
4 the requirements of the court order or that are less than the
5 monthly court ordered amount shall not extend the notification
6 period. Such notification shall not be prevented or
7 prohibited."

8 Section 4. The provisions of this act are severable.
9 If any part of this act is declared invalid or
10 unconstitutional, that declaration shall not affect the part
11 which remains.

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