

Regular Session, 2010

SENATE BILL NO. 130

BY SENATOR MORRELL

SOCIAL SERVICES DEPT. Provides for collection of child support by private party agencies. (gov sig)

1 AN ACT

2 To enact R.S. 46:236.1.5(D) and Chapter 13-D of Title 51 of the Louisiana Revised Statutes

3 of 1950, to be comprised of R.S. 51:1441 through 1449, relative to child support; to

4 provide relative to the collection of child support through private party child support

5 collection agencies; to provide for definitions; to provide for the regulation of

6 services of private party child support collection agencies; to provide relative to

7 prohibited practices and penalties; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 46:236.1.5(D) is hereby enacted to read as follows:

10 §236.1.5. Family and child support programs; FITAP; other service recipients;

11 rights; responsibilities

12 * * *

13 **D. No applicant or recipient who has accepted FITAP for or on behalf**

14 **of himself or another individual shall be permitted to enter into a contract for**

15 **the collection of support pursuant to R.S. 51:1441 et seq. Any such contract**

16 **shall be considered a violation of public policy and shall be void.**

17 Section 2. Chapter 13 -B of Title 51 of the Louisiana Revised Statutes of 1950,

1 comprised of R.S. 51:1441 through 1449, is hereby enacted to read as follows:

2 CHAPTER 13-B. LOUISIANA CHILD SUPPORT

3 COLLECTION PROTECTION ACT

4 §1441. Short title

5 This Chapter shall be known and may be cited as the "Louisiana Child
6 Support Collection Protection Act".

7 §1442. Definitions

8 As used in this Chapter, the following words and phrases shall have the
9 following meanings:

10 (1) "Arrears" or "arrearages" means amounts of past due and unpaid
11 monthly support obligations established by a court order issued by any court
12 of this state or another state, including any judgment or order issued in
13 accordance with an administrative procedure established by state law that
14 affords substantial due process and is subject to judicial review, or any other
15 judgment created by operation of any state law.

16 (2) "Child support" means any amount required to be paid pursuant to
17 a court order issued by any court of this state or another state, including any
18 judgment or order issued in accordance with an administrative procedure
19 established by state law that affords substantial due process and is subject to
20 judicial review.

21 (3) "Contract" means a contract or agreement, as described in R.S.
22 51:1444, pursuant to which a private child support collection agency agrees to
23 perform support enforcement services for an obligee for a fee or other
24 compensation.

25 (4) "Department" means the Department of Social Services, office of
26 family support, support enforcement services.

27 (5) "FITAP" means Family Independence Temporary Assistance
28 Program.

29 (6) "Obligee" means an individual who is owed child support under a

1 child support order and who has entered or may enter into a contract with a
2 collection agency.

3 (7) "Obligor" means a resident of this state who is identified in an order
4 of support issued by a court or other tribunal as required to make child support
5 payments.

6 (8) "Order of support" or "child support order" means any judgment
7 or order for the support of dependent children issued by any court of this state
8 or another state, including any judgment or order issued in accordance with an
9 administrative procedure established by state law that affords substantial due
10 process and is subject to judicial review.

11 (9)(a) "Private child support collection agency" or "collection agency"
12 means an individual or nongovernmental entity that solicits and contracts
13 directly with obligees to provide child support collection services for a fee or
14 other compensation.

15 (b) For the purposes of this chapter, the following persons or entities are
16 not considered a private child support collection agency:

17 (i) The department or any government agency providing services in
18 accordance with Title IV-D of the Social Security Act and corresponding state
19 laws and regulations;

20 (ii) An attorney duly licensed to practice law in the state of Louisiana if
21 such an attorney meets one of the following:

22 (aa) Is not employed by a private child support collection agency.

23 (bb) Does not derive a substantial portion of his business from the
24 collection or enforcement of child support. As used in this Subitem,
25 "substantial" means that at least fifty percent of the attorney's business, either
26 in terms of remuneration or time spent, is comprised of the activity of seeking
27 to collect or enforce child support obligations for other individuals.

28 (iii) A collection agency that performs support enforcement services
29 while under contract with the department to provide such services in

1 accordance with Title IV-D of the Social Security Act and corresponding state
2 laws and regulations.

3 (iv) A public officer, judicial officer, receiver, or trustee acting under the
4 order of a court.

5 (10) "Support services" and "support enforcement services" means:

6 (a) Any action taken by the Department of Social Services, upon receipt
7 of an application or referral for services or a request made under the Uniform
8 Interstate Family Support Act, in accordance with the federal requirements of
9 Title IV-D of the Social Security Act and corresponding state laws and
10 regulations without regard to whether there is any existing court order,
11 delinquency, or presumption of paternity.

12 (b) A service, including related financial accounting services, performed
13 directly or indirectly for the purpose of causing a payment required, or
14 allegedly required, by an order of support to be made to the obligee to whom
15 the payment is owed or to an agent of that individual.

16 §1443. Registration

17 Any private child support collection agency intending to provide support
18 enforcement services to an obligee who is a resident of this state or collect any
19 child support or arrearages from an obligor shall:

20 (1) Register with the secretary of state and provide information as
21 requested by the secretary of state, including but not limited to the name of the
22 private child support collection agency, the office address and telephone
23 number for such entity, and the registered agent in this state on whom service
24 of process is to be made in a proceeding against such private child support
25 collection agency.

26 (2) Provide with the registration information:

27 (a) A surety bond filed, held, and approved by the secretary of state.
28 The surety bond shall be issued by a surety authorized to do business in this
29 state in the amount of fifty thousand dollars in favor of the state for the benefit

1 of a person damaged by a violation of this Chapter, and conditioned on the
2 private child support collection agency's compliance with this Chapter and the
3 faithful performance of the obligations under the private child support
4 collection agency's agreements with its clients.

5 (b) A deposit of money in the amount of fifty thousand dollars may be
6 made in lieu of the surety bond. The secretary of state shall deposit any
7 amounts received under this Chapter in an insured depository account.

8 §1444. Contracts between obligees and private child support collection
9 agencies; contents; provisions

10 A. Any contract for the collection of child support between a private
11 child support collection agency and an obligee shall be in writing, in at least
12 ten-point font or the equivalent, and dated and signed by the obligee and an
13 authorized representative of the collection agency. The contract shall be
14 delivered to the obligee in paper form that the obligee may retain for his
15 records. The contract shall include:

16 (1) A clear description of the child support enforcement services that
17 may be provided pursuant to the contract.

18 (2) An explanation of the amount to be collected from the obligor by the
19 private child support collection agency and a statement of a sum certain of the
20 total amount that is to be collected by the private child support collection
21 agency that has been engaged by the obligee.

22 (3) An explanation in dollar figures of the maximum amount of fees
23 which could be collected under the contract and an example of how the fees are
24 calculated and deducted.

25 (4) A statement that fees shall only be charged for collecting past due
26 child support, even if the contract includes provisions to collect current and past
27 due child support.

28 (5) A statement that a private child support collection agency shall not
29 retain fees from collections that are primarily attributable to the actions of the

1 department and that a private child support collection agency shall be required
2 by law to refund any fees improperly retained to the appropriate party.

3 (6) An explanation of the opportunities available to the obligee or
4 private child support collection agency to cancel the contract or other
5 conditions under which the contract terminates.

6 (7) The mailing address, street address, telephone numbers, facsimile
7 numbers, and Internet address or location of the collection agency and any
8 agents who assist the collection agency in providing support enforcement
9 services.

10 (8) A statement that the private child support collection agency shall
11 only collect money owed to the obligee and not child support assigned to the
12 state of Louisiana.

13 (9) A statement that the private child support collection agency is not a
14 government agency and is not affiliated with any government agency and that
15 the department provides support enforcement services at little or no cost to the
16 obligee.

17 (10) A statement that the obligee may continue to receive, or may
18 pursue, support enforcement services through the department, and the private
19 child support collection agency will not require or request that the obligee cease
20 or refrain from engaging those services.

21 (11) A provision that the collection agency cannot alienate, encumber,
22 sell or assign any rights to the contract to a third party. This shall include using
23 the contract as collateral to secure any debt owed by the collection agency to a
24 third party.

25 (12) A copy of any other document the collection agency requires the
26 obligee to sign.

27 (13) A notice that the private child support collection agency is required
28 to keep and maintain case records for a period of two years after the
29 termination of the contract and may thereafter destroy or otherwise dispose of

1 the records. The obligee may, prior to destruction or disposal, retrieve his
2 entire record.

3 (14) The expected duration of the contract, stated as a length of time or
4 as an amount to be collected by the collection agency.

5 (15) An explanation of the opportunities available to the obligee or
6 private child support collection agency to cancel the contract or other
7 conditions under which the contract terminates. This explanation shall be
8 attached to the contract as an addendum written in the same size font as the
9 contract and contain all of the provisions included in Subsection D of this
10 Section. The explanation shall be signed and dated by the obligee.

11 B. A private child support enforcement service contract shall not
12 include:

13 (1) A requirement, as a condition of providing services to the obligee,
14 that the obligee waive any right or procedure provided for in any state law
15 regarding the right to file and pursue a civil or criminal action, or that the
16 obligee agree to resolve disputes in a jurisdiction outside of the obligee's state
17 of residence or to the application of laws other than those of the obligee's state
18 of residence. Any waiver, including but not limited to an agreement to arbitrate
19 or regarding choice of forum or choice of law, that is required as a condition of
20 doing business with the private child support collection agency shall be
21 presumed against public policy and unenforceable.

22 (2) A clause that requires the obligee to change the payee or redirect
23 child support payments that would otherwise be payable to the obligee, the
24 department or other agency administering a state plan approved under Title
25 IV-D of the Social Security Act and corresponding state laws and regulations,
26 or a state disbursement unit, if payment is ordered to be made through a state
27 disbursement unit.

28 (3) A clause that requires the obligee to close, or not open, a child
29 support case with the department or other agency administering a state plan

1 approved under Title IV-D of the Social Security Act and corresponding state
2 laws and regulations.

3 (4) A clause that requires the obligee to waive his or her rights to review
4 and consent to any modification of a contract entered into by the obligee.

5 (5) A clause that prohibits the termination of a contract for the
6 collection of child support payments until arrears are paid.

7 (6) Any provision requesting or requiring an obligee to waive the right
8 of the obligee to accept a settlement offer.

9 C. A private child support enforcement contract may not be modified
10 by subsequent agreement unless the obligee has signed the subsequent
11 agreement after receiving a written copy of the modifications.

12 D. In addition to any other cancellation or termination provisions
13 provided in the contract between a private child support collection agency and
14 an obligee, the contract shall be cancelled or terminate if:

15 (1) The obligee requests cancellation in writing within thirty days of
16 signing the contract.

17 (2) No payment of child support has been collected by such debt
18 collection agency for a period of six consecutive months.

19 (3) The private child support collection agency breaches any term of the
20 contract or violates any provision contained in this Chapter.

21 (4) The contract term has expired or the contract amount has been
22 collected, whichever occurs first.

23 **§1445. Duties of private child support collection agencies**

24 **A private child support collection agency shall:**

25 **(1) Enter into a written contract with a child support obligee before**
26 **providing support enforcement services. The provisions of the contract shall**
27 **conform to R.S. 51:1444.**

28 **(2) Have an affirmative duty to act as a trustee and fiduciary for the**
29 **benefit of the obligee.**

1 (3) Advise an obligee before entering into a contract with him that the
2 obligee is under no obligation to hire a private child support collection agency
3 to collect child support payments on the obligee's behalf.

4 (4) Provide the obligee and the department, when the department is
5 providing support enforcement services to the obligee, with an accounting of
6 any money collected and forwarded to the obligee as child support or
7 arrearages every thirty days until the collection agency ceases all collection
8 activity. The statement shall be sent by first class mail by the collection agency.
9 The statement shall contain all of the following information:

10 (a) The name of, and any other identifying information relating to, any
11 obligor who made child support payments collected by the private child support
12 collection agency.

13 (b) The amount of support collected by the private child support
14 collection agency.

15 (c) The date on which each amount was received by the private child
16 support collection agency.

17 (d) The date on which each amount received by the private child support
18 collection agency was sent to the obligee.

19 (e) The amount of the payment sent to the obligee.

20 (f) The source of payment of support collected and the actions
21 affirmatively taken by the private child support collection agency that resulted
22 in the payment.

23 (g) The amount and percentage of each payment kept by the private
24 child support collection agency as its fee.

25 (h) A copy of all correspondence, both paper and electronic, sent or
26 received by the collection agency during the preceding thirty days. This
27 provision shall not apply to correspondence required by law to be kept
28 confidential.

29 (5) Any private child support collection agency that collects child

1 support pursuant to a contract in accordance with R.S. 51:1444 shall forward
2 that portion of the collections due to the obligee within two days of receipt.

3 (6) Maintain records of all child support collections made on behalf of
4 an obligee. The records required under this Section shall be maintained by the
5 private child support collection agency for the duration of the contract plus a
6 period of two years after the termination of the contract. In addition to a copy
7 of the contract, the private child support collection agency shall maintain the
8 following:

9 (a) A copy of the order establishing the child support obligation under
10 which a collection was made by the private child support collection agency.

11 (b) Records of all correspondence between the private child support
12 collection agency and the obligee or obligor in a case.

13 (c) Any other pertinent information relating to the child support
14 obligation, including any case, cause, or docket number of the court having
15 jurisdiction over the matter and official government payment records obtained
16 by the private child support collection agency on behalf of and at the request of
17 the obligee.

18 (7) Safeguard case records in a manner reasonably expected to prevent
19 intentional or accidental disclosure of information contained therein pertaining
20 to the obligee or obligor, to anyone other than the obligee, obligor or the
21 department, including providing necessary protections for records maintained
22 in an automated system.

23 (8) Ensure that every person who contracts with a private child support
24 collection agency has the right to obtain copies of all files and documents, both
25 paper and electronic, in the possession of the private child support collection
26 agency for the information specified in this Paragraph regarding that obligee's
27 case that are not required by law to be kept confidential. The obligee shall be
28 provided reasonable access during regular business hours to originals and
29 copies of the files and records of the private child support collection agency

1 regarding all monies received, collection attempts made, fees retained or paid
2 to the private child support collection agency, and monies disbursed to the
3 obligee. The private child support collection agency may not charge a fee for
4 access to the files and records but may require the obligee to pay up to three
5 cents per page for the copies prior to their release. This fee shall not apply to
6 documents sent with a statement pursuant to Paragraph (4) of this Section.

7 (9) Convey any offer of settlement or compromise made by the obligor
8 to the obligee in writing.

9 (10) Maintain a separate bank account for child support funds collected
10 on behalf of obligees and keep such funds in the bank account until disbursed
11 to the appropriate obligee.

12 (11) Notwithstanding any other provision of this Chapter, including
13 provisions establishing a right of cancellation and requiring notice thereof, any
14 contract for the collection of child support between an attorney who meets the
15 definition of "private child support collection agency" pursuant to R.S.
16 51:1441(I) shall conform to the statutes, rules, and case law governing attorney
17 conduct.

18 §1446. Provision of support enforcement services by a private child support
19 collection agency; prerequisites

20 Before commencing support enforcement services, a private child
21 support collection agency shall:

22 (1) Obtain from the obligee:

23 (a) A certified copy of the order of support.

24 (b) A statement executed by the obligee under oath containing the
25 arrears balance and the dates during which the arrears balance accrued.

26 (c) Any judgments in existence at the time the contract is signed by the
27 obligee setting the arrears owed under the order of support in Subparagraph
28 (2)(a) of this Section.

29 (d) A statement executed by the obligee under oath stating that the

1 obligee is not receiving FITAP for, or on behalf of, himself or another
2 individual.

3 (2) Send the obligor a written notice no later than five days after the
4 obligee and collection agency sign the contract.

5 (a) The notice shall contain the following:

6 (i) The name of the obligee.

7 (ii) A statement of the amount of the child support arrears, including
8 any associated interest, late payment fee, or other charge authorized by law, and
9 of the amount of the current child support owed by the obligor to the obligee.

10 (iii) A statement that the collection agency assumes that the obligor owes
11 child support or arrears to the obligee and that the amounts owed as described
12 in the statement pursuant to this Paragraph are correct, unless the obligor
13 disputes the existence or amount of the child support obligation within thirty
14 days after receipt of the notice.

15 (iv) A statement that if, within the abovementioned thirty day period,
16 the obligor notifies the collection agency in writing that the obligor disputes the
17 existence or amount of the child support obligation or arrears, the collection
18 agency will cease efforts to collect the child support, subject to Subparagraph
19 (2)(b) of this Section, until the collection agency:

20 (aa) Obtains written verification of the existence or amount of the
21 obligation or arrears, unless the obligee has provided a judgment under
22 Subparagraph (1)(c) of this Section.

23 (bb) Mails to the obligor a copy of the verification or judgment.

24 (v) A statement that the arrears balance reflected does not include any
25 amounts owed to the department or any other state agency administering a state
26 plan approved under Title IV-D of the Federal Social Security Act, as amended.

27 (b) A statement made by a collection agency pursuant to Item (2)(a)(iv)
28 of this Section shall not affect the enforceability of a valid income-withholding
29 order or assignment issued by the department or any other state agency

1 administering a state plan approved under Title IV-D of the Federal Social
2 Security Act, as amended.

3 (3) The failure of an obligor to dispute the amount or existence of child
4 support or arrears pursuant to Item (2)(a)(iii) of this Section shall not be
5 construed as an admission of liability by the obligor.

6 §1447. Prohibited practices

7 For the purposes of this Chapter, any attempt to collect a child support
8 obligation or arrearage shall be deemed unfair, deceptive or unreasonable if the
9 collection agency:

10 (1) Attempts to collect child support or arrears from an obligor by any
11 threat, coercion or attempt to coerce, including, but not limited to:

12 (a) The use, or the express or implicit threat of use, of violence or other
13 criminal means, to cause harm to the person, reputation or property of any
14 person.

15 (b) The accusation or threat to accuse any person of fraud, of any crime,
16 or of any conduct which, if true, would tend to disgrace the other person or in
17 any way subject them to ridicule or contempt of society.

18 (c) False accusations made to another person, including any credit
19 reporting agency, that a person is willfully refusing to pay child support or
20 arrears, or the threat to make such false accusations.

21 (d) The threat that nonpayment of child support or arrears will result
22 in the arrest of any person, or of the taking of any other action requiring
23 judicial sanction, without informing the person that there must be in effect a
24 court order permitting the action before it can be taken.

25 (e) The threat to take any action prohibited by this Section or other law
26 regulating the conduct of a collection agency.

27 (2) Unreasonably oppresses or abuses any person in connection with the
28 attempt to collect any child support obligation or arrearage, including but not
29 limited to:

1 **(a) The use of profane or obscene language or language that is intended**
2 **to abuse the listener or reader.**

3 **(b) Causing a telephone to ring or engaging any person in telephone**
4 **conversation repeatedly or continuously, or at any time from nine o'clock p.m.**
5 **to 8 o'clock a.m. local time, or at times known to be inconvenient with the intent**
6 **to abuse, oppress or harass any person at the called number.**

7 **(c) Causing expense to any person in the form of long distance telephone**
8 **tolls, telegram fees or other charges incurred by a medium of communication**
9 **by concealment of the true purpose of the communication.**

10 **(3) Unreasonably publicizes information relating to any alleged child**
11 **support obligation or arrearage, including but not limited to:**

12 **(a) Communicating to any employer or his agent any information**
13 **relating to an obligor's indebtedness other than through proper legal action,**
14 **process or proceeding.**

15 **(b) Disclosing, publicizing or otherwise communicating any information**
16 **relating to a child support obligation or arrearage to any relative or family**
17 **member of the obligor, except through proper legal action or process or at the**
18 **written, express and unsolicited request of the obligor.**

19 **(c) Disclosing, publicizing or otherwise communicating any information**
20 **relating to an obligor's child support obligation or arrearage to any other**
21 **person other than a credit reporting agency, by publishing or posting any list**
22 **of persons, commonly known as "deadbeat lists" or in any manner other than**
23 **through proper legal action, process or proceeding.**

24 **(d) Using any form of communication to the obligor, which may be seen**
25 **by any other person, that displays or conveys any information about the alleged**
26 **claim other than the name, address and telephone number of the collection**
27 **agency.**

28 **(4) Uses any fraudulent, deceptive or misleading representation or**
29 **means to attempt to collect a child support obligation or arrearage or to obtain**

1 information concerning obligors, including but not limited to:

2 (a) The use of any business, company or organization name while
3 engaged in the collection of child support or arrears, other than the true name
4 of the collection agency's business, company or organization.

5 (b) Making any false representation that the collection agency has in its
6 possession information or something of value for the obligor with the
7 underlying purpose of soliciting or discovering information about the person.

8 (c) Asking any party other than the obligor to pay the child support
9 obligation, unless that party is legally responsible for the obligation or is the
10 legal representative of the obligor.

11 (d) Making any false representation or implication of the character,
12 extent or amount of a claim against an obligor, or of the status of any legal
13 proceeding.

14 (e) Making any false representation or false implication that any
15 collection agency is vouched for, bonded by, affiliated with an agency,
16 instrumentality, agent or official of this state or of the federal or local
17 government.

18 (f) The use, distribution or sale of any written communication which
19 simulates or is falsely represented to be a document authorized, issued or
20 approved by a court, an official or any other legally constituted or authorized
21 authority, or which creates a false impression about its source, authorization or
22 approval.

23 (g) Any representation that an existing obligation of the obligor may be
24 increased by the addition of attorney fees, investigation fees, service fees or any
25 other fees or charges when in fact the fees or charges may not legally be added
26 to the existing obligation.

27 (h) Any false representation or false impression about the status or true
28 nature of the services rendered by the collection agency.

29 (5) Uses unfair or unconscionable means to attempt to collect any child

1 support obligation or arrearage, including but not limited to the collection of or
2 the attempt to collect any interest, fee or expense in excess of what is authorized
3 by the provisions of state law.

4 (6) Uses, distributes, sells or prepare for use any written communication
5 which violates or fails to conform to United States postal laws and regulations
6 or uses a method contrary to a postal law or regulation to collect an account.

7 (7) Places a telephone call or otherwise communicates by telephone with
8 any person at any place, including a place of employment, and falsely states that
9 the call is urgent or an emergency.

10 (8) Communicates or attempts to communicate with the obligor in the
11 following manner:

12 (a) At the obligor's place of employment, if the place is not also the
13 obligor's residence, with the understanding that:

14 (i) A collection agency may send a single letter to the obligor at his place
15 of employment if the agency has otherwise been unable to locate the obligor.

16 (ii) A collection agency may phone the obligor at his place of
17 employment if the agency is unable to contact the obligor at his residence,
18 provided that:

19 (aa) The obligor does not inform the collection agency that he does not
20 wish the collection agency to communicate or attempt to communicate with him
21 at his place of employment.

22 (bb) The collection agency shall not inform the employer of the nature
23 of the call unless asked by the employer.

24 (cc) In no event shall the collection agency make more than one phone
25 call per month to the obligor at his place of employment unless the obligor
26 affirmatively indicates in writing that he desires the collection agency to call
27 him at his place of employment.

28 (b) Using any written communication which fails to clearly identify the
29 name of the collection agency, the name of the obligee for whom the collection

1 agency is attempting to collect the debt, and the collection agency's business,
2 unless identifying the obligee would violate Subparagraph (3)(d) of this Section.

3 (c) By placing of phone calls without disclosure of the name of the
4 individual making the call and the name of the obligee for whom the collection
5 agency is attempting to collect the debt, or by using a fictitious name while
6 engaging in the collection of debts.

7 (d) When the obligor is represented by an attorney, the attorney's name
8 and address are known by the collection agency unless:

9 (i) The attorney representing the debtor fails to answer written
10 communication, or fails to discuss the claim within thirty days after receipt of
11 written communication.

12 (ii) Communication with the obligor takes place through billing
13 procedures.

14 (e) Through the use of forms or instruments which simulate the form
15 and appearance of judicial process or which give the appearance of being
16 authorized, issued or approved by a court of law, government agency, or
17 attorney-at-law when they are not.

18 (f) In any manner that violates any other provision of this Section.

19 (9) Imposes a charge or fee for the costs of an application.

20 (10) Imposes a fee or charge, including costs, for any child support
21 payments collected through the efforts of a federal, state, or local government
22 agency, including but not limited to child support collected from federal or state
23 tax refunds, judgments, settlements, lotteries, public or private retirement
24 funds, liens, workers' compensation, unemployment benefits, or Social Security
25 benefits. If the department or obligee notifies a private child support collection
26 agency in writing of such improper fee retention, the private child support
27 collection agency shall refund such fees to the obligee within seven days of the
28 notification of the improper retention of fees and shall not be liable for such
29 improper fee retention under R.S. 51:1448(A).

1 **(11) Charge fees to the obligee in excess of twenty percent of the total**
2 **amount of each child support payment collected.**

3 **(12) Charge the obligee interest or otherwise impose a charge or fee for**
4 **a current payment of child support.**

5 **(13) Fail to implement a procedure designed to prevent a violation by**
6 **an employee.**

7 **(14) Unless licensed to practice law in this state, attempt to collect a**
8 **child support obligation or arrearage by engaging in conduct which is**
9 **considered the practice of law, including but not limited to:**

10 **(a) The performance of legal services, the offering of legal advice or the**
11 **making of a false representation, directly or by implication, that a person is an**
12 **attorney.**

13 **(b) Communicating with persons in the name of an attorney or upon**
14 **stationery or other written matter bearing an attorney's name.**

15 **(c) Making a demand for or payment of money constituting a share of**
16 **compensation for services performed or to be performed by an attorney in**
17 **collecting a claim.**

18 **(d) Impose an additional charge or fee for legal services related to the**
19 **provision of support enforcement services.**

20 **(15) Solicit obligees using marketing materials, advertisements, or**
21 **representations reasonably calculated to create a false impression or mislead an**
22 **obligee into believing the private child support collection agency is affiliated**
23 **with the department or any other government agency providing services in**
24 **accordance with Title IV-D of the Social Security Act and corresponding state**
25 **laws and regulations.**

26 **(16) Contract with an obligee for a sum certain to be collected which is**
27 **greater than the total sum of arrearages and the judicial interest owed as of the**
28 **date of execution of the contract.**

29 **(17) Provide support enforcement services to any obligee if the obligee,**

1 or any child listed in the support order, is receiving any of the services listed in
2 R.S. 46:236.1.2(A).

3 (18) Represent in any communication or advertising material that
4 results are guaranteed under a contract.

5 (19) Designate a current child support payment as a payment to the
6 arrears or other amount owed.

7 (20) Misrepresent the geographical location of the collection agency by
8 listing a fictitious business name or an assumed business name in the classified
9 advertising section of a telephone directory or other directory database. The
10 collection agency is considered to have misrepresented its geographical location
11 if it violates any of the provisions listed in R.S. 51:1420.

12 (21) Accept a settlement offer made by an obligor before:

13 (a) The collection agency has reviewed all settlement offers with the
14 obligee.

15 (b) The obligee has given the collection agency express written
16 authorization to accept the settlement offer.

17 (22) Fail to apply funds collected in any given month to current support
18 before applying funds to the arrears or other amounts, unless the contract
19 applies to the collection of arrears only.

20 (23) Commingle any funds owed to an obligee in accordance with a
21 contract with other funds.

22 (24) Suggest or instruct that the obligor or the obligor's employer send
23 the payment to the collection agency when a child support order directs that
24 payment be made through a central payment registry.

25 § 1448. Criminal penalties

26 A.(1) A private child support collection agency and any individual
27 directly involved in providing support enforcement services under this Chapter
28 who willfully violates the provisions of R.S. 51:1447 is guilty of a misdemeanor
29 and upon conviction may be sentenced to pay a fine not to exceed two thousand

1 dollars, or to imprisonment not to exceed six months, or both.

2 (2) A private child support collection agency and any individual directly
3 involved in providing support enforcement services under this Chapter who
4 willfully violates the provisions of R.S. 51:1443 is guilty of a misdemeanor and
5 upon conviction may be sentenced to pay a fine of not less than five hundred
6 dollars nor more than one thousand dollars, or to imprisonment not to exceed
7 six months, or both.

8 B. When the collection agency is incorporated under the laws of any
9 state, its officers, directors or stockholders who are not personally involved in
10 violations of this Chapter, shall not be subject to the criminal penalties of this
11 Section.

12 C. The provisions and remedies provided by this Section shall be
13 construed as an addition to, and not in substitution for, any other remedy
14 otherwise available to any person damaged by a violation of this Chapter.
15 Relief under this Section shall not be denied, delayed, or otherwise affected
16 because of the availability of other remedies, nor shall relief under any other
17 statute be delayed or denied because of the availability of the remedies provided
18 by this Section.

19 § 1449. Enforcement and venue

20 A. District attorneys and their assistants may institute and prosecute
21 actions under R.S. 51:1448.

22 B. Venue shall be proper in either of the following:

23 (1) In the parish where the obligee resides.

24 (2) In the parish where the obligor resides, if the obligee is not a resident
25 of this state.

26 Section 3. This Act shall become effective upon signature by the governor or, if not
27 signed by the governor, upon expiration of the time for bills to become law without signature
28 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
29 vetoed by the governor and subsequently approved by the legislature, this Act shall become

1 effective on the day following such approval.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Bobbie Hunter.

DIGEST

Morrell (SB 130)

Present law provides for the rights and responsibilities for FITAP recipients.

Proposed law retains present law and provides that FITAP recipients shall not enter into contracts for the collection of support pursuant to current law. Any such contract shall be considered a violation of public policy and shall be considered null and void.

Proposed law provides for the Louisiana Child Support Collection Protection Act.

Proposed law provides for the definitions for the following: "arrearages or arrearages," "child support," "contract," "department," "FITAP," "obligee" or "obligor," "order of support" or "child support order," "private child support collection agency," "support services," and "support enforcement services."

Proposed law provides that the following shall not be considered private child support collection agents:

1. The department or any government agency providing services in accordance with Title IV-D of the Social Security Act and corresponding state laws and regulations.
2. An attorney licensed to practice law in Louisiana if such an attorney is not employed by a private child support collection agency, or does not derive a substantial portion of his business from the collection or enforcement of child support.
3. A collection agency that performs support enforcement services while under contract with the department to provide such services in accordance with such laws.
4. A public officer, judicial officer, receiver, or trustee acting under the order of a court.

Proposed law provides that any private child support collection agency intending to provide support enforcement services to an obligee who is a resident of this state or collect any child support or arrearages from an obligor shall register with the secretary of state and shall provide information as requested by the secretary of state, including, but not limited to, the name of the private child support collection agency, the office address and telephone number for such entity, and the registered agent in this state on whom service of process is to be made in a proceeding against such private child support collection agency.

Proposed law provides that in addition to the registration information, either a surety bond shall be filed, held, and approved by the secretary of state and issued by a surety authorized to do business in this state in the amount of \$50,000.00 in favor of the state, or a deposit of money in the amount of \$50,000.00. The secretary of state shall deposit any amounts received in an insured depository account.

Proposed law provides for contracts between obligees and private child support collection agencies. Any contract shall be in writing and shall include the following:

1. A clear description of the services that may be provided pursuant to the contract.
2. An explanation of the amount to be collected from the obligor by the private child support collection agency and a statement of a sum certain of the total amount that

- is to be collected by the private child support collection agency that has been engaged by the obligee.
3. An explanation of the maximum amount of fees which could be collected under the contract and an example of how the fees are calculated and deducted.
 4. A statement that fees shall only be charged for collecting past due child support.
 5. A statement that a private child support collection agency shall not retain fees from collections that are primarily attributable to the actions of the department, and that a private child support collection agency shall be required by law to refund any fees improperly retained to the appropriate party.
 6. An explanation of the opportunities available to the obligee or private child support collection agency to cancel the contract.
 7. The mailing address, street address, telephone numbers, facsimile numbers, and Internet address or location of the collection agency and any agents who assist the collection agency in providing support enforcement services.
 8. A statement that the private child support collection agency shall only collect money owed to the obligee and not child support assigned to the state.
 9. A statement that the private child support collection agency is not a government agency and is not affiliated with any government agency and that the department provides support enforcement services at little or no cost to the obligee.
 10. A statement that the obligee may continue to receive, or may pursue, support enforcement services through the department.
 11. A provision that the collection agency cannot alienate, encumber, sell or assign any rights to the contract to a third party.
 12. A copy of any other document the collection agency requires the obligee to sign.
 13. A notice that the private child support collection agency is required to keep and maintain case records for a period of two years after the termination of the contract and may thereafter destroy or otherwise dispose of the records. The obligee may, prior to destruction or disposal, retrieve his or her entire record.
 14. The expected duration of the contract.
 15. An explanation of the opportunities available to the obligee or private child support collection agency to cancel the contract or other conditions under which the contract terminates.

Proposed law provides that private child support enforcement service contract shall not include the following:

1. A requirement that the obligee waive any right or procedure provided for in any state law regarding the right to file and pursue a civil or criminal action, or that the obligee agree to resolve disputes in a jurisdiction outside of the obligee's state of residence, or to the application of laws other than those of the obligee's state of residence. Any waiver shall be presumed against public policy and unenforceable.
2. A clause that requires the obligee to change the payee or redirect child support payments that would otherwise be payable to the obligee, the department or other agency administering a state plan if payment is ordered to be made through a state

- disbursement unit.
3. A clause that requires the obligee to close, or not open, a child support case with the department or other agency administering a state plan.
 4. A clause that requires the obligee to waive his rights to review and consent to any modification of a contract entered into by the obligee.
 5. A clause that prohibits the termination of a contract for the collection of child support payments until arrears are paid.
 6. Any provision requesting or requiring an obligee to waive the right of the obligee to accept a settlement offer.

Proposed law provides that a private child support enforcement contract may not be modified by subsequent agreement, unless the obligee has signed the subsequent agreement after receiving a written copy of the modifications. In addition to any other cancellation or termination provisions provided in the contract between a private child support collection agency and an obligee, the contract shall be cancelled or terminated if the obligee requests cancellation in writing within 30 days of signing the contract, no payment of child support has been collected by such debt collection agency for a period of six consecutive months, the agency breaches any term of the contract or contract term has expired, or the contract amount has been collected, whichever occurs first.

Proposed law provides for the duties of private child support collection agencies and requires such agencies to:

1. Enter into a written contract with a child support obligee before providing support enforcement services.
2. Act as a trustee and fiduciary for the benefit of the obligee.
3. Advise an obligee before entering into a contract with him or her that the obligee is under no obligation to hire a private child support collection agency to collect child support payments.
4. Provide the obligee and the department, when the department is providing support enforcement services to the obligee, with an accounting of any money collected and forwarded to the obligee as child support or arrearages every thirty days until the collection agency ceases all collection activity.

Proposed law requires any private child support collection agency that collects child support shall forward that portion of the collections due to the obligee within two days of receipt. Records shall be maintained of all child support collections made on behalf of an obligee for the duration of the contract plus a period of two years after the termination of the contract. In addition to a copy of the contract, the agency shall maintain a copy of the order establishing the child support obligation, records of all correspondence between the private child support collection agency and the obligee or obligor and any other pertinent information relating to the child support obligation.

Proposed law provides that case records shall be safeguarded in a manner reasonably expected to prevent intentional or accidental disclosure of information to anyone other than the obligee, obligor, or the department, and includes providing necessary protections for records maintained in an automated system.

Proposed law provides that every person who contracts with a private child support collection agency has the right to obtain copies of all files and documents, both paper and electronic, in the possession of the private child support collection agency regarding that obligee's case that are not required by law to be kept confidential. Proposed law provides

that the obligee shall be provided reasonable access to and copies of the files and records of the private child support collection agency regarding all monies received, collection attempts made, fees retained or paid to the private child support collection agency, and monies disbursed to the obligee.

Proposed law requires the private child support collection agency to convey any offer of settlement or compromise made by the obligor to the obligee in writing. A separate bank account shall be kept for child support funds collected on behalf of obligees and shall keep such funds in the bank account until disbursed to the appropriate obligee. Any attorney who meets the definition of "private child support collection agency." shall conform to the statutes, rules, and case law governing attorney conduct.

Proposed law provides for prerequisites for private child support collection agencies before commencing support enforcement services. The agency shall obtain from the obligee a certified copy of the order of support, a statement executed by the obligee under oath containing the arrears balance and the dates during which the arrears balance accrued, and any judgments in existence at the time the contract is signed by the obligee setting the arrears owed under the order of support. Proposed law further provides that the agency shall obtain a statement executed by the obligee under oath stating that the obligee is not receiving FITAP for, or on behalf of, himself or another individual.

Proposed law provides that the private child support collection agency send the obligor a written notice no later than five days after the obligee and collection agency sign the contract. Such notice shall contain the name of the obligee, a statement of the amount of the child support arrears, including any associated interest, late payment fee, or other charge authorized by law, and of the amount of the current child support owed by the obligor to the obligee.

Proposed law provides that the written notice shall contain a statement that the collection agency assumes that the obligor owes child support or arrears to the obligee and that the amounts owed as described in the statement are correct, unless the obligor disputes the existence or amount of the child support obligation within 30 days after receipt of the notice. If within the 30 days the obligor notifies the collection agency in writing that the obligor disputes the existence or amount of the child support obligation or arrears, the collection agency will cease efforts to collect the child support, subject to certain conditions.

Proposed law further provides that statement made by a collection agency shall not affect the enforceability of a valid income-withholding order or assignment issued by the department or any other state agency administering a state plan. The failure of an obligor to dispute the amount or existence of child support or arrears shall not be construed as an admission of liability by the obligor.

Proposed law provides for prohibited practices in any attempt to collect a child support obligation or arrearage deemed unfair, deceptive or unreasonable if the collection agency does the following:

1. Attempts to collect child support or arrears from an obligor by any threat, coercion or attempt to coerce, including, but not limited to the use of violence, or to cause harm to a person.
2. Unreasonably oppresses or abuses any person in connection with the attempt to collect any child support obligation or arrearage.
3. Unreasonably publicizes information relating to any alleged child support obligation or arrearage.
4. Uses any fraudulent, deceptive or misleading representation or means to attempt to collect child support obligation or arrearage or to obtain information concerning

- obligors.
5. Uses unfair or unconscionable means to attempt to collect any child support obligation or arrearage, including, but not limited to the collection of or the attempt to collect any interest, fee or expense in excess of what is authorized by the provisions of state law.
 6. Uses, distributes, sells or prepares for use any written communication which violates or fails to conform to U.S. postal laws and regulations or uses a method contrary to a postal law or regulation to collect an account.
 7. Places a telephone call or otherwise communicates by telephone with any person at any place, including a place of employment, and falsely states that the call is urgent or an emergency.
 8. Communicates, or attempts to communicate with the obligor at the obligor's place of employment if said place is not also the obligor's residence, uses any written communication which fails to clearly identify the name of the collection agency, the name of the obligee for whom the collection agency is attempting to collect the debt, and the collection agency's business, unless identifying the obligee would violate proposed law.
 9. Phone calls shall not be made without disclosure of the name of the individual making the call and the name of the obligee for whom the collection agency is attempting to collect the debt, or by using a fictitious name while engaging in the collection of debts.
 10. Imposes a charge or fee for the costs of an application, or imposes a fee or charge, including costs, for any child support payments collected through a federal, state, or local government agency, including but not limited to child support collected from federal or state tax refunds, judgments, settlements, lotteries, public or private retirement funds, liens, workers' compensation, unemployment benefits, or Social Security benefits. If the department or obligee notifies a private child support collection agency in writing of such improper fee retention, the private child support collection agency shall refund such fees to the obligee within seven days of the notification of the improper retention of fees and shall not be liable for such improper fee retention under proposed law.
 11. Charge fees to the obligee in excess of 15% of the total amount of each child support payment collected, or charge the obligee interest or other fees for a current payment of child support.
 12. Fail to implement a procedure designed to prevent a violation by an employee, and unless licensed to practice law in this state, attempt to collect a child support obligation or arrearage by engaging in conduct which is considered the practice of law.
 13. Solicit obligees using marketing materials, advertisements, or representations reasonably calculated to create a false impression or mislead an obligee into believing the private child support collection agency is affiliated with the department or any other government agency providing services.
 14. Contract with an obligee for a sum which is greater than the total sum of arrearages and the judicial interest owed as of the date of execution of the contract.
 15. Provide support enforcement services to any obligee if the obligee, or any child listed in the support order, is receiving any of the services listed in R.S. 46:236.1.2(A).
 16. Represent in any communication or advertising material that results are guaranteed

- under a contract.
17. Designate a current child support payment as a payment to the arrears or other amount owed.
 18. Misrepresent the geographical location of the collection agency by listing a fictitious business name or an assumed business name in the classified advertising section of a telephone directory or other directory database.
 19. Accept a settlement offer made by an obligor before the collection agency has reviewed all settlement offers with the obligee and the obligee has given the collection agency written authorization to accept the settlement offer.
 20. Fail to apply funds collected in any given month to current support before applying funds to the arrears or other amounts, unless the contract applies to the collection of arrears only.
 21. Co-mingle any funds owed to an obligee in accordance with a contract with other funds.
 22. Suggest or instruct that the obligor or the obligor's employer send the payment to the collection agency when a child support order directs that payment be made through a central payment registry.

Proposed law provides criminal penalties for a private child support collection agency, and any individual directly involved in providing support enforcement services, who violates the provisions in proposed law, and is guilty of a misdemeanor and upon conviction may be sentenced to pay a fine not to exceed \$2,000, or to imprisonment not to exceed 6 months, or both.

Proposed law provides that when a collection agency is incorporated under the laws of any state, its officers, directors or stockholders who are not personally involved in violations shall not be subject to the criminal penalties.

Proposed law provides that notwithstanding any provision of law to the contrary, criminal penalties provided in proposed law shall be construed as an addition to, and not in substitution for, any other remedy otherwise available to any person damaged by a violation of proposed law.

Proposed law provides that district attorneys may enforce and prosecute violations of proposed law in the parish where the obligee resides or in the parish where the obligor resides.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Adds R.S. 46:236.1.5(D) and R.S. 51:1441-1449)