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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 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 state treasurer 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 state treasurer 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. Commingle 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)

Summary of Amendments Adopted by Senate

Senate Floor Amendments to engrossed bill.

1. Changes required registry information for private child support collection agencies.
2. Changes provision requiring private child support collection agencies to file surety bonds from being filed, held, and approved by the secretary of state to be filed, held, and approved by the state treasurer.
3. Legislative Bureau technical amendment.