

SENATE BILL NO. 130

BY SENATOR MORRELL

1 AN ACT

2 To enact R.S. 46:236.1.5(D) and Chapter 13-B of Title 51 of the Louisiana Revised Statutes
3 of 1950, to be comprised of R.S. 51:1441 through 1448, 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,
18 comprised of R.S. 51:1441 through 1448, is hereby enacted to read as follows:

19 **CHAPTER 13-B. LOUISIANA CHILD SUPPORT**

20 **COLLECTION PROTECTION ACT**

1 **§1441. Short title**

2 **This Chapter shall be known and may be cited as the "Louisiana Child**
3 **Support Collection Protection Act".**

4 **§1442. Definitions**

5 **As used in this Chapter, the following words and phrases shall have the**
6 **following meanings:**

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

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

18 **(3) "Contract" means a contract or agreement, as described in R.S.**
19 **51:1444, pursuant to which a private child support collection agency agrees to**
20 **perform support enforcement services for an obligee for a fee or other**
21 **compensation.**

22 **(4) "Department" means the Department of Social Services, office of**
23 **family support, support enforcement services.**

24 **(5) "FITAP" means Family Independence Temporary Assistance**
25 **Program.**

26 **(6) "Obligee" means an individual who is owed child support under a**
27 **child support order and who has entered or may enter into a contract with a**
28 **collection agency.**

29 **(7) "Obligor" means a resident of this state required to pay child**
30 **support in accordance with an order of support issued by a court or other**

1 tribunal.

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

7 (9)(a) "Private child support collection agency" or "collection agency"
8 means an individual or nongovernmental entity that solicits and contracts
9 directly with obligees to provide child support collection services for
10 compensation.

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

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

16 (ii) An attorney duly licensed to practice law in the state of Louisiana if
17 he is not employed by a private child support collection agency or does not
18 derive a substantial portion of business from the collection or enforcement of
19 child support. As used in this Section, "substantial" means that at least fifty
20 percent of the attorney's business, either in terms of remuneration or time
21 spent, is comprised of the activity of seeking to collect or enforce child support
22 obligations.

23 (iii) A collection agency that performs support enforcement services
24 while under contract with the department to provide such services in
25 accordance with Title IV-D of the Social Security Act and corresponding state
26 laws and regulations.

27 (iv) A public officer, judicial officer, receiver, or trustee acting in
28 accordance with a court order.

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

30 (a) Any action taken by the department, upon receipt of an application

1 or referral for services or a request made under the Uniform Interstate Family
2 Support Act, in accordance with the federal requirements of Title IV-D of the
3 Social Security Act and corresponding state laws and regulations without
4 regard to whether there is any existing court order, delinquency, or
5 presumption of paternity.

6 (b) A service, including related financial accounting services, performed
7 directly or indirectly for the purpose of causing a payment required, or
8 allegedly required, by an order of support to be made to the obligee or to an
9 agent of that individual.

10 §1443. Registration

11 Any private child support collection agency providing support
12 enforcement services to an obligee who is a resident of this state or collecting
13 any child support or arrearages from an obligor shall comply with the
14 following:

15 (1) Register with the secretary of state and provide information as
16 requested, including the name of the private child support collection agency, the
17 office address, and the registered agent in this state on whom service of process
18 is to be made.

19 (2) Submit to the state treasurer not later than 4:30 p.m. on the fifth
20 business day after registering with the secretary of state all of the following:

21 (a) A surety bond filed, held, and approved by the state treasurer. The
22 surety bond shall be issued by a surety authorized to do business in this state in
23 the amount of fifty thousand dollars in favor of the state for the benefit of a
24 person damaged by a violation of this Chapter, and conditioned on the private
25 child support collection agency's compliance with this Chapter and the faithful
26 performance of the obligations under the private child support collection
27 agency's agreements with its clients.

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

1 §1444. Contracts between obligees and private child support collection
2 agencies; contents; provisions

3 A. Any contract for the collection of child support between a private
4 child support collection agency and an obligee shall be in writing, in at least
5 ten-point font or the equivalent, and dated and signed by the obligee and an
6 authorized representative of the collection agency. The contract shall be
7 delivered to the obligee in paper form. The contract shall include all of the
8 following:

9 (1) A clear description of the child support enforcement services that
10 may be provided.

11 (2) An explanation of the amount to be collected from the obligor and
12 a statement of a sum certain of the total amount that is to be collected.

13 (3) An explanation in dollar figures of the maximum amount of fees
14 which may be collected under the contract and an example of how the fees are
15 calculated and deducted.

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

19 (5) A statement that a private child support collection agency shall not
20 retain fees from collections that are primarily attributable to the actions of the
21 department and the collection agency shall be required to refund any
22 improperly retained fee.

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

26 (7) The mailing address, street address, telephone numbers, facsimile
27 numbers, and Internet address or location of the collection agency and any
28 agents who assist the collection agency.

29 (8) A statement that the private child support collection agency shall
30 collect only money owed to the obligee and not child support assigned to the

1 state of Louisiana.

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

6 (10) A statement that the obligee may continue to receive or pursue
7 support enforcement services through the department and the collection agency
8 may not prohibit this in any way.

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

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

15 (13) A notice that the collection agency is required to keep and maintain
16 case records for a period of two years after the termination of the contract and
17 may thereafter destroy or otherwise dispose of the records. The obligee may,
18 prior to destruction or disposal, retrieve his entire record.

19 (14) The expected duration of the contract, stated as a length of time or
20 as an amount to be collected.

21 B. A private child support enforcement service contract shall not include
22 any of the following:

23 (1) A requirement that the obligee waive the right to pursue any civil or
24 criminal matter, agree to resolve disputes in a jurisdiction other than the
25 obligee's, or agree to the application of laws other than those of the residence
26 of the obligee. Any waiver, including an agreement to arbitrate or a choice of
27 forum or law, required as a condition of doing business with the collection
28 agency shall be presumed against public policy and unenforceable.

29 (2) A clause that requires the obligee to change the payee or redirect
30 child support payments that would otherwise be payable to the obligee, the

1 department or other agency administering a state plan approved under Title
2 IV-D of the Social Security Act and corresponding state laws and regulations,
3 or a state disbursement unit, if payment is ordered to be made through a state
4 disbursement unit.

5 (3) A requirement that the obligee not pursue a child support case with
6 the department or other agency administering a state plan approved under Title
7 IV-D of the Social Security Act and corresponding state laws and regulations.

8 (4) A requirement that the obligee waive his right to review and consent
9 to any modification of the contract.

10 (5) A prohibition against termination of the contract for the collection
11 of child support payments until the arrears are paid.

12 (6) A requirement that the obligee waive his right to accept a settlement
13 offer.

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

17 D. The provisions of this Subsection shall be attached to the contract as
18 an addendum, in at least ten-point font, and be signed and dated by the obligee.
19 In addition to any other cancellation or termination provisions provided in the
20 contract, it shall be cancelled or terminated if any of the following:

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

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

25 (3) The collection agency breaches any term of the contract or violates
26 any provision contained in this Chapter.

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

29 §1445. Duties of private child support collection agencies

30 A. A private child support collection agency shall comply with all of the

1 **following:**

2 **(1) Enter into a written contract with the obligee, as provided in R.S.**
3 **51:1444, before providing support enforcement services.**

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

6 **(3) Advise an obligee before entering into a contract that he is not**
7 **obligated to hire a collection agency to collect child support.**

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

13 **(a) The name of the obligor and any other identifying information.**

14 **(b) The amount of support collected.**

15 **(c) The date each amount was received.**

16 **(d) The date each amount received was forwarded to the obligee.**

17 **(e) The amount of each payment forwarded to the obligee.**

18 **(f) The source of payment and the actions taken by the collection agency**
19 **which resulted in the payment.**

20 **(g) The amount and percentage of each payment retained by the**
21 **collection agency as its fee.**

22 **(h) A copy of all correspondence, both paper and electronic, sent or**
23 **received by the collection agency during the preceding thirty days, excluding**
24 **correspondence required by law to be kept confidential.**

25 **(5) Forward that portion of the collections due to the obligee within two**
26 **days of receipt.**

27 **(6) Maintain records of all child support collections made on behalf of**
28 **an obligee for the duration of the contract plus a period of two years after the**
29 **termination of the contract. In addition to a copy of the contract, the collection**
30 **agency shall maintain all of the following:**

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

3 (b) Records of all correspondence between the collection agency and the
4 obligee or obligor in a case.

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

9 (7) Safeguard case records in a manner reasonably expected to prevent
10 the disclosure of information pertaining to the obligee or obligor, including
11 protections for records maintained in an automated system.

12 (8) Ensure that every person who contracts with a collection agency has
13 the right to obtain copies of all files and documents, both paper and electronic,
14 in the possession of the collection agency as provided in this Paragraph. The
15 obligee shall be provided reasonable access during regular business hours to
16 originals and copies of the files and records of the collection agency regarding
17 all monies received, collection attempts made, fees retained or paid to the
18 collection agency, and monies disbursed to the obligee. The collection agency
19 may not charge a fee for access to the files and records but may require the
20 obligee to pay up to three cents per page for the copies prior to their release.
21 This fee shall not apply to documents sent with a statement pursuant to
22 Paragraph (4) of this Subsection.

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

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

28 (B.) Notwithstanding any other provision of this Chapter, including
29 provisions establishing a right of cancellation and requiring notice thereof, any
30 attorney contracting with an obligee to provide child support collection services

1 for compensation shall comply with all provisions governing attorney conduct.

2 §1446. Provision of support enforcement services by a private child support
3 collection agency; prerequisites

4 A. Before commencing support enforcement services, a private child
5 support collection agency shall obtain from the obligee all of the following:

6 (1) A certified copy of the order of support.

7 (2) A statement executed by the obligee under oath containing the
8 arrears balance and the dates during which the arrears balance accrued.

9 (3) Any judgments in existence at the time the contract is signed by the
10 obligee setting the arrears owed.

11 (4) A statement executed by the obligee under oath stating that the
12 obligee is not receiving FITAP for, or on behalf of, himself or another
13 individual.

14 B. In addition to Subsection A of this Section, before commencing
15 support enforcement services, the collection agency shall send the obligor a
16 written notice no later than five days after the obligee and collection agency sign
17 a contract. The notice shall include all of the following:

18 (1) The name of the obligee.

19 (2) A statement of the amount of the child support arrears, including
20 any associated interest, late payment fee, or other charge authorized by law, and
21 the current child support owed by the obligor.

22 (3) A statement that the collection agency assumes that the obligor owes
23 child support or arrears to the obligee and that the amounts owed as described
24 in the statement are correct, unless the obligor disputes the existence or amount
25 of the child support obligation within thirty days after receipt of the notice.

26 (4) A statement that if the obligor provides written notice to the
27 collection agency within the time period provided in Paragraph (3) of this
28 Subsection, disputing the existence or amount of the child support obligation or
29 arrears, the collection agency shall cease efforts to collect the support until it
30 obtains and mails to the obligor written verification of the existence or amount

1 of the obligation.

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

5 C. A statement in accordance with Paragraph (B)(4) of this Section shall
 6 not affect the enforceability of a valid income-withholding order or assignment
 7 issued by the department or any other state agency administering a state plan
 8 approved under Title IV-D of the Federal Social Security Act, as amended.

9 D. The failure of an obligor to dispute the amount or existence of child
 10 support or arrears shall not be construed as an admission of liability by the
 11 obligor.

12 §1447. Prohibited acts

13 A private child support collection agency providing support enforcement
 14 services to an obligee in this state or collecting support or arrears from an
 15 obligor shall not engage in any act which violates any provision of the Fair Debt
 16 Collection Practices Act, 15 U.S.C. 1692 et seq., or the Federal Trade
 17 Commission Act, 15 U.S.C. 42 et seq.

18 §1448. Civil penalties

19 A. When a private child support collection agency is found by a court
 20 to have violated the provisions of R.S. 51:1443, the court shall award to the state
 21 a civil penalty not to exceed ten thousand dollars.

22 B. A collection agency found by a court to have violated any of the
 23 provisions of R.S. 51:1444 through 1447 shall be ordered to pay to the plaintiff
 24 a civil penalty not to exceed five thousand dollars per violation and reasonable
 25 attorney fees, expenses, and court costs.

26 C. The civil penalties provided in this Section shall be cumulative to
 27 each other and any other provision of law.

28 Section 3. This Act shall become effective upon signature by the governor
 29 or, if not signed by the governor, upon expiration of the time for bills to become law
 30 without signature by the governor, as provided by Article III, Section 18 of the

1 Constitution of Louisiana. If vetoed by the governor and subsequently approved by
2 the legislature, this Act shall become effective on the day following such approval.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____