

Regular Session, 2012

HOUSE BILL NO. 1205 (Substitute for House Bill No. 910 by Representative Johnson)

BY REPRESENTATIVE JOHNSON

CHILDREN/SUPPORT: Provides for the transfer of a child support obligation to a caretaker

1 AN ACT

2 To amend and reenact R.S. 46:236.2(A) and (B) and 236.14(E)(3)(a) and to enact R.S.  
3 46:236.1.12, relative to obligations for child support; to provide for the transfer of  
4 an obligation for support to a caretaker; to provide for procedures; to provide for  
5 employer reporting requirements of the child support program; and to provide for  
6 related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 46:236.2(A) and (B) and 236.14(E)(3)(a) are hereby amended and  
9 reenacted and R.S. 46:236.1.12 is hereby enacted to read as follows:

10 §236.1.12. Transfer of child support obligation to third party

11 A. Obligations ordered for support of a child are for the use and benefit of  
12 the child and shall follow the child.

13 B. If a child with an existing support order has a caretaker who is not the  
14 obligee listed in the current support order, the department shall obtain from the court  
15 that rendered the support order an amended order naming the current caretaker as the  
16 obligee in accordance with the provisions of this Section.

17 C. When the current caretaker applies for support enforcement services  
18 pursuant to R.S. 46:236.1.2, the caretaker shall execute an affidavit stating that the  
19 minor child resides with him. The affidavit shall contain the following information  
20 in substantially the following form:

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**AFFIDAVIT OF CHILD(REN)'S PHYSICAL  
PRESENCE IN THE CARETAKER'S HOME**

**AFFIDAVIT**

I, \_\_\_\_\_, the undersigned affiant  
Name of the Affiant

do hereby certify and affirm that I am the caretaker of the minor child(ren)  
named below;

That I am the applicant/recipient of support enforcement services on behalf  
of the minor child(ren) whose name(s) appear(s) below;

That I have requested that the Department of Children and Family Services,  
Child Support Enforcement (DCFS, CSE) secure a court order to authorize  
the child support payments that are due and payable by the obligor and/or the  
obligee on behalf of the minor child(ren) whose name(s) appear(s) below to  
be redirected to me, the affiant, on behalf of the minor child(ren);

That I do hereby further certify and affirm that the minor child(ren) whose  
name(s) appear(s) below have been *physically* residing with me in my  
residence since \_\_\_\_\_, \_\_\_\_\_, located in the  
parish/county of \_\_\_\_\_, state of \_\_\_\_\_.

Name(s) of Children	Date of Birth

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 I solemnly swear or affirm that the foregoing statements are true and correct  
2 to the best of my knowledge and belief.  
3

4 \_\_\_\_\_  
5 SIGNATURE OF AFFIANT  
6

7 \_\_\_\_\_  
8 PRINT NAME OF AFFIANT  
9

10 SUBSCRIBED AND SWORN TO BEFORE ME ON THIS \_\_\_\_\_ DAY  
11 OF \_\_\_\_\_ AT \_\_\_\_\_, LOUISIANA  
12

13  
14 \_\_\_\_\_  
15 PRINT NAME OF ATTORNEY OR NOTARY PUBLIC

16 \_\_\_\_\_  
17 SIGNATURE OF ATTORNEY OR NOTARY PUBLIC  
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19 \_\_\_\_\_  
20 NOTARY NUMBER OF NOTARY PUBLIC OR BAR ROLL NUMBER OF  
21 ATTORNEY

22 MY COMMISSION EXPIRES: \_\_\_\_\_

23 D. Upon receiving the application and affidavit pursuant to Subsection C of  
24 this Section, the department shall send written notice to the obligor and obligee at  
25 their last known addresses through the United States Postal Service. The notice shall  
26 inform the obligor and obligee of the department's intent to redirect payments to the  
27 current caretaker. The notice shall include a copy of the caretaker's affidavit.

28 E. In addition to the notice sent pursuant to Subsection D of this Section, an  
29 attempt to contact the obligor and obligee at their last known telephone numbers or  
30 e-mail addresses shall be made when telephone numbers or e-mail addresses are  
31 available in the department's record.

32 F. At least fifteen days after mailing written notice to the obligor and  
33 obligee, the department shall file an ex parte motion and order to have the caretaker  
34 recognized as the new obligee and have the department redirect child support  
35 payments to the current caretaker.

36 (1) The ex parte motion shall include an affidavit executed by the current  
37 caretaker pursuant to the provisions of Subsection C.

38 (2) The ex parte motion shall also include an affidavit executed by an

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1 authorized representative of the department. The affidavit shall contain the  
2 following information in substantially the following form:

3 **AFFIDAVIT OF RECEIPT OF SERVICE AND NOTICE**

4  
5 **AFFIDAVIT**

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7 I, \_\_\_\_\_, an authorized  
8 Name of the Affiant

9  
10 representative of the Department of Children and Family Services, Child  
11 Support Enforcement hereby certify and affirm:

12  
13 That support enforcement services are being furnished to \_\_\_\_\_.  
14 Caretaker

15  
16 The following efforts have been made to give the **obligor** reasonable notice  
17 of the department's intent to redirect child support payments to the current  
18 caretaker. The obligor has not notified the department that (s)he objects to  
19 the redirection of support payments.

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Date of Action	Action Taken

22 The following efforts have been made to give the **obligee** reasonable notice  
23 of the department's intent to redirect child support payments to the current  
24 caretaker. The obligee has not notified the department that (s)he objects to  
25 the redirection of support payments.

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Date of Action	Action Taken

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28 I solemnly swear or affirm that the foregoing statements are true and correct  
29 to the best of my knowledge and belief.

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SIGNATURE OF AFFIANT

\_\_\_\_\_

\_\_\_\_\_  
PRINT NAME OF AFFIANT

SUBSCRIBED AND SWORN TO BEFORE ME ON THIS \_\_\_\_\_ DAY  
OF \_\_\_\_\_ AT \_\_\_\_\_, LOUISIANA

\_\_\_\_\_  
PRINT NAME OF ATTORNEY OR NOTARY PUBLIC

\_\_\_\_\_  
SIGNATURE OF ATTORNEY OR NOTARY PUBLIC

\_\_\_\_\_  
NOTARY NUMBER OF NOTARY PUBLIC OR BAR ROLL NUMBER OF  
ATTORNEY

MY COMMISSION EXPIRES: \_\_\_\_\_

G. Upon submission of the ex parte motion, order, and affidavits, the court shall determine whether the department has made sufficient efforts to notify the obligor and obligee of the department's intent to redirect child support payments to the current caretaker. Upon finding that the department has made sufficient efforts, the court shall:

(1) Issue an interim order naming the current caretaker as the obligee and authorizing the department to redirect payments to the current caretaker, and

(2) Issue a rule to show cause ordering the obligor and obligee to appear and show cause why the interim order should not be made permanent.

H. The rule to show cause shall be set for a hearing not more than thirty days after the court signs the interim order.

I. The interim order shall remain in effect until the rule to show cause is heard and ruled upon by the court or until the court orders otherwise.

J. The provisions of this Section shall not change the legal custody of a child or affect the rights and obligations of a parent relating to a child.

1 §236.2. Amendment of support orders

2 A.(1) The department or district attorney may, by a written motion together  
3 with a written certification from the department that support enforcement services  
4 are being furnished to the individual, to the current caretaker of any individual  
5 receiving support benefits, or to the payor of any support benefits for such  
6 individual, obtain an order to require any person under an order to support such  
7 individual or caretaker to make such support payments payable to the department.

8 (2) Notwithstanding the provisions of R.S. 13:1599(B), in cases receiving  
9 support enforcement services from the department, upon the ~~district attorney's or the~~  
10 ~~department's~~ motion of the district attorney or the department to transfer, a support  
11 order payable to the department shall be transferred for subsequent enforcement and  
12 modification to the appropriate juvenile court within the parish wherein the support  
13 order was rendered or last registered, except in East Baton Rouge Parish.

14 B.(1)(a) Any interested party may by a written motion, together with a  
15 written certification from the department that the department is not presently  
16 furnishing and does not contemplate furnishing FITAP for or on behalf of an  
17 individual and that no services are being rendered by the department on behalf of the  
18 individual, obtain from the court to which the order to support the individual had  
19 previously been transferred, an amended order to require that support payments be  
20 made payable to the individual or current caretaker instead of the department.

21 (b) If the support order was originally established in juvenile, family, or  
22 district court, any interested party may, by written motion, together with a written  
23 certification from the department that it is not presently furnishing and does not  
24 contemplate furnishing FITAP for or on behalf of an individual and that no support  
25 enforcement services are being rendered by the department, obtain from the court  
26 which rendered the order of support, an amended order requiring payments in  
27 accordance with the order to be made to the individual or current caretaker instead  
28 of the department. When the motion is granted, the individual or current caretaker

1 to whom support is owed shall be the proper party to enforce the support obligation  
2 or any arrears owed.

3 (c) As used in this ~~Paragraph~~ Section, "interested party" shall include only  
4 the department, district attorney, contract attorney providing support services  
5 pursuant to Title IV-D, the person owing the support obligation, or the individual or  
6 current caretaker to whom the support obligation is owed.

7 (2)(a) Notwithstanding the provisions of R.S. 13:1599(B), in cases receiving  
8 support enforcement services from the department, upon the ~~district attorney's or the~~  
9 ~~department's~~ motion of the district attorney or the department to transfer, a support  
10 order amended to change the payee to the individual or current caretaker instead of  
11 the department under this Subsection, shall be transferred for subsequent  
12 enforcement and modification to the appropriate court which was enforcing the  
13 support order prior to its transfer under Paragraph (A)(2) of this Section.

14 (b) Notwithstanding the provisions of R.S. 13:1599(B), in cases not  
15 receiving support enforcement services from the department, upon motion to transfer  
16 by the interested party, a support order amended to change the payee to the  
17 individual or current caretaker in accordance with Subparagraph (1)(b) of this  
18 Subsection shall be transferred for subsequent enforcement and modification to the  
19 district or family court in the same parish as the juvenile court transferring the order.

20 \* \* \*

21 §236.14. Employer reporting program

22 \* \* \*

23 E.

24 \* \* \*

25 (3) The report shall contain all of the following:

26 (a) The employee's name, address, social security number, and occupation,  
27 and the date services for remuneration were first performed by the employee.

28 \* \* \*

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**DIGEST**

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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Johnson

HB No. 1205

**Abstract:** Provides procedures by which a previously ordered child support obligation may be transferred to the current caretaker of the child when the current caretaker is not the obligee of the original order.

Present law authorizes transfers of child support obligations to nonparent custodians and certain state agencies which have legal custody of a child.

Proposed law retains present law and authorizes the court to amend an order of support to name the current caretaker as the obligee upon motion of the department or district attorney.

Proposed law is new law and provides for procedures for the transfer of a child support obligation to a current caretaker. Requires the current caretaker to provide an affidavit of the child's physical presence in the caretaker's home. Further provides for notice to the obligor and obligee of support order before filing for an ex parte motion and order to have the caretaker recognized as the new obligee. Authorizes interim support to the current caretaker pending a rule to show cause why the child support payments should not be redirected to the current caretaker permanently.

Present law requires employers to provide a report to DCFS containing identifying information for both the employee and the employer for the purpose of child support establishment and enforcement.

Proposed law retains present law and adds that employers are also required to report the date the employee began working for the employer.

(Amends R.S. 46:236.2(A) and (B) and 236.14(E)(3)(a); Adds R.S. 46:236.1.12)