

Regular Session, 2012

HOUSE BILL NO. 389

BY REPRESENTATIVE SCHRODER

1 AN ACT

2 To amend and reenact R.S. 6:333(F)(14), R.S. 9:315.9(A)(6), 315.16(A), 315.40(1),
3 399.1(A) and (F)(3) and (4), and 406(B)(2) and (C)(2), R.S. 11:441.1(F), R.S.
4 13:4291(B)(1) and (C), R.S. 27:364(A)(1)(b)(vi), R.S. 40:34(B)(1)(h)(iv) and (E)(1)
5 and 46.1(D) and (F)(introductory paragraph), R.S. 46:56(M)(1), 236.1.1(9)(b) and
6 (13), 236.1.2(G), 236.1.4(E) and (F), 236.1.5(C), 236.1.7(B), 236.1.8(D),
7 236.3(A)(2), 236.10(A), (B), and (D), 236.12(B)(1), 236.14(D)(1)(introductory
8 paragraph) and (H)(2), 236.15(A)(1), 236.16, 238(F), and 2136.2(F), and R.S.
9 51:1442(4), relative to the Department of Children and Family Services; to provide
10 for proper designation of certain sections and divisions of the department; to make
11 technical changes; and to provide for related matters.

12 Be it enacted by the Legislature of Louisiana:

13 Section 1. R.S. 6:333(F)(14) is hereby amended and reenacted to read as follows:

14 §333. Disclosure of financial records; reimbursement of costs

15 * * *

16 F. The following disclosures by a bank or any affiliate are hereby
17 specifically authorized and, except as otherwise provided in this Subsection, nothing
18 in this Section shall prohibit, restrict, or otherwise apply to:

19 * * *

20 (14) The disclosure by a bank or any affiliate of data match information on
21 an individual to the secretary of the Department of Children and Family Services, or
22 his designee in the office of children and family services, child support enforcement

1 §315.40. Definitions

2 As used in this Subpart:

3 (1) "Administrator" means the administrator of the ~~Support Enforcement~~
4 ~~Services Program~~ child support enforcement section, office of children and family
5 services, Department of Children and Family Services.

6 * * *

7 §399.1. Dismissal of final order following judgment of paternity; time periods;
8 procedure; effects

9 A. Notwithstanding any other provision of law, a judgment establishing
10 paternity may be set aside or vacated by the adjudicated father of a child, the child,
11 the mother of the child, or the legal representative of any of these persons. The
12 proceeding shall be instituted by ordinary process in a court of competent
13 jurisdiction and service shall be made upon the office of children and family
14 services, child support enforcement ~~services~~ section of the Department of Children
15 and Family Services, if services are being provided by the department. The burden
16 of proof shall be upon the party seeking to set aside or vacate the judgment of
17 paternity. The proceeding shall be brought within a two-year period commencing
18 with the date on which the adjudicated father knew or should have known of a
19 judgment that established him as the father of the child or commencing with the date
20 the adjudicated father knew or should have known of the existence of an action to
21 adjudicate the issue of paternity, whichever is first.

22 * * *

23 F.

24 * * *

25 (3) The judgment dismissing an established order of support shall be served
26 upon the office of children and family services, child support enforcement ~~services~~
27 section of the Department of Children and Family Services, if services are being
28 provided by the department.

1 Department of Children and Family Services, or his designee shall certify the actual
 2 amount in an affidavit entitled "Child Support Mortgage and Privilege by Affidavit
 3 of ~~DSS~~ DCFS". Such affidavit shall have the effect of a judgment and when filed
 4 and recorded in the manner provided by law shall create a legal mortgage and
 5 privilege as provided in R.S. 46:236.16. Notwithstanding any other law to the
 6 contrary, prescription shall not begin to run against any such judgment until the child
 7 reaches the age of majority or the obligation to provide child support ceases.

8 * * *

9 C. The department shall provide notice by certified mail, by personal service,
 10 or by domiciliary service, to the child support obligor thirty days prior to a "Child
 11 Support Mortgage and Privilege by Affidavit of ~~DSS~~ DCFS" being filed and
 12 recorded. The notice shall advise the child support obligor that he has fifteen days
 13 to file an appeal. Upon notice of appeal, the department shall schedule a judicial
 14 hearing. Notwithstanding any other law to the contrary, prescription shall not begin
 15 to run against any such judgment until the child reaches the age of majority or the
 16 obligation to provide child support ceases.

17 Section 5. R.S. 27:364(A)(1)(b)(vi) is hereby amended and reenacted to read as
 18 follows:

19 §364. Gaming Control Board; powers and duties

20 A. The board shall:

21 (1)

22 * * *

23 (b) Such rules shall include:

24 * * *

25 (vi) A procedure for the withholding of progressive slot machine annuities,
 26 of persons who have outstanding child support arrearages or child support
 27 overpayments. The board may require any agency reporting current child support
 28 arrearages, or overpayments of child support payments collected and distributed to

1 a custodial parent by the child support enforcement ~~services~~ section of the
 2 Department of Children and Family Services to the board to provide information
 3 relating to such arrearages or overpayments in a manner, format, or record approved
 4 by the board. The board or any entity licensed or permitted under this Title shall not
 5 be liable for withholding or failing to withhold any progressive slot machine
 6 annuities, based upon information provided to it. The board shall enact such rules
 7 and regulations by January 1, 2007.

8 * * *

9 Section 6. R.S. 40:34(B)(1)(h)(iv) and (E)(1) and 46.1(D) and (F)(introductory
 10 paragraph) are hereby amended and reenacted to read as follows:

11 §34. Vital records forms

12 * * *

13 B. The forms shall be printed and supplied or provided by electronic means
 14 by the state registrar and the required contents are:

15 (1) Contents of birth certificate. The certificate of birth shall contain, as a
 16 minimum, the following items:

17 * * *

18 (h)

19 * * *

20 (iv) Nothing in this Subparagraph shall preclude the Department of Children
 21 and Family Services, office of children and family services, child support
 22 enforcement ~~services~~ section from obtaining an admission of paternity from the
 23 biological father for submission in a judicial proceeding, or prohibit the issuance of
 24 an order in a judicial proceeding which bases a legal finding of paternity on an
 25 admission of paternity by the biological father and any other additional showing
 26 required by state law.

27 * * *

1 Section 7. R.S. 46:56(M)(1), 236.1.1(9)(b) and (13), 236.1.2(G), 236.1.4(E) and (F),
2 236.1.5(C), 236.1.7(B), 236.1.8(D), 236.3(A)(2), 236.10(A), (B), and (D), 236.12(B)(1),
3 236.14(D)(1)(introductory paragraph) and (H)(2), 236.15(A)(1), 236.16, 238(F), and
4 2136.2(F) are hereby amended and reenacted to read as follows:

5 §56. Applications and client case records; definitions; confidentiality; waiver;
6 penalty

7 * * *

8 M.(1) Notwithstanding the foregoing provisions of this Section, payment
9 histories on child or spousal support obligations maintained by the department in
10 conformity with the provisions of Title IV-D of the Social Security Act or by the
11 department's child support enforcement ~~services program~~ section may be released
12 to a consumer reporting agency upon its application in writing and payment of a fee
13 covering the department's actual costs for duplicating, copying, or transmitting the
14 information. Payment histories shall not be released without the removal or
15 obliteration of any confidential information contained therein, including but not
16 restricted to the payee's address or receipt of Aid to Families with Dependent
17 Children, or any successor to that program, or other state assistance.

18 * * *

19 §236.1.1. Family and child support programs; definitions

20 For the purposes of this Subpart, the following items shall mean:

21 * * *

22 (9)

23 * * *

24 (b) "Absent parent" means any person who does not reside with his
25 dependent child and who is responsible for providing financial support for that child
26 and against whom the ~~Support Enforcement Services Program~~ child support
27 enforcement section of the department is enforcing or seeking to enforce or modify
28 a support obligation pursuant to a plan described in Title IV-D of the Social Security

1 Act and made applicable to the state under this Subpart. An "absent parent" may
2 include but is not limited to the natural parent, adoptive parent, and the putative or
3 alleged father. This definition shall apply retroactively to all cases that the ~~Support~~
4 ~~Enforcement Services Program~~ child support enforcement section of the department
5 is enforcing or seeking to enforce or modify.

6 * * *

7 (13) "~~SES program~~ CSE administrator" means the ~~administrator~~ program
8 executive director of the ~~Support Enforcement Services program~~ child support
9 enforcement section, division of programs, office of children and family services,
10 Department of Children and Family Services.

11 * * *

12 §236.1.2. Family and child support programs; responsibilities

13 * * *

14 G. In any case in which the department is providing services under this
15 Subpart to obtain an order, judgment, or agreement of support or to recoup support
16 payments against the responsible person, the court shall not cancel any accrued
17 arrearages unless the department, through the ~~SES~~ CSE administrator, has
18 determined that there is no reasonable possibility of collecting the arrearages.

19 * * *

20 §236.1.4. Family and child support programs; financial institution duties;
21 responsibilities

22 * * *

23 E. The office of children and family services, child support enforcement
24 ~~services~~ section, which obtains data match information on an individual from a
25 financial institution pursuant to this ~~Subsection~~ Subpart may disclose such data
26 match information only for the purpose of, and to the extent necessary in,
27 establishing, modifying, or enforcing a child support obligation of such individual.

28 F. If any state employee or any person working under a contract with the
29 state knowingly, or by reason of negligence, discloses data match information of an
30 individual in violation of any provision of this ~~Subparagraph~~ Subpart, such

1 individual may bring a civil action for damages against such person in any district
2 court of this state.

3 * * *

4 §236.1.5. Family and child support programs; FITAP; other service recipients;
5 rights; responsibilities

6 * * *

7 C. The applicant or recipient of services shall also be deemed without the
8 necessity of signing any document to have appointed the ~~Support Enforcement~~
9 ~~Services Program~~ CSE administrator as his or her true and lawful attorney-in-fact to
10 act in his or her name, place, and stead to perform the specific act of endorsing any
11 and all drafts, checks, money orders, or other negotiable instruments representing
12 support payments which are received on behalf of such individual or caretaker.

13 * * *

14 §236.1.7. Family and child support programs; liability

15 * * *

16 B. Any attorney initiating legal proceedings pursuant to this Subpart and
17 Titles IV-D and IV-A of the Social Security Act shall represent the state of
18 Louisiana, Department of Children and Family Services exclusively. An
19 attorney-client relationship shall not exist between the attorney and any applicant or
20 recipient of child support enforcement services for and on behalf of a child or
21 children, without regard to the name in which legal proceedings are initiated. In
22 those cases in which the Department of Children and Family Services is providing
23 child support services, the attorney representing the department shall not represent
24 any party in matters involving custody or visitation. The provisions of this
25 ~~Paragraph~~ Subsection shall apply to a staff attorney in the child support enforcement
26 ~~services~~ section of the Department of Children and Family Services, district attorney,
27 or contract attorney providing support services pursuant to Title IV-D.

28 * * *

1 hires shall provide the ~~office of child support enforcement division~~ section with the
2 employee's name, address, and social security number, and the employer's name,
3 address, and employer's identification number.

4 * * *

5 §236.15. Limited administrative authority for certain paternity and child support
6 actions

7 A.

8 * * *

9 (1) In cases in which the Department of Children and Family Services, office
10 of children and family services, child support enforcement services section, referred
11 to in this Section as "agency", is providing services, the agency may, in cases in
12 which paternity is at issue, order all parties to submit to genetic testing.

13 * * *

14 §236.16. Child support mortgage and privilege by affidavit; effect of filing

15 A. The director of the child support enforcement services section, office of
16 children and family services, Department of Children and Family Services may cause
17 a "Child Support Mortgage and Privilege by Affidavit of ~~DCFS~~ DCFS", as provided
18 in R.S. 13:4291(B), to be recorded in the mortgage records of any parish in which
19 the support obligor owns movable or immovable property, and with the office of the
20 secretary of state for inclusion in the master index authorized under R.S. 10:9-519.
21 Such affidavit when filed shall operate as a first lien, privilege, and legal mortgage
22 on all of the movable and immovable property of the support obligor only from the
23 date of such filing ~~only~~, and shall not affect liens, privileges, chattel mortgages, or
24 security interests as provided in R.S. 10:9-101 et seq. or mortgages already affecting
25 or burdening such property at the date of such filing. Such filing shall apply to all
26 unpaid support obligations that may accrue after such filing, and the property of the
27 support obligor shall be subject to seizure and sale for the payment of such support
28 obligation and arrearages according to the preference and rank of the lien, privilege,
29 security interest, and mortgage securing their payment. Notwithstanding any

1 provision of this Subsection, such affidavit shall not operate as a lien, privilege, or
2 legal mortgage on any licensed or titled motor vehicle.

3 B. The director of the child support enforcement ~~services~~ section, office of
4 children and family services, Department of Children and Family Services, or his
5 designee, may release all or any portion of the property subject to any lien or
6 judgment obtained pursuant to this Section from such lien or judgment, or may
7 subordinate such lien or judgment to other liens and encumbrances if he determines
8 that the support obligation and arrearages are sufficiently secured by a lien or
9 judgment on other property or through other security, or that the release, partial
10 release, or subordination of such lien or judgment will not endanger or jeopardize the
11 collection of support obligations or arrearages.

12 * * *

13 §238. Unpaid child support, release of information

14 * * *

15 F. Nothing in this Section shall authorize the Department of Children and
16 Family Services or the ~~office of~~ child support enforcement ~~services~~ section to
17 contract for hire with any private attorney or entity for the collection of child support
18 or the provision of IV-D services.

19 * * *

20 §2136.2. Louisiana Protective Order Registry

21 * * *

22 F. The judicial administrator's office shall make the Louisiana Protective
23 Order Registry available to state and local law enforcement agencies, district
24 attorney offices, the Department of Children and Family Services, office of children
25 and family services, child support enforcement ~~services~~ section, the Department of
26 Health and Hospitals, bureau of protective services, the Governor's Office of Elderly
27 Affairs, elderly protective services, the office of the attorney general, and the courts.
28 Section 8. R.S. 51:1442(4) is hereby amended and reenacted to read as follows:

