ENROLLED

Regular Session, 2012

ACT No. 255

HOUSE BILL NO. 389

BY REPRESENTATIVE SCHRODER

AN ACT

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

Be it enacted by the Legislature of Louisiana:

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

§333. Disclosure of financial records; reimbursement of costs

* * *

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

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

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~~services~~ section, for use in attempting to establish, modify, or enforce a child support obligation of such individual. Such disclosure to the department shall be limited to the name, record address, social security or taxpayer identification number, and an average daily account balance for the most recent thirty-day period, of a noncustodial parent who maintains an account at such institution and who owes past-due support as identified by the state by name and social security or taxpayer identification number.

* * *

Section 2. R.S. 9:315.9(A)(6), 315.16(A), 315.40(1), 399.1(A) and (F)(3) and (4), and 406(B)(2) and (C)(2) are hereby amended and reenacted to read as follows:

§315.9. Effect of shared custodial arrangement

A.

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(6) The court shall order each parent to pay his proportionate share of all reasonable and necessary uninsured ordinary medical expenses ~~under the provisions of R.S. 9:315(C)(7)~~ as defined in R.S. 9:315(C)(8) which are under two hundred fifty dollars.

* * *

§315.16. Review of guidelines

A. The guidelines set forth in this Part shall be reviewed by the legislature not less than once every four years. A review of the guidelines shall take place in 2012 and every four years thereafter, and it shall be the responsibility of the office of children and family services, child support enforcement ~~services~~ section of the Department of Children and Family Services, and the Louisiana District Attorneys Association, in consultation with the child support review committee provided in Subsection B of this Section, to obtain all information required to comply with the provisions of 42 U.S.C. 667(a) and present the same to the legislature sixty days prior to the beginning of the 2008 Regular Session of the Legislature and every four years thereafter.

* * *

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§315.40. Definitions

As used in this Subpart:

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

* * *

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

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

* * *

F.

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

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(4) Neither the state of Louisiana, its officers, employees, agents, contractors, nor the office of children and family services, child support enforcement ~~services~~ section of the Department of Children and Family Services shall be liable in any case to compensate any person for child support paid or for any other costs as a result of the judgment setting aside or vacating the judgment of paternity or support entered in accordance with this Section.

* * *

§406. Revocation of authentic act; with and without cause; procedure

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B.

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(2) The mover shall institute the proceeding by ordinary process, within a two-year period commencing with the execution of the authentic act of acknowledgment of paternity, in a court of competent jurisdiction upon notice to the other party who executed the notarial act of acknowledgment and other necessary parties including the office of children and family services, child support enforcement ~~services~~ section of the Department of Children and Family Services. If the court finds based upon the evidence presented at the hearing that there is substantial likelihood that fraud, duress, material mistake of fact or error existed in the execution of the act or that the person who executed the authentic act of acknowledgment is not the biological father, then, and only then, the court shall order genetic tests pursuant to R.S. 9:396. Nothing herein shall preclude the mover from presenting any other evidence as a substitute for the genetic tests if it is not possible to conduct such tests.

* * *

C.

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(2) Neither the state of Louisiana, its officers, employees, agents, contractors, nor the office of children and family services, child support enforcement ~~services~~ section of the Department of Children and Family Services shall be liable to compensate any person for child support paid or any other costs as a result of the revocation of any authentic act of acknowledgment or the revocation of any judgment of paternity or support in accordance with this Section.

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Section 3. R.S. 11:441.1(F) is hereby amended and reenacted to read as follows:

§441.1. Early Retirement and Payroll Reduction Act of 2006

* * *

F. Notwithstanding any other provision of law or of this Section to the contrary, the provisions of this Section which eliminate vacated positions shall not be applicable to any positions of the Department of Children and Family Services, office of children and family services, child support enforcement ~~services division~~ section; or to Department of Public Safety and Corrections security officers or probation and parole officers; or to any positions of the LSU health care services division.

* * *

Section 4. R.S. 13:4291(B)(1) and (C) are hereby amended and reenacted to read as follows:

§4291. Effect of child support payments; legal mortgage and privilege; affidavit of support owed; prescription

* * *

B.(1) In all cases where the Department of Children and Family Services is enforcing child support services, a judgment created by operation of law pursuant to Subsection A of this Section shall be executory in all respects, without the necessity of a judicial proceeding to determine the amount actually owed. The director of the child support enforcement ~~services~~ section, office of children and family services,

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

* * *

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

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

§364. Gaming Control Board; powers and duties

A. The board shall:

(1)

* * *

(b) Such rules shall include:

* * *

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

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

* * *

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

§34. Vital records forms

* * *

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

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

* * *

(h)

* * *

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

* * *

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E.(1) If the child is a child born outside of marriage and the father is known to the mother, she shall complete and sign a paternity information form issued by the Vital Records Registry which shall include the name and date of birth of the child, full name of the father, his mailing address, his street address or the location where he can be found, his date of birth, and the name of his parent or guardian if he is a minor, his state and city of birth, his social security number, and his place of employment, if known. Within fifteen days after the date of admission, the hospital or birthing facility shall forward the form to the child support enforcement ~~services~~ section, office of children and family services, Department of Children and Family Services, with such information as the mother has provided. If the birth occurred at a location other than a licensed hospital or birthing facility, the form shall be completed at the time the home birth is recorded by the Vital Records Registry and submitted to support enforcement services within fifteen days thereafter. If the natural father has not executed an acknowledgment of paternity, the mother shall sign as the informant unless she is medically unable or mentally incompetent in which case her guardian or legal representative shall sign.

* * *

§46.1. Hospital-based paternity program

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D. Hospital personnel shall forward an acknowledgment of paternity to the state registrar who shall forward copies of same to the Department of Children and Family Services, office of children and family services, child support enforcement ~~services~~ section. A statewide ~~data base~~ database shall be maintained by the Department of Children and Family Services in accordance with federal regulations.

* * *

F. The Department of Children and Family Services, office of children and family services, child support enforcement ~~services~~ section shall provide to all birthing hospitals in the state:

* * *

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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), 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), 236.14(D)(1)(introductory paragraph) and (H)(2), 236.15(A)(1), 236.16, 238(F), and 2136.2(F) are hereby amended and reenacted to read as follows:

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

* * *

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

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§236.1.1. Family and child support programs; definitions

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

* * *

(9)

* * *

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

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

* * *

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

* * *

§236.1.2. Family and child support programs; responsibilities

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

* * *

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

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

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

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

* * *

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

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

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§236.1.7. Family and child support programs; liability

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

* * *

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§236.1.8. Family and child support programs; additional authorized employee actions

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D. The support services authorized by this Subpart shall be provided by the office of children and family services, ~~Support Enforcement Services program~~ child support enforcement section. Field officers responsible for supplying these services shall be designated as support enforcement regional administrators, support enforcement district managers, social service analyst supervisors, and social service analysts. Such officers shall have the power and authority to make arrests, supervise the probation of offenders, serve notices, orders, subpoenas, ~~summons~~ summonses, citations, motions, and writs, and to execute all warrants and orders and to perform any other duties incident to their office. All such officers are hereby authorized to carry weapons and arms, concealed or openly, while in the actual performance of any duty or while under assignment to any duty, but under no circumstances shall officers be authorized to carry weapons unless they have been trained in the proper carrying and use of firearms by a recognized firearm training program.

* * *

§236.3. Enforcement of support by income assignment

A. For purposes of this Section, the following words have the meaning ascribed to them by this Section unless the context clearly indicates a different meaning:

* * *

(2) "Department" means the Department of Children and Family Services, office of children and family services, child support enforcement ~~services~~ section.

* * *

§236.10. State case registry of child support orders

A. The secretary of the Department of Children and Family Services shall create an automated state case registry of child support orders within the office of children and family services, child support enforcement ~~services~~ section.

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B. The automated state case registry of child support orders, hereinafter referred to as the "state case registry", shall contain records with respect to each case in which services are being provided by the child support enforcement ~~services~~ section and each support order established or modified in the state on or after October 1, 1998.

* * *

D. Clerks of court in the state's judicial districts shall provide the required information to the child support enforcement ~~services~~ section for use in developing the state case registry. The court shall require the parties, or the attorneys representing the parties, to provide the required information to the clerks of court. The Department of Children and Family Services shall enter into cooperative agreements with clerks of court to provide for reimbursement of the actual costs of collecting and transmitting the information required by this Section.

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§236.12. Plan for parental participation of support; required work activities

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B. For purposes of this Section:

(1) "Department" means the child support enforcement ~~services~~ section, office of children and family services, Department of Children and Family Services.

* * *

§236.14. Employer reporting program

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D.(1) An employer shall report to the Department of Children and Family Services, office of children and family services, child support enforcement ~~services~~ section any of the following:

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* * *

(2) If a match is revealed with respect to the social security numbers in the state directory of new hires and is in the state case registry, the state directory of new

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

* * *

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

A.

* * *

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

* * *

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

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

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

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

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§238. Unpaid child support, release of information

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

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§2136.2. Louisiana Protective Order Registry

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F. The judicial administrator's office shall make the Louisiana Protective Order Registry available to state and local law enforcement agencies, district attorney offices, the Department of Children and Family Services, office of children and family services, child support enforcement ~~services~~ section, the Department of Health and Hospitals, bureau of protective services, the Governor's Office of Elderly Affairs, elderly protective services, the office of the attorney general, and the courts.

Section 8. R.S. 51:1442(4) is hereby amended and reenacted to read as follows:

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§1442. Definitions

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

* * *

(4) "Department" means the Department of Children and Family Services, office of children and family services, child support enforcement ~~services~~ section.

* * *

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____

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