

House Bill 189

By: Representatives Butler of the 18th, Willard of the 49th, and Golick of the 34th

A BILL TO BE ENTITLED
AN ACT

To amend Chapter 11 of Title 19 of the Official Code of Georgia Annotated, relating to enforcement of duty of support, so as to provide legislative intent; to provide for child support collection options; to change provisions relating to payment of child support held by the Child Support Enforcement Agency of the Department of Human Resources; to provide for definitions; to provide for contract requirements; to provide for prohibited practices of private child support collectors; to provide for cancellation or termination of the contract; to provide for other remedies; to provide for related matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

SECTION 1.

The General Assembly recognizes that private child support collectors, private attorneys, and the Department of Human Resources are colleagues in the important role of collecting support for the children of Georgia. The General Assembly also finds that it is vital that they cooperate with each other to ensure the best service to parents. It is, therefore, the intent of the General Assembly to ensure that parents, as consumers, have options for the enforcement of child support obligations and the ability to make well-informed decisions regarding those options.

SECTION 2.

Chapter 11 of Title 19 of the Official Code of Georgia Annotated, relating to enforcement of duty of support, is amended by adding a new article to read as follows:

"ARTICLE 4

19-11-210.

As used in this article the term:

(1) 'Child support enforcement' means the action, conduct, or practice of enforcing a child support order issued by a court or other tribunal.

(2) 'Department' means the Department of Human Resources.

(3) 'Obligee' means a resident of this state who is identified in an order for child support issued by a court or other tribunal as the payee to whom an obligor owes child support.

(4) 'Obligor' means a resident of this state who is identified in an order for child support issued by a court or other tribunal as required to make child support payments.

(5) 'Private child support collector' means an individual or nongovernmental entity that solicits and contracts directly with obligees to provide child support collection services for a fee or other compensation but shall not include attorneys licensed to practice in this state.

19-11-211.

Any contract for the collection of child support between a private child support collector and an obligee shall be in writing and written in simple language, in at least ten-point type, and signed by the private child support collector and the obligee. The contract shall include:

(1) An explanation of the nature of the services to be provided;

(2) An explanation of the amount to be collected by the private child support collector;

(3) An explanation of the fees imposed by the contract and an example of how they are calculated and deducted;

(4) A statement that fees shall be charged for collecting past due child support and for collecting current child support if the collection of current child support for a fee is one of the terms of the contract;

(5) A statement that the private child support collector shall not retain fees from collections that are primarily attributable to the actions of the department and that the private child support collector is required by law to refund any fees improperly retained;

(6) An explanation of the opportunities available to the obligee or private child support collector to cancel the contract or other conditions under which the contract terminates;

(7) The mailing address, telephone numbers, facsimile numbers, and Internet address of the private child support collector;

(8) A statement that the private child support collector collects only money owed to the obligee and not support assigned to the State of Georgia;

(9) A statement that the private child support collector is not a governmental entity and that the department provides child support enforcement services at little or no cost to the obligee; and

(10) A statement that the obligee may continue to use or pursue services through the department to collect support.

19-11-212.

A private child support collector shall not:

(1) Improperly retain fees from collections that are primarily attributable to the actions of the department. The private child support collector shall refund such fees to the obligee within seven business days of discovery of the improper retention of fees. The private child support collector may require the obligee to provide documentation that the collection was primarily attributable to the actions of the department prior to issuing any refund;

(2) 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 collector is affiliated with the department or any other governmental entity;

(3) Use or threaten to use violence or other criminal means to cause harm to an obligor or the property of the obligor;

(4) Falsely accuse or threaten to falsely accuse an obligor of a violation of state or federal laws;

(5) Take or threaten to take an enforcement action against an obligor that is not authorized by law; or

(6) Intentionally represent to an obligor that the private child support collector is affiliated with the department or any other governmental entity authorized to enforce child support obligations or fail to include in any written correspondence to an obligor the statement that 'This communication is from a private child support collector. The purpose of this communication is to collect a child support debt. Any information obtained will be used for that purpose.'

19-11-213.

In addition to any other cancellation or termination provisions provided in the contract between a private child support collector and an obligee, the contract shall be cancelled or terminate if:

(1) The obligee requests cancellation in writing within 14 days of signing the contract;

(2) The obligee requests cancellation in writing after any 12 consecutive months in which the private child support collector fails to make a collection;

(3) The private child support collector breaches any term of the contract or violates any provision contained within this article; or

(4) The amount to be collected pursuant to the contract has been collected.

94 19-11-214.

95 (a) In addition to any other remedies provided by law, an obligee or obligor may bring an
96 action for actual damages incurred as a result of a violation of this article and for injunctive
97 relief to enjoin or restrain a violation of this article.

98 (b) The prevailing party in any action pursuant to this article shall be entitled to recover
99 the costs of the action. Reasonable attorney's fees, which shall be based on the time
100 necessarily expended to enforce the liability, shall be awarded to a prevailing party, other
101 than the private child support collector, asserting rights under this article. Reasonable
102 attorney's fees may be awarded to a prevailing private child support collector if the court
103 finds that the party bringing the action did not prosecute the action in good faith.

104 (c) A private child support collector shall not be in violation of this article if the action
105 complained of was not intentional and resulted from a bona fide error that occurred
106 notwithstanding the use of reasonable procedures to avoid such error.

107 (d) The remedies provided in this article shall be cumulative and shall be in addition to any
108 other procedures, rights, or remedies available under any other law.

109 (e) Any waiver of the rights, requirements, and remedies provided by this article violates
110 public policy and shall be void."

111 **SECTION 3.**

112 Said chapter is further amended by revising subsection (f) of Code Section 19-11-18, relating
113 to collection procedures, as follows:

114 "(f)(1) As used in this subsection, the term 'private child support collector' shall have the
115 same meaning as provided in Code Section 19-11-210.

116 (2) Notwithstanding any other provision of this title to the contrary, any child support
117 being held by the Child Support Enforcement Agency of the Department of Human
118 Resources shall be paid to the custodial parent to any address or bank account or in care
119 of any person designated by such parent within 30 days from receipt of same by the
120 enforcement agency. The department may require that the custodial parent's designation
121 of an address, person, or bank account be in writing but shall not charge a fee for
122 receiving such request or redirecting the payments as requested. The department shall
123 provide to an attorney representing a custodial parent, or to a private child support
124 collector hired by a custodial parent and acting pursuant to a power of attorney signed by
125 such custodial parent, any documents which such custodial parent would be entitled to
126 request and receive from the department. It is the intent of this subsection that
127 arrangements between custodial parents and private child support collectors and attorneys
128 shall be promoted and facilitated."

129 **SECTION 4.**

130 This Act shall become effective upon its approval by the Governor or upon its becoming law
131 without such approval and shall be applicable to all contracts for private collection of child
132 support payment entered into on or after such effective date.

133 **SECTION 5.**

134 All laws and parts of laws in conflict with this Act are repealed.