

House Bill 189 (COMMITTEE SUBSTITUTE)

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

A BILL TO BE ENTITLED

AN ACT

1 To provide for legislative findings; to amend Code Section 9-9-2 of the Official Code of
 2 Georgia Annotated, relating to applicability of the "Georgia Arbitration Code," so as to
 3 correct a cross-reference; to amend Part 2 of Article 15 of Chapter 1 of Title 10 of the
 4 Official Code of Georgia Annotated, relating to the "Fair Business Practices Act of 1975,"
 5 so as to provide for oversight by the Governor's Office of Consumer Affairs of private child
 6 support collection; to provide for definitions; to provide for contractual requirements; to
 7 provide for prohibited practices of private child support collectors; to provide for cancellation
 8 or termination of such contracts; to provide for other remedies; to amend Code Section
 9 19-11-18 of the Official Code of Georgia Annotated, relating to collection procedures, so as
 10 to change provisions relating to payment of child support held by the Child Support
 11 Enforcement Agency of the Department of Human Resources; to provide a definition; to
 12 provide for related matters; to provide for an effective date and applicability; to repeal
 13 conflicting laws; and for other purposes.

14

SECTION 1.

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

22

SECTION 2.

23 Code Section 9-9-2 of the Official Code of Georgia Annotated, relating to applicability of
 24 the "Georgia Arbitration Code," is amended by revising paragraph (7) of subsection (c) as
 25 follows:

26 "(7) Any contract involving consumer acts or practices or involving consumer
 27 transactions as such terms are defined in ~~paragraphs (2) and (3)~~ of subsection (a) of Code
 28 Section 10-1-392, relating to definitions in the 'Fair Business Practices Act of 1975';"

29 **SECTION 3.**

30 Part 2 of Article 15 of Chapter 1 of Title 10 of the Official Code of Georgia Annotated,
 31 relating to the "Fair Business Practices Act of 1975," is amended by revising subsection (a)
 32 of Code Section 10-1-392, relating to definitions, as follows:

33 "(a) As used in this part, the term:

34 (1) 'Administrator' means the administrator appointed pursuant to subsection (a) of Code
 35 Section 10-1-395 or his or her delegate.

36 ~~(1.1)~~(2) 'Campground membership' means any arrangement under which a purchaser has
 37 the right to use, occupy, or enjoy a campground membership facility.

38 ~~(1.2)~~(3) 'Campground membership facility' means any campground facility at which the
 39 use, occupation, or enjoyment of the facility is primarily limited to those purchasers,
 40 along with their guests, who have purchased a right to make reservations at future times
 41 to use the facility or who have purchased the right periodically to use the facility at fixed
 42 times or intervals in the future, but shall not include any such arrangement which is
 43 regulated under Article 5 of Chapter 3 of Title 44.

44 ~~(1.3)~~(4) 'Career consulting firm' means any person providing services to an individual
 45 in conjunction with a career search and consulting program for the individual, including,
 46 but not limited to, counseling as to the individual's career potential, counseling as to
 47 interview techniques, and the identification of prospective employers. A 'career
 48 consulting firm' shall not guarantee actual job placement as one of its services. A 'career
 49 consulting firm' shall not include any person who provides these services without
 50 charging a fee to applicants for those services or any employment agent or agency
 51 regulated under Chapter 10 of Title 34.

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

54 ~~(2)~~(6) 'Consumer' means a natural person.

55 ~~(2.1)~~(7) 'Consumer acts or practices' means acts or practices intended to encourage
 56 consumer transactions.

57 ~~(2.2)~~(8) 'Consumer report' means any written or other communication of any information
 58 by a consumer reporting agency bearing on a consumer's creditworthiness, credit
 59 standing, or credit capacity which is used or intended to be used or collected in whole or
 60 in part for the purpose of serving as a factor in establishing the consumer's eligibility for:

61 (A) Credit or insurance to be used primarily for personal, family, or household
62 purposes; or

63 (B) Employment consideration.

64 ~~(2.3)~~(9) 'Consumer reporting agency' or 'agency' means any person which, for monetary
65 fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in
66 the practice of assembling or evaluating consumer credit information or other information
67 on consumers for the purpose of furnishing consumer reports to third parties.

68 ~~(3)~~(10) 'Consumer transactions' means the sale, purchase, lease, or rental of goods,
69 services, or property, real or personal, primarily for personal, family, or household
70 purposes.

71 (11) 'Department' means the Department of Human Resources.

72 ~~(4)~~(12) 'Documentary material' means the original or a copy, whether printed, filmed, or
73 otherwise preserved or reproduced, by whatever process, including electronic data storage
74 and retrieval systems, of any book, record, report, memorandum, paper, communication,
75 tabulation, map, chart, photograph, mechanical transcription, or other tangible document
76 or record wherever situate.

77 ~~(5)~~(13) 'Examination' of documentary material means inspection, study, or copying of
78 any such material and the taking of testimony under oath or acknowledgment in with
79 respect of to any such documentary material.

80 ~~(5.1)~~(14) 'File' means, when used in connection with information on any consumer, all
81 of the information on that consumer recorded or retained by a consumer reporting agency
82 regardless of how the information is stored.

83 ~~(5.2)~~(15) 'Going-out-of-business sale' means any offer to sell to the public or sale to the
84 public of goods, wares, or merchandise on the implied or direct representation that such
85 sale is in anticipation of the termination of a business at its present location or that the
86 sale is being held other than in the ordinary course of business and includes, without
87 being limited to, any sale advertised either specifically or in substance to be a sale
88 because the person is going out of business, liquidating, selling his or her entire stock or
89 50 percent or more of his or her stock, selling out to the bare walls, selling because the
90 person has lost his or her lease, selling out his or her interest in the business, or selling
91 because everything in the business must be sold or that the sale is a trustee's sale,
92 bankrupt sale, save us from bankruptcy sale, insolvent sale, assignee's sale, must vacate
93 sale, quitting business sale, receiver's sale, loss of lease sale, forced out of business sale,
94 removal sale, liquidation sale, executor's sale, administrator's sale, warehouse removal
95 sale, branch store discontinuance sale, creditor's sale, adjustment sale, or defunct business
96 sale.

97 ~~(6)~~(16) 'Health spa' means an establishment which provides, as one of its primary
 98 purposes, services or facilities which are purported to assist patrons to improve their
 99 physical condition or appearance through change in weight, weight control, treatment,
 100 dieting, or exercise. The term includes an establishment designated as a 'reducing salon,'
 101 'health spa,' 'spa,' 'exercise gym,' 'health studio,' 'health club,' or by other terms of similar
 102 import. A health spa shall not include any of the following:

103 (A) Any nonprofit organization;

104 (B) Any facility wholly owned and operated by a licensed physician or physicians at
 105 which such physician or physicians are engaged in the actual practice of medicine; or

106 (C) Any such establishment operated by a health care facility, hospital, intermediate
 107 care facility, or skilled nursing care facility.

108 ~~(6.1)~~(17) 'Marine membership' means any arrangement under which a purchaser has a
 109 right to use, occupy, or enjoy a marine membership facility.

110 ~~(6.2)~~(18) 'Marine membership facility' means any boat, houseboat, yacht, ship, or other
 111 floating facility upon which the use, occupation, or enjoyment of the facility is primarily
 112 limited to those purchasers, along with their guests, who have purchased a right to make
 113 reservations at future times to use the facility or who have purchased a right to use
 114 periodically, occupy, or enjoy the facility at fixed times or intervals in the future, but shall
 115 not include any such arrangement which is regulated under Article 5 of Chapter 3 of Title
 116 44.

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

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

121 ~~(6.3)~~(21) 'Office' means any place where business is transacted, where any service is
 122 supplied by any person, or where any farm is operated.

123 ~~(6.4)~~(22) 'Office supplier' means any person who sells, rents, leases, or ships, or offers
 124 to sell, lease, rent, or ship, goods, services, or property to any person to be used in the
 125 operation of any office or of any farm.

126 ~~(6.5)~~(23) 'Office supply transactions' means the sale, lease, rental, or shipment of, or
 127 offer to sell, lease, rent, or ship, goods, services, or property to any person to be used in
 128 the operation of any office or of any farm but shall not include transactions in which the
 129 goods, services, or property is purchased, leased, or rented by the office or farm for
 130 purposes of reselling them to other persons.

131 ~~(7)~~(24) 'Person' means a natural person, corporation, trust, partnership, incorporated or
 132 unincorporated association, or any other legal entity.

133 (25) 'Private child support collector' means an individual or nongovernmental entity that
 134 solicits and contracts directly with obligees to provide child support collection services
 135 for a fee or other compensation but shall not include attorneys licensed to practice law
 136 in this state unless such attorney is employed by a private child support collector.

137 ~~(7.1)~~(26) 'Prize' means a gift, award, or other item intended to be distributed or actually
 138 distributed in a promotion.

139 ~~(8)~~(27) 'Promotion' means any scheme or procedure for the promotion of consumer
 140 transactions whereby one or more prizes are distributed among persons who are required
 141 to be present at the place of business or are required to participate in a seminar, sales
 142 presentation, or any other presentation, by whatever name denominated, in order to
 143 receive the prize or to determine which, if any, prize they will receive. Promotions shall
 144 not include any procedure where the receipt of the prize is conditioned upon the purchase
 145 of the item which the seller is trying to promote if such condition is clearly and
 146 conspicuously disclosed in the promotional advertising and literature and the receipt of
 147 the prize does not involve an element of chance. Any procedure where the receipt of the
 148 prize is conditioned upon the purchase of the item which the seller is trying to promote
 149 or upon the payment of money and where the receipt of that prize involves an element of
 150 chance shall be deemed to be a lottery under Code Section 16-12-20; provided, however,
 151 that nothing in this definition shall be construed to include a lottery operated by the State
 152 of Georgia or the Georgia Lottery Corporation as authorized by law; provided, further,
 153 that any deposit made in connection with an activity described by subparagraph
 154 (b)(22)(B) of Code Section 10-1-393 shall not constitute the payment of money.

155 ~~(9)~~(28) 'Trade' and 'commerce' mean the advertising, distribution, sale, lease, or offering
 156 for distribution, sale, or lease of any goods, services, or any property, tangible or
 157 intangible, real, personal, or mixed, or any other article, commodity, or thing of value
 158 wherever situate and shall include any trade or commerce directly or indirectly affecting
 159 the people of ~~the~~ this state."

160 **SECTION 4.**

161 Said part is further amended by adding a new Code section to read as follows:

162 "10-1-393.9.

163 (a)(1) Private child support collectors shall register with the Governor's Office of
 164 Consumer Affairs and shall provide information as requested by the Governor's Office
 165 of Consumer Affairs, including, but not limited to, the name of the private child support
 166 collector, the office address and telephone number for such entity, and the registered
 167 agent in this state on whom service of process is to be made in a proceeding against such
 168 private child support collector.

- 169 (2) An application for registration shall be accompanied by a surety bond approved by
170 the Governor's Office of Consumer Affairs, and the surety bond shall be:
- 171 (A) Issued by a surety authorized to do business in this state;
172 (B) In the amount of \$50,000.00;
173 (C) In favor of the state for the benefit of a person damaged by a violation of this Code
174 section; and
175 (D) Conditioned on the private child support collector's compliance with this Code
176 section and the faithful performance of the obligations under the private child support
177 collector's agreements with its clients.
- 178 (3) A surety bond shall be filed with and held by the Governor's Office of Consumer
179 Affairs.
- 180 (4) Instead of a surety bond, the Governor's Office of Consumer Affairs may accept a
181 deposit of money in an amount determined by the Governor's Office of Consumer Affairs
182 not to exceed \$50,000.00. The Governor's Office of Consumer Affairs shall deposit any
183 amounts received under this paragraph in an insured depository account designated for
184 that purpose.
- 185 (b) Any contract for the collection of child support between a private child support
186 collector and an obligee shall be in writing, in at least ten-point type, and signed by a
187 private child support collector and the obligee. The contract shall include:
- 188 (1) An explanation of the nature of the services to be provided;
189 (2) An explanation of the amount to be collected from the obligor by a private child
190 support collector and a statement of a sum certain of the total amount that is to be
191 collected by the private child support collector that has been engaged by the obligee;
192 (3) An explanation in dollar figures of the maximum amount of fees which could be
193 collected under the contract and an example of how fees are calculated and deducted;
194 (4) A statement that fees shall be charged for collecting past due child support and for
195 collecting current child support if the collection of current child support for a fee is one
196 of the terms of the contract;
197 (5) A statement that a private child support collector shall not retain fees from collections
198 that are primarily attributable to the actions of the department and that a private child
199 support collector shall be required by law to refund any fees improperly retained;
200 (6) An explanation of the opportunities available to the obligee or private child support
201 collector to cancel the contract or other conditions under which the contract terminates;
202 (7) The mailing address, telephone numbers, facsimile numbers, and e-mail address of
203 a private child support collector;
204 (8) A statement that a private child support collector shall only collect money owed to
205 the obligee and not child support assigned to the State of Georgia;

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

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

211 (c) A private child support collector shall not:

212 (1) Improperly retain fees from collections that are primarily attributable to the actions
213 of the department. If the department or administrator notifies a private child support
214 collector of such improper fee retention, such private child support collector shall refund
215 such fees to the obligee within seven business days of the notification of the improper
216 retention of fees and shall not be liable for such improper fee retention. A private child
217 support collector may require documentation that the collection was primarily attributable
218 to the actions of the department prior to issuing any refund;

219 (2) Charge fees in excess of one-third of the total amount of child support payments
220 collected;

221 (3) Solicit obligees using marketing materials, advertisements, or representations
222 reasonably calculated to create a false impression or mislead an obligee into believing a
223 private child support collector is affiliated with the department or any other governmental
224 entity;

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

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

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

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

237 (8) Communicate to an obligor's employer, or his or her agent, any information relating
238 to an obligor's indebtedness other than through proper legal action, process, or
239 proceeding;

240 (9) Communicate with an obligor whenever it appears the obligor is represented by an
241 attorney and the attorney's name and address are known, or could be easily ascertained,
242 unless the attorney fails to answer correspondences, return telephone calls, or discuss the

243 obligation in question, or unless the attorney and the obligor consent to direct
 244 communication;
 245 (10) Contract with an obligee who is owed less than three months of child support
 246 arrearages; or
 247 (11) Contract with an obligee for a sum certain to be collected which is greater than the
 248 total sum of arrearages as of the date of execution of the contract.
 249 (d) In addition to any other cancellation or termination provisions provided in the contract
 250 between a private child support collector and an obligee, the contract shall be cancelled or
 251 terminate if:
 252 (1) The obligee requests cancellation in writing within 30 days of signing the contract;
 253 (2) The obligee requests cancellation in writing after any 12 consecutive months in
 254 which a private child support collector fails to make a collection;
 255 (3) A private child support collector breaches any term of the contract or violates any
 256 provision contained within this Code section; or
 257 (4) The amount to be collected pursuant to the contract has been collected.
 258 (e) All private child support collector contracts, and any amendments thereto, shall be
 259 submitted to the administrator and certified by the administrator as to whether or not such
 260 contract complies with this Code section. Contracts that are not in compliance with this
 261 Code section shall be void and unenforceable. The administrator shall have 30 business
 262 days to certify or disapprove certification of contract submissions.
 263 (f) The remedies provided in this Code section shall be cumulative and shall be in addition
 264 to any other procedures, rights, or remedies available under any other law.
 265 (g) Any waiver of the rights, requirements, and remedies provided by this Code section
 266 violates public policy and shall be void.
 267 (h) In addition to any civil penalties under this part, any person who intentionally violates
 268 this Code section shall be subject to a criminal penalty under subsection (a) of Code
 269 Section 16-8-12. In addition thereto, if the violator is a corporation, each of its officers and
 270 directors may be subjected to a like penalty; if the violator is a sole proprietorship, the
 271 owner thereof may be subjected to a like penalty; and, if the violator is a partnership, each
 272 of the partners may be subjected to a like penalty, provided that no person shall be
 273 subjected to a like penalty if the person did not have prior actual knowledge of the acts
 274 violating this Code section."

275 **SECTION 5.**

276 Code Section 19-11-18 of the Official Code of Georgia Annotated, relating to collection
 277 procedures, is amended by revising subsection (f) as follows:

278 "(f)(1) As used in this subsection, the term 'private child support collector' shall have the
 279 same meaning as provided in Code Section 10-1-392.

280 (2) Notwithstanding any other provision of this title to the contrary, any child support
 281 being held by the Child Support Enforcement Agency of the Department of Human
 282 Resources department shall be paid to the custodial parent, legal guardian, or caretaker
 283 relative having custody of or responsibility for a child at any address or bank account
 284 designated by such parent, legal guardian, or caretaker relative within 30 two days from
 285 receipt of same by the enforcement agency. Designating that payments shall be directed
 286 to an address or bank account designated by a parent, legal guardian, or caretaker relative
 287 having custody of or responsibility for a child shall not constitute a change in payee. The
 288 Child Support Enforcement Agency of the department may require that such custodial
 289 parent's, legal guardian's, or caretaker relative's designation of an address, person, or bank
 290 account be in writing but shall not charge a fee for receiving such request or redirecting
 291 the payments as requested. The Child Support Enforcement Agency of the department
 292 shall provide to an attorney representing a custodial parent, legal guardian, or caretaker
 293 relative having custody of or responsibility for a child, or to a private child support
 294 collector hired by a custodial parent, legal guardian, or caretaker relative having custody
 295 of or responsibility for a child and acting pursuant to a power of attorney signed by such
 296 custodial parent, legal guardian, or caretaker relative, any documents which such
 297 custodial parent, legal guardian, or caretaker relative would be entitled to request and
 298 receive from the department. It is the intent of this subsection that arrangements between
 299 custodial parents, legal guardians, or caretaker relatives having custody of or
 300 responsibility for a child and private child support collectors and attorneys shall be
 301 facilitated by the department."

302 **SECTION 6.**

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

306 **SECTION 7.**

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