

The Senate Judiciary Committee offered the following substitute to HB 189:

**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 Secretary of State of private child support collection; to
6 provide for definitions; to provide for contractual requirements; to provide for prohibited
7 practices of private child support collectors; to provide for cancellation or termination of
8 such contracts; to provide for other remedies; to amend Article 1 of Chapter 11 of Title 19
9 of the Official Code of Georgia Annotated, relating to the "Child Support Recovery Act," so
10 as to change provisions relating to payment of child support held by the Child Support
11 Enforcement Agency of the Department of Human Resources; to change provisions relating
12 to records held by the department; to provide for related matters; to provide for an effective
13 date and applicability; to repeal conflicting laws; and for other purposes.

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.

SECTION 2.

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

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

SECTION 3.

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

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

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

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

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

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

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

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

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

(2.2)(8) 'Consumer report' means any written or other communication of any information by a consumer reporting agency bearing on a consumer's creditworthiness, credit standing, or credit capacity which is used or intended to be used or collected in whole or 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.

(25) '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 law in this state unless such attorney is employed by a private child support collector.

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

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

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

SECTION 4.

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

"10-1-393.9.

(a)(1) Private child support collectors shall register with the Secretary of State and shall provide information as requested by the Secretary of State, including, but not limited to, the name of the private child support collector, the office address and telephone number for such entity, and the registered agent in this state on whom service of process is to be made in a proceeding against such private child support collector.

168 (2) An application for registration shall be accompanied by a surety bond approved by
169 the Secretary of State, and the surety bond shall be:

170 (A) Issued by a surety authorized to do business in this state;

171 (B) In the amount of \$50,000.00;

172 (C) In favor of the state for the benefit of a person damaged by a violation of this Code
173 section; and

174 (D) Conditioned on the private child support collector's compliance with this Code
175 section and the faithful performance of the obligations under the private child support
176 collector's agreements with its clients.

177 (3) A surety bond shall be filed with and held by the Secretary of State.

178 (4) Instead of a surety bond, the Secretary of State may accept a deposit of money in an
179 amount determined by the Secretary of State not to exceed \$50,000.00. The Secretary
180 of State shall deposit any amounts received under this paragraph in an insured depository
181 account designated for that purpose.

182 (b) Any contract for the collection of child support between a private child support
183 collector and an obligee shall be in writing, in at least ten-point type, and signed by a
184 private child support collector and the obligee. The contract shall include:

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

186 (2) An explanation of the amount to be collected from the obligor by a private child
187 support collector and a statement of a sum certain of the total amount that is to be
188 collected by the private child support collector that has been engaged by the obligee;

189 (3) An explanation in dollar figures of the maximum amount of fees which could be
190 collected under the contract and an example of how fees are calculated and deducted;

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

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

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

199 (7) The mailing address, telephone numbers, facsimile numbers, and e-mail address of
200 a private child support collector;

201 (8) A statement that a private child support collector shall only collect money owed to
202 the obligee and not child support assigned to the State of Georgia;

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

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

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

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

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

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

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

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

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

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

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

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

240 obligation in question, or unless the attorney and the obligor consent to direct
241 communication;

242 (10) Contract with an obligee who is owed less than three months of child support
243 arrearages; or

244 (11) Contract with an obligee for a sum certain to be collected which is greater than the
245 total sum of arrearages and the statutory interest owed as of the date of execution of the
246 contract.

247 (d) In addition to any other cancellation or termination provisions provided in the contract
248 between a private child support collector and an obligee, the contract shall be cancelled or
249 terminated if:

250 (1) The obligee requests cancellation in writing within 30 days of signing the contract;

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

253 (3) A private child support collector breaches any term of the contract or violates any
254 provision contained within this Code section; or

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

256 (e) When it reasonably appears to the administrator that a private child support collector
257 has contracted with obligees after the effective date of this Act using a contract that is not
258 in compliance with this Code section, the administrator may demand pursuant to Code
259 Section 10-1-403 that the private child support collector produce a true and accurate copy
260 of each such contract. If the private child support collector fails to comply or the contracts
261 are determined by the administrator to not be compliant with the provisions of this Code
262 section, the administrator may utilize any of the powers vested in this part to ensure
263 compliance.

264 (f) Upon the request of an obligee, the Child Support Enforcement Agency of the
265 department shall forward child support payments made payable to the obligee to any
266 private child support collector that is in compliance with the provisions of this Code
267 section.

268 (g) The remedies provided in this Code section shall be cumulative and shall be in addition
269 to any other procedures, rights, or remedies available under any other law.

270 (h) Any waiver of the rights, requirements, and remedies provided by this Code section
271 violates public policy and shall be void.

272 (i) In addition to any civil penalties under this part, any person who intentionally violates
273 this Code section shall be subject to a criminal penalty under subsection (a) of Code
274 Section 16-8-12. In addition thereto, if the violator is a corporation, each of its officers and
275 directors may be subjected to a like penalty; if the violator is a sole proprietorship, the
276 owner thereof may be subjected to a like penalty; and, if the violator is a partnership, each

of the partners may be subjected to a like penalty, provided that no person shall be subjected to a like penalty if the person did not have prior actual knowledge of the acts violating this Code section."

SECTION 5.

Article 1 of Chapter 11 of Title 19 of the Official Code of Georgia Annotated, relating to the "Child Support Recovery Act," is amended by revising subsection (f) of Code Section 19-11-18, relating to collection procedures, as follows:

"(f) Notwithstanding any other provision of this title to the contrary, any child support being held by the Child Support Enforcement Agency of the Department of Human Resources department shall be paid to the custodial parent, legal guardian, or caretaker relative having custody of or responsibility for a child within 30 two days from receipt of same by the enforcement agency."

SECTION 6.

Said article is further amended by revising subsection (a) of Code Section 19-11-30, relating to confidentiality of information and records, as follows:

"(a)(1) Information and records obtained by the department pursuant to any provision of this article or Title IV-D of the federal Social Security Act shall be deemed to be confidential and shall be released only by permission of the party or parties named in the information or records, by order of the court, or for those purposes specifically authorized by this article. Any person who violates this Code section shall be guilty of a misdemeanor.

(2) The department shall provide to an attorney representing an obligee or to a private child support collector, as defined in Code Section 10-1-392, hired by an obligee and acting pursuant to a power of attorney signed by such obligee, any documents which such obligee would be entitled to request and receive from the Child Support Enforcement Agency of the department."

SECTION 7.

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

SECTION 8.

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