

## COMMITTEE OF CONFERENCE SUBSTITUTE TO HB 189

A BILL TO BE ENTITLED  
AN ACT

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

**SECTION 1.**

15 Code Section 9-9-2 of the Official Code of Georgia Annotated, relating to applicability of  
16 the "Georgia Arbitration Code," is amended by revising paragraph (7) of subsection (c) as  
17 follows:  
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19 "(7) Any contract involving consumer acts or practices or involving consumer  
20 transactions as such terms are defined in paragraphs (2) and (3) of subsection (a) of Code  
21 Section 10-1-392, relating to definitions in the 'Fair Business Practices Act of 1975';"

**SECTION 2.**

22 Part 2 of Article 15 of Chapter 1 of Title 10 of the Official Code of Georgia Annotated,  
23 relating to the "Fair Business Practices Act of 1975," is amended by revising subsection (a)  
24 of Code Section 10-1-392, relating to definitions, as follows:  
25

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

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

29 ~~(1.1)~~(2) 'Campground membership' means any arrangement under which a purchaser has  
30 the right to use, occupy, or enjoy a campground membership facility.

31 ~~(1.2)~~(3) 'Campground membership facility' means any campground facility at which the  
32 use, occupation, or enjoyment of the facility is primarily limited to those purchasers,  
33 along with their guests, who have purchased a right to make reservations at future times  
34 to use the facility or who have purchased the right periodically to use the facility at fixed  
35 times or intervals in the future, but shall not include any such arrangement which is  
36 regulated under Article 5 of Chapter 3 of Title 44.

37 ~~(1.3)~~(4) 'Career consulting firm' means any person providing services to an individual  
38 in conjunction with a career search and consulting program for the individual, including,  
39 but not limited to, counseling as to the individual's career potential, counseling as to  
40 interview techniques, and the identification of prospective employers. A 'career  
41 consulting firm' shall not guarantee actual job placement as one of its services. A 'career  
42 consulting firm' shall not include any person who provides these services without  
43 charging a fee to applicants for those services or any employment agent or agency  
44 regulated under Chapter 10 of Title 34.

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

47 ~~(2)~~(6) 'Consumer' means a natural person.

48 ~~(2.1)~~(7) 'Consumer acts or practices' means acts or practices intended to encourage  
49 consumer transactions.

50 ~~(2.2)~~(8) 'Consumer report' means any written or other communication of any information  
51 by a consumer reporting agency bearing on a consumer's creditworthiness, credit  
52 standing, or credit capacity which is used or intended to be used or collected in whole or  
53 in part for the purpose of serving as a factor in establishing the consumer's eligibility for:

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

56 (B) Employment consideration.

57 ~~(2.3)~~(9) 'Consumer reporting agency' or 'agency' means any person which, for monetary  
58 fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in  
59 the practice of assembling or evaluating consumer credit information or other information  
60 on consumers for the purpose of furnishing consumer reports to third parties.

61 ~~(3)~~(10) 'Consumer transactions' means the sale, purchase, lease, or rental of goods,  
62 services, or property, real or personal, primarily for personal, family, or household  
63 purposes.

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

65 ~~(4)~~(12) 'Documentary material' means the original or a copy, whether printed, filmed, or  
 66 otherwise preserved or reproduced, by whatever process, including electronic data storage  
 67 and retrieval systems, of any book, record, report, memorandum, paper, communication,  
 68 tabulation, map, chart, photograph, mechanical transcription, or other tangible document  
 69 or record wherever situate.

70 ~~(5)~~(13) 'Examination' of documentary material means inspection, study, or copying of  
 71 any such material and the taking of testimony under oath or acknowledgment ~~in~~ with  
 72 respect ~~of~~ to any such documentary material.

73 ~~(5.1)~~(14) 'File' means, when used in connection with information on any consumer, all  
 74 of the information on that consumer recorded or retained by a consumer reporting agency  
 75 regardless of how the information is stored.

76 ~~(5.2)~~(15) 'Going-out-of-business sale' means any offer to sell to the public or sale to the  
 77 public of goods, wares, or merchandise on the implied or direct representation that such  
 78 sale is in anticipation of the termination of a business at its present location or that the  
 79 sale is being held other than in the ordinary course of business and includes, without  
 80 being limited to, any sale advertised either specifically or in substance to be a sale  
 81 because the person is going out of business, liquidating, selling his or her entire stock or  
 82 50 percent or more of his or her stock, selling out to the bare walls, selling because the  
 83 person has lost his or her lease, selling out his or her interest in the business, or selling  
 84 because everything in the business must be sold or that the sale is a trustee's sale,  
 85 ~~bankrupt~~ bankruptcy sale, ~~save us from bankruptcy sale,~~ ~~insolvent~~ insolvency sale,  
 86 assignee's sale, must vacate sale, quitting business sale, receiver's sale, loss of lease sale,  
 87 forced out of business sale, removal sale, liquidation sale, executor's sale, administrator's  
 88 sale, warehouse removal sale, branch store discontinuance sale, creditor's sale, adjustment  
 89 sale, or defunct business sale.

90 ~~(6)~~(16) 'Health spa' means an establishment which provides, as one of its primary  
 91 purposes, services or facilities which are purported to assist patrons to improve their  
 92 physical condition or appearance through change in weight, weight control, treatment,  
 93 dieting, or exercise. The term includes an establishment designated as a 'reducing salon,'  
 94 'health spa,' 'spa,' 'exercise gym,' 'health studio,' 'health club,' or by other terms of similar  
 95 import. A health spa shall not include any of the following:

96 (A) Any nonprofit organization;

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

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

101 ~~(6.1)~~(17) 'Marine membership' means any arrangement under which a purchaser has a  
 102 right to use, occupy, or enjoy a marine membership facility.

103 ~~(6.2)~~(18) 'Marine membership facility' means any boat, houseboat, yacht, ship, or other  
 104 floating facility upon which the use, occupation, or enjoyment of the facility is primarily  
 105 limited to those purchasers, along with their guests, who have purchased a right to make  
 106 reservations at future times to use the facility or who have purchased a right to use  
 107 periodically, occupy, or enjoy the facility at fixed times or intervals in the future, but shall  
 108 not include any such arrangement which is regulated under Article 5 of Chapter 3 of Title  
 109 44.

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

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

114 ~~(6.3)~~(21) 'Office' means any place where business is transacted, where any service is  
 115 supplied by any person, or where any farm is operated.

116 ~~(6.4)~~(22) 'Office supplier' means any person who sells, rents, leases, or ships, or offers  
 117 to sell, lease, rent, or ship, goods, services, or property to any person to be used in the  
 118 operation of any office or of any farm.

119 ~~(6.5)~~(23) 'Office supply transactions' means the sale, lease, rental, or shipment of, or  
 120 offer to sell, lease, rent, or ship, goods, services, or property to any person to be used in  
 121 the operation of any office or of any farm but shall not include transactions in which the  
 122 goods, services, or property is purchased, leased, or rented by the office or farm for  
 123 purposes of reselling them to other persons.

124 ~~(7)~~(24) 'Person' means a natural person, corporation, trust, partnership, incorporated or  
 125 unincorporated association, or any other legal entity.

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

130 ~~(7.1)~~(26) 'Prize' means a gift, award, or other item intended to be distributed or actually  
 131 distributed in a promotion.

132 ~~(8)~~(27) 'Promotion' means any scheme or procedure for the promotion of consumer  
 133 transactions whereby one or more prizes are distributed among persons who are required  
 134 to be present at the place of business or are required to participate in a seminar, sales  
 135 presentation, or any other presentation, by whatever name denominated, in order to  
 136 receive the prize or to determine which, if any, prize they will receive. Promotions shall  
 137 not include any procedure where the receipt of the prize is conditioned upon the purchase

138 of the item which the seller is trying to promote if such condition is clearly and  
 139 conspicuously disclosed in the promotional advertising and literature and the receipt of  
 140 the prize does not involve an element of chance. Any procedure where the receipt of the  
 141 prize is conditioned upon the purchase of the item which the seller is trying to promote  
 142 or upon the payment of money and where the receipt of that prize involves an element of  
 143 chance shall be deemed to be a lottery under Code Section 16-12-20; provided, however,  
 144 that nothing in this definition shall be construed to include a lottery operated by the State  
 145 of Georgia or the Georgia Lottery Corporation as authorized by law; provided, further,  
 146 that any deposit made in connection with an activity described by subparagraph  
 147 (b)(22)(B) of Code Section 10-1-393 shall not constitute the payment of money.  
 148 ~~(9)~~(28) 'Trade' and 'commerce' mean the advertising, distribution, sale, lease, or offering  
 149 for distribution, sale, or lease of any goods, services, or any property, tangible or  
 150 intangible, real, personal, or mixed, or any other article, commodity, or thing of value  
 151 wherever situate and shall include any trade or commerce directly or indirectly affecting  
 152 the people of ~~the~~ this state."

### 153 SECTION 3.

154 Said part is further amended by adding two new Code sections to read as follows:

155 "10-1-393.9.

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

161 (b) An application for registration shall be accompanied by a surety bond filed, held, and  
 162 approved by the Secretary of State, and the surety bond shall be:

163 (1) Issued by a surety authorized to do business in this state;

164 (2) In the amount of \$50,000.00;

165 (3) In favor of the state for the benefit of a person damaged by a violation of this Code  
 166 section; and

167 (4) Conditioned on the private child support collector's compliance with this Code  
 168 section and Code Section 10-1-393.10 and the faithful performance of the obligations  
 169 under the private child support collector's agreements with its clients.

170 (c) In lieu of a surety bond, the Secretary of State may accept a deposit of money in the  
 171 amount of \$50,000.00. The Secretary of State shall deposit any amounts received under  
 172 this subsection in an insured depository account designated for that purpose.

173 10-1-393.10.

174 (a) Any contract for the collection of child support between a private child support  
 175 collector and an obligee shall be filed by the private child support collector with the  
 176 Governor's Office of Consumer Affairs.

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

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

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

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

186 (4) A statement that fees shall only be charged for collecting past due child support,  
 187 although the contract may include provisions to collect current and past due child  
 188 support;

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

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

194 (7) The mailing address, telephone numbers, facsimile numbers, and e-mail address of  
 195 the private child support collector;

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

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

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

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

204 (1) Improperly retain fees from collections that are primarily attributable to the actions  
 205 of the department. If the department or an obligee notifies a private child support  
 206 collector of such improper fee retention, such private child support collector shall refund  
 207 such fees to the obligee within seven business days of the notification of the improper  
 208 retention of fees and shall not be liable for such improper fee retention. A private child

- 209 support collector may require documentation that the collection was primarily attributable  
210 to the actions of the department prior to issuing any refund;
- 211 (2) Charge fees in excess of one-third of the total amount of child support payments  
212 collected;
- 213 (3) Solicit obligees using marketing materials, advertisements, or representations  
214 reasonably calculated to create a false impression or mislead an obligee into believing the  
215 private child support collector is affiliated with the department or any other governmental  
216 entity;
- 217 (4) Use or threaten to use violence or other criminal means to cause harm to an obligor  
218 or the property of the obligor;
- 219 (5) Falsely accuse or threaten to falsely accuse an obligor of a violation of state or  
220 federal laws;
- 221 (6) Take or threaten to take an enforcement action against an obligor that is not  
222 authorized by law;
- 223 (7) Represent to an obligor that the private child support collector is affiliated with the  
224 department or any other governmental entity authorized to enforce child support  
225 obligations or fail to include in any written correspondence to an obligor the statement  
226 that 'This communication is from a private child support collector. The purpose of this  
227 communication is to collect a child support debt. Any information obtained will be used  
228 for that purpose.';
- 229 (8) Communicate to an obligor's employer, or his or her agent, any information relating  
230 to an obligor's indebtedness other than through proper legal action, process, or  
231 proceeding;
- 232 (9) Communicate with an obligor whenever it appears the obligor is represented by an  
233 attorney and the attorney's name and address are known, or could be easily ascertained,  
234 unless the attorney fails to answer correspondences, return telephone calls, or discuss the  
235 obligation in question, or unless the attorney and the obligor consent to direct  
236 communication;
- 237 (10) Contract with an obligee who is owed less than three months of child support  
238 arrearages; or
- 239 (11) Contract with an obligee for a sum certain to be collected which is greater than the  
240 total sum of arrearages and the statutory interest owed as of the date of execution of the  
241 contract.
- 242 (d) In addition to any other cancellation or termination provisions provided in the contract  
243 between a private child support collector and an obligee, the contract shall be cancelled or  
244 terminate if:
- 245 (1) The obligee requests cancellation in writing within 30 days of signing the contract;

- 246 (2) The obligee requests cancellation in writing after any 12 consecutive months in  
 247 which the private child support collector fails to make a collection;
- 248 (3) The private child support collector breaches any term of the contract or violates any  
 249 provision contained within this Code section; or
- 250 (4) The amount to be collected pursuant to the contract has been collected.
- 251 (e) When it reasonably appears to the administrator that a private child support collector  
 252 has contracted with obligees on or after July 1, 2009, using a contract that is not in  
 253 compliance with this Code section, the administrator may demand pursuant to Code  
 254 Section 10-1-403 that such private child support collector produce a true and accurate copy  
 255 of each such contract. If such private child support collector fails to comply or the  
 256 contracts are determined by the administrator to not be compliant with the provisions of  
 257 this Code section, the administrator may utilize any of the powers vested in this part to  
 258 ensure compliance.
- 259 (f) Upon the request of an obligee, the Child Support Enforcement Agency of the  
 260 department shall forward child support payments made payable to the obligee to any  
 261 private child support collector that is in compliance with the provisions of this Code section  
 262 and Code Section 10-1-393.9.
- 263 (g) The remedies provided in this part shall be cumulative and shall be in addition to any  
 264 other procedures, rights, or remedies available under any other law.
- 265 (h) Any waiver of the rights, requirements, and remedies provided by this Code section  
 266 that are contained in a contract between a private child support collector and an obligee  
 267 violates public policy and shall be void."

268 **SECTION 4.**

269 Article 1 of Chapter 11 of Title 19 of the Official Code of Georgia Annotated, relating to the  
 270 "Child Support Recovery Act," is amended by revising subsection (f) of Code Section  
 271 19-11-18, relating to collection procedures, as follows:

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

277 **SECTION 5.**

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



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

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

291 **SECTION 6.**

292 This Act shall become effective on July 1, 2009, and shall be applicable to all contracts for  
293 private collection of child support payment entered into on or after such effective date.

294 **SECTION 7.**

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