

ASSEMBLY BILL

No. 2781

Introduced by Assembly Member Leno

February 24, 2006

An act to add Chapter 9 (commencing with Section 5610) to Part 5 of Division 9 of the Family Code, relating to child support.

LEGISLATIVE COUNSEL'S DIGEST

AB 2781, as introduced, Leno. Child support collectors.

Existing law governs the collection of child support by local child support agencies, or by means of a writ of execution, a notice of levy, or earnings assignment order.

This bill would enact the Private Child Support Collection Act. These provisions would regulate the activities of private child support collectors, as defined. Among other things, the bill would require a private child support collector to provide specified notices and disclosures to the child support obligee in a written contract and additional information about child support payments during the term of the contract, authorize the obligee to cancel any contract entered into with that entity in certain circumstances, prescribe the rights of the parties with respect to child support agencies and other governmental entities, and prescribe procedures and remedies for enforcement of the provisions of the act. The bill would also require that every court order for child support issued on or after July 1, 2007, and every child support agreement providing for the payment of child support approved by the court on or after July 1, 2007, include a separate obligation owed by the child support obligor to pay 1/2 of the fee charged by a private child support collector, as specified. This obligation would have the force and effect of a money judgment in

favor of the private child support collector and the child support obligee, jointly.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 9 (commencing with Section 5610) is
2 added to Part 5 of Division 9 of the Family Code, to read:

3
4 CHAPTER 9. PRIVATE CHILD SUPPORT COLLECTORS
5

6 5610. (a) For the purposes of this section, “private child
7 support collector” means any individual, corporation, attorney,
8 nonprofit organization, or other nongovernmental entity who is
9 engaged by an obligee to collect child support ordered by a court
10 or other tribunal for a fee or other consideration. The term does
11 not include any attorney who addresses issues of ongoing child
12 support or child support arrearages in the course of an action to
13 establish parentage or a child support obligation, a proceeding
14 under Division 10 (commencing with Section 6200), a
15 proceeding for dissolution of marriage, legal separation, or
16 nullity of marriage, or in post judgment or modification
17 proceedings related to any of those actions. A “private child
18 support collector” includes any private, nongovernmental
19 attorney whose business is substantially comprised of the
20 collection or enforcement of child support. As used in this
21 subdivision, “substantially” means that at least 50 percent of the
22 attorney’s business, either in terms of remuneration or time spent,
23 is comprised of the activity of seeking to collect or enforce child
24 support obligations for other individuals.

25 (b) Any contract for the collection of child support between a
26 private child support collector and an obligee shall be written in
27 simple language, in at least 10-point type, signed by the private
28 child support collector and the obligee. The contract shall be
29 delivered to the obligee in a paper form that the obligee may
30 retain for his or her records. The contract shall include all of the
31 following:

1 (1) An explanation of the fees imposed by contract and
2 otherwise permitted by law and an example of how they are
3 calculated and deducted.

4 (2) A statement that the amount of fees to be charged is set by
5 the agency and is not set by state law.

6 (3) An explanation of the nature of the services to be provided.

7 (4) The expected duration of the contract, stated as a length of
8 time or as an amount to be collected by the collection agency.

9 (5) An explanation of the opportunities available to the obligee
10 or private child support collector to cancel the contract or other
11 conditions under which the contract terminates.

12 (6) The mailing address, street address, telephone numbers,
13 facsimile numbers, and Internet address or location of the private
14 child support collector.

15 (7) A statement that the private child support collector is not a
16 government entity and that government entities in California
17 provide child support collection and enforcement services free of
18 charge.

19 (8) A statement that the private child support collector collects
20 only money owed to the obligee and not support assigned to the
21 state or county due to the receipt of CalWORKs or Temporary
22 Assistance to Needy Families.

23 (9) A statement that the private child support collector will not
24 retain fees from collections that are almost completely
25 attributable to the actions of a government entity or any other
26 person or entity and is required by law to refund any fees
27 improperly retained.

28 (10) A statement that the obligee may continue to receive, or
29 may pursue, services through a government entity to collect
30 support, and the private child support collection agency will not
31 require or request that the obligee cease or refrain from engaging
32 those services.

33 (11) A notice that the private child support collector is
34 required to keep and maintain case records for a period of four
35 years and four months, after the expiration of the contract and
36 may thereafter destroy or otherwise dispose of the records. The
37 obligee may, prior to destruction or disposal, retrieve those
38 portions of the records that are not confidential.

39 (12) A "Notice of Cancellation," which shall be included with
40 the contract and which shall contain, in the same size font as the

contract, the following statement, written in the same language as the contract:

“Notice of Cancellation

You may cancel this contract, without any penalty or obligation, within 15 business days from the date the contract is signed or you receive this notice, whichever is later, or at any time if the private child support collector commits a material breach of any provision of the contract or a material violation of any provision of this chapter with respect to the obligee or the obligor, or _____ (all other reasons for cancellation permitted).

To cancel this contract, mail or deliver a signed copy of this cancellation notice or any other written notice to _____ (name of private child support collector) at

_____ (address for mail or delivery) no later than midnight on _____ (date).

I am canceling this contract. _____ (date)

_____ (signature)”

(13) (A) Each private child support collector shall make the following disclosure in any advertisement, commercial, or other solicitation:

“(Name of private child support collector) is a private child support collector and not a governmental entity. (Name of private child support collector) charges a fee for services provided.”

(B) The disclosure required by subparagraph (A) shall be printed in every written advertisement and solicitation as follows:

(i) In a type size that is at least equal to one-quarter of the largest type size used in the solicitation to advertise the collection service. In no event shall the disclosure be printed in less than 8-point type.

(ii) In the same style and color of type used to advertise the collection service.

(iii) Immediately above, below, or beside the advertised fee without any intervening words, pictures, marks, or symbols.

(iv) In the same language as the advertisement.

(C) The disclosure required by subparagraph (A) shall be broadcast in every radio or television advertisement and solicitation. For broadcast advertisement of 30 seconds or less, the disclosure may be shortened as follows:

1 “(Name of private child support collector) is not a
2 governmental entity, and charges a fee for its services.”

3 (D) This section shall apply to an advertisement, commercial,
4 or solicitation in English or any other language.

5 (c) (1) An obligee shall have the right to cancel a contract
6 with a private support collector within 15 business days of the
7 later of signing the contract, or receiving a blank notice of
8 cancellation form, or at any time if the private child support
9 collector commits a material breach of any provision of the
10 contract or a material violation of any provision of this chapter
11 with respect to the obligee or the obligor.

12 (2) A contract shall automatically terminate when the contract
13 term has expired or the contract amount has been collected,
14 whichever occurs sooner.

15 (3) A contract shall terminate at the end of any 12-month
16 period in which the total amount collected by the private child
17 support collector is less than 50 percent of the amount scheduled
18 to be paid under a payment plan.

19 (4) No private child support collector shall take an assignment
20 of the support obligation.

21 (5) The private child support collector may not collect on
22 proceeds from a withholding order for child support if that order
23 has been in effect with the same employer for six months and has
24 yielded six months’ of withholding order payments.

25 (6) The private child support collector may not collect on
26 current child support payments.

27 (7) A private child support collector that improperly retains
28 fees from collections that are almost completely attributable to
29 the actions of a government entity or to any other person or entity
30 shall refund all of those fees to the obligee immediately upon
31 discovery or notice of the improper retention of fees.

32 (d) (1) A private child support collector shall provide to an
33 obligee all of the following information:

34 (A) The name of, and other identifying information relating to,
35 any obligor who made child support payments collected by the
36 private child support collector.

37 (B) The amount of support collected by the private child
38 support collector.

39 (C) The date on which each amount was received by the
40 private child support collector.

1 (D) The date on which each amount received by the private
2 child support collector was sent to the obligee.

3 (E) The amount of the payment sent to the obligee.

4 (F) The source of payment of support collected and the actions
5 affirmatively taken by the private child support collector that
6 resulted in the payment.

7 (G) The amount and percentage of each payment kept by the
8 private child support collector as its fee.

9 (2) The information required by paragraph (1) shall either be
10 made available, at the option of the obligee, by mail, telephone,
11 or via secure Internet access. If provided by mail, the notice shall
12 be sent at least quarterly. Information accessed by telephone and
13 the Internet shall be up to date.

14 (e) (1) A private child support collector shall maintain records
15 of all child support collections made on behalf of a client who is
16 an obligee. The records required under this section shall be
17 maintained by the private child support collector for the duration
18 of the contract plus for a period of four years and four months
19 from the date of the last child support payment collected by the
20 private child support collector on behalf of an obligee. In
21 addition to information required by subdivision (d), the private
22 child support collector shall maintain the following:

23 (A) A copy of the order establishing the child support
24 obligation under which a collection was made by the private
25 child support collector.

26 (B) Records of all correspondence between the private child
27 support collector and the obligee or obligor in a case.

28 (C) Any other pertinent information relating to the child
29 support obligation, including any case, cause, or docket number
30 of the court having jurisdiction over the matter and official
31 government payment records obtained by the private child
32 support collector on behalf of, and at the request of, the obligee.

33 (2) A private child support collector shall safeguard case
34 records in a manner reasonably expected to prevent intentional or
35 accidental disclosure of confidential information pertaining to the
36 obligee or obligor, including providing necessary protections for
37 records maintained in an automated system.

38 (3) Every person who contracts with a private child support
39 collector shall have the right to review all files and documents,
40 both paper and electronic, in the possession of the private child

1 support collector regarding that obligee's case that are not
2 required by law to be kept confidential. The obligee, during
3 regular business hours, shall be provided reasonable access to
4 and copies of the files and records of the private child support
5 collector regarding all moneys received, collection attempts
6 made, fees retained or paid to the private child support collector,
7 and moneys disbursed to the obligee. The private child support
8 collector may not charge a fee for access to the files and records,
9 but may require the obligee to pay up to three cents (\$.03) per
10 page for the copies prior to their release.

11 (f) A private child support collector shall not do any of the
12 following:

13 (1) Collect or attempt to collect child support by means of any
14 conduct that is prohibited of a debt collector collecting a
15 consumer debt under Sections 1788.10 to 1788.16, inclusive, of
16 the Civil Code.

17 (2) Misstate the amount of the fee that may be lawfully paid
18 the private child support collector for the performance of the
19 contract or the identity of the person who is obligated to pay that
20 fee.

21 (3) Make a false representation of the amount of child support
22 to be collected. A private child support collector is not in
23 violation of this paragraph if it reasonably relied on evidence
24 provided by the government entity collecting child support, a
25 court with jurisdiction over the support obligation, or from the
26 obligee, or upon proof provided by the obligor.

27 (4) Ask any party other than the obligor to pay the child
28 support obligation, unless that party is legally responsible for the
29 obligation or is the legal representative of the obligor.

30 (5) On or after January 1, 2006, no private child support
31 collector may require, as a condition of providing services to the
32 obligee, that the obligee waive any right or procedure provided
33 for in any state law regarding the right to file and pursue a civil
34 action as provided by law. Any waiver by the obligee of the right
35 to file and pursue a civil action as provided by law must be
36 knowing, voluntary, and not made a condition of doing business
37 with the private child support collector. Any waiver, including,
38 but not limited to, an agreement to arbitrate, that is required as a
39 condition of doing business with the private child support
40 collector, shall be deemed involuntary, unconscionable, against

1 public policy, and unenforceable. The private child support
2 collector has the burden of proving that any waiver of rights,
3 including any agreement to arbitrate a claim, was knowing,
4 voluntary and not made a condition of the contract with the
5 obligee.

6 (g) (1) A person may bring an action for actual damages
7 incurred as a result of a violation of this section.

8 (2) In addition to actual damages, a private child support
9 collector who willfully and knowingly violates the provisions of
10 this section shall be liable for a civil penalty in an amount
11 determined by the court, which may not be less than one hundred
12 dollars (\$100) nor more than one thousand dollars (\$1,000).

13 (3) A person who prevails in an action brought pursuant to this
14 section is entitled to recover court costs. Reasonable attorney's
15 fees shall be awarded to a prevailing obligee or obligor. On a
16 finding by a court that an action pursuant to this section was
17 brought by an obligee or obligor in bad faith or for purposes of
18 harassment, the court shall award the private child support
19 collector attorney's fees reasonably related to the work
20 performed and costs.

21 (4) A private child support collector is not in violation of this
22 section if the private child support collector shows, by a
23 preponderance of the evidence, that the action complained of was
24 not intentional and resulted from a bona fide error that occurred
25 notwithstanding the use of reasonable procedures to avoid the
26 error.

27 (5) The remedies provided in this subdivision are cumulative
28 and are in addition to any other procedures, rights, or remedies
29 available under any other law.

30 (h) Any waiver of the rights, requirements, and remedies
31 provided by this section violates public policy and is void.

32 (i) Every court order for child support issued on or after July
33 1, 2007, and every child support agreement providing for the
34 payment of child support approved by a court on or after July 1,
35 2007, shall include a separate obligation owed by the child
36 support obligor to pay one-half of the fee charged by a private
37 child support collector pursuant to a contract complying with the
38 requirements of this section and any other child support
39 collections costs expressly permitted by the child support order.
40 The obligation to pay half the fee shall have the force and effect

1 of a money judgment in favor of the private child support
2 collector and the child support obligee, jointly. The obligation to
3 pay the fee may be enforced by the private child support collector
4 by any means available to the obligee for the enforcement of the
5 child support order without any additional action or order by the
6 court, however, the fee does not constitute child support.

7 (j) If the child support order makes the obligor responsible for
8 payment of collection fees and costs, fees that are deducted by a
9 private child support collector may not be credited against child
10 support arrearages or interest owing on arrearages or any other
11 money owed by the obligor to the obligee.

12 (k) If the order for child support requires payment of
13 collection fees and costs by the obligor, then not later than five
14 days after the date that the private child support collector makes
15 its first collection, written notice shall be provided to the obligor
16 of (1) the amount of arrearages subject to collection, (2) the
17 amount of the collection that shall be applied to the arrearage,
18 and (3) the amount of the collection that shall be applied to the
19 fees and costs of collection. The notice shall provide that, in
20 addition to any other procedures available, the obligor has 30
21 days to file a motion to contest the amount of collection fees and
22 costs assessed against the obligor as well as the amount of the
23 arrearages subject to collection.