

AMENDED IN SENATE MAY 10, 2005

AMENDED IN SENATE APRIL 28, 2005

SENATE BILL

No. 896

Introduced by Senator Runner

February 22, 2005

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

SB 896, as amended, Runner. Child support.

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.

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

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

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

CHAPTER 9. PRIVATE CHILD SUPPORT COLLECTORS

5610. (a) For the purposes of this section, “private child support collector” means a person, corporation, attorney, or other nongovernmental entity who is engaged by an obligee to collect child support ordered by a court or other tribunal for a fee or other consideration. The term does not include any attorney who addresses issues of ongoing child support or child support arrearages in the course of an action to establish parentage or a child support obligation, a proceeding under Division 10 (commencing with Section 6200), a proceeding for dissolution of marriage, legal separation, or nullity of marriage, or in post judgment or modification proceedings related to any of those actions.

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

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

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

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

~~(3)~~
(4) The expected duration of the contract, stated as a length of time or as an amount to be collected by the collection agency.

~~(4)~~
(5) 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.

~~(5)~~

1 (6) The mailing address, street address, telephone numbers,
2 facsimile numbers, and Internet address or location of the private
3 child support collector.

4 ~~(6)~~

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

9 ~~(7)~~

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

14 ~~(8)~~

15 (9) A statement that the private child support collector will not
16 retain fees from collections that are primarily attributable to the
17 actions of a government entity or any other person or entity *and*
18 *is required by law to refund any fees improperly retained.*

19 ~~(9)~~

20 (10) A statement that the obligee may continue to receive, or
21 may pursue, services through a government entity to collect
22 support, and the private child support collection agency will not
23 require or request that the obligee cease or refrain from engaging
24 those services.

25 ~~(10)~~

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

32 ~~(11)~~

33 (12) A “Notice of Cancellation,” which shall be included with
34 the contract and which shall contain, in the same size font as the
35 contract, the following statement, written in the same language as
36 the contract:

37 “Notice of Cancellation

38 You may cancel this contract, without any penalty or
39 obligation, within 15 business days from the date the contract is
40 signed or you receive this notice, whichever is later,

1 or _____ (all other reasons for
2 cancellation permitted).

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

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

10 I am canceling this contract. _____ (date)
11 _____ (signature)”

12 (c) (1) An obligee shall have the right to cancel a contract
13 with a private support collector within 15 business days of the
14 later of signing the contract, or receiving a blank notice of
15 cancellation form, or at any time if the private child support
16 collector commits a material breach of any provision of the
17 contract or a material violation of any provision of this chapter
18 with respect to the obligee or the obligor.

19 (2) A contract shall automatically terminate when the contract
20 term has expired or the contract amount has been collected,
21 whichever occurs sooner.

22 (3) No private child support collector shall take an assignment
23 of the support obligation.

24 (4) *A private child support collector that improperly retains*
25 *fees from collections that are primarily attributable to the actions*
26 *of a government entity or to any other person or entity shall*
27 *refund all of those fees to the obligee immediately upon discovery*
28 *or notice of the improper retention of fees.*

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

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

34 (B) The amount of support collected by the private child
35 support collector.

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

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

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

1 (F) The source of payment of support collected and the actions
2 affirmatively taken by the private child support collector that
3 resulted in the payment.

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

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

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

20 (A) A copy of the order establishing the child support
21 obligation under which a collection was made by the private
22 child support collector.

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

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

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

35 (3) Every person who contracts with a private child support
36 collector shall have the right to review all files and documents,
37 both paper and electronic, in the possession of the private child
38 support collector regarding that obligee's case that are not
39 required by law to be kept confidential. The obligee, during
40 regular business hours, shall be provided reasonable access to

1 and copies of the files and records of the private child support
2 collector regarding all moneys received, collection attempts
3 made, fees retained or paid to the private child support collector,
4 and moneys disbursed to the obligee. The private child support
5 collector may not charge a fee for access to the files and records,
6 but may require the obligee to pay up to three cents (\$.03) per
7 page for the copies prior to their release.

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

10 (1) Collect or attempt to collect child support by means of any
11 conduct ~~which~~ *that* is prohibited of a debt collector collecting a
12 consumer debt under Sections 1788.10 to 1788.16, inclusive, of
13 the Civil Code.

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

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

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

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

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

34 (3) A person who prevails in an action brought pursuant to this
35 section is entitled to recover court costs. Reasonable attorney's
36 fees shall be awarded to a prevailing obligee or obligor. On a
37 finding by a court that an action pursuant to this section was
38 brought by an obligee or obligor in bad faith or for purposes of
39 harassment, the court shall award the private child support

1 collector attorney's fees reasonably related to the work
2 performed and costs.

3 (4) A private child support collector is not in violation of this
4 section if the private child support collector shows, by a
5 preponderance of the evidence, that the action complained of was
6 not intentional and resulted from a bona fide error that occurred
7 notwithstanding the use of reasonable procedures to avoid the
8 error.

9 (5) The remedies provided in this subdivision are cumulative
10 and are in addition to any other procedures, rights, or remedies
11 available under other provision of the law.

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