

Regular Session, 2010

HOUSE BILL NO. 221

BY REPRESENTATIVE TIM BURNS

CHILDREN/SUPPORT: Provides technical corrections to child support provisions

1 AN ACT

2 To amend and reenact R.S. 9:303(C) and 315.11(A), R.S. 13:1621(B)(3) and (4), R.S.
3 15:305(D) and (E)(1), R.S. 46:236.1.2(D)(2) and (J), 236.7(A)(1) and (B), and
4 236.11.1(C)(3), and Code of Evidence Article 902(10), relative to child support; to
5 make technical corrections to provisions governing child support; and to provide for
6 related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 9:303(C) and 315.11(A) are hereby amended and reenacted to read
9 as follows:

10 §303. Income assignment; new orders; deviation

11 * * *

12 C. An income assignment order issued pursuant to this Section shall be
13 payable through the Louisiana state disbursement unit for collection and
14 disbursement of child support payments as provided in R.S. 46:236.11 and shall be
15 governed by the same provisions as immediate income assignment orders that are
16 being enforced by the department, including ~~R.S. 46:236.3 and 236.4~~ R.S. 46:236.1.1
17 et seq. All clerks of court in the state shall provide information to the state
18 disbursement unit on income assignment orders issued pursuant to this Section. The
19 department shall promulgate rules and regulations to implement the provisions of
20 this Section in accordance with the Administrative Procedure Act.

21 * * *

1 §315.11. Voluntarily unemployed or underemployed party

2 A. If a party is voluntarily unemployed or underemployed, child support
3 shall be calculated based on a determination of ~~his or her~~ income earning potential,
4 unless the party is physically or mentally incapacitated, or is caring for a child of the
5 parties under the age of five years. In determining the party's income earning
6 potential, the court may consider the most recently published ~~Louisiana Workforce~~
7 ~~Commission Wage Survey~~ Louisiana Occupational Employment Wage Survey.

8 * * *

9 Section 2. R.S. 13:1621(B)(3) and (4) are hereby amended and reenacted to read as
10 follows:

11 §1621. Juvenile court for the parish of East Baton Rouge; establishment;
12 jurisdiction

13 * * *

14 B. The court shall have concurrent jurisdiction with the family court for the
15 parish of East Baton Rouge in the following proceedings:

16 * * *

17 (3) All proceedings under the ~~Uniform Reciprocal Enforcement of Support~~
18 ~~Law~~ Uniform Interstate Family Support Act.

19 (4) Proceedings brought by the Department of Social Services on its own
20 behalf or on behalf of any person for whom support has been ordered to enforce
21 support by interstate income assignment pursuant to ~~R.S. 46:236.4~~ Children's Code
22 Article 1301.3 et seq., or proceedings brought by the district attorney to establish or
23 enforce support pursuant to the provisions of R.S. 46:236.2 or ~~236.1(F)~~ Children's
24 Code Article 1301.3 et seq.

25 * * *

26 Section 3. R.S. 15:305(D) and (E)(1) are hereby amended and reenacted to read as
27 follows:

1 §305. Probation in neglect of family cases

2 * * *

3 D. The clerk of court shall give notice to the ~~Department of Health and~~
4 ~~Human Resources~~ Department of Social Services in every case in which an offender
5 is placed on probation under this Section.

6 E.(1) If the court finds that the defendant has violated a condition of his
7 probation, it shall order that the probation be revoked and shall sentence the
8 defendant to imprisonment for not more than six months. The court shall also order
9 the defendant to pay the total amount of unpaid support to the spouse, to the tutor or
10 custodian of the child, to the court-approved fiduciary of the spouse or child, or to
11 the ~~Department of Health and Human Resources~~ Department of Social Services in
12 a FITAP case or in a non-FITAP case in which the department is rendering services,
13 whichever is applicable; hereinafter, said payee shall be referred to as the applicable
14 payee. Such judgment shall have the same force and effect as a final judgment for
15 money damages against the defendant. This judgment may be made executory by
16 any Louisiana court of competent jurisdiction on petition of the department or the
17 district attorney.

18 * * *

19 Section 4. R.S. 46:236.1.2(D)(2) and (J), 236.7(A)(1) and (B), and 236.11.1(C)(3)
20 are hereby amended and reenacted to read as follows:

21 §236.1.2. Family and child support programs; responsibilities

22 * * *

23 D.

24 * * *

25 (2) In cases where the department is providing support enforcement services,
26 if the name of the father appears on the birth certificate of the child, the department
27 may proceed to establish a court order for child support and medical support against

1 the father whose name does appear on the birth certificate without the need to
2 establish paternity in accordance with Civil Code Article ~~209~~ 197.

3 * * *

4 J. The department, in conjunction with the administrator of the ~~Louisiana~~
5 ~~Employment Security Law~~ Louisiana Workforce Commission, shall take all steps
6 necessary to implement and utilize procedures for collection of child support
7 payments from unemployment compensation benefits, pursuant to R.S. 23:1600(8)
8 and 1693. The department shall determine on a periodic basis, from information
9 supplied to it pursuant to the federal unemployment statute, 29 U.S.C. 49(b), whether
10 any persons receiving compensation under the state's unemployment compensation
11 law, including amounts payable pursuant to any agreement under any federal
12 unemployment compensation law, owe child support obligations which are being
13 enforced by the department. The department may enforce any such obligation which
14 is not being met by the person through a written agreement with the person to have
15 specified amounts withheld from compensation benefits otherwise payable to the
16 person and by submitting a copy of the agreement to the administrator of the
17 ~~Louisiana Employment Security Law~~ Louisiana Workforce Commission or, in the
18 absence of such an agreement, by using legal means to require the withholding of
19 specified amounts from the unemployment compensation benefits to apply toward
20 satisfaction of the support obligation, provided that in either case the maximum
21 amount of withholding shall not exceed the amount specified in the garnishment
22 statute, R.S. 13:3881. However, if the amount deducted and withheld is less than the
23 amount of the support obligation, the balance is not discharged and shall remain an
24 outstanding debt of the person. The department shall comply with all rules and
25 regulations imposed by the administrator of the ~~Louisiana Employment Security Law~~
26 Louisiana Workforce Commission, including payment of any fee assessed to
27 reimburse that office for the administrative costs incurred in applying the
28 withholding procedure.

29 * * *

1 §236.7. Order of support; stipulation by district attorney and party

2 A.(1) In cases in which the responsible parent or other person owes a duty
3 of support to a spouse or minor child, the responsible parent or other person owing
4 such duty and the district attorney may stipulate to an order of support. The juvenile
5 and family courts of this state shall have the power to issue an order of support under
6 the provisions of this Section. This order shall be considered a civil order of support
7 enforceable in the juvenile or family court of this state which rendered the order.
8 This order may be registered in other family or juvenile courts of this state pursuant
9 to the provisions of ~~R.S. 13:1691 through 1696 inclusive~~ Children's Code Article
10 1301.3 et seq. This support shall be ordered payable to the spouse, to the tutor or
11 custodian of the child, to the court-approved fiduciary of the spouse or child, or to
12 the Department of Social Services in a FITAP case or in a non-FITAP case in which
13 the department is rendering services, whichever is applicable; hereinafter, said payee
14 shall be referred to as the "applicable payee". The amount of support as set by the
15 court may be increased or decreased as the circumstances may require.

16 * * *

17 B. If a defendant violates the terms of a court order issued pursuant to the
18 provisions of ~~R.S. 46:236.7~~ this Section requiring him to pay child support to the
19 Department of Social Services, a representative of the child support collection
20 agency as set forth in ~~R.S. 46:236.1(K)~~ R.S. 46:236.1.1 et seq. may serve on the
21 defendant a summons ordering him to appear and show cause before the proper court
22 of competent jurisdiction why he should not be held in constructive contempt of
23 court. Prior to or at the hearing, the district attorney shall file with the court and
24 serve in open court on the defendant a rule for contempt, setting forth the terms of
25 the original court order for child support and all modifications thereof, along with
26 the grounds for contempt. If the defendant denies the allegations or offers a defense
27 to the rule, the court may, upon motion of either party or on its own motion, continue
28 the hearing. In the alternative, a representative of the department may serve on the
29 defendant a rule to show cause why he should not be held in constructive contempt

1 for violating the previous order of the court, with the rule setting forth the same
2 terms as in a rule for contempt, if the representative does not serve a summons on the
3 offender. The rule shall set forth a specific time, place, and date where the offender
4 is to show cause in answer to the rule. Hearings held on rules for contempt or rules
5 to show cause shall be tried in a summary manner.

6 * * *

7 §236.11.1. Notice of payment

8 * * *

9 C. The notice shall include all of the following:

10 * * *

11 (3) Instructions for the payment of support to the state disbursement unit ~~in~~
12 ~~accordance with R.S. 46:236.1.4.~~

13 * * *

14 Section 5. Code of Evidence Article 902(10) is hereby amended and reenacted to
15 read as follows:

16 Art. 902. Self-authentication

17 Extrinsic evidence of authenticity as a condition precedent to admissibility
18 is not required with respect to the following:

19 * * *

20 (10) Labor reports. A copy of a report from the Louisiana Workforce
21 Commission, or from any state or federal reporting agency, which is in the
22 possession of a field officer of the support enforcement services program, office of
23 family support, Department of Social Services, introduced as evidence in any child
24 or spousal support proceeding. "Field officer" means any person designated or
25 authorized as a field officer pursuant to the provisions of ~~R.S. 46:236.1(K)~~ R.S.
26 46:236.1.8.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Tim Burns

HB No. 221

Abstract: Makes technical revisions to provisions of law regarding child support.

Present law provides procedures regarding the collection of child support.

Proposed law makes technical changes to present law to correct inaccurate citations and references.

(Amends R.S. 9:303(C) and 315.11(A), R.S. 13:1621(B)(3) and (4), R.S. 15:305(D) and (E)(1), R.S. 46:236.1.2(D)(2) and (J), 236.7(A)(1) and (B), and 236.11.1(C)(3), and C.E. Art. 902(10))