

SECOND REGULAR SESSION

SENATE BILL NO. 597

90TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR STEELMAN.

Pre-filed December 1, 1999, and 1,000 copies ordered printed.

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TERRY L. SPIELER, Secretary.

AN ACT

To amend chapter 191, RSMo, by adding thereto six new sections relating to adoption, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 191, RSMo, is amended by adding thereto six new sections, to be known as sections 191.975, 191.978, 191.981, 191.984, 191.987 and 191.991, to read as follows:

191.975. 1. This act shall be known and may be cited as the "Parenting Alternatives Law".

2. In order to raise public awareness and educate expectant mothers, the division of maternal, child and family health in the department of health shall be responsible for:

(1) Collecting resource materials in the area of adoption education and options, including print and video resources; and

(2) Establishing and promoting adoption alternative materials for public use and for use as an integral part of the department of health's family planning programs, whether provided by the department or by third parties under contract with the department, including the development of a video which presents adoption as an alternative parenting option. The video shall include information about:

(a) The benefits of adoption;

(b) Adoption procedures;

(c) Methods of paying for adoption;

(d) Methods of controlling the adoption of a child, including the choice of adoptive parents;

(e) Protection for and rights of the natural parents prior to and following the adoption;

(f) Location of adoption agencies; and

(g) Discussion of various state programs for women and children, including income assistance and medical assistance programs;

(3) Such video shall be shown to expectant mothers by all department of health family planning programs, whether provided by the department or by third parties under contract with the department, privately-funded adoption agencies, and abortion facilities, as defined in section 188.015, RSMo;

(4) Expectant mothers who decline to view the video shall sign a form so stating and such form shall be returned to the division to be treated as confidential and used for statistical purposes only. Such form shall be distributed to all department of health family planning programs, whether provided by the department or by third parties under contract with the department, privately-funded adoption agencies and abortion facilities, as defined in section 188.015, RSMo;

(5) The division may request that the department of health family planning programs, whether provided by the department or by third parties under contract with the department, privately-funded adoption agencies, and abortion facilities, as defined in section 188.015, RSMo, collect demographic data on expectant mothers. Such data shall be returned to the division to be treated as confidential and used for statistical purposes only. Expectant mothers will have the option of giving their names or in lieu thereof, being assigned an identification number.

3. The division shall use the following strategies to raise public awareness about adoption:

(1) An outreach campaign utilizing print, radio, and television public service announcements, advertisements, posters, and other materials;

(2) Community forums;

(3) Adoption and health information at public events;

(4) Targeting at-risk populations;

(5) Providing reliable information to policy makers;

(6) Distributing information through local health agencies, schools, employer wellness programs, hospitals, health maintenance organizations, nonprofit organizations, community-based organizations and department of health offices; and

(7) Building a statewide network to provide information and referrals on all aspects of adoption, including, but not limited to, educational materials, counseling, and support groups.

4. The duties prescribed in this section shall be subject to appropriations by the general assembly.

5. The division shall promulgate rules and regulations for the implementation of this section in accordance with chapter 536, RSMo.

191.978. 1. The department of health is authorized to issue certificates of guarantee covering adoption loans made through the parenting alternatives loan fund, pursuant to section 191.984 to eligible borrowers, and to reimburse the fund in the event the borrower defaults.

2. The department shall charge for each guaranteed loan a special loan insurance premium established by the department which shall be paid to the department by the borrower. Amounts so received shall be used by the department to pay the costs of administering the program and to guarantee adoption loans.

3. The department is authorized to originate loans, including lender of last resort loans. All moneys to originate loans, including lender of last resort loans, shall be paid from the parenting alternatives loan fund established pursuant to section 191.984 for that purpose.

4. The total outstanding guaranteed loans shall at no time exceed an amount which, according to sound actuarial judgment as determined by the state auditor, can be guaranteed by the fund.

191.981. 1. After the department has paid a loss on a defaulted loan and has entered a statement of claim in which it determines and sets forth the existence, nature and amount of the money due it by the defaulting borrower and a proposed payment schedule, the department may issue an order directing any employer of the borrower to withhold or pay over to the department money due or to become due to the department.

2. Before issuing the order as provided in subsection 1 of this section, the department shall serve on the borrower the statement of claim and shall inform the borrower that the department intends to initiate proceedings to collect the debt through deductions from earnings. The department shall also provide a copy of this section or an explanation of the borrower's rights pursuant to this section.

3. The department shall provide the borrower with an opportunity to inspect and copy records related to the defaulted loans.

4. The department shall provide the borrower with the opportunity to enter into a written agreement with the department under terms agreeable to the department to establish a schedule for the repayment of the debt.

5. The department shall provide the borrower with the opportunity to have a hearing before an impartial hearing officer appointed by the department but who is not under the control or supervision of the department. The procedures for the hearing shall be the same as those for contested cases pursuant to chapter 536, RSMo. Upon the borrower's filing of a request for a hearing in compliance with the rules of the department, the department shall stay the commencement of collection proceedings for the debt described in the statement of claim until the department issues an order

provided for in subsection 6, 7, or 8, of this section.

6. At the earliest practicable date but not later than sixty days after the filing of the request for the hearing, the hearing officer shall file with the department his written decision which states specifically his findings in regard to those matters set forth in the department's statement of claim. The hearing officer shall also determine and include in his decision the terms of the repayment schedule which shall be the same as that set forth by the department in its statement of claim unless he finds no good cause to enter that schedule. Upon receipt of the hearing officer's decision, the department shall issue an order which adopts the findings in the decision as to the existence, nature and amount of the debt and as to the repayment schedule.

7. When a borrower properly requests a hearing and the hearing officer does not issue a decision within sixty days of the department's having received the request for the hearing, the department shall issue an order withdrawing the statement of claim and serve it upon the borrower with a copy of this subsection. After such an order is entered, the department shall not use the provisions of this section in regard to the loans set forth in the statement of claim, but may use any other remedy provided by law to recover the moneys owed the department. The order issued by the department shall not have the effect of precluding any other administrative or judicial tribunal from deciding any claim brought by the department or other party against the borrower or from deciding any factual or legal issue relevant to such claim.

8. When a borrower does not make a proper timely request for a hearing, the department may issue and serve on the borrower an order to pay debt which contains as its provisions the content of the statement of claim including the proposed repayment schedule.

9. The borrower may seek judicial review of any final order to pay debt pursuant to sections 536.100 to 536.140, RSMo.

10. Upon issuing an order to pay debt, but not less than thirty days after the statement of claim was served on the borrower, the department may issue an order to withhold earnings which directs any employer of the borrower to withhold and pay over to the department money due or to become due the borrower. The employer shall withhold from the earnings the amount specified in the order, except that the total amount withheld shall not exceed ten percent of the borrower's earnings after deduction from those earnings of any amount required by law to be withheld. When the borrower voluntarily makes a written request that money due or to become due him be withheld or applied to the debt or that more than the ten percent maximum be withheld from his earnings, the employer shall comply with that request as if so ordered by the department.

11. Subject to the provisions of section 454.505, RSMo, an order to withhold

earnings shall have the same force and effect in regard to the employer as any other garnishment.

12. No employer or other payor who complies with an order to withhold earnings shall be liable to the borrower, or to any other person claiming rights derived from the borrower, for wrongful withholding. An employer who fails or refuses to withhold or pay the amounts as ordered pursuant to this section shall be liable to the department in an amount equal to the amount which became due the department during the relevant period and which, under the order, should have been withheld and paid over.

13. An employer shall not discharge, refuse to hire or otherwise discipline an employee as a result of an order to withhold and pay over certain money authorized by this section. Any employer who does so is guilty of an infraction.

14. Service on the borrower or on the employer pursuant to this section or pursuant to rules promulgated pursuant to this section may be made on the borrower or employer, respectively or on other party in the manner provided for service of process in a civil action by a duly authorized process server appointed by the department, or by certified mail, return receipt requested, to the borrower's last known address or to the employer's address. The department may appoint any disinterested party, including, but not necessarily limited to, employees of the department, to serve such process. For purposes of this section, a borrower or an employer who does not accept receipt of service by certified mail or a borrower who has not provided the department his new or correct address is deemed to have been served as of the date on which the certified mail is mailed.

15. The department may promulgate rules to carry out the provisions of this section pursuant to chapter 536, RSMo, including, but not limited to, rules pertaining to proceedings before the hearing officer and before the department and rules pertaining to procedures to be followed by employers to comply with the order to withhold and pay over earnings.

191.984. 1. The "Parenting Alternatives Loan Fund" is established within the state treasury and shall consist of money appropriated to it by the general assembly, charges, gifts, grants and bequests from federal, private or other sources made for the purpose of assisting adoptive parents in financing the cost of adoption. Notwithstanding the provisions of section 33.080, RSMo, no portion of the fund shall be transferred to the general revenue fund, and any appropriation made to the fund shall not lapse.

2. All moneys recovered by the department of health for payments made on previously defaulted guaranteed loans shall be paid promptly into the state treasury and credited to the fund.

3. The fund shall be administered by the department of health.

191.987. The department shall promulgate rules and regulations pursuant to chapter 536, RSMo, establishing standards for determining eligible borrowers pursuant to sections 191.975 to 191.991. These standards shall include, but are not limited to, the following:

(1) The need of the adoptive parents for the loan, including the employment status of the adoptive parents; and

(2) The estimated cost of the adoption.

191.991. 1. The department shall adopt regulations establishing standards for determining eligibility of loan agreements to be guaranteed pursuant to the provisions of sections 191.975 to 191.991. The regulations shall provide for, but shall not be limited to, the following:

(1) The requirement or nonrequirement of security or endorsement;

(2) The manner and time of repayment of the principal and interest;

(3) The maximum rate of interest;

(4) The right of the borrower to accelerate payments without penalty;

(5) The amount of the guarantee charge;

(6) The effective period of the guarantee;

(7) The percent of the loan covered by the guarantee;

(8) The assignability of loans by the lender;

(9) Procedures in the event of default by the borrower;

(10) The due diligence effort on the part of the department for collection of guaranteed loans; and

(11) The extension of the guarantee in consideration of eligible deferments or forbearances.

2. The eligibility of any person for an adoption loan pursuant to the provisions of sections 191.975 to 191.991 shall not be determined or otherwise affected by any considerations of that person's race, religion, sex, creed, color, location of residence, or choice of adoption agency.

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