

By: Gallego

H.B. No. 2225

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of private child support enforcement agencies.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The heading of Subchapter B, Chapter 396, Finance Code, is amended to read as follows:

SUBCHAPTER B. POWERS AND DUTIES OF ATTORNEY GENERAL
~~[DEPARTMENT]~~

SECTION 2. Section 396.051, Finance Code, is amended to read as follows:

Sec. 396.051. ADMINISTRATIVE AND RULEMAKING AUTHORITY. (a) The attorney general ~~[department]~~ shall administer this chapter.

(b) The attorney general ~~[Finance Commission of Texas]~~ shall adopt rules as necessary for the administration of this chapter.

SECTION 3. Section 396.052(a), Finance Code, is amended to read as follows:

(a) The attorney general ~~[department]~~ shall charge each applicant for a certificate of registration, or renewal of a certificate, a nonrefundable fee of \$500 for each certificate.

SECTION 4. Section 396.053, Finance Code, is amended to read as follows:

Sec. 396.053. COST OF REGULATION. The attorney general ~~[department]~~ may charge each registered private child support

1 enforcement agency an annual fee not to exceed \$500 to cover the
2 cost of enforcing this chapter.

3 SECTION 5. Section 396.101, Finance Code, is amended to
4 read as follows:

5 Sec. 396.101. REGISTRATION REQUIRED. Except as otherwise
6 provided by this chapter, a private child support enforcement
7 agency must register with the attorney general [~~department~~] to
8 engage in child support enforcement in this state.

9 SECTION 6. Section 396.102, Finance Code, is amended to
10 read as follows:

11 Sec. 396.102. RECOGNITION OF AUTHORIZATION ISSUED BY
12 ANOTHER STATE. (a) The attorney general [~~department~~] may waive any
13 prerequisite to obtaining a registration for a foreign agency:

14 (1) after reviewing the applicant's credentials and
15 determining that the applicant holds a valid registration or other
16 authorization from another state whose requirements are
17 substantially equivalent to those imposed under this chapter; or

18 (2) after determining the applicant has a valid
19 registration or other authorization from another state with which
20 this state has a reciprocity agreement.

21 (b) The attorney general [~~department~~] may enter into an
22 agreement with another state to permit registration by reciprocity.

23 SECTION 7. Section 396.103(a), Finance Code, is amended to
24 read as follows:

25 (a) An applicant for registration as a private child support
26 enforcement agency must file with the attorney general [~~department~~]
27 an application on a form and in the manner prescribed by the

1 attorney general ~~[department]~~.

2 SECTION 8. Section 396.104, Finance Code, is amended to
3 read as follows:

4 Sec. 396.104. FINANCIAL AND OTHER DISCLOSURES. The
5 attorney general ~~[department]~~ shall require an applicant for
6 registration or renewal of registration as a private child support
7 enforcement agency to provide:

8 (1) a certified financial statement demonstrating the
9 financial solvency of the agency for which registration or renewal
10 of registration is sought; and

11 (2) any other information the attorney general
12 ~~[department]~~ may reasonably require the applicant to provide to
13 establish that the requirements and qualifications for
14 registration or renewal of registration have been fulfilled by the
15 applicant.

16 SECTION 9. Sections 396.105(a), (c), and (d), Finance Code,
17 are amended to read as follows:

18 (a) An application for registration must be accompanied by a
19 surety bond approved by the attorney general ~~[department]~~.

20 (c) The surety bond must be filed with and held by the
21 attorney general ~~[department]~~.

22 (d) Instead of a surety bond, the attorney general
23 ~~[department]~~ may accept a deposit of money in an amount determined
24 by the attorney general ~~[department]~~ not to exceed \$50,000. The
25 attorney general ~~[department]~~ shall deposit any amounts received
26 under this subsection in an insured depository account designated
27 for that purpose.

SECTION 10. Section 396.106, Finance Code, is amended to read as follows:

Sec. 396.106. ISSUANCE OF CERTIFICATE OF REGISTRATION.(a) The attorney general [~~department~~] shall issue a certificate of registration and mail the certificate to the applicant on receipt of:

- (1) a completed application;
- (2) evidence of financial solvency;
- (3) the surety bond or deposit of money required by Section 396.105; and
- (4) the required registration fee.

(b) If a single application is used to register more than one registered location, the attorney general [~~department~~] shall:

- (1) issue a certificate of registration for each registered location; and
- (2) mail all of the certificates to the principal business location stated in the application.

SECTION 11. Section 396.107, Finance Code, is amended to read as follows:

Sec. 396.107. DUTY TO UPDATE APPLICATION INFORMATION. A certificate holder shall notify the attorney general [~~department~~] of any material change in the information provided in an application for registration not later than the 60th day after the date on which the information changes.

SECTION 12. Section 396.108(b), Finance Code, is amended to read as follows:

- (b) A certificate of registration may be renewed for another

1 three-year period as provided by attorney general [~~department~~]
2 rule.

3 SECTION 13. Section 396.151, Finance Code, is amended to
4 read as follows:

5 Sec. 396.151. APPLICATION TO OPERATE UNDER OTHER
6 AUTHORIZATION INSTEAD OF REGISTRATION. (a) To engage in business in
7 this state, a foreign agency that is exempt from registration as
8 prescribed by Section 396.102 may file an application with the
9 attorney general [~~department~~] to operate under that authorization
10 by filing:

11 (1) the information required for an application for
12 registration under Section 396.103;

13 (2) a surety bond or deposit of money that meets the
14 requirements of Section 396.105 unless the agency provides proof to
15 the satisfaction of the attorney general [~~department~~] that the
16 agency maintains in the state in which that agency has its principal
17 office an adequate bond or similar instrument for purposes similar
18 to the purposes required for the filing of a surety bond under
19 Section 396.105; and

20 (3) a copy of the license or other authorization
21 issued by the state in which that agency is authorized to operate.

22 (b) The attorney general [~~department~~] may charge a single
23 administrative fee in a reasonable amount that is sufficient to
24 cover the costs of [~~the department in~~] processing and acting on the
25 application.

26 SECTION 14. Section 396.152, Finance Code, is amended to
27 read as follows:

1 Sec. 396.152. ACCEPTANCE OF OTHER AUTHORIZATION INSTEAD OF
2 REGISTRATION. The attorney general [~~department~~] shall issue a
3 certificate to operate under another state's authorization in this
4 state to a foreign agency that files an application with the
5 attorney general [~~department~~] under Section 396.151 if:

6 (1) the agency submits all of the information required
7 by Section 396.151(a)(1);

8 (2) the attorney general [~~department~~] determines that
9 the agency has met the requirements of Section 396.151(a)(2);

10 (3) the agency remits any required administrative fee
11 under Section 396.151(b); and

12 (4) the attorney general [~~department~~] verifies that
13 the registration or other authorization issued by another state is
14 active and in good standing.

15 SECTION 15. Section 396.153, Finance Code, is amended to
16 read as follows:

17 Sec. 396.153. NOTIFICATION OF UPDATED INFORMATION OR CHANGE
18 IN STATUS OF OTHER AUTHORIZATION. Not later than the 30th day after
19 the date on which the change occurs, a foreign private child
20 support enforcement agency that is issued a certificate to operate
21 in this state under this subchapter shall notify the attorney
22 general [~~department~~] of any change in:

23 (1) the information provided in an application
24 submitted under Section 396.152; or

25 (2) the status of the agency's authorization in the
26 other state.

27 SECTION 16. Section 396.154, Finance Code, is amended to

read as follows:

Sec. 396.154. WITHDRAWAL IF APPROVAL TO OPERATE UNDER OTHER AUTHORIZATION. A holder of a certificate issued under this subchapter may not engage in business in this state as a private child support enforcement agency if another state has revoked or withdrawn the person's authority to operate as a private child support enforcement agency in that state unless the attorney general ~~[department]~~ grants the agency a registration under this chapter.

SECTION 17. Section 396.203, Finance Code, is amended by adding Subsection (c) to read as follows:

(c) The contract required under this section must contain a provision that allows the client the option to terminate the contract before the end of the contract period on the payment of an amount not to exceed \$25 that is specifically stated in the contract. An attempted waiver of the required provision is void.

SECTION 18. Section 396.252, Finance Code, is amended to read as follows:

Sec. 396.252. FRAUDULENT, DECEPTIVE, OR MISLEADING REPRESENTATIONS. In enforcing a child support obligation, a registered agency or employee of the agency may not:

(1) identify the registered agency by any name other than one by which the agency is registered with the attorney general ~~[department]~~;

(2) falsely represent the nature of the child support enforcement activities in which the agency is authorized by law to engage; or

1 (3) falsely represent that an oral or written
2 communication is the communication of an attorney.

3 SECTION 19. Subchapter F, Chapter 396, Finance Code, is
4 amended by adding Section 396.253 to read as follows:

5 Sec. 396.253. FEE OR OTHER CONSIDERATION RECEIVED BY
6 AGENCY. For child support enforcement, a registered agency or
7 foreign agency authorized to engage in business under this chapter
8 may not receive a fee or other consideration that exceeds 25 percent
9 of the total amount received by the agency from the obligor.

10 SECTION 20. Section 396.301, Finance Code, is amended to
11 read as follows:

12 Sec. 396.301. REVOCATION OF REGISTRATION. (a) After notice
13 and hearing, the attorney general [~~department~~] may revoke the
14 registration of a registered agency that:

15 (1) fails to comply with this chapter or a rule adopted
16 under this chapter;

17 (2) does not pay a fee or other charge imposed by the
18 attorney general [~~department~~] under this chapter; and

19 (3) fails to maintain and produce at the request of the
20 attorney general [~~department~~] records attesting to the financial
21 solvency of the registered agency or other business records
22 concerning client accounts.

23 (b) The attorney general [~~department~~] may permit a
24 registered agency to take an appropriate action to correct a
25 failure to comply with this chapter and not revoke the registration
26 of the agency.

27 SECTION 21. Section 396.302(a), Finance Code, is amended to

1 read as follows:

2 (a) The attorney general ~~[department]~~ may not deny or
3 suspend the registration of a private child support enforcement
4 agency under this chapter without first conducting an
5 administrative hearing.

6 SECTION 22. Sections 396.304(a), (b), (e), (f), and (g),
7 Finance Code, are amended to read as follows:

8 (a) A person may file with the attorney general ~~[department]~~
9 a written complaint against a registered agency for a violation of
10 this chapter.

11 (b) Not later than the 30th day after the date on which the
12 attorney general ~~[department]~~ receives a complaint under this
13 section, the attorney general ~~[department]~~ shall initiate an
14 investigation into the merits of the complaint.

15 (e) The attorney general ~~[department]~~ may ~~[delegate to a~~
16 ~~hearings officer appointed to investigate a complaint under this~~
17 ~~section the authority to]~~ dismiss the complaint, after an initial
18 investigation and after notice to each affected party and an
19 opportunity for hearing, for lack of sufficient evidentiary basis.

20 (f) An individual aggrieved by a decision of the attorney
21 general ~~[department or hearings officer]~~ under this section may
22 appeal the decision to a district court in Travis County.

23 (g) The attorney general ~~[department]~~ shall provide for an
24 annual public inspection of an investigation report of a complaint
25 filed under this section.

26 SECTION 23. Section 396.352(b), Finance Code, is amended to
27 read as follows:

1 (b) A foreign agency engaging in business in this state in
2 violation of this chapter is considered to have appointed the
3 attorney general ~~[department]~~ as the agency's agent for service of
4 process in any action, suit, or proceeding arising from a violation
5 of this chapter.

6 SECTION 24. Subchapter H, Chapter 396, Finance Code, is
7 amended by adding Section 396.354 to read as follows:

8 Sec. 396.354. VOIDABLE CONTRACT. (a) A contract that does
9 not contain the provision required by Section 396.203(c) is
10 voidable at the option of the client. The client is entitled to
11 recover any amount the registered agency or foreign agency received
12 as compensation in connection with the contract.

13 (b) A person who prevails in an action to enforce the
14 person's rights under this section is entitled to recover court
15 costs and reasonable attorney's fees.

16 SECTION 25. Sections 396.001(3) and 396.304(c) and (d),
17 Finance Code, are repealed.

18 SECTION 26. Sections 396.203(c), 396.253, and 396.354,
19 Finance Code, as added by this Act, apply only to a contract that is
20 entered into on or after the effective date of this Act.

21 SECTION 27. This Act takes effect September 1, 2003.