

By: Dutton

H.B. No. 2668

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the performance by a private entity of the functions of
3 a local child support registry or a child support enforcement
4 agency and to the receipt, disbursement, and monitoring of child
5 support payments.

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

7 SECTION 1. Section 101.018, Family Code, is amended to read
8 as follows:

9 Sec. 101.018. LOCAL REGISTRY. "Local registry" means a
10 county [~~an~~] agency or public entity operated under the authority of
11 a district clerk, county government, juvenile board, juvenile
12 probation office, domestic relations office, or other county agency
13 or public entity that serves a county or a court that has
14 jurisdiction under this title and that:

- 15 (1) receives child support payments;
16 (2) maintains records of child support payments;
17 (3) distributes child support payments as required by
18 law; and
19 (4) maintains custody of official child support
20 payment records.

21 SECTION 2. Section 154.241, Family Code, is amended by
22 adding Subsection (g) to read as follows:

23 (g) Notwithstanding any other law, a private entity may
24 perform the duties and functions of a local registry under this

1 section either under a contract with a county commissioners court
2 or domestic relations office executed under Section 204.002 or
3 under an appointment by a court.

4 SECTION 3. Section 204.001, Family Code, is amended to read
5 as follows:

6 Sec. 204.001. APPLICABILITY. This chapter applies only to a
7 commissioners court or domestic relations office of a county that
8 did not have the authority to contract with a private entity to
9 receive, disburse, and record payments or restitution of child
10 support on January 1, 1997.

11 SECTION 4. Section 234.008, Family Code, is amended by
12 amending Subsection (a) and adding Subsection (d) to read as
13 follows:

14 (a) Except as provided by Subsection (c) or (d), not later
15 than the second business day after the date the state disbursement
16 unit receives a child support payment, the state disbursement unit
17 shall distribute the payment to the Title IV-D agency or the
18 obligee.

19 (d) The signature of an obligee on a final order in a suit
20 affecting the parent-child relationship, or another order under
21 this title, that designates an individual or entity for the purpose
22 of receiving, disbursing, and monitoring child support payments
23 constitutes written consent by the obligee to the distribution of
24 the child support payments by the state disbursement unit to the
25 designated individual or entity. The state disbursement unit shall
26 distribute each child support payment to the designated individual
27 or entity by the date required by Subsection (a). The designated

1 individual or entity shall deduct any amount of the individual's or
2 entity's authorized fee from the payment and promptly disburse the
3 remainder of the amount to the Title IV-D agency or obligee.

4 SECTION 5. Section 396.001, Finance Code, is amended by
5 amending Subdivision (1) and adding Subdivisions (1-a), (4-a), (9),
6 and (10) to read as follows:

7 (1) "Certified foreign agency" means a foreign agency
8 that, in lieu of registration, is issued a certificate to operate in
9 this state under Subchapter D.

10 (1-a) "Child support enforcement" means an action,
11 conduct, or practice in enforcing, or in soliciting for
12 enforcement, a child support obligation, including the collection
13 of an amount owed under a child support obligation.

14 (4-a) "Local registry" has the meaning assigned by
15 Section 101.018, Family Code.

16 (9) "State disbursement unit" has the meaning assigned
17 by Section 101.0302, Family Code.

18 (10) "Title IV-D agency" has the meaning assigned by
19 Section 101.033, Family Code.

20 SECTION 6. Section 396.052(a), Finance Code, is amended to
21 read as follows:

22 (a) The department shall charge each applicant for a
23 certificate of registration, or renewal of a certificate, a
24 nonrefundable fee [~~of \$500~~] for each certificate. The department
25 shall set each fee in an amount that is reasonable and necessary to
26 defray the cost of administering this chapter.

27 SECTION 7. Section 396.053, Finance Code, is amended to

1 read as follows:

2 Sec. 396.053. COST OF REGULATION. The department may
3 charge each registered private child support enforcement agency an
4 annual fee in an amount that is reasonable and necessary [~~not to~~
5 ~~exceed \$500~~] to defray [~~cover~~] the cost of administering and
6 enforcing this chapter.

7 SECTION 8. Subchapter C, Finance Code, is amended by adding
8 Section 396.1011 to read as follows:

9 Sec. 396.1011. ELIGIBILITY FOR REGISTRATION. (a) In this
10 section, "principal" means a person who participates in the affairs
11 of the holder of a certificate of registration under this section or
12 who exercises supervisory duties, including an owner, officer,
13 director, partner, trustee, or agent of the registration holder.

14 (b) A person is not eligible for a certificate of
15 registration under this chapter if, during the preceding 10 years:

16 (1) the person or a principal of the person has been
17 convicted of:

18 (A) a felony or a crime involving moral turpitude
19 under the laws of this or another state or the United States;

20 (B) a crime under the laws of a foreign country
21 that involves moral turpitude or would be a felony if committed in
22 the United States; or

23 (C) an offense under a state or federal law
24 relating to any state or federal monetary instrument reporting
25 requirement; or

26 (2) the person or a principal of the person has been
27 convicted of an offense under a state or federal law relating to:

1 (A) drugs, drug trafficking, or money
2 laundering; or

3 (B) a reporting requirement of the Bank Secrecy
4 Act (12 U.S.C. Section 1951 et seq.).

5 (c) A person is not eligible for a certificate of
6 registration under this chapter if at any time the person or a
7 principal of the person has been convicted of:

8 (1) a felony under Chapter 34, Penal Code, or a similar
9 provision involving the laundering of money that is the product of
10 or proceeds from criminal activity under the laws of another state
11 or the United States; or

12 (2) a felony violation of 31 U.S.C. Section 5313 or
13 5324 or a regulation adopted under those sections.

14 SECTION 9. Section 396.106(a), Finance Code, is amended to
15 read as follows:

16 (a) The department shall issue a certificate of
17 registration and mail the certificate to an eligible [~~the~~]
18 applicant on receipt of:

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

24 SECTION 10. Section 396.153, Finance Code, is amended to
25 read as follows:

26 Sec. 396.153. NOTIFICATION OF UPDATED INFORMATION OR CHANGE
27 IN STATUS OF OTHER AUTHORIZATION. Not later than the 30th day after

1 the date on which the change occurs, a certified foreign [~~private~~
2 ~~child support enforcement~~] agency [~~that is issued a certificate to~~
3 ~~operate in this state under this subchapter~~] shall notify the
4 department of any change in:

5 (1) the information provided in an application
6 submitted under Section 396.152; or

7 (2) the status of the agency's authorization in the
8 other state.

9 SECTION 11. Section 396.203, Finance Code, is amended to
10 read as follows:

11 Sec. 396.203. CONTRACT FOR SERVICES. (a) A registered
12 agency and certified foreign agency [~~authorized to engage in~~
13 ~~business under this chapter~~] shall execute a written contract for
14 the enforcement of child support for each client of the agency that
15 is residing in this state.

16 (b) The contract required under this section must:

17 (1) be in writing, dated, and signed by both parties to
18 the contract; [~~and~~]

19 (2) specify its terms in clear language; and

20 (3) specify that the client:

21 (A) may cancel the contract for any reason not
22 later than the seventh day after the date the contract is executed;
23 and

24 (B) is entitled to receive a full refund of any
25 money paid by the client to the agency not later than the 10th day
26 after the cancellation date.

27 (c) A contract under this section for the collection of a

1 child support obligation must specify a sum certain for collection,
2 which may not exceed:

3 (1) the amount of the child support obligation owed on
4 the date the contract is executed, subject to Subsection (d); or

5 (2) the monthly amount of the obligor's child support
6 payment multiplied by 36.

7 (d) If the parties are unable to determine the amount of the
8 arrearage on the date the contract is executed, the agency shall,
9 not later than the 30th day after the contract's execution date,
10 send to the client an addendum to the contract that contains the
11 arrearage amount and the sum certain for collection. If the agency
12 does not send the addendum within the deadline prescribed by this
13 subsection, the contract is voidable at the option of the client
14 until the date the client receives the addendum.

15 (e) A contract for the collection of a child support
16 obligation terminates on the date the agency collects the sum
17 certain specified in the contract or any addendum to the contract as
18 provided by Subsection (c).

19 (f) The contract required under this section must also
20 contain a provision that allows the client the option to cancel the
21 contract if the total amount of child support payments collected
22 from the obligor in any consecutive 12-month period beginning 18
23 months after the date the contract is executed does not equal the
24 amount of at least one of the obligor's ordered monthly child
25 support payments. The client must notify the agency in writing of
26 the client's intent to cancel under this subsection.

27 (g) An attempted waiver of the requirements of Subsections

1 (c)-(e) or the cancellation provisions prescribed by this section
2 is void.

3 SECTION 12. Subchapter E, Chapter 396, Finance Code, is
4 amended by adding Section 396.204 to read as follows:

5 Sec. 396.204. ANNUAL REPORT. Not later than September 1 of
6 each year, each registered agency shall provide to the department a
7 detailed report accounting for all child support collections made
8 by the agency during the preceding calendar year. The report, at a
9 minimum, must contain a statement of the amount of child support
10 collected on behalf of, and disbursed to, each client, including:

11 (1) the date on which the amount of child support was
12 collected; and

13 (2) the date on which each amount of child support due
14 the client by the obligor was paid to the client.

15 SECTION 13. Subchapter F, Chapter 396, Finance Code, is
16 amended by adding Sections 396.253 and 396.254 to read as follows:

17 Sec. 396.253. FEE OR OTHER CONSIDERATION RECEIVED BY
18 AGENCY. (a) For child support enforcement, a registered agency or
19 certified foreign agency may not receive a fee or other
20 consideration that exceeds 20 percent of the total amount of the
21 child support obligation collected by the agency from the obligor.

22 (b) A registered agency or certified foreign agency may not
23 receive a fee or other consideration for any child support payment
24 that:

25 (1) is collected or received solely through the
26 efforts of the Title IV-D agency, the state disbursement unit, a
27 local registry, or another state or local governmental entity or

1 agency; or

2 (2) is collected by another registered agency or
3 certified foreign agency.

4 (c) Subsection (b) does not preclude a registered agency or
5 certified foreign agency from receiving a fee or other
6 consideration for any increase in a child support payment that
7 results directly from the efforts of the agency, regardless of
8 whether the payment was initially collected or received through the
9 efforts of the Title IV-D agency, the state disbursement unit, a
10 local registry, or another public or private entity or agency.

11 (d) A person who violates Subsection (a) or (b) commits an
12 offense. An offense under this section is a Class B misdemeanor.

13 Sec. 396.254. REDIRECTION OF CHILD SUPPORT PAYMENTS OR
14 ARREARAGES PROHIBITED. No child support payment or arrearage
15 collected or received by the Title IV-D agency, the state
16 disbursement unit, or a local registry may be redirected to any
17 private child support enforcement agency.

18 SECTION 14. Section 396.301(a), Finance Code, is amended to
19 read as follows:

20 (a) After notice and hearing, the department may revoke the
21 registration of a registered agency that:

22 (1) fails to comply with this chapter or a rule adopted
23 under this chapter;

24 (2) does not pay a fee or other charge imposed by the
25 department under this chapter; ~~and~~

26 (3) fails to maintain and produce at the request of the
27 department records attesting to the financial solvency of the

1 registered agency or other business records concerning client
2 accounts; or

3 (4) violates a prohibition established by Section
4 396.1011.

5 SECTION 15. Subchapter H, Chapter 396, Finance Code, is
6 amended by adding Section 396.354 to read as follows:

7 Sec. 396.354. VOIDABLE CONTRACT. (a) A contract that does
8 not contain the information required by Section 396.203(c) or
9 cancellation provisions prescribed by Section 396.203(b)(3), (e),
10 or (f) is voidable at the option of the client. The client is
11 entitled to recover any amount the registered agency or certified
12 foreign agency received as compensation in connection with the
13 contract.

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

17 SECTION 16. Sections 396.203(b)(3) and (c)-(f), 396.253,
18 and 396.354, Finance Code, as added by this Act, apply only to a
19 contract that is entered into on or after the effective date of this
20 Act.

21 SECTION 17. This Act takes effect immediately if it
22 receives a vote of two-thirds of all the members elected to each
23 house, as provided by Section 39, Article III, Texas Constitution.
24 If this Act does not receive the vote necessary for immediate
25 effect, this Act takes effect September 1, 2005.