

1-1 By: Dutton (Senate Sponsor - Wentworth) H.B. No. 2668
1-2 (In the Senate - Received from the House May 11, 2005;
1-3 May 13, 2005, read first time and referred to Committee on
1-4 Jurisprudence; May 21, 2005, reported favorably by the following
1-5 vote: Yeas 5, Nays 0; May 21, 2005, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to the performance by a private entity of the functions of
1-9 a local child support registry or a child support enforcement
1-10 agency and to the receipt, disbursement, and monitoring of child
1-11 support payments.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Section 101.018, Family Code, is amended to read
1-14 as follows:

1-15 Sec. 101.018. LOCAL REGISTRY. "Local registry" means a
1-16 county ~~an~~ agency or public entity operated under the authority of
1-17 a district clerk, county government, juvenile board, juvenile
1-18 probation office, domestic relations office, or other county agency
1-19 or public entity that serves a county or a court that has
1-20 jurisdiction under this title and that:

- 1-21 (1) receives child support payments;
1-22 (2) maintains records of child support payments;
1-23 (3) distributes child support payments as required by
1-24 law; and
1-25 (4) maintains custody of official child support
1-26 payment records.

1-27 SECTION 2. Section 154.241, Family Code, is amended by
1-28 adding Subsection (g) to read as follows:

1-29 (g) Notwithstanding any other law, a private entity may
1-30 perform the duties and functions of a local registry under this
1-31 section either under a contract with a county commissioners court
1-32 or domestic relations office executed under Section 204.002 or
1-33 under an appointment by a court.

1-34 SECTION 3. Section 204.001, Family Code, is amended to read
1-35 as follows:

1-36 Sec. 204.001. APPLICABILITY. This chapter applies only to a
1-37 commissioners court or domestic relations office of a county that
1-38 did not have the authority to contract with a private entity to
1-39 receive, disburse, and record payments or restitution of child
1-40 support on January 1, 1997.

1-41 SECTION 4. Section 234.008, Family Code, is amended by
1-42 amending Subsection (a) and adding Subsection (d) to read as
1-43 follows:

1-44 (a) Except as provided by Subsection (c) or (d), not later
1-45 than the second business day after the date the state disbursement
1-46 unit receives a child support payment, the state disbursement unit
1-47 shall distribute the payment to the Title IV-D agency or the
1-48 obligee.

1-49 (d) The signature of an obligee on a final order in a suit
1-50 affecting the parent-child relationship, or another order under
1-51 this title, that designates an individual or entity for the purpose
1-52 of receiving, disbursing, and monitoring child support payments
1-53 constitutes written consent by the obligee to the distribution of
1-54 the child support payments by the state disbursement unit to the
1-55 designated individual or entity. The state disbursement unit shall
1-56 distribute each child support payment to the designated individual
1-57 or entity by the date required by Subsection (a). The designated
1-58 individual or entity shall deduct any amount of the individual's or
1-59 entity's authorized fee from the payment and promptly disburse the
1-60 remainder of the amount to the Title IV-D agency or obligee.

1-61 SECTION 5. Section 396.001, Finance Code, is amended by
1-62 amending Subdivision (1) and adding Subdivisions (1-a), (4-a), (9),
1-63 and (10) to read as follows:

1-64 (1) "Certified foreign agency" means a foreign agency

2-1 that, in lieu of registration, is issued a certificate to operate in
 2-2 this state under Subchapter D.

2-3 (1-a) "Child support enforcement" means an action,
 2-4 conduct, or practice in enforcing, or in soliciting for
 2-5 enforcement, a child support obligation, including the collection
 2-6 of an amount owed under a child support obligation.

2-7 (4-a) "Local registry" has the meaning assigned by
 2-8 Section 101.018, Family Code.

2-9 (9) "State disbursement unit" has the meaning assigned
 2-10 by Section 101.0302, Family Code.

2-11 (10) "Title IV-D agency" has the meaning assigned by
 2-12 Section 101.033, Family Code.

2-13 SECTION 6. Section 396.052(a), Finance Code, is amended to
 2-14 read as follows:

2-15 (a) The department shall charge each applicant for a
 2-16 certificate of registration, or renewal of a certificate, a
 2-17 nonrefundable fee [~~of \$500~~] for each certificate. The department
 2-18 shall set each fee in an amount that is reasonable and necessary to
 2-19 defray the cost of administering this chapter.

2-20 SECTION 7. Section 396.053, Finance Code, is amended to
 2-21 read as follows:

2-22 Sec. 396.053. COST OF REGULATION. The department may
 2-23 charge each registered private child support enforcement agency an
 2-24 annual fee in an amount that is reasonable and necessary [~~not to~~
 2-25 ~~exceed \$500~~] to defray [~~cover~~] the cost of administering and
 2-26 enforcing this chapter.

2-27 SECTION 8. Subchapter C, Finance Code, is amended by adding
 2-28 Section 396.1011 to read as follows:

2-29 Sec. 396.1011. ELIGIBILITY FOR REGISTRATION. (a) In this
 2-30 section, "principal" means a person who participates in the affairs
 2-31 of the holder of a certificate of registration under this section or
 2-32 who exercises supervisory duties, including an owner, officer,
 2-33 director, partner, trustee, or agent of the registration holder.

2-34 (b) A person is not eligible for a certificate of
 2-35 registration under this chapter if, during the preceding 10 years:

2-36 (1) the person or a principal of the person has been
 2-37 convicted of:

2-38 (A) a felony or a crime involving moral turpitude
 2-39 under the laws of this or another state or the United States;

2-40 (B) a crime under the laws of a foreign country
 2-41 that involves moral turpitude or would be a felony if committed in
 2-42 the United States; or

2-43 (C) an offense under a state or federal law
 2-44 relating to any state or federal monetary instrument reporting
 2-45 requirement; or

2-46 (2) the person or a principal of the person has been
 2-47 convicted of an offense under a state or federal law relating to:

2-48 (A) drugs, drug trafficking, or money
 2-49 laundering; or

2-50 (B) a reporting requirement of the Bank Secrecy
 2-51 Act (12 U.S.C. Section 1951 et seq.).

2-52 (c) A person is not eligible for a certificate of
 2-53 registration under this chapter if at any time the person or a
 2-54 principal of the person has been convicted of:

2-55 (1) a felony under Chapter 34, Penal Code, or a similar
 2-56 provision involving the laundering of money that is the product of
 2-57 or proceeds from criminal activity under the laws of another state
 2-58 or the United States; or

2-59 (2) a felony violation of 31 U.S.C. Section 5313 or
 2-60 5324 or a regulation adopted under those sections.

2-61 SECTION 9. Section 396.106(a), Finance Code, is amended to
 2-62 read as follows:

2-63 (a) The department shall issue a certificate of
 2-64 registration and mail the certificate to an eligible [~~the~~]
 2-65 applicant on receipt of:

2-66 (1) a completed application;

2-67 (2) evidence of financial solvency;

2-68 (3) the surety bond or deposit of money required by
 2-69 Section 396.105; and

3-1 (4) the required registration fee.

3-2 SECTION 10. Section 396.153, Finance Code, is amended to
3-3 read as follows:

3-4 Sec. 396.153. NOTIFICATION OF UPDATED INFORMATION OR CHANGE
3-5 IN STATUS OF OTHER AUTHORIZATION. Not later than the 30th day after
3-6 the date on which the change occurs, a certified foreign [~~private~~
3-7 ~~child support enforcement~~] agency [~~that is issued a certificate to~~
3-8 ~~operate in this state under this subchapter~~] shall notify the
3-9 department of any change in:

3-10 (1) the information provided in an application
3-11 submitted under Section 396.152; or

3-12 (2) the status of the agency's authorization in the
3-13 other state.

3-14 SECTION 11. Section 396.203, Finance Code, is amended to
3-15 read as follows:

3-16 Sec. 396.203. CONTRACT FOR SERVICES. (a) A registered
3-17 agency and certified foreign agency [~~authorized to engage in~~
3-18 ~~business under this chapter~~] shall execute a written contract for
3-19 the enforcement of child support for each client of the agency that
3-20 is residing in this state.

3-21 (b) The contract required under this section must:

3-22 (1) be in writing, dated, and signed by both parties to
3-23 the contract; [~~and~~]

3-24 (2) specify its terms in clear language; and

3-25 (3) specify that the client:

3-26 (A) may cancel the contract for any reason not
3-27 later than the seventh day after the date the contract is executed;
3-28 and

3-29 (B) is entitled to receive a full refund of any
3-30 money paid by the client to the agency not later than the 10th day
3-31 after the cancellation date.

3-32 (c) A contract under this section for the collection of a
3-33 child support obligation must specify a sum certain for collection,
3-34 which may not exceed:

3-35 (1) the amount of the child support obligation owed on
3-36 the date the contract is executed, subject to Subsection (d); or

3-37 (2) the monthly amount of the obligor's child support
3-38 payment multiplied by 36.

3-39 (d) If the parties are unable to determine the amount of the
3-40 arrearage on the date the contract is executed, the agency shall,
3-41 not later than the 30th day after the contract's execution date,
3-42 send to the client an addendum to the contract that contains the
3-43 arrearage amount and the sum certain for collection. If the agency
3-44 does not send the addendum within the deadline prescribed by this
3-45 subsection, the contract is voidable at the option of the client
3-46 until the date the client receives the addendum.

3-47 (e) A contract for the collection of a child support
3-48 obligation terminates on the date the agency collects the sum
3-49 certain specified in the contract or any addendum to the contract as
3-50 provided by Subsection (c).

3-51 (f) The contract required under this section must also
3-52 contain a provision that allows the client the option to cancel the
3-53 contract if the total amount of child support payments collected
3-54 from the obligor in any consecutive 12-month period beginning 18
3-55 months after the date the contract is executed does not equal the
3-56 amount of at least one of the obligor's ordered monthly child
3-57 support payments. The client must notify the agency in writing of
3-58 the client's intent to cancel under this subsection.

3-59 (g) An attempted waiver of the requirements of Subsections
3-60 (c)-(e) or the cancellation provisions prescribed by this section
3-61 is void.

3-62 SECTION 12. Subchapter E, Chapter 396, Finance Code, is
3-63 amended by adding Section 396.204 to read as follows:

3-64 Sec. 396.204. ANNUAL REPORT. Not later than September 1 of
3-65 each year, each registered agency shall provide to the department a
3-66 detailed report accounting for all child support collections made
3-67 by the agency during the preceding calendar year. The report, at a
3-68 minimum, must contain a statement of the amount of child support
3-69 collected on behalf of, and disbursed to, each client, including:

4-1 (1) the date on which the amount of child support was
 4-2 collected; and

4-3 (2) the date on which each amount of child support due
 4-4 the client by the obligor was paid to the client.

4-5 SECTION 13. Subchapter F, Chapter 396, Finance Code, is
 4-6 amended by adding Sections 396.253 and 396.254 to read as follows:

4-7 Sec. 396.253. FEE OR OTHER CONSIDERATION RECEIVED BY
 4-8 AGENCY. (a) For child support enforcement, a registered agency or
 4-9 certified foreign agency may not receive a fee or other
 4-10 consideration that exceeds 20 percent of the total amount of the
 4-11 child support obligation collected by the agency from the obligor.

4-12 (b) A registered agency or certified foreign agency may not
 4-13 receive a fee or other consideration for any child support payment
 4-14 that:

4-15 (1) is collected or received solely through the
 4-16 efforts of the Title IV-D agency, the state disbursement unit, a
 4-17 local registry, or another state or local governmental entity or
 4-18 agency; or

4-19 (2) is collected by another registered agency or
 4-20 certified foreign agency.

4-21 (c) Subsection (b) does not preclude a registered agency or
 4-22 certified foreign agency from receiving a fee or other
 4-23 consideration for any increase in a child support payment that
 4-24 results directly from the efforts of the agency, regardless of
 4-25 whether the payment was initially collected or received through the
 4-26 efforts of the Title IV-D agency, the state disbursement unit, a
 4-27 local registry, or another public or private entity or agency.

4-28 (d) A person who violates Subsection (a) or (b) commits an
 4-29 offense. An offense under this section is a Class B misdemeanor.

4-30 Sec. 396.254. REDIRECTION OF CHILD SUPPORT PAYMENTS OR
 4-31 ARREARAGES PROHIBITED. No child support payment or arrearage
 4-32 collected or received by the Title IV-D agency, the state
 4-33 disbursement unit, or a local registry may be redirected to any
 4-34 private child support enforcement agency.

4-35 SECTION 14. Section 396.301(a), Finance Code, is amended to
 4-36 read as follows:

4-37 (a) After notice and hearing, the department may revoke the
 4-38 registration of a registered agency that:

4-39 (1) fails to comply with this chapter or a rule adopted
 4-40 under this chapter;

4-41 (2) does not pay a fee or other charge imposed by the
 4-42 department under this chapter; ~~and~~

4-43 (3) fails to maintain and produce at the request of the
 4-44 department records attesting to the financial solvency of the
 4-45 registered agency or other business records concerning client
 4-46 accounts; or

4-47 (4) violates a prohibition established by Section
 4-48 396.1011.

4-49 SECTION 15. Subchapter H, Chapter 396, Finance Code, is
 4-50 amended by adding Section 396.354 to read as follows:

4-51 Sec. 396.354. VOIDABLE CONTRACT. (a) A contract that does
 4-52 not contain the information required by Section 396.203(c) or
 4-53 cancellation provisions prescribed by Section 396.203(b)(3), (e),
 4-54 or (f) is voidable at the option of the client. The client is
 4-55 entitled to recover any amount the registered agency or certified
 4-56 foreign agency received as compensation in connection with the
 4-57 contract.

4-58 (b) A person who prevails in an action to enforce the
 4-59 person's rights under this section is entitled to recover court
 4-60 costs and reasonable attorney's fees.

4-61 SECTION 16. Sections 396.203(b)(3) and (c)-(f), 396.253,
 4-62 and 396.354, Finance Code, as added by this Act, apply only to a
 4-63 contract that is entered into on or after the effective date of this
 4-64 Act.

4-65 SECTION 17. This Act takes effect immediately if it
 4-66 receives a vote of two-thirds of all the members elected to each
 4-67 house, as provided by Section 39, Article III, Texas Constitution.
 4-68 If this Act does not receive the vote necessary for immediate
 4-69 effect, this Act takes effect September 1, 2005.

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