

FINANCE CODE

TITLE 5. PROTECTION OF CONSUMERS OF FINANCIAL SERVICES
CHAPTER 396. PRIVATE CHILD SUPPORT ENFORCEMENT AGENCIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 396.001. DEFINITIONS. In this chapter:

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

(2) "Child support obligation" means an obligation for the payment of financial support for a child under an order or writ issued by a court or other tribunal.

(3) "Department" means the Texas Department of Banking.

(4) "Foreign agency" means a private child support enforcement agency that engages in business in this state solely by use of telephone, mail, the Internet, facsimile transmission, or any other means of interstate communication.

(5) "Obligee" means the person identified in an order for child support issued by a court or other tribunal as the payee to whom an obligor's amounts of ordered child support are due.

(6) "Obligor" means the person identified in an order for child support issued by a court or other tribunal as the individual required to make payment under the terms of a support order for a child.

(7) "Private child support enforcement agency" means an individual or nongovernmental entity who engages in the enforcement of child support ordered by a court or other tribunal for a fee or other consideration. The term does not include:

(A) an attorney enforcing a child support obligation on behalf of, and in the name of, a client unless the attorney has an employee who is not an attorney and who on behalf of the attorney:

(i) regularly solicits for child support enforcement; or

(ii) regularly contacts child support obligees or obligors for the purpose of child support enforcement;

(B) a state agency designated to serve as the state's Title IV-D agency in accordance with Part D, Title IV, Social Security Act (42 U.S.C. Section 651 et seq.), as amended; or

(C) a contractor awarded a contract to engage in child support enforcement on behalf of a governmental agency, including a contractor awarded a contract:

(i) under Chapter 236, Family Code; or

(ii) by a political subdivision of this or another state that is authorized by law to enforce a child support obligation.

(8) "Registered agency" means a private child support enforcement agency, including a foreign agency, that is registered under this chapter.

Added by Acts 2001, 77th Leg., ch. 1023, Sec. 73, eff. Sept. 1, 2001.

SUBCHAPTER B. POWERS AND DUTIES OF DEPARTMENT

Sec. 396.051. ADMINISTRATIVE AND RULEMAKING AUTHORITY. (a) The department shall administer this chapter.

(b) The Finance Commission of Texas shall adopt rules as necessary for the administration of this chapter.

Added by Acts 2001, 77th Leg., ch. 1023, Sec. 73, eff. Sept. 1, 2001.

Sec. 396.052. FILING FEE. (a) The department shall charge each applicant for a certificate of registration, or renewal of a certificate, a nonrefundable fee of \$500 for each certificate.

(b) The application fee is due on the date the applicant submits an application for registration. The renewal fee is due on the date a certificate holder submits an application to renew a registration.

Added by Acts 2001, 77th Leg., ch. 1023, Sec. 73, eff. Sept. 1, 2001.

Sec. 396.053. COST OF REGULATION. The department may charge each registered private child support enforcement agency an annual fee not to exceed \$500 to cover the cost of enforcing this chapter.

Added by Acts 2001, 77th Leg., ch. 1023, Sec. 73, eff. Sept. 1, 2001.

SUBCHAPTER C. REGISTRATION

Sec. 396.101. REGISTRATION REQUIRED. Except as otherwise provided by this chapter, a private child support enforcement agency must register with the department to engage in child support enforcement in this state.

Added by Acts 2001, 77th Leg., ch. 1023, Sec. 73, eff. Sept. 1, 2001.

Sec. 396.102. RECOGNITION OF AUTHORIZATION ISSUED BY ANOTHER STATE. (a) The department may waive any prerequisite to obtaining a registration for a foreign agency:

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

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

(b) The department may enter into an agreement with another state to permit registration by reciprocity.

Added by Acts 2001, 77th Leg., ch. 1023, Sec. 73, eff. Sept. 1, 2001.

Sec. 396.103. APPLICATION REQUIREMENTS. (a) An applicant for registration as a private child support enforcement agency must file with the department an application on a form and in the manner prescribed by the department.

(b) The application must state:

(1) the name of the applicant;

(2) the name under which the applicant is doing or intends to do business in this state, if different from the applicant's name;

(3) the address of the applicant's principal business office, including the state, municipality, and numeric street address; and

(4) any Internet or other electronic mail address and business telephone number of the applicant.

(c) The chief executive officer of the applicant agency shall state in a notarized statement that the application is accurate and truthful in all respects.

Added by Acts 2001, 77th Leg., ch. 1023, Sec. 73, eff. Sept. 1, 2001.

Sec. 396.104. FINANCIAL AND OTHER DISCLOSURES. The department shall require an applicant for registration or renewal of registration as a private child support enforcement agency to provide:

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

(2) any other information the department may reasonably require the applicant to provide to establish that the requirements and qualifications for registration or renewal of registration have been fulfilled by the applicant.

Added by Acts 2001, 77th Leg., ch. 1023, Sec. 73, eff. Sept. 1, 2001.

Sec. 396.105. SURETY BOND OR OTHER DEPOSIT REQUIRED. (a) An application for registration must be accompanied by a surety bond approved by the department.

(b) The surety bond must be:

(1) issued by a surety authorized to do business in this state;

(2) in the amount of \$50,000;

(3) in favor of the state for the benefit of a person damaged by a violation of this chapter; and

(4) conditioned on the private child support enforcement agency's compliance with this chapter and the faithful performance of the obligations under the agency's agreements with its clients.

(c) The surety bond must be filed with and held by the department.

(d) Instead of a surety bond, the department may accept a deposit of money in an amount determined by the department not to exceed \$50,000. The department shall deposit any amounts received under this subsection in an insured depository account designated for that purpose.

Added by Acts 2001, 77th Leg., ch. 1023, Sec. 73, eff. Sept. 1, 2001.

Sec. 396.106. ISSUANCE OF CERTIFICATE OF REGISTRATION. (a) The 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 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.

Added by Acts 2001, 77th Leg., ch. 1023, Sec. 73, eff. Sept. 1, 2001.

Sec. 396.107. DUTY TO UPDATE APPLICATION INFORMATION. A certificate holder shall notify the 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.

Added by Acts 2001, 77th Leg., ch. 1023, Sec. 73, eff. Sept. 1,

2001.

Sec. 396.108. TERM OF REGISTRATION; RENEWAL. (a) A private child support enforcement agency's certificate of registration expires on the third anniversary of the date of issuance.

(b) A certificate of registration may be renewed for another three-year period as provided by department rule.

Added by Acts 2001, 77th Leg., ch. 1023, Sec. 73, eff. Sept. 1, 2001.

SUBCHAPTER D. AUTHORITY OF FOREIGN AGENCY TO ENGAGE IN BUSINESS IN
THIS STATE

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

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

(2) a surety bond or deposit of money that meets the requirements of Section 396.105 unless the agency provides proof to the satisfaction of the department that the agency maintains in the state in which that agency has its principal office an adequate bond or similar instrument for purposes similar to the purposes required for the filing of a surety bond under Section 396.105; and

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

(b) The department may charge a single administrative fee in a reasonable amount that is sufficient to cover the costs of the department in processing and acting on the application.

Added by Acts 2001, 77th Leg., ch. 1023, Sec. 73, eff. Sept. 1, 2001.

Sec. 396.152. ACCEPTANCE OF OTHER AUTHORIZATION INSTEAD OF REGISTRATION. The department shall issue a certificate to operate

under another state's authorization in this state to a foreign agency that files an application with the department under Section 396.151 if:

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

(2) the department determines that the agency has met the requirements of Section 396.151(a)(2);

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

(4) the department verifies that the registration or other authorization issued by another state is active and in good standing.

Added by Acts 2001, 77th Leg., ch. 1023, Sec. 73, eff. Sept. 1, 2001.

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

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

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

Added by Acts 2001, 77th Leg., ch. 1023, Sec. 73, eff. Sept. 1, 2001.

Sec. 396.154. WITHDRAWAL OF 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 department grants the agency a registration under this chapter.

Added by Acts 2001, 77th Leg., ch. 1023, Sec. 73, eff. Sept. 1, 2001.

SUBCHAPTER E. REQUIRED BUSINESS PRACTICES

Sec. 396.201. REGISTRATION PREREQUISITE TO SUIT. A private child support enforcement agency may not bring an action to enforce a child support obligation in this state unless the agency is registered or otherwise authorized to engage in business in this state as provided by this chapter.

Added by Acts 2001, 77th Leg., ch. 1023, Sec. 73, eff. Sept. 1, 2001.

Sec. 396.202. RECORDS. (a) A registered agency shall maintain records of all child support collections made on behalf of, and disbursed to, a client who is an obligee, including:

(1) the name of any obligor who made child support payments collected by the agency;

(2) the amount of support collected by the agency for each client, including:

(A) the date on which the amount was collected; and

(B) the date on which each amount due the client by the obligor was paid to the client;

(3) a copy of the order establishing the child support obligation under which a collection was made by the agency; and

(4) any other pertinent information relating to the child support obligation, including any case, cause, or docket number of the court having jurisdiction over the matter.

(b) The records required under this section must be updated at least monthly and must be maintained by the registered agency for a period of four years from the date of the last support payment collected by the agency on behalf of an obligee.

Added by Acts 2001, 77th Leg., ch. 1023, Sec. 73, eff. Sept. 1, 2001.

Sec. 396.203. CONTRACT FOR SERVICES. (a) A registered agency and foreign agency authorized to engage in business under this chapter shall execute a written contract for the enforcement

of child support for each client of the agency that is residing in this state.

(b) The contract required under this section must:

(1) be in writing, dated, and signed by both parties to the contract; and

(2) specify its terms in clear language.

Added by Acts 2001, 77th Leg., ch. 1023, Sec. 73, eff. Sept. 1, 2001.

SUBCHAPTER F. PROHIBITED PRACTICES

Sec. 396.251. THREATS OR COERCION. (a) In enforcing a child support obligation, a registered agency may not use threats, coercion, or attempts to coerce that employ any of the following practices:

(1) using or threatening to use violence or other criminal means to cause harm to an obligor or property of the obligor;

(2) accusing falsely or threatening to accuse falsely an obligor of a violation of state or federal child support laws;

(3) taking or threatening to take an enforcement action against an obligor that is not authorized by law; or

(4) intentionally representing to a person that the agency is a governmental agency authorized to enforce a child support obligation.

(b) Subsection (a) does not prevent a registered agency from:

(1) informing an obligor that the obligor may be subject to penalties prescribed by law for failure to pay a child support obligation; or

(2) taking, or threatening to take, an action authorized by law for the enforcement of a child support obligation by the agency.

Added by Acts 2001, 77th Leg., ch. 1023, Sec. 73, eff. Sept. 1, 2001.

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 department;

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

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

Added by Acts 2001, 77th Leg., ch. 1023, Sec. 73, eff. Sept. 1, 2001.

SUBCHAPTER G. ADMINISTRATIVE ENFORCEMENT

Sec. 396.301. REVOCATION OF REGISTRATION. (a) After notice and hearing, the department may revoke the registration of a registered agency that:

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

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

(3) fails to maintain and produce at the request of the department records attesting to the financial solvency of the registered agency or other business records concerning client accounts.

(b) The department may permit a registered agency to take an appropriate action to correct a failure to comply with this chapter and not revoke the registration of the agency.

Added by Acts 2001, 77th Leg., ch. 1023, Sec. 73, eff. Sept. 1, 2001.

Sec. 396.302. ADMINISTRATIVE HEARING ON DENIAL, SUSPENSION, OR REVOCATION OF REGISTRATION. (a) The department may not deny or suspend the registration of a private child support enforcement agency under this chapter without first conducting an administrative hearing.

(b) A hearing under this section or Section [396.301](#) is

subject to Chapter 2001, Government Code.

Added by Acts 2001, 77th Leg., ch. 1023, Sec. 73, eff. Sept. 1, 2001.

Sec. 396.303. BONA FIDE ERROR. A registered agency does not violate this chapter if the action complained of resulted from a bona fide error that occurred notwithstanding the use of reasonable procedures to avoid the error.

Added by Acts 2001, 77th Leg., ch. 1023, Sec. 73, eff. Sept. 1, 2001.

Sec. 396.304. ADMINISTRATIVE INVESTIGATION OF COMPLAINT.

(a) A person may file with the department a written complaint against a registered agency for a violation of this chapter.

(b) Not later than the 30th day after the date on which the department receives a complaint under this section, the department shall initiate an investigation into the merits of the complaint.

(c) The department may appoint a hearings officer to conduct the investigation.

(d) A hearings officer appointed by the department to investigate a complaint may arrange for the services of a qualified mediator and attempt to:

(1) resolve the complaint and any differences between the parties; and

(2) reach a settlement without the requirement of further investigation.

(e) The department may delegate to a hearings officer appointed to investigate a complaint under this section the authority to dismiss the complaint, after an initial investigation and after notice to each affected party and an opportunity for hearing, for lack of sufficient evidentiary basis.

(f) An individual aggrieved by a decision of the department or hearings officer under this section may appeal the decision to a district court in Travis County.

(g) The department shall provide for an annual public inspection of an investigation report of a complaint filed under this section.

Added by Acts 2001, 77th Leg., ch. 1023, Sec. 73, eff. Sept. 1, 2001.

SUBCHAPTER H. CIVIL REMEDIES

Sec. 396.351. CIVIL ACTION. (a) In addition to any other remedy provided by this chapter, a person may bring an action for:

(1) injunctive relief to enjoin or restrain a violation of this chapter; and

(2) actual damages incurred as a result of a violation of this chapter.

(b) A person who prevails in an action brought under this section is entitled to recover court costs and reasonable attorney's fees.

(c) On a finding by a court that an action under this section was brought in bad faith or for purposes of harassment, the court shall award the defendant attorney's fees reasonably related to the work performed and costs.

Added by Acts 2001, 77th Leg., ch. 1023, Sec. 73, eff. Sept. 1, 2001.

Sec. 396.352. SERVICE OF PROCESS OUTSIDE STATE. (a) A registered agency that is located in another state or a private child support enforcement agency that engages in the business of child support enforcement in this state in violation of this chapter is considered to have submitted to the jurisdiction of the courts of this state with respect to an action brought under this chapter.

(b) A foreign agency engaging in business in this state in violation of this chapter is considered to have appointed the department as the agency's agent for service of process in any action, suit, or proceeding arising from a violation of this chapter.

Added by Acts 2001, 77th Leg., ch. 1023, Sec. 73, eff. Sept. 1, 2001.

Sec. 396.353. REMEDIES UNDER OTHER LAW. (a) A violation of

this chapter is a deceptive trade practice under Subchapter E, Chapter 17, Business & Commerce Code, and is actionable under that subchapter.

(b) This chapter does not affect or alter a remedy at law or in equity otherwise available to an obligor, obligee, governmental entity, or other legal entity.

Added by Acts 2001, 77th Leg., ch. 1023, Sec. 73, eff. Sept. 1, 2001.