

## **BILL ANALYSIS**

Senate Research Center

H.B. 1365  
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Jurisprudence  
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Engrossed

### **DIGEST AND PURPOSE**

Current law provides for the establishment and enforcement of child support obligations in suits affecting the parent-child relationship. Among the provisions are procedures for ordering medical support and enforcing support obligations through mechanisms such as income withholding and liens. H.B. 1365 provides technical corrections and textual emendations to various provisions to clarify intent and to enhance establishment and enforcement provisions. H.B. 1365 also provides for the continuation of the duty of support beyond the death of an obligee, medical support for a child for whom child support is ordered, child support lien and levy processes, and administrative processes used by the Office of the Attorney General's child support division.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Finance Commission of Texas in SECTION 64 (Section 396.051, Finance Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 101.015, Family Code, to redefine "health insurance."

SECTION 2. Amends Section 102.013, Family Code, to require the clerk, in a suit to determine parentage under this title in which the court has rendered an order relating to an earlier born child of the same parents, to file the suit and all other papers relating to the suit under the same docket number as the prior parentage action. Provides that for all other purposes, including the assessment of fees and other costs, the suit is a separate suit.

SECTION 3. Amends Section 154.008, Family Code, as follows:

Sec. 154.008. New heading: **PROVISION FOR MEDICAL SUPPORT**. Requires the court to order medical support, rather than health insurance coverage, for the child as provided by Subchapters B and D.

SECTION 4. Amends Section 154.009, Family Code, to authorize the court, notwithstanding Subsection (a), to order retroactive child support for a child for a period after the termination of a previous child support order for the child if the termination resulted from the marriage or remarriage of the child's parents.

SECTION 5. Amends Section 154.012, Family Code, as follows:

Sec. 154.012. New heading: **SUPPORT PAID IN EXCESS OF SUPPORT ORDER**. Requires an obligee, if an obligor is not in arrears and the obligor's child support obligation has terminated, to return to the obligor a child support payment made by the obligor that exceeds the amount of support ordered, regardless of whether the payment was made before, on, or after the date the child support obligation, rather than order, terminated.

SECTION 6. Amends Chapter 154A, Family Code, by adding Section 154.013, as follows:

Sec. 154.013. CONTINUATION OF DUTY TO PAY SUPPORT AFTER DEATH OF OBLIGEE. Provides that a child support obligation does not terminate on the death of the obligee but continues as an obligation to the child named in the support order, as required by this section. Requires an arrearage owed under the support order, a child support payment held by the Title IV-D agency, a local registry, or the state disbursement unit, or any uncashed check or warrant representing a child support payment made before, on, or after the date of death of the obligee to be paid proportionately for the benefit of each surviving child named in the support order and not to the estate of the obligee, notwithstanding any provision of the Probate Code. Provides that the payment is free of any creditor's claim against the deceased obligee's estate as provided by this section.

Requires current child support owed by the obligor for the benefit of the child or any amount described by this section to be paid to certain individuals, if the obligor does not assume actual care, control, and possession of the child on the death of the obligee.

Requires the court, if the obligor has not assumed actual care, control, and possession of the child, on presentation of the obligee's death certificate, to enter an order directing payment of current child support amounts, arrearages, and support paid but not disbursed, to be made as provided by this section. Requires a copy of the order to be provided to certain individuals.

Requires the order under the section to contain certain information. Requires the local registry, state disbursement unit, or Title IV-D agency, on receipt of the order required under this section, to disburse payments as required by the order.

SECTION 7. Amends Section 154.064, Family Code, as follows:

Sec. 154.064. New heading: MEDICAL SUPPORT FOR CHILD PRESUMPTIVELY PROVIDED BY OBLIGOR. Makes a conforming change.

SECTION 8. Amends Section 154.185, Family Code, to provide that the application of the guidelines under Section 154.129 does not constitute a variance from the child support guidelines requiring specific findings by the court under this section.

SECTION 9. Amends Section 154.185, Family Code, to require the court to order a parent providing health insurance to furnish to either the obligee, obligor, or child support agency, rather than obligee, obligor, local domestic relations office, or Title IV-D agency, certain information not later than the 30th day after the date the notice of rendition of the order is received. Makes conforming changes.

SECTION 10. Amends Section 155.205, Family Code, to require the transferring court, on rendition of an order transferring continuing, exclusive jurisdiction to another court, to also order that all future payments of child support be made to the local registry of the transferee court or, if payments have previously been directed to the state disbursement unit, to the state disbursement unit. Requires the transferring court's local registry, after receiving notice of docketing from the transferee court, to send a certified copy of the child support payment record to the clerk of the transferee court, and requires to forward any payments received to the transferee court's local registry or to the state disbursement unit, as appropriate. Makes conforming changes.

SECTION 11. Amends Section 156.408(b), Family Code, to authorize a court, if both parties and the child reside in this state, to modify an order of child support rendered by an appropriate tribunal of another state after registration of the order as provided by Chapter 159. Deletes text regarding any aspect of conservatorship.

SECTION 12. Amends Section 156.409, Family Code, to authorize a notice of a motion for modification under this section to be served in the manner for serving a notice under Section 157.065.

SECTION 13. Amends Section 157.264, Family Code, as follows:

Sec. 157.264. ENFORCEMENT OF JUDGMENT. Authorizes the court to render an order requiring that income be withheld from the disposable earnings of the obligor in an amount sufficient to discharge the judgment in not more than two years, or if the obligor is not subject to income withholding, that the obligor make periodic payments to the obligee in an amount sufficient to discharge the judgment within a reasonable time.

SECTION 14. Amends Section 157.311, Family Code, to define “account” and “financial institution” and redefine “lien.”

SECTION 15. Amends Sections 157.312(d) and (f), Family Code, to provide that a child support lien arises by operation of law against real and personal property of an obligor for all amounts of child, rather than overdue, support due and owing, including any accrued interest, regardless of whether the amounts have been adjudicated or otherwise determined, subject to the requirements of this chapter for perfection of the lien, rather than recording and notice. Deletes text regarding the court having jurisdiction or, in certain cases, the Title IV-D determining an amount of arrears owed by a child support obligor. Provides that a foreclosure action under this chapter is not required as a prerequisite to levy and execution on a judicial, rather than judgment, or administrative determination of arrearages as provided by Section 157.327. Deletes text regarding the arrears rendered after notice and opportunity for hearing.

SECTION 16. Amends Section 157.313, Family Code, as follows:

Sec. 157.313. New heading: CONTENTS OF CHILD SUPPORT LIEN NOTICE. Requires a child support lien notice, except as provided by this section, to contain certain information. Authorizes a notice of a lien for child support under this section to be in the form authorized by federal law or regulation.

SECTION 17. Amends Section 157.314, Family Code, as follows:

Sec. 157.314. FILING LIEN NOTICE OR ABSTRACT OF JUDGMENT; NOTICE TO OBLIGOR. Requires the claimant, not later than 21st day after the date of filing or delivering the child support lien notice, to provide a copy of the notice to the obligor by first class or certified mail, return receipt requested, addressed to the obligor at the obligor’s last know address. Requires the claimant, if another person is known to have an ownership interest in the property subject to the lien, to provide a copy of the lien notice to that person at the time notice is provided to the obligor. Requires a financial institution, if a child support lien notice is delivered to an institution, to immediately perform certain actions.

SECTION 18. Amends Chapter 157G, Family Code, by adding Section 157.3145, as follows:

Sec. 157.3145. SERVICE ON FINANCIAL INSTITUTION. Provides that service of a child support lien notice on a financial institution in the name of, or in behalf of, an obligor is governed by Section 59.008 (Claims Against Customers of Financial Institutions), Finance Code, or any other applicable law.

SECTION 19. Amends Section 157.315, Family Code, to require the county clerk, on receipt of a child support lien notice, to immediately record the notice in the county judgment records as provided in Chapter 52 (Judgment Lien), Property Code. Requires a lien, for exemption to the recording fee, to be styled “Notice of Child Support Lien” or be in the form authorized by federal law or regulation. Makes a conforming change.

SECTION 20. Amends Section 157.316(a), Family Code, to provide that a child support lien, except as provided by this section, is perfected when an abstract of judgement for past due child support or child support lien notice is filed or delivered as provided by Section 157.314, rather than this subchapter. Deletes text regarding the filing of the lien with the county clerk.

SECTION 21. Amends Section 157.317(a), Family Code, to provide that a child support lien attaches to all real and personal property not exempt under the Texas Constitution or other law, including an account, rather than depository account, in a financial institution, a retirement plan, including an individual retirement account, the proceeds of a life insurance policy, a claim for negligence, personal injury, or workers' compensation, or an insurance award for the claim, due to or owned by the obligor on or after the date the lien notice or abstract of judgment is filed with the county clerk of the county in which the property is located, with the court clerk as to property or claims in litigation, or, as to property of the obligor in the possession or control of a third party, from the date the lien notice is filed with the party. Deletes text regarding the service of a property lien notice, held by a financial institution, is governed by Section 59.008, Finance Code.

SECTION 22. Amends Sections 157.318(a) and (b), Family Code, to provide that a lien is effective until all current support and child support arrearages, including interest and any costs and reasonable attorney's fees, have been paid or the lien is otherwise released as provided by this subchapter. Makes conforming and nonsubstantive changes.

SECTION 23. Amends Section 157.319, Family Code, to provide that this section does not affect the validity or priority of a lien of a health care provider, a lien for attorney's fees, or a lien of a holder of a security interest. Provides that this section does not affect the assignment of rights or subrogation of a claim under Title XIX of the federal Social Security Act (42 U.S.C. Section 1396 et seq.), as amended.

SECTION 24. Amends Section 157.321, Family Code, to change a reference from "claimant" to "child support lien claimant."

SECTION 25. Amends Section 157.322, Family Code, to make conforming and nonsubstantive changes.

SECTION 26. Amends Sections 157.323(a) and (b), Family Code, to authorize an action to foreclose a child support lien, to dispute the amount of arrearages stated in the lien, or to resolve issues of ownership interest with respect to property subject to a child support lien to be brought in certain courts, in addition to any other remedy provided by law. Provides that the procedures provided by Subchapter B apply to a foreclosure action under this section, except that a person or organization in possession of the property of the obligor or known to have an ownership interest in property that is subject to the lien is authorized to be joined as an additional respondent.

SECTION 27. Amends Section 157.324, Family Code, to provide that a person who knowingly disposes of property subject to a child support lien, who, after a foreclosure hearing, fails to surrender on demand nonexempt personal property as directed by a court or administrative order under this subchapter, or who fails to comply with a notice of levy under this subchapter is liable to the claimant in an amount equal to the arrearages for which the lien, notice of levy, or foreclosure judgment was issued.

SECTION 28. Amends Section 157.325(a), Family Code, to authorize the holder of the nonexempt personal property or the obligor to request that the claimant release any excess amount from the lien, if a person has in the person's possession earnings, deposits, accounts, or balances, or other funds or assets of the obligor, including the proceeds of a judgment or other settlement of a claim or counterclaim due to the obligor that are in excess of the amount of arrearages specified in the child support lien.

SECTION 29. Amends Section 157.326, Family Code, as follows:

Sec. 157.326. New heading. INTEREST OF OBLIGOR'S SPOUSE OR ANOTHER PERSON HAVING OWNERSHIP INTEREST. Authorizes a spouse of an obligor or another person having an ownership interest in property that is subject to a child support lien to file suit under Section 157.323 to determine the extent, if any, of the spouse's or other person's

interest in real or personal property that is subject to a lien perfected under this subchapter, or an action foreclose under this subchapter. Requires the court to hold a hearing and determine the extent of the ownership interest, and requires the court, if the court finds that the property is owned in part by another person other than the obligor's spouse, to render an order partitioning the property and directing that the obligor's share of the property be applied to the child support arrearages.

SECTION 30. Amends Chapter 157G, Family Code, by adding Sections 157.327-157.331, as follows:

Sec. 157.327. EXECUTION AND LEVY ON FINANCIAL ASSETS OF OBLIGOR. Authorizes a claimant, if a judgment or administrative determination of arrearages has been rendered, to deliver a notice of levy to any financial institution possessing or controlling assets or funds owned by, or owed to, an obligor and subject to a child support lien, including a lien for child support arising in another state, notwithstanding any other provision of law. Requires the notice under this section to meet certain specifications. Prohibits a financial institution that receives a notice of levy under this section from closing an account in which the obligor has an ownership interest, permitting a withdrawal from any account the obligor owns, in whole or in part, or paying funds to the obligor so that any amount remaining in the account is less than the amount of the arrearages identified in the notice, plus any fees due to the institution and any costs of the levy identified by the claimant. Requires a financial institution that receives a notice of levy under this section to notify any other person having an ownership interest in an account in which the obligor has an ownership interest that the account has been levied on in an amount not to exceed the amount of the child support arrearages identified in the notice of levy. Authorizes the notice of levy to be delivered to a financial institution as provided by Section 59.008, Finance Code, if the institution is subject to that law or to be delivered to the registered agent, the institution's main business office in this state, or another address provided by the institution under Section 231.307.

Sec. 157.328. NOTICE OF LEVY SENT TO OBLIGOR. Requires the claimant, at the time the notice of levy under Section 157.327 is delivered to a financial institution, to serve the obligor with a copy of the notice. Requires the notice of levy delivered to the obligor to inform the obligor of certain information. Authorizes the obligor receiving a notice of levy, if the claimant is the Title IV-D agency, to request review by the agency not later than the 10th day after the date of receipt of the notice to resolve any issue in dispute regarding the existence or amount of the arrearages. Requires the agency to provide an opportunity for a review, by telephone conference or in person, as appropriate to the circumstances, not later than the fifth business day after the date an oral or written request from the obligor for the review is received. Authorizes the obligor, if the review fails to resolve any issue in dispute, to file suit under Section 157.323 for a hearing by the court not later than the fifth day after the date of the conclusion of the agency review. Authorizes the Title IV-D agency, if the obligor fails to timely file suit, to request the financial institution to release and remit the funds subject to levy. Authorizes the notice under this section to be delivered to the last known address of the obligor by first class mail, certified mail, or registered mail.

Sec. 157.329. NO LIABILITY FOR COMPLIANCE WITH NOTICE OF LEVY. Provides that a financial institution that possesses or has a right to an obligor's assets for which a notice of levy has been delivered and that surrenders the assets or right to assets to a child support lien claimant is not liable to the obligor or any other person for the property or rights surrendered.

Sec. 157.330. FAILURE TO COMPLY WITH NOTICE OF LEVY. Provides that a person who possesses or has a right to property that is the subject of a notice of levy delivered to the person and who refuses to surrender the property or right to property to the claimant on demand is liable to the claimant in an amount equal to the value of the property or right to

property not surrendered but that does not exceed the amount of the child support arrearages for which the notice of levy has been filed.

Sec. 157.331. **ADDITIONAL LEVY TO SATISFY ARREARAGES.** Authorizes the claimant to proceed to levy on other property of the obligor until the total amount of child support due is paid, if the property or right to property on which a notice of levy has been filed does not produce money sufficient to satisfy the amount of child support arrearages identified in the notice of levy.

SECTION 31. Amends Section 158.103, Family Code, to require an order of withholding or writ of withholding issued under this chapter to contain the information required by the forms prescribed by the Title IV-D agency under Section 158.106. Deletes text regarding certain information that is necessary for an employer or other entity to comply with the existing child support order.

SECTION 32. Amends Sections 158.105(b) - (d), Family Code, to delete text that requires the clerk to attach a copy of Subchapter C to the order or writ.

SECTION 33. Amends Section 158.106(a), Family Code, to require the Title IV-D agency to prescribe forms as required, rather than authorized, by federal law in a standard format entitled order or notice to withhold income for child support.

SECTION 34. Amends Section 158.206, Family Code, as follows:

Sec. 158.206. New heading: **LIABILITY AND OBLIGATION OF EMPLOYER; WORKERS' COMPENSATION CLAIMS.** Requires an obligor's employer, if the obligor has filed a claim for workers' compensation, to send a copy of the income withholding order or writ to the insurance carrier with whom the claim has been filed in order to continue the ordered withholding of income.

SECTION 35. Amends Section 158.501, Family Code, by adding Subsection (c) to authorize the Title IV-D agency to use the procedures authorized by this subchapter to enforce a support order rendered by a tribunal of another state regardless of whether the order has been registered under Chapter 159.

SECTION 36. Amends Section 158.502(c), Family Code, to authorize the Title IV-D agency to issue an administrative writ of withholding as a reissuance of an existing withholding order on file with the court of continuing jurisdiction or a tribunal of another state.

SECTION 37. Amends Section 158.503(b), Family Code, to provide that this subsection does not apply to the enforcement under Section 158.501(c) of a support order rendered by a tribunal of another state.

SECTION 38. Amends Section 158.504(b), Family Code, to authorize an administrative writ of withholding issued under this subchapter to contain only the information that is necessary for the employer to withhold income for child support and medical support, and is required to specify the place where the withheld income is to be paid.

SECTION 39. Amends Section 158.505(a), Family Code, to require the Title IV-D agency, on issuance of an administrative writ of withholding, to send the obligor notice that the withholding has commenced, including, if the writ is issued as provided by Section 158.502(b), the amount of the arrearages, including accrued interest.

SECTION 40. Amends Section 201.104, Family Code, by adding Subsection (e) to authorize only the referring court to render an order for post judgment relief, including an order for a new trial.

SECTION 41. Amends Section 201.1041(b), Family Code, to provide that a master's report that recommends enforcement by contempt or the immediate incarceration of a party becomes an order of the referring court only if the order meets the requirements of Section 157.166.

SECTION 42. Amends Section 201.1042, Family Code, to prohibit a master, until a hearing is held on a timely filed appeal under this section, from holding a hearing on the respondent's compliance with conditions in the master's report for suspension of incarceration.

SECTION 43. Amends Chapter 201B, Family Code, by adding Section 201.113, as follows:

Sec. 201.113. VISITING CHILD SUPPORT MASTER. Authorizes the presiding judge of the administrative judicial region in which the master serves to appoint a visiting child support master to perform the duties of the master during the period the master is unable to perform the master's duties, if a child support master appointed under this subchapter is temporarily unable to perform the master's official duties because of absence resulting from family circumstances, illness, injury, or disability. Provides that a person is not eligible for appointment under this section unless the person has served as a child support master or associate judge for at least two years before the date of appointment. Provides that a visiting master appointed under this section is subject to each provision of this chapter that applies to a child support master serving under a regular appointment. Provides that a visiting master appointed under this section is entitled to compensation to be determined by a majority vote of the presiding judges of the administrative judicial regions through use of funds under Section 201.105(b). Provides that a visiting judge is not considered a state employee for any purpose.

SECTION 44. Amends Section 231.104(a), Family Code, to delete text regarding the right to the amount accrued at the time the application for or the receipt of financial assistance was filed or the assistance was received. Makes a nonsubstantive change.

SECTION 45. Amends Section 231.105(a) and (b), Family Code, to require child support payments for the benefit of a child whose support rights have been assigned to the Title IV-D agency under section 231.104 to be made payable to the Title IV-D agency and transmitted to the state disbursement unit as provided by Chapter 234. Requires the Title IV-D agency to, on providing notice to the obligee and the obligor, direct the obligor or other pay or to make support payments payable to the Title IV-D agency and to transmit the payments to the state disbursement unit, rather than agency. Makes conforming changes.

SECTION 46. Amends Section 231.204, Family Code, to prohibit an appellate court, a clerk of an appellate court, a district or county clerk, sheriff, constable, or other government officer or employee, except as provided by this subchapter, from charging the Title IV-D agency or a private attorney or political subdivision that has entered into a contract to provide Title IV-D services any fees or other amounts otherwise imposed by law for services rendered in, or in connection with, a Title IV-D case, including a filing fee or other costs payable to a clerk of an appellate court.

SECTION 47. Amends Section 231.302(b), Family Code, to require a government agency, private company, institution, or other entity to provide the information requested under Subsection (a) directly to the Title IV-D agency, without the requirement of payment of a fee for the information, and, subject to safeguards on privacy and information security, to provide the information in the most efficient and expeditious manner available, including electronic or automated transfer and interface.

SECTION 48. Amends Section 231.307, Family Code, to require the Title IV-D agency to develop a system meeting the requirements of federal law (42 U.S.C. Sections 666(a) (4) and (17)), rather than 42 U.S.C. Section 666(a) (17), for the exchange, rather than quarterly exchange, of data with financial institutions doing business in the state to identify an account of an obligor owing past-due child support and to enforce support obligations against the obligor, including the imposition of a lien and a levy and execution on an obligor's assets held in financial institutions as required by federal law (42 U.S.C.

Section 666(c) (1) (G)). Redefines “financial institution” and “account.” Authorizes a financial institution participating in data matches authorized by this section to provide the Title IV-D agency an address for the purpose of service of notices or process required in actions under this section or Chapter 157G.

SECTION 49. Amends 232.001(4), Family Code, to redefine “subpoena.”

SECTION 50. Amends Section 232.003, Family Code, to change a reference from “individual” to “a parent or alleged parent.” Makes nonsubstantive changes.

SECTION 51. Amends Section 232.005(a), Family Code, to require a petition under this chapter to state that license suspension is required under Section 232.003 and allege with regard to each license, the type, and if known, number of any license the individual is believed to hold and the name of the licensing authority that issued the license.

SECTION 52. Amends Section 232.009, Family Code, to make nonsubstantive changes.

SECTION 53. Amends Section 232.011, Family Code, to provide that an order issued under this chapter to suspend a license applies to each license issued by the licensing authority subject to the order for which the obligor is eligible. Prohibits the licensing authority from issuing or renewing any other license for the obligor until the court or the Title IV-D agency renders an order vacating or staying an order suspending license.

SECTION 54. Amends Section 232.015(b), Family Code, to require a licensing authority to provide the requested information in the form and manner identified, rather than agreed to, by the Title IV-D agency, rather than the Title IV-D agency and the licensing authority.

SECTION 55. Amends Section 233.006, Family Code, to authorize, rather than require, the notice of child support review, to inform the recipient that an affidavit of financial resources, rather than information, included with the notice is required to be executed by the recipient and returned to the Title IV-D agency not later than the 15th day after the date the notice is received or delivered. Deletes text that requires certain documents to be included in the notice of child support review issued by the Title IV-D agency. Makes a conforming change.

SECTION 56. Amends Section 233.009, Family Code, to authorize the Title IV-D agency, notwithstanding any other provision of this chapter, to immediately present the order and waiver to the court for confirmation without conducting a negotiation conference or re requiring the production of financial information, if the parties have agreed to the terms of a proposed child support review order and each party has signed the order, including a waiver of the right to service of process as provided by Section 233.018.

SECTION 57. Amends Section 233.0095, Family Code, to authorize the Title IV-D agency, notwithstanding any other provision of this chapter, to immediately present the order and waiver to the court for confirmation without conducting a negotiation conference or requiring the production of financial information, if paternity has been acknowledged, the parties have agreed to the terms of a proposed child support review order, and each party has signed the order, including a waiver of the right to service of process as provided by Section 233.018.

SECTION 58. Amends Section 223.018(a), Family Code, by adding to a child support review order the phrase, “I acknowledge that I have read and understand this child support review order,” and deleting from the order the phrase, “I know that I do not have to sign this child support review order.”

SECTION 59. Amends Section 233.024(a), Family Code, to authorize the court to sign a child support review order before filing the order, but require the signed order to be immediately filed.



SECTION 60. Amends Section 234.001, Family Code, to require the Title IV-D agency to establish and operate a state case registry and state disbursement unit meeting the requirements of 42 U.S.C. Sections 654a (e) and 654b and this subchapter. Requires the state disbursement unit to forward child support payments as authorized, rather than required, by law. Provides that a certified child support payment record produced by the state disbursement unit is admissible as evidence of the truth of the information contained in the record and does not require further authentication or verification. Makes a conforming change.

SECTION 61. Amends Section 234.004, Family Code, to authorize the Title IV-D agency, to the extent funds are available for this purpose, to enter into contracts or cooperative agreements to process through the state disbursement unit child support collections in cases not otherwise eligible under 42 U.S.C. Section 654b.

SECTION 62. Amends Section 234.006, Family Code, as added by Chapter 556, Acts of the 76th Legislature, Regular Session, 1999, to authorize, rather than require, the Title IV-D agency, in cooperation with the work group established under Section 234.003, to adopt rules in compliance with federal law for the operation of the state case registry and the state disbursement unit. Deletes text regarding the return of payments made in error or delivered to the state disbursement unit with insufficient information for disbursement.

SECTION 63. Amends Section 730.005, Transportation Code, to require personal information obtained by an agency in connection with a motor vehicle record to be disclosed for use in connection with any matter of child support enforcement under Chapter 231 (Title IV Services), Family Code.

SECTION 64. Amends Title 5, Finance Code, by adding Chapter 396, as follows:

**CHAPTER 396. PRIVATE CHILD SUPPORT ENFORCEMENT AGENCIES**  
**SUBCHAPTER A. GENERAL PROVISIONS**

Sec. 396.001. **DEFINITIONS.** Defines “child support enforcement,” “child support obligation,” “department,” “foreign agency,” “obligee,” “obligor,” “private child support enforcement agency,” and “registered agency.”

[Sections 396.002-396.050 reserved for expansion]

**SUBCHAPTER B. POWERS AND DUTIES OF DEPARTMENT**

Sec. 396.051. **ADMINISTRATIVE AND RULEMAKING AUTHORITY.** Requires the Texas Department of Banking (department) to administer this chapter. Requires the Finance Commission of Texas to adopt rules as necessary for the administration of this chapter.

Sec. 396.052. **FILING FEE.** Requires the department to charge each applicant for a certificate of registration, or renewal of a certificate, a nonrefundable fee of \$500 for each certificate. Provides that the application fee is due on the date the applicant submits an application for registration. Provides that the renewal fee is due on the date a certificate holder submits an application to renew a registration.

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

[Sections 396.054-396.100 reserved for expansion]

**SUBCHAPTER C. REGISTRATION**

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

Sec. 396.102. **RECOGNITION OF AUTHORIZATION ISSUED BY ANOTHER STATE.** Authorizes the department to waive any prerequisite to obtaining a registration for a foreign agency under certain circumstances. Authorizes the department to enter into an agreement with another state to permit registration by reciprocity.

Sec. 396.103. **APPLICATION REQUIREMENTS.** Requires an applicant for registration as a private child support enforcement agency to file with the department an application on a form and in the manner prescribed by the department. Requires the application to state certain information. Requires the chief executive officer of the applicant agency to state in a notarized statement that the application is accurate and truthful in all respects.

Sec. 396.104. **FINANCIAL AND OTHER DISCLOSURES.** Requires the department to require an applicant for registration or renewal of registration as a private child support enforcement agency to provide certain information.

Sec. 396.105. **SURETY BOND OR OTHER DEPOSIT REQUIRED.** Requires an application for registration to be accompanied by a surety bond approved by the department. Requires the surety bond to meet certain requirements. Requires the surety bond to be filed with and held by the department. Authorizes the department, instead of a surety bond, to accept a deposit of money in an amount determined by the department not to exceed \$50,000. Requires the department to deposit any amounts received under this subsection in an insured depository account designated for that purpose.

Sec. 396.106. **ISSUANCE OF CERTIFICATE OF REGISTRATION.** Requires the department to issue a certificate of registration and mail the certificate to the applicant on receipt of a completed application, evidence of financial solvency, the surety bond or deposit of money required by Section 396.105, and the required registration fee. Requires the department, if a single application is used to register more than one registered location, to issue a certificate of registration for each registered location, and mail all of the certificates to the principal business location stated in the application.

Sec. 396.107. **DUTY TO UPDATE APPLICATION INFORMATION.** Requires a certificate holder to 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.

Sec. 396.108. **TERM OF REGISTRATION; RENEWAL.** Provides that a private child support enforcement agency's certificate of registration expires on the third anniversary of the date of issuance. Authorizes a certificate of registration to be renewed for another three-year period as provided by department rule.

[Sections 396.109-396.150 reserved for expansion]

#### 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.** Authorizes a foreign agency that is exempt from registration as prescribed by Section 396.102, in order to engage in business in this state, to file an application with the department to operate under that authorization by filing certain documents. Authorizes the department to 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.

Sec. 396.152. **ACCEPTANCE OF OTHER AUTHORIZATION INSTEAD OF REGISTRATION.** Requires the department to 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 under certain circumstances.

Sec. 396.153. **NOTIFICATION OF UPDATED INFORMATION OR CHANGE IN STATUS OF OTHER AUTHORIZATION.** Requires a foreign private child support enforcement agency that is issued a certificate to operate in this state under this subchapter, not later than the 30th day after the date on which the change occurs, to notify the department of any change in the information provided in an application submitted under Section 396.152 or the status of the agency's authorization in the other state.

Sec. 396.154. **WITHDRAWAL OF APPROVAL TO OPERATE UNDER OTHER AUTHORIZATION.** Prohibits a holder of a certificate issued under this subchapter from engaging 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.

[Sections 396.155-396.200 reserved for expansion]

#### SUBCHAPTER E. REQUIRED BUSINESS PRACTICES

Sec. 396.201. **REGISTRATION PREREQUISITE TO SUIT.** Prohibits a private child support enforcement agency from bringing 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.

Sec. 396.202. **RECORDS.** Requires a registered agency to maintain records of all child support collections made on behalf of, and disbursed to, a client who is an obligee, including certain information. Requires the records required under this section to be updated at least monthly and 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.

Sec. 396.203. **CONTRACT FOR SERVICES.** Requires a registered agency and foreign agency authorized to engage in business under this chapter to execute a written contract for the enforcement of child support for each client of the agency that is residing in this state. Requires the contract required under this section to be in writing, dated, and signed by both parties to the contract and specify its terms in clear language.

[Sections 396.204-396.250 reserved for expansion]

#### SUBCHAPTER F. PROHIBITED PRACTICES

Sec. 396.251. **THREATS OR COERCION.** Prohibits a registered agency, in enforcing a child support obligation, from using threats, coercion, or attempts to coerce that employ certain practices. Provides that this section does not prevent a registered agency from informing an obligor that the obligor may be subject to penalties prescribed by law for failure to pay a child support obligation, or taking, or threatening to take, an action authorized by law for the enforcement of a child support obligation by the agency.

Sec. 396.252. **FRAUDULENT, DECEPTIVE, OR MISLEADING REPRESENTATIONS.** Prohibits a registered agency or employee of the agency, in enforcing a child support obligation,

from committing certain acts.

[Sections 396.253-396.300 reserved for expansion]

#### SUBCHAPTER G. ADMINISTRATIVE ENFORCEMENT

Sec. 396.301. REVOCATION OF REGISTRATION. Authorizes the department, after notice and hearing, to revoke the registration of a registered agency that fails to meet certain requirements. Authorizes the department to 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.

Sec. 396.302. ADMINISTRATIVE HEARING ON DENIAL, SUSPENSION, OR REVOCATION OF REGISTRATION. Prohibits the department from denying or suspending the registration of a private child support enforcement agency under this chapter without first conducting an administrative hearing. Provides that a hearing under this section or Section 396.301 is subject to Chapter 2001 Administrative Procedures), Government Code.

Sec. 396.303. BONA FIDE ERROR. Provides that 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.

Sec. 396.304. ADMINISTRATIVE INVESTIGATION OF COMPLAINT. Authorizes a person to file with the department a written complaint against a registered agency for a violation of this chapter. Requires the department to initiate an investigation into the merits of the complaint not later than the 30th day after the date on which the department receives a complaint under this section. Authorizes the department to appoint a hearings officer to conduct the investigation. Authorizes a hearings officer appointed by the department to investigate a complaint to arrange for the services of a qualified mediator and attempt to resolve the complaint and any differences between the parties, and reach a settlement without the requirement of further investigation. Authorizes the department to 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. Authorizes an individual aggrieved by a decision of the department or hearings officer under this section to appeal the decision to a district court in Travis County. Requires the department to provide for an annual public inspection of an investigation report of a complaint filed under this section.

[Sections 396.305-396.350 reserved for expansion]

#### SUBCHAPTER H. CIVIL REMEDIES

Sec. 396.351. CIVIL ACTION. Authorizes a person, in addition to any other remedy provided by this chapter, to bring an action for injunctive relief to enjoin or restrain a violation of this chapter, and actual damages incurred as a result of a violation of this chapter. Provides that a person who prevails in an action brought under this section is entitled to recover court costs and reasonable attorney's fees. Requires the court to award the defendant attorney's fees reasonably related to the work performed and costs, on a finding by a court that an action under this section was brought in bad faith or for purposes of harassment.

Sec. 396.352. SERVICE OF PROCESS OUTSIDE STATE. Provides that 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. Provides that 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.

Sec. 396.353. REMEDIES UNDER OTHER LAW. Provides that a violation of this chapter is a deceptive trade practice under Chapter 17E (Deceptive Trade Practices and Consumer Protection), Business & Commerce Code, and is actionable under that subchapter. Provides that 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.

SECTION 65. Repealer: Section 158.508 (Interstate Request for Income Withholding) and Section 231.010 (Case Processing Pilot Program), Family Code.

SECTION 66. Effective date: September 1, 2001.

- Provides that the requirement of Chapter 396, Finance Code, as added by this Act, that a private child support enforcement agency be registered applies only on or after January 1, 2002.
- Makes application of this Act prospective.