SUBJECT: Adopting federal child support mandates

COMMITTEE: Juvenile Justice and Family Issues — favorable, with amendment

VOTE: 8 ayes — Goodman, Staples, J. Jones, McClendon, McReynolds, A. Reyna, Smith, Williams

0 nays

1 absent — Naishtat

WITNESSES: For — Bonnie Wolbrueck and Cindy Groomer, County and District Clerks Association of Texas; Mary Rhoads, Advisory Council of Attorney Generals Integrated Child Support System

Against — David Shelton, Texas Fathers Alliance; Robert L. (Bob) Green, Jr., Primary Nurturing Fathers of Texas and Texas Fathers Alliance; Camille Hemlock

On — Cindy Alexander, Comptroller of Public Accounts; Linda Boline, Texas Department of Public Safety; H. Patrick Sullivan, Office of the Texas Attorney General; Alicia Key; Howard Baldwin, Jr.; Tina Slayton

BACKGROUND: In August 1996, Congress enacted the federal Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), requiring all states to enact specific mandates to carry out child support enforcement programs under Title IV, Part D of the federal Social Security Act, commonly known as the "Title IV-D" program. Any state that fails to enact these requirements could be considered noncompliant and lose federal funding for its Title IV-D child support enforcement program as well as incur financial penalties on its grant for Temporary Assistance to Needy Families (TANF) under Title IV, Part A of the federal Social Security Act.

Texas has approximately $560 million at stake under PRWORA requirements — about $160 million in Title IV-D funds and about $400 million in TANF funds. The Office of the Attorney General is the "IV-D agency" for Texas because it is responsible for administering the state's Title IV-D child support program.

DIGEST:

HB 3286, as amended, would amend the Family Code and the Business and Commerce Code to implement the PRWORA requirements for child support enforcement. The bill would make various technical and conforming amendments; major substantive provisions address the following issues:

Unified state case registry and disbursement unit. HB 3286 would create a new Family Code chapter requiring the Title IV-D agency to establish and operate a unified state case registry and state disbursement unit that met federal requirements. The registry and unit would be required to:

- maintain records of child support orders in Title IV-D cases and in other cases in which a child support order was established or modified in Texas on or after October 1, 1998;
- receive, maintain and furnish records of child support payments in Title IV-D cases and other cases as required by law;
- monitor support payments and initiate appropriate enforcement actions immediately on the occurrence of a delinquency in payment in Title IV-D cases;
- distribute child support payments as required by law; and
- maintain custody of official child support payment records in the registry and disbursement unit.

The statewide integrated system for child support that currently exists under another chapter of the Family Code would be included as a part of the unified state case registry and state disbursement unit.

The Title IV-D agency would have to convene a work group to develop procedures for establishing and operating the unified state case registry and disbursement unit. The work group would consist of representatives of the judiciary, district clerks, domestic relations offices, the Bureau of Vital Statistics, and other county and state agencies and appropriate entities. The Title IV-D agency, in cooperation with the work group, would be required to adopt rules and prescribe forms to implement the unified registry and disbursement unit. In addition, the agency would be authorized to enter into

contracts and cooperative agreements as necessary to establish and operate the state case registry and disbursement unit.

Parties to a final order affecting the parent-child relationship would be required to provide, and update as necessary, certain contact information to the court that rendered the order and to the state case registry. HB 3286 would add driver's license numbers to the list of required contact information, which currently includes home, mailing and work addresses and phone numbers. In subsequent child support enforcement actions, except those in which contempt was sought, due process requirements for notice and service of process could be deemed met if written notice was delivered to a party at the most recent address provided by that party.

Clerks of courts would be required to provide the state case registry with the records of child support orders. The record would have to include information supplied by the parties on a form developed by the Title IV-D agency. The petitioner would have to complete the form and submit it to the clerk at the time the order was filed for record. To the extent federal funds were available for such purpose, clerks would be reimbursed for the costs of providing support order records to the registry.

State directory of new hires. The Title IV-D agency would be required to develop and operate, in cooperation with the Texas Workforce Commission, a state directory to which Texas employers would have to report each newly hired or rehired employee. The agency would also have to establish by rule the procedures for reporting employee information and for operating a directory that met federal requirements, and would be authorized to enter into cooperative agreements and contracts as necessary to create and operate the state directory of new hires. “Employer” and “employee” would have the meanings given to them by the Internal Revenue Code. The Family Code section that currently provides for a voluntary new-hire reporting program would be repealed on October 1, 1998, when the new federally required mandatory new hire program took effect.

Financial institution data match system. The Title IV-D agency would be required to develop a system for quarterly data matches with financial institutions doing business in Texas to identify accounts of any obligors owing past-due child support and to enforce support obligations against

them. Financial institutions providing information, responding to a notice of child support lien, or otherwise acting in good faith to comply with the agency's requests would not be liable under any federal or state law for any damages that arose from those acts. "Accounts" would include demand deposit accounts, checking or negotiable withdrawal order accounts, savings accounts, time deposit accounts, or money market mutual fund accounts.

Title IV-D child support services. HB 3286 would expand the range of services offered by the Title IV-D agency. Upon request by either the obligee (the person to whom child support is paid) or the obligor (the person who pays child support), the agency would have to review a child support order once every three years and, if appropriate, adjust the support amount. Parties subject to a support order would have to be given notice at least once every three years of their right to request such review and adjustment. The agency could review a support order at any time on a showing of a material and substantial change in circumstances, taking into consideration the best interests of the child.

When a person filed for financial assistance from the state on behalf of a child and thereby assigned to the agency the child support rights, the agency would have to direct the obligor or other payor to make support payments to it. The agency would have to give notice to both the obligee and the obligor and file a copy of the notice with the child support registry. Upon termination of the assignment, the agency would have to notify the obligee and obligor and send copies of the termination notice to the court ordering the child support and to the child support registry.

In performing its duties related to enforcing child support or determining paternity, the Title IV-D agency could continue to release information from its files or records, except for information on the physical location of a person if a protective order had been entered for the person or if there was reason to believe that releasing the information could result in physical or emotional harm to the person.

HB 3286 would stipulate that the agency's parent locator service could be used to obtain information for child support enforcement purposes regarding the identity, social security number, location, employer and employment

benefits, income and assets or debts of any individual under an obligation to pay child or medical support or to whom a support obligation was owed.

HB 3286 also would broaden the agency's right to request information needed to establish, modify or enforce a child support order or medical support order. The Title IV-D agency of Texas or any other state could request and obtain information relating to identity, employment, compensation, benefits and any other assets of a person, in addition to the information on location, income and property holdings already authorized in the Family Code. Private companies, institutions and other entities, in addition to government agencies, would have to provide requested information subject to safeguards for privacy and information security. Individuals or entities disclosing information in response to a request from a Title IV-D agency could not be held liable in a civil action or proceeding for the disclosure of the information.

Administrative powers of the Title IV-D agency. The agency could take certain actions with respect to locating a parent, determining parentage, and establishing, modifying and enforcing child support and medical support orders without first obtaining an order from any other judicial or administrative tribunal. The agency could:

- issue an administrative subpoena to obtain financial or other information;
- order genetic testing to determine parentage;
- order income withholding and issue an administrative writ of withholding; and
- take any action with respect to execution, collection, and release of a judgment or lien for child support necessary to satisfy the judgment or lien.

The agency would have to recognize and enforce the authority of the Title IV-D agency of another state to take similar actions. In addition, the agency would have to develop and use procedures for administrative enforcement of interstate cases. Under these procedures, the agency would have to respond

within five business days to another state's request for assistance and would be authorized to transmit to another state, by electronic or other means, a request for assistance in such cases.

The Title IV-D agency of Texas or another state would be authorized to issue an administrative subpoena to any individual or private or public entity in Texas to furnish information necessary to the process of child support enforcement. The Title IV-D agency could impose a fine not to exceed $500 on any individual or entity that failed without good cause to comply with the administrative subpoena. An alleged father, presumed father, or parent who failed to comply with a subpoena without good cause could also be subject to suspension of any occupational or professional license. The Title IV-D agency could go to court to compel compliance with an administrative subpoena and with any administrative fines for failure to comply with the subpoena. If the court found the failure to comply with the subpoena was without good cause, the agency could also recover attorney's fees and court costs.

Income withholding for child support. The agency would be authorized to initiate income withholding in Title IV-D cases where there was an existing child support order by issuing an administrative writ of withholding for the enforcement. This writ would be defined as the document issued by the agency and delivered to an employer directing that earnings be withheld for payment of child support. The administrative writ could be issued at any time until all current support, including medical support, and child support arrearages were paid. The writ could be delivered to an employer by mail or electronic transmission, and could only contain information necessary for the employer to comply with the withholding order. On issuance of an administrative writ of withholding, the Title IV-D agency would be required to send to the obligor notice that the withholding had commenced and procedures to contest the withholding and a copy of the administrative writ. These notices would have to be sent to the obligor by personal delivery, first-class or certified mail, or by service of citation.

An obligor receiving notice of an administrative writ could request a review by the Title IV-D agency to resolve any dispute regarding the identity of the obligor or the existence or amount of arrearages. The agency would have to provide an opportunity for a review by telephone or in person. Following

review, the agency could issue a new administrative writ of withholding that modified the amount to be withheld or terminated the withholding. If the review did not resolve the issues in dispute, the obligor could file a motion with the court to withdraw the administrative writ and request a hearing within 30 days after receiving notice of the agency's determination. Income withholding could not be interrupted pending a court hearing.

When all required support had been paid, the agency could issue and deliver to the employer an administrative writ to terminate withholding.

HB 3286 would also detail the responsibilities and liability of an employer upon receipt of an income withholding order, judicial writ or administrative writ; allow obligors and obligers to agree to a reduction in or termination of income withholding on the occurrence of certain contingencies contained in the withholding order; and provide for enforcement of interstate income withholding orders.

Child support review process. HB 3286 would redesign the child support review process to enable the Title IV-D agency to take expedited administrative actions to establish, modify and enforce child support and medical support obligations, to determine parentage, or to take any other action authorized or required by federal law. An administrative order issued under the child support review process that was confirmed by a court would constitute an order of the court and be enforceable by any means available in the Family Code, including income withholding, a child support lien, and license suspension.

After investigating and assessing the parties' financial resources, the agency could serve notice of a proposed child support review order in enforcing or modifying an existing order. The notice would have to state the amount of child support, including arrearages, that was due and payable, that the person identified in the notice had certain grounds to contest the notice and that failure to contest the notice or request a negotiation conference within 15 days of the delivery of the notice would authorize the agency to file a child support review order for child support or medical support according to the information available to it. If both parties attended a negotiation conference, they would have to be informed at the beginning of the conference that the purpose was to reach an agreed order. They also would

have to be informed about the review process. Agreed orders would be effective immediately on being confirmed by the court. The agency could file a review order without the agreement of the parties, and the parties could sign a waiver of the right to service of process. A party could request a hearing on a nonagreed order before the 20th day after a confirmation petition was filed and could file a motion for new trial at any time before an order was confirmed by the court.

If three years had elapsed since a child support order was rendered or last modified and the amount of the child support award under the order differed by either 20 percent or $100 from the amount that would be awarded under the child support guidelines, the agency would have to file a child support review order to modify the existing court or administrative order without having to file a motion to modify. Courts could also modify orders under these circumstances in child support cases not involving Title IV-D.

If a negotiation conference resulted in an agreed order, the parties would have to sign the order and a statement acknowledging they were cognizant of the effect of their actions and aware of their rights. The agency could then file the agreed child support review order and a waiver of service signed by the parties with the clerk of the court having continuing jurisdiction over the child who was the subject of the order. If applicable, the agency would have to file any statement of paternity or written report of parentage testing and any other documentary evidence pertinent to the agreed review order. If the court found that all parties appropriately agreed to a child support review order and had waived service, it would have to sign the order within three days of filing. On confirmation by the court, the Title IV-D agency would have to immediately deliver to each party a copy of the signed agreed review order.

In cases where the child support review order was not an agreed order but there was no timely request for hearing from either party, the court would have to confirm and sign the nonagreed order within 30 days after the date the petition for confirmation was delivered to the last party entitled to service of process. The Title IV-D agency would be required to immediately deliver a copy of the nonagreed order to each party, along with a notice of right to file a motion for a new trial within 30 days after the court confirmed the order.

HB 3286 also would also modify the special child support review procedures for establishing parentage. Notice of a child support review in these cases would have to inform the parties of established procedures. Within 15 days of receiving the notice, the alleged parent would have to either sign a statement or an acknowledgment of paternity or deny in writing that he was the biological father of the child. If the alleged parent timely denied parentage, the agency would have to order parentage testing. If the alleged parent did not deny parentage, the agency could conduct a negotiation conference. If the agency ordered parentage testing, it would have to give each party notice of the time and place of testing. If a party failed to participate in the testing, the agency could file a child support review order resolving the question of parentage against that party. If the parentage testing produced sufficient results that did not exclude the alleged parent, the agency could conduct a negotiation conference to resolve any support issues and file a child support review order.

The bill would repeal sections of the Family Code providing an expiration date of September 1, 1997, for the child support review process and requiring a study of the process to be completed by September 1, 1996.

Liens for child support arrearages. HB 3286 would amend the child support lien provisions of the Family Code to provide for an automatic lien that would arise by operation of law against the real and personal property of an obligor for all amounts of overdue support, regardless of whether the amounts had been adjudicated, subject to recording and notice requirements. A child support lien would also arise when a court or the agency determined the amount of arrears owed by a child support obligor. Child support liens from other states could be enforced in the same manner and to the same extent as liens arising in Texas. A foreclosure process would not be required as a prerequisite to execution on a judgment or administrative determination of arrears rendered after notice and opportunity for hearing.

In addition to those entities already specified in law, a child support lien notice could be filed with the appropriate county clerk; any individual or organization believed to be in possession of real or personal property of the obligor; or any governmental unit or agency issuing or recording certificates, titles, or other indicators of property ownership.

A child support lien would attach to all real and personal property not exempted under the Texas Constitution that was owned by the obligor on or after the date the lien notice or abstract of judgment was filed. A lien would be perfected when an abstract of judgment for past due child support or a child support lien notice was filed with the county clerk.

A child support lien would be effective until all current support and child support arrearages, including interest, were paid or the lien was otherwise released. Except under limited circumstances, persons having notice of the lien who possessed nonexempt personal property of the obligor that could be subject to the lien could not divest themselves of the property. Persons violating this provision could be joined as parties to a foreclosure action and would be subject to penalties.

Once child support, costs, and any attorney's fees due were paid in full, the obligor would receive a release of lien, which would be effective when filed with the county clerk. A copy of the release of lien could also be filed with any other individual or organization that may have been served with a child support lien notice.

License suspension for failure to pay child support or comply with subpoena. The Title IV-D agency or a court also would be authorized to issue orders suspending licenses in cases where an individual failed, after receiving appropriate notice, to comply with a subpoena issued in a parentage determination or child support proceeding. Petitions for license suspension would have to allege, in addition to those items already required by the Family Code, the number, if known, of any license the individual was believed to hold and the amount of arrearages owed under the child support order or the facts associated with the individual's failure to comply with a subpoena. On filing a petition, the court or the agency would have to deliver notice of the individual's right to a hearing.

In cases involving the failure to comply with a subpoena, proof of service would be evidence of delivery of the subpoena. HB 3286 would mitigate punishment for individuals who could show good cause for failure to comply with a subpoena or who complied with the requirements of a reissued and delivered subpoena.

Medical support. The obligee, obligor or a child support agency could include notice of a medical support order in an order or writ of withholding sent to an employer. An order or notice of medical support would bind both current and subsequent employers on receipt without regard to the date the order was rendered. If the employee was eligible for dependent health coverage, the employer would be required to automatically enroll the child, regardless of whether the employee was enrolled in the plan, for the first 31 days after the receipt of the order or notice. An obligor ordered to provide health insurance for a child would be required to notify both the obligee and the child support agency enforcing a support obligation if the coverage terminated or lapsed. If termination of coverage resulted from a change of employers, the obligor, the obligee, or the child support agency could send the new employer a copy of the order requiring the employee to provide health insurance for a child or notice of the medical support order.

Support arrearages involving children receiving TANF funds. If an obligor was in arrears for a child receiving public assistance under the TANF program, a motion for enforcement of child support could include a request that the obligor pay the arrearages in accordance with a court-approved payment plan. If the obligor was already subject to a payment plan and not incapacitated, the motion could request that the obligor participate in work activities that the court determined appropriate.

Effective dates. HB 3286 would take effect September 1, 1997. Enactment of the bill would not constitute a material and substantial change of circumstances sufficient to warrant modification of any existing court order providing for child support.

The requirement that an employer report a newly hired or rehired employee to the state directory of new hires would take effect October 1, 1998.

SUPPORTERS SAY:

HB 3286 is necessary to enact federal mandates and maintain nearly $600 million in federal funding for child support enforcement and human services in Texas. The bill is drafted narrowly to make only those changes to Texas law that are required to properly integrate the federal requirements into existing Texas statutes. Without HB 3286, Texas will lose a substantial amount of money it now depends on for providing assistance to needy

children in the state. To get federal money, the state must comply with federal requirements — there is no alternative.

But HB 3286 is much more than just an exercise in fulfilling federal mandates. It would provide much needed teeth to enforce child support orders through such provisions as the unified state case registry, state directory of new hires, financial institution data match system, automatic child support liens and increased administrative powers for the Office of the Attorney General. These measures would help the OAG discover, locate and deal with delinquent obligors more quickly and efficiently. When obligors meet their responsibilities and pay court-ordered child support in a timely manner, children are provided with needed food, clothing and shelter, and Texas saves money because fewer children need public assistance.

OPPONENTS SAY:

Texas should not go too far in complying with federal mandates. There is much that is good in current Texas law on child-support that should be retained. For example, child support liens in Texas now expire after 10 years rather than existing in perpetuity or until they are paid off, as in the federal model. Similarly, HB 3286 would allow withholding until all current support and child support arrearages, including interest, have been paid, whereas current Texas law sets time limits on payments. There should remain some cut-off point for these obligations; otherwise, the OAG may find itself inundated with paperwork on child support liens and withholding orders for children who have long since grown up.

Federal funds would not cover all of the expenses court clerks would incur in providing support order records to the state case registry. A fee, however small, should be authorized to cover the excess costs rather than requiring that they be absorbed by court clerks.

The bill would give the Attorney General's Child Support Office many strong administrative powers with too much room for bureaucratic abuse at a time when public confidence in that office is at a low point. Also, child support payments could be substantially delayed if they all must go through the central registry.

OTHER OPPONENTS SAY:

The bill should allow noncustodial parents to use the parent locator service. This is also a federal mandate, but currently these parents still do not have access to the service. They should be allowed access to the parent locator service and other child support information records to find out the physical location of their children in order to facilitate court-ordered visitation.

NOTES:

The committee amendment would delete sections denying jury trials in paternity suits and requiring licensing authorities and agencies administering contracts, loans or grants to provide social security numbers, and add a requirement that the petitioner complete the information form for the record of an order affecting the parent-child relationship.

The fiscal note indicated that implementing the provisions of HB 3286 would result in a net negative impact of $6,875,673 to general revenue related funds through the biennium ending August 31, 1999.

The companion bill, SB 29 by Zaffirini, passed the Senate on April 21 and was reported favorably, without amendment, by the House Juvenile Justice and Family Issues Committee on April 24, making it eligible to be considered in lieu of HB 3286.