

SUBJECT: Prohibiting enforcement of child support agreements as contracts

COMMITTEE: Juvenile Justice and Family Issues — favorable, without amendment

VOTE: 9 ayes — Dutton, Goodman, Baxter, Castro, Dunnam, Hodge, J. Moreno, Morrison, Reyna
0 nays

WITNESSES: For — Judge Tom Stansbury, Texas Family Law Foundation
Against — None

BACKGROUND: Under Family Code, sec. 154.124, parties may enter into a written child support agreement. If the court finds that the agreement is in the child's best interest, it enters an order in accordance with the agreement. Parties to the agreement may use all available remedies to enforce the agreement, including contempt. However, the parties may seek contract remedies only if they agreed to do so in the written agreement.

Family Code, sec. 153.007, has similar provisions that allow parties to enter into written agreements for conservatorship and possession of the child. However, the parties cannot enforce the agreement as a contract under any circumstances.

Family Code, secs. 155.001 and 155.002, give continuing, exclusive jurisdiction over suits affecting the parent-child relationship to the first court that enters a final order. Under Family Code, sec. 155.003, a court with continuing, exclusive jurisdiction over such a suit may modify its orders regarding possession of and access to the child, as well as child support.

DIGEST: HB 899 would amend Family Code, sec. 154.124(c) to prohibit the enforcement of child support agreements as contracts.

The bill would take effect September 1, 2003, and would apply only to child support agreements entered into on or after that date.

**SUPPORTERS
SAY:**

By eliminating the contract remedy for enforcing the terms of agreements in child support orders, HB 889 would give courts more flexibility to modify such orders to reflect the changing needs of the child and prevent a conflict in remedies. If the parties enter into a child support agreement and then conditions change, such as a child becoming ill, one parent can go to court to seek a modification of the original child support order. Under current law, if one parent obtains a modification order and the other parent objects, the objecting parent, under certain conditions, can seek to enforce the original child support agreement as a contract. A direct conflict can result, with one party seeking to enforce the contract and the other seeking to enforce the modification. This bill would prevent a parent from bringing a contract suit that would undermine the court's modification of child support.

HB 889 also would prevent a conflict with the statute (Family Code, secs. 155.001-155.003) that allows one court to have continuing jurisdiction over suits affecting the parent-child relationship. The court that entered the original child support order would continue to have jurisdiction over any modifications, and neither party could circumvent that court's jurisdiction by filing a contract suit in another court.

Maintaining child support agreements within the purview of the courts would promote more equitable child support enforcement. To render a child support order, a court must find that the agreement is in the child's best interest, which provides an important safeguard. Two parties making a contractual arrangement on their own, without court involvement, might not reach an agreement that promoted the child's best interest. Furthermore, the parties might have unequal bargaining power, and one parent might coerce the other parent into accepting unfavorable child support conditions.

The bill also would encourage use of more flexible enforcement remedies like contempt. Contempt is a strong remedy that judges easily can enforce, often by incarcerating the party in violation of a child support order, whereas enforcement of judgments in contract suits can be more difficult. The losing party might have insufficient assets to satisfy the judgment or might claim exemptions.

HB 889 would bring the child-support section of the Family Code in line with related code sections. Before the Family Code was re-codified in 1995, all agreements in suits affecting the parent-child relationship were addressed under one code section. Following re-codification, these provisions were divided into two categories: agreements involving conservatorship and agreements involving child support. The 74th Legislature amended sec. 153.007, which deals with conservatorship and possession, to prohibit the enforcement of written agreements as contracts. Family Code, sec. 154.124, should be amended to mirror that prohibition.

Finally, HB 889 would not discourage parents from reaching child support agreements. It simply would require parents to seek a court order in accordance with their agreement. It is accepted law that when parties agree to any modification in child support, the court presumes it is in the child's best interest and does not require a hearing. Therefore, parents could obtain court orders for modifications with little effort.

**OPPONENTS
SAY:**

By requiring that modification of child support agreements be exclusively through the courts, HB 889 could discourage parents from reaching such agreements in the first place. The purpose of Family Code, sec. 153.007 is to promote the amicable settlement of disputes, and parents should have all available options to make and enforce agreements on child support, including a contract remedy.