

SUBJECT: Specifying interest rate on accrual of overdue child support

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

VOTE: 5 ayes — Dutton, Goodman, Nixon, Strama, Thompson
0 nays
4 absent — Castro, Y. Davis, Dunnam, J. Moreno

WITNESSES: For — None
Against — None
On — Alicia Key, Office of the Attorney General - Child Support Division

BACKGROUND: In 2001, the 77th Legislature reduced the annual interest rate on delinquent child support from 12 percent to 6 percent by amending sec. 157.265 of the Family Code. Sec. 157.265 requires a 6 percent interest rate from the date of delinquency until the date the support is paid or the arrearages are confirmed and reduced to money judgment. Interest continues to accrue on money judgments, including judgments for retroactive or lump-sum child support, at a 6 percent rate until the judgment is paid.

The 2001 change applied to a child support payment that became due on or after January 1, 2002, or to unpaid child support that became due before January 1, 2002, but for which a court had not yet confirmed the amount of arrearages and rendered a money judgment. Money judgments entered before January 1, 2002 were to be governed by the law in effect on the date the judgment was entered, with the former law continuing in effect for that purpose.

Texas appeals courts have split on how the interest rate change applies to child support arrearages accrued before and after January 1, 2002. In 2003, the Third, Fifth and Tenth courts of appeals held that the 6 percent interest rate did not apply retroactively to child support payments that became delinquent before January 1, 2002. The courts further held that the 6

percent interest rate applied to delinquent payments that accrued after January 1, 2002, even if the past due amounts were not reduced to money judgment before that date.

In 2004, however, the Second Court of Appeals held that the 2001 changes to sec. 157.265 expressed the Legislature's intention that the 6 percent interest rate be applied retrospectively to all child support arrearages. The court noted that the new rate applied to unpaid child support that became due before January 1, 2002, but which had not been confirmed and reduced to money judgment.

DIGEST: HB 678 would specify that the 6 percent interest rate applied to a child support payment that became due on or after January 1, 2002.

Child support arrearages in existence before January 1, 2002, but not confirmed and reduced to a money judgment by that date, would be subject to the 12 percent interest rate. On and after January 1, 2002, the cumulative total of arrearages and interest accumulated on those arrearages would be subject to the 6 percent interest rate.

HB 687 would specify that the 6 percent interest rate applied to a confirmed and reduced money judgment entered on or after January 1, 2002. A judgment entered before that date would be subject to the 12 percent interest rate.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2005.

SUPPORTERS SAY: HB 678 would clarify the effective date language in Family Code, sec. 157.265. The intent of the 77th Legislature was not to change the interest rate of child support due before January 1, 2002. The 6 percent change was to apply only to child support payments and arrearages due on or after January 1, 2002. The bill would make the rate application clear for courts and attorneys around the state that are confused by the current statute.

Not clarifying when the interest rate change applied could create a tremendous problem for the child support division of the Attorney General's Office and other agencies that need to determine child support case balances. If the 6 percent interest were applied retroactively to all child support cases, all the child support entries in the attorney general's

system would have to be modified to recalculate the child support arrearages. Such a huge task would require significant time, money and manpower.

As a result of the conflicting rulings by the courts of appeals, the interest on overdue child support could accrue at different rates. This could result in some obligors paying more than others. Clarification is needed to ensure that individuals paying child support are not facing different or erroneous interest rates based on the jurisdiction of their cases.

If the 6 percent interest rate were applied retroactively to child support payments, federal law prohibiting modification of money judgments for support could be violated. Additionally, the retroactive application could also be found to violate the Texas Constitution's prohibition against laws acting retroactively to deprive persons of vested rights acquired under existing law.

**OPPONENTS
SAY:**

Without this legislation, it still would not be necessary to initiate a recalculation of all the child support entries. The courts are in conflict, but so far only one court of appeals has ruled that the 6 percent rate increase should be applied retroactively. Regardless of the opinion of the Second Court of Appeals, the Attorney General's Office could continue to calculate the interest rates according to what it believed the law mandated, which would be the same interpretation clarified by this bill.

NOTES:

HB 1067 by Goodman, which sought to make this clarification during the 78th Legislature in 2003, was referred to the Juvenile Justice and Family Issues Committee, which took no further action.