

SUBJECT: Attachment of child support liens to accounts not signed to by an obligor

COMMITTEE: Judiciary and Civil Jurisprudence — committee substitute recommended

VOTE: 10 ayes — Hunter, Alonzo, Branch, Hartnett, Jackson, Leibowitz, Lewis, Madden, Martinez, Woolley

0 nays

1 absent — Hughes

SENATE VOTE: On final passage, April 2 — 31-0, on Local and Uncontested Calendar

WITNESSES: *(On original bill:)*
For — *(Registered, but did not testify:)* Steve Bresnen, Texas Family Law Foundation; Brandon Wong)

Against — *(Registered, but did not testify:)* Melodie Stegall, Credit Union Legislative Coalition)

On — Sylvia Fenstermacher

(On committee substitute:)
For — *(Registered, but did not testify:)* Steven Sinkin)

Against — *(Registered, but did not testify:)* Jeff Huffman, Texas Credit Union League; Eric Sandberg, Texas Bankers Association)

On — *(Registered, but did not testify:)* Steve Bresnen, Texas Family Law Foundation)

BACKGROUND: If a court or administrative agency determines that a child support obligor owes past-due child support, a claimant under a child support order may 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. Under Family Code, sec. 157.314, if a claimant files a child support lien notice with a financial institution concerning an account of an obligor, the institution must immediately provide the last known

address of the obligor and notify any other person having an ownership interest, in the account that the account has been frozen in an amount not to exceed the amount of arrearages identified in the lien notice.

DIGEST:

CSSB 431 would allow a child support lien to attach to an account in which a child support obligor had a community or separate property interest, or in which funds were held for the obligor's benefit, regardless of whether the funds were held in the name of a third party or nominal owner other than the obligor. An obligor would not have to be a signatory to an account to be considered as having a beneficial ownership.

Notice requirements for support lien to financial institution. CSSB 431 would require a child support lien delivered to a financial institution on assets of a specified third party or nominal owner to contain the social security number, tax identification number, or account number of the third party or nominal owner.

A financial institution would have to pay the claimant any amount from the assets or funds owned by or owed to the obligor at the time the child support levy was paid that should have been frozen by the institution.

The payment amount could exceed the amount of the child support arrearages identified in the notice if the obligor or another ownership interest had filed, not later than the 10th day after the date the institution received the notice, a suit disputing the arrearages or the ownership interest under Family Code, sec. 157.323 or a motion disputing the applicability of the child support lien to the funds or assets in the account.

Requirements of financial institutions upon delivery of lien. The bill would require a financial institution that received a child support lien notice to disclose the amount in the account, and upon request, a statement showing deposits and withdrawals between the date and time the institution received the child support lien and the date the institution received the request for information.

After receiving a child support lien, a financial institution could not close an account, permit a withdrawal, or pay funds to the obligor or a nominal owner so that the account would have an amount less than the amount of child support arrearages identified in the notice, in addition to any fees due to the institution and any costs of the levy identified by the claimant.

Collection and deduction of fees by financial institution. A financial institution could collect any fees and costs allowed for under existing law, but could not deduct them from the obligor's assets before paying the claimant under a child support order, except for a processing fee and any applicable early-withdrawal fees.

Disputing a lien's applicability to an account's assets. SB 431 would authorize a person, other than the obligor, claiming an ownership interest in an account subject to a child support lien to file a motion disputing the applicability of the lien to the assets or funds in the account. If the motion was filed timely, the court would have to give notice to all interested parties and hold a hearing to determine the extent, if any, to which the account contained assets of the obligor that were subject to levy for a child support lien.

If the court determined that the account contained any assets subject to levy, the court would have to specify and order the amount to be applied against child support arrearages owed by the obligor. A financial institution that surrendered assets in compliance with this court order would not be liable to the obligor, the account holder, or any other person for the amount of the assets surrendered.

If no assets in the account were subject to levy, the court would have to order the release of the child support lien on which the levy was based.

If a person other than the obligor claiming ownership in an account subject to levy successfully disputed the amount of the arrearages or the applicability of the child support lien to the account, the person could recover costs and reasonable attorney's fees incurred against the claimant under the child support order.

Miscellaneous provisions. SB 431 would amend Civil Practice and Remedies Code, sec. 34.001 to make inapplicable to a child support judgment or any other child support collection remedy authorized by the Family Code the provisions prohibiting the issuance of a writ of execution on a dormant judgment, unless the judgment was revived.

Applicable dates. The bill would take effect September 1, 2009. The provisions of SB 431 would apply after the effective date, except that the bill's provision exempting child support judgments from the dormant judgment provisions of Civil Practice and Remedies Code, sec. 34.001

would apply to each judgment for child support under the Family Code, regardless of the date on which the judgment was rendered.

**SUPPORTERS
SAY:**

CSSB 431 would assist in efforts to collect past-due child support from recalcitrant child support obligors by helping to prevent obligors from hiding assets in the account of a new spouse or other individual or entity. Under current law, one of the few recourses a child support obligee has against an obligor who disguises funds in an account to which the obligor is not a signatory is to seek a writ of garnishment, which has limited effectiveness due to the time and legal expense required to get one. Furthermore, since the legal fees of acquiring a writ are deducted against any amount received by the obligee, the child may not receive much in actual support if the garnished amounts were small. The bill would make the child support collection process more efficient and more beneficial to children by requiring financial institutions to freeze assets in accounts used to hide assets of child support obligors.

Contrary to some concerns, CSSB 431 would not prejudice non-obligor account holders unfairly nor expose financial institutions to greater risk of liability. The bill would provide account owners with a mechanism to contest any child support lien and require a court order to reach funds in an owner's account if the owner did contest the lien. The committee substitute would address financial institutions' concerns about identifying accounts subject to a child support lien by requiring a claimant to provide an institution with the account number or other specific identification. Finally, non-obligor account holders could recover costs and attorney's fees incurred if they established that the obligor did not have an ownership interest in the account.

CSSB 431 also would clarify existing law related to dormant judgments by providing that the current 10-year timeframe for acquiring a writ of execution on a court-ordered judgment would not apply to a child support judgment or any other child support collection remedy. This would prevent the 10-year statute of limitations period from beginning to run at the time when an obligation for child support becomes due; instead, the period would begin to run when the child turned 18 or otherwise ceased to be a minor by operation of law.

**OPPONENTS
SAY:**

This bill would do more harm than good by imposing a sweeping requirement upon banks and financial institutions to freeze third party accounts without first requiring a claimant to obtain a court or

administrative order. Under the bill's provisions, a claimant could place a child support lien on an account at a bank or credit union in which the obligor had a beneficial ownership, regardless of whether the obligor was a signatory on that account. This means that even though the child support obligor under the lien had no relationship with the institution and may have had no relationship with the rightful owner of the account, CSSB 431 would mandate that the funds in the account be frozen.

If a child support lien wrongly or mistakenly attached to an account, CSSB 431 would inappropriately place the responsibility on the rightful owner of the account to file a motion with a court claiming that the funds were rightfully the owner's. The bill would provide no clear statutory timeframe for when the hearing on the motion would have to occur, thereby leaving innocent third party account owners without access to their funds for an undetermined amount of time. These owners would effectively be considered guilty until they proved themselves innocent.

SB 431 contains unclear language regarding beneficial ownership that could cause future problems in the context of payable on death and other type of accounts where the account owner could change the beneficiary at will or situations where the account was pledged as security for a loan or for a license from the state. Should litigation arise over the ownership of these funds, the financial institution would likely be a party (despite the bill's provision on lack of liability for asset surrender) and would be asking for attorney's fees, which would further reduce funds available for lien satisfaction.

NOTES:

The companion bill, HB 446 by Villarreal, was considered in a public hearing by the Judiciary and Civil Jurisprudence Committee on March 9 and left pending.

The committee substitute differs from the Senate-passed bill in that it would require a court order to reach funds in a nominal owner's account if the owner contested, while the original contained no such provision. The committee substitute also would require a child support lien or levy to include the bank account number or other identifying information, while the Senate version would not have required such information.