

BILL ANALYSIS

Senate Research Center

H.B. 3281
By: Glaze (Harris)
Jurisprudence
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Engrossed

DIGEST

Currently, the Office of the Attorney General (OAG) administers the Title IV-D child support enforcement program. The Comptroller's *Disturbing the Peace*, in issues GG 12 through GG 16, identified several tools and system efficiencies that could be implemented by the OAG to improve performance of the Title IV-D child support program. This bill would implement some of those tools and system efficiencies identified in *Disturbing the Peace*.

PURPOSE

As proposed, H.B. 3281 implements tools and system efficiencies identified in the Comptroller's *Disturbing the Peace* to help the Office of the Attorney General in implementing the Title IV-D child support enforcement program.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the Title IV-D agency in SECTION 21 (Section 231.309(b), Family Code of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 157.311, Family Code, to define "court having continuing jurisdiction." Makes a conforming change.

SECTION 2. Amends Section 157.312, Family Code, by adding Subsections (d)-(f), to provide that a child support lien arises under certain conditions. Authorizes a child support lien arising in another state to be enforced in the same manner and to the same extent as a lien arising in this state. Provides that a foreclosure action under this subchapter is not required as a prerequisite to levy and execution on a judgment or an administration determination of arrearage rendered after notice and opportunity for hearing.

SECTION 3. Amends Section 157.313(a), Family Code, to require a child support lien notice to include, among other items, the amount of child support arrearages owed by the obligor and the date of the rendition of the court order, administrative order, or writ that determined the arrearages or the date and manner in which the arrearages were determined; the rate of interest specified in the court order, administrative order, or writ or, in the absence of a specified interest rate, the rate provided for by law, rather than Subchapter F; and the name and address of the person or agency asserting the lien, rather than the person or agency to whom the payment of the child support arrearages shall be made.

SECTION 4. Amends Section 157.314, Family Code, to authorize a child support lien notice or an abstract of judgment for past due child support to be filed by the claimant with the county clerk of the county in which the court having continuing jurisdiction has venue of the suit affecting the parent-child relationship, among other county clerks. Authorizes a child support lien notice to be filed with the clerk of the court in which a claim, counterclaim, or suit by or on behalf of the obligor, including a claim or potential right to proceeds from an estate as an heir, beneficiary, or creditor, is pending, provided that a copy of the lien is mailed to the attorney of record for the obligor, if any; any other individual or organization believed to be in possession of real or personal property of the obligor; or any governmental unit or agency that issues or records certificates, titles, or other indicia of property

ownership. Makes conforming changes.

SECTION 5. Amends Section 157.316, Family Code, to provide that a child support lien is perfected, rather than attaches, when an abstract of judgment for past due child support or a child support lien notice is filed with the county clerk as provided by this subchapter.

SECTION 6. Amends Section 157.317(a), Family Code, to provide that a lien attaches to all real and personal property not exempt under the Texas Constitution 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 that party, rather than on or after the date the lien attaches.

SECTION 7. Amends Section 157.318, Family Code, as follows:

Sec. 157.318. New heading: DURATION AND EFFECT OF CHILD SUPPORT LIEN. Provides that a lien is effective until all current support and child support arrearages have been paid or the lien is otherwise released as provided in this subchapter, rather than for 10 years from the date the notice is recorded in the county clerk's office in the county where the property of the obligor is located. Provides that the lien secures payment of all child support arrearages owed by the obligor under the underlying support order, rather than authorizing the lien to be extended for an additional 10-year period by a certain recording. Provides that the filing of a lien notice or abstract or judgment with the county clerk is a record of the notice and has the same effect as any other lien notice with respect to real property records.

SECTION 8. Amends Section 157.319, Family Code, as follows:

Sec. 157.319. New heading: EFFECT OF LIEN NOTICE. Deletes existing Subsection (a). Deletes text in reference to a lien that has been filed as provided in this subchapter. Authorizes a person having notice of a child support lien who violates this section to be joined as a party to a foreclosure action under this chapter and is subject to the remedies provided by this subchapter. Makes conforming changes.

SECTION 9. Amends Section 157.321, Family Code, to prohibit the release or return from operating to prevent future action to collect from the same or other property owned by the obligor.

SECTION 10. Amends Sections 157.322(a) and (b), Family Code, to require the claimant, under certain conditions, to execute and deliver to the obligor or the obligor's attorney a release of the child support lien. Provides that the release of the lien is effective when filed with the county clerk with whom the lien notice or abstract of judgment was filed. Authorizes a copy of the release of lien to be filed with any other individual or organization that may have been served with a lien notice under this subchapter. Deletes existing Subsection (b).

SECTION 11. Amends Section 157.323, Family Code, as follows:

Sec. 157.323. New heading: FORECLOSURE OR SUIT TO DETERMINE ARREARAGES. Authorizes an action to foreclose a child support lien or to dispute the amount of arrearages stated in the lien, in addition to any other remedy provided by law, to be brought in the court of continuing jurisdiction or, if there is no court of continuing jurisdiction in this state, in the district court of the county in which the property is or was located and the lien was filed. 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 property of the obligor may be joined as an additional respondent. Require the court, if arrearages are owed by the obligor, among other options, to order an individual or organization in possession of nonexempt personal property or cash owned by the obligor to dispose of the property as the court may direct. Makes conforming and nonsubstantive changes.

SECTION 12. Amends Section 157.324, Family Code, to provide that a person who knowingly disposes of property subject to a lien or who, after a foreclosure hearing, fails to surrender on demand nonexempt personal property as directed by a court or administrative order under this subchapter is liable to the claimant in an amount equal to the arrearages for which the foreclosure judgment was issued. Makes a conforming change.

SECTION 13. Amends Section 157.325(b), Family Code, to authorize the holder of the personal property or the obligor, if the claimant refuses the request, to file suit under this subchapter for an order determining the amount of arrearages and discharging, rather than petition the court of competent jurisdiction for discharge of, excess personal property or money from the lien.

SECTION 14. Amends Section 157.326, Family Code, to authorize a spouse of an obligor to file an affidavit with the court of continuing, rather than a court of competent, jurisdiction or, if there is no court of continuing jurisdiction in this state, in the district court of the county in which the property is or was located and the lien was filed requesting that the court determine the extent, if any, of the spouse's interest in real or personal property that is subject to a lien perfected under this subchapter; or an action to foreclose under this subchapter. Requires the court, after notice to the obligee, among others, to conduct a hearing and determine the extent of the ownership interest in the property held by the obligor's spouse. Requires the court, if the court finds that the property is jointly owned by the obligor and the obligor's spouse, to determine whether the sale of the obligor's interest in the property would result in an unreasonable hardship on the obligor's spouse and family and, if not, the court shall render an order partitioning the property and directing that the property be sold and the proceeds applied to the child support arrearages. Provides that in a proceeding under this section, the spouse claiming an ownership interest in the property has the burden to prove the extent of that ownership interest. Makes conforming changes.

SECTION 15. Amends Section 158.210(b), Family Code, to require a fine recovered under this section to be paid to the county in which the obligee resides and to be used by the county to improve child support services, rather than being paid to the obligee and credited against any amounts owed by the obligor.

SECTION 16. Amends Chapter 231A, Family Code, by adding Sections 231.0012 and 231.0013, as follows:

Sec. 231.0012. CHILD SUPPORT ENFORCEMENT MANAGEMENT. Requires the person appointed by the attorney general as the person responsible for managing the Title IV-D agency's child support enforcement duties to report directly to the attorney general.

Sec. 231.0013. DEDICATION OF FUNDS. Authorizes appropriations made to the Title IV-D agency for child support enforcement to be expended only for the purposes for which the money was appropriated.

SECTION 17. Amends Chapter 231A, Family Code, by adding Section 231.010, as follows:

Sec. 231.010. CASE PROCESSING PILOT PROGRAM. (a) Requires the Title IV-D agency, as part of the development of a statewide integrated system for child support and medical support enforcement under Section 231.0011, to establish a pilot program to improve the efficiency of court processing of family welfare cases. Requires the Title IV-D agency to consult with the Department of Protective and Regulatory Services (DPRS) in establishing the pilot program with respect to the processing of foster care cases.

(b) Requires the Title IV-D agency to identify at least two counties that have a population of more than one million and that are voluntarily participating in the statewide integrated system under Section 231.0011 for the development and establishment of pilot programs during each fiscal year of the 1998-1999 biennium. Requires a county to be selected on the basis of the county's ability to achieve the automation goals of the pilot program.

(c) Requires the pilot program to include certain processes.

(d) Requires the pilot program authorized under this section to be developed and implemented in cooperation with representatives of the counties identified under Subsection (b).

(e) Requires the Title IV-D agency, as part of the pilot program, to review county assessments of needs related to processing child support, medical support, and foster care cases and to provide technical assistance to county and district clerks as requested.

(f) Requires the Title IV-D agency to provide funding for the pilot program from funds appropriated to operate the agency and from any available federal funds.

(g) Requires the Title IV-D agency, by January 15, 1999, to submit a report regarding the status of the pilot program to the governor, the lieutenant governor, the speaker of the house of representatives, and the comptroller. Requires the Title IV-D agency, on request, to make the report available to any member of the legislature.

SECTION 18. Amends Chapter 231B, Family Code, by adding Section 231.116, as follows:

Sec. 231.116. INFORMATION ON INTERNET. Requires the Title IV-D agency to place on the Internet for public access child support information to assist the public in child support matters.

SECTION 19. Amends Chapter 231C, Family Code, by adding Section 231.2025 as follows:

Sec. 231.2025. CONTINGENCY FEES. Authorizes the Title IV-D agency to pay a contingency fee in a contract or agreement between the agency and a private agency or individual authorized under Section 231.002(c).

SECTION 20. Amends Sections 231.302(a), (b), and (e), Family Code, as follows:

(a) Authorizes the Title IV-D agency of this or another state, rather than requiring the Title IV-D agency to attempt to locate a person needed to establish or enforce a support or medical support obligation, to request and obtain information relating to the identity, location, employment, compensation, benefits, income, and property holdings or other assets of any person from a state or local government agency, private company, institution, or other entity as necessary to establish, modify, or enforce a support order. Makes conforming changes.

(b) Requires a government agency, private company, institution, or other entity to provide the information requested under Subsection (a) and, subject to safeguards on privacy and information security, to provide the information in the most efficient and expeditious manner available. Prohibits any individual or entity disclosing information under this section in response to a request from a Title IV-D agency from being held liable in any civil action or proceeding to any person for the disclosure of information under this section.

(e) Provides that a social security number provided under this section is confidential and may be disclosed only for the purposes of responding to a request for information from an agency operating under the provision of Part A or, rather than and, D of Title IV of the federal Social Security Act (42 U.S.C. Sections 601 et seq. and 615 et seq.). Makes nonsubstantive changes.

SECTION 21. Amends Chapter 231D, Family Code, by adding Sections 231.308 and 231.309, as follows:

Sec. 231.308. PUBLIC IDENTIFICATION OF CERTAIN OBLIGORS. Requires the Title IV-D agency to develop a program to identify publicly certain child support obligors who are delinquent in the payment of child support. Requires the program to include the displaying of photographs and profiles of obligors in public and private locations. Requires the Title IV-D agency to use posters, the news media, and other cost-effective methods to display photographs and profiles of certain obligors who are in arrears in paying child support.

Requires the Title IV-D agency to divide the state into at least six regions for local identification of certain child support obligors who are delinquent in the payment of child support. Prohibits the Title IV-D agency from disclosing information under this section that is by law required to remain confidential.

Sec. 231.309. REWARDS FOR INFORMATION. Authorizes the Title IV-D agency to offer a reward to an individual who provides information to the agency that leads to the collection of child support owed by an obligor who is delinquent in paying support. Requires the Title IV-D agency to adopt rules providing for the amounts of rewards offered under this section and the circumstances under which an individual providing information described in Subsection (a) is entitled to receive a reward. Requires a reward paid under this section to be paid from the child support retained collections account.

SECTION 22. Amends Section 232.003, Family Code, to delete "shall," from "may shall" to clarify the powers granted to the Title IV-D agency or a court under this section.

SECTION 23. Amends Section 232.003, Family Code, to authorize a court of the Title IV-D agency to issue an order suspending a license as provided by this chapter if an obligor, among other conditions, has been provided an opportunity to make payments toward the child support arrearage under an agreed or court-ordered repayment schedule, without regard to whether the repayment schedule was agreed to or ordered before or after the date the petition for suspension of a license was filed.

SECTION 24. Amends Section 232.004(a), Family Code, to authorize a child support agency or obligee to file a petition to suspend, as provided by this chapter, a license of an obligor who has an arrearage equal to or greater than the total support due for 90 days under a support order.

SECTION 25. Amends Section 232.009, Family Code, to require a court or Title IV-D agency to consider the allegations of the petition for suspension to be admitted and to render an order suspending the license of an obligor without the requirement of a hearing if the court or Title IV-D agency determines that the obligor failed to perform certain actions. Makes conforming changes.

SECTION 26. Amends Title 5D, Family Code, by adding Chapter 233, as follows:

CHAPTER 233. SHARING INFORMATION IN STATE CASE REGISTRY

Sec. 233.001. REQUEST FOR INFORMATION. Requires the state case registry to provide information under this chapter on the written request of a custodial parent who has a certain case. Requires the state case registry to provide to a custodial parent under Subsection (a) who makes a request for information or to an attorney, friend of the court, guardian ad litem, or domestic relations office designated by the parent any information in the registry concerning the parent's case.

Sec. 233.002. REQUEST TO INCLUDE CASE IN REGISTRY. Authorizes the case of a custodial parent whose case would otherwise not be included in the state case registry under 42 U.S.C. Section 654a to be included in the state case registry by making a written request to the registry either directly or through an attorney, friend of the court, guardian ad litem, or domestic relations office designated by the custodial parent. Requires the request to be accompanied by a certified copy of the court order requiring the payment of child support.

Sec. 233.003. APPLICATION FOR SERVICES NOT REQUIRED. Prohibits the Title IV-D agency from requiring an application for services as a condition for certain actions.

Sec. 233.004. FEES. Authorizes the state case registry to charge a fee for certain actions. Prohibits the amount of a fee under this section from exceeding the actual costs incurred by the state case registry in providing the services.

SECTION 27. Amends Title 5D, Family Code, by adding Chapter 234, as follows:

CHAPTER 234. COMPETITIVE BIDDING FOR CHILD
SUPPORT COLLECTION SERVICES

Sec. 234.001. DEFINITION. Defines "council."

Sec. 234.002. POWERS AND DUTIES OF COUNCIL. Sets forth the required powers and duties of the State Council on Competitive Government (council). Requires the Title IV-D agency to coordinate with the council regarding competitive bidding of child support enforcement functions identified under this section. Authorizes a member of the council to designate an employee of the state agency represented by the member to perform any of the member's powers or duties under this section. Requires the Title IV-D agency to cooperate with the council if requested by the council. Requires the council and the Title IV-D agency to report by October 1, 1998, to certain high government officials, the results of the council's efforts under this section.

Sec. 234.003. CHILD SUPPORT COLLECTION AGREEMENT. Authorizes the Title IV-D agency or a contractor awarded a contract under this chapter to collect child support to enter into an agreement with a person liable for the payment of child support. Authorizes the agreement to relate to any matter that may be adjudicated by a court.

SECTION 28. Amends Section 521.044, Transportation Code, by adding Subsection (e), to require the Department of Public Safety (DPS) to include in DPS's legislative appropriations requests and budgets, in quarterly performance reports, and in audits of the DPS's local offices performance measures on the percentage of complete and correct social security numbers on driver's license.

SECTION 29. Amends Chapter 521C, Transportation Code, by adding Section 521.0445, as follows:

Sec. 521.0445. NOTICE REGARDING SUSPENSION OF LICENSE FOR NONPAYMENT OF CHILD SUPPORT. Requires DPS to include in each notice sent to a driver's license holder a statement advising a holder who is delinquent in the payment of child support to make satisfactory arrangements with the office of the attorney general to correct the delinquency and that failure to contact the attorney general or to make satisfactory arrangements may result in the commencement by the attorney general of procedures to suspend the holder's driver's license.

SECTION 30. (a) Provides that the involvement of the attorney general's office in matters related to the enforcement of child support is subject to review under Chapter 325, Government Code (Texas Sunset Act), as if the attorney general's involvement in matters relating to the enforcement of child support were a state agency under that chapter. Provides that the involvement of the attorney general's office in matters related to child support enforcement is not abolished under Chapter 325, Government Code (Texas Sunset Act).

(b) Requires the attorney general's office, to the extent Chapter 325, Government Code, imposes a duty on a state agency under review, to perform the duty as it applies to the attorney general's involvement in matters related to child support enforcement.

(c) Requires the Sunset Advisory Commission (commission) to select an independent firm with experience in evaluating government programs to conduct a comprehensive analysis of, and to make recommendations to the commission concerning the structure, efficiency, and effectiveness of the attorney general's involvement in matters relating to child support enforcement. Requires the firm to consider and recommend whether programs related to the enforcement of child support should remain as part of the attorney general's office, be privatized, or be transferred to an independent state agency established to operate child support enforcement programs. Authorizes the commission to prescribe additional matters to be evaluated by the firm selected under this section. Requires the attorney general's office to pay the costs of the analysis by the firm selected under this subsection from funds appropriated to the attorney general's office for the enforcement of child support.

(d) Requires the office of the state auditor, the Texas Legislature Council, and the Department of Information Resources to assist the commission in performing the commission's review of the attorney general's involvement in matters relating to the enforcement of child support.

(e) Requires the commission to report its findings as required under Section 325.010, Government Code, to the 76th Legislature, Regular Session, 1999.

SECTION 31. Makes application of this Act prospective.

SECTION 32. Emergency clause.
Effective date: 90 days after adjournment.