

BILL ANALYSIS

Senate Research Center

C.S.H.B. 1449
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Jurisprudence
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Committee Report (Substituted)

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Currently, the Texas Family Code provides for the establishment of paternity and for the establishment and enforcement of child support and medical support obligations for a child in suits affecting the child-parent relationship. Under the Family Code, support obligations may be enforced through the use of various remedies, including the use of income withholding, the assertion of liens for past-due support, and the suspension of licenses of a delinquent obligor for the purpose compelling compliance with a child support order. The Family Code also provides certain administrative processes to the Title IV-D agency administered by the Texas attorney general in compliance with federal mandates as a condition of the receipt by the state of federal funds both for its child support enforcement program and for its welfare programs.

The Family Code has been repeatedly amended with regard to child support establishment and enforcement to reflect new federal mandates, case law, current practice, and the need for clarification of its provisions and enhancement of procedures provided by the code.

C.S.H.B. 1449 provides technical corrections and clarifications in certain provisions of the Family Code relating to the establishment and enforcement of child support obligations, as well as to cognate provisions in the Government Code, the Transportation Code, and the Labor Code. It provides for the enhancement of administrative processes available to the Title IV-D agency under the Family Code for the enforcement of child support obligations, specifically by providing an administrative process for the denial of renewal of a license under Chapter 232 (Suspension of License), Family Code. C.S.H.B. 1449 also provides an administrative, civil money penalty for the failure of an employer to make reports to the state directory of new hires, as required by federal and state law.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to a Title IV-D agency is modified in SECTION 33 (Section 234.006, Family Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 101, Family Code, by adding Section 101.0255, as follows:

Sec. 101.0255. RECORD. Defines "record."

SECTION 2. Amends Section 102.009(d), Family Code, to require notice to be given to the Title IV-D agency in a manner provided by Rule 21a, Texas Rules of Civil Practice, if the petition requests termination of a support right assigned to the Title IV-D agency under Chapter 231 (Title IV-D Services).

SECTION 3. Amends Section 105.008(a), Family Code, to make a conforming change.

SECTION 4. Amends Section 151.001(b), Family Code, to provide that the duty of a parent to support his or her child exists while the child is an unemancipated minor and continues as long as the child is fully enrolled in a secondary school and complies with attendance requirements described by Section 154.002(a)(2), rather than in a program leading toward a high school diploma until the end of the school year in which the child graduates.

SECTION 5. Amends Section 153.0071, Family Code, by adding Subsection (c-1), amending Subsections (d) and (e), and adding Subsections (g) and (h), as follows:

(c-1) Authorizes the parties to agree to conduct one or more informal settlement conferences and to agree that the settlement conferences may be conducted with or without the presence of the parties' attorneys, if any.

(d) Provides that a written, rather than mediated settlement, agreement reached at mediation or at an informal settlement conference is binding on the parties if the agreement satisfies certain conditions. Makes conforming changes.

(e) Makes conforming changes.

(g) Provides that, if the court finds that the terms of the written settlement agreement conducted under Subsection (c-1) are in the best interests of the child, those terms are binding on the court. Authorizes the court, if the court approves the agreement, to set forth the agreement in full or incorporate the agreement by reference in the final order.

(h) Authorizes the court, if the court finds that the terms of the written settlement agreement conducted under Subsection (c-1) are not in the best interests of the child, to request the spouses to submit a revised agreement or to set the case for a hearing.

SECTION 6. Amends Section 154.125, Family Code, as follows:

Sec. 154.125. New heading: APPLICATION OF GUIDELINES TO NET RESOURCES OF \$7,500 OR LESS. Provides that the guidelines for the support of a child in this section are specifically designed to apply to situations in which the obligor's monthly net resources are \$7,500, rather than \$6,000, or less. Makes conforming changes.

SECTION 7. Amends Section 154.126, Family Code, to make conforming changes.

SECTION 8. Amends Section 154.130(b), Family Code, to make a conforming change.

SECTION 9. Amends Section 155.301(c), Family Code, to create an exception to this subsection as provided by this subsection. Requires a court, if the parties submit to the court an agreed order for transfer, to sign the order without the need for other pleadings.

SECTION 10. Amends Section 156.401(b), Family Code, to authorize a support order to be modified with regard to the amount of support ordered.

SECTION 11. Amends Section 156.409, Family Code, by amending Subsection (a) and adding Subsection (a-1), as follows:

(a) Authorizes the court to modify an order providing for the support of a child to provide that the person having physical possession of the child, including a conservator or governmental entity, shall have the right to receive and give receipt for payments of support for the child and to hold or disburse money if the sole managing conservator of the child or the joint managing conservator who has the exclusive right to determine the primary residence of the child does not have physical possession of the child for one of several listed reasons.

(a-1) Requires the court, if the court modifies a support order under this section, to order the obligor to pay the person or entity having physical possession of the child any unpaid child support that is not subject to offset or reimbursement under Section 157.008 and that accrues after the date the sole or joint managing conservator relinquishes possession and control of the child or is incarcerated.

SECTION 12. Amends Section 157.005(a), Family Code, to provide that the court retains jurisdiction to render a contempt order for failure to comply with the child support order if the motion for enforcement is filed not later than the second anniversary, rather than six months

after, the date the child becomes an adult or on which the child support obligation terminates under the order or by operation of law.

SECTION 13. Amends Section 157.065(a), Family Code, to make a conforming change.

SECTION 14. Amends Sections 157.105(a) and (c), Family Code, as follows:

(a) Requires the respondent, if taken into custody and not released on bond, to be brought before the court that issued the *capias* on or before the third, rather than the first, working day after the arrest.

(c) Requires a hearing on the alleged contempt to be held as soon as practicable, but not later than the seventh, rather than the fifth, day after the date that the respondent was taken into custody, if the court is not satisfied that the respondent's appearance in court can be assured and the respondent remains in custody, unless the respondent and the respondent's attorney waive the accelerated hearing.

SECTION 15. Amends Section 157.211, Family Code, to authorize the terms and conditions of community supervision to include specific requirements for the respondent, which includes the respondent submitting to a period of confinement in a county jail beginning at any time during the community supervision period, and prohibiting that the aggregate of all periods of confinement during the community supervision period from exceeding 180 days, if the court places the respondent on community supervision.

SECTION 16. Amends Section 157.212, Family Code, to prohibit the initial period of community supervision from exceeding 10 years. Authorizes the court to continue the community supervision until a certain specified time

SECTION 17. Amends Sections 157.216(a) and (b), Family Code, as follows:

(a) Requires the court to hold a hearing without a jury no later than the third, rather than on or before the first, working day after the date the respondent is arrested under Section 157.215. Makes a conforming change.

(b) Prohibits a hearing under this section from being held later than the seventh, rather than the third, working day after the date the respondent is arrested.

SECTION 18. Amends Section 157.263(c), Family Code, to require the court to render a new cumulative judgment to include as arrearages an amount equal to the amount by which the credit was reduced, if the amount of arrearages confirmed by the court reflects a credit to the obligor for support arrearages collected from a federal tax refund under 42 U.S.C. Section 664, and subsequently, the amount of that credit is reduced because the refund was adjusted because of an injured spouse claim by a jointly filing spouse, the tax return was amended, the return was audited by the Internal Revenue Service, or for another reason permitted by law.

SECTION 19. Amends Section 157.264(b), Family Code, to require, rather than authorize, the court to render an order requiring that the obligor make periodic payments on the judgment, including by income withholding under Chapter 158 (Withholding from Earnings for Child Support), if the obligor is subject to income withholding. Deletes existing text relating to requiring the court to render an order requiring that income be withheld from the disposable earnings.

SECTION 20. Amends Section 157.269, Family Code, to provide that a court that renders an order providing for the payment of child support retains continuing jurisdiction to enforce the order, including by adjusting the amount of the periodic payments to be made by the obligor or the amount to be withheld from the obligor's disposable earnings, until all current support and medical support and child support arrearages, including interest and any applicable fees and costs, have been paid.

SECTION 21. Amends Sections 157.313(a), (c), and (e), Family Code, as follows:

(a) Requires a child support lien notice to contain, except as provided by Subsection (e), a statement that the lien attaches to all nonexempt real and personal property of the obligor that is located or recorded in the state, including any property specifically identified in the notice and any property specifically identified in the notice and any property acquired after the date of filing or delivery of the notice.

(c) Requires the lien notice to be verified, except as provided by Subsection (e).

(e) Provides that the federal form of lien notice does not require verification when used by the Title IV-D agency.

SECTION 22. Amends Section 157.317(a-1), Family Code, to provide that a lien attaches to all property owned or acquired after the date the lien notice or abstract 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 delivered to, rather than file with, that party.

SECTION 23. Amends Subchapter C, Chapter 158, Family Code, by adding Section 158.214, as follows:

Sec. 158.214. WITHHOLDING FROM SEVERANCE PAY. (a) Defines "severance pay."

(b) Requires an employer receiving an order or writ of withholding under this chapter to withhold from any severance pay owed an obligor an amount equal to the amount the employer would have withheld under the order or writ if the severance pay had been paid periodically as the obligor's usual earnings as a current employee.

(c) Provides that the total amount that may be withheld under this section is subject to the maximum amount allowed to be withheld under Section 158.009.

SECTION 24. Amends Section 159.102(23), Family Code, to redefine "support order."

SECTION 25. Amends Section 159.316, Family Code, by adding Subsection (j), to provide that a voluntary acknowledgement of paternity, certified as a true copy, is admissible to establish parentage of the child.

SECTION 26. Amends Section 161.206, Family Code, by adding Subsection (d), to require an order rendered under this section (Order Terminating Parental Rights) to include specific findings.

SECTION 27. Amends Section 201.104(d), Family Code, by authorizing an associate judge to hear and render an order on a motion for postjudgment relief, including a motion for a new trial or to vacate, correct, or reform a judgment rendered by the associate judge. Prohibits an associate judge from granting postjudgment relief under Rule 306a, 316, or 329, Texas Rules of Civil Procedure, that alters or affects any judicial action taken by the referring court on the associate judge's recommendation.

SECTION 28. Amends Section 201.113, Family Code, by adding Subsection (d), to provide that Section 2252.901 (Contracts with Former or Retired Agency Employees), Government Code, does not apply to the appointment of a visiting associate judge under this section (Visiting Associate Judge).

SECTION 29. Amends Section 201.208, Family Code, by adding Subsection (e), to provide that Section 2252.901, Government Code, does not apply to the appointment of a visiting judge under this section (Assignment of Judges and Appointment of Visiting Associate Judges).

SECTION 30. Amends Section 231.202, Family Code, to require the Title IV-D agency, for a Title IV-D case filed under this title, including a case filed under Chapter 159 (Uniform

Interstate Family Support Act, to pay the fee for issuance of a subpoena as provided by Section 51.318(b)(1), Government Code.

SECTION 31. Amends Sections 232.001(1)-(3), Family Code, to redefine "license," "licensing authority," and "order suspending license."

SECTION 32. Amends Section 232.002, Family Code, to provide that all licensing authorities are subject to this chapter, unless otherwise restricted or exempted. Deletes existing list of qualifying entities.

SECTION 33. Amends Chapter 232, Family Code, by adding Section 232.0022, as follows:

Sec. 232.0022. **SUSPENSION OF MOTOR VEHICLE REGISTRATION.** Provides that the Texas Department of Transportation is the appropriate licensing authority for suspension of a motor vehicle registration under this chapter. Provides that the general registration provisions of Chapter 502 (Registration of Vehicles), Transportation Code, do not apply to the suspension or denial of a renewal of a motor vehicle registration under this chapter.

SECTION 34. 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 three months, rather than 90 days, under a support order.

SECTION 35. Amends Sections 232.006(b) and (c), Family Code, as follows:

- (b) Authorizes a notice under this section (Notice) to be served in a specific manner.
- (c) Requires the notice to contain a specific prominently displayed statement in boldfaced type, capital letters, or underlined. Amends said notice.

SECTION 36. Amends Chapter 232, Family Code, by adding Section 232.0135, as follows:

Sec. 232.0135. **DENIAL OF LICENSE RENEWAL.** (a) Authorizes the Title IV-D agency to provide a licensing authority (authority) with information concerning an obligor who has failed to pay child support for six months or more.

(b) Requires a licensing authority that receives the information described by Subsection (a) to refuse to accept an application for renewal of the license of the obligor until the authority is notified by the Title IV-D agency that the obligor has satisfied specific requirements.

(c) Requires the Title IV-D agency, on providing a licensing authority with the information described by Subsection (a), to immediately notify the obligor by first class mail that the information has been provided and of the steps the obligor must take to prevent the denial by the authority of an application for license renewal or to permit the authority to accept the obligor's application for renewal.

(d) Authorizes an obligor receiving notice under Subsection (c) to request a review by the Title IV-D agency to resolve any issue in dispute regarding the identity of the obligor or the existence or amount of child support arrearages. Requires the Title IV-D agency to provide an opportunity for a review, either by telephone or in person, as appropriate to the circumstances. Authorizes the Title IV-D agency, after the review, if appropriate, to notify the licensing authority that it is authorized to accept the obligor's application for renewal of license. Authorizes the obligor, if the Title IV-D agency and the obligor fail to resolve any issue in dispute, no later than the 30th day after the date of receiving notice of the Title IV-D agency's determination from the review, to file a motion with the court to direct the licensing authority to accept the obligor's application for renewal of license and request a hearing on the motion. Prohibits the obligor's application

for license renewal from being accepted by the licensing authority until the court rules on the motion.

(e) Authorizes the Title IV-D agency, if an obligor enters into a repayment agreement with the Title IV-D agency under this section, to incorporate the agreement in an order to be filed with and confirmed by the court in the manner provided for agreed orders under Chapter 233 (Child Support Review Process to Establish or Enforce Support Obligations).

(f) Defines "licensing authority."

SECTION 37. Amends Section 232.014, Family Code, to authorize a licensing authority to charge a fee to an individual who is the subject of an order suspending license or of an action by the Title IV-D agency to deny renewal of license in an amount sufficient to recover the administrative costs incurred by the authority under this chapter. Prohibits the amount charged from exceeding the actual costs incurred.

SECTION 38. Amends Section 234.001(c), Family Code, to require the state disbursement unit to maintain the records of child support payments made through the state disbursement unit and make available specific information to a local registry each day in a manner determined by the Title IV-D agency.

SECTION 39. Amends Section 234.006, Family Code, as follows:

Sec. 234.006. New heading: RULEMAKING. Deletes reference to the Title IV-D agency cooperating with the work group to adopt rules.

SECTION 40. Amends Subchapter B, Chapter 234, Family Code, by adding Section 234.105, as follows:

Sec. 234.105. CIVIL PENALTY. (a) Provides that in addition to any other remedy provided by law, an employer who knowingly violates a procedure adopted under Section 234.104 for reporting employee information can be liable for a civil penalty as permitted by Section 453(d) of the federal Social Security Act (42 U.S.C. Section 653a).

(b) Prohibits the amount of the civil penalty from exceeding a specific threshold.

(c) Authorizes the attorney general to sue to collect the civil penalty. Requires a penalty collected under this section to be deposited in a special fund in the state treasury.

SECTION 41. Amends Section 804.001, Government Code, by amending Subdivisions (1) and (2) to redefine "alternate payee" and "domestic relations order," and adding Subdivision (1-a) to define "child support obligee."

SECTION 42. Amends Sections 207.093(a) and (d), Labor Code, to make conforming changes.

SECTION 43. Amends Section 501.002(9), Transportation Code, to redefine "lien."

SECTION 44. Repealer: Section 201.104(e) (regarding the cases an associate judge is authorized to hear and render an order), Family Code.

SECTION 45. Makes application of this Act prospective.

SECTION 46. Makes application of the changes in law made by this Act by the amendment of Sections 154.125, 154.126, and 154.130, Family Code, prospective.

SECTION 47. Effective date: September 1, 2005.