

BILL ANALYSIS

Senate Research Center

C.S.S.B. 431
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Jurisprudence
3/19/2009
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

There is concern that some child support obligors are hiding funds with a friend or family member to avoid paying a child support lien. This bill is intended to prevent that occurrence by requiring a financial institution that receives a child support lien to disclose the balance in the account to the child support claimant and, if requested, the state.

C.S.S.B. 431 requires a financial institution that receives a child support lien notice with respect to an account of the child support obligor to disclose to the claimant the amount in the account at the time of receipt of the notice. The bill also requires the financial institution to provide the claimant, on request, with a statement showing all transactions involving the obligor's account that occurred from the date of receipt of the lien notice to the date of receipt of the request for information.

C.S.S.B. 431 authorizes a claimant to file suit to obtain a judicial determination of the extent, if any, to which the funds in a third-party account are assets owned by the obligor. The bill places on the claimant the burden to freeze the third-party account and requires that proper documentation be provided to the financial institution to support a third-party lien. The bill authorizes the court to award attorney's fees and costs to the prevailing party in a suit against a third-party account.

C.S.S.B. 431 authorizes a financial institution to charge fees for processing a levy and collect those fees from the obligor, but prohibits the financial institution from deducting those fees from the amounts paid to the child support recipient.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 157.005(g), Family Code, to prohibit a child support lien under this subchapter from being directed to an employer in lieu of an order or writ under Chapter 158 (Withholding from Earnings for Child Support) to withhold child support from the disposable earnings of an obligor, rather than to attach to the disposable earnings of an obligor paid by the employer.

SECTION 2. Amends Section 157.314, Family Code, by amending Subsection (d) and adding Subsection (e), as follows:

(d) Requires the financial institution, if a child support lien notice is delivered to a financial institution with respect to an account of the obligor, to provide the claimant with the last known address of the obligor and disclose to the claimant the amount in the account at the time of receipt of the notice.

(e) Requires a financial institution to which a child support lien notice has been delivered, on request, to provide the claimant with a statement showing all transactions involving the obligor's account that occurred from the date of receipt of the child support lien notice to the date of receipt of the request for information.

SECTION 3. Amends Sections 157.327(b) and (f), Family Code, as follows:

(b) Requires that the notice under this section direct the financial institution to pay to the claimant, not earlier than the 15th day or later than the 21st day after the date of delivery of the notice, an amount from the assets of the obligor or from funds due to the obligor at the time the levy is paid that are held or controlled by the institution or that should have been held or controlled by the institution, not to exceed the amount of the child support arrearages identified in the notice, unless certain actions occur, including that the obligor or another person with an ownership interest in the account files, not later than the 10th day after the date of delivery of the notice required by Section 157.328 (Notice of Levy Sent to Obligor), a suit under Section 157.323 (Foreclosure or Suit to Determine Arrearages) requesting a hearing by the court.

(f) Authorizes a financial institution to collect any fees and costs identified in Subsection (c) from the obligor but prohibits a financial institution from deducting those fees and costs from the obligor's assets before paying the appropriate amount to the claimant. Deletes existing text authorizing a financial institution to deduct the fees and costs identified in Subsection (c) from the obligor's assets before paying the appropriate amount to the claimant.

SECTION 4. Amends Subchapter G, Chapter 157, Family Code, by adding Section 157.332, as follows:

Sec. 157.332. LIEN AND LEVY ON CERTAIN THIRD-PARTY ASSETS. (a) Authorizes a claimant, if the claimant has reason to believe that an obligor's financial assets have been directed to a depository account of another individual in an attempt to protect those assets from a child support lien and levy under this subchapter, to file suit to obtain a judicial determination of the extent, if any, to which the account contains assets owned by the obligor.

(b) Requires the claimant, on filing suit under this section, to also deliver a child support lien notice under this subchapter to the financial institution in which the account is maintained. Requires the financial institution, on receipt of the notice, to immediately freeze all assets in the account, except for assets that exceed the amount of the child support arrearage identified in the notice, until a judicial determination is made in accordance with this section, and inform the account holder that the assets have been frozen and the account is prohibited from being closed until a judicial determination is made in accordance with this section.

(c) Authorizes a child support lien notice required under Subsection (b) to be served on a financial institution in the manner authorized by Section 157.3145 (Service on Financial Institution).

(d) Provides that except as otherwise provided by this section, the procedures provided by Subchapter B (Procedure) apply to a suit under this section. Requires the obligor to be joined as an additional respondent.

(e) Requires the court, after providing notice to the obligor, the account holder, any other person alleging an ownership interest in the account, the claimant, and the obligee, to hold a hearing to determine the extent, if any, to which the account contains assets owned by the obligor that are subject to a child support lien and levy under this subchapter. Requires that the hearing be held not later than the 30th day after the date suit is filed under this section.

(f) Provides that in the hearing required by Subsection (e), the claimant has the burden of proving the extent of the obligor's ownership interest in assets held in the account.

(g) Provides that, following the hearing required by Subsection (e), the court is required, if the court determines that the account does not contain any of the obligors assets that are subject to a child support lien and levy under this

subchapter, to order the release of the lien against the account, and prohibit any action to levy on the account; or the court is required, if the court determines that the account contains any of the obligor's assets that are subject to a child support lien any levy under this subchapter, to specify the amount of assets in the account determined by the court to be the obligor's assets subject to a child support lien and levy under this subchapter, and order that the amount specified under Paragraph (A) be applied against child support arrearages owed by the obligor.

(h) Provides that a financial institution that freezes assets under Subsection (b)(1) (relating to freezing all account assets, except those that exceed amount of child support arrearage in the notice) or surrenders assets in compliance with a court order under Subsection (g)(2) (relating to court determination of account containing obligor's assets) is not liable to the obligor, the account holder, or any other person for the assets frozen or surrendered.

(i) Authorizes the court to award attorney's fees and costs to the prevailing party in a suit filed under this section.

SECTION 5. Amends Section 34.001, Civil Practice and Remedies Code, by adding Subsection (c), to provide that this section does not apply to a child support judgment or any other child support collection remedy authorized by the Family Code.

SECTION 6. Makes application of the changes in law made by this Act to Section 157.312, Family Code, prospective.

SECTION 7. Makes application of the changes in law made by this Act to Sections 157.314 and 157.327(f), Family Code, prospective.

SECTION 8. Provides that the changes in law made by this Act to Section 34.001, Civil Practice and Remedies Code, apply to each child support judgment or collection remedy, regardless of the date on which the judgment is rendered or the remedy is sought.

SECTION 9. Effective date: September 1, 2009.