

BILL ANALYSIS

S.B. 1805
By: Harris
Juvenile Justice & Family Issues
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Currently, Texas has the Uniform Interstate Family Support Act in statute. C.S.S.B. 1805 amends state law to comply with recent amendments to the Uniform Interstate Family Support Act.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 154.004, Family Code, as follows:

Sec. 154.004. PLACE OF PAYMENT. (a) Removes as entities to which a court is required to order the payment of child support a local registry and the Title IV-D agency.

(b) Requires, in a Title IV-D case, the court or the Title IV-D agency to order that income withheld for child support be paid to the state disbursement unit of this state or, if appropriate, to the state disbursement unit of another state. Makes conforming changes.

(c) Provides that this section does not apply to a child support order that was initially rendered by a court before January 1, 1994, and is not being enforced by the Title IV-D agency.

SECTION 2. Amends Section 158.502, Family Code, by adding Subsection (d) to authorize the Title IV-D agency to issue an administrative writ of withholding to direct the payment of child support to the state disbursement unit of another state.

SECTION 3. Amends Subchapter B, Chapter 159, Family Code, as follows:

SUBCHAPTER B. GENERAL PROVISIONS

Sec. 159.101. SHORT TITLE. Authorizes this chapter to be cited as the Uniform Interstate Family Support Act.

Sec. 159.102. DEFINITIONS. Removes references to the Uniform Reciprocal Enforcement of Support Act and the Revised Uniform Reciprocal Enforcement of Support Act from definitions. Defines "person" and "record." Adds to the definitions of "state" and "support enforcement agency." Makes conforming changes.

Sec. 159.103. TRIBUNAL OF STATE. Provides that the court is the tribunal of this state.

Sec. 159.104. REMEDIES CUMULATIVE. (a) Creates this subsection from existing text to

provide that remedies provided in this chapter are cumulative and do not affect the availability of remedies under other law, including the recognition of a support order of a foreign country or political subdivision on the basis of comity.

(b) Provides that this chapter does not provide the exclusive method of establishing or enforcing a support order under the law of this state or grant a tribunal of this state jurisdiction to render a judgment or issue an order relating to child custody or visitation in a proceeding under this chapter.

SECTION 4. Amends Section 159.201, Family Code, as follows:

Sec. 159.201. BASES FOR JURISDICTION OVER NONRESIDENT. (a) Removes the term "modify" in relation to a proceeding regarding a support order or an order to determine parentage.

(b) Prohibits a tribunal of this state from using the bases of personal jurisdiction listed in Subsection (a) or in any other law of this state to acquire personal jurisdiction to modify a child support order of another state unless the requirements of Section 159.611 or 159.615 are satisfied.

SECTION 5. Amends Section 159.202, Family Code, as follows:

Sec. 159.202. New heading: DURATION OF PERSONAL JURISDICTION. Provides that personal jurisdiction acquired by a tribunal of this state in a proceeding under this chapter or other law of this state relating to a support order continues as long as the tribunal has continuing, exclusive jurisdiction to modify its order or continuing jurisdiction to enforce its order under Sections 159.205, 159.206, and 159.211. Deletes text relating to the receipt of evidence from another state relating a nonresident and to discovery. Deletes text relating to the application of Subchapters D-H and the requirement for the tribunal to apply the procedural and substantive law of this state, including the rules on choice of law other than those established by this chapter.

SECTION 6. Amends the heading to Section 159.204, Family Code, to read as follows:

Sec. 159.204. SIMULTANEOUS PROCEEDINGS.

SECTION 7. Amends the heading to Section 159.205, Family Code, to read as follows:

Sec. 159.205. CONTINUING, EXCLUSIVE JURISDICTION TO MODIFY CHILD SUPPORT ORDER.

SECTION 8. Amends Sections 159.205(a), (b), (c), and (d), Family Code, as follows:

(a) Requires a tribunal of this state that has issued a child support order consistent with the law of this state to exercise continuing, exclusive jurisdiction to modify its order if the order is the controlling order and certain other conditions are met.

(b) Prohibits a tribunal of this state that has issued a child support order consistent with the law of this state from exercising continuing, exclusive jurisdiction to modify the order if each party who is an individual files a consent in a record with the tribunal of this state that a tribunal of another state that has jurisdiction over at least one of the parties who is an individual or that is located in the state of residence of the child may modify the order and assume continuing, exclusive jurisdiction or the order is not the controlling order. Deletes text relating to a modified order.

(c) Requires a tribunal of this state to recognize the continuing, exclusive jurisdiction of a tribunal of another state if the tribunal of the other state has issued a child support order that modifies a child support order of a tribunal of this state under a law substantially similar to this chapter. Deletes text relating to a tribunal of this state losing its continuing, exclusive jurisdiction with regard to prospective enforcement of the order issued in this state.

(d) Authorizes a tribunal of this state that does not have continuing, exclusive jurisdiction to modify a child support order to serve as an initiating tribunal to request a tribunal of another state to modify a support order issued in that state. Deletes text requiring a tribunal of this state to recognize the continuing exclusive jurisdiction of a tribunal of another state that issued a child support order under a law substantially similar to this chapter.

SECTION 9. Amends Section 159.206, Family Code, as follows:

Sec. 159.206. New heading: CONTINUING JURISDICTION TO ENFORCE CHILD SUPPORT ORDER. (a) Authorizes a tribunal of this state that has issued a child support order consistent with the law of this state to serve as an initiating tribunal to request a tribunal of another state to enforce the order, if the order is the controlling order and has not been modified by a tribunal of another state that assumed jurisdiction under the Uniform Interstate Family Support Act or a money judgment for support arrearages and interest on the order accrued before a determination that an order of another state is the controlling order.

(b) Makes conforming changes. Deletes Subsection (c) prohibiting a tribunal of this state that lacks continuing, exclusive jurisdiction over a spousal support order from serving as a responding tribunal to modify a spousal support order of another state.

SECTION 10. Amends the heading to Section 159.207, Family Code, to read as follows:

Sec. 159.207. DETERMINATION OF CONTROLLING CHILD SUPPORT ORDER.

SECTION 11. Amends Section 159.207, Family Code, by amending Subsections (b), (c), (d), (e), and (f) and adding Subsections (g) and (h), as follows:

(b) Requires a tribunal of this state having personal jurisdiction over both the obligor and individual obligee to apply certain rules to determine which order controls, rather than which order to recognize for purposes of continuing, exclusive jurisdiction, if a proceeding is brought under this chapter and two or more child support orders have been issued by tribunals of this state or another state with regard to the same obligor and same child.

(c) Requires a tribunal of this state having personal jurisdiction over both the obligor and the obligee who is an individual to determine which order controls, if two or more child support orders have been issued for the same obligor and same child, on request of a party who is an individual or a support enforcement agency. Authorizes the request to be filed in a certain manner. Deletes text stating that the obligor or the individual obligee reside in this state.

(d) Requires a request to determine the controlling order to be accompanied by a copy of each child support order in effect and the applicable record of payments. Requires the requesting party to give notice of the request to each party whose rights may be affected by the determination.

(e) Provides that the tribunal that issued the controlling order under Subsection (a), (b), or (c) has continuing jurisdiction to the extent provided under Section 159.205 or 159.206. Deletes the term "exclusive" preceding "jurisdiction."

(f) Requires a tribunal of this state that determines by order which order is, rather than the

identity of, the controlling order under Subsection (b)(1) or (2) or Subsection (c) or that issues a new controlling order under Subsection (b)(3) to state certain information in that order.

(g) Provides that a party or support enforcement agency that obtains the order and fails to file a certified copy of the order is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises. Makes conforming changes.

(h) Requires an order that has been determined to be the controlling order, or a judgment for consolidated support arrearages and interest issued under this section, to be recognized in a proceeding under this chapter.

SECTION 12. Amends Subchapter C, Chapter 159, Family Code, by amending Sections 159.208 and 159.209 and adding Sections 159.210 and 159.211, as follows:

Sec. 159.208. New heading: **CHILD SUPPORT ORDERS FOR TWO OR MORE OBLIGEES**. Makes conforming changes.

Sec. 159.209. Requires a tribunal of this state to credit amounts collected for a particular period under a support order against the amounts owed for the same period under any other child support order for support of the same child issued by a tribunal of this or another state.

Sec. 159.210. **APPLICABILITY TO NONRESIDENT SUBJECT TO PERSONAL JURISDICTION**. (a) Provides that Subchapters D-H do not apply to a tribunal of this state exercising personal jurisdiction over a nonresident in a proceeding under this chapter or under other law of this state relating to a support order or recognizing a support order of a foreign country or political subdivision on the basis of comity. Requires the tribunal to apply the procedural and substantive law of this state in a proceeding described by this subsection, except as provided by Subsection (b).

(b) Authorizes a tribunal of this state exercising personal jurisdiction over a nonresident in a proceeding under this chapter or under other law of this state relating to a support order or recognizing a support order of a foreign country or political subdivision on the basis of comity to receive evidence from another state, communicate with a tribunal of another state, and obtain discovery through a tribunal of another state.

Sec. 159.211. **CONTINUING, EXCLUSIVE JURISDICTION TO MODIFY SPOUSAL SUPPORT ORDER**. (a) Provides that a tribunal of this state issuing a spousal support order consistent with the law of this state has continuing, exclusive jurisdiction to modify the spousal support order throughout the existence of the support obligation.

(b) Prohibits a tribunal of this state from modifying a spousal support order issued by a tribunal of another state having continuing, exclusive jurisdiction over that order under the law of that state.

(c) Authorizes a tribunal of this state that has continuing, exclusive jurisdiction over a spousal support order to serve as an initiating tribunal to request a tribunal of another state to enforce the spousal support order issued in this state or a responding tribunal to enforce or modify its own spousal support order.

SECTION 13. Amends Section 159.301(c), Family Code, to replace the term "commence" with "initiate."

SECTION 14. Amends the heading to Section 159.302, Family Code, to read as follows:

Sec. 159.302. **PROCEEDING BY MINOR PARENT**.

SECTION 15. Amends Sections 159.303 and 159.304, Family Code, as follows:

Sec. 159.303. APPLICATION OF LAW OF STATE. Deletes the reference to rules on choice of law relating to the application of law by a responding tribunal.

Sec. 159.304. DUTIES OF INITIATING TRIBUNAL. (a) Removes the requirement to forward three copies of the petition and its accompanying documents.

(b) Requires, rather than authorizes, a tribunal of this state, if requested by the responding tribunal, to issue a certificate or other document and make findings required by the law of the responding state. Requires, rather than authorizes, the tribunal to specify the amount of support sought, convert that amount into the equivalent amount in the foreign currency under the applicable official or market exchange rate as publicly reported, and provide any other documents necessary to satisfy the requirements of the responding state, if the responding state is a foreign country or political subdivision. Deletes text regarding a state that has not enacted the Uniform Interstate Family Support Act or a law or procedure substantially similar to that Act.

SECTION 16. Amends Section 159.305, Family Code, by amending Subsection (b) and adding Subsection (f), as follows:

(b) Provides an exception and makes a conforming change.

(f) Requires a responding tribunal of this state to convert the amount stated in the foreign currency to the equivalent amount in dollars under the applicable official or market exchange rate as publicly reported, if requested to enforce a support order, arrearages, or judgment or to modify a support order stated in a foreign currency.

SECTION 17. Amends Section 159.307, Family Code, by amending Subsections (b) and (c) and adding Subsections (d), (e), and (f), as follows:

(b) Requires a support enforcement agency of this state that provides services to the petitioner to perform certain functions.

(c) Requires a support enforcement agency of this state that requests registration of a child support order in this state for enforcement or for modification to make reasonable efforts to ensure that the order to be registered is the controlling order or a request for a determination of which order is the controlling order is made in a tribunal having jurisdiction to make the determination, if two or more child support orders have been issued and a determination of the controlling order has not been made.

(d) Requires a support enforcement agency of this state that requests registration and enforcement of a support order, a judgment for arrearages, or another judgment stated in a foreign currency to convert the amount stated in the foreign currency to the equivalent amount in dollars under the applicable official or market exchange rate as publicly reported.

(e) Requires a support enforcement agency of this state to issue, or request a tribunal of this state to issue, a child support order and an income-withholding order that redirects payment of current support, arrearages, and interest if requested to do so by a support enforcement agency of another state under Section 159.319.

(f) Creates this subsection from existing text relating to fiduciary relationships.

SECTION 18. Amends Section 159.308, Family Code, as follows:

Sec. 159.308. New heading: DUTY OF CERTAIN STATE OFFICIALS. (a) Creates this

subsection from existing text.

- (b) Authorizes the governor to determine that a foreign country or political subdivision has established a reciprocal arrangement for child support with this state and take appropriate action for notification of the determination.

SECTION 19. Amends Section 159.310(b), Family Code, to include the names and addresses of tribunals in the register required to be maintained by the state information agency. Replaces the word "place" with "county" in relation to forwarding documents.

SECTION 20. Amends Section 159.311(a), Family Code, to require, in a proceeding under this chapter, a petitioner seeking to establish a support order, to determine parentage, or to register and modify a support order of another state to file, rather than verify, a petition. Requires, unless otherwise ordered under Section 159.312, the petition or accompanying documents to provide, so far as known, the name, residential address, and social security numbers of the obligor and the obligee or the parent and alleged parent and the name, sex, residential address, social security number, and date of birth of each child for whose benefit support is sought or whose parentage is to be determined. Requires the petition to be accompanied by a copy, rather than certified copy, of any support order known to have been issued by another tribunal, unless filed at the time of registration.

SECTION 21. Amends Section 159.312, Family Code, as follows:

Sec. 159.312. Requires identifying information to be sealed and prohibits the information from being disclosed to the other party or to the public, if a party alleges in an affidavit or pleading under oath, rather than on a finding which may be made ex parte, that the health, safety, or liberty of a party or child would be jeopardized, rather than unreasonably put at risk, by the disclosure of specific identifying information regarding the party or the child. Authorizes, rather than requires, a tribunal, after a hearing in which a tribunal considers the health, safety, or liberty of the party or the child, to order disclosure of information if the tribunal determines that the disclosure serves the interests of justice.

SECTION 22. Amends Section 159.314(a), Family Code, to provide that participation by a petitioner in a proceeding be under this chapter.

SECTION 23. Amends Sections 159.316(a), (b), (e), and (f), Family Code, as follows:

- (a) Provides that the physical presence of a nonresident party who is an individual, rather than the petitioner, in a tribunal of this state is not required for the establishment, enforcement, or modification of a support order or the rendition of a judgment determining parentage.

- (b) Provides that an affidavit, a document substantially complying with federally mandated forms, or a document incorporated by reference in an affidavit or document, that would not be under the hearsay rule if given in person, is admissible in evidence if given under penalty of perjury by a party or witness residing in another state. Removes petition as a document under this subsection.

- (e) Replaces the term "sent" with "transmitted" and the term "writing" with "record."

- (f) Requires, rather than authorizes, a tribunal of this state to permit a party or witness residing in another state to be deposed or to testify by telephone, audiovisual means, or other electronic means at a designated location.

SECTION 24. Amends Section 159.317, Family Code, to include a foreign state or political subdivision among the entities that a tribunal of this state is authorized to communicate with. Makes conforming changes.

SECTION 25. Amends Section 159.319, Family Code, as follows:

Sec. 159.319. (a) Creates this subsection from existing text.

(b) Requires the support enforcement agency of this state or a tribunal of this state to direct that the support payment be made to the support enforcement agency in the state in which the obligee is receiving services and issue and send to the obligor's employer a conforming income-withholding order or an administrative notice of change of payee reflecting the redirected payments, if the obligor, the obligee who is an individual, and the child do not reside in this state, on request from the support enforcement agency of this state or another state.

(c) Requires the support enforcement agency of this state on receiving redirected payments from another state under a law similar to Subsection (b) to provide to a requesting party or a tribunal of the other state a certified statement by the custodian of the record of the amount and dates of all payments received.

SECTION 26. Amends Section 159.401(b), Family Code, to authorize the tribunal to issue a temporary child support order if the tribunal determines that the order is appropriate and the individual ordered to pay is a certain individual.

SECTION 27. Amends Section 159.501, Family Code, to authorize an income-withholding order issued in another state to be sent by or on behalf of the obligee or by the support enforcement agency to the person defined as the obligor's employer under Chapter 158 without first filing a petition or comparable pleading or registering the order with a tribunal of this state.

SECTION 28. Amends Section 159.502(c), Family Code, to delete "agency" from Subdivision (2) in relation to the receipt of payments.

SECTION 29. Amends Section 159.503, Family Code, as follows:

Sec. 159.503. New heading: EMPLOYER'S COMPLIANCE WITH TWO OR MORE INCOME-WITHHOLDING ORDERS. Makes conforming changes.

SECTION 30. Amends Section 159.506, Family Code, to authorize an obligor to contest the validity or enforcement of an income-withholding order issued in another state and received directly by an employer in this state by registering the order in a tribunal of this state and filing a contest to that order under Subchapter G or contesting the order in the same manner as if the order had been issued by a tribunal of this state. Deletes text stating that Section 159.604 applies to the contest.

(b) Requires the obligor to give notice of the contest to a support enforcement agency providing services to the obligee, each employer that has directly received an income-withholding order relating to the obligor and the person designated to receive payments in the income-withholding order or to the obligee, if no person is designated.

SECTION 31. Amends Section 159.507(a), Family Code, to make a conforming change.

SECTION 32. Amends the heading to Subchapter G, Chapter 159, Family Code, to read as follows:

SUBCHAPTER G. REGISTRATION, ENFORCEMENT, AND MODIFICATION OF SUPPORT ORDER

SECTION 33. Amends Section 159.602, Family Code, by amending Subsection (a) and adding Subsections (d) and (e), as follows:

- (a) Provides an exception in Subdivision (5) and makes nonsubstantive changes.
- (d) Requires the person requesting registration to provide to the tribunal a copy of each support order and the documents specified in this section, identify the order alleged to be the controlling order, if any and state the amount of consolidated arrearages, if any, if two or more orders are in effect.
- (e) Authorizes a request for a determination of which order is the controlling order to be filed separately from or with a request for registration and enforcement or for registration and modification. Requires the person requesting registration to give notice of the request to each party whose rights may be affected by the determination.

SECTION 34. Amends Section 159.604, Family Code, as follows:

- (a) Provides that, except as provided by Subsection (d), the law of the issuing state governs the nature, extent, amount, and duration of current payments under a registered support order, the computation and payment of arrearages and accrual of interest on the arrearages under the support order, and the existence and satisfaction of other obligations under the support order.
- (b) Provides that in a proceeding for arrearages under a registered support order, the statute of limitation of this state or of the issuing state, whichever is longer, applies.
- (c) Requires a responding tribunal in this state to apply the procedures and remedies of this state to enforce current support and collect arrearages and interest due on a support order of another state registered in this state.
- (d) Requires the tribunal of this state to prospectively apply the law of the state issuing the controlling order, including that state's law on interest on arrearages, current and future support, and consolidated arrearages, after a tribunal of this or another state determines which order is the controlling order and issues an order consolidating arrearages, if any.

SECTION 35. Amends Section 159.605, Family Code, by amending Subsections (b) and (c) and adding Subsection (d), as follows:

- (b) Includes the phrase "under this section" in relation to informing the nonregistering party of certain information.
- (c) Requires the notice, if the registering party asserts that two or more orders are in effect, to identify the orders, including which order is alleged by the registering person to be the controlling order and the consolidated arrearages, if any, to notify the nonregistering party of the right to a determination of which order is the controlling order, to state that the procedures provided in Subsection (b) apply to the determination of which order is the controlling order, and to state that failure to contest the validity or enforcement of the order alleged to be the controlling order in a timely manner may result in confirmation that the order is the controlling order.
- (d) Creates this subsection from existing text.

SECTION 36. Amends Section 159.607(a), Family Code, as follows:

- (a) Includes "the alleged controlling order is not the controlling order" as a defense a party has the burden of proving relating to a party contesting the validity or enforcement of a registered order or seeking to vacate the registration.

SECTION 37. Amends Section 159.610, Family Code, to include Sections 159.613 and 159.615 as containing requirements which must be met with regards to modification.

SECTION 38. Amends Section 159.611, Family Code, by amending Subsections (a), (c), and (d) and adding Subsection (e), as follows:

- (a) Provides an exception and makes conforming changes.
- (c) Provides that except as provided by Section 159.615, a tribunal of this state is prohibited from modifying any aspect of a child support order, including the duration of the obligation of support, that may not be modified under the law of the issuing state. Makes a conforming change.
- (d) Provides that on issuance of an order by a tribunal of this state modifying a child support order issued in another state, the tribunal of this state becomes the tribunal of continuing, exclusive jurisdiction.
- (e) Provides that in a proceeding to modify a child support order, the law of the state that is determined to have issued the initial controlling order governs the duration of the obligation of support. Provides that the obligor's fulfillment of the duty of support established by that order precludes imposition of a further obligation of support by a tribunal of this state.

SECTION 39. Amends Section 159.612, Family Code, to provide that if a child support order issued by a tribunal of this state is modified by a tribunal of another state that assumed jurisdiction under the Uniform Interstate Family Support Act, a tribunal of this state:

- (1) is authorized to enforce the order that was modified only as to arrearages and interest, rather than amounts, accruing before the modification;
- (2) is authorized to provide appropriate relief for violations of the order that occurred before the effective date of the modification; and
- (3) is required to recognize the modifying order of the other state, on registration, for the purpose of enforcement.

Deletes text requiring a tribunal to recognize a modification of its earlier child support order.

SECTION 40. Amends Subchapter G, Chapter 159, Family Code, by adding Section 159.615, as follows:

Sec. 159.615. JURISDICTION TO MODIFY CHILD SUPPORT ORDER OF FOREIGN COUNTRY OR POLITICAL SUBDIVISION. (a) Authorizes a tribunal of this state to assume jurisdiction to modify the child support order, if a foreign country or political subdivision that is a state refuses to modify its order or may not under its law modify its order, and bind all individuals subject to the personal jurisdiction of the tribunal regardless of whether consent to modification of a child support order has been given under Section 159.611 or the individual seeking modification is a resident of this state or of the foreign country or political subdivision.

- (b) Provides that an order issued under this section is the controlling order.

SECTION 41. Amends Section 159.701, Family Code, to authorize a court, rather than tribunal, of this state, authorized to determine the parentage of a child to serve as a responding tribunal in a proceeding to determine parentage brought under this chapter or a law substantially similar to this chapter. Deletes Subsection (b) requiring, in a proceeding to determine parentage, a responding tribunal of this state to apply the procedural and substantive law of this state and the rules of this state

on choice of law. Makes a conforming change.

SECTION 42. Amends Section 159.801(b), Family Code, to make a nonsubstantive change.

SECTION 43. Amends Section 159.802(b), Family Code, to make a conforming change.

SECTION 44. Amends Section 159.901, Family Code, to require, in applying and construing this chapter, that consideration be given to the need to promote uniformity of the law with respect to the subject matter of this chapter among states that enact a law similar to this chapter.

SECTION 45. Amends Section 234.007, Family Code, by adding Subsection (f) to authorize the notice under Subsection (b) to be used by the Title IV-D agency to redirect child support payments from the state disbursement unit of this state to the state disbursement unit of another state.

SECTION 46. Repealer: Sections 159.205(f) (Continuing, Exclusive Jurisdiction), 159.301(b) (Proceedings Under Chapter), and 159.902 (Short Title), Family Code.

SECTION 47. Makes the changes in law made by this Act to Section 154.004, Family Code, prospective. Provides that except as provided by Subsection (a), the changes in law made by this Act apply only to an interstate proceeding to establish, modify, or enforce a support obligation or to determine parentage began on or after the effective date of the Act. Provides that a proceeding begun before the effective date is governed by the law in effect on the date the proceeding began, and the former law is continued in effect for that purpose.

SECTION 48. Effective date: September 1, 2003.

EFFECTIVE DATE

September 1, 2003.