

BILL ANALYSIS

H.B. 678
By: Goodman
Juvenile Justice & Family Issues
Committee Report (Unamended)

BACKGROUND AND PURPOSE

In 2001, Section 157.265, of the Family Code was amended to reduce the interest rate on unpaid child support accruing after January 1, 2002 from 12% to 6%. HB 678 attempts to clarify the application of the effective date of this amendment by providing that any unpaid child support that accrued before January 1, 2002 accrued at the interest rate in effect at the time the child support payment became delinquent.

The Fifth, Seventh, and Tenth District Court of Appeals held that the change in interest rate applied prospectively only. *See In re A.B.L.*, 2003 WL 21470071, 5-6 (Tex. App.—Waco 2003, no pet.) (mem. op.); *In re Hurd*, 2003 WL 1961142, 6 and 2 (Tex. App.—Amarillo 2003, no pet.) (mem. op.); *In re A.R.J.*, 97 S.W.3d 833, 835 (Tex. App.—Dallas 2003, no pet.).

However, the Second District Court of Appeals held the opposite and requires that all of the earlier child-support obligations be recalculated. *In re M.C.C.*, 142 S.W.3d 504, 521 (Tex. App.—Fort Worth, pet. filed). As a result, child support is being paid at a different rates in different parts of the State even though the enactment language of the 2001 amendment stated that the interest rate change was prospective only.

The Office of the Attorney General's computer system brought forward all balances (including interest) in child support cases into the new computer system on September 1, 1997. Currently, there are no individual entries for payments or obligations incurred prior to September 1, 1997.

If the 6% interest amendment were applied retroactively, approximately 1.5 billion child support entries in the Attorney General's system would have to be redone to recalculate the child support arrearages— a task that would cripple the present system. Additionally, there would be serious constitutional infirmities.

HB 678 would ensure that the calculation of the change in interest charged on delinquent child support is made in a simple, straightforward manner. Moreover, this bill would provide that any unpaid child support that accrued before January 1, 2002 accrued at the interest rate in effect at the time the child support payment became delinquent.

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.

ANALYSIS

SECTION 1. Amends Section 157.265 of the Family Code by adding Subsections (d)-(f) to provide that a child support payment that becomes due after January 1, 2002 accrues interest at the 6% rate. Child support arrearages owed before January 1, 2002 accrued interest at the rate in effect when the arrearage became due; any unpaid balance of child support and interest owed on January 1, 2002 will begin accruing interest at the 6% rate from that date forward. A money judgment for child support previously rendered is governed by the law in effect on the date the judgement was rendered, and the former law is continued in effect for that purpose.

SECTION 2.

This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2005.

EFFECTIVE DATE

September 1, 2005.