

BILL ANALYSIS

C.S.H.B. 1449

By: Dutton

Juvenile Justice & Family Issues
Committee Report (Substituted)

BACKGROUND AND PURPOSE

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 parent-child 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 cash assistance (“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.

Many of the changes made to the Family Code with regard to child support establishment and enforcement contain inconsistent or now outdated terminology or do not reflect current practice or case law. Furthermore, there is an on-going need to enhance enforcement remedies.

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 also 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, Family Code. Furthermore, it 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

It is the committee’s opinion that rulemaking authority is expressly granted to the Title IV-D agency, the Child Support Division in the Office of the Attorney General, in SECTION 36 (Section 234.006, Family Code) of this bill.

ANALYSIS

SECTION 1. Amends Chapter 101, Family Code, to add a definition of “record” that conforms to the standard for legal documentation as provided by Section 43.002(12), Business and Commerce Code (Uniform Electronic Transactions Act) and Section 159.102(5), Family Code (Uniform Interstate Family Support Act).

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 by deleting reference to expired Section 234.003, Family Code.

SECTION 4. Amends Section 153.0071, Family Code, by adding Subsections (d) and (e) and adding Subsection (c-1), as follows:

(c-1) permits parties to a suit referred by the court to mediation to agree to conduct one or more informal settlement conferences and to agree that the conferences be conducted with or without the presence of the parties' attorneys, if any;

(d) provides that a written settlement agreement reached at mediation or at an informal settlement conference is binding on the parties if the agreement indicates clearly that it is not subject to revocation, is signed by each party, and is signed by the party's attorney, if any;

(e) provides that a written agreement meeting the requirements of Subsection (d) is entitled to judgment on the settlement agreement notwithstanding Rule 11, Texas Rules of Civil Procedure or another rule of law.

SECTION 5. Amends Section 151.001(b), Family Code, to conform the section to Section 154.002(a), Family Code, with respect with the continuation of support for an unemancipated minor as long as the child is fully enrolled in an accredited secondary school and is complying with the attendance requirements under Section 154.002(a).

SECTION 6. Amends Section 155.301, Family Code, to allow the court to transfer continuing, exclusive jurisdiction if the parties agree to an order for transfer which the court then signs without the need for other pleadings.

SECTION 7. Amends Section 156.401(b), Family Code, to clarify that the restriction on modification of a support order under that section is with regard only to the amount of support ordered and not other provisions of the order.

SECTION 8. Amends Section 154.409, Family Code, by amending Subsection (a) and adding Subsection (a-1), as follows:

(a) Adds involuntary relinquishment of possession of a child under Chapter 262 or the incarceration of the sole managing conservator or a joint managing conservator who has exclusive right to determine the primary of residence of the child as further conditions under which the court may modify an order to provide that the actual caretaker has the right to receive and disburse child support payments for the benefit of the child.

(a-1) Requires the court, if the court so modifies the support order under this section, to order the obligor to pay the actual caretaker amounts of unpaid support that accrue after possession of the child has been relinquished or the conservator has been incarcerated and that are not subject to offset or reimbursement under Section 157.008.

SECTION 9. Amends Section 157.005(a), Family Code, to provide that the court retains jurisdiction to render a contempt order for failure to comply with a 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 support obligation terminates by operation of law.

- SECTION 10.** Amends Section 157.065(a), Family Code, to clarify that a notice of hearing accompanies a motion for enforcement.
- SECTION 11.** Amends Sections 157.105(a) and (c), Family Code, to revise the time frames within which the court must conduct release hearings after the arrest of a respondent, as follows:
- (a) respondent must be brought before the court before the third, instead of first, working day after the arrest;
 - (b) hearing on alleged contempt must be held not later than the seventh, instead of fifth, day after the date the respondent was taken into custody, unless an accelerated hearing is waived.
- SECTION 12.** Amends Section 157.211, Family Code, to authorize the court to impose periods of confinement during a community supervision period not to exceed in the aggregate a total of 180 days during the supervision period.
- SECTION 13.** Amends Section 157.212, Family Code, to allow the court to extend community supervision beyond an initial period of 10 years for 2 additional years, or until all child support, including arrearages and interest, has been paid, whichever is sooner.
- SECTION 14.** Amends Sections 157.216(a) and 157.216(b), Family Code, to revise the time frames within which, after the arrest of a respondent, the court must hold hearings on a motion to revoke community supervision, as follows:
- (a) not later than the third, instead of first, working day after the date the respondent is arrested or if the court is unavailable for a hearing on that date, not later than the third, instead of first, working day after the date the court becomes available;
 - (b) hearing under this section may not be held later than the seventh, instead of the third, working day after arrest of respondent.
- SECTION 15.** Amends Section 157.263(c), Family Code, to clarify the bases for a downward adjustment of the amount of a federal tax refund in cases in which the court has already provided a credit to the obligor for arrearages collected from the refund and there is a subsequent reduction in the amount of the refund. In such cases the court must render a new cumulative judgment to reflect the reduction in credit.
- SECTION 16.** 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 and deletes existing text relating to requiring the court to render an order requiring that income be withheld from the disposable earnings of the obligor.
- SECTION 17.** Amends Section 157.269, Family Code, to clarify that the court retains continuing jurisdiction to enforce a support order, including adjusting the amount of periodic payments made by an obligor or the amounts withheld from income, until all current support and support arrearages, including interest and all applicable fees, have been paid.
- SECTION 18.** 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 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, when used by the Title IV-D agency, the federal form of lien notice requires no verification.

SECTION 19. Amends Section 157.317(a-1), Family Code, to clarify that a child support lien attaches to all property owned on or acquired by an obligor after the date the lien notice is filed with the appropriate county or court clerk or, with respect to property in the possession of a third party, delivered to that party.

SECTION 20. Amends Chapter 158, Family Code, to add Section 158.214, as follows:

(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 that would have been withheld under order or writ if the obligor were receiving usual earnings.

(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, Family Code.

SECTION 21. Amends Section 159.102(23), Family Code, to restore language inadvertently omitted from the definition of “Support order” when amendments to Chapter 159 (the Uniform Interstate Family Support Act - UIFSA) were made by the 78th Texas Legislature. States are required under federal law to adopt the Act verbatim.

SECTION 22. Amends Section 159.316, Family Code, to add Subsection (j) relating to evidence in interstate proceedings - in this instance, a voluntary acknowledgment of paternity - which was inadvertently omitted from amendments to UIFSA made by the 78th Texas Legislature and required by federal law.

SECTION 23. Amends Section 161.206, Family Code, to require specific findings in an order terminating parental rights that a request for identification of a court of continuing exclusive jurisdiction has been made and that all parties entitled to notice, including the Title IV-D agency, have been notified.

SECTION 24. Amends Section 201.104, Family Code, to restate the powers of an associate judge with regard to postjudgment relief, so that an associate judge may not grant postjudgment relief in a case under Rule 306a, 316, or 329, Texas Rules of Civil Procedure, that alters or otherwise affects any action taken by the referring court on the associate judge’s recommendation in that case.

SECTION 25. Amends Section 201.113, Family Code, to provide that Section 2252.901, Government Code, restricting contracts with former or retired agency employees does not apply to the appointment of a visiting associate judge under the section.

- SECTION 26.** Amends Section 201.208, Family Code, to provide that Section 2252.901, Government Code, restricting contracts with former or retired agency employees does not apply to the appointment of a visiting associate judge under the section.
- SECTION 27.** Amends Section 231.202, Family Code, to require the Title IV-D agency to pay appropriate costs and fees in Title IV-D cases under Chapter 159 (Uniform Interstate Family Support Act) and to pay fees for issuance of a subpoena as provided by Section 51.318(b)(1), Government Code.
- SECTION 28.** Amends Section 232.001 (1) - (3), Family Code, to clarify that, as defined in this section, a “license” includes, as a “registration” under the definition, a motor vehicle registration and that it encompasses any license subject to renewal, as well as to suspension by a licensing authority. Accordingly, the definition of “licensing authority” under this section is clarified to mean an authority (department, commission, board, office or other agency of the state or political subdivision) that issues or renews a license or has authority to suspend or deny the renewal of a license.
- SECTION 29.** Amends Section 232.002, Family Code, to delete a listing of licensing authorities subject to the chapter and to make all licensing authorities, unless otherwise exempted or restricted by law, subject to the chapter.
- SECTION 30.** Amends Chapter 232, Family Code, to add Section 232.0022, as follows:
- Section 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 and that the general registration provisions of Chapter 502, Transportation Code, do not apply to suspension or denial of renewal of registration under Chapter 232, Family Code.
- SECTION 31.** Amends Section 232.004(a), Family Code, to conform the section to Section 232.003(a), Family Code, with respect to the amount of arrearage owed by an obligor required for an action for license suspension so that it is an amount equal to or greater than the total support due for three months, rather than 90 days.
- SECTION 32.** Amends Sections 232.006(b) and (c), Family Code, as follows:
- (b) Provides that notice of license suspension may be delivered by first-class if the party has been ordered under Chapter 105 to provide the court and case registry with the party’s current mailing address;
- (c) Requires that the notice delivered to the obligor contain a prominently displayed statement in boldfaced type, capital letters, or underlined indicating that the action to suspend a license has been filed as provided by Chapter 232, Texas Family Code. Amends the notice to read “order of license suspension”, rather than “order suspending license,” to conform to the definition in Section 232.001(3).
- SECTION 33** Amends Chapter 233, 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

with information concerning an obligor who has failed to pay support for six or more months.

(b) Requires a licensing authority that receives the information described by Subsection (a) to refuse to accept an application for renewal of a license until the Title IV-D agency notifies the authority that the obligor has met certain conditions, including an agreement for repayment, or has successfully contested the Title IV-D agency's action.

(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) Provides specific procedures for a contest by the obligor of the Title IV-D agency's action, including informal resolution with the agency or, failing resolution with the agency, a court hearing on the agency's action.

(e) Authorizes the Title IV-D agency to file with the court a repayment agreement entered into by the obligor with the Title IV-D agency for confirmation by the court in the manner provided for agreed orders under Chapter 233, Family Code.

SECTION 34. Amends Section 232.014, Family Code, to permit a licensing authority to charge a fee to an individual who is subject to a Title IV-D agency action to deny renewal of a license, in addition to the already authorized fee in the case of license suspension, so that the authority may recover administrative costs in complying with the requirements of Chapter 232 in suspending or denying the renewal of a license. The amount charged may not exceed the actual costs incurred by the licensing authority.

SECTION 35. Amends Section 234.001(c), Family Code, to delete a reference to expired Section 234.003, Family Code.

SECTION 36.. Amends Section 234.006, Family Code, as follows:

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

SECTION 37. Amends Chapter 234, Family Code, to add Section 234.105, as follows:

Sec. 234.105. CIVIL PENALTY. (a) Provides civil money penalties for noncompliance by an employer with the requirements for new hire reporting, as permitted by Section 453a(d) of the federal Social Security Act (42 U.S.C. Section 653a(d)).

(b) Prohibits the amount of the civil penalty from exceeding a specific threshold set by federal law.

(c) Authorizes the attorney general to sue to collect a penalty imposed by the Title IV-D for a violation by an employer. Requires a penalty collected under this section to be deposited in a special fund in the state treasury.

SECTION 38. Amends Section 804.001, Government Code, by amending Subdivisions (1) and (2) to redefine "alternate payee" to include "child support obligee"

as an alternate payee under a domestic relations order and to provide a definition of “child support obligee.”

- SECTION 39.** Amends Section 207.093(a) and (d), Labor Code, to correct citations to the federal Social Security Act.
- SECTION 40.** Amends Section 501.002(9), Transportation Code, to include a child support lien in the definition of “lien” under that section.
- SECTION 41.** Repeals Section 201.104(e), Family Code, with respect to the authority of an associate judge to hear and render an order.
- SECTION 42.** Makes application of this Act prospective.
- SECTION 43** Effective date: September 1, 2005.

EFFECTIVE DATE

September 1, 2005

COMPARISON OF ORIGINAL TO SUBSTITUTE

C.S.H.B.1449 modifies the original H.B.1449 allowing the court to continue community supervision until the earlier of the expiration of an additional two-year period beyond the ten years or the date on which all child support, including arrearages and interest, has been paid. C.S.H.B.1449 also modifies H.B.1449 by permitting a licensing authority to charge a fee to an individual who is subject to a Title IV-D action to deny renewal of a license, so that the authority may recover administrative costs, but in an amount not to exceed the actual costs incurred by the authority. C.S.H.B.1449 further modifies H.B.1449 to amends provisions for alternate dispute resolution under Section 153.0071, Family Code: (1) to permit the parties in a case referred to mediation to agree to conduct one or more informal settlement conferences and to agree to having the conferences conducted with or without the presence of the parties’ attorneys, if any; and (2) to provide that a written settlement agreement reached at mediation or at an informal settlement conference is binding on the parties if the agreement meets the requirements of Section 153.0071(d). Finally, C.S.H.B.1449 modifies H.B.1449 by specifically amending Sections 201.113 and 201.208, Family Code, to provide that Section 2252.901, Government Code, restricting contracts with former or retired agency employees, does not apply to the appointment of a visiting associate judge under these sections of the Family Code. C.S.H.B.1449 accordingly modifies H.B.1449 by striking the provision of H.B.1449 that amended Section 2252.901, Government Code, to provide an exemption for the appointment of visiting judges under Chapter 201, Family Code.