

BILL ANALYSIS

C.S.H.B. 3136

By: Castro

Juvenile Justice & Family Issues
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Currently, when an individual has child support arrearages, a claimant at any moment may enforce a lien or a levy on the obligors property or financial assets. If an individual who has made a commitment with the court to make these payments falls behind on their child support, the state can still place a lien or a levy on the obligor for all arrearages, including interest, at any time.

House Bill 3136 allows an obligor of child support arrearages to set up a payment schedule with the court. If the obligor maintains their commitment to make payments on the judgment and child support, the state and IV-D agency may not issue a lien on the obligor's property or financial assets, unless they are more than 31 days late on their payment.

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 157.312 of the Family Code by amending Subsection (d) and adding Subsection (h) to provide that a child support lien does not arise by operation of law against assets or funds owned by, or owed to, an obligor and in the possession of, or controlled by, a financial institution if a judgment for retroactive child support or a judgment or administrative determination of child support arrearages has been rendered and the obligor is fully complying with the terms of a payment schedule ordered by the court or agreed to by the Title IV-D agency. If the obligor becomes at least 31 days delinquent in payment of support under the payment schedule, a child support lien arises by operation of law against the assets or funds owned by, or owed to, the obligor in the possession of, or controlled by, the financial institution, and a claimant may file a child support lien notice under Section 157.314 or proceed with execution and levy on those assets under Section 157.327.

SECTION 2. Amends Section 157.327(a) of the Family Code to provide that except as provided by Section 157.312(h), but notwithstanding any other provision of law, if a judgment or administrative determination of arrearages has been rendered, a claimant may deliver a notice of levy to any financial institution possessing or controlling assets or funds owned by, or owed to, an obligor and subject to a child support lien, including a lien for child support arising in another state.

SECTION 3. The change in law made by this Act applies only to the issuance of a lien or delivery of a notice of levy to enforce child support arrearages or a judgment for retroactive support on or after the effective date of this Act.

SECTION 4. This Act takes effect September 1, 2005.

EFFECTIVE DATE

September 1, 2005

COMPARISON OF ORIGINAL TO SUBSTITUTE

C.S.H.B.3136 modifies the original H.B.3136 by avoiding any conflict with federal law mandating that states have laws under which a lien arises by operation of law against all real and personal property of an obligor for past-due child support.

The proposed committee substitute seeks to preserve the basic intent of the original bill in providing that a lien for child support will not arise by operation of law if an obligor is complying with a payment schedule in paying support arrearages.

The difference between the original bill and the proposed committee substitute is the extent to which property of an obligor would not be subject to a child support lien by operation of law if the obligor is complying with a payment schedule. The original bill covers all property of an obligor, while the proposed substitute applies only to an obligor's assets in a financial institution.

Specifically, the proposed committee substitute would prevent a lien and/or levy on an obligor's assets held by a financial institution if the obligor is complying with a payment schedule ordered by the court or agreed to by the Title IV-D agency where there is a judgment for retroactive support or a judgment for, or administrative determination of, arrearages. If the obligor becomes 31 or more days delinquent in paying support under the payment schedule, then a lien arises against the assets of the obligor in a financial institution and levy on those assets may proceed.