

BILL ANALYSIS

C.S.S.B. 228

By: Harris
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 and medical support obligations for a child in suits affecting the child-parent relationship. Child and medical support obligations may be enforced through the use of various remedies prescribed by the Family Code, including income withholding, the assertion of liens for past-due support, and the suspension of licenses of delinquent obligors for the purpose of forcing compliance with a child support order. The Family Code also provides certain administrative processes for the Title IV-D agency, which is administered by the Texas attorney general in compliance with federal mandates as a condition for state's receipt of federal funds for its child support enforcement and welfare programs.

The Family Code has been repeatedly amended with regard to the establishment and enforcement of child support obligations to reflect new federal mandates, case law, current practice, and the need for clarification of provisions and enhance procedures provided by law.

As proposed, C.S.S.B. 228 makes technical corrections to and clarifications in certain provisions of the Family Code relating to the establishment and enforcement of child support obligations, as well as to related provisions in the Government Code, Transportation Code, and Labor Code. In addition, this bill 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 license renewal under Chapter 232 (Suspension of License), Family Code. This bill also provides an administrative, civil 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 in SECTION 30 (Sec. 234.006, Family Code) of this bill.

ANALYSIS

SECTION 1. Amends Chapter 101, Family Code, by adding Section 101.0255, to define "record."

SECTION 2. Amends Section 102.009(d), Family Code, as follows:

(d) Adds termination of a support right assigned to the Title IV-D agency to the requirements for which notice shall be given to the Title IV-D agency.

SECTION 3. Amends Section 151.001(b), Family Code, as follows:

(b) Specifies that a parent's duty to support his or her child exists while the child is an unemancipated minor and is fully enrolled in a secondary school leading toward a high school diploma, rather than an accredited secondary school. Places an additional requirement that the child be in compliance with the attendance requirements described by Section 154.002(a)(2). Deletes existing text establishing the end of the parent's support duty at the end of the school year in which the child graduates.

SECTION 4. Amends Section 155.301(c), Family Code, to require the court to sign an order for transfer of continuing, exclusive, jurisdiction if the parties submit an agreed order to the court. Makes a conforming change.

SECTION 5. Amends Section 156.401(b), Family Code, to specify that a support order may be modified with regard to the amount of support ordered as to obligations accruing after the earlier of specified dates.

SECTION 6. Amends Section 156.409, Family Code, by amending Subsection (a) and adding Subsections (a-1)-(a-3), as follows:

(a) Deletes existing text relating to a conservator of a child who voluntarily relinquishes primary care and possession of the child to another person. Requires the court to modify a child support order to provide that the person with possession of the child, including a conservator or governmental entity, has the right to receive and give receipt for child support payments and hold or disburse money for the benefit of the child, in certain circumstances. Sets forth the circumstances under which the aforementioned provision applies.

(a-1) Requires the court to order the obligor to pay the child's legal custodian certain unpaid child support if the court modifies a support order under this section.

(a-2) Specifies that the court's ability to render a temporary order for payment of child support in the best interest of the child is not affected.

(a-3) Requires that a support order modified under this section due to the incarceration of the sole or joint managing conservator of a child must provide an affidavit to the court stating, if appropriate, that there has not been a modification to the conservatorship and that physical possession of the child has been resumed. Copies shall be delivered to the obligor and any other party, including the Title IV-D agency, if appropriate. Upon receipt of the affidavit, the court shall order the obligor to make support payments to the conservator.

SECTION 7. Amends Section 157.005(a), Family Code, to change the timeframe by which a motion for enforcement must be filed from six months after to the second anniversary of a certain date.

SECTION 8. Amends Section 157.065(a), Family Code, to specify that a notice of a hearing on a motion for enforcement, rather than notice of a motion for enforcement, may be served in the manner described in this subsection.

SECTION 9. Amends Sections 157.105(a) and (c), Family Code, as follows:

(a) Specifies that a respondent who is taken into custody and not released on bond must be brought before the court on or before the third, rather than the first, working day after the arrest date.

(c) Increases from five to seven the number of days after the respondent's arrest that the court has in which to hold a hearing, unless otherwise waived by the party.

SECTION 10. Amends Section 157.211, Family Code, as follows:

Sec. 157.211. CONDITIONS OF COMMUNITY SUPERVISION. Removes the stipulation that the court suspends commitment for this section to apply.

SECTION 11. Amends Section 157.212, Family Code, as follows:

Sec. 157.212. TERM OF COMMUNITY SUPERVISION. Specifies that the initial period of community supervision is not to exceed 10 years. Authorizes the

court to continue the community supervision beyond 10 years until the earlier of specified dates.

SECTION 12. Amends Sections 157.216(a) and (b), Family Code, as follows:

(a) Increases the number of days in which the court must hold a hearing to no later than the third working day after the respondent's arrest date, unless otherwise unavailable, then the hearing must take place no later than the third day working day after the court becomes available.

(b) Requires the aforementioned hearing to be held no later than the seventh, rather than third, working day after the respondent's arrest.

SECTION 13. Amends Section 157.263(c), Family Code, as follows:

(c) Requires the court to render a new cumulative judgment if the amount of the child support tax credit to the obligor is reduced because the tax refund was amended, audited by the I.R.S., adjusted because of an injured spouse claim by a jointly filing spouse, or for another reason permitted by law. Deletes existing text relating to a refund based on a joint return under 42 U.S.C. Section 664, as amended.

SECTION 14. Amends Section 157.264(b), Family Code, as follows:

(b) Requires, rather than authorizes, the court to render an order requiring the obligor make payments on the judgment, including by income withholding under Chapter 158, if the obligor is subject thereto. Deletes existing text relating to withholding of earnings of an obligor.

SECTION 15. Amends Section 157.269, Family Code, as follows:

Sec. 157.269. RETENTION OF JURISDICTION. Specifies that a court rendering a decision for the payment of child support retains continuing jurisdiction to enforce the order. Provides methods by which a court may enforce the order.

SECTION 16. Amends Sections 157.313(a), (c), and (e), Family code, as follows:

(a) Provides an additional content requirement for a child support lien notice to include any property acquired after the filing or delivery date of the notice.

(c) Provides an exception under Subsection (e).

(e) Specifies that the federal form of lien notice does not require verification when used by the Title IV-D agency.

SECTION 17. Amends Section 157.317(a-1), Family Code, to specify that a lien attaches to all property owned or acquired on or after submission date thereof.

SECTION 18. Amends Subchapter C, Chapter 158, Family Code, by adding Section 158.214, as follows:

Sec. 158.214. WITHHOLDING FROM SEVERANCE PAY. Defines "severance pay." Requires an employer who receives a writ of withholding under this chapter to withhold from any severance pay an amount equal to what the obligor would have paid if the severance pay had been paid as the obligor's usual earnings as a current employee, but not in an amount that exceeds the maximum amount allowed under Section 158.009.

SECTION 19. Amends Section 159.102(23), Family Code, to redefine "support order."

SECTION 20. Amends Section 161.206, Family Code, by adding Subsection (d), to set forth the contents required to be included in an order rendered under this section.

SECTION 21. Amends Section 231.202, Family Code, as follows:

Sec. 231.202. AUTHORIZED COSTS AND FEES IN TITLE IV-D CASES. Specifies that this section applies to cases filed under Chapter 159. Requires the Title IV-D agency to pay the subpoena issuance fee, as provided by Section 51.318(b)(1), Government Code, for a case filed under this title.

SECTION 22. Amends Sections 232.001(1)-(3), Family Code, to redefine "license," "licensing authority," and "order suspending license."

SECTION 23. Amends Section 232.002, Family Code, as follows:

Sec. 232.002. LICENSING AUTHORITIES SUBJECT TO CHAPTER. Specifies that all licensing authorities, unless otherwise exempted, are subject to this chapter. Deletes existing text specifying the particular licensing authorities that are subject to this chapter.

SECTION 24. Amends Chapter 232, Family Code, by adding Section 232.0022, as follows:

Sec. 232.0022. SUSPENSION OF MOTOR VEHICLE REGISTRATION. Specifies that the Texas Department of Transportation is the appropriate licensing authority for the suspension of motor vehicle registration under this chapter. Provides that the general registration provisions of Chapter 502 (Registration of Vehicles), Transportation Code, do not apply to the suspension or denial of registration renewal.

SECTION 25. Amends Section 232.004(a), Family Code, to authorize a child support agency or obligee to file a petition to suspend an obligor's license if the arrearage is an amount greater than or equal to the total support to be paid for three months, rather than 90 days.

SECTION 26. Amends Sections 232.006(b) and (c), Family Code, as follows:

(b) Authorizes a notice under this section to be served in a specified manner if the party has been ordered under Chapter 105 (Settings, Hearings, and Orders), Family Code, to provide the court and registry with its current mailing address.

(c) Amends the language to be included in the notice under this section.

SECTION 27. Amends Chapter 232, Family Code, by adding Section 232.0135, as follows:

Sec. 232.0135. DENIAL OF LICENSE RENEWAL. Defines "child support agency" and licensing authority". Authorizes a child support agency to provide to a licensing authority a notice of an obligor's failure to pay child support for six months or more and that requests the authority to deny an obligor's application for license renewal. Requires the licensing authority that receives the aforementioned information to deny license renewal to the obligor until a specified action has been taken. Requires the licensing authority to send a copy of the notice to the obligor, informing the obligor of the available courses of action. Sets forth specific procedural requirements for a review by a child support agency, if requested by the obligor. Authorizes a child support agency to incorporate an obligor's repayment agreement in an order to be filed with and confirmed by the court in the manner provided under Chapter 233. Excludes the State Securities Board from the definition of "licensing authority."

SECTION 28. Amends Section 232.014, Family Code, as follows:

Sec. 232.014. FEE BY LICENSING AUTHORITY. (a) Creates this subsection from existing text. Adds the denial of license renewal by a child support agency to the cases for which a licensing authority is authorized to charge a fee.

(b) Specifies that fees collected by the Texas Department of Transportation or the Department of Public Safety are to be credited to the state highway fund.

SECTION 29. Amends Section 234.001(c), Family Code, as follows:

(c) Makes a nonsubstantive change. Deletes existing text relating to the requirement that the Title IV-D agency make a local registry available with the assistance of the work group established under Section 234.003.

SECTION 30. Amends Section 234.006, Family Code, as follows:

Sec. 234.006. New heading: RULEMAKING. Makes a conforming change.

SECTION 31. Amends Subchapter B, Chapter 234, Family Code, by adding Section 234.105, as follows:

Sec. 234.105. CIVIL PENALTY. Provides a civil penalty for an employer who knowingly violates a procedure under Section 234.104. Establishes the maximum penalty for a violation thereof. Authorizes the attorney general to sue to collect the penalty and requires the penalty to be deposited in a special fund of the state treasury.

SECTION 32. Amends Sections 207.093(a) and (d), Labor Code, as follows:

(a) Changes the section of the Social Security Act to which this section applies from Section 454(20)(i) to Section 454(19)(B)(i) of the Social Security Act.

(d) Redefines "legal process."

SECTION 33. Amends Section 501.002(9), Transportation Code, to redefine "lien."

SECTION 34. Makes application of this Act prospective.

SECTION 35. Effective date: September 1, 2007.

EFFECTIVE DATE

September 1, 2007.

COMPARISON OF ORIGINAL TO SUBSTITUTE

C.S.S.B.228 modifies the original S.B.228 by amending Section 156.409, to add a new (a-3), page 3, following line 27. The proposed amendment would provide that a sole or joint managing conservator who has lost physical possession of a child because of incarceration and who has thus lost direct payment of child support may file an affidavit with the court upon release and upon taking physical possession of the child so that the court may order support to be directed back to the released conservator. This change is intended to provide a procedure for the redirection of support to a released conservator, if during the term of incarceration there has not been a court-ordered change in conservatorship.

Amends to SECTION 10 of the bill by striking subsection 8. This would eliminate the confinement option.

Amends to SECTIONS 27 and 28 of the bill, by striking these sections and substituting identically numbered sections, which substitutes "child support agency" for "Title IV-D agency" with respect to amendments to Chapter 232, Family Code, that provide the Title IV-D agency authority to take action to deny the renewal of a license of a child support obligor who has failed

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to pay support for six months or more. “Child support agency,” as defined by Section 101.004, Family Code, includes, along with the Title IV-D agency, a domestic relations office or a county or district attorney or other county officer or county agency that has a cooperative agreement with the Title IV-D agency for the enforcement of child support. This change - “child support agency” - would enable other appropriate persons to take action to deny renewal of a license for failure to pay child support for six or more months.