

BILL ANALYSIS

C.S.S.B. 232
By: Harris
Judiciary
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The Texas Family Code currently authorizes the Title IV-D agency to "take any action with respect to execution, collection, and release of a judgment or lien for child support necessary to satisfy the judgment or lien." However, the Family Code does not provide a specific administrative procedure authorizing the Title IV-D agency to secure assets of an obligor in the form of the obligor's benefits under a retirement plan for the purpose of paying support owed to the obligee. Such a change may give the Title IV-D agency another option in enforcing child support orders.

The bill provides an administrative procedure for rendering a domestic relations order that is qualified for the purpose of securing an obligor's retirement benefits and applying those benefits to the child support obligation.

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 Subtitle D, Title 5, Family Code, by adding Chapter 237, as follows:

CHAPTER 237. ADMINISTRATIVE DOMESTIC RELATIONS ORDER

Sec. 237.001. RENDITION OF ADMINISTRATIVE DOMESTIC RELATIONS ORDER. (a) Authorizes the director of the Title IV-D agency (agency) or an assistant attorney general designated by the director to render an administrative domestic relations order (order) to be delivered to a retirement plan subject to certain federal or state law to enforce a child support order against an obligor who has or will have vested retirement benefits under the plan.

(b) Authorizes the agency to render an order under this chapter until all current child support and arrearages owed by the obligor, including money due for medical support, have been paid.

(c) Requires an order under this chapter to be signed by the agency director or the director's designee, is required to include a statement that the assignment of benefits under the order is effective on the date the order is received by the retirement plan but that the retirement plan shall delay any distribution to the alternate payee (obligee) until the first regularly scheduled distribution that occurs at least 30 days after that date in order to permit the obligor an opportunity to contest the order under Section 237.006, Family Code.

Sec. 237.002. EFFECT OF DOMESTIC RELATIONS ORDER BY COURT. (a) Prohibits the agency from rendering an order under this chapter for a suit affecting the parent-child relationship in which a judge or an associate judge of a certain court renders a domestic relations order in the suit with respect to a retirement plan in which a child support obligor has or will have vested retirement benefits, and the court's order provides for the enforcement of the obligor's child support obligation.

(b) Provides that an order rendered by the agency before the court's order remains in effect to the extent that the provision of that order are not superseded by the court's order.

(c) Authorizes the agency to render a domestic relations order reflecting that child support arrearages have been paid in full, notwithstanding Subsection (a).

Sec. 237.003. PLAN DISTRIBUTIONS AS TAXABLE INCOME. (a) Requires that an order rendered under this chapter provide that all plan distributions from tax-deferred benefits for the payment of child support are required to be reported by the plan as income of the plan participant for federal income tax purposes.

(b) Authorizes the agency to file a motion in the court of continuing jurisdiction to have the payment credit for plan distributions for which the obligee incurs a tax liability reduced by the amount of the obligee's marginal tax rate, if a plan administrator refuses to accept the order as qualified because of the provision required by Subsection (a). Requires the court, after notice and hearing under Chapter 157 (Enforcement), Family Code, to grant the agency's motion on sufficient proof of the obligee's marginal tax rate.

Sec. 237.004. FILING ADMINISTRATIVE DOMESTIC RELATIONS ORDER. Requires the agency to file a copy of an order with the appropriate court of continuing jurisdiction not later than the third business day after the date the order was sent to the retirement plan.

Sec. 237.005. NOTICE OF ORDER. (a) Requires the agency to send to the obligor, obligee, and other parties notice that an order has been rendered and transmitted to the retirement plan together with a statement of the procedures by which the order may be contested with regard to the identity of the obligor or arrearages, and a copy of the order, not later than the 12th business day after the date the order is sent to the plan.

(b) Authorizes the required notice under this section to be delivered to a party by certain methods.

Sec. 237.006. CONTEST OF ADMINISTRATIVE DOMESTIC RELATIONS ORDER. (a) Authorizes a party who receives a notice as specified in this Act to request a review by the agency to resolve any issue in dispute regarding the identity of the obligor or the existence or amount of child support obligation or arrearages.

(b) Requires the agency to promptly provide an opportunity for the review either by telephone conference or in person as appropriate to the circumstances. Requires the agency to render a temporary order directing the plan to delay distribution to the alternate payee until receiving further order from the agency in the event that the agency receives a request for review under this section not later than the 15th day after the date the agency sent notice under Section 237.005 to the party requesting the review and the agency is unable to complete the review within 24 days after the date the agency sent the order to the retirement plan.

(c) Authorizes the agency to render a new order that modifies or terminates the previous order after said review.

(d) Authorizes a party to file a motion with the court under Chapter 157, Family Code, to withdraw or modify the administrative domestic relations order or to replace the order with an alternative payment arrangement. Authorizes the court, in determining whether to withdraw, modify, or replace the agency's order, to consider the subsistence needs of the obligor and the obligor's family against the right of the obligee to have arrearages paid as quickly as possible.

SECTION 2. Amends Section 9.101(a), Family Code, to authorize a court with the jurisdiction under Title 5 (The Parent-Child Relationship and the Suit Affecting the Parent-Child

Relationship), Family Code, to render an enforceable qualified order to enforce support for a child.

SECTION 3. Amends Section 201.104(e), Family Code, to authorize an associate judge to render qualified domestic relations orders for child support.

SECTION 4. Amends Section 231.002(e), Family Code, to make a conforming change.

SECTION 5. Amends Section 804.003(b), Government Code, to provide that the administrative head of a public retirement system or his designee has exclusive authority to determine whether a domestic relations order or an administrative domestic relations order rendered by the agency under Chapter 237, Family Code, is a qualified order, except as provided in Subsection (d).

EFFECTIVE DATE

September 1, 2007

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute adds text to Section 1 of the bill, not in the original, to add a provision permitting delivery of a required notice under Section 237.005, Family Code, by first class mail to the party's address on file with the state case registry and to the party's last known address, if different.