

BILL ANALYSIS

Senate Research Center
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S.B. 232
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Jurisprudence
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

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.

As proposed, S.B. 232 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

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION 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 Title IV-D agency (agency) 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) Provides that an order under this chapter is required 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 31st day after that date, and is considered to be a qualified domestic relations order if it complies with the requirements of certain state or federal laws, as applicable.

(d) Requires a plan administrator to accept an order rendered under this section and authorizes the order to be determined to be unqualified only if the plan administrator specifies in writing to the agency the reasons the order fails to meet a qualification requirement under federal or state law, as applicable.

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, notice of the procedure 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. Requires the agency to provide an opportunity for the review either by telephone conference or in person as appropriate to the circumstances.

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

(c) Authorizes a party to file with the court, not later than the 30th day after the date of receiving notice of the Title IV-D agency's determination, if a review under this section fails to resolve any issue in dispute, a motion 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 804.001, Government Code, to define "child support obligee," "obligor," and "Title IV-D agency," and to redefine "alternate payee" and "domestic relations order."

SECTION 6. Amends Section 804.003, Government Code, by amending Subsections (b) and (d) and by adding Subsections (p) and (q), as follows:

(b) Provides that the administrative head of a public retirement system or his designee has exclusive authority to determine whether an order is a qualified order, except as provided in Subsections (d) and (p).

(d) Requires applicable carriers under the optional retirement program to determine whether an order is a qualified order, except as provided by Subsection (p).

(p) Provides that an order issued by the agency under Chapter 237, Family Code, is considered to be a qualified order if it complies with the requirements of Subsection (f).

(q) Provides that, for federal tax purposes, benefits paid to an obligee as an alternate payee are considered benefits payable to the child and are required to be reported under Section 402(a), Internal Revenue Code of 1986, as taxable income of the member or retiree who is the obligor.

SECTION 7. Amends Subchapter A, Chapter 804, Government Code, by adding Section 804.006, as follows:

Sec. 804.006. ADMINISTRATIVE DOMESTIC RELATIONS ORDER. (a) Provides that an order issued by the agency under Chapter 237 (Administrative Domestic Relations Order), Family Code, and received by a public retirement system, is considered to be a qualified order as provided by Section 804.003(p), Government Code.

(b) Provides that an obligee named in an order is to be considered an alternate payee.

(c) Requires the public retirement system to remit payments as specified by the order.

SECTION 8. Amends Section 815.503, Government Code, by amending Subsection (b) and adding Subsection (e), as follows:

(b) Authorizes the retirement system to release certain records to the attorney general for the purpose of enforcing a child support obligation.

(e) Provides that this section does not prevent disclosure or confirmation on an individual basis of the status or identity of a participant as a member, retiree, deceased member or retiree, beneficiary, or alternate payee of the retirement system.

SECTION 9. Amends Section 845.115(a), Government Code, to make a conforming change.

SECTION 10. Amends Section 855.115(a), Government Code, to make a conforming change.

SECTION 11. Amends Section 32(a), Texas Local Fire Fighters Retirement Act (Article 6243e, V.T.C.S.) to provide that certain information retained by the retirement system is confidential for the purposes of Section 552.101 (Exception: Confidential Information), Government Code, rather than statutes related to the protection of information deemed confidential under Section

3(a)(1), Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, V.T.C.S.). Makes a conforming change.

SECTION 12. Amends Section 17(a), Article 6243e.2(1), Revised Statutes, to authorize the disclosure of certain information in custody of the retirement board or system concerning certain individuals to the attorney general for the purpose of enforcing a child support obligation.

SECTION 13. Amends Section 29(a), Article 6243g-4, Revised Statutes, to make conforming changes.

SECTION 14. Amends Section 26(a), Chapter 88, Acts of the 77th Legislature, Regular Session, 2001 (Article 6243h, V.T.C.S.), to authorize the disclosure of certain information in custody of the retirement board or system concerning certain individuals to the attorney general for the purpose of enforcing a child support obligation.

SECTION 15. Amends Section 13(a), Chapter 451, Acts of the 72nd Legislature, Regular Session, 1991 (Article 6243n, V.T.C.S.), to authorize the disclosure of certain information in custody of the retirement board or system concerning certain individuals to the attorney general for the purpose of enforcing a child support obligation.

SECTION 16. Makes application of this Act prospective.

SECTION 17. Effective date: September 1, 2007.