

By: Harris

S.B. No. 232

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the rendition and issuance of an administrative
3 qualified domestic relations order to enforce child support
4 obligations.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Subtitle D, Title 5, Family Code, is amended by
7 adding Chapter 237 to read as follows:

8 CHAPTER 237. ADMINISTRATIVE DOMESTIC RELATIONS ORDER

9 Sec. 237.001. RENDITION OF ADMINISTRATIVE DOMESTIC
10 RELATIONS ORDER. (a) The director of the Title IV-D agency or an
11 assistant attorney general designated by the director may render an
12 administrative domestic relations order to be delivered to a
13 retirement plan subject to the federal Employee Retirement Income
14 Security Act of 1974 (29 U.S.C. Section 1001 et seq.) or the law of
15 this state to enforce a child support obligation against an obligor
16 who has or will have vested retirement benefits under the plan.

17 (b) The Title IV-D agency may render an administrative
18 domestic relations order under this chapter until all current child
19 support and arrearages owed by the obligor, including money due for
20 medical support, have been paid.

21 (c) A domestic relations order under this chapter must:

22 (1) be signed by the director of the Title IV-D agency
23 or the director's designee; and

24 (2) include a statement that the assignment of

1 benefits under the order is effective on the date the order is
2 received by the retirement plan but that the retirement plan shall
3 delay any distribution to the alternate payee until the first
4 regularly scheduled distribution that occurs at least 30 days after
5 that date in order to permit the obligor an opportunity to contest
6 the order under Section 237.006.

7 Sec. 237.002. EFFECT OF DOMESTIC RELATIONS ORDER BY COURT.

8 (a) The Title IV-D agency may not render a domestic relations
9 order under this chapter for a suit affecting the parent-child
10 relationship in which:

11 (1) a judge or an associate judge of a court of
12 continuing jurisdiction renders a domestic relations order in the
13 suit with respect to a retirement plan in which a child support
14 obligor has or will have vested retirement benefits; and

15 (2) the court's order provides for the enforcement of
16 the obligor's child support obligation.

17 (b) A domestic relations order rendered by the Title IV-D
18 agency before the court's order remains in effect to the extent that
19 the provisions of the order under this chapter are not superseded by
20 the court's order.

21 (c) Notwithstanding Subsection (a), the Title IV-D agency
22 may render a domestic relations order reflecting that child support
23 arrearages have been paid in full.

24 Sec. 237.003. PLAN DISTRIBUTIONS AS TAXABLE INCOME. (a) A
25 domestic relations order rendered under this chapter must provide
26 that all plan distributions from tax-deferred benefits for the
27 payment of child support shall be reported by the plan as income of

1 the plan participant for federal income tax purposes.

2 (b) If a plan administrator refuses to accept the domestic
3 relations order as qualified because of the provision required by
4 Subsection (a), the Title IV-D agency may file a motion in the court
5 of continuing jurisdiction to have the payment credit for plan
6 distributions for which the obligee incurs a tax liability reduced
7 by the amount of the obligee's marginal tax rate. After notice and
8 hearing under Chapter 157, the court shall grant the agency's
9 motion on sufficient proof of the obligee's marginal tax rate.

10 Sec. 237.004. FILING ADMINISTRATIVE DOMESTIC RELATIONS
11 ORDER. The Title IV-D agency shall file a copy of an administrative
12 domestic relations order with the court of continuing jurisdiction
13 not later than the third business day after the date the order is
14 sent to the retirement plan.

15 Sec. 237.005. NOTICE OF ORDER. (a) Not later than the 12th
16 business day after the date the administrative domestic relations
17 order is sent to the retirement plan, the Title IV-D agency shall
18 send to the obligor, the obligee, and any other party:

19 (1) notice that a domestic relations order has been
20 rendered by the agency and transmitted to the retirement plan
21 together with a statement of the procedures by which a party may
22 contest the order with regard to the identity of the obligor or the
23 existence or amount of a current child support obligation or
24 arrearages; and

25 (2) a copy of the order.

26 (b) The notice required under this section may be delivered
27 to a party by:

1 (1) personal delivery by a person designated by the
2 Title IV-D agency; or

3 (2) service of citation as in civil cases generally.

4 Sec. 237.006. CONTEST OF ADMINISTRATIVE DOMESTIC RELATIONS
5 ORDER. (a) A party who receives a notice under Section 237.005 may
6 request a review by the Title IV-D agency to resolve any issue in
7 dispute regarding the identity of the obligor or the existence or
8 amount of a current child support obligation or arrearages.

9 (b) The Title IV-D agency shall promptly provide an
10 opportunity for a review either by a telephone conference or in
11 person as appropriate to the circumstances. If the agency receives
12 a request for review under this section not later than the 15th day
13 after the date the agency sent notice under Section 237.005 to the
14 party requesting the review, and the agency is not able to complete
15 the review within 24 days after the date the agency sent the order
16 to the retirement plan, the agency shall render a temporary order
17 directing the plan to delay distribution to the alternate payee
18 until receiving further order from the agency.

19 (c) After a review under this section, the Title IV-D agency
20 may render a new administrative domestic relations order that
21 modifies or terminates the previous order.

22 (d) If a review under this section fails to resolve any
23 issue in dispute, the party may file with the court a motion under
24 Chapter 157 to withdraw or modify the administrative domestic
25 relations order or to replace the order with an alternative payment
26 arrangement. In determining whether to withdraw, modify, or
27 replace the agency's order, the court may consider the subsistence

1 needs of the obligor and the obligor's family against the right of
2 the obligee to have child support arrearages paid as quickly as
3 possible.

4 SECTION 2. Subsection (a), Section 9.101, Family Code, is
5 amended to read as follows:

6 (a) Notwithstanding any other provision of this chapter,
7 the court that rendered a final decree of divorce or annulment or
8 another final order dividing property under this title retains
9 continuing, exclusive jurisdiction to render an enforceable
10 qualified domestic relations order or similar order permitting
11 payment of pension, retirement plan, or other employee benefits
12 divisible under the law of this state or of the United States to an
13 alternate payee or other lawful payee, except that a court with
14 jurisdiction under Title 5 may render an enforceable qualified
15 domestic relations order to enforce support for a child.

16 SECTION 3. Subsection (e), Section 201.104, Family Code, is
17 amended to read as follows:

18 (e) Notwithstanding Subsection (d) and subject to Section
19 201.1042(g), an associate judge may hear and render an order on:

20 (1) a suit to modify or clarify an existing child
21 support order;

22 (2) a motion to enforce a child support order,
23 including a motion for the rendition of a qualified domestic
24 relations order for child support, or revoke a respondent's
25 community supervision and suspension of commitment; or

26 (3) a respondent's compliance with the conditions
27 provided in the associate judge's report for suspension of the

1 respondent's commitment.

2 SECTION 4. Subsection (e), Section 231.002, Family Code, is
3 amended to read as follows:

4 (e) The Title IV-D agency may take the following
5 administrative actions with respect to the location of a parent,
6 the determination of parentage, and the establishment,
7 modification, and enforcement of child support and medical support
8 orders required by 42 U.S.C. Section 666(c), without obtaining an
9 order from any other judicial or administrative tribunal:

10 (1) issue an administrative subpoena, as provided by
11 Section 231.303, to obtain financial or other information;

12 (2) order genetic testing for parentage
13 determination, as provided by Chapter 233;

14 (3) order income withholding, as provided by Chapter
15 233, and issue an administrative writ of withholding, as provided
16 by Chapter 158; ~~and~~

17 (4) take any action with respect to execution,
18 collection, and release of a judgment or lien for child support
19 necessary to satisfy the judgment or lien, as provided by Chapter
20 157; and

21 (5) render an administrative domestic relations order
22 under Chapter 237.

23 SECTION 5. Subsection (b), Section 804.003, Government
24 Code, is amended to read as follows:

25 (b) Except as provided in Subsection (d), the
26 administrative head of a public retirement system to which this
27 chapter applies and to which a domestic relations order is

1 submitted or his designee has exclusive authority to determine
2 whether a domestic relations order, or an administrative domestic
3 relations order rendered by the Title IV-D agency under Chapter
4 237, Family Code, is a qualified domestic relations order. A
5 determination by the administrative head or his designee under this
6 section may be appealed only to the board of trustees of the public
7 retirement system. An appeal to the board of trustees of a
8 statewide retirement system is a contested case under Chapter 2001.
9 However, the board of a statewide retirement system by rule may
10 waive the requirement of an appeal to the board. On appeal of a
11 decision made by the board of trustees or by the administrative head
12 if there is no appeal to the board under this section, the standard
13 of review is by substantial evidence.

14 SECTION 6. This Act takes effect September 1, 2007.