

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the rendition and issuance of a qualified domestic
3 relations order, including an administrative qualified domestic
4 relations order by the Title IV-D agency, to enforce child support
5 obligations and to the designation of a child support obligee as an
6 alternate payee under a qualified domestic relations order.

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

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

10 CHAPTER 237. ADMINISTRATIVE DOMESTIC RELATIONS ORDER

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

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

22 (c) A domestic relations order under this chapter:

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

1 (2) must include a statement that the assignment of
2 benefits under the order is effective on the date the order is
3 received by the retirement plan but that the retirement plan shall
4 delay any distribution to the alternate payee until the 31st day
5 after that date; and

6 (3) is considered to be a qualified domestic relations
7 order if it complies with the requirements of Section 804.003(f),
8 Government Code, or Section 206(d) of the federal Employee
9 Retirement Income Security Act of 1974 (29 U.S.C. Section 1056(d)),
10 as applicable.

11 (d) A plan administrator shall accept a domestic relations
12 order rendered under this section and the order may be determined to
13 be unqualified only if the plan administrator specifies in writing
14 to the Title IV-D agency the reasons the order fails to meet a
15 qualification requirement under federal law or the law of this
16 state, as applicable.

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

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

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

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

27 (b) A domestic relations order rendered by the Title IV-D

1 agency before the court's order remains in effect to the extent that
2 the provisions of the order under this chapter are not superseded by
3 the court's order.

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

7 Sec. 237.003. PLAN DISTRIBUTIONS AS TAXABLE INCOME. (a) A
8 domestic relations order rendered under this chapter must provide
9 that all plan distributions from tax-deferred benefits for the
10 payment of child support shall be reported by the plan as income of
11 the plan participant for federal income tax purposes.

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

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

25 Sec. 237.005. NOTICE OF ORDER. (a) Not later than the 12th
26 business day after the date the administrative domestic relations
27 order is sent to the retirement plan, the Title IV-D agency shall

1 send to the obligor, the obligee, and any other party:

2 (1) notice that a domestic relations order has been
3 rendered by the agency and transmitted to the retirement plan;

4 (2) notice of the procedures by which a party may
5 contest the order with regard to the identity of the obligor or the
6 existence or amount of a current child support obligation or
7 arrearages; and

8 (3) a copy of the order.

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

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

13 (2) first class mail to the party's address on file
14 with the state case registry and to the party's last known address,
15 if different; or

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

17 Sec. 237.006. CONTEST OF ADMINISTRATIVE DOMESTIC RELATIONS
18 ORDER. (a) A party who receives a notice under Section 237.005 may
19 request a review by the Title IV-D agency to resolve any issue in
20 dispute regarding the identity of the obligor or the existence or
21 amount of a current child support obligation or arrearages. The
22 agency shall provide an opportunity for a review either by a
23 telephone conference or in person as appropriate to the
24 circumstances.

25 (b) After a review under this section, the Title IV-D agency
26 may render a new administrative domestic relations order that
27 modifies or terminates the previous order.

1 (c) If a review under this section fails to resolve any
2 issue in dispute, the party may file with the court, not later than
3 the 30th day after the date of receiving notice of the Title IV-D
4 agency's determination, a motion under Chapter 157 to withdraw or
5 modify the administrative domestic relations order or to replace
6 the order with an alternative payment arrangement. In determining
7 whether to withdraw, modify, or replace the agency's order, the
8 court may consider the subsistence needs of the obligor and the
9 obligor's family against the right of the obligee to have child
10 support arrearages paid as quickly as possible.

11 SECTION 2. Section 9.101(a), Family Code, is amended to
12 read as follows:

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

23 SECTION 3. Section 201.104(e), Family Code, is amended to
24 read as follows:

25 (e) Notwithstanding Subsection (d) and subject to Section
26 201.1042(g), an associate judge may hear and render an order on:

27 (1) a suit to modify or clarify an existing child

1 support order;

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

6 (3) a respondent's compliance with the conditions
7 provided in the associate judge's report for suspension of the
8 respondent's commitment.

9 SECTION 4. Section 231.002(e), Family Code, is amended to
10 read as follows:

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

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

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

21 (3) order income withholding, as provided by Chapter
22 233, and issue an administrative writ of withholding, as provided
23 by Chapter 158; ~~and~~

24 (4) take any action with respect to execution,
25 collection, and release of a judgment or lien for child support
26 necessary to satisfy the judgment or lien, as provided by Chapter
27 157; and

1 (5) render an administrative domestic relations order
2 under Chapter 237.

3 SECTION 5. Section 804.001, Government Code, is amended by
4 amending Subdivisions (1) and (2) and adding Subdivisions (1-a),
5 (2-a), and (6) to read as follows:

6 (1) "Alternate payee" means a spouse, former spouse,
7 child support obligee, child, or other dependent of a member or
8 retiree who is recognized by a domestic relations order as having a
9 right to receive all or a portion of the benefits payable by a
10 public retirement system with respect to such member or retiree.

11 (1-a) "Child support obligee" has the meaning assigned
12 to "obligee" by Section 101.021, Family Code.

13 (2) "Domestic relations order" means any judgment,
14 decree, or order, including approval of a property settlement
15 agreement, which relates to the provision of child support, alimony
16 payments, or marital property rights to a spouse, former spouse,
17 child support obligee, child, or other dependent of a member or
18 retiree, and is made pursuant to a domestic relations law,
19 including a community property law of the State of Texas or of
20 another state.

21 (2-a) "Obligor" has the meaning assigned by Section
22 101.022, Family Code.

23 (6) "Title IV-D agency" has the meaning assigned by
24 Section 101.033, Family Code.

25 SECTION 6. Section 804.003, Government Code, is amended by
26 amending Subsections (b) and (d) and by adding Subsections (p) and
27 (q) to read as follows:

1 (b) Except as provided in Subsections [~~Subsection~~] (d) and
2 (p), the administrative head of a public retirement system to which
3 this chapter applies and to which a domestic relations order is
4 submitted or his designee has exclusive authority to determine
5 whether a domestic relations order is a qualified domestic
6 relations order. A determination by the administrative head or his
7 designee under this section may be appealed only to the board of
8 trustees of the public retirement system. An appeal to the board of
9 trustees of a statewide retirement system is a contested case under
10 Chapter 2001. However, the board of a statewide retirement system
11 by rule may waive the requirement of an appeal to the board. On
12 appeal of a decision made by the board of trustees or by the
13 administrative head if there is no appeal to the board under this
14 section, the standard of review is by substantial evidence.

15 (d) Except as provided by Subsection (p), under [~~Under~~] the
16 optional retirement program, applicable carriers shall determine
17 whether a domestic relations order is a qualified domestic
18 relations order. If a dispute arises over the determination of
19 whether a domestic relations order is a qualified domestic
20 relations order which cannot be resolved by the procedure described
21 in Subsection (g), the court which issued the order or which
22 otherwise has jurisdiction over the matter shall resolve the
23 dispute with respect to a divorce or other domestic relations
24 action in which an alternate payee's right to receive all or a
25 portion of the benefits payable to a member or retiree under the
26 optional retirement program is created or established.

27 (p) A domestic relations order issued by the Title IV-D

1 agency under Chapter 237, Family Code, is considered to be a
2 qualified domestic relations order if it complies with the
3 requirements of Subsection (f).

4 (g) For federal tax purposes, benefits paid to a child
5 support obligee as an alternate payee are considered benefits
6 payable to the child and must be reported under Section 402(a),
7 Internal Revenue Code of 1986, as taxable income of the member or
8 retiree who is the obligor.

9 SECTION 7. Subchapter A, Chapter 804, Government Code, is
10 amended by adding Section 804.006 to read as follows:

11 Sec. 804.006. ADMINISTRATIVE DOMESTIC RELATIONS ORDER. (a)
12 An administrative domestic relations order issued by the Title IV-D
13 agency under Chapter 237, Family Code, and received by a public
14 retirement system is considered to be a qualified domestic
15 relations order as provided by Section 804.003(p).

16 (b) The child support obligee named in an order under this
17 section is considered to be an alternate payee.

18 (c) The public retirement system shall remit payments in
19 accordance with the instructions in the order.

20 SECTION 8. Section 815.503, Government Code, is amended by
21 amending Subsection (b) and adding Subsection (e) to read as
22 follows:

23 (b) Records may be released to a member, annuitant, retiree,
24 beneficiary, or alternate payee or to an authorized attorney,
25 family member, or representative acting on behalf of the member,
26 annuitant, retiree, beneficiary, or alternate payee. The
27 retirement system may release the records to an administrator,

1 carrier, or agent or attorney acting on behalf of the retirement
2 system, to another governmental entity having a legitimate need for
3 the information to perform the purposes of the retirement system,
4 to the attorney general for the purpose of enforcing a child support
5 obligation, or to a party in response to a subpoena issued under
6 applicable law.

7 (e) This section does not prevent the disclosure or
8 confirmation on an individual basis of the status or identity of a
9 participant as a member, retiree, deceased member or retiree,
10 beneficiary, or alternate payee of the retirement system.

11 SECTION 9. Section 845.115(a), Government Code, is amended
12 to read as follows:

13 (a) Information contained in records in the custody of the
14 retirement system or maintained in the custody of another
15 governmental entity or an administrator or carrier acting in
16 cooperation with or on behalf of the retirement system concerning
17 an individual member, retiree, annuitant, or beneficiary is
18 confidential and is not subject to public disclosure under Chapter
19 552. The information may not be disclosed in a form identifiable
20 with a specific individual unless:

21 (1) the information is disclosed to:

22 (A) the individual or the individual's attorney,
23 guardian, executor, administrator, conservator, or other person
24 who the director determines is acting in the interest of the
25 individual or the individual's estate;

26 (B) a spouse or former spouse of the individual
27 and the director determines that the information is relevant to the

1 spouse's or former spouse's interest in member accounts, benefits,
2 or other amounts payable by the retirement system;

3 (C) a governmental official or employee and the
4 director determines that disclosure of the information requested is
5 reasonably necessary to the performance of the duties of the
6 official or employee; [~~or~~]

7 (D) a person authorized by the individual in
8 writing to receive the information; or

9 (E) the attorney general for the purpose of
10 enforcing a child support obligation; or

11 (2) the information is disclosed pursuant to a
12 subpoena and the director determines that the individual will have
13 a reasonable opportunity to contest the subpoena.

14 SECTION 10. Section 855.115(a), Government Code, is amended
15 to read as follows:

16 (a) Information contained in records that are in the custody
17 of the retirement system concerning an individual member, retiree,
18 annuitant, or beneficiary is confidential under Section 552.101,
19 and may not be disclosed in a form identifiable with a specific
20 individual unless:

21 (1) the information is disclosed to:

22 (A) the individual or the individual's attorney,
23 guardian, executor, administrator, conservator, or other person
24 who the director determines is acting in the interest of the
25 individual or the individual's estate;

26 (B) a spouse or former spouse of the individual
27 after the director determines that the information is relevant to

1 the spouse's or former spouse's interest in member accounts,
2 benefits, or other amounts payable by the retirement system;

3 (C) a governmental official or employee after the
4 director determines that disclosure of the information requested is
5 reasonably necessary to the performance of the duties of the
6 official or employee; ~~[or]~~

7 (D) a person authorized by the individual in
8 writing to receive the information; or

9 (E) the attorney general for the purpose of
10 enforcing a child support obligation; or

11 (2) the information is disclosed pursuant to a
12 subpoena and the director determines that the individual will have
13 a reasonable opportunity to contest the subpoena.

14 SECTION 11. Section 32(a), Texas Local Fire Fighters
15 Retirement Act (Article 6243e, Vernon's Texas Civil Statutes), is
16 amended to read as follows:

17 (a) Information contained in records that are in the custody
18 of a retirement system established under this Act concerning an
19 individual member, retiree, annuitant, or beneficiary is
20 confidential for purposes of Section 552.101, Government Code
21 ~~[under Section 3(a)(1), Chapter 424, Acts of the 63rd Legislature,~~
22 ~~Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil~~
23 ~~Statutes)]~~, and may not be disclosed in a form identifiable with a
24 specific individual unless:

25 (1) the information is disclosed to:

26 (A) the individual;

27 (B) the individual's attorney, guardian,

1 executor, administrator, conservator, or other person who the board
2 of trustees of the retirement system determines is acting in the
3 interest of the individual or the individual's estate;

4 (C) a spouse or former spouse of the individual
5 if the board of trustees determines that the information is
6 relevant to the spouse's or former spouse's interest in member
7 accounts, benefits, or other amounts payable by the retirement
8 system; [~~or~~]

9 (D) a person authorized by the individual in
10 writing to receive the information; or

11 (E) the attorney general for the purpose of
12 enforcing a child support obligation; or

13 (2) the information is disclosed under an
14 authorization of the board of trustees that specifies the reason
15 for the disclosure.

16 SECTION 12. Section 17(a), Article 6243e.2(1), Revised
17 Statutes, is amended to read as follows:

18 (a) Information contained in records that are in the custody
19 of a fund established under this article concerning an individual
20 member, retiree, or beneficiary is not public information under
21 Chapter 552, Government Code. The information may not be disclosed
22 in a form identifiable with a specific individual unless:

23 (1) the information is disclosed to:

24 (A) the individual;

25 (B) the individual's attorney, guardian,
26 executor, administrator, or conservator, or other legal
27 representative of the individual's estate or court-approved small

1 estate or other person who the board determines is acting in the
2 interest of the individual or the individual's estate;

3 (C) a spouse or former spouse of the individual,
4 or the attorney of the spouse or former spouse, if the information
5 concerns the spouse's or former spouse's interest in member
6 accounts, benefits, or other amounts payable by the fund; ~~or~~

7 (D) a person with written authorization from the
8 individual to receive the information; or

9 (E) the attorney general for the purpose of
10 enforcing a child support obligation; or

11 (2) the information is disclosed under an
12 authorization of the board that specifies the reason for the
13 disclosure.

14 SECTION 13. Section 29(a), Article 6243g-4, Revised
15 Statutes, is amended to read as follows:

16 (a) Information contained in a record that is in the custody
17 of a fund established under this article concerning an individual
18 member, retiree, survivor, or beneficiary is confidential for
19 purposes of Sections 552.101, 552.102, and 552.117, Government
20 Code. The information may not be disclosed in a form that
21 identifies a specific individual unless the information is
22 disclosed to:

23 (1) the individual;

24 (2) the individual's attorney, guardian, executor,
25 administrator, or conservator; ~~or~~

26 (3) a person who has written authorization from the
27 individual to receive the information; or

1 (4) the attorney general for the purpose of enforcing
2 a child support obligation.

3 SECTION 14. Section 26(a), Chapter 88, Acts of the 77th
4 Legislature, Regular Session, 2001 (Article 6243h, Vernon's Texas
5 Civil Statutes), is amended to read as follows:

6 (a) Records that are in the custody of the pension system
7 concerning an individual member, deferred participant, retiree,
8 eligible survivor, beneficiary, or alternate payee are not public
9 information under Chapter 552, Government Code, and may not be
10 disclosed in a form identifiable to a specific individual unless:

11 (1) the information is disclosed to:

12 (A) the individual or the individual's attorney,
13 guardian, executor, administrator, or conservator, or another
14 person who the executive director determines is acting in the
15 interest of the individual or the individual's estate;

16 (B) a spouse or former spouse of the individual
17 and the executive director determines that the information is
18 relevant to the spouse's or former spouse's interest in a member's
19 accounts or benefits or other amounts payable by the pension
20 system;

21 (C) a governmental official or employee and the
22 executive director determines that disclosure of the information
23 requested is reasonably necessary to the performance of the duties
24 of the official or employee; ~~[or]~~

25 (D) a person authorized by the individual in
26 writing to receive the information; or

27 (E) the attorney general for the purpose of

1 enforcing a child support obligation; or

2 (2) the information is disclosed under a subpoena and
3 the executive director determines that the individual will have a
4 reasonable opportunity to contest the subpoena.

5 SECTION 15. Section 13(a), Chapter 451, Acts of the 72nd
6 Legislature, Regular Session, 1991 (Article 6243n, Vernon's Texas
7 Civil Statutes), is amended to read as follows:

8 (a) Information contained in records that are in the custody
9 of the retirement board or the system concerning an individual
10 member, retiree, annuitant, beneficiary, or alternate payee is
11 confidential under this section and may not be disclosed in a form
12 identifiable with a specific individual unless:

13 (1) the information is disclosed to:

14 (A) the individual or the individual's attorney,
15 guardian, executor, administrator, conservator, or other person
16 who the pension director determines is acting in the interest of the
17 individual or the individual's estate;

18 (B) a spouse or former spouse of the individual
19 if the pension director determines that the information is relevant
20 to the spouse's or former spouse's interest in member accounts,
21 benefits, or other amounts payable by the retirement system;

22 (C) a governmental official or employee if the
23 pension director determines that disclosure of the information
24 requested is reasonably necessary to the performance of the duties
25 of the official or employee;

26 (D) the individual's employer as defined in this
27 Act; [~~or~~]

1 (E) a person authorized by the individual in
2 writing to receive the information; or

3 (F) the attorney general for the purpose of
4 enforcing a child support obligation; or

5 (2) the information is disclosed pursuant to a
6 subpoena and the pension director determines that the individual
7 will have a reasonable opportunity to contest the subpoena.

8 SECTION 16. The change in law made by this Act applies to a
9 domestic relations order as provided by Section 804.003(p),
10 Government Code, as added by this Act, received by a public
11 retirement system on or after the effective date of this Act. A
12 domestic relations order received before the effective date of this
13 Act is governed by the law in effect on the date the order was
14 received, and that law is continued in effect for that purpose.

15 SECTION 17. This Act takes effect September 1, 2007.