

BILL ANALYSIS

C.S.H.B. 3053
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Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Currently, there is no statute of limitations on child support liens for real property. The absence of the ability to automatically clear a title in the event of a stale child support lien could cause a child to be responsible for his or her parent's lien liability in the event of the child's inheritance of a parent's real property. Additionally, current law requires the attorney general's office to automatically file a lien on real property in instances where more than \$5,000 is owed by a parent. This requirement is extremely burdensome to the attorney general's office and does not meet any meaningful policy objective. This bill provides protection for the child and helps ensure the maximum effectiveness of the real property lien while avoiding the unintended consequence of potentially harming the child and rendering the property inalienable. The bill also removes a significant administrative burden requiring the office of the attorney general to provide taxpayer benefits at both the state and county level.

C.S.H.B. 3053 authorizes an obligor who believes that a child support lien has attached to real property of the obligor that is the obligor's homestead to file an affidavit to release the lien against the homestead in the same manner that a judgment debtor may file an affidavit to release a judgment lien against a homestead. The bill makes a child support lien on real property effective until the 10th anniversary of the date the lien notice was filed. The bill repeals the provision requiring the attorney general to automatically file liens in the absence of meaningful discretion.

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

C.S.H.B. 3053 amends the Family Code to authorize an obligor who believes that a child support lien has attached to real property of the obligor that is the obligor's homestead to file an affidavit to release the lien against the homestead in the same manner that a judgment debtor may file an affidavit to release a judgment lien against a homestead. The bill requires the obligor to comply with all requirements imposed by provisions relating to the release of a judgment lien except that the obligor is required only to send the required letter and affidavit to the claimant under the child support lien at the claimant's last known address. The substitute establishes that the obligor is considered to be a judgment debtor and the claimant under the child support lien is considered to be a judgment creditor for purposes of compliance with those requirements.

C.S.H.B. 3053 authorizes the claimant under the child support lien to dispute the obligor's affidavit by filing a contradicting affidavit in the manner provided by provisions relating to the release of a judgment lien and clarifies that an affidavit filed by an obligor has the same effect with respect to a child support lien as an affidavit filed under those provisions, subject to the following provision. The bill requires the issue of whether the real property is subject to the child support lien to be resolved in an action brought for that purpose in the district court of the county

in which the real property is located and the lien was filed, if the claimant files a contradicting affidavit.

C.S.H.B. 3053 establishes that a child support lien is effective with respect to real property until the 10th anniversary of the date on which the lien notice was filed with the county clerk. The bill authorizes such a lien to be renewed for subsequent 10-year periods by filing a renewed lien notice in the same manner as the original lien notice. The bill provides that, for purposes of establishing priority, a renewed lien notice filed before the applicable 10th anniversary relates back to the date the original lien notice was filed. The bill clarifies that a renewed lien notice filed on or after the applicable 10th anniversary has priority over any other lien recorded with respect to the real property only on the basis of the date the renewed lien notice is filed.

C.S.H.B. 3053 repeals Section 231.002(h), Family Code, requiring the office of the attorney general to enforce a child support obligation for delinquent child support obligations of at least \$5,000 by filing a child support lien.

EFFECTIVE DATE

On passage, or, if the act does not receive the necessary vote, the act takes effect September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 3053 adds provisions not included in the original establishing procedures for the release of a lien on homestead property. The substitute adds a provision not included in the original specifying that a renewed lien notice filed before the applicable 10th anniversary relates back to the date the original lien notice was filed for the purposes of establishing priority of a lien. The substitute adds a provision not included in the original establishing that a renewed lien notice filed on or after the applicable 10th anniversary has priority over any other lien recorded with respect to the real property only on the basis of the date the renewed lien notice is filed. The substitute omits a provision included in the original requiring a lien renewal to be filed before the expiration of the preceding 10-year period.