

BILL ANALYSIS

C.S.S.B. 431
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Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Families headed by a single parent are much more likely to live in poverty than other families. The Child Trends DataBank indicates that in 2006, 42 percent of children living in families headed by a single mother were poor, compared with eight percent of children living in families headed by a married couple. The Center for Law and Social Policy has reported that child support is the second largest source of income for families headed by a single mother living in poverty. Furthermore, paying child support obligations often strengthens the emotional relationship between an obligor and his or her child. The purpose of this bill is to increase compliance with the obligation to pay child support, which will reduce poverty in Texas and strengthen families. The bill seeks to address a court decision, for *In re P.R.*, No. 04-05-00509-CV, 2006 WL 2545919 (Tex.App-San Antonio 2006, pet. denied) which denied a child support lien attached to an account where the obligor had hidden funds, because the obligor was not the signatory on the account. Additionally, the bill seeks to address a Dallas Court of Appeals decision applying the 10- year limit from the Civil Practice and Remedies Code to each periodic child support payment.

C.S.S.B. 431 clarifies that a lien can be issued on a bank account to collect overdue child support if the child support obligor has an interest in the account even if the account is held in the name of a nominal owner. The bill also amends requirements on a financial institution that receives a notice to pay a child support claim from an account in which the obligor has an interest.

C.S.S.B. 431 clarifies that the 10-year limit to collect overdue financial obligations under the Civil Practice and Remedies Code does not apply to overdue child support obligations under the Family Code.

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.S.B. 431 amends the Family Code to redefine "account" to include an account in which the obligor has a community or separate property interest or funds are held for the obligor's benefit or placed at the direction of the obligor, regardless of whether the funds are held in the name of a nominal owner other than the obligor. The bill further clarifies the definition to provide that an individual need not be a signatory to an account to be considered as having a beneficial ownership in the account.

C.S.S.B. 431 requires a child support lien notice sent to a financial institution that applies to assets of a specified third party or nominal owner, in addition to the information required as content of a child support lien notice, to contain the social security number, tax identification number, or account number of the third party nominal owner. The bill adds to the information required to be provided by a financial institution to a claimant on delivery of a child support lien notice disclosure of the amount in an obligor's account at the time of receipt of the notice. The bill requires a financial institution to which a child support lien notice has been delivered, on request until the lien is satisfied, to provide the claimant with a statement showing all deposits and withdrawals involving the obligor's account that occurred from the date of receipt of the child support lien notice to the date of receipt of the request for information.

C.S.S.B. 431 adds language to the requirements for a notice of execution and levy on the financial assets of an obligor to clarify that the payment made by a financial institution to a claimant from funds due to the obligor as directed by the notice is to be made from funds due at the time the levy is paid. The bill clarifies that those funds include funds that should have been held or frozen by the institution. The bill establishes a deadline of not later than the 10th day after the date of delivery of the notice for an obligor or another person claiming an ownership interest in an account subject to a notice of levy to file a suit requesting a hearing to dispute child support arrearages or a motion to determine the extent to which the account contains assets of the obligor subject to levy. The bill requires a notice of levy delivered to a financial institution that applies to assets or funds of a specified third party or nominal owner to include the social security number, tax identification number, or account number of the third party nominal owner. The bill clarifies that the prohibition against a financial institution that receives notice of a child support levy closing an obligor's account applies to an account in which the obligor has a beneficial ownership interest. The bill clarifies that the prohibition against such an institution paying funds so that any amount remaining in the account is less than the amount of arrearages identified in the notice applies to a payment to a nominal owner in addition to the obligor.

C.S.S.B. 431 authorizes a financial institution to charge an obligor fees and costs associated with maintaining the obligor's account but prohibits the institution from deducting those fees and costs from the obligor's assets before paying the appropriate amount to the claimant, except for a reasonable processing fee and a fee associated with early withdrawal of funds from certain interest-bearing accounts. The bill requires a court, after giving notice to all interested parties, on filing of a timely motion by a person claiming an ownership interest in the account other than an obligor, to hold a hearing to determine the extent to which the account contains assets of the obligor that are subject to levy for a child support lien. The bill requires the court on determination that the account contains any of the obligor's assets that are subject to levy to specify the amount subject to levy and order that amount to be applied against child support arrearages or on determination that the account does not contain any of the obligor's assets that are subject to levy, to order the release of the child support lien on which the levy was based. The bill clarifies that a financial institution that surrenders assets in compliance with a court order is not liable to the obligor, the account holder, or any other person for the assets surrendered. The bill entitles a person claiming ownership in an account, other than the obligor, for which the obligor is not included on the title or listed as a signatory to recover costs and reasonable attorney's fees incurred against the claimant, if the person successfully establishes in a suit or a hearing that the obligor did not have any ownership interest in the account.

C.S.S.B. 431 amends the Civil Practice and Remedies Code to exempt a child support judgment or any other child support collection remedy from provisions rendering a judgment dormant if a writ of execution is not delivered within certain time periods.

EFFECTIVE DATE

September 1, 2009.

COMPARISON OF ORIGINAL TO SUBSTITUTE

C.S.S.B. 431 differs from the original by omitting the prohibition against a child support lien being directed to an employer in lieu of an order or writ to withhold child support from the disposable earnings of an obligor.

C.S.S.B. 431 adds a provision not in the original redefining "account." The substitute adds a requirement not in the original that certain third-party or nominal owner information be contained in a child support lien notice sent to a financial institute that applies to assets of the third party or nominal owner. The substitute differs from the original by clarifying that the requirement that a financial statement provide a claimant account statement information on request applies until the lien is satisfied and differs by requiring the statement to show all deposits and withdrawals, rather than transactions as in the original. The substitute differs from the original by referring to assets or funds due to an obligor that should have been frozen by the institution, rather than held or controlled by the institution, under provisions requiring a notice of levy to direct the institution to pay an amount from those assets or funds to a claimant. The

substitute differs from the original by specifying that the exception to the requirement that a financial institution pay a claimant the amount indicated in a notice of levy based on the filing of a suit or motion for a hearing is based on such a filing by another person claiming an ownership interest in the account, rather than another person as in the original. The substitute adds provisions not in the original relating to the information about a specified third party or nominal owner required to be included in a notice of levy delivered to a financial institution. The substitute differs from the original by clarifying that the prohibition against a financial institution that receives a notice of levy closing an obligor's account applies to an account in which the obligor has a beneficial ownership interest. The substitute differs from the original by clarifying that the prohibition against such an institution paying funds so that the amount remaining in the account is less than the amount of arrearages identified in the notice of levy applies to payments from the account to a nominal owner in addition to payments to the obligor. The substitute adds provisions not included in the original regarding the authority of a financial institution to deduct certain fees before paying an appropriate amount to a claimant, establishing procedures for a court hearing to determine whether an account contains the assets of an obligor, exempting a financial institution from liability if it surrenders assets in compliance with a court order, and authorizing the recovery of costs and reasonable attorney's fees by a person claiming ownership in an account for which the obligor is not included on the title or listed as a signatory. The substitute omits provisions in the original authorizing a claimant to file a suit for a lien and levy against the assets of a third party if the claimant has reason to believe that an obligor's financial assets have been directed to a depository account of another individual.

C.S.S.B. 431 makes conforming changes relating to a motion for a hearing to determine whether an account contains assets of an obligor and to the saving provisions of the bill.