

BILL ANALYSIS

S.B. 1661
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Judiciary & Civil Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Currently, there is no statute of limitations on child support liens, which will eventually present a problem for the transferring of clear title of properties in Texas. There are also significant administrative burdens surrounding the automatic filing of child support liens.

S.B. 1661 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.

S.B. 1661 relates to child support liens on real property.

RULEMAKING AUTHORITY

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

ANALYSIS

SECTION 1. Amends Subchapter G, Chapter 157, Family Code, by adding Section 157.3171, as follows:

Sec. 157.3171. RELEASE OF LIEN ON HOMESTEAD PROPERTY. (a) Authorizes an obligor who believes that a child support lien has attached to real property of the obligor that is the obligor's homestead, as defined by Section 41.002 (Definition of Homestead), Property Code, to file an affidavit to release the lien against the homestead in the same manner that a judgment debtor is required to file an affidavit under Section 52.0012 (Release of Record of Lien on Homestead Property), Property Code, to release a judgment lien against a homestead.

(b) Requires the obligor, except as provided by Subsection (c), to comply with all requirements imposed by Section 52.0012, Property Code. Provides that, for purposes of complying with that section, the obligor is considered to be a judgment debtor under that section and the claimant under the child support lien is considered to be a judgment creditor under that section.

(c) Requires the obligor, for purposes of Section 52.0012(d)(2) (relating to the delivery of the letter and the affidavit), Property Code, and the associated text in the affidavit required by Section 52.0012(f) (relating to required language in the affidavit), Property Code, only to send the letter and affidavit described in those provisions to the claimant under the child support lien at the claimant's last known address.

(d) Authorizes the claimant under the child support lien to dispute the obligor's affidavit by filing a contradicting affidavit in the manner provided by Section 52.0012(e) (relating to an affidavit not serving as release of record of a judgment lien), Property Code.

(e) Provides that an affidavit filed by an obligor under this section, subject to Subsection (f), has the same effect with respect to a child support lien as an affidavit filed under Section 52.0012, Property Code, has with respect to a judgment lien.

(f) Requires that the issue of whether the real property is subject to the lien, if the claimant files a contradicting affidavit as described by Subsection (d), 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.

SECTION 2. Amends Section 157.318, Family Code, by amending Subsection (a) and adding Subsection (d), as follows:

(a) Provides that a lien, subject to Subsection (d), is effective until all certain support and child support arrearages including interest, any costs and reasonable attorney's fees, and any Title IV-D service fees authorized under Section 231.103 (Application and Service Fees), Family Code, for which the obligor is responsible, have been paid or the lien is otherwise released as provided by this subchapter.

(d) Provides that a 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. Authorizes a lien subject to the limitation prescribed by this subsection to be renewed for subsequent 10-year periods by filing a renewed lien notice in the same manner as the original lien notice. 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. Provides 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.

SECTION 3. Repealer: Section 231.002(h) (relating to the requirement of a Title IV-D agency's enforcement of a child support obligation by filing a lien), Family Code.

SECTION 4. Makes application of this Act prospective.

SECTION 5. Effective date: upon passage or September 1, 2009.

EFFECTIVE DATE

Upon passage or September 1, 2009.