

By: Wentworth

S.B. No. 431

A BILL TO BE ENTITLED

AN ACT

relating to the enforcement of unpaid child support.

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

SECTION 1. Subsection (g), Section 157.312, Family Code, is amended to read as follows:

(g) A child support lien under this subchapter may not be directed to an employer in lieu of an order or writ under Chapter 158 to withhold child support from ~~[attach to]~~ the disposable earnings of an obligor ~~[paid by the employer]~~.

SECTION 2. Section 157.314, Family Code, is amended by amending Subsection (d) and adding Subsection (e) to read as follows:

(d) If a child support lien notice is delivered to a financial institution with respect to an account of the obligor, the institution shall immediately:

(1) provide the claimant with the last known address of the obligor and disclose to the claimant the amount in the account at the time of receipt of the notice; and

(2) notify any other person having an ownership interest in the account that the account has been frozen in an amount not to exceed the amount of the child support arrearage identified in the notice.

(e) On request, a financial institution to which a child support lien notice has been delivered shall provide the claimant

1 with a statement showing all transactions involving the obligor's  
2 account that occurred from the date of receipt of the child support  
3 lien notice to the date of receipt of the request for information.

4 SECTION 3. Subsections (b) and (f), Section 157.327, Family  
5 Code, are amended to read as follows:

6 (b) The notice under this section must:

7 (1) identify the amount of child support arrearages  
8 owing at the time the amount of arrearages was determined or, if the  
9 amount is less, the amount of arrearages owing at the time the  
10 notice is prepared and delivered to the financial institution; and

11 (2) direct the financial institution to pay to the  
12 claimant, not earlier than the 15th day or later than the 21st day  
13 after the date of delivery of the notice, an amount from the assets  
14 of the obligor or from funds due to the obligor at the time the levy  
15 is paid that are held or controlled by the institution or that  
16 should have been held or controlled by the institution, not to  
17 exceed the amount of the child support arrearages identified in the  
18 notice, unless:

19 (A) the institution is notified by the claimant  
20 that the obligor has paid the arrearages or made arrangements  
21 satisfactory to the claimant for the payment of the arrearages;

22 (B) the obligor or another person files, not  
23 later than the 10th day after the date of delivery of the notice  
24 required by Section 157.328, a suit under Section 157.323  
25 requesting a hearing by the court; or

26 (C) if the claimant is the Title IV-D agency, the  
27 obligor has requested an agency review under Section 157.328.

1 (f) A financial institution may collect any fees and costs  
2 identified in Subsection (c) from the obligor but may not deduct  
3 those [the] fees and costs [identified in Subsection (c)] from the  
4 obligor's assets before paying the appropriate amount to the  
5 claimant.

6 SECTION 4. Subchapter G, Chapter 157, Family Code, is  
7 amended by adding Section 157.332 to read as follows:

8 Sec. 157.332. LIEN AND LEVY ON CERTAIN THIRD-PARTY ASSETS.

9 (a) If a claimant has reason to believe that an obligor's  
10 financial assets have been directed to a depository account of  
11 another individual in an attempt to protect those assets from a  
12 child support lien and levy under this subchapter, the claimant may  
13 file suit to obtain a judicial determination of the extent, if any,  
14 to which the account contains assets owned by the obligor.

15 (b) On filing suit under this section, the claimant shall  
16 also deliver a child support lien notice under this subchapter to  
17 the financial institution in which the account is maintained. On  
18 receipt of the notice, the financial institution shall immediately:

19 (1) freeze all assets in the account, except for  
20 assets that exceed the amount of the child support arrearage  
21 identified in the notice, until a judicial determination is made in  
22 accordance with this section; and

23 (2) inform the account holder that the assets have  
24 been frozen and the account may not be closed until a judicial  
25 determination is made in accordance with this section.

26 (c) A child support lien notice required under Subsection  
27 (b) may be served on a financial institution in the manner

1 authorized by Section 157.3145.

2 (d) Except as otherwise provided by this section, the  
3 procedures provided by Subchapter B apply to a suit under this  
4 section. The obligor must be joined as an additional respondent.

5 (e) After providing notice to the obligor, the account  
6 holder, any other person alleging an ownership interest in the  
7 account, the claimant, and the obligee, the court shall hold a  
8 hearing to determine the extent, if any, to which the account  
9 contains assets owned by the obligor that are subject to a child  
10 support lien and levy under this subchapter. The hearing must be  
11 held not later than the 30th day after the date suit is filed under  
12 this section.

13 (f) In the hearing required by Subsection (e), the claimant  
14 has the burden of proving the extent of the obligor's ownership  
15 interest in assets held in the account.

16 (g) Following the hearing required by Subsection (e):

17 (1) if the court determines that the account does not  
18 contain any of the obligor's assets that are subject to a child  
19 support lien and levy under this subchapter, the court shall:

20 (A) order the release of the lien against the  
21 account; and

22 (B) prohibit any action to levy on the account;

23 or

24 (2) if the court determines that the account contains  
25 any of the obligor's assets that are subject to a child support lien  
26 and levy under this subchapter, the court shall:

27 (A) specify the amount of assets in the account

1 determined by the court to be the obligor's assets subject to a  
2 child support lien and levy under this subchapter; and

3 (B) order that the amount specified under  
4 Paragraph (A) be applied against child support arrearages owed by  
5 the obligor.

6 (h) A financial institution that freezes assets under  
7 Subsection (b)(1) or surrenders assets in compliance with a court  
8 order under Subsection (g)(2) is not liable to the obligor, the  
9 account holder, or any other person for the assets frozen or  
10 surrendered.

11 (i) In a suit filed under this section, the court may award  
12 attorney's fees and costs to the prevailing party.

13 SECTION 5. Section 34.001, Civil Practice and Remedies  
14 Code, is amended by adding Subsection (c) to read as follows:

15 (c) This section does not apply to a child support judgment  
16 or any other child support collection remedy authorized by the  
17 Family Code.

18 SECTION 6. The changes in law made by this Act to Section  
19 157.312, Family Code, apply only to a child support lien notice  
20 filed on or after the effective date of this Act. A child support  
21 lien notice filed before the effective date of this Act is governed  
22 by the law in effect on the date the lien notice was filed, and the  
23 former law is continued in effect for that purpose.

24 SECTION 7. The changes in law made by this Act to Section  
25 157.314 and Subsection (f), Section 157.327, Family Code, apply  
26 only to a financial institution that receives a lien notice or  
27 notice of levy under those sections on or after the effective date

1 of this Act. A financial institution that receives a lien notice or  
2 notice of levy under those sections before the effective date of  
3 this Act is governed by the law in effect on the date the lien notice  
4 or notice of levy is received, and the former law is continued in  
5 effect for that purpose.

6 SECTION 8. The changes in law made by this Act to Section  
7 34.001, Civil Practice and Remedies Code, apply to each child  
8 support judgment or collection remedy, regardless of the date on  
9 which the judgment is rendered or the remedy is sought.

10 SECTION 9. This Act takes effect September 1, 2009.