

By: Wentworth

S.B. No. 431

Substitute the following for S.B. No. 431:

By: Alonzo

C.S.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. Section 157.311(1), Family Code, is amended to read as follows:

(1) "Account" means:

(A) any type of a demand deposit account, checking or negotiable withdrawal order account, savings account, time deposit account, money market mutual fund account, certificate of deposit, or any other instrument of deposit in which an individual, as a signatory or not, has a beneficial ownership interest either in its entirety or on a shared or multiple party basis, including any accrued interest and dividends, and in which:

(i) the obligor has a community or separate property interest; or

(ii) funds are held for the obligor's benefit, regardless of whether the funds are held in the name of a nominal owner other than the obligor; and

(B) a life insurance policy in which an individual has a beneficial ownership or liability insurance against which an individual has filed a claim or counterclaim.

SECTION 2. Section 157.313, Family Code, is amended by adding Subsection (a-1) to read as follows:

(a-1) In addition to the information required under

1 Subsection (a), a child support lien notice sent to a financial
2 institution that applies to assets of a specified third party or
3 nominal owner must contain the social security number, tax
4 identification number, or account number of the third party or
5 nominal owner.

6 SECTION 3. Section 157.314, Family Code, is amended by
7 amending Subsection (d) and adding Subsection (e) to read as
8 follows:

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

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

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

19 (e) On request, until the lien is satisfied, a financial
20 institution to which a child support lien notice has been delivered
21 shall provide the claimant with a statement showing all deposits
22 and withdrawals involving the obligor's account that occurred from
23 the date and time of receipt of the child support lien notice to the
24 date of receipt of the request for information.

25 SECTION 4. Section 157.327, Family Code, is amended by
26 amending Subsections (b), (c), and (f) and adding Subsections
27 (b-1), (g), (h), and (i) to read as follows:

1 (b) The notice under this section must:

2 (1) identify the amount of child support arrearages
3 owing at the time the amount of arrearages was determined or, if the
4 amount is less, the amount of arrearages owing at the time the
5 notice is prepared and delivered to the financial institution; and

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

13 (A) the institution is notified by the claimant
14 that the obligor has paid the arrearages or made arrangements
15 satisfactory to the claimant for the payment of the arrearages;

16 (B) the obligor or another person claiming an
17 ownership interest in the account files, not later than the 10th day
18 after the date of delivery of the notice required by Section
19 157.328, a suit under Section 157.323 or a motion under Subsection
20 (g) requesting a hearing by the court; or

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

23 (b-1) A notice of levy delivered to a financial institution
24 that applies to assets or funds of a specified third party or
25 nominal owner must include the social security number, tax
26 identification number, or account number of the third party or
27 nominal owner.

1 (c) A financial institution that receives a notice of levy
2 under this section may not close an account in which the obligor has
3 a beneficial ~~[an]~~ ownership interest, permit a withdrawal from any
4 account the obligor owns, in whole or in part, or pay funds to the
5 obligor or a nominal owner so that any amount remaining in the
6 account is less than the amount of the arrearages identified in the
7 notice, plus any fees due to the institution and any costs of the
8 levy identified by the claimant.

9 (f) A financial institution may collect any fees and costs
10 identified in Subsection (c) from the obligor but may not, except as
11 otherwise provided by this subsection, deduct those ~~[the]~~ fees and
12 costs ~~[identified in Subsection (c)]~~ from the obligor's assets
13 before paying the appropriate amount to the claimant. A financial
14 institution may deduct the following fees before paying the
15 appropriate amount to the claimant:

- 16 (1) a reasonable processing fee; and
17 (2) a fee associated with early withdrawal of funds
18 from a certificate of deposit or other interest-bearing account
19 before the applicable maturity date.

20 (g) If a timely motion is filed by a person claiming an
21 ownership interest in the account, other than the obligor, the
22 court, after giving notice to all interested parties, shall hold a
23 hearing to determine the extent, if any, to which the account
24 contains assets of the obligor that are subject to levy for a child
25 support lien under this subchapter. After the hearing:

- 26 (1) if the court determines that the account contains
27 any of the obligor's assets that are subject to levy, the court

1 shall specify the amount in the account subject to levy and order
2 that amount to be applied against child support arrearages owed by
3 the obligor; or

4 (2) if the court determines that the account does not
5 contain any of the obligor's assets that are subject to levy, the
6 court shall order the release of the child support lien on which the
7 levy was based.

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

12 (i) This subsection applies if a financial institution
13 receives a notice of levy under this section with regard to an
14 account for which the obligor is not included on the title or listed
15 as a signatory. If a person claiming ownership in the account,
16 other than the obligor, successfully establishes in a suit under
17 Section 157.323 or a hearing under Subsection (g) that the obligor
18 did not have any ownership interest in the account, the person may
19 recover costs and reasonable attorney's fees incurred against the
20 claimant.

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

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

26 SECTION 6. The changes in law made by this Act to Sections
27 157.311 and 157.313, Family Code, apply only to a child support lien

1 notice filed on or after the effective date of this Act. A child
2 support lien notice filed before the effective date of this Act is
3 governed by the law in effect on the date the lien notice was filed,
4 and the former law is continued in effect for that purpose.

5 SECTION 7. The changes in law made by this Act to Sections
6 157.314 and 157.327(f), Family Code, apply only to a financial
7 institution that receives a lien notice or notice of levy under
8 those sections on or after the effective date of this Act. A
9 financial institution that receives a lien notice or notice of levy
10 under those sections before the effective date of this Act is
11 governed by the law in effect on the date the lien notice or notice
12 of levy is received, and the former law is continued in effect for
13 that purpose.

14 SECTION 8. Sections 157.327(b-1), (g), (h), and (i), Family
15 Code, as added by this Act, apply only to a notice of levy delivered
16 on or after the effective date of this Act. A notice of levy
17 delivered before the effective date of this Act is governed by the
18 law in effect on the date the notice of levy is delivered, and the
19 former law is continued in effect for that purpose.

20 SECTION 9. The changes in law made by this Act to Section
21 34.001, Civil Practice and Remedies Code, apply to each child
22 support judgment or collection remedy, regardless of the date on
23 which the judgment is rendered or the remedy is sought.

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