

1-1 By: Wentworth S.B. No. 431  
1-2 (In the Senate - Filed January 8, 2009; February 17, 2009,  
1-3 read first time and referred to Committee on Jurisprudence;  
1-4 March 23, 2009, reported adversely, with favorable Committee  
1-5 Substitute by the following vote: Yeas 6, Nays 0; March 23, 2009,  
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 431 By: Wentworth

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to the enforcement of unpaid child support.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. Subsection (g), Section 157.312, Family Code, is  
1-13 amended to read as follows:

1-14 (g) A child support lien under this subchapter may not be  
1-15 directed to an employer in lieu of an order or writ under Chapter  
1-16 158 to withhold child support from [attach to] the disposable  
1-17 earnings of an obligor [paid by the employer].

1-18 SECTION 2. Section 157.314, Family Code, is amended by  
1-19 amending Subsection (d) and adding Subsection (e) to read as  
1-20 follows:

1-21 (d) If a child support lien notice is delivered to a  
1-22 financial institution with respect to an account of the obligor,  
1-23 the institution shall immediately:

1-24 (1) provide the claimant with the last known address  
1-25 of the obligor and disclose to the claimant the amount in the  
1-26 account at the time of receipt of the notice; and

1-27 (2) notify any other person having an ownership  
1-28 interest in the account that the account has been frozen in an  
1-29 amount not to exceed the amount of the child support arrearage  
1-30 identified in the notice.

1-31 (e) On request, a financial institution to which a child  
1-32 support lien notice has been delivered shall provide the claimant  
1-33 with a statement showing all transactions involving the obligor's  
1-34 account that occurred from the date of receipt of the child support  
1-35 lien notice to the date of receipt of the request for information.

1-36 SECTION 3. Subsections (b) and (f), Section 157.327, Family  
1-37 Code, are amended to read as follows:

1-38 (b) The notice under this section must:

1-39 (1) identify the amount of child support arrearages  
1-40 owing at the time the amount of arrearages was determined or, if the  
1-41 amount is less, the amount of arrearages owing at the time the  
1-42 notice is prepared and delivered to the financial institution; and

1-43 (2) direct the financial institution to pay to the  
1-44 claimant, not earlier than the 15th day or later than the 21st day  
1-45 after the date of delivery of the notice, an amount from the assets  
1-46 of the obligor or from funds due to the obligor at the time the levy  
1-47 is paid that are held or controlled by the institution or that  
1-48 should have been held or controlled by the institution, not to  
1-49 exceed the amount of the child support arrearages identified in the  
1-50 notice, unless:

1-51 (A) the institution is notified by the claimant  
1-52 that the obligor has paid the arrearages or made arrangements  
1-53 satisfactory to the claimant for the payment of the arrearages;

1-54 (B) the obligor or another person files, not  
1-55 later than the 10th day after the date of delivery of the notice  
1-56 required by Section 157.328, a suit under Section 157.323  
1-57 requesting a hearing by the court; or

1-58 (C) if the claimant is the Title IV-D agency, the  
1-59 obligor has requested an agency review under Section 157.328.

1-60 (f) A financial institution may collect any fees and costs  
1-61 identified in Subsection (c) from the obligor but may not deduct  
1-62 those [the] fees and costs [identified in Subsection (c)] from the  
1-63 obligor's assets before paying the appropriate amount to the

2-1 claimant.

2-2 SECTION 4. Subchapter G, Chapter 157, Family Code, is  
2-3 amended by adding Section 157.332 to read as follows:

2-4 Sec. 157.332. LIEN AND LEVY ON CERTAIN THIRD-PARTY ASSETS.

2-5 (a) If a claimant has reason to believe that an obligor's  
2-6 financial assets have been directed to a depository account of  
2-7 another individual in an attempt to protect those assets from a  
2-8 child support lien and levy under this subchapter, the claimant may  
2-9 file suit to obtain a judicial determination of the extent, if any,  
2-10 to which the account contains assets owned by the obligor.

2-11 (b) On filing suit under this section, the claimant shall  
2-12 also deliver a child support lien notice under this subchapter to  
2-13 the financial institution in which the account is maintained. On  
2-14 receipt of the notice, the financial institution shall immediately:

2-15 (1) freeze all assets in the account, except for  
2-16 assets that exceed the amount of the child support arrearage  
2-17 identified in the notice, until a judicial determination is made in  
2-18 accordance with this section; and

2-19 (2) inform the account holder that the assets have  
2-20 been frozen and the account may not be closed until a judicial  
2-21 determination is made in accordance with this section.

2-22 (c) A child support lien notice required under Subsection  
2-23 (b) may be served on a financial institution in the manner  
2-24 authorized by Section 157.3145.

2-25 (d) Except as otherwise provided by this section, the  
2-26 procedures provided by Subchapter B apply to a suit under this  
2-27 section. The obligor must be joined as an additional respondent.

2-28 (e) After providing notice to the obligor, the account  
2-29 holder, any other person alleging an ownership interest in the  
2-30 account, the claimant, and the obligee, the court shall hold a  
2-31 hearing to determine the extent, if any, to which the account  
2-32 contains assets owned by the obligor that are subject to a child  
2-33 support lien and levy under this subchapter. The hearing must be  
2-34 held not later than the 30th day after the date suit is filed under  
2-35 this section.

2-36 (f) In the hearing required by Subsection (e), the claimant  
2-37 has the burden of proving the extent of the obligor's ownership  
2-38 interest in assets held in the account.

2-39 (g) Following the hearing required by Subsection (e):

2-40 (1) if the court determines that the account does not  
2-41 contain any of the obligor's assets that are subject to a child  
2-42 support lien and levy under this subchapter, the court shall:

2-43 (A) order the release of the lien against the  
2-44 account; and

2-45 (B) prohibit any action to levy on the account;

2-46 or

2-47 (2) if the court determines that the account contains  
2-48 any of the obligor's assets that are subject to a child support lien  
2-49 and levy under this subchapter, the court shall:

2-50 (A) specify the amount of assets in the account  
2-51 determined by the court to be the obligor's assets subject to a  
2-52 child support lien and levy under this subchapter; and

2-53 (B) order that the amount specified under  
2-54 Paragraph (A) be applied against child support arrearages owed by  
2-55 the obligor.

2-56 (h) A financial institution that freezes assets under  
2-57 Subsection (b)(1) or surrenders assets in compliance with a court  
2-58 order under Subsection (g)(2) is not liable to the obligor, the  
2-59 account holder, or any other person for the assets frozen or  
2-60 surrendered.

2-61 (i) In a suit filed under this section, the court may award  
2-62 attorney's fees and costs to the prevailing party.

2-63 SECTION 5. Section 34.001, Civil Practice and Remedies  
2-64 Code, is amended by adding Subsection (c) to read as follows:

2-65 (c) This section does not apply to a child support judgment  
2-66 or any other child support collection remedy authorized by the  
2-67 Family Code.

2-68 SECTION 6. The changes in law made by this Act to Section  
2-69 157.312, Family Code, apply only to a child support lien notice

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

3-5 SECTION 7. The changes in law made by this Act to Section  
3-6 157.314 and Subsection (f), Section 157.327, Family Code, apply  
3-7 only to a financial institution that receives a lien notice or  
3-8 notice of levy under those sections on or after the effective date  
3-9 of this Act. A financial institution that receives a lien notice or  
3-10 notice of levy under those sections before the effective date of  
3-11 this Act is governed by the law in effect on the date the lien notice  
3-12 or notice of levy is received, and the former law is continued in  
3-13 effect for that purpose.

3-14 SECTION 8. The changes in law made by this Act to Section  
3-15 34.001, Civil Practice and Remedies Code, apply to each child  
3-16 support judgment or collection remedy, regardless of the date on  
3-17 which the judgment is rendered or the remedy is sought.

3-18 SECTION 9. This Act takes effect September 1, 2009.

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