

By: Harris

S.B. No. 865

A BILL TO BE ENTITLED

AN ACT

relating to child support enforcement.

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

SECTION 1. Section 102.009, Family Code, is amended by adding Subsection (e) to read as follows:

(e) In a proceeding under Chapter 233, the requirements imposed by Subsections (a) and (c) do not apply to the extent of any conflict between those requirements and the provisions in Chapter 233.

SECTION 2. Subsection (b), Section 102.011, Family Code, is amended to read as follows:

(b) The court may also exercise personal jurisdiction over a person on whom service of citation is required or over the person's personal representative, although the person is not a resident or domiciliary of this state, if:

(1) the person is personally served with citation in this state;

(2) the person submits to the jurisdiction of this state by consent, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;

(3) the child resides in this state as a result of the acts or directives of the person;

(4) the person resided with the child in this state;

1 (5) the person resided in this state and provided
2 prenatal expenses or support for the child;

3 (6) the person engaged in sexual intercourse in this
4 state and the child may have been conceived by that act of
5 intercourse;

6 (7) the person, ~~[registered with the paternity~~
7 ~~registry maintained by the bureau of vital statistics]~~ as provided
8 by Chapter 160:

9 (A) registered with the paternity registry
10 maintained by the bureau of vital statistics; or

11 (B) signed an acknowledgment of paternity of a
12 child born in this state; or

13 (8) there is any basis consistent with the
14 constitutions of this state and the United States for the exercise
15 of the personal jurisdiction.

16 SECTION 3. Subsections (b) and (c), Section 154.062, Family
17 Code, are amended to read as follows:

18 (b) Resources include:

19 (1) 100 percent of all wage and salary income and other
20 compensation for personal services (including commissions,
21 overtime pay, tips, and bonuses);

22 (2) interest, dividends, and royalty income;

23 (3) self-employment income;

24 (4) net rental income (defined as rent after deducting
25 operating expenses and mortgage payments, but not including noncash
26 items such as depreciation); and

27 (5) all other income actually being received,

1 including severance pay, retirement benefits, pensions, trust
2 income, annuities, capital gains, social security benefits other
3 than supplemental security income, unemployment benefits,
4 disability and workers' compensation benefits, interest income
5 from notes regardless of the source, gifts and prizes, spousal
6 maintenance, and alimony.

7 (c) Resources do not include:

8 (1) return of principal or capital;

9 (2) accounts receivable; or

10 (3) benefits paid in accordance with federal public
11 assistance programs [~~aid for families with dependent children~~].

12 SECTION 4. Subsections (a) and (b), Section 154.130, Family
13 Code, are amended to read as follows:

14 (a) Without regard to Rules 296 through 299, Texas Rules of
15 Civil Procedure, in rendering an order of child support, the court
16 shall make the findings required by Subsection (b) if:

17 (1) a party files a written request with the court not
18 later than 10 days after the date of the hearing;

19 (2) a party makes an oral request in open court during
20 the hearing; or

21 (3) the amount of child support ordered by the court
22 varies from the amount computed by applying the percentage
23 guidelines under Section 154.125 or 154.129, as applicable.

24 (b) If findings are required by this section, the court
25 shall state whether the application of the guidelines would be
26 unjust or inappropriate and shall state the following in the child
27 support order:

1 "(1) the [~~monthly~~] net resources of the obligor per
2 month are \$_____;

3 "(2) the [~~monthly~~] net resources of the obligee per
4 month are \$_____;

5 "(3) the percentage applied to the obligor's net
6 resources for child support [~~by the actual order rendered by the~~
7 ~~court~~] is _____%; and

8 "~~(4) [the amount of child support if the percentage~~
9 ~~guidelines are applied to the portion of the obligor's net~~
10 ~~resources that does not exceed the amount provided by Section~~
11 ~~154.125(a), Family Code, is \$_____;~~

12 ~~["(5)] if applicable, the specific reasons that the~~
13 ~~amount of child support per month ordered by the court varies from~~
14 ~~the amount computed by applying the percentage guidelines under~~
15 ~~Section 154.125 or 154.129, as applicable [stated in Subdivision~~
16 ~~(4) are: _____; and~~

17 ~~["(6) if applicable, the obligor is obligated to~~
18 ~~support children in more than one household, and:~~

19 ~~["(A) the number of children before the court is~~
20 ~~_____;~~

21 ~~["(B) the number of children not before the court~~
22 ~~residing in the same household with the obligor is _____; and~~

23 ~~["(C) the number of children not before the court~~
24 ~~for whom the obligor is obligated by a court order to pay support,~~
25 ~~without regard to whether the obligor is delinquent in child~~
26 ~~support payments, and who are not counted under Paragraph (A) or (B)~~
27 ~~is _____]."~~

1 SECTION 5. Subsections (b), (c), and (e), Section 154.181,
2 Family Code, are amended to read as follows:

3 (b) Before a hearing on temporary orders or a final order,
4 if no hearing on temporary orders is held, the court shall require
5 the parties to the proceedings to disclose in a pleading or other
6 statement:

7 (1) if private health insurance is in effect for the
8 child, the identity of the insurance company providing the
9 coverage, the policy number, which parent is responsible for
10 payment of any insurance premium for the coverage, whether the
11 coverage is provided through a parent's employment, and the cost of
12 the premium; or

13 (2) if private health insurance is not in effect for
14 the child, whether:

15 (A) the child is receiving medical assistance
16 under Chapter 32, Human Resources Code;

17 (B) the child is receiving health benefits
18 coverage under the state child health plan under Chapter 62, Health
19 and Safety Code, and the cost of any premium; and

20 (C) either parent has access to private health
21 insurance at reasonable cost to the obligor [~~that parent~~].

22 (c) In rendering temporary orders, the court shall, except
23 for good cause shown, order that any health insurance coverage in
24 effect for the child continue in effect pending the rendition of a
25 final order, except that the court may not require the continuation
26 of any health insurance that is not available to the parent at
27 reasonable cost to the obligor. If there is no health insurance

1 coverage in effect for the child or if the insurance in effect is
2 not available at a reasonable cost to the obligor, the court shall,
3 except for good cause shown, order health care coverage for the
4 child as provided under Section 154.182.

5 (e) In this section, "reasonable cost" means the cost of
6 health insurance coverage for a child that does not exceed nine
7 percent of the obligor's [~~responsible parent's~~] annual resources,
8 as described by Section 154.062(b), if the obligor is responsible
9 under a medical support order for the cost of health insurance
10 coverage for only one child. If the obligor is responsible under a
11 medical support order for the cost of health insurance coverage for
12 more than one child, "reasonable cost" means the total cost of
13 health insurance coverage for all children for which the obligor is
14 responsible under a medical support order that does not exceed nine
15 percent of the obligor's annual resources, as described by Section
16 154.062(b).

17 SECTION 6. Subsections (a), (b), (b-1), (b-2), and (c),
18 Section 154.182, Family Code, are amended to read as follows:

19 (a) The court shall consider the cost, accessibility, and
20 quality of health insurance coverage available to the parties and
21 shall give priority to health insurance coverage available through
22 the employment of one of the parties if the coverage is available at
23 a reasonable cost to the obligor.

24 (b) In determining the manner in which health care coverage
25 for the child is to be ordered, the court shall render its order in
26 accordance with the following priorities, unless a party shows good
27 cause why a particular order would not be in the best interest of

1 the child:

2 (1) if health insurance is available for the child
3 through a parent's employment or membership in a union, trade
4 association, or other organization at reasonable cost to the
5 obligor [~~parent~~], the court shall order that parent to include the
6 child in the parent's health insurance;

7 (2) if health insurance is not available for the child
8 under Subdivision (1) but is available to a parent from another
9 source and at a reasonable cost to the obligor, the court may order
10 that parent to provide health insurance for the child; or

11 (3) if health insurance coverage is not available for
12 the child under Subdivision (1) or (2), the court shall order the
13 obligor to pay the obligee, in addition to any amount ordered under
14 the guidelines for child support, an amount, not to exceed the
15 maximum amount that the obligor could be required to pay for health
16 insurance under this subchapter [~~nine percent of the obligor's~~
17 ~~monthly resources~~], as cash medical support for the child.

18 (b-1) If the parent ordered to provide health insurance
19 under Subsection (b)(1) or (2) is the obligee, the court shall order
20 the obligor to pay the obligee, as additional child support, an
21 amount equal to the actual cost of health insurance for the child,
22 but not to exceed a reasonable cost to the obligor. In calculating
23 the actual cost of health insurance for the child, if the obligee
24 has other minor dependents covered under the same health insurance
25 plan, the court shall divide the total cost to the obligee for the
26 insurance by the total number of minor dependents, including the
27 child covered under the plan.

1 (b-2) If the court finds that neither parent has access to
2 private health insurance at a reasonable cost to the obligor, the
3 court shall order the parent awarded the exclusive right to
4 designate the child's primary residence or, to the extent permitted
5 by law, the other parent to apply immediately on behalf of the child
6 for participation in a government medical assistance program or
7 health plan. If the child participates in a government medical
8 assistance program or health plan, the court shall order cash
9 medical support under Subsection (b)(3).

10 (c) In this section:

11 (1) "Accessibility" means the extent to which health
12 insurance coverage for a child provides for the availability of
13 medical care within a reasonable traveling distance and time from
14 the child's primary residence, as determined by the court.

15 (2) "Reasonable~~[, "reasonable]~~ cost" has the meaning
16 assigned by Section 154.181(e).

17 SECTION 7. Subsection (c), Section 154.183, Family Code, is
18 amended to read as follows:

19 (c) As additional child support, the court shall allocate
20 between the parties, according to their circumstances:

21 (1) [7] the reasonable and necessary health care
22 expenses, including vision and dental expenses, of the [of a] child
23 that are not reimbursed by health insurance or are not otherwise
24 covered by the amount of cash medical support ordered under Section
25 154.182(b)(3); and

26 (2) amounts paid by either party as deductibles or
27 copayments in obtaining health care services for the child covered

1 under a health insurance policy.

2 SECTION 8. Subsection (c), Section 154.187, Family Code, is
3 amended to read as follows:

4 (c) An employer who has received an order or notice under
5 this subchapter shall provide to the sender, by first class mail not
6 later than the 30th day after the date the employer receives the
7 order or notice, a statement that the child:

8 (1) has been enrolled in the employer's [a] health
9 insurance plan or is already enrolled in another health insurance
10 plan in accordance with a previous child support or medical support
11 order to which the employee is subject; or

12 (2) cannot be enrolled or cannot be enrolled
13 permanently in the employer's [a] health insurance plan and provide
14 the reason why coverage or permanent coverage cannot be provided.

15 SECTION 9. Subsection (b), Section 154.191, Family Code, is
16 amended to read as follows:

17 (b) This subchapter does not limit the authority of the
18 court to render or modify a medical support order to provide
19 ~~[containing a provision]~~ for payment of uninsured health expenses,
20 health care costs, or health insurance premiums in a manner
21 consistent ~~[that are in addition to and inconsistent]~~ with this
22 subchapter.

23 SECTION 10. Subsection (b), Section 157.005, Family Code,
24 is amended to read as follows:

25 (b) The court retains jurisdiction to confirm the total
26 amount of child support arrearages and render a cumulative money
27 judgment for past-due child support, as provided by Section

1 157.263, if a motion for enforcement requesting a cumulative money
2 judgment is filed not later than the 10th anniversary after the
3 date:

- 4 (1) the child becomes an adult; or
5 (2) on which the child support obligation terminates
6 under the child support order or by operation of law.

7 SECTION 11. Subchapter A, Chapter 157, Family Code, is
8 amended by adding Section 157.009 to read as follows:

9 Sec. 157.009. CREDIT FOR PAYMENT OF DISABILITY BENEFITS.

10 In addition to any other credit or offset available to an obligor
11 under this title, if a child for whom the obligor owes child support
12 receives a lump-sum payment as a result of the obligor's disability
13 and that payment is made to the obligee as the representative payee
14 of the child, the obligor is entitled to a credit. The credit under
15 this section is equal to the amount of the lump-sum payment and
16 shall be applied to any child support arrearage and interest owed by
17 the obligor on behalf of that child at the time the payment is made.

18 SECTION 12. Subsection (d), Section 157.162, Family Code,
19 is amended to read as follows:

20 (d) If the court determines that a respondent has failed to
21 make one or more periodic child support payments as ordered by the
22 court, the [The] court may [not] find the [a] respondent in contempt
23 of court regardless of whether [for failure to pay child support if]
24 the respondent appears at the hearing with a copy of the payment
25 record or other evidence [satisfactory to the court] showing that
26 the respondent, as of the time of the hearing, is current in the
27 payment of child support [as ordered by the court].

1 SECTION 13. Subsection (f), Section 157.262, Family Code,
2 is amended to read as follows:

3 (f) The money judgment for arrearages rendered by the court
4 may be subject to a counterclaim or offset as provided by this title
5 ~~[subchapter]~~.

6 SECTION 14. Section 157.264, Family Code, is amended by
7 adding Subsection (c) to read as follows:

8 (c) An order rendered under Subsection (b) does not preclude
9 or limit the use of any other means for enforcement of the judgment.

10 SECTION 15. Section 158.203, Family Code, is amended by
11 amending Subsection (b) and adding Subsection (b-1) to read as
12 follows:

13 (b) An employer with 250 or more employees shall remit a
14 payment required under this section ~~[For payments made]~~ by
15 electronic funds transfer or electronic data interchange~~[, the~~
16 ~~employer shall transmit the amount withheld]~~ not later than the
17 second business day after the pay date.

18 (b-1) An employer with fewer than 250 employees may remit a
19 payment required under this section by electronic funds transfer or
20 electronic data interchange. A payment remitted by the employer
21 electronically must be remitted not later than the date specified
22 by Subsection (b).

23 SECTION 16. Subsections (a), (b), and (c), Section 158.215,
24 Family Code, are amended to read as follows:

25 (a) In this section, "lump-sum payment" means income in the
26 form of a bonus or ~~[commission or]~~ an amount paid in lieu of
27 vacation or other leave time. The term does not include an

1 employee's usual earnings or an amount paid as severance pay on
2 termination of employment.

3 (b) This section applies only to an employer who receives an
4 administrative writ of withholding in a Title IV-D case [~~that~~
5 ~~requires that an obligor's income be withheld for child support~~
6 ~~arrearages~~].

7 (c) An employer to whom this section applies may not make a
8 lump-sum payment to the obligor in the amount of \$500 or more
9 without first notifying the Title IV-D agency [~~that issued the~~
10 ~~writ~~] to determine whether all or a portion of the payment should be
11 applied to [~~the~~] child support arrearages owed by the obligor.

12 SECTION 17. Subsection (a), Section 159.611, Family Code,
13 is amended to read as follows:

14 (a) Except as provided by Section 159.615, on petition a
15 tribunal of this state may modify a child support order issued in
16 another state and registered in this state only if Section 159.613
17 does not apply and after notice and hearing the tribunal finds that:

18 (1) the following requirements are met:

19 (A) the child, the obligee who is an individual,
20 and the obligor do not reside in the issuing state;

21 (B) a petitioner who is a nonresident of this
22 state seeks modification; and

23 (C) the respondent is subject to the personal
24 jurisdiction of the tribunal of this state; or

25 (2) this state is the state of residence of the child
26 [~~and the child~~], or a party who is an individual[~~7~~] is subject to
27 the personal jurisdiction of the tribunal of this state, and all of

1 the parties who are individuals have filed consents in a record in
2 the issuing tribunal [~~consents~~] for a tribunal of this state to
3 modify the support order and assume continuing, exclusive
4 jurisdiction.

5 SECTION 18. Subsection (a), Section 160.103, Family Code,
6 is amended to read as follows:

7 (a) Except as provided by Chapter 233, this [~~This~~] chapter
8 governs every determination of parentage in this state.

9 SECTION 19. Subsection (b), Section 160.601, Family Code,
10 is amended to read as follows:

11 (b) The proceeding is governed by the Texas Rules of Civil
12 Procedure, except as provided by Chapter 233.

13 SECTION 20. Subsection (e), Section 201.009, Family Code,
14 is amended to read as follows:

15 (e) On a request for a de novo hearing, the referring court
16 may consider testimony or other evidence in the record[~~, if the~~
17 ~~record is taken by a court reporter,~~] in addition to witnesses or
18 other matters presented under Section 201.015.

19 SECTION 21. Subsection (c), Section 201.015, Family Code,
20 is amended to read as follows:

21 (c) In the de novo hearing before the referring court, the
22 parties may present witnesses on the issues specified in the
23 request for hearing. The referring court may also consider the
24 record from the hearing before the associate judge, including the
25 charge to and verdict returned by a jury[~~, if the record was taken~~
26 ~~by a court reporter~~].

27 SECTION 22. Section 231.015, Family Code, is amended to

1 read as follows:

2 Sec. 231.015. INSURANCE REPORTING [~~PILOT~~] PROGRAM. (a) In
3 consultation with the Texas Department of Insurance and
4 representatives of the insurance industry in this state, including
5 insurance trade associations, the Title IV-D agency by rule shall
6 operate [~~establish~~] a [~~pilot~~] program to improve the enforcement of
7 child support, including the use of child support liens under
8 Chapter 157. The [~~pilot~~] program shall provide for procedures,
9 including data matches, [~~develop processes~~] under which insurance
10 companies shall [~~may voluntarily~~] cooperate with the Title IV-D
11 agency in identifying obligors who owe child support arrearages or
12 who are subject to liens for child support arrearages to intercept
13 certain liability insurance settlements or awards for claims in
14 satisfaction of the arrearage amounts.

15 (b) An insurance company that provides information or
16 [~~otherwise~~] responds to a notice of child support lien or levy under
17 Subchapter G, Chapter 157, or acts in good faith to comply with
18 procedures established by the Title IV-D agency [~~in the pilot~~
19 ~~program~~] under this section is not liable for those acts under any
20 law to any person.

21 SECTION 23. Section 231.202, Family Code, is amended to
22 read as follows:

23 Sec. 231.202. AUTHORIZED COSTS AND FEES IN TITLE IV-D
24 CASES. In a Title IV-D case filed under this title, including a
25 case filed under Chapter 159, the Title IV-D agency shall pay only
26 the following costs and fees:

27 (1) filing fees and fees for issuance and service of

1 process as provided by Chapter 110 of this code and by Sections
2 51.317(b)(1), (2), and (3) and (b-1) [51.317], 51.318(b)(2), and
3 51.319(2), Government Code;

4 (2) fees for transfer as provided by Chapter 110;

5 (3) fees for the issuance and delivery of orders and
6 writs of income withholding in the amounts provided by Chapter 110;

7 (4) the fee that sheriffs and constables are
8 authorized to charge for serving process under Section 118.131,
9 Local Government Code, for each item of process to each individual
10 on whom service is required, including service by certified or
11 registered mail, to be paid to a sheriff, constable, or clerk
12 whenever service of process is required;

13 (5) the fee for filing an administrative writ of
14 withholding under Section 158.503(d); and

15 (6) the fee for issuance of a subpoena as provided by
16 Section 51.318(b)(1), Government Code.

17 SECTION 24. Subsection (a), Section 232.005, Family Code,
18 is amended to read as follows:

19 (a) A petition under this chapter must state that license
20 suspension is required under Section 232.003 and allege:

21 (1) the name and, if known, social security number of
22 the individual;

23 (2) ~~[with regard to each license, the type, and if~~
24 ~~known, number of any license the individual is believed to hold and]~~
25 the name of the licensing authority that issued a [the] license the
26 individual is believed to hold; and

27 (3) the amount of arrearages owed under the child

1 support order or the facts associated with the individual's failure
2 to comply with:

3 (A) a subpoena; or

4 (B) the terms of a court order providing for the
5 possession of or access to a child.

6 SECTION 25. Section 34.001, Civil Practice and Remedies
7 Code, is amended by adding Subsection (c) to read as follows:

8 (c) This section does not apply to a judgment for child
9 support under the Family Code.

10 SECTION 26. Section 12.0011, Property Code, is amended by
11 adding Subsection (d) to read as follows:

12 (d) This section does not apply to a child support lien
13 notice issued by the Title IV-D agency under Chapter 157, Family
14 Code. For purposes of this subsection, "Title IV-D agency" has the
15 meaning assigned by Section 101.033, Family Code.

16 SECTION 27. Subsection (c), Section 601.454,
17 Transportation Code, is amended to read as follows:

18 (c) Information obtained under this subchapter is
19 confidential. The agent:

20 (1) may use the information only for a purpose
21 authorized under this subchapter;

22 (2) ~~and~~ may not use the information for a commercial
23 purpose; and

24 (3) on request, and subject to appropriate safeguards
25 to protect the privacy of motor vehicle owners developed by the
26 implementing agencies and the attorney general, may provide the
27 information to the attorney general for the purpose of enforcing

1 child support obligations.

2 SECTION 28. Subsection (c), Section 154.130, Subsection
3 (d), Section 154.182, and Section 234.011, Family Code, are
4 repealed.

5 SECTION 29. Section 102.009, Family Code, as amended by
6 this Act, applies to a proceeding under Chapter 233, Family Code,
7 that is pending before the Title IV-D agency or initiated by the
8 Title IV-D agency on or after the effective date of that provision.

9 SECTION 30. Section 102.011, Family Code, as amended by
10 this Act, applies only to an acknowledgment of paternity signed on
11 or after the effective date of that provision.

12 SECTION 31. Sections 154.062 and 154.130, Family Code, as
13 amended by this Act, apply only to a suit affecting the parent-child
14 relationship that is commenced on or after the effective date of
15 those provisions. A suit affecting the parent-child relationship
16 commenced before the effective date of those provisions is governed
17 by the law in effect on the date the suit was commenced, and the
18 former law is continued in effect for that purpose.

19 SECTION 32. Sections 154.181, 154.182, 154.183, and
20 154.191, Family Code, as amended by this Act, apply to a suit
21 affecting the parent-child relationship pending in a trial court on
22 or filed on or after the effective date of those provisions.

23 SECTION 33. Section 154.187, Family Code, as amended by
24 this Act, applies to an order or notice received by an employer on
25 or after the effective date of that provision. An order or notice
26 received by an employer before the effective date of that provision
27 is governed by the law in effect on the date the order or notice was

1 received, and the former law is continued in effect for that
2 purpose.

3 SECTION 34. Section 157.009, Family Code, as added by this
4 Act, applies only to a money judgment for child support arrearages
5 that is rendered on or after the effective date of that provision.
6 A money judgment for child support arrearages rendered before the
7 effective date of that provision is governed by the law in effect on
8 the date that the judgment was rendered, and the former law is
9 continued in effect for that purpose.

10 SECTION 35. Section 157.162, Family Code, as amended by
11 this Act, applies to a hearing to enforce an order in a suit
12 affecting the parent-child relationship that commences on or after
13 the effective date of that provision. A hearing that commences
14 before the effective date of that provision is governed by the law
15 in effect on the date the hearing commenced, and the former law is
16 continued in effect for that purpose.

17 SECTION 36. Section 158.203, Family Code, as amended by
18 this Act, applies to child support payments withheld by an employer
19 on or after September 1, 2009.

20 SECTION 37. Sections 201.009 and 201.015, Family Code, as
21 amended by this Act, apply only to a hearing before an associate
22 judge that is commenced on or after the effective date of those
23 provisions. A hearing before an associate judge that commenced
24 before the effective date of those provisions is governed by the law
25 in effect on the date the hearing commenced, and the former law is
26 continued in effect for that purpose.

27 SECTION 38. Section 232.005, Family Code, as amended by

1 this Act, applies only to a petition filed on or after the effective
2 date of that provision. A petition filed before the effective date
3 of that provision is governed by the law in effect on the date the
4 petition was filed, and the former law is continued in effect for
5 that purpose.

6 SECTION 39. Section 34.001, Civil Practice and Remedies
7 Code, as amended by this Act, applies to each judgment for child
8 support under the Family Code, regardless of the date on which the
9 judgment was rendered.

10 SECTION 40. (a) Except as provided by Subsection (b) of
11 this section:

12 (1) this Act takes effect immediately if it receives a
13 vote of two-thirds of all the members elected to each house, as
14 provided by Section 39, Article III, Texas Constitution; and

15 (2) if this Act does not receive the vote necessary for
16 immediate effect, this Act takes effect September 1, 2009.

17 (b) The change in law made by this Act to Section 158.203,
18 Family Code, takes effect September 1, 2009.