

SENATE AMENDMENTS

2nd Printing

By: Phillips

H.B. No. 3876

A BILL TO BE ENTITLED

1 AN ACT
2 relating to certain enforcement actions alleging the failure to pay
3 child support.

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

5 SECTION 1. Section 157.162, Family Code, is amended by
6 adding Subsection (e) to read as follows:

7 (e) Notwithstanding Subsection (d), the court may award the
8 petitioner costs of court and reasonable attorney's fees in a
9 proceeding described by that subsection if the court finds that:

10 (1) on the date the motion for enforcement was filed,
11 the respondent was not current in the payment of child support as
12 ordered by the court; and

13 (2) the respondent made the child support payments
14 described by Subsection (d) after the date the respondent was
15 served notice or otherwise discovered that the motion for
16 enforcement had been filed.

17 SECTION 2. The change in law made by this Act applies only
18 to a motion for enforcement that is filed on or after the effective
19 date of this Act. A motion for enforcement filed before the
20 effective date of this Act is governed by the law in effect
21 immediately before that date, and the former law is continued in
22 effect for that purpose.

23 SECTION 3. This Act takes effect September 1, 2009.

FLOOR AMENDMENT NO. _____

ADOPTED

BY:

Chris Harris

MAY 27 2009

Atty. Spaw
Secretary of the Senate

Amend H.B. No. 3876 as follows:

(1) On page 1, line 12, strike "adding Subsection (e)" and substitute "amending Subsection (d) and adding Subsection (e)".

(2) Add the following on page 1, between lines 12 and 13:

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

FLOOR AMENDMENT NO. 2

ADOPTED

MAY 27 2009

BY: W. Lutwack

Atty. Gen.
~~Secretary of the Senate~~

1 Amend H.B. No. 3876 (senate ~~committee~~ printing) as follows:

2 (1) Add the following appropriately numbered SECTIONS and
3 renumber subsequent SECTIONS of the bill accordingly:

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

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

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

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

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

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

23 (e) On request, a financial institution to which a child
24 support lien notice has been delivered shall provide the
25 claimant with a statement showing all transactions involving the
26 obligor's account that occurred from the date of receipt of the
27 child support lien notice to the date of receipt of the request
28 for information.

29 SECTION ____ . Section 157.324, Family Code, is amended to

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13

1 read as follows:

2 Sec. 157.324. LIABILITY FOR FAILURE TO COMPLY WITH ORDER
3 OR LIEN. (a) A person who knowingly pays over, releases, sells,
4 transfers, encumbers, conveys, or otherwise disposes of property
5 subject to a child support lien or who, after a foreclosure
6 hearing, fails to surrender on demand nonexempt personal
7 property as directed by a court under this subchapter is liable
8 to the claimant in an amount equal to the greater of two times
9 the value of the property paid over, released, sold,
10 transferred, encumbered, conveyed, or otherwise disposed of or
11 not surrendered or \$5,000, but not to exceed the amount of the
12 child support arrearages for which the lien or foreclosure
13 judgment was issued.

14 (b) A claimant may recover costs and reasonable attorney's
15 fees incurred in an action under this section.

16 (c) Fifty percent of the amount paid by a person to the
17 claimant under Subsection (a) shall be credited against the
18 child support arrearages owed by the obligor.

19 (d) A financial institution is not liable under this
20 section for the disposition of assets in an account if the child
21 support lien does not contain either the account number or the
22 social security number of an account owner of record.

23 SECTION ____ . Subsections (b) and (f), Section 157.327,
24 Family Code, are amended to read as follows:

25 (b) The notice under this section must:

26 (1) identify the amount of child support arrearages
27 owing at the time the amount of arrearages was determined or, if
28 the amount is less, the amount of arrearages owing at the time
29 the notice is prepared and delivered to the financial
30 institution; and

31 (2) direct the financial institution to pay to the

1 claimant, not earlier than the 15th day or later than the 21st
2 day after the date of delivery of the notice, an amount from the
3 assets of the obligor or from funds due to the obligor at the
4 time the levy is paid that are held or controlled by the
5 institution or that should have been held or controlled by the
6 institution, not to exceed the amount of the child support
7 arrearages identified in the notice, unless:

8 (A) the institution is notified by the claimant
9 that the obligor has paid the arrearages or made arrangements
10 satisfactory to the claimant for the payment of the arrearages;

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

15 (C) if the claimant is the Title IV-D agency,
16 the obligor has requested an agency review under Section
17 157.328.

18 (f) A financial institution may collect any fees and costs
19 identified in Subsection (c) from the obligor but may not deduct
20 those [the] fees and costs [identified in Subsection (e)] from
21 the obligor's assets before paying the appropriate amount to the
22 claimant.

23 SECTION ____ . Section 157.330, Family Code, is amended by
24 amending Subsection (a) and adding Subsections (c) and (d) to
25 read as follows:

26 (a) A person who possesses or has a right to property that
27 is the subject of a notice of levy delivered to the person and
28 who refuses or fails to timely surrender the property or right
29 to property that should have been paid or delivered to the
30 claimant on demand is liable to the claimant in an amount equal
31 to the greater of two times the value of the property or right

1 to property that should have been paid or delivered or \$5,000,
2 ~~[not surrendered]~~ but ~~[that does]~~ not to exceed the amount of
3 the child support arrearages for which the notice of levy has
4 been filed.

5 (c) Fifty percent of the amount paid by a person to the
6 claimant under Subsection (a) shall be credited against the
7 child support arrearages owed by the obligor.

8 (d) A financial institution is not liable under this
9 section for the disposition of assets in an account if the
10 notice of levy does not contain either the account number or the
11 social security number of an account owner of record.

12 SECTION ____ Subchapter G, Chapter 157, Family Code, is
13 amended by adding Section 157.332 to read as follows:

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

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

22 (b) On filing suit under this section, the claimant shall
23 also deliver a child support lien notice under this subchapter
24 to the financial institution in which the account is maintained.
25 On receipt of the notice, the financial institution shall
26 immediately:

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

31 (2) inform the account holder that the assets have

16

1 been frozen and the account may not be closed until a judicial
2 determination is made in accordance with this section.

3 (c) A child support lien notice required under Subsection
4 (b) may be served on a financial institution in the manner
5 authorized by Section 157.3145.

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

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

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

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

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

25 (A) order the release of the lien against the
26 account; and

27 (B) prohibit any action to levy on the account;
28 or

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

17

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

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

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

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

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

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

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

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

1 before the effective date of this Act is governed by the law in
2 effect on the date the lien notice or notice of levy is
3 received, and the former law is continued in effect for that
4 purpose.

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

9 (2) Strike SECTION 2 of the bill and substitute the
10 following:

11 SECTION 2. The change in law made by this Act to Section
12 157.162, Family Code, applies only to a motion for enforcement
13 that is filed on or after the effective date of this Act. A
14 motion for enforcement filed before the effective date of this
15 Act is governed by the law in effect immediately before that
16 date, and the former law is continued in effect for that
17 purpose.

19

ADOPTED

MAY 27 2009

Atty. Gen.
Secretary of the Senate

FLOOR AMENDMENT NO. 3

BY: Thurk Dutton

1 Amend H.B. 3876 by adding the following appropriately
2 numbered SECTION to the bill and renumbering subsequent SECTIONS
3 of the bill as appropriate:

4 SECTION __. Section 231.202, Family Code, is amended to
5 read as follows:

6 Sec. 231.202. AUTHORIZED COSTS AND FEES IN TITLE IV-D
7 CASES. In a Title IV-D case filed under this title, including a
8 case filed under Chapter 159, the Title IV-D agency shall pay:

9 (1) filing fees and fees for issuance and service of
10 process as provided by Chapter 110 of this code and by Sections
11 51.317, 51.318(b)(2), and 51.319(2), Government Code;

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

13 (3) fees for the issuance and delivery of orders and
14 writs of income withholding in the amounts provided by Chapter
15 110;

16 (4) the fee for services provided by ~~[that]~~ sheriffs
17 and constables, including:

18 (A) a fee ~~[are]~~ authorized ~~[to charge for~~
19 ~~serving process]~~ under Section 118.131, Local Government Code,
20 for serving each item of process to each individual on whom
21 service is required, including service by certified or
22 registered mail ~~[, to be paid to a sheriff, constable, or clerk]~~

1 ~~whenever service of process is required]; and~~

2 (B) a fee authorized under Section 157.103(b)
3 for serving a capias;

4 (5) the fee for filing an administrative writ of
5 withholding under Section 158.503(d); ~~and]~~

6 (6) the fee for issuance of a subpoena as provided by
7 Section 51.318(b)(1), Government Code; and

8 (7) a fee authorized under a local rule for the
9 electronic filing of documents with a clerk.

10 SECTION __. The changes in law made in Section 231.202 by
11 this Act apply to a suit affecting the parent-child relationship
12 pending in a trial court on or filed on or after the effective
13 date of this Act.

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 28, 2009

TO: Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB3876 by Phillips (Relating to certain enforcement actions alleging the failure to pay child support.), **As Passed 2nd House**

No fiscal implication to the State is anticipated.

The bill would amend several sections of the Family Code related to certain enforcement actions alleging the failure to pay child support, under certain conditions, and child support lien notices.

The bill would allow a court to determine that a respondent is in contempt of court if the respondent has missed one or more child support payments regardless of an appearance at a hearing with a copy of proof of payment, and to award court costs and attorney's fees in certain enforcement actions alleging the failure to pay child support. Any award of costs or fees by a court pursuant to the legislation would have no fiscal effect on the court system.

The bill also would add certain requirements for financial institutions that receive child support lien notices, and would allow a financial institution to collect fees and costs from an obligor, but not deduct the amounts from the obligor's assets prior to paying the amount to the claimant.

The bill also would provide that the Office of the Attorney General shall pay a fee authorized under a local rule for the electronic filing of documents with a clerk. It is assumed that any additional costs associated with implementation of the bill could be absorbed within existing state resources.

It is assumed that any additional costs associated with implementation of the bill could be absorbed within existing resources. The bill would take immediate effect if the bill receives two-thirds the vote of all members. Otherwise, the bill would take effect September 1, 2009.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council

LBB Staff: JOB, TP, MN, TB

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 22, 2009

TO: Honorable Jeff Wentworth, Chair, Senate Committee on Jurisprudence

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB3876 by Phillips (Relating to certain enforcement actions alleging the failure to pay child support.), **As Engrossed**

No fiscal implication to the State is anticipated.

The bill would amend the Family Code to allow a court to award court costs and attorney's fees in certain enforcement actions alleging the failure to pay child support, under certain conditions. Any award of costs or fees by a court pursuant to the legislation would have no fiscal effect on the court system. Therefore, no fiscal implication to the State is anticipated. The bill would take immediate effect if the bill receives two-thirds the vote of all members. Otherwise, the bill would take effect September 1, 2009.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council

LBB Staff: JOB, MN, TB

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 11, 2009

TO: Honorable Todd Hunter, Chair, House Committee on Judiciary & Civil Jurisprudence

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB3876 by Phillips (relating to certain enforcement actions alleging the failure to pay child support.), **Committee Report 1st House, Substituted**

No fiscal implication to the State is anticipated.

The bill would amend the Family Code to allow a court to award court costs and attorney's fees in certain enforcement actions alleging the failure to pay child support, under certain conditions. Any award of costs or fees by a court pursuant to the legislation would have no fiscal effect on the court system. Therefore, no fiscal implication to the State is anticipated. The bill would take immediate effect if the bill receives two-thirds the vote of all members. Otherwise, the bill would take effect September 1, 2009.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council

LBB Staff: JOB, MN, TB

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

April 21, 2009

TO: Honorable Todd Hunter, Chair, House Committee on Judiciary & Civil Jurisprudence

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB3876 by Phillips (Relating to certain enforcement actions alleging the failure to pay child support.), **As Introduced**

No fiscal implication to the State is anticipated.

The bill would amend the Family Code to allow a court to award court costs and attorney's fees in certain enforcement actions alleging the failure to pay child support. Any award of costs or fees by a court pursuant to the legislation would have no fiscal effect on the court system. Therefore, no fiscal implication to the State is anticipated. The bill would take immediate effect if the bill receives two-thirds the vote of all members. Otherwise, the bill would take effect September 1, 2009.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council

LBB Staff: JOB, MN, TB