

House Bill 3876
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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

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

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

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

SECTION 2. The change in law made by this Act applies only to a motion for enforcement that is filed on or after the effective date of this Act. A motion for enforcement filed before the effective date of this Act is governed by the law in effect immediately before that

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

(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].

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

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

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

SECTION __. The change in law made by this Act to Section 157.162, Family Code, applies only to a motion for enforcement that is filed on or after the effective date of this Act. A motion for enforcement filed before the effective date of this Act is governed by the law in effect

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date, and the former law is continued in effect for that purpose.

No equivalent provision.

No equivalent provision.

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immediately before that date, and the former law is continued in effect for that purpose.

SECTION __. 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 __. 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 with a statement showing all transactions involving the obligor's account that occurred from the

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date of receipt of the child support lien notice to the date of receipt of the request for information.

No equivalent provision.

SECTION __. Section 157.324, Family Code, is amended to read as follows:

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

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

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

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

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No equivalent provision.

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

(b) The notice under this section must:

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

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

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

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

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

(f) A financial institution may collect any fees and costs identified in Subsection (c) from the obligor but may not

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deduct those ~~[the]~~ fees and costs ~~[identified in Subsection (e)]~~ from the obligor's assets before paying the appropriate amount to the claimant.

No equivalent provision.

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

(a) A person who possesses or has a right to property that is the subject of a notice of levy delivered to the person and who refuses or fails to timely surrender the property or right to property that should have been paid or delivered to the claimant on demand is liable to the claimant in an amount equal to the greater of two times the value of the property or right to property that should have been paid or delivered or \$5,000, ~~[not surrendered]~~ but ~~[that does]~~ not to exceed the amount of the child support arrearages for which the notice of levy has been filed.

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

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

No equivalent provision.

SECTION __. Subchapter G, Chapter 157, Family Code, is amended by adding Section 157.332 to read as

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follows:

Sec. 157.332. LIEN AND LEVY ON CERTAIN THIRD-PARTY ASSETS. (a) If a claimant has reason to believe that an obligor's financial assets have been directed to a depository account of another individual in an attempt to protect those assets from a child support lien and levy under this subchapter, the claimant may file suit to obtain a judicial determination of the extent, if any, to which the account contains assets owned by the obligor.

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

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

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

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

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

(e) After providing notice to the obligor, the account

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

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

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

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

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

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

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

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

and

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

(h) A financial institution that freezes assets under Subsection (b)(1) or surrenders assets in compliance with a court order under Subsection (g)(2) is not liable to the

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obligor, the account holder, or any other person for the assets frozen or surrendered.

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

No equivalent provision.

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

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

No equivalent provision.

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

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

- (1) filing fees and fees for issuance and service of process as provided by Chapter 110 of this code and by Sections 51.317, 51.318 (b)(2), and 51.319(2), Government Code;
- (2) fees for transfer as provided by Chapter 110;
- (3) fees for the issuance and delivery of orders and writs of income withholding in the amounts provided by Chapter 110;
- (4) the fee for services provided by ~~that~~ sheriffs and constables, including:
 - (A) a fee ~~are~~ authorized ~~[to charge for serving process]~~

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under Section 118.131, Local Government Code, for servicing each item of process to each individual on whom service is required, including service by certified or registered mail [~~to be paid to a sheriff, constable, or clerk whenever service of process is required~~]; and
(B) a fee authorized under Section 157.103(b) for serving a capias;
(5) the fee for filing an administrative writ of withholding under Section 158.503(d); [~~and~~]
(6) the fee for issuance of a subpoena as provided by Section 51.318(b)(1), Government Code; and
(7) a fee authorized under a local rule for the electronic filing of documents with a clerk.

No equivalent provision.

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

No equivalent provision.

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

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No equivalent provision.

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

No equivalent provision.

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

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

Same as House version.