

## **BILL ANALYSIS**

C.S.H.B. 3017  
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Judiciary & Civil Jurisprudence  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

In Texas, the amount of child support an obligor must pay may be determined by a court examining the obligor's overall resources. According to those familiar with child support mechanisms, if a court finds that an obligor is intentionally underemployed or unemployed, it may consider the obligor's earning potential, which is commonly done by examining the obligor's previous income level.

The income of obligors who are military servicemembers often changes dramatically immediately after they are discharged from service. Veterans advocacy groups assert that after discharge, a veteran who has filed a disability claim may have to wait up to two years for a decision to be made on the claim, during which time no income is earned from the military. These groups contend that these veterans sometimes face lawsuits for arrears because past military pay can skew the calculation of earning potential.

In addition, family law practitioners note that courts currently have discretion to decide whether a veteran's disability benefits are considered resources when calculating child support obligations. Such practitioners contend that there is no statewide uniformity on that issue and very little guidance regarding when and how a veteran's choice to seek disability may be construed as intentional underemployment or unemployment. C.S.H.B. 3017 seeks to address these issues by clarifying provisions relating to the consideration of military disability benefits for purposes of child support liability.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 3017 amends the Family Code to include U.S. Department of Veterans Affairs disability benefits other than non-service-connected disability pension benefits, as defined by federal law, among the types of income considered resources for the purpose of determining child support liability. The bill authorizes a court, in determining whether an obligor is intentionally unemployed or underemployed, to consider evidence that the obligor is a veteran, as defined by federal law, who is seeking or has been awarded U.S. Department of Veterans Affairs disability benefits or non-service-connected disability pension benefits, as those terms are defined by federal law.

C.S.H.B. 3017 requires a court to presume, for purposes of determining child support liability, that a party has income, rather than wages or salary, equal to the federal minimum wage for a 40-hour work week, specifies that the income is presumed to be income to which the child support guidelines may be applied, and requires the court to make such a presumption in the absence of evidence of a party's resources, rather than in the absence of evidence of wages and salary income.

**EFFECTIVE DATE**

September 1, 2013.

**COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 3017 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

**INTRODUCED**

SECTION 1. Section 154.062(b), Family Code, is amended to read as follows:

(b) Resources include:

- (1) 100 percent of all wage and salary income and other compensation for personal services (including commissions, overtime pay, tips, and bonuses);
- (2) interest, dividends, and royalty income;
- (3) self-employment income;
- (4) net rental income (defined as rent after deducting operating expenses and mortgage payments, but not including noncash items such as depreciation); and
- (5) all other income actually being received, including severance pay, retirement benefits, pensions, trust income, annuities, capital gains, social security benefits other than supplemental security income, United States Department of Veterans Affairs disability benefits other than non-service-connected disability pension benefits, unemployment benefits, disability and workers' compensation benefits, interest income from notes regardless of the source, gifts and prizes, spousal maintenance, and alimony.

SECTION 2. Section 154.066, Family Code, is amended to read as follows:

Sec. 154.066. INTENTIONAL UNEMPLOYMENT OR UNDEREMPLOYMENT. (a) Except as provided by Subsection (b), if [H] the actual income of the obligor is significantly less than what the obligor could earn because of intentional unemployment or underemployment, the court may apply the support guidelines to the earning potential of the obligor.

**HOUSE COMMITTEE SUBSTITUTE**

SECTION 1. Section 154.062(b), Family Code, is amended to read as follows:

(b) Resources include:

- (1) 100 percent of all wage and salary income and other compensation for personal services (including commissions, overtime pay, tips, and bonuses);
- (2) interest, dividends, and royalty income;
- (3) self-employment income;
- (4) net rental income (defined as rent after deducting operating expenses and mortgage payments, but not including noncash items such as depreciation); and
- (5) all other income actually being received, including severance pay, retirement benefits, pensions, trust income, annuities, capital gains, social security benefits other than supplemental security income, United States Department of Veterans Affairs disability benefits other than non-service-connected disability pension benefits, as defined by 38 U.S.C. Section 101(17), unemployment benefits, disability and workers' compensation benefits, interest income from notes regardless of the source, gifts and prizes, spousal maintenance, and alimony.

SECTION 2. Section 154.066, Family Code, is amended to read as follows:

Sec. 154.066. INTENTIONAL UNEMPLOYMENT OR UNDEREMPLOYMENT. (a) If the actual income of the obligor is significantly less than what the obligor could earn because of intentional unemployment or underemployment, the court may apply the support guidelines to the earning potential of the obligor.

(b) The court may not consider the unemployment or underemployment of an obligor as intentional if the obligor is a veteran, as defined by 38 U.S.C. Section 101(2), who has:

(1) a service-connected disability, as defined by 38 U.S.C. Section 101(16); or

(2) a non-service-connected disability, as defined by 38 U.S.C. Section 101(17).

SECTION 3. Section 154.068, Family Code, is amended.

SECTION 4. The changes in law made by this Act to Sections 154.062, 154.066, and 154.068, Family Code, apply only to a proceeding to establish or modify a child support obligation that is pending in a trial court on or filed on or after the effective date of this Act.

SECTION 5. This Act takes effect September 1, 2013.

(b) In determining whether an obligor is intentionally unemployed or underemployed, the court may consider evidence that the obligor is a veteran, as defined by 38 U.S.C. Section 101(2), who is seeking or has been awarded:

(1) United States Department of Veterans Affairs disability benefits, as defined by 38 U.S.C. Section 101(16); or

(2) non-service-connected disability pension benefits, as defined by 38 U.S.C. Section 101(17).

SECTION 3. Same as introduced version.

SECTION 4. Same as introduced version.

SECTION 5. Same as introduced version.