

BILL ANALYSIS

Senate Research Center

S.B. 355
By: West
Jurisprudence
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 355 is intended for clarification and technical corrections of certain Family Code provisions as they relate to the duties and responsibilities of the Title IV-D agency, otherwise known as the child support division of the Office of the Attorney General.

This bill amends several sections of the Family Code related to marriage licenses, child support, protective orders, and administrative fines. Child support issues addressed include standards for modification of support orders, changes to collection provisions, conforming withholding procedures with federal standards, and clarifying the Title IV-D agency's role in agreements between the parties. Additionally, it addresses the need for the Title IV-D agency to be informed when a protective order is issued, provides for penalties to be assessed on employers who fail to comply with withholding requirements, and clarifies the designated court for Title IV-D cases.

This bill makes technical corrections to current law without proposing any substantive new initiatives.

S.B. 355 amends current law relating to the powers and duties of the Title IV-D agency regarding the establishment, collection, and enforcement of child support and in connection with an application for a marriage license or protective order, and authorizes a surcharge.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 2.009(c), Family Code, as follows:

(c) Requires a county clerk, on the proper execution of a marriage application, to:

(1)-(4) Makes no change to these subdivisions; and

(5) inform, rather than distribute to, each applicant:

(A) that a premarital education handbook developed, rather than provided, by the child support division of the office of the attorney general (Title IV-D agency) under Section 2.014 (Family Trust Fund) is available on the child support division's Internet website; or

(B) if the applicant does not have Internet access, how the applicant may obtain a paper copy of the handbook described by Paragraph (A).

SECTION 2. Amends Sections 2.014(b) and (c), Family Code, as follows:

(b) Authorizes money in a family trust fund to be used only for certain purposes, including the development, rather than the development and distribution, of a premarital education handbook under Subdivision (1).

(c) Requires that the premarital education handbook under Subsection (b)(1) be made available, rather than distributed, to each applicant for a marriage license as provided by Section 2.009(c)(5) and to contain certain information.

SECTION 3. Amends Section 82.004, Family Code, to require that an application for protective order include certain information, including whether an applicant is receiving services from the Title IV-D agency in connection with a child support case and, if known, the agency case number for each open case.

SECTION 4. Amends Section 85.042(a), Family Code, to include the Title IV-D agency, if the application for the protective order indicates that the applicant is receiving services from the Title IV-D agency, among the entities to which the clerk of the court issuing an original or modified protective order under this subtitle (Protective Orders) is required to send a copy of the order, along with the information provided by the applicant or the applicant's attorney that is required under Section 411.042(b)(6) (relating to requiring the bureau of identification and records to collect information concerning the number and nature of protective orders and all other pertinent information about all persons on active protective orders), Government Code.

SECTION 5. Amends Section 156.401(a-2), Family Code, to authorize a court or administrative order for child support in a Title IV-D case to be modified at any time, and without a showing of material and substantial change in the circumstances of the child or a person affected by the order, to provide for medical support of the child if the order does not provide health care coverage as required under Section 154.182 (Health Care Coverage for Child), rather than to be modified as provided under Section 233.013(c) (relating to filing a child support review order to modify an existing order for child support to provide medical support for a child) to provide for medical support of a child.

SECTION 6. Amends Section 158.106, Family Code, as follows:

Sec. 158.106. New heading: REQUIRED FORMS FOR INCOME WITHHOLDING.

(a) Requires the Title IV-D agency to prescribe forms as required by federal law in a standard format entitled order or notice to withhold income for child support under this chapter (Withholding From Earnings for Child Support).

(b) Requires the Title IV-D agency to make the required forms, rather than appropriate forms, available to certain entities, including clerks of the court.

(c) Authorizes the Title IV-D agency to prescribe additional forms for the efficient collection of child support from earnings and to promote the administration of justice for all parties.

(d) Requires, rather than authorizes, that the forms prescribed by the Title IV-D agency under this section be used for an order or judicial writ of income withholding under this chapter, in addition to requesting voluntary withholding under Section 158.011 (Voluntary Withholding by Obligor).

SECTION 7. Amends Section 158.203, Family Code, by amending Subsection (d) and adding Subsections (e) and (f), as follows:

(d) Deletes existing text requiring an employer, in a case in which an obligor's income is subject to withholding, to remit the payment of child support directly to a local registry or the Title IV-D agency.

(e) Authorizes the state disbursement unit to impose on an employer described by Subsection (b) (relating to requiring an employer with 50 or more employees to remit a payment required under this section by electronic funds transfer or electronic data interchange not later than the second business day after the pay date) a payment processing surcharge in an amount of not more than \$25 for each remittance made on behalf of an employee that is not made by electronic funds transfer or electronic data

exchange. Prohibits the payment processing surcharge under this subsection from being charged against the employee or taken from amounts withheld from the employee's wages.

(f) Requires the state disbursement unit to notify an employer described by Subsection (b) who fails to remit withheld income by electronic funds transfer or electronic data exchange that the employer is subject to a payment processing surcharge under Subsection (e), and inform the employer of the amount of the surcharge owed and the manner in which the surcharge is required to be paid to the unit.

SECTION 8. Amends Section 201.101(e), Family Code, to authorize enforcement services to be directly provided in cases identified under a contract by certain county personnel if a county has entered into the contract with the Title IV-D agency under Section 231.0011 (Development of Statewide Integrated System for Child Support and Medical Support Enforcement).

SECTION 9. Amends Section 231.002, Family Code, by adding Subsection (j), as follows:

(j) Provides that the Title IV-D agency, in the enforcement or modification of a child support order, is not:

(1) subject to a mediation or arbitration clause or requirement in the order to which the Title IV-D agency was not a party; or

(2) liable for any costs associated with mediation or arbitration arising from provisions in the order or another agreement of the parties.

SECTION 10. Amends Section 231.204, Family Code, as follows:

Sec. 231.204. PROHIBITED FEES IN TITLE IV-D CASES. Prohibits an appellate court, a clerk of an appellate court, a district or county clerk, sheriff, constable, or other government officer or employee, except as provided by this subchapter, from charging the Title IV-D agency or a private attorney or political subdivision that has entered into a contract to provide Title IV-D services any fees or other amounts otherwise imposed by law for services rendered in, or in connection with, a Title IV-D case, including:

(1)-(4) Makes no change to these subdivisions;

(5)-(6) Makes nonsubstantive changes; and

(7) a statewide electronic filing system fund fee.

SECTION 11. Amends Section 232.0135(a), Family Code, to authorize a child support agency, as defined by Section 101.004 (Child Support Agency), to provide notice to a licensing authority concerning an obligor who has failed to pay child support under a support order for six months or more that requests the authority to refuse to approve, rather than accept, an application for issuance of a license to the obligor or renewal of an existing license of the obligor.

SECTION 12. Amends Sections 233.013(a) and (b), Family Code, as follows:

(a) Authorizes the Title IV-D agency, in determining the appropriate amount of child support, to consider evidence of the factors a court is required to consider under Section 154.123(b) (relating to requiring the court to consider evidence of all relevant factors), and, if the agency deviates from the guidelines in determining the amount of monthly child support, with or without the agreement of the parties, the child support review order must include the findings required to be made by a court under Section 154.130(b) (relating to requiring the court, if certain findings are required to state whether the application of the guidelines would be unjust or inappropriate and to state certain information in the child support order).

(b) Authorizes, rather than requires, the Title IV-D agency to file an appropriate child support review order, including an order that has the effect of modifying an existing court or administrative order for child support without the necessity of filing a motion to modify, if it has been three years since a child support order was rendered or last modified and the amount of the child support award under the order differs by either 20 percent or \$100 from the amount that would be awarded under the child support guidelines.

SECTION 13. Amends Section 233.019, Family Code, by adding Subsection (e), to provide that an agreed review order filed with the clerk constitutes a sufficient pleading by the Title IV-D agency for relief on any issue addressed in the order if a party timely files a motion for a new trial for reconsideration of the agreed review order and the court grants the motion.

SECTION 14. Amends the heading to Section 233.027, Family Code, to read as follows:

Sec. 233.027. NONAGREED ORDER AFTER HEARING.

SECTION 15. Amends Sections 233.027(a) and (c), Family Code, as follows:

(a) Requires the court, after the hearing on the confirmation of a nonagreed child support review order to:

(1) immediately sign the nonagreed order and enter the order as a final order of the court if the court finds that the nonagreed order should be confirmed, rather than immediately sign a confirmation order and enter the order as an order of the court if the court finds that the order should be confirmed;

(2) Makes a conforming change; or

(3) Makes no change to this subdivision.

(c) Makes a conforming change.

SECTION 16. Amends Sections 234.007(a), (b), and (c), Family Code, as follows:

(a) Deletes existing text requiring the Title IV-D agency to notify the courts that the state disbursement unit has been established. Requires a court that orders income to be withheld for child support to order that all income ordered withheld for child support is required to be paid to the state disbursement unit, rather than requiring a court that orders income to be withheld for child support to order that all income withheld for child support be paid to the state disbursement unit after receiving notice of the establishment of the state disbursement unit.

(b) Requires the Title IV-D agency, in order to redirect payments to the state disbursement unit, rather than in order to redirect payments from a local registry to the state disbursement unit after the date of the establishment of the state disbursement unit, to issue a notice of place of payment informing the obligor, obligee, and employer that income withheld for child support is to be paid to the state disbursement unit and is prohibited from being remitted to a local registry, the obligee, or any other person or agency. Requires the Title IV-D agency, if withheld support has been paid to a local registry, to send the notice to the registry to redirect any payments to the state disbursement unit.

(c) Deletes existing text requiring that a copy of the notice under Subsection (b) be filed with the local child support registry.

SECTION 17. Amends Section 234.101, Family Code, by adding Subdivision (3) to define "newly hired employee."

SECTION 18. Repealer: Section 233.027(b) (relating to the child support review order becoming a final order of the court), Family Code.

SECTION 19. (a) Makes application of the changes in law made by this Act to Sections 2.009 and 2.014, Family Code, prospective.

(b) Makes application of the changes in law made by this Act to Sections 82.004 and 85.042, Family Code, prospective.

(c) Makes application of the changes in law made by this Act to Section 158.203, Family Code, prospective.

(d) Makes application of the changes in law made by this Act to Section 233.013, Family Code, prospective.

(e) Makes application of the change in law made by this Act to Section 233.019, Family Code, prospective.

(f) Makes application of the change in law made by this Act to Section 233.027, Family Code, prospective.

SECTION 20. Provides that the change in law made by this Act to Section 231.204, Family Code, takes effect only if House Bill No. 2302, Senate Bill No. 1146, or substantially similar legislation authorizing a statewide electronic filing system fund fee is enacted by the 83rd Legislature, Regular Session, 2013, and becomes law. Provides that if legislation described by this section is not enacted or does not become law, the amendment to Section 231.204, Family Code, made by this Act has no effect.

SECTION 21. Effective date: September 1, 2013.