

BILL ANALYSIS

C.S.S.B. 355
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Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties assert that certain revisions to statutory provisions relating to marriage licenses, child support, and protective orders are necessary to update and clarify the duties and responsibilities of the office of the attorney general and to provide for notification regarding the issuance of protective orders and the imposition of fines on employers who fail to comply with certain withholding requirements. C.S.S.B. 355 seeks to make these revisions.

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.S.B. 355 amends the Family Code to remove a requirement that the premarital handbook required to be developed by the child support division of the attorney general be distributed to each applicant for a marriage license and instead requires a county clerk to inform each applicant that the handbook is available on the child support division's Internet website or how an applicant without Internet access may obtain a paper copy of the handbook.

C.S.S.B. 355 requires an application for a protective order against family violence to state whether an applicant is receiving services from the office of the attorney general in connection with a child support case and, if known, the agency case number for each open case. The bill requires the clerk of the court issuing an original or modified protective order against family violence to send a copy of the order, along with certain pertinent information regarding the protective order, to the office of the attorney general if a protective order application indicates the applicant is receiving such services.

C.S.S.B. 355 requires the office of the attorney general to make certain required income withholding for child support forms available to clerks of the court, in addition to other specified persons, and requires, rather than authorizes, the income withholding forms prescribed by the office to be used for an order or judicial writ of income withholding for child support, as well as to request voluntary income withholding.

C.S.S.B. 355 removes a provision requiring an employer to remit payment of child support to a local registry or the office of the attorney general as alternatives to the state disbursement unit and instead requires that all such payments be remitted to the state disbursement unit. The bill authorizes the state disbursement unit to impose on an employer required to remit a payment by electronic fund transfer or electronic data interchange 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. The bill prohibits the payment processing surcharge from being charged against the employee or taken from amounts withheld from the employee's wages. The bill requires the state disbursement unit to notify an employer who fails to remit withheld income by electronic funds transfer or electronic data exchange that

the employer is subject to a payment processing surcharge and to 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.

C.S.S.B. 355 specifies that, in the enforcement or modification of a child support order, the office of the attorney general is not subject to a mediation or arbitration clause or requirement in the order to which the office of the attorney general was not a party or liable for any costs associated with mediation or arbitration arising from provisions in the order or another agreement of the parties.

C.S.S.B. 355, contingent on legislation proposed by the 83rd Legislature, Regular Session, 2013, authorizing a statewide electronic filing system fund fee becoming law, adds such a fee to those which an appellate court, a clerk of an appellate court, a district or county clerk, sheriff, constable, or other government officer or employee is prohibited from charging the office of the attorney general or a private attorney or political subdivision that has entered into a contract to provide child support services.

C.S.S.B. 355 authorizes the office of the attorney general, in determining the appropriate amount of child support, to consider evidence of the factors a court is required to consider in determining whether application of child support guidelines would be unjust or inappropriate and, if the office deviates from the guidelines in determining the amount of monthly child support, with or without agreement of the parties, requires the child support review order to include the findings required to be made by a court in rendering an order of child support. The bill authorizes, rather than requires, the office of the attorney general to file an appropriate child support review order 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 current child support guidelines.

C.S.S.B. 355 establishes that, if a party to a child support review process files a motion for a new trial for reconsideration of an agreed review order and the court grants the motion, the agreed review order filed with the clerk constitutes a sufficient pleading by the office of the attorney general for relief on any issue addressed in the order.

C.S.S.B. 355 removes provisions relating to a requirement that the office of the attorney general notify the courts that the state disbursement unit has been established and to redirect payments from a local registry to the state disbursement unit after the date the unit is established. The bill requires the notice issued by the office of the attorney general informing an obligor, obligee, and employer that income withheld for child support is to be paid to the state disbursement unit to inform those persons that such income may not be remitted to a local registry, the obligee, or any other person or agency. The bill requires the office of the attorney general, if withheld support has been paid to a local registry, to send the notice to the registry to redirect payments to the state disbursement unit. The bill removes a requirement that a copy of the notice be filed with the local child support registry.

C.S.S.B. 355 repeals Section 233.027(b), Family Code.

EFFECTIVE DATE

September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.S.B. 355 may differ from the engrossed version in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the engrossed and committee substitute versions of the bill.

SENATE ENGROSSED

SECTION 1. Subsection (c), Section 2.009, Family Code, is amended.

SECTION 2. Subsections (b) and (c), Section 2.014, Family Code, are amended.

SECTION 3. Section 82.004, Family Code, is amended.

SECTION 4. Subsection (a), Section 85.042, Family Code, is amended.

SECTION 5. Subsection (a-2), Section 156.401, Family Code, is amended.

SECTION 6. Section 158.106, Family Code, is amended.

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

(d) In a case in which an obligor's income is subject to withholding, the employer shall remit the payment of child support directly to ~~[a local registry, the Title IV-D agency, or to]~~ the state disbursement unit.

(e) The Title IV-D agency may impose a fine in an amount not to exceed \$25 for each violation by an employer described by Subsection (b) who fails without good cause to use electronic funds transfer or electronic data interchange to comply with this section. Each occurrence of noncompliance with respect to each employee constitutes a separate violation.

(f) A court may compel compliance with an administrative fine described by Subsection (e) and may award attorney's fees and costs to the Title IV-D agency in enforcing the electronic funds transfer or electronic data interchange requirement under Subsection (b) on proof that the employer failed without good cause to comply with that requirement.

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Same as engrossed version except for recitation.

SECTION 2. Same as engrossed version except for recitation.

SECTION 3. Same as engrossed version.

SECTION 4. Same as engrossed version except for recitation.

SECTION 5. Same as engrossed version except for recitation.

SECTION 6. Same as engrossed version.

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

(d) In a case in which an obligor's income is subject to withholding, the employer shall remit the payment of child support directly to ~~[a local registry, the Title IV-D agency, or to]~~ the state disbursement unit.

(e) The state disbursement unit may impose on an employer described by Subsection (b) 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. The payment processing surcharge under this subsection may not be charged against the employee or taken from amounts withheld from the employee's wages.

(f) The state disbursement unit shall:
(1) 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
(2) 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. Subsection (e), Section 201.101, Family Code, is amended.

SECTION 8. Same as engrossed version except for recitation.

SECTION 9. Section 231.002, Family Code, is amended.

SECTION 9. Same as engrossed version.

No equivalent provision.

SECTION 10. Section 231.204, Family Code, is amended to read as follows:

Sec. 231.204. PROHIBITED FEES IN TITLE IV-D CASES. Except as provided by this subchapter, an appellate court, a clerk of an appellate court, a district or county clerk, sheriff, constable, or other government officer or employee may not charge 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) a fee payable to a district clerk for:
 - (A) performing services related to the estates of deceased persons or minors;
 - (B) certifying copies; or
 - (C) comparing copies to originals;
- (2) a court reporter fee, except as provided by Section 231.209;
- (3) a judicial fund fee;
- (4) a fee for a child support registry, enforcement office, or domestic relations office;
- (5) a fee for alternative dispute resolution services; ~~and~~
- (6) a filing fee or other costs payable to a clerk of an appellate court; and
- (7) a statewide electronic filing system fund fee.

SECTION 10. Subsection (a), Section 232.0135, Family Code, is amended.

SECTION 11. Subsections (a) and (b), Section 233.013, Family Code, are amended.

SECTION 12. Section 233.019, Family Code, is amended.

SECTION 13. The heading to Section 233.027, Family Code, is amended.

SECTION 14. Subsections (a) and (c), Section 233.027, Family Code, are amended.

SECTION 15. Subsections (a), (b), and (c), Section 234.007, Family Code, are amended.

SECTION 16. Section 234.101, Family Code, is amended.

SECTION 17. Subsection (b), Section 233.027, Family Code, is repealed.

SECTION 18. (a) The changes in law made by this Act to Sections 2.009 and 2.014, Family Code, apply only to an application for a marriage license submitted on or after the effective date of this Act. An application for a marriage license submitted before the effective date of this Act is governed by the law in effect on the date the application was submitted, and the former law is continued in effect for that purpose.
(b) The changes in law made by this Act to Sections 82.004 and 85.042, Family Code, apply only to an application for a protective order filed on or after the effective date of this Act. An application for a protective order filed before the effective date of this Act is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose.

SECTION 11. Same as engrossed version except for recitation.

SECTION 12. Same as engrossed version except for recitation.

SECTION 13. Same as engrossed version.

SECTION 14. Same as engrossed version.

SECTION 15. Same as engrossed version except for recitation.

SECTION 16. Same as engrossed version except for recitation.

SECTION 17. Same as engrossed version.

SECTION 18. Same as engrossed version except for recitation.

SECTION 19. (a) The changes in law made by this Act to Sections 2.009 and 2.014, Family Code, apply only to an application for a marriage license submitted on or after the effective date of this Act. An application for a marriage license submitted before the effective date of this Act is governed by the law in effect on the date the application was submitted, and the former law is continued in effect for that purpose.
(b) The changes in law made by this Act to Sections 82.004 and 85.042, Family Code, apply only to an application for a protective order filed on or after the effective date of this Act. An application for a protective order filed before the effective date of this Act is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose.

(c) The change in law made by this Act to Subsection (d), Section 158.203, Family Code, applies only to a child support withholding remitted by an employer on or after the effective date of this Act. A child support withholding remitted by an employer before the effective date of this Act is governed by the law in effect on the date the withholding was remitted, and the former law is continued in effect for that purpose.

(d) The change in law made by this Act to Section 158.203, Family Code, in adding Subsections (e) and (f) applies only to an act of noncompliance that occurs on or after the effective date of this Act. An act of noncompliance that occurs before the effective date of this Act is governed by the law in effect on the date the act occurred, and the former law is continued in effect for that purpose.

(e) The changes in law made by this Act to Section 233.013, Family Code, apply only to a child support review order filed on or after the effective date of this Act. A child support review order filed before the effective date of this Act is governed by the law in effect on the date the order was filed, and the former law is continued in effect for that purpose.

(f) The change in law made by this Act to Section 233.019, Family Code, applies only to a motion for a new trial filed on or after the effective date of this Act. A motion for a new trial filed before the effective date of this Act is governed by the law in effect on the date the motion was filed, and the former law is continued in effect for that purpose.

(g) The change in law made by this Act to Section 233.027, Family Code, applies to a child support review order that is pending before a trial court on or filed on or after the effective date of this Act.

No equivalent provision.

(c) The changes in law made by this Act to Section 158.203, Family Code, apply only to a child support withholding remitted by an employer on or after the effective date of this Act. A child support withholding remitted by an employer before the effective date of this Act is governed by the law in effect on the date the withholding was remitted, and the former law is continued in effect for that purpose.

(d) The changes in law made by this Act to Section 233.013, Family Code, apply only to a child support review order filed on or after the effective date of this Act. A child support review order filed before the effective date of this Act is governed by the law in effect on the date the order was filed, and the former law is continued in effect for that purpose.

(e) The change in law made by this Act to Section 233.019, Family Code, applies only to a motion for a new trial filed on or after the effective date of this Act. A motion for a new trial filed before the effective date of this Act is governed by the law in effect on the date the motion was filed, and the former law is continued in effect for that purpose.

(f) The change in law made by this Act to Section 233.027, Family Code, applies to a child support review order that is pending before a trial court on or filed on or after the effective date of this Act.

SECTION 20. The change in law made by this Act to Section 231.204, Family Code, takes effect only if H.B. 2302, S.B. 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. 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 19. This Act takes effect September 1, 2013.

SECTION 21. Same as engrossed version.