

SUBJECT: Revising statutory provisions related to child support orders

COMMITTEE: Judiciary and Civil Jurisprudence — favorable, without amendment

VOTE: 10 ayes — Hunter, Hughes, Alonzo, Hartnett, Jackson, Leibowitz, Lewis, Madden, Martinez, Woolley

0 nays

1 absent — Branch

SENATE VOTE: On final passage, April 23 — 30-0, on Local and Uncontested Calendar

WITNESSES: (*On House companion bill, HB 4228:*)
For — (*Registered, but did not testify:* Karl Hays, Texas Family Law Foundation)

Against — None

On — Alicia Key, Office of the Attorney General

DIGEST: SB 865 would add, remove, and modify various statutory provisions related to child support orders.

Conflict of provisions. SB 865 would provide that, if any conflict existed between the requirements related to service of citation in Family Code, sec. 102.009(a) and (c) and any similar requirements related to the child support review process in a suit affecting the parent-child relationship under Family Code, ch. 233, the latter provisions would control.

Extending personal jurisdiction over certain persons. The bill would authorize a court to exercise personal jurisdiction over a non-resident or non-domiciliary person upon whom service of citation was required or over the person's personal representative if the person had, as provided by the Uniform Parentage Act, registered with the paternity registry maintained by the Bureau of Vital Statistics or signed an acknowledgement of paternity of a child born in Texas.

Excluding supplemental social security income in determining child support. The bill would prohibit a court from considering a person's supplemental social security income benefits in determining child support liability.

Health insurance provisions in child medical support orders. The parties in a child support proceeding would have to disclose whether either parent had access to private health insurance at reasonable cost to the obligor required to pay child support, rather than at reasonable cost to the parent who had access to private insurance, as under current law. The bill would make the same change in terminology in other provisions related to health insurance coverage for a child.

The bill would expand the definition of "reasonable cost" to mean either:

- the cost of health insurance coverage for a child that did not exceed 9 percent of the obligor's annual resources, if the obligor was responsible under a medical support order for the cost of health insurance coverage for only one child; or
- the total cost of health insurance coverage for all children that did not exceed 9 percent of the obligor's annual resources, if the obligor was responsible under a medical support order for the cost of health insurance coverage for more than one child.

If a court required the obligee — the parent to whom child support was owed — to provide health insurance for a child, the court could not order the obligor to pay the obligee an additional amount of child support that would exceed a reasonable cost to the obligor, regardless of the actual cost of the health insurance.

For a court's allocation of additional child support related to a child's reasonable and necessary and health care expenses, SB 865 would specifically include a child's vision and dental expenses as well as amounts paid as deductibles or copayments in obtaining health care services for the child covered under a health insurance policy.

The bill would require a court to consider the accessibility, in addition to cost and quality, of health insurance coverage available to the parties in determining the amount and manner of a child medical support order. The bill would define "accessibility" to mean the extent to which health insurance coverage for a child provided for the availability of medical care

within a reasonable traveling distance and time from the child's primary residence.

The bill would require an employer who received an order or notice for a child's medical support relating to an employee to provide to the sender, by first class mail not later than the 30th day after the date the employer received the order or notice, a statement that the child:

- had been enrolled in the employer's health insurance plan;
- was already enrolled in another health insurance plan in accordance with a previous child support or medical support order to which the employee was subject; or
- could not be enrolled or could not be enrolled permanently in the employer's health insurance plan.

Cumulative money judgments for past-due child support. SB 865 would authorize the court with jurisdiction to confirm past-due child support or arrearages to render a cumulative money judgment for past-due child support, if a motion for enforcement requesting a cumulative money judgment was filed not later than the 10th anniversary after the date the child became an adult or on which the child support obligation terminated under the child support order or as required by law.

Obligor's credit for payment of disability benefits. SB 865 would entitle a child support obligor to a credit if the child for whom the obligor owed support received a lump-sum payment as a result of the obligor's disability and the obligee received the payment as the representative of the child. The credit would be equal to the amount of the lump-sum payment and would be applied to any child support arrearage and interest owed by the obligor on behalf of the child at the time the payment was made.

Allowing a court to hold certain child support obligors in contempt. The bill would authorize a court to hold a respondent who had failed to make one or more required child support payments in contempt of court regardless of whether the respondent presented the court at the hearing with a copy of the payment record or other evidence showing that the respondent was current on child support payments at the time of the hearing.

Withholding earnings for child support. SB 865 would allow but not require an employer with fewer than 250 employees to remit a withheld

payment for child support by electronic funds transfer or electronic data interchange. If the employer chose to remit a payment electronically, the employer would have to remit the payment not later than the second business day after the pay date.

An employer with 250 or more employees would be required to remit a withheld payment by electronic funds transfer or electronic data interchange not later than the second business day after the pay date.

Inapplicability of dormant judgment provision. SB 865 would amend Civil Practice and Remedies Code, sec. 34.001 to make the provisions prohibiting the issuance of a writ of execution on a dormant judgment unless the judgment was revived inapplicable to a judgment for child support under the Family Code. Current law provides that a judgment becomes dormant if a writ of execution is not issued within 10 years after a court renders the judgment.

Information obtained by insurance company agents. SB 865 would allow an insurance agent that obtained confidential information under Transportation Code, ch. 601, subch. N (verification of financial responsibility for motor vehicles) to provide the information to the state attorney general upon request for the purpose of enforcing child support obligations.

Effective dates. The provisions exempting child support judgments from the dormant judgment provisions of Civil Practice and Remedies Code, sec. 34.001 would apply to each judgment for child support under the Family Code, regardless of the date on which the judgment was rendered.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2009.

**SUPPORTERS
SAY:**

SB 865 would clarify and modernize various statutory provisions governing child support orders and enforcement while removing outdated and unnecessary provisions. The bill would provide courts with clearer guidance in determining the amount of child support needed to obtain health insurance and health services in general for a child. It also would make it easier for employers with fewer than 250 employees to remit withheld earnings for child support purposes.

SB 865 would give courts more flexibility in dealing with child support obligors who were perpetually behind on their support payments. Current law prohibits a court from holding an obligor in contempt for past-due payments if the obligor presents the court with evidence that the obligor was current on the obligor's payments at the time of the hearing. Unfortunately, some habitually late obligors have abused this privilege by continually falling behind on their support payments, only to show up before the court at the last minute claiming that the obligor had made the required payments. This wastes the court's time and resources. In order to deter these kinds of situations, SB 865 would provide a court with the discretion to hold an obligor in contempt even if the obligor could show that the obligor was current on all support payments, if the court believed that the obligor would continue to fall behind on support payments.

OPPONENTS
SAY:

SB 865 would prejudice low-income child support obligors unfairly by allowing a court to hold an obligor who was current on child support payments in contempt of court. Contrary to popular misconception, many obligors who fall behind on their support payments do not do so because of laziness or a willful refusal to pay, but rather because they have low personal incomes or are disabled and simply unable to make consistent payments. This bill would take the wrong approach toward encouraging payment of past-due child support by threatening jail time for obligors who made sincere efforts to keep current with their payments.

The provision in SB 865 that would allow a court to render a cumulative money judgment that could require an obligor to pay the interest of support arrearages before the principal of the past due amount could make it extremely difficult for an obligor to become current on the obligor's payments. The provision would effectively treat payment of past-due arrearages the same way as some credit card companies treat payment of past-due credit card balances by requiring full payment of interest before payment of principal.

NOTES:

The House companion bill, HB 4228 by Jackson, was considered in a public hearing by the House Judiciary and Civil Jurisprudence Committee on April 14 and left pending.