

BILL ANALYSIS

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S.B. 786
By: Harris
Jurisprudence
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 786 is an omnibus bill regarding child support. It amends multiple sections of the Family Code to clarify, conform, and remove outdated language.

As proposed, S.B. 786 amends current law relating to procedures for establishment, modification, and enforcement of child support obligations.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Office of the Attorney General as the designated Title IV-D agency is modified in SECTION 11 (Section 231.015, Family Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 154.187(c), Family Code, to require an employer who has received an order or notice under this subchapter to provide to the sender, by first class mail not later than the 40th day, rather than the 30th day, after the date the employer receives the order or notice, a statement with certain information relating to the child's enrollment in a health insurance plan.

SECTION 2. Amends Section 154.303(b), Family Code, to prohibit the parent, the child, if the child is 18 years of age or older, or other person from transferring or assigning the cause of action to any person, including a governmental or private entity or agency, except for an assignment made to the Title IV-D agency under Section 231.104 (Assignment of Right to Support) or in the provision of child support enforcement services under Section 159.307 (Duties of Support Enforcement Agency).

SECTION 3. Amends Section 156.401, Family Code, by amending Subsection (a) and by adding Subsection (a-2), as follows:

(a) Authorizes a court, except as provided by Subsection (a-1) (relating to modifying a child support order under certain conditions), (a-2), or (b) (relating to modifying a support order based on certain time constraints) to modify an order for the support of a child under certain circumstances.

(a-2) Authorizes that a court or administrative order for child support in a Title IV-D case be modified as provided under Section 233.013(c) to provide for medical support of a child.

SECTION 4. Amends Section 157.162, Family Code, by amending Subsection (c) and adding Subsection (c-1), as follows:

(c) Authorizes the movant to attach to the motion a copy of a payment record maintained by the state disbursement unit under Chapter 234 (State Case Registry, Disbursement Unit, and Directory of New Hires) or a local registry that is current as of the date the motion is filed. Authorizes the movant to subsequently update that payment record at the hearing. Provides that, if a payment record was attached to the motion as authorized by this subsection, the payment record, as updated if applicable, is admissible to prove:

- (1) the dates and in what amounts payments were made;
- (2) the amount of any accrued interest;
- (3) the cumulative arrearage over time; and
- (4) the cumulative arrearage as of the final date of the record.

(c-1) Creates this subsection from existing text. Authorizes a respondent to offer evidence controverting the contents of a payment record under Subsection (c).

Deletes existing text providing that a copy of the payment record attached to the motion is evidence of the facts asserted in the payment record and is admissible to show whether payments were made.

SECTION 5. Amends Sections 157.311(1) and (4), Family Code, to redefine "account" and "financial institution."

SECTION 6. Amends Section 157.317(a), Family Code, as follows:

(a) Provides that a child support lien attaches to all real and personal property not exempt under the Texas Constitution or other law, including:

- (1) an account in a financial institution;
- (2) a retirement plan, including an individual retirement account;
- (3) the proceeds of an insurance policy, including the proceeds from a life insurance policy or annuity contract and the proceeds from the sale or assignment of life insurance or annuity benefits, a claim for compensation, or a settlement or award for the claim for compensation, due to or owned by the obligor, rather than the proceeds of a life insurance policy, a claim for negligence or personal injury, or an insurance settlement or award for the claim, due to or owned by the obligor; and
- (4) property seized and subject to forfeiture under Chapter 59 (Forfeiture of Contraband), Code of Criminal Procedure.

SECTION 7. Amends Subchapter G, Chapter 157, Family Code, by adding Section 157.3271, as follows:

Sec. 157.3271. LEVY ON FINANCIAL INSTITUTION ACCOUNT OF DECEASED OBLIGOR. (a) Authorizes the Title IV-D agency, subject to Subsection (b), not earlier than the 90th day after the date of death of an obligor in a Title IV-D case, to deliver a notice of levy to a financial institution in which the obligor was the sole owner of an account, regardless of whether the Title IV-D agency has issued a child support lien notice regarding the account.

(b) Prohibits the Title IV-D agency from delivering a notice of levy under this section if probate proceedings relating to the obligor's estate have commenced.

(c) Requires that the notice of levy:

- (1) identify the amount of child support arrearages determined by the Title IV-D agency to be owing and unpaid by the obligor on the date of the obligor's death; and
- (2) direct the financial institution to pay to the Title IV-D agency, not earlier than the 45th day or later than the 60th day after the date of

delivery of the notice, an amount from the assets of the obligor or from funds due to the obligor that are held or controlled by the institution, not to exceed the amount of the child support arrearages identified in the notice.

(d) Requires the financial institution, not later than the 35th day after the date of delivery of the notice, to notify any other person asserting a claim against the account that:

(1) the account has been levied on for child support arrearages in the amount shown on the notice of levy; and

(2) the person may contest the levy by filing suit and requesting a court hearing in the same manner that a person may challenge a child support lien under Section 157.323 (Foreclosure or Suit to Determine Arrearages).

(e) Authorizes a person who contests a levy under this section, as authorized by Subsection (d)(2) to bring the suit in:

(1) the district court of the county in which the property is located or in which the obligor resided; or

(2) the court of continuing jurisdiction.

(f) Authorizes the notice of levy to be delivered to a financial institution as provided by Section 59.008 (Claims Against Customers of Financial Institutions), Finance Code, if the institution is subject to that law or may be delivered to the registered agent, the institution's main business office in this state, or another address provided by the institution under Section 231.307 (Financial Institution Data Matches).

(g) Authorizes a financial institution to deduct its fees and costs, including any costs for complying with this section, from the deceased obligor's assets before paying the appropriate amount to the Title IV-D agency.

SECTION 8. Amends Sections 158.203(b) and (b-1), Family Code, as follows:

(b) Requires an employer with 50 or more employees, rather than 250 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.

(b-1) Authorizes an employer with fewer than 50 employees, rather than fewer than 250 employees, to remit a payment required under this section by electronic funds transfer or electronic data interchange. Requires that a payment remitted by the employer electronically be remitted not later than the date specified by Subsection (b).

SECTION 9. Amends the heading the Section 158.503, Family Code, to read as follows:

Sec. 158.503. DELIVERY OF ADMINISTRATIVE WRIT TO EMPLOYER; FILING WITH COURT OR MAINTAINING RECORD.

SECTION 10. Amends Section 158.503, Family Code, by amending Subsections (a) and (b) and by adding Subsection (b-1), as follows:

(a) Authorizes that an administrative writ of withholding issued under this subchapter be delivered to an employer, rather than to an obligor, obligee, and employer, by mail or by electronic transmission.

(b) Requires the Title IV-D agency to:

(1) not later than the third business day after the date of delivery of the administrative writ of withholding to an employer, file a copy of the writ, together with a signed certificate of service, in the court of continuing jurisdiction; or

(2) maintain a record of the writ until all support obligations of the obligor have been satisfied or income withholding has been terminated as provided by this chapter.

(b-1) Creates this subsection from existing text. Authorizes the certificate of service required under Subsection (b)(1) to be signed electronically. Deletes existing text providing that this subsection does not apply to the enforcement under Section 158.501(c) (relating to authorizing a Title IV-D agency to use authorized procedures to enforce a support order) of a support order rendered by a tribunal of another state.

SECTION 11. Amends Section 231.015, Family Code, as follows:

Sec. 231.015. INSURANCE REPORTING PROGRAM. (a) Requires a Title IV-D agency by rule, in consultation with the Texas Department of Insurance and representatives of the insurance industry in this state, including insurance trade associations, to operate a program under which insurers are required to cooperate with the Title IV-D agency in identifying obligors who owe child support arrearages and are subject to liens for child support arrearages to intercept certain insurance settlements or awards for claims in satisfaction of the arrearage amounts. Deletes existing text relating to requiring the Title IV-D agency operating a program to improve the enforcement of child support, including the use of child support liens under Chapter 157 (Enforcement) and requiring that the program provide for procedures, including data matches, under which insurance companies under which insurance companies are required to cooperate with the Title IV-D agency in identifying obligors who owe child support arrearages or who are subject to liens for child support arrearages to intercept certain liability insurance settlements or awards for claims in satisfaction of the arrearage amounts.

(b) Provides that an insurer, rather than an insurance company, that provides information or responds to a notice of child support lien or levy under Subchapter G (Child Support Lien), Chapter 157, or acts in good faith to comply with procedures established by the Title IV-D agency under this section is not liable for those acts under any law to any person.

SECTION 12. Amends Section 231.307, Family Code, by amending Subsection (d) and adding Subsection (g), as follows:

(d) Prohibits a financial institution providing information or responding to a notice of child support lien or levy provided under Subchapter G, Chapter 157, or otherwise acting in good faith to comply with the Title IV-D agency's procedures under this section from being liable under any federal or state law for any damages that arise from those acts.

(g) Provides that this section does not apply to an insurer subject to the reporting requirements under Section 231.015.

SECTION 13. Amends the heading to Section 232.0135, Family Code, to read as follows:

Sec. 232.0135. DENIAL OF LICENSE ISSUANCE OR RENEWAL.

SECTION 14. Amends Sections 232.0135(a)-(d), Family Code, as follows:

(a) Authorizes 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 for six months or more that requests the authority to refuse to accept an application for issuance of a license to the obligor or renewal of an existing license of the obligor.

(b) Requires a licensing authority that receives the information described by Subsection (a) to refuse to accept an application for issuance of a license to the obligor or renewal of an existing license of the obligor until the authority is notified by the child support agency that the obligor has met certain conditions, including successfully contested the denial of issuance or renewal of license under Subsection (d).

(c) Requires the child support agency, on providing a licensing authority with the notice described by Subsection (a), to send a copy to the obligor by first class mail and inform the obligor of the steps the obligor must take to permit the authority to accept the obligor's application for license issuance or renewal.

(d) Authorizes the child support agency, after the review, if appropriate, to notify the licensing authority that it may accept the obligor's application for issuance or renewal of license. Makes a conforming change.

SECTION 15. Amends Section 232.014(a), Family Code, to authorize a licensing authority to charge a fee to an individual who is the subject of an order suspending license or of an action of a child support agency under Section 232.0135 (Denial of Renewal License) to deny issuance or renewal of license in an amount sufficient to recover the administrative costs incurred by the authority under this chapter.

SECTION 16. Amends Section 233.012, Family Code, as follows:

Sec. 233.012. INFORMATION REQUIRED TO BE PROVIDED AT NEGOTIATION CONFERENCE. Requires the child support review officer, at the beginning of the negotiation conference, to review with the parties participating in the conference information provided in the notice of child support review and inform the parties of certain information, including that a party may file a request for a court hearing on a nonagreed order not later than, rather than at any time before, the 20th day after the date a copy of the petition for confirmation of the order is delivered to the party, rather than filed; and a party may file motion a for a new trial not later than, rather than at any time before, the 30th day after an order is confirmed by the court.

SECTION 17. Amends Section 233.013, Family Code, by adding Subsection (c), as follows:

(c) Authorizes the Title IV-D agency, notwithstanding Subsection (b), at any time and without a showing of material and substantial change in the circumstances of the parties, to file a child support review order that has the effect of modifying an existing order for child support to provide medical support for a child if the existing order does not provide health care coverage for the child as required under Section 154.182 (Health Care Coverage for Child).

SECTION 18. Amends Section 1108.101, Insurance Code, as follows:

Sec. 1108.101. ASSIGNMENT GENERALLY. (a) Creates this subsection from existing text. Makes no further changes.

(b) Provides that a benefit or right described by Subsection (a) assigned by an insured, owner, or annuitant after a child support lien notice has been filed against the insured, owner, or annuitant by the Title IV-D agency continues to be subject to the child support lien after the date of assignment. Provides that the lien continues to secure payment of all child support arrearages owed by the insured, owner, or annuitant under the underlying child support order, including arrearages that accrue after the date of assignment.

SECTION 19. Amends Section 411.1271, Government Code, by adding Subsection (b-1) and by amending Subsection (c), as follows:

(b-1) Provides that the Office of the Attorney General (OAG) is entitled to obtain from the Department of Public Safety of the State of Texas (DPS), the Federal Bureau of

Investigation identification division, or another law enforcement agency criminal history record information maintained by DPS or agency that relates to a person who owes child support in a Title IV-D case, as defined by Section 101.034 (Title IV-D Case), Family Code, for the purposes of locating that person and establishing, modifying, or enforcing a child support obligation against that person.

(c) Prohibits criminal history record information obtained by OAG under this section, rather than under Subsection (a) (relating to entitling OAG to obtain data from certain entities relating to a person who is an applicant for a position with OAG) or (b) (relating to entitling OAG to obtain data from certain entities relating to a person who proposes to enter into or has a contract with OAG), from being released or disclosed to any person except on court order or with the consent of the person who is the subject of the criminal history record information.

SECTION 20. Amends Section 34.04(a), Tax Code, to authorize a person, including a taxing unit and the Title IV-D agency, to file a petition in the court that ordered the seizure or sale setting forth a claim to the excess proceeds.

SECTION 21. Amends Article 59.06(a), Code of Criminal Procedure, as follows:

(a) Requires all forfeited property, except as provided by Subsection (k), to be administered by the attorney representing the state, acting as the agent of the state, in accordance with accepted accounting practices and with the provisions of any local agreement entered into between the attorney representing the state and law enforcement agencies. Requires the property, if a local agreement has not been executed, to be sold on the 75th day after the date of the final judgment of forfeiture at public auction under the direction of the county sheriff, after notice of public auction as provided by law for other sheriff's sales. Requires the proceeds of the sale to be distributed as follows:

(1) to any interest holder to the extent of the interest holder's nonforfeitable interest;

(2) after any distributions under Subdivision (1), if the Title IV-D agency has filed a child support lien in the forfeiture proceeding, to the Title IV-D agency in an amount not to exceed the amount of child support arrearages identified in the lien; and

(3) the balance, if any, after the deduction of court costs to which a district court clerk is entitled under Article 59.05(f) (relating to entitling clerk of the court in which the forfeiture proceeding to court costs in that proceeding) and, after that deduction, the deduction of storage and disposal costs, to be deposited not later than the 30th day after the date of the sale in the state treasury to the credit of the general revenue fund.

SECTION 22. Repealer: Section 233.017(c) (relating to requiring a child support review order that establishes or modifies an amount of previously ordered support to include certain findings), Family Code.

SECTION 23. Makes application of Section 154.187(c), Family Code, as amended by this Act, to an order or notice received by an employer on or after the effective date of this Act, prospective.

SECTION 24. Provides that Sections 156.401(a-2) and 233.013(c), Family Code, as added by this Act, apply to each child support order, regardless of whether the order was rendered before, during, or after the effective date of this Act.

SECTION 25. Makes application of Section 157.162, Family Code, as amended by this Act, to a motion for child support enforcement filed on or after the effective date of this Act, prospective.

SECTION 26. Makes application of Section 158.203, Family Code, as amended by this Act, prospective.

SECTION 27. Makes application of Section 158.503, Family Code, as amended by this Act, to child support payments withheld by an employer on or after the effective date of this Act, prospective.

SECTION 28. Makes application of Section 1108.101(b), Insurance Code, as amended by this Act, to an administrative writ of withholding issued on or after the effective date of this Act, prospective.

SECTION 29. Makes application of Article 59.06(a), Code of Criminal Procedure, as amended by this Act, to an assignment made on or after the effective date of this Act, prospective.

SECTION 30. Effective date: September 1, 2011.