

- SUBJECT:** Amending procedures for establishing and enforcing child support
- COMMITTEE:** Juvenile Justice and Family Issues — committee substitute recommended
- VOTE:** 6 ayes — Goodman, A. Reyna, P. King, Menendez, Morrison, Naishtat
1 nay — Nixon
2 absent — E. Reyna, Tillery
- WITNESSES:** For — None
Against — None
On — Howard Baldwin, Office of the Attorney General; David Shelton
- BACKGROUND:** The Family Code provides for the establishment and enforcement of child-support and medical-support obligations in suits affecting the parent-child relationship. Procedures enforcing child support include income withholding, use of liens against property for overdue child support, and suspension and revocation of licenses of a child-support obligor. Many of the procedures laid out in the Family Code reflect federal requirements with which states must comply in order to receive federal funding for child-support enforcement and for public assistance programs. Title IV-D of the federal Social Security Act establishes guidelines for states for paternity and child-support services. In Texas, the Title IV-D agency responsible for child-support enforcement is the Office of the Attorney General.
- DIGEST:** CSHB 1365 would make various revisions to the Family Code regarding child support, including the following.
- Continuation of duty to pay child support after death of the obligee.**
CSHB 1365 would establish guidelines for child-support payments after the death of the child's managing conservator. A child-support obligation would not end with the death of the obligee, but would continue as an obligation to the child named in the support order. The bill would require that outstanding payments be paid for the benefit of each surviving child and not to the estate

of the obligee. Any payment would be free of creditor's claims against the estate of the deceased.

If the obligor did not assume possession or control of the child, support would have to be paid to the appointed managing conservator, guardian, or surviving child if that child was an adult. The court would have to order the redirection of payment, and a copy would have to be sent to the obligor, the child-support agency, the appointed managing conservator or guardian, and the surviving child if the child was an adult. The order would have to contain a statement that the obligee was deceased and that all child-support payments should be paid for the benefit of the child, the name and age of each child in the support order, and the name and mailing address of the managing conservator or guardian, if one had been appointed.

Attachment of child-support lien. CSHB 1365 would specify that a child-support lien could attach to a retirement plan, including an individual retirement account, the proceeds of a life insurance policy, and a claim or potential right to the proceeds from an inheritance.

Any action to resolve issues of ownership interest of property that was subject to a child-support lien could be brought in the court in which the lien notice was filed, the district court, or the court of continuing jurisdiction. Another person, other than a spouse, who had an ownership interest in the property of the obligor that was subject to a lien could join the suit. If the property was partly owned by another person other than the obligor's spouse, the property in question would be partitioned and the obligor's share would be applied to the lien.

A lien would continue to be effective until any costs and reasonable attorney's fees had been paid. The claimant would have to release other funds or assets of the obligor, including proceeds from judgments or settlements, that were in excess of the amount of the lien.

Contents of child-support lien notice. CSHB 1365 would require that a child-support lien notice contain the following:

- ! the name and address of the person to whom the notice was sent;
- ! the case number, if the case was a Title IV-D case;

- ! any aliases of the obligor;
- ! the amount of the current or prospective child support owed;
- ! the schedule for the payment of child support;
- ! a statement that the lien would attach to all nonexempt real and personal property;
- ! a statement that any child support not paid on schedule in the future would be a final determination for the amount owed, including interest, and could not exceed the lien amount; and
- ! a statement that the obligor had been given a copy of the lien notice and could dispute the amount of arrearages by filing a suit for a hearing.

Filing lien notice and notice to obligor. CSHB 1365 would set time limits and establish guidelines for delivering a notice of lien to the obligor. It would require the claimant to provide a copy of the notice by first-class, certified, or registered mail to the obligor within 21 days of filing or delivering the notice. If another person was known to have ownership interest in the property that was subject to the lien, the claimant would have to provide a copy of the notice to that person at the same time.

If a notice of lien was delivered to a financial institution regarding the obligor's account, the institution immediately would have to provide the last known address of the obligor and notify any other person with an ownership interest in the account that the account had been frozen in the amount of the arrearages.

Levy on obligor's financial assets. CSHB 1365 would establish guidelines for a claimant to send a notice of levy to a financial institution that possessed or controlled assets or funds of the obligor. The notice would have to include the amount of child-support arrearages owed and would have to direct the financial institution to pay the obligee the amount owed between the 15th and 21st days after the delivery of the notice, unless:

- ! the claimant notified the institution that the arrearages had been paid or that payment arrangements had been made;
- ! the obligor or someone else filed a suit to request a hearing; or
- ! the claimant was the Title IV-D agency and the obligor had requested an agency review.

When a financial institution received a notice of levy, it could not close the obligor's account, permit a withdrawal from the obligor's account, or pay funds to the obligor that would leave less than the amount of the arrearages, fees to the institution, and any costs associated with the notice of levy. An institution that had received a notice of levy would have to notify any other person who had an ownership interest in the obligor's account that the account had been levied in the amount of the arrearages.

The claimant would have to serve a copy of the notice of levy to the obligor at the time that the notice was delivered to the financial institution. The notice would have to be delivered to the obligor's last known address by first-class, registered, or certified mail. The notice would have to inform the obligor that the claimant would not proceed with the levy if, within 10 days of receipt of the notice, the obligor paid or arranged to pay the full amount owed and that the obligor could contest the levy by filing suit to determine arrearages within 10 days. If the claimant was the Title IV-D agency, the obligor could ask the agency to review the matter within 10 days to resolve any dispute of the existence or amount of arrearages. The agency would have to provide an opportunity for a review within five working days after the request for the review. If the review failed to resolve the issue, the obligor could file suit within five days of the end of the review.

CSHB 1365 would exempt a financial institution that surrendered assets to a child-support lien from any liability to the obligor or any other person for the property surrendered. A person who possessed or had a right to property that was the subject of the notice of levy and who refused to surrender the property or right would be liable to the claimant for the amount of arrearages. If the value of the property was not sufficient, the claimant could levy other property of the obligor until the total arrearages were paid.

An obligor who failed to comply with a notice of levy as outlined in the bill would be liable to the claimant for the amount of arrearages owed.

Miscellaneous provisions. CSHB 1365 would require an order or writ of withholding wages to contain information required by forms established by the Title IV-D agency.

The bill would establish guidelines for obligor's workers' compensation claims. If an employer received an order or writ of withholding wages and the obligor had filed a workers' compensation claim, the employer would have to send a copy of the writ or order to the insurance carrier responsible for the claim.

The Title IV-D agency could enforce a support order from another state. The agency would have to include in a notice to the obligor the amount of arrearages, including accrued interest if an administrative writ had been issued.

CSHB 1365 would authorize only the referring court, and not the master, to render an order for post-judgment relief, including a new trial. A master could not conduct a compliance review of an order while it was on appeal to the referring court. If the child-support master could not fulfill the duties of the office, a presiding judge could appoint a visiting master, who would have to have served as a child-support master or associate judge for at least two years. The visiting master would be paid according to a majority vote by presiding judges and would not be considered a state employee.

CSHB 1365 would prohibit charging a filing fee or other costs payable to the clerk of an appellate court in Title IV-D cases. An agency, company, institution, or other entity would have to provide information to assist in the location of persons or property to enforce a support order directly to the Title IV-D agency without charging a fee.

If the obligor had had a license suspended for nonpayment of child support, a licensing authority could not issue or renew a license for the obligor until the court or Title IV-D agency lifted the order suspending the license.

If paternity had been acknowledged and the parties had agreed to the terms of a proposed child-support review order and had waived the right to service of process, the Title IV-D agency could present the order and waiver to the court for confirmation immediately without conducting a formal negotiation conference or requiring financial disclosures.

The bill would require information from motor-vehicle records to be disclosed for child-support enforcement.

CSHB 1365 would allow a court to order retroactive child support for a child if a previous child-support order had ended as a result of the marriage or remarriage of the child's parents and thereafter the child's parents had separated and a new child-support action had been filed.

CSHB 1365 would require a clerk to file a suit to determine parentage under same docket number as other prior action. For all other purposes, including assessment of fees, the suit would be considered separately.

CSHB 1365 would provide that a certified child-support payment record produced by the state disbursement unit would be taken as the truth, and additional verification would not be required. A dispute of the record would have to be resolved by a deposition of written interrogatories and would not require other testimony by the state distribution unit.

This bill would take effect September 1, 2001. It would apply only to orders establishing, modifying, or enforcing child-support obligations rendered on or after that date.

SUPPORTERS
SAY:

CSHB 1365 would improve the state's efficiency and effectiveness in establishing and enforcing child-support orders, and the Office of the Attorney General (OAG), which is responsible for child-support enforcement, supports it for that reason. A significant portion of the bill would bring Texas into compliance with federal law.

The OAG currently can freeze accounts, but CSHB 1365 would allow assets to be seized for use in paying arrearages. The obligor could seek legal recourse and could file suit to halt the seizure.

CSHB 1365 would establish important guidelines for child-support payments in the event of the death of the obligee. This would create a consistent process for the execution of child support.

Specifying the items that must be listed in a child-support lien notice would help ensure that all parties had the necessary information. The bill would ensure that the information would be delivered to the obligor as quickly as possible. Also, establishing deadlines for actions relating to service and

receipt of a notice of a child-support lien would help streamline the process for the obligor to seek recourse or make arrangements for payment.

CSHB 1365 also would make technical corrections and clarify language in the current child-support statutes.

OPPONENTS
SAY:

CSHB 1365's provision that a child-support lien could attach to a claim or potential right to an inheritance is too onerous. It could cause unnecessary hardship for those who plan to bequeath property to the obligor.

NOTES:

Rep. Goodman plans to offer floor amendments that would:

- ! delete the provision that a child-support lien could attach to a claim or potential right to an inheritance, and
- ! delete the provision that a dispute of a matter in a payment record would have to be resolved by a deposition of written interrogatories and would not require other testimony from the state disbursement unit.

The committee substitute made many changes to the original. Among other changes, the substitute:

- ! removed the requirement, in regard to an order redirecting child-support payments following the death of the obligee, that the order show the social security and mailing address for each child, the social security number of the managing conservator, and a copy of the section of the bill;
- ! added the requirement that a copy of a notice of child-support lien be delivered to the obligor within 21 days of the filing or delivery of the notice;
- ! added a provision that a child-support lien could attach to an individual retirement account, the proceeds of a life insurance policy, or a claim or potential right to an estate inheritance;
- ! added time limits to the service of a notice of levy and to possible recourse by the obligor;
- ! added the requirement that a lien would be effective until any costs and reasonable attorney's fees had been paid or the lien was otherwise released;

- ! specified the courts in which an action could be brought to foreclose a lien, dispute the amount of arrearages, or resolve issues of ownership interest in property; and
- ! added provisions that would establish compensation guidelines for a visiting master.