

**SUBJECT:** Withholding income for spousal maintenance

**COMMITTEE:** Juvenile Justice and Family Issues — favorable, without amendment

**VOTE:** 8 ayes — Goodman, A. Reyna, E. Reyna, P. King, Menendez, Naishtat, Nixon, Tillery

0 nays

1 absent — Morrison

**WITNESSES:** For — Tom Stansbury, State Bar of Texas

Against — None

On — Sherry Griffis, County and District Clerk Association

**BACKGROUND:** Provisions in Family Code, chapter 8 allow courts in certain situations to order one spouse to “maintain” the other spouse after divorce. “Maintenance” means an award in a marriage dissolution suit of periodic payments from the future income of one spouse for the support of the other spouse.

Family Code, sec. 8.002 allows courts to order spousal maintenance only in cases in which:

- ! the spouse who is to pay the maintenance was convicted of or received deferred adjudication for a criminal offense of family violence with two years before the date a divorce is filed or while a divorce is pending; or
- ! the marriage lasted 10 years or more and the spouse seeking support lacks sufficient property to provide for minimum reasonable needs, and:
  - ! cannot provide for his or her needs by working because of a physical or mental disability;
  - ! cannot be employed outside of the home because he or she is custodian of a child who requires substantial care and supervision due to a physical or mental disability; or
  - ! clearly lacks earning ability to provide his or her minimum needs.

Family Code, sec. 8.003 lists many factors that courts must consider when determining the amount of maintenance awarded, including the spouses' financial resources and education and employment skills, ability of the spouse paying maintenance to meet his or her own needs and also make child support payments, contributions of the receiving spouse as homemaker, and any marital misconduct.

Courts may enforce maintenance orders by garnishing wages of the spouse ordered to pay the spousal support, as authorized by an amendment to Art. 16, sec. 28 of the Texas Constitution adopted by the Legislature and approved by voters in 1999.

**DIGEST:**

HB 691 would establish provisions regarding income withholding for spousal maintenance, priority of child-support payments, and limiting the amount of support an obligor (the spouse ordered to pay the other spouse) would have to pay.

The bill would allow a court to order that income be withheld from an obligor's disposable income for spousal maintenance under certain conditions. Income could be withheld if permitted by an alimony contract or if payments were not being made in a timely manner. The writ of withholding could combine the amounts due for spousal maintenance and for child support if the obligee (the former spouse receiving maintenance support) was the child's conservator.

In addition to income withheld for current spousal maintenance, the court could order income be withheld to liquidate arrearages (overdue payments). The amount withheld for arrearages would have to be whichever of the following options discharged the arrearages in the least amount of time:

- ! an amount sufficient to discharge the arrearages in not more than two years; or
- ! 20 percent of the amount withheld for current maintenance.

Even if spousal maintenance payments were not currently due, the court could order withholding to pay for arrearages in an amount sufficient to discharge them in not more than two years. The court also could order withholding to satisfy judgments for arrearages.

An order or writ of withholding for spousal maintenance would have priority over any garnishment, attachment, execution, or other order affecting disposable earnings but would not have priority over a writ of withholding for child support.

The maximum amount that an obligor's employer would have to withhold would be the lesser of the amount specified in the writ or an amount that, when added to the amount withheld for child support, equaled 50 percent of the obligor's disposable income. An employer would be bound to comply with the writ.

If an obligor and obligee agreed, the obligor could file a notarized request with the court clerk for a voluntary writ of withholding. An obligor could request a voluntary writ regardless of whether a writ had been served on any party or whether the obligor owed arrearages. The court clerk would have to deliver a writ of withholding to the obligor's employer. An employer who received a writ of withholding or an obligor whose employer received a writ could request a hearing.

An obligee could file with the court clerk a request for issuance of a writ and could contest a writ of withholding up to 180th day after the obligee learned that a writ had been issued. A voluntary writ would not reduce the total amount of spousal maintenance, including arrearages, owed to the obligee.

**Procedures for writ of withholding.** A court could order a writ of withholding at any time before all spousal maintenance and arrearages were paid. The order would have to state the style, cause number, and court having jurisdiction to enforce the order; the name and address of the obligor and obligee and their social security numbers, if available; and the amount and duration of the spousal maintenance payments.

A court clerk who received a request for issuance of a writ would have to deliver a certified copy with a copy of Subchapter E (rights and duties of the employer) attached to the obligor's current employer or to any subsequent employer. The clerk would have to deliver the copy by certified or registered mail, return receipt requested, no later than the fourth working day after the date the order was signed or the request was filed. The writ would have to be delivered to a person authorized to receive service of process for the employer or to a person designated in writing by the employer.

**Rights and duties of obligor's employer.** An employer required to withhold income would not be entitled to notice of the proceeding before the writ of withholding was issued. A writ would be binding on an employer regardless of whether the order specifically named the employer. The employer would have to begin withholding income on the first pay period after the writ was delivered and continue withholding income as long as the obligor worked for the employer. The employer would have to remit the withheld income to the person named in the writ order on each pay date. The remittance would have to include the date the withholding occurred, the cause number of the suit, and the payor's and payee's names, unless the remittance was made by electronic funds transfer.

The employer could deduct an administrative fee of not more than \$5 each month from the obligor's income. The employer could file a request for a hearing no later than the 20th day after the writ was delivered, and the hearing would have to be held no later than the 15th day after the request was made. During this period, the employer still would have to withhold income.

An employer who complied with the writ would not be responsible to the obligor for the amount of income withheld and remitted. An employer who received but did not comply with a writ would be liable to the obligee for any amount not paid, to the obligor for any amount withheld but not remitted, and for attorney's fees for either party who incurred costs in recovering payment. An employer would have to comply with a writ of withholding issued in another state. An employer would have to notify an employee of an order for withholding for spousal maintenance or alimony issued by another state in the same manner as required for an order for child support issued by another state, and the employer could contest the order in the same manner.

An employer who received multiple writs for the same obligor would have to withhold the combined amounts due unless they exceeded 50 percent of the obligor's earnings. If the amounts due exceed the maximum total, the employer would have to pay child support and arrearages first, then current spousal maintenance, then spousal maintenance arrearages.

An employer could not discharge or refuse to hire an employee because of a writ of withholding, or the employer would be liable to that employee for current wages, other employment benefits, and reasonable attorney's fees and

court costs incurred in enforcing the employee's rights. An employee could bring suit to enforce these rights. An employer who knowingly violated a writ to withhold and remit income for spousal maintenance would commit an offense punishable by a fine not to exceed \$200 for each violation.

An obligor who changed employment would have to inform the court and the obligee of the termination, the obligor's last known address, and the name and address of the obligor's new employer. The obligor would have to inform his subsequent employer of the writ.

**Writ of withholding issued by clerk.** An obligor or obligee could file in the court that ordered spousal maintenance a notice of application for a writ of withholding if a writ was not ordered at the time spousal maintenance was ordered. The notice would have to be verified; state the monthly amount due, including arrearages, and the amount to be withheld; state that the withholding applied to each current or subsequent employer; state that the obligor's employer would be notified to begin the withholding if not contested by the obligor on or before the 10th day after the date the obligor received notice; describe the procedure to contest the writ; state that the obligor would receive an opportunity for a hearing; state the sole grounds for successfully contesting the writ; describe the actions to be taken if the obligor contested the application; and include a suggested form for the motion to stay the writ.

A foreign order would be sufficient for filing a notice of application for a writ of withholding. The notice would have to be filed with the court clerk having venue and be delivered to the obligor at the same time that an order was filed for registration.

A writ of withholding could include withholding for arrearages that accrued between the filing of the notice of application and the date of the hearing or issuance of the writ. The party that filed the notice would have to deliver the notice to the obligor by first-class or certified mail, return receipt requested, or by service of citation. If the notice was delivered by mail, the party who filed would have to file with the court a certificate stating the name, address, and date the party mailed the notice. The notice would be considered to be received by the obligor on the date of the certified mail receipt, the 10th day after it was mailed by first-class mail, or on the date of service of citation.

The obligor could file a motion to stay the writ of withholding with the court clerk no later than the 10th day after the date the notice of application was received. The grounds available for filing a motion would be limited to an identity dispute or the amount of arrearages. The court clerk could not deliver the writ to the obligor's employer before the motion to stay hearing was held. The hearing could not be later than the 30th day after the motion was filed unless both parties agreed and waived this right. After the hearing, the court would have to render an order that included a determination of any amount of arrearages, or else grant the motion to stay.

A defect in a notice of application would be waived if the respondent cited the alleged defect in writing. The court would have to hear the defect before hearing the motion to stay. If a defect was found, the court would have to give the party filing the notice a chance to refill and would have to continue the hearing to a specified date without requiring additional service.

The court could not refuse to order withholding because the obligor paid the arrearages after the obligor received notice of application for a writ. The court would have to order the reasonable amount to be withheld. If a notice of application was delivered and the obligor did not timely file a motion to stay, the party who filed the notice would have to file with the clerk court a request of issuance of the writ stating the amount of current spousal maintenance, the amount of arrearages, and the amount to be withheld from the obligor's income. A request for issuance could not be filed before the 11th day after the date the obligor received notice of application for a writ. The court clerk would have to issue and deliver the writ no later than the second working day after the request was filed. The writ would have to direct that an obligor's employer withhold the amount ordered.

A party who determined that the schedule for repaying arrearages would cause the obligor unreasonable hardship could extend the payment period in the writ. The obligor's employer would have to remit the amount withheld to the person named on the writ on each pay day and include the date the withholding occurred.

No later than the 30th day after the date of the first withholding, the obligor could file an affidavit stating that the obligor did not timely file a motion to stay because the obligor did not receive the notice of application and that grounds existed for a motion to stay. The obligor could file with the affidavit

a motion to withdraw the writ and request a hearing. Income withholding could not be interrupted until ordered by the court.

After the court clerk issued a writ, the party who filed the notice of application for the writ could deliver a copy of the writ to a subsequent employer of the obligor by certified mail. The party would have to file a copy of the writ and the postal return receipt with the court clerk and pay the clerk a fee of \$15 for the filing.

An obligor and obligee could agree to reduce or terminate income withholding by filing notarized request with the clerk. The clerk would have to issue and deliver to the obligor's employer a writ that reflected the agreed changes.

In voluntary withholding cases, an obligee could file with the clerk a notarized request signed by both the obligee and the obligor to modify the writ. The clerk would have to issue and deliver the modified writ to the obligor's employer and could charge a reasonable fee not to exceed \$15 for filing the request. An obligee could contest the modified writ by requesting a hearing.

Anybody could deliver to the obligor's employer a certified copy of a modified order. The liability of employers for withholding would apply to modified orders as well.

This bill would take effect September 1, 2001, and would apply to spousal maintenance payments regardless of when they became due.

**SUPPORTERS  
SAY:**

HB 691 would help courts by giving them specific authority to issue income-withholding writs for spousal maintenance and by allowing them to issue a combined writ for child support and spousal support. A judge could hold a delinquent obligor in contempt without requiring a hearing.

Spousal maintenance is rarely granted. When it is granted, it reflects a great need on the part of the spouse who is the obligee. The bill would make it easier for a person to receive spousal maintenance payments that were due. It would encourage the courts to issue withholding orders so that people who were not receiving payments would not have to file a contempt action and return to the court to enforce the spousal maintenance. Many of these parties

already are strapped for cash and do not have money to pay court costs and attorney's fees.

HB 691 also would benefit those who owe spousal maintenance and child support by specifying the maximum amount that could be withheld from their paychecks. Currently, no safeguards are in place to ensure that obligors could make their payments and still have enough money to sustain themselves. The bill also would prioritize child-support payments above spousal maintenance if the obligor could not meet both obligations.

OPPONENTS  
SAY:

No apparent opposition.