

- SUBJECT:** Revising Family Code provisions affecting child support
- COMMITTEE:** Juvenile Justice and Family Issues — committee substitute recommended
- VOTE:** 5 ayes — Dutton, Goodman, Castro, Nixon, Strama
0 nays
4 absent — Y. Davis, Dunnam, J. Moreno, Thompson
- WITNESSES:** (*On original version:*)
For — None

Against — Roy Getting, Texas Father's Alliance

On — Alicia Key, Charles Smith, Office of the Attorney General/Child Support Division; David Weaver, State Securities Board.
- BACKGROUND:** The Family Code provides for the establishment and enforcement of child and medical support obligations for children in suits affecting the parent-child relationship. These provisions have continually been amended in the Code to account for changes in federal law, case law, and current practice.
- DIGEST:** CSHB 1449 would revise provisions in the Family Code relating to the establishment, modification, and enforcement of child support.
- Alternative dispute resolution.** CSHB 1449 would give parties involved in a suit affecting the parent-child relationship referred to mediation the option to agree to conduct informal settlement conferences with or without the presence of the parties' attorneys. A written settlement agreement reached at mediation or at an informal settlement conference would be binding on the parties. If parties submitted to the court an agreed order for transfer of proceedings, the court would sign the order without the need for other pleadings. The bill would clarify that support orders could be modified only for the amount of support ordered.
- Modification of child support orders.** The bill would provide for when an order for child support could be modified by a court to allow the person

with physical possession of the child, including a conservator or a governmental entity, the right to receive, hold, or disburse child support payments for the benefit of the child. The order could be modified if the sole managing conservator or the joint managing conservator with the exclusive right to determine primary residence of the child had: (1) voluntarily relinquished primary care and possession of the child for at least six months; (2) been incarcerated or sentenced to be incarcerated for at least 30 days; or (3) involuntarily relinquished primary care and possession of the child. The obligor would have to pay the person or entity with physical possession of the child any eligible unpaid child support that accrued after the date the sole or joint managing conservator voluntarily or involuntarily relinquished possession and control, or was incarcerated.

The bill would modify when a court retained jurisdiction to render a contempt order for failure to comply with a support order. Jurisdiction would be retained if the motion for enforcement was filed no later than the second anniversary of either the date the child became an adult or when the child support obligation terminated under the order or by law.

Enforcement of child support orders. CSHB 1449 would revise the time in which a court would have to conduct a release hearing for an arrested respondent to before the third working day after the arrest. A hearing on alleged contempt would have to be held no later than seven days after the respondent was taken into custody.

Additionally, a respondent placed on community supervision could be required to submit to confinement in a county jail for no longer than an aggregate of 180 days during the supervision period. The bill would allow the court to extend the initial period of community supervision past the 10-year limit for either an additional two years or when all child support, including arrearages and interest, had been paid, whichever occurred first.

If an obligor's federal tax refund was reduced after the obligor received credit for support arrearages based on that amount, the bill would clarify that the court would render a new cumulative judgment to reflect the reduction in credit. A child support lien notice would contain a statement that the lien attached to any property of the obligor after the date of filing or delivery of the notice. The lien notice would have to be verified, except that the federal form of lien notice would not require verification when used by the OAG. CSHB 1449 would specify that a child support lien

attached to all property owned on or acquired by an obligor after the date the lien notice was filed with the appropriate county or court clerk or, if the property was in the possession of a third party, when it was delivered to that party.

The bill would define severance pay and require an employer who received an order or writ of withholding to withhold from severance pay owed to an obligor the amount equal to what would have been withheld from income if the obligor were receiving usual earnings. The amount held could not exceed 50 percent of the obligor's disposable earnings.

CSHB 1449 would require a court to render an order requiring that the obligor make periodic payments on the judgment for child support arrearages, including by income withholding. It would further specify that a court that rendered an order providing for the payment of child support would retain continuing jurisdiction to enforce the order, including by adjusting the amount of the obligor's periodic payments or the amount to be withheld from the obligor's disposable income until all child support and arrearages had been paid.

In an order terminating parental rights, the bill would add a provision requiring specific findings that a request for identification of a court of continuing, exclusive jurisdiction had been made, and that all parties entitled to notice had been notified.

The bill would allow an associate judge to hear and render an order on a motion for postjudgment relief, but could not grant postjudgement relief in a case that would alter or otherwise affect any action taken by the referring court on the associate judge's recommendation in the case. It also would provide that the restriction on state agencies from entering into contracts with former or retired agency employees would not apply to appointed visiting associate judges.

License suspension. A notice of license suspension could be delivered by first-class mail to an obligor as long as the notice clearly indicated it was an order of license suspension. The bill would modify definitions of license, licensing authority, and an order suspending license, would delete a list of licensing authorities subject to the chapter on suspension of licensure, and would make all licensing authorities, unless otherwise restricted or exempted, subject to the chapter. The bill would make the

Department of Transportation the licensing authority for suspension of motor vehicle registration and provide that general registration provisions in the Transportation Code did not apply to suspension or denial of registration renewal for failure to pay child support.

CSHB 1449 would authorize the OAG to provide a licensing authority with information on an obligor's failure to pay child support for at least six months. The licensing authority would refuse to accept an application for renewal of a license until it was notified by the OAG agency that the obligor met certain conditions, including payment of all child support arrearages or establishment of a satisfactory repayment schedule. An obligor would have to immediately be notified by the OAG of the information provided to the licensing authority and the necessary steps required by the obligor to prevent denial of an application for license renewal. The obligor could contest the OAG's action by informal resolution or a court hearing. If a repayment agreement was entered into between the obligor and the OAG, the OAG could incorporate the agreement in an order filed with and confirmed by the court in the same manner provided for agreed orders.

The bill would permit the licensing authority to charge a fee to an obligor subject to an action to deny renewal of a license, in addition to the already authorized fee in the case of license suspension, to recover actual administrative costs incurred by the licensing authority.

Other provisions. CSHB 1449 would provide for a civil money penalty on an employer who knowingly violated federal requirements for the reporting of new employee information. The penalty amount could not exceed \$25 per nonreporting occurrence and \$500 for each occurrence in which nonreporting was a result of a conspiracy between the employer and employee.

CSHB 1449 would make changes to conform the language of the Family Code sections, and to conform to the Uniform Interstate Family Support Act, which states are required by federal law to adopt verbatim. The bill would delete all references to sec. 234.003 and the work group established under it.

The bill would amend the Code to add a definition of record and require notice to be given to the Office of the Attorney General (OAG) if a party

filed a petition to request the termination of a child support right assigned to the OAG. It would also redefine the terms alternate payee and domestic relations order, and define a child support obligee. It would clarify that a notice of hearing would be served to a respondent at the same time as a motion for enforcement and include a child support lien in the definition of lien in the Transportation Code.

This bill would take effect on September 1, 2005, and changes in law relating to a court order establishing paternity or the obligation to pay child support would apply only to a suit affecting the parent-child relationship filed on or after the effective date.

**SUPPORTERS
SAY:**

The general purpose of CSHB 1449 is to make technical corrections where inconsistencies or outdated terminology exist in the Family Code concerning the order and enforcement of child support. The bill would make the terminology more consistent and better reflect current practice and case law. It would provide necessary changes and clarifications to ensure a more uniform and efficient execution of family law in the state.

CSHB 1449 would make a few vital substantive changes related to enforcement of child support, including license suspension. These changes would provide the state with a more effective system to enforce child support, which would most benefit the children entitled to financial and medical support. Revisions made by the committee substitute satisfied earlier concerns about the original bill.

**OPPONENTS
SAY:**

No apparent opposition.

NOTES:

The substitute modified the original version by adding a provision giving parties referred to mediation the option to agree to an informal settlement conference and allowing a written settlement agreement reached at mediation or at an informal settlement conference to be binding on the parties. It also allows the court to continue community supervision of a delinquent obligor until the earlier of the expiration of an additional two-year period beyond the 10 years or the date that all child support, including arrearages and interest, has been paid. The substitute would also provide that restricting state agencies from entering into contracts with former or retired agency employees would not apply to visiting associate judges under the noted sections of the Family Code, rather than making

changes in the Government Code.