SUBJECT: Limiting private entities performing services of local child support registry

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

VOTE: 5 ayes — Dutton, Goodman, Castro, Nixon, Strama

0 nays

4 absent — Y. Davis, Dunnam, J. Moreno, Thompson

WITNESSES: None

BACKGROUND: Courts generally order child support to be paid through either a local child support registry or the state disbursement unit of the Office of the Attorney General (OAG). Under current law, a local child support registry is defined as an agency or entity that must be operated under the authority of a county agency or entity serving a county or court with jurisdiction over child support cases. The Family Code authorizes local child support registries to enforce, collect, distribute, and maintain records of child support payments.

Currently, the Code allows a county, acting through its commissioners court or domestic relations office, to contract with a private entity to enforce, receive, and disburse child support payments.

Although not specifically authorized or prohibited in current law, judges in some parts of the state have appointed individual guardians ad litem to receive, disburse, and monitor child support payments through divorce decrees or other orders authorized by the parties involved.

DIGEST: HB 2668 would authorize a private entity to perform the duties and functions of a local child support registry only if it contracted with a commissioners court or domestic relations office.

This bill also would redefine a local child support registry as a county agency or public entity.

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, 2005.

SUPPORTERS SAY:

HB 2668 would prohibit a private agency from being appointed as a guardian ad litem to receive, disburse, and monitor child support payments through a divorce decree or other order, even if the parents involved authorized the use of the guardian ad litem. Only private entities that contracted with a commissioners court or domestic relations order could perform the duties and functions of a local child support registry.

Although nothing in federal law precludes states from sending child support payments to an entity requested by a custodial parent if authorization to do so has been obtained, such practices are governed by state law. It is up to the state to determine what constitutes authorization from the custodial parent. As the state disbursement unit, the OAG has taken the position that signatures on a divorce decree or other court order do not constitute proper authorization from the custodial parent.

Because federal law has mandated that states form centralized disbursement units to collect and pay all child support ordered after January 1994, specific statutory authority is required to allow the state disbursement unit to direct payments based on court orders. Specific statutory authority is not currently granted to private entities serving as appointed guardians ad litem, so such entities should not be allowed to perform the functions and duties of a local registry.

HB 2668 would ensure that the state disbursement unit of the OAG would not direct payments to private entities that would jeopardize its status as the disbursing unit in the implementation of its federal mandates. This would ensure the continuation of federal funding for the OAG as the state disbursement unit.

Because appointed guardians ad litem do not register with the state disbursement unit, many compliance and accountability problems have been reported about these agencies. Many obligor parents have not properly been credited for making payments, or custodial parents have not received the correct payment amount. Obligors face threats of contempt charges and possible jail time. HB 2668 would provide a more unified and successful child support system that would better ensure participant satisfaction.

OPPONENTS SAY:

Private agencies should not be prohibited from serving as guardians ad litem. The federal Office of Child Support Enforcement (OCSE) has issued several official opinions that nothing in federal law precludes states from sending child support payments to an entity requested by a custodial parent if authorization to do so has been obtained. Although such practices are to be governed by state law, it is the position of the OCSE that it would be good customer service and good public policy for a state to send child support payments to the custodial parent at the address that he or she requested, even if it were a third party, such as an attorney or a private collection agency.

Although states have the authority to regulate private collection agencies, no one is in a better position to determine where the custodial parent should receive child support payments than the custodial parent. Sending a custodial parent's payments to a non-residential address provided by the custodial parent would not inject states into the private contractual arrangements of the parents.

Sending payments to a custodial parent at the address of an attorney or a private collection agency would not violate federal requirements governing the distribution, disbursement, or payment of collections due to the custodial parent. A divorce decree or other order providing for a guardian ad litem for child support serves as adequate and proper authorization from the obligee and would permit the OAG to direct payments to such entity without jeopardizing the OAG as the disbursing unit in the implementation of its federal mandates.

In jurisdictions allowing a private entity to serve as a guardian ad litem, child support compliance has risen dramatically. Although the compliance rate for authorized local registries and the state disbursement unit is about 18-28 percent, the rate for appointed guardians ad litem has increased to 76-88 percent. Because of the compliance rate, guardians ad litem have also reported a higher customer satisfaction rate.