

SUBJECT: Modifying and enforcing child support orders

COMMITTEE: Juvenile Justice and Family Issues — committee substitute recommended

VOTE: 5 ayes — Dutton, Eiland, Farrar, Gonzalez Toureilles, Hernandez
0 nays
4 absent — Bolton, Farias, Strama, Vaught

SENATE VOTE: On final passage, March 14 — 30-0, on Local and Uncontested Calendar

WITNESSES: *(On House companion bill, HB 2264 by Eiland:)*
For — Steve Bresnen, Texas Family Law Foundation; Cecelia Burke, Texas Association of Domestic Relations Offices; David W. Simpson, Texas Association of Domestic Relations Office, Harris County;
(Registered, but did not testify: Wendy Burgower, Texas Family Law Foundation)

Against — None

On — Alicia Key, Office of Attorney General, Child Support Division

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: CSSB 228 would revise provisions in the Family Code relating to the establishment, modification, and enforcement of child support.

Modification of child support orders. The bill would provide for when an order for child support could be modified by a court to allow a person with physical possession of the child for at least six months, 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:

- voluntarily relinquished primary care and possession of the child;
- been incarcerated or sentenced to be incarcerated for at least 90 days; or
- 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 relinquished possession and control or was incarcerated. This would not affect the ability of the court to render a temporary order for the payment of child support that was in the best interest of the child. An order that modified a support order because of the incarceration of the sole or joint managing conservator of a child would have to provide that on the conservator's release from incarceration, the conservator could file an affidavit with the court stating, if appropriate, that the conservator had been released, that there had been no modification of the conservatorship of the child during incarceration, and that the conservator had resumed physical possession of the child. Once the court had received the affidavit, the court would order the obligor to make support payments to the conservator.

Jurisdiction to render a contempt order for failure to comply with a support order 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. CSSB 228 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.

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 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 child support agency. CSSB 228 would specify that a child support lien attached to all property owned 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. CSSB 228 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.

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, and would delete a list of licensing authorities subject to the chapter on suspension of licensure, making all licensing authorities, unless otherwise restricted or exempted, subject to the chapter. The bill would make the Texas 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.

CSSB 228 would authorize a child support agency 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 have to refuse to accept an application for renewal of a license until it was notified by the child support 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 be notified immediately by the child support agency 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 child support agency's action by informal resolution or a court hearing. After review by the agency or a hearing by the court, if the agency withdrew the notice, the agency would have to reimburse the obligor the amount of any fee charged for administrative costs. If a repayment agreement was entered into between the obligor and the child support agency, the child support agency could incorporate the agreement in an order filed with and confirmed by the court in the same manner provided for agreed orders.

The licensing authority could 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. A fee collected by the Texas Department of Transportation or the Department of Public Safety would be deposited to the credit of the state highway fund.

Other provisions. CSSB 228 would provide for a civil penalty against an employer who knowingly violated federal requirements for the reporting of new employee information. The penalty amount could not exceed \$25 per non-reporting occurrence and \$500 for each occurrence in which non-reporting was a result of a conspiracy between the employer and employee.

CSSB 228 also would conform the language of Family Code sections and the Uniform Interstate Family Support Act, which states are required by federal law to adopt verbatim. The bill would delete references to sec. 234.003 and the work group established under it. The bill would add a

definition of record and require notice to be given to the Office of the Attorney General if a party filed a petition to request the termination of a child support right assigned to the child support agency. 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.

The bill would take effect September 1, 2007.

**SUPPORTERS
SAY:**

The general purpose of CSSB 228 is to update and 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 would better reflect current practice and case law to ensure a more uniform and efficient execution of family law in the state. CSSB 228 would make a few substantive changes related to enforcement of child support. Changes to provisions on license suspension for failure to pay child support would provide the state with a more effective system to enforce payment, adding penalties and enforcement tools and benefiting the children entitled to financial and medical support.

**OPPONENTS
SAY:**

No apparent opposition.

NOTES:

The House committee substitute removed the option of limited confinement as a condition of community supervision. It also would replace "Title IV-D agency" with "child support agency" as defined by the Family Code with respect to who could notify a licensing agency about a failure to pay child support for six months or more.

The companion bill, HB 2264 by Eiland, was heard and left pending by the Juvenile Justice and Family Issues Committee on April 4.