

SUBJECT: Liability for not complying with a child support lien, court order, or levy

COMMITTEE: Judiciary and Civil Jurisprudence — committee substitute recommended

VOTE: 6 ayes — Hunter, Hughes, Alonzo, Hartnett, Leibowitz, Martinez  
4 nays — Jackson, Lewis, Madden, Woolley  
1 absent — Branch

SENATE VOTE: On final passage, April 2 — 31-0, on Local and Uncontested Calendar

WITNESSES: For — (*Registered, but did not testify*: Steven Sinkin; Brandon Wong)  
  
Against — Jeff Huffman, Texas Credit Union League; (*Registered, but did not testify*: Melodie Stegall, Credit Union Legislative Coalition)

BACKGROUND: Under Family Code, sec. 157.324, a person who knowingly disposes of property subject to a child support lien or fails to surrender on demand nonexempt personal property after a foreclosure hearing is liable to the claimant in an amount equal to the value of the disposed property, but not for an amount greater than the amount of the child support obligations for which the lien or foreclosure judgment was issued.

DIGEST: CSSB 432 would amend Family Code, sec. 157.324 to provide that a person, other than a financial institution, would be liable to a claimant under a child support lien if the person:

- paid over, released, sold, transferred, encumbered, conveyed, or otherwise disposed of property subject to a child support lien;
- failed to surrender on demand nonexempt personal property after a foreclosure hearing, as directed by a court; or
- possessed or had a right to property that was the subject of a notice of levy and had refused or failed to timely surrender the property or right to property that should have been paid or delivered to the claimant on demand.

The person would be liable to the claimant for an amount three times the value of the property or \$5,000, whichever was greater, except that the amount could not exceed the amount of the past-due child support for which the lien or foreclosure judgment was issued.

A financial institution would be liable to a claimant under a child support lien if the institution:

- paid over, released, sold, transferred, encumbered, conveyed, or otherwise disposed of property subject to a child support lien;
- failed to surrender on demand nonexempt personal property after a foreclosure hearing; or
- possessed or had a right to property that was subject to a notice of levy and had refused or failed to timely surrender the property or right that should have been paid or delivered to the claimant on demand.

The financial institution would be liable to the claimant in an amount of one and one-half times the value of the property or \$5,000, whichever was greater, except that the amount could not exceed the amount of the past-due child support for which the lien or foreclosure judgment was issued. A financial institution would not be liable for the disposition of assets in an account if the child support lien or notice of levy did not contain either account number or the social security number of an account owner of record.

The bill would require that 50 percent of any amount paid to the claimant as a result of an action against a person or a financial institution for the improper disposal of or failure to surrender property subject to a child support lien, foreclosure judgment, or notice of levy be credited against the child support arrearages owed by the obligor. The claimant also could recover costs and reasonable attorney fees.

The bill would take effect September 1, 2009.

**SUPPORTERS  
SAY:**

CSSB 432 would provide an additional incentive to comply with child support liens and notices of levy by increasing the penalties for failure to release assets subject to child support liens and levies. The 80th Legislature in 2007 reduced the penalties to their current levels, which have not been as effective in encouraging compliance with child support liens. For example, a financial institution that held \$10,000 in an account

for a child support obligor who owed a total of \$30,000 in overdue child support would only have to pay a penalty of \$10,000 under current law, whereas the institution would have had to pay \$30,000 prior to 2007. CSSB 432 would increase modestly the penalty for an institution to \$15,000, thereby increasing the incentive to comply with the lien.

OPPONENTS  
SAY:

CSSB 432 would go too far by restoring penalties for financial institutions closer to their pre-2007 levels, which were too excessive. Financial institutions today do not need additional coercive “incentives” to comply with court-ordered judgments and child support liens, because they almost always do comply with judgments and liens. If the bill was passed in conjunction with CSSB 431, which would require financial institutions to freeze accounts owned by third parties upon receipt of a lien alleging that an account contained assets that were owned by, or owed to, a child support obligor, financial institutions could face double-edged liability: liability to a claimant for not paying funds from the account, and liability to the third party account owner for paying funds that were wrongly subject to a child support lien.

NOTES:

The companion bill, HB 447 by Villarreal, was heard by the House Judiciary and Civil Jurisprudence Committee on March 9 and left pending.