BILL ANALYSIS

Senate Research Center

H.B. 1174
By: Dutton (Wentworth)
Jurisprudence
6/14/2005
Enrolled

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

The law is quite clear that attorney's fees incurred to enforce child support are themselves enforceable as child support; they may be enforced by contempt, collected by an order withholding, made a condition for purging a finding of contempt, or made a condition of community supervision.

However, although Section 157.167(b), Family Code, requires a court to assess attorney's fees and costs against a person found to have violated an order for possession and access, the law is not clear how such an award may be enforced. If attorney's fees and costs for enforcement of possession and access can only be enforced as a debt, this puts noncustodial parents at a serious disadvantage.

H.B. 1174 authorizes an order to pay a movant's attorney's fees and costs in a child possession or access case to be enforced by any means available for the enforcement of child support, including contempt, if the court finds that the possession and access order with which the respondent failed to comply was necessary to ensure the child's physical or emotional health or welfare. Income withholding, however, cannot be used to enforce the order.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 157.167, Family Code, as amended by Chapters 477 and 1262, Acts of the 78th Legislature, Regular Session, 2003, to authorize the attorney fees and costs ordered because of the respondent's failure to comply with the terms of an order providing for the possession or access to a child, if the court finds that the enforcement of the order with which the respondent failed to comply was necessary to ensure the child's physical or emotional health or welfare, to be enforced by any means available for the enforcement of child support, including contempt, but not including income withholding. Makes a nonsubstantive change.

SECTION 2. Makes application of this Act prospective to an enforcement order rendered on or after the effective date of this Act.

SECTION 3. Provides that to the extent of any conflict, this Act prevails over another Act of the 79th Legislature, Regular Session, 2005, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 4. Effective date: September 1, 2005.