

## **The House Committee on Pensions, Investments & Financial Services**

88th Legislature

September 19, 2024

10:00 a.m.

E2.014

Pursuant to a notice posted on August 23, 2024, the House Committee on Pensions, Investments & Financial Services met in a public hearing and was called to order by the chair, Representative Capriglione, at 10:01 a.m.

The initial quorum call was answered as follows: Representatives Capriglione; Lambert; Bhojani; Frazier; Leo-Wilson; Plesa; and VanDeaver.

A quorum was present.

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Chair made opening remarks.

The committee considered an Attorney General Opinion Request regarding child support liens.

Vice Chair Lambert moved to authorize the chair to submit an Attorney General Opinion Request relating to child support liens in substantially the same form as the draft letter distributed to committee members and direct the committee clerk to include the text of the opinion request letter in the committee minutes for this hearing. The motion prevailed by the following record vote:

Ayes: Representatives Capriglione; Lambert; Bhojani; Frazier; Leo-Wilson; Plesa; VanDeaver (7).

Nays: None (0).

Present, Not Voting: None (0).

Absent: Representatives Bryant; Vo (2).

(See attachment for Attorney General Opinion Request Letter.)

The committee heard invited testimony on the following Interim Charge: examine the ways in which environmental, social, governance (ESG) policies are contradictory to fiduciary duties and the resultant detrimental effect on investors.

Testimony taken/registration recorded. (See attached witness list.)

The committee heard invited testimony examining how legislative changes affect the investment of public funds.

Testimony taken/registration recorded. (See attached witness list.)

(Representative Vo now present.)

Testimony taken/registration recorded. (See attached witness list.)

(Representative Bryant now present.)

Testimony taken/registration recorded. (See attached witness list.)

The committee returned to invited testimony on the following Interim Charge: examine the ways in which environmental, social, governance (ESG) policies are contradictory to fiduciary duties and the resultant detrimental effect on investors.

Testimony taken/registration recorded. (See attached witness list.)

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The committee heard invited testimony regarding the Dallas Police and Fire Pension System.

Testimony taken/registration recorded. (See attached witness list.)

The committee heard invited testimony regarding pension systems with infinite amortization periods.

Testimony taken/registration recorded. (See attached witness list.)

The committee heard invited testimony on the implementation of SB 10, relating to certain benefits paid by the Teacher Retirement System of Texas.

Testimony taken/registration recorded. (See attached witness list.)

The committee heard invited testimony on the implementation of HB 1666, relating to the commingling of funds by digital asset service providers; providing an administrative penalty.

Testimony taken/registration recorded. (See attached witness list.)

The committee heard public testimony on the following Interim Charge: examine the ways in which environmental, social, governance (ESG) policies are contradictory to fiduciary duties and the resultant detrimental effect on investors.

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At 4:08 p.m., on the motion of the chair and without objection, the meeting was adjourned subject to the call of the chair.

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Rep. Capriglione, Chair

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Katy Aldredge, Clerk

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(ATTACHMENT)

Office of the Attorney General  
Attention: Opinion Committee  
P.O. Box 12548  
Austin, Texas 78711-2548

Dear Attorney General Paxton:

Pursuant to Texas Government Code Section 402.042, on behalf of the House Committee on Pensions, Investments, and Financial Services, I request your opinion as to the following questions:

1. If a claimant issues a child support lien notice to a third party under Chapter 157 of the Texas Family Code but fails to promptly issue a levy, does Chapter 157 impose an ongoing duty for the third party to hold the obligor's property in perpetuity while awaiting a possible levy?
  - a. Specifically, with respect to a financial institution, does the child support lien freeze remain in effect in perpetuity?
  
2. Pursuant to Chapter 157 of the Texas Family Code, does a child support lien attach to property that comes into the possession or control of a third party after the service of the lien notice?
  - a. If the third-party recipient of the child support lien notice is not in possession of property of the obligor at the time the lien notice is served upon it, does the third-party recipient of the lien notice have an obligation to remain "on notice" of the child support lien notice, in perpetuity, in the event it later comes into possession of property of the obligor?
    - i. Specifically, with respect to a financial institution, does a child support lien served on a financial institution pursuant to Chapter 157 of the Texas Family Code attach and perfect as to only existing accounts at the financial institution or also to any future accounts that may be opened by the obligor in the future at the financial institution?
  
    - ii. Is it a violation of Chapter 157 of the Texas Family Code if a financial institution served with a child support lien notice for an obligor who is not an account holder at the time of service subsequently opens a new account for an obligor who and allows the obligor access to funds deposited in the subsequently opened account?

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3. Does Section 157.330 of the Texas Family Code impose liability for actions of a financial institution beyond the 21-day period allowed in Section 157.327 following the issuance of a levy notice?
  - a. Alternatively, does compliance with a levy dispose of the child support lien notice as to a third-party recipient? For example, if a financial institution turned over all monies in an account in response to a levy on a child support lien notice, (i) does the child support lien freeze remain in effect for the now-empty account held at the financial institution, and (ii) does the financial institution have an obligation (1) to hold subsequent deposits in perpetuity waiting for a subsequent child support lien levy to be served and (2) to maintain the obligor's account in perpetuity without closing the account for nonactivity?

### I. Background

Financial institutions regularly receive notices of child support liens and levies, upon which they generally freeze an obligor's account, and, in accordance with the claimant's demand, surrender funds from the account to the claimant. This process is similar to a civil garnishment that a litigant may file after receiving a final judgment in a lawsuit. However, Texas statutes provide a clear framework for beginning, adjudicating, and ending a civil garnishment—a framework that is lacking in Texas statutes concerning child support liens. The resulting ambiguity raises questions as to a third party's ongoing liability to be on notice of a child support lien for obligors for whom it does not hold any property at the time the lien notice is served, to freeze any property that comes into its possession after a child support lien notice has been served upon it, and to hold open accounts that have been depleted after a levy has been issued on a child support lien.

By way of comparison, in a civil garnishment, a judgment creditor serves a writ of garnishment upon the garnishee—for example, a financial institution. The financial institution must file an answer within the standard time for answering a lawsuit under Texas Rules of Civil Procedure. The financial institution will freeze any account then in its possession, and, subject to a judgment in the garnishment action, will surrender the account funds to the judgment creditor—up to the amount of the judgment and deducting attorney's fees and costs. After the court signs the order and the financial institution complies with the order, the court discharges the institution from the proceeding, ending further responsibility by the institution. *Tex. R. Civ. P. 678*. In this process, the financial institution's obligation to freeze funds or other assets coming into its possession ends on the date its answer is due. *Tex. R. Civ. P. 659*. Any subsequently deposited funds or assets deposited with the financial institution would have to be the subject of a separate garnishment action to be captured by the judgment creditor. Thus, this statutory framework and quick timeline protect a garnishee from ongoing liability and undue burden of tracking the funds deposited into a garnished account.

In contrast, a child support lien notice can linger for years, as the Texas Family Code provides no method for a third party to obtain a final judgment releasing it from liability after receiving notice of a child support lien and/or turning over any property in its possession pursuant to a child support lien levy. Instead, the Texas Family Code provides generally that a

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child support lien remains in place, and even survives the death of the obligor, until the child support arrearages are completely paid or the claimant takes action to release the lien. *Id.* § 157.318.<sup>1</sup> A third party served with a child support lien notice appears to be subject to an ongoing requirement not to dispose of any property subject to the lien, including after-acquired property and accounts.

A key question of statutory ambiguity arises in the provision in Section 157.317(a-1) that the child support lien attaches to after-acquired property. Although the term “after-acquired” is familiar in the context of secured transactions, its use in the context of child support liens is much less clear. In the context of a child support lien, when a claimant serves a notice of lien on a third party that does not possess any property of the obligor at the time of notice, does the child support lien attach to property that subsequently comes into the possession of that third party? If so, how long must a third party keep and maintain record of the child support lien notice for an obligor with whom it had no relationship at the time it received the child support lien notice in the event that it might one day have a relationship and be bound to freeze the obligor’s property subject to the child support lien?

For financial institutions, this question can arise in the following scenarios:

- A. A financial institution receives a child support lien notice for the arrearage amount of \$50,000. The obligor has never owned an account at that financial institution, so the child support lien does not attach to any property held by the institution at that time. Five years later, the obligor opens an account at the institution. Having kept no record of the child support lien notice pertaining to that obligor, the institution does not freeze the funds deposited into the new account. The obligor uses the account and, over a period of time, deposits and withdraws over \$50,000. When the child support lien claimant discovers the existence of the account, is the financial institution liable to the claimant for \$50,000 for failing to freeze the funds in the subsequently opened account pursuant to the child support lien notice it received five years earlier?
- B. A financial institution receives a child support lien notice for an arrearage amount of \$50,000. The obligor owns an account at the financial institution with \$10,000.00 in it. The financial institution freezes the account and upon receipt of a levy, turns over all funds in the account to the claimant. The account has a zero balance for three years. According to the regulations and requirements for account management, the account is administratively closed for having no activity. The account records for this account are disposed of following the expiration of the regulatory requirements for record retention. Five years later, the obligor opens a new account at the financial institution. Having no record of the child support lien

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<sup>1</sup> Case law acknowledges the general ongoing nature of a child support lien. *See, e.g., In Interest of C.D.E.*, 533 S.W.3d 367, 372 (Tex. App.—Houston [14th Dist.] 2015, no pet.) (“The OAG is entitled to enforce a child support obligation by issuing a lien as provided by statute, and such a lien remains effective until all child support arrearages are either paid or released”); *Isaacs v. Isaacs*, 338 S.W.3d 184, 188 (Tex. App.—Houston [14th Dist.] 2011, pet. denied) (holding that the limitations in Section 157.005 do not apply to terminate a child support lien). However, these cases do not address the specific issues discussed herein.

pertaining to that obligor, because the previous records were disposed of after keeping them the requisite number of years, the institution does not have any record in its system indicating that the new account may be subject to a child support lien and does not freeze the account. The obligor uses the account and, over a period of time, deposits and withdraws \$50,000. Is the financial institution now liable to the claimant for \$50,000? If not, when did the child support lien notice expire as to the financial institution? Did the notice terminate as to the financial institution following the levy?

This statutory ambiguity affects more than merely financial institutions. Claimants may serve notices of child support liens on any third party, whether an individual or an entity. Those third parties may find that they do not hold any property of the obligor at the time of service. Yet, in the future—perhaps years or even decades later—those parties may come into possession of property of the obligor. Are they to remember the child support lien notice that was served on them years prior? The Texas Family Code does not impose an obligation for a third party in possession of property to notify the claimant of its possession or seek a levy from the claimant. Does the Texas Family Code require that the third party hold the property in perpetuity?

Because a child support lien as to personal property does not expire upon passage of time, depending on the correct statutory interpretation of after-acquired property, such third parties could be held liable even under outrageous circumstances. For example, a neighbor or friend of a obligor who borrows the obligor’s trailer a decade after receiving a child support lien notice and then returns the trailer could be liable for the entire value of the trailer despite having no recollection of the lien notice and no intent to violate it.

Because the Texas statute on child support liens lacks clarity, third parties, including financial institutions, are unable to determine their responsibilities and potential risk of violating the statutes. These third parties wish to avoid undue liability but do not wish to engage in outrageous records retention policies in an attempt to cover every possible interpretation of the ambiguous statute. Therefore, I request an opinion on the correct interpretation of this statute in the contexts presented and given the ambiguities discussed below, so that financial institutions and all third parties may understand their responsibilities in re and act accordingly.

## **II. Authorities**

### ***A. Child Support Lien and Levy***

#### ***Child Support Lien***

Sections 157.311 through 157.331 of the Texas Family Code provide for attachment, perfection, and enforcement of a child support lien to collect child support arrearages. “A *child support lien arises by operation of law against real and personal property of an obligor for all amounts of child support due and owing, including any accrued interest, regardless of whether the amounts have been adjudicated or otherwise determined,*” subject to statutory requirements for perfection of the lien. Tex. Fam. Code § 157.312(d).



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A claimant is responsible to file the notice of a child support lien with the county clerk to attach and perfect the lien as to real property and may also deliver the notice to “*any individual or organization believed to be in possession of real or personal property of the obligor.*” *Id.* § 57.314(a), (b). Delivery of notice to a third party is effective both for attachment and perfection of the lien as to real and personal property with the exception of motor vehicles. *Id.* § 157.316, 157.317(a-1).

It appears that child support liens as to both real property and personal property are effective until all current child support and child support arrearages, including interest and additional costs and fees, have been paid or the lien is otherwise released. *Id.* § 157.318(a).<sup>2</sup> The statute does not require a claimant who has perfected a child support lien to subsequently levy funds to satisfy the arrearages and does not otherwise provide for a third party to secure a final judgment and release of lien. Thus, a third party could be forced to hold the obligor’s property in perpetuity if the claimant does not choose to take action.

The Code provides the following guidance as to the type of property to which a child support lien attaches: “*A child support lien attaches to all real and personal property not exempt under the Texas Constitution or other law, including: (1) an account in a financial institution . . .*” *Id.* § 157.317(a). Further, “*A lien attaches to all property owned or acquired on or after the date the lien notice or abstract of judgment is filed with the county clerk of the county in which the property is located, with the court clerk as to property or claims in litigation, or, as to property of the obligor in the possession or control of a third party, from the date the lien notice is delivered to that party.*” *Id.* § 157.317(a-1). This complex sentence is ambiguous as to whether a lien attaches to property that comes into possession or control of the third party after that third party receives notice of the lien or whether property must already be in the possession or control of the third party at the time the lien notice is served on the third party for the lien to attach to the property in the third party’s possession. Clarification of this provision is critical in understanding a third party’s potential liability as discussed herein.

A person with “actual notice” of a lien who possesses property subject to the lien must not pay over, release, sell, transfer, encumber, or convey that property unless the lien is released by the claimant or by court order. *Id.* § 157.319(a). Violation of this statute subjects a party to liability in the amount of the value of the property disposed of or not surrendered, not to exceed the amount of arrearages. Although the prohibition applies to one with *actual* notice, the statute specifically assigns this liability to “a person who *knowingly* disposes of property subject to a child support lien.” *Id.* § 157.324 (emphasis added). Yet a potentially conflicting provision states: “*A person having notice of a child support lien who violates [Section 157.319(a)] . . . is subject to the penalties provided by this subchapter.*” *Id.* § 157.319(b). The precise duty imposed by these statutory references to actual notice, notice, and knowing disposition requires clarity.

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<sup>2</sup> The Texas Family Code previously required claimants to refile a lien notice in the county records office every ten years for the lien remain in place with respect to the obligor’s real property, but the Code lacked any corresponding requirement for maintaining notice of a child support lien notice on a third party to keep it alive. *See* Tex. Fam. Code § 157.318(d), as amended by Acts 2009, 81st Leg., R.S., Ch. 164 (S.B. 1661), Sec. 2, eff. May 26, 2009. However, the 88<sup>th</sup> Texas Legislature repealed this ten-year refileing requirement for liens on real property in 2023 Tex. Sess. Law Serv. Ch. 151 (S.B. 869), Sec. 11, eff. Sept. 1, 2023, eliminating the distinction between the ongoing nature of child support liens on real property and personal property.

Levy

In addition to serving a notice of child support lien, a claimant may deliver a notice of levy to “*any financial institution possessing or controlling assets or funds owned by, or owed to, an obligor and subject to a child support lien.*” *Id.* § 157.327(a). The notice of levy must direct the financial institution to pay the claimant within 21 days from the date the levy is served on the financial institution from the obligor’s account funds, up to the amount of arrearage. *Id.* § 157.327(b).

A Section 157.327(c) further provides: “*A financial institution that receives a notice of levy under this section may not close an account in which the obligor has an ownership interest, permit a withdrawal from any account the obligor owns, in whole or in part, or pay funds to the obligor so that any amount remaining in the account is less than the amount of the arrearages identified in the notice, plus any fees due to the institution and any costs of the levy identified by the claimant.*” *Id.* § 157.327(c). The placement of this provision appears to imply that this requirement exists during the time between the date a notice of levy is delivered but before the requisite amount is paid out to the claimant. However, the statute does not make clear whether the financial institution’s responsibility to keep an account open ends after the deadline to pay (within 21 days) or continues indefinitely. Again, this provision is problematic for institutions with a requirement to administratively close inactive accounts after a certain amount of time has elapsed.

The following liability exists regarding levies: “*A person who possesses or has a right to property that is the subject of a notice of levy delivered to the person and who refuses to surrender the property or right to property to the claimant on demand is liable to the claimant in an amount equal to the value of the property or right to property not surrendered but that does not exceed the amount of the child support arrearages for which the notice of levy has been filed.*” *Id.* § 157.330(a). The wording of this provision, construed together with Section 157.327, implies that the liability attaches only if a financial institution actually possesses the obligor’s property at the time of notice of levy and refuses to surrender it by the demand deadline (within 21 days of notice of levy). Yet the statute does not clearly state this, potentially exposing financial institutions to significant ongoing liability if this statute assigns liability for funds deposited in an account after the demand deadline, including in a new account opened by the obligor after the levy deadline.

**B. Construction of Penal Statute**

Statutes that impose a penalty not found within common law are penal statutes that must be strictly construed so as not to impose undue liability. *See, e.g., Flores v. Millennium Interests, Ltd.*, 185 S.W.3d 427, 433 (Tex. 2005); *Smith v. Sewell*, 858 S.W.2d 350, 354 (Tex. 1993); *Ballin v. Poston Home Care Ctr. Co.*, 749 S.W.2d 164, 167 (Tex. App.—San Antonio 1988, writ denied) (adopting the construction which comports with legality, presuming that parties intend to obey the law). Specifically, penal statutes should be strictly construed against parties seeking to exact statutory penalties and in favor of persons on whom such penalties are sought to be imposed. *See Branaum v. Patrick*, 643 S.W.2d 745, 749 (Tex. App.—San Antonio 1982, no writ). Because Sections 157.319(a), 157.324, and 157.330(a) of the Texas Family Code impose

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statutory penalties not found within common law, they are penal statutes and must be strictly construed. *See In re P.R.*, No. 04-05-00509-CV, 2006 WL 2545919, at \*3 (Tex. App.—San Antonio Sept. 6, 2006, pet. denied) (“Because Section 157.324 imposes statutory penalties, it is a penal statute that must be strictly construed.”). Thus, the correct statutory interpretation of ambiguities in the statute should rest in favor of the third parties and against imposing penalties.

**III. Conclusion**

The statutory ambiguities of Chapter 157 of the Texas Family Code raise serious questions on the obligations of third parties who receive child support lien notices or levies. Financial institutions in particular need to understand the extent of their potential liability in servicing the accounts of obligors. Thus, we respectfully request your opinion regarding the construction and interpretation of Chapter 157 provisions in the circumstances described above.

Respectfully submitted,



Giovanni Capriglione  
State Representative  
District 98