

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

SB 454 (Bates)
Version: March 25, 2021
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Fiscal: No
Urgency: No
JT

SUBJECT

Child support: enforcement

DIGEST

This bill increases the threshold for the attachment of a child support lien from one month of past-due support to the lower of three months of past-due support or \$1,000.

EXECUTIVE SUMMARY

Existing law requires a local child support agency (LCSA) to take all appropriate actions to enforce child support, including enforcing liens against the obligor's personal and real property. With respect to personal property, a lien arises by operation of law when the obligor has failed to make payment equal to one month's support obligation. With respect to real property, the LCSA must record a lien within 45 days of receiving an order or opening a case, as specified.

This bill would instead provide that a child support lien attaches to personal or real property when three months of overdue support or \$1,000 is owed, whichever is lower. The bill is sponsored by the Orange County Board of Supervisors, which argues that increasing the threshold would provide cost-savings to LCSAs and reduce the financial burden for noncustodial parents, who typically pay off past-due support before it reaches these thresholds. The bill has no known opposition.

PROPOSED CHANGES TO THE LAW

Existing federal law requires that states establish procedures under which “liens arise by operation of law against real and personal property for amounts of overdue support owed by a noncustodial parent who resides or owns property in the State.” (42 USCS § 666(a)(4)(A); 45 CFR 302.70.)

Existing state law:

- 1) Provides that a judgment lien on personal property is created by filing a notice of judgment lien in the office of the Secretary of State. (§ 697.510.) Such liens continue until the money judgment is satisfied, becomes enforceable, or is terminated or released. (*Id.* at (g).) The judgement creditor of an extinguished lien must file a statement of release within 20 days of receiving an authenticated demand from the judgment debtor. (*Id.*) Establishes procedures for a court to order a release if one is not filed. (*Id.* at (h).)
- 2) Provides that a judgment lien on real property is created by recording an abstract, notice of support judgment, interstate lien form, or a certified copy of the money judgment, including a judgment for child, family, or spousal support payable in installments, which continues during the period the judgment remains enforceable. (697.320(a)(b).)
- 3) Requires that an abstract of a judgment ordering a party to pay spousal, child, or family support to the other party be certified by the clerk of the court where the judgment was entered and that it contain specified information. (§ 4506(a).)
- 4) Establishes the Department of Child Support Services (DCSS) as the single statewide agency responsible for the administration and management of California’s child support enforcement program and administers the state plan for securing child support and determining paternity. (Fam. Code § 17202.)¹
- 5) Requires that each county maintain an LCSA, which has the responsibility for promptly and effectively establishing, modifying, and enforcing child support obligations, spousal support orders, and determining paternity, as provided. (§ 17400(a).) Requires that the LCSA take all appropriate action to establish, modify, and enforce child support and, if appropriate, enforce spousal support orders if the child is receiving public assistance, and, if requested, to take the same actions on behalf of a child who is not receiving public assistance. (*Id.*)
- 6) Provides that in any case of separation or desertion of a parent or parents from a child or children that results in aid being provided under the California Work

¹ All further section references are to the Family Code, unless otherwise specified.

Opportunity and Responsibility to Kids Act (Welf. & Inst. Code § 11200 et seq.), the noncustodial parent or parents is obligated to the county for an amount equal to the amount specified in an order for the support and maintenance of the family issued by a court of competent jurisdiction. (§ 17402(a).)

- 7) Provides that if a support obligor is delinquent in the payment of support – defined as a failure to make payment equal to one month’s support obligation (§ 17523(c)(2)) – and the LCSA is enforcing the support obligation pursuant to the provisions described above, a lien for child support against the personal property of the support obligor arises against the personal property of the support obligor in either of the following circumstances:
 - a) by operation of law for all amounts of overdue support regardless of whether the amounts have been adjudicated or otherwise determined; or
 - b) when either a court having continuing jurisdiction or the LCSA determines a specific amount of arrearages is owed by the support obligor. (*Id.* at (a).)
- 8) Requires that the lien for child support be perfected by filing a notice of child support lien with the Secretary of State pursuant to Code of Civil Procedure section 697.510, which governs judgement liens on personal property generally. Once filed, the child support lien has the same priority, force, and effect as a judgement lien on personal property under those provisions. (*Id.* at (b).)
- 9) Provides that a support obligor is delinquent in payment of support for purposes of the imposition of a lien under the provisions described above if the support obligor has failed to make payment equal to one month’s support obligation. (*Id.* at (c)(2).)
- 10) Provides that a judgment lien on real property is created by recording an abstract, notice of support judgment, interstate lien form, or a certified copy of the money judgment, including a judgment for child, family, or spousal support payable in installments, which continues during the period the judgment remains enforceable. (Code Civ. Proc. § 697.320(a), (b).)
- 11) Permits the transmission, filing, and recording of a lien by DCSS or LCSA staff arising from judgements for support against the real property of the support obligor in the form of a digital or digitized electronic record. (§ 17523.5(a).)
- 12) Requires an LCSA to prepare and submit for recording a real property lien within 45 days of the date a money judgment or order is received by the LCSA, a case is opened for enforcement of an existing order or judgment, or an existing order is registered for enforcement. (22 Cal. Code Regs. §§ 116130.) Establishes procedures related to the satisfaction of judgments for which child support liens on real property are imposed, and for releasing those liens. (*Id.* at §§ 116132, 116134.)

This bill:

- 1) Increases the threshold for personal property liens to instances in which the obligor is over \$1,000 in arrears on their support obligation or has failed to make payments equal to three months of their support obligation, whichever occurs first.
- 2) Provides that a lien for child support arises against the real property of the support obligor by operation of law for any amounts of overdue support over \$1,000 or when the support obligor has failed to make payments equal to three months of their support obligation, whichever occurs first, regardless of whether the amounts have been adjudicated or otherwise determined.
- 3) Clarifies that a lien on real property is perfected when an abstract or notice pursuant to existing provisions is recorded.

COMMENTS

1. Author's statement

The author writes:

County child support agencies are required by statute to record liens against real or personal property any time a child support debtor owes more than one month's worth of child support. However, in most cases the recordation and eventual release of liens produces no collection.

Most parents paying support stay in substantial compliance with their support orders, meaning they are treated as if they were not going to pay their obligation from the time the order is established.

They also face a financial burden when they need to clear the lien for a property transaction or credit report review. That lien is, in most cases, electronically recorded without fee to the government agency. When a person against whom a lien is filed wishes to conduct a property transaction, they are required by lenders or escrow agents to clear the lien or show they are current on their ongoing obligation.

That requires effort by the local agency to issue a 'Release of Lien' (no moneys owing), 'Matured Installment' (ongoing obligation, but obligor is current), or Demand (moneys owing on the obligation).

2. Child support liens

Existing law requires LCSAs to take all appropriate action to enforce child support orders when the child is receiving public assistance,² and, when requested, to take the same actions on behalf of a child who is not receiving public assistance. (§§ 17400, 17402.)

If an LCSA is enforcing a delinquent support obligation pursuant to these provisions, a lien for child support arises against the obligor's personal property³ by operation of law for all amounts of overdue support, regardless of whether the amounts have been adjudicated or otherwise determined (§ 17523(a)(1))⁴, as well as when either a court having continuing jurisdiction or the LCSA determines that the support obligor owes a specific amount of arrearages (*id.* at (a)(2)). The lien is perfected by filing a notice of child support lien with the Secretary of State under general provisions governing judgement liens on personal property. (Code Civ. Proc. § 697.510 et seq.) A child support obligor is delinquent in the payment of support when they have failed to make payment equal to one month's support obligation. (§ 17523(c)(2).)

With respect to real property, existing law permits the transmission, filing, and recording of a lien record by DCSS or LCSA staff arising from judgements for support against the real property of the support obligor in the form of a digital or digitized electronic record. (§ 17523.5(a).) An abstract of a judgment ordering a party to pay spousal, child, or family support to the other party must be certified by the clerk of the court where the judgment was entered and must contain specified information, as provided. (§ 4506(a).) With respect to money judgments generally, a judgment lien on real property is created by recording an abstract, notice of support judgment, interstate lien form, or a certified copy of the money judgment, including a judgment for child, family, or spousal support payable in installments, which continues during the period the judgment remains enforceable. (Code Civ. Proc. § 697.320(a), (b).) Existing regulations require an LCSA to prepare and submit for recording a real property lien within 45 days of the date a money judgment or order is received by the LCSA, a case is opened for enforcement of an existing order or judgment, or an existing order is registered for enforcement. (22 Cal. Code Regs. §§ 116130.)

² "Public assistance" means any amount paid under the California Work Opportunity and Responsibility to Kids Act (Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code), or any Medi-Cal benefit, for the benefit of any dependent child or the caretaker of a child. (§ 17000(j).)

³ "Personal property" is defined for these purposes to include accounts receivable, tangible chattel paper, equipment, farm products, inventory, and negotiable documents of title under Code of Civil Procedure section 697.530(a). (§ 17523(c)(3).)

⁴ The federal Child Support Program requires that states establish procedures under which "liens arise by operation of law against real and personal property for amounts of overdue support owed by a noncustodial parent who resides or owns property in the State." (42 USCS § 666(a)(4)(A); 45 CFR 302.70.)

3. Establishes a higher threshold for enforcement of child support through liens

An analysis prepared by Orange County Child Support Services found that from November 2013 through May 2018, there were 6,325 cases statewide with a lien collection.⁵ The arrears owed before the lien collection were as follows:

- 41 percent owed less than \$2,500 in arrears.
- 54 percent owed less than \$5,000.
- 68 percent owed less than \$10,000.
- 32 percent owed more than \$10,000 (139 of the cases had arrears greater than \$100,000).⁶

The analysis concluded, among other things, that a very small percentage of liens placed are productive in collecting support and that setting a threshold of \$5,000 would eliminate over 80 percent of liens recorded and would eliminate the need to release that lien later.⁷

This bill originally would have established the threshold at \$5,000. However, out of concern that it could disproportionately affect low-income custodial parents, the threshold was changed to the lower of three months of overdue support or \$1,000. This is in line with similar provisions in some other states,⁸ and is intended to strike a balance between improving administrative efficiency, giving a buffer to obligors who fall slightly behind on their payments, and ensuring that low-income custodial parents are not left in the lurch.

4. Support

The bill's sponsor, the Orange County Board of Supervisors, argues that the bill would provide cost-savings to county agencies and reduce the financial burden for families complying with their support orders. They write:

Currently, County child support agencies are required by statute to record liens against real or personal property any time a child support debtor owes more than one month's worth of child support. However, in most cases the recordation and eventual release of liens produces no collection because the obligation has already been paid. Most parents paying support stay in substantial compliance with their support orders, and the filing of a lien when a parent is only one month in arrears is a burden on both child support agencies and parents who

⁵ SB2 *Property Lien Analysis*, Orange County Department of Child Support Services, Orange County Research Unit (Oct. 2018).

⁶ *Id.* at 7.

⁷ *Id.* at 1.

⁸ See e.g. N.C. Gen. Stat. § 44-86 (lower of \$3,000 or three months); Idaho Code § 7-1206 (lower of \$2,000 or 90 days); S.C. Code Ann. § 63-17-2710 (\$1,000).

typically pay their child support obligation on time. Data also shows that the majority of lien collections occurs in cases in excess of \$10,000 in arrears.

Orange County Child Support Services (OC CSS) records approximately 7,000 requests to release liens every year. Of those releases, over 90% are 'Release of Lien' or 'Matured Installment,' meaning there was no money owing on the obligation. Each lien document must contain the notarized signature of a CSS employee attesting to the accuracy of the release/demand. Annually, this costs OC CSS over \$104,000 in unnecessary expense for staff time. Statewide, the administrative costs are estimated to be \$1.8 million each year. SB 454 would provide a much-needed cost savings to county agencies and reduce imposition and cost on otherwise-paying child support obligors while the impact to collections is expected to be minimal.

5. Technical and clarifying changes

The Child Support Directors Association (CSDA), which supports the policy of the bill, recently submitted a letter detailing technical issues with the bill in print and requesting clarifying changes going forward:

The Child Support Directors Association (CSDA) writes to express its conditional support of Senate Bill 454 (Bates). CSDA appreciates the intent of this bill and we thank the Author and Co-Authors for their attention in relieving unnecessary burdens of paying parents. We too are very much interested in that policy goal as well as eliminating what we find to be unproductive Local Child Support Agency (LCSA) work.

Filing property liens on all child support cases within 45 days, as required by regulation and irrespective of a paying parent's arrears balance often does not result in a collection for the receiving parent's benefit. The current threshold and practice are an inefficient blanket approach that needs to be remedied. Although CSDA supports these intended goals of SB 454, we offer the following technical assistance to clarify the implementation of the statutes and avoid conflict with other code sections and existing regulations.

In its current form, Family Code § 17523 addresses when a lien arises by operation of law against personal property. Therefore, amending the definition of "Support obligor is delinquent in payment of support" found in Fam Code § 17523(c)(2) to include a threshold amount of \$1,000, as is proposed in the current version of SB 454, will not serve to meet the intended objective of creating a threshold amount for the recording of a real property lien. This section is exclusive to the creation of liens against personal property. Also, redefining delinquency in this section would frustrate the authorization provided to LCSAs by Family Code § 17522 to enforce a lien by levy when a paying parent is

delinquent at least 30 days. Under the proposed new definition of delinquency in Fam Code § 17523(c)(2) a lien would not arise against that same personal property until at least \$1,000 was owing, which in many cases will not occur until the paying parent is significantly more than 30 days delinquent.

In its current form Family Code § 17523.5 serves only to authorize local child support agencies to electronically sign and submit real property liens for recording. This section does not address the creation of real property liens nor the mandate for LCSAs to record real property liens. The creation of a real property lien is addressed by Code of Civil Procedure (CCP) § 697.320, which states in simplest form that a real property lien is created by the recording of an abstract with the county recorder. Fam Code § 4506 provides the necessary details on the form, content, and notice required to properly record an abstract that reflects the support order obligation.

It is 22 California Code of Regulations (CCR) § 116130(a) that mandates LCSAs record a real property lien within 45 days of obtaining a money judgment. Therefore, the proposed amendments to Family Code § 17523.5, which under the current version of SB 454 would serve to alter the manner in which a real property lien is created by applying the personal property lien standard of arising by operation of law, would not achieve the intended purpose. Rather, they would create substantial confusion by making Family Code § 17523.5 directly contrary to CCP § 697.320. Further, passage of SB 454 in its current form would create two separate standards of real property liens, one for individuals outside of the IV-D child support program and another for individuals within the IV-D child support program. This inconsistency would result in confusion impacting not only the paying parents but possibly also lenders, creditors, purchasers, and title companies involved in related real property transactions.

Furthermore, absent an amendment to 22 CCR § 116130(a) or revised language in SB 454, the LCSA will still be required to record the abstract within 45 days of obtaining a money judgment regardless of whether the \$1,000 threshold permitting the lien is met. For those cases where the paying parent owes less than \$1,000, LCSAs would still have to record an abstract by regulation within 45 days of case opening. If LCSAs comply with that regulation and record the abstract before the paying parent reaches an arrears balance of \$1,000, then arguably a lien would still be created pursuant to CCP § 697.320. To remedy this conflict, we would suggest the following be added to the proposed Family Code § 17523.5(2)(B) "Notwithstanding Section 697.320 of the Code of Civil Procedure or Section 116130(a) of Title 22 of the California Code of Regulations, a local child support agency shall only perfect real property liens that arise pursuant to subparagraph (A)."

As noted above, CSDA supports the implementation of some dollar value threshold for LCSAs to record a real property lien and we have offered a few amendments to clarify the implementation of the statute. We feel though that to better achieve this end, consideration should be given to disregarding the proposed changes to Family Code § 17523, and instead only amend the Family Code § 17523.5(a)(1) as it is currently in force to read as, "...enforce child support obligations under Title IV-D as against real property when support obligor is delinquent in an amount of \$2,500 or greater." Family Code § 4506(c) could also then be amended as, "...the agency enforcing the obligation may record a notice of support judgment when support obligor is delinquent in an amount of \$2,500 or greater. Once recorded the lien remains in effect until released." We feel all other amendments are best left to regulation.

The apparent objective in seeking to amend Family Code §§ 17523 and 17523.5 through the introduction of SB 454 appears to eliminate an undue burden that real property liens create for parents who remain in substantial compliance of their child support obligation and to reduce the LCSA administrative expense of processing the recording and release of unproductive liens for those cases. Initial discussions suggested defining substantial compliance for purposes of real property liens by a threshold arrearage amount of \$5,000. The current amended of SB 454 has reduced that amount to \$1,000. The \$1,000 or three-months delinquent child support moves the needle in the right direction. However, work of CSDA in 2018 found a more reasonable level to be \$2,500, which we would suggest be considered.

We also note that the suggested changes, particularly the introduction of two measures – those being the \$1,000 threshold and the failure of a paying parent "to make payments equal to three months of their support obligation" – would mean that every case has its own level of arrears at which a lien might arise and for which an abstract may need to be recorded. Since these measures and paperwork needed to file abstracts are generated by the statewide Child Support Enforcement (CSE) database, the proposed level of complexity will certainly result in needed time and resources to reconfigure that database. We do think some measure of time is needed to measure delinquency and generally think three months is adequate. However, we are concerned that if the State Department of Child Support Services is unable to update CSE timely, the measuring of arrears for the purposes of property liens and the filing of abstracts could turn into a cumbersome manual process for which LCSAs would be responsible. The generation of liens is today primarily automated and LCSAs are not fully and adequately funded to take on additional cumbersome and unforeseen work.

Additionally, the current language which uses the phrase "for any amounts of overdue support over one thousand dollars" is somewhat ambiguous. Is this

intended to mean that a lien is filed for the full amount of arrears or only for the amount beyond \$1,000? If the intent is to lien the full amount of arrears, we might suggest the following instead“ ...a lien for child support shall arise against the real property of the support obligor by operation of law when overdue support exceeds two thousand five hundred dollars.”

Finally, all of this seems to be for naught unless the regulations at 22 CCR §§ 116130 through 116134 are also satisfactorily amended. We would recommend this bill also include language that makes amending those regulations a priority of the Department of Child Support Services and offer the following for that purpose at Family Code § 17523.5(c): “The Department of Child Support Services shall adopt or amend regulations, including emergency regulations, necessary to implement this part by March 31, 2022” and to also renumber the existing § 17523.5(c) as (d).

We look forward to working with the Author and Legislature in updating the statute to remove unnecessary burdens on the parents who rely on the child support program while also relieving LCSAs of unproductive work.

The author indicates that she appreciates CSDA’s concerns and recommended amendments. The author intends to work closely with the CSDA as the bill moves forward and pledges to accept their technical amendments as stated.

SUPPORT

Orange County Board of Supervisors (sponsor)

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation: AB 2463 (Wicks, Ch. 218, Stats. 2020) prohibits a sale under execution of a judgment lien of a judgment debtor’s principal place of residence based on a consumer debt unless that debt was secured by that principal place of residence at the time it was incurred. The bill exempts specified forms of debt, including child support.
