

By: Thompson of Harris

H.B. No. 865

A BILL TO BE ENTITLED

AN ACT

relating to spousal maintenance.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 8.052, Family Code, is amended to read as follows:

Sec. 8.052. FACTORS IN DETERMINING ORIGINAL MAINTENANCE ORDER. (a) A court that determines that a spouse is eligible to receive maintenance under this chapter shall determine the nature, amount, duration, and manner of periodic payments by considering all relevant factors, including:

(1) each spouse's ability to provide for that spouse's minimum reasonable needs independently, considering that spouse's financial resources on dissolution of the marriage;

(2) the education and employment skills of the spouses, the time necessary to acquire sufficient education or training to enable the spouse seeking maintenance to earn sufficient income, and the availability and feasibility of that education or training;

(3) the duration of the marriage;

(4) the age, employment history, earning ability, and physical and emotional condition of the spouse seeking maintenance;

(5) the effect on each spouse's ability to provide for that spouse's minimum reasonable needs while providing periodic child support payments or maintenance, if applicable;

1           (6) acts by either spouse resulting in excessive or  
2 abnormal expenditures or destruction, concealment, or fraudulent  
3 disposition of community property, joint tenancy, or other property  
4 held in common;

5           (7) the contribution by one spouse to the education,  
6 training, or increased earning power of the other spouse;

7           (8) the property brought to the marriage by either  
8 spouse;

9           (9) the contribution of a spouse as homemaker;

10          (10) marital misconduct, including adultery and cruel  
11 treatment, by either spouse during the marriage; ~~and~~

12          (11) any history or pattern of family violence, as  
13 defined by Section 71.004; and

14          (12) the intentional unemployment or underemployment  
15 of either spouse.

16          (b) If the actual income of either spouse is significantly  
17 less than what the spouse could earn because of intentional  
18 unemployment or underemployment, the court may determine the  
19 spouse's gross income based on the earning potential of the spouse.

20          (c) In determining whether a spouse is intentionally  
21 unemployed or underemployed, the court may consider evidence that  
22 the spouse is a veteran, as defined by 38 U.S.C. Section 101(2), who  
23 is seeking or has been awarded:

24                 (1) United States Department of Veterans Affairs  
25 disability benefits, as defined by 38 U.S.C. Section 101(16); or

26                 (2) non-service-connected disability pension  
27 benefits, as defined by 38 U.S.C. Section 101(17).

1        (d) When appropriate, in order to determine the gross income  
2 available for maintenance, the court may assign a reasonable amount  
3 of deemed income attributable to assets that do not currently  
4 produce income. The court shall also consider whether certain  
5 property that is not producing income can be liquidated without an  
6 unreasonable financial sacrifice because of cyclical or other  
7 market conditions. If there is no effective market for the  
8 property, the carrying costs of such an investment, including  
9 property taxes and note payments, shall be offset against the  
10 income attributed to the property.

11        (e) The court may assign a reasonable amount of deemed  
12 income to income-producing assets that a spouse has voluntarily  
13 transferred or on which earnings have intentionally been reduced.

14        SECTION 2. Sections 8.057(a) and (c), Family Code, are  
15 amended to read as follows:

16        (a) The amount of maintenance specified in a court order or  
17 the portion of a decree that provides for the maintenance [~~support~~]  
18 of a former spouse may be modified [~~reduced~~] by the filing of a  
19 motion in the court that originally rendered the order. A party  
20 affected by the order or the portion of the decree to be modified  
21 may file the motion.

22        (c) After a hearing, the court may modify an original or  
23 modified order or portion of a decree providing for maintenance on a  
24 proper showing of a material and substantial change in  
25 circumstances that occurred after the date of the order or decree,  
26 including circumstances reflected in the factors specified in  
27 Section 8.052, relating to either party or to a child of the

1 marriage described by Section 8.051(2)(C) [~~, if applicable~~]. The  
2 court:

3 (1) shall apply the modification only to payment  
4 accruing after the filing of the motion to modify; and

5 (2) may not increase maintenance to an amount or  
6 duration that exceeds the amount or remaining duration of the  
7 original maintenance order.

8 SECTION 3. (a) The changes in law made by this Act apply  
9 only to a suit for dissolution of marriage or a proceeding for  
10 maintenance that was commenced on or after the effective date of  
11 this Act. A suit for dissolution of marriage or a proceeding for  
12 maintenance that was commenced before that date is governed by the  
13 law in effect on the date on which the suit or proceeding was  
14 commenced, and the former law is continued in effect for that  
15 purpose.

16 (b) The enactment of this Act does not by itself constitute  
17 a material and substantial change in circumstances sufficient under  
18 Section 8.057, Family Code, to warrant modification of a spousal  
19 maintenance order rendered before the effective date of this Act.

20 SECTION 4. This Act takes effect September 1, 2021.