

By: Thompson of Harris

H.B. No. 867

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the issuance of a qualified domestic relations order
3 for the payment of spousal maintenance and child support
4 obligations.

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

6 SECTION 1. Sections 8.057(a), (b), and (c), Family Code,
7 are amended to read as follows:

8 (a) The amount of maintenance specified in a court order or
9 the portion of a decree that provides for the maintenance [~~support~~]
10 of a former spouse may be modified [~~reduced~~] by the filing of a
11 motion in the court that originally rendered the order. A party
12 affected by the order or the portion of the decree to be modified
13 may file the motion.

14 (b) Notice of a motion to modify maintenance or to establish
15 or modify a maintenance qualified domestic relations order under
16 Subchapter H and the response to the motion, if any, are governed by
17 the Texas Rules of Civil Procedure applicable to the filing of an
18 original lawsuit. Notice must be given by service of citation, and
19 a response must be in the form of an answer due on or before 10 a.m.
20 of the first Monday after 20 days after the date of service. A court
21 shall set a hearing on the motion in the manner provided by Rule
22 245, Texas Rules of Civil Procedure.

23 (c) After a hearing, the court may modify an original or
24 modified order or portion of a decree providing for maintenance or a

1 maintenance qualified domestic relations order under Subchapter H
2 on a proper showing of a material and substantial change in
3 circumstances that occurred after the date of the order or decree,
4 including circumstances reflected in the factors specified in
5 Section 8.052, relating to either party or to a child of the
6 marriage described by Section 8.051(2)(C) [~~if applicable~~]. The
7 court:

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

10 (2) may not increase maintenance to an amount or
11 duration that exceeds the amount or remaining duration of the
12 original maintenance order.

13 SECTION 2. Section 8.059(b), Family Code, is amended to
14 read as follows:

15 (b) On the suit to enforce by an obligee, the court may
16 render judgment against a defaulting party for the amount of
17 arrearages after notice by service of citation, answer, if any, and
18 a hearing finding that the defaulting party has failed or refused to
19 comply with the terms of the order. The judgment may be enforced by
20 any means available for the enforcement of judgment for debts,
21 including by an order or writ of withholding and a maintenance
22 qualified domestic relations order under Subchapter H.

23 SECTION 3. Chapter 8, Family Code, is amended by adding
24 Subchapter H to read as follows:

25 SUBCHAPTER H. MAINTENANCE QUALIFIED DOMESTIC RELATIONS ORDER

26 Sec. 8.351. JURISDICTION FOR QUALIFIED DOMESTIC RELATIONS
27 ORDER. (a) The court that rendered an order for the payment of

1 maintenance, or the court that obtains jurisdiction to enforce a
2 maintenance order, has continuing jurisdiction to render
3 enforceable qualified domestic relations orders or similar orders
4 permitting payment of pension, retirement plan, or other employee
5 benefits to an alternate payee or other lawful payee to satisfy
6 amounts due under the maintenance order. A maintenance order
7 includes a temporary or final order for maintenance and arrears and
8 interest with respect to that order.

9 (b) Unless prohibited by federal law, a suit seeking a
10 qualified domestic relations order or similar order under this
11 subchapter applies to a pension, retirement plan, or other employee
12 benefit, regardless of whether the pension, retirement plan, or
13 other employee benefit:

14 (1) is private, state, or federal;

15 (2) is subject to another qualified domestic relations
16 order or similar order;

17 (3) is property that is the subject of a pending
18 proceeding for dissolution of a marriage;

19 (4) is property disposed of in a previous decree for
20 dissolution of a marriage; or

21 (5) is the subject of an agreement under Chapter 4.

22 (c) A court described by Subsection (a) retains
23 jurisdiction to render a qualified domestic relations order or
24 similar order under this subchapter until all maintenance due under
25 the maintenance order, including arrearages and interest, has been
26 paid.

27 Sec. 8.352. PROCEDURE. (a) A party to a maintenance order

1 may petition the court for a qualified domestic relations order or
2 similar order in an original suit or in an action for enforcement of
3 the maintenance order under this chapter.

4 (b) Each party whose rights may be affected by the petition
5 is entitled to receive notice.

6 Sec. 8.353. TEMPORARY ORDERS. (a) While a suit for a
7 qualified domestic relations order or similar order is pending or
8 during an appeal of an enforcement order, and on the motion of a
9 party or on the court's own motion after notice and hearing, the
10 court may render an appropriate order, including the granting of a
11 temporary restraining order and temporary injunction, for the
12 preservation of the pension, retirement plan, or other employee
13 benefits and protection of the parties as the court considers
14 necessary.

15 (b) An order under this section is not subject to
16 interlocutory appeal.

17 Sec. 8.354. DEFECTIVE PRIOR DOMESTIC RELATIONS ORDER. If a
18 plan administrator or other person acting in an equivalent capacity
19 determines that a domestic relations order does not satisfy the
20 requirements of a qualified domestic relations order or similar
21 order, the court retains continuing jurisdiction over the parties
22 to the extent necessary to render a qualified domestic relations
23 order.

24 Sec. 8.355. AMENDMENT OF QUALIFIED DOMESTIC RELATIONS
25 ORDER. (a) A court that renders a qualified domestic relations
26 order or similar order retains continuing jurisdiction:

27 (1) to amend the order to correct the order, clarify

1 the terms of the order, or add language to the order to provide for
2 the collection of maintenance;

3 (2) to convert the amount or frequency of payments
4 under the order to a formula that is in compliance with the terms of
5 the pension, retirement plan, or employee benefit plan; or

6 (3) to vacate or terminate the order.

7 (b) An amended domestic relations order or similar order
8 under this section must be submitted to the plan administrator or
9 other person acting in an equivalent capacity to determine whether
10 the amended order satisfies the requirements of a qualified
11 domestic relations order or similar order. Section 8.354 applies
12 to an order amended under this section.

13 Sec. 8.356. LIBERAL CONSTRUCTION. The court shall
14 liberally construe this subchapter to effect payment of pension,
15 retirement plan, or other employee benefits for the satisfaction of
16 the obligor's maintenance obligation.

17 Sec. 8.357. ATTORNEY'S FEES AND COSTS. (a) In a proceeding
18 under this subchapter, the court may order the obligor to pay
19 reasonable attorney's fees incurred by a party to obtain the order,
20 all court costs, and all fees charged by a plan administrator for
21 the qualified domestic relations order or similar order.

22 (b) Fees and costs ordered under this section may be
23 enforced by any means available for the enforcement of a judgment
24 for debt.

25 Sec. 8.358. DIRECT PAYMENT. Payments under a qualified
26 domestic relations order under this subchapter may be made by
27 direct payment or other method ordered by the court.

1 Sec. 8.359. CONFLICTS WITH OTHER LAW. (a) To the extent of
2 a conflict between this subchapter and Chapter 804, Government
3 Code, Chapter 804, Government Code, prevails.

4 (b) To the extent of a conflict between this subchapter and
5 federal law, the federal law prevails.

6 SECTION 4. Section 154.003, Family Code, is amended to read
7 as follows:

8 Sec. 154.003. MANNER OF PAYMENT. The court may order that
9 child support be paid by:

- 10 (1) periodic payments;
11 (2) a lump-sum payment;
12 (3) an annuity purchase;
13 (4) the setting aside of property to be administered
14 for the support of the child as specified in the order; ~~or~~

15 (5) pension, retirement, or other employee benefits in
16 accordance with an enforceable qualified domestic relations order
17 or similar order under Subchapter J, Chapter 157; or

18 (6) any combination of periodic payments, lump-sum
19 payments, annuity purchases, or setting aside of property.

20 SECTION 5. Chapter 157, Family Code, is amended by adding
21 Subchapter J to read as follows:

22 SUBCHAPTER J. CHILD SUPPORT QUALIFIED DOMESTIC RELATIONS ORDER

23 Sec. 157.501. JURISDICTION FOR QUALIFIED DOMESTIC
24 RELATIONS ORDER. (a) The court that rendered an order for the
25 payment of child support, or the court that obtains jurisdiction to
26 enforce a child support order under Chapter 159, has continuing
27 jurisdiction to render enforceable qualified domestic relations

1 orders or similar orders permitting payment of pension, retirement
2 plan, or other employee benefits to an alternate payee or other
3 lawful payee to satisfy support amounts due under the child support
4 order. A child support order includes a temporary or final order for
5 child support, medical support, or dental support and arrears and
6 interest with respect to that order.

7 (b) Unless prohibited by federal law, a suit seeking a
8 qualified domestic relations order or similar order under this
9 subchapter applies to a pension, retirement plan, or other employee
10 benefit, regardless of whether the pension, retirement plan, or
11 other employee benefit:

12 (1) is private, state, or federal;

13 (2) is subject to another qualified domestic relations
14 order or similar order;

15 (3) is property that is the subject of a pending
16 proceeding for dissolution of a marriage;

17 (4) is property disposed of in a previous decree for
18 dissolution of a marriage; or

19 (5) is the subject of an agreement under Chapter 4.

20 (c) A court described by Subsection (a) retains
21 jurisdiction to render a qualified domestic relations order or
22 similar order under this subchapter until all support due under the
23 child support order, including arrearages and interest, has been
24 paid.

25 Sec. 157.502. PROCEDURE. (a) A party to a child support
26 order, or the Title IV-D agency in a Title IV-D case, may petition
27 the court for a qualified domestic relations order or similar order

1 in an original suit or in an action for child support enforcement
2 under this chapter.

3 (b) Each party whose rights may be affected by the petition
4 is entitled to receive notice under Subchapter B.

5 Sec. 157.503. TEMPORARY ORDERS. (a) While a suit for a
6 qualified domestic relations order or similar order is pending or
7 during an appeal of an enforcement order, and on the motion of a
8 party or on the court's own motion after notice and hearing, the
9 court may render an appropriate order, including the granting of a
10 temporary restraining order and temporary injunction, for the
11 preservation of the pension, retirement plan, or other employee
12 benefits and protection of the parties as the court considers
13 necessary.

14 (b) An order under this section is not subject to
15 interlocutory appeal.

16 Sec. 157.504. DEFECTIVE PRIOR DOMESTIC RELATIONS ORDER. If
17 a plan administrator or other person acting in an equivalent
18 capacity determines that a domestic relations order does not
19 satisfy the requirements of a qualified domestic relations order or
20 similar order, the court retains continuing jurisdiction over the
21 parties to the extent necessary to render a qualified domestic
22 relations order.

23 Sec. 157.505. AMENDMENT OF QUALIFIED DOMESTIC RELATIONS
24 ORDER. (a) A court that renders a qualified domestic relations
25 order or similar order retains continuing jurisdiction:

26 (1) to amend the order to correct the order, clarify
27 the terms of the order, or add language to the order to provide for

1 the collection of child support;

2 (2) to convert the amount or frequency of payments
3 under the order to a formula that is in compliance with the terms of
4 the pension, retirement plan, or employee benefit plan; or

5 (3) to vacate or terminate the order.

6 (b) An amended domestic relations order or similar order
7 under this section must be submitted to the plan administrator or
8 other person acting in an equivalent capacity to determine whether
9 the amended order satisfies the requirements of a qualified
10 domestic relations order or similar order. Section 157.504 applies
11 to an order amended under this section.

12 Sec. 157.506. LIBERAL CONSTRUCTION. The court shall
13 liberally construe this subchapter to effect payment of pension,
14 retirement plan, or other employee benefits for the satisfaction of
15 the obligor's child support obligation.

16 Sec. 157.507. ATTORNEY'S FEES AND COSTS. (a) In a
17 proceeding under this subchapter, the court may order the obligor
18 to pay reasonable attorney's fees incurred by a party to obtain the
19 order, all court costs, and all fees charged by a plan administrator
20 for the qualified domestic relations order or similar order.

21 (b) Fees and costs ordered under this section may be
22 enforced by any means available for the enforcement of child
23 support, including contempt.

24 Sec. 157.508. CONFLICTS WITH OTHER LAW. (a) To the extent
25 of a conflict between this subchapter and Chapter 804, Government
26 Code, Chapter 804, Government Code, prevails.

27 (b) To the extent of a conflict between this subchapter and

1 federal law, the federal law prevails.

2 SECTION 6. (a) The changes in law made by this Act to
3 Chapters 8, 154, and 157, Family Code, apply to an order for
4 maintenance under Chapter 8, Family Code, or for child support
5 under Chapter 154, Family Code, as applicable, regardless of
6 whether the order was rendered before, on, or after the effective
7 date of this Act.

8 (b) The enactment of this Act does not constitute a material
9 and substantial change of circumstances sufficient to warrant
10 modification of a court order or portion of a decree that provides
11 for maintenance or child support rendered before the effective date
12 of this Act.

13 SECTION 7. This Act takes effect September 1, 2021.