

By: Goodman

H.B. No. 201

A BILL TO BE ENTITLED

AN ACT

relating to the eligibility of a spouse for spousal maintenance in a suit for dissolution of a marriage.

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

SECTION 1. Section 8.051, Family Code, is amended to read as follows:

Sec. 8.051. ELIGIBILITY FOR MAINTENANCE; COURT ORDER. In a suit for dissolution of a marriage or in a proceeding for maintenance in a court with personal jurisdiction over both former spouses following the dissolution of their marriage by a court that lacked personal jurisdiction over an absent spouse, the court may order maintenance for either spouse only if:

(1) the spouse from whom maintenance is requested was convicted of or received deferred adjudication for a criminal offense that also constitutes an act of family violence under Title 4 and the offense occurred:

(A) within two years before the date on which a suit for dissolution of the marriage is filed; or

(B) while the suit is pending; or

(2) the duration of the marriage was 10 years or longer, the spouse seeking maintenance lacks sufficient property, including property distributed to the spouse under this code, to provide for the spouse's minimum reasonable needs, as limited by Section 8.054, and the spouse seeking maintenance:

1 (A) is unable to support himself or herself  
2 through appropriate employment because of an incapacitating  
3 physical or mental disability;

4 (B) is the custodian of a child of the marriage of  
5 any age who requires substantial care and personal supervision  
6 because a physical or mental disability makes it necessary, taking  
7 into consideration the needs of the child, that the spouse not be  
8 employed outside the home; or

9 (C) clearly lacks earning ability in the labor  
10 market adequate to provide support for the spouse's minimum  
11 reasonable needs, as limited by Section 8.054.

12 SECTION 2. Section 8.053, Family Code, is amended to read as  
13 follows:

14 Sec. 8.053. PRESUMPTION. (a) Except as provided by  
15 Subsection (b), it is presumed that maintenance under Section  
16 8.051(2) is not warranted unless the spouse seeking maintenance has  
17 exercised diligence in:

18 (1) seeking suitable employment; or

19 (2) developing the necessary skills to become  
20 self-supporting during a period of separation and during the time  
21 the suit for dissolution of the marriage is pending.

22 (b) This section does not apply to a spouse who is not able  
23 to satisfy the presumption in Subsection (a) because the spouse:

24 (1) has [of] an incapacitating physical or mental  
25 disability; or

26 (2) is the custodian of a child of the marriage of any  
27 age who requires substantial care and personal supervision because

1 a physical or mental disability makes it necessary, taking into  
2 consideration the needs of the child, that the spouse not be  
3 employed outside the home.

4 SECTION 3. Section 8.054(b), Family Code, is amended to  
5 read as follows:

6 (b) If a spouse seeking maintenance is unable to support  
7 himself or herself through appropriate employment because the  
8 spouse has ~~[of]~~ an incapacitating physical or mental disability or  
9 because the spouse is the custodian of a child of the marriage of  
10 any age who has a physical or mental disability, the court may order  
11 maintenance ~~[for an indefinite period]~~ for as long as the  
12 disability continues. The court may order periodic review of its  
13 order, on the request of either party or on its own motion, to  
14 determine whether the disability continues to render the spouse  
15 unable to support himself or herself through appropriate employment  
16 ~~[is continuing]~~. The continuation of spousal maintenance under  
17 these circumstances is subject to a motion to modify as provided by  
18 Section 8.057.

19 SECTION 4. (a) The changes in law made by this Act apply  
20 only to a suit for dissolution of marriage or a proceeding for  
21 maintenance that was commenced on or after September 1, 2005. A  
22 suit for dissolution of marriage or a proceeding for maintenance  
23 that was commenced before that date is governed by the law in effect  
24 on the date on which the suit or proceeding was commenced, and the  
25 former law is continued in effect for that purpose.

26 (b) The enactment of this Act does not by itself constitute  
27 a material and substantial change in circumstances sufficient under

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1 Section 8.057, Family Code, to warrant modification of a spousal  
2 maintenance order rendered before September 1, 2005.

3 SECTION 5. This Act takes effect September 1, 2005.