

1-1 By: Goodman, et al. H.B. No. 201
1-2 (Senate Sponsor - Van de Putte)
1-3 (In the Senate - Received from the House April 18, 2005;
1-4 April 19, 2005, read first time and referred to Committee on
1-5 Jurisprudence; May 20, 2005, reported favorably by the following
1-6 vote: Yeas 6, Nays 0; May 20, 2005, sent to printer.)

1-7 A BILL TO BE ENTITLED
1-8 AN ACT

1-9 relating to the eligibility of a spouse for spousal maintenance in a
1-10 suit for dissolution of a marriage.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. Section 8.051, Family Code, is amended to read as
1-13 follows:

1-14 Sec. 8.051. ELIGIBILITY FOR MAINTENANCE; COURT ORDER. In a
1-15 suit for dissolution of a marriage or in a proceeding for
1-16 maintenance in a court with personal jurisdiction over both former
1-17 spouses following the dissolution of their marriage by a court that
1-18 lacked personal jurisdiction over an absent spouse, the court may
1-19 order maintenance for either spouse only if:

1-20 (1) the spouse from whom maintenance is requested was
1-21 convicted of or received deferred adjudication for a criminal
1-22 offense that also constitutes an act of family violence under Title
1-23 4 and the offense occurred:

1-24 (A) within two years before the date on which a
1-25 suit for dissolution of the marriage is filed; or

1-26 (B) while the suit is pending; or

1-27 (2) the duration of the marriage was 10 years or
1-28 longer, the spouse seeking maintenance lacks sufficient property,
1-29 including property distributed to the spouse under this code, to
1-30 provide for the spouse's minimum reasonable needs, as limited by
1-31 Section 8.054, and the spouse seeking maintenance:

1-32 (A) is unable to support himself or herself
1-33 through appropriate employment because of an incapacitating
1-34 physical or mental disability;

1-35 (B) is the custodian of a child of the marriage of
1-36 any age who requires substantial care and personal supervision
1-37 because a physical or mental disability makes it necessary, taking
1-38 into consideration the needs of the child, that the spouse not be
1-39 employed outside the home; or

1-40 (C) clearly lacks earning ability in the labor
1-41 market adequate to provide support for the spouse's minimum
1-42 reasonable needs, as limited by Section 8.054.

1-43 SECTION 2. Section 8.053, Family Code, is amended to read as
1-44 follows:

1-45 Sec. 8.053. PRESUMPTION. (a) Except as provided by
1-46 Subsection (b), it is presumed that maintenance under Section
1-47 8.051(2) is not warranted unless the spouse seeking maintenance has
1-48 exercised diligence in:

1-49 (1) seeking suitable employment; or

1-50 (2) developing the necessary skills to become
1-51 self-supporting during a period of separation and during the time
1-52 the suit for dissolution of the marriage is pending.

1-53 (b) This section does not apply to a spouse who is not able
1-54 to satisfy the presumption in Subsection (a) because the spouse:

1-55 (1) has ~~of~~ an incapacitating physical or mental
1-56 disability; or

1-57 (2) is the custodian of a child of the marriage of any
1-58 age who requires substantial care and personal supervision because
1-59 a physical or mental disability makes it necessary, taking into
1-60 consideration the needs of the child, that the spouse not be
1-61 employed outside the home.

1-62 SECTION 3. Section 8.054(b), Family Code, is amended to
1-63 read as follows:

1-64 (b) If a spouse seeking maintenance is unable to support

2-1 himself or herself through appropriate employment because the
2-2 spouse has ~~of~~ an incapacitating physical or mental disability or
2-3 because the spouse is the custodian of a child of the marriage of
2-4 any age who has a physical or mental disability, the court may order
2-5 maintenance ~~[for an indefinite period]~~ for as long as the
2-6 disability continues. The court may order periodic review of its
2-7 order, on the request of either party or on its own motion, to
2-8 determine whether the disability continues to render the spouse
2-9 unable to support himself or herself through appropriate employment
2-10 ~~[is continuing]~~. The continuation of spousal maintenance under
2-11 these circumstances is subject to a motion to modify as provided by
2-12 Section 8.057.

2-13 SECTION 4. (a) The changes in law made by this Act apply
2-14 only to a suit for dissolution of marriage or a proceeding for
2-15 maintenance that was commenced on or after September 1, 2005. A
2-16 suit for dissolution of marriage or a proceeding for maintenance
2-17 that was commenced before that date is governed by the law in effect
2-18 on the date on which the suit or proceeding was commenced, and the
2-19 former law is continued in effect for that purpose.

2-20 (b) The enactment of this Act does not by itself constitute
2-21 a material and substantial change in circumstances sufficient under
2-22 Section 8.057, Family Code, to warrant modification of a spousal
2-23 maintenance order rendered before September 1, 2005.

2-24 SECTION 5. This Act takes effect September 1, 2005.

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