

BILL ANALYSIS

Senate Research Center
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H.B. 901
By: Thompson et al. (Harris)
Jurisprudence
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The law regarding spousal maintenance, including economic limitations and duration of maintenance, has remained mostly unchanged for many years and also contains a number of vague provisions. H.B. 901 seeks to address these issues by amending and clarifying statutory provisions relating to the maximum amount and duration of spousal maintenance.

H.B. 901 amends current law relating to spousal maintenance.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 8.051 and 8.052, Family Code, as follows:

Sec. 8.051. ELIGIBILITY FOR MAINTENANCE; COURT ORDER. Authorizes the court, 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, to order maintenance for either spouse only if the spouse seeking maintenance will lack sufficient property, including the spouse's separate property, on dissolution of the marriage to provide for the spouse's minimum reasonable needs and:

(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, as defined by Section 71.004 (Family Violence), committed during the marriage against the other spouse or the other spouse's child and the offense occurred within two years before the date on which a suit for dissolution of the marriage is filed, or while the suit is pending; or

(2) the spouse seeking maintenance is unable to earn sufficient income to provide for the spouse's minimum reasonable needs because of an incapacitating physical or mental disability, has been married to the other spouse for 10 years or longer and lacks the ability to earn sufficient income to provide for the spouse's minimum reasonable needs, or is the custodian of a child of the marriage of any age who requires substantial care and personal supervision because of a physical or mental disability that prevents the spouse from earning sufficient income to provide for the spouse's minimum reasonable needs.

Deletes existing text providing that the court may order maintenance for either spouse only if 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 (Protective Orders and Family Violence) and the offense occurred within two years before the date on which a suit for dissolution of the marriage is filed, or while the suit is pending, or 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 (Duration of Maintenance Order), and the spouse seeking maintenance is unable to support himself or herself through appropriate employment because of an incapacitating physical or mental disability, is the custodian of a child of the marriage of any age who requires substantial care and personal supervision because a physical or mental disability makes it necessary, taking into consideration the needs of the child, that the spouse not be employed outside the home, or clearly lacks earning ability in the labor market adequate to provide support for the spouse's minimum reasonable needs, as limited by Section 8.054.

Sec. 8.052. FACTORS IN DETERMINING MAINTENANCE. Requires a court that determines that a spouse is eligible to receive maintenance under this chapter to 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, rather than considering the financial resources of the spouse seeking maintenance, including the community and separate property and liabilities apportioned that spouse in the dissolution proceeding, and the spouse's ability to meet the spouse's needs independently;
- (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, rather than the education and employment skills of the spouses, the time necessary to acquire sufficient education or training to enable the spouse seeking maintenance to find appropriate employment, the availability of that education or training, and the 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, rather than the ability of the spouse from whom maintenance is requested to meet that spouse's personal needs and to provide periodic child support payments, if applicable, while meeting the personal needs of the spouse seeking maintenance;
- (6) acts by either spouse resulting in excessive or abnormal expenditures or destruction, concealment, or fraudulent disposition of community property, joint tenancy, or other property held in common;
- (7) the contribution by one spouse to the education, training, or increased earning power of the other spouse;
- (8) the property brought to the marriage by either spouse;
- (9) the contribution of a spouse as homemaker;
- (10) marital misconduct, including adultery and cruel treatment, by either spouse during the marriage, rather than marital misconduct of the spouse seeking maintenance; and
- (11) any history or pattern of family violence, as defined by Section 71.004, rather than the efforts of the spouse seeking maintenance to pursue available

employment counseling as provided by Chapter 304 (Counseling For Displaced Homemakers or Workers), Labor Code. Makes nonsubstantive changes.

Deletes existing text relating to considering the comparative financial resources of the spouses, including medical, retirement, insurance, or other benefits, and the separate property of each spouse.

SECTION 2. Amends Section 8.053(a), Family Code, as follows:

(a) Provides that it is a rebuttable presumption that maintenance under Section 8.051(2)(B) is not warranted unless the spouse seeking maintenance has exercised diligence in earning sufficient income to provide for the spouse's minimum reasonable needs, or developing the necessary skills to provide for the spouse's minimum reasonable needs during a period of separation and during the time the suit for dissolution of the marriage is pending, rather than provides that except as provided by Subsection (b) (relating to providing that this section does not apply to a spouse who is not able to satisfy the presumption because of certain conditions), it is presumed that maintenance under Section 8.051(2) is not warranted unless the spouse seeking maintenance has exercised diligence in seeking suitable employment, or developing the necessary skills to become self-supporting during a period of separation and during the time the suit for dissolution of the marriage is pending.

SECTION 3. Amends Section 8.054, Family Code, as follows:

Sec. 8.054. DURATION OF MAINTENANCE ORDER. (a) Provides that except as provided by Subsection (b), a court:

(1) is prohibited to order maintenance that remains in effect for more than:

(A) five years, rather than three years, after the date of the order, if the spouses were married to each other for less than 10 years and the eligibility of the spouse for whom maintenance is ordered is established under Section 8.051(1) (relating to authorizing the court to order maintenance for either spouse if the spouse from whom maintenance was requested has been convicted or received deferred adjudication for a criminal offense that also constitutes an act of family violence), or the spouses were married to each other for at least 10 years but not more than 20 years;

(B) seven years after the date of the order, if the spouses were married to each other for at least 20 years but not more than 30 years; or

(C) 10 years after the date of the order, if the spouses were married to each other for 30 years or more; and

(2) is required to limit the duration of a maintenance order to the shortest reasonable period that allows the spouse seeking maintenance to earn sufficient income to provide for the spouse's minimum reasonable needs, unless the ability of the spouse to provide for the spouse's minimum reasonable needs is substantially or totally diminished because of, rather than to require that limit the duration of a maintenance order to the shortest reasonable period that allows the spouse seeking maintenance to meet the spouse's minimum reasonable needs by obtaining appropriate employment or developing an appropriate skill, unless the ability of the spouse to provide for the spouse's minimum reasonable needs through employment is substantially or totally diminished because of:

(A) physical or mental disability of the spouse seeking maintenance;

(B) duties as the custodian of an infant or young child of the marriage; or

(C) another compelling impediment to earning sufficient income to provide for the spouse's minimum reasonable needs, rather than another compelling impediment to gainful employment.

(b) Authorizes the court, to order maintenance for a spouse to whom Section 8.051(2)(A) or (C) applies for as long as the spouse continues to satisfy the eligibility criteria prescribed by the applicable provision. Deletes existing text authorizing the court, if a spouse seeking maintenance is unable to support himself or herself through appropriate employment because the spouse has an incapacitating physical or mental disability or because the spouse is the custodian of a child of the marriage of any age who has a physical or mental disability, to order maintenance for as long as the disability continues; to order periodic review of its order, on the request of either party or on its own motion, to determine whether the disability continues to render the spouse unable to support himself or herself through appropriate employment. Deletes existing text providing that the continuation of spousal maintenance under these circumstances is subject to a motion to modify as provided by Section 8.057.

(c) Authorizes the court, on the request of either party or on the court's own motion, to order the periodic review of its order for maintenance under Subsection (b).

(d) Provides that the continuation of maintenance ordered under Subsection (b) is subject to a motion to modify as provided by Section 8.057.

SECTION 4. Amends Section 8.055, Family Code, by amending Subsection (a) and adding Subsection (a-1), as follows:

(a) Prohibits a court from ordering maintenance that requires an obligor to pay monthly more than the lesser of \$5,000, rather than \$2,500, or 20 percent of the spouse's average monthly gross income.

(a-1) Provides that for purposes of this chapter, gross income:

(1) includes:

(A) 100 percent of all wage and salary income and other compensation for personal services (including commissions, overtime pay, tips, and bonuses);

(B) interest, dividends, and royalty income;

(C) self-employment income;

(D) net rental income (defined as rent after deducting operating expenses and mortgage payments, but not including noncash items such as depreciation); and

(E) all other income actually being received, including severance pay, retirement benefits, pensions, trust income, annuities, capital gains, unemployment benefits, interest income from notes regardless of the source, gifts and prizes, maintenance, and alimony; and

(2) does not include:

(A) return of principal or capital;

(B) accounts receivable;

(C) benefits paid in accordance with federal public assistance programs;

(D) benefits paid in accordance with the Temporary Assistance for Needy Families program;

(E) payments for foster care of a child;

(F) Department of Veterans Affairs service-connected disability compensation;

(G) supplemental security income (SSI), social security benefits, and disability benefits; or

(H) workers' compensation benefits.

SECTION 5. Amends Section 8.056, Family Code, by amending Subsection (b) and adding Subsection (c), as follows:

(b) Requires the court, after a hearing, to order the termination of the maintenance obligation if the court finds that the obligee cohabits with another person with whom the obligee has a dating or romantic relationship in a permanent place of abode on a continuing basis, rather than requires the court, after a hearing, the court to terminate the maintenance order if the obligee cohabits with another person in a permanent place of abode on a continuing, conjugal basis.

(c) Provides that termination of the maintenance obligation does not terminate the obligation to pay any maintenance that accrued before the date of termination, whether as a result of death or remarriage under Subsection (a) (relating to providing that the obligation to pay future maintenance terminates on the death of either party or on the remarriage of the obligee) or a court order under Subsection (b).

SECTION 6. Amends Sections 8.057(c) and (d), Family Code, as follows:

(c) Authorizes the court, after a hearing, to modify an original or modified order or portion of a decree providing for maintenance on a proper showing of a material and substantial change in circumstances, including circumstances reflected in the factors specified in Section 8.052, relating to either party or to a child of the marriage described by Section 8.051(2)(C), if applicable, rather than on a proper showing of a material and substantial change in circumstances of either party. Requires the court to apply the modification only to payment accruing after the filing of the motion to modify.

(d) Provides that a loss of employment or circumstances that render a former spouse unable to provide for the spouse's minimum reasonable needs by reason of incapacitating physical or mental disability that occur after the divorce or annulment are not grounds for the institution of spousal maintenance for the benefit of the former spouse, rather than provides that a loss of employment or circumstances that render a former spouse unable to support himself or herself through appropriate employment by reason of incapacitating physical or mental disability that occur after the divorce or annulment are not grounds for the institution of spousal maintenance for the benefit of the former spouse

SECTION 7. Amends Sections 8.059(a), (b), and (d), Family Code, as follows:

(a) Authorizes the court to enforce by contempt against the obligor the court's maintenance order or an agreement for the payment of maintenance under the terms of this chapter voluntarily entered into between the parties and approved by the court. Prohibits the court from enforcing by contempt any provision of an agreed order for maintenance for any period of maintenance beyond the period of maintenance the court could have ordered under this chapter.

(b) Authorizes the court, on the suit to enforce by an obligee, to render judgment against a defaulting party for the amount of arrearages after notice by service of citation, answer,

if any, and a hearing finding that the defaulting party has failed or refused to comply with, rather than carry out, the terms of the order. Authorizes the judgment to be enforced by any means available for the enforcement of judgment for debts.

(d) Provides that the issue of the existence of an affirmative defense does not arise until pleaded. Requires an obligor to prove the affirmative defense by a preponderance of the evidence, rather than provides that the issue of the existence of an affirmative defense does not arise unless evidence is admitted supporting the defense. Deletes existing text providing that, if the issue of the existence of an affirmative defense arises, an obligor is required to prove the affirmative defense by a preponderance of the evidence.

SECTION 8. Amends Subchapter B, Chapter 8, Family Code, by adding Section 8.0591, as follows:

Sec. 8.0591. OVERPAYMENT. (a) Requires the obligee, if an obligor is not in arrears on the obligor's maintenance obligation and the obligor's maintenance obligation has terminated, to return to the obligor any maintenance payment made by the obligor that exceeds the amount of maintenance ordered or approved by the court, regardless of whether the payment was made before, on, or after the date the maintenance obligation terminated.

(b) Authorizes an obligor to file a suit to recover overpaid maintenance under Subsection (a). Requires the court, if the court finds that the obligee failed to return overpaid maintenance under Subsection (a), to order the obligee to pay the obligor's attorney's fees and all court costs in addition to the amount of the overpaid maintenance. Authorizes the court, for good cause shown, to waive the requirement that the obligee pay attorney's fees and court costs if the court states in its order the reasons supporting that finding.

SECTION 9. Repealers: Section 8.053(b) (relating to providing that this section does not apply to a spouse who is not able to satisfy the presumption in Subsection (a)), 8.055(b) (relating to requiring the court to set the amount that an obligor is required to pay in a maintenance order), 8.055(c) (relating to providing that the Department of Veterans Affairs service-connected disability compensation, social security benefits and disability benefits, and workers' compensation benefits are excluded from maintenance), 8.055(d) (defining "gross income"), and 8.059(e) (relating to authorizing a court to enforce an order for spousal maintenance under this chapter by ordering garnishment of wages or by any other means available), Family Code.

SECTION 10. (a) Makes application of the changes in law made by this Act to Subchapter B, Chapter 8, Family Code, except as provided by Subsection (b) of this section, prospective.

(b) Provides that Section 8.0591, Family Code, as added by this Act, applies to an order for maintenance under Subchapter B (Court-Ordered Maintenance), Chapter 8 (Maintenance), Family Code, regardless of whether the order was rendered before, on, or after the effective date of this Act.

SECTION 11. Effective date: September 1, 2011.