

BILL ANALYSIS

C.S.H.B. 901
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Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Spousal maintenance in Texas was established to give a stay-at-home spouse married at least 10 years the financial means, on dissolution of the marriage, to transition from a reliance on maintenance to self-support. It has been noted that many spouses who have been out of the workforce for decades require longer to become fully self-supporting. The spousal maintenance laws have had few amendments since enactment and interested parties note that these laws contain a number of vague provisions. Interested parties also note that neither the economic limits on maintenance nor the provisions regarding the duration of spousal maintenance awards have been updated for many years. C.S.H.B. 901 seeks to address these issues by amending and clarifying statutory provisions relating to the allowable amount and duration of spousal maintenance.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 901 amends the Family Code to revise the conditions that establish eligibility for spousal maintenance 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 bill limits the circumstances under which such a court is authorized to order spousal maintenance to make that authority contingent on whether 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. The bill, if such circumstances apply, specifies that a court's authority to order maintenance based in part on a conviction of or deferred adjudication for a criminal offense that also constitutes an act of family violence for the spouse from whom maintenance is requested applies to an act of family violence committed during the marriage against the other spouse or the other spouse's child. The bill establishes as a separate condition determining the court's authority to order maintenance under those same circumstances that the spouse seeking maintenance 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 reasonable needs.

C.S.H.B. 901 specifies that a court's authority to order maintenance based on certain conditions relating to the spouse seeking maintenance is contingent on the spouse's inability to earn sufficient income to provide for the spouse's minimum reasonable needs because of an incapacitating physical or mental disability, rather than based on the spouse's inability to support himself or herself through appropriate employment because of an incapacitating physical or mental disability. The bill, for such a spouse, removes from that sufficient income standard determining the court's authority to order maintenance the requirement that the duration of the marriage be 10 years or longer and that the spouse seeking maintenance lacks sufficient property, including property distributed to the spouse under applicable provisions of law, to

provide for the spouse's minimum reasonable needs.

C.S.H.B. 901 clarifies that a court's authority to order maintenance based on custody of a child of the marriage of any age who requires substantial care and personal supervision because of a physical or mental disability applies to a physical or mental disability that prevents the spouse from earning sufficient income to provide for the spouse's minimum reasonable needs, rather than a physical or mental disability that makes it necessary, taking into consideration the needs of the child, that the spouse not be employed outside the home. The bill, for such a spouse, removes from that sufficient earning standard determining the court's authority to order maintenance the requirement that the duration of the marriage be 10 years or longer and that the spouse seeking maintenance lacks sufficient property, including property distributed to the spouse under applicable provisions of law, to provide for the spouse's minimum reasonable needs.

C.S.H.B. 901 removes as a condition determining the court's authority to order maintenance that the duration of the marriage be 10 years or longer, the spouse seeking maintenance lacks sufficient property, including property distributed to the spouse under applicable provisions of law, to provide for the spouse's minimum reasonable needs, as limited by applicable provisions of law, and the spouse seeking maintenance clearly lacks earning ability in the labor market adequate to provide support for the spouse's minimum reasonable needs, as limited by applicable provisions of law.

C.S.H.B. 901 makes changes to relevant factors that must be considered by the court in determining the nature, amount, duration, and manner of periodic payments for a spouse that has been determined to be eligible to receive maintenance. The bill establishes as a factor 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 the financial resources of the spouse seeking maintenance, including the community and separate property and liabilities apportioned to that spouse in the dissolution proceeding, and that spouse's ability to meet the spouse's needs independently. The bill establishes as a factor the time necessary to acquire sufficient education or training to enable the spouse seeking maintenance to earn sufficient income, rather than to find appropriate employment. The bill establishes as a factor 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. The bill removes as a factor the comparative financial resources of the spouses, including medical, retirement, insurance, or other benefits, and the separate property of each spouse. The bill, in a factor considering marital misconduct of a spouse, includes the spouse from whom maintenance is sought in addition to the spouse seeking maintenance and specifies that marital misconduct includes adultery and cruel treatment during the marriage. The bill establishes as a factor any history or pattern of family violence and removes as a factor the efforts of the spouse seeking maintenance to pursue available employment counseling as provided by provisions of law relating to counseling for displaced homemakers or workers.

C.S.H.B. 901 establishes that it is a rebuttable presumption, rather than a presumption, that maintenance for a spouse seeking maintenance who lacks sufficient property on dissolution of a marriage lasting at least 10 years to provide for the spouse's minimum reasonable needs and who lacks the ability to earn sufficient income to provide for those needs 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 in developing the necessary skills to provide for those needs during a period of separation and during the time the suit for dissolution of the marriage is pending and makes conforming changes. The bill removes an exception of applicability to the presumption by repeal.

C.S.H.B. 901 increases from three years after the date of a maintenance order to five years, seven years, or 10 years after the date of the maintenance order the maximum time beyond which a court is prohibited from ordering the maintenance to remain in effect based on the duration of the marriage of at least 10 years but not more than 20 years, at least 20 years but not more than 30 years, or for 30 years or more, as appropriate. The bill increases from three years after the date of a maintenance order to five years after the date of the maintenance order the maximum time beyond which a court is prohibited from ordering the maintenance to remain in effect for a marriage of less than 10 years duration if the eligibility of the spouse for whom maintenance is ordered is established based on the spouse from whom maintenance is requested being convicted of or receiving deferred adjudication for a criminal offense that also constitutes an act of family violence committed during the marriage against the other spouse or the other spouse's child.

C.S.H.B. 901 requires the court 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, rather than to meet the spouse's minimum reasonable needs, and removes the provision that those needs are met by obtaining appropriate employment or developing an appropriate skill. The bill clarifies the conditions that create an exception to the limitation on the duration of the maintenance based on the circumstances under which the ability of the spouse to provide for the spouse's minimum reasonable needs is substantially or totally diminished. The bill specifies that such a circumstance relating to physical or mental disability applies to a disability of the spouse seeking maintenance, a circumstance relating to duties as the custodian of an infant or young child applies to an infant or young child of the marriage, and a circumstance relating to another compelling impediment applies to an impediment to earning sufficient income to provide for the spouse's minimum reasonable needs. The bill makes related conforming changes.

C.S.H.B. 901, in a provision that prohibits the court from ordering maintenance that requires an obligor to pay monthly more than the lesser of two alternatives, increases from \$2,500 to \$5,000 the monthly payment of maintenance that is an alternative to 20 percent of the spouse's average monthly gross income. The bill establishes that, for purposes of provisions of law relating to maintenance, gross income includes 100 percent of all wage and salary income and other compensation for personal services, including commissions, overtime pay, tips, and bonuses; interest, dividends, and royalty income; self-employment income; net rental income, defined as rent after deducting operating expenses and mortgage payments but not including noncash items such as depreciation; and 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. The bill specifies that gross income does not include return of principal or capital; accounts receivable; benefits paid in accordance with federal public assistance programs; benefits paid in accordance with the Temporary Assistance for Needy Families program; payments for foster care of a child; Department of Veterans Affairs service-connected disability compensation; supplemental security income, social security benefits, and disability benefits; or workers' compensation benefits.

C.S.H.B. 901, in a provision relating to the grounds under which the court is required to order the termination of a maintenance obligation to an obligee that cohabits with another person, changes the description of the cohabiting relationship from a conjugal relationship to a dating or romantic relationship. The bill establishes that the termination of maintenance obligation does not terminate the obligation to pay any maintenance that accrued before the date of termination, whether as a result of the death of either party, remarriage of the obligee, or a court order issued because of the obligee's cohabitation with another person.

C.S.H.B. 901 specifies circumstances in which a material and substantial change constitutes grounds for the court to modify an original or modified order or portion of a decree providing for maintenance by including circumstances, if applicable, reflected in the factors in determining

maintenance as provided by provisions of law and provisions of law amended by the bill as they relate to either party or to 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 custodial spouse from earning sufficient income to provide for the spouse's minimum reasonable needs.

C.S.H.B. 901 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 provisions of law and provisions of law amended by the bill. The bill establishes that the issue of existence of an affirmative defense for the obligor to an allegation of contempt of court or the violation of a condition of probation requiring payment of court-ordered maintenance does not arise until pleaded, rather than not arising unless evidence is admitted supporting the defense.

C.S.H.B. 901 requires the obligee of a maintenance obligation 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, if an obligor is not in arrears on the obligor's maintenance obligation and the obligor's maintenance obligation has terminated. The bill authorizes an obligor to file a suit to recover the overpaid maintenance. The bill requires the court 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 if the court finds that the obligee failed to return overpaid maintenance. The bill 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.

C.S.H.B. 901 makes conforming and nonsubstantive changes.

C.S.H.B. 901 repeals the following sections of the Family Code:

- Section 8.053(b)
- Sections 8.055(b), (c), and (d)
- Section 8.059(e)

EFFECTIVE DATE

September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 901 differs from the original by making the various circumstances for which a court is authorized to order spousal maintenance contingent on whether 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, whereas the original makes the court's authority contingent on whether the spouse seeking maintenance lacks or will lack sufficient property to provide for the spouse's minimum reasonable needs only in certain circumstances and does not include consideration of the spouse's separate property. The substitute differs from the original by specifying that the bill provision authorizing a court to order maintenance based on a conviction of or deferred adjudication for a criminal offense that also constitutes an act of family violence committed during the marriage applies also to such an act committed against the other spouse's child, whereas the original specifies that the provision applies to such an act committed against the other spouse only.

C.S.H.B. 901 differs from the original by establishing as a separate condition determining the court's authority to order maintenance that the spouse seeking maintenance 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 reasonable needs, whereas the original applies the duration of the marriage

standard to circumstances in which the spouse is incapacitated by a physical or mental disability, lacks the ability to earn sufficient income, and lacks or will lack sufficient property.

C.S.H.B. 901 differs from the original by removing the condition that a spouse seeking maintenance lacks sufficient property on dissolution of marriage to provide for the spouse's minimum reasonable needs, as limited by applicable provisions of law, for a court to be authorized to order such maintenance based on that spouse's inability to earn sufficient income because of a physical or mental disability or inability to earn sufficient income to provide for the spouse's minimum reasonable needs. The substitute differs from the original by removing the same condition for a spouse seeking maintenance based on custody of a child of any age requiring substantial care and personal supervision based on a physical or mental disability that interferes with the spouse's ability to earn sufficient income.

C.S.H.B. 901 contains a provision not included in the original increasing from three years after the date of a maintenance order to five years after the date of the maintenance order the maximum duration of a maintenance order for spouses married to each other for less than 10 years and the eligibility of the spouse for whom maintenance is ordered is established based on the other spouse being convicted of or receiving deferred adjudication for a certain criminal offense that also constitutes an act of family violence.

C.S.H.B. 901 differs from the original in nonsubstantive ways and by making conforming changes not included in the original.