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H.B. No. 901

A BILL TO BE ENTITLED

AN ACT

relating to spousal maintenance.

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

SECTION 1. Sections 8.051 and 8.052, Family Code, are 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 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, committed during the marriage against the other spouse or the other spouse's child 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 spouse seeking maintenance:

(A) is unable to earn sufficient income to

1 provide for the spouse's minimum reasonable needs because of an  
2 incapacitating physical or mental disability;

3 (B) has been married to the other spouse for 10  
4 years or longer and lacks the ability to earn sufficient income to  
5 provide for the spouse's minimum reasonable needs; or

6 (C) [÷

7 ~~[(1) the spouse from whom maintenance is requested was~~  
8 ~~convicted of or received deferred adjudication for a criminal~~  
9 ~~offense that also constitutes an act of family violence under Title~~  
10 ~~4 and the offense occurred;~~

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

13 ~~[(B) while the suit is pending; or~~

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

19 ~~[(A) is unable to support himself or herself~~  
20 ~~through appropriate employment because of an incapacitating~~  
21 ~~physical or mental disability;~~

22 ~~[(B)]~~ is the custodian of a child of the marriage  
23 of any age who requires substantial care and personal supervision  
24 because of a physical or mental disability that prevents the spouse  
25 from earning sufficient income to provide for the spouse's minimum  
26 reasonable needs ~~[makes it necessary, taking into consideration the~~  
27 ~~needs of the child, that the spouse not be employed outside the~~

1 ~~home, or~~

2 ~~[(C) clearly lacks earning ability in the labor~~  
3 ~~market adequate to provide support for the spouse's minimum~~  
4 ~~reasonable needs, as limited by Section 8.054].~~

5 Sec. 8.052. FACTORS IN DETERMINING MAINTENANCE. A court  
6 that determines that a spouse is eligible to receive maintenance  
7 under this chapter shall determine the nature, amount, duration,  
8 and manner of periodic payments by considering all relevant  
9 factors, including:

10 (1) each ~~[the financial resources of the spouse~~  
11 ~~seeking maintenance, including the community and separate property~~  
12 ~~and liabilities apportioned to that spouse in the dissolution~~  
13 ~~proceeding, and that]~~ spouse's ability to provide for that ~~[meet~~  
14 ~~the]~~ spouse's minimum reasonable needs independently, considering  
15 that spouse's financial resources on dissolution of the marriage;

16 (2) the education and employment skills of the  
17 spouses, the time necessary to acquire sufficient education or  
18 training to enable the spouse seeking maintenance to earn  
19 sufficient income, and ~~[find appropriate employment,]~~ the  
20 availability and feasibility of that education or training~~, and~~  
21 ~~the feasibility of that education or training];~~

22 (3) the duration of the marriage;

23 (4) the age, employment history, earning ability, and  
24 physical and emotional condition of the spouse seeking maintenance;

25 (5) the effect on each spouse's ability to provide for  
26 that spouse's minimum reasonable needs while providing ~~[of the~~  
27 ~~spouse from whom maintenance is requested to meet that spouse's~~

1 ~~personal needs and to provide]~~ periodic child support payments or  
2 maintenance, if applicable~~[, while meeting the personal needs of~~  
3 ~~the spouse seeking maintenance]~~;

4 (6) acts by either spouse resulting in excessive or  
5 abnormal expenditures or destruction, concealment, or fraudulent  
6 disposition of community property, joint tenancy, or other property  
7 held in common;

8 (7) ~~[the comparative financial resources of the~~  
9 ~~spouses, including medical, retirement, insurance, or other~~  
10 ~~benefits, and the separate property of each spouse,~~

11 ~~[(8)]~~ the contribution by one spouse to the education,  
12 training, or increased earning power of the other spouse;

13 (8) ~~[(9)]~~ the property brought to the marriage by  
14 either spouse;

15 (9) ~~[(10)]~~ the contribution of a spouse as homemaker;

16 (10) ~~[(11)]~~ marital misconduct, including adultery  
17 and cruel treatment, by either spouse during the marriage ~~[of the~~  
18 ~~spouse seeking maintenance]~~; and

19 (11) any history or pattern of family violence, as  
20 defined by Section 71.004 ~~[(12) the efforts of the spouse seeking~~  
21 ~~maintenance to pursue available employment counseling as provided~~  
22 ~~by Chapter 304, Labor Code].~~

23 SECTION 2. Section 8.053(a), Family Code, is amended to  
24 read as follows:

25 (a) It ~~[Except as provided by Subsection (b), it]~~ is a  
26 rebuttable presumption ~~[presumed]~~ that maintenance under Section  
27 8.051(2)(B) ~~[8.051(2)]~~ is not warranted unless the spouse seeking

1 maintenance has exercised diligence in:

2 (1) earning sufficient income to provide for the  
3 spouse's minimum reasonable needs [~~seeking suitable employment~~];  
4 or

5 (2) developing the necessary skills to provide for the  
6 spouse's minimum reasonable needs [~~become self-supporting~~] during  
7 a period of separation and during the time the suit for dissolution  
8 of the marriage is pending.

9 SECTION 3. Section 8.054, Family Code, is amended to read as  
10 follows:

11 Sec. 8.054. DURATION OF MAINTENANCE ORDER. (a) Except as  
12 provided by Subsection (b), a court:

13 (1) may not order maintenance that remains in effect  
14 for more than:

15 (A) five [~~three~~] years after the date of the  
16 order, if:

17 (i) the spouses were married to each other  
18 for less than 10 years and the eligibility of the spouse for whom  
19 maintenance is ordered is established under Section 8.051(1); or

20 (ii) the spouses were married to each other  
21 for at least 10 years but not more than 20 years;

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

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

27 (2) shall limit the duration of a maintenance order to

1 the shortest reasonable period that allows the spouse seeking  
2 maintenance to earn sufficient income to provide for ~~[meet]~~ the  
3 spouse's minimum reasonable needs ~~[by obtaining appropriate~~  
4 ~~employment or developing an appropriate skill]~~, unless the ability  
5 of the spouse to provide for the spouse's minimum reasonable needs  
6 ~~[through employment]~~ is substantially or totally diminished  
7 because of:

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

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

12 (C) another compelling impediment to earning  
13 sufficient income to provide for the spouse's minimum reasonable  
14 needs ~~[gainful employment]~~.

15 (b) The ~~[If a spouse seeking maintenance is unable to~~  
16 ~~support himself or herself through appropriate employment because~~  
17 ~~the spouse has an incapacitating physical or mental disability or~~  
18 ~~because the spouse is the custodian of a child of the marriage of~~  
19 ~~any age who has a physical or mental disability, the]~~ court may  
20 order maintenance for a spouse to whom Section 8.051(2)(A) or (C)  
21 applies for as long as the spouse continues to satisfy the  
22 eligibility criteria prescribed by the applicable provision ~~[the~~  
23 ~~disability continues. The court may order periodic review of its~~  
24 ~~order, on the request of either party or on its own motion, to~~  
25 ~~determine whether the disability continues to render the spouse~~  
26 ~~unable to support himself or herself through appropriate~~  
27 ~~employment. The continuation of spousal maintenance under these~~

1 ~~circumstances is subject to a motion to modify as provided by~~  
2 ~~Section 8.057].~~

3 (c) On the request of either party or on the court's own  
4 motion, the court may order the periodic review of its order for  
5 maintenance under Subsection (b).

6 (d) The continuation of maintenance ordered under  
7 Subsection (b) is subject to a motion to modify as provided by  
8 Section 8.057.

9 SECTION 4. Section 8.055, Family Code, is amended by  
10 amending Subsection (a) and adding Subsection (a-1) to read as  
11 follows:

12 (a) A court may not order maintenance that requires an  
13 obligor to pay monthly more than the lesser of:

- 14 (1) \$5,000 [~~\$2,500~~]; or  
15 (2) 20 percent of the spouse's average monthly gross  
16 income.

17 (a-1) For purposes of this chapter, gross income:

18 (1) includes:

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

22 (B) interest, dividends, and royalty income;

23 (C) self-employment income;

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

27 (E) all other income actually being received,

1 including severance pay, retirement benefits, pensions, trust  
2 income, annuities, capital gains, unemployment benefits, interest  
3 income from notes regardless of the source, gifts and prizes,  
4 maintenance, and alimony; and

5 (2) does not include:

6 (A) return of principal or capital;

7 (B) accounts receivable;

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

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

12 (E) payments for foster care of a child;

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

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

17 (H) workers' compensation benefits.

18 SECTION 5. Section 8.056, Family Code, is amended by  
19 amending Subsection (b) and adding Subsection (c) to read as  
20 follows:

21 (b) After a hearing, the court shall order the termination  
22 of [~~terminate~~] the maintenance obligation [~~order~~] if the court  
23 finds that the obligee cohabits with another person with whom the  
24 obligee has a dating or romantic relationship in a permanent place  
25 of abode on a continuing[~~, conjugal~~] basis.

26 (c) Termination of the maintenance obligation does not  
27 terminate the obligation to pay any maintenance that accrued before



1 the date of termination, whether as a result of death or remarriage  
2 under Subsection (a) or a court order under Subsection (b).

3 SECTION 6. Sections 8.057(c) and (d), Family Code, are  
4 amended to read as follows:

5 (c) After a hearing, the court may modify an original or  
6 modified order or portion of a decree providing for maintenance on a  
7 proper showing of a material and substantial change in  
8 circumstances, including circumstances reflected in the factors  
9 specified in Section 8.052, relating to [of] either party or to a  
10 child of the marriage described by Section 8.051(2)(C), if  
11 applicable. The court shall apply the modification only to payment  
12 accruing after the filing of the motion to modify.

13 (d) A loss of employment or circumstances that render a  
14 former spouse unable to provide for the spouse's minimum reasonable  
15 needs [~~support himself or herself through appropriate employment~~]  
16 by reason of incapacitating physical or mental disability that  
17 occur after the divorce or annulment are not grounds for the  
18 institution of spousal maintenance for the benefit of the former  
19 spouse.

20 SECTION 7. Sections 8.059(a), (b), and (d), Family Code,  
21 are amended to read as follows:

22 (a) The court may enforce by contempt against the obligor  
23 the court's maintenance order or an agreement for the payment of  
24 maintenance under the terms of this chapter voluntarily entered  
25 into between the parties and approved by the court. The court may  
26 not enforce by contempt any provision of an agreed order for  
27 maintenance for any period of maintenance beyond the period of

1 maintenance the court could have ordered under this chapter.

2 (b) On the suit to enforce by an obligee, the court may  
3 render judgment against a defaulting party for the amount of  
4 arrearages after notice by service of citation, answer, if any, and  
5 a hearing finding that the defaulting party has failed or refused to  
6 comply with ~~[carry out]~~ the terms of the order. The judgment may be  
7 enforced by any means available for the enforcement of judgment for  
8 debts.

9 (d) The issue of the existence of an affirmative defense  
10 does not arise until pleaded. An ~~[unless evidence is admitted~~  
11 ~~supporting the defense. If the issue of the existence of an~~  
12 ~~affirmative defense arises, an]~~ obligor must prove the affirmative  
13 defense by a preponderance of the evidence.

14 SECTION 8. Subchapter B, Chapter 8, Family Code, is amended  
15 by adding Section 8.0591 to read as follows:

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

23 (b) An obligor may file a suit to recover overpaid  
24 maintenance under Subsection (a). If the court finds that the  
25 obligee failed to return overpaid maintenance under Subsection (a),  
26 the court shall order the obligee to pay the obligor's attorney's  
27 fees and all court costs in addition to the amount of the overpaid

1 maintenance. For good cause shown, the court may waive the  
2 requirement that the obligee pay attorney's fees and court costs if  
3 the court states in its order the reasons supporting that finding.

4 SECTION 9. The following provisions of the Family Code are  
5 repealed:

- 6 (1) Section 8.053(b);
- 7 (2) Sections 8.055(b), (c), and (d); and
- 8 (3) Section 8.059(e).

9 SECTION 10. (a) Except as provided by Subsection (b) of  
10 this section, the changes in law made by this Act to Subchapter B,  
11 Chapter 8, Family Code, apply only to a suit for dissolution of a  
12 marriage or proceeding for maintenance that was commenced on or  
13 after the effective date of this Act. A suit for dissolution of a  
14 marriage or proceeding for maintenance commenced before the  
15 effective date of this Act is governed by the law in effect on the  
16 date the suit or proceeding was commenced, and the former law is  
17 continued in effect for that purpose.

18 (b) Section 8.0591, Family Code, as added by this Act,  
19 applies to an order for maintenance under Subchapter B, Chapter 8,  
20 Family Code, regardless of whether the order was rendered before,  
21 on, or after the effective date of this Act.

22 SECTION 11. This Act takes effect September 1, 2011.