

## **BILL ANALYSIS**

C.S.H.B. 389  
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Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Under current law, spousal maintenance may be ordered under certain provisions of the Family Code or as agreed to by the parties. Interested parties contend that, while court-ordered spousal maintenance may be enforced by contempt as to the amount, duration, and terms of the order, current law only addresses the period for which an agreed spousal maintenance may be enforced by contempt and is silent regarding the amount of agreed maintenance that may be enforced. In addition, current law relating to income withholding for spousal maintenance does not adequately address a court's authority to order such withholding in proceedings in which there is an agreement for periodic payments of spousal maintenance.

Finally, under current law, parties to a decree of divorce or annulment may request enforcement of the decree by filing suit in the court that rendered the decree. Interested parties contend, however, that agreements to divide property that are approved by the same court that renders the decree of divorce or annulment are not necessarily included within the four corners of the decree.

C.S.H.B. 389 seeks to provide for the uniform enforcement of court-ordered, agreed, and contractual alimony and maintenance and to provide for the enforcement of certain property division agreements, regardless of whether the agreement is included in the decree or in a separate document.

### **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. 389 amends the Family Code to specify that the agreement for payment of maintenance that is enforceable by contempt against an obligor is an agreement for periodic payments of spousal maintenance. The bill prohibits the court from enforcing by contempt any provision of an agreed order for maintenance that exceeds the amount of periodic support the court could have ordered, as well as from similarly enforcing any provision of such an order for any period beyond the period of maintenance the court could have ordered. The bill authorizes the court to order that income be withheld from the disposable earnings of the obligor in a proceeding in which there is an agreement for periodic payments of spousal maintenance voluntarily entered into between the parties and approved by the court but prohibits the court from ordering that income be withheld to the extent that any provision of an agreed order for maintenance exceeds the amount of periodic support the court could have ordered or for any period of maintenance beyond the period the court could have ordered.

C.S.H.B. 389 specifies that a party affected by a decree of divorce or annulment providing for a division of property, including a division of property and any contractual provisions under the terms of a court-approved agreement incident to divorce or annulment, may request enforcement of that decree by filing a suit to enforce in the court that rendered the decree and that the court

that rendered such a decree retains the power to enforce the property division, including any contractual provisions under the terms of a court-approved agreement incident to divorce or annulment. The bill specifies that a court's authority to make certain orders for purposes of the enforcement of a division of property and the delivery of such property applies to a division of property approved in a decree of divorce or annulment.

C.S.H.B. 389 applies to an order for maintenance or a maintenance agreement or to the enforcement of a property division and any contractual provisions under the terms of a court-approved agreement incident to divorce or annulment, regardless of when the order for maintenance or decree of divorce or annulment was rendered or when the maintenance agreement or the agreement incident to divorce or annulment was approved.

### **EFFECTIVE DATE**

September 1, 2013.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 389 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

#### INTRODUCED

SECTION 1. The heading to Subchapter B, Chapter 8, Family Code, is amended to read as follows:

SUBCHAPTER B. ~~[COURT-ORDERED]~~  
MAINTENANCE ~~ORDERED OR~~  
~~APPROVED BY COURT~~

SECTION 2. The heading to Section 8.059, Family Code, is amended to read as follows:

Sec. 8.059. ENFORCEMENT OF MAINTENANCE ORDER; LIMITED ENFORCEMENT OF MAINTENANCE AGREEMENT.

~~No equivalent provision.~~

SECTION 3. Section 8.059(a), Family Code, is amended to read as follows:

(a) The court may 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

#### HOUSE COMMITTEE SUBSTITUTE

SECTION 1. The heading to Subchapter B, Chapter 8, Family Code, is amended to read as follows:

SUBCHAPTER B. **SPOUSAL** ~~[COURT-ORDERED]~~ MAINTENANCE

~~No equivalent provision.~~

SECTION 2. The heading to Section 8.051, Family Code, is amended to read as follows:  
Sec. 8.051. ELIGIBILITY FOR MAINTENANCE~~[; COURT-ORDER]~~.

SECTION 3. Section 8.059, Family Code, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

(a) The court may enforce by contempt against the obligor:  
(1) the court's maintenance order; or  
(2) an agreement for **periodic payments** ~~[the payment]~~ of **spousal maintenance** under the

and approved by the court

~~, except that the [The] court may not enforce payment of [by contempt any provision of an agreed order for] maintenance for a [any period of maintenance beyond the] period longer than or in an amount of periodic support greater than [of maintenance] the court could have ordered under this chapter.~~

SECTION 4. Section 8.101(b), Family Code, is amended to read as follows:

(b) This subchapter applies ~~[does not apply]~~ to contractual alimony or spousal maintenance, including an agreement for the payment of maintenance under the terms of this chapter voluntarily entered into between the parties and approved by the court, subject to the limits on the court's authority to enforce the agreement under Section 8.059(a) [regardless of whether the alimony or maintenance is taxable, unless: [(1) ~~the contract specifically permits income withholding; or~~ [(2) ~~the alimony or maintenance payments are not timely made under the terms of the contract].~~

No equivalent provision.

SECTION 5. Section 9.001(a), Family Code, is amended.

terms of this chapter voluntarily entered into between the parties and approved by the court.

(a-1) The court may not enforce ~~by contempt any provision of an agreed order for maintenance~~ that exceeds the amount of periodic support the court could have ordered under this chapter or for any period of maintenance beyond the period of maintenance the court could have ordered under this chapter.

No equivalent provision.

SECTION 4. Section 8.101, Family Code, is amended by adding Subsections (a-1) and (a-2) to read as follows:

(a-1) The court may order that income be withheld from the disposable earnings of the obligor in a proceeding in which there is an agreement for periodic payments of spousal maintenance under the terms of this chapter voluntarily entered into between the parties and approved by the court.

(a-2) The court may not order that income be withheld from the disposable earnings of the obligor to the extent that any provision of an agreed order for maintenance exceeds the amount of periodic support the court could have ordered under this chapter or for any period of maintenance beyond the period of maintenance the court could have ordered under this chapter.

SECTION 5. Same as introduced version.

SECTION 6. Section 9.002, Family Code, is amended.

SECTION 6. Same as introduced version.

SECTION 7. Sections 9.006(a) and (b), Family Code, are amended.

SECTION 7. Same as introduced version.

SECTION 8. Section 9.009, Family Code, is amended.

SECTION 8. Same as introduced version.

SECTION 9. (a) The changes in law made by this Act to Chapter 8, Family Code, apply to an order for maintenance or a maintenance agreement under Subchapter B, Chapter 8, Family Code, regardless of whether the order was rendered or the agreement was approved before, on, or after the effective date of this Act.

SECTION 9. Same as introduced version.

(b) The changes in law made by this Act to Chapter 9, Family Code, apply to the enforcement of a property division and any contractual provisions under the terms of an agreement incident to divorce or annulment under Section 7.006, Family Code, that was approved by the court regardless of whether the agreement was approved or the decree of divorce or annulment was rendered before, on, or after the effective date of this Act.

SECTION 10. This Act takes effect September 1, 2013.

SECTION 10. Same as introduced version.