

BILL ANALYSIS

H.B. 865
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Juvenile Justice & Family Issues
Committee Report (Unamended)

BACKGROUND AND PURPOSE

There are concerns that the current statutory framework regarding modification of spousal maintenance orders only allows for a reduction in spousal maintenance, and that even when the party who sought a reduction in maintenance owed because of economic loss has recovered from the loss, the court lacks authority to order the party to pay the original maintenance amount. Additionally, it has been noted that courts have long been able to consider intentional unemployment and underemployment for child support calculations, but lack that authority when determining spousal support. H.B. 865 seeks to provide courts greater flexibility in determining support in an original spousal maintenance order and to allow a party to seek modification of an order in certain circumstances to increase the amount of maintenance after it was reduced by a previous modification.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

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

H.B. 865 amends the Family Code to require a court that is determining the nature, amount, duration, and manner of periodic payments for a spousal maintenance order to consider the intentional unemployment or underemployment of either spouse. In determining whether a spouse is intentionally unemployed or underemployed, the court may consider evidence that the spouse is a veteran of qualifying U.S. military service who is seeking or has been awarded either federal disability benefits from the U.S. Department of Veterans Affairs or non-service-connected disability pension benefits. If the actual income of either spouse is significantly less than what the spouse could earn because of intentional unemployment or underemployment, the court may determine the spouse's gross income based on the spouse's earning potential.

H.B. 865 authorizes the court to assign a reasonable amount of deemed income attributable to assets that do not currently produce income, when appropriate, in order to determine the gross income available for maintenance. The bill requires the court also to consider whether certain property that is not producing income can be liquidated without an unreasonable financial sacrifice because of cyclical or other market conditions and, if there is no effective market for the property, requires the carrying costs of such an investment, including property taxes and note payments, to be offset against the income attributed to the property. The bill authorizes the court to assign a reasonable amount of deemed income to income-producing assets that a spouse has voluntarily transferred or on which earnings have intentionally been reduced.

H.B. 865 authorizes the amount of spousal maintenance specified in a modified court order or applicable portion of a decree that reduced the original amount of maintenance due to be increased as a result of a material and substantial change in circumstances that occurred after the date of the order or decree, except that the court may not increase maintenance to an amount or duration that exceeds the amount or remaining duration of the original maintenance order.

H.B. 865 provides that the enactment of its provisions does not by itself constitute a material and substantial change in circumstances sufficient to warrant modification of a spousal maintenance order rendered before the bill's effective date.

EFFECTIVE DATE

September 1, 2021.