By:  Thompson of Harris (Senate Sponsor - Hughes) H.B. No. 867

(In the Senate - Received from the House March 25, 2021; April 8, 2021, read first time and referred to Committee on State Affairs; May 4, 2021, reported favorably by the following vote: Yeas 9, Nays 0; May 4, 2021, sent to printer.)

COMMITTEE VOTE

               Yea Nay Absent  PNV

Hughes          X

Birdwell        X

Campbell        X

Hall            X

Lucio           X

Nelson          X

Powell          X

Schwertner      X

Zaffirini       X

A BILL TO BE ENTITLED

AN ACT

relating to the issuance of a qualified domestic relations order for the payment of spousal maintenance and child support obligations.

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

SECTION 1.  Sections 8.057(a), (b), and (c), Family Code, are amended to read as follows:

(a)  The amount of maintenance specified in a court order or the portion of a decree that provides for the maintenance [~~support~~] of a former spouse may be modified [~~reduced~~] by the filing of a motion in the court that originally rendered the order. A party affected by the order or the portion of the decree to be modified may file the motion.

(b)  Notice of a motion to modify maintenance or to establish or modify a maintenance qualified domestic relations order under Subchapter H and the response to the motion, if any, are governed by the Texas Rules of Civil Procedure applicable to the filing of an original lawsuit. Notice must be given by service of citation, and a response must be in the form of an answer due on or before 10 a.m. of the first Monday after 20 days after the date of service. A court shall set a hearing on the motion in the manner provided by Rule 245, Texas Rules of Civil Procedure.

(c)  After a hearing, the court may modify an original or modified order or portion of a decree providing for maintenance or a maintenance qualified domestic relations order under Subchapter H on a proper showing of a material and substantial change in circumstances that occurred after the date of the order or decree, 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~~]. The court:

(1)  shall apply the modification only to payment accruing after the filing of the motion to modify; and

(2)  may not increase maintenance to an amount or duration that exceeds the amount or remaining duration of the original maintenance order.

SECTION 2.  Section 8.059(b), Family Code, is amended to read as follows:

(b)  On the suit to enforce by an obligee, the court may 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 the terms of the order. The judgment may be enforced by any means available for the enforcement of judgment for debts, including by an order or writ of withholding and a maintenance qualified domestic relations order under Subchapter H.

SECTION 3.  Chapter 8, Family Code, is amended by adding Subchapter H to read as follows:

SUBCHAPTER H. MAINTENANCE QUALIFIED DOMESTIC RELATIONS ORDER

Sec. 8.351.  JURISDICTION FOR QUALIFIED DOMESTIC RELATIONS ORDER. (a) The court that rendered an order for the payment of maintenance, or the court that obtains jurisdiction to enforce a maintenance order, has continuing jurisdiction to render enforceable qualified domestic relations orders or similar orders permitting payment of pension, retirement plan, or other employee benefits to an alternate payee or other lawful payee to satisfy amounts due under the maintenance order. A maintenance order includes a temporary or final order for maintenance and arrears and interest with respect to that order.

(b)  Unless prohibited by federal law, a suit seeking a qualified domestic relations order or similar order under this subchapter applies to a pension, retirement plan, or other employee benefit, regardless of whether the pension, retirement plan, or other employee benefit:

(1)  is private, state, or federal;

(2)  is subject to another qualified domestic relations order or similar order;

(3)  is property that is the subject of a pending proceeding for dissolution of a marriage;

(4)  is property disposed of in a previous decree for dissolution of a marriage; or

(5)  is the subject of an agreement under Chapter 4.

(c)  A court described by Subsection (a) retains jurisdiction to render a qualified domestic relations order or similar order under this subchapter until all maintenance due under the maintenance order, including arrearages and interest, has been paid.

Sec. 8.352.  PROCEDURE.  (a) A party to a maintenance order may petition the court for a qualified domestic relations order or similar order in an original suit or in an action for enforcement of the maintenance order under this chapter.

(b)  Each party whose rights may be affected by the petition is entitled to receive notice.

Sec. 8.353.  TEMPORARY ORDERS. (a) While a suit for a qualified domestic relations order or similar order is pending or during an appeal of an enforcement order, and on the motion of a party or on the court's own motion after notice and hearing, the court may render an appropriate order, including the granting of a temporary restraining order and temporary injunction, for the preservation of the pension, retirement plan, or other employee benefits and protection of the parties as the court considers necessary.

(b)  An order under this section is not subject to interlocutory appeal.

Sec. 8.354.  DEFECTIVE PRIOR DOMESTIC RELATIONS ORDER. If a plan administrator or other person acting in an equivalent capacity determines that a domestic relations order does not satisfy the requirements of a qualified domestic relations order or similar order, the court retains continuing jurisdiction over the parties to the extent necessary to render a qualified domestic relations order.

Sec. 8.355.  AMENDMENT OF QUALIFIED DOMESTIC RELATIONS ORDER. (a) A court that renders a qualified domestic relations order or similar order retains continuing jurisdiction:

(1)  to amend the order to correct the order, clarify the terms of the order, or add language to the order to provide for the collection of maintenance;

(2)  to convert the amount or frequency of payments under the order to a formula that is in compliance with the terms of the pension, retirement plan, or employee benefit plan; or

(3)  to vacate or terminate the order.

(b)  An amended domestic relations order or similar order under this section must be submitted to the plan administrator or other person acting in an equivalent capacity to determine whether the amended order satisfies the requirements of a qualified domestic relations order or similar order. Section 8.354 applies to an order amended under this section.

Sec. 8.356.  LIBERAL CONSTRUCTION. The court shall liberally construe this subchapter to effect payment of pension, retirement plan, or other employee benefits for the satisfaction of the obligor's maintenance obligation.

Sec. 8.357.  ATTORNEY'S FEES AND COSTS. (a) In a proceeding under this subchapter, the court may order the obligor to pay reasonable attorney's fees incurred by a party to obtain the order, all court costs, and all fees charged by a plan administrator for the qualified domestic relations order or similar order.

(b)  Fees and costs ordered under this section may be enforced by any means available for the enforcement of a judgment for debt.

Sec. 8.358.  DIRECT PAYMENT. Payments under a qualified domestic relations order under this subchapter may be made by direct payment or other method ordered by the court.

Sec. 8.359.  CONFLICTS WITH OTHER LAW. (a) To the extent of a conflict between this subchapter and Chapter 804, Government Code, Chapter 804, Government Code, prevails.

(b)  To the extent of a conflict between this subchapter and federal law, the federal law prevails.

SECTION 4.  Section 154.003, Family Code, is amended to read as follows:

Sec. 154.003.  MANNER OF PAYMENT. The court may order that child support be paid by:

(1)  periodic payments;

(2)  a lump-sum payment;

(3)  an annuity purchase;

(4)  the setting aside of property to be administered for the support of the child as specified in the order; [~~or~~]

(5)  pension, retirement, or other employee benefits in accordance with an enforceable qualified domestic relations order or similar order under Subchapter J, Chapter 157; or

(6)  any combination of periodic payments, lump-sum payments, annuity purchases, or setting aside of property.

SECTION 5.  Chapter 157, Family Code, is amended by adding Subchapter J to read as follows:

SUBCHAPTER J. CHILD SUPPORT QUALIFIED DOMESTIC RELATIONS ORDER

Sec. 157.501.  JURISDICTION FOR QUALIFIED DOMESTIC RELATIONS ORDER. (a) The court that rendered an order for the payment of child support, or the court that obtains jurisdiction to enforce a child support order under Chapter 159, has continuing jurisdiction to render enforceable qualified domestic relations orders or similar orders permitting payment of pension, retirement plan, or other employee benefits to an alternate payee or other lawful payee to satisfy support amounts due under the child support order. A child support order includes a temporary or final order for child support, medical support, or dental support and arrears and interest with respect to that order.

(b)  Unless prohibited by federal law, a suit seeking a qualified domestic relations order or similar order under this subchapter applies to a pension, retirement plan, or other employee benefit, regardless of whether the pension, retirement plan, or other employee benefit:

(1)  is private, state, or federal;

(2)  is subject to another qualified domestic relations order or similar order;

(3)  is property that is the subject of a pending proceeding for dissolution of a marriage;

(4)  is property disposed of in a previous decree for dissolution of a marriage; or

(5)  is the subject of an agreement under Chapter 4.

(c)  A court described by Subsection (a) retains jurisdiction to render a qualified domestic relations order or similar order under this subchapter until all support due under the child support order, including arrearages and interest, has been paid.

Sec. 157.502.  PROCEDURE.  (a) A party to a child support order, or the Title IV-D agency in a Title IV-D case, may petition the court for a qualified domestic relations order or similar order in an original suit or in an action for child support enforcement under this chapter.

(b)  Each party whose rights may be affected by the petition is entitled to receive notice under Subchapter B.

Sec. 157.503.  TEMPORARY ORDERS. (a) While a suit for a qualified domestic relations order or similar order is pending or during an appeal of an enforcement order, and on the motion of a party or on the court's own motion after notice and hearing, the court may render an appropriate order, including the granting of a temporary restraining order and temporary injunction, for the preservation of the pension, retirement plan, or other employee benefits and protection of the parties as the court considers necessary.

(b)  An order under this section is not subject to interlocutory appeal.

Sec. 157.504.  DEFECTIVE PRIOR DOMESTIC RELATIONS ORDER. If a plan administrator or other person acting in an equivalent capacity determines that a domestic relations order does not satisfy the requirements of a qualified domestic relations order or similar order, the court retains continuing jurisdiction over the parties to the extent necessary to render a qualified domestic relations order.

Sec. 157.505.  AMENDMENT OF QUALIFIED DOMESTIC RELATIONS ORDER. (a) A court that renders a qualified domestic relations order or similar order retains continuing jurisdiction:

(1)  to amend the order to correct the order, clarify the terms of the order, or add language to the order to provide for the collection of child support;

(2)  to convert the amount or frequency of payments under the order to a formula that is in compliance with the terms of the pension, retirement plan, or employee benefit plan; or

(3)  to vacate or terminate the order.

(b)  An amended domestic relations order or similar order under this section must be submitted to the plan administrator or other person acting in an equivalent capacity to determine whether the amended order satisfies the requirements of a qualified domestic relations order or similar order. Section 157.504 applies to an order amended under this section.

Sec. 157.506.  LIBERAL CONSTRUCTION. The court shall liberally construe this subchapter to effect payment of pension, retirement plan, or other employee benefits for the satisfaction of the obligor's child support obligation.

Sec. 157.507.  ATTORNEY'S FEES AND COSTS. (a) In a proceeding under this subchapter, the court may order the obligor to pay reasonable attorney's fees incurred by a party to obtain the order, all court costs, and all fees charged by a plan administrator for the qualified domestic relations order or similar order.

(b)  Fees and costs ordered under this section may be enforced by any means available for the enforcement of child support, including contempt.

Sec. 157.508.  CONFLICTS WITH OTHER LAW. (a) To the extent of a conflict between this subchapter and Chapter 804, Government Code, Chapter 804, Government Code, prevails.

(b)  To the extent of a conflict between this subchapter and federal law, the federal law prevails.

SECTION 6.  (a) The changes in law made by this Act to Chapters 8, 154, and 157, Family Code, apply to an order for maintenance under Chapter 8, Family Code, or for child support under Chapter 154, Family Code, as applicable, regardless of whether the order was rendered before, on, or after the effective date of this Act.

(b)  The enactment of this Act does not constitute a material and substantial change of circumstances sufficient to warrant modification of a court order or portion of a decree that provides for maintenance or child support rendered before the effective date of this Act.

SECTION 7.  This Act takes effect September 1, 2021.

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