

By: Thompson of Harris

H.B. No. 867

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the issuance of a qualified domestic relations order
3 for the payment of spousal maintenance and child support
4 obligations.

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

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

8 (b) Notice of a motion to modify maintenance or to establish
9 or modify a maintenance qualified domestic relations order under
10 Subchapter H and the response to the motion, if any, are governed by
11 the Texas Rules of Civil Procedure applicable to the filing of an
12 original lawsuit. Notice must be given by service of citation, and
13 a response must be in the form of an answer due on or before 10 a.m.
14 of the first Monday after 20 days after the date of service. A court
15 shall set a hearing on the motion in the manner provided by Rule
16 245, Texas Rules of Civil Procedure.

17 (c) After a hearing, the court may modify an original or
18 modified order or portion of a decree providing for maintenance or a
19 maintenance qualified domestic relations order under Subchapter H
20 on a proper showing of a material and substantial change in
21 circumstances, including circumstances reflected in the factors
22 specified in Section 8.052, relating to either party or to a child
23 of the marriage described by Section 8.051(2)(C), if applicable.
24 The court shall apply the modification only to payment accruing

1 after the filing of the motion to modify.

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

4 (b) On the suit to enforce by an obligee, the court may
5 render judgment against a defaulting party for the amount of
6 arrearages after notice by service of citation, answer, if any, and
7 a hearing finding that the defaulting party has failed or refused to
8 comply with the terms of the order. The judgment may be enforced by
9 any means available for the enforcement of judgment for debts,
10 including by an order or writ of withholding and a maintenance
11 qualified domestic relations order under Subchapter H.

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

14 SUBCHAPTER H. MAINTENANCE QUALIFIED DOMESTIC RELATIONS ORDER

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

25 (b) Unless prohibited by federal law, a suit seeking a
26 qualified domestic relations order or similar order under this
27 subchapter applies to a pension, retirement plan, or other employee

1 benefit, regardless of whether the pension, retirement plan, or
2 other employee benefit:

3 (1) is private, state, or federal;

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

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

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

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

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

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

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

22 Sec. 8.353. TEMPORARY ORDERS. (a) While a suit for a
23 qualified domestic relations order or similar order is pending or
24 during an appeal of an enforcement order, and on the motion of a
25 party or on the court's own motion after notice and hearing, the
26 court may render an appropriate order, including the granting of a
27 temporary restraining order and temporary injunction, for the

1 preservation of the pension, retirement plan, or other employee
2 benefits and protection of the parties as the court considers
3 necessary.

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

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

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

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

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

22 (3) to vacate or terminate the order.

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

1 to an order amended under this section.

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

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

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

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

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

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

- 21 (1) periodic payments;
22 (2) a lump-sum payment;
23 (3) an annuity purchase;
24 (4) the setting aside of property to be administered
25 for the support of the child as specified in the order; ~~or~~

26 (5) pension, retirement, or other employee benefits in
27 accordance with an enforceable qualified domestic relations order

1 or similar order under Subchapter J, Chapter 157; or

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

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

6 SUBCHAPTER J. CHILD SUPPORT QUALIFIED DOMESTIC RELATIONS ORDER

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

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

23 (1) is private, state, or federal;

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

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

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

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

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

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

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

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

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

27 Sec. 157.504. DEFECTIVE PRIOR DOMESTIC RELATIONS ORDER. If

1 a plan administrator or other person acting in an equivalent
2 capacity determines that a domestic relations order does not
3 satisfy the requirements of a qualified domestic relations order or
4 similar order, the court retains continuing jurisdiction over the
5 parties to the extent necessary to render a qualified domestic
6 relations order.

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

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

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

16 (3) to vacate or terminate the order.

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

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

27 Sec. 157.507. ATTORNEY'S FEES AND COSTS. (a) In a

1 proceeding under this subchapter, the court may order the obligor
2 to pay reasonable attorney's fees incurred by a party to obtain the
3 order, all court costs, and all fees charged by a plan administrator
4 for the qualified domestic relations order or similar order.

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

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

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

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