

1-1 By: Thompson of Harris (Senate Sponsor - Hughes) H.B. No. 867  
 1-2 (In the Senate - Received from the House March 25, 2021;  
 1-3 April 8, 2021, read first time and referred to Committee on State  
 1-4 Affairs; May 4, 2021, reported favorably by the following vote:  
 1-5 Yeas 9, Nays 0; May 4, 2021, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	X			
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16	X			

1-17 A BILL TO BE ENTITLED  
 1-18 AN ACT

1-19 relating to the issuance of a qualified domestic relations order  
 1-20 for the payment of spousal maintenance and child support  
 1-21 obligations.

1-22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-23 SECTION 1. Sections 8.057(a), (b), and (c), Family Code,  
 1-24 are amended to read as follows:

1-25 (a) The amount of maintenance specified in a court order or  
 1-26 the portion of a decree that provides for the maintenance ~~[support]~~  
 1-27 of a former spouse may be modified ~~[reduced]~~ by the filing of a  
 1-28 motion in the court that originally rendered the order. A party  
 1-29 affected by the order or the portion of the decree to be modified  
 1-30 may file the motion.

1-31 (b) Notice of a motion to modify maintenance or to establish  
 1-32 or modify a maintenance qualified domestic relations order under  
 1-33 Subchapter H and the response to the motion, if any, are governed by  
 1-34 the Texas Rules of Civil Procedure applicable to the filing of an  
 1-35 original lawsuit. Notice must be given by service of citation, and  
 1-36 a response must be in the form of an answer due on or before 10 a.m.  
 1-37 of the first Monday after 20 days after the date of service. A court  
 1-38 shall set a hearing on the motion in the manner provided by Rule  
 1-39 245, Texas Rules of Civil Procedure.

1-40 (c) After a hearing, the court may modify an original or  
 1-41 modified order or portion of a decree providing for maintenance or a  
 1-42 maintenance qualified domestic relations order under Subchapter H  
 1-43 on a proper showing of a material and substantial change in  
 1-44 circumstances that occurred after the date of the order or decree,  
 1-45 including circumstances reflected in the factors specified in  
 1-46 Section 8.052, relating to either party or to a child of the  
 1-47 marriage described by Section 8.051(2)(C) [~~if applicable~~]. The  
 1-48 court:

1-49 (1) shall apply the modification only to payment  
 1-50 accruing after the filing of the motion to modify; and

1-51 (2) may not increase maintenance to an amount or  
 1-52 duration that exceeds the amount or remaining duration of the  
 1-53 original maintenance order.

1-54 SECTION 2. Section 8.059(b), Family Code, is amended to  
 1-55 read as follows:

1-56 (b) On the suit to enforce by an obligee, the court may  
 1-57 render judgment against a defaulting party for the amount of  
 1-58 arrearages after notice by service of citation, answer, if any, and  
 1-59 a hearing finding that the defaulting party has failed or refused to  
 1-60 comply with the terms of the order. The judgment may be enforced by  
 1-61 any means available for the enforcement of judgment for debts,

2-1 including by an order or writ of withholding and a maintenance  
 2-2 qualified domestic relations order under Subchapter H.

2-3 SECTION 3. Chapter 8, Family Code, is amended by adding  
 2-4 Subchapter H to read as follows:

2-5 SUBCHAPTER H. MAINTENANCE QUALIFIED DOMESTIC RELATIONS ORDER

2-6 Sec. 8.351. JURISDICTION FOR QUALIFIED DOMESTIC RELATIONS  
 2-7 ORDER. (a) The court that rendered an order for the payment of  
 2-8 maintenance, or the court that obtains jurisdiction to enforce a  
 2-9 maintenance order, has continuing jurisdiction to render  
 2-10 enforceable qualified domestic relations orders or similar orders  
 2-11 permitting payment of pension, retirement plan, or other employee  
 2-12 benefits to an alternate payee or other lawful payee to satisfy  
 2-13 amounts due under the maintenance order. A maintenance order  
 2-14 includes a temporary or final order for maintenance and arrears and  
 2-15 interest with respect to that order.

2-16 (b) Unless prohibited by federal law, a suit seeking a  
 2-17 qualified domestic relations order or similar order under this  
 2-18 subchapter applies to a pension, retirement plan, or other employee  
 2-19 benefit, regardless of whether the pension, retirement plan, or  
 2-20 other employee benefit:

2-21 (1) is private, state, or federal;

2-22 (2) is subject to another qualified domestic relations  
 2-23 order or similar order;

2-24 (3) is property that is the subject of a pending  
 2-25 proceeding for dissolution of a marriage;

2-26 (4) is property disposed of in a previous decree for  
 2-27 dissolution of a marriage; or

2-28 (5) is the subject of an agreement under Chapter 4.

2-29 (c) A court described by Subsection (a) retains  
 2-30 jurisdiction to render a qualified domestic relations order or  
 2-31 similar order under this subchapter until all maintenance due under  
 2-32 the maintenance order, including arrearages and interest, has been  
 2-33 paid.

2-34 Sec. 8.352. PROCEDURE. (a) A party to a maintenance order  
 2-35 may petition the court for a qualified domestic relations order or  
 2-36 similar order in an original suit or in an action for enforcement of  
 2-37 the maintenance order under this chapter.

2-38 (b) Each party whose rights may be affected by the petition  
 2-39 is entitled to receive notice.

2-40 Sec. 8.353. TEMPORARY ORDERS. (a) While a suit for a  
 2-41 qualified domestic relations order or similar order is pending or  
 2-42 during an appeal of an enforcement order, and on the motion of a  
 2-43 party or on the court's own motion after notice and hearing, the  
 2-44 court may render an appropriate order, including the granting of a  
 2-45 temporary restraining order and temporary injunction, for the  
 2-46 preservation of the pension, retirement plan, or other employee  
 2-47 benefits and protection of the parties as the court considers  
 2-48 necessary.

2-49 (b) An order under this section is not subject to  
 2-50 interlocutory appeal.

2-51 Sec. 8.354. DEFECTIVE PRIOR DOMESTIC RELATIONS ORDER. If a  
 2-52 plan administrator or other person acting in an equivalent capacity  
 2-53 determines that a domestic relations order does not satisfy the  
 2-54 requirements of a qualified domestic relations order or similar  
 2-55 order, the court retains continuing jurisdiction over the parties  
 2-56 to the extent necessary to render a qualified domestic relations  
 2-57 order.

2-58 Sec. 8.355. AMENDMENT OF QUALIFIED DOMESTIC RELATIONS  
 2-59 ORDER. (a) A court that renders a qualified domestic relations  
 2-60 order or similar order retains continuing jurisdiction:

2-61 (1) to amend the order to correct the order, clarify  
 2-62 the terms of the order, or add language to the order to provide for  
 2-63 the collection of maintenance;

2-64 (2) to convert the amount or frequency of payments  
 2-65 under the order to a formula that is in compliance with the terms of  
 2-66 the pension, retirement plan, or employee benefit plan; or

2-67 (3) to vacate or terminate the order.

2-68 (b) An amended domestic relations order or similar order  
 2-69 under this section must be submitted to the plan administrator or

3-1 other person acting in an equivalent capacity to determine whether  
 3-2 the amended order satisfies the requirements of a qualified  
 3-3 domestic relations order or similar order. Section 8.354 applies  
 3-4 to an order amended under this section.

3-5 Sec. 8.356. LIBERAL CONSTRUCTION. The court shall  
 3-6 liberally construe this subchapter to effect payment of pension,  
 3-7 retirement plan, or other employee benefits for the satisfaction of  
 3-8 the obligor's maintenance obligation.

3-9 Sec. 8.357. ATTORNEY'S FEES AND COSTS. (a) In a proceeding  
 3-10 under this subchapter, the court may order the obligor to pay  
 3-11 reasonable attorney's fees incurred by a party to obtain the order,  
 3-12 all court costs, and all fees charged by a plan administrator for  
 3-13 the qualified domestic relations order or similar order.

3-14 (b) Fees and costs ordered under this section may be  
 3-15 enforced by any means available for the enforcement of a judgment  
 3-16 for debt.

3-17 Sec. 8.358. DIRECT PAYMENT. Payments under a qualified  
 3-18 domestic relations order under this subchapter may be made by  
 3-19 direct payment or other method ordered by the court.

3-20 Sec. 8.359. CONFLICTS WITH OTHER LAW. (a) To the extent of  
 3-21 a conflict between this subchapter and Chapter 804, Government  
 3-22 Code, Chapter 804, Government Code, prevails.

3-23 (b) To the extent of a conflict between this subchapter and  
 3-24 federal law, the federal law prevails.

3-25 SECTION 4. Section 154.003, Family Code, is amended to read  
 3-26 as follows:

3-27 Sec. 154.003. MANNER OF PAYMENT. The court may order that  
 3-28 child support be paid by:

- 3-29 (1) periodic payments;
- 3-30 (2) a lump-sum payment;
- 3-31 (3) an annuity purchase;
- 3-32 (4) the setting aside of property to be administered  
 3-33 for the support of the child as specified in the order; ~~or~~
- 3-34 (5) pension, retirement, or other employee benefits in  
 3-35 accordance with an enforceable qualified domestic relations order  
 3-36 or similar order under Subchapter J, Chapter 157; or
- 3-37 (6) any combination of periodic payments, lump-sum  
 3-38 payments, annuity purchases, or setting aside of property.

3-39 SECTION 5. Chapter 157, Family Code, is amended by adding  
 3-40 Subchapter J to read as follows:

3-41 SUBCHAPTER J. CHILD SUPPORT QUALIFIED DOMESTIC RELATIONS ORDER

3-42 Sec. 157.501. JURISDICTION FOR QUALIFIED DOMESTIC  
 3-43 RELATIONS ORDER. (a) The court that rendered an order for the  
 3-44 payment of child support, or the court that obtains jurisdiction to  
 3-45 enforce a child support order under Chapter 159, has continuing  
 3-46 jurisdiction to render enforceable qualified domestic relations  
 3-47 orders or similar orders permitting payment of pension, retirement  
 3-48 plan, or other employee benefits to an alternate payee or other  
 3-49 lawful payee to satisfy support amounts due under the child support  
 3-50 order. A child support order includes a temporary or final order  
 3-51 for child support, medical support, or dental support and arrears  
 3-52 and interest with respect to that order.

3-53 (b) Unless prohibited by federal law, a suit seeking a  
 3-54 qualified domestic relations order or similar order under this  
 3-55 subchapter applies to a pension, retirement plan, or other employee  
 3-56 benefit, regardless of whether the pension, retirement plan, or  
 3-57 other employee benefit:

- 3-58 (1) is private, state, or federal;
- 3-59 (2) is subject to another qualified domestic relations  
 3-60 order or similar order;
- 3-61 (3) is property that is the subject of a pending  
 3-62 proceeding for dissolution of a marriage;
- 3-63 (4) is property disposed of in a previous decree for  
 3-64 dissolution of a marriage; or
- 3-65 (5) is the subject of an agreement under Chapter 4.

3-66 (c) A court described by Subsection (a) retains  
 3-67 jurisdiction to render a qualified domestic relations order or  
 3-68 similar order under this subchapter until all support due under the  
 3-69 child support order, including arrearages and interest, has been

4-1 paid.

4-2 Sec. 157.502. PROCEDURE. (a) A party to a child support  
 4-3 order, or the Title IV-D agency in a Title IV-D case, may petition  
 4-4 the court for a qualified domestic relations order or similar order  
 4-5 in an original suit or in an action for child support enforcement  
 4-6 under this chapter.

4-7 (b) Each party whose rights may be affected by the petition  
 4-8 is entitled to receive notice under Subchapter B.

4-9 Sec. 157.503. TEMPORARY ORDERS. (a) While a suit for a  
 4-10 qualified domestic relations order or similar order is pending or  
 4-11 during an appeal of an enforcement order, and on the motion of a  
 4-12 party or on the court's own motion after notice and hearing, the  
 4-13 court may render an appropriate order, including the granting of a  
 4-14 temporary restraining order and temporary injunction, for the  
 4-15 preservation of the pension, retirement plan, or other employee  
 4-16 benefits and protection of the parties as the court considers  
 4-17 necessary.

4-18 (b) An order under this section is not subject to  
 4-19 interlocutory appeal.

4-20 Sec. 157.504. DEFECTIVE PRIOR DOMESTIC RELATIONS ORDER. If  
 4-21 a plan administrator or other person acting in an equivalent  
 4-22 capacity determines that a domestic relations order does not  
 4-23 satisfy the requirements of a qualified domestic relations order or  
 4-24 similar order, the court retains continuing jurisdiction over the  
 4-25 parties to the extent necessary to render a qualified domestic  
 4-26 relations order.

4-27 Sec. 157.505. AMENDMENT OF QUALIFIED DOMESTIC RELATIONS  
 4-28 ORDER. (a) A court that renders a qualified domestic relations  
 4-29 order or similar order retains continuing jurisdiction:

4-30 (1) to amend the order to correct the order, clarify  
 4-31 the terms of the order, or add language to the order to provide for  
 4-32 the collection of child support;

4-33 (2) to convert the amount or frequency of payments  
 4-34 under the order to a formula that is in compliance with the terms of  
 4-35 the pension, retirement plan, or employee benefit plan; or

4-36 (3) to vacate or terminate the order.

4-37 (b) An amended domestic relations order or similar order  
 4-38 under this section must be submitted to the plan administrator or  
 4-39 other person acting in an equivalent capacity to determine whether  
 4-40 the amended order satisfies the requirements of a qualified  
 4-41 domestic relations order or similar order. Section 157.504 applies  
 4-42 to an order amended under this section.

4-43 Sec. 157.506. LIBERAL CONSTRUCTION. The court shall  
 4-44 liberally construe this subchapter to effect payment of pension,  
 4-45 retirement plan, or other employee benefits for the satisfaction of  
 4-46 the obligor's child support obligation.

4-47 Sec. 157.507. ATTORNEY'S FEES AND COSTS. (a) In a  
 4-48 proceeding under this subchapter, the court may order the obligor  
 4-49 to pay reasonable attorney's fees incurred by a party to obtain the  
 4-50 order, all court costs, and all fees charged by a plan administrator  
 4-51 for the qualified domestic relations order or similar order.

4-52 (b) Fees and costs ordered under this section may be  
 4-53 enforced by any means available for the enforcement of child  
 4-54 support, including contempt.

4-55 Sec. 157.508. CONFLICTS WITH OTHER LAW. (a) To the extent  
 4-56 of a conflict between this subchapter and Chapter 804, Government  
 4-57 Code, Chapter 804, Government Code, prevails.

4-58 (b) To the extent of a conflict between this subchapter and  
 4-59 federal law, the federal law prevails.

4-60 SECTION 6. (a) The changes in law made by this Act to  
 4-61 Chapters 8, 154, and 157, Family Code, apply to an order for  
 4-62 maintenance under Chapter 8, Family Code, or for child support  
 4-63 under Chapter 154, Family Code, as applicable, regardless of  
 4-64 whether the order was rendered before, on, or after the effective  
 4-65 date of this Act.

4-66 (b) The enactment of this Act does not constitute a material  
 4-67 and substantial change of circumstances sufficient to warrant  
 4-68 modification of a court order or portion of a decree that provides  
 4-69 for maintenance or child support rendered before the effective date

5-1 of this Act.

5-2 SECTION 7. This Act takes effect September 1, 2021.

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