

By: Thompson

H.B. No. 901

A BILL TO BE ENTITLED

AN ACT

relating to spousal maintenance.

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

SECTION 1. Sections 8.051 and 8.052, Family Code, are amended to read as follows:

Sec. 8.051. ELIGIBILITY FOR MAINTENANCE; COURT ORDER. In a suit for dissolution of a marriage or in a proceeding for maintenance in a court with personal jurisdiction over both former spouses following the dissolution of their marriage by a court that lacked personal jurisdiction over an absent spouse, the court may order maintenance for either spouse only if:

(1) the spouse from whom maintenance is requested was convicted of or received deferred adjudication for a criminal offense that also constitutes an act of family violence, as defined by Section 71.004, committed against the other spouse during the marriage [~~under Title 4~~] and the offense occurred:

(A) within two years before the date on which a suit for dissolution of the marriage is filed; or

(B) while the suit is pending; [~~or~~]

(2) the duration of the marriage was 10 years or longer, the spouse seeking maintenance lacks or will lack sufficient property on dissolution of the marriage [~~, including property distributed to the spouse under this code,~~] to provide for the spouse's minimum reasonable needs, as limited by Section 8.054,

1 and the spouse seeking maintenance:

2 (A) is unable to earn sufficient income to
3 provide for the spouse's minimum reasonable needs [~~support himself~~
4 ~~or herself through appropriate employment~~] because of an
5 incapacitating physical or mental disability; or

6 (B) lacks the ability to earn sufficient income
7 to provide for the spouse's minimum reasonable needs; or

8 (3) the spouse seeking maintenance:

9 (A) lacks or will lack sufficient property on
10 dissolution of the marriage to provide for the spouse's minimum
11 reasonable needs, as limited by Section 8.054; and

12 (B) is the custodian of a child of the marriage of
13 any age who requires substantial care and personal supervision
14 because of a physical or mental disability that prevents the spouse
15 from earning sufficient income to provide for the spouse's minimum
16 reasonable needs [~~makes it necessary, taking into consideration the~~
17 ~~needs of the child, that the spouse not be employed outside the~~
18 ~~home; or~~

19 [~~(C) clearly lacks earning ability in the labor~~
20 ~~market adequate to provide support for the spouse's minimum~~
21 ~~reasonable needs, as limited by Section 8.054].~~

22 Sec. 8.052. FACTORS IN DETERMINING MAINTENANCE. A court
23 that determines that a spouse is eligible to receive maintenance
24 under this chapter shall determine the nature, amount, duration,
25 and manner of periodic payments by considering all relevant
26 factors, including:

27 (1) each [~~the financial resources of the spouse~~

1 ~~seeking maintenance, including the community and separate property~~
2 ~~and liabilities apportioned to that spouse in the dissolution~~
3 ~~proceeding, and that] spouse's ability to provide for that [~~meet~~
4 ~~the~~] spouse's minimum reasonable needs independently, considering
5 that spouse's financial resources on dissolution of the marriage;~~

6 (2) the education and employment skills of the
7 spouses, the time necessary to acquire sufficient education or
8 training to enable the spouse seeking maintenance to earn
9 sufficient income, and [~~find appropriate employment,~~] the
10 availability and feasibility of that education or training[, ~~and~~
11 ~~the feasibility of that education or training~~];

12 (3) the duration of the marriage;

13 (4) the age, employment history, earning ability, and
14 physical and emotional condition of the spouse seeking maintenance;

15 (5) the effect on each spouse's ability to provide for
16 that spouse's minimum reasonable needs while providing [~~of the~~
17 ~~spouse from whom maintenance is requested to meet that spouse's~~
18 ~~personal needs and to provide~~] periodic child support payments or
19 maintenance, if applicable[, ~~while meeting the personal needs of~~
20 ~~the spouse seeking maintenance~~];

21 (6) acts by either spouse resulting in excessive or
22 abnormal expenditures or destruction, concealment, or fraudulent
23 disposition of community property, joint tenancy, or other property
24 held in common;

25 (7) [~~the comparative financial resources of the~~
26 ~~spouses, including medical, retirement, insurance, or other~~
27 ~~benefits, and the separate property of each spouse,~~

1 ~~(8)~~ the contribution by one spouse to the education,
2 training, or increased earning power of the other spouse;

3 (8) ~~(9)~~ the property brought to the marriage by
4 either spouse;

5 (9) ~~(10)~~ the contribution of a spouse as homemaker;

6 (10) ~~(11)~~ marital misconduct, including adultery
7 and cruel treatment, by either spouse during the marriage ~~[of the~~
8 ~~spouse seeking maintenance]~~; and

9 (11) any history or pattern of family violence, as
10 defined by Section 71.004 ~~[(12) the efforts of the spouse seeking~~
11 ~~maintenance to pursue available employment counseling as provided~~
12 ~~by Chapter 304, Labor Code].~~

13 SECTION 2. Section 8.053(a), Family Code, is amended to
14 read as follows:

15 (a) It ~~[Except as provided by Subsection (b), it]~~ is a
16 rebuttable presumption ~~[presumed]~~ that maintenance under Section
17 8.051(2)(B) ~~[8.051(2)]~~ is not warranted unless the spouse seeking
18 maintenance has exercised diligence in:

19 (1) earning sufficient income to provide for the
20 spouse's minimum reasonable needs ~~[seeking suitable employment];~~
21 or

22 (2) developing the necessary skills to provide for the
23 spouse's minimum reasonable needs ~~[become self-supporting]~~ during
24 a period of separation and during the time the suit for dissolution
25 of the marriage is pending.

26 SECTION 3. Section 8.054, Family Code, is amended to read as
27 follows:

1 Sec. 8.054. DURATION OF MAINTENANCE ORDER. (a) Except as
2 provided by Subsection (b), a court:

3 (1) may not order maintenance that remains in effect
4 for more than:

5 (A) five [~~three~~] years after the date of the
6 order, if the spouses were married to each other for at least 10
7 years but not more than 20 years;

8 (B) seven years after the date of the order, if
9 the spouses were married to each other for at least 20 years but not
10 more than 30 years; or

11 (C) 10 years after the date of the order, if the
12 spouses were married to each other for at least 30 years; and

13 (2) shall limit the duration of a maintenance order to
14 the shortest reasonable period that allows the spouse seeking
15 maintenance to earn sufficient income to provide for [~~meet~~] the
16 spouse's minimum reasonable needs [~~by obtaining appropriate~~
17 ~~employment or developing an appropriate skill~~], unless the ability
18 of the spouse to provide for the spouse's minimum reasonable needs
19 [~~through employment~~] is substantially or totally diminished
20 because of:

21 (A) physical or mental disability of the spouse
22 seeking maintenance;

23 (B) duties as the custodian of an infant or young
24 child of the marriage; or

25 (C) another compelling impediment to earning
26 sufficient income to provide for the spouse's minimum reasonable
27 needs [~~gainful employment~~].

1 (b) The [~~If a spouse seeking maintenance is unable to~~
2 ~~support himself or herself through appropriate employment because~~
3 ~~the spouse has an incapacitating physical or mental disability or~~
4 ~~because the spouse is the custodian of a child of the marriage of~~
5 ~~any age who has a physical or mental disability, the] court may
6 order maintenance for a spouse to whom Section 8.051(2)(A) or
7 8.051(3) applies for as long as the spouse continues to satisfy the
8 eligibility criteria prescribed by the applicable provision [~~the~~
9 ~~disability continues. The court may order periodic review of its~~
10 ~~order, on the request of either party or on its own motion, to~~
11 ~~determine whether the disability continues to render the spouse~~
12 ~~unable to support himself or herself through appropriate~~
13 ~~employment. The continuation of spousal maintenance under these~~
14 ~~circumstances is subject to a motion to modify as provided by~~
15 ~~Section 8.057].~~~~

16 (c) On the request of either party or on the court's own
17 motion, the court may order the periodic review of its order for
18 maintenance under Subsection (b).

19 (d) The continuation of maintenance ordered under
20 Subsection (b) is subject to a motion to modify as provided by
21 Section 8.057.

22 SECTION 4. Section 8.055, Family Code, is amended by
23 amending Subsection (a) and adding Subsection (a-1) to read as
24 follows:

25 (a) A court may not order maintenance that requires an
26 obligor to pay monthly more than the lesser of:

27 (1) \$5,000 [~~\$2,500~~]; or

1 (2) 20 percent of the spouse's average monthly gross
2 income.

3 (a-1) For purposes of this chapter, gross income:

4 (1) includes:

5 (A) 100 percent of all wage and salary income and
6 other compensation for personal services (including commissions,
7 overtime pay, tips, and bonuses);

8 (B) interest, dividends, and royalty income;

9 (C) self-employment income;

10 (D) net rental income (defined as rent after
11 deducting operating expenses and mortgage payments, but not
12 including noncash items such as depreciation); and

13 (E) all other income actually being received,
14 including severance pay, retirement benefits, pensions, trust
15 income, annuities, capital gains, unemployment benefits, interest
16 income from notes regardless of the source, gifts and prizes,
17 maintenance, and alimony; and

18 (2) does not include:

19 (A) return of principal or capital;

20 (B) accounts receivable;

21 (C) benefits paid in accordance with federal
22 public assistance programs;

23 (D) benefits paid in accordance with the
24 Temporary Assistance for Needy Families program;

25 (E) payments for foster care of a child;

26 (F) Department of Veterans Affairs
27 service-connected disability compensation;

1 (G) supplemental security income (SSI), social
2 security benefits, and disability benefits; or

3 (H) workers' compensation benefits.

4 SECTION 5. Section 8.056, Family Code, is amended by
5 amending Subsection (b) and adding Subsection (c) to read as
6 follows:

7 (b) After a hearing, the court shall order the termination
8 of [~~terminate~~] the maintenance obligation [~~order~~] if the court
9 finds that the obligee cohabits with another person with whom the
10 obligee has a dating or romantic relationship in a permanent place
11 of abode on a continuing[~~, conjugal~~] basis.

12 (c) Termination of the maintenance obligation does not
13 terminate the obligation to pay any maintenance that accrued before
14 the date of termination, whether as a result of death or remarriage
15 under Subsection (a) or a court order under Subsection (b).

16 SECTION 6. Sections 8.057(c) and (d), Family Code, are
17 amended to read as follows:

18 (c) After a hearing, the court may modify an original or
19 modified order or portion of a decree providing for maintenance on a
20 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 [~~of~~] either party or to a
23 child of the marriage described by Section 8.051(3)(B), if
24 applicable. The court shall apply the modification only to payment
25 accruing after the filing of the motion to modify.

26 (d) A loss of employment or circumstances that render a
27 former spouse unable to provide for the spouse's minimum reasonable

1 needs [~~support himself or herself through appropriate employment~~]
2 by reason of incapacitating physical or mental disability that
3 occur after the divorce or annulment are not grounds for the
4 institution of spousal maintenance for the benefit of the former
5 spouse.

6 SECTION 7. Sections 8.059(a), (b), and (d), Family Code,
7 are amended to read as follows:

8 (a) The court may enforce by contempt against the obligor
9 the court's maintenance order or an agreement for the payment of
10 maintenance under the terms of this chapter voluntarily entered
11 into between the parties and approved by the court. The court may
12 not enforce by contempt any provision of an agreed order for
13 maintenance for any period of maintenance beyond the period of
14 maintenance the court could have ordered under this chapter.

15 (b) On the suit to enforce by an obligee, the court may
16 render judgment against a defaulting party for the amount of
17 arrearages after notice by service of citation, answer, if any, and
18 a hearing finding that the defaulting party has failed or refused to
19 comply with [~~carry out~~] the terms of the order. The judgment may be
20 enforced by any means available for the enforcement of judgment for
21 debts.

22 (d) The issue of the existence of an affirmative defense
23 does not arise until pleaded. An [~~unless evidence is admitted~~
24 ~~supporting the defense.~~ ~~If the issue of the existence of an~~
25 ~~affirmative defense arises, an~~] obligor must prove the affirmative
26 defense by a preponderance of the evidence.

27 SECTION 8. Subchapter B, Chapter 8, Family Code, is amended

1 by adding Section 8.0591 to read as follows:

2 Sec. 8.0591. OVERPAYMENT. (a) If an obligor is not in
3 arrears on the obligor's maintenance obligation and the obligor's
4 maintenance obligation has terminated, the obligee must return to
5 the obligor any maintenance payment made by the obligor that
6 exceeds the amount of maintenance ordered or approved by the court,
7 regardless of whether the payment was made before, on, or after the
8 date the maintenance obligation terminated.

9 (b) An obligor may file a suit to recover overpaid
10 maintenance under Subsection (a). If the court finds that the
11 obligee failed to return overpaid maintenance under Subsection (a),
12 the court shall order the obligee to pay the obligor's attorney's
13 fees and all court costs in addition to the overpaid maintenance.
14 For good cause shown, the court may waive the requirement that the
15 obligee pay attorney's fees and court costs if the court states in
16 its order the reasons supporting that finding.

17 SECTION 9. The following laws are repealed:

- 18 (1) Section 8.053(b), Family Code;
19 (2) Sections 8.055(b), (c), and (d), Family Code; and
20 (3) Section 8.059(e), Family Code.

21 SECTION 10. (a) Except as provided by Subsection (b) of this
22 section, the changes in law made by this Act to Subchapter B,
23 Chapter 8, Family Code, apply only to a suit for dissolution of a
24 marriage or proceeding for maintenance that was commenced on or
25 after the effective date of this Act. A suit for dissolution of a
26 marriage or proceeding for maintenance commenced before the
27 effective date of this Act is governed by the law in effect on the

1 date the suit or proceeding was commenced, and the former law is
2 continued in effect for that purpose.

3 (b) Section 8.0591, Family Code, as added by this Act,
4 applies to an order for maintenance under Subchapter B, Chapter 8,
5 Family Code, regardless of whether the order was rendered before,
6 on, or after the effective date of this Act.

7 SECTION 11. This Act takes effect September 1, 2011.