

1-1 By: Thompson, et al. (Senate Sponsor - Harris) H.B. No. 901
1-2 (In the Senate - Received from the House April 27, 2011;
1-3 May 2, 2011, read first time and referred to Committee on
1-4 Jurisprudence; May 12, 2011, reported favorably by the following
1-5 vote: Yeas 7, Nays 0; May 12, 2011, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to spousal maintenance.

1-9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-10 SECTION 1. Sections 8.051 and 8.052, Family Code, are
1-11 amended to read as follows:

1-12 Sec. 8.051. ELIGIBILITY FOR MAINTENANCE; COURT ORDER. In a
1-13 suit for dissolution of a marriage or in a proceeding for
1-14 maintenance in a court with personal jurisdiction over both former
1-15 spouses following the dissolution of their marriage by a court that
1-16 lacked personal jurisdiction over an absent spouse, the court may
1-17 order maintenance for either spouse only if the spouse seeking
1-18 maintenance will lack sufficient property, including the spouse's
1-19 separate property, on dissolution of the marriage to provide for
1-20 the spouse's minimum reasonable needs and:

1-21 (1) the spouse from whom maintenance is requested was
1-22 convicted of or received deferred adjudication for a criminal
1-23 offense that also constitutes an act of family violence, as defined
1-24 by Section 71.004, committed during the marriage against the other
1-25 spouse or the other spouse's child and the offense occurred:

1-26 (A) within two years before the date on which a
1-27 suit for dissolution of the marriage is filed; or

1-28 (B) while the suit is pending; or

1-29 (2) the spouse seeking maintenance:

1-30 (A) is unable to earn sufficient income to
1-31 provide for the spouse's minimum reasonable needs because of an
1-32 incapacitating physical or mental disability;

1-33 (B) has been married to the other spouse for 10
1-34 years or longer and lacks the ability to earn sufficient income to
1-35 provide for the spouse's minimum reasonable needs; or

1-36 (C) [~~+~~

1-37 [~~(1) the spouse from whom maintenance is requested was~~
1-38 ~~convicted of or received deferred adjudication for a criminal~~
1-39 ~~offense that also constitutes an act of family violence under Title~~
1-40 ~~4 and the offense occurred:~~

1-41 [~~(A) within two years before the date on which a~~
1-42 ~~suit for dissolution of the marriage is filed; or~~

1-43 [~~(B) while the suit is pending; or~~

1-44 [~~(2) the duration of the marriage was 10 years or~~
1-45 ~~longer, the spouse seeking maintenance lacks sufficient property,~~
1-46 ~~including property distributed to the spouse under this code, to~~
1-47 ~~provide for the spouse's minimum reasonable needs, as limited by~~
1-48 ~~Section 8.054, and the spouse seeking maintenance:~~

1-49 [~~(A) is unable to support himself or herself~~
1-50 ~~through appropriate employment because of an incapacitating~~
1-51 ~~physical or mental disability;~~

1-52 [~~(B)] is the custodian of a child of the marriage~~

1-53 of any age who requires substantial care and personal supervision

1-54 because of a physical or mental disability that prevents the spouse
1-55 from earning sufficient income to provide for the spouse's minimum
1-56 reasonable needs [makes it necessary, taking into consideration the
1-57 needs of the child, that the spouse not be employed outside the
1-58 home; or

1-59 [~~(C) clearly lacks earning ability in the labor~~
1-60 ~~market adequate to provide support for the spouse's minimum~~
1-61 ~~reasonable needs, as limited by Section 8.054].~~

1-62 Sec. 8.052. FACTORS IN DETERMINING MAINTENANCE. A court
1-63 that determines that a spouse is eligible to receive maintenance
1-64 under this chapter shall determine the nature, amount, duration,

2-1 and manner of periodic payments by considering all relevant
2-2 factors, including:

2-3 (1) each [the financial resources of the spouse
2-4 seeking maintenance, including the community and separate property
2-5 and liabilities apportioned to that spouse in the dissolution
2-6 proceeding, and that] spouse's ability to provide for that [meet
2-7 the] spouse's minimum reasonable needs independently, considering
2-8 that spouse's financial resources on dissolution of the marriage;

2-9 (2) the education and employment skills of the
2-10 spouses, the time necessary to acquire sufficient education or
2-11 training to enable the spouse seeking maintenance to earn
2-12 sufficient income, and [find appropriate employment,] the
2-13 availability and feasibility of that education or training[, and
2-14 the feasibility of that education or training];

2-15 (3) the duration of the marriage;

2-16 (4) the age, employment history, earning ability, and
2-17 physical and emotional condition of the spouse seeking maintenance;

2-18 (5) the effect on each spouse's ability to provide for
2-19 that spouse's minimum reasonable needs while providing [of the
2-20 spouse from whom maintenance is requested to meet that spouse's
2-21 personal needs and to provide] periodic child support payments or
2-22 maintenance, if applicable[, while meeting the personal needs of
2-23 the spouse seeking maintenance];

2-24 (6) acts by either spouse resulting in excessive or
2-25 abnormal expenditures or destruction, concealment, or fraudulent
2-26 disposition of community property, joint tenancy, or other property
2-27 held in common;

2-28 (7) ~~[the comparative financial resources of the~~
2-29 ~~spouses, including medical, retirement, insurance, or other~~
2-30 ~~benefits, and the separate property of each spouse;~~

2-31 ~~[(8)]~~ the contribution by one spouse to the education,
2-32 training, or increased earning power of the other spouse;

2-33 (8) ~~[(9)]~~ the property brought to the marriage by
2-34 either spouse;

2-35 (9) ~~[(10)]~~ the contribution of a spouse as homemaker;

2-36 (10) ~~[(11)]~~ marital misconduct, including adultery
2-37 and cruel treatment, by either spouse during the marriage [of the
2-38 spouse seeking maintenance]; and

2-39 (11) any history or pattern of family violence, as
2-40 defined by Section 71.004 [(12) the efforts of the spouse seeking
2-41 maintenance to pursue available employment counseling as provided
2-42 by Chapter 304, Labor Code].

2-43 SECTION 2. Section 8.053(a), Family Code, is amended to
2-44 read as follows:

2-45 (a) It [Except as provided by Subsection (b), it] is a
2-46 rebuttable presumption [presumed] that maintenance under Section
2-47 8.051(2)(B) [8.051(2)] is not warranted unless the spouse seeking
2-48 maintenance has exercised diligence in:

2-49 (1) earning sufficient income to provide for the
2-50 spouse's minimum reasonable needs [seeking suitable employment];
2-51 or

2-52 (2) developing the necessary skills to provide for the
2-53 spouse's minimum reasonable needs [become self-supporting] during
2-54 a period of separation and during the time the suit for dissolution
2-55 of the marriage is pending.

2-56 SECTION 3. Section 8.054, Family Code, is amended to read as
2-57 follows:

2-58 Sec. 8.054. DURATION OF MAINTENANCE ORDER. (a) Except as
2-59 provided by Subsection (b), a court:

2-60 (1) may not order maintenance that remains in effect
2-61 for more than:

2-62 (A) five [three] years after the date of the
2-63 order, if:

2-64 (i) the spouses were married to each other
2-65 for less than 10 years and the eligibility of the spouse for whom
2-66 maintenance is ordered is established under Section 8.051(1); or

2-67 (ii) the spouses were married to each other
2-68 for at least 10 years but not more than 20 years;

2-69 (B) seven years after the date of the order, if

3-1 the spouses were married to each other for at least 20 years but not
3-2 more than 30 years; or
3-3 (C) 10 years after the date of the order, if the
3-4 spouses were married to each other for 30 years or more; and
3-5 (2) shall limit the duration of a maintenance order to
3-6 the shortest reasonable period that allows the spouse seeking
3-7 maintenance to earn sufficient income to provide for [meet] the
3-8 spouse's minimum reasonable needs [by obtaining appropriate
3-9 employment or developing an appropriate skill], unless the ability
3-10 of the spouse to provide for the spouse's minimum reasonable needs
3-11 [through employment] is substantially or totally diminished
3-12 because of:

3-13 (A) physical or mental disability of the spouse
3-14 seeking maintenance;
3-15 (B) duties as the custodian of an infant or young
3-16 child of the marriage; or
3-17 (C) another compelling impediment to earning
3-18 sufficient income to provide for the spouse's minimum reasonable
3-19 needs [gainful employment].

3-20 (b) The [If a spouse seeking maintenance is unable to
3-21 support himself or herself through appropriate employment because
3-22 the spouse has an incapacitating physical or mental disability or
3-23 because the spouse is the custodian of a child of the marriage of
3-24 any age who has a physical or mental disability, the] court may
3-25 order maintenance for a spouse to whom Section 8.051(2)(A) or (C)
3-26 applies for as long as the spouse continues to satisfy the
3-27 eligibility criteria prescribed by the applicable provision [the
3-28 disability continues. The court may order periodic review of its
3-29 order, on the request of either party or on its own motion, to
3-30 determine whether the disability continues to render the spouse
3-31 unable to support himself or herself through appropriate
3-32 employment. The continuation of spousal maintenance under these
3-33 circumstances is subject to a motion to modify as provided by
3-34 Section 8.057].

3-35 (c) On the request of either party or on the court's own
3-36 motion, the court may order the periodic review of its order for
3-37 maintenance under Subsection (b).

3-38 (d) The continuation of maintenance ordered under
3-39 Subsection (b) is subject to a motion to modify as provided by
3-40 Section 8.057.

3-41 SECTION 4. Section 8.055, Family Code, is amended by
3-42 amending Subsection (a) and adding Subsection (a-1) to read as
3-43 follows:

3-44 (a) A court may not order maintenance that requires an
3-45 obligor to pay monthly more than the lesser of:
3-46 (1) \$5,000 [~~\$2,500~~]; or
3-47 (2) 20 percent of the spouse's average monthly gross
3-48 income.

3-49 (a-1) For purposes of this chapter, gross income:
3-50 (1) includes:
3-51 (A) 100 percent of all wage and salary income and
3-52 other compensation for personal services (including commissions,
3-53 overtime pay, tips, and bonuses);
3-54 (B) interest, dividends, and royalty income;
3-55 (C) self-employment income;
3-56 (D) net rental income (defined as rent after
3-57 deducting operating expenses and mortgage payments, but not
3-58 including noncash items such as depreciation); and
3-59 (E) all other income actually being received,
3-60 including severance pay, retirement benefits, pensions, trust
3-61 income, annuities, capital gains, unemployment benefits, interest
3-62 income from notes regardless of the source, gifts and prizes,
3-63 maintenance, and alimony; and
3-64 (2) does not include:
3-65 (A) return of principal or capital;
3-66 (B) accounts receivable;
3-67 (C) benefits paid in accordance with federal
3-68 public assistance programs;
3-69 (D) benefits paid in accordance with the

4-1 Temporary Assistance for Needy Families program;
 4-2 (E) payments for foster care of a child;
 4-3 (F) Department of Veterans Affairs
 4-4 service-connected disability compensation;
 4-5 (G) supplemental security income (SSI), social
 4-6 security benefits, and disability benefits; or
 4-7 (H) workers' compensation benefits.

4-8 SECTION 5. Section 8.056, Family Code, is amended by
 4-9 amending Subsection (b) and adding Subsection (c) to read as
 4-10 follows:

4-11 (b) After a hearing, the court shall order the termination
 4-12 of [~~terminate~~] the maintenance obligation [~~order~~] if the court
 4-13 finds that the obligee cohabits with another person with whom the
 4-14 obligee has a dating or romantic relationship in a permanent place
 4-15 of abode on a continuing[~~, conjugal~~] basis.

4-16 (c) Termination of the maintenance obligation does not
 4-17 terminate the obligation to pay any maintenance that accrued before
 4-18 the date of termination, whether as a result of death or remarriage
 4-19 under Subsection (a) or a court order under Subsection (b).

4-20 SECTION 6. Sections 8.057(c) and (d), Family Code, are
 4-21 amended to read as follows:

4-22 (c) After a hearing, the court may modify an original or
 4-23 modified order or portion of a decree providing for maintenance on a
 4-24 proper showing of a material and substantial change in
 4-25 circumstances, including circumstances reflected in the factors
 4-26 specified in Section 8.052, relating to [~~of~~] either party or to a
 4-27 child of the marriage described by Section 8.051(2)(C), if
 4-28 applicable. The court shall apply the modification only to payment
 4-29 accruing after the filing of the motion to modify.

4-30 (d) A loss of employment or circumstances that render a
 4-31 former spouse unable to provide for the spouse's minimum reasonable
 4-32 needs [~~support himself or herself through appropriate employment~~]
 4-33 by reason of incapacitating physical or mental disability that
 4-34 occur after the divorce or annulment are not grounds for the
 4-35 institution of spousal maintenance for the benefit of the former
 4-36 spouse.

4-37 SECTION 7. Sections 8.059(a), (b), and (d), Family Code,
 4-38 are amended to read as follows:

4-39 (a) The court may enforce by contempt against the obligor
 4-40 the court's maintenance order or an agreement for the payment of
 4-41 maintenance under the terms of this chapter voluntarily entered
 4-42 into between the parties and approved by the court. The court may
 4-43 not enforce by contempt any provision of an agreed order for
 4-44 maintenance for any period of maintenance beyond the period of
 4-45 maintenance the court could have ordered under this chapter.

4-46 (b) On the suit to enforce by an obligee, the court may
 4-47 render judgment against a defaulting party for the amount of
 4-48 arrearages after notice by service of citation, answer, if any, and
 4-49 a hearing finding that the defaulting party has failed or refused to
 4-50 comply with [~~carry out~~] the terms of the order. The judgment may be
 4-51 enforced by any means available for the enforcement of judgment for
 4-52 debts.

4-53 (d) The issue of the existence of an affirmative defense
 4-54 does not arise until pleaded. An [~~unless evidence is admitted~~
 4-55 ~~supporting the defense.~~ If the issue of the existence of an
 4-56 ~~affirmative defense arises, an] obligor must prove the affirmative
 4-57 defense by a preponderance of the evidence.~~

4-58 SECTION 8. Subchapter B, Chapter 8, Family Code, is amended
 4-59 by adding Section 8.0591 to read as follows:

4-60 Sec. 8.0591. OVERPAYMENT. (a) If an obligor is not in
 4-61 arrears on the obligor's maintenance obligation and the obligor's
 4-62 maintenance obligation has terminated, the obligee must return to
 4-63 the obligor any maintenance payment made by the obligor that
 4-64 exceeds the amount of maintenance ordered or approved by the court,
 4-65 regardless of whether the payment was made before, on, or after the
 4-66 date the maintenance obligation terminated.

4-67 (b) An obligor may file a suit to recover overpaid
 4-68 maintenance under Subsection (a). If the court finds that the
 4-69 obligee failed to return overpaid maintenance under Subsection (a),

5-1 the court shall order the obligee to pay the obligor's attorney's
5-2 fees and all court costs in addition to the amount of the overpaid
5-3 maintenance. For good cause shown, the court may waive the
5-4 requirement that the obligee pay attorney's fees and court costs if
5-5 the court states in its order the reasons supporting that finding.

5-6 SECTION 9. The following provisions of the Family Code are
5-7 repealed:

- 5-8 (1) Section 8.053(b);
- 5-9 (2) Sections 8.055(b), (c), and (d); and
- 5-10 (3) Section 8.059(e).

5-11 SECTION 10. (a) Except as provided by Subsection (b) of
5-12 this section, the changes in law made by this Act to Subchapter B,
5-13 Chapter 8, Family Code, apply only to a suit for dissolution of a
5-14 marriage or proceeding for maintenance that was commenced on or
5-15 after the effective date of this Act. A suit for dissolution of a
5-16 marriage or proceeding for maintenance commenced before the
5-17 effective date of this Act is governed by the law in effect on the
5-18 date the suit or proceeding was commenced, and the former law is
5-19 continued in effect for that purpose.

5-20 (b) Section 8.0591, Family Code, as added by this Act,
5-21 applies to an order for maintenance under Subchapter B, Chapter 8,
5-22 Family Code, regardless of whether the order was rendered before,
5-23 on, or after the effective date of this Act.

5-24 SECTION 11. This Act takes effect September 1, 2011.

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