

## **BILL ANALYSIS**

Senate Research Center

H.B. 691  
By: Thompson (Harris)  
Jurisprudence  
5/10/2001  
Engrossed

### **DIGEST AND PURPOSE**

Prior to 1995, child support was the only type of family support that could be ordered in Texas and the only type of support for which wages could be garnished. The 1995 welfare reform bill included a provision for limited spousal maintenance; however, spousal maintenance was difficult to enforce without a garnishment provision. Legislation enacted in 1999 authorized garnishment of the wages of a person ordered to pay spousal maintenance. Although a court is now able to enforce spousal maintenance payments, current law does not grant child support priority over spousal maintenance or clearly limit all support to 50 percent of an obligor's earnings. H.B. 691 establishes provisions regarding income withholding for spousal maintenance, including granting priority to child support payments and limiting the amount of support an obligor is required to pay.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Chapter 8, Family Code, as follows:

#### CHAPTER 8. MAINTENANCE

##### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 8.001. DEFINITIONS. Defines “notice of application for a writ of withholding,” “obligee,” “obligor,” and “writ of withholding.”

[Sections 8.002-8.050 reserved for expansion]

##### SUBCHAPTER B. COURT-ORDERED MAINTENANCE

Sec. 8.051. ELIGIBILITY FOR MAINTENANCE; COURT ORDER. Redesignates Section 8.002 as Section 8.051. Deletes text that authorized a court to enforce an order for spousal maintenance by ordering garnishment of the wages of the person ordered to pay the maintenance or by any other means available under Section 8.009. Makes a conforming change.

Sec. 8.052. FACTORS IN DETERMINING MAINTENANCE. Redesignates Section 8.003 as Section 8.052.

Sec. 8.053. PRESUMPTION. Redesignates Section 8.004 as Section 8.053.

Sec. 8.054. DURATION OF MAINTENANCE ORDER. Redesignates Section 8.005 as Section 8.054. Makes a conforming change.

Sec. 8.055. AMOUNT OF MAINTENANCE. Redesignates Section 8.006 as Section 8.055. Makes references to “spouse” as “obligor” and “spouse receiving the maintenance” as “obligee.” Makes conforming changes.

Sec. 8.056. TERMINATION. Redesignates Section 8.007 as Section 8.056. Makes a reference to “party receiving maintenance” as “obligee.” Makes a conforming change.

Sec. 8.057. MODIFICATION OF MAINTENANCE ORDER. Redesignates Section 8.008 as Section 8.057.

Sec. 8.058. MAINTENANCE ARREARAGES. Provides that a spousal maintenance payment not timely made constitutes an arrearage.

Sec. 8.059. ENFORCEMENT OF MAINTENANCE ORDER. Redesignates Section 8.009 as Section 8.059. Authorizes a court to enforce an order for spousal maintenance under this chapter by ordering garnishment of the obligor’s wages or by any other means available under this section. Makes conforming and nonsubstantive changes.

Sec. 8.060. PUTATIVE SPOUSE. Redesignates Section 8.010 as Section 8.060.

Sec. 8.061. UNMARRIED COHABITANTS. Redesignates Section 8.011 as Section 8.061.

[Sections 8.062-8.100 reserved for expansion]

#### SUBCHAPTER C. INCOME WITHHOLDING

Sec. 8.101. INCOME WITHHOLDING; GENERAL RULE. Authorizes the court to order that income be withheld from the disposable earnings of the obligor as provided by this chapter, in a proceeding in which periodic payments of spousal maintenance are ordered, modified, or enforced. Provides that this subchapter does not apply to contractual alimony or spousal maintenance, regardless of whether the alimony or maintenance is taxable, except under certain circumstances. Authorizes an order or writ of withholding for spousal maintenance to be combined with an order or writ of withholding for child support only if the obligee has been appointed managing conservator of the child for whom the child support is owed and is the conservator with whom the child primarily resides. Requires an order or writ of withholding that combines withholding for spousal maintenance and child support to meet certain requirements. Provides that garnishment for the purposes of spousal maintenance does not apply to unemployment insurance benefit payments.

Sec. 8.102. WITHHOLDING FOR ARREARAGES IN ADDITION TO CURRENT SPOUSAL MAINTENANCE. Authorizes the court, in addition to income withheld for current spousal maintenance, to order that income be withheld from the disposable earnings of the obligor to be applied toward the liquidation of any arrearages. Requires the additional amount withheld to be applied toward arrearages to be whichever of the following amounts will discharge the arrearages in the least amount of time: an amount sufficient to discharge the arrearages in not more than two years, or 20 percent of the amount withheld for current maintenance.

Sec. 8.103. WITHHOLDING FOR ARREARAGES WHEN CURRENT MAINTENANCE IS NOT DUE. Authorizes a court to order income withholding to be applied toward arrearages in an amount sufficient to discharge those arrearages in not more than two years if current spousal maintenance is no longer owed.

Sec. 8.104. WITHHOLDING TO SATISFY JUDGMENT FOR ARREARAGES.

Authorizes the court, in rendering a cumulative judgment for arrearages, to order that a reasonable amount of income be withheld from the disposable earnings of the obligor to be applied toward the satisfaction of the judgment.

Sec. 8.105. **PRIORITY OF WITHHOLDING.** Provides that an order or writ of withholding under this chapter has priority over any garnishment, attachment, execution, or other order affecting disposable earnings, except for an order or writ of withholding for child support under Chapter 158.

Sec. 8.106. **MAXIMUM AMOUNT WITHHELD FROM EARNINGS.** Requires an order or writ of withholding to direct that an obligor's employer withhold from the obligor's disposable earnings the lesser of a certain amount.

Sec. 8.107. **ORDER OR WRIT BINDING ON EMPLOYER DOING BUSINESS IN THIS STATE.** Provides that an order or writ of withholding issued under this chapter and delivered to an employer doing business in this state is binding on the employer without regard to whether the obligor resides or works outside this state.

Sec. 8.108. **VOLUNTARY WRIT OF WITHHOLDING BY OBLIGOR.** Authorizes an obligor to file with the clerk of the court a notarized or acknowledged request signed by the obligor and the obligee for the issuance and delivery to the obligor's employer of a writ of withholding. Authorizes the obligor to file the request under this section regardless of whether a writ or order has been served on any party or whether the obligor owes arrearages. Requires the clerk, on receipt of a request under this section, to issue and deliver a writ of withholding in the manner provided by this subchapter. Authorizes an employer who receives a writ of withholding issued under this section to request a hearing in the same manner and according to the same terms provided by Section 8.205.

Authorizes an obligor whose employer receives a writ of withholding issued under this section to request a hearing in the manner provided by Section 8.258. Authorizes an obligee to contest a writ of income withholding issued under this section by requesting, not later than the 180th day after the date on which the obligee discovers that the writ was issued, a hearing to be conducted in the manner provided by Section 8.258 for a hearing on a motion to stay. Prohibits a writ of withholding under this section from reducing the total amount of spousal maintenance, including arrearages, owed by the obligor.

[Sections 8.109-8.150 reserved for expansion]

#### SUBCHAPTER D. PROCEDURE

Sec. 8.151. **TIME LIMIT.** Authorizes the court to issue an order or writ for withholding under this chapter at any time before all spousal maintenance and arrearages are paid.

Sec. 8.152. **CONTENTS OF ORDER OF WITHHOLDING.** Requires an order of withholding to state certain information. Requires the order for withholding to require the obligor to notify the court promptly of any material change affecting the order, including a change of employer. Requires the court, on request by an obligee, to exclude from an order of withholding the obligee's address and social security number if the obligee or a member of the obligee's family or household is a victim of family violence and is the subject of a protective order to which the obligor is also subject. Requires the court to order the clerk to perform certain tasks, on granting a request under this section.

Sec. 8.153. **REQUEST FOR ISSUANCE OF ORDER OR WRIT OF WITHHOLDING.** Authorizes an obligor or obligee to file with the clerk of the court a request for issuance of an order or writ of withholding.

Sec. 8.154. ISSUANCE AND DELIVERY OF ORDER OR WRIT OF WITHHOLDING. Requires the clerk of the court, on receipt of a request for issuance of an order or writ of withholding, to deliver a certified copy of the order or writ to the obligor's current employer or to any subsequent employer of the obligor. Requires the clerk to attach a copy of Subchapter E to the order or writ. Requires the clerk, not later than the fourth working day after the date the order is signed or the request is filed, whichever is later, to issue and deliver the certified copy of the order or writ by a certain method.

[Sections 8.155-8.200 reserved for expansion]

#### SUBCHAPTER E. RIGHTS AND DUTIES OF EMPLOYER

Sec. 8.201. ORDER OR WRIT BINDING ON EMPLOYER. Provides that an employer required to withhold income from earnings under this chapter is not entitled to notice of the proceedings before the order of withholding is rendered or writ of withholding is issued. Provides that an order or writ of withholding is binding on an employer regardless of whether the employer is specifically named in the order or writ.

Sec. 8.202. EFFECTIVE DATE AND DURATION OF INCOME WITHHOLDING. Requires an employer to begin to withhold income in accordance with an order or writ of withholding not later than the first pay period after the date the order or writ was delivered to the employer. Requires the employer to continue to withhold income as required by the order or writ as long as the obligor is employed by the employer.

Sec. 8.203. REMITTING WITHHELD PAYMENTS. Requires the employer to remit to the person or office named in the order or writ of withholding the amount of income withheld from an obligor on each pay date. Requires the remittance to include the date on which the income withholding occurred. Requires the employer to include with each remittance certain information.

Sec. 8.204. EMPLOYER MAY DEDUCT FEE FROM EARNINGS. Authorizes an employer to deduct an administrative fee of not more than \$5 each month from the obligor's disposable earnings in addition to the amount withheld as spousal maintenance.

Sec. 8.205. HEARING REQUESTED BY EMPLOYER. Authorizes an employer, not later than the 20th day after the date an order or writ of withholding is delivered to the employer, to file with the court a motion for a hearing on the applicability of the order or writ to the employer. Requires the hearing under this section to be held on or before the 15th day after the date the motion is made. Requires an order or writ of withholding to be binding and the employer to continue to withhold income and remit the amount withheld pending further order of the court.

Sec. 8.206. LIABILITY AND OBLIGATION OF EMPLOYER FOR PAYMENTS. Provides that an employer who complies with an order or writ of withholding under this chapter is not liable to the obligor for the amount of income withheld and remitted as required by the order or writ. Provides that an employer who receives, but does not comply with, an order or writ of withholding is liable to certain individuals. Requires an employer to comply with an order of withholding for spousal maintenance or alimony issued in another state that appears regular on its face in the same manner as an order issued by a tribunal of this state. Requires the employer to notify the employee of the order and comply with the order in the manner provided by Chapter 159F, with respect to an order of withholding for child support issued by another state. Authorizes the employer to contest the order of withholding in the manner provided by that subchapter with respect to an order of withholding for child support issued by another state.

Sec. 8.207. EMPLOYER RECEIVING MULTIPLE ORDERS OR WRITS. Requires an employer who receives more than one order or writ of withholding to withhold income from the same obligor to withhold the combined amounts due under each order or writ unless the combined amounts due exceed the maximum total amount of allowed income withholding under Section 8.106. Requires the employer, if the combined amounts to be withheld under multiple orders or writs for the same obligor exceed the maximum total amount of allowed income withholding under Section 8.106, to pay, until that maximum is reached, in a certain order of priority.

Sec. 8.208. EMPLOYER'S LIABILITY FOR DISCRIMINATORY HIRING OR DISCHARGE. Prohibits an employer from using an order or writ of withholding as grounds in whole or part for the termination of employment of, or for any other disciplinary action against, an employee. Prohibits an employer from refusing to hire an employee because of an order or writ of withholding. Provides that an employer who intentionally discharges an employee in violation of this section is liable to that employee for current wages, other employment benefits, and reasonable attorney's fees and court costs incurred in enforcing the employee's rights. Requires the court, in addition to liability imposed under this section, to order with respect to an employee whose employment was suspended or terminated in violation of this section appropriate injunctive relief, including reinstatement of the employee's position with the employer and fringe benefits or seniority lost as a result of the suspension or termination. Authorizes an employee to bring an action to enforce the employee's rights under this section.

Sec. 8.209. PENALTY FOR NONCOMPLIANCE. Provides that in addition to the civil remedies provided by this subchapter or any other remedy provided by law, an employer who knowingly violates this chapter by failing to withhold income for spousal maintenance or to remit withheld income in accordance with an order or writ of withholding issued under this chapter commits an offense. Provides that an offense under this section is punishable by a fine not to exceed \$200 for each violation.

Sec. 8.210. NOTICE OF TERMINATION OF EMPLOYMENT AND OF NEW EMPLOYMENT. Requires an obligor who terminates employment with an employer who has been withholding income and the obligor's employer to each notify the court and the obligee of certain information. Requires the obligor to inform a subsequent employer of the order or writ of withholding after obtaining employment.

[Sections 8.211-8.250 reserved for expansion]

#### SUBCHAPTER F. WRIT OF WITHHOLDING ISSUED BY CLERK

Sec. 8.251. NOTICE OF APPLICATION FOR WRIT OF WITHHOLDING; FILING. Authorizes an obligor or obligee to file a notice of application for a writ of withholding if income withholding was not ordered at the time spousal maintenance was ordered. Authorizes the obligor or obligee to file the notice of application for a writ of withholding in the court that ordered the spousal maintenance under Subchapter B.

Sec. 8.252. CONTENTS OF NOTICE OF APPLICATION FOR WRIT OF WITHHOLDING. Requires the notice of application for a writ of withholding to be verified and state, describe, and include certain information.

Sec. 8.253. INTERSTATE REQUEST FOR WITHHOLDING. Provides that the registration of a foreign order that provides for spousal maintenance or alimony as provided in Chapter 159 is sufficient for filing a notice of application for a writ of withholding. Requires the notice to be filed with the clerk of the court having venue as provided in Chapter 159. Authorizes the notice of application for a writ of withholding to be delivered to the obligor at the same time that an order is filed for registration under Chapter 159.

Sec. 8.254. **ADDITIONAL ARREARAGES.** Authorizes the writ of withholding to include withholding for arrearages that accrue between the filing of the notice and the date of the hearing or the issuance of the writ, if the notice of application for a writ of withholding states that the obligor has failed to pay more than one spousal maintenance payment according to the terms of the spousal maintenance order,

Sec. 8.255. **DELIVERY OF NOTICE OF APPLICATION FOR WRIT OF WITHHOLDING; TIME OF DELIVERY.** Requires the party who files a notice of application for a writ of withholding to deliver the notice to the obligor by first-class or certified mail, return receipt requested, addressed to the obligor's last known address or place of employment or service of citation as in civil cases generally. Requires the party who filed the notice to file with the court a certificate stating the name, address, and date the party mailed the notice, if the notice is delivered by mail. Provides that the notice is considered to have been received by the obligor on a certain date.

Sec. 8.256. **MOTION TO STAY ISSUANCE OF WRIT OF WITHHOLDING.** Authorizes the obligor to stay issuance of a writ of withholding by filing a motion to stay with the clerk of the court not later than the 10th day after the date the notice of application for a writ of withholding was received. Provides that the grounds for filing a motion to stay issuance are limited to a dispute concerning the identity of the obligor or the existence or the amount of the arrearages. Requires the obligor to verify that the statements of fact in the motion to stay issuance of the writ are correct.

Sec. 8.257. **EFFECT OF FILING MOTION TO STAY.** Prohibits the clerk of the court, if the obligor files a motion to stay as provided by Section 8.256, from delivering the writ of withholding to the obligor's employer before a hearing is held.

Sec. 8.258. **HEARING ON MOTION TO STAY.** Requires the court, if the obligor files a motion to stay as provided by Section 8.256, to set a hearing on the motion and requires the clerk of the court to notify the obligor and obligee of the date, time, and place of the hearing. Requires the court to hold a hearing on the motion to stay not later than the 30th day after the date the motion was filed unless the obligor and obligee agree and waive the right to have the motion heard within 30 days. Requires the court, after the hearing, to render an order for income withholding that includes a determination of any amount of arrearages or grant the motion to stay.

Sec. 8.259. **SPECIAL EXCEPTIONS.** Provides that a defect in a notice of application for a writ of withholding is waived unless the respondent specially excepts in writing and cites with particularity the alleged defect, obscurity, or other ambiguity in the notice. Requires a special exception under this section to be heard by the court before hearing the motion to stay issuance. Requires the court, if the court sustains an exception, to provide the party filing the notice an opportunity to refile and requires the court to continue the hearing to a specified date without requiring additional service.

Sec. 8.260. **WRIT OF WITHHOLDING AFTER ARREARAGES ARE PAID.** Prohibits the court from refusing to order withholding solely on the basis that the obligor paid the arrearages after the obligor received the notice of application for a writ of withholding. Requires the court to order that a reasonable amount of income be withheld and applied toward the liquidation of arrearages, even though a judgment confirming arrearages was rendered against the obligor.

Sec. 8.261. **REQUEST FOR ISSUANCE AND DELIVERY OF WRIT OF WITHHOLDING.** Requires the party who filed the notice, if a notice of application for a writ of withholding is delivered and the obligor does not file a motion to stay within the time provided by Section 8.256, to file with the clerk of the court a request for issuance of the writ

of withholding stating the amount of current spousal maintenance, the amount of arrearages, and the amount to be withheld from the obligor's income. Prohibits the party who filed the notice from filing a request for issuance before the 11th day after the date the obligor received the notice of application for a writ of withholding.

Sec. 8.262. ISSUANCE AND DELIVERY OF WRIT OF WITHHOLDING. Requires the clerk of the court, on the filing of a request for issuance of a writ of withholding, to issue and deliver the writ as provided by Subchapter D not later than the second working day after the date the request is filed. Requires the clerk to charge a fee in the amount of \$15 for issuing the writ of withholding.

Sec. 8.263. CONTENTS OF WRIT OF WITHHOLDING. Requires a writ of withholding to direct that an obligor's employer or a subsequent employer withhold from the obligor's disposable earnings an amount for current spousal maintenance and arrearages consistent with this chapter.

Sec. 8.264. EXTENSION OF REPAYMENT SCHEDULE BY PARTY; UNREASONABLE HARDSHIP. Authorizes a party who files a notice of application for a writ of withholding and who determines that the schedule for repaying arrearages would cause unreasonable hardship to the obligor or the obligor's family to extend the payment period in the writ.

Sec. 8.265. REMITTANCE OF AMOUNT TO BE WITHHELD. Requires the obligor's employer to remit the amount withheld to the person or office named in the writ on each pay date and requires the obligor's employer to include with the remittance the date on which the withholding occurred.

Sec. 8.266. FAILURE TO RECEIVE NOTICE OF APPLICATION FOR WRIT OF WITHHOLDING. Authorizes the obligor, not later than the 30th day after the date of the first pay period after the date the obligor's employer receives a writ of withholding, to file an affidavit with the court stating certain information. Authorizes the obligor to file with the affidavit a motion to withdraw the writ of withholding and request a hearing on the applicability of the writ. Prohibits income withholding from being interrupted until after the hearing at which the court renders an order denying or modifying withholding.

Sec. 8.267. ISSUANCE AND DELIVERY OF WRIT OF WITHHOLDING TO SUBSEQUENT EMPLOYER. Authorizes a party authorized to file a notice of application for a writ of withholding under this subchapter to deliver a copy of the writ to a subsequent employer of the obligor by certified mail after the clerk of the court issues a writ of withholding. Requires the withholding, except as provided by an order under Section 8.152, to include the name, address, and signature of the party and clearly indicate that the writ is being issued to a subsequent employer. Requires the party to file a copy of the writ of withholding with the clerk not later than the third working day after the date of delivery of the writ to the subsequent employer and the postal return receipt from the delivery to the subsequent employer not later than the third working day after the date the party receives the receipt. Requires the party to pay the clerk a fee in the amount of \$15 for filing the copy of the writ.

[Sections 8.268-8.300 reserved for expansion]

#### SUBCHAPTER G. MODIFICATION, REDUCTION, OR TERMINATION OF WITHHOLDING

Sec. 8.301. AGREEMENT BY PARTIES REGARDING AMOUNT OR DURATION OF WITHHOLDING. Authorizes an obligor and obligee to agree to reduce or terminate income withholding for spousal maintenance on the occurrence of any contingency stated in the order.

Authorizes the obligor and obligee to file a notarized or acknowledged request with the clerk of the court under Section 8.108 for a revised writ of withholding or notice of termination of withholding. Requires the clerk to issue and deliver to the obligor's employer a writ of withholding that reflects the agreed revision or a notice of termination of withholding. Provides that an agreement by the parties under this section does not modify the terms of an order for spousal maintenance.

Sec. 8.302. MODIFICATIONS TO OR TERMINATION OF WITHHOLDING IN VOLUNTARY WITHHOLDING CASES. Authorizes the obligee, if an obligor initiates voluntary withholding under Section 8.108, to file with the clerk of the court a notarized request signed by the obligor and the obligee for the issuance and delivery to the obligor of a modified writ of withholding that reduces the amount of withholding or a notice of termination of withholding. Requires the clerk, on receipt of a request under this section, to issue and deliver a modified writ of withholding or notice of termination in the manner provided by Section 8.301. Authorizes the clerk to charge a fee in the amount of \$15 for issuing and delivering the modified writ of withholding or notice of termination. Authorizes an obligee to contest a modified writ of withholding or notice of termination issued under this section by requesting a hearing in the manner provided by Section 8.258 not later than the 180th day after the date the obligee discovers that the writ or notice was issued.

Sec. 8.303. TERMINATION OF WITHHOLDING IN MANDATORY WITHHOLDING CASES. Authorizes an obligor for whom withholding for maintenance owed or withholding for maintenance and child support owed is mandatory to file a motion to terminate withholding. Requires the court, on a showing by the obligor that the obligor has complied fully with the terms of the maintenance or child support order, as applicable, to render an order for the issuance and delivery to the obligor of a notice of termination of withholding. Requires the clerk to issue and deliver the notice of termination ordered under this section to the obligor. Authorizes the clerk to charge a fee in the amount of \$15 for issuing and delivering the notice.

Sec. 8.304. DELIVERY OF ORDER OF REDUCTION OR TERMINATION OF WITHHOLDING. Authorizes any person to deliver to the obligor's employer a certified copy of an order that reduces the amount of spousal maintenance to be withheld or terminates the withholding.

Sec. 8.305. LIABILITY OF EMPLOYERS. Provides that the provisions of this chapter regarding the liability of employers for withholding apply to an order that reduces or terminates withholding.

SECTION 2. Amends Section 158.207, Family Code, by adding Subsection (c) to require an employer who receives more than one order or writ of withholding that combines withholding for child support and spousal maintenance as provided by Section 8.101 to withhold income and pay the amount withheld in accordance with Section 8.207.

SECTION 3. Effective date: September 1, 2001.

- Provides that the change in law made by this Act applies to spousal maintenance payments regardless of whether the payments become due before, on, or after the effective date of this Act.