

BILL ANALYSIS

Senate Research Center
83R15182 JSC-D

H.B. 389
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Jurisprudence
5/1/2013
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Under current law, spousal maintenance may be ordered under certain provisions of the Family Code or as agreed to by the parties. Interested parties contend that, while court-ordered spousal maintenance may be enforced by contempt as to the amount, duration, and terms of the order, current law only addresses the period for which an agreed spousal maintenance may be enforced by contempt and is silent regarding the amount of agreed maintenance that may be enforced.

In addition, current law relating to income withholding for spousal maintenance does not adequately address a court's authority to order such withholding in proceedings in which there is an agreement for periodic payments of spousal maintenance.

Finally, under current law, parties to a decree of divorce or annulment may request enforcement of the decree by filing suit in the court that rendered the decree. Interested parties contend, however, that agreements to divide property, which are approved by the same court that renders the decree of divorce or annulment, are not necessarily included within the four corners of the decree.

H.B. 389 seeks to provide for the uniform enforcement of court-ordered, agreed, and contractual alimony and maintenance and to provide for the enforcement of certain property division agreements, regardless of whether the agreement is included in the decree or in a separate document.

H.B. 389 amends current law relating to the enforcement of spousal maintenance agreements and property distribution agreements incident to divorce or annulment.

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 the heading to Subchapter B, Chapter 8, Family Code, to read as follows:

SUBCHAPTER B. SPOUSAL MAINTENANCE

SECTION 2. Amends the heading to Section 8.051, Family Code, to read as follows:

Sec. 8.051. ELIGIBILITY FOR MAINTENANCE.

SECTION 3. Amends Section 8.059, Family Code, by amending Subsection (a) and adding Subsection (a-1), as follows:

(a) Authorizes the court to enforce by contempt against the obligor the court's maintenance order or an agreement for periodic payments of spousal maintenance under the terms of this chapter voluntarily entered into between the parties and approved by the court.

(a-1) Prohibits the court from enforcing by contempt any provision of an agreed order for maintenance that exceeds the amount of periodic support the court could have ordered under this chapter or for any period of maintenance beyond the period of maintenance the court could have ordered under this chapter.

SECTION 4. Amends Section 8.101, Family Code, by adding Subsections (a-1) and (a-2), as follows:

(a-1) Authorizes the court to order that income be withheld from the disposable earnings of the obligor in a proceeding in which there is an agreement for periodic payments of spousal maintenance under the terms of this chapter voluntarily entered into between the parties and approved by the court.

(a-2) Prohibits the court from ordering that income be withheld from the disposable earnings of the obligor to the extent that any provision of an agreed order for maintenance exceeds the amount of periodic support the court could have ordered under this chapter or for any period of maintenance beyond the period of maintenance the court could have ordered under this chapter.

SECTION 5. Amends Section 9.001(a), Family Code, to authorize a party affected by a decree of divorce or annulment providing for a division of property as provided by Chapter 7 (Award of Marital Property), including a division of property and any contractual provisions under the terms of an agreement incident to divorce or annulment under Section 7.006 (Agreement Incident to Divorce or Annulment) that was approved by the court, to request enforcement of that decree by filing a suit to enforce as provided by this chapter in the court that rendered the decree.

SECTION 6. Amends Section 9.002, Family Code, to provide that the court that rendered the decree of divorce or annulment retains the power to enforce the property division as provided by Chapter 7, including a property division and any contractual provisions under the terms of an agreement incident to divorce or annulment under Section 7.006 that was approved by the court.

SECTION 7. Amends Sections 9.006(a) and (b), Family Code, as follows:

(a) Authorizes the court, except as provided by this subchapter and by the Texas Rules of Civil Procedure, to render further orders to enforce the division of property made or approved in the decree of divorce or annulment to assist in the implementation of or to clarify the prior order.

(b) Authorizes the court to specify more precisely the manner of effecting the property division previously made or approved if the substantive division of property is not altered or changed.

SECTION 8. Amends Section 9.009, Family Code, to authorize the court, to enforce the division of property made or approved in a decree of divorce or annulment, to make an order to deliver the specific existing property awarded, without regard to whether the property is of especial value, including an award of an existing sum of money or its equivalent.

SECTION 9. (a) Provides that the changes in law made by this Act to Chapter 8, Family Code, apply to an order for maintenance or a maintenance agreement under Subchapter B, Chapter 8, Family Code, regardless of whether the order was rendered or the agreement was approved before, on, or after the effective date of this Act.

(b) Provides that the changes in law made by this Act to Chapter 9 (Post-Decree Proceedings), Family Code, apply to the enforcement of a property division and any contractual provisions under the terms of an agreement incident to divorce or annulment under Section 7.006, Family Code, that was approved by the court regardless of whether the agreement was approved or the decree of divorce or annulment was rendered before, on, or after the effective date of this Act.

SECTION 10. Effective date: September 1, 2013.