

## **BILL ANALYSIS**

Senate Research Center

H.B. 867  
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Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

It has been noted that qualified domestic relations orders (QDROs) may be issued under federal law for the payment of child support or spousal support obligations through the retrieval of funds from an obligor's retirement account. There have been calls to update state law to align more closely with federal law pertaining to such orders. H.B. 867 seeks to do so by providing for the issuance of QDROs permitting the payment of pension, retirement plan, or other employee benefits to satisfy amounts due under a spousal maintenance order or child support order.

H.B. 867 amends current law relating to the issuance of a qualified domestic relations order for the payment of spousal maintenance and child support obligations.

### **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 Sections 8.057(a), (b), and (c), Family Code, as follows:

(a) Authorizes the amount of maintenance specified in a court order or the portion of a decree that provides for the maintenance of a former spouse to be modified, rather than authorizes the amount of maintenance specified in a court order or the portion of a decree that provides for the support of a former spouse to be reduced, by the filing of a motion in the court that originally rendered the order.

(b) Provides that certain notices are governed by the Texas Rules of Civil Procedure applicable to the filing of an original lawsuit, including notice to establish or modify a maintenance qualified domestic relations order under Subchapter H and the response to the motion.

(c) Authorizes the court, after a hearing, to modify an original or modified order or portion of a decree providing for maintenance or a maintenance qualified domestic relations order under Subchapter H on a proper showing of a material and substantial change in circumstances that occurred after the date of the order or decree, rather than to modify an original or modified order or portion of a decree providing for maintenance on a proper showing of a material and substantial change in circumstances, including circumstances reflected in the factors specified in Section 8.052 (Factors in Determining Maintenance), relating to either party or to a child of the marriage described by Section 8.051(2)(C) (relating to a child who requires substantial care and personal supervision because of a physical or mental disability). Provides that the court:

(1) creates this subdivision from existing text and makes a nonsubstantive change; and

(2) is prohibited from increasing maintenance to an amount or duration that exceeds the amount or remaining duration of the original maintenance order.

SECTION 2. Amends Section 8.059(b), Family Code, to authorize enforcement of the judgment against a defaulting party for the amount of arrearages by any means available for the enforcement of judgment for debts, including by an order or writ of withholding and a maintenance qualified domestic relations order under Subchapter H.

SECTION 3. Amends Chapter 8, Family Code, by adding Subchapter H, as follows:

#### SUBCHAPTER H. MAINTENANCE QUALIFIED DOMESTIC RELATIONS ORDER

Sec. 8.351. JURISDICTION FOR QUALIFIED DOMESTIC RELATIONS ORDER. (a) Provides that the court that rendered an order for the payment of maintenance, or the court that obtains jurisdiction to enforce a maintenance order, has continuing jurisdiction to render enforceable qualified domestic relations orders or similar orders permitting payment of pension, retirement plan, or other employee benefits to an alternate payee or other lawful payee to satisfy amounts due under the maintenance order. Provides that a maintenance order includes a temporary or final order for maintenance and arrears and interest with respect to that order.

(b) Provides that, unless prohibited by federal law, a suit seeking a qualified domestic relations order or similar order under this subchapter applies to a pension, retirement plan, or other employee benefit, regardless of whether the pension, retirement plan, or other employee benefit is private, state, or federal, is subject to another qualified domestic relations order or similar order, is property that is the subject of a pending proceeding for dissolution of a marriage, is property disposed of in a previous decree for dissolution of a marriage, or is the subject of an agreement under Chapter 4 (Premarital and Marital Property Agreements).

(c) Provides that a court described by Subsection (a) retains jurisdiction to render a qualified domestic relations order or similar order under this subchapter until all maintenance due under the maintenance order, including arrearages and interest, has been paid.

Sec. 8.352. PROCEDURE. (a) Authorizes a party to a maintenance order to petition the court for a qualified domestic relations order or similar order in an original suit or in an action for enforcement of the maintenance order under Chapter 8 (Maintenance).

(b) Provides that each party whose rights may be affected by the petition is entitled to receive notice.

Sec. 8.353. TEMPORARY ORDERS. (a) Authorizes the court, while a suit for a qualified domestic relations order or similar order is pending or during an appeal of an enforcement order, and on the motion of a party or on the court's own motion after notice and hearing, to render an appropriate order, including the granting of a temporary restraining order and temporary injunction, for the preservation of the pension, retirement plan, or other employee benefits and protection of the parties as the court considers necessary.

(b) Provides that an order under this section is not subject to interlocutory appeal.

Sec. 8.354. DEFECTIVE PRIOR DOMESTIC RELATIONS ORDER. Provides that if a plan administrator or other person acting in an equivalent capacity determines that a domestic relations order does not satisfy the requirements of a qualified domestic relations order or similar order, the court retains continuing jurisdiction over the parties to the extent necessary to render a qualified domestic relations order.

Sec. 8.355. AMENDMENT OF QUALIFIED DOMESTIC RELATIONS ORDER. (a) Provides that a court that renders a qualified domestic relations order or similar order retains continuing jurisdiction to amend the order to correct the order, clarify the terms of the order, or add language to the order to provide for the collection of maintenance, to

convert the amount or frequency of payments under the order to a formula that is in compliance with the terms of the pension, retirement plan, or employee benefit plan, or to vacate or terminate the order.

(b) Requires that an amended domestic relations order or similar order under this section be submitted to the plan administrator or other person acting in an equivalent capacity to determine whether the amended order satisfies the requirements of a qualified domestic relations order or similar order. Provides that Section 8.354 applies to an order amended under this section.

Sec. 8.356. LIBERAL CONSTRUCTION. Requires the court to liberally construe this subchapter to effect payment of pension, retirement plan, or other employee benefits for the satisfaction of the obligor's maintenance obligation.

Sec. 8.357. ATTORNEY'S FEES AND COSTS. (a) Authorizes the court, in a proceeding under this subchapter, to order the obligor to pay reasonable attorney's fees incurred by a party to obtain the order, all court costs, and all fees charged by a plan administrator for the qualified domestic relations order or similar order.

(b) Authorizes enforcement of fees and costs ordered under this section by any means available for the enforcement of a judgment for debt.

Sec. 8.358. DIRECT PAYMENT. Authorizes the making of payments under a qualified domestic relations order under this subchapter by direct payment or other method ordered by the court.

Sec. 8.359. CONFLICTS WITH OTHER LAW. (a) Provides that to the extent of a conflict between this subchapter and Chapter 804 (Domestic Relations Orders and Spousal Consent), Government Code, Chapter 804, Government Code, prevails.

(b) Provides that to the extent of a conflict between this subchapter and federal law, the federal law prevails.

SECTION 4. Amends Section 154.003, Family Code, to authorize the court to order that child support be paid by certain payments, including by pension, retirement, or other employee benefits in accordance with an enforceable qualified domestic relations order or similar order under Subchapter J, Chapter 157 (Enforcement). Makes nonsubstantive changes.

SECTION 5. Amends Chapter 157, Family Code, by adding Subchapter J, as follows:

#### SUBCHAPTER J. CHILD SUPPORT QUALIFIED DOMESTIC RELATIONS ORDER

Sec. 157.501. JURISDICTION FOR QUALIFIED DOMESTIC RELATIONS ORDER.

(a) Provides that the court that rendered an order for the payment of child support, or the court that obtains jurisdiction to enforce a child support order under Chapter 159 (Uniform Interstate Family Support Act), has continuing jurisdiction to render enforceable qualified domestic relations orders or similar orders permitting payment of pension, retirement plan, or other employee benefits to an alternate payee or other lawful payee to satisfy support amounts due under the child support order. Provides that a child support order includes a temporary or final order for child support, medical support, or dental support and arrears and interest with respect to that order.

(b) Provides that, unless prohibited by federal law, a suit seeking a qualified domestic relations order or similar order under this subchapter applies to a pension, retirement plan, or other employee benefit, regardless of whether the pension, retirement plan, or other employee benefit is private, state, or federal, is subject to another qualified domestic relations order or similar order, is property that is the subject of a pending proceeding for dissolution of a marriage, is property disposed of in a previous decree for dissolution of a marriage, or is the subject of an agreement under Chapter 4.

(c) Provides that a court described by Subsection (a) retains jurisdiction to render a qualified domestic relations order or similar order under this subchapter until all support due under the child support order, including arrearages and interest, has been paid.

Sec. 157.502. PROCEDURE. (a) Authorizes a party to a child support order, or the Title IV-D agency in a Title IV-D case, to petition the court for a qualified domestic relations order or similar order in an original suit or in an action for child support enforcement under Chapter 157.

(b) Provides that each party whose rights may be affected by the petition is entitled to receive notice under Subchapter B (Spousal Maintenance).

Sec. 157.503. TEMPORARY ORDERS. (a) Authorizes the court, while a suit for a qualified domestic relations order or similar order is pending or during an appeal of an enforcement order, and on the motion of a party or on the court's own motion after notice and hearing, to render an appropriate order, including the granting of a temporary restraining order and temporary injunction, for the preservation of the pension, retirement plan, or other employee benefits and protection of the parties as the court considers necessary.

(b) Provides that an order under this section is not subject to interlocutory appeal.

Sec. 157.504. DEFECTIVE PRIOR DOMESTIC RELATIONS ORDER. Provides that if a plan administrator or other person acting in an equivalent capacity determines that a domestic relations order does not satisfy the requirements of a qualified domestic relations order or similar order, the court retains continuing jurisdiction over the parties to the extent necessary to render a qualified domestic relations order.

Sec. 157.505. AMENDMENT OF QUALIFIED DOMESTIC RELATIONS ORDER. (a) Provides that a court that renders a qualified domestic relations order or similar order retains continuing jurisdiction to amend the order to correct the order, clarify the terms of the order, or add language to the order to provide for the collection of child support, to convert the amount or frequency of payments under the order to a formula that is in compliance with the terms of the pension, retirement plan, or employee benefit plan, or to vacate or terminate the order.

(b) Requires that an amended domestic relations order or similar order under this section be submitted to the plan administrator or other person acting in an equivalent capacity to determine whether the amended order satisfies the requirements of a qualified domestic relations order or similar order. Provides that Section 157.504 applies to an order amended under this section.

Sec. 157.506. LIBERAL CONSTRUCTION. Requires the court to liberally construe this subchapter to effect payment of pension, retirement plan, or other employee benefits for the satisfaction of the obligor's child support obligation.

Sec. 157.507. ATTORNEY'S FEES AND COSTS. (a) Authorizes the court, in a proceeding under this subchapter, to order the obligor to pay reasonable attorney's fees incurred by a party to obtain the order, all court costs, and all fees charged by a plan administrator for the qualified domestic relations order or similar order.

(b) Authorizes enforcement of fees and costs ordered under this section by any means available for the enforcement of child support, including contempt.

Sec. 157.508. CONFLICTS WITH OTHER LAW. (a) Provides that to the extent of a conflict between this subchapter and Chapter 804, Government Code, Chapter 804, Government Code, prevails.

(b) Provides that to the extent of a conflict between this subchapter and federal law, the federal law prevails.

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

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

SECTION 7. Effective date: September 1, 2021.