

By:

\_\_\_\_.B. No.\_\_\_\_

A BILL TO BE ENTITLED

1 AN ACT

2 relating to spousal maintenance.

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

4 SECTION 1. Section 8.052, Family Code, is amended to read as  
5 follows:

6 Sec. 8.052. FACTORS IN DETERMINING ORIGINAL MAINTENANCE  
7 ORDER.(a) A court that determines that a spouse is eligible to  
8 receive maintenance under this chapter shall determine the nature,  
9 amount, duration, and manner of periodic payments by considering  
10 all relevant factors, including:

11 (1) each spouse's ability to provide for that spouse's  
12 minimum reasonable needs independently, considering that spouse's  
13 financial resources on dissolution of the marriage;

14 (2) the education and employment skills of the spouses, the  
15 time necessary to acquire sufficient education or training to  
16 enable the spouse seeking maintenance to earn sufficient income,  
17 and the availability and feasibility of that education or training;

18 (3) the duration of the marriage;

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

1 (5) the effect on each spouse's ability to provide for that  
2 spouse's minimum reasonable needs while providing periodic child  
3 support payments or maintenance, if applicable;

4 (6) acts by either spouse resulting in excessive or abnormal  
5 expenditures or destruction, concealment, or fraudulent disposition  
6 of community property, joint tenancy, or other property held in  
7 common;

8 (7) the contribution by one spouse to the education,  
9 training, or increased earning power of the other spouse;

10 (8) the property brought to the marriage by either spouse;

11 (9) the contribution of a spouse as homemaker;

12 (10) marital misconduct, including adultery and cruel  
13 treatment, by either spouse during the marriage;

14 (11) any history or pattern of family violence, as defined by  
15 Section 71.004; and

16 (12) intentional unemployment or underemployment of either  
17 spouse.

18 (b) If the actual income of either spouse is significantly  
19 less than what the spouse could earn because of intentional  
20 unemployment or underemployment, the court may deem gross income in  
21 accordance with the earning potential of that spouse.

1       (c) In determining whether a spouse is intentionally  
2 unemployed or underemployed, the court may consider evidence that  
3 the spouse is a veteran, as defined by 38 U.S.C. Section 101(2),  
4 who is seeking or has been awarded:

5       (1) United States Department of Veterans Affairs disability  
6 benefits, as defined by 38 U.S.C. Section 101(16); or

7       (2) non-service-connected disability pension benefits, as  
8 defined by 38 U.S.C. Section 101(17).

9       (d) When appropriate, in order to determine the gross income  
10 available for maintenance, the court may assign a reasonable amount  
11 of deemed income attributable to assets that do not currently  
12 produce income. The court shall also consider whether certain  
13 property that is not producing income can be liquidated without an  
14 unreasonable financial sacrifice because of cyclical or other  
15 market conditions. If there is no effective market for the  
16 property, the carrying costs of such an investment, including  
17 property taxes and note payments, shall be offset against the  
18 income attributed to the property.

19       (e) The court may assign a reasonable amount of deemed income  
20 to income-producing assets that a party has voluntarily transferred  
21 or on which earnings have intentionally been reduced.

1 SECTION 2. Sections 8.057(a) and (c), Family Code, are  
2 amended to read as follows:

3 Sec. 8.057. MODIFICATION OF MAINTENANCE ORDER. (a) The  
4 amount of maintenance specified in a court order or the portion of  
5 a decree that provides for the ~~support~~ maintenance of a former  
6 spouse may be ~~reduced~~ modified by the filing of a motion in the  
7 court that originally rendered the order. A party affected by the  
8 order or the portion of the decree to be modified may file the  
9 motion.

10 (b) Notice of a motion to modify maintenance and the  
11 response, if any, are governed by the Texas Rules of Civil  
12 Procedure applicable to the filing of an original lawsuit. Notice  
13 must be given by service of citation, and a response must be in the  
14 form of an answer due on or before 10 a.m. of the first Monday  
15 after 20 days after the date of service. A court shall set a  
16 hearing on the motion in the manner provided by Rule 245, Texas  
17 Rules of Civil Procedure.

18 (c) After a hearing, the court may modify an original or  
19 modified order or portion of a decree providing for maintenance on  
20 a proper showing of a material and substantial change in  
21 circumstances since the date of the order sought to be modified,

1 including circumstances reflected in the factors specified in  
2 Section 8.052, relating to either party or to a child of the  
3 marriage described by Section 8.051(2)(C), ~~if applicable~~. The court  
4 may only increase maintenance to an amount and duration not to  
5 exceed the amount and remaining duration of the original  
6 maintenance order. The court shall apply the modification only to  
7 payment accruing after the filing of the motion to modify.

8 SECTION 3. (a) The changes in law made by this Act apply  
9 only to a suit that is filed on or after the effective date of this  
10 Act. A suit filed before the effective date of this Act is  
11 governed by the law in effect on the date the application is filed,  
12 and the former law is continued in effect for that purpose.

13 SECTION 4. This Act takes effect September 1, 2021

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