

SUBJECT: Issuing certain orders for the payment of child and spousal support

COMMITTEE: Juvenile Justice and Family Issues — favorable, without amendment

VOTE: 9 ayes — Neave, Swanson, Cook, Frank, Leach, Ramos, Talarico, Vasut, Wu

0 nays

WITNESSES: For — Charla Bradshaw, Texas Family Law Foundation; (*Registered, but did not testify*: Amy Bresnen, Steve Bresnen, and Bill Morris, Texas Family Law Foundation; Thomas Parkinson)

Against — (*Registered, but did not testify*: Taran Champagne)

On — Joel Rogers, Office of the Attorney General - Child Support Division; Art Alfaro, Texas Association of Public Employee Retirement Systems

BACKGROUND: Government Code sec. 804.001(2) defines "domestic relations order" as any judgment, decree, or order that relates to providing child support, alimony payments, or marital property rights to a spouse, former spouse, child, or other dependent.

Sec. 804.001(4) defines "qualified domestic relations order" as a domestic relations order that creates or recognizes the existence of an alternate payee's right or assigns an alternate payee the right to receive all or a portion of the benefits payable to a member or retiree under a public retirement system.

DIGEST: HB 867 would provide for the issuance of qualified domestic relations orders (QDRO) for the payment of spousal maintenance or child support.

Unless prohibited by federal law, a suit seeking a QDRO or similar order under the bill would apply to a pension, retirement plan, or other employee benefit regardless of whether the benefit:

- was private, state, or federal;
- was subject to another QDRO or similar order;
- was property that was the subject of a pending proceeding for the dissolution of a marriage;
- was property disposed of in a previous decree for dissolution of a marriage; or
- was the subject of a premarital or marital property agreement.

Jurisdiction. Under the bill, the court that rendered or obtained jurisdiction to enforce an order for the payment of maintenance or child support would have continuing jurisdiction to render enforceable QDROs or similar orders. These orders would permit pension, retirement plan, or other employee benefits to be paid to certain payees in order to satisfy amounts due under the maintenance or child support order.

A maintenance order would include a temporary or final order for maintenance, and a child support order would include a temporary or final order for child support, medical or dental support. Both types of orders would include arrears and interest. The court would retain jurisdiction to render a QDRO or similar order until all maintenance or child support due under the order, including arrearages and interest, had been paid.

Procedure. HB 867 would authorize parties to a maintenance order or a child support order to petition the court for a QDRO or similar order in an original suit or in an action for enforcement. Each party whose rights could be affected by the petition would be entitled to receive notice.

Orders. While a suit for a QDRO or similar order was pending or during an appeal of an enforcement order, HB 867 would allow the court to issue temporary orders, including the granting of a temporary restraining order and temporary injunction, to preserve pension, retirement plan, or other employee benefits. Temporary orders would not be subject to interlocutory appeal.

If a plan administrator or equivalent person determined that a domestic

relations order did not satisfy the requirements of a QDRO or similar order, the court would retain continuing jurisdiction to the extent necessary to render an order. In addition, a court that issued a QDRO or similar order would retain continuing jurisdiction to make amendments to correct or clarify the order, add language to provide for the collection of maintenance or child support, convert the amount or frequency of payments to a formula in compliance with the terms of the pension or other benefit plan, or to vacate or terminate the order. An amended QDRO would have to be submitted to the plan administrator or other appropriate person for compliance review.

Other provisions. The court would be required to liberally construe the provisions of the bill to effect the payment of benefits in order to satisfy the obligor's spousal maintenance or child support obligations. The court also could 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 the plan administrator for the QDRO or similar order.

Fees and costs related to the collection and payment of spousal maintenance could be enforced by any means available for the enforcement of a judgment for debt. Child support-related fees and costs could be enforced by any means available, including contempt. QDRO payments for maintenance under the bill could be made by direct payment or by another method ordered by the court.

The bill would take effect September 1, 2021 and would apply to an order for maintenance or for child support, as applicable, regardless of when the order was rendered.

SUPPORTERS
SAY:

HB 867 would give Texas courts an important tool to aid in the collection of unpaid child support and spousal maintenance. Each year millions of dollars in support and maintenance payments goes uncollected in the state, depriving adults and children of necessary financial support. By clarifying the use of qualified domestic relations orders (QRDOs), the bill would

help ensure that children and adults receive the financial support to which they are entitled.

Texas family law attorneys and the attorney general's office historically have used qualified domestic relations orders (QDROs) for the collection and payment of child support and spousal maintenance. However, recent confusion among judges regarding the use of QDROs has made it more difficult and costly to apply this useful tool to collections. HB 867 would help eliminate this confusion by amending statute to align Texas law with federal law, which clearly supports the use of QDROs for collecting child support and spousal maintenance. The bill also would reduce attorneys fees and state spending on litigation in child support cases, saving individuals and Texas taxpayers money while better serving children and adults who rely on court-ordered financial support.

Any concerns about the bill improperly giving judges control over how administrators of public retirement systems manage QDROs for their members could be addressed in a floor amendment.

**CRITICS
SAY:**

HB 867 could give judges too much control over how public pension and retirement plans administer QDROs. Public pension plans and other employee benefit plans are complicated and best left to the management of plan administrators.

NOTES:

The author intends to offer a floor amendment that would specify that should the bill's provisions conflict with Government Code ch. 804 pertaining to public retirement systems, the Government Code would prevail. The amendment also would specify that to the extent of a conflict between the bill's provisions and federal law, federal law would prevail.