

FAMILY CODE CHAPTER 8. MAINTENANCE

FAMILY CODE

TITLE 1. THE MARRIAGE RELATIONSHIP

SUBTITLE C. DISSOLUTION OF MARRIAGE

CHAPTER 8. MAINTENANCE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 8.001. DEFINITIONS. In this chapter:

(1) "Maintenance" means an award in a suit for dissolution of a marriage of periodic payments from the future income of one spouse for the support of the other spouse.

(2) "Notice of application for a writ of withholding" means the document delivered to an obligor and filed with the court as required by this chapter for the nonjudicial determination of arrears and initiation of withholding for spousal maintenance.

(3) "Obligee" means a person entitled to receive payments under the terms of an order for spousal maintenance.

(4) "Obligor" means a person required to make periodic payments under the terms of an order for spousal maintenance.

(5) "Writ of withholding" means the document issued by the clerk of a court and delivered to an employer, directing that earnings be withheld for payment of spousal maintenance as provided by this chapter.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

Amended by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

SUBCHAPTER B. COURT-ORDERED MAINTENANCE

Sec. 8.051. ELIGIBILITY FOR MAINTENANCE; COURT ORDER. In a suit for dissolution of a marriage or in a proceeding for maintenance in a court with personal jurisdiction over both former spouses following the dissolution of their marriage by a court that lacked personal jurisdiction over an absent spouse, the court may order maintenance for either spouse only if:

(1) the spouse from whom maintenance is requested was convicted of or received deferred adjudication for a criminal offense that also constitutes an act of family violence under Title

4 and the offense occurred:

(A) within two years before the date on which a suit for dissolution of the marriage is filed; or

(B) while the suit is pending; or

(2) the duration of the marriage was 10 years or longer, the spouse seeking maintenance lacks sufficient property, including property distributed to the spouse under this code, to provide for the spouse's minimum reasonable needs, as limited by Section 8.054, and the spouse seeking maintenance:

(A) is unable to support himself or herself through appropriate employment because of an incapacitating physical or mental disability;

(B) is the custodian of a child of the marriage of any age who requires substantial care and personal supervision because a physical or mental disability makes it necessary, taking into consideration the needs of the child, that the spouse not be employed outside the home; or

(C) clearly lacks earning ability in the labor market adequate to provide support for the spouse's minimum reasonable needs, as limited by Section 8.054.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 6.05, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 304, Sec. 1, eff. Sept. 1, 1999.

Renumbered from Sec. 8.002 and amended by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 914, Sec. 1, eff. September 1, 2005.

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

(1) the financial resources of the spouse seeking maintenance, including the community and separate property and liabilities apportioned to that spouse in the dissolution proceeding, and that spouse's ability to meet the spouse's needs

independently;

(2) the education and employment skills of the spouses, the time necessary to acquire sufficient education or training to enable the spouse seeking maintenance to find appropriate employment, the availability of that education or training, and the feasibility of that education or training;

(3) the duration of the marriage;

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

(5) the ability of the spouse from whom maintenance is requested to meet that spouse's personal needs and to provide periodic child support payments, if applicable, while meeting the personal needs of the spouse seeking maintenance;

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

(7) the comparative financial resources of the spouses, including medical, retirement, insurance, or other benefits, and the separate property of each spouse;

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

(9) the property brought to the marriage by either spouse;

(10) the contribution of a spouse as homemaker;

(11) marital misconduct of the spouse seeking maintenance; and

(12) the efforts of the spouse seeking maintenance to pursue available employment counseling as provided by Chapter 304, Labor Code.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997. Renumbered from Sec. 8.003 by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

Sec. 8.053. PRESUMPTION. (a) Except as provided by Subsection (b), it is presumed that maintenance under Section 8.051(2) is not warranted unless the spouse seeking maintenance has

exercised diligence in:

(1) seeking suitable employment; or

(2) developing the necessary skills to become self-supporting during a period of separation and during the time the suit for dissolution of the marriage is pending.

(b) This section does not apply to a spouse who is not able to satisfy the presumption in Subsection (a) because the spouse:

(1) has an incapacitating physical or mental disability; or

(2) is the custodian of a child of the marriage of any age who requires substantial care and personal supervision because a physical or mental disability makes it necessary, taking into consideration the needs of the child, that the spouse not be employed outside the home.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

Renumbered from Sec. 8.004 by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 914, Sec. 2, eff. September 1, 2005.

Sec. 8.054. DURATION OF MAINTENANCE ORDER. (a) Except as provided by Subsection (b), a court:

(1) may not order maintenance that remains in effect for more than three years after the date of the order; and

(2) shall limit the duration of a maintenance order to the shortest reasonable period that allows the spouse seeking maintenance to meet the spouse's minimum reasonable needs by obtaining appropriate employment or developing an appropriate skill, unless the ability of the spouse to provide for the spouse's minimum reasonable needs through employment is substantially or totally diminished because of:

(A) physical or mental disability;

(B) duties as the custodian of an infant or young child; or

(C) another compelling impediment to gainful employment.

(b) If a spouse seeking maintenance is unable to support

himself or herself through appropriate employment because the spouse has an incapacitating physical or mental disability or because the spouse is the custodian of a child of the marriage of any age who has a physical or mental disability, the court may order maintenance for as long as the disability continues. The court may order periodic review of its order, on the request of either party or on its own motion, to determine whether the disability continues to render the spouse unable to support himself or herself through appropriate employment. The continuation of spousal maintenance under these circumstances is subject to a motion to modify as provided by Section 8.057.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.
Renumbered from Sec. 8.005 and amended by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 914, Sec. 3, eff. September 1, 2005.

Sec. 8.055. AMOUNT OF MAINTENANCE. (a) A court may not order maintenance that requires an obligor to pay monthly more than the lesser of:

(1) \$2,500; or

(2) 20 percent of the spouse's average monthly gross income.

(b) The court shall set the amount that an obligor is required to pay in a maintenance order to provide for the minimum reasonable needs of the obligee, considering employment or property received in the dissolution of the marriage or otherwise owned by the obligee that contributes to the minimum reasonable needs of the obligee.

(c) Department of Veterans Affairs service-connected disability compensation, social security benefits and disability benefits, and workers' compensation benefits are excluded from maintenance.

(d) For purposes of this chapter, "gross income" means resources as defined in Sections 154.062(b) and (c), disregarding any deductions listed in Section 154.062(d) and disregarding those benefits excluded under Subsection (c) of this section.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.
Renumbered from Sec. 8.006 and amended by Acts 2001, 77th Leg., ch.
807, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1138,
Sec. 1, eff. Sept. 1, 2003.

Sec. 8.056. TERMINATION. (a) The obligation to pay future maintenance terminates on the death of either party or on the remarriage of the obligee.

(b) After a hearing, the court shall terminate the maintenance order if the obligee cohabits with another person in a permanent place of abode on a continuing, conjugal basis.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.
Renumbered from Sec. 8.007 and amended by Acts 2001, 77th Leg., ch.
807, Sec. 1, eff. Sept. 1, 2001.

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

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

(c) After a hearing, the court may 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 of either party. The court shall apply the modification only to payment accruing after the filing of the motion to modify.

(d) A loss of employment or circumstances that render a former spouse unable to support himself or herself through appropriate employment by reason of incapacitating physical or

mental disability that occur after the divorce or annulment are not grounds for the institution of spousal maintenance for the benefit of the former spouse.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

Renumbered from Sec. 8.008 by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

Sec. 8.058. MAINTENANCE ARREARAGES. A spousal maintenance payment not timely made constitutes an arrearage.

Added by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

Sec. 8.059. ENFORCEMENT OF MAINTENANCE ORDER. (a) The court may enforce by contempt the court's maintenance order or an agreement for the payment of maintenance voluntarily entered into between the parties and approved by the court.

(b) On the suit to enforce by an obligee, the court may render judgment against a defaulting party for the amount of arrearages after notice by service of citation, answer, if any, and a hearing finding that the defaulting party has failed or refused to carry out the terms of the order. The judgment may be enforced by any means available for the enforcement of judgment for debts.

(c) It is an affirmative defense to an allegation of contempt of court or the violation of a condition of probation requiring payment of court-ordered maintenance that the obligor:

(1) lacked the ability to provide maintenance in the amount ordered;

(2) lacked property that could be sold, mortgaged, or otherwise pledged to raise the funds needed;

(3) attempted unsuccessfully to borrow the needed funds; and

(4) did not know of a source from which the money could have been borrowed or otherwise legally obtained.

(d) The issue of the existence of an affirmative defense does not arise unless evidence is admitted supporting the defense. If the issue of the existence of an affirmative defense arises, an obligor must prove the affirmative defense by a preponderance of the evidence.

(e) A court may 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.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.
Renumbered from Sec. 8.009 and amended by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

Sec. 8.060. PUTATIVE SPOUSE. In a suit to declare a marriage void, a putative spouse who did not have knowledge of an existing impediment to a valid marriage may be awarded maintenance if otherwise qualified to receive maintenance under this chapter.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.
Renumbered from Sec. 8.010 by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

Sec. 8.061. UNMARRIED COHABITANTS. An order for maintenance is not authorized between unmarried cohabitants under any circumstances.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.
Renumbered from Sec. 8.011 by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

SUBCHAPTER C. INCOME WITHHOLDING

Sec. 8.101. INCOME WITHHOLDING; GENERAL RULE. (a) In a proceeding in which periodic payments of spousal maintenance are ordered, modified, or enforced, the court may order that income be withheld from the disposable earnings of the obligor as provided by this chapter.

(b) This subchapter does not apply to contractual alimony or spousal maintenance, regardless of whether the alimony or maintenance is taxable, unless:

(1) the contract specifically permits income withholding; or

(2) the alimony or maintenance payments are not timely made under the terms of the contract.

(c) An order or writ of withholding for spousal maintenance may 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.

(d) An order or writ of withholding that combines withholding for spousal maintenance and child support must:

(1) require that the withheld amounts be paid to the appropriate place of payment under Section 154.004;

(2) be in the form prescribed by the Title IV-D agency under Section 158.106;

(3) clearly indicate the amounts withheld that are to be applied to current spousal maintenance and to any maintenance arrearages; and

(4) subject to the maximum withholding allowed under Section 8.106, order that withheld income be applied in the following order of priority:

(A) current child support;

(B) current spousal maintenance;

(C) child support arrearages; and

(D) spousal maintenance arrearages.

(e) Garnishment for the purposes of spousal maintenance does not apply to unemployment insurance benefit payments.

Added by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

Sec. 8.102. WITHHOLDING FOR ARREARAGES IN ADDITION TO CURRENT SPOUSAL MAINTENANCE. (a) The court may order that, in addition to income withheld for current spousal maintenance, income be withheld from the disposable earnings of the obligor to be applied toward the liquidation of any arrearages.

(b) The additional amount withheld to be applied toward arrearages must be whichever of the following amounts will discharge the arrearages in the least amount of time:

(1) an amount sufficient to discharge the arrearages in not more than two years; or

(2) 20 percent of the amount withheld for current maintenance.

Added by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

Sec. 8.103. WITHHOLDING FOR ARREARAGES WHEN CURRENT MAINTENANCE IS NOT DUE. A court may 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.

Added by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

Sec. 8.104. WITHHOLDING TO SATISFY JUDGMENT FOR ARREARAGES. The court, in rendering a cumulative judgment for arrearages, may 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.

Added by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

Sec. 8.105. PRIORITY OF WITHHOLDING. 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.

Added by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

Sec. 8.106. MAXIMUM AMOUNT WITHHELD FROM EARNINGS. An order or writ of withholding must direct that an obligor's employer withhold from the obligor's disposable earnings the lesser of:

(1) the amount specified in the order or writ; or

(2) an amount that, when added to the amount of income being withheld by the employer for child support, is equal to 50 percent of the obligor's disposable earnings.

Added by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

Sec. 8.107. ORDER OR WRIT BINDING ON EMPLOYER DOING BUSINESS IN THIS STATE. 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.

Added by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

Sec. 8.108. VOLUNTARY WRIT OF WITHHOLDING BY OBLIGOR.

(a) An obligor may 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. The obligor may 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.

(b) On receipt of a request under this section, the clerk shall issue and deliver a writ of withholding in the manner provided by this subchapter.

(c) An employer who receives a writ of withholding issued under this section may request a hearing in the same manner and according to the same terms provided by Section 8.205.

(d) An obligor whose employer receives a writ of withholding issued under this section may request a hearing in the manner provided by Section 8. 258.

(e) An obligee may 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.

(f) A writ of withholding under this section may not reduce the total amount of spousal maintenance, including arrearages, owed by the obligor.

Added by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

SUBCHAPTER D. PROCEDURE

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

Added by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

Sec. 8.152. CONTENTS OF ORDER OF WITHHOLDING. (a) An order of withholding must state:

(1) the style, cause number, and court having jurisdiction to enforce the order;

(2) the name, address, and, if available, the social

security number of the obligor;

(3) the amount and duration of the spousal maintenance payments, including the amount and duration of withholding for arrearages, if any; and

(4) the name, address, and, if available, the social security number of the obligee.

(b) The order for withholding must require the obligor to notify the court promptly of any material change affecting the order, including a change of employer.

(c) On request by an obligee, the court may 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. On granting a request under this subsection, the court shall order the clerk to:

(1) strike the address and social security number required by Subsection (a) from the order or writ of withholding; and

(2) maintain a confidential record of the obligee's address and social security number to be used only by the court.

Added by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

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

Added by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

Sec. 8.154. ISSUANCE AND DELIVERY OF ORDER OR WRIT OF WITHHOLDING. (a) On receipt of a request for issuance of an order or writ of withholding, the clerk of the court shall deliver a certified copy of the order or writ to the obligor's current employer or to any subsequent employer of the obligor. The clerk shall attach a copy of Subchapter E to the order or writ.

(b) Not later than the fourth working day after the date the order is signed or the request is filed, whichever is later, the clerk shall issue and deliver the certified copy of the order or writ by:

(1) certified or registered mail, return receipt requested, to the employer; or

(2) service of citation to:

(A) the person authorized to receive service of process for the employer in civil cases generally; or

(B) a person designated by the employer by written notice to the clerk to receive orders or notices of income withholding.

Added by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

SUBCHAPTER E. RIGHTS AND DUTIES OF EMPLOYER

Sec. 8.201. ORDER OR WRIT BINDING ON EMPLOYER. (a) 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.

(b) An order or writ of withholding is binding on an employer regardless of whether the employer is specifically named in the order or writ.

Added by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

Sec. 8.202. EFFECTIVE DATE AND DURATION OF INCOME WITHHOLDING. An employer shall 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. The employer shall continue to withhold income as required by the order or writ as long as the obligor is employed by the employer.

Added by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

Sec. 8.203. REMITTING WITHHELD PAYMENTS. (a) The employer shall 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. The remittance must include the date on which the income withholding occurred.

(b) The employer shall include with each remittance:

(1) the cause number of the suit under which income withholding is required;

(2) the payor's name; and

(3) the payee's name, unless the remittance is made by electronic funds transfer.

Added by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

Sec. 8.204. EMPLOYER MAY DEDUCT FEE FROM EARNINGS. An employer may 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.

Added by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

Sec. 8.205. HEARING REQUESTED BY EMPLOYER. (a) Not later than the 20th day after the date an order or writ of withholding is delivered to an employer, the employer may file with the court a motion for a hearing on the applicability of the order or writ to the employer.

(b) The hearing under this section must be held on or before the 15th day after the date the motion is made.

(c) An order or writ of withholding is binding and the employer shall continue to withhold income and remit the amount withheld pending further order of the court.

Added by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

Sec. 8.206. LIABILITY AND OBLIGATION OF EMPLOYER FOR PAYMENTS. (a) 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.

(b) An employer who receives, but does not comply with, an order or writ of withholding is liable to:

(1) the obligee for any amount of spousal maintenance not paid in compliance with the order or writ;

(2) the obligor for any amount withheld from the obligor's disposable earnings, but not remitted to the obligee; and

(3) the obligee or obligor for reasonable attorney's fees and court costs incurred in recovering an amount described by

Subdivision (1) or (2).

(c) An employer shall 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. The employer shall notify the employee of the order and comply with the order in the manner provided by Subchapter F, Chapter 159, with respect to an order of withholding for child support issued by another state. The employer may 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.

Added by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

Sec. 8.207. EMPLOYER RECEIVING MULTIPLE ORDERS OR WRITS.

(a) An employer who receives more than one order or writ of withholding to withhold income from the same obligor shall 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.

(b) 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, the employer shall pay, until that maximum is reached, in the following order of priority:

(1) an equal amount toward current child support owed by the obligor in each order or writ until the employer has complied fully with each current child support obligation;

(2) an equal amount toward current maintenance owed by the obligor in each order or writ until the employer has complied fully with each current maintenance obligation;

(3) an equal amount toward child support arrearages owed by the obligor in each order or writ until the employer has complied fully with each order or writ for child support arrearages; and

(4) an equal amount toward maintenance arrearages owed by the obligor in each order or writ until the employer has complied fully with each order or writ for spousal maintenance arrearages.

Added by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

Sec. 8.208. EMPLOYER'S LIABILITY FOR DISCRIMINATORY HIRING OR DISCHARGE. (a) An employer may not use 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.

(b) An employer may not refuse to hire an employee because of an order or writ of withholding.

(c) 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.

(d) In addition to liability imposed under Subsection (c), the court shall order with respect to an employee whose employment was suspended or terminated in violation of this section appropriate injunctive relief, including reinstatement of:

(1) the employee's position with the employer; and

(2) fringe benefits or seniority lost as a result of the suspension or termination.

(e) An employee may bring an action to enforce the employee's rights under this section.

Added by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

Sec. 8.209. PENALTY FOR NONCOMPLIANCE. (a) 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.

(b) An offense under this section is punishable by a fine not to exceed \$200 for each violation.

Added by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

Sec. 8.210. NOTICE OF TERMINATION OF EMPLOYMENT AND OF NEW EMPLOYMENT. (a) An obligor who terminates employment with an employer who has been withholding income and the obligor's employer

shall each notify the court and the obligee of:

- (1) the termination of employment not later than the seventh day after the date of termination;
- (2) the obligor's last known address; and
- (3) the name and address of the obligor's new employer, if known.

(b) The obligor shall inform a subsequent employer of the order or writ of withholding after obtaining employment.

Added by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

SUBCHAPTER F. WRIT OF WITHHOLDING ISSUED BY CLERK

Sec. 8.251. NOTICE OF APPLICATION FOR WRIT OF WITHHOLDING; FILING. (a) An obligor or obligee may file a notice of application for a writ of withholding if income withholding was not ordered at the time spousal maintenance was ordered.

(b) The obligor or obligee may file the notice of application for a writ of withholding in the court that ordered the spousal maintenance under Subchapter B.

Added by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

Sec. 8.252. CONTENTS OF NOTICE OF APPLICATION FOR WRIT OF WITHHOLDING. The notice of application for a writ of withholding must be verified and:

(1) state the amount of monthly maintenance due, including the amount of arrearages or anticipated arrearages, and the amount of disposable earnings to be withheld under a writ of withholding;

(2) state that the withholding applies to each current or subsequent employer or period of employment;

(3) state that the obligor's employer will be notified to begin the withholding if the obligor does not contest the withholding on or before the 10th day after the date the obligor receives the notice;

(4) describe the procedures for contesting the issuance and delivery of a writ of withholding;

(5) state that the obligor will be provided an opportunity for a hearing not later than the 30th day after the date

of receipt of the notice of contest if the obligor contests the withholding;

(6) state that the sole ground for successfully contesting the issuance of a writ of withholding is a dispute concerning the identity of the obligor or the existence or amount of the arrearages;

(7) describe the actions that may be taken if the obligor contests the notice of application for a writ of withholding, including the procedures for suspending issuance of a writ of withholding; and

(8) include with the notice a suggested form for the motion to stay issuance and delivery of the writ of withholding that the obligor may file with the clerk of the appropriate court.

Added by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

Sec. 8.253. INTERSTATE REQUEST FOR WITHHOLDING. (a) 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.

(b) The notice must be filed with the clerk of the court having venue as provided in Chapter 159.

(c) The notice of application for a writ of withholding may be delivered to the obligor at the same time that an order is filed for registration under Chapter 159.

Added by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

Sec. 8.254. ADDITIONAL ARREARAGES. 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, the writ of withholding may include withholding for arrearages that accrue between the filing of the notice and the date of the hearing or the issuance of the writ.

Added by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

Sec. 8.255. DELIVERY OF NOTICE OF APPLICATION FOR WRIT OF WITHHOLDING; TIME OF DELIVERY. (a) The party who files a notice

of application for a writ of withholding shall deliver the notice to the obligor by:

(1) first-class or certified mail, return receipt requested, addressed to the obligor's last known address or place of employment; or

(2) service of citation as in civil cases generally.

(b) If the notice is delivered by mail, the party who filed the notice shall file with the court a certificate stating the name, address, and date the party mailed the notice.

(c) The notice is considered to have been received by the obligor:

(1) on the date of receipt, if the notice was mailed by certified mail;

(2) on the 10th day after the date the notice was mailed, if the notice was mailed by first-class mail; or

(3) on the date of service, if the notice was delivered by service of citation.

Added by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

Sec. 8.256. MOTION TO STAY ISSUANCE OF WRIT OF WITHHOLDING. (a) The obligor may 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.

(b) 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.

(c) The obligor shall verify that the statements of fact in the motion to stay issuance of the writ are correct.

Added by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

Sec. 8.257. EFFECT OF FILING MOTION TO STAY. If the obligor files a motion to stay as provided by Section 8.256, the clerk of the court may not deliver the writ of withholding to the obligor's employer before a hearing is held.

Added by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

Sec. 8.258. HEARING ON MOTION TO STAY. (a) If the obligor files a motion to stay as provided by Section 8.256, the court shall set a hearing on the motion and the clerk of the court shall notify the obligor and obligee of the date, time, and place of the hearing.

(b) The court shall 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.

(c) After the hearing, the court shall:

(1) render an order for income withholding that includes a determination of any amount of arrearages; or

(2) grant the motion to stay.

Added by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

Sec. 8.259. SPECIAL EXCEPTIONS. (a) 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.

(b) A special exception under this section must be heard by the court before hearing the motion to stay issuance.

(c) If the court sustains an exception, the court shall provide the party filing the notice an opportunity to refile and shall continue the hearing to a specified date without requiring additional service.

Added by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

Sec. 8.260. WRIT OF WITHHOLDING AFTER ARREARAGES ARE PAID.

(a) The court may not refuse 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.

(b) The court shall 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.

Added by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

Sec. 8.261. REQUEST FOR ISSUANCE AND DELIVERY OF WRIT OF WITHHOLDING. (a) 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, the party who filed the notice shall 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.

(b) The party who filed the notice may not file a request for issuance before the 11th day after the date the obligor received the notice of application for a writ of withholding.

Added by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

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

Added by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

Sec. 8.263. CONTENTS OF WRIT OF WITHHOLDING. A writ of withholding must 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.

Added by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

Sec. 8.264. EXTENSION OF REPAYMENT SCHEDULE BY PARTY; UNREASONABLE HARDSHIP. 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 may extend the payment period in the writ.

Added by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

Sec. 8.265. REMITTANCE OF AMOUNT TO BE WITHHELD. The

obligor's employer shall remit the amount withheld to the person or office named in the writ on each pay date and shall include with the remittance the date on which the withholding occurred.

Added by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

Sec. 8.266. FAILURE TO RECEIVE NOTICE OF APPLICATION FOR WRIT OF WITHHOLDING. (a) 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, the obligor may file an affidavit with the court stating that:

(1) the obligor did not timely file a motion to stay because the obligor did not receive the notice of application for a writ of withholding; and

(2) grounds exist for a motion to stay.

(b) The obligor may:

(1) file with the affidavit a motion to withdraw the writ of withholding; and

(2) request a hearing on the applicability of the writ.

(c) Income withholding may not be interrupted until after the hearing at which the court renders an order denying or modifying withholding.

Added by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

Sec. 8.267. ISSUANCE AND DELIVERY OF WRIT OF WITHHOLDING TO SUBSEQUENT EMPLOYER. (a) After the clerk of the court issues a writ of withholding, a party authorized to file a notice of application for a writ of withholding under this subchapter may deliver a copy of the writ to a subsequent employer of the obligor by certified mail.

(b) Except as provided by an order under Section 8.152, the writ of withholding must include the name, address, and signature of the party and clearly indicate that the writ is being issued to a subsequent employer.

(c) The party shall file:

(1) 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

(2) 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.

(d) The party shall pay the clerk a fee in the amount of \$15 for filing the copy of the writ.

Added by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

SUBCHAPTER G. MODIFICATION, REDUCTION, OR TERMINATION OF
WITHHOLDING

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

(b) The obligor and obligee may 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.

(c) The clerk shall issue and deliver to the obligor's employer a writ of withholding that reflects the agreed revision or a notice of termination of withholding.

(d) An agreement by the parties under this section does not modify the terms of an order for spousal maintenance.

Added by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

Sec. 8.302. MODIFICATIONS TO OR TERMINATION OF WITHHOLDING IN VOLUNTARY WITHHOLDING CASES. (a) If an obligor initiates voluntary withholding under Section 8.108, the obligee may 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:

(1) a modified writ of withholding that reduces the amount of withholding; or

(2) a notice of termination of withholding.

(b) On receipt of a request under this section, the clerk shall issue and deliver a modified writ of withholding or notice of termination in the manner provided by Section 8.301.

(c) The clerk may charge a fee in the amount of \$15 for issuing and delivering the modified writ of withholding or notice of termination.

(d) An obligee may 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.

Added by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

Sec. 8.303. TERMINATION OF WITHHOLDING IN MANDATORY WITHHOLDING CASES. (a) An obligor for whom withholding for maintenance owed or withholding for maintenance and child support owed is mandatory may file a motion to terminate withholding. On a showing by the obligor that the obligor has complied fully with the terms of the maintenance or child support order, as applicable, the court shall render an order for the issuance and delivery to the obligor of a notice of termination of withholding.

(b) The clerk shall issue and deliver the notice of termination ordered under this section to the obligor.

(c) The clerk may charge a fee in the amount of \$15 for issuing and delivering the notice.

Added by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

Sec. 8.304. DELIVERY OF ORDER OF REDUCTION OR TERMINATION OF WITHHOLDING. Any person may 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.

Added by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

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

Added by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.