

## **BILL ANALYSIS**

C.S.H.B. 885

By: Dutton

Juvenile Justice & Family Issues  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Currently, there is no provision in the Family Code that specifies that earnings and other income are subject to partition or exchange by spouses, which often times leads to some confusion. Also, there is no provision in the Family Code that would allow courts to treat property acquired in other jurisdictions, as separate property, which if acquired in Texas would be separate property.

C.S.H.B.885 provides that property that is the subject of a partition or exchange agreement does include future earnings and income, and provides that in a decree for divorce or annulment, property acquired in another state, or property acquired by the person in exchange for real or personal property, be treated as separate property if that property would have been deemed separate property in Texas at the time of acquisition.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **SECTION BY SECTION ANALYSIS**

**SECTION 1.** Amends Section 3.403, Family Code, by amending Subsection (b) and adding Subsection (b-1), which provides that the amount of the claim under this section is equal to the product of the equity in the benefited property on the date of dissolution of the marriage, the death of a spouse, or disposition of the property; multiplied by a fraction of which: (A) the numerator is the economic contribution to the property owned by the benefited marital estate by the contributing marital estate and, (B) the denominator is an amount equal to the sum of the economic contribution to the property owned by the benefited marital estate by the contributing marital estate; and the contribution by the benefited estate to the equity in the property owned by the benefited estate. Subsection (b-1) provides guidelines for measuring the amount of contribution by determining if the benefited estate is the community property estate or if the benefited estate is the separate property estate of the spouse.

**SECTION 2.** Amends Section 4.102, Family Code, which provides that at any time, the spouses may partition or exchange between themselves all or part of their community property, then existing or to be acquired. The partition or exchange of property includes earnings and income arising from the property as the separate property of the owning spouse unless the spouses agree in a record that the future earnings and income will be community property after the partition or exchange.

**SECTION 3.** Amends Section 7.002(a), Family Code, to read DIVISION AND DISPOSITION OF CERTAIN PROPERTY UNDER SPECIAL CIRCUMSTANCES. This provision would allow a court to treat property acquired in other jurisdictions as separate property, which if acquired in this state

would be separate property. The division of real and personal property may include the partition or exchange of income and earnings from all or part of the parties' property, wages, salaries, and other forms of compensation to be effective on January 1 of the year in which the suit for dissolution of marriage was filed or a later year during which the parties were married for any part of the year.

**SECTION 4.** This Act takes effect September 1, 2003. The change in law made by this Act by the amendment of Section 4.102, Family Code, applies only to an agreement to partition or exchange property made on or after the effective date of this Act. The changes in law made by this Act by the amendment of Sections 3.403 and 7.002, Family Code, apply to a suit for dissolution of a marriage pending before a trial court on or filed on or after the effective date of this Act.

**EFFECTIVE DATE**

September 1, 2003.

**COMPARISON OF ORIGINAL TO SUBSTITUTE**

C.S.H.B.885 modifies the original H.B.885 by amending Section 3.403, Subsection (b), Family Code and adding Subsection (b-1). C.S.H.B.885 additionally provides that the partition or exchange of property includes earnings and income arising from the property as the separate property of the owning spouse unless the spouses agree in a record that the future earnings and income will be community property after the partition or exchange. Lastly, the substitute provides that the division of real and personal property may include the partition or exchange of income and earnings from all or part of the parties' property, wages, salaries, and other forms of compensation to be effective on January 1 of the year in which the suit for dissolution of marriage was filed or a later year during which the parties were married for any part of the year.