

BILL ANALYSIS

C.S.H.B. 1475
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Judicial Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Under Texas law, there are two types of marital property: separate property and community property. A spouse's separate property consists of property owned by that spouse before marriage, or acquired by gift, inheritance or personal injury recovery during marriage. Community property consists of all other property acquired during marriage. As a general rule, the separate property of Spouse B cannot be seized by the creditors of Spouse A. The spouses, though, may agree to convert separate property to community property. If Spouse B agrees to a conversion, the property would then generally be subject to seizure by the Spouse A's creditors.

Current law allows Spouse B to challenge enforcement of the conversion if Spouse B proves that he or she did not 1) execute the conversion agreement voluntarily; or 2) receive a fair and reasonable disclosure of the legal effect of converting the property to community property.

Situations have arisen where creditors of Spouse A have tried to seize the converted community property after the death of Spouse B. C.S.H.B. 1475 extends the right to challenge enforcement of the conversion in proceedings occurring after the death of Spouse B to either the heirs of Spouse B or the personal representative of Spouse B's estate.

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.

ANALYSIS

C.S.H.B. 1475 amends Subchapter C, Chapter 4 of the Family Code to provide that if a proceeding regarding enforcement of an agreement under Subchapter C occurs after the death of the spouse against whom enforcement is sought, the proof required may be made by an heir of the spouse or the personal representative of the estate of that spouse.

EFFECTIVE DATE

September 1, 2003.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute changes the language "another person representing" the estate of a spouse to "the personal representative of" the estate of a spouse.