

By: Dutton

H.B. No. 885

A BILL TO BE ENTITLED

AN ACT

relating to the rights of spouses in relation to separate and community property.

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

SECTION 1. Section 3.403, Family Code, is amended by amending Subsection (b) and adding Subsection (b-1) to read as follows:

(b) The amount of the claim under this section is equal to the product of:

(1) 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

(2) 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:

(i) the economic contribution to the property owned by the benefited marital estate by the contributing marital estate; and

~~(ii) the [equity in the property as of the date of the marriage or, if later, the date of the first economic contribution by the contributing estate, and~~

1 [~~(iii) the economic~~] contribution [~~to the~~
2 ~~property~~] by the benefited estate to the equity in the property
3 owned by the benefited estate [~~during the marriage~~].

4 (b-1) The amount of the contribution by the benefited
5 marital estate under Subsection (b)(2)(B)(ii) is measured by
6 determining:

7 (1) if the benefited estate is the community property
8 estate:

9 (A) the net equity of the community property
10 estate in the property owned by the community property estate as of
11 the date of the first economic contribution to that property by the
12 contributing separate property estate; and

13 (B) any additional economic contribution to the
14 equity in the property owned by the community property estate made
15 by the benefited community property estate after the date described
16 by Subdivision (A); or

17 (2) if the benefited estate is the separate property
18 estate of a spouse:

19 (A) the net equity of the separate property
20 estate in the property owned by the separate property estate as of
21 the date of the first economic contribution to that property by the
22 contributing community property estate or the separate property
23 estate of the other spouse; and

24 (B) any additional contribution to the equity in
25 the property owned by the separate property estate made by the
26 benefited separate property estate after the date described by
27 Subdivision (A).

1 SECTION 2. Section 4.102, Family Code, is amended to read as
2 follows:

3 Sec. 4.102. PARTITION OR EXCHANGE OF COMMUNITY PROPERTY.
4 At any time, the spouses may partition or exchange between
5 themselves all or [any] part of their community property, then
6 existing or to be acquired, as the spouses may desire. Property or
7 a property interest transferred to a spouse by a partition or
8 exchange agreement becomes that spouse's separate property. The
9 partition or exchange of property includes future earnings and
10 income arising from the property as the separate property of the
11 owning spouse unless the spouses agree in a record that the future
12 earnings and income will be community property after the partition
13 or exchange.

14 SECTION 3. Section 4.205, Family Code, is amended by adding
15 Subsection (c) to read as follows:

16 (c) If a proceeding regarding enforcement of an agreement
17 under this subchapter occurs after the death of the spouse against
18 whom enforcement is sought, the proof required by Subsection (a)
19 may be made by an heir of the spouse or the personal representative
20 of the estate of that spouse.

21 SECTION 4. Section 7.002, Family Code, is amended to read as
22 follows:

23 Sec. 7.002. DIVISION AND DISPOSITION OF CERTAIN PROPERTY
24 UNDER SPECIAL CIRCUMSTANCES. (a) In addition to the division of the
25 estate of the parties required by Section 7.001, in a decree of
26 divorce or annulment the court shall order a division of the
27 following real and personal property, wherever situated, in a

1 manner that the court deems just and right, having due regard for
2 the rights of each party and any children of the marriage:

3 (1) property that was acquired by either spouse while
4 domiciled in another state and that would have been community
5 property if the spouse who acquired the property had been domiciled
6 in this state at the time of the acquisition; or

7 (2) property that was acquired by either spouse in
8 exchange for real or personal property and that would have been
9 community property if the spouse who acquired the property so
10 exchanged had been domiciled in this state at the time of its
11 acquisition.

12 (b) In a decree of divorce or annulment, the court shall
13 award to a spouse the following real and personal property,
14 wherever situated, as the separate property of the spouse:

15 (1) property that was acquired by the spouse while
16 domiciled in another state and that would have been the spouse's
17 separate property if the spouse had been domiciled in this state at
18 the time of acquisition; or

19 (2) property that was acquired by the spouse in
20 exchange for real or personal property and that would have been the
21 spouse's separate property if the spouse had been domiciled in this
22 state at the time of acquisition.

23 (c) In a decree of divorce or annulment, the court shall
24 confirm the following as the separate property of a spouse if
25 partitioned or exchanged by written agreement of the spouses:

26 (1) income and earnings from the spouses' property,
27 wages, salaries, and other forms of compensation received on or

1 after January 1 of the year in which the suit for dissolution of
2 marriage was filed; or

3 (2) income and earnings from the spouses' property,
4 wages, salaries, and other forms of compensation received in
5 another year during which the spouses were married for any part of
6 the year.

7 SECTION 5. (a) This Act takes effect September 1, 2003.

8 (b) The change in law made by this Act by the amendment of
9 Section 4.102, Family Code, applies only to an agreement to
10 partition or exchange property made on or after the effective date
11 of this Act. An agreement made before the effective date of this
12 Act is governed by the law in effect on the date the agreement was
13 made, and the former law is continued in effect for that purpose.

14 (c) The change in law made by this Act by the enactment of
15 Section 4.205(c), Family Code, applies to an agreement under
16 Subchapter C, Chapter 4, Family Code, without regard to whether the
17 agreement was made before, on, or after the effective date of this
18 Act.

19 (d) The changes in law made by this Act by the amendment of
20 Sections 3.403 and 7.002, Family Code, apply to a suit for
21 dissolution of a marriage pending before a trial court on or filed
22 on or after the effective date of this Act.