

1-1 By: Dutton (Senate Sponsor - West) H.B. No. 885  
1-2 (In the Senate - Received from the House May 2, 2003;  
1-3 May 6, 2003, read first time and referred to Committee on  
1-4 Jurisprudence; May 20, 2003, reported favorably by the following  
1-5 vote: Yeas 6, Nays 0; May 20, 2003, sent to printer.)

1-6 A BILL TO BE ENTITLED  
1-7 AN ACT

1-8 relating to the rights of spouses in relation to separate and  
1-9 community property.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Section 3.403, Family Code, is amended by  
1-12 amending Subsection (b) and adding Subsection (b-1) to read as  
1-13 follows:

1-14 (b) The amount of the claim under this section is equal to  
1-15 the product of:

1-16 (1) the equity in the benefited property on the date of  
1-17 dissolution of the marriage, the death of a spouse, or disposition  
1-18 of the property; multiplied by

1-19 (2) a fraction of which:

1-20 (A) the numerator is the economic contribution to  
1-21 the property owned by the benefited marital estate by the  
1-22 contributing marital estate; and

1-23 (B) the denominator is an amount equal to the sum  
1-24 of:

1-25 (i) the economic contribution to the  
1-26 property owned by the benefited marital estate by the contributing  
1-27 marital estate; and

1-28 (ii) the ~~[equity in the property as of the~~  
1-29 ~~date of the marriage or, if later, the date of the first economic~~  
1-30 ~~contribution by the contributing estate; and~~

1-31 ~~[(iii) the economic] contribution [to the~~  
1-32 ~~property] by the benefited estate to the equity in the property~~  
1-33 ~~owned by the benefited estate [during the marriage].~~

1-34 (b-1) The amount of the contribution by the benefited  
1-35 marital estate under Subsection (b)(2)(B)(ii) is measured by  
1-36 determining:

1-37 (1) if the benefited estate is the community property  
1-38 estate:

1-39 (A) the net equity of the community property  
1-40 estate in the property owned by the community property estate as of  
1-41 the date of the first economic contribution to that property by the  
1-42 contributing separate property estate; and

1-43 (B) any additional economic contribution to the  
1-44 equity in the property owned by the community property estate made  
1-45 by the benefited community property estate after the date described  
1-46 by Subdivision (A); or

1-47 (2) if the benefited estate is the separate property  
1-48 estate of a spouse:

1-49 (A) the net equity of the separate property  
1-50 estate in the property owned by the separate property estate as of  
1-51 the date of the first economic contribution to that property by the  
1-52 contributing community property estate or the separate property  
1-53 estate of the other spouse; and

1-54 (B) any additional contribution to the equity in  
1-55 the property owned by the separate property estate made by the  
1-56 benefited separate property estate after the date described by  
1-57 Subdivision (A).

1-58 SECTION 2. Section 4.102, Family Code, is amended to read as  
1-59 follows:

1-60 Sec. 4.102. PARTITION OR EXCHANGE OF COMMUNITY PROPERTY.  
1-61 At any time, the spouses may partition or exchange between  
1-62 themselves all or [any] part of their community property, then  
1-63 existing or to be acquired, as the spouses may desire. Property or  
1-64 a property interest transferred to a spouse by a partition or  
1-65 exchange agreement becomes that spouse's separate property. The

2-1 partition or exchange of property includes future earnings and  
2-2 income arising from the property as the separate property of the  
2-3 owning spouse unless the spouses agree in a record that the future  
2-4 earnings and income will be community property after the partition  
2-5 or exchange.

2-6 SECTION 3. Section 4.205, Family Code, is amended by adding  
2-7 Subsection (c) to read as follows:

2-8 (c) If a proceeding regarding enforcement of an agreement  
2-9 under this subchapter occurs after the death of the spouse against  
2-10 whom enforcement is sought, the proof required by Subsection (a)  
2-11 may be made by an heir of the spouse or the personal representative  
2-12 of the estate of that spouse.

2-13 SECTION 4. Section 7.002, Family Code, is amended to read as  
2-14 follows:

2-15 Sec. 7.002. DIVISION AND DISPOSITION OF CERTAIN PROPERTY  
2-16 UNDER SPECIAL CIRCUMSTANCES. (a) In addition to the division of the  
2-17 estate of the parties required by Section 7.001, in a decree of  
2-18 divorce or annulment the court shall order a division of the  
2-19 following real and personal property, wherever situated, in a  
2-20 manner that the court deems just and right, having due regard for  
2-21 the rights of each party and any children of the marriage:

2-22 (1) property that was acquired by either spouse while  
2-23 domiciled in another state and that would have been community  
2-24 property if the spouse who acquired the property had been domiciled  
2-25 in this state at the time of the acquisition; or

2-26 (2) property that was acquired by either spouse in  
2-27 exchange for real or personal property and that would have been  
2-28 community property if the spouse who acquired the property so  
2-29 exchanged had been domiciled in this state at the time of its  
2-30 acquisition.

2-31 (b) In a decree of divorce or annulment, the court shall  
2-32 award to a spouse the following real and personal property,  
2-33 wherever situated, as the separate property of the spouse:

2-34 (1) property that was acquired by the spouse while  
2-35 domiciled in another state and that would have been the spouse's  
2-36 separate property if the spouse had been domiciled in this state at  
2-37 the time of acquisition; or

2-38 (2) property that was acquired by the spouse in  
2-39 exchange for real or personal property and that would have been the  
2-40 spouse's separate property if the spouse had been domiciled in this  
2-41 state at the time of acquisition.

2-42 (c) In a decree of divorce or annulment, the court shall  
2-43 confirm the following as the separate property of a spouse if  
2-44 partitioned or exchanged by written agreement of the spouses:

2-45 (1) income and earnings from the spouses' property,  
2-46 wages, salaries, and other forms of compensation received on or  
2-47 after January 1 of the year in which the suit for dissolution of  
2-48 marriage was filed; or

2-49 (2) income and earnings from the spouses' property,  
2-50 wages, salaries, and other forms of compensation received in  
2-51 another year during which the spouses were married for any part of  
2-52 the year.

2-53 SECTION 5. (a) This Act takes effect September 1, 2003.

2-54 (b) The change in law made by this Act by the amendment of  
2-55 Section 4.102, Family Code, applies only to an agreement to  
2-56 partition or exchange property made on or after the effective date  
2-57 of this Act. An agreement made before the effective date of this  
2-58 Act is governed by the law in effect on the date the agreement was  
2-59 made, and the former law is continued in effect for that purpose.

2-60 (c) The change in law made by this Act by the enactment of  
2-61 Section 4.205(c), Family Code, applies to an agreement under  
2-62 Subchapter C, Chapter 4, Family Code, without regard to whether the  
2-63 agreement was made before, on, or after the effective date of this  
2-64 Act.

2-65 (d) The changes in law made by this Act by the amendment of  
2-66 Sections 3.403 and 7.002, Family Code, apply to a suit for  
2-67 dissolution of a marriage pending before a trial court on or filed  
2-68 on or after the effective date of this Act.

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