

AN ACT

relating to the property interests of spouses in connection with certain separate and community property.

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

SECTION 1. Subchapter A, Chapter 3, Family Code, is amended by adding Sections 3.007 and 3.008 to read as follows:

Sec. 3.007. PROPERTY INTEREST IN CERTAIN EMPLOYEE BENEFITS.

(a) A spouse who is a participant in a defined benefit retirement plan has a separate property interest in the monthly accrued benefit the spouse had a right to receive on normal retirement age, as defined by the plan, as of the date of marriage, regardless of whether the benefit had vested.

(b) The community property interest in a defined benefit plan shall be determined as if the spouse began to participate in the plan on the date of marriage and ended that participation on the date of dissolution or termination of the marriage, regardless of whether the benefit had vested.

(c) The separate property interest of a spouse in a defined contribution retirement plan may be traced using the tracing and characterization principles that apply to a nonretirement asset.

(d) A spouse who is a participant in an employer-provided stock option plan or an employer-provided restricted stock plan has a separate property interest in the options or restricted stock granted to the spouse under the plan as follows:

1           (1) if the option or stock was granted to the spouse  
2 before marriage but required continued employment during marriage  
3 before the grant could be exercised or the restriction removed, the  
4 spouse's separate property interest is equal to the fraction of the  
5 option or restricted stock in which the numerator is the period from  
6 the date the option or stock was granted until the date of marriage  
7 and the denominator is the period from the date the option or stock  
8 was granted until the date the grant could be exercised or the  
9 restriction removed; and

10           (2) if the option or stock was granted to the spouse  
11 during the marriage but required continued employment after  
12 marriage before the grant could be exercised or the restriction  
13 removed, the spouse's separate property interest is equal to the  
14 fraction of the option or restricted stock in which the numerator is  
15 the period from the date of dissolution or termination of the  
16 marriage until the date the grant could be exercised or the  
17 restriction removed and the denominator is the period from the date  
18 the option or stock was granted until the date the grant could be  
19 exercised or the restriction removed.

20           (e) The computation described by Subsection (d) applies to  
21 each component of the benefit requiring varying periods of  
22 employment before the grant could be exercised or the restriction  
23 removed.

24           (f) The characterization of the marital property interest  
25 in an option or restricted stock described by Subsection (d) must be  
26 recalculated if, after the initial division of the option or stock,  
27 the vesting occurs on a date earlier than the vesting date stated in

1 the original grant of the option or stock. The recalculation  
2 required by this subsection must adjust for the shortened vesting  
3 period and applies to options and stock granted before and during  
4 the marriage.

5 Sec. 3.008. PROPERTY INTEREST IN CERTAIN INSURANCE  
6 PROCEEDS. (a) Insurance proceeds paid or payable that arise from a  
7 casualty loss to property during marriage are characterized in the  
8 same manner as the property to which the claim is attributable.

9 (b) If a person becomes disabled or is injured, any  
10 disability insurance payment or workers' compensation payment is  
11 community property to the extent it is intended to replace earnings  
12 lost while the disabled or injured person is married. To the extent  
13 that any insurance payment or workers' compensation payment is  
14 intended to replace earnings while the disabled or injured person  
15 is not married, the recovery is the separate property of the  
16 disabled or injured spouse.

17 SECTION 2. The changes in law made by this Act apply:

18 (1) to a suit for dissolution of a marriage pending  
19 before a trial court on or filed on or after the effective date of  
20 this Act; and

21 (2) with respect to Section 3.007, Family Code, as  
22 added by this Act, to the estate of a person who dies on or after the  
23 effective date of this Act.

24 SECTION 3. This Act takes effect September 1, 2005.

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President of the Senate

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Speaker of the House

I certify that H.B. No. 410 was passed by the House on April 22, 2005, by a non-record vote.

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Chief Clerk of the House

I certify that H.B. No. 410 was passed by the Senate on May 24, 2005, by the following vote: Yeas 31, Nays 0.

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Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

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Governor