

By: Goodman

H.B. No. 410

Substitute the following for H.B. No. 410:

By: Strama

C.S.H.B. No. 410

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the property interests of spouses in connection with
3 certain separate and community property.

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

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

7 Sec. 3.007. PROPERTY INTEREST IN CERTAIN EMPLOYEE BENEFITS.

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

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

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

21 (d) A spouse who is a participant in an employer-provided
22 stock option plan or an employer-provided restricted stock plan has
23 a separate property interest in the options or restricted stock
24 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.