

1-1 By: Goodman (Senate Sponsor - Harris) H.B. No. 410
1-2 (In the Senate - Received from the House April 25, 2005;
1-3 April 26, 2005, read first time and referred to Committee on
1-4 Jurisprudence; May 13, 2005, reported favorably by the following
1-5 vote: Yeas 5, Nays 0; May 13, 2005, sent to printer.)

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

1-8 relating to the property interests of spouses in connection with
1-9 certain separate and community property.

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

1-11 SECTION 1. Subchapter A, Chapter 3, Family Code, is amended
1-12 by adding Sections 3.007 and 3.008 to read as follows:

1-13 Sec. 3.007. PROPERTY INTEREST IN CERTAIN EMPLOYEE BENEFITS.

1-14 (a) A spouse who is a participant in a defined benefit retirement
1-15 plan has a separate property interest in the monthly accrued
1-16 benefit the spouse had a right to receive on normal retirement age,
1-17 as defined by the plan, as of the date of marriage, regardless of
1-18 whether the benefit had vested.

1-19 (b) The community property interest in a defined benefit
1-20 plan shall be determined as if the spouse began to participate in
1-21 the plan on the date of marriage and ended that participation on the
1-22 date of dissolution or termination of the marriage, regardless of
1-23 whether the benefit had vested.

1-24 (c) The separate property interest of a spouse in a defined
1-25 contribution retirement plan may be traced using the tracing and
1-26 characterization principles that apply to a nonretirement asset.

1-27 (d) A spouse who is a participant in an employer-provided
1-28 stock option plan or an employer-provided restricted stock plan has
1-29 a separate property interest in the options or restricted stock
1-30 granted to the spouse under the plan as follows:

1-31 (1) if the option or stock was granted to the spouse
1-32 before marriage but required continued employment during marriage
1-33 before the grant could be exercised or the restriction removed, the
1-34 spouse's separate property interest is equal to the fraction of the
1-35 option or restricted stock in which the numerator is the period from
1-36 the date the option or stock was granted until the date of marriage
1-37 and the denominator is the period from the date the option or stock
1-38 was granted until the date the grant could be exercised or the
1-39 restriction removed; and

1-40 (2) if the option or stock was granted to the spouse
1-41 during the marriage but required continued employment after
1-42 marriage before the grant could be exercised or the restriction
1-43 removed, the spouse's separate property interest is equal to the
1-44 fraction of the option or restricted stock in which the numerator is
1-45 the period from the date of dissolution or termination of the
1-46 marriage until the date the grant could be exercised or the
1-47 restriction removed and the denominator is the period from the date
1-48 the option or stock was granted until the date the grant could be
1-49 exercised or the restriction removed.

1-50 (e) The computation described by Subsection (d) applies to
1-51 each component of the benefit requiring varying periods of
1-52 employment before the grant could be exercised or the restriction
1-53 removed.

1-54 (f) The characterization of the marital property interest
1-55 in an option or restricted stock described by Subsection (d) must be
1-56 recalculated if, after the initial division of the option or stock,
1-57 the vesting occurs on a date earlier than the vesting date stated in
1-58 the original grant of the option or stock. The recalculation
1-59 required by this subsection must adjust for the shortened vesting
1-60 period and applies to options and stock granted before and during
1-61 the marriage.

1-62 Sec. 3.008. PROPERTY INTEREST IN CERTAIN INSURANCE
1-63 PROCEEDS. (a) Insurance proceeds paid or payable that arise from a
1-64 casualty loss to property during marriage are characterized in the

2-1 same manner as the property to which the claim is attributable.

2-2 (b) If a person becomes disabled or is injured, any
2-3 disability insurance payment or workers' compensation payment is
2-4 community property to the extent it is intended to replace earnings
2-5 lost while the disabled or injured person is married. To the extent
2-6 that any insurance payment or workers' compensation payment is
2-7 intended to replace earnings while the disabled or injured person
2-8 is not married, the recovery is the separate property of the
2-9 disabled or injured spouse.

2-10 SECTION 2. The changes in law made by this Act apply:

2-11 (1) to a suit for dissolution of a marriage pending
2-12 before a trial court on or filed on or after the effective date of
2-13 this Act; and

2-14 (2) with respect to Section 3.007, Family Code, as
2-15 added by this Act, to the estate of a person who dies on or after the
2-16 effective date of this Act.

2-17 SECTION 3. This Act takes effect September 1, 2005.

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