

## **BILL ANALYSIS**

C.S.H.B. 1646  
By: Dutton  
Juvenile Justice & Family Issues  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

In 2005, the Family Code was amended to statutorily define the community and separate property interests in retirement benefits as well as stock options and restricted stock. These definitions did not cover all of the property involved in the defined benefit plans.

C.S.H.B.1646 restores the historical application of separate and community property law principles in defined benefit plans, both in the formation and interpretation of qualified domestic relations orders and in the portions of divorce decrees relating to defined benefit plans.

Additionally, C.S.H.B.1646 adds the necessary language to toll the statute of limitations on post-marital agreements during the marriage, bringing the statute of limitations for post-marital agreements in-line with those of pre-marital agreements.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

Amends Section 3.007(d) of the Family Code to provide that the numerator is the period from the date the option or stock was granted until the date of marriage and, if the option or stock also required continued employment following the date of dissolution of the marriage before the grant could be exercised or the restriction removed, the period from the date of dissolution of the marriage until the date the grant could be exercised or the restriction removed, and the denominator is the period from the date the option or stock was granted until the date the grant could be exercised or the restriction removed, and if the option or stock was granted to the spouse during the marriage but required continued employment following the date of dissolution of the marriage, rather than after marriage, before the grant could be exercised or the restriction removed, the spouse's separate property interest is equal to the fraction of the option or restricted stock in which the numerator is the period from the date of dissolution of the marriage until the date the grant could be exercised or the restriction removed.

Further amends Subchapter B, Chapter 4, of the Family Code by adding Section 4.107 to provide that a statute of limitations applicable to an action asserting a claim for relief under an agreement under this subchapter is tolled during the marriage of the parties to the agreement. Equitable defenses limiting the time for enforcement, including laches and estoppel, however, are available to either party.

Also amends Subchapter C, Chapter 4 of the Family Code by adding Section 4.207 which provides that a statute of limitations on a post marital agreement is tolled during the marriage of the parties to the agreement. However, equitable defenses limiting the time for enforcement, including laches and estoppel, are available to either party.

Finally, this bill repeals Section 3.007 (a), (b), and (f) of the Family Code.

This Act takes effect immediately if it receives the necessary vote or if it does not receive the necessary vote, then the Act takes effect September 1, 2007.

**EFFECTIVE DATE**

September 1, 2007.

**COMPARISON OF ORIGINAL TO SUBSTITUTE**

C.S.H.B.1646 modifies the original H.B.1646 by amending only Section 3.007(d), and repealing Section 3.007(a), (b), and (f). Subsection (d)(1)(A) is amended to provide that the numerator is the period from the date the option or stock was granted until the date of marriage and, if the option or stock also required continued employment following the date of dissolution of the marriage before the grant could be exercised or the restriction removed, the period from the date of the dissolution of the marriage until the date the grant could be exercised or the restriction removed.

C.S.H.B.1646 further modifies H.B.1646 by adding Section 4.107 and Section 4.207 to provide that a statute of limitations applicable to an action asserting a claim for relief under an agreement under this subchapter is tolled during the marriage of the parties to the agreement and a statute of limitations on a post marital agreement is tolled during the marriage of the parties to the agreement. However, equitable defenses limiting the time for enforcement, including laches and estoppel, are available to either party.