

## **BILL ANALYSIS**

C.S.S.B. 866  
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Judiciary & Civil Jurisprudence  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

The method of determining the property interest of a spouse in an employer-provided stock option or employer-provided restricted stock plan is extremely difficult to calculate. The guidelines used by courts to determine economic contribution are complicated, and the courts are not expressly granted the authority to award attorney's fees in qualified domestic relations orders.

C.S.S.B. 866 clarifies three issues that arise during divorce proceedings and certain post-dissolution proceedings.

The bill amends Section 3.007(d) of the Family Code to address an employer-provided stock option plan and clarifies the figures used to determine the fraction of the option or stock to which the spouse is entitled.

The bill amends Section 3.402 of the Family Code, and amends or appeals related statutes, to convert the economic contribution system to a system of reimbursement and offset based on equitable principles and clarify that the party seeking an offset has the burden of proof.

The bill amends Section 9.014 of the Family Code to authorize a court to award reasonable attorney's fees in a proceeding regarding qualified domestic relations order and provide that those fees are enforceable by any means available.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **ANALYSIS**

SECTION 1. Amends Section 3.007(d), Family Code, as follows:

(d) Provides that 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) if the option or stock was granted to the spouse before marriage but required continued employment during 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 sum of 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

(2) 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 continued employment 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; 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. Makes nonsubstantive changes.

SECTION 2. Amends the heading to Subchapter E, Chapter 3, Family Code, to read as follows:

#### SUBCHAPTER E. CLAIMS FOR REIMBURSEMENT

SECTION 3. Amends Section 3.402, Family Code, as follows:

Sec. 3.402. New heading: CLAIM FOR REIMBURSEMENT; OFFSETS. (a) Provides that for purposes of this subchapter, a claim for reimbursement includes only certain types of claims, including payment by one marital estate of the unsecured liabilities of another marital estate; inadequate compensation for the time, toil, talent, and effort of a spouse by a business entity under the control and direction of that spouse; and the refinancing of the principal amount described by Subdivisions (3)-(6) (regarding the reduction of the principal amount of a debt for property), rather than (1)-(4), to the extent the refinancing reduces that principal amount in a manner described by the applicable, rather than appropriate, subdivision. Provides that a claim for reimbursement includes the reduction by the community property estate of an unsecured debt incurred by the separate estate of one of the spouses. Makes conforming changes.

(b) Requires the court to resolve a claim for reimbursement by using equitable principles, including the principle that claims for reimbursement may be offset against each other if the court determines it to be appropriate.

(c) Authorizes benefits for the use and enjoyment of property to be offset against a claim for reimbursement for expenditures to benefit a marital estate, except the separate estate of a spouse may not claim an offset for use and enjoyment of a primary or secondary residence owned in whole or part by the separate estate against contributions made by the community estate to the separate estate.

(d) Requires that reimbursement for funds expended by a marital estate for improvements to another marital estate be measured by the enhancement in value to the benefited marital estate.

(e) Provides that the party seeking an offset to a claim for reimbursement has the burden of proof with respect to the offset. Deletes existing definition of "economic contribution."

SECTION 4. Amends Section 3.404(b), Family Code, to provide that a claim for reimbursement, rather than the claim for economic contribution, created under this subchapter does not create an ownership interest in property, but does create a claim against the property of the benefited estate by the contributing estate.

SECTION 5. Amends Sections 3.406(a) and (b), Family Code as follows:

(a) Authorizes, rather than requires, the court, on dissolution of a marriage, to impose an equitable lien on the property of a benefited marital estate to secure a claim for reimbursement against that property by a contributing marital estate. Makes nonsubstantive and conforming changes.

(b) Authorizes, rather than requires, the court, on the death of a spouse, on application for a claim for reimbursement brought by the surviving spouse, the personal representative of the estate of the deceased spouse, or any other person interested in the estate, as defined by Section 3 (Determination of Heirship), Texas Probate Code, to impose an equitable lien on the property of a benefited marital estate to secure a claim for

reimbursement against that property by a contributing marital estate. Makes nonsubstantive and conforming changes.

SECTION 6. Amends Section 3.410, Family Code, as follows:

Sec. 3.410. EFFECT OF MARITAL PROPERTY AGREEMENTS. Provides that a premarital or marital property agreement, whether executed before, on, or after September 1, 2009, rather than 1999, that satisfies the requirements of Chapter 4 (Premarital and Marital Property Agreements) is effective to waive, release, assign, or partition a claim for economic contribution, reimbursement, or both, under this subchapter to the same extent the agreement would have been effective to waive, release, assign, or partition a claim for economic contribution, reimbursement, or both under the law as it existed immediately before September 1, 2009, rather than 1999, unless the agreement provides otherwise.

SECTION 7. Amends Section 7.007, Family Code, as follows:

Sec. 7.007. New heading: DISPOSITION OF CLAIM FOR REIMBURSEMENT. Deletes existing text requiring the court in a decree of divorce or annulment to determine the rights of both spouses in a claim for economic contribution as provided by Subchapter E, Chapter 3, and in a manner that the court considers just and right, having due regard for the rights of each party and any children of the marriage, to order a division of a claim for economic contribution of the community marital estate to the separate marital estate of one of the spouses. Deletes existing text requiring the court to order that a claim for an economic contribution by one separate marital estate of a spouse to the community marital estate of the spouses be awarded to the owner of the contributing separate marital estate. Deletes existing text requiring the court to order that a claim for economic contribution of one separate marital estate in the separate marital estate of the other spouse be awarded to the owner of the contributing marital estate.

SECTION 8. Amends Section 9.014, Family Code, as follows:

Sec. 9.014. ATTORNEY'S FEES. Authorizes the court to award reasonable attorney's fees, rather than reasonable attorney's fees as costs, in a proceeding under this subchapter.

SECTION 9. Amends Subchapter B, Chapter 9, Family Code, by adding Section 9.106, as follows:

Sec. 9.106. ATTORNEY'S FEES. Authorizes the court, in a proceeding under this subchapter, to award reasonable attorney's fees incurred by a party to a divorce or annulment against the other party to the divorce or annulment. Authorizes the court to order the attorney's fees to be paid directly to the attorney, who is authorized to enforce the order for fees in the attorney's own name by any means available for the enforcement of a judgment for debt.

SECTION 10. Amends Section 9.205, Family Code, by making a conforming change.

SECTION 11. Repealers: (1) Sections 3.007(a) (regarding a spouse having a separate property interest in the monthly accrued benefit the spouse had a right to receive on normal retirement age from a defined benefit retirement plan), (b) (regarding the timeframe for establishing the community property interest in a defined benefit plan for a spouse participating in such a retirement plan), and (f) (regarding recalculating the characterization of the marital property interest in an option or restricted stock if vesting occurs earlier than previously established), Family Code;

(2) Sections 3.401(1) (regarding the definition of "claim for economic contribution"), (2) (regarding the definition of "economic contribution"), and (3) (regarding the definition of "equity"), Family Code;

(3) Section 3.403 (Claim Based on Economic Contribution), Family Code;

(4) Section 3.406(c) (regarding an equitable lien being imposed on the entirety of a spouse's property in the marital estate), Family Code; and

(5) Sections 3.407 (Offsetting Claims) and 3.408 (Claim For Reimbursement), Family Code.

SECTION 12. Provides that the certain changes in law made by this Act to Section 3.007, Family Code, apply to a suit for dissolution of a marriage pending before a trial court on or filed on or after the effective date of this Act; and the estate of a person who dies on or after the effective date of this Act.

SECTION 13. (a) Makes application of this Act in regard to a claim under Subchapter E, Chapter 3, Family Code, that arises from a suit for dissolution of a marriage, prospective.

(b) Makes application of this Act in regard to a claim under Subchapter E, Chapter 3, Family Code, that arises from the death of a spouse, prospective.

SECTION 14. Makes application of Chapter 9, Family Code, as added by this Act, prospective.

SECTION 15. Effective date: September 1, 2009.

#### **EFFECTIVE DATE**

September 1, 2009.

#### **COMPARISON OF ORIGINAL TO SUBSTITUTE**

Language was added to Section 3.402(a), Family Code, to make it clear that a claim for reimbursement includes the reduction by the community estate of an unsecured debt incurred by a spouse's separate estate.

Language was added to Section 3.402(c), Family Code, to provide that the separate estate of a spouse may not make a claim an offset for use and enjoyment of a primary or secondary residence owned by the separate estate against contributions made by the community estate to the separate estate.