

By: Frost

H.B. No. 2566

A BILL TO BE ENTITLED

AN ACT

relating to the rights of spouses and claims for reimbursement in relation to separate and community property.

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

SECTION 1. The heading to Subchapter E, Chapter 3, Family Code, is amended to read as follows:

SUBCHAPTER E. CLAIMS FOR ~~[ECONOMIC CONTRIBUTION AND]~~ REIMBURSEMENT

SECTION 2. Section 3.402, Family Code, is amended to read as follows:

Sec. 3.402. CLAIM FOR REIMBURSEMENT; OFFSETS ~~[ECONOMIC CONTRIBUTION]~~. (a) For purposes of this subchapter, a claim for reimbursement includes only:

(1) payment by one marital estate of the unsecured liabilities of another marital estate;

(2) inadequate compensation for the time, toil, talent, and effort of a spouse by a business entity under the control and direction of that spouse;

(3) ["economic contribution" is the dollar amount of:  
~~(1)]~~ the reduction of the principal amount of a debt secured by a lien on property owned before marriage, to the extent the debt existed at the time of marriage;

(4) [(2)] the reduction of the principal amount of a debt secured by a lien on property received by a spouse by gift, devise, or descent during a marriage, to the extent the debt existed

1 at the time the property was received;

2 (5) [~~(3)~~] the reduction of the principal amount of  
3 that part of a debt, including a home equity loan:

4 (A) incurred during a marriage;

5 (B) secured by a lien on property; and

6 (C) incurred for the acquisition of, or for  
7 capital improvements to, property;

8 (6) [~~(4)~~] the reduction of the principal amount of  
9 that part of a debt:

10 (A) incurred during a marriage;

11 (B) secured by a lien on property owned by a  
12 spouse;

13 (C) for which the creditor agreed to look for  
14 repayment solely to the separate marital estate of the spouse on  
15 whose property the lien attached; and

16 (D) incurred for the acquisition of, or for  
17 capital improvements to, property;

18 (7) [~~(5)~~] the refinancing of the principal amount  
19 described by Subdivisions (3)-(6) [~~(1)-(4)~~], to the extent the  
20 refinancing reduces that principal amount in a manner described by  
21 the applicable [~~appropriate~~] subdivision; and

22 (8) [~~(6)~~] capital improvements to property other than  
23 by incurring debt.

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

1        (c) Benefits for the use and enjoyment of property may be  
2 offset against a claim for reimbursement for expenditures to  
3 benefit a marital estate.

4        (d) Reimbursement for funds expended by a marital estate for  
5 improvements to another marital estate shall be measured by the  
6 enhancement in value to the benefited marital estate.

7        (e) The party seeking an offset to a claim for reimbursement  
8 has the burden of proof with respect to the offset [~~"Economic~~  
9 ~~contribution" does not include the dollar amount of:~~

10            [~~(1) expenditures for ordinary maintenance and repair~~  
11 ~~or for taxes, interest, or insurance; or~~

12            [~~(2) the contribution by a spouse of time, toil,~~  
13 ~~talent, or effort during the marriage].~~

14        SECTION 3. Section 3.404(b), Family Code, is amended to  
15 read as follows:

16        (b) A A [~~The~~] claim for reimbursement [~~economic contribution~~  
17 ~~created~~] under this subchapter does not create an ownership  
18 interest in property, but does create a claim against the property  
19 of the benefited estate by the contributing estate. The claim  
20 matures on dissolution of the marriage or the death of either  
21 spouse.

22        SECTION 4. Sections 3.406(a) and (b), Family Code, are  
23 amended to read as follows:

24        (a) On dissolution of a marriage, the court may [~~shall~~]  
25 impose an equitable lien on the property of a benefited marital  
26 estate to secure a claim for reimbursement against [~~economic~~  
27 ~~contribution in~~] that property by a contributing [~~another~~] marital

1 estate.

2 (b) On the death of a spouse, a court may [~~shall~~], on  
3 application for a claim for reimbursement [~~of economic~~  
4 ~~contribution~~] brought by the surviving spouse, the personal  
5 representative of the estate of the deceased spouse, or any other  
6 person interested in the estate, as defined by Section 3, Texas  
7 Probate Code, impose an equitable lien on the property of a  
8 benefited marital estate to secure a claim for reimbursement  
9 against that property [~~economic contribution~~] by a contributing  
10 marital estate.

11 SECTION 5. Section 7.007, Family Code, is amended to read as  
12 follows:

13 Sec. 7.007. DISPOSITION OF CLAIM FOR [~~ECONOMIC CONTRIBUTION~~  
14 ~~OR CLAIM FOR~~] REIMBURSEMENT. [~~(a) In a decree of divorce or~~  
15 ~~annulment, the court shall determine the rights of both spouses in a~~  
16 ~~claim for economic contribution as provided by Subchapter E,~~  
17 ~~Chapter 3, and in a manner that the court considers just and right,~~  
18 ~~having due regard for the rights of each party and any children of~~  
19 ~~the marriage, shall:~~

20 [~~(1) order a division of a claim for economic~~  
21 ~~contribution of the community marital estate to the separate~~  
22 ~~marital estate of one of the spouses,~~

23 [~~(2) order that a claim for an economic contribution~~  
24 ~~by one separate marital estate of a spouse to the community marital~~  
25 ~~estate of the spouses be awarded to the owner of the contributing~~  
26 ~~separate marital estate, and~~

27 [~~(3) order that a claim for economic contribution of~~

1 ~~one separate marital estate in the separate marital estate of the~~  
2 ~~other spouse be awarded to the owner of the contributing marital~~  
3 ~~estate.~~

4 [(b)] In a decree of divorce or annulment, the court shall  
5 determine the rights of both spouses in a claim for reimbursement as  
6 provided by Subchapter E, Chapter 3, and shall apply equitable  
7 principles to:

8 (1) determine whether to recognize the claim after  
9 taking into account all the relative circumstances of the spouses;  
10 and

11 (2) order a division of the claim for reimbursement,  
12 if appropriate, in a manner that the court considers just and right,  
13 having due regard for the rights of each party and any children of  
14 the marriage.

15 SECTION 6. The following laws are repealed:

- 16 (1) Sections 3.401(1), (2), and (3), Family Code; and  
17 (2) Sections 3.403, 3.406(c), 3.407, 3.408, and 3.410,  
18 Family Code.

19 SECTION 7. (a) In regard to a claim under Subchapter E,  
20 Chapter 3, Family Code, that arises from a suit for dissolution of a  
21 marriage, the changes in law made by this Act apply only to a claim  
22 made in a suit filed on or after the effective date of this Act. A  
23 claim made in a suit filed before the effective date of this Act is  
24 governed by the law in effect on the date the suit was filed, and the  
25 former law is continued in effect for that purpose.

26 (b) In regard to a claim under Subchapter E, Chapter 3,  
27 Family Code, that arises from the death of a spouse, the changes in

1 law made by this Act apply only to a claim arising from a death that  
2 occurs on or after the effective date of this Act. A claim arising  
3 from a death that occurs before the effective date of this Act is  
4 governed by the law in effect on the date of death, and the former  
5 law is continued in effect for that purpose.

6 SECTION 8. This Act takes effect September 1, 2009.