

By: Harris

S.B. No. 866

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to the rights and liabilities of the parties in a suit for  
3 dissolution of a marriage and certain post-dissolution  
4 proceedings.

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

6 SECTION 1. Subsection (d), Section 3.007, Family Code, is  
7 amended to read as follows:

8 (d) A spouse who is a participant in an employer-provided  
9 stock option plan or an employer-provided restricted stock plan has  
10 a separate property interest in the options or restricted stock  
11 granted to the spouse under the plan as follows:

12 (1) if the option or stock was granted to the spouse  
13 before marriage but required continued employment during marriage  
14 before the grant could be exercised or the restriction removed, the  
15 spouse's separate property interest is equal to the fraction of the  
16 option or restricted stock in which:

17 (A) the numerator is the sum of:

18 (i) the period from the date the option or  
19 stock was granted until the date of marriage; and

20 (ii) if the option or stock also required  
21 continued employment following the date of dissolution of the  
22 marriage before the grant could be exercised or the restriction  
23 removed, the period from the date of dissolution of the marriage  
24 until the date the grant could be exercised or the restriction

1 removed; and

2                   (B) the denominator is the period from the date  
3 the option or stock was granted until the date the grant could be  
4 exercised or the restriction removed; and

5                   (2) if the option or stock was granted to the spouse  
6 during the marriage but required continued employment following the  
7 date of dissolution of the [~~after~~] marriage before the grant could  
8 be exercised or the restriction removed, the spouse's separate  
9 property interest is equal to the fraction of the option or  
10 restricted stock in which:

11                   (A) the numerator is the period from the date of  
12 dissolution [~~or termination~~] of the marriage until the date the  
13 grant could be exercised or the restriction removed; and

14                   (B) the denominator is the period from the date  
15 the option or stock was granted until the date the grant could be  
16 exercised or the restriction removed.

17           SECTION 2. The heading to Subchapter E, Chapter 3, Family  
18 Code, is amended to read as follows:

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

20           SECTION 3. Section 3.402, Family Code, is amended to read as  
21 follows:

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

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

27                   (2) inadequate compensation for the time, toil,

1 talent, and effort of a spouse by a business entity under the  
2 control and direction of that spouse;

3 (3) [~~(2)~~] ~~is the dollar amount of:~~  
4 [~~(1)~~] the reduction of the principal amount of a debt  
5 secured by a lien on property owned before marriage, to the extent  
6 the debt existed at the time of marriage;

7 (4) [~~(2)~~] the reduction of the principal amount of a  
8 debt secured by a lien on property received by a spouse by gift,  
9 devise, or descent during a marriage, to the extent the debt existed  
10 at the time the property was received;

11 (5) [~~(3)~~] the reduction of the principal amount of  
12 that part of a debt, including a home equity loan:

- 13 (A) incurred during a marriage;  
14 (B) secured by a lien on property; and  
15 (C) incurred for the acquisition of, or for  
16 capital improvements to, property;

17 (6) [~~(4)~~] the reduction of the principal amount of  
18 that part of a debt:

- 19 (A) incurred during a marriage;  
20 (B) secured by a lien on property owned by a  
21 spouse;

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

- 25 (D) incurred for the acquisition of, or for  
26 capital improvements to, property;

27 (7) [~~(5)~~] the refinancing of the principal amount

1 described by Subdivisions (3)-(6) [~~(1)-(4)~~], to the extent the  
2 refinancing reduces that principal amount in a manner described by  
3 the applicable [~~appropriate~~] subdivision; and

4 (8) [~~(6)~~] capital improvements to property other than  
5 by incurring debt.

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

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

13 (d) Reimbursement for funds expended by a marital estate for  
14 improvements to another marital estate shall be measured by the  
15 enhancement in value to the benefited marital estate.

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

19 [~~(1) expenditures for ordinary maintenance and repair~~  
20 ~~or for taxes, interest, or insurance, or~~

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

23 SECTION 4. Subsection (b), Section 3.404, Family Code, is  
24 amended to read as follows:

25 (b) A [~~The~~] claim for reimbursement [~~economic contribution~~  
26 ~~created~~] under this subchapter does not create an ownership  
27 interest in property, but does create a claim against the property

1 of the benefited estate by the contributing estate. The claim  
2 matures on dissolution of the marriage or the death of either  
3 spouse.

4 SECTION 5. Subsections (a) and (b), Section 3.406, Family  
5 Code, are amended to read as follows:

6 (a) On dissolution of a marriage, the court may [~~shall~~]  
7 impose an equitable lien on the property of a benefited marital  
8 estate to secure a claim for reimbursement against [~~economic~~  
9 ~~contribution in~~] that property by a contributing [~~another~~] marital  
10 estate.

11 (b) On the death of a spouse, a court may [~~shall~~], on  
12 application for a claim for reimbursement [~~of economic~~  
13 ~~contribution~~] brought by the surviving spouse, the personal  
14 representative of the estate of the deceased spouse, or any other  
15 person interested in the estate, as defined by Section 3, Texas  
16 Probate Code, impose an equitable lien on the property of a  
17 benefited marital estate to secure a claim for reimbursement  
18 against that property [~~economic contribution~~] by a contributing  
19 marital estate.

20 SECTION 6. Section 3.410, Family Code, is amended to read as  
21 follows:

22 Sec. 3.410. EFFECT OF MARITAL PROPERTY AGREEMENTS. A  
23 premarital or marital property agreement, whether executed before,  
24 on, or after September 1, 2009 [~~1999~~], that satisfies the  
25 requirements of Chapter 4 is effective to waive, release, assign,  
26 or partition a claim for economic contribution, reimbursement, or  
27 both, under this subchapter to the same extent the agreement would

1 have been effective to waive, release, assign, or partition a claim  
2 for economic contribution, reimbursement, or both under the law as  
3 it existed immediately before September 1, 2009 [~~1999~~], unless the  
4 agreement provides otherwise.

5 SECTION 7. Section 7.007, Family Code, is amended to read as  
6 follows:

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

14 [~~(1) order a division of a claim for economic~~  
15 ~~contribution of the community marital estate to the separate~~  
16 ~~marital estate of one of the spouses;~~

17 [~~(2) order that a claim for an economic contribution~~  
18 ~~by one separate marital estate of a spouse to the community marital~~  
19 ~~estate of the spouses be awarded to the owner of the contributing~~  
20 ~~separate marital estate; and~~

21 [~~(3) order that a claim for economic contribution of~~  
22 ~~one separate marital estate in the separate marital estate of the~~  
23 ~~other spouse be awarded to the owner of the contributing marital~~  
24 ~~estate.~~

25 [~~(b)~~] In a decree of divorce or annulment, the court shall  
26 determine the rights of both spouses in a claim for reimbursement as  
27 provided by Subchapter E, Chapter 3, and shall apply equitable

1 principles to:

2 (1) determine whether to recognize the claim after  
3 taking into account all the relative circumstances of the spouses;  
4 and

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

9 SECTION 8. Section 9.014, Family Code, is amended to read as  
10 follows:

11 Sec. 9.014. ATTORNEY'S FEES. The court may award  
12 reasonable attorney's fees [~~as costs~~] in a proceeding under this  
13 subchapter. The court may order the attorney's fees to be paid  
14 directly to the attorney, who may enforce the order for fees in the  
15 attorney's own name by any means available for the enforcement of a  
16 judgment for debt.

17 SECTION 9. Subchapter B, Chapter 9, Family Code, is amended  
18 by adding Section 9.106 to read as follows:

19 Sec. 9.106. ATTORNEY'S FEES. In a proceeding under this  
20 subchapter, the court may award reasonable attorney's fees incurred  
21 by a party to a divorce or annulment against the other party to the  
22 divorce or annulment. The court may order the attorney's fees to be  
23 paid directly to the attorney, who may enforce the order for fees in  
24 the attorney's own name by any means available for the enforcement  
25 of a judgment for debt.

26 SECTION 10. Section 9.205, Family Code, is amended to read  
27 as follows:

1           Sec. 9.205. ATTORNEY'S FEES. In a proceeding to divide  
2 property previously undivided in a decree of divorce or annulment  
3 as provided by this subchapter, the court may award reasonable  
4 attorney's fees [~~as costs~~]. The court may order the attorney's fees  
5 to be paid directly to the attorney, who may enforce the order in  
6 the attorney's own name by any means available for the enforcement  
7 of a judgment for debt.

8           SECTION 11. The following laws are repealed:

- 9                   (1) Subsections (a), (b), and (f), Section 3.007,  
10 Family Code;  
11                   (2) Subdivisions (1), (2), and (3), Section 3.401,  
12 Family Code;  
13                   (3) Section 3.403, Family Code;  
14                   (4) Subsection (c), Section 3.406, Family Code; and  
15                   (5) Sections 3.407 and 3.408, Family Code.

16           SECTION 12. The changes in law made by this Act to Section  
17 3.007, Family Code, apply to:

- 18                   (1) 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) the estate of a person who dies on or after the  
22 effective date of this Act.

23           SECTION 13. (a) In regard to a claim under Subchapter E,  
24 Chapter 3, Family Code, that arises from a suit for dissolution of a  
25 marriage, the changes in law made by this Act to that subchapter  
26 apply only to a claim made in a suit filed on or after the effective  
27 date of this Act. A claim made in a suit filed before the effective



1 date of this Act is governed by the law in effect on the date the  
2 suit was filed, and the former law is continued in effect for that  
3 purpose.

4 (b) In regard to a claim under Subchapter E, Chapter 3,  
5 Family Code, that arises from the death of a spouse, the changes in  
6 law made by this Act to that subchapter apply only to a claim  
7 arising from a death that occurs on or after the effective date of  
8 this Act. A claim arising from a death that occurs before the  
9 effective date of this Act is governed by the law in effect on the  
10 date of death, and the former law is continued in effect for that  
11 purpose.

12 SECTION 14. The changes in law made by this Act to Chapter  
13 9, Family Code, apply only to a proceeding commenced under that  
14 chapter on or after the effective date of this Act. A proceeding  
15 commenced under Chapter 9, Family Code, before the effective date  
16 of this Act is governed by the law in effect immediately before that  
17 date, and the former law is continued in effect for that purpose.

18 SECTION 15. This Act takes effect September 1, 2009.