

By: Harris

S.B. No. 866

Substitute the following for S.B. No. 866:

By: Madden

C.S.S.B. No. 866

A BILL TO BE ENTITLED

AN ACT

1
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) [~~economic contribution~~] ~~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; and

6 (9) the reduction by the community property estate of
7 an unsecured debt incurred by the separate estate of one of the
8 spouses.

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

13 (c) Benefits for the use and enjoyment of property may be
14 offset against a claim for reimbursement for expenditures to
15 benefit a marital estate, except that the separate estate of a
16 spouse may not claim an offset for use and enjoyment of a primary or
17 secondary residence owned wholly or partly by the separate estate
18 against contributions made by the community estate to the separate
19 estate.

20 (d) Reimbursement for funds expended by a marital estate for
21 improvements to another marital estate shall be measured by the
22 enhancement in value to the benefited marital estate.

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

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

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

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

5 (b) A ~~[The]~~ claim for reimbursement ~~[economic contribution~~
6 ~~created]~~ under this subchapter does not create an ownership
7 interest in property, but does create a claim against the property
8 of the benefited estate by the contributing estate. The claim
9 matures on dissolution of the marriage or the death of either
10 spouse.

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

13 (a) On dissolution of a marriage, the court may ~~[shall]~~
14 impose an equitable lien on the property of a benefited marital
15 estate to secure a claim for reimbursement against ~~[economic~~
16 ~~contribution in]~~ that property by a contributing ~~[another]~~ marital
17 estate.

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

27 SECTION 6. Section 3.410, Family Code, is amended to read as

1 follows:

2 Sec. 3.410. EFFECT OF MARITAL PROPERTY AGREEMENTS. A
3 premarital or marital property agreement, whether executed before,
4 on, or after September 1, 2009 [~~1999~~], that satisfies the
5 requirements of Chapter 4 is effective to waive, release, assign,
6 or partition a claim for economic contribution, reimbursement, or
7 both, under this subchapter to the same extent the agreement would
8 have been effective to waive, release, assign, or partition a claim
9 for economic contribution, reimbursement, or both under the law as
10 it existed immediately before September 1, 2009 [~~1999~~], unless the
11 agreement provides otherwise.

12 SECTION 7. Section 7.007, Family Code, is amended to read as
13 follows:

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

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

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

1 ~~[(3) order that a claim for economic contribution of~~
2 ~~one separate marital estate in the separate marital estate of the~~
3 ~~other spouse be awarded to the owner of the contributing marital~~
4 ~~estate.~~

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

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

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

16 SECTION 8. Section 9.014, Family Code, is amended to read as
17 follows:

18 Sec. 9.014. ATTORNEY'S FEES. The court may award
19 reasonable attorney's fees ~~[as costs]~~ in a proceeding under this
20 subchapter. The court may order the attorney's fees to be paid
21 directly to the attorney, who may enforce the order for fees in the
22 attorney's own name by any means available for the enforcement of a
23 judgment for debt.

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

26 Sec. 9.106. ATTORNEY'S FEES. In a proceeding under this
27 subchapter, the court may award reasonable attorney's fees incurred

1 by a party to a divorce or annulment against the other party to the
2 divorce or annulment. The court may order the attorney's fees to be
3 paid directly to the attorney, who may enforce the order for fees in
4 the attorney's own name by any means available for the enforcement
5 of a judgment for debt.

6 SECTION 10. Section 9.205, Family Code, is amended to read
7 as follows:

8 Sec. 9.205. ATTORNEY'S FEES. In a proceeding to divide
9 property previously undivided in a decree of divorce or annulment
10 as provided by this subchapter, the court may award reasonable
11 attorney's fees [~~as costs~~]. The court may order the attorney's fees
12 to be paid directly to the attorney, who may enforce the order in
13 the attorney's own name by any means available for the enforcement
14 of a judgment for debt.

15 SECTION 11. The following laws are repealed:

- 16 (1) Subsections (a), (b), and (f), Section 3.007,
17 Family Code;
- 18 (2) Subdivisions (1), (2), and (3), Section 3.401,
19 Family Code;
- 20 (3) Section 3.403, Family Code;
- 21 (4) Subsection (c), Section 3.406, Family Code; and
- 22 (5) Sections 3.407 and 3.408, Family Code.

23 SECTION 12. The changes in law made by this Act to Section
24 3.007, Family Code, apply to:

- 25 (1) a suit for dissolution of a marriage pending
26 before a trial court on or filed on or after the effective date of
27 this Act; and

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

3 SECTION 13. (a) In regard to a claim under Subchapter E,
4 Chapter 3, Family Code, that arises from a suit for dissolution of a
5 marriage, the changes in law made by this Act to that subchapter
6 apply only to a claim made in a suit filed on or after the effective
7 date of this Act. A claim made in a suit filed before the effective
8 date of this Act is governed by the law in effect on the date the
9 suit was filed, and the former law is continued in effect for that
10 purpose.

11 (b) In regard to a claim under Subchapter E, Chapter 3,
12 Family Code, that arises from the death of a spouse, the changes in
13 law made by this Act to that subchapter apply only to a claim
14 arising from a death that occurs on or after the effective date of
15 this Act. A claim arising from a death that occurs before the
16 effective date of this Act is governed by the law in effect on the
17 date of death, and the former law is continued in effect for that
18 purpose.

19 SECTION 14. The changes in law made by this Act to Chapter
20 9, Family Code, apply only to a proceeding commenced under that
21 chapter on or after the effective date of this Act. A proceeding
22 commenced under Chapter 9, Family Code, before the effective date
23 of this Act is governed by the law in effect immediately before that
24 date, and the former law is continued in effect for that purpose.

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