

1-1 By: Harris S.B. No. 866
1-2 (In the Senate - Filed February 16, 2009; March 9, 2009,
1-3 read first time and referred to Committee on Jurisprudence;
1-4 March 30, 2009, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 6, Nays 0; March 30, 2009,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 866 By: Harris

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the rights and liabilities of the parties in a suit for
1-11 dissolution of a marriage and certain post-dissolution
1-12 proceedings.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Subsection (d), Section 3.007, Family Code, is
1-15 amended to read as follows:

1-16 (d) A spouse who is a participant in an employer-provided
1-17 stock option plan or an employer-provided restricted stock plan has
1-18 a separate property interest in the options or restricted stock
1-19 granted to the spouse under the plan as follows:

1-20 (1) if the option or stock was granted to the spouse
1-21 before marriage but required continued employment during marriage
1-22 before the grant could be exercised or the restriction removed, the
1-23 spouse's separate property interest is equal to the fraction of the
1-24 option or restricted stock in which:

1-25 (A) the numerator is the sum of:

1-26 (i) the period from the date the option or
1-27 stock was granted until the date of marriage; and

1-28 (ii) if the option or stock also required
1-29 continued employment following the date of dissolution of the
1-30 marriage before the grant could be exercised or the restriction
1-31 removed, the period from the date of dissolution of the marriage
1-32 until the date the grant could be exercised or the restriction
1-33 removed; and

1-34 (B) the denominator is the period from the date
1-35 the option or stock was granted until the date the grant could be
1-36 exercised or the restriction removed; and

1-37 (2) if the option or stock was granted to the spouse
1-38 during the marriage but required continued employment following the
1-39 date of dissolution of the [after] marriage before the grant could
1-40 be exercised or the restriction removed, the spouse's separate
1-41 property interest is equal to the fraction of the option or
1-42 restricted stock in which:

1-43 (A) the numerator is the period from the date of
1-44 dissolution [~~or termination~~] of the marriage until the date the
1-45 grant could be exercised or the restriction removed; and

1-46 (B) the denominator is the period from the date
1-47 the option or stock was granted until the date the grant could be
1-48 exercised or the restriction removed.

1-49 SECTION 2. The heading to Subchapter E, Chapter 3, Family
1-50 Code, is amended to read as follows:

1-51 SUBCHAPTER E. CLAIMS FOR [~~ECONOMIC CONTRIBUTION AND~~] REIMBURSEMENT

1-52 SECTION 3. Section 3.402, Family Code, is amended to read as
1-53 follows:

1-54 Sec. 3.402. CLAIM FOR REIMBURSEMENT; OFFSETS [~~ECONOMIC~~
1-55 ~~CONTRIBUTION~~]. (a) For purposes of this subchapter, a claim for
1-56 reimbursement includes:

1-57 (1) payment by one marital estate of the unsecured
1-58 liabilities of another marital estate;

1-59 (2) inadequate compensation for the time, toil,
1-60 talent, and effort of a spouse by a business entity under the
1-61 control and direction of that spouse;

1-62 (3) [~~"economic contribution" is the dollar amount of:~~

1-63 [~~(1)~~] the reduction of the principal amount of a debt

2-1 secured by a lien on property owned before marriage, to the extent
 2-2 the debt existed at the time of marriage;

2-3 (4) [~~(2)~~] the reduction of the principal amount of a
 2-4 debt secured by a lien on property received by a spouse by gift,
 2-5 devise, or descent during a marriage, to the extent the debt existed
 2-6 at the time the property was received;

2-7 (5) [~~(3)~~] the reduction of the principal amount of
 2-8 that part of a debt, including a home equity loan:

2-9 (A) incurred during a marriage;

2-10 (B) secured by a lien on property; and

2-11 (C) incurred for the acquisition of, or for
 2-12 capital improvements to, property;

2-13 (6) [~~(4)~~] the reduction of the principal amount of
 2-14 that part of a debt:

2-15 (A) incurred during a marriage;

2-16 (B) secured by a lien on property owned by a
 2-17 spouse;

2-18 (C) for which the creditor agreed to look for
 2-19 repayment solely to the separate marital estate of the spouse on
 2-20 whose property the lien attached; and

2-21 (D) incurred for the acquisition of, or for
 2-22 capital improvements to, property;

2-23 (7) [~~(5)~~] the refinancing of the principal amount
 2-24 described by Subdivisions (3)-(6) [~~(1)-(4)~~], to the extent the
 2-25 refinancing reduces that principal amount in a manner described by
 2-26 the applicable [~~appropriate~~] subdivision; and

2-27 (8) [~~(6)~~] capital improvements to property other than
 2-28 by incurring debt.

2-29 (b) The court shall resolve a claim for reimbursement by
 2-30 using equitable principles, including the principle that claims for
 2-31 reimbursement may be offset against each other if the court
 2-32 determines it to be appropriate.

2-33 (c) Benefits for the use and enjoyment of property may be
 2-34 offset against a claim for reimbursement for expenditures to
 2-35 benefit a marital estate.

2-36 (d) Reimbursement for funds expended by a marital estate for
 2-37 improvements to another marital estate shall be measured by the
 2-38 enhancement in value to the benefited marital estate.

2-39 (e) The party seeking an offset to a claim for reimbursement
 2-40 has the burden of proof with respect to the offset [~~"Economic~~
 2-41 ~~contribution" does not include the dollar amount of:~~

2-42 [~~(1) expenditures for ordinary maintenance and repair~~
 2-43 ~~or for taxes, interest, or insurance; or~~

2-44 [~~(2) the contribution by a spouse of time, toil,~~
 2-45 ~~talent, or effort during the marriage].~~

2-46 SECTION 4. Subsection (b), Section 3.404, Family Code, is
 2-47 amended to read as follows:

2-48 (b) A [~~The~~] claim for reimbursement [~~economic contribution~~
 2-49 ~~created~~] under this subchapter does not create an ownership
 2-50 interest in property, but does create a claim against the property
 2-51 of the benefited estate by the contributing estate. The claim
 2-52 matures on dissolution of the marriage or the death of either
 2-53 spouse.

2-54 SECTION 5. Subsections (a) and (b), Section 3.406, Family
 2-55 Code, are amended to read as follows:

2-56 (a) On dissolution of a marriage, the court may [~~shall~~]
 2-57 impose an equitable lien on the property of a benefited marital
 2-58 estate to secure a claim for reimbursement against [~~economic~~
 2-59 ~~contribution in~~] that property by a contributing [~~another~~] marital
 2-60 estate.

2-61 (b) On the death of a spouse, a court may [~~shall~~], on
 2-62 application for a claim for reimbursement [~~of economic~~
 2-63 ~~contribution~~] brought by the surviving spouse, the personal
 2-64 representative of the estate of the deceased spouse, or any other
 2-65 person interested in the estate, as defined by Section 3, Texas
 2-66 Probate Code, impose an equitable lien on the property of a
 2-67 benefited marital estate to secure a claim for reimbursement
 2-68 against that property [~~economic contribution~~] by a contributing
 2-69 marital estate.

3-1 SECTION 6. Section 3.410, Family Code, is amended to read as
3-2 follows:

3-3 Sec. 3.410. EFFECT OF MARITAL PROPERTY AGREEMENTS. A
3-4 premarital or marital property agreement, whether executed before,
3-5 on, or after September 1, 2009 [~~1999~~], that satisfies the
3-6 requirements of Chapter 4 is effective to waive, release, assign,
3-7 or partition a claim for economic contribution, reimbursement, or
3-8 both, under this subchapter to the same extent the agreement would
3-9 have been effective to waive, release, assign, or partition a claim
3-10 for economic contribution, reimbursement, or both under the law as
3-11 it existed immediately before September 1, 2009 [~~1999~~], unless the
3-12 agreement provides otherwise.

3-13 SECTION 7. Section 7.007, Family Code, is amended to read as
3-14 follows:

3-15 Sec. 7.007. DISPOSITION OF CLAIM FOR [~~ECONOMIC CONTRIBUTION~~
3-16 ~~OR CLAIM FOR~~] REIMBURSEMENT. [~~(a) In a decree of divorce or~~
3-17 ~~annulment, the court shall determine the rights of both spouses in a~~
3-18 ~~claim for economic contribution as provided by Subchapter E,~~
3-19 ~~Chapter 3, and in a manner that the court considers just and right,~~
3-20 ~~having due regard for the rights of each party and any children of~~
3-21 ~~the marriage, shall:~~

3-22 [~~(1) order a division of a claim for economic~~
3-23 ~~contribution of the community marital estate to the separate~~
3-24 ~~marital estate of one of the spouses;~~

3-25 [~~(2) order that a claim for an economic contribution~~
3-26 ~~by one separate marital estate of a spouse to the community marital~~
3-27 ~~estate of the spouses be awarded to the owner of the contributing~~
3-28 ~~separate marital estate; and~~

3-29 [~~(3) order that a claim for economic contribution of~~
3-30 ~~one separate marital estate in the separate marital estate of the~~
3-31 ~~other spouse be awarded to the owner of the contributing marital~~
3-32 ~~estate.~~

3-33 [~~(b)~~] In a decree of divorce or annulment, the court shall
3-34 determine the rights of both spouses in a claim for reimbursement as
3-35 provided by Subchapter E, Chapter 3, and shall apply equitable
3-36 principles to:

3-37 (1) determine whether to recognize the claim after
3-38 taking into account all the relative circumstances of the spouses;
3-39 and

3-40 (2) order a division of the claim for reimbursement,
3-41 if appropriate, in a manner that the court considers just and right,
3-42 having due regard for the rights of each party and any children of
3-43 the marriage.

3-44 SECTION 8. Section 9.014, Family Code, is amended to read as
3-45 follows:

3-46 Sec. 9.014. ATTORNEY'S FEES. The court may award
3-47 reasonable attorney's fees [~~as costs~~] in a proceeding under this
3-48 subchapter. The court may order the attorney's fees to be paid
3-49 directly to the attorney, who may enforce the order for fees in the
3-50 attorney's own name by any means available for the enforcement of a
3-51 judgment for debt.

3-52 SECTION 9. Subchapter B, Chapter 9, Family Code, is amended
3-53 by adding Section 9.106 to read as follows:

3-54 Sec. 9.106. ATTORNEY'S FEES. In a proceeding under this
3-55 subchapter, the court may award reasonable attorney's fees incurred
3-56 by a party to a divorce or annulment against the other party to the
3-57 divorce or annulment. The court may order the attorney's fees to be
3-58 paid directly to the attorney, who may enforce the order for fees in
3-59 the attorney's own name by any means available for the enforcement
3-60 of a judgment for debt.

3-61 SECTION 10. Section 9.205, Family Code, is amended to read
3-62 as follows:

3-63 Sec. 9.205. ATTORNEY'S FEES. In a proceeding to divide
3-64 property previously undivided in a decree of divorce or annulment
3-65 as provided by this subchapter, the court may award reasonable
3-66 attorney's fees [~~as costs~~]. The court may order the attorney's fees
3-67 to be paid directly to the attorney, who may enforce the order in
3-68 the attorney's own name by any means available for the enforcement
3-69 of a judgment for debt.

4-1 SECTION 11. The following laws are repealed:
 4-2 (1) Subsections (a), (b), and (f), Section 3.007,
 4-3 Family Code;
 4-4 (2) Subdivisions (1), (2), and (3), Section 3.401,
 4-5 Family Code;
 4-6 (3) Section 3.403, Family Code;
 4-7 (4) Subsection (c), Section 3.406, Family Code; and
 4-8 (5) Sections 3.407 and 3.408, Family Code.

4-9 SECTION 12. The changes in law made by this Act to Section
 4-10 3.007, Family Code, apply to:

4-11 (1) a suit for dissolution of a marriage pending
 4-12 before a trial court on or filed on or after the effective date of
 4-13 this Act; and

4-14 (2) the estate of a person who dies on or after the
 4-15 effective date of this Act.

4-16 SECTION 13. (a) In regard to a claim under Subchapter E,
 4-17 Chapter 3, Family Code, that arises from a suit for dissolution of a
 4-18 marriage, the changes in law made by this Act to that subchapter
 4-19 apply only to a claim made in a suit filed on or after the effective
 4-20 date of this Act. A claim made in a suit filed before the effective
 4-21 date of this Act is governed by the law in effect on the date the
 4-22 suit was filed, and the former law is continued in effect for that
 4-23 purpose.

4-24 (b) In regard to a claim under Subchapter E, Chapter 3,
 4-25 Family Code, that arises from the death of a spouse, the changes in
 4-26 law made by this Act to that subchapter apply only to a claim
 4-27 arising from a death that occurs on or after the effective date of
 4-28 this Act. A claim arising from a death that occurs before the
 4-29 effective date of this Act is governed by the law in effect on the
 4-30 date of death, and the former law is continued in effect for that
 4-31 purpose.

4-32 SECTION 14. The changes in law made by this Act to Chapter
 4-33 9, Family Code, apply only to a proceeding commenced under that
 4-34 chapter on or after the effective date of this Act. A proceeding
 4-35 commenced under Chapter 9, Family Code, before the effective date
 4-36 of this Act is governed by the law in effect immediately before that
 4-37 date, and the former law is continued in effect for that purpose.

4-38 SECTION 15. This Act takes effect September 1, 2009.

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