

## **BILL ANALYSIS**

C.S.H.B. 908  
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Judiciary & Civil Jurisprudence  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Current law is unclear as to a court's ability to make a division of community estate in a case of fraud on the community and does not provide any explicit means, if fraud on the community is committed by a spouse, for the innocent spouse to recover the full value of that innocent spouse's part of the damaged community estate.

C.S.H.B. 908 seeks to further protect the innocent spouse from loss of value of damaged community property by clarifying that the ability of the court to make a just and right division of the community estate is not limited to the value of assets remaining after the fraud and by specifying what constitutes actual or constructive fraud on the community, the required court procedures in making a just and right division of a community estate that has been depleted as a result of fraud on the community, and the various forms of the award the court may grant to the innocent spouse.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 908 amends the Family Code to establish that a spouse commits actual fraud on the community if the spouse, with dishonesty of purpose or intent to deceive, spends or transfers community property for the primary purpose of depriving the other spouse of the use and enjoyment of the assets involved in the transaction. The bill establishes that a spouse commits constructive fraud on the community if the spouse, regardless of intent, breaches a legal or equitable duty owed to the other spouse or to the community estate by spending or transferring community property and the conduct deceives the other spouse or violates a confidence that exists as a result of the marriage. The bill establishes that acts by a spouse that constitute actual or constructive fraud on the community include unfairly disposing of or encumbering the other spouse's interest in community property or unfairly incurring community debt without the other spouse's knowledge or consent; wrongfully conveying property from the community estate without the other spouse's knowledge or consent; negligently, or with dishonesty of purpose or intent to deceive, wasting community assets by depriving the community estate of assets to the detriment of the other spouse; and failing, without good cause, to provide to the other spouse an accounting of money or other assets that have been transferred from the community estate without the consent of the other spouse, if the other spouse contests the fairness of a transfer of the money or assets. The bill defines "accounting."

C.S.H.B. 908 requires the court, if the trier of fact determines that a spouse has committed actual or constructive fraud on the community, to calculate the value by which the community estate was depleted as a result of the fraud on the community, calculate the amount of the reconstituted estate, and divide the value of the reconstituted estate between the parties in a manner the court deems just and right. The bill defines "reconstituted estate" to mean the total value of the

community estate that would exist if an actual or constructive fraud on the community had not occurred.

C.S.H.B. 908 authorizes the court, in making a just and right division of the reconstituted estate under provisions of law relating to the division of marital property, to grant any legal or equitable relief necessary to accomplish a just and right division, including awarding to the wronged spouse an appropriate share of the community estate remaining after the actual or constructive fraud on the community, awarding a money judgment in favor of the wronged spouse against the spouse who committed the actual or constructive fraud on the community, or awarding to the wronged spouse both a money judgment and an appropriate share of the community estate.

### **EFFECTIVE DATE**

September 1, 2011.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.H.B. 908 contains a provision not included in the original defining "accounting." The substitute differs from the original by defining "reconstituted estate" to mean the total value of the community estate that would exist if an actual or constructive fraud on the community had not occurred, whereas the original defines "reconstituted estate" to mean the total amount of money that would have been in the community estate if the fraud on the community had not occurred.

C.S.H.B. 908 omits a provision included in the original requiring the trier of fact in a suit for dissolution of a marriage to determine whether a spouse has committed fraud on the community before dividing a community estate under provisions of law relating to the division of marital property. The substitute contains provisions not in the original establishing the conditions under which a spouse commits actual fraud on the community and constructive fraud on the community and makes conforming changes in provisions where the original refers to fraud on the community to refer instead to actual or constructive fraud on the community.

C.S.H.B. 908 differs from the original by specifying certain acts by a spouse that constitute actual or constructive fraud on the community, whereas the original defines "fraud on the community" as improper conduct by a spouse to the detriment of the community estate and includes certain specified acts in that term. The substitute differs from the original by specifying that acts of actual or constructive fraud on the community include wrongfully conveying property from the community estate without the other spouse's knowledge or consent; negligently, or with dishonesty of purpose or intent to deceive, wasting community assets by depriving the community estate of assets to the detriment of the other spouse; and failing, without good cause, to provide to the other spouse an accounting of money or other assets that have been transferred from the community estate without the consent of the other spouse, if the other spouse contests the fairness of a transfer of the money or assets, whereas the original, in the comparable provisions, includes wrongfully conveying property out of the community estate, wasting community funds or property, and failing to provide an accounting of money transferred from the community estate in the definition of "fraud on the community." The substitute contains a provision not included in the original that includes unfairly disposing of or encumbering the other spouse's interest in community property or unfairly incurring community debt without the other spouse's knowledge or consent in the acts by a spouse that constitute actual or constructive fraud on the community.

C.S.H.B. 908, in the bill provision requiring the court to divide the value of the reconstituted estate between the parties of a suit for a dissolution of marriage, contains a provision not included in the original specifying that the division be in a manner the court deems just and right. The substitute omits a provision included in the original requiring the court, if the trier of fact

determines that a spouse has committed fraud on the community, to award to the spouse that committed the fraud on the community the portion of the estate that the spouse depleted.

C.S.H.B. 908 specifies that, in making a just and right division of the reconstituted estate, the court is authorized to grant any legal or equitable relief necessary for that purpose, including the actions that the original authorizes the court to take, whereas the original specifies only those actions.

C.S.H.B. 908 differs from the original in nonsubstantive ways by using language reflective of certain drafting conventions.