

By: Thompson

H.B. No. 908

Substitute the following for H.B. No. 908:

By: Hartnett

C.S.H.B. No. 908

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the division of community property on dissolution of
3 marriage.

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

5 SECTION 1. Chapter 7, Family Code, is amended by adding
6 Section 7.009 to read as follows:

7 Sec. 7.009. FRAUD ON THE COMMUNITY; DIVISION AND
8 DISPOSITION OF RECONSTITUTED ESTATE. (a) In this section:

9 (1) "Accounting" means a written explanation and
10 designation of all money or other assets spent or transferred,
11 including:

12 (A) the amount of money or other assets spent or
13 transferred;

14 (B) the date of each expenditure or transfer;

15 (C) the recipient of each expenditure or
16 transfer; and

17 (D) the location of the money or assets spent or
18 transferred.

19 (2) "Reconstituted estate" means the total value of
20 the community estate that would exist if an actual or constructive
21 fraud on the community had not occurred.

22 (b) A spouse commits actual fraud on the community if the
23 spouse, with dishonesty of purpose or intent to deceive, spends or
24 transfers community property for the primary purpose of depriving

1 the other spouse of the use and enjoyment of the assets involved in
2 the transaction.

3 (c) A spouse commits constructive fraud on the community if
4 the spouse, regardless of intent, breaches a legal or equitable
5 duty owed to the other spouse or to the community estate by spending
6 or transferring community property, and the conduct deceives the
7 other spouse or violates a confidence that exists as a result of the
8 marriage.

9 (d) Acts by a spouse that constitute actual or constructive
10 fraud on the community include:

11 (1) unfairly disposing of or encumbering the other
12 spouse's interest in community property or unfairly incurring
13 community debt without the other spouse's knowledge or consent;

14 (2) wrongfully conveying property from the community
15 estate without the other spouse's knowledge or consent;

16 (3) negligently, or with dishonesty of purpose or
17 intent to deceive, wasting community assets by depriving the
18 community estate of assets to the detriment of the other spouse; and

19 (4) failing, without good cause, to provide to the
20 other spouse an accounting of money or other assets that have been
21 transferred from the community estate without the consent of the
22 other spouse, if the other spouse contests the fairness of a
23 transfer of the money or assets.

24 (e) If the trier of fact determines that a spouse has
25 committed actual or constructive fraud on the community, the court
26 shall:

27 (1) calculate the value by which the community estate

1 was depleted as a result of the fraud on the community and calculate
2 the amount of the reconstituted estate; and

3 (2) divide the value of the reconstituted estate
4 between the parties in a manner the court deems just and right.

5 (f) In making a just and right division of the reconstituted
6 estate under Section 7.001, the court may grant any legal or
7 equitable relief necessary to accomplish a just and right division,
8 including:

9 (1) awarding to the wronged spouse an appropriate
10 share of the community estate remaining after the actual or
11 constructive fraud on the community;

12 (2) awarding a money judgment in favor of the wronged
13 spouse against the spouse who committed the actual or constructive
14 fraud on the community; or

15 (3) awarding to the wronged spouse both a money
16 judgment and an appropriate share of the community estate.

17 SECTION 2. The change in law made by this Act applies to a
18 suit for dissolution of a marriage pending before a trial court on
19 or filed on or after the effective date of this Act.

20 SECTION 3. This Act takes effect September 1, 2011.