

SENATE AMENDMENTS

2nd Printing

By: Thompson

H.B. No. 908

A BILL TO BE ENTITLED

AN ACT

relating to the division of community property on dissolution of marriage.

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

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

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

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

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

(B) the date of each expenditure or transfer;

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

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

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

(b) 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

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.

ADOPTED

MAY 10 2011

Atty. Gen. Paul
Secretary of the Senate

By: Chris Harris

H.B. No. 908

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

By: Chris Harris

C.S. H.B. No. 908

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3 marriage.

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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 "reconstituted estate" means the total value of the community
10 estate that would exist if an actual or constructive fraud on the
11 community had not occurred.

12 (b) If the trier of fact determines that a spouse has
13 committed actual or constructive fraud on the community, the court
14 shall:

15 (1) calculate the value by which the community estate
16 was depleted as a result of the fraud on the community and calculate
17 the amount of the reconstituted estate; and

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

20 (c) In making a just and right division of the reconstituted
21 estate under Section 7.001, the court may grant any legal or
22 equitable relief necessary to accomplish a just and right division,
23 including:

24 (1) awarding to the wronged spouse an appropriate

1 share of the community estate remaining after the actual or
2 constructive fraud on the community;

3 (2) awarding a money judgment in favor of the wronged
4 spouse against the spouse who committed the actual or constructive
5 fraud on the community; or

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

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

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

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

May 10, 2011

TO: Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB908 by Thompson (Relating to the division of community property on dissolution of marriage.), **As Passed 2nd House**

No significant fiscal implication to the State is anticipated.

The bill would amend the Family Code to recognize "fraud on the community" as a factor in determining the proper division of the community estate in a divorce. The proposed amendment would compel a court to determine whether a spouse had wrongfully or wastefully treated community property. To the extent the bill would provide an additional factor courts may consider when hearing divorce cases, no significant implication to the workload of the courts is anticipated. The bill would take effect September 1, 2011.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council

LBB Staff: JOB, SD, TB, JT

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

May 5, 2011

TO: Honorable Chris Harris, Chair, Senate Committee on Jurisprudence

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB908 by Thompson (relating to the division of community property on dissolution of marriage.), **Committee Report 2nd House, Substituted**

No significant fiscal implication to the State is anticipated.

The bill would amend the Family Code to recognize "fraud on the community" as a factor in determining the proper division of the community estate in a divorce. The proposed amendment would compel a court to determine whether a spouse had wrongfully or wastefully treated community property. To the extent the bill would provide an additional factor courts may consider when hearing divorce cases, no significant implication to the workload of the courts is anticipated. The bill would take effect September 1, 2011.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council

LBB Staff: JOB, TB, JT

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

April 29, 2011

TO: Honorable Chris Harris, Chair, Senate Committee on Jurisprudence

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB908 by Thompson (Relating to the division of community property on dissolution of marriage.), **As Engrossed**

No significant fiscal implication to the State is anticipated.

The bill would amend the Family Code to recognize "fraud on the community" as a factor in determining the proper division of the community estate in a divorce. The proposed amendment would compel a court to determine whether a spouse had wrongfully or wastefully treated community property. To the extent the bill would provide an additional factor courts may consider when hearing divorce cases, no significant implication to the workload of the courts is anticipated. The bill would take effect September 1, 2011.

Local Government Impact

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Source Agencies: 212 Office of Court Administration, Texas Judicial Council

LBB Staff: JOB, TB, JT

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

April 1, 2011

TO: Honorable Jim Jackson, Chair, House Committee on Judiciary & Civil Jurisprudence

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB908 by Thompson (relating to the division of community property on dissolution of marriage.), **Committee Report 1st House, Substituted**

No significant fiscal implication to the State is anticipated.

The bill would amend the Family Code to recognize "fraud on the community" as a factor in determining the proper division of the community estate in a divorce. The proposed amendment would compel a court to determine whether a spouse had wrongfully or wastefully treated community property. To the extent the bill would provide an additional factor courts may consider when hearing divorce cases, no significant implication to the workload of the courts is anticipated. The bill would take effect September 1, 2011.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council

LBB Staff: JOB, TB, JT

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

March 4, 2011

TO: Honorable Jim Jackson, Chair, House Committee on Judiciary & Civil Jurisprudence

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB908 by Thompson (Relating to the division of community property on dissolution of marriage.), **As Introduced**

No significant fiscal implication to the State is anticipated.

The bill would amend the Family Code to recognize "fraud on the community" as a factor in determining the proper division of the community estate in a divorce. The proposed amendment would compel a court to determine whether a spouse had wrongfully or wastefully treated community property. To the extent the bill would provide an additional factor courts may consider when hearing divorce cases, no significant implication to the workload of the courts is anticipated. The bill would take effect September 1, 2011.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council

LBB Staff: JOB, JT, TB