

BILL ANALYSIS

C.S.H.B. 5291
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Juvenile Justice & Family Issues
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Currently, state law does not adequately or clearly provide for the submission of out of court, sworn statements in support of agreed final orders. When the pandemic hit and the Texas Supreme Court issued each of its emergency orders, Texas courts were advised that accepting out of court, sworn statements as evidence was explicitly permitted. This provided a way to finalize divorce cases where the parties are in agreement without requiring them to appear in person, which can require time off work and payment for lawyers to travel to and from the courthouse for a hearing. Now that the pandemic-based emergency orders have terminated, some courts are under the impression that the power to accept these statements has been taken back. C.S.H.B. 5291 seeks to address this issue by explicitly requiring a court to accept an agreed divorce order for entry by submission of evidence, rather than requiring the parties to testify and attend court in person, if certain conditions are satisfied.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

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. 5291 amends the Family Code to authorize a court with jurisdiction over a suit for dissolution of a marriage to adopt a written divorce agreement created by the parties as the court's final decree, without requiring that the parties testify or appear in person before the court, if the following conditions are satisfied:

- neither party has filed written objection opposing the adoption of the agreement as the final decree;
- the agreement includes the following components:
 - the signature of each party approving the form and substance of the agreement;
 - the date of marriage and the date of separation, if applicable;
 - the grounds for dissolution of the marriage;
 - characterization of the parties' assets as separate or community property;
 - a proposed just and right division of the community property of the marriage;
 - if there are minor children of the marriage, a written agreed parenting plan and an agreement concerning child support; and
 - provisions for maintenance, if applicable, or a statement that the parties agree that maintenance should not be awarded; and

- the agreement is accompanied by an affidavit or unsworn declaration of one or both parties containing the necessary facts or evidence to support the terms of the agreement, including:
 - a statement that the proposed division of the community property is a just and right division of the community property of the marriage;
 - if the agreement contains provisions affecting the parent-child relationship, the identity of any minor child, including the child's name and age, and a statement that the terms of the agreement are in the best interest of each child; and
 - if the agreement does not contain provisions affecting the parent-child relationship, a statement that there are no minor children of the marriage and none are expected.

C.S.H.B. 5291 requires the court to approve the agreement if it finds that the terms of the agreement are just and right and in the best interest of each child, if applicable, and requires the court to continue the case for appropriate proceedings if it finds that those conditions are not satisfied. If approved, the court may set forth the agreement in full or incorporate the agreement by reference in the final decree. An agreement adopted by a court under the bill's provisions is binding on the parties.

C.S.H.B. 5291 applies to a suit for dissolution of a marriage that is pending in a trial court on the bill's effective date or filed on or after that date.

EFFECTIVE DATE

September 1, 2023.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 5291 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute changes provisions in the introduced relating to the agreed divorce order, as follows:

- replaces the requirement in the introduced for the court and all parties to accept for entry any proposed divorce order that satisfies the prescribed conditions with an authorization for the court to adopt as the court's final decree a written divorce agreement created by the parties that satisfies the prescribed conditions; and
- omits the requirement in the introduced for the agreement to include signatures of counsel for the respective parties approving the form of the agreement.

The substitute includes provisions that were not in the introduced that do the following:

- require the agreement to include certain information related to the marriage, the parties' assets, maintenance, and, if minor children are involved, agreements concerning a parenting plan and child support;
- require the affidavit or unsworn declaration accompanying the agreement to include specified statements regarding the division of community property and minor children;
- require the court to approve the agreement or continue the case for appropriate proceedings, depending on whether the court finds that the terms of the agreement are just and right and in the best interest of each child, if applicable;
- authorize a court to set forth an approved agreement in full or incorporate the agreement by reference in the final decree;
- establish that an adopted agreement is binding on the parties; and
- provide that the bill's provisions apply to a suit for dissolution of a marriage that is pending in a trial court on the bill's effective date or filed on or after that date.

The substitute omits the language from the introduced that provided for the bill's immediate effect if it receives the requisite constitutional vote and instead provides for the bill to take effect on September 1, 2023, with no possibility for immediate effect.