

- SUBJECT:** Defining economic contribution and reimbursement among marital estates
- COMMITTEE:** Juvenile Justice and Family Issues — favorable, without amendment
- VOTE:** 7 ayes — Goodman, A. Reyna, E. Reyna, P. King, Menendez, Morrison, Naishtat
- 0 nays
- 2 absent — Nixon, Tillery
- WITNESSES:** For — Jerry Jones, Texas Academy of Probate Attorneys; Henry Tindell
- Against — None
- On — Tom Stansbury, State Bar of Texas, Family Law Section; John J. Sampson
- BACKGROUND:** In a marriage, property belongs to one of three estates: the separate property of the husband, the separate property of the wife, and the property of the marriage, called community property. Separate property generally is property that a spouse owned before the marriage or received as an individual after the marriage by gift or inheritance.
- In 1999, the 76th Legislature enacted HB 734 by Goodman, which added subchapter E to Family Code, ch. 3, “Equitable Interest of Community Estate in Enhanced Value of Separate Property.” This change established that the enhancement in value of separate property, when due to a financial contribution made by community property, creates an equitable interest of the community estate in that separate property. It was intended to mitigate the effects of the “inception of title” rule, which determines property ownership according to the time at which the property was acquired. For example, under strict inception of title, real property purchased by a spouse immediately before marriage, but paid for entirely by community funds after the marriage, is considered the spouse’s separate property.

DIGEST: HB 1245 would amend the Family Code by modifying provisions relating to the relationship between separate and community property during a marriage. The bill would rename subchapter E “Claims for Economic Contribution and Reimbursement” and would distinguish between these types of claims.

Claim for economic contribution. HB 1245 would define “economic contribution” as the dollar amount of reduction of certain types of debt secured by a lien on property, the amount of refinancing of the principal amount of such debts, and the amount of capital improvements to property other than by incurring debt. This term would not include expenditures for ordinary maintenance and repairs, taxes, interest, or insurance, or a spouse’s contribution of time, toil, talent, or effort during the marriage.

A marital estate (community property or separate property owned by either the husband or the wife) that made an economic contribution to property owned by another marital estate would have a claim against the benefitted estate. The amount of the claim would equal the product of (1) the equity in the benefitted property as of the dissolution of the marriage, the death of a spouse, or disposition of the property, multiplied by (2) a fraction of which the numerator would be the economic contribution of the contributing estate and the denominator would be the sum of the economic contribution by the contributing estate, the equity in the property as of date of the marriage (or if later, the date of the first economic contribution by the contributing estate), and the economic contribution by the benefitted estate during the marriage. The amount of the claim could be less than the total economic contributions by the contributing estate but could not cause the contributing estate to owe funds to the benefitted estate. The claim amount could not exceed the equity in the property as of the dissolution of the marriage, the death of a spouse, or disposition of the property. The use and enjoyment of property during a marriage for which a claim for economic contribution existed would not create a claim of an offsetting benefit against that claim.

A claim for economic contribution would not affect the inception-of-title rule, would not create an ownership interest in property, would not alter existing fiduciary duties, and would not affect management rights with regard to marital property. The claim would, however, create a claim against the benefitted estate by the contributing estate that would mature upon dissolution of the marriage or the death of either spouse.

On dissolution of a marriage, the court would have to impose an equitable lien on property of a marital estate to secure a claim for economic contribution by another marital estate. On the death of a spouse, if the surviving spouse, a representative of the deceased spouse's estate, or any other person interested in the estate brought a claim for economic contribution, the court would have to impose an equitable lien on property of a benefitted estate. Subject to homestead restrictions, the court could impose such a lien on all of a spouse's property in the marital estate. The court would have to offset a claim for economic contribution in a specific asset of a second marital estate against the second marital estate's claim for economic contribution in a specific asset of the first estate.

Reimbursement claim. HB 1245 would define a claim for reimbursement to include one marital estate's payment for unsecured debt of another estate and inadequate compensation by a business entity under the control of a spouse for that spouse's contribution of time, toil, talent, or effort during the marriage. The court would have to resolve such a claim by using equitable principles, including offsetting claims if the court deemed that appropriate. Benefits for use and enjoyment of property could be offset against a claim for reimbursement that did not involve a claim for economic contribution to the property.

The bill would prohibit a court from recognizing a marital estate's claim for reimbursement for child support, alimony, spousal maintenance, living expenses of a spouse or the spouse's child, nominal contributions of property or debt payments, or a student loan owed by a spouse.

A valid premarital or marital property agreement would be effective to waive, release, assign, or partition a claim for economic contribution to the same extent that it would have been effective to waive, release, assign, or partition a claim for reimbursement under the law as it existed before September 1, 2001, unless the agreement specified otherwise.

HB 1245 would take effect September 1, 2001, and would apply to a suit for dissolution of marriage or annulment pending on the effective date or filed on or after that date. The section on the effect of marital property agreements would apply to a premarital or marital property agreement executed before, on, or after the effective date.

SUPPORTERS
SAY:

HB 1245 would define more specifically the rights of spouses in relation to separate and community property and would eliminate confusion under the existing law enacted last session. It would establish greater equity between the community estate and the separate estates of spouses when one estate contributes to another.

The bill also would create a way for two separate estates to “share” an asset through a claim for economic contribution. This would strike a balance between the potential extremes of not recognizing one estate’s contribution to another and creating an actual property interest based on some ratio.

HB 1245 would create a statutory formulation for claims for reimbursement and would identify nonreimbursable claims. Furthermore, it would direct courts with regard to the disposition of claims for economic contribution or reimbursement on divorce or annulment.

OPPONENTS
SAY:

No apparent opposition.