

- SUBJECT:** Determination of division of property by a court in a decree of divorce
- COMMITTEE:** State Affairs — committee substitute recommended
- VOTE:** 6 ayes — Swinford, B. Cook, Gattis, J. Keffer, Villarreal, Wong
1 nays — Farrar
2 absent — Miller, Martinez Fischer
- WITNESSES:** For — Cathie Adams, Texas Eagle Forum
Against — None
- BACKGROUND:** Under current law, married couples can file for divorce based on a number of grounds. Although most parties today file on the ground that the marriage has become insupportable, known as a "no fault" divorce, there are six fault grounds that parties allege in an attempt to secure an advantage for purposes of property division or child custody. The fault grounds include cruel treatment, adultery, conviction of a felony (with imprisonment for at least one year), abandonment for more than a year, living apart for at least three years, and confinement in a mental hospital for at least three years.
- After granting a divorce, sec. 7.001 of the Family Code requires the court with jurisdiction over the divorce to divide the estate of the parties in a manner the court deems is just and right. In the decree of divorce, the court must have due regard for the rights of each party and any children of the marriage.
- DIGEST:** CSHB 1965 would amend what the court must consider when dividing the marriage estate under a decree of divorce or annulment. If the divorce were granted based on cruel treatment, adultery, conviction of a felony, or abandonment, the court would order a disproportionate division of the estate of the spouses in favor of the spouse awarded the divorce.
- The bill also would amend sections 6.001 and 7.001 by changing the language referring to a "party to" a marriage, "party," or "parties", to a "spouse of" a marriage, "spouse," or "spouses."

The bill would take effect on September 1, 2005, and would apply to a decree of divorce that was pending or filed on or after that date.

**SUPPORTERS
SAY:**

Courts that handle divorce proceedings currently have no statutory instructions requiring them to consider fault in the division of the marriage estate. CSHB 1965 would provide a standard for division of the marriage property when fault was found.

Marriage is a covenant and one of the most important contracts in society. CSHB 1965 would support fairness and the concept of right and wrong in a marriage. Since spouses have had the option of a no-fault divorce, Texas courts have handled marriage as a business partnership that could be dissolved at any time without penalty or blame. Fault in a divorce often does not receive significant weight or sometimes is only one of many factors considered in dividing an estate. In some case, courts entirely have ignored fault in the division of marriage property, but the law should reward good behavior and punish bad behavior. CSHB 1965 would help families suffer less when a divorce occurred.

CSHB 1965 would provide that if fault were found in divorce proceedings, the spouse at fault would get a smaller share of the marriage estate. The bill would leave most of the discretion to the judge but would require that a larger share of the estate go to the innocent spouse who continued to honor the marriage. This bill would send a message that Texas recognizes the importance of marriage.

Although currently courts have some discretion to award marital property disproportionately, courts have significant flexibility that could result in no disproportionate division even if fault were found. Under the current law, a judge could elevate other factors over findings of fault. However, fault should have to be more significance than other factors.

The bill still would give judges enormous discretion if certain factors or circumstances showed that a marital estate should be divided more evenly, even if one of the spouses were at fault.

Many unintended consequences of divorce are escalated by not considering fault in the division of marital property. Because divorce results in broken homes, many women and children are more likely to be on welfare. Growing up in a broken home and living in poverty or near-poverty could lead to children having difficulty in school and ultimately

being less likely to attend college. The bill would give more value to the bond of marriage and result in fewer divorces because the cost of fault in a divorce would be greater.

OPPONENTS
SAY:

Under current law, courts already can award assets disproportionately in a divorce proceeding. This bill could allow courts to devalue factors or circumstances that should be included in the division of property. The Legislature should not tie judges' hands when determining the most just and fair outcome of a divorce. CSHB 1965 would create a one-size-fits-all formula. It is better to allow a judge to weigh all factors based on the specific details of the case because the judge is in the best position to determine the division based on the facts of each case.

The bill significantly would alter the dynamics of a couple considering a divorce. Couples that might have good cause to end a marriage could be hesitant to file for divorce because of the effect that fault would have on the division of the estate. While one party might be found to be at fault for the divorce, factors caused by the other spouse could have contributed to the breakdown of the marriage. Although the importance of marriage should be appreciated, people should not be forced to remain in marriages that clearly were bad for them. Some might feel trapped if they knew they could suffer a significant loss through divorce. Remaining in a bad and irreconcilable marriage is not beneficial to either spouse.

OTHER
OPPONENTS
SAY:

Normally judges would want to divide a marital estate in favor of the parent who maintained custody of the child. This bill negatively could affect the division of the property that might be valuable and necessary to the child if the custodial parent also were found to be at fault in the marriage. Under CSHB 1965, children could end up paying for the behavior of the custodial parent.

NOTES:

The author plans to offer a floor amendment to CSHB 1965 that would require a court to consider any fault of the spouses in dividing the estate and would remove the requirement to order a disproportionate division of the estate in favor of the spouse awarded the divorce.

The committee substitute modified the original bill by removing the requirements to grant a divorce when certain fault grounds were proven.

The substitute also removed the language changes made to sections 6.002, 6.003, 6.004 and 6.005, referring to "spouses" rather than "parties" of a marriage.