

SUBJECT: Classifying pension, stock, and insurance property benefits of spouses

COMMITTEE: Juvenile Justice and Family Issues — committee substitute recommended

VOTE: 5 ayes — Dutton, Goodman, Castro, Nixon, Strama

0 nays

4 absent — Y. Davis, Dunnam, J. Moreno, Thompson

WITNESSES: For — Thomas J. Oldham; Angela G. Pence; Harry Tindall

Against — None

On — Alvin J. Golden, Texas Academy of Probate and Trust Lawyers

BACKGROUND: Texas is a community property state. Community property is a marital property regime in which all property acquired during the marriage, other than separate property, is owned jointly by both spouses and is divided upon divorce, annulment or death. Separate property is defined as 1) property owned or claimed by the spouse before marriage; 2) property acquired by the spouse during marriage by gift or inheritance; and 3) monetary awards for personal injuries sustained by the spouse during the marriage, except recovery for loss of earning capacity.

DIGEST: CSHB 410 would define the property interest classification of certain employee benefits.

A spouse who was a participant in a defined-benefit retirement plan would have a separate property interest in benefits accrued before the date of marriage, regardless of whether the benefit had vested. Only the portion of the pension earned during the marriage would be classified as community property. The separate property interest could be traced using the tracing and characterization principles that apply to a non-retirement asset.

A spouse who was a participant in an employer-provided stock plan would have a separate property interest in options or restricted stock granted under the plan as follows:

- If the stock or option was granted before the date of marriage but continued employment during marriage was required before the grant could be exercised or the restriction removed, the spouse's separate property interest would be calculated based on the length of time the spouse held the stock or option before the date of marriage relative to the length of time the spouse held the stock or option from when they initially were granted to when they could be exercised.
- If the stock or option was granted during the marriage but continued employment after the marriage was required before the grant could be exercised or the restriction removed, the spouse's separate property interest would be calculated based on the length of time the spouse held the stock or option following the date the marriage was dissolved relative to the length of time the spouse held the stock or options from when they initially were granted to when they could be exercised.

The characterization of the marital property interest in an option or restricted stock would have to be recalculated if, after the initial division of the option or stock, the vesting occurred on a date earlier than the vesting date defined in the original grant of the option or stock. The recalculation would have to adjust for the shortened vesting period and apply to options and stocks granted before and during the marriage.

CSHB 410 also would provide that insurance proceeds paid or payable from a casualty loss to property occurring during marriage would be characterized in the same manner as the property that was lost.

If a person becomes disabled or is injured, any disability insurance payment or workers' compensation payment would be community property if it was intended to replace earnings lost while the person was married. If it was intended to replace earnings while the person was not married, the recovery would be the separate property of the disabled or injured spouse.

The bill would take effect September 1, 2005, and would apply to a suit for dissolution of a marriage pending before a trial court filed on or after the effective date, and to the estate of a person who died on or after the effective date.

**SUPPORTERS
SAY:**

CSHB 410 would provide a clear-cut rule of law for classifying property interest in pension rights, stock options, and insurance benefits. It would provide a definitive answer to courts and attorneys seeking legal guidance in this area. The employee benefits area is complex and rapidly changing. Classification is provided in law for other assets and should be provided to determine the extent to which fringe benefits and insurance proceeds can be considered community property.

Spouses often enter marriages with pension interest or stock options already in place. The bill would give credit to an employee for the work that he or she completed before or after marriage. It would attempt to proportionalize the assets of spouses based on the duration of the marriage relative to the duration of the asset. The bill would put into statutory form what already is in existing case law and being put into practice by many courts. I

**OPPONENTS
SAY:**

No apparent opposition.

NOTES:

The committee substitute added how community property interest would be determined when one spouse was a participant in a defined benefit retirement plan.