

## **BILL ANALYSIS**

Senate Research Center

H.B. 885  
By: Dutton (West, Royce)  
Jurisprudence  
5/17/2003  
Engrossed

### **DIGEST AND PURPOSE**

Currently, there is no provision in the Family Code that specifies that earnings and other income are subject to partition or exchange by spouses, which may lead to some confusion. Also, there is no provision in the Family Code that allows courts to treat property acquired in other jurisdictions which if acquired in Texas would be separate property, as separate property.

H.B. 885 provides that property that is the subject of a partition or exchange agreement does include future earnings and income, and provides that in a decree for divorce or annulment, property acquired in another state, or property acquired by the person in exchange for real or personal property, be treated as separate property if that property would have been deemed separate property in Texas at the time of acquisition.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 3.403, Family Code, by amending Subsection (b) and adding Subsection (b-1), as follows:

(b) Provides that the amount of the claim under this section is equal to the product of a fraction of which the numerator is the economic contribution to the property owned by the benefited marital estate by the contributing marital estate and the denominator is an amount equal to the sum of the economic contribution to the property owned by the benefited marital estate by the contributing marital estate and the contribution by the benefited estate to the equity in the property owned by the benefited estate. Deletes text relating to equity in the property as of the date of the marriage.

(b-1) Provides that the amount of the contribution by the benefited marital estate under Subsection (b)(2)(B)(ii) is measured by determining specific criteria.

SECTION 2. Amends Section 4.102, Family Code, to provide that the partition or exchange of property includes future earnings and income arising from the property as the separate property of the owning spouse unless the spouses agree in a record that the future earnings and income will be community property after the partition or exchange. Replaces the word “any” with “all or” as a modifier to “part” relating to community property.

SECTION 3. Amends Section 4.205, Family Code, by adding Subsection (c) to authorize the proof required by Subsection (a), if a proceeding regarding enforcement of an agreement under this subchapter occurs after the death of the spouse against whom enforcement is sought, to be made by an heir of the spouse or the personal representative of the estate of that spouse.

SECTION 4. Amends Section 7.002, Family Code, as follows:

Sec. 7.002. New heading: DIVISION AND DISPOSITION OF CERTAIN PROPERTY UNDER SPECIAL CIRCUMSTANCES. (a) Created from existing text.

(b) Requires the court, in a decree of divorce or annulment, to award to a spouse certain real and personal property, wherever situated, as the separate property of the spouse.

(c) Requires the court, in a decree of divorce or annulment, to confirm certain properties as the separate property of a spouse if partitioned or exchanged by written agreement of the spouses.

SECTION 5. (a) Effective date: September 1, 2003.

(b) Makes application of the change in law made by this Act by the amendment of Section 4.102, Family Code, prospective.

(c) Makes application of the change in law made by this Act by the enactment of Section 4.205(c), Family Code, prospective.

(d) Provides that the changes in law made by this Act by the amendment of Sections 3.403 and 7.002, Family Code, apply to a suit for dissolution of a marriage pending before a trial court on or filed on or after the effective date of this Act.