

SUBJECT: Request for written finding of facts in a divorce suit

COMMITTEE: Juvenile Justice and Family Issues — favorable, with amendment

VOTE: 5 ayes — Goodman, A. Reyna, King, Menendez, Morrison
0 nays
4 absent — E. Reyna, Naishtat, Nixon, Tillery

WITNESSES: For — None
Against — None
On — Tom Stansbury, State Bar of Texas

BACKGROUND: In a divorce case, the trial court is not required to assign a value to property in dispute between the parties or to characterize any property either as community property or as separate property. In general, separate property is property that the spouses owned before the marriage, while community property is property acquired after the marriage. A trial court also is not required to list the specific reimbursement claims and offsets found to be equitable.

Reimbursement occurs when either a spouse or the community estate is repaid for a contribution from a spouse's separate property to the community property or vice versa. An example would be when the wife makes a down payment for a home (community property) with money from the sale of her separate property.

Offset occurs when the spouse or community estate receives a benefit for a contribution that offsets the amount of reimbursement that otherwise would be received. An example of an offset would be the benefit of living in the home received by the spouse who had paid the down payment on the home from her separate property.

DIGEST: HB 594 as amended would add sec. 6.711 to the Family Code, which would allow a party in a suit for dissolution of marriage to request a written copy of the court's findings of facts and conclusions of law if the judgment divided the parties' estate. If disputed evidence was presented, the court would have to state its findings and conclusions regarding the characterization of each party's assets, liabilities, claims, and offsets and the value or amount of the community estate's assets, liabilities, claims, and offsets. The request would have to conform with the Texas Rules of Civil Procedure.

HB 594 would take effect September 1, 2001, and would apply to suits for dissolution of marriage pending or filed on or after that date.

SUPPORTERS SAY: HB 594 would ensure fair treatment for parties who are dissatisfied with property division in a divorce action but who have little supporting evidence in the trial record on which to base an appeal. Currently, appeals courts typically must uphold trial court decisions because no evidence in the trial record indicates the findings and conclusions made by the trial court in dividing the property.

The bill would not intrude into the decision-making power of a trial court. To reverse a decision, an appeals court would have to find that a trial court had abused its discretion. Abuse of discretion is a high standard.

More appeals might occur at first once the basis for some property division was revealed in the trial record. However, these appeals should decrease quickly as trial courts become more careful in dividing property. They would be more careful specifically because a record of the basis for their decisions would be available on appeal.

HB 594 would not burden trial courts unduly since the parties' attorneys usually prepare the property findings and conclusions. The trial court simply would approve the findings once the parties agree upon them.

Courts would not have to assign a value to incidental property, because HB 594 would apply only to disputed property on which evidence was presented. Courts would not have to assign value to marital property that is uncontested or property that is disputed but on which no evidence was produced.

OPPONENTS
SAY:

HB 594 would add to the workload of an already overburdened court system by creating extra work for divorce-court judges, who would have to make detailed findings on disputed assets. Every divorce involves incidental items such as bed linen and furniture. A spiteful spouse could request an accounting of all items, even the incidental ones. To prevent this, the bill should assign a dollar amount to items that could be disputed. For example, items worth less than \$1,000 should not be allowed to be disputed.

HB 594 also would open the door to more appeals based on values that judges assigned to items that do not have an obvious market value. This too could add to the burden of the judicial system.

NOTES:

The filed version of HB 594 would require the court to state its findings and conclusions concerning the character and value of community assets and liabilities in dispute and concerning the amount of reimbursement claims and offsets the court found equitable. The committee amendment would specify that the court must characterize each party's assets, liabilities, claims, and offsets in dispute and attach a value to those of the community estate.

HB 1268 by Goodman, identical to the filed version of HB 594, passed the House during the 76th Legislature in 1999, but was left pending in the Senate Jurisprudence Committee.