

- SUBJECT:** Written trial court findings on disputed property in divorce actions
- COMMITTEE:** Juvenile Justice and Family Issues — favorable, without amendment
- VOTE:** 9 ayes — Goodman, Pickett, Isett, P. King, Morrison, Naishtat, A. Reyna, E. Reyna, Truitt
- 0 nays
- WITNESSES:** For — None
- Against — None
- 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 had 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 either when a spouse or the community estate itself 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 the down payment for the 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 1268 would allow a party to a divorce action to request written findings of fact and conclusions of law regarding disputed property when a court has rendered a judgment dividing the property between the spouses.
- The court would state whether the disputed assets were community property or separate property, the value of the disputed community assets and

liabilities, and the amount of reimbursement claims and offsets found by the court to be equitable. The request would have to conform to the Texas Rules of Civil Procedure.

HB 1268 would take effect September 1, 1999, and apply only to suits pending or filed on or after that date.

**SUPPORTERS
SAY:**

Parties who are dissatisfied with property division in a divorce action currently have little supporting evidence in the trial record on which to base an appeal. Appeals courts are forced to uphold trial court decisions because there is no evidence in the trial record to indicate the findings and conclusions made by the trial court in dividing the property.

HB 1268 would not intrude into the decision-making power of the trial courts. 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 may occur at first once the basis for some property division is revealed in the trial record. However, these appeals should decrease quickly as trial courts become more careful in dividing property. They will be more careful specifically because a record of the basis for their decisions will be available on appeal.

HB 1268 would not unduly burden trial courts since the parties' attorneys usually prepare the property findings and conclusions. The trial court would then approve the findings once the parties agree upon them. HB 1268 would apply only to disputed property, so marital property that is uncontested would not be added work for the courts.

**OPPONENTS
SAY:**

HB 1268 would add to the workload of an already overburdened court system, adding extra work for divorce court judges in making detailed findings on disputed assets. It also would open the door to more appeals, further burdening the system.