

SUBJECT:	Burden of proof for reimbursement claims in a divorce suit
COMMITTEE:	Juvenile Justice and Family Issues — favorable, without amendment
VOTE:	5 ayes — Dutton, Bolton, Farrar, Gonzalez Toureilles, Hernandez 0 nays 4 absent — Eiland, Farias, Strama, Vaught
WITNESSES:	For — Brian L. Webb, Texas Family Law Foundation Against — None
BACKGROUND:	<p>Family Code, ch. 3 governs marital property rights and liabilities. Upon dissolution of a marriage, sec. 3.408 provides the right of a spouse to seek a claim of reimbursement for:</p> <ul style="list-style-type: none">• payment by one marital estate of the unsecured liabilities of another marital estate; and• inadequate compensation for the time, toil, talent, and effort of a spouse by a business entity under the control and direction of that spouse. <p>The court is required to allow claims for reimbursement to offset each other, as equitably appropriate.</p>
DIGEST:	<p>HB 445 would amend Family Code, sec. 3.408 to place the burden of proof with the party seeking an offset to a claim for reimbursement.</p> <p>The bill would take effect September 1, 2007, and would affect a suit for the dissolution of a marriage brought on or after that date.</p>
SUPPORTERS SAY:	HB 445 would clarify in divorce cases which party making a claim for reimbursement has the burden of proof with respect to the offset. Neither case law nor the Family Code provides the burden of proof allocation for claims of reimbursement involving marital property. Historically, the

burden of proof has been on the person trying to prove the offset, and this bill simply would place this accepted practice in statute.

OPPONENTS
SAY:

No apparent opposition.

NOTES:

The companion bill, SB 430 by Harris, passed the Senate on the Local and Uncontested Calendar on March 28 and has been referred to the House Juvenile Justice and Family Issues Committee.