

BILL ANALYSIS

Senate Research Center

S.B. 334
By: Harris
Jurisprudence
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DIGEST

During the 1994 interim, the Joint Interim Committee on the Family Code made many recommendations and changes to the Texas Family Code. This bill makes nonsubstantive changes and recodifies Title 1 of the Texas Family Code. Title 1 contains the statutes regarding validity of marriage; dissolution of marriage; right, duties, powers, liabilities of spouses; and marital property.

PURPOSE

As proposed, S.B. 334 recodifies the Family Code and amends the Probate Code regarding the marriage relationship.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. Recodifies Title 1, Family Code, as follows:

TITLE 1. THE MARRIAGE RELATIONSHIP

SUBCHAPTER A. MARRIAGE

CHAPTER 1. GENERAL PROVISIONS

SUBCHAPTER A. DEFINITIONS

Sec. 1.001. **APPLICABILITY OF DEFINITIONS.** Provides that definitions in Chapter 101 apply to this title. Provides that if a term defined in this subchapter has a different meaning in another subchapter, the meaning of the other provision prevails.

Sec. 1.002. **COURT.** Defines "court."

Sec. 1.003. **SUIT FOR DISSOLUTION OF MARRIAGE.** Defines "suit for dissolution of marriage."

SUBCHAPTER B. PUBLIC POLICY

Sec. 1.101. **EVERY MARRIAGE PRESUMED VALID.** Provides that every marriage entered in this state is presumed valid unless void by Chapter 6.

Sec. 1.102. **MOST RECENT MARRIAGE PRESUMED VALID.** Sets forth validity of a marriage when two or more marriages of a person to different spouses are alleged.

Sec. 1.103. **PERSON MARRIED ELSEWHERE.** Provides that Texas law applies to persons married elsewhere who are domiciled in this state.

Sec. 1.104. **CAPACITY OF SPOUSE.** Provides that a person married in this state according

to law has the capacity and power of an adult, regardless of age.

Sec. 1.105. JOINDER IN CIVIL SUITS. Authorizes a spouse to sue or be sued without joinder and that spouses may be joined when claims or liabilities are joint and several.

Sec. 1.106. CRIMINAL CONVERSATION NOT AUTHORIZED. Prohibits a right of action by one spouse against a third party for criminal conversation.

Sec. 1.107. ALIENATION OF AFFECTION NOT AUTHORIZED. Prohibits an action by one spouse against a third party for alienation of affection.

Sec. 1.108. PROMISE OR AGREEMENT MUST BE IN WRITING. Provides that an agreement or promise made in consideration of marriage or nonmarital conjugal cohabitation is unenforceable unless in writing.

CHAPTER 2. THE MARRIAGE RELATIONSHIP

SUBCHAPTER A. APPLICATION FOR MARRIAGE LICENSE

Sec. 2.001. MARRIAGE LICENSE. Provides that a marriage license is needed if a man and woman desire to enter into a ceremonial marriage. Prohibits a license for same sex marriages.

Sec. 2.002. APPLICATION FOR LICENSE. Sets forth the requirements of a marriage license.

Sec. 2.003. APPLICATION FOR LICENSE BY MINOR. Sets forth requirements of a marriage license for a minor.

Sec. 2.004. APPLICATION FORM. Sets forth requirements for an application for a marriage license.

Sec. 2.005. PROOF OF IDENTITY AND AGE. Requires the county clerk to require proof of identity and age, which must be established by certain documents.

Sec. 2.006. ABSENT APPLICATION. Sets forth requirements for an absent applicant.

Sec. 2.007. AFFIDAVIT OF ABSENT APPLICANT. Sets forth requirements for an affidavit of an absent applicant.

Sec. 2.008. EXECUTION OF APPLICATION BY CLERK. Requires the county clerk to follow certain procedures to execute the application.

Sec. 2.009. ISSUANCE OF LICENSE. Prohibits the county clerk from issuing a license for certain reasons.

Sec. 2.010. AIDS INFORMATION. Requires the county clerk to provide material to applicants on acquired immune deficiency syndrome and human immunodeficiency virus.

Sec. 2.011. RECORDING. Requires the county clerk to record all licenses and other documents submitted with marriage license.

Sec. 2.012. VIOLATION BY COUNTY CLERK; PENALTY. Provides that a county clerk or deputy county clerk commits a misdemeanor punishable by a fine between \$200 and \$500 if he or she violates or fails to comply with this subchapter.

SUBCHAPTER B. UNDERAGE APPLICANTS

Sec. 2.101. GENERAL AGE REQUIREMENT. Prohibits a county clerk from issuing a marriage license to persons under 18 years of age, with exceptions.

Sec. 2.102. PARENTAL CONSENT FOR UNDERAGE APPLICANT. Sets forth requirements for parental consent for persons desiring to get married who are 14 years of age or older but under 18 years of age.

Sec. 2.103. COURT ORDER FOR UNDERAGE APPLICANT. Sets forth requirements for a minor's petition to obtain a judicial order granting permission to marry.

SUBCHAPTER C. CEREMONY AND RETURN OF LICENSE

Sec. 2.201. EXPIRATION OF LICENSE. Provides that a marriage license is valid up to the 31st day after the license is issued.

Sec. 2.202. PERSONS AUTHORIZED TO CONDUCT CEREMONY. Sets forth persons authorized to conduct a marriage ceremony.

Sec. 2.203. CEREMONY. Provides that an authorized person may conduct a marriage ceremony upon receiving an unexpired marriage license. Provides for a marriage ceremony by proxy.

Sec. 2.204. 72-HOUR WAITING PERIOD; EXCEPTIONS. Provides for a waiting period after receiving a marriage license and exceptions to the waiting period.

Sec. 2.205. DISCRIMINATION IN CONDUCTING MARRIAGE PROHIBITED. Prohibits discrimination by the person authorized to conduct a marriage ceremony. Authorizes the State Commission on Judicial Conduct to recommend to the supreme court that a person who intentionally violated this section be removed from office.

Sec. 2.206. RETURN OF LICENSE; PENALTY. Sets forth requirements for the person who conducts a marriage ceremony and penalties for failing to comply with this subsection.

Sec. 2.207. MARRIAGE CONDUCTED AFTER LICENSE EXPIRED; PENALTY. Requires the person conducting the marriage ceremony to determine expiration of the marriage license. Sets forth penalties for a person conducting a marriage ceremony after the license is expired.

Sec. 2.208. RECORDING AND DELIVERY OF LICENSE. Sets forth duties of the county clerk after a marriage license is returned.

Sec. 2.209. DUPLICATE LICENSE. Sets forth requirements for a duplicate marriage license.

SUBCHAPTER D. VALIDITY OF MARRIAGE

Sec. 2.301. FRAUD, MISTAKE, OR ILLEGALITY IN OBTAINING LICENSE. Provides that the validity of a marriage license is unaffected by fraud, mistake, or illegality.

Sec. 2.302. CEREMONY CONDUCTED BY UNAUTHORIZED PERSON. Provides that a person's lack of authority for conducting a marriage ceremony does not affect the validity of a marriage if certain requirements are met.

SUBCHAPTER E. MARRIAGE WITHOUT FORMALITIES

Sec. 2.401. PROOF OF INFORMAL MARRIAGE. Provides that a marriage may be proved by presenting certain evidence in a hearing.

Sec. 2.402. DECLARATION AND REGISTRATION OF INFORMAL MARRIAGE. Sets forth required contents of a declaration for informal marriage.

Sec. 2.403. PROOF OF IDENTITY AND AGE. Requires the county clerk to require proof

of the identity and age of parties to a declaration for informal marriage.

Sec. 2.404. RECORDING OF DECLARATION OF INFORMAL MARRIAGE. Sets forth the requirements in order for a county clerk to record a declaration of informal marriage.

Sec. 2.405. VIOLATION BY COUNTY CLERK; PENALTY. Provides that a county clerk or deputy county clerk commits a misdemeanor punishable by a fine between \$200 and \$500 if he or she violates or fails to comply with this subchapter.

SUBCHAPTER F. RIGHTS AND DUTIES OF SPOUSES

Sec. 2.501. DUTY TO SUPPORT. Provides that each spouse has the duty to support the other and is liable to the other spouse if he or she fails to do so.

SUBTITLE B. PROPERTY RIGHTS AND LIABILITIES

CHAPTER 3. MARITAL PROPERTY RIGHTS AND LIABILITIES

SUBCHAPTER A. GENERAL RULES FOR SEPARATE AND COMMUNITY PROPERTY

Sec. 3.001. SEPARATE PROPERTY. Sets forth what constitutes separate property.

Sec. 3.002. COMMUNITY PROPERTY. Sets forth what constitutes community property.

Sec. 3.003. PRESUMPTION OF COMMUNITY PROPERTY. Provides that property possessed by either spouse is presumed to be community property unless proven otherwise by clear and convincing evidence.

Sec. 3.004. RECORDATION OF SEPARATE PROPERTY. Sets forth provisions regarding the recording of a spouse's separate property.

SUBCHAPTER B. MANAGEMENT, CONTROL, AND DISPOSITION OF MARITAL PROPERTY

Sec. 3.101. MANAGING SEPARATE PROPERTY. Provides that each spouse has sole management, control, and disposition of that spouse's separate property.

Sec. 3.102. MANAGING COMMUNITY PROPERTY. Provides that each spouse has sole management, control, and disposition of community property that the spouse would have owned if single. Provides that mixed sole management community property is subject to joint management, control, and disposition of the spouses, unless provided for otherwise. Provides that community property is subject to the joint management, control, and disposition of the spouses unless provided for otherwise.

Sec. 3.103. MANAGING EARNINGS OF MINOR. Provides that earnings of an unemancipated minor, for whom no conservator has been appointed, are subject to the joint management, control, and disposition of the parents of the minor, unless otherwise agreed upon.

Sec. 3.104. PROTECTION OF THIRD PERSONS. Provides that during a marriage, property is presumed to be subject to the sole management, control, and disposition of a spouse if it is held in that spouse's name or possession. Provides that a third person is entitled to rely on a spouse's authority to deal with property if certain conditions are met.

SUBCHAPTER C. MARITAL PROPERTY LIABILITIES

Sec. 3.201. SPOUSAL LIABILITY. Sets forth provisions under which a person is personally liable for the acts of the other spouse. Provides that community property is not subject to liability that arise from an act of a spouse. Provides that a spouse does not act as an agent for

the other spouse solely because of the marriage relationship.

Sec. 3.202. RULES OF MARITAL PROPERTY LIABILITY. Provides that a spouse's separate property is not subject to the liabilities of the other spouse unless both spouses are liable by other rules of law. Sets forth conditions under which community property subject to a spouse's sole management, control, and disposition is not subject to liability. Provides that community property subject to a spouse's sole or joint management, control, and disposition is subject to liabilities incurred by the spouse before or during marriage. Provides that all community property is subject to tortious liability of either spouse incurred during marriage.

Sec. 3.203. ORDER IN WHICH PROPERTY IS SUBJECT TO EXECUTION. Authorizes a judge to determine an order in which separate and community property is subject to execution. Requires a judge to consider facts surrounding the transaction on which the suit is based in determining which property is property is subject to execution and sale.

SUBCHAPTER D. MANAGEMENT, CONTROL, AND DISPOSITION OF MARITAL PROPERTY UNDER UNUSUAL CIRCUMSTANCES

Sec. 3.301. INCAPACITATED, MISSING, ABANDONED, OR SEPARATED SPOUSE. Authorizes a spouse to petition for management, control, and disposition of property upon certain conditions. Sets forth requirements for the county in which the petition is to be filed.

Sec. 3.302. SPOUSE MISSING ON PUBLIC SERVICE. Authorizes a spouse to petition for sole management, control, and disposition of certain community property if a spouse is reported missing or a prisoner of war. Sets forth requirements for filing the petition.

Sec. 3.303. APPOINTMENT OF ATTORNEY. Authorizes a court to appoint an attorney in a suit filed under this subchapter. Requires a court to appoint an attorney for a respondent reported to be a prisoner of war or missing on public service. Authorizes the court to pay an appointed attorney a reasonable fee for services rendered under this subchapter as part of the costs of the suit.

Sec. 3.304. NOTICE OF HEARING; CITATION. Sets forth requirements for notice of hearing and citation.

Sec. 3.305. CITATION BY PUBLICATION. Sets forth the requirements for newspaper citation.

Sec. 3.306. COURT ORDER FOR MANAGEMENT, CONTROL, AND DISPOSITION OF COMMUNITY PROPERTY. Requires the court to render an order defining the community property that will be subject to the management, control, and disposition of each spouse during marriage considering just and equitable factors. Sets forth authorization for the court in defining community property.

Sec. 3.307. CONTINUING JURISDICTION OF COURT; VACATING ORIGINAL ORDER. Provides that a court has continuing jurisdiction over its orders. Requires the court, on motion of either party, to amend or vacate an original order after notice and hearing if certain factors are met.

Sec. 3.308. RECORDING ORDER TO AFFECT REAL PROPERTY. Provides that an order authorized by this subchapter affecting real property is not constructive notice to a good faith purchaser, unless the order is recorded in the deed of records of the county in which the real property is located.

Sec. 3.309. REMEDIES CUMULATIVE. Provides that the remedies in this subchapter are cumulative of other rights, powers, and remedies afforded spouses by law.

CHAPTER 4. PREMARITAL AND MARITAL PROPERTY AGREEMENTS

SUBCHAPTER A. UNIFORM PREMARITAL AGREEMENT ACT

Sec. 4.001. DEFINITIONS. Defines "premarital agreement" and "property."

Sec. 4.002. FORMALITIES. Requires a premarital agreement (agreement) to be in writing and signed by both parties. Provides that the agreement is enforceable without consideration.

Sec. 4.003. CONTENT. Authorizes the parties to an agreement to contract with respect to the content of the agreement.

Sec. 4.004. EFFECT OF MARRIAGE. Provides that a premarital agreement becomes effective upon marriage.

Sec. 4.005. AMENDMENT OR REVOCATION. Provides that after marriage an agreement may be revoked or amended by a written agreement signed by the parties, without consideration.

Sec. 4.006. ENFORCEMENT. Provides that an agreement is not enforceable if the party against whom enforcement is requested proves certain issues. Requires unconscionability of an agreement to be decided by the court. Provides that the remedies and defenses in this section are the exclusive remedies or defenses, including common law remedies or defenses.

Sec. 4.007. ENFORCEMENT: VOID MARRIAGE. Provides that an agreement is enforceable only to the extent necessary to avoid an inequitable result, if a marriage is determined to be void.

Sec. 4.008. LIMITATION OF ACTIONS. Provides that a statute of limitations applicable to an action asserting a claim for relief under an agreement is tolled during the marriage of the parties to the agreement. Provides that equitable defenses are available to the parties.

Sec. 4.009. APPLICATION AND CONSTRUCTION. Requires this subchapter to be applied and construed to effect its general purpose with respect to the subject of this subchapter.

Sec. 4.010. SHORT TITLE: UNIFORM PREMARITAL AGREEMENT ACT.

SUBCHAPTER B. MARITAL PROPERTY AGREEMENT

Sec. 4.101. DEFINITION. Defines "property."

Sec. 4.102. PARTITION OR EXCHANGE OF COMMUNITY PROPERTY. Authorizes spouses to partition or exchange community property at any time. Provides that partitioned or exchanged property becomes the separate property of the spouse to whom it was transferred.

Sec. 4.103. AGREEMENT BETWEEN SPOUSES CONCERNING INCOME AND PROPERTY FROM SEPARATE PROPERTY. Authorizes spouses to agree that income or property arising from separate property is separate property of the owner.

Sec. 4.104. FORMALITIES. Requires a partition or exchange agreement to be in writing and signed by both parties.

Sec. 4.105. ENFORCEMENT. Provides that a partition or exchange agreement is not enforceable if the party against whom enforcement is requested proves certain factors. Requires unconscionability of a partition or exchange agreement to be decided by the court. Provides that remedies and defenses in this section are the exclusive remedies or defenses, including common law remedies or defenses.

Sec. 4.106. RIGHTS OF CREDITORS AND RECORDATION UNDER PARTITION OR EXCHANGE AGREEMENT. Provides that a partition or exchange agreement which has an intent to defraud a preexisting creditor is void. Authorizes a partition or exchange agreement to be recorded in the county in which a party resides and in which the property is located. Provides that a recorded partition or exchange agreement is constructive notice for good faith purchasers only if the instrument is acknowledged and recorded in the county in which the property is located.

CHAPTER 5. HOMESTEAD RIGHTS

SUBCHAPTER A. SALE OF HOMESTEAD; GENERAL RULE

Sec. 5.001. SALE, CONVEYANCE, OR ENCUMBRANCE OF HOMESTEAD. Prohibits the sale, conveyance, or encumbrance of a homestead without joinder of the other spouse.

Sec. 5.002. SALE OF HOMESTEAD FOR INCAPACITATED SPOUSE. Authorizes sale, conveyance, or encumbrance of the homestead, without joinder of the other spouse, if the other spouse has been judicially declared incapacitated.

SUBCHAPTER B. SALE OF HOMESTEAD UNDER UNUSUAL CIRCUMSTANCES

Sec. 5.101. SALE OF HOMESTEAD UNDER UNUSUAL CIRCUMSTANCES. Authorizes a separate property homestead to be sold, conveyed, or encumbered, without joinder, under certain circumstances.

Sec. 5.102. SALE OF COMMUNITY HOMESTEAD UNDER UNUSUAL CIRCUMSTANCES. Authorizes community property homestead to be sold, conveyed, or encumbered, without joinder, under certain circumstances.

Sec. 5.103. TIME FOR FILING PETITION. Authorizes the petitioning spouse to file a petition by a certain date.

Sec. 5.104. APPOINTMENT OF ATTORNEY. Authorizes a court to appoint an attorney under this subchapter for the respondent. Requires a court to appoint an attorney for a respondent reported to be a prisoner of war or missing on public service. Authorizes the court to pay an attorney a reasonable fee for services rendered under this subchapter.

Sec. 5.105. CITATION; NOTICE OF HEARING. Requires a citation and notice of hearing to be issued and served as provided in Chapter 3D.

Sec. 5.106. COURT ORDER. Requires the court, after notice and hearing, to render an order the court deems just and equitable with respect to the sale, conveyance, or encumbrance of a separate property homestead. Requires the court to render an order defining community property. Sets forth authorizations for the court.

Sec. 5.107. SALE OF COMMUNITY HOMESTEAD FOR SPOUSE JUDICIALLY DECLARED INCAPACITATED. Authorizes a spouse to sell, convey, or encumber a community property homestead, without joinder, if one spouse is judicially declared incapacitated.

Sec. 5.108. REMEDIES AND POWERS CUMULATIVE. Provides that remedies and powers of a spouse under this subchapter are cumulative of other rights, powers, and remedies.

SUBTITLE C. DISSOLUTION OF MARRIAGE

CHAPTER 6. SUIT FOR DISSOLUTION OF MARRIAGE

SUBCHAPTER A. GROUNDS FOR DIVORCE AND DEFENSES

Sec. 6.001. INSUPPORTABILITY. Authorizes a court to grant a divorce because of discord and conflict of personalities which destroys the legitimate ends of the marriage.

Sec. 6.002. CRUELTY. Authorizes a court to grant a divorce because of a spouse's cruel treatment towards the other spouse.

Sec. 6.003. ADULTERY. Authorizes a court to grant a divorce based on adultery.

Sec. 6.004. CONVICTION OF FELONY. Sets forth the grounds for granting a divorce based on one spouse being convicted of a felony.

Sec. 6.005. ABANDONMENT. Sets forth the grounds for divorce based on abandonment.

Sec. 6.006. LIVING APART. Sets forth the grounds for divorce based on the spouses living apart for at least three years.

Sec. 6.007. CONFINEMENT IN A MENTAL HOSPITAL. Sets forth the grounds for divorce based on a spouse being confined to a mental institution.

Sec. 6.008. DEFENSES. Provides that defenses to a suit for recrimination and adultery are abolished and that condonation is a defense if there is a reasonable expectation of reconciliation.

SUBCHAPTER B. GROUNDS FOR ANNULMENT

Sec. 6.101. ANNULMENT OF MARRIAGE OF PERSON UNDER AGE 14. Sets forth the requirements for filing and granting an annulment of a marriage of a person under 14 years of age.

Sec. 6.102. ANNULMENT OF MARRIAGE OF PERSON UNDER 18. Sets forth the requirements for filing and granting an annulment of a person 14 years of age or older but under 18 years of age.

Sec. 6.103. UNDERAGE ANNULMENT BARRED BY ADULTHOOD. Prohibits a suit for annulment from being filed under Section 6.101 or 6.102 by a parent, conservator, or guardian after the 18th birthday of the person.

Sec. 6.104. DISCRETIONARY ANNULMENT OF UNDERAGE MARRIAGE. Authorizes an annulment to be granted with the court's discretion without a jury. Requires a court to consider pertinent facts in exercising its discretion.

Sec. 6.105. UNDER INFLUENCE OF ALCOHOL OR NARCOTICS. Authorizes the court to grant an annulment based on the effects of alcohol or narcotics.

Sec. 6.106. IMPOTENCY. Sets forth the requirements for an annulment if either party is impotent.

Sec. 6.107. FRAUD, DURESS, OR FORCE. Sets forth the requirements for an annulment based on fraud, duress, or force.

Sec. 6.108. MENTAL INCAPACITY. Sets forth the requirements for an annulment based on mental incapacity of a spouse at the time of the marriage.

Sec. 6.109. CONCEALED DIVORCE. Sets forth the requirements for an annulment based on a concealed divorce. Prohibits a suit from being brought under this section after the first anniversary of the marriage date.

Sec. 6.110. MARRIAGE LESS THAN 72 HOURS AFTER ISSUANCE OF LICENSE. Sets forth the requirements for an annulment based on a marriage ceremony which occurred less than 72 hours after the issuance of a marriage license. Prohibits a suit from being brought under this section after the first anniversary of the marriage date.

Sec. 6.111. DEATH OF PARTY TO VOIDABLE MARRIAGE. Prohibits an annulment from being challenged in a proceeding instituted after the death of either party to the marriage.

SUBCHAPTER C. DECLARING A MARRIAGE VOID

Sec. 6.201. CONSANGUINITY. Provides that a marriage is void if one party is related to the other by certain degrees of consanguinity.

Sec. 6.202. MARRIAGE DURING EXISTENCE OF PRIOR MARRIAGE. Provides that a marriage is void if either party is still legally married. Provides that a later void marriage becomes valid when the earlier marriage is dissolved if the parties have lived together and represent themselves as married.

Sec. 6.203. CERTAIN VOID MARRIAGES VALIDATED. Provides that certain marriages entered into before January 1, 1970 are validated if certain requirements are met.

SUBCHAPTER D. JURISDICTION, VENUE, AND RESIDENCE QUALIFICATIONS

Sec. 6.301. GENERAL RESIDENCY RULE FOR DIVORCE SUIT. Sets forth jurisdictional requirements for a divorce to be maintained in this state.

Sec. 6.302. SUIT FOR DIVORCE BY NONRESIDENT SPOUSE. Establishes where a nonresident may file a divorce suit in the county in which the resident spouse lives at the time the petition is filed.

Sec. 6.303. ABSENCE ON PUBLIC SERVICE. Provides that time spent outside the state while in the services of the armed forces or other service of the United States or of this state is considered residence in this state and in that county.

Sec. 6.304. ARMED FORCES PERSONNEL NOT PREVIOUSLY RESIDENTS. Provides that a person not previously a resident of this state who is serving in the armed forces of the United States and has been stationed at one or more military installations in this state for at least the last six months and at a military installation in a county of this state for at least the last 90 days is considered to be a Texas domiciliary and a resident of that county for those periods for the purpose of filing suit for dissolution of a marriage.

Sec. 6.305. ACQUIRING JURISDICTION OVER NONRESIDENT RESPONDENT. Provides that if a petitioner in a suit for dissolution of a marriage is a resident or domiciliary of this state, the court may exercise jurisdiction over the respondent if certain requirements are met. Provides that a court acquiring jurisdiction over a respondent in this section also acquires jurisdiction over the respondent in a suit affecting the parent-child relationship.

Sec. 6.306. JURISDICTION TO ANNUL MARRIAGE. Authorizes a suit for annulment to be maintained in this state if the parties were married in this state or if either party is domiciled in this state. Provides that an annulment suit is in rem and affects the status of the parties to the marriage.

Sec. 6.307. JURISDICTION TO DECLARE MARRIAGE VOID. Authorizes either party to a void marriage is authorized to sue to have the marriage declared void. Authorizes the court to declare a marriage void if certain requirements are met. Provides that a suit to void a marriage is in rem and affects the status of the parties to the purported marriage.

Sec. 6.308. EXERCISING PARTIAL JURISDICTION. Authorizes a court in which a suit for dissolution of a marriage is filed to exercise its jurisdiction over those portions of the suit for which it has authority. Provides the court's authority to resolve the parties' issues in controversy may be restricted because it lacks certain jurisdictions.

SUBCHAPTER E. FILING SUIT

Sec. 6.401. CAPTION. Sets forth the caption for pleadings in a suit for divorce.

Sec. 6.402. PLEADINGS. Sets forth the requirements for pleadings in a suit for divorce.

Sec. 6.403. ANSWER. Provides that no answer is required for a suit for dissolution of marriage.

Sec. 6.404. STATEMENT ON ALTERNATE DISPUTE RESOLUTION. Sets forth requirements for a statement to be included in the first pleading filed by each party. Provides that the statement is not required for certain pleadings.

Sec. 6.405. PROTECTIVE ORDER. Requires the petition in a suit for dissolution of a marriage to state whether a protective order is in effect or pending. Sets forth the requirements for the attachment of the protective order.

Sec. 6.406. MANDATORY JOINDER OF SUIT AFFECTING PARENT-CHILD RELATIONSHIP. Requires a petition in a suit for dissolution of a marriage to state whether there are children born or adopted of the marriage who are under 18 years of age or entitled to support. Requires the suit for dissolution of a marriage to include a suit affecting the parent-child relationship (SAPCR) if the parties are parents of a child and the child is not under continuing jurisdiction of another court.

Sec. 6.407. TRANSFER OF SUIT AFFECTING PARENT-CHILD RELATIONSHIP TO DIVORCE COURT. Provides that if a SAPCR is pending at the time the suit for dissolution of a marriage is filed, the SAPCR is required to be transferred to the court in which the suit for dissolution is filed. Provides that if the parties are parents of a child and the child is under the continuing jurisdiction of another court, either party to the suit may move that court for transfer of the SAPCR to the court having jurisdiction of the suit for dissolution. Requires the court with continuing jurisdiction to transfer the proceeding. Requires the court with jurisdiction of the suit for dissolution of a marriage to consolidate the two causes of action. Provides that the court with the jurisdiction of the suit for dissolution of a marriage has jurisdiction to render an order in a SAPCR.

Sec. 6.408. SERVICE OF CITATION. Requires a citation to be issued and served as in other civil cases for a suit for dissolution of marriage. Authorizes citation to be served on any person who may assert an interest in the suit for dissolution of marriage.

Sec. 6.409. CITATION BY PUBLICATION. Sets forth the requirements for citation by publication.

SUBCHAPTER F. TEMPORARY ORDERS

Sec. 6.501. TEMPORARY RESTRAINING ORDER. Sets forth the conditions under which a court may grant a temporary restraining order (TRO) and what the TRO allows and disallows.

Sec. 6.502. TEMPORARY INJUNCTION AND OTHER TEMPORARY ORDERS. Authorizes a court to issue a temporary injunction and sets forth provisions for the order.

Sec. 6.503. AFFIDAVIT, VERIFIED PLEADING, AND BOND NOT REQUIRED. Sets forth requirements for a temporary restraining order or temporary injunction. Authorizes the court to dispense with the issuance of a bond between the spouses in connection with

temporary orders.

Sec. 6.504. PROTECTIVE ORDERS. Authorizes the court to render a protective order.

Sec. 6.505. COUNSELING. Authorizes a court to direct parties to counseling while a divorce suit is pending. Requires a report to be made by a counselor about the parties in a suit and a copy of such report to be issued to each party and the court. Authorizes the court to direct further counseling, not to exceed 60 days, if the court believes there is a reasonable expectation for reconciliation. Sets forth circumstances the court is required to consider in ordering counseling. Requires the counselor to report to the court whether the parties have complied with the court's order. Requires the court thereafter to proceed with the divorce suit.

Sec. 6.506. CONTEMPT. Provides that a violation of a TRO, temporary injunction, or other temporary orders is punishable by contempt.

Sec. 6.507. INTERLOCUTORY APPEAL. Provides that an order under this section, except an order appointing a receiver, is not subject to interlocutory appeal.

SUBCHAPTER G. ALTERNATIVE DISPUTE RESOLUTION

Sec. 6.601. ARBITRATION PROCEDURES. Authorizes the court to refer the divorce suit to arbitration, upon written agreement of the parties. Requires the agreement to state whether the arbitration is binding or nonbinding. Requires the court to render an order reflecting the arbitrator's award, if the parties agree to binding arbitration.

Sec. 6.602. MEDIATION PROCEDURES. Authorizes the court, upon written agreement of the parties, to refer the suit for dissolution of a marriage to mediation. Provides that a mediated settlement agreement is binding on the parties if the agreement is not subject to revocation and is signed by both parties and by the party's attorneys. Provides that a party is entitled to judgment on the mediated settlement agreement if the mediated settlement agreement meets the requirements of this section.

SUBCHAPTER H. TRIAL AND APPEAL

Sec. 6.701. FAILURE TO ANSWER. Provides that the petition is not authorized to be taken as confessed if the respondent does not file an answer.

Sec. 6.702. JURY. Authorizes either party to demand a jury trial unless the action is a suit to annul an underage marriage.

Sec. 6.703. TESTIMONY OF HUSBAND OR WIFE. Provides that in a suit for dissolution of a marriage, the husband and wife are competent witnesses for and against each other. Provides that a spouse is not authorized to be compelled to testify if it will incriminate the spouse. Requires the court or the jury to determine the credibility and weight of a husband's or wife's testimony.

Sec. 6.704. TESTIMONY BY MARRIAGE COUNSELOR. Prohibits a report by a counselor (counselor) appointed by the court from being admitted as evidence in any suit for divorce. Provides that counselor is not competent to testify in any suit involving the parties or their children. Prohibits files, records, and other work-products of the counselor from being admitted into evidence.

Sec. 6.705. CHANGE OF NAME. Requires the court to change the name of a party to the party's previous name upon request, unless the court denies the change in the decree. Prohibits the court from denying the name change solely to keep the last name of family members the same. Provides that the name change does not release the person from any prior liability under the previous name. Authorizes the person whose name is changed to apply for a change of name certificate from the clerk of the court.

Sec. 6.706. TRANSFERS AND DEBTS PENDING DECREE. Provides that a transfer of real or personal community property or a debt incurred by a spouse while a suit for divorce or annulment is pending that subjects the other spouse or the community property to liability is void with respect to the other spouse if the transfer was made or the debt incurred with the intent to injure the rights of the other spouse. Provides that a transfer or debt is not void if the person dealing with the transferor or debtor spouse (third party) did not have notice of the intent to injure the rights of the other spouse. Provides that the spouse seeking to void the transfer has the burden that the third party had notice.

Sec. 6.707. COSTS. Authorizes a court to reward costs to a party in a suit for dissolution of marriage. Prohibits costs from being adjudged against a party against whom a divorce is granted for confinement in a mental hospital. Authorizes the expenses of counseling to be taxed against either or both parties.

Sec. 6.708. TEMPORARY ORDERS DURING APPEAL. Authorizes a trial court to render a temporary order necessary for the preservation of the property and for protection of the parties during appeal, including certain orders, no later than the 30th day after appeal. Provides that the trial court retains jurisdiction to enforce a temporary order unless superseded by the appellate court.

SUBCHAPTER I. REMARRIAGE

Sec. 6.801. REMARRIAGE. Prohibits a divorced party from marrying again before the 31st day after the date the divorce is decreed. Authorizes former spouses to marry each other at any time.

Sec. 6.802. WAIVER OF PROHIBITION AGAINST REMARRIAGE. Authorizes the court to waive the prohibition against remarriage upon good cause shown if a record of the proceedings is made and preserved or findings of fact and conclusions of law are filed.

CHAPTER 7. AWARD OF MARITAL PROPERTY

Sec. 7.001. GENERAL RULE OF PROPERTY DIVISION. Requires the court to make a just and right division of the estate of the parties, having due regard to each party and any children of the marriage.

Sec. 7.002. DIVISION OF PROPERTY UNDER SPECIAL CIRCUMSTANCES. Requires the court to order a division of certain real and personal property, in a manner the court deems just and right, having due regard to each party and any children of the marriage.

Sec. 7.003. DISPOSITION OF RETIREMENT AND EMPLOYMENT BENEFITS AND OTHER PLANS. Requires the court to determine the rights of both spouses in certain retirement plans, in a decree of divorce or annulment.

Sec. 7.004. DISPOSITION OF RIGHTS IN INSURANCE. Requires the court in a decree of divorce or annulment to award the rights of each spouse in an insurance policy.

Sec. 7.005. INSURANCE COVERAGE NOT SPECIFICALLY AWARDED. Provides that insurance other than life insurance, not awarded to a spouse in a decree of divorce or annulment, remains in effect until the policy expires. Sets forth how to pay the proceeds of a valid claim under an insurance policy. Provides that failure of a former spouse to change the endorsement of a policy does not relieve the insurer of liability to pay proceeds.

Sec. 7.006. AGREEMENT INCIDENT TO DIVORCE OR ANNULMENT. Authorizes spouses to enter into a written agreement concerning division of property (agreement) which may be revised or repudiated before the divorce or annulment, unless otherwise binding. Provides that the agreement is binding on the court once the court finds that it is just and right, otherwise the court is authorized to request a revised agreement or set the case for a

contested hearing.

CHAPTER 8. MAINTENANCE

Sec. 8.001. DEFINITION. Defines "maintenance."

Sec. 8.002. ELIGIBILITY FOR MAINTENANCE. Sets forth the conditions under which the court may order spousal maintenance.

Sec. 8.003. FACTORS IN DETERMINING MAINTENANCE. Sets forth the factors for the court in determining spousal maintenance.

Sec. 8.004. PRESUMPTION. Provides that it is presumed that spousal maintenance is not warranted unless certain factors are met. Provides that this presumption does not apply to certain individuals.

Sec. 8.005. DURATION OF MAINTENANCE ORDER. Sets forth requirements of the duration of the spousal maintenance. Sets forth an exception for the duration of spousal maintenance.

Sec. 8.006. AMOUNT OF MAINTENANCE. Sets forth amounts for spousal maintenance and what is excluded from spousal maintenance.

Sec. 8.007. TERMINATION. Sets forth instances in which spousal maintenance terminates.

Sec. 8.008. MODIFICATION OF MAINTENANCE ORDER. Sets forth the process and procedures in modifying a spousal maintenance order and grounds not suitable for the institution of spousal maintenance.

Sec. 8.009. ENFORCEMENT OF MAINTENANCE ORDER. Sets forth the enforcement and affirmative defenses to enforcement of spousal maintenance.

Sec. 8.010. PUTATIVE SPOUSE. Authorizes a putative spouse to be awarded spousal maintenance.

Sec. 8.011. UNMARRIED COHABITANTS. Prohibits spousal maintenance for unmarried cohabitants.

CHAPTER 9. POST-DECREE PROCEEDINGS

SUBCHAPTER A. SUIT TO ENFORCE DECREE

Sec. 9.001. ENFORCEMENT OF DECREE. Authorizes a party affected by a decree of divorce or annulment to file suit to enforce (suit) the decree. Requires the suit to be governed by the Texas Rules of Civil Procedure. Requires a written answer and entitlement to notice by citation for parties affected by the suit.

Sec. 9.002. CONTINUING AUTHORITY TO ENFORCE DECREE. Provides for continuing power, by a court rendering a decree of divorce or annulment.

Sec. 9.003. FILING DEADLINES. Sets forth deadlines for filing a suit.

Sec. 9.004. APPLICABILITY TO UNDIVIDED PROPERTY. Provides that procedures and limitations of this subchapter do not apply to existing property not divided on divorce.

Sec. 9.005. NO JURY. Prohibits a party from demanding a jury trial for a suit to enforce.

Sec. 9.006. ENFORCEMENT OF DIVISION OF PROPERTY. Authorizes the court to render further precise orders to enforce division of property. Provides that an order of

enforcement does not affect the finality of the decree of divorce or annulment.

Sec. 9.007. **LIMITATION ON POWER OF COURT TO ENFORCE.** Prohibits a court from amending, modifying, altering, or changing the division of property made in a decree of divorce or annulment and any change is unenforceable. Provides that a court's power to clarify or render is abated while an appellate proceeding is pending.

Sec. 9.008. **CLARIFICATION ORDER.** Authorizes the court to render a clarification order, in conjunction with a motion for contempt or denial of motion for contempt. Authorizes the court to render a clarifying order, if the original property division is not specific. Prohibits the court from giving retroactive effect to a clarifying order. Requires the court to provide reasonable time for compliance.

Sec. 9.009. **DELIVERY OF PROPERTY.** Authorizes the court to order delivery of specific existing property, including existing money or its equivalent.

Sec. 9.010. **REDUCTION TO MONEY JUDGMENT.** Authorizes the court to render a money judgment if a party fails to comply with a decree of divorce or annulment and delivery of property awarded in the decree is no longer an adequate remedy. Authorizes a court to render judgment against a defaulting party for nonpayment of money awarded from a divorce or annulment decree. Provides that reduction to money judgment is in addition to other remedies provided by law. Authorizes a money judgment rendered to be enforced by any means available for the enforcement of judgment for debt.

Sec. 9.011. **RIGHT TO FUTURE PROPERTY.** Authorizes a court to enforce awards of the right to receive installment payments. Provides that receipt of property awarded to the owner creates a fiduciary obligation and a constructive trust for the benefit of the owner.

Sec. 9.012. **CONTEMPT.** Sets forth instances during which a court is authorized to use and not use contempt. Provides that this subchapter does not detract from or limit the general power of a court to enforce an order of the court.

Sec. 9.013. **COSTS.** Authorizes the court to award costs to enforce property division.

Sec. 9.014. **ATTORNEY'S FEES.** Authorizes the court to award reasonable attorney's fees and to order the fees to be paid directly to the attorney.

SUBCHAPTER B. POST-DECREE QUALIFIED DOMESTIC RELATIONS ORDER

Sec. 9.101. **JURISDICTION FOR QUALIFIED DOMESTIC RELATIONS ORDER.** Provides that a court which rendered a final decree of divorce or annulment or another final order dividing property has continuing, exclusive jurisdiction for certain matters. Provides that a suit seeking a qualified domestic relations order applies to certain retirement plans.

Sec. 9.102. **PROCEDURE.** Sets forth the process and procedures for petitioning a qualified domestic relations order.

Sec. 9.103. **PRIOR FAILURE TO RENDER QUALIFIED DOMESTIC RELATIONS ORDER.** Authorizes a party to petition a court to render a qualified domestic relations order if the court that rendered a final decree of divorce or annulment or another final order did not provide a qualified domestic relations order or similar order permitting payment of benefits to an alternative payee or other lawful payee.

Sec. 9.104. **DEFECTIVE PRIOR DOMESTIC RELATIONS ORDER.** Provides that a court retains continuing, exclusive jurisdiction over parties and their property necessary to render a qualified domestic relations order although a qualified domestic relations order does not satisfy the requirements of one.

Sec. 9.105. **LIBERAL CONSTRUCTION.** Requires the court to liberally construe this

subchapter.

SUBCHAPTER C. POST-DECREE DIVISION OF PROPERTY

Sec. 9.201. PROCEDURE FOR DIVISION OF CERTAIN PROPERTY NOT DIVIDED ON DIVORCE OR ANNULMENT. Authorizes either spouse to file a suit to divide property not divided or awarded in a final decree of divorce or annulment. Provides that this suit is governed by the Texas Rules of Civil Procedure.

Sec. 9.202. LIMITATIONS. Sets forth the statute of limitations for suits under this subchapter.

Sec. 9.203. DIVISION OF UNDIVIDED ASSETS WHEN PRIOR COURT HAD JURISDICTION. Requires the court to divide undisposed property in a just and right manner. Requires a court of this state to apply the law of the court of the other state regarding undivided property.

Sec. 9.204. DIVISION OF UNDIVIDED ASSETS WHEN PRIOR COURT LACKED JURISDICTION. Provides that a court which did not dispose of property subject to division because the court lacked jurisdiction over the person or property, the court may divide the property once jurisdiction is conferred. Provides that if a court in another state does not dispose of property because the court lacked jurisdiction, and a court in this state acquires jurisdiction, then the court in this state may divide the property.

Sec. 9.205. ATTORNEY'S FEES. Authorizes a court to award reasonable attorney's fees and pay the fees directly to the attorney.

SUBCHAPTER D. DISPOSITION OF UNDIVIDED BENEFICIAL INTEREST

Sec. 9.301. PRE-DECREE DESIGNATION OF EX-SPOUSE AS BENEFICIARY OF LIFE INSURANCE. Provides that a life insurance policy which names an ex-spouse as beneficiary is ineffective unless certain factors are met. Provides that proceeds are payable to certain entities. Provides that an ineffective beneficiary still makes the insurer liable to pay proceeds if certain conditions are met.

Sec. 9.302. PRE-DECREE DESIGNATION OF EX-SPOUSE AS BENEFICIARY IN RETIREMENT BENEFITS AND OTHER FINANCIAL PLANS. Provides that if a decree is rendered after a spouse has designated the other spouse as a beneficiary under certain financial plans, the designating provision in the plan in favor of the other former spouse is not effective unless certain requirements are met. Sets forth the payee of an ineffective designation. Provides that an insurer is still liable for proceeds if the designation is ineffective, if certain requirements are satisfied. Provides that this section does not affect the right of a former spouse in certain financial plans nor does it apply to the disposition of certain financial plans.

SECTION 2. Amends Chapter XIII5D, Texas Probate Code, by adding Sections 886 through 886F, as follows:

Sec. 886. APPOINTMENT OF RECEIVER. Sets forth requirements under which a receiver is to be appointed to take charge of the separate property. Sets forth requirements of the order of appointment of receiver. Sets forth requirements of a person reported to be a prisoner of war or missing in action for a person becoming a receiver, including duties and power of the receiver.

Sec. 886A. EXPENDITURES BY RECEIVER. Sets forth requirements for expenditures by the receiver.

Sec. 886B. INVESTMENTS, LOANS, AND CONTRIBUTIONS BY RECEIVER. Sets forth requirements for investing by the receiver.

Sec. 886C. RECEIVER'S EXPENSES, ACCOUNT, AND COMPENSATION. Authorizes a monthly expense report to be given to a judge by the receiver. Requires the judge to reimburse the receiver, if judge is satisfied by the report, from funds under the receiver's control. Provides for compensation of the receiver.

Sec. 886D. CLOSING RECEIVERSHIP. Sets forth requirements for closing a receivership.

Sec 886E. ACTION OF JUDGE. Requires the judge to render an order to direct the receiver to deliver property in the receiver's control to certain persons once the judge is satisfied that the reason for appointing a receiver has been abated. Requires a person to whom property was delivered to give a receipt to the clerk. Requires the judge to continue receivership if the judge is not satisfied that the reason for receivership has not been abated or with the report filed by the receiver.

Sec. 886F. RECORDATION OF PROCEEDINGS. Requires certain receivership proceedings to be recorded in the minutes of the court.

SECTION 3. Repealer: Title 1, Family Code (The Marriage Relationship).

SECTION 4. Makes application of this Act prospective.

SECTION 5. Emergency clause.
Effective date: upon passage.