

BILL ANALYSIS

C.S.H.B. 705
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Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties point out that, in certain cases when someone dies without a will, a small estate affidavit can be a less expensive way of probating the estate than traditional estate administration. However, the parties emphasize that filing a small estate affidavit requires a demonstration that estate assets exceed known liabilities and that a lack of access to an account balance at a bank or other financial institution can be a barrier to families who would otherwise be able to use a small estate affidavit. The parties believe that a mechanism is needed for a decedent's heirs to obtain information that would enable them to avoid a costly probate administration. C.S.H.B. 705 seeks to provide that mechanism.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 705 amends the Estates Code to authorize a court, on application of an interested person or on the court's own motion, to issue an order requiring a financial institution to release to the person named in the order information concerning the balance of each account that is maintained at the financial institution of a decedent who dies intestate if 90 days have elapsed since the date of the decedent's death, no petition for the appointment of a personal representative for the decedent's estate is pending, and no letters testamentary or of administration have been granted with respect to the estate. The bill defines "interested person" as an heir, spouse, creditor, or any other having a property right in or claim against the decedent's estate.

C.S.H.B. 705 does not apply to an account with a beneficiary designation, a P.O.D. account, a trust account, or an account that provides for a right of survivorship.

EFFECTIVE DATE

September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 705 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences

between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. The heading to Subtitle D, Title 2, Estates Code, is amended to read as follows:

SUBTITLE D. PROCEEDINGS AND OTHER PROCEDURES BEFORE ADMINISTRATION OF ESTATE

SECTION 2. Subtitle D, Title 2, Estates Code, is amended by adding Chapter 153 to read as follows:

CHAPTER 153. ACCESS TO INTESTATE'S ACCOUNT WITH FINANCIAL INSTITUTION

Sec. 153.001. DEFINITIONS.

Sec. 153.002. INAPPLICABILITY OF CHAPTER.

Sec. 153.003. COURT-ORDERED ACCESS TO INTESTATE'S ACCOUNT INFORMATION.

On application of any person or on the court's own motion, a court may issue an order requiring a financial institution to release to the person named in the order information concerning the balance of each account that is maintained at the financial institution of a decedent who dies intestate if:

- (1) 90 days have elapsed since the date of the decedent's death;
- (2) no petition for the appointment of a personal representative for the decedent's estate is pending; and
- (3) no letters testamentary or of administration have been granted with respect to the estate.

Sec. 153.004. ACCESS TO INTESTATE'S ACCOUNT INFORMATION WITHOUT COURT ORDER. On presentation of a certified copy of the decedent's death certificate and an affidavit that complies with Section 153.005, a financial institution may release to an heir of a decedent who dies intestate information concerning the balance of each of the decedent's accounts that is maintained at the financial institution

HOUSE COMMITTEE SUBSTITUTE

No equivalent provision.

SECTION 1. Subtitle D, Title 2, Estates Code, is amended by adding Chapter 153 to read as follows:

CHAPTER 153. ACCESS TO INTESTATE'S ACCOUNT WITH FINANCIAL INSTITUTION

Sec. 153.001. DEFINITIONS.

Sec. 153.002. INAPPLICABILITY OF CHAPTER.

Sec. 153.003. COURT-ORDERED ACCESS TO INTESTATE'S ACCOUNT INFORMATION.

(a) In this section, "interested person" means an heir, spouse, creditor, or any other having a property right in or claim against the decedent's estate.

(b) On application of an interested person or on the court's own motion, a court may issue an order requiring a financial institution to release to the person named in the order information concerning the balance of each account that is maintained at the financial institution of a decedent who dies intestate if:

- (1) 90 days have elapsed since the date of the decedent's death;
- (2) no petition for the appointment of a personal representative for the decedent's estate is pending; and
- (3) no letters testamentary or of administration have been granted with respect to the estate.

if 90 days have elapsed since the date of the decedent's death.

Sec. 153.005. FORM OF AFFIDAVIT. An affidavit presented to a financial institution under this chapter must be in substantially the following form:

AFFIDAVIT

Before me, the undersigned authority, on this day personally appeared ("Affiant") (insert name of affiant) who, being first duly sworn, on his or her oath states:

My name is _____ (insert name of affiant), and I live at _____ (insert address of affiant's residence).

I am an heir of _____ (insert name of decedent), who is the holder of an account ("Account holder") maintained with _____ (insert name of financial institution). I am the account holder's _____ (insert "surviving spouse," "parent," "descendant," or other description of a familial relationship to the account holder).

The account holder died on _____ (insert decedent's date of death).

To the best of my knowledge no will of the account holder has been probated and there is no will that will be offered for probate. In addition, to the best of my knowledge there is no administration of the account holder's estate pending in a court of this state, and it is my belief that no administration of the estate is necessary.

Signed this _____ day of _____, _____.

(signature of affiant)

State of _____

County of _____

Sworn to and subscribed to before me on _____ (date) by _____ (insert name of affiant).

(signature of notarial officer)

(Seal, if any, of notary) _____

(printed name)

My commission expires: _____

SECTION 3. This Act takes effect September 1, 2015.

SECTION 2. Same as introduced version.