

BILL ANALYSIS

S.B. 995
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Judiciary & Civil Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

As part of its ongoing review of Texas probate, guardianship, and trust law, the Real Estate, Probate, and Trust Law Section of the State Bar of Texas has proposed several updates to the law relating to decedents' estates. S.B. 995 seeks to incorporate these updates into the law.

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 rulemaking authority is expressly granted to the Supreme Court of Texas in SECTION 44 of this bill.

ANALYSIS

S.B. 995 amends the Estates Code to clarify that the term "P.O.D. account," defined under statutory provisions governing multiple-party accounts, includes an account designated as a transfer on death or T.O.D. account. The bill authorizes the guardian of an estate or an attorney in fact or agent of an original payee, on the death of the party, to sign on behalf of the original payee a written agreement relating to the ownership of a P.O.D. account held by a financial institution on or after the bill's effective date, regardless of the date on which the account was opened.

S.B. 995 adds to the conditions under which a will must be read, if after a testator makes a will the testator's marriage is dissolved by divorce, annulment, or a declaration that the marriage is void, unless the will expressly provides otherwise, that all provisions in the will disposing of property to an irrevocable trust in which a former spouse or a relative of a former spouse who is not a relative of the testator is a beneficiary or is nominated to serve as trustee or in another fiduciary capacity or that confers a general or special power of appointment on a former spouse or a relative of a former spouse who is not a relative of the testator be read to instead dispose of the property to a trust the provisions of which are identical to the irrevocable trust. The bill sets out exceptions to this requirement for any provision in the irrevocable trust that is favorable as previously described to a former spouse or relative of a former spouse that require such a provision to be treated as if that individual had, as applicable, either disclaimed the interest granted in the provision or had died immediately before the dissolution of the marriage. These provisions do not apply if a court order or if an express provision of a contract relating to the division of the marital estate entered into between the testator and the testator's former spouse before, during, or after the marriage provides otherwise. The bill defines "irrevocable trust," for purposes of these provisions, to mean a trust for which the trust instrument was executed before the dissolution of a testator's marriage and that the testator was not solely empowered by law or by the trust instrument to revoke.

S.B. 995 specifies that certain provisions conferring a general or special power of appointment or nominating an individual in a fiduciary or representative capacity in a trust instrument that was executed by a divorced individual before the divorced individual's marriage was dissolved that are revoked by the dissolution of the marriage are those provisions that revocably make such conferrals or nominations. The bill establishes that a provision designating a spouse or relative of a spouse who is not a relative of the decedent as a P.O.D. payee or beneficiary, including an alternative P.O.D. payee or beneficiary, on a P.O.D. account or other multiple-party account is not effective as to the former spouse or the former spouse's relative if after the decedent makes such designation the decedent's marriage is dissolved by divorce, annulment, or a declaration that the marriage is void, unless certain circumstances apply. The bill establishes that if such a designation is not effective under the bill's provisions, a multiple-party account is payable to the named alternative P.O.D. payee or beneficiary, or to the estate of the decedent if such an alternative payee or beneficiary is not named. The bill makes a financial institution or other person obligated to pay a multiple-party account that pays the account to the former spouse or the former spouse's relative as P.O.D. payee or beneficiary under a designation that is not effective under the bill's provisions liable for payment of the account to the named alternative P.O.D. payee or beneficiary or decedent's estate only if certain conditions apply. The bill establishes that its provisions relating to a designation of a former spouse or relative of a former spouse on certain multiple-party accounts do not affect the right of a former spouse to assert an ownership interest in an undivided multiple-party account described by such provisions and that those provisions do not apply to the disposition of a beneficial interest in a retirement benefit or other financial plan of a public retirement system.

S.B. 995 establishes that statutory provisions relating to maternal and paternal inheritance do not permit inheritance by a child for whom no right of inheritance accrues under statutory provisions governing the inheritance of persons not in being, or by such a child's issue. The bill clarifies that no right of inheritance accrues to any person unless the person is born before, or is in gestation at, the time of the intestate's death and survives for at least 120 hours. The bill establishes that a person is considered to be in gestation at the time of the intestate's death if insemination or implantation occurs at or before the time of the intestate's death and is presumed to be in gestation at the time of the intestate's death if the person is born before the 301st day after the date of the intestate's death. The bill replaces requirements that an application made by an authorized person to commence a proceeding to declare heirship state the decedent's time of death and the residences of the decedent's heirs with requirements that such an application state the decedent's date of death and the physical addresses where service can be had on the decedent's heirs, respectively. The bill also requires the application to state whether each heir is an adult or minor. The bill authorizes, subject to certain exceptions relating to a minor distributee, a distributee to waive citation otherwise required by statutory provisions governing notice of a proceeding to declare heirship to be served on the distributee.

S.B. 995 makes statutory provisions requiring a will to be written, signed, and attested inapplicable to a written will executed in compliance with the law of the state or foreign country where the will was executed or where the testator was domiciled or had a place of residence, as that law existed at the time of the will's execution or at the time of the testator's death. The bill clarifies that a constitutional county court, district court, or statutory county court, including a statutory probate court, may not prohibit a person from revoking an existing will or codicil in whole or in part. The bill clarifies that statutory provisions governing the validity of forfeiture clauses in wills are not intended to and do not repeal any law recognizing that forfeiture clauses generally will not be construed to prevent a beneficiary from seeking to compel a fiduciary to perform the fiduciary's duties, from seeking redress against a fiduciary for a breach of the fiduciary's duties, or from seeking a judicial construction of a will or trust. The bill clarifies that statutory provisions governing the exoneration of debts secured by specific devises are applicable only to wills executed on or after September 1, 2005.

S.B. 995 establishes that a right to take as a member under a class gift does not accrue to any

person unless the person is born before, or is in gestation at, the time of the testator's death and survives for at least 120 hours but establishes that a provision in the testator's will to the contrary prevails.

S.B. 995 authorizes a court, on the petition of a personal representative, to order that the terms of a will be modified or reformed, that the personal representative be directed or permitted to perform acts that are not authorized or that are prohibited by the terms of the will, or that the personal representative be prohibited from performing acts that are required by the terms of the will under certain conditions. The bill authorizes the court to direct that such an order has retroactive effect. The bill requires the court to exercise the court's discretion to order such a modification or reformation in the manner that conforms as nearly as possible to the probable intent of the testator. The bill establishes that its provisions relating to the judicial modification or reformation of wills do not limit a court's powers under other law, including the power to modify, reform, or terminate a testamentary trust under the Property Code. The bill establishes that the judicial modification and reformation of wills provisions do not create or imply a duty for a personal representative to petition a court for modification or reformation of a will, to be directed or permitted to perform acts that are not authorized or that are prohibited by the terms of the will, or to be prohibited from performing acts that are required by the terms of the will; to inform devisees about the availability of applicable relief; or to review the will or other evidence to determine whether any applicable action should be taken. The bill grants a personal representative immunity from liability for failing to file a petition.

S.B. 995 includes an independent administrator designated by all of the distributees of the decedent among the individuals authorized to file an application with a court for an order admitting a will to probate or for the court to make certain appointments. The bill replaces a requirement that an application for the probate of a will state and aver the time of the testator's death with a requirement that such an application state and aver the date of the testator's death. The bill replaces a requirement that such an application, or an application for the probate of a will as muniment of title, made by an applicant that cannot produce the will in court state the age and marital status of certain individuals with a requirement that such an application state whether such individuals are adults or minors. The bill replaces requirements that an application for the probate of a will as a muniment of title state and aver the decedent's time of death and the residence of the executor named in the will with requirements that such an application state the decedent's date of death and the state of residence and physical address where service can be had of the executor, respectively. The bill replaces requirements that an application for letters of administration when no will is alleged to exist state the decedent's time of death and the age and marital status of each of the decedent's heirs with requirements that such an application state the decedent's date of death and whether such individuals are adults or minors, respectively. The bill removes a requirement that a personal representative, not later than the 90th day after the date of an order admitting a will to probate, file with the clerk of the court in which the decedent's estate is pending a sworn affidavit or certificate stating the addresses of certain beneficiaries and certain notice recipients.

S.B. 995 establishes that, absent a written request by a beneficiary, an independent executor is not required to provide a verified, full, and detailed inventory and appraisal to a beneficiary who is entitled to receive aggregate devises under the will with an estimated value of \$2,000 or less, to a beneficiary who has received all devises to which the beneficiary is entitled under the will on or before the date an affidavit in lieu of an inventory, appraisal, and list of claims is filed, or to a beneficiary who has waived in writing the beneficiary's right to receive a verified, full, and detailed inventory and appraisal. The bill excludes a person designated as an administrator with a will or alleged will annexed from those individuals who are allowed out of the estate the person's necessary expenses and disbursements in certain proceedings for the purpose of having the will or alleged will admitted to probate. The bill clarifies that the exempt property to which statutory provisions relating to setting aside exempt property, delivery of exempt property, and payment of family allowance in lieu of exempt property refer is exempt property described as personal property under the Property Code. The bill clarifies that

distributees are entitled to distribution of any remaining exempt property of an insolvent estate held by the executor or administrator, after the surviving spouse or children have had exempt property and family allowances set aside or paid to them, in the same manner as other estate property.

S.B. 995 authorizes all of the distributees of a decedent whose will names an executor but does not provide for independent administration, or in certain situations where a decedent's will names no executor or where named executors are deceased, disqualified, or unwilling, or when a decedent dies intestate, to alternatively designate an independent executor or administrator by collectively making such designation in one or more separate documents consenting to the application for probate of the decedent's will or to the application for administration of the decedent's estate, as applicable. The bill clarifies that the circumstances under which a court may appoint a temporary administrator, with powers limited as the circumstances of the case require, include a pending contest relating to granting letters testamentary.

S.B. 995 authorizes a personal representative, when administering the estate of a deceased lawyer who established certain trust or escrow accounts for client funds or the funds of third persons that are in the lawyer's possession in connection with representation, to hire through written agreement a lawyer authorized to practice in Texas to be the authorized signer on the trust or escrow account, to determine who is entitled to receive the funds in the account, to disburse the funds to the appropriate persons or to the decedent's estate, and to close the account. The bill authorizes a personal representative who is a lawyer authorized to practice in Texas to state that fact and disburse such trust or escrow account funds. The bill requires such an agreement or statement to be made in writing and requires a copy of the agreement or statement to be delivered to each eligible institution, defined by the bill to mean a financial institution or investment company in which a lawyer has established an escrow or trust account for purposes of holding client funds or the funds of third persons that are in the lawyer's possession in connection with representation, in which the trust or escrow accounts were established. The bill requires an eligible institution, within a reasonable time after receiving such a copy and accompanying instructions, if applicable, to disburse the funds and close the account. The bill grants an eligible institution immunity from liability for any act respecting an account taken in compliance with the bill's provisions governing disbursement and closing of lawyer trust or escrow accounts. The bill authorizes the Supreme Court of Texas to adopt rules regarding the administration of funds in a trust or escrow account subject to such provisions.

S.B. 995 clarifies that the written will of a testator who was not domiciled in Texas at the time of the testator's death may be admitted to probate at any time if certain conditions apply. The bill specifies that, on application, an executor named in a foreign will admitted to ancillary probate in Texas is entitled to receive ancillary letters testamentary on proof made to the court that, among other conditions, the executor, if the will is admitted to ancillary probate in Texas after the fourth anniversary of the testator's death, continues to serve in that capacity in the jurisdiction in which the will was previously admitted to probate or otherwise established.

EFFECTIVE DATE

September 1, 2015.