

BILL ANALYSIS

Senate Research Center

H.B. 1852
By: Thompson (Harris)
Jurisprudence
5/13/1999
Engrossed

DIGEST

Historically the Real Estate, Probate and Trust Law section of the State Bar of Texas has identified provisions of the Texas Probate Code that are in need of revision. Many revisions are necessary as a result of court rulings, some are intended as general improvements to the code, and others are simply conforming changes that result from changes to other codes. As in the past, the Real Estate, Probate and Trust Law section of the State Bar has identified certain revisions for the 76th Legislature. H.B. 1852 simplifies the process for the administration of a decedent's estate by clarifying the conditions under which a will may be probated as muniment of title. This bill also outlines the procedures for releasing independent executors from fully disclosed transactions. Furthermore, this bill conforms the Texas Probate Code to the homestead liability laws of the State of Texas. Finally, this bill authorizes the administrator to allocate interest due on the estate between income and principal.

PURPOSE

As proposed, H.B. 1852 establishes conditions regarding the administration of and other matters relating to decedents' estates.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. Section 10B, Texas Probate Code, to provide that on receipt of a subpoena of communications or records under this section and proof of filing of the will contest or proceeding, by file-stamped, rather than certified, copy, the appropriate individuals in possession of the communications or records shall release the communications or records to the party requesting the records without further authorization.

SECTION 2. Amends Part 4, Chapter V, Texas Probate Code, by adding Section 128B, as follows:

Sec. 128B. NOTICE WHEN WILL PROBATED AFTER FOUR YEARS. Sets forth provisions regarding the required notice for the probate of a will after four years.

SECTION 3. Amends Section 149A(b), Texas Probate Code, to authorize a person making a specific demand to compel compliance by an action in the county court, as the term is defined by Section 3 of this code. Deletes text regarding a suit in a district court.

SECTION 4. Amends Section 149B(a), Texas Probate Code, to delete text regarding certain proceedings brought in a county court. Makes conforming changes.

SECTION 5. Amends Section 149C(a), Texas Probate Code, to delete text regarding certain courts. Makes conforming changes.

SECTION 6. Amends Part 4, Chapter VI, Texas Probate Code, by adding Sections 149D, 149E, 149F, and 149G, as follows:

Sec. 149D. DISTRIBUTION OF REMAINING ESTATE PENDING JUDICIAL DISCHARGE. Sets forth provisions regarding the distribution of the remaining estate pending certain judicial discharge.

Sec. 149E. JUDICIAL DISCHARGE OF INDEPENDENT EXECUTOR. Sets forth provisions regarding the judicial discharge of an independent executor after an estate has been administered.

Sec. 149F. COURT COSTS AND OTHER CHARGES RELATED TO FINAL ACCOUNT IN JUDICIAL DISCHARGE. Sets forth conditions regarding the liability of certain individuals relating to court costs and other charges related to the final account in judicial discharge.

Sec. 149G. RIGHTS AND REMEDIES CUMULATIVE. Provides that the rights and remedies conferred by Sections 149D, 149E, and 149F of this code are cumulative of other rights and remedies to which a person interested in the estate may be entitled under the law.

SECTION 7. Amends Part 3, Chapter VII, Texas Probate Code, by adding Sections 221A and 221B, as follows:

Sec. 221A. CHANGE OF RESIDENT AGENT. Sets forth provisions regarding the changing of a resident agent by a personal representative through the filing of a statement titled "Designation of Successor Resident Agent."

Sec. 221B. RESIGNATION OF RESIDENT AGENT. Sets forth provisions regarding the resignation of a resident agent.

SECTION 8. Amends Section 222(a), Texas Probate Code, regarding the inability to serve certain individuals with notices due to certain facts regarding the person's whereabouts.

SECTION 9. Amends Section 270, Texas Probate Code, to provide that a homestead shall not be liable for the payment of any of the debts of the estate, providing certain exceptions. Deletes text regarding work and material that are contracted for in writing.

SECTION 10. Amends Section 378B(a), Texas Probate Code, to establish provisions regarding interest due on estate taxes and fees.

SECTION 11. Amends Section 37.005, Civil Practice and Remedies Code, to authorize a person interested as or through an executor or administrator, including an independent executor or administrator, or certain other individuals to have a declaration of rights or legal relations in respect to the trust estate, and to determine rights or legal relations of an independent executor or independent administrator regarding fiduciary fees and the settling of accounts.

SECTION 12. Makes application of SECTION 7 of this Act prospective.

SECTION 13. Makes application of SECTION 8 of this Act prospective.

SECTION 14. Makes application of SECTION 10 of this Act prospective.

SECTION 15. Establishes that except as provided by SECTIONS 12, 13, and 14 of this Act, the changes in law made by this Act apply only to the estate of a person who dies on or after the effective date of this Act. Provides that an estate of a person who dies before the effective date of this Act is governed by the law in effect on the date of the person's death, and the former law is continued in effect for the purpose.

SECTION 16. Effective date: September 1, 1999.

SECTION 17. Emergency clause.