

## **BILL ANALYSIS**

Senate Research Center  
81R21767 MTB-F

H.B. 3350  
By: Hartnett (Watson)  
Jurisprudence  
5/21/2009  
Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

This bill adds an optional provision for a "one-step" execution method for wills, based in part on a similar provision in the Uniform Probate Code.

The self-proving affidavit form is amended to add an optional provision for a "one-step" execution method for wills, so that the testator and witnesses only have to sign the will once. Use of the optional one-step method may reduce errors related to missing signatures. However, wills executed with the current two-step method will continue to be allowed as self-proved wills.

The bill repeals an antiquated provision allowing a testator to give his or her surviving spouse the power to keep the testator's property together until the distributees reach a specified age. It is rarely, if ever, used. The bill repeals this section as "deadwood."

H.B. 3350 includes an optional provision for a "one-step" execution method for wills, based in part on a similar provision in Probate Code. This bill repeals Section 70 (Provision In Will for Management of Separate Property), Texas Probate Code.

### **RULEMAKING AUTHORITY**

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

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 59, Texas Probate Code, by adding Subsection (a-1) and amending Subsection (b), as follows:

(a-1) Authorizes a last will and testament, as an alternative to the self-proving of a last will and testament by the affidavits of the testator and the attesting witnesses under Subsection (a) (relating to requirements for every last will and testament) of this section, to be simultaneously executed, attested, and made self-proved before an officer authorized to administer oaths under the laws of this state, and authorizes the testimony of the witnesses in the probate of the will and testament to be made unnecessary, with the inclusion in the will and testament of a certain statement in a certain form.

(b) Provides that a will with a self-proving affidavit subscribed and sworn to by the testator and witnesses attached or annexed to the will, or a will simultaneously executed, attested, and made self-proved as provided by Subsection (a-1) of this section, is a "self-proved will." Requires that substantial compliance with the form of the affidavit provided by Subsection (a) of this section, rather than substantial compliance with the form of such affidavit, suffice to cause the will to be self-proved. Provides that a signature on a self-proving affidavit as provided by Subsection (a) of this section is considered a signature to the will if necessary to prove that the will was signed by the testator or witnesses, or both, but in that case, the will is prohibited from being considered a self-proved will.

SECTION 2. Amends Section 471, Texas Probate Code, by adding Subdivisions (1-a), (2-a), and (2-b) and amending Subdivision (2), to define "dissolution," "relative of the former spouse," and "relative" and redefine "divorced individual."

SECTION 3. Amends Chapter XI-A, Texas Probate Code, by adding Section 471A, as follows:

Sec. 471A. DISSOLUTION OF MARRIAGE. Provides that for the purposes of this chapter, a marriage has been "dissolved" if the marriage terminates as a result of dissolution.

SECTION 4. Amends Sections 472 and 473, Texas Probate Code, as follows:

Sec. 472. REVOCATION OF CERTAIN NONTESTAMENTARY TRANSFERS ON DISSOLUTION OF MARRIAGE. (a) Provides that except as otherwise provided by a premarital agreement or marital property agreement or by a court order that is a final judgment, including a judgment dissolving the marriage and dividing marital property and an order for payment of child support in a suit affecting the parent-child relationship, the express terms of a trust instrument executed by a divorced individual before the individual's marriage was dissolved, or an express provision of a contract relating to the division of the marital estate entered into between a divorced individual and the individual's former spouse before, during, or after the marriage, the dissolution of the marriage revokes the following:

(1) a revocable disposition or appointment of property made by a divorced individual to the individual's former spouse or any relative of the former spouse in a trust instrument executed before the dissolution of the marriage;

(2) a provision in a trust instrument executed by a divorced individual before the dissolution of the marriage that confers a general or special power of appointment on the individual's former spouse or any relative of the former spouse; and

(3) a nomination in a trust instrument executed by a divorced individual before the dissolution of the marriage that nominates the individual's former spouse or any relative of the former spouse to serve in a fiduciary or representative capacity, including as a personal representative, executor, trustee, conservator, agent, or guardian.

(b) Provides that after the dissolution of a marriage, an interest granted in a provision of a trust instrument that is revoked under Subsection (a)(1) or (2) of this section passes as if the former spouse of the divorced individual who executed the trust instrument or any relative of the former spouse, as applicable, disclaimed the interest granted in the provision, and an interest granted in a provision of a trust instrument that is revoked under Subsection (a)(3) of this section passes as if the former spouse or any relative of the former spouse, as applicable, died immediately before the dissolution of the marriage.

Sec. 473. LIABILITY FOR CERTAIN PAYMENTS, BENEFITS, AND PROPERTY.

(a) Provides that a bona fide purchaser of property from a divorced individual's former spouse or any relative of the former spouse or a person who receives from a divorced individual's former spouse or any relative of the former spouse a payment, benefit, or property in partial or full satisfaction of an enforceable obligation is not required by this chapter to return the payment, benefit, or property, and is not liable under this chapter for the amount of the payment or the value of the property or benefit.

(b) Provides that a divorced individual's former spouse or any relative of the former spouse who, not for value, receives a payment, benefit, or property to which the former spouse or the relative of the former spouse is not entitled as a result of Section 472(a) of this code:

(1) is required to return the payment, benefit, or property to the person who is otherwise entitled to the payment, benefit, or property as provided by this chapter; or

(2) is personally liable to the person described by Subdivision (1) of this subsection for the amount of the payment or the value of the benefit or property received.

SECTION 5. Repealer: Section 70 (Provision In Will for Management of Separate Property), Texas Probate Code.

SECTION 6. Makes application of Sections 471, 472, and 473, Texas Probate Code, as amended by this Act, prospective.

SECTION 7. Effective date: September 1, 2009.