

BILL ANALYSIS

Senate Research Center
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S.B. 319
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Jurisprudence
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As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

During the 80th Legislature, Regular Session, Senate Bill 593 was enacted to require the personal representative of a decedent's estate, within a certain time period of an order admitting a will to probate, to give notice to each beneficiary named in the will whose identity is known or, through reasonable diligence, can be ascertained, and to file an affidavit with the court listing the beneficiaries notified. Since the new law was enacted it has become apparent that the requirements imposed are overly burdensome and costly for practitioners and their clients.

As proposed, S.B. 319 would repeal the amendments made last session and reestablish in a new section the notice requirements from prior law.

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 Part 4, Chapter V, Texas Probate Code, by adding Section 128C, as follows:

Sec. 128C. NOTICE TO CERTAIN ENTITIES AFTER PROBATE. (a) Requires an applicant under Section 81 (Contents of Application for Letters Testamentary) of this code, if the address of the entity can be ascertained with reasonable diligence, to give the state, a governmental agency of the state, or a charitable organization notice that the entity is named as a devisee in a written will or a written will not produced that has been admitted to probate.

(b) Requires that the notice required by Subsection (a) of this section be given not later than the 30th day after the date of the probate of the will.

(c) Requires that the notice be in writing and state the county in which the will was admitted to probate. Requires that a copy of the application and of the order admitting the will to probate and, if the application is for probate of a written will, a copy of the will be attached to the notice.

(d) Requires an entity entitled to notice under Subsection (a) of this section to be notified by registered or certified mail, return receipt requested.

(e) Requires the applicant to file a copy of the notice with the court in which the will was admitted to probate.

SECTION 2. Amends Sections 37A(h) and (i), Texas Probate Code, as follows:

(h) Requires that, if the beneficiary is a charitable organization or a governmental agency of the state, a written memorandum of disclaimer disclaiming a present or future interest be filed not later than the first anniversary of the date the beneficiary receives the notice required by Section 128C, rather than 128A, of this code, or the expiration of the six-month period following the date the personal representative files the inventory, appraisal, and list of claims due or owing to the estate, whichever occurs later.

(i) Makes a conforming change.

SECTION 3. Amends Section 149C(a), Texas Probate Code, to authorize the county court, as that term is defined by Section 3 (Definitions and Use of Terms) of this code, on its own motion or on a motion of any interested person, after the independent executor has been cited by personal service to answer at a time and place fixed in the notice, to remove an independent executor when the independent executor fails to timely file the notice required by Section 128C, rather than the affidavit or certificate required by Section 128A, of this code.

SECTION 4. Amends Section 222(b), Texas Probate Code, to make conforming changes.

SECTION 5. Repealer: Section 128A (Certain Beneficiaries After Probate of Will), Texas Probate Code, as amended by Chapter 801, Acts of the 80th Legislature, Regular Session, 2007.

Repealer: Section 128A (Notice to Certain Entities After Probate), Texas Probate Code, as amended by Chapter 1170, Acts of the 80th Legislature, Regular Session, 2007.

SECTION 6. Makes application of this Act prospective.

SECTION 7. Effective date: upon passage or September 1, 2009.