

BILL ANALYSIS

Senate Research Center
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H.B. 2912
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Jurisprudence
5/17/2013
Committee Report (Amended)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

As part of its ongoing revision 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 laws affecting decedents' estates. Included in these updates are heirship changes, new requirements for self-proving affidavits, power of sale for personal property, new guidelines for removing an independent executor, and adverse possession requirements for co-tenant heirs.

H.B. 2912 amends current law relating to decedent's estates.

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 21.005, Estates Code, as effective January 1, 2014, to conform to Section 2.54, Chapter 1338 (S.B. 1198), Acts of the 82nd Legislature, Regular Session, 2011, and further amends it as follows:

Sec. 21.005. **APPLICABILITY OF CERTAIN LAWS.** (a) Creates this subsection from existing text. Provides that notwithstanding Section 21.002(b) (relating to providing that Chapter 311, Government Code, does not apply to the construction of a provision of certain subtitles) of this code and Section 311.002 (Application), Government Code:

(1) Section 311.032(c) (relating to providing that certain statutes are severable), Government Code, applies to Subtitle X (Texas Probate Code: Scope, Jurisdiction, and Courts), rather than Subtitles X and Y (Texas Probate Code: Independent Administration), Title 2 (Estates of Decedents: Durable Powers of Attorney), and Subtitles Y (Texas Probate Code: Scope, Jurisdiction, and Venue) and Z (Texas Probate Code; Additional Guardianship Provisions), Title 3 (Guardianship and Related Procedures); and

(2) Sections 311.005(4) (defining "property") and 311.012(b) (relating to providing that the singular includes the plural and the plural includes the singular) and (c) (providing that words of one gender include the other), Government Code, apply to Subtitle X, rather than Subtitles X and Y, Title 2, and Subtitles Y and Z, Title 3.

(b) Provides that Chapter 132 (Unsworn Declarations), Civil Practice and Remedies Code, does not apply to Subchapter C (Self-Proved Wills), Chapter 251 (Fundamental Requirements and Provisions Relating to Wills).

SECTION 2. Transfers Section 2(e), Texas Probate Code, notwithstanding the transfer of Section 2, Texas Probate Code, to the Estates Code and its redesignation as Section 2 of that code effective January 1, 2014, by Section 2, Chapter 680 (H.B. 2502), Acts of the 81st

Legislature, Regular Session, 2009, to Chapter 32, Estates Code, redesignates it as Section 32.001(d), Estates Code, and amends it as follows:

(d) Redesignates existing Subsection (e) as Subsection (d), deletes the subsection heading, and makes no further change to this subsection.

SECTION 3. Amends Section 32.006, Estates Code, as effective January 1, 2014, as follows:

Sec. 32.006. JURISDICTION OF STATUTORY PROBATE COURT WITH RESPECT TO TRUSTS AND POWERS OF ATTORNEY. Provides that in a county in which there is a statutory probate court, the statutory probate court has jurisdiction of:

- (1)-(2) Makes no change to these subdivisions;
- (3) an action by or against an agent or former agent under a power of attorney arising out of the agent's performance of the duties of an agent; and
- (4) Makes no change to this subdivision.

SECTION 4. Amends Section 51.203(c), Estates Code, as effective January 1, 2014, as follows:

(c) Provides that at the expiration of the 10-day period prescribed by Subsection (a) (relating to service being made by posting notice of a certain intention):

- (1) the depositions for which the notice was posted are authorized to be taken, rather than the commission is authorized to issue for taking the depositions for which the notice was posted; and
- (2) Makes no change to this subdivision.

SECTION 5. Amends Section 53.104, Estates Code, as effective January 1, 2014, as follows:

Sec. 53.104. APPOINTMENT OF ATTORNEYS AD LITEM. (a) Authorizes the judge of a probate court, except as provided by Section 202.009(b), to appoint an attorney ad litem in any probate proceeding to represent the interests of any person, rather than certain persons, including:

- (1) a person who has a legal disability under state or federal law;
- (2) Makes no change to this subdivision;
- (3)-(4) Makes nonsubstantive changes;
- (5) a missing heir; or
- (6) an unknown or missing person for whom cash is deposited into the court's registry under Section 362.011.

(b) Entitles an attorney ad litem appointed under this section to reasonable compensation for services provided in the amount set by the court, rather than in the amount set by the court to be taxed as costs in the proceeding. Requires the court to:

- (1) tax the compensation as costs in the probate proceeding and order the compensation to be paid out of the estate or by any party at any time during the proceeding; or
- (2) for an attorney ad litem appointed under Subsection (a)(6), order that the compensation be paid from the cash on deposit in the court's registry as provided by Section 362.011.

Makes a nonsubstantive change.

SECTION 6. Amends Subchapter C, Chapter 53, Estates Code, as effective January 1, 2014, by adding Section 53.107, as follows:

Sec. 53.107. **INAPPLICABILITY OF CERTAIN RULES OF CIVIL PROCEDURE.** Provides that the following do not apply to probate proceedings:

- (1) Rules 47(c) and 169, Texas Rules of Civil Procedure; and
- (2) the portions of Rule 190.2, Texas Rules of Civil Procedure, concerning expedited actions under Rule 169, Texas Rules of Civil Procedure.

SECTION 7. Amends Section 54.051, Estates Code, as effective January 1, 2014, as follows:

Sec. 54.051. **APPLICABILITY OF CERTAIN RULES RELATING TO WITNESSES AND EVIDENCE.** Provides that except as provided by Section 51.203 (Service of Notice of Intention to Take Depositions in Certain Matters), the Texas Rules of Evidence, rather than rules relating to witnesses and evidence that apply in the district court, apply in a proceeding arising under this title to the extent practicable.

SECTION 8. Amends Section 102.004, Estates Code, as effective January 1, 2014, to provide that if the decedent was survived by a spouse or minor child, the homestead is not liable for the payment of any of the debts of the estate, other than certain debts.

SECTION 9. Amends Section 111.051, Estates Code, as effective January 1, 2014, by amending Subdivision (1) to define "contracting third party" and adding Subdivision (1-a) to make a nonsubstantive change.

SECTION 10. Amends Subchapter B, Chapter 111, Estates Code, by adding Section 111.054, as follows:

Sec. 111.054. **APPLICATION OF STATE LAW TO CERTAIN NONTESTAMENTARY TRANSFERS.** (a) Provides that this section applies if more than 50 percent of the:

- (1) assets in an account at a financial institution, in a retirement account, or in another similar arrangement are owned, immediately before a possible nontestamentary transfer of the assets, by one or more persons domiciled in this state; or
- (2) interests under an insurance contract, annuity contract, beneficiary designation, or other similar arrangement are owned, immediately before a possible nontestamentary transfer of the interests, by one or more persons domiciled in this state.

(b) Provides that notwithstanding a choice of law or other contractual provision in an agreement prepared or provided by a contracting third party, Texas law applies to determine:

- (1) whether a nontestamentary transfer of assets or interests described by Subsection (a) has occurred; and
- (2) the ownership of the assets or interests following a possible nontestamentary transfer.

(c) Requires any person, including a personal representative, who is asserting an ownership interest in assets or interests described by Subsection (a) subject to a possible nontestamentary transfer, notwithstanding a choice of law or other

contractual provision in an agreement prepared or provided by a contracting third party, to have access to the courts of this state for a judicial determination of:

(1) whether a nontestamentary transfer of the assets or interests has occurred; or

(2) the ownership of the assets or interests following a possible nontestamentary transfer.

(d) Provides that Subsections (a), (b), and (c) do not apply to an obligation:

(1) owed by a party to the contracting third party; or

(2) owed by the contracting third party to a party.

(e) Provides that this section applies to a community property survivorship agreement governed by Chapter 112 (Community Property With Right of Survivorship) and a multiple-party account governed by Chapter 113 (Multiple-Party Accounts).

SECTION 11. Amends Section 201.001, Estates Code, as effective January 1, 2014, by amending Subsections (f) and (g) and adding Subsections (i) and (j), as follows:

(f) Requires that the person's estate, if none of the kindred described by Subsections (b) (relating to passing of a person's estate to the person's children and children's descendants), (c) (relating to passing of a person's estate to the person's father and mother under certain circumstances), (d) (relating to passing of a person's estate if only one parent survives the decedent), and (e) (relating to passing of a person's estate to siblings if no parent survives the person) survive the person, but the person is survived by a grandparent or a descendant of a grandparent, be divided into two certain moieties, with one moiety passing to the person's paternal kindred as provided by Subsection (g); and one moiety passing to the person's maternal kindred as provided by Subsection (h) (providing that the moiety passing to the person's maternal kindred passes in the same order and manner as the other moiety passes to the decedent's paternal kindred under Subsection (g)).

(g) Provides that the moiety passing to the person's paternal kindred passes in the following order:

(1)-(2) Makes no change to these subdivisions; and

(3) if neither the person's paternal grandfather nor grandmother survives the person, the moiety passing to the decedent's paternal kindred passes to the descendants of the person's paternal grandfather and grandmother in like manner, rather than and so on without end, passing in like manner to the nearest lineal ancestors and their descendants.

(i) Provides that if none of the kindred described by Subsections (b)-(e) survive the person and there is no surviving paternal grandparent or descendant of a paternal grandparent or, in the alternative, there is no surviving maternal grandparent or descendant of a maternal grandparent, the entire estate passes to the decedent's kindred on the side with the surviving grandparent or descendant of a grandparent in the manner provided for a moiety under Subsection (g) or (h).

(j) Provides that if none of the kindred described by Subsections (b)-(i) survive the person, the person's estate escheats under Chapter 71 (Escheat of Property), Property Code.

SECTION 12. Amends Section 201.051, Estates Code, as effective January 1, 2014, to provide that if a child has intended parents, as defined by Section 160.102 (Definitions), Family Code,

under a gestational agreement validated under Subchapter I (Gestational Agreements), Chapter 160 (Uniform Parentage Act), Family Code, the child is the child of the intended mother and not the biological mother or gestational mother unless the biological mother is also the intended mother.

SECTION 13. Amends Section 201.052, Estates Code, as effective January 1, 2014, by adding Subsection (a-1) and amending Subsection (b), as follows:

(a-1) Provides that notwithstanding Subsection (a) (relating to establishing a child as the child of the child's biological father for purposes of inheritance), if a child has intended parents, as defined by Section 160.102, Family Code, under a gestational agreement validated under Subchapter I, Chapter 160, Family Code, the child is the child of the intended father and not the biological father unless the biological father is also the intended father.

(b) Requires a child described by Subsection (a) or (a-1), rather than by Subsection (a), and the child's issue to inherit from the child's father and the child's paternal kindred, both descendants, ascendants, and collateral kindred in all degrees, and authorizes them to inherit from the child and the child's issue.

SECTION 14. Amends Subchapter A, Chapter 202, Estates Code, as effective January 1, 2014, by adding Section 202.0025, as follows:

Sec. 202.0025. ACTION BROUGHT AFTER DECEDENT'S DEATH. Authorizes that a proceeding to declare heirship of a decedent, notwithstanding Section 16.051 (Residual Limitations Period), Civil Practice and Remedies Code, be brought at any time after the decedent's death.

SECTION 15. Amends Section 202.004, Estates Code, as effective January 1, 2014, as follows:

Sec. 202.004. PERSONS WHO MAY COMMENCE PROCEEDING TO DECLARE HEIRSHIP. Authorizes a proceeding to declare heirship of a decedent to be commenced and maintained under a circumstance specified by Section 202.002 (Circumstances Under Which Proceeding to Declare Heirship is Authorized) by:

- (1) Makes no change to this subdivision;
- (2) a person claiming to be a creditor, rather than a secured creditor, or the owner of all or part of the decedent's estate; or
- (3)-(5) Makes no change to these subdivisions.

SECTION 16. Amends Section 202.009, Estates Code, as effective January 1, 2014, as follows:

Sec. 202.009. New heading: ATTORNEY AD LITEM. (a) Requires the court to appoint an attorney ad litem in a proceeding to declare heirship to represent the interests of heirs whose names or locations are unknown, rather than authorizing the court, if it appears to the court in a proceeding to declare heirship that there is or may be a living heir whose name or whereabouts is unknown, or that a defendant is an incapacitated person, to appoint an attorney ad litem or guardian ad litem to represent the interests of that person. Deletes existing text prohibiting the court from appointing an attorney ad litem or guardian ad litem unless the court finds that the appointment is necessary to protect the interests of the living heir or incapacitated person.

(b) Authorizes the court to expand the appointment of the attorney ad litem appointed under Subsection (a) to include representation of an heir who is an incapacitated person on a finding that the appointment is necessary to protect the interests of the heir, rather than requiring the court to appoint an attorney ad litem to represent the interests of unknown heirs.

SECTION 17. Amends Section 202.056, Estates Code, as effective January 1, 2014, as follows:

Sec. 202.056. New heading: WAIVER OF SERVICE OF CITATION. Provides that a parent, managing conservator, guardian, attorney ad litem, or guardian ad litem of a minor distributee who:

- (1) is younger than 12 years of age is authorized to waive citation required by this subchapter to be served on the distributee; and
- (2) is 12 years of age or older is prohibited from waiving citation required by this subchapter to be served on the distributee.

Deletes existing text prohibiting a parent, managing conservator, guardian, attorney ad litem, or guardian ad litem of a distributee who is 12 years of age or older, but younger than 19 years of age, from waiving citation required by this subchapter to be served on the distributee.

SECTION 18. Amends Subchapter B, Chapter 202, Estates Code, as effective January 1, 2014, by adding Section 202.057, as follows:

Sec. 202.057. AFFIDAVIT OF SERVICE OF CITATION. (a) Requires a person who files an application under Section 202.005 (Application for Proceeding to Declare Heirship) to file with the court:

- (1) a copy of any citation required by this subchapter and the proof of delivery of service of the citation; and
- (2) an affidavit sworn to by the applicant or a certificate signed by the applicant's attorney stating:

(A) that the citation was served as required by this subchapter;

(B) the name of each person to whom the citation was served, if the person's name is not shown on the proof of delivery; and

(C) the name of each person who waived citation under Section 202.056.

(b) Prohibits the court from entering an order in the proceeding to declare heirship under Subchapter E (Judgment in Proceeding to Declare Heirship) until the applicant files the affidavit required by this section.

SECTION 19. Amends Section 202.151, Estates Code, as effective January 1, 2014, as follows:

Sec. 202.151. New heading: EVIDENCE IN PROCEEDING TO DECLARE HEIRSHIP. (a) Creates this subsection from existing text. Authorizes the court to require that any testimony admitted as evidence in a proceeding to declare heirship be reduced to writing and subscribed and sworn to by the witnesses, respectively, rather than authorizing the court to require that all or any part of the evidence admitted in a proceeding to declare heirship be reduced to writing and subscribed and sworn to by the witnesses, respectively and filed in the proceeding and recorded in the judge's probate docket. Makes nonsubstantive changes.

(b) Requires that testimony in a proceeding to declare heirship be taken in open court, by deposition in accordance with Section 51.203, or in accordance with the Texas Rules of Civil Procedure.

SECTION 20. Amends Sections 204.151 and 204.152, Estates Code, as effective January 1, 2014, as follows:

Sec. 204.151. **APPLICABILITY OF SUBCHAPTER.** Provides that this subchapter (Use of Results of Genetic Testing in Certain Proceedings to Declare Heirship) applies in a proceeding to declare heirship of a decedent only with respect to an individual who claims to be a biological child of the decedent or claims to inherit through a biological child of the decedent. Deletes existing text providing that this subchapter applies in a proceeding to declare heirship of a decedent only with respect to an individual who petitions the court for a determination of right of inheritance as authorized by Section 201.052(c) (relating to authorizing a person to petition the probate court for a determination of right of inheritance from a decedent under certain conditions); and claims to be a biological child of the decedent, but with respect to whom a parent-child relationship with the decedent was not established as provided by Section 160.201 (Establishment of Parent-Child Relationship), Family Code, or to inherit through a biological child of the decedent, if a parent-child relationship between the individual through whom the inheritance is claimed and the decedent was not established as provided by Section 160.201, Family Code.

Sec. 204.152. **New heading: PRESUMPTION; REBUTTAL.** Provides that the presumption under Section 160.505 (Genetic Testing Results; Rebuttal), Family Code, that applies in establishing a parent-child relationship also applies in determining heirship in the probate court using the results of genetic testing ordered with respect to an individual described by Section 204.151 (Applicability of Subchapter), and may be rebutted in the same manner provided by Section 160.505, Family Code. Deletes existing text requiring the court, unless the results of genetic testing of another individual who is an heir of the decedent who is the subject of a proceeding to declare heirship to which this subchapter applies are admitted as rebuttal evidence, to find that the individual described by Section 204.151 is an heir of the decedent, if the results of genetic testing ordered under Subchapter B (Court Orders for Genetic Testing in Proceedings to Declare Heirship) identify a tested individual who is an heir of the decedent as the ancestor of the individual described by Section 204.151; or is not an heir of the decedent, if the results of genetic testing ordered under Subchapter B exclude a tested individual who is an heir of the decedent as the ancestor of the individual described by Section 204.151.

SECTION 21. Amends Section 253.001, Estates Code, as effective January 1, 2014, by adding Subsection (c), to provide that any portion of a court order that purports to prohibit a person from executing a new will or a codicil to an existing will is void and may be disregarded without penalty or sanction of any kind.

SECTION 22. Amends the heading to Section 256.052, Estates Code, as effective January 1, 2014, to read as follows:

Sec. 256.052. **CONTENTS OF APPLICATION FOR PROBATE OF WILL.**

SECTION 23. Amends Section 256.052(a), Estates Code, as effective January 1, 2014, as follows:

(a) Requires that an application for the probate of a will, rather than a written will, state and aver the following to the extent each is known to the applicant or can, with reasonable diligence, be ascertained by the applicant:

(1)-(6) Makes no change to these subdivisions;

(7) the name, state of residence, and physical address where service can be had of the executor named in the will or other person to whom the applicant desires that letters be issued, rather than the name and residence of any executor named in the will, or, if no executor is named, of the person to whom the applicant desires that letters be issued and each subscribing witness to the will, if any;

(8) the name of each subscribing witness to the will, if any; and

(9)-(12) Makes nonsubstantive changes.

SECTION 24. Amends the heading to Section 256.053, Estates Code, as effective January 1, 2014, to read as follows:

Sec. 256.053. FILING OF WILL WITH APPLICATION FOR PROBATE GENERALLY REQUIRED.

SECTION 25. Amends Section 256.053(a), Estates Code, as effective January 1, 2014, to require an applicant for the probate of a will, rather than a written will, to file the will with the application if the will is in the applicant's control.

SECTION 26. Amends Section 256.054, Estates Code, as effective January 1, 2014, as follows:

Sec. 256.054. New heading: ADDITIONAL APPLICATION REQUIREMENTS WHEN NO WILL IS PRODUCED. Requires that the application, in addition to the requirements for an application under Section 256.052, if an applicant for the probate of a will, rather than a written will, cannot produce the will in court, state certain information.

SECTION 27. Amends Section 256.152(c), Estates Code, as effective January 1, 2014, to provide that as an alternative to Subsection (b) (relating to providing that a will that is self-proved in accordance with the laws of the state or foreign country of the testator's domicile at the time of the execution is not required to have any additional proof that the will was executed with the formalities and solemnities and under the circumstances required to make the will valid), rather than for purposes of Subsection (b), a will executed in another state or a foreign country is considered self-proved without further evidence of the law of the other state or foreign country if the will, or an affidavit of the testator and attesting witnesses attached or annexed to the will, provides certain declarations.

SECTION 28. Amends Section 256.153, Estates Code, as effective January 1, 2014, as follows:

Sec. 256.153. New heading: PROOF OF EXECUTION OF ATTESTED WILL. (a) Authorizes an attested will, rather than attested written will, produced in court that is not self-proved as provided by this title to be proved in the manner provided by this section.

(b) Makes no change to this subsection.

(c) Authorizes the will, if all the witnesses to a will described by Subsection (a) are nonresidents of the county or the witnesses who are residents of the county are unable to attend court, to be proved:

(1) by the sworn testimony of one or more of the witnesses by written or oral deposition taken in accordance with Section 51.203 or the Texas Rules of Civil Procedure, rather than in the same manner and under the same rules as depositions are taken in other civil actions; or

(2)-(3) Makes no changes to these subdivisions.

(d) Authorizes the will, under certain circumstances, to be proved:

(1) by two witnesses to the handwriting of one or both of the subscribing witnesses to the will or the testator, if the testator signed the will, by:

(A) Makes no change to this paragraph; or

(B) written or oral deposition taken in accordance with Section 51.203 or the Texas Rules of Civil Procedure, rather than taken in the same manner and under the same rules as depositions are taken in other civil actions; or

(2) Makes no change to this subdivision.

(e) Authorizes a witness being deposed for purposes of proving the will as provided by Subsection (c) or (d) to testify by referring to a certified copy of the will, without the judge requiring the original will to be removed from the court's file and shown to the witness.

SECTION 29. Amends Section 256.154, Estates Code, as effective January 1, 2014, as follows:

Sec. 256.154. New heading: PROOF OF EXECUTION OF HOLOGRAPHIC WILL.

(a) Creates this subsection from existing text. Authorizes a will wholly in the handwriting of the testator that is not self-proved as provided by this title to be proved by two witnesses to the testator's handwriting. Authorizes the evidence to be by:

(1) Makes no change to this subdivision; or

(2) if the witnesses are nonresidents of the county or are residents who are unable to attend court, written or oral deposition taken in accordance with Section 51.203 or the Texas Rules of Civil Procedure, rather than taken in the same manner and under the same rules as depositions are taken in other civil actions.

(b) Authorizes a witness being deposed for purposes of proving the will as provided by Subsection (a)(2) to testify by referring to a certified copy of the will, without the judge requiring the original will to be removed from the court's file and shown to the witness.

SECTION 30. Amends Section 256.155(a), Estates Code, as effective January 1, 2014, to provide that this section, rather than Sections 256.153(c) and (d) and 256.154 regarding the taking of depositions, rather than the taking of depositions under the same rules as depositions in other civil actions, applies if no contest has been filed with respect to an application for the probate of a will.

SECTION 31. Amends Section 256.156, Estates Code, as effective January 1, 2014, as follows:

Sec. 256.156. New heading: PROOF OF WILL NOT PRODUCED IN COURT. (a) Requires that a will, rather than a written will, that cannot be produced in court be proved in the same manner as provided in Section 256.153 for an attested will, rather than an attested written will, or Section 256.154 for a holographic will, as applicable. Makes conforming changes.

(b) Provides that in addition to the proof required by Subsection (a):

(1) Makes a conforming change; and

(2) the contents of the will are required to be substantially proved by the testimony of a credible witness who has read either the original or a copy of the will, has heard the will read, or can identify a copy of the will.

SECTION 32. Amends Section 256.203, Estates Code, as effective January 1, 2014, to make conforming changes.

SECTION 33. Amends Section 257.052, Estates Code, as effective January 1, 2014, as follows:

Sec. 257.052. New heading: FILING OF WILL WITH APPLICATION GENERALLY REQUIRED. (a) Requires an applicant for the probate of a will, rather than a written will, as a muniment of title to file the will with the application if the will is in the applicant's control.

(b) Makes no change to this subsection.

SECTION 34. Amends Section 257.053, Estates Code, as effective January 1, 2014, as follows:

Sec. 257.053. New heading: **ADDITIONAL APPLICATION REQUIREMENTS WHEN NO WILL IS PRODUCED**. Makes a conforming change.

SECTION 35. Amends Subchapter D, Chapter 301, Estates Code, as effective January 1, 2014, by adding Section 301.155, as follows:

Sec. 301.155. **AUTHORIZED METHODS OF PROOF**. Authorizes a fact contained in an application for issuance of letters testamentary or of administration or any other fact required to be proved by this subchapter to be proved by the sworn testimony of a witness with personal knowledge of the fact that is:

(1) taken in open court; or

(2) if proved under oath to the satisfaction of the court that the witness is unavailable, taken by deposition on written questions in accordance with Section 51.203 or the Texas Rules of Civil Procedure.

SECTION 36. Amends Section 304.001(c), Estates Code, as effective January 1, 2014, as follows:

(c) Provides that if persons, rather than applicants for letters testamentary or of administration, are equally entitled to letters testamentary or of administration, rather than the letters, the court:

(1) is required to grant the letters to the person, rather than applicant, who, in the judgment of the court, is most likely to administer the estate advantageously; or

(2) is authorized to grant the letters to two or more of those persons, rather than applicants.

SECTION 37. Amends Section 305.002(a), Estates Code, as effective January 1, 2014, as follows:

(a) Provides that a personal representative, other than an executor described by Subsection (b) (relating to providing that an executor who is not required to give a bond is considered to have qualified when the executor has taken and filed the oath prescribed by Subchapter B), is considered to have qualified when the representative has:

(1) Makes no change to this subdivision;

(2) filed the required bond with the clerk, rather than given the required bond; and

(3) obtained the judge's approval of the bond.

Deletes existing Subdivision (4) relating to the bond being filed with the clerk.

SECTION 38. Amends Section 305.003, Estates Code, as effective January 1, 2014, as follows:

Sec. 305.003. New heading: **PERIOD FOR TAKING OATH**. Authorizes an oath to be taken and subscribed at any time before a certain day or revocation. Deletes existing text authorizing an oath to be taken and subscribed and a bond to be given and approved at any time before a certain day or revocation.

SECTION 39. Amends Subchapter A, Chapter 305, Estates Code, as effective January 1, 2014, by adding Section 305.004, as follows:

Sec. 305.004. **PERIOD FOR GIVING BOND**. (a) Authorizes a bond to be filed with the clerk at any time before:

(1) the 21st day after:

(A) the date of the order granting letters testamentary or of administration, as applicable; or

(B) the date of any order modifying the bond requirement; or

(2) the date letters testamentary or of administration, as applicable, are revoked for a failure to qualify within the period allowed.

(b) Requires the court to act promptly to review a bond filed as provided by Subsection (a) and, if acceptable, to approve the bond.

(c) Authorizes the person appointed personal representative to file a motion requiring the judge of the court in which the bond was filed to specify on the record the reason or reasons for the judge's failure to act on the bond if no action has been taken by the court on the bond before the 21st day after the date the bond is filed. Requires that the hearing on the motion be held before the 11th day after the date the motion is filed.

SECTION 40. Amends Section 308.054(b), Estates Code, as effective January 1, 2014, as follows:

(b) Requires that notice given under Subsection (a):

(1) expressly state that the creditor is required to present the claim before the 121st day, rather than within four months, after the date of the receipt of the notice or the claim is barred, if the claim is not barred by the general statutes of limitation; and

(2) Makes no change to this subdivision.

SECTION 41. Amends Section 309.051(a), Estates Code, as effective January 1, 2014, to require the personal representative, except as provided by Subsection (c) (relating to authorizing the court to require the personal representative to file the inventory and appraisal within a certain period) or Section 309.056 (Affidavit in Lieu of Inventory, Appraisal, and List of Claims) or unless a longer period is granted by the court, before the 91st day after the date the personal representative qualifies, to prepare and file with the court clerk a certain single written instrument in regard to inventory.

SECTION 42. Amends Section 309.056, Estates Code, as effective January 1, 2014, by amending Subsection (b) and adding Subsection (d), as follows:

(b) Authorizes an independent executor, notwithstanding Sections 309.051 (Inventory and Appraisal) and 309.052 (List of Claims), or any contrary provision in a decedent's will that does not specifically prohibit the filing of an affidavit described by this subsection, to file with the court clerk under certain circumstances, in lieu of the inventory, appraisal, and list of claims, an affidavit stating that all debts, except for secured debts, taxes, and administration expenses, are paid and that all beneficiaries have received a verified, full, and detailed inventory and appraisal if there are no unpaid debts, except for secured debts, taxes, and administration expenses, at the time the inventory is due, including any extensions.

(d) Provides that an independent executor is not liable for choosing to file:

(1) an affidavit under this section in lieu of filing an inventory, appraisal, and list of claims, if permitted by law; or

(2) an inventory, appraisalment, and list of claims in lieu of filing an affidavit under this section.

SECTION 43. Amends Subchapter B, Chapter 309, Estates Code, as effective January 1, 2014, by adding Section 309.057, as follows:

Sec. 309.057. PENALTY FOR FAILURE TO TIMELY FILE INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS OR AFFIDAVIT IN LIEU OF. (a) Provides that this section applies only to a personal representative, including an independent executor or administrator, who does not file an inventory, appraisalment, and list of claims or affidavit in lieu of the inventory, appraisalment, and list of claims, as applicable, within the period prescribed by Section 309.051 or any extension granted by the court.

(b) Authorizes any person interested in the estate on written complaint, or the court on the court's own motion, to have a personal representative to whom this section applies cited to file the inventory, appraisalment, and list of claims or affidavit in lieu of the inventory, appraisalment, and list of claims, as applicable, and show cause for the failure to timely file.

(c) Authorizes the court on hearing to fine the representative in an amount not to exceed \$1,000 if the personal representative does not file the inventory, appraisalment, and list of claims or affidavit in lieu of the inventory, appraisalment, and list of claims, as applicable, after being cited or does not show good cause for the failure to timely file.

(d) Provides that the personal representative and the representative's sureties, if any, are liable for any fine imposed under this section and for all damages and costs sustained by the representative's failure. Authorizes the fine, damages, and costs to be recovered in any court of competent jurisdiction.

SECTION 44. Amends Sections 309.103(a) and (b), Estates Code, as effective January 1, 2014, as follows:

(a) Authorizes any interested person who considers an inventory, appraisalment, or list of claims or an affidavit in lieu of the inventory, appraisalment, and list of claims, rather than authorizing any interested person who considers an inventory, appraisalment, or list of claims filed for the estate, to be erroneous or unjust in any particular to take certain actions.

(b) Requires the court, on the hearing of the complaint, if the court is satisfied from the evidence that the inventory, appraisalment, or list of claims or an affidavit in lieu of the inventory, appraisalment, and list of claims is erroneous or unjust as alleged in the complaint, to enter an order:

(1) Makes no change to this subdivision; and

(2) if the complaint relates to an inventory, appraisalment, or list of claims, appointing appraisers to make a new appraisalment correcting the erroneous or unjust item and requiring the filing of the new appraisalment before the 21st day after the date of the order.

SECTION 45. Amends Section 353.101(d), Estates Code, as effective January 1, 2014, as follows:

(d) Prohibits a family allowance from being made for:

(1)-(2) Makes no change to these subdivisions; or

(3) any of the decedent's adult incapacitated children, if:

(A) Makes a nonsubstantive change; or

(B) at the time of the decedent's death, the decedent was not supporting the adult incapacitated child.

SECTION 46. Amends Section 355.060, Estates Code, as effective January 1, 2014, to provide that if a personal representative gives a notice permitted by Section 308.054 (Permissive Notice to Unsecured Creditor) to an unsecured creditor for money and the creditor's claim is not presented before the 121st day, rather than within four months, after the date of receipt of the notice, the claim is barred.

SECTION 47. Amends Section 361.155, Estates Code, as effective January 1, 2014, by amending Subsection (b) and adding Subsection (c), as follows:

(b) Requires an appointee who files an inventory, appraisalment, and list of claims under Subsection (a) (relating to requiring certain actions of the appointee succeeding a former personal representative), except as otherwise provided by this subsection, to set out in the inventory the appointee's appraisalment of the fair market value of each item in the inventory on the date of the appointee's qualification. Requires the appointee, if an inventory, appraisalment, and list of claims has not been filed by any former personal representative, to set out the inventory as provided by Sections 309.051 and 309.052.

(c) Creates this subsection from existing text and makes no further change to this subsection.

SECTION 48. Amends Section 362.005, Estates Code, as effective January 1, 2014, as follows:

Sec. 362.005. CITATION AND NOTICE ON PRESENTATION OF ACCOUNT. (a) Requires the county clerk to issue citation to the persons and in the manner provided by Subsection (b), rather than Subsections (c) and (d), on the presentation of an account for final settlement by a temporary or permanent personal representative.

(b) Requires that citation issued under Subsection (a):

(1) contain a statement that an account for final settlement has been presented, the time and place the court will consider the account, and a statement requiring the person cited to appear and contest the account, if the person wishes to contest the account; and

(2) be given to each heir or beneficiary of the decedent by certified mail, return receipt requested, unless the court by written order directs another method of service to be given.

Deletes existing Subsection (c) text requiring the personal representative to give notice to each heir or beneficiary of the decedent by certified mail, return receipt requested, unless the court by written order directs another type of notice to be given; requiring that the notice include a copy of the account for final settlement.

(c) Requires the personal representative to also provide to each person entitled to citation under Subsection (b) a copy of the account for final settlement either by certified mail, return receipt requested, or electronic delivery, including facsimile or e-mail.

(d) Makes no change to this subsection.

(e) Authorizes the court to allow the waiver of citation, rather than the waiver of notice, of an account for final settlement in a proceeding concerning a decedent's estate.

(f) Requires the personal representative to file an affidavit sworn to by the personal representative or a certificate signed by the personal representative's attorney stating:

- (1) that the citation was given as required by this section;
- (2) the name of each person to whom the citation was given, if the person's name is not shown on the proof of delivery;
- (3) the name of each person executing a waiver of citation; and
- (4) that each person entitled to citation was provided a copy of the account for final settlement, indicating the method of delivery for each person.

SECTION 49. Amends Section 362.011, Estates Code, as effective January 1, 2014, as follows:

Sec. 362.011. New heading: PARTITION AND DISTRIBUTION OF ESTATE; DEPOSIT IN COURT'S REGISTRY. (a) Creates this subsection from existing text and makes no further change to this subsection.

(b) Requires the court to order the personal representative to convert into money any remaining nonmonetary assets to which a person who is unknown or missing is entitled. Provides that the procedures in Chapter 356 (Sale of Estate Property) apply to the conversion of nonmonetary assets under this subsection.

(c) Requires the court to order the personal representative to deposit in an account in the court's registry all money, including the proceeds of any conversion under Subsection (b), to which a person who is unknown or missing is entitled. Requires the court to hold money deposited in an account under this subsection until the court renders:

- (1) an order requiring money in the account to be paid to the previously unknown or missing person who is entitled to the money; or
- (2) another order regarding the disposition of the money.

SECTION 50. Amends Section 362.013, Estates Code, as effective January 1, 2014, as follows:

Sec. 362.013. DISCHARGE OF PERSONAL REPRESENTATIVE WHEN ESTATE FULLY ADMINISTERED. Requires the court to enter an order discharging a personal representative from the representative's trust and declaring the estate closed when:

- (1)-(2) Makes no change to these subdivisions; and
- (3) the representative has:
 - (A) Makes a nonsubstantive change; and
 - (B) with respect to the portion of the estate distributable to an unknown or missing person, complied with an order of the court under Section 362.011.

SECTION 51. Amends Section 401.001(a), Estates Code, as effective January 1, 2014, to authorize any person capable of making a will to provide in the person's will that no other action is required to be had in the probate court in relation to the settlement of the person's estate than the probating and recording of the will and the return of any required inventory, appraisal, and list of claims of the person's estate, rather than the return of an inventory, appraisal, and list of claims of the person's estate.

SECTION 52. Amends Section 401.004(d), Estates Code, as effective January 1, 2014, as follows:

(d) Requires the person or class of persons entitled to receive property outright from the trust on the decedent's death and those first eligible to receive the income from the trust, when determined as if the trust were to be in existence on the date of the decedent's death, if a trust is created in the decedent's will or if the decedent's will devises property to a trustee as described by Section 254.001 (Devises to Trustees) to, for purposes of Section 401.002 (Creation in Testate Estate by Agreement), be considered to be the distributee or distributees on behalf of the trust, and any other trust or trusts coming into existence on the termination of the trust, and are authorized to apply for independent administration on behalf of the trusts without the consent or agreement of the trustee or any other beneficiary of the trust, or the trustee or any beneficiary of any other trust which may come into existence on the termination of the trust.

SECTION 53. Amends Section 401.006, Estates Code, as effective January 1, 2014, as follows:

Sec. 401.006. GRANTING POWER OF SALE BY AGREEMENT. Authorizes the court, in a situation in which a decedent does not have a will, or a decedent's will does not contain language authorizing the personal representative to sell property, rather than real property, or contains language that is not sufficient to grant the representative that authority, to include in an order appointing an independent executor under Section 401.002 or 401.003 (Creation in Intestate Estate by Agreement) any general or specific authority regarding the power of the independent executor to sell property that is authorized to be consented to by the beneficiaries who are to receive any interest in the property in the application for independent administration or in their consents to the independent administration. Authorizes the independent executor, in such event, to sell the property under the authority granted in the court order without the further consent of those beneficiaries. Makes conforming changes.

SECTION 54. Amends Section 403.055, Estates Code, as effective January 1, 2014, to require an unsecured creditor who has a claim for money against an estate and who receives a notice under Section 308.054 to give to the independent executor notice of the nature and amount of the claim before the 121st day, rather than not later than the 120th day, after the date the notice is received or the claim is barred.

SECTION 55. Amends Section 403.056(a), Estates Code, as effective January 1, 2014, as follows:

(a) Requires that notice to the independent executor required by Sections 403.052 (Secured Claims for Money) and 403.055 (Certain Unsecured Claims; Barring of Claims) be contained in:

- (1) a written instrument that complies with Section 355.004 (Affidavit Authenticating Claim for Money in General) and that is hand-delivered with proof of receipt, or mailed by certified mail, return receipt requested with proof of receipt, to the independent executor or the executor's attorney;
- (2) Makes no change to this subdivision; or
- (3) a written instrument that complies with Section 355.004 or a pleading filed in the court in which the administration of the estate is pending.

SECTION 56. Amends Section 404.001(a), Estates Code, as effective January 1, 2014, to authorize any person interested in the estate, at any time after the expiration of 15 months after the date that the court clerk first issues letters testamentary or of administration to any personal representative of an estate, rather than after the date that an independent administration was created and the order appointing an independent executor was entered by the probate court, to demand an accounting from the independent executor.

SECTION 57. Amends Chapter 404, Estates Code, as effective January 1, 2014, by amending Section 404.003 and adding Sections 404.0035, 404.0036, and 404.0037, as follows:

Sec. 404.003. New heading: REMOVAL OF INDEPENDENT EXECUTOR WITHOUT NOTICE. Authorizes the probate court, on the court's own motion or on the motion of any interested person, and without notice, to remove an independent executor appointed under this subtitle when:

(1) the independent executor cannot be served with notice or other processes because:

(A) the independent executor's whereabouts are unknown;

(B) the independent executor is eluding service; or

(C) the independent executor is a nonresident of this state without a designated resident agent; or

(2) sufficient grounds appear to support a belief that the independent executor has misapplied or embezzled, or is about to misapply or embezzle, all or part of the property committed to the independent executor's care.

Sec. 404.0035. REMOVAL OF INDEPENDENT EXECUTOR WITH NOTICE. (a) Authorizes the probate court, on the court's own motion, to remove an independent executor appointed under this subtitle after providing 30 days' written notice of the court's intent to remove the independent executor, by certified mail, return receipt requested, to the independent executor's last known address and to the last known address of the independent executor's attorney of record, if the independent executor:

(1) neglects to qualify in the manner and time required by law; or

(2) fails to return, before the 91st day after the date the independent executor qualifies, either an inventory of the estate property and a list of claims that have come to the independent executor's knowledge or an affidavit in lieu of the inventory, appraisal, and list of claims, unless that deadline is extended by court order.

(b) Creates this subsection from existing text. Deletes existing Subdivision (1) authorizing the probate court, under certain circumstances, to remove an independent executor when the independent executor fails to return within 90 days after qualification, unless such time is extended by order of the court, either an inventory of the property of the estate and list of claims that have come to the independent executor's knowledge or an affidavit in lieu of the inventory, appraisal, and list of claims, and deletes existing Subdivision (2) authorizing the probate court, under certain circumstances, to remove an independent executor when sufficient grounds appear to support belief that the independent executor has misapplied or embezzled, or that the independent executor is about to misapply or embezzle, all or any part of the property committed to the independent executor's care. Makes nonsubstantive changes.

Sec. 404.0036. REMOVAL ORDER. (a) Creates this section from text of existing Section 404.003(b). Requires that the order of removal of an independent executor state the cause of removal and direct by order the disposition of the assets remaining in the name or under the control of the removed independent executor. Requires that the order of removal require that letters issued to the removed independent executor be surrendered and that all letters be canceled of record.

(b) Creates this subsection from existing text. Authorizes the court, if an independent executor is removed by the court under Section 404.003 or 404.0035,

rather than under this section, to, on application, appoint a successor independent executor as provided by Section 404.005.

Sec. 404.0037. COSTS AND EXPENSES RELATED TO REMOVAL OF INDEPENDENT EXECUTOR. Redesignates existing Sections 404.003(c) and (d) as Sections 404.0037(a) and (b). Makes no further change to these subsections.

SECTION 58. Amends Sections 404.005(b) and (c), Estates Code, as effective January 1, 2014, as follows:

(b) Authorizes the guardian of the person of the distributee, except as otherwise provided by this subsection, to sign the application on behalf of the distributee if a distributee described in this section is an incapacitated person. Authorizes a natural guardian of the minor, if a distributee described in this section is a minor and has no guardian of the person, to sign the application for the order continuing independent administration on the minor's behalf unless a conflict of interest exists between the minor and the natural guardian.

(c) Requires the person or class of persons entitled to receive property outright from the trust on the decedent's death and those first eligible to receive the income from the trust, determined as if the trust were to be in existence on the date of the filing of the application for an order continuing independent administration, except as otherwise provided by this subsection, to, for the purposes of this section, be considered to be the distributee or distributees on behalf of the trust, and any other trust or trusts coming into existence on the termination of the trust, and are authorized to apply for an order continuing independent administration on behalf of the trust without the consent or agreement of the trustee or any other beneficiary of the trust, or the trustee or any beneficiary of any other trust which may come into existence on the termination of the trust if a trust is created in the decedent's will or if the decedent's will devises property to a trustee as described by Section 254.001. Authorizes the trustee or cotrustee to apply for the order continuing independent administration or sign the application on the incapacitated person's behalf if the trustee or cotrustee is not the person proposed to serve as the independent executor if a person considered to be a distributee under this subsection is an incapacitated person.

SECTION 59. Amends Section 405.001(b), Estates Code, as effective January 1, 2014, to authorize the court, if any portion of the estate that is ordered to be distributed is incapable of distribution without prior partition or sale, to order partition and distribution, or sale, in the manner provided for the partition and distribution of property incapable of division in supervised estates or order distribution of that portion of the estate incapable of distribution without prior partition or sale in undivided interests, rather than requiring the court, if any portion of the estate that is ordered to be distributed is incapable of distribution without prior partition or sale, to order partition and distribution, or sale, in the manner provided for the partition and distribution of property incapable of division in supervised estates.

SECTION 60. Amends Section 551.001(a), Estates Code, as effective January 1, 2014, as follows:

(a) Requires the court, by written order, to require the executor or administrator of an estate to pay to the comptroller of public accounts of the State of Texas as provided by this subchapter (Payment of Certain Funds to State) the share of that estate of a person entitled to that share who does not demand the share, including any portion deposited in an account in the court's registry under Section 362.011(c), from the executor or administrator within six months after the date of, as applicable:

- (1) a court order approving the report of the commissioners of partition made under Section 360.154 (Commissioner's Report); or
- (2) the settlement of the final account of the executor or administrator.

SECTION 61. Repealer: Section 122.057 (Extension of Time for Certain Disclaimers), Estates Code, as effective January 1, 2014.

SECTION 62. (a) Provides that the changes in law made by Section 111.051, Estates Code, as amended by this Act, and Section 111.054, Estates Code, as added by this Act, represent the fundamental policy of this state for the protection of its residents and are intended to prevail over the laws of another state or jurisdiction, to the extent those laws are in conflict with Texas law.

(b) Provides that the changes in law made by Section 111.051, Estates Code, as amended by this Act, and Section 111.054, Estates Code, as added by this Act, apply to an account at a financial institution, an insurance contract, an annuity contract, a retirement account, a beneficiary designation, or another similar arrangement of a person who dies on or after the effective date of this Act.

SECTION 63. (a) Makes application of Section 21.005(b), Estates Code, as added by this Act, prospective.

(b) Provides that the changes in law made by this Act to Sections 204.151 and 204.152, Estates Code, apply only to a proceeding to declare heirship commenced on or after January 1, 2014. Provides that a proceeding to declare heirship commenced before that date is governed by the law in effect on the date the proceeding was commenced, and the former law is continued in effect for that purpose.

(c) Provides that the changes in law made by this Act to Section 304.001(c), Estates Code, apply only to an application for the grant of letters testamentary or of administration of a decedent's estate filed on or after January 1, 2014. Provides that an application for the grant of letters testamentary or of administration of a decedent's estate filed before that date is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose.

(d) Provides that the changes in law made by Sections 32.006, 256.052, 256.053, 256.054, 256.152(c), 256.153, 256.154, 256.155(a), 256.156, 256.203, 257.052, 257.053, 401.001(a), 401.004(d), and 401.006, Estates Code, as amended by this Act, apply only to an action filed or other proceeding commenced on or after the effective date of this Act. Provides that an action filed or other proceeding commenced before the effective date of this Act is governed by the law in effect on the date the action was filed or the proceeding was commenced, and the former law is continued in effect for that purpose.

(e) Provides that the changes in law made by Sections 51.203(c), 53.104, 305.002(a), 305.003, 308.054(b), 309.051(a), 309.056, 309.103(a) and (b), 355.060, 361.155(b), 362.005, 362.011, 362.013, 404.001(a), 404.003, 404.005(b) and (c), 405.001(b), and 551.001(a), Estates Code, as amended by this Act, and Sections 253.001(c), 301.155, 305.004, 309.057, 361.155(c), 404.0035, 404.0036, and 404.0037, Estates Code, as added by this Act, apply to the administration of the estate of a decedent that is pending or commenced on or after the effective date of this Act.

(f) Makes application of Sections 102.004, 201.001(f) and (g), 201.051, 201.052(b), 202.004, 202.009, 202.056, 202.151, 353.101(d), 403.055, and 403.056(a), Estates Code, as amended by this Act, and Sections 201.001(i) and (j), 201.052(a-1), 202.0025, and 202.057, Estates Code, as added by this Act, prospective.

(g) Provides that Section 202.0025, Estates Code, as added by this Act, is intended to clarify current law in regard to the commencement of proceedings to declare heirship, and prohibits an inference from being made regarding the statute of limitations for a proceeding to declare heirship filed before the effective date of this Act.

(h) Prohibits an inference from being made from the changes in law made by this Act to Section 401.006, Estates Code, as to whether an independent executor had the authority to sell personal property of the estate in a probate proceeding filed before the effective date of this Act.

SECTION 64. Provides that to the extent of any conflict, this Act prevails over another Act of the 83rd Legislature, Regular Session, 2013, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 65. Effective date: January 1, 2014.

SUMMARY OF COMMITTEE CHANGES

Committee Amendment #1:

- (1) Strikes "until the applicant files the affidavit required by this section" and substitutes "until the affidavit or certificate required by Subsection (a) is filed" on page 13, lines 8-9.
- (2) Strikes "405.001(b)," on page 46, line 4.
- (3) Strikes "and 403.056(a)" and substitutes "403.056(a), and 405.001(b)" on page 46, line 12.

Committee Amendment #2:

- (1) Strikes SECTION 11 of the bill.
- (2) Strikes "201.001(f) and (g)," on page 46, lines 10 and 11.
- (3) Strikes "201.001(i) and (j)," on page 46, line 13.
- (4) Renumbers SECTIONS of the bill appropriately.