

BILL ANALYSIS

Senate Research Center

S.B. 995
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

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 regarding estates. Each of these updates is intended to clean up the current law regarding estates.

S.B. 995 amends current law relating to decedents' estates.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Supreme Court of the State of Texas in SECTION 45 (Section 456.005, Estates Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 113.004(4), Estates Code, to redefine "P.O.D. account."

SECTION 2. Amends Section 113.152, Estates Code, by adding Subsection (c), to authorize a guardian of the estate or an attorney in fact or agent of an original payee to sign a written agreement described by Subsection (a) (relating to the designation of a payee of a P.O.D. account) on behalf of the original payee.

SECTION 3. Amends Section 123.001, Estates Code, as follows:

Sec. 123.001. WILL PROVISIONS MADE BEFORE DISSOLUTION OF MARRIAGE.

(a) Defines "irrevocable trust" and "relative."

(b) Provides that if, after the 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:

(1) all provisions in the will, including all fiduciary appointments, shall be read as if the former spouse and each relative of the former spouse who is not a relative of the testator had failed to survive the testator; and

(2) 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 shall be read to instead dispose of the property to a trust the provisions of which are identical to the irrevocable trust, except any provision in the irrevocable trust:

(A) conferring a beneficial interest or a general or special power of appointment to the former spouse or a relative of the former spouse who is not a relative of the testator shall be treated as if the former spouse and each relative of the former spouse who is not a relative

of the testator had disclaimed the interest granted in the provision;
and

(B) nominating the former spouse or a relative of the former spouse who is not a relative of the testator to serve as trustee or in another fiduciary capacity shall be treated as if the former spouse and each relative of the former spouse who is not a relative of the testator had died immediately before the dissolution of the marriage.

(c) Provides that Subsection (b)(2) does not apply if one of the following provides otherwise:

(1) a court order; or

(2) 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.

SECTION 4. Amends Section 123.052(a), Estates Code, as follows:

(a) Provides that the dissolution of the marriage revokes a provision in a trust instrument that was executed by a divorced individual before the divorced individual's marriage was dissolved and that:

(1) Makes no change to this subdivision;

(2) revocably confers, rather than confers, a general or special power of appointment on the divorced individual's former spouse or any relative of the former spouse who is not a relative of the divorced individual; or

(3) revocably nominates, rather than nominates, the divorced individual's former spouse or any relative of the former spouse who is not a relative of the divorced individual to serve:

(A) and (B) Makes no change to these paragraphs.

SECTION 5. Amends Chapter 123, Estates Code, by adding Subchapter D, as follows:

SUBCHAPTER D. EFFECT OF DISSOLUTION OF MARRIAGE ON CERTAIN MULTIPLE-PARTY ACCOUNTS

Sec. 123.151. DESIGNATION OF FORMER SPOUSE OR RELATIVE OF FORMER SPOUSE ON CERTAIN MULTIPLE-PARTY ACCOUNTS. (a) Defines "beneficiary," "multiple-party account," "P.O.D. account," "P.O.D. payee," "public retirement system," and "relative."

(b) Provides that if, after a decedent designates a spouse or a relative of a spouse who is not a relative of the decedent as a P.O.D. payee or beneficiary, including alternative P.O.D. payee or beneficiary, on a P.O.D. account or other multiple-party account, the decedent's marriage is dissolved by divorce, annulment, or a declaration that the marriage is void, the designation provision on the account is not effective as to the former spouse or the former spouse's relative unless:

(1) the court decree dissolving the marriage designates the former spouse or the former spouse's relative as the P.O.D. payee or beneficiary;

(2) the decedent redesignated the former spouse or the former spouse's relative as the P.O.D. payee or beneficiary after the marriage was dissolved; or

(3) the former spouse or the former spouse's relative is designated to receive the proceeds or benefits in trust for, on behalf of, or for the benefit of a child or dependent of either the decedent or the former spouse.

(c) Provides that if a designation is not effective under Subsection (b), a multiple-party account is payable to the named alternative P.O.D. payee or beneficiary or, if an alternative P.O.D. payee or beneficiary is not named, to the estate of the decedent.

(d) Provides that a financial institution or other person obligated to pay an account described by Subsection (b) 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 Subsection (b) is liable for payment of the account to the person provided by Subsection (c) only if:

(1) before payment of the account to the designated P.O.D. payee or beneficiary, the payor receives written notice at the home office or principal office of the payor from an interested person that the designation of the P.O.D. payee or beneficiary is not effective under Subsection (b); and

(2) the payor has not interpleaded the account funds into the registry of a court of competent jurisdiction in accordance with the Texas Rules of Civil Procedure.

(e) Provides that this section does not affect the right of a former spouse to assert an ownership interest in an undivided multiple-party account described by Subsection (b).

(f) Provides that this section does not apply to the disposition of a beneficial interest in a retirement benefit or other financial plan of a public retirement system.

SECTION 6. Amends Section 201.051, Estates Code, as follows:

Sec. 201.051. MATERNAL INHERITANCE. (a) Creates this subsection from existing text and makes no further change.

(b) Provides that this section does not permit inheritance by a child for whom no right of inheritance accrues under Section 201.056 (Persons Not in Being) or by the child's issue.

SECTION 7. Amends Section 201.052, Estates Code, by adding Subsection (f), to provide that this section does not permit inheritance by a child for whom no right of inheritance accrues under Section 201.056 or by the child's issue.

SECTION 8. Amends Section 201.056, Estates Code, as follows:

Sec. 201.056. PERSONS NOT IN BEING. Provides 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, rather than providing that no right of inheritance accrues to any person other than to a child or lineal descendant of an intestate, unless the person is in being and capable in law to take as an heir at the time of the intestate's death. Provides that a person is:

(1) 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

(2) 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.

SECTION 9. Amends Section 205.005, Estates Code, as follows:

Sec. 202.005. APPLICATION FOR PROCEEDING TO DECLARE HEIRSHIP. Requires that the application for heirship state:

- (1) the decedent's name and date, rather than time, and place of death;
- (2) the names and physical address where service can be had of the decedent's heirs, rather than the names and residences of the decedent's heirs, whether each heir is an adult or minor, and the true interest of the applicant and each of the heirs in the decedent's estate or in the trust, as applicable;
- (3) Makes conforming changes.
- (4)-(8) Makes no change to these subdivisions.

SECTION 10. Amends Section 202.055, Estates Code, as follows:

Sec. 202.055. SERVICE OF CITATION ON CERTAIN PERSONS NOT REQUIRED. Provides that a party to a proceeding to declare heirship who executed the application filed under Section 202.005, entered an appearance in the proceeding, or waived citation under this subchapter is not required to be served by any method.

SECTION 11. Amends Section 202.056, Estates Code, as follows:

Sec. 202.056. WAIVER OF SERVICE OF CITATION. (a) Authorizes a distributee, except as provided by Subsection (b)(2) (prohibiting a child of a certain age from waiving citation required by this subchapter), to waive citation required by this subchapter to be served on the distributee.

- (b) Creates this subsection from existing text and makes no further change.

SECTION 12. Amends Section 202.201(a), Estates Code, to require that the judgment in a proceeding to declare heirship state:

- (1) the names of the heirs, rather than the names and places of residence, of the decedent who is the subject of the proceeding; and
- (2) Makes no change to this subdivision.

SECTION 13. Amends Subchapter B, Chapter 251, Estates Code, by adding Section 251.053, as follows:

Sec. 251.053. EXCEPTION FOR FOREIGN AND CERTAIN OTHER WILLS. Provides that Section 251.051 (Written, Signed, and Attested) does not apply to a written will executed in compliance with:

- (1) the law of the state or foreign country where the will was executed, as that law existed at the time of the will's execution; or
- (2) the law of the state or foreign country 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.

SECTION 14. Amends Section 251.1045(a), Estates Code, to amend the form that is to be included in the will. Sets forth the amended language for the form.

SECTION 15. Amends the heading to Section 253.001, Estates Code, to read as follows:

Sec. 253.001. COURT MAY NOT PROHIBIT CHANGING OR REVOKING A WILL.

SECTION 16. Amends Sections 253.001(b) and (c), Estates Code, as follows:

(b) Prohibits a court from prohibiting a person from:

- (1) executing a new will;
- (2) executing a codicil to an existing will; or
- (3) revoking an existing will or codicil in whole or in part.

Makes nonsubstantive changes.

(c) Provides that any portion of a court order that purports to prohibit a person from engaging in an action described by Subsection (b) is void and may be disregarded without penalty or sanction of any kind, rather than provides that 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 17. Amends Section 254.005, Estates Code, as follows:

Sec. 254.005. FORFEITURE CLAUSE. (a) Creates this subsection from existing text and makes no further change.

(b) Provides that this section is not intended to and does 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, seeking redress against a fiduciary for a breach of the fiduciary's duties, or seeking a judicial construction of a will or trust.

SECTION 18. Amends Subchapter G, Chapter 255, Estates Code, by adding Section 255.304, as follows:

Sec. 255.304. APPLICABILITY OF SUBCHAPTER. Provides that this subchapter is applicable only to wills executed on or after September 1, 2005.

SECTION 19. Amends Chapter 255, Estates Code, by adding Subchapters I and J, as follows:

SUBCHAPTER I. CLASS GIFTS

Sec. 255.401. POSTHUMOUS CLASS GIFT MEMBERSHIP. (a) Provides 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. Provides that a person is:

- (1) considered to be in gestation at the time of the testator's death if insemination or implantation occurs at or before the time of the testator's death; and
- (2) presumed to be in gestation at the time of the testator's death if the person was born before the 301st day after the date of the testator's death.

(b) Provides that a provision in the testator's will that is contrary to this section prevails over this section.

[Reserves Sections 255.402-255.450 for expansion.]

SUBCHAPTER J. JUDICIAL MODIFICATION OR REFORMATION OF WILLS

Sec. 255.451. CIRCUMSTANCES UNDER WHICH WILL MAY BE MODIFIED OR REFORMED. (a) Authorizes a court, on the petition of a personal representative, to order that the terms of the 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, if:

(1) modification of administrative, nondispositive terms of the will is necessary or appropriate to prevent waste or impairment of the estate's administration;

(2) the order is necessary or appropriate to achieve the testator's tax objectives or to qualify a distributee for government benefits and is not contrary to the testator's intent; or

(3) the order is necessary to correct a scrivener's error in the terms of the will, even if unambiguous, to conform with the testator's intent.

(b) Authorizes that an order described in Subsection (a)(3) be issued only if the testator's intent is established by clear and convincing evidence.

Sec. 255.452. JUDICIAL DISCRETION. Requires the court to exercise the court's discretion to order a modification or reformation under this subchapter in the manner that conforms as nearly as possible to the probable intent of the testator.

Sec. 255.453. RETROACTIVE EFFECT. Authorizes the court to direct that an order described by this subchapter has retroactive effect.

Sec. 255.454. POWER CUMULATIVE. Provides that this subchapter does not limit a court's powers under other law, including the power to modify, reform, or terminate a testamentary trust under Section 112.054 (Judicial Modification or Termination of Trusts), Property Code.

Sec. 255.455. DUTIES AND LIABILITY OF PERSON REPRESENTATIVE UNDER SUBCHAPTER. (a) Provides that this subchapter does not create or imply a duty for a personal representative to:

(1) 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;

(2) inform devisees about the availability of relief under this subchapter; or

(3) review the will or other evidence to determine whether any action should be taken under this subchapter.

(b) Provides that a personal representative is not liable for failing to file a petition under Section 255.451.

SECTION 20. Amends Sections 256.003(a) and (b), Estates Code, as follows:

(a) Prohibits a will, except as provided by Section 501.001 (Authority for Ancillary Probate of Foreign Will) with respect to a foreign will, from being admitted to probate after the fourth anniversary of the testator's death unless it is shown by proof that the applicant for the probate of the will was not in default in failing to present the will for

probate on or before the fourth anniversary of the testator's death. Makes a nonsubstantive change.

(b) Prohibits letters testamentary, except as provided by Section 501.006 (Ancillary Letters Testamentary) with respect to a foreign will, from being issued if a will is admitted to probate after the fourth anniversary of the testator's death. Makes a nonsubstantive change.

SECTION 21. Amends Section 256.051(a), Estates Code, as follows:

(a) Authorizes an executor named in a will, an independent administrator designated by all of the distributees of the decedent under Section 401.002(b) (authorizing all of the distributees of the decedent, under certain circumstances, to agree on the advisability of having an independent administration and collectively designate in the application for probate of the decedent's will a certain person set forth to settle the estate), or an interested person to file an application with the court for an order admitting a will to probate, whether the will is:

(1)-(5) Makes no change to these subdivisions.

SECTION 22. Amends Section 256.052(a), Estates Code, as follows:

(a) Requires that an application for the probate of a 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) and (2) Makes no change to these subdivisions;

(3) the fact, date, rather than time, and place of the testator's death;

(4)-(12) Makes no change to these subdivisions.

SECTION 23. Amends Section 256.054, Estates Code, as follows:

Sec. 256.054. **ADDITIONAL APPLICATION REQUIREMENTS WHEN NO WILL IS PRODUCED.** Requires that an application, if an applicant for the probate of a will cannot produce the will in court, state:

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

(3) the name and address, rather than name, age, marital status and address, if known, whether the person is an adult or minor, and the relationship to the testator, if any, of:

(A)-(C) Makes no change to these paragraphs.

SECTION 24. Amends Sections 256.152(b) and (c), Estates Code, as follows:

(b) Provides that a will that is self-proved as provided by Subchapter C (Self-Proved Wills), Chapter 251, that is self-proved in accordance with the law of another state or foreign country where the will was executed, as that law existed at the time of the will's execution, or that is self-proved in accordance with the law of another state or foreign country where the testator was domiciled or had a place of residence, as that law existed at the time of the will's execution or the time of the testator's death, 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 provides that a will that is self-proved as provided by Subchapter C, Chapter 251, or, if executed in another state or a foreign county, 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.

(c) Provides that as an alternative to Subsection (b), a will, rather than a will executed in another state or foreign country, is considered self-proved without further evidence of the law of any state, rather than law of the other state, or foreign country if:

(1) the will was executed in another state or a foreign country or the testator was domiciled or had a place of residence in another state or a foreign country at the time of the will's execution or the time of the testator's death; and

(2) Creates this subdivision from existing text and makes no further change;

(A) Redesignates Subdivision (1) as Paragraph (A) and makes no further change;

(B) Redesignates Subdivision (2) as Paragraph (B) and makes no further change.

SECTION 25. Amends Section 257.051(a), Estates Code, as follows:

(a) Provides that an application for the probate of a will as a muniment of title must 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) and (2) Makes no change to these subdivisions;

(3) the fact, date, rather than time, and place of the testator's death;

(4)-(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 and makes nonsubstantive changes;

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

(9) Redesignates Subdivision (8) as Subdivision (9) and redesignates the remaining subdivisions accordingly.

SECTION 26. Amends Section 257.053, Estates Code, as follows:

Sec. 256.053. ADDITIONAL APPLICATION REQUIREMENTS WHEN NO WILL IS PRODUCED. Requires that the application for the probate of a will as a muniment of title, if the applicant cannot produce the will in court, state:

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

(3) the name and address, rather than name, age, marital status, and address, if known, whether the person is an adult or minor, and the relationship to the testator, if any, of:

(A)-(C) Makes no changes to these paragraphs.

SECTION 27. Amends Section 301.002(a), Estates Code, to require that an application for the grant of letters testamentary or of administration of an estate, except as provided by Subsection (b) (providing that this section does not apply if administration is necessary to receive or recover property due a decedent's estate) and Section 501.006 with respect to a foreign will, be filed not later than the fourth anniversary of the decedent's death.

SECTION 28. Amends Section 301.051, Estates Code, as follows:

Sec. 301.051. ELIGIBLE APPLICANTS FOR LETTERS. Authorizes an executor named in a will, an independent administrator designated by all of the distributees of the decedent under Section 401.002(b) (relating to circumstances requiring a court to decide the executor of a will) or 401.003 (Creation in Intestate Estate by Agreement), or an interested person to file an application with the court for:

(1) and (2) Makes no change to these subdivisions.

SECTION 29. Amends Section 301.052, Estates Code, as follows:

Sec. 301.052. CONTENT OF APPLICATION FOR LETTERS OF ADMINISTRATION. Requires that an application for letters of administration when no will is alleged to exist state:

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

(3) the fact, the date, rather than time, and place of the decedent's death;

(4) and (5) Makes no change to these subdivisions;

(6) the name and address, rather than the name, age, marital status, and address, if known, whether the heir is an adult or minor, and the relationship to the decedent of each of the decedent's heirs;

(7)-(10) Makes no change to these subdivisions.

SECTION 30. Amends Section 301.151, Estates Code, as follows:

Sec. 301.151. GENERAL PROOF REQUIREMENTS. Requires that an applicant for the issuance of letters testamentary or of administration of an estate prove to the court's satisfaction that:

(1) Makes no change to this subdivision;

(2) except as provided by Section 301.002(b) with respect to administration necessary to receive or recover property due a decedent's estate, and Section 501.006 with respect to a foreign will, four years have not elapsed since the date of the decedent's death and before the application;

(3)-(5) Makes no change to these subdivisions.

SECTION 31. Amends Section 308.004(a), Estates Code, to change a reference to name and address of the beneficiary that meets certain requirements to a reference to the name of a beneficiary that meets certain requirements.

SECTION 32. Amends Section 309.001, Estates Code, as follows:

Sec. 309.001. APPOINTMENT OF APPRAISERS. (a) Requires the court, on the court's own motion or on the motion of an interested person, rather than interested party, at any time after letters testamentary or of administration are granted, for good cause, to appoint at least one but not more than three disinterested persons who are residents of the county in which the letters were granted to appraise the estate property.

(b) Authorizes the court, if the court makes an appointment under Subsection (a), rather than Subsection (a) or (b), and part of the estate is located in a county other than the county in which the letters were granted, if the court considers necessary, to appoint at least one but not more than three disinterested persons who are residents of the county in which the relevant part of the estate is located to appraise the estate property located in that county.

Redesignates existing Subsection (c) as Subsection (b). Deletes existing text requiring the court, for good cause shown, on the court's own motion or on the motion of an interested person to appoint at least one but not more than three disinterested persons who are residents of the county in which the letters were granted to appraise the estate property at any time after letters testamentary or of administration are granted.

SECTION 33. Amends Section 309.056, Estates Code, by amending Subsections (b) and (c) and adding Subsection (b-1), as follows:

(b) Adds reference to a beneficiary described under Subsection (b-1) and makes no further change.

(b-1) Provides 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:

(1) is entitled to receive aggregate devises under the will with an estimated value of \$2,000 or less;

(2) has received all devises to which the beneficiary is entitled under the will on or before the date an affidavit under this section is filed; or

(3) has waived in writing the beneficiary's right to receive a verified, full, and detailed inventory and appraisal.

(c) Adds reference to a beneficiary described under Subsection (b-1) and makes nonsubstantive changes.

SECTION 34. Amends Section 352.052(b), Estates Code, to authorize a person designated as a devisee in or beneficiary of a will or an alleged will, rather than a person designated as a devisee in or beneficiary of a will or an alleged will or as administrator with the will or alleged will annexed, who, for the purpose of having the will or alleged will admitted to probate, defends the will or alleged will or prosecutes any proceeding in good faith and with just cause, whether or not successful, to be allowed out of the estate the person's necessary expenses and disbursements in those proceedings, including reasonable attorney's fees.

SECTION 35. Amends Sections 353.051(a) and (b), Estates Code, as follows:

(a) Requires the court by order, unless an application and verified affidavit are filed as provided by Subsection (b), immediately after the inventory, appraisal, and list of claims of an estate are approved or after the affidavit in lieu of the inventory, appraisal, and list of claims is filed, to by order set aside:

(1) Makes no change to this subdivision;

(2) all other exempt property described by Section 42.002(a), Property Code, for the use and benefit of the decedent's, rather than all other estate property that is exempt from execution or forced sale by the constitution and laws of this state for the use and benefit of the decedent's:

(A)-(C) Makes no change to these paragraphs.

(b) Provides that, before the inventory, appraisal, and list of claims of an estate are approved or, if applicable, before the affidavit in lieu of the inventory, appraisal, and list of claims is filed:

(1) the decedent's surviving spouse or any other person authorized to act on behalf of the decedent's minor children may apply to the court to have exempt property described by Subsection (a), including the homestead, set aside by filing an

application and a verified affidavit listing all exempt property that the applicant claims is exempt property described by Subsection (a); and

(2) any of the decedent's unmarried adult children remaining with the decedent's family, any other adult child of the decedent who is incapacitated, or a person who is authorized to act on behalf of the adult incapacitated child may apply to the court to have all exempt property described by Subsection (a), other than the homestead, set aside by filing an application and a verified affidavit listing all the exempt property, other than the homestead, that the applicant claims is exempt property described by Subsection (a).

SECTION 36. Amends Section 353.052, Estates Code, by amending Subsection (a) and adding Subsection (a-1), as follows:

(a) Provides that this section only applies to exempt property described by Section 353.051(a).

(a-1) Creates this subsection from existing text and makes no further change to this subsection.

SECTION 37. Amends Section 353.053(a), Estates Code, as follows:

(a) Provides that if all or any of the specific articles of exempt property described by Section 353.051(a), rather than any of the specific articles exempt from execution or forced sale by the constitution and laws of this state, are not among the decedent's effects, the court shall make, in lieu of the articles not among the effects, a reasonable allowance to be paid to the decedent's surviving spouse and children as provided by Section 353.054 (Payment of Allowance in Lieu of Exempt Property).

SECTION 38. Amends Sections 353.153 and 353.154, Estates Code, as follows:

Sec. 353.153. TITLE TO PROPERTY OF INSOLVENT ESTATE. Provides that if on final settlement an estate proves to be insolvent, the decedent's surviving spouse and children have absolute title to all property and allowances set aside or paid to them under this title. Entitles the distributees to distribution of any remaining exempt property held by the executor or administrator in the same manner as other estate property. Prohibits the property allowances set aside or paid to the decedent's surviving spouse or children, and any remaining exempt property held by the executor or administrator, from being taken for any of the estate debts except as provided by Section 353.155 (Exempt Property Liable for Certain Debts).

Sec. 353.154. CERTAIN PROPERTY NOT CONSIDERED IN DETERMINING SOLVENCY. Prohibits the exempt property set aside for the decedent's surviving spouse or children, any allowance made in lieu of that exempt property, the family allowance under Subchapter C (Family Allowance), and any remaining exempt property held by the executor or administrator, in determining whether an estate is solvent or insolvent, from being estimated or considered as estate assets. Makes a nonsubstantive change.

SECTION 39. Amends Subchapter D, Chapter 355, Estates Code, by adding Section 355.1551, as follows:

Sec. 355.1551. CLAIM HOLDER DUTY TO POSSESS OR SELL WITHIN REASONABLE TIME. (a) Requires a claim holder of a claim allowed and approved under Section 355.151(a)(2) (requiring a claimant to specify in the claim whether the claimant desires to have the claim allowed, approved, and fixed as a preferred debt and lien against the specific property securing the indebtedness) who elects to take possession or sell the property securing the debt before final maturity in satisfaction of the claim holder's claim to do so within a reasonable time, as determined by the court.

(b) Authorizes the court, if the claim holder fails to take possession or sell secured property within a reasonable time under Subsection (a), on application by the personal representative, to require the sale of the property free of the lien and apply the proceeds to the payment of the whole debt.

(c) Provides that this section does not apply to an estate administered as an independent administration under Subtitle I (Independent Administration).

SECTION 40. Amends Section 401.002, Estates Code, as follows:

Sec. 401.002. CREATION IN TESTATE ESTATE BY AGREEMENT. (a) Authorizes all of the distributees of the decedent, except as provided in Section 401.001(b) (authorizing a person capable of making a will to provide that the will have no administrator of the person's estate), if a decedent's will names an executor but the will does not provide for independent administration as provided in Section 401.001(a) (authorizing a person capable of making a will to provide that action on their will is decided through the probate court), to agree on the advisability of having an independent administration and collectively designate in the application for probate of the decedent's will, or in one or more separate documents consenting to the application for probate of the decedent's will, the executor named in the will to serve as independent executor and request that no other action be had in the probate court in relation to the settlement of the decedent's estate other than the probating and recording of the decedent's will and the return of an inventory, appraisalment, and list of claims of the decedent's estate. Requires the probate court, in such case, to enter an order granting independent administration and appointing the person, firm, or corporation designated by the distributees, rather than the person, firm, or corporation designated in the application, as independent executor, unless the court finds that it would not be in the best interest of the estate to do so.

(b) Makes conforming changes.

SECTION 41. Amends Section 401.003(a), Estates Code, to authorize all of the distributees of a decedent dying intestate to agree on the advisability of having an independent administration and collectively designate in the application for administration of the decedent's estate, or in one or more documents consenting to the application for administration of the decedent's estate, a qualified person, firm, or corporation to serve as independent administrator and request, rather than request in the application, that no other action is required to be had in the probate court in relation to the settlement of the decedent's estate other than the return of an inventory, appraisalment, and list of claims of the decedent's estate. Requires the probate court, in such a case, to enter an order granting independent administration and appointing the person, firm, or corporation designated by the distributees, rather than designated in the application, as independent administrator, unless the court finds that it would not be in the best interest of the estate to do so.

SECTION 42. Amends Sections 401.004(c) and (h), Estates Code, as follows:

(c) Authorizes the guardian of the person of the distributee, if a distributee is an incapacitated person, to consent to the creation of an independent administration, rather than to sign the application, on behalf of the distributee. Prohibits the court, if the probate court finds that either the granting of independent administration or the appointment of the person, firm, or corporation designated by the distributees, rather than designated in the application, as independent executor would not be in the best interest of the incapacitated person, then, notwithstanding anything to the contrary in Section 401.002 (Creation in Testate Estate by Agreement) or 401.003 (Creation in Intestate Estate by Agreement), from entering an order granting independent administration of the estate. Authorizes the probate court to appoint a guardian ad litem to act, rather than make application, on behalf of an incapacitated person who has no guardian of the person if the court considers such an appointment necessary to protect the interests of the distributees.

(h) Makes a conforming change.

SECTION 43. Amends Section 401.006, Estates Code, 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 or contains language that is not sufficient to grant the representative that authority, to include in an order appointing an independent executor, rather than to include in an order appointing an independent executor under Section 401.002 or 401.003, any general or specific authority regarding the power of the independent executor to sell property that may be consented to by the beneficiaries who are to receive any interest in the property in the application for independent administration or for the appointment of an independent executor or in their consents to the independent administration or to the appointment of an independent executor.

SECTION 44. Amends Section 452.051(a), Estates Code, as follows:

(a) Authorizes the court to appoint a temporary administrator, with powers limited as the circumstances of the case require, if a contest related to probating a will or granting letters testamentary or of administration is pending.

SECTION 45. Amends Subtitle J, Title 2, Estates Code, by adding Chapter 456, as follows:

CHAPTER 456. DISBURSEMENT AND CLOSING OF LAWYER TRUST OR ESCROW ACCOUNTS

Sec. 456.001. DEFINITION. Defines "eligible institution."

Sec. 456.002. AUTHORITY TO DESIGNATE LAWYER ON CERTAIN TRUST OR ESCROW ACCOUNTS. (a) Authorizes the personal representative, when administering the estate of a deceased lawyer who established one or more trust or escrow accounts for client funds or the funds of third persons that are in the lawyer's possession in connection with representation as required by the Texas Disciplinary Rules of Professional Conduct, to hire through written agreement a lawyer authorized to practice in this state to be the authorized signer on the trust or escrow account, determine who is entitled to receive the funds in the account, disburse the funds to the appropriate persons or to the decedent's estate, and close the account.

(b) Authorizes the personal representative, if the personal representative is a lawyer authorized to practice in this state, to state that fact and disburse the trust or escrow account funds of a deceased lawyer in accordance with Subsection (a).

(c) Requires that an agreement under Subsection (a) or a statement under Subsection (b) be made in writing, and a copy of the agreement or statement be delivered to each eligible institution in which the trust or escrow accounts were established.

Sec. 456.003. DUTY OF ELIGIBLE INSTITUTIONS. Requires an eligible institution, within a reasonable time after receiving a copy of a written agreement under Section 456.002(a) or a statement from a personal representative under Section 456.002(b) and instructions from the lawyer identified in the agreement or statement, as applicable, regarding how to disburse the funds or close a trust or escrow account, to disburse the funds and close the account in compliance with the instructions.

Sec. 456.004. LIABILITY OF ELIGIBLE INSTITUTIONS. Provides that an eligible institution is not liable for any act respecting an account taken in compliance with this chapter.

Sec. 456.005. RULES. Authorizes the Supreme Court of the State of Texas to adopt rules regarding the administration of fund in a trust of escrow account subject to this chapter.

SECTION 46. Amends Section 501.001, Estates Code, as follows:

Sec. 501.001. AUTHORITY FOR ANCILLARY PROBATE OF FOREIGN WILL.
Authorizes the written will of a testator who was not domiciled in this state at the time of the testator's death to be admitted to probate at any time in this state if:

(1)-(2) Makes no change to these subdivisions.

SECTION 47. Amends Section 501.006(a), Estates Code, to entitle an executor named in a foreign will admitted to ancillary probate in this state in accordance with this chapter to receive ancillary letters testamentary on proof made to the court that if the will is admitted to ancillary probate in this state after the fourth anniversary of the testator's death, the executor continues to serve in that capacity in the jurisdiction in which the will was previously admitted to probate or otherwise established. Makes a nonsubstantive change.

SECTION 48. Provides that the addition by this Act of Section 255.304, Estates Code, and the amendment by this Act of Sections 113.004(4), 251.1045(a), 253.001(b) and (c), 254.005, 256.003(a), 353.051(a) and (b), 353.052, 353.053(a), 353.153, 353.154, 452.051(a), and 501.001, Estates Code, is intended to clarify rather than change existing law.

SECTION 49. Provides that Section 113.152(c), Estates Code, as added by this Act, applies to a P.O.D. account held by a financial institution on or after the effective date of this Act, regardless of the date on which the account was opened.

SECTION 50. Provides that Sections 201.051, 201.052, 201.056, 308.004(a), 309.056, and 352.052(b), Estates Code, as amended by this Act, and Section 251.053 and Subchapter I, Chapter 255, Estates Code, as added by this Act, apply only to the estate of a decedent who dies on or after the effective date of this Act. Makes application of this Act prospective.

SECTION 51. Provides that Sections 123.001 and 123.052(a), Estates Code, as amended by this Act, and Subchapter D, Chapter 123, Estates Code, as added by this Act, apply only to an individual whose marriage is dissolved on or after the effective date of this Act.

SECTION 52. Provides that Sections 202.005, 202.055, 202.056, 202.201(a), and 257.053, Estates Code, as amended by this Act, apply 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 that date 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.

SECTION 53. Provides that Subchapter J, Chapter 255, Section 355.1551, and Chapter 456, Estates Code, as added by this Act, and Sections 309.001, 401.002, 401.003(a), 401.004(c) and (h), and 401.006, Estates Code, as amended 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.

SECTION 54. Provides that Sections 256.003(b), 256.051(a), 256.052(a), 256.054, 256.152(b) and (c), 257.051(a), 301.002(a), 301.051, 301.052, 301.151, and 501.006(a), Estates Code, as amended by this Act, apply only to an application for the probate of a will or administration of a decedent's estate that is filed on or after the effective date of this Act. Makes application of this Act prospective.

SECTION 55. Effective date: September 1, 2015.