

BILL ANALYSIS

Senate Research Center
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S.B. 995
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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 are intended to clean up the current law regarding estates.

S.B. 995 amends current law relating to estates. In the following sections, the bill:

SECTION 1. Amends Section 113.004(4), Estates Code, to clarify that statutory references to “pay on death” (POD) accounts at financial institutions include accounts that are styled as “transfer on death” (TOD).

SECTION 2. Amends Section 123.001, Estates Code, to allow a person’s guardian, attorney-in-fact, or agent to establish a pay-on-death account on the person’s behalf. This provision is needed because under current law, it appears that a POD agreement must be signed by the account holder personally.

SECTION 3. Amends Section 123.001, Estates Code, to automatically revoke certain will provisions in the event of a divorce. Specifically, the bill revokes a bequest that adds to an irrevocable trust for the benefit of the former spouse (or the former spouse’s relatives), and replaces it with a bequest to a new trust that omits provisions in favor of the former spouse (or former spouse’s relatives) but is otherwise identical.

SECTION 4. Amends Section 123.052(a), Estates Code, to automatically revoke other revocable powers or fiduciary appointments in favor of a former spouse or former spouse’s relatives, in the event of a divorce.

SECTION 5. Amends Chapter 123, Estates Code, by adding a new Subchapter D to automatically revoke certain beneficiary designations and survivorship provisions in favor of a former spouse or former spouse’s relatives, in the event of a divorce.

SECTION 6. Amends Section 201.051, Estates Code, to limit the intestate inheritance rights of a child who is created after the biological parent’s death. Specifically, a child may inherit only if the child was born before, or in gestation at, the time of the parent’s death.

SECTION 7. Amends Section 201.052, Estates Code, to limit the intestate inheritance rights of a child who is created after the biological parent’s death. Specifically, a child may inherit only if the child was born before, or in gestation at, the time of the parent’s death.

SECTION 8. Amends Section 201.056, Estates Code, to limit the intestate inheritance rights of a child who is created after the biological parent’s death. Specifically, a child may inherit only if the child was born before, or in gestation at, the time of the parent’s death.

SECTION 9. Amends Section 202.005, Estates Code, to streamline the application requirements in heirship proceedings.

SECTION 10. Amends Section 202.055, Estates Code, to streamline the citation requirements in heirship proceedings.

SECTION 11. Amends Section 202.056, Estates Code, to streamline the citation requirements in heirship proceedings.

SECTION 12. Amends Section 202.201(a), Estates Code, to streamline the content of judgments in heirship proceedings.

SECTION 13. Adds new Section 251.053, Estates Code, to provide that a will is valid in Texas if it was executed in compliance with the law of the place where the will was executed, or in compliance with the law of the place where the testator was domiciled or had a place of residence.

SECTION 14. Amends Section 251.1045(a), Estates Code, to make technical corrections to the standard form to make a will self-proved in Texas.

SECTION 15. Amends Section 253.001, Estates Code, to clarify existing law on the effect of certain court orders in a divorce proceeding. Existing law provides that a court may not prohibit a divorcing spouse from making a new will or codicil. The proposed change clarifies that a court may not prohibit a divorcing spouse from revoking a will or codicil, either.

SECTION 16. Amends Section 254.005, Estates Code, to clarify a prior change to that Section. In 2013, Section 254.005 was amended to provide that a forfeiture clause in a will is enforceable unless certain conditions are satisfied. The legislative history of that amendment states that it was not intended to repeal prior Texas law, recognizing that forfeiture clauses generally will not be construed to prevent a beneficiary from seeking to compel a fiduciary to perform his duties, to seek redress against a fiduciary for breaches of his duties, or to seek a judicial construction of a will or trust. The proposed change would add this statement from the legislative history to the text of the statute itself.

SECTION 17. Adds new Section 255.304, Estates Code, to restore effective-date language to Subchapter G, Chapter 255 of the Estates Code (relating to the effect of certain bequests of debt-encumbered property) that was inadvertently omitted when the Probate Code was recodified as the Estates Code.

SECTION 18. Adds new Subchapter I to Chapter 255, Estates Code, to limit the circumstances under which a child who is created after the biological parent's death may benefit from a class gift. Specifically, a child may benefit from the gift only if the child was born before, or in gestation at, the time of the parent's death.

Also adds new Subchapter J to Chapter 255, Estates Code, to provide for judicial modification or reformation of wills to address administrative issues, achieve the testator's tax objectives, qualify a distributee for government benefits, or correct a scrivener's error. An order to correct a scrivener's error may be issued only if the testator's intent is established by clear and convincing evidence.

SECTION 19. Amends Section 501.001, Estates Code, to provide that a foreign will may be admitted to probate in Texas more than four years after the decedent's death, if the will was admitted to probate in the decedent's home jurisdiction. This and related amendments also allow letters testamentary to be issued more than four years after the decedent's death, if an estate administration remains pending in the decedent's home jurisdiction.

SECTION 20. Amends Section 256.051(a), Estates Code, to clarify that if all the distributees of a decedent designate a person to serve as independent administrator, the designated person has standing to file an application for probate.

SECTION 21. Amends Section 256.052(a), Estates Code, to streamline application requirements in probate proceedings.

SECTION 22. Amends Section 256.054, Estates Code, to streamline application requirements in probate proceedings.

SECTION 23. Amends Section 256.152, Estates Code, to provide that a will is self-proved in Texas if it is self-proved in accordance with the laws of the state or foreign country where the will was executed, or where the testator was domiciled or had a place of residence.

SECTION 24. Amends Section 257.051(a), Estates Code, to streamline application requirements in probate proceedings.

SECTION 25. Amends Section 257.053, Estates Code, to streamline application requirements in probate proceedings.

SECTION 26. Amends Section 301.002(a), Estates Code, to provide that a foreign will may be admitted to probate in Texas more than four years after the decedent's death, if the will was admitted to probate in the decedent's home jurisdiction. This and related amendments also allow letters testamentary to be issued more than four years after the decedent's death, if an estate administration remains pending in the decedent's home jurisdiction.

SECTION 27. Amends Section 301.051, Estates Code, to clarify that if all the distributees of a decedent designate a person to serve as independent administrator, the designated person has standing to file an application for appointment as administrator.

SECTION 28. Amends Section 301.052, Estates Code, to streamline application requirements in probate proceedings.

SECTION 29. Amends Section 301.151, Estates Code, to provide that a foreign will may be admitted to probate in Texas more than four years after the decedent's death, if the will was admitted to probate in the decedent's home jurisdiction. This and related amendments also allow letters testamentary to be issued more than four years after the decedent's death, if an estate administration remains pending in the decedent's home jurisdiction.

SECTION 30. Amends Section 308.004(a), Estates Code, to streamline application requirements in probate proceedings.

SECTION 31. Amends Section 309.001, Estates Code, to clarify terminology.

SECTION 32. Amends Section 309.056, Estates Code, to provide generally that an independent executor is not required to provide an inventory of assets to a beneficiary who is entitled to receive less than \$2,000, who has already received his or her bequest, or who has received receipt of an inventory. The executor is still required to provide an inventory to these persons upon request.

SECTION 33. Amends Section 352.052(b), Estates Code, to delete redundant language.

SECTION 34. Adds new Section 353.002, Estates Code, to clarify that the "exempt property" that may be set aside for the benefit of a decedent's surviving spouse or child includes only the homestead and certain tangible personal property.

SECTION 35. Amends Section 353.051, Estates Code, to clarify that the "exempt property" that may be set aside for the benefit of a decedent's surviving spouse or child includes only the homestead and certain tangible personal property.

SECTION 36. Amends Section 353.053, Estates Code, to clarify that the "exempt property" that may be set aside for the benefit of a decedent's surviving spouse or child includes only the homestead and certain tangible personal property.

SECTION 37. Amends Sections 353.153 and 353.154, Estates Code, to clarify that other exempt property remains free from creditors' claims and is not taken into account in determining whether the estate is solvent.

SECTION 38. Amends Section 401.002, Estates Code, to clarify that the distributees of a testate decedent's estate may agree to independent administration either in the application for probate, or in separate consents.

SECTION 39. Amends Section 401.003, Estates Code, to clarify that the distributees of an intestate decedent's estate may agree to independent administration either in the application for probate, or in separate consents.

SECTION 40. Amends Section 401.004, Estates Code, to clarify that a person acting on behalf of an incapacitated distributee of a decedent's estate may agree to independent administration either in the application for probate, or in separate consents.

SECTION 41. Amends Section 401.006, Estates Code, to expand the circumstances in which a court may grant to the independent executor authority to sell estate property. If the distributees consent, this provision would allow the court to grant that authority in cases where the will provides for independent administration but does not include such authority.

SECTION 42. Adds new Chapter 456 to Subtitle J, Title 2, Estates Code, to allow an executor to appoint a lawyer to administer a deceased lawyer's trust and escrow accounts. Alternatively, if the executor is a lawyer, this Section allows the executor himself or herself to administer the deceased lawyer's trust and escrow accounts.

SECTION 43. Amends Section 501.001, Estates Code, to provide that a foreign will may be admitted to probate in Texas more than four years after the decedent's death, if the will was admitted to probate in the decedent's home jurisdiction. This and related amendments also allow letters testamentary to be issued more than four years after the decedent's death, if an estate administration remains pending in the decedent's home jurisdiction.

SECTION 44. Amends Section 501.006, Estates Code, to provide that letters testamentary may be issued to an executor of a foreign will more than four years after the decedent's death, if an estate administration remains pending in the decedent's home jurisdiction.

SECTION 45. Amends Section 309.001, Estates Code, by repealing a redundant provision.

SECTION 46. Provides that Sections of this bill concerning multi-party accounts, and revocation of a will during a divorce proceeding, are intended to clarify rather than change existing law.

SECTION 47. Provides that the Section of this bill allowing a person's guardian, attorney-in-fact, or agent to establish a pay-on-death account on the person's behalf applies to existing pay-on-death accounts held by a financial institution on or after the effective date of this bill.

SECTION 48. Provides that various Sections of this bill concerning probate proceedings apply only to the estate of a decedent who dies on or after the effective date of this bill.

SECTION 49. Provides that Sections of this bill concerning divorced individuals apply only to a divorced individual who dies on or after the effective date of this bill.

SECTION 50. Provides that various Sections of this bill concerning probate proceedings apply only to an action filed or other proceeding commenced on or after the effective date of this bill.

SECTION 51. Provides that various Sections of this bill concerning decedents' wills apply only to a will executed on or after the effective date of this bill.

SECTION 52. Provides that various Sections of this bill concerning independent administrations apply to the administration of a decedent's estate that is pending or commenced on or after the effective date of this bill.

SECTION 53. Provides that various Sections of this bill concerning applications for probate or administration apply only to an application filed on or after the effective date of this bill.

SECTION 54. Provides that Chapter 456, Estates Code, concerning lawyers' trust and escrow accounts, applies only to a trust or escrow account of a lawyer who dies on or after the effective date of this bill.

SECTION 55. Effective date: September 1, 2015.

As proposed, 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 42 (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 addresses 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 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 16. 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 17. 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 18. 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 of 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 19. 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 20. 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 21. 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 22. 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 23. 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 24. 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 25. 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 26. 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 27. 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 Interstate 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 28. 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 29. 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 subdivisions;

(2) except as provided by 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 30. 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 31. Amends Sections 309.001(a) and (c), Estates Code, as follows:

(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, the court, 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.

(c) 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.

SECTION 32. 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 33. 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 34. Amends Subchapter A, Chapter 353, Estates Code, by adding Section 353.002, as follows:

Sec. 353.002. DEFINITION. Defines "exempt property."

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

(a) Requires the court, 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 set aside:

(1) Makes no change to this subdivision;

(2) all other exempt property 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, including the homestead, set aside by filing an application and a verified affidavit listing all the property that the applicant claims is exempt for purposes of this chapter; and

(2) Makes conforming changes.

SECTION 36. Amends Section 353.053(a), Estates Code, as follows:

(a) Provides that if all or any of the specific articles of exempt property, 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 37. 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 38. 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, appraisal, and list of claims of the decedent's estate. Makes a conforming change.

(b) Makes conforming changes.

SECTION 39. Amends Section 401.003(a), Estates Code, to authorize all of the distributees of a decedent dying interstate 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, appraisal, 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 40. 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 41. 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 42. 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 are 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 unless otherwise prohibited by rule.

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 necessary to implement this chapter.

SECTION 43. 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 44. 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 45. Repealer: Section 309.001(b) (authorizing the court to appoint at least one but not more than three disinterested persons to appraise estate property under certain circumstances), Estates Code.

SECTION 46. Provides that the amendment by this Act of Sections 113.004(4) and 253.001, Estates Code, is intended to clarify rather than change existing law.

SECTION 47. 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 48. Provides that Sections 201.051, 201.052, 201.056, 308.004(a), 309.056, 352.052(b), 353.051(a) and (b), 353.053(a), 353.153, and 353.154, Estates Code, as amended by this Act, and Subchapters I and J, Chapter 255, and Section 353.002, 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 49. 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 a divorced individual who dies on or after the effective date of this Act.

SECTION 50. Provides that Sections 202.005, 202.055, 202.056, 202.201(a), 257.051(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 51. Provides that Section 251.053, Estates Code, as added by this Act, and Sections 251.1045(a), 256.003(a) and (b), 256.152(b) and (c), 501.001, and 501.006(a), Estates Code, as amended by this Act, apply only to a will executed on or after the effective date of this Act. Makes application of this Act prospective.

SECTION 52. Provides that Sections 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 53. Provides that Sections 256.051(a), 256.052(a), 256.054, 301.002(a), 301.051, 301.052, and 301.151, 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 54. Makes application of Chapter 456, Estates Code, as added by this Act, prospective.

SECTION 55. Effective date: September 1, 2015.