

BILL ANALYSIS

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S.B. 1017
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

As part of its ongoing review of Texas law, the Real Estate, Probate, and Trust Law Section of the State Bar of Texas (a.k.a. the REPTL Section) has proposed S.B. 1017, which provides several updates to the law regarding decedents' estates. The bill will clarify definitions that currently exist in the Texas Estates Code, specifically, who is considered a decedent's next of kin, that the generation-skipping transfer tax is a separate tax from the estate tax, and that a child adopted by estoppel is treated the same as any other child and is a decedent's child.

The bill clarifies the effect of divorce in certain testamentary and nontestamentary circumstances, including that with regard to revocable trusts, divorce revokes certain provisions only as to a divorced settlor of the trust; that if a revocable trust is established by married persons who later divorce and then one dies, if not handled otherwise before death, the trust is to be divided; and that if married persons enter into a multiple-party account with survivorship provisions in favor of the other spouse or a relative of the other spouse who is not a common relative and the persons later divorce, the provisions in favor of the former spouse or former spouse's relative are ineffective.

The bill makes it clear that for class gifts, the time period for determining the persons who are class members is based on the date of death of the person designated as the measuring life, including for class members who are in gestation at the time of the person's death. The bill makes a similar addition regarding gestation and class gifts in the Texas Property Code to provide conformity between the two codes.

The bill addresses various issues to aid in the efficient administration of a decedent's estate, including:

- providing clarity that for the payment of estate taxes, when other assets of a decedent's estate are insufficient, a personal representative may obtain funds from an account passing because of a survivorship provision;
- increasing the value of an estate that may qualify for a small estate affidavit proceeding to \$75,000, an increase from the current amount of \$50,000 established in 1979;
- clarifying that the proof required for a muniment of title proceeding conforms to the existing statutory requirements for an application to seek this type of proceeding;
- updating the published claim notice requirements for counties that do not have a newspaper printed in them;
- providing that for estates required to prepare annual accountings, a personal representative has 60 days after the anniversary of qualification to file the accounting, allowing time to gather needed information;
- allowing, in certain instances, an independent executor to make non pro rata distributions of estate assets among beneficiaries in order to alleviate potential adverse income tax consequences;

- providing clarification regarding the administration of a lawyer's trust account in a deceased lawyer's estate; and
- providing a deadline in the recent will reformation statute by which a reformation action can be brought.

As proposed, S.B. 1017 amends current law relating to decedents' estates and certain posthumous gifts.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 22.004(a), Estates Code, to redefine "child."

SECTION 2. Amends Section 33.001, Estates Code, as follows:

Sec. 33.001. PROBATE OF WILLS AND GRANTING OF LETTERS TESTAMENTARY AND OF ADMINISTRATION. (a) Creates Subsection (a) from existing text and makes no further changes to this subsection.

(b) Provides that for purposes of this section the decedent's next of kin is the decedent's surviving spouse, or if there is no surviving spouse, other relatives of the decedent within the third degree by consanguinity, and includes a person who legally adopted the decedent or has been legally adopted by the decedent and that person's descendants; and provides that the decedent's nearest of kin is determined in accordance with order of descent, with the decedent's next of kin who is nearest in order of descent first, and so on.

SECTION 3. Amends Sections 112.103(a) and (b), Estates Code, as follows:

(a) Authorizes the deceased spouse's signature to an agreement that is the subject of an application under Section 112.101 (Application Authorized) to be proved by:

(1) and (2) makes no changes to these subdivisions; or

(3) the written or oral deposition of one witness taken in accordance with Section 51.203 (Service of Notice of Intention to Take Depositions in Certain Matters) or the Texas Rules of Civil Procedure, rather than the same manner and under the same rules as depositions in other civil actions.

(b) Makes conforming change.

SECTION 4. Amends Sections 113.252(a), (b), and (c), Estates Code, as follows:

(a) Provides that a multiple-party account is not effective against:

(1) an estate of a deceased party to transfer to a survivor:

(A) amounts equal to the amounts of estate taxes and expenses charged under Subchapter A (Apportionment of Taxes), Chapter 124 (Valuation and Taxation of Estate Property), to the deceased party, P.O.D. payee, or beneficiary of the account; or

(B) if other assets of the estate are insufficient, amounts needed to pay debts, other taxes, and expenses of administration, including statutory allowances to the surviving spouse and minor children, rather than if other

assets of the estate are insufficient. Creates this paragraph from existing text; or

(2) makes no change to this subdivision.

(b) Provides that a party, P.O.D. payee, or beneficiary who receives payment from a multiple-party account or causes a payment to be made to another person from a multiple-party account after the death of a deceased party is liable to account to the deceased party's personal representative for amounts the deceased party owned beneficially immediately before the party's death to the extent necessary to discharge the claims, expenses, and charges described by Subsection (a), rather than that remain unpaid after application of the deceased party's estate. Provides that the party, P.O.D. payee, or beneficiary is not liable in an amount greater than the amount the party, P.O.D. payee, or beneficiary received or caused to be paid to another person from the multiple-party account after the deceased party's death.

(c) Requires any proceeding by the personal representative of a deceased party to assert liability under Subsection (b) to be commenced on or before the second anniversary of the death of the deceased party. Deletes existing text of Subdivision (1) authorizing a proceeding to only be commenced if the personal representative receives a written demand by a surviving spouse, a creditor, or one acting for a minor child of the deceased party, and designation of Subdivision (2). Makes a nonsubstantive change.

SECTION 5. 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 as settlor before the divorced individual's marriage was dissolved and that meets certain criteria.

SECTION 6. Amends Subchapter B, Chapter 123, Estates Code, by adding Section 123.056, as follows:

Sec. 123.056. CERTAIN TRUSTS WITH DIVORCED INDIVIDUALS AS JOINT SETTLORS. (a) Provides that this section applies only to a trust created under a trust instrument that was executed by two married individuals as settlors whose marriage to each other is subsequently dissolved and that includes a provision described by Section 123.052(a).

(b) Requires the trustee, on the death of one of the divorced individuals who is a settlor of a trust to which this section applies, to divide the trust into two trusts, each of which to be composed of the property attributable to the contributions of only one of the divorced individuals.

(c) Authorizes an action authorized in a trust instrument described by Subsection (a) that requires the actions of both divorced individuals to be taken with respect to a trust established in accordance with Subsection (b) from the surviving divorced individual's contributions solely by that divorced individual.

(d) Provides that the provisions of this subchapter apply independently to each trust established in accordance with Subsection (b) as if the divorced individual from whose contributions the trust was established had been the only settlor to execute the trust instrument described by Subsection (a).

(e) Provides that this section does not apply if a court order, the express terms of a trust instrument executed by the two divorced individuals before their marriage was dissolved, or an express provision of a contract relating to the division of the marital estate entered into between the two divorced individuals before, during, or after their marriage, provides otherwise.

SECTION 7. Amends Section 123.151, Estates Code, by amending Subsections (a) and (b) and adding Subsections (c-1) and (d-1), as follows:

(a) Defines "party" and "survivorship agreement."

(b) Provides that if a decedent established, rather than if 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 and the decedent's marriage was later dissolved by divorce, annulment, or a declaration that the marriage is void, any payable on request after death designation provision or provision of a survivorship agreement with respect to that account in favor of the decedent's former spouse or a relative of the former spouse who is not a relative of the decedent is not effective as to that spouse or relative, rather than 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:

(A) creates Paragraph (A) from existing text and makes a nonsubstantive change; or

(B) reaffirms the survivorship agreement or the relevant provision of the survivorship agreement in favor of the former spouse or the former spouse's relative;

(2) after the marriage was dissolved, the decedent:

(A) creates Paragraph (A) from existing text and makes a nonsubstantive change; or

(B) reaffirmed the survivorship agreement in writing, rather than after the marriage was dissolved; or

(3) the former spouse of the former spouse's relative is designated to receive, or under the survivorship agreement would 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.

Makes nonsubstantive changes.

(c-1) Provides that if the provision of a survivorship agreement is not effective under Subsection (b), for purposes of determining the disposition of the decedent's interest in the account, the former spouse or former spouse's relative who would have received the decedent's interest if the provision were effective is treated as if that spouse or relative predeceased the decedent.

(d-1) Provides that a financial institution is not liable for payment of an account to a former spouse or the former spouse's relative as a party to the account, notwithstanding the fact that a designation or provision of a survivorship agreement in favor of that person is not effective under Subsection (b).

SECTION 8. Amends Section 124.001(3), Estates Code, to redefine "estate tax."

SECTION 9. Amends Section 201.054, Estates Code, by adding Subsection (e) to define "adopted child."

SECTION 10. Amends the heading to Section 202.052, Estates Code, to read as follows:

Sec. 202.052. SERVICE OF CITATION BY PUBLICATION.

SECTION 11. Amends Section 202.057(a), Estates Code, as follows:

(a) Requires that a person who files an application under Section 202.005 (Application for Proceeding to Declare Heirship) file with the court:

(1) makes no change to this subdivision; and

(2) an affidavit sworn to by the applicant or a certificate signed by the applicant's attorney stating:

(A) and (B) makes no changes to these paragraphs; and

(C) if service of citation is waived under Section 202.056 (Waiver of Service of Citation):

(i) the name of each person who waived citation under that section, rather than Section 202.056; and

(ii) if citation is waived under Section 202.056(b)(1) (relating to authorizing a parent, managing conservator, guardian, attorney ad litem, or guardian ad litem of a minor distribute who is younger than 12 years of age to waive citation to be served on distribute), the name of the distribute and the representative capacity of the person who waived citation required to be served on the distribute.

SECTION 12. Amends Section 205.001, Estates Code, as follows:

Sec. 205.001. ENTITLEMENT TO ESTATE WITHOUT APPOINTMENT OF PERSONAL REPRESENTATIVE. Provides that the distributees of the estate of a decedent who dies intestate are entitled to the decedent's estate without waiting for the appointment of a personal representative of the estate to the extent the certain estate assets exceed the certain known liabilities of the estate, if:

(1) and (2) makes no changes to these subdivisions;

(3) the value of the estate assets on the date of the affidavit described by Subsection (4), excluding homestead and exempt property, does not exceed \$75,000, rather than \$50,000;

(4) through (6) makes no changes to these subdivisions.

SECTION 13. Amends Section 251.001, Estates Code, to provide that under the rules and limitations prescribed by law, a person of sound mind has the right and power to make a will, rather than last will and testament, if, at the times the will is made, the person meets certain criteria.

SECTION 14. Amends Section 251.002, Estates Code, as follows:

Sec. 251.002. INTERESTS THAT MAY PASS BY WILL; DISINHERITANCE. (a) Authorizes a person competent to make a will, rather than last will and testament, subject to limitations prescribed by law, to devise under the will, rather than will and testament, all the estate, right, title and interest in property the person has at the time of the person's death.

(b) Makes a conforming change.

SECTION 15. Amends Section 251.051, Estates Code, as follows:

Sec. 251.051. WRITTEN, SIGNED, AND ATTESTED. Changes reference to last will and testament to will.

SECTION 16. Amends Section 251.103, Estates Code, as follows:

Sec. 251.103. PERIOD FOR MAKING ATTESTED WILLS SELF-PROVED. Changes reference to will or testament to will.

SECTION 17. Amends Sections 251.104(c), (d), and (e), Estates Code, as follows:

(c) Changes reference to will or testament to will.

(d) Makes a conforming change.

(e) Changes references to last will and testament to will.

SECTION 18. Amends Section 251.107, Estates Code, as follows:

Sec. 251.107. SELF-PROVED HOLOGRAPHIC WILL. Changes reference to last will to will.

SECTION 19. Amends Section 252.152, Estates Code, as follows:

Sec. 252.152. PRIOR DEPOSITED WILL IN RELATION TO LATER WILL. Changes reference to last will and testament to last will.

SECTION 20. Amends Section 255.151, Estates Code, as follows:

Sec. 255.151. APPLICABILITY OF SUBCHAPTER. Changes reference to last will and testament to will.

SECTION 21. Amends Section 255.401, Estates Code, by amending Subsection (a) and adding Subsection (a-1), as follows:

(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 death, rather than the testator's death, of a person by which the class is measured and survives that person by at least 120 hours. Makes a nonsubstantive change.

(a-1) Provides that for purposes of this section a person is:

(1) considered to be in gestation if insemination or implantation occurs at or before the time of death of the person by which the class is measured; and

(2) presumed to be in gestation at the time of death of the person by which the class is measured if the person was born before the 301st day after the date of the person's death.

Makes nonsubstantive and conforming changes.

SECTION 22. Amends Section 255.451, Estates Code, by amending Subsection (a) and adding Subsection (a-1), as follows:

(a) Authorizes a court, subject to Subsection (a-1), 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 certain criteria are met.

(a-1) Requires a personal representative seeking to modify or reform a will under this section to file a petition on or before the fourth anniversary of the date the will was admitted to probate.

SECTION 23. Amends Section 256.003(b), Estates Code, as follows:

(b) Prohibits, except as provided by Section 501.006 (Ancillary Letters Testamentary) with respect to a foreign will, letters testamentary to be issued if a will is admitted to probate after the fourth anniversary of the testator's death unless it is shown that the application for probate was filed on or before the fourth anniversary of the testator's death.

SECTION 24. Amends Section 257.051(a), Estates Code, as follows:

(a) Requires an application for the probate of a will as a muniment of title to 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) through (9) makes no changes to these subdivisions.

(10) that the testator's estate does not owe an unpaid debt, other than any debt secured by a lien on real estate, or that for another reason there is no necessity for administration of the estate;

(11) and (12) makes no changes to these subdivisions.

SECTION 25. Amends Section 257.054, Estates Code, as follows:

Sec. 257.054. PROOF REQUIRED. Requires an applicant for the probate of a will as a muniment of title to prove to the court's satisfaction that:

(1) through (4) makes no changes to these subdivisions;

(5) the testator's estate does not owe an unpaid debt, other than any debt secured by a lien on real estate, or that for another reason there is no necessity for administration of the estate;

(6) and (7) makes no changes to these subdivisions.

SECTION 26. Amends Section 305.108, Estates Code, as follows:

Sec. 305.108. FORM OF BOND. Changes reference to last will and testament to will in the contents of the form authorized to be used for the bond a personal representative.

SECTION 27. Amends Sections 308.051(a) and (c), Estates Code, as follows:

(a) Requires a personal representative of an estate, within one month after receiving letters testamentary or of administration, to provide notice requiring each person who has a claim against the estate to present the claim within the period prescribed by law by:

(1) having the notice published in a newspaper of general circulation, rather than a newspaper printed, in the county in which the letters were issued; and

(2) makes no change to this subdivision.

(c) Requires the notice, if there is no newspaper of general circulation in the county in which the letters testamentary or of administration were issued, to be posed and the return made and filed as otherwise required by this title (Estates of Decedent's; Durable Powers of Attorney).

SECTION 28. Amends Section 310.006, Estates Code, as follows:

Sec. 310.006. FREQUENCY AND METHOD OF DETERMINING INTERESTS IN CERTAIN ESTATE ASSETS. Changes references to beneficiaries to distributees.

SECTION 29. Amends Section 362.005(b), Estates Code, by changing reference to beneficiary to distributee.

SECTION 30. Amends Section 359.001(a), Estates Code, as follows:

(a) Requires the representative, not later than the 60th day after the first anniversary of, rather than on the expiration of 12 months from, the date a personal representative qualifies and receives letters testamentary or of administration to administer a decedent's estate under court order, unless the court authorizes an extension, to file with the court an account consisting of a written exhibit made under oath that lists all claims against the estate presented to the representative during the 12-month period following the representative's qualification and receipt of letters, rather than the period covered by the account.

SECTION 31. Amends Section 359.002(a), Estates Code, as follows:

(a) Requires the representative, rather than each personal representative of the estate of a decedent, not later than the 60th day after each anniversary of the date a personal representative of the estate of a decedent qualifies and receives letters testamentary or of administration to administer the decedent's estate under court order, unless the court authorizes an extension, to file an annual account conforming to the essential requirements of Section 359.001 (Account of Estate Required) regarding changes in the estate assets occurring during the 12-month period after the date the most recent previous account was filed. Makes nonsubstantive changes.

SECTION 32. Amends Section 401.006, Estates Code, as follows:

Sec. 401.006. GRANTING POWER OF SALE BY AGREEMENT. Changes references to beneficiaries to distributees.

SECTION 33. Amends Chapter 405, Estates Code, by adding Section 405.0015, as follows:

Sec. 405.0015. DISTRIBUTIONS GENERALLY. Authorizes an independent executor, unless the will, if any, or a court order provides otherwise, to, in distributing property not specifically devised that the independent executor is authorized to sell, make distributions in divided or undivided interests, allocate particular assets in proportionate or disproportionate shares, value the estate property for the purposes of acting under Subdivision (1) or (2), and adjust the distribution, division, or termination for resulting differences in valuation.

SECTION 34. Amends Sections 405.003(b) and (d), Estates Code, as follows:

(b) Changes references to beneficiary to distribute.

(d) Makes a conforming change.

SECTION 35. Amends Section 456.003, Estates Code, as follows:

Sec. 456.003. DUTY OF ELIGIBLE INSTITUTIONS. Requires the eligible institution, not later than the seventh business day, rather than within a reasonable time, after the date an eligible institution receives a copy of a written agreement under Section 456.002(a) (relating to administering the estate of a deceased lawyer who established one or more trust or escrow accounts for client funds or the funds of a third person) or a statement from a personal representative under Section 456.002(b) (relating to certain procedures if the personal representative is a lawyer authorized to practice in this state) 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. Makes nonsubstantive changes.

SECTION 36. Amends Chapter 456, Estates Code, by adding Section 456.0045, as follows:

Sec. 456.0045. PRIVATE CAUSE OF ACTION. (a) Authorizes a person aggrieved by the violation, if an eligible institution violates Section 456.003, to bring an action against the eligible institution to obtain declaratory or injunctive relief to enforce the section and recover damages to the same extent the person would be entitled to damages had the eligible institution acted in the same manner with respect to the deceased lawyer before the lawyer's death.

(b) Authorizes a person who prevails in an action under this section to recover court costs and reasonable attorney's fees.

SECTION 37. Amends Subchapter A, Chapter 112, Property Code, by adding Section 112.011, as follows:

Sec. 112.011. POSTHUMOUS CLASS GIFTS 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 death of the person by which the class is measured and survives that person by at least 120 hours.

(b) Defines "person."

(c) Provides that a provision in the trust instrument that is contrary to this section prevails over this section.

SECTION 38. Repealer: Section 303.003 (Service by Publication or Other Substituted Service), Estates Code.

Repealer: Section 362.010 (Payment of Inheritance Taxes Required), Estates Code.

SECTION 39. Makes application of Section 33.001, Estates Code, as amended by this Act, prospective.

SECTION 40. Makes application of Section 112.103, Estates Code, as amended by this Act, prospective regarding a proceeding under Subchapter C (Adjudication to Prove Community Property Survivorship Agreement), Chapter 112 (Community Property with Right of Survivorship), Estates Code.

SECTION 41. Provides that Section 113.252(c), Estates Code, as amended by this Act, applies to a proceeding commenced before, on, or after the effective date of this Act, regardless of the date of the decedent's death.

SECTION 42. Provides that Section 123.056, Estates Code, as added by this Act, applies to a trust created before, on, or after the effective date of this Act with respect to which the marriage of the settlors is dissolved on or after that date.

SECTION 43. Makes application of Sections 123.151(a) and (b), Estates Code, as amended by this Act, and Section 123.151(c-1), as added by this Act, prospective.

SECTION 44. Makes application of Section 123.151(d-1), Estates Code, as added by this Act, and Section 456.0045, Estates Code, as added by this Act, prospective.

SECTION 45. Makes application of Section 202.057, Estates Code, as amended by this Act, prospective.

SECTION 46. Makes application of Section 205.001, Estates Code, as amended by this Act, prospective.

SECTION 47. Provides that Section 255.401, Estates Code, as amended by this Act and Section 112.011, Property Code, as added by this Act, apply to the estate of a decedent who dies before, on, or after the effective date of this Act.

SECTION 48. Makes application of Section 255.451, Estates Code, as amended by this Act, prospective.

SECTION 49. Makes application of Sections 256.003(b), 257.051(a), and 257.054, Estates Code, as amended by this Act, prospective.

SECTION 50. Provides that Sections 359.001(a) and 359.002(a), Estates Code, as amended by this Act, apply to an account filed on or after the effective date of this Act, regardless of whether the personal representative was appointed before, on, or after that date.

SECTION 51. Provides that Section 405.0015, Estates Code, as added by this Act, applies to the administration of the estate of a decedent that is pending or commenced on or after the effective date of this Act.

SECTION 52. Effective date: September 1, 2017.