

- SUBJECT:** Claims against an independently administered estate
- COMMITTEE:** Civil Practices — favorable, without amendment
- VOTE:** 6 ayes — T. Hunter, Hilbert, Culberson, Hartnett, Moffat, Zbranek
0 nays
3 absent — Alvarado, Sadler, Tillery
- WITNESSES:** For — Alvin J. Golden, Texas Academy of Probate and Trust Lawyers;
Mike Slack, Texas Trial Lawyers Association
Against — None
- BACKGROUND:** An independent executor acts without the oversight of a probate court to make all of the arrangements to close the administration of a decedent's estate. Because an independent executor acts without the constant oversight of a court, it generally saves time and money compared to a probated administration.
- Creditors against an estate fall into two categories in the Probate Code:
- Creditors whose debts are secured by property are entitled to notice that of an administration of the estate is taking place and are required to make a claim against the estate for the full value of the debt (asking that the debt be matured) or may ask that their security against a specific piece of property be continued. If they fail to make this election, secured creditors are placed in the same position as unsecured creditors.
 - Unsecured creditors must "stand in line" as the estate is administered. These unsecured creditors are paid out of the proceeds of the estate only after all other claims are paid.
- DIGEST:** HB 2866 would amend various sections of the Probate Code relating to claims against an independent administration to clean up language, make provisions gender neutral and establish a fixed procedure for the payment

of secured and unsecured claims. Changes in independent administration would include:

- requiring an independent executor to give notice to secured creditors and all other creditors whom the independent executor is aware of within two months (rather than four) of beginning the administration of an estate;
- requiring a secured creditor, within six months of when the estate began to be administered or four months after the creditor is given notice, to make an election to have the claim matured and immediately paid or have the claim paid by the terms of the contract;
- permitting an independent executor to give notice to unsecured creditors of whom the independent executor has knowledge;
- allowing a secured creditor to file a claim against an estate anytime before the closure of the administration — so long as that is within four months after notice is given — rather than within six months of the commencement of the administration;
- establishing a formal procedure that a secured creditor may use for the foreclosure of property secured by a lien against the estate (the current statute allows a claimant to make a motion to require the sale of the secured property applying the proceeds to the debt owed);
- requiring the independent executor to use the proceeds of the sale of secured property to be used to pay the debt the property was secured against so long as there are no other claims of a higher priority that are not satisfied by other assets of the estate; and
- allowing a court to increase the personal bond of an independent executor if the executor creates new liens on the estate.

HB 2866 would apply only to the estates of persons who die on or after the effective date of the act, January 1, 1996.

**SUPPORTERS
SAY:**

Independent administration is one of the most valuable resources available under Texas probate law. However, independent executors often have a difficult time working with the current statutes regarding payment of claims to creditors. These statutes are confusing and do not treat secured and unsecured creditors as they would be treated in a dependent administration. There is no reason why the rights and remedies of a creditor should be different depending on whether the administration of the estate is managed by a court or by an independent executor.

HB 2866 would not materially alter the rights of creditors or of a decedent's estate, but only clear up the statutory language and allow independent administrations to function under rules similar to those for dependent administrations for handling creditors' claims. HB 2866 would similarly not alter the family support provisions of the Probate Code. Allowances for surviving spouses and children would still take precedence over claims by creditors.

HB 2866 would create a formal foreclosure mechanism for secured creditors to use when attempting to get some return on a debt. This would not allow a creditor to do anything that cannot already be done — creditors can currently require a court to sell secured property and pay those proceeds to the creditor (so long as there are no other claims of a higher priority). The new mechanism would merely allow the formalization and regulation of the procedure. It would require a foreclosure application to be filed, a hearing to be held, and a mechanism for appeal if necessary.

**OPPONENTS
SAY:**

No apparent opposition.

NOTES:

Revisions to the Probate Code similar to those of HB 2866 were recommended by the Real Estate, Probate and Trust Law Section of the State Bar.