

BILL ANALYSIS

Senate Research Center

H.B. 1473
By: Hartnett (Harris)
Jurisprudence
5/19/2003
Engrossed

DIGEST AND PURPOSE

Recent studies by the State Bar of Texas suggest a need to change the change statutory provisions relating to probate law. H. B. 1473 makes changes to the Texas Probate Code.

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 the heading to Section 5, Texas Probate Code, to read as follows:

Sec. 5. JURISDICTION WITH RESPECT TO PROBATE PROCEEDINGS.

SECTION 2. Amends Section 5, Texas Probate Code, by amending Subsections (b), (c), (d), and (e) and adding Subsections (b-1)-(b-5), (h), and (i), as follows:

(b) Provides that the judge of the county court, in contested probate matters, may on the judge's own motion or shall on the motion of any party to the proceeding, perform certain tasks, according to the motion.

(b-1) Created from existing text.

(b-2) Provides that a statutory probate court judge assigned to a contested probate matter as provided by Subsection (b) of this section has the jurisdiction and authority granted to a statutory probate court by Sections 5A and 5B of this code. Provides that on resolution of a contested matter, including an appeal of a matter, to which a statutory probate court judge has been assigned, the statutory probate court judge must transfer the resolved portion of the case to the county court for further proceedings not inconsistent with the orders of the statutory probate court judge. Deletes text requiring the county court to continue to exercise jurisdiction over the management of the estate with the exception of the contested matter until final disposition of the contested matter is made by the assigned judge or the district court.

(b-3) Provides that in contested matters transferred to the district court, the district court has the general jurisdiction of a probate court, rather than concurrently with the county court. Provides that on resolution of a contested matter, including an appeal of a matter, the district court must transfer the resolved, rather than contested, portion of the case, rather than the probate proceeding shall be transferred by the district court, to the county court for further proceedings not inconsistent with the orders of the district court.

(b-4) Requires the county court to continue to exercise jurisdiction over the management of the estate with the exception of the contested matter until final disposition of the contested matter is made by the assigned statutory probate court judge or the district court.

(b-5) Makes a conforming change.

(c) Requires all applications, petitions, and motions regarding probate and administrations, in those counties in which there is no statutory probate court, but in which there is a county court at law or other statutory court exercising the jurisdiction of a probate court, to be filed and heard in those courts and the constitutional county court. Deletes text specifying that such matters are not to be heard in the district courts.

(d) Requires all applications, petitions, and motions regarding probate or administrations, in those counties in which there is a statutory probate court, to be filed and heard in the statutory probate court, rather than unless otherwise provided by law.

(e) Provides that a statutory probate court has concurrent jurisdiction with the district court in all personal injury, survival, or wrongful death actions by or against a person in the person's capacity as a personal representative, in all actions involving an inter vivos trust, in all actions involving a charitable trust, and in all actions involving a personal representative of an estate in which each other party aligned with the personal representative is not an interested person in that estate, rather than testamentary trust.

(h) Provides that a statutory probate court has jurisdiction over any matter appertaining to an estate or incident to an estate and has jurisdiction over any cause of action in which a personal representative of an estate pending in the statutory probate court is a party.

(i) Authorizes a statutory probate court to exercise the pendent and ancillary jurisdiction necessary to promote judicial efficiency and economy.

SECTION 3. Amends the heading to Section 5A, Texas Probate Code, to read as follows:

Sec. 5A. MATTERS APPERTAINING AND INCIDENT TO AN ESTATE.

SECTION 4. Amends Section 5A(b), Texas Probate Code, to delete "district courts" from existing text relating to proceedings in the statutory probate courts. Adds the word "collection" relating to the distribution of estates of deceased persons. Provides that except for situations in which the jurisdiction of a statutory probate court is concurrent with that of a district court as provided by Section 5(e) of this code or any other court, any cause of action appertaining to estates or incident to an estate shall be brought in a statutory probate court, rather than in the district court. Deletes text requiring all statutory probate courts to have the same powers over independent executors that are exercisable by the district courts.

SECTION 5. Amends Section 8(c)(2), Texas Probate Code, to require the clerk of the court from which the proceeding is transferred to transmit to the court to which the proceeding is transferred the original file in the proceeding and a certified copy of the index, rather than the entries in the minutes that relate to the proceeding.

SECTION 6. Amends Chapter I, Texas Probate Code, by adding Section 10C, as follows:

Sec. 10C. EFFECT OF FILING OR CONTESTING PLEADING. (a) Provides that the filing or contesting in probate court of any pleading relating to a decedent's estate does not constitute tortious interference with inheritance of the estate.

(b) Provides that this section does not abrogate any rights of a person under Rule 13, Texas Rules of Civil Procedure, or Chapter 10, Civil Practice and Remedies Code.

SECTION 7. Amends Chapter II, Texas Probate Code, by adding Section 37C, as follows:

Sec. 37C. SATISFACTION OF DEVISE. (a) Provides that property given to a person by a testator during the testator's lifetime is considered a satisfaction, either wholly or partly, of a devise to the person if certain requirements are met.

(b) Requires property given in partial satisfaction of a devise to be valued as of the earlier of the date on which the devisee acquires possession of or enjoys the property or the date on which the testator dies.

SECTION 8. Amends Chapter IV, Texas Probate Code, by adding Section 58c, as follows:

Sec. 58c. EXERCISE OF POWER OF APPOINTMENT. Prohibits a testator from exercising a power of appointment through a residuary clause in the testator's will or through a will providing for general disposition of all the testator's property unless certain requirements are met.

SECTION 9. Amends Section 59A(a), Texas Probate Code, to provide that contract to make a will or devise, or not to revoke a will or devise, if executed or entered into on or after September 1, 2003, rather than 1979, can be established only by provisions of a written agreement that is binding and enforceable.

SECTION 10. Amends Section 67(a), Texas Probate Code, to add new language to existing text related to a testator having one or more children living when he or she executes his or her last will.

SECTION 11. Amends Section 84, Texas Probate Code, to redesignate Subsection (b) as (c) and Subsection (c) as (d).

SECTION 12. Amends Section 222A(b), Texas Probate Code, to require the court clerk, on the filing of an application for a hearing under this section, to issue a notice stating that the application for reinstatement was filed, the name of the decedent, rather than ward, and the name of the applicant. Requires the clerk to issue the notice to the applicant and to the successor representative of the decedent's estate rather than the ward's estate and, if applicable, to a person who has control of the care and custody of the ward. Requires the notice to cite all persons interested in the estate, rather than welfare of the ward, to appear at the time and place stated in the notice if they wish to contest the application.

SECTION 13. Amends Section 245, Texas Probate Code, to provide that when a personal representative neglects to perform a required duty or if a personal representative is removed for cause, the personal representative and the sureties on the personal representative's bond are liable for certain expenditures. Makes conforming changes.

SECTION 14. Amends Section 322, Texas Probate Code, to require claims against an estate of a decedent to be classified and have priority of payment, according to certain classes.

SECTION 15. Amends Section 378B(f), Texas Probate Code, to require a devisee of a pecuniary bequest, whether or not in trust, to be paid interest on the bequest at the legal rate of interest as provided by Section 302.002, Finance Code, rather than Article 1.03, Revised Statutes (Article 5069-1.03, V.T.C.S.), and its subsequent amendments, beginning one year after the date the court grants letters testamentary or letters of administration.

SECTION 16. Repealer: Sections 5(a), 5A(c), 5A(d), 5A(e), and 322A(j), Texas Probate Code.

SECTION 17. (a) Provides that the changes in law made by this Act to Sections 5 and 5A(b), Texas Probate Code, apply only to a probate proceeding or other action commenced on or after the effective date of this Act without regard to whether the decedent's death occurred before, on, or after that date and the probate proceeding or other action is the original proceeding or action.

(b) Provides that a probate proceeding or other action commenced before the effective date of this Act is governed by the law applicable to the proceeding or action immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 18. (a) Makes application of Sections 37C and 58c, Texas Probate Code, as added by this Act prospective.

(b) Makes application of the change in law made by this Act to Section 67(a), Texas Probate Code, prospective.

(c) Makes application of the changes in law made by this Act to Section 222A(b), Texas Probate Code, prospective.

SECTION 19. Effective date: September 1, 2003.