

BILL ANALYSIS

Senate Research Center
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S.B. 593
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Jurisprudence
3/15/2007
Committee Report (Amended)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Beneficiaries of wills where an independent executor is appointed may not learn of the will or their rights until it is too late for them to take steps to protect their interests. Currently, only beneficiaries of wills being probated more than four years after the death of the testator currently receive notice.

S.B. 593 requires the personal representative of a decedent's estate, within a certain time period of an order admitting a will to probate, to give notice to each beneficiary named in the will whose identity is known or, through reasonable diligence, can be ascertained, and to file an affidavit with the court listing the beneficiaries notified. The bill also sets out what the notice must contain.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 128A, Texas Probate Code, as follows:

Sec. 128A. New heading: NOTICE TO BENEFICIARIES AFTER PROBATE OF WILL. (a) Defines "beneficiary."

(b) Requires the personal representative (representative) of the decedent's estate, including an independent executor or independent administrator, to give notice that complies with Subsection (d) of this section to each beneficiary named in the will whose identity and address are known to the personal representative or, through reasonable diligence, can be ascertained, not later than the 60th day after the date of admitting a decedent's will to probate. Requires that the representative give the notice as soon as possible to a person whose identity and address are made known to the representative after the 60th day after the date of the order.

(c) Requires that the representative give notice with respect to a beneficiary described by this subsection if the beneficiary is a trust, to the trustee, unless the representative is the trustee, in which case the representative shall give notice to the person or class of persons first eligible to receive the trust income, to be determined for purposes of this subdivision as if the trust were in existence on the date of the decedent's death; if the beneficiary has a court-appointed guardian or conservator, to that the guardian or conservator; and if the beneficiary is a minor for whom no guardian or conservator has been appointed, to a parent of the minor, notwithstanding the requirement under Subsection (b) of this section that the representative give the notice to the beneficiary.

(d) Requires the notice to state certain information and to contain as attachments a copy of the will admitted to probate and the order admitting the will to probate.

(e) Requires the notice to be sent by registered or certified mail, return receipt requested.

(f) Requires the representative, not later than the 60th day after the date of an order admitting a will to probate, to file with the clerk of the court in which the decedent's estate is pending, an affidavit stating certain information. Deletes existing text relating to providing notice to an entity that is named as a devisee, and certain procedures relating to such notice.

SECTION 2. Amends the heading to Section 128B, Texas Probate Code, to read as follows:

Sec. 128B. NOTICE TO HEIRS ON APPLICATION TO PROBATE WILL AFTER FOUR YEARS.

SECTION 3. Amends Section 149C(a), Texas Probate Code, to make nonsubstantive changes regarding gender-neutral language, and other nonsubstantive changes.

SECTION 4. Amends Section 222(b), Texas Probate Code, to make nonsubstantive changes regarding gender-neutral language, and other nonsubstantive changes.

SECTION 5. Makes application of this Act prospective.

SECTION 6. Effective date: September 1, 2007.

SUMMARY OF COMMITTEE CHANGES

Committee Amendment

Amends SECTION 1 of this bill, in proposed Section 128A(c)(1), Texas Probate Code (page 2, Lines 9 through 14), as follows:

Requires the personal representative to give notice, if the beneficiary is a trust, to the trustee, unless the personal representative is the trustee, in which case the personal representative shall give notice, except as provided by Paragraph (b) of this subdivision, to the person, entity, or class first eligible to receive the trust income, to be determined for purposes of this paragraph as if the trust were in existence on the date of the decedent's death; or to the attorney general, if under Paragraph (A) of this subdivision the notice is required to be given to a charitable beneficiary that is no longer in existence, or a class of charitable beneficiaries, but providing the notice to the class is impracticable because the class is not composed of natural person or is unascertainable.

Amends SECTION 1 of this bill, at the end of proposed Section 128A(c)(2), Texas Probate Code (page , line16) by striking "; and" and substituting an underlined semicolon.

Amends SECTION 1 of this bill, at the end of proposed Section 128A(c)(3), Texas Probate Code (page 2, line 18), between "minor" and the underlined period, by inserting a semicolon underlined and the word "and" underlined, as follows:

Provides that if the beneficiary is a charitable beneficiary that is no longer in existence or is a class of charitable beneficiaries that is not composed of natural persons or is unascertainable, the personal representative is required to provide the notice to the attorney general.

Amends SECTION 1 of the bill, by striking proposed Section 128A(d)(1)(A), Texas Probate Code (page 2, lines 21 through 25), and substituting text that:

Requires the notice required by this section to state the name and address of the beneficiary for whom the notice is given or, if that beneficiary is a charitable beneficiary or class of charitable beneficiaries described by Subsection (c)(4) of this section, a description of the beneficiary or class of beneficiaries; and the name and address of the person to whom the notice is given.

Amends SECTION 1 of the bill, by striking proposed Section 128A(d)(1)(F), Texas Probate Code (page 3, lines 6 through 9), and substituting text that:

Requires the notice required by this section to state that the personal representative is a fiduciary and owes duties to the beneficiary, that the beneficiary has rights under the Texas Probate Code and common law, and that the beneficiary should consider retaining an attorney to advise the beneficiary of those rights and duties.

Amends SECTION 1 of the bill, in proposed Section 128A(f), Texas Probate Code, by striking page 3, lines 14 through 22 and substituting text that:

Requires the personal representative to file with the clerk of the court, not later than the 90th day after the date of an order admitting a will to probate, to file with the clerk of the court in which the decedent's estate is pending a sworn affidavit of the personal representative, or a certificate signed by the personal representative's attorney, stating the name and address of each beneficiary to whom the personal representative gave the notice and, with respect to each beneficiary described by Subsection (c) of this section; the name and address of the beneficiary for whom the personal representative gave the notice or, if a beneficiary is a charitable beneficiary or class of charitable beneficiaries described by Subsection (c)(4) of this section, a description of the beneficiary or class of beneficiaries; and the name and address of the person to whom the personal representative gave the notice.

Amends SECTION 1 of the bill, at the end of proposed Section 128A(f), Texas Probate Code (page 4, lines 1), between "section." and the words "If the address" with a strike to insert Subsection (g), as follows:

(g) Authorizes the affidavit or certificate required by Subsection (f) of this section to be included with any pleading or other document filed with the clerk of the court, including the inventory appraised, and list of claims or an application for an extension of the deadline to file the inventory, appraisal, and list of claims, provided that the pleading or other document with which the affidavit or certificate is included is filed not later than the date the affidavit or certificate is required to be filed as provided by Subsection (f) of this section.

Amends SECTION 3 of the bill, in proposed Section 149C(a)(4), Texas Probate Code (page 5, line 17), by striking "the affidavit" and substituting "the affidavit or certificate" to make a conforming change.

Amends SECTION 4 of the bill, in proposed Section 222C(b)(7), Texas Probate Code (page 7, line 1), by striking "the affidavit" and substituting "the affidavit or certificate" to make a conforming change.