

BILL ANALYSIS

Senate Research Center
81R6219 MTB-F

S.B. 1789
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Jurisprudence
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As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, there is no mechanism that allows a person to disinherit certain heirs and prohibit those persons from contesting the will.

As proposed, S.B. 1789 would allow a person, while still living, to apply to the court for an order prohibiting a disinherited heir from instituting a proceeding contesting the person's will. The court would have to find that the applicant has sufficient testamentary capacity, there is no undue influence, there is no tortious interference with the inheritance rights of another person, and there is no other cause of action at law that may have a similar effect to modify or defeat the person's will. If the court finds that these elements are satisfied, it may issue an order prohibiting a disinherited heir from contesting the will. These orders would be final and not subject to appeal. The applicant may also move to have the documents and other evidence sealed by the court.

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 Chapter IV, Texas Probate Code, by adding Section 59B, as follows:

Sec. 59B. ORDERS AFFECTING CERTAIN HEIRS. (a) Provides that this section applies only to a person who has executed a will that includes a provision that has the effect of disinheriting an heir of the person.

(b) Authorizes a person, notwithstanding Section 72 (Proceedings Before Death; Administration in Absence of Direct Evidence of Death; Distribution; Limitation of Liability; Restoration of Estate; Validation of Proceeding) of this code, to apply to the court for an order as prescribed by this section relating to a disinherited heir's standing to institute a proceeding in relation to the applicant's will after the applicant's death.

(c) Authorizes the court, after hearing, on application and citation and notice to heirs of the applicant, to make a finding that: (1) the applicant has sufficient testamentary capacity to make a testamentary disposition of property; (2) there is no undue influence operating on the applicant; (3) there is no tortious interference with the inheritance rights of another relating to the applicant's property; and (4) there is no other cause of action arising in law that is authorized to have the same or similar effect as the capacity or a circumstance listing in Subdivision (1), (2), or (3) of this section to modify or defeat the person's will.

(d) Requires the court, if the court makes a finding under Subsection (c) of this section, to order that the disinherited heir may not institute in the person's capacity as the applicant's heir a suit under Section 93 (Period For Contesting Probate) of this code to contest the validity of the will that is the subject of an adjudication under this section.

(e) Provides that a court order under this section is final and not subject to appeal.

(f) Provides that on the applicant's motion, documents and other records placed into evidence in a hearing under this section may be sealed by the court.

SECTION 2. Effective date: upon passage or September 1, 2009.