

## **BILL ANALYSIS**

Senate Research Center

H.B. 2899  
By: Hartnett (Harris)  
Jurisprudence  
5/13/2011  
Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Practitioners of probate law, including members of the judiciary, occasionally encounter and identify situations that require legislative changes to more effectively and efficiently pursue the interests of the general public and their clients. The purpose of H.B. 2899 is to make changes to the Texas Probate Code that have been identified by such practitioners in order to achieve greater effectiveness and efficiency in probate matters.

H.B. 2899 amends current law relating to decedents' estates.

### **RULEMAKING AUTHORITY**

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

### **SECTION BY SECTION ANALYSIS**

#### ARTICLE 1. AMENDMENTS TO TEXAS PROBATE CODE

SECTION 1.01. Amends Section 34A, Texas Probate Code, as follows:

Sec. 34A. ATTORNEYS AD LITEM. (a) Creates this subsection from existing text. Authorizes the judge of a probate court, except as provided by Section 53(c) (relating to requiring the court to appoint an attorney ad litem to represent the interests of unknown heirs) of this code, to appoint an attorney ad litem in any probate proceeding to represent the interests of:

- (1) a person having a legal disability;
- (2) a nonresident;
- (3) an unborn or unascertained person;
- (4) an unknown or missing heir; or
- (5) an unknown or missing person entitled to property deposited in an account in the court's registry under Section 408(b) of this code.

Makes nonsubstantive changes.

(b) Entitles an attorney ad litem appointed under this section to reasonable compensation for services in the amount set by the court, subject to Subsection (c) of this section. Requires the court to:

- (1) tax the compensation as costs in the probate proceeding; or
- (2) for an attorney ad litem appointed to represent the interests of an unknown or missing person described by Subsection (a)(5) of this section,

order that the compensation be paid from money in the account described by that subdivision.

Makes nonsubstantive changes.

(c) Requires that the court order appointing an attorney ad litem to represent the interests of an unknown or missing person described by Subsection (a)(5) of this section require the attorney ad litem to conduct a search for the person. Prohibits compensation paid under Subsection (b) of this section to the attorney ad litem from exceeding 10 percent of the amount on deposit in the account described by Subsection (a)(5) of this section on the date:

(1) the attorney ad litem reports to the court the location of the previously unknown or missing person; or

(2) the money in the account is paid to the comptroller as provided by Section 427 of this code.

SECTION 1.02. Amends Section 48, Texas Probate Code, by adding Subsection (d), to authorize a proceeding to declare heirship of a decedent to be brought at any time after the decedent's death, notwithstanding Section 16.051 (Residual Limitations Period), Civil Practice and Remedies Code.

SECTION 1.03. Amends Section 49(a), Texas Probate Code, to authorize such proceedings to be instituted and maintained in any of the instances enumerated above by the qualified personal representative of the estate of such decedent, by any person or persons claiming to be a secured or unsecured creditor or the owner of the whole or a part of the estate of such decedent, or by the guardian of the estate of a ward, if the proceedings are instituted and maintained in the probate court in which the proceedings for the guardianship of the estate were pending at the time of the death of the ward.

SECTION 1.04. Amends Sections 53C(a) and (b), Texas Probate Code, as follows:

(a) Provides that this section applies in a proceeding to declare heirship of a decedent only with respect to an individual who claims to be a biological child of the decedent or claims inheritance through a biological child of the decedent. Deletes existing text providing that this section applies in a proceeding to declare heirship of a decedent only with respect to an individual who petitions the court for a determination of right of inheritance as authorized by Section 42(b) (Paternal Inheritance) of this code, and with respect to an individual who claims to be a biological child of the decedent, but with respect to whom a parent-child relationship with the decedent was not established as provided by Section 160.201 (Establishment of Parent-Child Relationship), Family Code, or who claims inheritance through a biological child of the decedent, if a parent-child relationship between the individual through whom the inheritance is claimed and the decedent was not established as provided by Section 160.201, Family Code.

(b) Provides that the presumption under Section 160.505 (Genetic Testing Results; Rebuttal), Family Code, that applies in establishing a parent-child relationship also applies in determining heirship in the probate court using the results of genetic testing ordered with respect to an individual described by Subsection (a) of this section, and authorizes the presumption to be rebutted in the same manner provided by Section 160.505, Family Code. Deletes existing text requiring the court to find that the individual described by Subsection (a) of this section is an heir of the decedent if the results of genetic testing ordered under Section 53A (Order for Genetic Testing Authorized) of this chapter identify a tested individual who is an heir of the decedent as the ancestor of the individual described by Subsection (a) of this section unless the results of genetic testing of another individual who is an heir of the decedent are admitted as rebuttal evidence.

SECTION 1.05. Amends Section 77, Texas Probate Code, to make nonsubstantive changes.

SECTION 1.06. Amends Section 83(a), Texas Probate Code, to prohibit the court from severing or bifurcating the proceeding on the applications.

SECTION 1.07. Amends Section 149C, Texas Probate Code, by amending Subsection (a) and adding Subsections (a-1) and (a-2), as follows:

(a) Authorizes the court, rather than the county court, as that term is defined by Section 3 (Definitions and Use of Terms) of this code, on its own motion or on motion of any interested person, after the independent executor has been cited by personal service to answer at a time and place fixed in the notice, to remove an independent executor when:

(1)-(5) Makes no changes to these subdivisions; or

(6) the independent executor becomes an incapacitated person, or is sentenced to the penitentiary, or from any other cause becomes incapable of, rather than legally incapacitated from, properly performing the independent executor's fiduciary duties.

(a-1) Authorizes the court, on its own motion or on the motion of any interested person, and after the independent executor has been cited by certified mail, return receipt requested, to answer at a time and place stated in the citation, to remove an independent executor who is appointed under the provisions of this code if the independent executor:

(1) subject to Subsection (a-2)(1) of this section, fails to qualify in the manner and period required by law;

(2) subject to Subsection (a-2)(2) of this section, fails to return not later than the 90th day after the date the independent executor qualifies an inventory of the estate property and a list of claims that have come to the independent executor's knowledge, unless the period is extended by court order;

(3) cannot be served with notices or other processes because the:

(A) independent executor's location is unknown;

(B) independent executor is eluding service; or

(C) independent executor is a nonresident of this state who does not have a resident agent to accept service of process in a probate proceeding or other action relating to the estate; or

(4) subject to Subsection (a-2)(3) of this section, has misapplied, embezzled, or removed from the state, or is about to misapply, embezzle, or remove from the state, all or any part of the property committed to the independent executor's care.

(a-2) Authorizes the court to remove an independent executor:

(1) under Subsection (a-1)(1) of this section only if the independent executor fails to qualify on or before the 30th day after the date the court sends a notice by certified mail, return receipt requested, to the independent executor's last known address and to the last known address of the independent executor's attorney, notifying the independent executor and attorney of the court's intent to remove the independent executor for failure to qualify in the manner and period required by law;

(2) under Subsection (a-1)(2) of this section only if the independent executor fails to file an inventory and list of claims as required by law on or before the 30th day after the date the court sends a notice by certified mail, return receipt requested, to the independent executor's last known address and to the last known address of the independent executor's attorney, notifying the independent executor and

attorney of the court's intent to remove the independent executor for failure to file the inventory and list of claims; and

(3) under Subsection (a-1)(4) of this section only on presentation of clear and convincing evidence given under oath of the misapplication, embezzlement, or removal from this state of property as described by that subdivision.

SECTION 1.08. Amends Part 1, Chapter VIII, Texas Probate Code, by adding Section 254, as follows:

Sec. 254. PENALTY FOR FAILURE TO TIMELY FILE INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS. (a) Provides that this section applies only to a personal representative, including an independent executor or administrator, who does not file an inventory, appraisal, and list of claims within the period prescribed by Section 250 (Inventory and Appraisal) of this code or any extension granted by the court.

(b) Authorizes any person interested in the estate on written complaint, or the court on the court's own motion, to have a personal representative to whom this section applies cited to file the inventory, appraisal, and list of claims and show cause for the failure to timely file.

(c) Authorizes the court on hearing to fine the representative in an amount not to exceed \$1,000 if the personal representative does not file the inventory, appraisal, and list of claims after being cited or does not show good cause for the failure to timely file.

(d) Provides that the personal representative and the representative's sureties, if any, are liable for any fine imposed under this section and for all damages and costs sustained by the representative's failure. Authorizes the fine, damages, and costs to be recovered in any court of competent jurisdiction.

SECTION 1.09. Amends Section 407, Texas Probate Code, as follows:

Sec. 407. New heading: CITATION AND NOTICE UPON PRESENTATION OF ACCOUNT FOR FINAL SETTLEMENT. Requires such citation to be issued by the county clerk to the persons and in the manner set out below.

1. Requires citation to be given to each heir or beneficiary of the decedent by certified mail, return receipt requested, unless another method of service is directed by the court by written order, rather than requires notice to be given in case of the estates of deceased persons by the personal representative to each heir or beneficiary of the decedent by certified mail, return receipt requested, unless another type of notice is directed by the court by written order. Requires the citation, rather than the notice, to include a copy of the account for final settlement.

2. Authorizes the court, in its discretion, to allow the waiver of citation of an account, rather than the waiver of notice of an account, for final settlement in a proceeding concerning a decedent's estate.

SECTION 1.10. Amends Sections 408(b), (c), and (d), Texas Probate Code, as follows:

(b) Requires the court to order the representative to deposit in an account in the court's registry any remaining estate property that is money and to which a person who is unknown or missing is entitled. Requires the court, in addition, to order the representative to sell, on terms the court determines are best, remaining estate property that is not money and to which a person who is unknown or missing is entitled. Requires the court to order the representative to deposit the sale proceeds in an account in the

court's registry. Requires the court to hold money deposited in an account under this subsection until the court renders:

(1) an order requiring money in the account to be paid to the previously unknown or missing person who is entitled to the money; or

(2) another order regarding the disposition of the money.

(c)-(d) Makes nonsubstantive changes.

SECTION 1.11. Amends Section 427, Texas Probate Code, as follows:

Sec. 427. WHEN ESTATES TO BE PAID INTO STATE TREASURY. Requires the court, if any person entitled to a portion of an estate, except a resident minor without a guardian, does not demand the person's portion, including any portion deposited in an account in the court's registry under Section 408(b) of this code, from the executor or administrator within six months after an order of court approving the report of commissioners of partition, or within six months after the settlement of the final account of an executor or administrator, as the case may be, by written order to require the executor or administrator to pay so much of said portion as is in money to the comptroller; and such portion as is in other property order the executor or administrator to sell on such terms as the court thinks best, and, when the proceeds of such sale are collected, to order the same to be paid to the comptroller, in all such cases allowing the executor or administrator reasonable compensation for the executor's or administrator's services. Makes nonsubstantive changes.

SECTION 1.12. Repealer: Section 29 (Appeal Bonds of Personal Representatives), Texas Probate Code.

Repealer: 53C(c) (relating to use of genetic testing results in certain proceedings to declare heirship), Texas Probate Code.

SECTION 1.13. (a) Provides that, except as otherwise provided by this section, the changes in law made by this article apply to the estate of a decedent that is pending or commenced on or after September 1, 2011, regardless of the date of the decedent's death.

(b) Provides that the changes in law made by this article to Section 49(a), Texas Probate Code, apply only to an application for determination of heirship filed on or after September 1, 2011. Provides that an application for determination of heirship filed before that date is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose.

(c) Provides that the changes in law made by this article to Section 77, Texas Probate Code, apply only to an application for the grant of letters testamentary or of administration of a decedent's estate filed on or after September 1, 2011. Provides that an application for the grant of letters testamentary or of administration of a decedent's estate filed before that date is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose.

(d) Provides that the changes in law made by this article to Section 83(a), Texas Probate Code, apply only to an application for the probate of a will or administration of the estate of a decedent that is pending or filed on or after September 1, 2011.

(e) Provides that the changes in law made by this article to Sections 53C(a) and (b), Texas Probate Code, apply only to a proceeding to declare heirship commenced on or after September 1, 2011. Provides that a proceeding to declare heirship commenced before that date is governed by the law in effect on the date the proceeding was commenced, and the former law is continued in effect for that purpose.

## ARTICLE 2. AMENDMENTS TO ESTATES CODE

SECTION 2.01. Amends Section 53.104, Estates Code, as effective January 1, 2014, as follows:

Sec. 53.104. APPOINTMENT OF ATTORNEYS AD LITEM. (a) Authorizes the judge of a probate court, except as provided by Section 202.009(b) (relating to requiring the court to appoint an attorney ad litem to represent the interests of unknown heirs), to appoint an attorney ad litem in any probate proceeding to represent the interests of:

- (1) a person who has a legal disability;
- (2) a nonresident;
- (3) an unborn or unascertained person;
- (4) an unknown or missing heir; or
- (5) an unknown or missing person entitled to property deposited in an account in the court's registry under Section 362.011(b).

Makes nonsubstantive changes.

(b) Entitles an attorney ad litem appointed under this section to reasonable compensation for services provided in the amount set by the court, subject to Subsection (c). Requires the court to:

- (1) tax the compensation as costs in the probate proceeding; or
- (2) for an attorney ad litem appointed to represent the interests of an unknown or missing person described by Subsection (a)(5), order that the compensation be paid from money in the account described by that subdivision.

Makes nonsubstantive changes.

(c) Requires that the court order appointing an attorney ad litem to represent the interests of an unknown or missing person described by Subsection (a)(5) require the attorney ad litem to conduct a search for the person. Prohibits compensation paid under Subsection (b) to the attorney ad litem from exceeding 10 percent of the amount on deposit in the account described by Subsection (a)(5) on the date:

- (1) the attorney ad litem reports to the court the location of the previously unknown or missing person; or
- (2) the money in the account is paid to the comptroller as provided by Section 551.001 (Payment of Certain Shares of Estate to State).

SECTION 2.02. Amends Subchapter A, Chapter 202, Estates Code, as effective January 1, 2014, by adding Section 202.0025, as follows:

Sec. 202.0025. ACTION BROUGHT AFTER DECEDENT'S DEATH. Authorizes a proceeding to declare heirship of a decedent to be brought at any time after the decedent's death, notwithstanding Section 16.051, Civil Practice and Remedies Code.

SECTION 2.03. Amends Section 202.004, Estates Code, as effective January 1, 2014, as follows:

Sec. 202.004. PERSONS WHO MAY COMMENCE PROCEEDING TO DECLARE HEIRSHIP. Authorizes a proceeding to declare heirship of a decedent to be commenced

and maintained under a circumstance specified by Section 202.002 (Circumstances Under Which Proceeding to Declare Heirship is Authorized) by:

- (1) Makes no changes to this subdivision;
- (2) a person claiming to be a secured or unsecured creditor or the owner of all or part of the decedent's estate; or
- (3) Makes no changes to this subdivision.

SECTION 2.04. Amends Sections 204.151 and 204.152, Estates Code, as effective January 1, 2014, as follows:

Sec. 204.151. **APPLICABILITY OF SUBCHAPTER.** Provides that this subchapter applies in a proceeding to declare heirship of a decedent only with respect to an individual who claims to be a biological child of the decedent or claims to inherit through a biological child of the decedent. Deletes existing text providing that this subchapter applies in a proceeding to declare heirship of a decedent only with respect to an individual who petitions the court for a determination of right of inheritance as authorized by Section 201.052(c) (relating to paternal inheritance); and claims to be a biological child of the decedent, but with respect to whom a parent-child relationship with the decedent was not established as provided by Section 160.201, Family Code, or to inherit through a biological child of the decedent, if a parent-child relationship between the individual through whom the inheritance is claimed and the decedent was not established as provided by Section 160.201, Family Code.

Sec. 204.152. **New heading: PRESUMPTION; REBUTTAL.** Provides that the presumption under Section 160.505, Family Code, that applies in establishing a parent-child relationship also applies in determining heirship in the probate court using the results of genetic testing ordered with respect to an individual described by Section 204.151, and authorizes the presumption to be rebutted in the same manner provided by Section 160.505, Family Code. Deletes existing text requiring the court to find that the individual described by Section 204.151 is an heir of the decedent, if the results of genetic testing ordered under Subchapter B (Court Orders for Genetic Testing in Proceedings to Declare Heirship) identify a tested individual who is an heir of the decedent as the ancestor of the individual described by Section 204.151, or is not an heir of the decedent, if the results of genetic testing ordered under Subchapter B exclude a tested individual who is an heir of the decedent as the ancestor of the individual described by Section 204.151, unless the results of genetic testing of another individual who is an heir of the decedent who is the subject of a proceeding to declare heirship to which this subchapter applies are admitted as rebuttal evidence.

SECTION 2.05. Amends Section 256.101, Estates Code, as effective January 1, 2014, as follows:

Sec. 256.101. **PROCEDURE ON FILING OF SECOND APPLICATION WHEN ORIGINAL APPLICATION HAS NOT BEEN HEARD.** (a) Creates this subsection from existing text. Makes no further changes to this subsection.

- (b) Prohibits the court from severing or bifurcating the proceeding on the applications described in Subsection (a) (relating to applications for the probate of a decedent's will or the appointment of a personal representative for the decedent's estate).

SECTION 2.06. Amends Section 304.001(c), Estates Code, as effective January 1, 2014, as follows:

- (c) Provides that if persons, rather than applicants for letters testamentary or of administration, are equally entitled to letters testamentary or of administration, the court:

- (1) is required to grant the letters to the person who, in the judgment of the court, is most likely to administer the estate advantageously; or
- (2) is authorized to grant the letters to two or more of those persons.

Makes nonsubstantive and conforming changes.

SECTION 2.07. Amends Subchapter B, Chapter 309, Estates Code, as effective January 1, 2014, by adding Section 309.056, as follows:

Sec. 309.056. PENALTY FOR FAILURE TO TIMELY FILE INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS. (a) Provides that this section applies only to a personal representative, including an independent executor or administrator, who does not file an inventory, appraisal, and list of claims within the period prescribed by Section 309.051 (Inventory and Appraisal) or any extension granted by the court.

(b) Authorizes any person interested in the estate on written complaint, or the court on the court's own motion, to have a personal representative to whom this section applies cited to file the inventory, appraisal, and list of claims and show cause for the failure to timely file.

(c) Authorizes the court on hearing to fine the personal representative in an amount not to exceed \$1,000 if the representative does not file the inventory, appraisal, and list of claims after being cited or does not show good cause for the failure to timely file.

(d) Provides that the personal representative and the representative's sureties, if any, are liable for any fine imposed under this section and for all damages and costs sustained by the representative's failure. Authorizes the fine, damages, and costs to be recovered in any court of competent jurisdiction.

SECTION 2.08. Amends Section 362.005, Estates Code, as effective January 1, 2014, as follows:

Sec. 362.005. CITATION AND NOTICE ON PRESENTATION OF ACCOUNT. (a) Requires the county clerk, on the presentation of an account for final settlement by a temporary or permanent personal representative, to issue citation to the persons and in the manner provided by Subsection (b), rather than in the manner provided by Subsections (c) and (d).

(b) Requires that citation issued under Subsection (a):

(1) contain:

- (A) a statement that an account for final settlement has been presented;
- (B) the time and place the court will consider the account;
- (C) a statement requiring the person cited to appear and contest the account, if the person wishes to contest the account; and
- (D) a copy of the account for final settlement; and

(2) be given to each heir or beneficiary of the decedent by certified mail, return receipt requested, unless the court by written order directs another method of service to be given.

Deletes existing text requiring the personal representative to give notice to each heir or beneficiary of the decedent by certified mail, return receipt requested,

unless the court by written order directs another type of notice to be given. Deletes existing text requiring the notice to include a copy of the account for final settlement. Makes nonsubstantive changes.

(c) Redesignates existing Subsection (d) as Subsection (c). Makes no further changes.

(d) Redesignates existing Subsection (e) as Subsection (d). Authorizes the court to allow the waiver of citation, rather than notice, of an account for final settlement in a proceeding concerning a decedent's estate.

SECTION 2.09. Amends Section 362.011, Estates Code, as effective January 1, 2014, as follows:

Sec. 362.011. New heading: PARTITION AND DISTRIBUTION OF ESTATE; DEPOSIT IN COURT'S REGISTRY. (a) Creates this subsection from existing text. Makes no further changes.

(b) Requires the court to order the personal representative to deposit in an account in the court's registry any remaining estate property that is money and to which a person who is unknown or missing is entitled. Requires the court, in addition, to order the representative to sell, on terms the court determines are best, remaining estate property that is not money and to which a person who is unknown or missing is entitled. Requires the court to order the representative to deposit the sale proceeds in an account in the court's registry. Requires the court to hold money deposited in an account under this subsection until the court renders:

(1) an order requiring money in the account to be paid to the previously unknown or missing person who is entitled to the money; or

(2) another order regarding the disposition of the money.

SECTION 2.10. Amends Section 551.001(a), Estates Code, as effective January 1, 2014, as follows:

(a) Requires the court, by written order, to require the executor or administrator of an estate to pay to the comptroller as provided by this subchapter the share of that estate of a person entitled to that share who does not demand the share, including any portion deposited in an account in the court's registry under Section 362.011(b), from the executor or administrator within six months after the date of, as applicable:

(1) a court order approving the report of the commissioners of partition made under Section 360.154 (Commissioners' Report); or

(2) the settlement of the final account of the executor or administrator.

SECTION 2.11. (1) Repealers: the changes in law made by Article 1 of this Act to Sections 34A, 49(a), 53C(a) and (b), 77, 83(a), 407, 408(b), (c), and (d), and 427, Texas Probate Code.

(2) Repealers: Sections 48(d) and 254, Texas Probate Code, as added by Article 1 of this Act.

(3) Repealer: Section 351.002 (Appeal Bond), Estates Code, as effective January 1, 2014.

SECTION 2.12. Effective date, this article: January 1, 2014.

### ARTICLE 3. GENERAL EFFECTIVE DATE

SECTION 3.01. Effective date, except as otherwise provided by this Act: September 1, 2011.