

## **BILL ANALYSIS**

Senate Research Center  
82R23343 MTB-F

C.S.S.B. 1198  
By: Rodriguez  
Jurisprudence  
4/27/2011  
Committee Report (Substituted)

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

As part of its ongoing revision of Texas probate, guardianship, and trust law, the Real Estate, Probate, and Trust Law Section of the State Bar of Texas has proposed several changes affecting decedents' estates.

C.S.S.B. 1198 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**

SECTION 1.01. Amends Section 4D, Texas Probate Code, by adding Subsection (b-1) and amending Subsections (e) and (g), as follows:

(b-1) Authorizes a judge, if the judge of a county court requests the assignment of a statutory probate court judge to hear a contested matter in a probate proceeding on the judge's own motion or on the motion of a party to the proceeding as provided by this section, to request that the statutory probate court judge be assigned to the entire proceeding on the judge's own motion or on the motion of a party.

(e) Provides that a statutory probate court judge assigned to a contested matter in a probate proceeding or to the entire proceeding under this section has the jurisdiction and authority granted to a statutory probate court by this code. Requires a statutory probate court judge assigned to hear only the contested matter in a probate proceeding, on resolution of the matter, rather than on resolution of a contested matter for which a statutory probate court judge is assigned under this section, including an appeal of the matter, to return the matter to the county court for further proceedings not inconsistent with the orders of the statutory probate court or court of appeals, as applicable. Requires a statutory probate court judge assigned to the entire probate proceeding as provided by Subsection (b-1) of this section, on resolution of the contested matter in the proceeding, including an appeal of the matter, to return the entire proceeding to the county court for further proceedings not inconsistent with the orders of the statutory probate court or court of appeals, as applicable.

(g) Requires the county court, if only the contested matter in a probate proceeding is assigned to a statutory probate court judge under this section, or if the contested matter in a probate proceeding is transferred to a district court under this section, to continue to exercise jurisdiction over the management of the estate, other than a contested matter, until final disposition of the contested matter is made in accordance with this section. Authorizes that any matter related to a probate proceeding in which a contested matter is transferred to a district court, rather than after a contested matter is transferred to a district court, be brought in the district court. Authorizes the district court in which a matter related to the proceeding, rather than probate proceeding, is filed, on its own motion or on the motion of any party, to find that the matter is not a contested matter and transfer the matter to the county court with jurisdiction of the management of the estate.

SECTION 1.02. Amends Section 4H, Texas Probate Code, to provide that a statutory probate court has concurrent jurisdiction with the district court in certain actions, including an action involving an inter vivos trust, testamentary trust, or charitable trust, including a charitable trust as defined by Section 123.001 (Definitions), Property Code.

SECTION 1.03. Amends the heading to Section 5B, Texas Probate Code, to read as follows:

Sec. 5B. TRANSFER TO STATUTORY PROBATE COURT OF PROCEEDING RELATED TO PROBATE PROCEEDING.

SECTION 1.04. Amends Section 6, Texas Probate Code, as follows:

Sec. 6. New heading: VENUE: PROBATE OF WILLS AND GRANTING OF LETTERS TESTAMENTARY AND OF ADMINISTRATION. Replaces references to the deceased with the decedent. Requires that wills be admitted to probate, and requires that letters testamentary or of administration be granted:

(1) in the county where the decedent resided, if the decedent had a domicile or fixed place of residence in this State;

(2) if the decedent had no domicile or fixed place of residence in this State but died in this State, then either in the county where the decedent's principal estate, rather than principal property, was at the time of the decedent's death, or in the county where the decedent died; or

(3) if the decedent had no domicile or fixed place of residence in this State, and died outside the limits of this State:

(A) in any county in this State where the decedent's nearest of kin reside; or

(B) if there are no kindred of the decedent in this State, then in the county where the decedent's principal estate was situated at the time of the decedent's death.

Deletes existing Subsections (a)-(d) designations. Makes conforming and nonsubstantive changes.

Deletes existing Subsection (e) requiring that citation, in the county where the applicant resides, when administration is for the purpose only of receiving funds or money due to a deceased person or his estate from any governmental source or agency; provided, that unless the mother or father or spouse or adult child of the deceased is applicant, be served personally on the living parents and spouses and adult children, if any, of the deceased person, or upon those who are alive and whose addresses are known to the applicant.

SECTION 1.05. Amends Chapter I, Texas Probate Code, by adding Sections 6A, 6B, 6C, and 6D, as follows:

Sec. 6A. VENUE: ACTION RELATED TO PROBATE PROCEEDING IN STATUTORY PROBATE COURT. Provides that, except as provided by Section 6B of this code, venue for any cause of action related to a probate proceeding pending in a statutory probate court is proper in the statutory probate court in which the decedent's estate is pending.

Sec. 6B. VENUE: CERTAIN ACTIONS INVOLVING PERSONAL REPRESENTATIVE. Provides that, notwithstanding any other provision of this chapter, the proper venue for an action by or against a personal representative for personal injury,

death, or property damages is determined under Section 15.007 (Conflict With Certain Provisions), Civil Practice and Remedies Code.

Sec. 6C. VENUE: HEIRSHIP PROCEEDINGS. (a) Provides that venue for a proceeding to determine a decedent's heirs is in:

(1) the court of the county in which a proceeding admitting the decedent's will to probate or administering the decedent's estate was most recently pending; or

(2) the court of the county in which venue would be proper for commencement of an administration of the decedent's estate under Section 6 (Venue for Probate of Wills and Administration of Estates or Decedents) of this code if:

(A) no will of the decedent has been admitted to probate in this state and no administration of the decedent's estate has been granted in this state; or

(B) the proceeding is commenced by the trustee of a trust holding assets for the benefit of the decedent.

(b) Provides that, notwithstanding Subsection (a) of this section and Section 6 of this code, if there is no administration pending of the estate of a deceased ward who died intestate, venue for a proceeding to determine the deceased ward's heirs is in the probate court in which the guardianship proceedings with respect to the ward's estate were pending on the date of the ward's death. Provides that a proceeding described by this subsection is prohibited from being brought as part of the guardianship proceedings with respect to the ward's estate, but rather is required to be filed as a separate clause in which the court is authorized determine the heirs' respective shares and interests in the estate as provided by the laws of this state.

Sec. 6D. VENUE: CERTAIN ACTIONS INVOLVING BREACH OF FIDUCIARY DUTY. Provides that, notwithstanding any other provision of this chapter, venue for a proceeding brought by the attorney general alleging breach of a fiduciary duty by a charitable entity or a fiduciary or managerial agent of a charitable trust is determined under Section 123.005 (Breach of Fiduciary Duty: Venue), Property Code.

SECTION 1.06. Amends Chapter I, Texas Probate Code, by amending Section 8 and adding Sections 8A and 8B, as follows:

Sec. 8. New heading: CONCURRENT VENUE IN PROBATE PROCEEDING. (a) Concurrent Venue. Requires the court in which the application for the proceeding is first filed, when two or more courts have concurrent venue of a probate proceeding, rather than the court in which the application for a proceeding in probate or determination of heirship, when two or more courts have concurrent venue of an estate or a proceeding to declare heirship under Section 48(a) (relating to determining and declaring who are the heirs of a certain estate) of this code, to have and retain jurisdiction of the estate or heirship proceeding, as appropriate, rather than jurisdiction of the estate or heirship proceeding, as appropriate, to the exclusion of the other court or courts. Requires that the proceeding be deemed commenced by the filing of an application averring facts sufficient to confer venue, and that the proceeding first legally commenced extend to all of the property of the decedent or the decedent's estate. Requires that a bona fide purchaser of real property in reliance on any such subsequent proceeding, without knowledge of its invalidity, be protected in such purchase unless before the purchase the decree admitting the will to probate, determining heirship, or granting administration in the prior proceeding is, rather than is required to be, recorded in the office of the county clerk of the county in which such property is located.

(b) New heading: Probate Proceedings in More Than One County. Provides that, if probate proceedings involving the same estate are commenced in more than one county, each proceeding commenced in a county other than the county in which a proceeding was first commenced is stayed until final determination of venue by the court in the county where first commenced. Deletes existing text requiring that a proceeding, if the proceeding in probate or to declare heirship under Section 48(a) of this code is commenced in more than one county, be stayed except in the county where first commenced until final determination of venue in the county where first commenced.

(c) Jurisdiction to Determine Venue. Provides that, subject to Subsections (a) and (b) of this section, a court in which an application for a probate proceeding is filed has jurisdiction to determine venue for the proceeding and for any matter related to the proceeding. Provides that a court's determination under this subsection is not subject to collateral attack.

Sec. 8A. New heading: TRANSFER OF VENUE IN PROBATE PROCEEDING. Creates this section from existing text. (a) Creates this subsection from existing text. Transfer for Want of Venue. Requires a court, if it appears to the court at any time before the final decree in a probate proceeding that the proceeding was commenced in the court which did not have priority of venue over such proceeding, on the application of any interested person, to transfer the proceeding to the proper county by transmitting to the proper court in such county the original file in such case, together with certified copies of all entries in the judge's probate docket theretofore made, and requires that the proceeding, rather than the probate of the will, determination of heirship, or administration of the estate, in such county be completed in the same manner as if the proceeding had originally been instituted therein; but, if the question as to priority of venue is not raised before final decree in the proceedings is announced, the finality of such decree shall not be affected by any error in venue.

(b) New heading: Transfer for Convenience. Authorizes the court, in its discretion, if it appears to the court at any time before a probate proceeding is concluded that it would be in the best interest of the estate or, if there is no administration of the estate, that it would be in the best interest of the heirs or beneficiaries of the decedent's will, rather than if it appears to the court at any time before the estate is closed or, if there is no administration of the estate, when the proceeding in probate or to declare heirship is concluded that it would be in the best interest of the estate or, if there is no administration of the estate, that it would be in the best interest of the heirs or beneficiaries of the decedent's will, to order the proceeding transferred to the proper court in any other county in this state.

Sec. 8B. VALIDATION OF PRIOR PROCEEDINGS. Redesignates existing Subsection (d) as Section 8B. Requires that all orders entered in connection with the proceeding, when a probate proceeding is transferred to another county under any provision of Section 8 or 8A of this code, be valid and be recognized in the second court, provided such orders were made and entered in conformance with the procedure prescribed by this code. Makes nonsubstantive changes.

Deletes existing Subsection (e) (Jurisdiction to Determine Venue) requiring any court in which there has been filed an application for a proceeding in probate or determination of heirship to have full jurisdiction to determine the venue of the proceeding in probate or heirship proceeding, and of any proceeding relating thereto, and prohibits its determination from being subject to collateral attack.

SECTION 1.07. Amends Section 15, Texas Probate Code, as follows:

Sec. 15. CASE FILES. Requires the county clerk to maintain a case file for each decedent's estate in which a probate proceeding has been filed. Requires that the case file contain all orders, judgments, and proceedings of the court and any other probate filing

with the court, including certain documents, including affidavits in lieu of inventories, appraisements, and lists of claims.

SECTION 1.08. Amends Section 37A, Texas Probate Code, by amending Subsections (h) and (i) and adding Subsections (h-1) and (p), as follows:

(h) New heading: Time for Filing of Disclaimer. Requires that a written memorandum of disclaimer disclaiming a present or future interest, if the beneficiary is a charitable organization or a governmental agency of the state, be filed not later than the later of:

(1) the first anniversary of the date the beneficiary receives the notice required by Section 128A (Notice to Certain Beneficiaries After Probate of Will) of this code; or

(2) the expiration of the six-month period following the date the personal representative files:

(A) the inventory, appraisal, and list of claims due or owing to the estate; or

(B) the affidavit in lieu of the inventory, appraisal, and list of claims.

(h-1) New heading: Filing of Disclaimer. Creates this subsection from existing text. Makes no further changes.

(i) Notice of Disclaimer. Requires that the notices required by this section, if the beneficiary is a charitable organization or government agency of the state, be filed not later than the later of:

(1) the first anniversary of the date the beneficiary receives the notice required by Section 128A of this code; or

(2) the expiration of the six-month period following the date the personal representative files:

(A) the inventory, appraisal, and list of claims due or owing to the estate; or

(B) the affidavit in lieu of the inventory, appraisal, and list of claims, rather than whichever occurs later.

(p) Extension of Time for Certain Disclaimers. Authorizes that a disclaimer with respect to an interest in property passing by reason of the death of a decedent dying after December 31, 2009, but before December 17, 2010, notwithstanding the periods prescribed by Subsections (h) and (i) of this section, be executed and filed, and notice of the disclaimer be given, not later than nine months after December 17, 2010. Provides that a disclaimer filed and for which notice is given during this extended period is valid and is required to be treated as if the disclaimer had been filed and notice had been given within the periods prescribed by Subsections (h) and (i) of this section. Provides that this subsection does not apply to a disclaimer made by a beneficiary that is a charitable organization or governmental agency of the state.

SECTION 1.09. Amends the heading to Section 48, Texas Probate Code, to read as follows:

Sec. 48. PROCEEDINGS TO DECLARE HEIRSHIP.

SECTION 1.10. Amends Section 48(a), Texas Probate Code, to authorize the court of the county in which venue would be proper under Section 6C of this code, rather than the court of the county in which such proceedings were last pending, or in the event no will of such decedent has been admitted to probate in this state, and no administration has been granted in this state

upon the estate of such decedent, then the court of the county in which venue would be proper for commencement of an administration of the decedent's estate under Section 6 of this code, when a person dies intestate owning or entitled to real or personal property in Texas, and there shall have been no administration in this state upon the person's estate; or when it is necessary for the trustee of a trust holding assets for the benefit of a decedent to determine the heirs of the decedent; or when there has been a will probated in this state or elsewhere, or an administration in this state upon the estate of such decedent, and any real or personal property in this state has been omitted from such will or from such administration, or no final disposition thereof has been made in such administration, to determine and declare in the manner hereinafter provided who are the heirs and only heirs of such decedent, and their respective shares and interests, under the laws of this state, in the estate of such decedent or, if applicable, in the trust, and requires that the proceedings therefore be known as proceedings to declare heirship. Makes a nonsubstantive change.

SECTION 1.11. Amends Section 49(a), Texas Probate Code, as follows:

(a) Authorizes such proceedings to be instituted and maintained under a circumstance specified in Section 48(a) of this code, rather than in any of the instances enumerated above, by the qualified personal representative of the estate of such decedent, by a party seeking the appointment of an independent administrator under Section 145 (Independent Administration) of this code, by the trustee of a trust holding assets for the benefit of the decedent, by any person or persons claiming to be a secured 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. Requires that an application, in such a case, be filed in a proper court stating certain information, including the names and residences of the decedent's heirs, the relationship of each heir to the decedent, and the true interest of the applicant and each of the heirs in the estate of the decedent or in the trust, as applicable, and a general description of all the real and personal property belonging to the estate of the decedent or held in trust for the benefit of the decedent, as applicable.

SECTION 1.12. Amends Section 59, Texas Probate Code, by amending Subsections (a) and (b) and adding Subsection (a-1), as follows:

(a) Authorizes that such a will or testament, at the time of its execution or at any subsequent date during the lifetime of the testator and the witnesses, be made self-proved, and the testimony of the witnesses in the probate thereof be made unnecessary, by the affidavits of the testator and the attesting witnesses, made before an officer authorized to administer oaths, rather than made before an officer authorized to administer oaths under the laws of this state.

(a-1) Authorizes a will, as an alternative to the self-proving of a will by the affidavits of the testator and the attesting witnesses under Subsection (a) of this section, to be simultaneously executed, attested, and made self-proved before an officer authorized to administer oaths under the laws of this state, and provides that the testimony of the witnesses in the probate of the will may be made unnecessary, with the inclusion in the will of a certain form and content. Sets forth the required language.

(b) Provides that a will with a self-proving affidavit subscribed and sworn to by the testator and witnesses attached or annexed to the will, or a will simultaneously executed, attested, and made self-proved as provided by Subsection (a-1) of this section, is a "self-proved will." Provides that substantial compliance with the form provided by Subsection (a) or (a-1) of this section, rather than with the form of such affidavit, shall suffice to cause the will to be self-proved. Provides that a signature on a self-proving affidavit as provided by Subsection (a) of this section is considered a signature to the will if necessary to prove that the will was signed by the testator or witnesses, or both, but in that case, the will may not be considered a self-proved will.

SECTION 1.13. Amends Section 64, Texas Probate Code, as follows:

Sec. 64. FORFEITURE CLAUSE. Provides that a provision in a will that would cause a forfeiture of or void a devise or provision in favor of a person for bringing any court action, including contesting a will, is unenforceable if:

- (1) just cause existed, rather than is probable cause exists, for bringing the action; and
- (2) the action was brought and maintained in good faith.

Makes a nonsubstantive change.

SECTION 1.14. Amends Section 67, Texas Probate Code, by amending Subsections (a) and (b) and adding Subsection (e), as follows:

(a) Requires a pretermitted child, whenever a pretermitted child is not mentioned in the testator's will, provided for in the testator's will, or otherwise provided for by the testator, to succeed to a portion of the testator's estate as provided by Subsection (a)(1) or (a)(2) of this section, except as limited by Subsection (e) of this section.

(1) Provides that if the testator has one or more children living when he executes his last will, and:

(A) No provision is made therein for any such child, a pretermitted child succeeds to the portion of the testator's separate and community estate to which the pretermitted child would have been entitled pursuant to Section 38(a) (relating to an estate descending and passing in parcenary to kindred in a certain manner) of this code had the testator died intestate without a surviving spouse owning only that portion of his estate not devised or bequeathed to either the testator's surviving spouse or the other parent of the pretermitted child.

(B) Provision, whether vested or contingent, is made therein for one or more of such children, a pretermitted child is entitled to share in the testator's estate in a certain manner.

(2) Provides that if the testator has no child living when he executes his last will, the pretermitted child succeeds to the portion of the testator's separate and community estate to which the pretermitted child would have been entitled pursuant to Section 38(a) of this code had the testator died intestate without a surviving spouse owning only that portion of his estate not devised or bequeathed to either the testator's surviving spouse or the other parent of the pretermitted child.

(b) Authorizes the pretermitted child to recover the share of the testator's estate to which he is entitled either from the other children under Subsection (a)(1)(B) or the testamentary beneficiaries under Subsections (a)(1)(A) and (a)(2) other than the testator's surviving spouse and the other parent of the pretermitted child, ratably, out of the portions of such estate passing to such persons under the will. Requires that, in abating the interests of such beneficiaries, the character of the testamentary plan adopted by the testator be preserved to the maximum extent possible.

(e) Prohibits the portion of the testator's estate to which the pretermitted child is entitled under Subsection (a)(1)(A) or (a)(2) of this section, if a pretermitted child's other parent is not the surviving spouse of the testator, from reducing the portion of the testator's estate passing to the testator's surviving spouse by more than one-half.

SECTION 1.15. Amends Section 81(a), Texas Probate Code, as follows:

(a) For Probate of a Written Will. Requires that an application for probate of a written will state certain information, including whether a marriage of the decedent was ever dissolved after the will was made and if so, when and from whom, rather than , whether a marriage of the decedent was ever dissolved after the will was made whether by divorce, annulment, or a declaration that the marriage was void, and if so, when and from whom.

SECTION 1.16. Amends Section 84(a), Texas Probate Code, as follows:

(a)(1) Requires that, if a will is self-proved as provided in Section 59 of this code or, if executed in another state or foreign country, is self-proved in accordance with the laws of the state or foreign country of the testator's domicile at the time of the execution, no further proof of its execution with the formalities and solemnities and under the circumstances required to make it a valid will are necessary.

(2) Provides that for purposes of Subdivision (1) of this subsection, a will is considered self-proved if the will, or an affidavit of the testator and attesting witnesses attached or annexed to the will, provides that:

(A) the testator declared that the testator signed the instrument as the testator's will, the testator signed it willingly or willingly directed another to sign for the testator, the testator executed the will as the testator's free and voluntary act for the purposes expressed in the instrument, the testator is of sound mind and under no constraint or undue influence, and the testator is eighteen years of age or over, or if under that age, was or had been lawfully married, or was then a member of the armed forces of the United States, an auxiliary of the armed forces of the United States, or the United States Maritime Service; and

(B) the witnesses declared that the testator signed the instrument as the testator's will, the testator signed it willingly or willingly directed another to sign for the testator, each of the witnesses, in the presence and hearing of the testator, signed the will as witness to the testator's signing, and to the best of their knowledge the testator was of sound mind and under no constraint or undue influence, and the testator was eighteen years of age or over, or if under that age, was or had been lawfully married, or was then a member of the armed forces of the United States, an auxiliary of the armed forces of the United States, or the United States Maritime Service.

SECTION 1.17. Amends Section 89A(a), Texas Probate Code, to require that an application for probate of a will as a muniment of title state certain information, including whether a marriage of the decedent was ever dissolved after the will was made and if so, when and from whom, rather than after the will was made, whether by divorce, annulment, or a declaration that the marriage was void, and if so, when and from whom.

SECTION 1.18. Reenacts Section 128A, Texas Probate Code, as amended by Chapters 801 (S.B. 593) and 1170 (H.B. 391), Acts of the 80th Legislature, Regular Session, 2007, and amends it, as follows:

Sec. 128A. NOTICE TO CERTAIN BENEFICIARIES AFTER PROBATE OF WILL.

(a) Redefines, in this section, "beneficiary."

(a-1) Provides that this section does not apply to the probate of a will as a muniment of title.

(b) Makes no changes to this subsection.

(c) Requires the personal representative, notwithstanding the requirement under Subsection (b) of this section that the personal representative give the notice to the beneficiary, to give the notice with respect to a certain beneficiary described by this subsection, including if the beneficiary is a trustee of a trust, to the trustee,

unless the personal representative is the trustee, in which case the personal representative shall, except as provided by Subsection (c-1) of this section, give the 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.

(c-1) Provides that the personal representative is not required to give the notice otherwise required by Subsection (c)(1) of this section to a person eligible to receive trust income at the sole discretion of the trustee of a trust if:

- (1) the personal representative has given the notice to an ancestor of the person who has a similar interest in the trust; and
- (2) no apparent conflict exists between the ancestor and the person eligible to receive trust income.

(d) Provides that a personal representative is not required to give the notice otherwise required by this section to a beneficiary who:

- (1) has made an appearance in the proceeding with respect to the decedent's estate before the will was admitted to probate;
- (2) is entitled to receive aggregate gifts under the will with an estimated value of \$2,000 or less;
- (3) has received all gifts to which the beneficiary is entitled under the will not later than the 60th day after the date of the order admitting the decedent's will to probate; or
- (4) has received a copy of the will that was admitted to probate or a written summary of the gifts to the beneficiary under the will and has waived the right to receive the notice in an instrument that:
  - (A) either acknowledges the receipt of the copy of the will or includes the written summary of the gifts to the beneficiary under the will;
  - (B) is signed by the beneficiary; and
  - (C) is filed with the court.

Makes nonsubstantive changes.

(e) Requires that the notice required by this section include, rather than state:

- (1) the name and address of the beneficiary to whom the notice is given or, for a beneficiary described by Subsection (c) of this section, the name and address of the beneficiary for whom the notice is given and of the person to whom the notice is given;
- (2) the decedent's name;
- (3) a statement that the decedent's will has been admitted to probate;
- (4) a statement that the beneficiary to whom or for whom the notice is given is named as a beneficiary in the will;
- (5) the personal representative's name and contact information; and
- (6) either:

(A) a copy of the will that was admitted to probate and the order admitting the will to probate; or

(B) a summary of the gifts to the beneficiary under the will, the court in which the will was admitted to probate, the docket number assigned to the estate, the date the will was admitted to probate, and, if different, the date the court appointed the personal representative.

Makes nonsubstantive changes.

(f) Makes no changes to this subsection.

(g) Requires the personal representative, 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 certain information, including the name and address of each beneficiary to whom notice was not required to be given under Subsection (d)(2), (3), or (4) of this section, rather than each beneficiary who filed a waiver of the notice.

(h) Authorizes that the affidavit or certificate required by Subsection (g) (relating to filing a sworn affidavit of the personal representative, or a certificate signed by the personal representative's attorney stating certain information) of this section be included with any pleading or other document filed with the clerk of the court, including the inventory, appraisal, and list of claims, an affidavit in lieu of the inventory, appraisal, and list of claims, or an application for an extension of the deadline to file the inventory, appraisal, and list of claims or an affidavit in lieu of 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 (g) of this section.

SECTION 1.19. Amends Section 143, Texas Probate Code, as follows:

Sec. 143. SUMMARY PROCEEDINGS FOR SMALL ESTATES AFTER PERSONAL REPRESENTATIVE APPOINTED. Requires the personal representative, upon order of the court, whenever, after the inventory, appraisal, and list of claims or the affidavit in lieu of the inventory, appraisal, and list of claims has been filed by a personal representative, it is established that the estate of a decedent, exclusive of the homestead and exempt property and family allowance to the surviving spouse and minor children, does not exceed the amount sufficient to pay the claims of Classes One to Four, inclusive, as claims are hereinafter classified, to pay the claims in the order provided and to the extent permitted by the assets of the estate subject to the payment of such claims, and thereafter present his account with an application for the settlement and allowance thereof.

SECTION 1.20. Amends Sections 145(g)-(j), Texas Probate Code, as follows:

(g) Prohibits the court from appointing an independent administrator to serve in an intestate administration unless and until the parties seeking appointment of the independent administrator have been determined, through a proceeding to declare heirship under Chapter III (Determination of Heirship) of this code, to constitute all of the decedent's heirs. Deletes existing text providing that in no case shall any independent administrator be appointed by any court to serve in any intestate administration until those parties seeking the appointment of said independent administrator offer clear and convincing evidence to the court that they constitute all of the said decedent's heirs.

(h) Provides that, when an independent administration has been created, and the order appointing an independent executor has been entered by the county court, and the inventory, appraisal, and list aforesaid has been filed by the executor and approved by the county court or an affidavit in lieu of the inventory, appraisal, and list of claims has been filed by the executor, as long as the estate is represented by an independent executor, further action of any nature shall not be had in the county court except where this code specifically and explicitly provides for some action in the county court.

(i) Authorizes the natural guardian or guardians of the minor, alternatively, if the distributee who is an incapacitated person is a minor and has no guardian of the person, to consent on the minor's behalf if there is no conflict of interest between the minor and the natural guardian or guardians.

(j) Authorizes the trustee or cotrustee, if a trust beneficiary who is considered to be a distributee under this subsection is an incapacitated person, to file the application or give the consent, provided that the trustee or cotrustee is not the person proposed to serve as the independent executor.

SECTION 1.21. Amends Part 4, Chapter VI, Texas Probate Code, by adding Sections 145A, 145B, and 145C, as follows:

Sec. 145A. GRANTING POWER OF SALE BY AGREEMENT. Authorizes the court, in a situation in which a decedent does not have a will or a decedent's will does not contain language authorizing the personal representative to sell real property or contains language that is not sufficient to grant the representative that authority, to include in an order appointing an independent executor under Section 145 of this code any general or specific authority regarding the power of the independent executor to sell real property that may be consented to by the beneficiaries who are to receive any interest in the real property in the application for independent administration or in their consents to the independent administration. Authorizes the independent executor, in such event, to sell the real property under the authority granted in the court order without the further consent of those beneficiaries.

Sec. 145B. INDEPENDENT EXECUTORS MAY ACT WITHOUT COURT APPROVAL. Authorizes any action that a personal representative subject to court supervision may take with or without a court order, unless this code specifically provides otherwise, to be taken by an independent executor without a court order. Provides that the other provisions of this part are designed to provide additional guidance regarding independent administrations in specified situations, and are not designed to limit by omission or otherwise the application of the general principles set forth in this part.

Sec. 145C. POWER OF SALE OF ESTATE PROPERTY. (a) Definition. Defines in this section, "independent executor."

(b) General. Provides that, unless limited by the terms of a will, an independent executor, in addition to any power of sale of estate property given in the will, and an independent administrator has the same power of sale for the same purposes as a personal representative has in a supervised administration, but without the requirement of court approval. Provides that the procedural requirements applicable to a supervised administration do not apply.

(c) Protection of Person Purchasing Estate Property. (1) Provides that a person who is not a devisee or heir is not required to inquire into the power of sale of estate property of the independent executor or independent administrator or the propriety of the exercise of the power of sale if the person deals with the independent executor or independent administrator in good faith and:

(A) a power of sale is granted to the independent executor in the will;

(B) a power of sale is granted under Section 145A of this code in the court order appointing the independent executor or independent administrator; or

(C) the independent executor or independent administrator provides an affidavit, executed and sworn to under oath and recorded in the deed records of the county where the property is located, that the sale is necessary or advisable for any of the purposes described in Section 341(1) (relating to paying expenses of administration, funeral expenses and expenses of last sickness of decedents, and allowances and claims against the estates of decedents) of this code.

(2) Provides that, as to acts undertaken in good faith reliance, the affidavit described by Subsection (c)(1)(C) of this section is conclusive proof, as between a purchaser of property from an estate, and the personal representative of the estate or the heirs and distributees of the estate, with respect to the authority of the independent executor or independent administrator to sell the property. Provides that the signature or joinder of a devisee or heir who has an interest in the property being sold as described in this section is not necessary for the purchaser to obtain all right, title, and interest of the estate in the property being sold.

(3) Provides that this section does not relieve the independent executor or independent administrator from any duty owed to a devisee or heir in relation, directly or indirectly, to the sale.

(d) No Limitations. Provides that this section does not limit the authority of an independent executor or independent administrator to take any other action without court supervision or approval with respect to estate assets that may take place in a supervised administration, for purposes and within the scope otherwise authorized by this code, including the authority to enter into a lease and to borrow money.

SECTION 1.22. Amends Section 146, Texas Probate Code, by adding Subsections (a-1) and (b-1)-(b-7) and amending Subsection (b), as follows:

(a-1) Statement in Notice of Claim. Requires that the notice provided under Subsection (a)(2) (authorizing giving permitted notice and barring a claim) of this section, to be effective, include, in addition to the other information required by Section 294(d) (relating to giving notice to an unsecured creditor having a claim for money against the estate expressly stating certain information or the claim is barred, if the claim is not barred by the general statutes of limitation) of this code, a statement that a claim may be effectively presented by only one of the methods prescribed by this section.

(b) Secured Claims for Money. Requires a creditor whose claim is secured by real property In addition to giving the notice within this period, to record a notice of the creditor's election under this subsection in the deed records of the county in which the real property is located. Requires that the claim, if no election to be a matured secured creditor is made, or the election is made, but not within the prescribed period, or is made within the prescribed period but the creditor has a lien against real property and fails to record notice of the claim in the deed records as required within the prescribed period, be a preferred debt and lien against the specific property securing the indebtedness and be paid according to the terms of the contract that secured the lien, and prohibits the claim from being asserted against other assets of the estate, rather than providing that, if the election is not made, the claim is a preferred debt and lien against the specific property securing the indebtedness and is required to be paid according to the terms of the contract that secured the lien, and the claim is prohibited from being asserted against other assets of the estate.

(b-1) Matured Secured Claims. (1) Provides that a claim approved as a matured secured claim under Subsection (b) of this section remains secured by any lien or security interest against the specific property securing payment of the claim but subordinated to the payment from the property of claims having a higher classification under Section 322 (Classifications of Claims Against Estates of Decedent) of this code. Provides that, however, the secured creditor:

(A) is not entitled to exercise any remedies in a manner that prevents the payment of the higher priority claims and allowances; and

(B) during the administration of the estate, is not entitled to exercise any contractual collection rights, including the power to foreclose, without either the prior written approval of the independent executor or court approval.

(2) Prohibits Subdivision (1) of this subsection from being construed to suspend or otherwise prevent a creditor with a matured secured claim from seeking judicial relief of any kind or from executing any judgment against an independent executor. Authorizes any third party acting in good faith, except with respect to real property, to obtain good title with respect to an estate asset acquired through a secured creditor's extrajudicial collection rights, without regard to whether the creditor had the right to collect the asset or whether the creditor acted improperly in exercising those rights during an estate administration due to having elected matured secured status.

(3) Requires the independent executor, if a claim approved or established by suit as a matured secured claim is secured by property passing to one or more devisees in accordance with Section 71A (No Right to Exoneration of Debts; Exception) of this code, to collect from the devisees the amount of the debt and pay that amount to the claimant or to sell the property and pay out of the sale proceeds the claim and associated expenses of sale consistent with the provisions of Section 306(c-1) (relating to collecting from the devisees the amount of the debt and pay that amount to the claimant in satisfaction of the claim) of this code applicable to court supervised administrations.

(b-2) Preferred Debt and Lien Claims. Provides that, during an independent administration, a secured creditor whose claim is a preferred debt and lien against property securing the indebtedness under Subsection (b) of this section is free to exercise any judicial or extrajudicial collection rights, including the right to foreclosure and execution; provided, however, that the creditor does not have the right to conduct a nonjudicial foreclosure sale within six months after letters are granted.

(b-3) Certain Unsecured Claims; Barring of Claims. Requires an unsecured creditor who has a claim for money against an estate and who receives a notice under Section 294(d) of this code to give to the independent executor notice of the nature and amount of the claim not later than the 120th day after the date the notice is received or the claim is barred.

(b-4) Notices Required by Creditors. Requires that notice to the independent executor required by Subsections (b) and (b-3) of this section be contained in:

(1) a written instrument that is hand-delivered with proof of receipt, or mailed by certified mail, return receipt requested with proof of receipt, to the independent executor or the executor's attorney;

(2) a pleading filed in a lawsuit with respect to the claim; or

(3) a written instrument or pleading filed in the court in which the administration of the estate is pending.

(b-5) Filing Requirements Applicable. Provides that Subsection (b-4) of this section does not exempt a creditor who elects matured secured status from the filing requirements of Subsection (b) of this section, to the extent those requirements are applicable.

(b-6) Statute of Limitations. Requires that the running of the statute of limitations, except as otherwise provided by Section 16.062 (Effect of Death), Civil Practice and Remedies Code, be tolled only by a written approval of a claim signed by an independent executor, a pleading filed in a suit pending at the time of the decedent's death, or a suit brought by the creditor against the independent executor. Provides that, in particular, the presentation of a statement or claim, or a notice with respect to a claim, to an independent executor does not toll the running of the statute of limitations with respect to that claim.

(b-7) Other Claim Procedures of Code Generally Do Not Apply. Provides that, except as otherwise provided by this section, the procedural provisions of this code governing creditor claims in supervised administrations do not apply to independent administrations. Provides that, by way of example, but not as a limitation:

(1) Section 313 (Suit on Rejected Claim) of this code does not apply to independent administrations, and, consequently, a creditor's claim may not be barred solely because the creditor failed to file a suit not later than the 90th day after the date an independent executor rejected the claim or with respect to a claim for which the independent executor takes no action; and

(2) Sections 306(f) (Foreclosure of Preferred Liens), (g) (Citation), (h) (Setting of Hearing on Application), (i) (Hearing), (j) (Appeal), and (k) (Unsuccessful Foreclosure) of this code do not apply to independent administrations.

SECTION 1.23. Amends Section 149B(a), Texas Probate Code, to authorize a person interested in the estate then subject to independent administration, in addition to or in lieu of the right to an accounting provided by Section 149A (Accounting) of this code, at any time after the expiration of two years from the date the court clerk first issues letters testamentary or of administration to any personal representative of an estate, rather than the date that an independent administration was created and the order appointing an independent executor was entered, to petition the county court, as that term is defined by Section 3 (Definitions and Use of Terms) of this code, for an accounting and distribution.

SECTION 1.24. Amends Section 149C(a), Texas Probate Code, to authorize the county court, as that term is defined by Section 3 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 certain criteria are met, including the independent executor fails to return within ninety days after qualification, unless such time is extended by order of the court, either an inventory of the property of the estate and list of claims that have come to the independent executor's knowledge or an affidavit in lieu of the inventory, appraisal, and list of claims.

SECTION 1.25. Amends Section 151, Texas Probate Code, as follows:

Sec. 151. New heading: CLOSING INDEPENDENT ADMINISTRATION BY CLOSING REPORT OR NOTICE OF CLOSING ESTATE. (a) New heading: Filing of Closing Report or Notice of Closing Estate. Authorizes the independent executor, when all of the debts known to exist against the estate have been paid, or when they have been paid so far as the assets in the hands of the independent executor will permit, when there is no pending litigation, and when the independent executor has distributed to the persons entitled thereto all assets of the estate, if any, remaining after payment of debts, to file with the court a closing report or a notice of closing of the estate.

(a-1) Closing Report. Authorizes an independent executor to file a closing report verified by affidavit that:

(1) shows:

(A) the property of the estate which came into the possession of the independent executor;

(B) the debts that have been paid;

(C) the debts, if any, still owing by the estate;

(D) the property of the estate, if any, remaining on hand after payment of debts; and

(E) the names and residences of the persons to whom the property of the estate, if any, remaining on hand after payment of debts has been distributed; and

(2) includes signed receipts or other proof of delivery of property to the distributees named in the closing report if the closing report reflects that there was property remaining on hand after payment of debts.

Makes nonsubstantive changes.

(b) Notice of Closing Estate. (1) Authorizes an independent executor, instead of filing a closing report under Subsection (a-1) of this section, to file a notice of closing estate verified by affidavit that states:

(A) that all debts known to exist against the estate have been paid or have been paid to the extent permitted by the assets in the independent executor's possession;

(B) that all remaining assets of the estate, if any, have been distributed; and

(C) the names and addresses of the distributees to whom the property of the estate, if any, remaining on hand after payment of debts has been distributed.

(2) Requires the independent executor, before filing the notice, to provide to each distributee of the estate a copy of the notice of closing estate. Requires that the notice of closing estate filed by the independent executor include signed receipts or other proof that all distributees have received a copy of the notice of closing estate.

(c) Redesignates existing Subsection (b) as Subsection (c). New heading: Effect of Filing Closing Report or Notice of Closing Estate. (1) Provides that the independent administration of an estate is considered closed 30 days after the date of the filing of a closing report or notice of closing estate unless an interested person files an objection with the court within that time. Provides that, if an interested person files an objection within the 30-day period, the independent administration of the estate is closed when the objection has been disposed of or the court signs an order closing the estate.

(2) Provides that the closing of an independent administration by filing of a closing report or notice of closing estate terminates the power and authority of the independent executor, but shall not relieve the independent executor from liability for any mismanagement of the estate or from liability for any false statements contained in the report or notice, rather than requiring that the filing of such an affidavit and proof of delivery, if required, terminate the independent administration and the power and authority of the independent executor, but is prohibited from

relieving the independent executor from liability for any mismanagement of the estate or from liability for any false statements contained in the affidavit.

(3) Requires persons dealing with properties of the estate, or with claims against the estate, when a closing report or notice of closing estate, rather than such an affidavit, has been filed, to deal directly with the distributees of the estate; and the acts of the distributees with respect to the properties or claims shall in all ways be valid and binding as regards the persons with whom they deal, notwithstanding any false statements made by the independent executor in the report or notice. Makes a conforming and nonsubstantive changes.

(4) Redesignates existing Subdivision (2) as Subdivision (4). Provides that, if the independent executor is required to give bond, the independent executor's filing of the closing report, rather than the independent executor's filing of the affidavit, and proof of delivery, if required, automatically releases the sureties on the bond from all liability for the future acts of the principal. Provides that the filing of a notice of closing estate does not release the sureties on the bond of an independent executor.

(d) Redesignates existing Subsection (c) as Subsection (d). New heading: Authority to Transfer Property of a Decedent After Filing the Closing Report or Notice of Closing Estate. Requires that an independent executor's closing report or notice of closing estate, rather than an independent executor's affidavit closing the independent administration, constitute sufficient legal authority to all persons owing any money, having custody of any property, or acting as registrar or transfer agent or trustee of any evidence of interest, indebtedness, property, or right that belongs to the estate, for payment or transfer without additional administration to the distributees, rather than to the persons, described in the will as entitled to receive the particular asset or who as heirs at law are entitled to receive the asset. Authorizes the distributees described in the will as entitled to receive the particular asset or the heirs at law entitled to receive the asset to enforce their right to the payment or transfer by suit. Makes a conforming change.

(e) Redesignates existing Subsection (d) as Subsection (e). Delivery Subject to Receipt or Proof of Delivery. Prohibits an independent executor from being required to deliver tangible or intangible personal property to a distributee unless the independent executor receives, rather than shall receive, at or before the time of delivery of the property, a signed receipt or other proof of delivery of the property to the distributee. Prohibits an independent executor from requiring a waiver or release from the distributee as a condition of delivery of property to a distributee. Makes a nonsubstantive change.

SECTION 1.26. Amends Section 227, Texas Probate Code, as follows:

Sec. 227. New heading: SUCCESSORS RETURN OF INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS OR AFFIDAVIT IN LIEU OF INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS. Requires an appointee who has been qualified to succeed to a prior personal representative to make and return to the court an inventory, appraisal, and list of claims of the estate, or if the appointee is an independent executor, to make and return to the court that document or file an affidavit in lieu of the inventory, appraisal, and list of claims, within ninety days after being qualified, in like manner as is provided for original appointees, rather than required of original appointees; and requires an appointee to also in like manner return additional inventories, appraisements, and lists of claims or file additional affidavits.

SECTION 1.27. Amends Section 250, Texas Probate Code, as follows:

Sec. 250. New heading: INVENTORY AND APPRAISEMENT; AFFIDAVIT IN LIEU OF INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS. (a) Creates this subsection from existing text. Requires the representative, within ninety days after the representative's qualification, unless a longer time shall be granted by the court, to prepare and file with the clerk of court a verified, full, and detailed inventory, in one written instrument, of all the property of such estate which has come to the representative's possession or knowledge, which inventory shall include:

- (1) all real property of the estate situated in the State of Texas; and
- (2) all personal property of the estate wherever situated.

Makes nonsubstantive changes.

(b) Creates this subsection from existing text. Requires the representative to set out in the inventory the representative's appraisal of the fair market value of each item thereof as of the date of death in the case of grant of letters testamentary or of administration, as the case may be; requires the representative, provided that, if the court shall appoint an appraiser or appraisers of the estate, to determine the fair market value of each item of the inventory with the assistance of such appraiser or appraisers and to set out in the inventory such appraisal. Deletes existing text requiring that the interest owned by the estate, if any property is owned in common with others, be shown, together with the names and relationship, if known, of co-owners. Makes a nonsubstantive change.

(c) Authorizes an independent executor, notwithstanding Subsection (a) of this section, if there are no unpaid debts, except for secured debts, taxes, and administration expenses, at the time the inventory is due, including any extensions, to file with the court clerk, in lieu of the inventory, appraisal, and list of claims, an affidavit stating that all debts, except for secured debts, taxes, and administration expenses, are paid and that all beneficiaries have received a verified, full, and detailed inventory. Requires that the affidavit in lieu of the inventory, appraisal, and list of claims be filed within the 90-day period prescribed by Subsection (a) of this section, unless the court grants an extension.

(d) Defines, in this section, "beneficiary."

(e) Provides that, if the independent executor files an affidavit in lieu of filing an inventory, appraisal, and list of claims as authorized under Subsection (c) of this section:

- (1) any person interested in the estate, including a possible heir of the decedent or a beneficiary under a prior will of the decedent, is entitled to receive a copy of the inventory, appraisal, and list of claims from the independent executor on written request;
- (2) the independent executor is authorized to provide a copy of the inventory, appraisal, and list of claims to any person the independent executor believes in good faith may be a person interested in the estate without liability to the estate or its beneficiaries; and
- (3) a person interested in the estate is authorized to apply to the court for an order compelling compliance with Subdivision (1) of this subsection and the court, in its discretion, is authorized to compel the independent executor to provide a copy of the inventory, appraisal, and list of claims to the interested person or deny the application.

SECTION 1.28. Amends Section 256, Texas Probate Code, as follows:

Sec. 256. DISCOVERY OF ADDITIONAL PROPERTY. (a) Creates this subsection from existing text. Requires the representative, if, after the filing of the inventory and appraisalment, property or claims not included in the inventory shall come to the possession or knowledge of the representative, to forthwith file with the clerk of court a verified, full, and detailed supplemental inventory and appraisalment. Makes a nonsubstantive change.

(b) Requires the representative, if, after the filing of an affidavit in lieu of the inventory and appraisalment, property or claims not included in the inventory given to the beneficiaries shall come to the possession or knowledge of the representative, to forthwith file with the clerk of court a supplemental affidavit in lieu of the inventory and appraisalment stating that all beneficiaries have received a verified, full, and detailed supplemental inventory and appraisalment.

SECTION 1.29. Amends Section 260, Texas Probate Code, as follows:

Sec. 260. New heading: FAILURE OF JOINT PERSONAL REPRESENTATIVES TO RETURN AN INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS OR AFFIDAVIT IN LIEU OF INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS. Authorizes any one or more representatives, if there be more than one representative qualified as such, on the neglect of the others, to make and return an inventory and appraisalment and list of claims or file an affidavit in lieu of an inventory, appraisalment, and list of claims; and requires the representative so neglecting to not thereafter interfere with the estate or have any power over same; but requires the representative so returning the inventory, appraisalment, and list of claims or filing the affidavit in lieu of an inventory, appraisalment, and list of claims to have the whole administration, unless, within sixty days after the return or the filing, the delinquent or delinquents shall assign to the court in writing and under oath a reasonable excuse which the court may deem satisfactory; and requires the court, if no excuse is filed or if the excuse filed is not deemed sufficient, to enter an order removing any and all such delinquents and revoking their letters.

SECTION 1.30. Amends Sections 271(a) and (b), Texas Probate Code, as follows:

(a) Requires the court, unless an affidavit is filed under Subsection (b) of this section, immediately after the inventory, appraisalment, and list of claims have been approved or after the affidavit in lieu of the inventory, appraisalment, and list of claims has been filed, by order, to set apart:

(1) the homestead for the use and benefit of the surviving spouse and minor children; and

(2) all other property of the estate that is exempt from execution or forced sale by the constitution and laws of this state for the use and benefit of the surviving spouse and minor children and unmarried children remaining with the family of the deceased.

(b) Provides that, before the approval of the inventory, appraisalment, and list of claims or, if applicable, before the filing of the affidavit in lieu of the inventory, appraisalment, and list of claims:

(1) a surviving spouse or any person who is authorized to act on behalf of minor children of the deceased may apply to the court to have exempt property, including the homestead, set aside by filing an application and a verified affidavit listing all of the property that the applicant claims is exempt; and

(2) any unmarried children remaining with the family of the deceased may apply to the court to have all exempt property other than the homestead set aside by filing an application and a verified affidavit listing all of the other property that the applicant claims is exempt.

SECTION 1.31. Amends Section 286, Texas Probate Code, as follows:

Sec. 286. FAMILY ALLOWANCE TO SURVIVING SPOUSES AND MINORS. (a) Requires the court, unless an affidavit is filed under Subsection (b) of this section, immediately after the inventory, appraisal, and list of claims have been approved or the affidavit in lieu of the inventory, appraisal, and list of claims has been filed, to fix a family allowance for the support of the surviving spouse and minor children of the deceased.

(b) Authorizes a surviving spouse or any person who is authorized to act on behalf of minor children of the deceased, before the approval of the inventory, appraisal, and list of claims or, if applicable, before the filing of the affidavit in lieu of the inventory, appraisal, and list of claims, to apply to the court to have the court fix the family allowance by filing an application and a verified affidavit describing the amount necessary for the maintenance of the surviving spouse and minor children for one year after the date of the death of the decedent and describing the spouse's separate property and any property that minor children have in their own right.

SECTION 1.32. Amends Section 293, Texas Probate Code, as follows:

Sec. 293. SALE TO RAISE FUNDS FOR FAMILY ALLOWANCE. Requires the court, if there be no personal property of the deceased that the surviving spouse or guardian is willing to take for such allowance, or not a sufficiency of them, and if there be no funds or not sufficient funds in the hands of such executor or administrator to pay such allowance, or any part thereof, as soon as the inventory, appraisal, and list of claims are returned and approved or, if applicable, the affidavit in lieu of the inventory, appraisal, and list of claims is filed, to order a sale of so much of the estate for cash as will be sufficient to raise the amount of such allowance, or a part thereof, as the case requires.

SECTION 1.33. Amends the heading to Section 322, Texas Probate Code, to read as follows:

Sec. 322. CLASSIFICATION OF CLAIMS AGAINST ESTATE OF DECEDENT.

SECTION 1.34. Amends Section 385(a), Texas Probate Code, as follows:

(a) Application for Partition. Authorizes the survivor, when a husband or wife shall die leaving any community property, at any time after letters testamentary or of administration have been granted, and an inventory, appraisal, and list of the claims of the estate have been returned or an affidavit in lieu of the inventory, appraisal, and list of claims has been filed, to make application in writing to the court which granted such letters for a partition of such community property.

SECTION 1.35. Amends Section 436, Texas Probate Code, by adding Subdivision (2-a) and amending Subdivisions (7) and (11) to define "charitable organization" and to redefine "party" and "P.O.D. payee."

SECTION 1.36. Amends Section 439(a), Texas Probate Code, to provide that a survivorship agreement will not be inferred from the mere fact that the account is a joint account or that the account is designated as JT TEN, Joint Tenancy, or joint, or with other similar language.

SECTION 1.37. Amends Section 452, Texas Probate Code, as follows:

Sec. 452. FORMALITIES. (a) Creates this subsection from existing text. Requires that an agreement between spouses creating a right of survivorship in community property be in writing and signed by both spouses. Requires that the agreement, if an agreement in writing is signed by both spouses, be sufficient to create a right of survivorship in the community property described in the agreement if it includes any of certain phrases.

(b) Creates this subsection from existing text. Requires that an agreement that otherwise meets the requirements of this part, however, be effective without including any of those phrases.

(c) Provides that a survivorship agreement will not be inferred from the mere fact that the account is a joint account or that the account is designated as JT TEN, Joint Tenancy, or joint, or with other similar language.

SECTION 1.38. Amends Section 471, Texas Probate Code, by amending Subdivision (2) and adding Subdivision (2-a) to redefine "divorced individual" and define "relative."

SECTION 1.39. Amends Sections 472 and 473, Texas Probate Code, as follows:

Sec. 472. REVOCATION OF CERTAIN NONTESTAMENTARY TRANSFERS ON DISSOLUTION OF MARRIAGE. (a) Provides that, except as otherwise provided by a court order, the express terms of a trust instrument executed by a divorced individual before the individual's marriage was dissolved, or an express provision of a contract relating to the division of the marital estate entered into between a divorced individual and the individual's former spouse before, during, or after the marriage, the dissolution of the marriage revokes the following:

(1) a revocable disposition or appointment of property made by a divorced individual to the individual's former spouse or any relative of the former spouse who is not a relative of the divorced individual in a trust instrument executed before the dissolution of the marriage;

(2) a provision in a trust instrument executed by a divorced individual before the dissolution of the marriage that confers a general or special power of appointment on the individual's former spouse or any relative of the former spouse who is not a relative of the divorced individual; and

(3) a nomination in a trust instrument executed by a divorced individual before the dissolution of the marriage that nominates the individual's former spouse or any relative of the former spouse who is not a relative of the divorced individual to serve in a fiduciary or representative capacity, including as a personal representative, executor, trustee, conservator, agent, or guardian.

(b) Provides that, after the dissolution of a marriage, an interest granted in a provision of a trust instrument that is revoked under Subsection (a)(1) or (2) of this section passes as if the former spouse of the divorced individual who executed the trust instrument and each relative of the former spouse who is not a relative of the divorced individual disclaimed the interest granted in the provision, and an interest granted in a provision of a trust instrument that is revoked under Subsection (a)(3) of this section passes as if the former spouse and each relative of the former spouse who is not a relative of the divorced individual died immediately before the dissolution of the marriage.

Sec. 473. LIABILITY FOR CERTAIN PAYMENTS, BENEFITS, AND PROPERTY.

(a) Provides that a bona fide purchaser of property from a divorced individual's former spouse or any relative of the former spouse who is not a relative of the divorced individual or a person who receives from a divorced individual's former spouse or any relative of the former spouse who is not a relative of the divorced individual a payment, benefit, or property in partial or full satisfaction of an enforceable obligation:

(1) is not required by this chapter to return the payment, benefit, or property; and

(2) is not liable under this chapter for the amount of the payment or the value of the property or benefit.

(b) Provides that a divorced individual's former spouse or any relative of the former spouse who is not a relative of the divorced individual who, not for value, receives a payment, benefit, or property to which the former spouse or the relative of the former spouse who is not a relative of the divorced individual is not entitled as a result of Section 472(a) of this code:

(1) is required to return the payment, benefit, or property to the person who is otherwise entitled to the payment, benefit, or property as provided by this chapter; or

(2) is personally liable to the person described by Subdivision (1) of this subsection for the amount of the payment or the value of the benefit or property received.

SECTION 1.40. Amends Section 25.0022(i), Government Code, to provide that a judge assigned under this section has the jurisdiction, powers, and duties given by Sections 4A (General Probate Court Jurisdiction; Appeals), 4C (Original Jurisdiction for Probate Proceedings), 4D (Jurisdiction of Contested Probate Proceedings in County With No Statutory Probate Court or Statutory County Court), 4F (Exclusive Jurisdiction of Probate Proceeding in County with Statutory Probate Court), 4G (Jurisdiction of Statutory Probate Court With Respect to Trusts and Powers of Attorney), 4H (Concurrent Jurisdiction With District Court), 5B (Transfer of Proceeding), 606 (Jurisdiction With Respect to Guardianship Proceedings), 607 (Matters Appertaining and Incident to an Estate), and 608 (Transfer of Guardianship Proceeding), Texas Probate Code, to statutory probate court judges by general law.

SECTION 1.41. (a) Repealers: Sections 48(c), 70, and 251(f), Texas Probate Code.

(b) Repealer, notwithstanding the transfer of Section 5, Texas Probate Code, to the Estates Code and redesignation as Section 5 of that code effective January 1, 2014, by Section 2, Chapter 680 (H.B. 2502), Acts of the 81st Legislature, Regular Session, 2009: Section 5 (Jurisdiction With Respect to Probate Proceedings), Texas Probate Code.

SECTION 1.42. (a) Makes application of Sections 4D, 4H, 6, 8, 48, and 49, Texas Probate Code, as amended by this article, and Sections 6A, 6B, 6C, 6D, 8A, and 8B, Texas Probate Code, as added by this article, prospective.

(b) Provides that the changes in law made by Section 37A(p), Texas Probate Code, as added by this article, apply to all disclaimers made after December 31, 2009, for decedents dying after December 31, 2009, but before December 17, 2010.

(c) Makes application of Sections 64, 67, 84, 128A, 143, 145, 146, 149C, 168, 222, 227, 241, 250, 256, 260, 262, 271, 286, 293, 333, 373, 378B, 385, 471, 472, and 473, Texas Probate Code, as amended by this article, and Sections 145A, 145B, and 145C, Texas Probate Code, as added by this article, prospective.

(d) Makes application of Section 59, Texas Probate Code, prospective.

(e) Makes application of Section 149B, Texas Probate Code, prospective.

(f) Makes application of Section 151, Texas Probate Code, prospective.

(g) Provides that the changes in law made by this article to Sections 436 and 439, Texas Probate Code, apply only to multiple-party accounts created or existing on or after the effective date of this Act and are intended to clarify existing law.

(h) Provides that the changes in law made by this article to Section 452, Texas Probate Code, apply only to agreements created or existing on or after the effective date of this

Act, and are intended to overturn the ruling of the Texas Supreme Court in *Holmes v. Beatty*, 290 S.W.3d 852 (Tex. 2009).

SECTION 1.43. Effective date, Section 37A(p), Texas Probate Code, as added by this article: upon passage or September 1, 2011.

## ARTICLE 2. CHANGES TO ESTATES CODE

SECTION 2.01. Amends the heading to Subtitle A, Title 2, Estates Code, as effective January 1, 2014, to read as follows:

### SUBTITLE A. SCOPE, JURISDICTION, VENUE, AND COURTS

SECTION 2.02. Amends Section 32.003, Estates Code, as effective January 1, 2014, by adding Subsection (b-1) and amending Subsections (e) and (g), as follows:

(b-1) Authorizes the judge, if a judge of a county court requests the assignment of a statutory probate court judge to hear a contested matter in a probate proceeding on the judge's own motion or on the motion of a party to the proceeding as provided by this section, to request that the statutory probate court judge be assigned to the entire proceeding on the judge's own motion or on the motion of a party.

(e) Provides that a statutory probate court judge assigned to a contested matter in a probate proceeding or to the entire proceeding under this section has the jurisdiction and authority granted to a statutory probate court by this subtitle. Requires a statutory probate court judge assigned to hear only the contested matter in a probate proceeding, on resolution of the matter, rather than on resolution of a contested matter for which a statutory probate court judge is assigned under this section, including any appeal of the matter, to return the matter to the county court for further proceedings not inconsistent with the orders of the statutory probate court or court of appeals, as applicable. Requires a statutory probate court judge assigned to the entire probate proceeding as provided by Subsection (b-1), on resolution of the contested matter in the proceeding, including any appeal of the matter, to return the entire proceeding to the county court for further proceedings not inconsistent with the orders of the statutory probate court or court of appeals, as applicable. Makes nonsubstantive changes.

(g) Requires the county court, if only the contested matter in a probate proceeding is assigned to a statutory probate court judge under this section, or if the contested matter in a probate proceeding is transferred to a district court under this section, to continue to exercise jurisdiction over the management of the estate, other than a contested matter, until final disposition of the contested matter is made in accordance with this section. Authorizes that any matter related to a probate proceeding in which a contested matter is transferred to a district court be brought in the district court, rather than authorizing that any matter related the probate proceeding, after a contested matter is transferred to a district court, be brought in the district court. Authorizes the district court in which a matter related to the proceeding is filed, on its own motion or on the motion of any party, to find that the matter is not a contested matter and transfer the matter to the county court with jurisdiction of the management of the estate. Makes nonsubstantive changes.

SECTION 2.03. Amends Section 32.007, Estates Code, as effective January 1, 2014, to provide that a statutory probate court has concurrent jurisdiction with the district court in certain cases, including an action involving an inter vivos trust, testamentary trust, or charitable trust, including a charitable trust as defined by Section 123.001 (Definitions), Property Code.

SECTION 2.04. Amends Subtitle A, Title 2, Estates Code, as effective January 1, 2014, by adding Chapter 33, as follows:

## CHAPTER 33. VENUE

SUBCHAPTER A. VENUE FOR CERTAIN PROCEEDINGS

Sec. 33.001. PROBATE OF WILLS AND GRANTING OF LETTERS TESTAMENTARY AND OF ADMINISTRATION. Provides that venue for a probate proceeding to admit a will to probate or for the granting of letters testamentary or of administration is:

(1) in the county in which the decedent resided, if the decedent had a domicile or fixed place of residence in this state; or

(2) with respect to a decedent who did not have a domicile or fixed place of residence in this state:

(A) if the decedent died in this state, in the county in which:

(i) the decedent's principal estate was located at the time of the decedent's death; or

(ii) the decedent died; or

(B) if the decedent died outside of this state:

(i) in any county in this state in which the decedent's nearest of kin reside; or

(ii) if there is no next of kin of the decedent in this state, in the county in which the decedent's principal estate was located at the time of the decedent's death.

Sec. 33.002. ACTION RELATED TO PROBATE PROCEEDING IN STATUTORY PROBATE COURT. Provides that, except as provided by Section 33.003, venue for any cause of action related to a probate proceeding pending in a statutory probate court is proper in the statutory probate court in which the decedent's estate is pending.

Sec. 33.003. CERTAIN ACTIONS INVOLVING PERSONAL REPRESENTATIVE. Provides that, notwithstanding any other provision of this chapter, the proper venue for an action by or against a personal representative for personal injury, death, or property damages is determined under Section 15.007 (Conflict With Certain Provisions), Civil Practice and Remedies Code.

Sec. 33.004. HEIRSHIP PROCEEDINGS. (a) Provides that venue for a proceeding to determine a decedent's heirs is in:

(1) the court of the county in which a proceeding admitting the decedent's will to probate or administering the decedent's estate was most recently pending; or

(2) the court of the county in which venue would be proper for commencement of an administration of the decedent's estate under Section 33.001 if:

(A) no will of the decedent has been admitted to probate in this state and no administration of the decedent's estate has been granted in this state; or

(B) the proceeding is commenced by the trustee of a trust holding assets for the benefit of the decedent.

(b) Provides that, notwithstanding Subsection (a) and Section 33.001, if there is no administration pending of the estate of a deceased ward who died intestate,

venue for a proceeding to determine the deceased ward's heirs is in the probate court in which the guardianship proceedings with respect to the ward's estate were pending on the date of the ward's death. Provides that a proceeding described by this subsection is prohibited from being brought as part of the guardianship proceedings with respect to the ward's estate, but rather is required to be filed as a separate cause in which the court is authorized determine the heirs' respective shares and interests in the estate as provided by the laws of this state.

Sec. 33.005. CERTAIN ACTIONS INVOLVING BREACH OF FIDUCIARY DUTY. Provides that, notwithstanding any other provision of this chapter, venue for a proceeding brought by the attorney general alleging breach of a fiduciary duty by a charitable entity or a fiduciary or managerial agent of a charitable trust is determined under Section 123.005, Property Code.

[Reserves Sections 33.006-33.050 for expansion.]

#### SUBCHAPTER B. DETERMINATION OF VENUE

Sec. 33.051. COMMENCEMENT OF PROCEEDING. Provides that, for purposes of this subchapter, a probate proceeding is considered commenced on the filing of an application for the proceeding that avers facts sufficient to confer venue on the court in which the application is filed.

Sec. 33.052. CONCURRENT VENUE. (a) Provides that, if applications for probate proceedings involving the same estate are filed in two or more courts having concurrent venue, the court in which a proceeding involving the estate was first commenced has and retains jurisdiction of the proceeding to the exclusion of the other court or courts in which a proceeding involving the same estate was commenced.

(b) Provides that the first commenced probate proceeding extends to all of the decedent's property, including the decedent's estate property.

Sec. 33.053. PROBATE PROCEEDINGS IN MORE THAN ONE COUNTY. Provides that, if probate proceedings involving the same estate are commenced in more than one county, each proceeding commenced in a county other than the county in which a proceeding was first commenced is stayed until the court in which the proceeding was first commenced makes a final determination of venue.

Sec. 33.054. JURISDICTION TO DETERMINE VENUE. (a) Provides that, subject to Sections 33.052 and 33.053, a court in which an application for a probate proceeding is filed has jurisdiction to determine venue for the proceeding and for any matter related to the proceeding.

(b) Provides that a court's determination under this section is not subject to collateral attack.

Sec. 33.055. PROTECTION FOR CERTAIN PURCHASERS. Requires that a bona fide purchaser of real property who relied on a probate proceeding that was not the first commenced proceeding, without knowledge that the proceeding was not the first commenced proceeding, notwithstanding Section 33.052, be protected with respect to the purchase unless before the purchase an order rendered in the first commenced proceeding admitting the decedent's will to probate, determining the decedent's heirs, or granting administration of the decedent's estate was recorded in the office of the county clerk of the county in which the purchased property is located.

[Reserves Sections 33.056-33.100 for expansion.]

#### SUBCHAPTER C. TRANSFER OF PROBATE PROCEEDING

Sec. 33.101. TRANSFER TO OTHER COUNTY IN WHICH VENUE IS PROPER. Requires the court clerk, if probate proceedings involving the same estate are commenced in more than one county and the court making a determination of venue as provided by Section 33.053 determines that venue is proper in another county, to make and retain a copy of the entire file in the case and transmit the original file to the court in the county in which venue is proper. Requires the court to which the file is transmitted to conduct the proceeding in the same manner as if the proceeding had originally been commenced in that county.

Sec. 33.102. TRANSFER FOR WANT OF VENUE. (a) Requires the court, if it appears to the court at any time before the final order in a probate proceeding is rendered that the court does not have priority of venue over the proceeding, on the application of an interested person, to transfer the proceeding to the proper county by transmitting to the proper court in that county:

(1) the original file in the case; and

(2) certified copies of all entries that have been made in the judge's probate docket in the proceeding.

(b) Requires the court of the county to which a probate proceeding is transferred under Subsection (a) to complete the proceeding in the same manner as if the proceeding had originally been commenced in that county.

(c) Provides that, if the question as to priority of venue is not raised before a final order in a probate proceeding is announced, the finality of the order is not affected by any error in venue.

Sec. 33.103. TRANSFER FOR CONVENIENCE. (a) Authorizes the court to order that a probate proceeding be transferred to the proper court in another county in this state if it appears to the court at any time before the proceeding is concluded that the transfer would be in the best interest of:

(1) the estate; or

(2) if there is no administration of the estate, the decedent's heirs or beneficiaries under the decedent's will.

(b) Requires the clerk of the court from which the probate proceeding described by Subsection (a) is transferred to transmit to the court to which the proceeding is transferred:

(1) the original file in the proceeding; and

(2) a certified copy of the index.

Sec. 33.104. VALIDATION OF PREVIOUS PROCEEDINGS. Provides that all orders entered in connection with a probate proceeding that is transferred to another county under a provision of this subchapter are valid and are required to be recognized in the court to which the proceeding is transferred if the orders were made and entered in conformance with the procedure prescribed by this code.

SECTION 2.05. Amends Section 52.052(b), Estates Code, as effective January 1, 2014, to require that each case file contain each order, judgment, and proceeding of the court and any other probate filing with the court, including certain documents, including each affidavit in lieu of the inventory, appraisalment, and list of claims.

SECTION 2.06. Amends Section 112.052, Estates Code, as effective January 1, 2014, by adding Subsection (d) to prohibit a survivorship agreement from being inferred from the mere fact that

an account is a joint account or that an account is designated as JT TEN, Joint Tenancy, or joint, or with other similar language.

SECTION 2.07. Amends Section 113.001, Estates Code, as effective January 1, 2014, by adding Subdivision (2-a) and amending Subdivision (5) to define "charitable organization" and redefine "P.O.D. payee."

SECTION 2.08. Amends Section 113.002(b), Estates Code, as effective January 1, 2014, to provide that a P.O.D. payee, including a charitable organization, or beneficiary of a trust account is a party only after the account becomes payable to the P.O.D. payee or beneficiary by reason of the P.O.D. payee or beneficiary surviving the original payee or trustee.

SECTION 2.09. Amends Section 113.151(c), Estates Code, as effective January 1, 2014, to prohibit a survivorship agreement from being inferred from the mere fact that the account is a joint account or that the account is designated as JT TEN, Joint Tenancy, or joint, or with other similar abbreviation.

SECTION 2.10. Amends Section 122.055(c), Estates Code, as effective January 1, 2014, as follows:

(c) Requires that a written memorandum of disclaimer of a present or future interest, if the beneficiary is a charitable organization or a governmental agency of the state, be filed not later than the later of:

(1) the first anniversary of the date the beneficiary receives the notice required by Subchapter A, Chapter 308; or

(2) the expiration of the six-month period following the date the personal representative files:

(A) the inventory, appraisalment, and list of claims due or owing to the estate; or

(B) the affidavit in lieu of the inventory, appraisalment, and list of claims.

SECTION 2.11. Amends Section 122.056(b), Estates Code, as effective January 1, 2014, as follows:

(b) Provides that, if the beneficiary is a charitable organization or a governmental agency of this state, notice of a disclaimer required by Subsection (a) must be filed not later than the later of:

(1) the first anniversary of the date the beneficiary receives the notice required by Subchapter A, Chapter 308; or

(2) the expiration of the six-month period following the date the personal representative files:

(A) the inventory, appraisalment, and list of claims due or owing to the estate; or

(B) the affidavit in lieu of the inventory, appraisalment, and list of claims.

Makes a nonsubstantive change.

SECTION 2.12. Amends Subchapter B, Chapter 122, Estates Code, as effective January 1, 2014, by adding Section 122.057, as follows:

Sec. 122.057. EXTENSION OF TIME FOR CERTAIN DISCLAIMERS. (a) Provides that this section does not apply to a disclaimer made by a beneficiary that is a charitable organization or governmental agency of the state.

(b) Authorizes that a disclaimer with respect to an interest in property passing by reason of the death of a decedent dying after December 31, 2009, but before December 17, 2010, notwithstanding the periods prescribed by Sections 122.055 (Filing Deadline) and 122.056 (Notice), be executed and filed, and notice of the disclaimer be given, not later than nine months after December 17, 2010.

(c) Provides that a disclaimer filed and for which notice is given during the extended period described by Subsection (b) is valid and shall be treated as if the disclaimer had been filed and notice had been given within the periods prescribed by Sections 122.055 and 122.056.

SECTION 2.13. Amends Section 123.051, Estates Code, as effective January 1, 2014, by amending Subdivision (2) and adding Subdivision (2-a) to redefine "divorced individual" and define "relative."

SECTION 2.14. Amends Section 123.052(a), Estates Code, as effective January 1, 2014, as follows:

(a) Provides that the dissolution of the marriage revokes a provision in a trust instrument that was executed by a divorced individual before the divorced individual's marriage was dissolved and that:

(1) is a revocable disposition or appointment of property made to the divorced individual's former spouse or any relative of the former spouse who is not a relative of the divorced individual;

(2) confers a general or special power of appointment on the divorced individual's former spouse or any relative of the former spouse who is not a relative of the divorced individual; or

(3) nominates the divorced individual's former spouse or any relative of the former spouse who is not a relative of the divorced individual to serve:

(A) as a personal representative, trustee, conservator, agent, or guardian;  
or

(B) in another fiduciary or representative capacity.

SECTION 2.15. Amends Section 123.053, Estates Code, as effective January 1, 2014, as follows:

Sec. 123.053. EFFECT OF REVOCATION. (a) Provides that an interest granted in a provision of a trust instrument that is revoked under Section 123.052(a)(1) or (2) passes as if the former spouse of the divorced individual who executed the trust instrument and each relative of the former spouse who is not a relative of the divorced individual disclaimed the interest granted in the provision.

(b) Provides that an interest granted in a provision of a trust instrument that is revoked under Section 123.052(a)(3) passes as if the former spouse and each relative of the former spouse who is not a relative of the divorced individual died immediately before the dissolution of the marriage.

SECTION 2.16. Amends Section 123.054, Estates Code, as effective January 1, 2014, as follows:

Sec. 123.054. LIABILITY OF CERTAIN PURCHASERS OR RECIPIENTS OF CERTAIN PAYMENTS, BENEFITS, OR PROPERTY. Provides that a bona fide purchaser of property from a divorced individual's former spouse or any relative of the former spouse who is not a relative of the divorced individual or a person who receives from the former spouse or any relative of the former spouse who is not a relative of the divorced individual a payment, benefit, or property in partial or full satisfaction of an enforceable obligation:

(1) is not required by this subchapter to return the payment, benefit, or property; and

(2) is not liable under this subchapter for the amount of the payment or the value of the property or benefit.

SECTION 2.17. Amends Section 123.055, Estates Code, as effective January 1, 2014, as follows:

Sec. 123.055. LIABILITY OF FORMER SPOUSE FOR CERTAIN PAYMENTS, BENEFITS, OR PROPERTY. Provides that a divorced individual's former spouse or any relative of the former spouse who is not a relative of the divorced individual who, not for value, receives a payment, benefit, or property to which the former spouse or the relative of the former spouse who is not a relative of the divorced individual is not entitled as a result of Sections 123.052(a) and (b):

(1) is required to return the payment, benefit, or property to the person who is entitled to the payment, benefit, or property under this subchapter; or

(2) is personally liable to the person described by Subdivision (1) for the amount of the payment or the value of the benefit or property received, as applicable.

SECTION 2.18. Amends Section 202.001, Estates Code, as effective January 1, 2014, as follows:

Sec. 202.001. GENERAL AUTHORIZATION FOR AND NATURE OF PROCEEDING TO DECLARE HEIRSHIP. Authorizes a court, in the manner provided by this chapter, to determine through a proceeding to declare heirship:

(1) the persons who are a decedent's heirs and only heirs; and

(2) the heirs' respective shares and interests under the laws of this state in the decedent's estate or, if applicable, in the trust.

SECTION 2.19. Amends Section 202.002, Estates Code, as effective January 1, 2014, to authorize a court to conduct a proceeding to declare heirship under certain conditions, including when it is necessary for the trustee of a trust holding assets for the benefit of a decedent to determine the heirs of the decedent.

SECTION 2.20. Amends Section 202.004, Estates Code, as effective January 1, 2014, to authorize a proceeding to declare heirship of a decedent to be commenced and maintained under a circumstance specified by Section 202.002 by certain individuals, including a party seeking the appointment of an independent administrator under Section 401.003, or the trustee of a trust holding assets for the benefit of a decedent.

SECTION 2.21. Amends Section 202.005, Estates Code, as effective January 1, 2014, as follows:

Sec. 202.005. APPLICATION FOR PROCEEDING TO DECLARE HEIRSHIP. Requires a person authorized by Section 202.004 to commence a proceeding to declare heirship must file an application in a court specified by Section 33.004, rather than Section 202.003, to commence the proceeding. Requires that the application state certain

information, including the names and residences of the decedent's heirs, the relationship of each heir to the decedent, and the true interest of the applicant and each of the heirs in the decedent's estate or in the trust, as applicable, and a general description of all property belonging to the decedent's estate or held in trust for the benefit of the decedent, as applicable.

SECTION 2.22. Amends Section 251.101, Estates Code, as effective January 1, 2014, as follows:

Sec. 251.101. SELF-PROVED WILL. Provides that a self-proved will is a will:

- (1) to which a self-proving affidavit subscribed and sworn to by the testator and witnesses is attached or annexed; or
- (2) that is simultaneously executed, attested, and made self-proved as provided by Section 251.1045.

Makes nonsubstantive changes.

SECTION 2.23. Amends Section 251.102(a), Estates Code, as effective January 1, 2014, as follows:

(a) Authorizes a self-proved will to be admitted to probate without the testimony of any subscribing witnesses if:

- (1) the testator and witnesses execute a self-proving affidavit; or
- (2) the will is simultaneously executed, attested, and made self-proved as provided by Section 251.1045.

SECTION 2.24. Amends Section 251.104(b), Estates Code, as effective January 1, 2014, to require that a self-proving affidavit be made by the testator and by the attesting witnesses before an officer authorized to administer oaths, rather than authorized to administer oaths under the laws of this state.

SECTION 2.25. Amends Subchapter C, Chapter 251, Estates Code, as effective January 1, 2014, by adding Section 251.1045, as follows:

Sec. 251.1045. SIMULTANEOUS EXECUTION, ATTESTATION, AND SELF-PROVING. (a) Authorizes a will, as an alternative to the self-proving of a will by the affidavits of the testator and the attesting witnesses as provided by Section 251.104, to be simultaneously executed, attested, and made self-proved before an officer authorized to administer oaths, and authorizes the testimony of the witnesses in the probate of the will to be made unnecessary, with the inclusion in the will of certain information. Sets forth the required language.

(b) Provides that a will that is in substantial compliance with the form provided by Subsection (a) is sufficient to self-prove a will.

SECTION 2.26. Amends Chapter 254, Estates Code, as effective January 1, 2014, by adding Section 254.005, as follows:

Sec. 254.005. FORFEITURE CLAUSE. Provides that a provision in a will that would cause a forfeiture of or void a devise or provision in favor of a person for bringing any court action, including contesting a will, is unenforceable if:

- (1) just cause existed for bringing the action; and
- (2) the action was brought and maintained in good faith.

SECTION 2.27. Amends Section 255.053(a), Estates Code, as effective January 1, 2014, to provide that, if no provision is made in the testator's last will for any child of the testator who is living when the testator executes the will, a pretermitted child succeeds to the portion of the testator's separate and community estate, other than any portion of the estate devised to the pretermitted child's other parent, to which the pretermitted child would have been entitled under Section 201.001 if the testator had died intestate without a surviving spouse, except as limited by Section 255.056.

SECTION 2.28. Amends Section 255.054, Estates Code, as effective January 1, 2014, as follows:

Sec. 255.054. SUCCESSION BY PRETERMITTED CHILD IF TESTATOR HAS NO LIVING CHILD AT WILL'S EXECUTION. Provides that, if a testator has no child living when the testator executes the testator's last will, a pretermitted child succeeds to the portion of the testator's separate and community estate, other than any portion of the estate devised to the pretermitted child's other parent, to which the pretermitted child would have been entitled under Section 201.001 if the testator had died intestate without a surviving spouse, except as limited by Section 255.056.

SECTION 2.29. Amends Subchapter B, Chapter 255, Estates Code, as effective January 1, 2014, by adding Section 255.056, as follows:

Sec. 255.056. LIMITATION ON REDUCTION OF ESTATE PASSING TO SURVIVING SPOUSE. Prohibits the portion of the testator's estate to which the pretermitted child is entitled under Section 255.053(a) or 255.054, if a pretermitted child's other parent is not the surviving spouse of the testator, from reducing the portion of the testator's estate passing to the testator's surviving spouse by more than one-half.

SECTION 2.30. (a) Amends Section 256.052(a), Estates Code, as effective January 1, 2014, as follows:

(a) Requires that an application for the probate of a written will state and aver certain information to the extent each is known to the applicant or can, with reasonable diligence, be ascertained by the applicant, including whether a marriage of the testator was ever dissolved after the will was made, rather than divorced, and, if so, when and from whom.

(b) Provides that, if the amendment to Section 256.052(a), Estates Code, made by this section conflicts with an amendment to Section 256.052(a), Estates Code, made by another Act of the 82nd Legislature, Regular Session, 2011, relating to nonsubstantive additions to and corrections in enacted codes, the amendment made by this section controls, and the amendment made by the other Act has no effect.

SECTION 2.31. Amends Section 256.152, Estates Code, as effective January 1, 2014, as follows:

Sec. 256.152. ADDITIONAL PROOF REQUIRED FOR PROBATE OF WILL. (a) Requires an applicant for the probate of a will to prove certain requirements to the court's satisfaction, in addition to the proof required by Section 256.151, to obtain the probate, including if the will is not self-proved, rather than if the will is not self-proved as provided by this title, the testator executed the will with the formalities and solemnities and under the circumstances required by law to make the will valid; and at the time of executing the will, was of sound mind and met one of certain requirements.

(b) Provides that a will that is self-proved as provided by Subchapter C, Chapter 251, or, if executed in another state or foreign country, is self-proved in accordance with the laws of the state or foreign country of the testator's domicile at the time of the execution, rather than as provided by this title, is not required to have any additional proof that the will was executed with the formalities and solemnities and under the circumstances required to make the will valid.

(c) Provides that, for purposes of Subsection (b), a will is considered self-proved if the will, or an affidavit of the testator and attesting witnesses attached or annexed to the will, provides that:

(1) the testator declared that the testator signed the instrument as the testator's will, the testator signed it willingly or willingly directed another to sign for the testator, the testator executed the will as the testator's free and voluntary act for the purposes expressed in the instrument, the testator is of sound mind and under no constraint or undue influence, and the testator is eighteen years of age or over, or if under that age, was or had been lawfully married, or was then a member of the armed forces of the United States, an auxiliary of the armed forces of the United States, or the United States Maritime Service; and

(2) the witnesses declared that the testator signed the instrument as the testator's will, the testator signed it willingly or willingly directed another to sign for the testator, each of the witnesses, in the presence and hearing of the testator, signed the will as witness to the testator's signing, and to the best of their knowledge the testator was of sound mind and under no constraint or undue influence, and the testator was eighteen years of age or over, or if under that age, was or had been lawfully married, or was then a member of the armed forces of the United States, an auxiliary of the armed forces of the United States, or the United States Maritime Service.

SECTION 2.32. (a) Amends Section 257.051(a), Estates Code, as effective January 1, 2014, as follows:

(a) Requires that an application for the probate of a will as a muniment of title state and aver certain information to the extent each is known to the applicant or can, with reasonable diligence, be ascertained by the applicant, including whether a marriage of the testator was ever dissolved after the will was made, rather than divorced, and, if so, when and from whom.

(b) Provides that if the amendment to Section 257.051(a), Estates Code, made by this section conflicts with an amendment to Section 257.051(a), Estates Code, made by another Act of the 82nd Legislature, Regular Session, 2011, relating to nonsubstantive additions to and corrections in enacted codes, the amendment made by this section controls, and the amendment made by the other Act has no effect.

SECTION 2.33. Amends Section 308.001, Estates Code, as effective January 1, 2014, to refine, in this subchapter, "beneficiary."

SECTION 2.34. Amends Subchapter A, Chapter 308, Estates Code, as effective January 1, 2014, by adding Section 308.0015, as follows:

Sec. 308.0015. APPLICATION. Provides that this subchapter does not apply to the probate of a will as a muniment of title.

SECTION 2.35. Amends Section 308.002, Estates Code, as effective January 1, 2014, by amending Subsections (b) and (c) and adding Subsection (b-1), as follows:

(b) Requires the representative, notwithstanding the requirement under Subsection (a) that the personal representative give the notice to the beneficiary, to give the notice with respect to a beneficiary described by this subsection in certain manners, including if the beneficiary is a trustee of a trust, to the trustee, unless the representative is the trustee, in which case the representative shall, except as provided by Subsection (b-1), give the 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.

(b-1) Provides that the personal representative is not required to give the notice otherwise required by Subsection (b)(1) to a person eligible to receive trust income at the sole discretion of the trustee of a trust if:

- (1) the representative has given the notice to an ancestor of the person who has a similar interest in the trust; and
- (2) no apparent conflict exists between the ancestor and the person eligible to receive trust income.

(c) Provides that a personal representative is not required to give the notice otherwise required by this section to a beneficiary who:

- (1) has made an appearance in the proceeding with respect to the decedent's estate before the will was admitted to probate;
- (2) is entitled to receive aggregate gifts under the will with an estimated value of \$2,000 or less;
- (3) has received all gifts to which the beneficiary is entitled under the will not later than the 60th day after the date of the order admitting the decedent's will to probate; or
- (4) has received a copy of the will that was admitted to probate or a written summary of the gifts to the beneficiary under the will and has waived the right to receive the notice in an instrument that:
  - (A) either acknowledges the receipt of the copy of the will or includes the written summary of the gifts to the beneficiary under the will;
  - (B) is signed by the beneficiary; and
  - (C) is filed with the court.

SECTION 2.36. Amends Section 308.003, Estates Code, as effective January 1, 2014, as follows:

Sec. 308.003. CONTENTS OF NOTICE. Requires that the notice required by Section 308.002 must include, rather than state:

- (1) the name and address of the beneficiary to whom the notice is given or, for a beneficiary described by Section 308.002(b), the name and address of the beneficiary for whom the notice is given and of the person to whom the notice is given;
- (2) the decedent's name;
- (3) a statement that the decedent's will has been admitted to probate;
- (4) a statement that the beneficiary to whom or for whom the notice is given is named as a beneficiary in the will;
- (5) the personal representative's name and contact information; and
- (6) either:
  - (A) a copy of the will that was admitted to probate and of the order admitting the will to probate; or

(B) a summary of the gifts to the beneficiary under the will, the court in which the will was admitted to probate, the docket number assigned to the estate, the date the will was admitted to probate, and, if different, the date the court appointed the personal representative.

Makes nonsubstantive changes.

SECTION 2.37. Amends Section 308.004, Estates Code, as effective January 1, 2014, as follows:

Sec. 308.004. AFFIDAVIT OR CERTIFICATE. (a) Requires the personal representative, 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 representative or a certificate signed by the representative's attorney stating certain information, including the name and address of each beneficiary to whom notice was not required to be given under Section 308.002(c)(2), (3), or (4), rather than each beneficiary who filed a waiver of the notice.

(b) Authorizes the affidavit or certificate required by Subsection (a) to be included with any pleading or other document filed with the court clerk, including the inventory, appraisal, and list of claims, an affidavit in lieu of the inventory, appraisal, and list of claims, or an application for an extension of the deadline to file the inventory, appraisal, and list of claims or an affidavit in lieu of the inventory, appraisal, and list of claims, provided that the pleading or other document is filed not later than the date the affidavit or certificate is required to be filed under Subsection (a).

SECTION 2.38. Amends the heading to Subchapter B, Chapter 309, Estates Code, as effective January 1, 2014, to read as follows:

**SUBCHAPTER B. REQUIREMENTS FOR INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS; AFFIDAVIT IN LIEU OF INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS**

SECTION 2.39. Amends Section 309.051(a), Estates Code, as effective January 1, 2014, as follows:

(a) Requires the representative, except as provided by Subsection (c) or unless a longer period is granted by the court, before the 91st day after the date the personal representative qualifies, to prepare and file with the court clerk a single written instrument that contains a verified, full, and detailed inventory of all estate property that has come into the representative's possession or of which the representative has knowledge. Deletes existing text requiring that inventory specify if estate property is owned in common with others, the interest of the estate in that property and the names and relationship, if known, of the co-owners.

SECTION 2.40. Amends Section 309.052, Estates Code, as effective January 1, 2014, to delete existing text requiring that the list of claims state if any portion of the claim is held in common with others, the interest of the estate in the claim and the names and relationships, if any, of the other part owners.

SECTION 2.41. Amends Section 309.055, Estates Code, as effective January 1, 2014, as follows:

Sec. 309.055. New heading: FAILURE OF JOINT PERSONAL REPRESENTATIVES TO FILE INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS OR AFFIDAVIT IN LIEU OF INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS. (a) Authorizes any one or more of the representatives, if more than one personal representative qualifies to serve, on the neglect of the other representatives, to make and

file an inventory, appraisal, and list of claims or an affidavit in lieu of an inventory, appraisal, and list of claims.

(b) Provides that a personal representative who neglects to make or file an inventory, appraisal, and list of claims or an affidavit in lieu of an inventory, appraisal, and list of claims is prohibited from interfering with and does not have any power over the estate after another representative makes and files an inventory, appraisal, and list of claims or an affidavit in lieu of an inventory, appraisal, and list of claims.

(c) Entitles the personal representative who files the inventory, appraisal, and list of claims or the affidavit in lieu of an inventory, appraisal, and list of claims to the whole administration unless, before the 61st day after the date the representative files the inventory, appraisal, and list of claims or the affidavit in lieu of an inventory, appraisal, and list of claims, one or more delinquent representatives file with the court a written, sworn, and reasonable excuse that the court considers satisfactory.

SECTION 2.42. Amends Subchapter B, Chapter 309, Estates Code, as effective January 1, 2014, by adding Section 309.056, as follows:

Sec. 309.056. AFFIDAVIT IN LIEU OF INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS. (a) Defines, in this section, "beneficiary."

(b) Authorizes an independent executor, notwithstanding Sections 309.051 (Required Notice Regarding Presentment of Claims in General) and 309.052 (Proof of Publication), if there are no unpaid debts, except for secured debts, taxes, and administration expenses, at the time the inventory is due, including any extensions, to file with the court clerk, in lieu of the inventory, appraisal, and list of claims, an affidavit stating that all debts, except for secured debts, taxes, and administration expenses, are paid and that all beneficiaries have received a verified, full, and detailed inventory and appraisal. Requires that the affidavit in lieu of the inventory, appraisal, and list of claims be filed within the 90-day period prescribed by Section 309.051(a) (relating to providing notice requiring each person who has a claim against an estate to present the claim within the period prescribed by law), unless the court grants an extension.

(c) Provides that, if the independent executor files an affidavit in lieu of the inventory, appraisal, and list of claims as authorized under Subsection (b):

(1) any person interested in the estate, including a possible heir of the decedent or a beneficiary under a prior will of the decedent, is entitled to receive a copy of the inventory, appraisal, and list of claims from the independent executor on written request;

(2) the independent executor is authorized to provide a copy of the inventory, appraisal, and list of claims to any person the independent executor believes in good faith may be a person interested in the estate without liability to the estate or its beneficiaries; and

(3) a person interested in the estate is authorized to apply to the court for an order compelling compliance with Subdivision (1), and the court, in its discretion, is authorized to compel the independent executor to provide a copy of the inventory, appraisal, and list of claims to the interested person or may deny the application.

SECTION 2.43. Amends Section 309.101, Estates Code, as effective January 1, 2014, as follows:

Sec. 309.101. DISCOVERY OF ADDITIONAL PROPERTY OR CLAIMS. (a) Creates this subsection from existing text. Makes no further changes.

(b) Requires the personal representative, if the personal representative acquires possession or knowledge of property or claims of the estate not included in the inventory and appraisal given to the beneficiaries after the filing of the affidavit in lieu of the inventory, appraisal, and list of claims, to promptly file with the court clerk a supplemental affidavit in lieu of the inventory, appraisal, and list of claims stating that all beneficiaries have received a verified, full, and detailed supplemental inventory and appraisal.

SECTION 2.44. Amends Section 352.004, Estates Code, as effective January 1, 2014, to authorize the court, on application of an interested person or on the court's own motion, to wholly or partly deny a commission allowed by this subchapter under certain conditions.

SECTION 2.45. Amends Sections 353.051(a) and (b), Estates Code, as effective January 1, 2014, as follows:

(a) Requires the court, unless an application and verified affidavit are filed as provided by Subsection (b), immediately after the inventory, appraisal, and list of claims of an estate are approved or after the affidavit in lieu of the inventory, appraisal, and list of claims is filed, by order to set aside:

(1) the homestead for the use and benefit of the decedent's surviving spouse and minor children; and

(2) all other estate property that is exempt from execution or forced sale by the constitution and laws of this state for the use and benefit of the decedent's:

(A) surviving spouse and minor children; and

(B) unmarried children remaining with the decedent's family.

(b) Provides that, before the inventory, appraisal, and list of claims of an estate are approved or, if applicable, before the affidavit in lieu of the inventory, appraisal, and list of claims is filed:

(1) the decedent's surviving spouse or any other person authorized to act on behalf of the decedent's minor children may apply to the court to have exempt property, including the homestead, set aside by filing an application and a verified affidavit listing all property that the applicant claims is exempt; and

(2) any of the decedent's unmarried children remaining with the decedent's family may apply to the court to have all exempt property, other than the homestead, set aside by filing an application and a verified affidavit listing all property, other than the homestead, that the applicant claims is exempt.

SECTION 2.46. Amends Sections 353.101(a) and (b), Estates Code, as effective January 1, 2014, as follows:

(a) Requires the court, unless an application and verified affidavit are filed as provided by Subsection (b), immediately after the inventory, appraisal, and list of claims of an estate are approved or after the affidavit in lieu of the inventory, appraisal, and list of claims is filed, to fix a family allowance for the support of the decedent's surviving spouse and minor children.

(b) Authorizes the decedent's surviving spouse or any other person authorized to act on behalf of the decedent's minor children, before the inventory, appraisal, and list of claims of an estate are approved or, if applicable, before the affidavit in lieu of the inventory, appraisal, and list of claims is filed, to apply to the court to have the court

fix the family allowance by filing an application and a verified affidavit describing certain information.

SECTION 2.47. Amends Section 353.107(a), Estates Code, as effective January 1, 2014, to require the court, as soon as the inventory, appraisalment, and list of claims are returned and approved or the affidavit in lieu of the inventory, appraisalment, and list of claims is filed, to order the sale of estate property for cash in an amount that will be sufficient to raise the amount of the family allowance, or a portion of that amount, as necessary, under certain conditions.

SECTION 2.48. Amends Section 354.001(a), Estates Code, as effective January 1, 2014, as follows:

(a) Requires the representative, if, after a personal representative of an estate has filed the inventory, appraisalment, and list of claims or the affidavit in lieu of the inventory, appraisalment, and list of claims as provided, rather than required, by Chapter 309 (Inventory, Appraisalment, and List of Claims), it is established that the decedent's estate, excluding any homestead, exempt property, and family allowance to the decedent's surviving spouse and minor children, does not exceed the amount sufficient to pay the claims against the estate classified as Classes 1 through 4 under Section 355.102 (Claims Classification; Priority of Payment), to:

(1) on order of the court, pay those claims in the order provided and to the extent permitted by the assets of the estate subject to the payment of those claims; and

(2) after paying the claims in accordance with Subdivision (1), present to the court the representative's account with an application for the settlement and allowance of the account.

SECTION 2.49. Amends Section 360.253(a), Estates Code, as effective January 1, 2014, to authorize the surviving spouse, if a spouse dies leaving community property, at any time after letters testamentary or of administration have been granted and an inventory, appraisalment, and list of claims of the estate have been returned or an affidavit in lieu of the inventory, appraisalment, and list of claims has been filed, to apply in writing to the court that granted the letters for a partition of the community property.

SECTION 2.50. Amends the heading to Section 361.155, Estates Code, as effective January 1, 2014, to read as follows:

Sec. 361.155. SUCCESSOR REPRESENTATIVE TO RETURN INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS OR AFFIDAVIT IN LIEU OF INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS.

SECTION 2.51. Amends Section 361.155(a), Estates Code, as effective January 1, 2014, to require an appointee who has qualified to succeed a former personal representative, before the 91st day after the date the personal representative qualifies, to make and return to the court an inventory, appraisalment, and list of claims of the estate, or if the appointee is an independent executor, to make and return to the court that document or file an affidavit in lieu of the inventory, appraisalment, and list of claims, in the manner provided for an original appointee, rather than make and return to the court an inventory, appraisalment, and list of claims of the estate before the 91st day after the date the personal representative qualifies, in the manner required of an original appointee; and also to return additional inventories, appraisalments, and lists of claims and additional affidavits in the manner provided for an original appointee, rather than required of an original appointee.

SECTION 2.52. Amends Subtitle I, Title 2, Estates Code, as effective January 1, 2014, by adding Chapters 401, 402, 403, 404, and 405, as follows:

#### CHAPTER 401. CREATION

Sec. 401.001. EXPRESSION OF TESTATOR'S INTENT IN WILL. (a) Authorizes any person capable of making a will to provide in the person's will that no other action shall be had in the probate court in relation to the settlement of the person's estate than the probating and recording of the will and the return of an inventory, appraisalment, and list of claims of the person's estate.

(b) Authorizes any person capable of making a will may provide in the person's will that no independent administration of his or her estate to be allowed. Requires that the person's estate, in such case, if administered, be administered and settled under the direction of the probate court as other estates are required to be settled and not as an independent administration.

Sec. 401.002. CREATION IN TESTATE ESTATE BY AGREEMENT. (a) Authorizes all of the distributees of the decedent, except as provided in Section 401.001(b), if a decedent's will names an executor but the will does not provide for independent administration as provided in Section 401.001(a), to agree on the advisability of having an independent administration and collectively designate in the application for probate of the decedent's will the executor named in the will to serve as independent executor and request in the application that no other action shall be had in the probate court in relation to the settlement of the decedent's estate other than the probating and recording of the decedent's will and the return of an inventory, appraisalment, and list of claims of the decedent's estate. Requires the probate court, in such case, to enter an order granting independent administration and appointing the person, firm, or corporation designated in the application as independent executor, unless the court finds that it would not be in the best interest of the estate to do so.

(b) Authorizes all of the distributees of the decedent, except as provided in Section 401.001(b), in situations where no executor is named in the decedent's will, or in situations where each executor named in the will is deceased or is disqualified to serve as executor or indicates by affidavit filed with the application for administration of the decedent's estate the executor's inability or unwillingness to serve as executor, to agree on the advisability of having an independent administration and collectively designate in the application for probate of the decedent's will a qualified person, firm, or corporation to serve as independent administrator and request in the application that no other action shall be had in the probate court in relation to the settlement of the decedent's estate other than the probating and recording of the decedent's will and the return of an inventory, appraisalment, and list of claims of the decedent's estate. Requires the probate court, in such case, to enter an order granting independent administration and appointing the person, firm, or corporation designated in the application as independent administrator, unless the court finds that it would not be in the best interest of the estate to do so.

Sec. 401.003. CREATION IN INTESTATE ESTATE BY AGREEMENT. (a) Authorizes all of the distributees of a decedent dying intestate to agree on the advisability of having an independent administration and collectively designate in the application for administration of the decedent's estate a qualified person, firm, or corporation to serve as independent administrator and request in the application that no other action shall be had in the probate court in relation to the settlement of the decedent's estate other than the return of an inventory, appraisalment, and list of claims of the decedent's estate. Requires the probate court, in such case, to enter an order granting independent administration and appointing the person, firm, or corporation designated in the application as independent administrator, unless the court finds that it would not be in the best interest of the estate to do so.

(b) Prohibits the court from appointing an independent administrator to serve in an intestate administration unless and until the parties seeking appointment of the independent administrator have been determined, through a proceeding to declare heirship under Chapter 202 (Determination of Heirship), to constitute all of the decedent's heirs.

Sec. 401.004. MEANS OF ESTABLISHING DISTRIBUTEE CONSENT. (a) Provides that this section applies to the creation of an independent administration under Section 401.002 or 401.003.

(b) Requires that all distributees be served with citation and notice of the application for independent administration unless the distributee waives the issuance or service of citation or enters an appearance in court.

(c) Authorizes the guardian of the person of the distributee, if a distributee is an incapacitated person, to sign the application on behalf of the distributee. Prohibits the court, if the probate court finds that either the granting of independent administration or the appointment of the person, firm, or corporation designated in the application as independent executor would not be in the best interest of the incapacitated person, then, notwithstanding anything to the contrary in Section 401.002 or 401.003, from entering an order granting independent administration of the estate. Authorizes the probate court, if a distributee who is an incapacitated person has no guardian of the person, to appoint a guardian ad litem to make application on behalf of the incapacitated person if the court considers such an appointment necessary to protect the interest of the distributees. Authorizes the natural guardian or guardians of the minor, alternatively, if the distributee who is an incapacitated person is a minor and has no guardian of the person, to consent on the minor's behalf if there is no conflict of interest between the minor and the natural guardian or guardians.

(d) Requires that the person or class of persons first eligible to receive the income from the trust, if a trust is created in the decedent's will, when determined as if the trust were to be in existence on the date of the decedent's death, for the purposes of Section 401.002, be considered to be the distributee or distributees on behalf of the trust, and any other trust or trusts coming into existence on the termination of the trust, and are authorized to apply for independent administration on behalf of the trusts without the consent or agreement of the trustee or any other beneficiary of the trust, or the trustee or any beneficiary of any other trust which may come into existence on the termination of the trust. Authorizes the trustee or cotrustee, if a trust beneficiary who is considered to be a distributee under this subsection is an incapacitated person, to file the application or give the consent, provided that the trustee or cotrustee is not the person proposed to serve as the independent executor.

(e) Requires that the life tenant or life tenants, when determined as if the life estate were to commence on the date of the decedent's death, if a life estate is created either in the decedent's will or by law, for the purposes of Section 401.002 or 401.003, be considered to be the distributee or distributees on behalf of the entire estate created, and are authorized to apply for independent administration on behalf of the estate without the consent or approval of any remainderman.

(f) Provides that, if a decedent's will contains a provision that a distributee must survive the decedent by a prescribed period of time in order to take under the decedent's will, then, for the purposes of determining who shall be the distributee under Section 401.002 and under Subsection (c), it shall be presumed that the distributees living at the time of the filing of the application for probate of the decedent's will survived the decedent by the prescribed period.

(g) Provides that, in the case of all decedents, whether dying testate or intestate, for the purposes of determining who shall be the distributees under Section 401.002 or 401.003 and under Subsection (c), it shall be presumed that no distributee living at the time the application for independent administration is filed shall subsequently disclaim any portion of the distributee's interest in the decedent's estate.

(h) Authorizes the deceased distributee's personal representative, if a distributee of a decedent's estate dies and if by virtue of the distributee's death the distributee's share of the decedent's estate becomes payable to the distributee's estate, to sign the application for independent administration of the decedent's estate under Section 401.002 or 401.003 and under Subsection (c).

Sec. 401.005. BOND; WAIVER OF BOND. (a) Requires that the independent executor, if an independent administration of a decedent's estate is created under Section 401.002 or 401.003, then, unless the probate court waives bond on application for waiver, be required to enter into bond payable to and be approved by the judge and the judge's successors in a sum that is found by the judge to be adequate under all circumstances, or a bond with one surety in a sum that is found by the judge to be adequate under all circumstances, if the surety is an authorized corporate surety.

(b) Provides that this section does not repeal any other section of this title.

Sec. 401.006. GRANTING POWER OF SALE BY AGREEMENT. Authorizes the court, in a situation in which a decedent does not have a will, or a decedent's will does not contain language authorizing the personal representative to sell real property or contains language that is not sufficient to grant the representative that authority, to include in an order appointing an independent executor under Section 401.002 or 401.003 any general or specific authority regarding the power of the independent executor to sell real property that may be consented to by the beneficiaries who are to receive any interest in the real property in the application for independent administration or in their consents to the independent administration. Authorizes the independent executor, in such event, to sell the real property under the authority granted in the court order without the further consent of those beneficiaries.

Sec. 401.007. NO LIABILITY OF JUDGE. Provides that absent proof of fraud or collusion on the part of a judge, no judge may be held civilly liable for the commission of misdeeds or the omission of any required act of any person, firm, or corporation designated as an independent executor under Section 401.002 or 401.003. Provides that Section 351.354 (Judge's Liability) does not apply to the appointment of an independent executor under Section 401.002 or 401.003.

Sec. 401.008. PERSON DECLINING TO SERVE. Authorizes a person who declines to serve or resigns as independent executor of a decedent's estate to be appointed an executor or administrator of the estate if the estate will be administered and settled under the direction of the court.

## CHAPTER 402. ADMINISTRATION

### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 402.001. GENERAL SCOPE AND EXERCISE OF POWERS. Prohibits, further action of any nature, when an independent administration has been created, and the order appointing an independent executor has been entered by the probate court, and the inventory, appraisal, and list of claims has been filed by the independent executor and approved by the court or an affidavit in lieu of the inventory, appraisal, and list of claims has been filed by the independent executor, as long as the estate is represented by an independent executor, from being had in the probate court except where this title specifically and explicitly provides for some action in the court.

Sec. 402.002. INDEPENDENT EXECUTORS MAY ACT WITHOUT COURT APPROVAL. Authorizes any action that a personal representative subject to court supervision may take with or without a court order, unless this title specifically provides otherwise, to be taken by an independent executor without a court order. Provides that the other provisions of this subtitle are designed to provide additional guidance regarding independent administrations in specified situations, and are not designed to limit by omission or otherwise the application of the general principles set forth in this chapter.

[Reserves Sections 402.003-402.050 for expansion.]

## SUBCHAPTER B. POWER OF SALE

Sec. 402.051. DEFINITION OF INDEPENDENT EXECUTOR. Defines, in this subchapter, "independent executor."

Sec. 402.052. POWER OF SALE OF ESTATE PROPERTY GENERALLY. Provides that, unless limited by the terms of a will, an independent executor, in addition to any power of sale of estate property given in the will, and an independent administrator have the same power of sale for the same purposes as a personal representative has in a supervised administration, but without the requirement of court approval. Provides that the procedural requirements applicable to a supervised administration do not apply.

Sec. 402.053. PROTECTION OF PERSON PURCHASING ESTATE PROPERTY. (a) Provides that a person who is not a devisee or heir is not required to inquire into the power of sale of estate property of the independent executor or independent administrator or the propriety of the exercise of the power of sale if the person deals with the independent executor or independent administrator in good faith and:

(1) a power of sale is granted to the independent executor in the will or in the court order appointing the independent executor;

(2) a power of sale is granted under Section 401.006 in the court order appointing the independent executor or independent administrator; or

(3) the independent executor or independent administrator provides an affidavit, executed and sworn to under oath and recorded in the deed records of the county where the property is located, that the sale is necessary or advisable for any of the purposes described in Section 356.251(1).

(b) Provides that, as to acts undertaken in good faith reliance, the affidavit described by Subsection (a)(3) is conclusive proof, as between a purchaser of property from the estate, and the personal representative of an estate or the heirs and distributees of the estate, with respect to the authority of the independent executor or independent administrator to sell the property. Provides that the signature or joinder of a devisee or heir who has an interest in the property being sold as described in this section is not necessary for the purchaser to obtain all right, title, and interest of the estate in the property being sold.

(c) Provides that this subchapter does not relieve the independent executor or independent administrator from any duty owed to a devisee or heir in relation, directly or indirectly, to the sale.

Sec. 402.054. NO LIMITATION ON OTHER ACTION. Provides that this subchapter does not limit the authority of an independent executor to take any other action without court supervision or approval with respect to estate assets that may take place in a supervised administration, for purposes and within the scope otherwise authorized by this title, including the authority to enter into a lease and to borrow money.

## CHAPTER 403. EXEMPTIONS AND ALLOWANCES; CLAIMS

### SUBCHAPTER A. EXEMPTIONS AND ALLOWANCES

Sec. 403.001. SETTING ASIDE EXEMPT PROPERTY AND ALLOWANCES. Requires the independent executor to set aside and deliver to those entitled exempt property and allowances for support, and allowances in lieu of exempt property, as

prescribed in this title, to the same extent and result as if the independent executor's actions had been accomplished in, and under orders of, the court.

[Reserves Sections 403.002-403.050 for expansion.]

#### SUBCHAPTER B. CLAIMS

Sec. 403.051. DUTY OF INDEPENDENT EXECUTOR. (a) Provides that an independent executor, in the administration of an estate, independently of and without application to, or any action in or by the court:

(1) is required to give the notices required under Sections 308.051 (Required Notice Regarding Presentment of Claims in General) and 308.053 (Required Notice to Secured Creditor);

(2) is authorized to give the notice to an unsecured creditor with a claim for money permitted under Section 308.054 (Permissive Notice to Unsecured Creditor) and bar a claim under Section 403.055; and

(3) is authorized approve or reject any claim, or take no action on a claim, and shall classify and pay claims approved or established by suit against the estate in the same order of priority, classification, and proration prescribed in this title.

(b) Requires that the notice prescribed under Subsection (a)(2), to be effective, include, in addition to the other information required by Section 308.054, a statement that a claim may be effectively presented by only one of the methods prescribed by this subchapter.

Sec. 403.052. SECURED CLAIMS FOR MONEY. Requires a creditor with a claim for money secured by property of the estate, within six months after the date letters are granted or within four months after the date notice is received under Section 308.053, whichever is later, to give notice to the independent executor of the creditor's election to have the creditor's claim approved as a matured secured claim to be paid in due course of administration. Requires a creditor whose claim is secured by real property, in addition to giving the notice within this period, to record a notice of the creditor's election under this section in the deed records of the county in which the real property is located. Requires that the claim, if no election to be a matured secured creditor is made, or the election is made, but not within the prescribed period, or is made within the prescribed period but the creditor has a lien against real property and fails to record notice of the claim in the deed records as required within the prescribed period, be a preferred debt and lien against the specific property securing the indebtedness and shall be paid according to the terms of the contract that secured the lien, and prohibits the claim from being asserted against other assets of the estate. Authorizes the independent executor to pay the claim before maturity if it is determined to be in the best interest of the estate to do so.

Sec. 403.053. MATURED SECURED CLAIMS. (a) Provides that a claim approved as a matured secured claim under Section 403.052 remains secured by any lien or security interest against the specific property securing payment of the claim but subordinated to the payment from the property of claims having a higher classification under Section 355.102. Provides that, however, the secured creditor:

(1) is not entitled to exercise any remedies in a manner that prevents the payment of the higher priority claims and allowances; and

(2) during the administration of the estate, is not entitled to exercise any contractual collection rights, including the power to foreclose, without either the prior written approval of the independent executor or court approval.

(b) Prohibits Subsection (a) from being construed to suspend or otherwise prevent a creditor with a matured secured claim from seeking judicial relief of any kind or from executing any judgment against an independent executor. Authorizes any third party acting in good faith, except with respect to real property, to obtain good title with respect to an estate asset acquired through a secured creditor's extrajudicial collection rights, without regard to whether the creditor had the right to collect the asset or whether the creditor acted improperly in exercising those rights during an estate administration due to having elected matured secured status.

(c) Requires the independent executor, if a claim approved or established by suit as a matured secured claim is secured by property passing to one or more devisees in accordance with Subchapter G (Exoneration of Debts Secured by Specific Devises), Chapter 255 (Construction and Interpretation of Wills), to collect from the devisees the amount of the debt and pay that amount to the claimant or shall sell the property and pay out of the sale proceeds the claim and associated expenses of sale consistent with the provisions of Sections 355.153(b) (requiring the personal representative to collect debt and pay that amount in satisfaction of the claim), (c) (relating to each devisee's share of debt being an amount equal to a fraction representing the devisee's ownership interest in the property securing the debt, multiplied by the amount of debt), (d) (requiring the personal representative to sell the property securing the debt), and (e) (requiring that the difference between the sale proceeds and sum of the amount of debt and associated expenses be paid in a certain manner) applicable to court supervised administrations.

Sec. 403.054. **PREFERRED DEBT AND LIEN CLAIMS.** Provides that, during an independent administration, a secured creditor whose claim is a preferred debt and lien against property securing the indebtedness under Section 403.052 is free to exercise any judicial or extrajudicial collection rights, including the right to foreclosure and execution; provided, however, that the creditor does not have the right to conduct a nonjudicial foreclosure sale within six months after letters are granted.

Sec. 403.055. **CERTAIN UNSECURED CLAIMS; BARRING OF CLAIMS.** Requires an unsecured creditor who has a claim for money against an estate and who receives a notice under Section 308.054 to give to the independent executor notice of the nature and amount of the claim not later than the 120th day after the date the notice is received or the claim is barred.

Sec. 403.056. **NOTICES REQUIRED BY CREDITORS.** (a) Requires that notice to the independent executor required by Sections 403.052 and 403.055 be contained in:

- (1) a written instrument that is hand-delivered with proof of receipt, or mailed by certified mail, return receipt requested with proof of receipt, to the independent executor or the executor's attorney;
- (2) a pleading filed in a lawsuit with respect to the claim; or
- (3) a written instrument or pleading filed in the court in which the administration of the estate is pending.

(b) Provides that this section does not exempt a creditor who elects matured secured status from the filing requirements of Section 403.052, to the extent those requirements are applicable.

Sec. 403.057. **STATUTE OF LIMITATIONS.** Requires that the running of the statute of limitations, except as otherwise provided by Section 16.062, Civil Practice and Remedies Code, be tolled only by a written approval of a claim signed by an independent executor, a pleading filed in a suit pending at the time of the decedent's death, or a suit brought by the creditor against the independent executor. Provides that, in particular, the

presentation of a statement or claim, or a notice with respect to a claim, to an independent executor does not toll the running of the statute of limitations with respect to that claim.

Sec. 403.058. OTHER CLAIM PROCEDURES GENERALLY DO NOT APPLY. Provides that, except as otherwise provided by this subchapter, the procedural provisions of this title governing creditor claims in supervised administrations do not apply to independent administrations. Provides that, by way of example, but not as a limitation:

(1) Sections 355.064 (Suit on Rejected Claim) and 355.066 (Judgment in Suit on Rejected Claim) do not apply to independent administrations, and consequently a creditor's claim may not be barred solely because the creditor failed to file a suit not later than the 90th day after the date an independent executor rejected the claim or with respect to a claim for which the independent executor takes no action; and

(2) Sections 355.156 (Affidavit Required for Foreclosure), 355.157 (Citation on Application), 355.158 (Hearing on Application), 355.159 (Manner of Foreclosure; Minimum Price), and 355.160 (Unsuccessful Foreclosure; Subsequent Application) do not apply to independent administrations.

Sec. 403.0585. LIABILITY OF INDEPENDENT EXECUTOR FOR PAYMENT OF A CLAIM. Authorizes an independent executor, in the administration of an estate, to pay at any time and without personal liability a claim for money against the estate to the extent approved and classified by the independent executor if:

(1) the claim is not barred by limitations; and

(2) at the time of payment, the independent executor reasonably believes the estate will have sufficient assets to pay all claims against the estate.

Sec. 403.059. ENFORCEMENT OF CLAIMS BY SUIT. Authorizes any person having a debt or claim against the estate to enforce the payment of the same by suit against the independent executor; and requires that the execution, when judgment is recovered against the independent executor, run against the estate of the decedent in the possession of the independent executor that is subject to the debt. Prohibits the independent executor from being required to plead to any suit brought against the executor for money until after six months after the date that an independent administration was created and the order appointing the executor was entered by the probate court.

Sec. 403.060. REQUIRING HEIRS TO GIVE BOND. Authorizes any person having a debt against the estate, when an independent administration is created and the order appointing an independent executor is entered by the probate court, by written complaint filed in the probate court in which the order was entered, to cause all distributees of the estate, heirs at law, and other persons entitled to any portion of the estate under the will, if any, to be cited by personal service to appear before the court and execute a bond for an amount equal to the amount of the creditor's claim or the full value of the estate, as shown by the inventory and list of claims, whichever is smaller. Requires that the bond be payable to the judge, and the judge's successors, and be approved by the judge, and conditioned that all obligors are required to pay all debts that be established against the estate in the manner provided by law. Requires that the estate, on the return of the citation served, unless a person so entitled to any portion of the estate, or some of them, or some other person for them, execute the bond to the satisfaction of the probate court, be administered and settled under the direction of the probate court as other estates are required to be settled. Requires that the independent administration, if the bond is executed and approved, proceed. Provides that creditors of the estate are authorized to sue on the bond, and are required to be entitled to judgment on the bond for the amount of their debt, or they are authorized to have their action against those in possession of the estate.

#### CHAPTER 404. ACCOUNTINGS, SUCCESSORS, AND OTHER REMEDIES

Sec. 404.001. ACCOUNTING. (a) Authorizes any person interested in the estate, at any time after the expiration of 15 months after the date that an independent administration was created and the order appointing an independent executor was entered by the probate court, to demand an accounting from the independent executor. Requires the independent executor to furnish to the person or persons making the demand an exhibit in writing, sworn and subscribed by the independent executor, setting forth in detail:

- (1) the property belonging to the estate that has come into the executor's possession as executor;
- (2) the disposition that has been made of the property described by Subdivision (1);
- (3) the debts that have been paid;
- (4) the debts and expenses, if any, still owing by the estate;
- (5) the property of the estate, if any, still remaining in the executor's possession;
- (6) other facts as may be necessary to a full and definite understanding of the exact condition of the estate; and
- (7) the facts, if any, that show why the administration should not be closed and the estate distributed.

(a-1) Requires any other interested person to, on demand, be entitled to a copy of any exhibit or accounting that has been made by an independent executor in compliance with this section.

(b) Authorizes the person making the demand, should the independent executor not comply with a demand for an accounting authorized by this section within 60 days after receipt of the demand, to compel compliance by an action in the probate court. Requires the court, after a hearing, to enter an order requiring the accounting to be made at such time as it considers proper under the circumstances.

(c) Authorizes any person interested in an estate, after an initial accounting has been given by an independent executor, to demand subsequent periodic accountings at intervals of not less than 12 months, and such subsequent demands be enforced in the same manner as an initial demand.

(d) Provides that the right to an accounting accorded by this section is cumulative of any other remedies which persons interested in an estate may have against the independent executor of the estate.

Sec. 404.002. REQUIRING INDEPENDENT EXECUTOR TO GIVE BOND. Provides that, when it has been provided by will, regularly probated, that an independent executor appointed by the will shall not be required to give bond for the management of the estate devised by the will, or the independent executor is not required to give bond because bond has been waived by court order as authorized under Section 401.005, then the independent executor may be required to give bond, on proper proceedings had for that purpose as in the case of personal representatives in a supervised administration, if it be made to appear at any time that the independent executor is mismanaging the property, or has betrayed or is about to betray the independent executor's trust, or has in some other way become disqualified.

Sec. 404.003. REMOVAL OF INDEPENDENT EXECUTOR. (a) Authorizes the probate court, 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) the independent executor fails to return within 90 days after qualification, unless such time is extended by order of the court, either an inventory of the property of the estate and list of claims that have come to the independent executor's knowledge or an affidavit in lieu of the inventory, appraisal, and list of claims;

(2) sufficient grounds appear to support belief that the independent executor has misapplied or embezzled, or that the independent executor is about to misapply or embezzle, all or any part of the property committed to the independent executor's care;

(3) the independent executor fails to make an accounting which is required by law to be made;

(4) the independent executor fails to timely file the affidavit or certificate required by Section 308.004 (Affidavit or Certificate);

(5) the independent executor is proved to have been guilty of gross misconduct or gross mismanagement in the performance of the independent executor's duties; or

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

(b) Requires that the order of removal state the cause of removal and direct by order the disposition of the assets remaining in the name or under the control of the removed executor. Requires that the order of removal require that letters issued to the removed executor be surrendered and that all letters be canceled of record. Authorizes the court, if an independent executor is removed by the court under this section, on application, to appoint a successor independent executor as provided by Section 404.005.

(c) Requires an independent executor who defends an action for the independent executor's removal in good faith, whether successful or not, to be allowed out of the estate the independent executor's necessary expenses and disbursements, including reasonable attorney's fees, in the removal proceedings.

(d) Authorizes costs and expenses incurred by the party seeking removal that are incident to removal of an independent executor appointed without bond, including reasonable attorney's fees and expenses, to be paid out of the estate.

Sec. 404.004. POWERS OF AN ADMINISTRATOR WHO SUCCEEDS AN INDEPENDENT EXECUTOR. (a) Authorizes the court, whenever a person has died, or shall die, testate, owning property in this state, and the person's will has been or shall be admitted to probate by the court, and the probated will names an independent executor or executors, or trustees acting in the capacity of independent executors, to execute the terms and provisions of that will, and the will grants to the independent executor, or executors, or trustees acting in the capacity of independent executors, the power to raise or borrow money and to mortgage, and the independent executor, or executors, or trustees, have died or shall die, resign, fail to qualify, or be removed from office, leaving unexecuted parts or portions of the will of the testator, and an administrator with the will annexed is appointed by the probate court, and an administrator's bond is filed and approved by the court, then in all such cases, in addition to the powers conferred on the administrator under other provisions of the laws of this state, to authorize, direct, and empower the administrator to do and perform the acts and deeds, clothed with the rights,

powers, authorities, and privileges, and subject to the limitations, set forth in the subsequent provisions of this section.

(b) Authorizes the court, on application, citation, and hearing, by its order, to authorize, direct, and empower the administrator to raise or borrow such sums of money and incur such obligations and debts as the court shall, in its said order, direct, and to renew and extend same from time to time, as the court, on application and order, shall provide; and, if authorized by the court's order, to secure such loans, obligations, and debts, by pledge or mortgage on property or assets of the estate, real, personal, or mixed, on such terms and conditions, and for such duration of time, as the court shall consider to be in the best interests of the estate, and by its order shall prescribe; and provides that all such loans, obligations, debts, pledges, and mortgages shall be valid and enforceable against the estate and against the administrator in the administrator's official capacity.

(c) Authorizes the court to order and authorize the administrator to have and exercise the powers and privileges set forth in Subsection (a) or (b) only to the extent that same are granted to or possessed by the independent executor, or executors, or trustees acting in the capacity of independent executors, under the terms of the probated will of the decedent, and then only in such cases as it appears, at the hearing of the application, that at the time of the appointment of the administrator, there are outstanding and unpaid obligations and debts of the estate, or of the independent executor, or executors, or trustees, chargeable against the estate, or unpaid expenses of administration, or when the court appointing the administrator orders the business of the estate to be carried on and it becomes necessary, from time to time, under orders of the court, for the administrator to borrow money and incur obligations and indebtedness in order to protect and preserve the estate.

(d) Authorizes the court, in addition, on application, citation, and hearing, to order, authorize, and empower the administrator to assume, exercise, and discharge, under the orders and directions of the court, made from time to time, all or such part of the rights, powers, and authorities vested in and delegated to, or possessed by, the independent executor, or executors, or trustees acting in the capacity of independent executors, under the terms of the will of the decedent, as the court finds to be in the best interests of the estate and shall, from time to time, order and direct.

(e) Requires that the granting to the administrator by the court of some, or all, of the powers and authorities set forth in this section be on application filed by the administrator with the county clerk, setting forth such facts as, in the judgment of the administrator, require the granting of the power or authority requested.

(f) Requires the clerk, on the filing of an application under Subsection (e), to issue citation to all persons interested in the estate, stating the nature of the application, and requiring those persons to appear on the return day named in such citation and show cause why the application should not be granted, should they choose to do so. Requires that the citation be served by posting.

(g) Requires the court to hear the application and evidence on the application, on or after the return day named in the citation, and, if satisfied a necessity exists and that it would be in the best interests of the estate to grant the application in whole or in part, requires the court to so order; otherwise, requires the court to refuse the application.

Sec. 404.005. COURT-APPOINTED SUCCESSOR INDEPENDENT EXECUTOR. (a) Authorizes all of the distributees of the decedent as of the filing of the application for an order continuing independent administration, if the will of a person who dies testate names an independent executor who, having qualified, fails for any reason to continue to serve, or is removed for cause by the court, and the will does not name a successor

independent executor or if each successor executor named in the will fails for any reason to qualify as executor or indicates by affidavit filed with the application for an order continuing independent administration the successor executor's inability or unwillingness to serve as successor independent executor, to apply to the probate court for the appointment of a qualified person, firm, or corporation to serve as successor independent executor. Requires the court, if the probate court finds that continued administration of the estate is necessary, to enter an order continuing independent administration and appointing the person, firm, or corporation designated in the application as successor independent executor, unless the probate court finds that it would not be in the best interest of the estate to do so. Requires the successor independent executor to serve with all of the powers and privileges granted to the successor's predecessor independent executor.

(b) Authorizes the guardian of the person of the distributee, if a distributee described in this section is an incapacitated person, to sign the application on behalf of the distributee. Prohibits the court, if the probate court finds that either the continuing of independent administration or the appointment of the person, firm, or corporation designated in the application as successor independent executor would not be in the best interest of the incapacitated person, then, notwithstanding Subsection (a), from entering an order continuing independent administration of the estate. Authorizes the court, if the distributee is an incapacitated person and has no guardian of the person, to appoint a guardian ad litem to make application on behalf of the incapacitated person if the probate court considers such an appointment necessary to protect the interest of that distributee.

(c) Requires the person or class of persons first eligible to receive the income from the trust, determined as if the trust were to be in existence on the date of the filing of the application for an order continuing independent administration, if a trust is created in the decedent's will, for the purposes of this section, to be considered to be the distributee or distributees on behalf of the trust, and any other trust or trusts coming into existence on the termination of the trust, and are authorized to apply for an order continuing independent administration on behalf of the trust without the consent or agreement of the trustee or any other beneficiary of the trust, or the trustee or any beneficiary of any other trust which may come into existence on the termination of the trust.

(d) Requires the life tenant or life tenants, if a life estate is created either in the decedent's will or by law, and if a life tenant is living at the time of the filing of the application for an order continuing independent administration, determined as if the life estate were to commence on the date of the filing of the application for an order continuing independent administration, for the purposes of this section, then to be considered to be the distributee or distributees on behalf of the entire estate created, and are authorized to apply for an order continuing independent administration on behalf of the estate without the consent or approval of any remainderman.

(e) Provides that, if a decedent's will contains a provision that a distributee must survive the decedent by a prescribed period of time in order to take under the decedent's will, for the purposes of determining who shall be the distributee under this section, it shall be presumed that the distributees living at the time of the filing of the application for an order continuing independent administration of the decedent's estate survived the decedent for the prescribed period.

(f) Provides that, in the case of all decedents, for the purposes of determining who shall be the distributees under this section, it shall be presumed that no distributee living at the time the application for an order continuing independent administration of the decedent's estate is filed shall subsequently disclaim any portion of the distributee's interest in the decedent's estate.

(g) Authorizes the deceased distributee's personal representative, if a distributee of a decedent's estate should die, and if by virtue of the distributee's death the distributee's share of the decedent's estate shall become payable to the distributee's estate, then to sign the application for an order continuing independent administration of the decedent's estate under this section.

(h) Requires the successor independent executor, if a successor independent executor is appointed under this section, then, unless the probate court shall waive bond on application for waiver, to be required to enter into bond payable to and to be approved by the judge and the judge's successors in a sum that is found by the judge to be adequate under all circumstances, or a bond with one surety in an amount that is found by the judge to be adequate under all circumstances, if the surety is an authorized corporate surety.

(i) Prohibits the judge, absent proof of fraud or collusion on the part of a judge, from being held civilly liable for the commission of misdeeds or the omission of any required act of any person, firm, or corporation designated as a successor independent executor under this section. Provides that Section 351.354 does not apply to an appointment of a successor independent executor under this section.

#### CHAPTER 405. CLOSING AND DISTRIBUTIONS

Sec. 405.001. ACCOUNTING AND DISTRIBUTION. (a) Authorizes a person interested in the estate then subject to independent administration, in addition to or in lieu of the right to an accounting provided by Section 404.001, at any time after the expiration of two years after the date the court clerk first issues letters testamentary or of administration to any personal representative of an estate, to petition the court for an accounting and distribution. Authorizes the court to order an accounting to be made with the court by the independent executor at such time as the court considers proper. Requires the accounting to include the information that the court considers necessary to determine whether any part of the estate should be distributed.

(b) Requires the court, on receipt of the accounting and, after notice to the independent executor and a hearing, unless the court finds a continued necessity for administration of the estate, to order its distribution by the independent executor to the distributees entitled to the property. Requires the court, if the court finds there is a continued necessity for administration of the estate, to order the distribution of any portion of the estate that the court finds should not be subject to further administration by the independent executor. Requires the court, if any portion of the estate that is ordered to be distributed is incapable of distribution without prior partition or sale, to order partition and distribution, or sale, in the manner provided for the partition and distribution of property incapable of division in supervised estates.

(c) Authorizes the court, if all the property in the estate is ordered distributed by the court and the estate is fully administered, to also order the independent executor to file a final account with the court and may enter an order closing the administration and terminating the power of the independent executor to act as executor.

Sec. 405.002. RECEIPTS AND RELEASES FOR DISTRIBUTIONS BY INDEPENDENT EXECUTOR. (a) Prohibits an independent executor from being required to deliver tangible or intangible personal property to a distributee unless the independent executor receives, at or before the time of delivery of the property, a signed receipt or other proof of delivery of the property to the distributee.

(b) Prohibits an independent executor from requiring a waiver or release from the distributee as a condition of delivery of property to a distributee.

Sec. 405.003. JUDICIAL DISCHARGE OF INDEPENDENT EXECUTOR. (a) Authorizes the independent executor of the estate, after an estate has been administered and if there is no further need for an independent administration of the estate, to file an action for declaratory judgment under Chapter 37 (Declaratory Judgments), Civil Practice and Remedies Code, seeking to discharge the independent executor from any liability involving matters relating to the past administration of the estate that have been fully and fairly disclosed.

(b) Requires each beneficiary of the estate, on the filing of an action under this section, to be personally served with citation, except for a beneficiary who has waived the issuance and service of citation.

(c) Authorizes the court, in a proceeding under this section, to require the independent executor to file a final account that includes any information the court considers necessary to adjudicate the independent executor's request for a discharge of liability. Authorizes the court to audit, settle, or approve a final account filed under this subsection.

(d) Requires the independent executor, on or before filing an action under this section, to distribute to the beneficiaries of the estate any of the remaining assets or property of the estate that remains in the independent executor's possession after all of the estate's debts have been paid, except for a reasonable reserve of assets that the independent executor may retain in a fiduciary capacity pending court approval of the final account. Authorizes the court to review the amount of assets on reserve and order the independent executor to make further distributions under this section.

(e) Entitles the independent executor, except as ordered by the court, to pay from the estate legal fees, expenses, or other costs incurred in relation to a proceeding for judicial discharge filed under this section. Requires the independent executor to be personally liable to refund any amount of such fees, expenses, or other costs not approved by the court as a proper charge against the estate.

Sec. 405.004. CLOSING INDEPENDENT ADMINISTRATION BY CLOSING REPORT OR NOTICE OF CLOSING ESTATE. Authorizes the independent executor, when all of the debts known to exist against the estate have been paid, or when they have been paid so far as the assets in the independent executor's possession will permit, when there is no pending litigation, and when the independent executor has distributed to the distributees entitled to the estate all assets of the estate, if any, remaining after payment of debts, to file with the court a closing report or a notice of closing of the estate.

Sec. 405.005. CLOSING REPORT. Authorizes an independent executor to file a closing report verified by affidavit that:

(1) shows:

(A) the property of the estate that came into the independent executor's possession;

(B) the debts that have been paid;

(C) the debts, if any, still owing by the estate;

(D) the property of the estate, if any, remaining on hand after payment of debts; and

(E) the names and addresses of the distributees to whom the property of the estate, if any, remaining on hand after payment of debts has been distributed; and

(2) includes signed receipts or other proof of delivery of property to the distributees named in the closing report if the closing report reflects that there was property remaining on hand after payment of debts.

Sec. 405.006. NOTICE OF CLOSING ESTATE. (a) Authorizes an independent executor, instead of filing a closing report under Section 405.005, to file a notice of closing estate verified by affidavit that states:

(1) that all debts known to exist against the estate have been paid or have been paid to the extent permitted by the assets in the independent executor's possession;

(2) that all remaining assets of the estate, if any, have been distributed; and

(3) the names and addresses of the distributees to whom the property of the estate, if any, remaining on hand after payment of debts has been distributed.

(b) Requires the independent executor, before filing the notice, to provide to each distributee of the estate a copy of the notice of closing estate. Requires that the notice of closing estate filed by the independent executor include signed receipts or other proof that all distributees have received a copy of the notice of closing estate.

Sec. 405.007. EFFECT OF FILING CLOSING REPORT OR NOTICE OF CLOSING ESTATE. (a) Provides that the independent administration of an estate is considered closed 30 days after the date of the filing of a closing report or notice of closing estate unless an interested person files an objection with the court within that time. Provides that, if an interested person files an objection within the 30-day period, the independent administration of the estate is closed when the objection has been disposed of or the court signs an order closing the estate.

(b) Provides that the closing of an independent administration by filing of a closing report or notice of closing estate terminates the power and authority of the independent executor, but does not relieve the independent executor from liability for any mismanagement of the estate or from liability for any false statements contained in the report or notice.

(c) Requires persons dealing with properties of the estate, or with claims against the estate, when a closing report or notice of closing estate has been filed, to deal directly with the distributees of the estate; and requires that the acts of the distributees with respect to the properties or claims in all ways be valid and binding as regards the persons with whom they deal, notwithstanding any false statements made by the independent executor in the report or notice.

(d) Provides that if the independent executor is required to give bond, the independent executor's filing of the closing report and proof of delivery, if required, automatically releases the sureties on the bond from all liability for the future acts of the principal. Provides that the filing of a notice of closing estate does not release the sureties on the bond of an independent executor.

(e) Requires that an independent executor's closing report or notice of closing estate constitute sufficient legal authority to all persons owing any money, having custody of any property, or acting as registrar or transfer agent or trustee of any evidence of interest, indebtedness, property, or right that belongs to the estate, for payment or transfer without additional administration to the distributees described in the will as entitled to receive the particular asset or who as heirs at law are entitled to receive the asset. Authorizes the distributees described in the will as entitled to receive the particular asset or the heirs at law entitled to receive the asset to enforce their right to the payment or transfer by suit.

Sec. 405.008. PARTITION AND DISTRIBUTION OR SALE OF PROPERTY INCAPABLE OF DIVISION. Authorizes the independent executor, but prohibits the independent executor from being required to, if the will does not distribute the entire estate of the testator or provide a means for partition of the estate, or if no will was probated, to petition the probate court for either a partition and distribution of the estate or an order of sale of any portion of the estate alleged by the independent executor and found by the court to be incapable of a fair and equal partition and distribution, or both. Requires that the estate or portion of the estate either be partitioned and distributed or sold, or both, in the manner provided for the partition and distribution of property and the sale of property incapable of division in supervised estates.

Sec. 405.009. CLOSING INDEPENDENT ADMINISTRATION ON APPLICATION BY DISTRIBUTE. (a) Authorizes any distributee, at any time after an estate has been fully administered and there is no further need for an independent administration of the estate, to file an application to close the administration; and authorizes the court, after citation on the independent executor, and on hearing, to enter an order:

(1) requiring the independent executor to file a closing report meeting the requirements of Section 405.005;

(2) closing the administration;

(3) terminating the power of the independent executor to act as independent executor; and

(4) releasing the sureties on any bond the independent executor was required to give from all liability for the future acts of the principal.

(b) Requires the order of the court closing the independent administration to constitute sufficient legal authority to all persons owing any money, having custody of any property, or acting as registrar or transfer agent or trustee of any evidence of interest, indebtedness, property, or right that belongs to the estate, for payment or transfer without additional administration to the distributees described in the will as entitled to receive the particular asset or who as heirs at law are entitled to receive the asset. Authorizes the distributees described in the will as entitled to receive the particular asset or the heirs at law entitled to receive the asset to enforce their right to the payment or transfer by suit.

Sec. 405.010. ISSUANCE OF LETTERS. Requires the clerk, at any time before the authority of an independent executor has been terminated in the manner set forth in this subtitle, to issue such number of letters testamentary as the independent executor shall request.

Sec. 405.011. RIGHTS AND REMEDIES CUMULATIVE. Provides that the rights and remedies conferred by this chapter are cumulative of other rights and remedies to which a person interested in the estate may be entitled under law.

Sec. 405.012. CLOSING PROCEDURES NOT REQUIRED. Provides that an independent executor is not required to close the independent administration of an estate under Section 405.003 or Sections 405.004 through 405.007.

SECTION 2.53. (a) Repealers: Sections 202.003 (Venue for Proceeding to Declare Heirship) and 352.003 (Alternate Compensation), Estates Code, as effective January 1, 2014.

(b) Repealers:

(1) Sections 4D (Jurisdiction of Contested Probate Proceeding in County With No Statutory Probate Court or Statutory County Court), 4H (Concurrent Jurisdiction With District Court), 48 (Proceedings to Declare Heirship), 49 (Who May

Institute Proceedings to Declare Heirship), 59 (Requisites of a Will), 64 (Forfeiture Clause), 67 (Pretermitted Child), 84 (Proof of Written Will Produced in Court), 222 (Removal), 241 (Compensation of Personal Representatives), 250 (Inventory and Appraisal; Affidavit in Lieu of Inventory, Appraisal, and List of Claims), 260 (Failure of Joint Personal Representatives to Return an Inventory, Appraisal and List of Claims or Affidavit in Lieu of Inventory, Appraisal, and List of Claims), 436 (Definitions), 439 (Right of Survivorship), 452 (Formalities), 471 (Definitions), 472 (Revocation of Certain Nontestamentary Transfers on Dissolution of Marriage), and 473 (Liability for Certain Payments, Benefits, and Property), Texas Probate Code, as amended by Article 1 of this Act; and

(2) Sections 6A, 6B, 6C, 6D, 8A, 8B, 145A, 145B, and 145C, Texas Probate Code, as added by Article 1 of this Act.

(c) Repealers, notwithstanding the transfer of Sections 6 and 8, Texas Probate Code, to the Estates Code and redesignation as Sections 6 and 8 of that code effective January 1, 2014, by Section 2, Chapter 680 (H.B. 2502), Acts of the 81st Legislature, Regular Session, 2009: Sections 6 (Venue: Probate of Wills and Granting of Letters Testamentary and of Administration) and 8 (Concurrent Venue in Probate Proceeding), Texas Probate Code, as amended by Article 1 of this Act.

(d) Repealers, notwithstanding the transfer of Sections 145-154A, Texas Probate Code, to the Estates Code and redesignation as Sections 145-154A of that code effective January 1, 2014, by Section 3, Chapter 680 (H.B. 2502), Acts of the 81st Legislature, Regular Session, 2009:

(1) Sections 145 (Independent Administration), 146 (Payment of Claims and Delivery of Exemptions and Allowances), 149B (Accounting and Distribution), and 151 (Closing Independent Administration by Affidavit), Texas Probate Code, as amended by Article 1 of this Act; and

(2) Sections 147 (Enforcement of Claims by Suit), 148 (Requiring Heirs to Give Bond), 149 (Requiring Independent Executor to Give Bond), 149A (Accounting), 149C (Removal of Independent Executor), 149D (Distribution of Remaining Estate Pending Judicial Discharge), 149E (Judicial Discharge of Independent Executor), 149F (Court Costs and Other Charges Related to Final Account in Judicial Discharge), 149G (Rights and Remedies Cumulative), 150 (Partition and Distribution or Sale of Property Incapable of Division), 152 (Closing Independent Administration Upon Application by Distribute), 153 (Issuance of Letters), 154 (Powers of an Administrator Who Succeeds an Independent Executor), and 154A (Court-Appointed Successor Independent Executor), Texas Probate Code.

SECTION 2.54. Effective date, this article: January 1, 2014.

### ARTICLE 3. CONFLICTS; EFFECTIVE DATE

SECTION 3.01. Provides that, to the extent of any conflict, this Act prevails over another Act of the 82nd Legislature, Regular Session, 2011, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 3.02. Effective date, except as otherwise provided by this Act: September 1, 2011.