

BILL ANALYSIS

Senate Research Center
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S.B. 911
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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. The updates create a number of changes to the Government Code and the Estates Code.

Included in these updates are heirship changes, new requirements for self-proving affidavits, power of sale for personal property, new guidelines for removing an independent executor, and adverse possession requirements for co-tenant heirs.

Although numerous, very few of these changes can be considered significant. In essence, S.B. 911 is intended to renovate areas of the Estates Code to provide clarity to the various requirements for heirship. Additionally, S.B. 911 seeks to bring certain sections up to date by revising selected definitions in the Estates Code.

As proposed, S.B. 911 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. Amends Section 21.005, Estates Code, as effective January 1, 2014, to conform to Section 2.54, Chapter 1338 (S.B. 1198), Acts of the 82nd Legislature, Regular Session, 2011, and further amends it as follows:

Sec. 21.005. **APPLICABILITY OF CERTAIN LAWS.** (a) Creates this subsection from existing text. Provides that notwithstanding Section 21.002(b) (relating to providing that Chapter 311, Government Code, does not apply to the construction of a provision of certain subtitles) of this code and Section 311.002 (Application), Government Code:

(1) Section 311.032(c) (relating to providing that certain statutes are severable), Government Code, applies to Subtitle X (Texas Probate Code: Scope, Jurisdiction, and Courts), rather than Subtitles X and Y (Texas Probate Code: Independent Administration), Title 2 (Estates of Decedents: Durable Powers of Attorney), and Subtitles Y (Texas Probate Code: Scope, Jurisdiction, and Venue) and Z (Texas Probate Code; Additional Guardianship Provisions), Title 3 (Guardianship and Related Procedures); and

(2) Sections 311.005(4) (defining "property") and 311.012(b) (relating to providing that the singular includes the plural and the plural includes the singular) and (c) (providing that words of one gender include the other), Government Code, apply to Subtitle X, rather than Subtitles X and Y, Title 2, and Subtitles Y and Z, Title 3.

(b) Provides that Chapter 132 (Unsworn Declarations), Civil Practice and Remedies Code, does not apply to Subchapter C (Self-Proved Wills), Chapter 251 (Fundamental Requirements and Provisions Relating to Wills).

SECTION 2. Transfers Section 2(e), Texas Probate Code, notwithstanding the transfer of Section 2, Texas Probate Code, to the Estates Code and its redesignation as Section 2 of that code effective January 1, 2014, by Section 2, Chapter 680 (H.B. 2502), Acts of the 81st Legislature, Regular Session, 2009, to Chapter 32, Estates Code, redesignates it as Section 32.001(d), Estates Code, and amends it as follows:

(d) Redesignates existing Subsection (e) as Subsection (b), deletes the subsection heading, and makes no further change to this subsection.

SECTION 3. Amends Section 32.006, Estates Code, as effective January 1, 2014, as follows:

Sec. 32.006. JURISDICTION OF STATUTORY PROBATE COURT WITH RESPECT TO TRUSTS AND POWERS OF ATTORNEY. Provides that in a county in which there is a statutory probate court, the statutory probate court has jurisdiction of:

- (1)-(2) Makes no change to these subdivisions;
- (3) an action by or against an agent or former agent under a power of attorney arising out of the agent's performance of the duties of an agent; and
- (4) Makes no change to this subdivision.

SECTION 4. Amends Section 51.203(c), Estates Code, as effective January 1, 2014, as follows:

(c) Provides that at the expiration of the 10-day period prescribed by Subsection (a) (relating to service being made by posting notice of a certain intention):

- (1) the depositions for which the notice was posted are authorized to be taken, rather than the commission is authorized to issue for taking the depositions for which the notice was posted; and
- (2) Makes no change to this subdivision.

SECTION 5. Amends Section 53.104, Estates Code, as effective January 1, 2014, as follows:

Sec. 53.104. APPOINTMENT OF ATTORNEYS AD LITEM. (a) Authorizes the judge of a probate court, except as provided by Section 202.009(b), to appoint an attorney ad litem in any probate proceeding to represent the interests of any person, rather than certain persons, including:

- (1) a person who has a legal disability under state or federal law, rather than a person who has a legal disability;
- (2) Makes no change to this subdivision;
- (3)-(4) Makes nonsubstantive changes;
- (5) a missing heir; or
- (6) an unknown or missing person for whom cash is deposited into the court's registry under Section 362.011.

(b) Provides that an attorney ad litem appointed under this section is entitled to reasonable compensation for services provided in the amount set by the court, rather than in the amount set by the court to be taxed as costs in the proceeding. Requires the court to:

(1) tax the compensation as costs in the probate proceeding and order the compensation to be paid out of the estate or by any party at any time during the proceeding; or

(2) for an attorney ad litem appointed under Subsection (a)(6), order that the compensation be paid from the cash on deposit in the court's registry as provided by Section 362.011.

Makes a nonsubstantive change.

SECTION 6. Amends Section 102.004, Estates Code, as effective January 1, 2014, to provide that if the decedent was survived by a spouse or minor child, the homestead is not liable for the payment of any of the debts of the estate, other than certain debts.

SECTION 7. Amends Section 111.051, Estates Code, as effective January 1, 2014, by amending Subdivision (1) to define "contracting third party" and adding Subdivision (1-a) to make a nonsubstantive change.

SECTION 8. Amends Subchapter B, Chapter 111, Estates Code, by adding Section 111.054, as follows:

Sec. 111.054. APPLICATION OF STATE LAW TO CERTAIN NONTESTAMENTARY TRANSFERS. (a) Provides that this section applies if more than 50 percent of the:

(1) money in an account at a financial institution, in a retirement account, or in another similar arrangement is owned, immediately before a possible nontestamentary transfer of the money, by one or more persons domiciled in this state; or

(2) benefits due under an insurance contract, annuity contract, beneficiary designation, or other similar arrangement are owned, immediately before a possible nontestamentary transfer of the benefits, by one or more persons domiciled in this state.

(b) Provides that notwithstanding a choice of law or other contractual provision in an agreement prepared or provided by a contracting third party, Texas law applies to determine:

(1) whether a nontestamentary transfer of money or benefits described by Subsection (a) has occurred; and

(2) the ownership of the money or benefits following a possible nontestamentary transfer.

(c) Requires any person, including a personal representative, who is asserting an ownership interest in money or benefits described by Subsection (a) subject to a possible nontestamentary transfer, notwithstanding a choice of law or other contractual provision in an agreement prepared or provided by a contracting third party, to have access to the courts of this state for a judicial determination of:

(1) whether a nontestamentary transfer of the money or benefits has occurred; or

(2) the ownership of the money or benefits following a possible nontestamentary transfer.

(d) Provides that Subsections (a), (b), and (c) do not apply to an obligation:

(1) owed by a party to the contracting third party; or

(2) owed by the contracting third party to a party.

(e) Provides that this section applies to a community property survivorship agreement governed by Chapter 112 (Community Property With Right of Survivorship) and a multiple-party account governed by Chapter 113 (Multiple-Party Accounts).

SECTION 9. Amends Section 201.001, Estates Code, as effective January 1, 2014, by amending Subsections (f) and (g) and adding Subsections (i), (j), and (k), as follows:

(f) Requires that the person's estate, if none of the kindred described by Subsections (b) (relating to passing of a person's estate to the person's children and children's descendants), (c) (relating to passing of a person's estate to the person's father and mother under certain circumstances), (d) (relating to passing of a person's estate if only one parent survives the decedent), and (e) (relating to passing of a person's estate to siblings if no parent survives the person) survive the person, but the person is survived by a grandparent or a descendant of a grandparent, be divided into two certain moieties, with one moiety passing to the person's paternal kindred as provided by Subsection (g); and one moiety passing to the person's maternal kindred as provided by Subsection (h) (providing that the moiety passing to the person's maternal kindred passes in the same order and manner as the other moiety passes to the decedent's paternal kindred under Subsection (g)).

(g) Provides that the moiety passing to the person's paternal kindred passes in the following order:

(1)-(2) Makes no change to these subdivisions; and

(3) if neither the person's paternal grandfather nor grandmother survives the person, the moiety passing to the decedent's paternal kindred passes to the descendants of the person's paternal grandfather and grandmother in like manner, rather than and so on without end, passing in like manner to the nearest lineal ancestors and their descendants.

(i) Provides that if none of the kindred described by Subsections (b)-(e) survive the person and there is no surviving paternal grandparent or descendant of a paternal grandparent or, in the alternative, there is no surviving maternal grandparent or descendant of a maternal grandparent, the entire estate passes to the decedent's kindred on the side with the surviving grandparent or descendant of a grandparent in the manner provided for a moiety under Subsection (g) or (h).

(j) Provides that if none of the kindred described by Subsections (b)-(i) survive the person, the person's estate escheats under Chapter 71 (Escheat of Property), Property Code.

(k) Provides that the limitation of heirs to grandparents and their descendants provided in this section does not apply to a gift in a written instrument to a person's heirs, unless the instrument provides otherwise.

SECTION 10. Amends Section 201.051, Estates Code, as effective January 1, 2014, to provide that if a child has intended parents, as defined by Section 160.102 (Definitions), Family Code, under a gestational agreement validated under Subchapter I (Gestational Agreements), Chapter 160 (Uniform Parentage Act), Family Code, the child is the child of the intended mother and not the biological mother or gestational mother unless the biological mother is also the intended mother.

SECTION 11. Amends Section 201.052, Estates Code, as effective January 1, 2014, by adding Subsection (a-1) and amending Subsection (b), as follows:

(a-1) Provides that notwithstanding Subsection (a) (relating to establishing a child as the child of the child's biological father for purposes of inheritance), if a child has intended parents, as defined by Section 160.102, Family Code, under a gestational agreement validated under Subchapter I, Chapter 160, Family Code, the child is the child of the intended father and not the biological father unless the biological father is also the intended father.

(b) Requires a child described by Subsection (a) or (a-1), rather than by Subsection (a), and the child's issue to inherit from the child's father and the child's paternal kindred, both descendants, ascendants, and collateral kindred in all degrees, and authorizes them to inherit from the child and the child's issue.

SECTION 12. Amends Subchapter A, Chapter 202, Estates Code, as effective January 1, 2014, by adding Section 202.0025, as follows:

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

SECTION 13. Amends Section 202.004, Estates Code, as effective January 1, 2014, as follows:

Sec. 202.004. PERSONS WHO MAY COMMENCE PROCEEDING TO DECLARE HEIRSHIP. Authorizes a proceeding to declare heirship of a decedent to be commenced and maintained under a circumstance specified by Section 202.002 (Circumstances Under Which Proceeding to Declare Heirship is Authorized) by:

- (1) Makes no change to this subdivision;
- (2) a person claiming to be a creditor, rather than a secured creditor, or the owner of all or part of the decedent's estate; or
- (3)-(5) Makes no change to these subdivisions.

SECTION 14. Amends Section 202.009, Estates Code, as effective January 1, 2014, as follows:

Sec. 202.009. New heading: ATTORNEY AD LITEM. (a) Requires the court to appoint an attorney ad litem in a proceeding to declare heirship to represent the interests of heirs whose names or locations are unknown, rather than authorizing the court, if it appears to the court in a proceeding to declare heirship that there is or may be a living heir whose name or whereabouts is unknown, or that a defendant is an incapacitated person, to appoint an attorney ad litem or guardian ad litem to represent the interests of that person. Deletes existing text prohibiting the court from appointing an attorney ad litem or guardian ad litem unless the court finds that the appointment is necessary to protect the interests of the living heir or incapacitated person.

(b) Authorizes the court to expand the appointment of the attorney ad litem appointed under Subsection (a) to include representation of an heir who is an incapacitated person on a finding that the appointment is necessary to protect the interests of the heir, rather than requiring the court to appoint an attorney ad litem to represent the interests of unknown heirs.

SECTION 15. Amends Section 202.056, Estates Code, as effective January 1, 2014, as follows:

Sec. 202.056. New heading: WAIVER OF SERVICE OF CITATION. Provides that a parent, managing conservator, guardian, attorney ad litem, or guardian ad litem of a minor distributee, rather than a distributee, who:

(1) is younger than 12 years of age is authorized to waive citation required by this subchapter to be served on the distributee; and

(2) is 12 years of age or older is prohibited from waiving citation required by this subchapter to be served on the distributee.

Deletes existing text prohibiting a parent, managing conservator, guardian, attorney ad litem, or guardian ad litem of a distributee who is 12 years of age or older, but younger than 19 years of age, from waiving citation required by this subchapter to be served on the distributee.

SECTION 16. Amends Subchapter B, Chapter 202, Estates Code, as effective January 1, 2014, by adding Section 202.057, as follows:

Sec. 202.057. AFFIDAVIT OF SERVICE OF CITATION. (a) Requires a person who files an application under Section 202.005 (Application for Proceeding to Declare Heirship) to file with the court:

(1) a copy of any citation required by this subchapter and the proof of delivery of service of the citation; and

(2) an affidavit sworn to by the applicant or a certificate signed by the applicant's attorney stating:

(A) that the citation was served as required by this subchapter;

(B) the name of each person to whom the citation was served, if the person's name is not shown on the proof of delivery; and

(C) the name of each person who waived citation under Section 202.056.

(b) Prohibits the court from rendering a judgment in the proceeding to declare heirship under Subchapter E (Judgment in Proceeding to Declare Heirship) until the applicant files the affidavit required by this section.

SECTION 17. Amends Section 202.151, Estates Code, as effective January 1, 2014, as follows:

Sec. 202.151. New heading: EVIDENCE IN PROCEEDING TO DECLARE HEIRSHIP. (a) Creates this subsection from existing text. Authorizes the court to require that any testimony admitted as evidence in a proceeding to declare heirship be reduced to writing and subscribed and sworn to by the witnesses, respectively, rather than authorizing the court to require that all or any part of the evidence admitted in a proceeding to declare heirship be reduced to writing and subscribed and sworn to by the witnesses, respectively and filed in the proceeding and recorded in the judge's probate docket.

(b) Requires that testimony in a proceeding to declare heirship be taken in open court or by deposition under the Texas Rules of Civil Procedure.

SECTION 18. Amends Section 253.001, Estates Code, as effective January 1, 2014, by adding Subsection (c), to provide that any portion of a court order that purports to prohibit a person from executing a new will or a codicil to an existing will is void and may be disregarded without penalty or sanction of any kind.

SECTION 19. Amends the heading to Section 256.052, Estates Code, as effective January 1, 2014, to read as follows:

Sec. 256.052. CONTENTS OF APPLICATION FOR PROBATE OF WILL.

SECTION 20. Amends Section 256.052(a), Estates Code, as effective January 1, 2014, as follows:

(a) Requires that an application for the probate of a will, rather than a written will, state and aver the following to the extent each is known to the applicant or can, with reasonable diligence, be ascertained by the applicant:

(1)-(6) Makes no change to these subdivisions;

(7) the name, state of residence, and residence or business address of the executor named in the will or other person to whom the applicant desires that letters be issued, rather than the name and residence of any executor named in the will, or, if no executor is named, of the person to whom the applicant desires that letters be issued and each subscribing witness to the will, if any;

(8) the name of each subscribing witness to the will, if any; and

(9)-(12) Makes nonsubstantive changes.

SECTION 21. Amends the heading to Section 256.053, Estates Code, as effective January 1, 2014, to read as follows:

Sec. 256.053. FILING OF WILL WITH APPLICATION FOR PROBATE GENERALLY REQUIRED.

SECTION 22. Amends Section 256.053(a), Estates Code, as effective January 1, 2014, to require an applicant for the probate of a will, rather than a written will, to file the will with the application if the will is in the applicant's control.

SECTION 23. Amends Section 256.054, Estates Code, as effective January 1, 2014, as follows:

Sec. 256.054. New heading: ADDITIONAL APPLICATION REQUIREMENTS WHEN NO WILL IS PRODUCED. Requires that the application, in addition to the requirements for an application under Section 256.052, if an applicant for the probate of a will, rather than a written will, cannot produce the will in court, state certain information.

SECTION 24. Amends Section 256.152(c), Estates Code, as effective January 1, 2014, to provide that as an alternative to Subsection (b) (relating to providing that a will that 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 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), rather than for purposes of Subsection (b), a will executed in another state or a foreign country is considered self-proved without further evidence of the law of the other state or foreign country if the will, or an affidavit of the testator and attesting witnesses attached or annexed to the will, provides certain declarations.

SECTION 25. Amends Section 256.153, Estates Code, as effective January 1, 2014, as follows:

Sec. 256.153. New heading: PROOF OF EXECUTION OF ATTESTED WILL. (a) Authorizes an attested will, rather than attested written will, produced in court that is not self-proved as provided by this title to be proved in the manner provided by this section.

(b) Makes no change to this subsection.

(c) Authorizes that the will, if all the witnesses to a will described by Subsection (a) are nonresidents of the county or the witnesses who are residents of the county are unable to attend court, be proved:

(1) by the sworn testimony of one or more of the witnesses by written or oral deposition taken in accordance with the provisions of the Texas Rules

of Civil Procedure relating to written or oral depositions, rather than in the same manner and under the same rules as depositions are taken in other civil actions; or

(2)-(3) Makes no changes to these subdivisions.

(d) Authorizes that the will, under certain circumstances, be proved:

(1) by two witnesses to the handwriting of one or both of the subscribing witnesses to the will or the testator, if the testator signed the will, by:

(A) Makes no change to this paragraph; or

(B) written or oral deposition taken in accordance with the provisions of the Texas Rules of Civil Procedure relating to written or oral depositions, rather than taken in the same manner and under the same rules as depositions are taken in other civil actions; or

(2) Makes no change to this subdivision.

(e) Authorizes a witness being deposed for purposes of proving the will as provided by Subsection (c) or (d) to testify by referring to a certified copy of the will, without the judge requiring the original will to be removed from the court's file and shown to the witness.

SECTION 26. Amends Section 256.154, Estates Code, as effective January 1, 2014, as follows:

Sec. 256.154. New heading: **PROOF OF EXECUTION OF HOLOGRAPHIC WILL.**

(a) Creates this subsection from existing text. Authorizes a will wholly in the handwriting of the testator that is not self-proved as provided by this title to be proved by two witnesses to the testator's handwriting. Authorizes the evidence to be by:

(1) Makes no change to this subdivision; or

(2) if the witnesses are nonresidents of the county or are residents who are unable to attend court, written or oral deposition taken in accordance with the provisions of the Texas Rules of Civil Procedure relating to written or oral depositions, rather than taken in the same manner and under the same rules as depositions are taken in other civil actions.

(b) Authorizes a witness being deposed for purposes of proving the will as provided by Subsection (a)(2) to testify by referring to a certified copy of the will, without the judge requiring the original will to be removed from the court's file and shown to the witness.

SECTION 27. Amends Section 256.155(a), Estates Code, as effective January 1, 2014, to provide that this section, rather than Sections 256.153(c) and (d) and 256.154 regarding the taking of depositions, rather than the taking of depositions under the same rules as depositions in other civil actions, applies if no contest has been filed with respect to an application for the probate of a will.

SECTION 28. Amends Section 256.156, Estates Code, as effective January 1, 2014, as follows:

Sec. 256.156. New heading: **PROOF OF WILL NOT PRODUCED IN COURT.** (a) Requires that a will, rather than a written will, that cannot be produced in court be proved in the same manner as provided in Section 256.153 for an attested will, rather than an attested written will, or Section 256.154 for a holographic will, as applicable. Makes conforming changes.

(b) Provides that in addition to the proof required by Subsection (a):

(1) Makes a conforming change; and

(2) the contents of the will are required to be substantially proved by the testimony of a credible witness who has read either the original or a copy of the will, has heard the will read, or can identify a copy of the will.

SECTION 29. Amends Section 256.203, Estates Code, as effective January 1, 2014, to make conforming changes.

SECTION 30. Amends Section 257.052, Estates Code, as effective January 1, 2014, as follows:

Sec. 257.052. New heading: **FILING OF WILL WITH APPLICATION GENERALLY REQUIRED.** (a) Requires an applicant for the probate of a will, rather than a written will, as a muniment of title to file the will with the application if the will is in the applicant's control.

(b) Makes no change to this subsection.

SECTION 31. Amends Section 257.053, Estates Code, as effective January 1, 2014, as follows:

Sec. 257.053. New heading: **ADDITIONAL APPLICATION REQUIREMENTS WHEN NO WILL IS PRODUCED.** Makes a conforming change.

SECTION 32. Amends Subchapter D, Chapter 301, Estates Code, as effective January 1, 2014, by adding Section 301.155, as follows:

Sec. 301.155. **AUTHORIZED METHODS OF PROOF.** Authorizes a fact contained in an application for issuance of letters testamentary or of administration or any other fact required to be proved by this subchapter to be proved by the sworn testimony of a witness with personal knowledge of the fact that is:

(1) taken in open court; or

(2) if proved under oath to the satisfaction of the court that the witness is unavailable, taken by deposition on written questions under Rule 200, Texas Rules of Civil Procedure.

SECTION 33. Amends Section 305.002(a), Estates Code, as effective January 1, 2014, as follows:

(a) Provides that a personal representative, other than an executor described by Subsection (b) (relating to providing that an executor who is not required to give a bond is considered to have qualified when the executor has taken and filed the oath prescribed by Subchapter B), is considered to have qualified when the representative has:

(1) Makes no change to this subdivision;

(2) filed the required bond with the clerk, rather than given the required bond; and

(3) obtained the judge's approval of the bond.

Deletes existing Subdivision (4) relating to the bond being filed with the clerk.

SECTION 34. Amends Section 305.003, Estates Code, as effective January 1, 2014, as follows:

Sec. 305.003. New heading: **PERIOD FOR TAKING OATH.** (a) Creates this subsection from existing text. Authorizes the oath of the executor, if an executor is named in a will that directs that the executor not be required to give a bond or security, to be taken and subscribed at any time, rather than authorizing that an oath be taken and subscribed and a

bond be given and approved at any time. Provides that an oath taken and subscribed by the executor before the date of the order granting the letters testamentary is effective on the date of the order granting the letters.

(b) Authorizes the oath of a personal representative, other than an executor described by Subsection (a), to be taken and subscribed at any time after the date of the order granting letters testamentary or of administration, as applicable.

(c) Requires that an oath under Subsection (a) or (b) be taken, subscribed, and filed before a certain day or revocation.

SECTION 35. Amends Subchapter A, Chapter 305, Estates Code, as effective January 1, 2014, by adding Section 305.004, as follows:

Sec. 305.004. PERIOD FOR GIVING BOND. (a) Authorizes a bond to be filed with the clerk at any time before:

(1) the 21st day after:

(A) the date of the order granting letters testamentary or of administration, as applicable; or

(B) the date of any order modifying the bond requirement; or

(2) the date letters testamentary or of administration, as applicable, are revoked for a failure to qualify within the period allowed.

(b) Requires the court to act promptly to review a bond filed as provided by Subsection (a) and, if acceptable, to approve the bond.

(c) Provides that notwithstanding Subsection (b), a bond filed with the clerk within the period prescribed by Subsection (a) is considered to have been approved by the court following the 21st day after the bond has been filed, until the court takes action on the bond.

(d) Provides that a bond that is not filed with the clerk within the period prescribed by Subsection (a) is authorized to be still approved by the court, if acceptable, but is prohibited from being considered approved without action of the court.

SECTION 36. Amends Section 308.054(b), Estates Code, as effective January 1, 2014, as follows:

(b) Requires that notice given under Subsection (a):

(1) expressly state that the creditor is required to present the claim before the 121st day, rather than within four months, after the date of the receipt of the notice or the claim is barred, if the claim is not barred by the general statutes of limitation; and

(2) Makes no change to this subdivision.

SECTION 37. Amends Section 309.051(a), Estates Code, as effective January 1, 2014, to require the personal representative, except as provided by Subsection (c) (relating to authorizing the court to require the personal representative to file the inventory and appraisal within a certain period) or Section 309.056 (Affidavit in Lieu of Inventory, Appraisal, and List of Claims), rather than 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 certain single written instrument in regard to inventory.

SECTION 38. Amends Section 309.056, Estates Code, as effective January 1, 2014, by amending Subsection (b) and adding Subsection (d), as follows:

(b) Authorizes an independent executor, notwithstanding Sections 309.051 (Inventory and Appraisal) and 309.052 (List of Claims), or any contrary provision in a decedent's will that does not specifically prohibit the filing of an affidavit described by this subsection, to file with the court clerk under certain circumstances, 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 if there are no unpaid debts, except for secured debts, taxes, and administration expenses, at the time the inventory is due, including any extensions.

(d) Provides that an independent executor is not liable to any person for filing:

(1) an affidavit under this section in lieu of filing an inventory, appraisal, and list of claims, if permitted by law; or

(2) an inventory, appraisal, and list of claims in lieu of filing an affidavit under this section.

SECTION 39. Amends Sections 309.103(a) and (b), Estates Code, as effective January 1, 2014, as follows:

(a) Authorizes any interested person who considers an inventory, appraisal, or list of claims or an affidavit in lieu of the inventory, appraisal, and list of claims, rather than authorizing any interested person who considers an inventory, appraisal, or list of claims filed for the estate, to be erroneous or unjust in any particular to take certain actions.

(b) Requires the court, on the hearing of the complaint, if the court is satisfied from the evidence that the inventory, appraisal, or list of claims or an affidavit in lieu of the inventory, appraisal, and list of claims is erroneous or unjust as alleged in the complaint, to enter an order:

(1) Makes no change to this subdivision; and

(2) if the complaint relates to an inventory, appraisal, or list of claims, appointing appraisers to make a new appraisal correcting the erroneous or unjust item and requiring the filing of the new appraisal before the 21st day after the date of the order.

SECTION 40. Amends Section 353.101(d), Estates Code, as effective January 1, 2014, as follows:

(d) Prohibits a family allowance from being made for:

(1)-(2) Makes no change to these subdivisions; or

(3) any of the decedent's adult incapacitated children, if:

(A) Makes a nonsubstantive change; or

(B) at the time of the decedent's death, the decedent was not supporting the adult incapacitated child.

SECTION 41. Amends Section 355.060, Estates Code, as effective January 1, 2014, to provide that if a personal representative gives a notice permitted by Section 308.054 (Permissive Notice to Unsecured Creditor) to an unsecured creditor for money and the creditor's claim is not

presented before the 121st day, rather than within four months, after the date of receipt of the notice, the claim is barred.

SECTION 42. Amends Section 361.155, Estates Code, as effective January 1, 2014, by amending Subsection (b) and adding Subsection (c), as follows:

(b) Requires an appointee who files an inventory, appraisal, and list of claims under Subsection (a) (relating to requiring certain actions of the appointee succeeding a former personal representative), except as otherwise provided by this subsection, to set out in the inventory the appointee's appraisal of the fair market value of each item in the inventory on the date of the appointee's qualification. Requires the appointee, if an inventory, appraisal, and list of claims have not been filed by any former personal representative, to set out the inventory as provided by Section 309.051(b) (relating to requiring certain responsibilities of the personal representative in the inventory and appraisal).

(c) Creates this subsection from existing text and makes no further change to this subsection.

SECTION 43. Amends Section 362.011, Estates Code, as effective January 1, 2014, as follows:

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

(b) Requires the court to order the personal representative to convert any remaining nonmonetary assets distributable to an unknown or missing person into cash to be deposited into the court's registry. Provides that the procedures in Chapter 356 (Sale of Estate Property) apply to the conversion of nonmonetary assets under this subsection.

SECTION 44. Amends Section 362.013, Estates Code, as effective January 1, 2014, as follows:

Sec. 362.013. DISCHARGE OF PERSONAL REPRESENTATIVE WHEN ESTATE FULLY ADMINISTERED. Requires the court to enter an order discharging a personal representative from the representative's trust and declaring the estate closed when:

(1)-(2) Makes no change to these subdivisions;

(3) the representative has:

(A) Makes a nonsubstantive change; and

(B) with respect to the portion of the estate distributable to an unknown or missing person, complied with an order of the court under Section 362.011.

SECTION 45. Amends Section 401.001(a), Estates Code, as effective January 1, 2014, as follows:

(a) Authorizes any person capable of making a will to provide in the person's will that no other action is required to 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 any required inventory, appraisal, and list of claims of the person's estate, rather than the return of an inventory, appraisal, and list of claims of the person's estate.

SECTION 46. Amends Section 401.004(d), Estates Code, as effective January 1, 2014, as follows:

(d) Requires the person or class of persons entitled to receive property outright from the trust on the decedent's death and those first eligible to receive the income from the trust, when determined as if the trust were to be in existence on the date of the decedent's death, if a trust is created in the decedent's will or if the decedent's will devises property to a trustee as described by Section 254.001 (Devises to Trustees) to, for purposes of Section 401.002 (Creation in Testate Estate by Agreement), 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.

SECTION 47. Amends Section 401.006, Estates Code, as effective January 1, 2014, as follows:

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 property, rather than 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 (Creation in Intestate Estate by Agreement) any general or specific authority regarding the power of the independent executor to sell property that is authorized to be consented to by the beneficiaries who are to receive any interest in the 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 property under the authority granted in the court order without the further consent of those beneficiaries. Makes conforming changes.

SECTION 48. Amends Section 403.055, Estates Code, as effective January 1, 2014, to require 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 before the 121st day, rather than not later than the 120th day, after the date the notice is received or the claim is barred.

SECTION 49. Amends Section 403.056(a), Estates Code, as effective January 1, 2014, as follows:

(a) Requires that notice to the independent executor required by Sections 403.052 (Secured Claims for Money) and 403.055 (Certain Unsecured Claims; Barring of Claims) be contained in:

- (1) a written instrument in the form required by Section 355.004 (Affidavit Authenticating Claim for Money in General) 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) Makes no change to this subdivision; or
- (3) a written instrument in the form required by Section 355.004 or pleading filed in the court in which the administration of the estate is pending.

SECTION 50. Amends Section 404.001(a), Estates Code, as effective January 1, 2014, to authorize any person interested in the estate, at any time after the expiration of 15 months after the date that the court clerk first issues letters testamentary or of administration to any personal representative of an estate, rather than 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.

SECTION 51. Amends Chapter 404, Estates Code, as effective January 1, 2014, by amending Section 404.003 and adding Sections 404.0035, 404.0036, and 404.0037, as follows:

Sec. 404.003. New heading: REMOVAL OF INDEPENDENT EXECUTOR WITHOUT NOTICE. Authorizes the probate court, on the court's own motion or on the motion of any interested person, and without notice, to remove an independent executor appointed under this subtitle when:

(1) the independent executor cannot be served with notice or other processes because:

(A) the independent executor's whereabouts are unknown;

(B) the independent executor is eluding service; or

(C) the independent executor is a nonresident of this state without a designated resident agent; or

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

Sec. 404.0035. REMOVAL OF INDEPENDENT EXECUTOR WITH NOTICE. (a) Authorizes the probate court, on the court's own motion, to remove an independent executor appointed under this subtitle after providing 30 days' written notice of the court's intent to remove the independent executor, by certified mail, return receipt requested, to the independent executor's last known address and to the last known address of the independent executor's attorney of record, if the independent executor:

(1) neglects to qualify in the manner and time required by law; or

(2) fails to return, before the 91st day after the date the independent executor qualifies, either an inventory of the estate property and a 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, unless that deadline is extended by court order.

(b) Creates this subsection from existing text. Deletes existing Subdivision (1) authorizing the probate court, under certain circumstances, to remove an independent executor when 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, and deletes existing Subdivision (2) authorizing the probate court, under certain circumstances, to remove an independent executor when 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. Makes nonsubstantive changes.

Sec. 404.0036. REMOVAL ORDER. Creates this section from text of existing Section 404.003(b). (a) Requires that the order of removal of an independent executor 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 independent executor. Requires that the order of removal require that letters issued to the removed independent executor be surrendered and that all letters be canceled of record.

(b) Creates this subsection from existing text. Authorizes the court, if an independent executor is removed by the court under Section 404.003 or 404.0035, rather than under this section, to, on application, appoint a successor independent executor as provided by Section 404.005.

Sec. 404.0037. COSTS AND EXPENSES RELATED TO REMOVAL OF INDEPENDENT EXECUTOR. Creates Subsections (a) and (b) from text of existing Sections 404.003(c) and (d). Makes no further change to these subsections.

SECTION 52. Amends Sections 404.005(b) and (c), Estates Code, as effective January 1, 2014, as follows:

(b) Authorizes the guardian of the person of the distributee, except as provided by this subsection, to sign the application on behalf of the distributee if a distributee described in this section is an incapacitated person. Authorizes a natural guardian of the minor, if a distributee described in this section is a minor and has no guardian of the person, to sign the application for the order continuing independent administration on the minor's behalf unless a conflict of interest exists between the minor and the natural guardian.

(c) Requires the person or class of persons entitled to receive property outright from the trust on the decedent's death and those 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, except as otherwise provided by this subsection, to, for the purposes of this section, 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 if a trust is created in the decedent's will or if the decedent's will devises property to a trustee as described by Section 254.001. Authorizes the trustee or cotrustee to apply for the order continuing independent administration or sign the application on the incapacitated person's behalf if the trustee or cotrustee is not the person proposed to serve as the independent executor if a person considered to be a distributee under this subsection is an incapacitated person.

SECTION 53. Amends Section 405.001(b), Estates Code, as effective January 1, 2014, to authorize 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 or order distribution of that portion of the estate incapable of distribution without prior partition or sale in undivided interests, rather than requiring 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.

SECTION 54. Repealer: Section 122.057 (Extension of Time for Certain Disclaimers), Estates Code, as effective January 1, 2014.

SECTION 55. (a) Provides that the changes in law made by Section 111.051, Estates Code, as amended by this Act, and Section 111.054, Estates Code, as added by this Act, represent the fundamental policy of this state for the protection of its residents and are intended to prevail over the laws of another state or jurisdiction, to the extent those laws are in conflict with Texas law.

(b) Provides that the changes in law made by Section 111.051, Estates Code, as amended by this Act, and Section 111.054, Estates Code, as added by this Act, apply to an account at a financial institution, an insurance contract, an annuity contract, a retirement account, a beneficiary designation, or another similar arrangement of a person who dies on or after the effective date of this Act.

SECTION 56. (a) Makes application of Section 21.005(b), Estates Code, as added by this Act, prospective.

(b) Makes application of Sections 32.006, 256.052, 256.053, 256.054, 256.152(c), 256.153, 256.154, 256.155(a), 256.156, 256.203, 257.052, 257.053, 401.001(a), 401.004(d), and 401.006, Estates Code, as amended by this Act, prospective.

(c) Provides that the changes in law made by Sections 51.203(c), 53.104, 305.002(a), 305.003, 308.054(b), 309.051(a), 309.056, 309.103(a) and (b), 355.060, 361.155(b), 362.011, 362.013, 404.001, 404.003, 404.005(b) and (c), and 405.001(b), Estates Code, as amended by this Act, and Sections 253.001(c), 301.155, 305.004, 361.155(c), 404.0035, 404.0036, and 404.0037, Estates Code, as added by this Act, apply to the administration of the estate of a decedent that is pending or commenced on or after the effective date of this Act.

(d) Makes application of Sections 102.004, 201.001(f) and (g), 201.051, 201.052(b), 202.004, 202.009, 202.056, 202.151, 353.101(d), 403.055, and 403.056(a), Estates Code, as amended by this Act, and Sections 201.001(i), (j), and (k), 201.052(a-1), 202.0025, and 202.057, Estates Code, as added by this Act, prospective

(e) Provides that Section 202.0025, Estates Code, as added by this Act, is intended to clarify current law in regard to the commencement of proceedings to declare heirship, and prohibits an inference from being made regarding the statute of limitations for a proceeding to declare heirship filed before the effective date of this Act.

(f) Prohibits an inference from being made from the changes in law made by this Act to Section 401.006, Estates Code, as to whether an independent executor had the authority to sell personal property of the estate in a probate proceeding filed before the effective date of this Act.

SECTION 57. Provides that to the extent of any conflict, this Act prevails over another Act of the 83rd Legislature, Regular Session, 2013, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 58. Effective date: January 1, 2014.