

BILL ANALYSIS

Senate Research Center

S.B. 512
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently it is cost-prohibitive for many Texans to hire an attorney to draft or probate a will and legal aid provides assistance to only a small portion of persons in need. Accordingly, many persons neglect writing a will and others self-prepare wills lacking essential language to make it legally effective. When a valid will does not exist, the property may be given informally to the person that the decedent wanted to have the property, but legal title does not transfer. Without legal title, disputes of co-ownership can arise and the person in possession cannot sell the property, use it as a collateral on a loan, or qualify for property tax exemptions for which they would otherwise be eligible, such as the disability exemption or the over-65 exemption.

S.B. 512 directs the Texas Supreme Court to develop standardized forms for probate and wills, specifically forms for simple wills, muniment of title, and small estate affidavits. These forms would allow a greater number of Texans to transfer the legal title of their property.

As proposed, S.B. 512 amends current law relating to the promulgation of certain forms for use in probate matters.

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 Subchapter A, Chapter 22, Government Code, by adding Section 22.020, as follows:

Sec. 22.020. PROMULGATION OF CERTAIN PROBATE FORMS. (a) Requires the supreme court of the State of Texas (supreme court), as the court considers appropriate, to promulgate forms and instructions for the use of those forms for use by individuals representing themselves in certain probate matters or making certain wills, including forms for use in:

- (1) a small estate affidavit proceeding under Chapter 205 (Small Estate Affidavit), Estates Code;
- (2) the probate of a will as a muniment of title under Chapter 257 (Probate of Will as Muniment of Title), Estates Code; and
- (3) the making of a will for a married individual with an adult child, a married individual with a minor child, a married individual with no children, an unmarried individual with an adult child, an unmarried individual with a minor child, and an unmarried individual with no children.

(b) Requires the forms and instructions to:

(1) be written in plain language that is easy to understand by the general public;

(2) clearly and conspicuously state that the form is not a substitute for the advice of an attorney;

(3) be made readily available to the general public in the manner prescribed by the supreme court; and

(4) be translated into the Spanish language and the Spanish language translation of the form must either:

(A) state that the Spanish language-translated form is to be used solely for the purpose of assisting in understanding the form and may not be submitted to the court, and that the English version of the form must be submitted to the court; or

(B) be incorporated into the English language form in a manner that is understandable to both the court and members of the public.

(c) Requires the clerk of a court to inform members of the public of the availability of a form promulgated under this section as appropriate and make the form available free of charge.

(d) Requires a court to accept a form promulgated by the supreme court under this section unless the form has been completed in a manner that causes a substantive defect that cannot be cured.

SECTION 2. Effective date: September 1, 2015.