

BILL ANALYSIS

C.S.H.B. 1473
By: Hartnett
Judicial Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The Real Estate, Probate, and Trust Law Section of the State Bar of Texas studies the need for statutory changes in the probate area. It receives comments and suggestions from its members and from others active in this area of the law. Judges and academics also participate in these efforts. This bill consists of changes in probate law for which there is a broad consensus.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 1473 amends the Probate Code to provide that in those counties in which there is no statutory probate court or statutory county court exercising probate jurisdiction, a statutory probate judge or a district court judge assigned to a contested probate matter has for that matter the jurisdiction and authority granted by the Probate Code. On resolution of a contested probate matter to which the statutory probate court judge or district court judge has been assigned, including an appeal of that matter, the judge shall transfer the resolved portion of the case to the county court for further proceedings.

The bill also provides that the county court shall continue to exercise jurisdiction over the management of the estate with the exception of the contested matter until final disposition of the contested matter is made by the assigned judge or the district court.

The bill clarifies that in those counties in which there is a statutory probate court, all applications, petitions, and motions regarding probate or administrations shall be filed and heard in probate court.

The bill provides that a statutory probate court has concurrent jurisdiction with the district court in all personal injury, survival or wrongful death actions by or against a person in the person's capacity as personal representative and in all actions involving a personal representative of the estate in which each other party aligned with the personal representative is not an interested person in that estate.

The bill also provides that a statutory probate court has jurisdiction over any matter appertaining to an estate or incident to an estate and has jurisdiction over any cause of action in which a personal representative of an estate pending in the statutory probate court is a party; also, a statutory probate court may exercise the pendent and ancillary jurisdiction necessary to promote judicial efficiency and economy.

The bill provides that the phrases appertaining to estates and incident to an estate also apply to the collection of estates of deceased persons.

The bill provides that upon transfer of a proceeding under Section 8(c)(2) of the Probate Code, the clerk of the court from which the proceeding is transferred shall transmit to the court to which the proceeding is transferred the original file in the proceeding and a certified copy of the index.

The bill provides that the filing or contesting in probate court of any pleading relating to a decedent's estate does not constitute tortious interference with inheritance of the estate, and that this provision does not abrogate any rights of a person under Rule 13, Texas Rules of Civil Procedure, or Chapter 10, Civil Practice and Remedies Code.

The bill adds Section 37C to the Probate Code to provide that property given to a person by a testator during the testator's lifetime is considered a satisfaction, either wholly or partly, of a devise to the person if: 1) the testator's will provides for the deduction of the lifetime gift; 2) the testator declares in a contemporaneous writing that the lifetime gift is to be deducted; or 3) the recipient acknowledges that the lifetime gift is in satisfaction of the devise. The bill also specifies that property given shall be valued as of the earlier of the date on which the recipient acquires possession or enjoyment of the property, or the date on which the testator dies.

The bill states that a testator may not exercise a power of appointment through a residuary clause in the testator's will or through a will providing for the general disposition of the testator's property unless: 1) the testator makes a specific reference to the power in the will; or 2) there is some other indication in writing that the testator intended to include the property subject to the power in the will.

The bill states that a contract to make a will or devise, or not to revoke a will or devise, can be established by provisions of a written agreement that is binding and enforceable.

The bill states that if a testator has one or more children living when he executes his last will, and provision, whether vested or contingent, is made for one or more of such children, then a pretermitted child is entitled to share in the testator's estate under certain conditions.

The bill also deletes certain references to guardianships or guardianship estates from Probate Code provisions relating to a decedent or a decedent's estate, and clarifies certain other language relating to a personal representative.

The bill provides that expenses of administration and expenses incurred in the preservation, safekeeping and management of the estate as provided by Section 322 of the Probate Code include fees and expenses awarded according to Section 243 of the Probate Code.

The bill states that certain interest is to be paid at a rate as provided by the Finance Code.

EFFECTIVE DATE

September 1, 2003.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute makes changes to certain jurisdictional provisions contained in the original.

The substitute provides that in those counties in which there is no statutory probate court or statutory county court exercising probate jurisdiction, a statutory probate judge or a district court judge assigned to a contested probate matter has for that matter the jurisdiction and authority granted by the Probate Code. On resolution of a contested probate matter to which the statutory probate court judge or district court judge has been assigned, including an appeal of that matter, the judge shall transfer the resolved portion of the case to the county court for further proceedings.

The substitute also provides that the county court shall continue to exercise jurisdiction over the management of the estate with the exception of the contested matter until final disposition of the contested matter is made by the assigned judge or the district court.

The substitute clarifies that in those counties in which there is a statutory probate court, all applications, petitions, and motions regarding probate or administrations shall be filed and heard in probate court.

The substitute provides that a statutory probate court has concurrent jurisdiction with the district court in all personal injury, survival or wrongful death actions by or against a person in the person's capacity as personal representative and in all actions involving a personal representative of the estate in which each other party aligned with the personal representative is not an interested person in that estate.

The substitute also provides that a statutory probate court has jurisdiction over any matter appertaining to an estate or incident to an estate and has jurisdiction over any cause of action in which a personal representative of an estate pending in the statutory probate court is a party; also, a statutory probate court may exercise the pendent and ancillary jurisdiction necessary to promote judicial efficiency and economy.

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