

By: Hartnett

H.B. No. 1473

A BILL TO BE ENTITLED

AN ACT

relating to probate matters.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The heading to Section 5, Texas Probate Code, is amended to read as follows:

Sec. 5. JURISDICTION [~~OF DISTRICT COURT AND OTHER COURTS OF RECORD~~] WITH RESPECT TO PROBATE PROCEEDINGS [~~AND APPEALS FROM PROBATE ORDERS~~].

SECTION 2. Section 5, Texas Probate Code, is amended by amending Subsections (b), (c), (d), and (e) and adding Subsections (b-1)-(b-5), (h), and (i) to read as follows:

(b) In those counties in which there is no statutory probate court, county court at law, or other statutory court exercising the jurisdiction of a probate court, all applications, petitions, and motions regarding probate and administrations shall be filed and heard in the county court. In [~~, except that in~~] contested probate matters, the judge of the county court may on the judge's own motion [~~+~~] or shall on the motion of any party to the proceeding, according to the motion:

(1) [~~+~~] request [~~as provided by Section 25.0022, Government Code,~~] the assignment of a statutory probate court judge to hear the contested portion of the proceeding, as provided by Section 25.0022, Government Code; or

(2) transfer the contested portion of the proceeding

1 to the district court, which may then hear the contested matter as
2 if originally filed in district court.

3 (b-1) If the judge of the county court has not transferred a
4 contested probate matter to the district court at the time a party
5 files a motion for assignment of a statutory probate court judge,
6 the county judge shall grant the motion and may not transfer the
7 matter to district court unless the party withdraws the motion.

8 (b-2) A statutory probate court judge assigned to a
9 contested probate matter as provided by Subsection (b) of this
10 section [~~this subsection~~] has [~~for that matter~~] the jurisdiction
11 and authority granted to a statutory probate court by Sections 5A
12 and 5B of this code. On resolution of a contested matter, including
13 an appeal of a matter, to which a statutory probate court judge has
14 been assigned, the statutory probate court judge shall transfer the
15 resolved portion of the case to the county court for further
16 proceedings not inconsistent with the orders of the statutory
17 probate court judge [~~The county court shall continue to exercise~~
18 ~~jurisdiction over the management of the estate with the exception~~
19 ~~of the contested matter until final disposition of the contested~~
20 ~~matter is made by the assigned judge or the district court~~].

21 (b-3) In contested matters transferred to the district
22 court [~~in those counties~~], the district court has [~~concurrently~~
23 ~~with the county court, shall have~~] the general jurisdiction of a
24 probate court. On [~~Upon~~] resolution of a [~~all pending~~] contested
25 matter, including an appeal of a matter, the district court shall
26 transfer [~~matters,~~] the resolved [~~contested~~] portion of the case
27 [~~probate proceeding shall be transferred by the district court~~] to

1 the county court for further proceedings not inconsistent with the
2 orders of the district court.

3 (b-4) The county court shall continue to exercise
4 jurisdiction over the management of the estate with the exception
5 of the contested matter until final disposition of the contested
6 matter is made by the assigned statutory probate court judge or the
7 district court.

8 (b-5) If a contested portion of the proceeding is
9 transferred to a district court under Subsection (b-3) of this
10 section [~~this subsection~~], the clerk of the district court may
11 perform in relation to the transferred portion of the proceeding
12 any function a county clerk may perform in that type of contested
13 proceeding.

14 (c) In those counties in which there is no statutory probate
15 court, but in which there is a county court at law or other
16 statutory court exercising the jurisdiction of a probate court, all
17 applications, petitions, and motions regarding probate and
18 administrations shall be filed and heard in those courts and the
19 constitutional county court [~~, rather than in the district courts~~],
20 unless otherwise provided by law. The judge of a county court may
21 hear any of those matters regarding probate or administrations
22 sitting for the judge of any other county court. In contested
23 probate matters, the judge of the constitutional county court may
24 on the judge's own motion, and shall on the motion of a party to the
25 proceeding, transfer the proceeding to the county court at law or a
26 statutory court exercising the jurisdiction of a probate court
27 other than a statutory probate court. The court to which the

1 proceeding is transferred may hear the proceeding as if originally
2 filed in the court.

3 (d) In those counties in which there is a statutory probate
4 court, all applications, petitions, and motions regarding probate
5 or administrations shall be filed and heard in the statutory
6 probate court [~~, unless otherwise provided by law~~].

7 (e) A statutory probate court has concurrent jurisdiction
8 with the district court in all personal injury, survival, or
9 wrongful death actions by or against a person in the person's
10 capacity as a personal representative, in all actions involving an
11 inter vivos trust, in all actions involving a charitable trust, and
12 in all actions involving a personal representative of an estate in
13 which each other party aligned with the personal representative is
14 not an interested person in that estate [~~testamentary trust~~].

15 (h) A statutory probate court has jurisdiction over any
16 matter appertaining to an estate or incident to an estate and has
17 jurisdiction over any cause of action in which a personal
18 representative of an estate pending in the statutory probate court
19 is a party.

20 (i) A statutory probate court may exercise the pendent and
21 ancillary jurisdiction necessary to promote judicial efficiency
22 and economy.

23 SECTION 3. The heading to Section 5A, Texas Probate Code, is
24 amended to read as follows:

25 Sec. 5A. MATTERS APPERTAINING AND INCIDENT TO AN ESTATE
26 [~~AND OTHER PROBATE COURT JURISDICTION~~].

27 SECTION 4. Section 5A(b), Texas Probate Code, is amended to

1 read as follows:

2 (b) In proceedings in the statutory probate courts [~~and~~
3 ~~district courts~~], the phrases "appertaining to estates" and
4 "incident to an estate" in this Code include the probate of wills,
5 the issuance of letters testamentary and of administration, and the
6 determination of heirship, and also include, but are not limited
7 to, all claims by or against an estate, all actions for trial of
8 title to land and for the enforcement of liens thereon, all actions
9 for trial of the right of property, all actions to construe wills,
10 the interpretation and administration of testamentary trusts and
11 the applying of constructive trusts, and generally all matters
12 relating to the collection, settlement, partition, and
13 distribution of estates of deceased persons. All statutory probate
14 courts may, in the exercise of their jurisdiction, notwithstanding
15 any other provisions of this Code, hear all suits, actions, and
16 applications filed against or on behalf of any heirship proceeding
17 or decedent's estate, including estates administered by an
18 independent executor; all such suits, actions, and applications are
19 appertaining to and incident to an estate. This subsection shall be
20 construed in conjunction with and in harmony with Section 145 and
21 all other sections of this Code dealing with independent executors,
22 but shall not be construed so as to increase permissible judicial
23 control over independent executors. Except for [~~All statutory~~
24 ~~probate courts shall have the same powers over independent~~
25 ~~executors that are exercisable by the district courts. In]~~
26 situations in which [~~where~~] the jurisdiction of a statutory probate
27 court is concurrent with that of a district court as provided by

1 Section 5(e) of this Code or any other court, any cause of action
2 appertaining to estates or incident to an estate shall be brought in
3 a statutory probate court [~~rather than in the district court~~].

4 SECTION 5. Section 8(c)(2), Texas Probate Code, is amended
5 to read as follows:

6 (2) Transfer for Convenience of the Estate. If it
7 appears to the court at any time before the estate is closed that it
8 would be in the best interest of the estate, the court, in its
9 discretion, may order the proceeding transferred to the proper
10 court in any other county in this State. The clerk of the court from
11 which the proceeding is transferred shall transmit to the court to
12 which the proceeding is transferred the original file in the
13 proceeding and a certified copy of the index [~~entries in the minutes~~
14 ~~that relate to the proceeding~~].

15 SECTION 6. Chapter I, Texas Probate Code, is amended by
16 adding Section 10C to read as follows:

17 Sec. 10C. EFFECT OF FILING OR CONTESTING PLEADING. (a) The
18 filing or contesting in probate court of any pleading relating to a
19 decendent's estate does not constitute tortious interference with
20 inheritance of the estate.

21 (b) This section does not abrogate any rights of a person
22 under Rule 13, Texas Rules of Civil Procedure, or Chapter 10, Civil
23 Practice and Remedies Code.

24 SECTION 7. Chapter II, Texas Probate Code, is amended by
25 adding Section 37C to read as follows:

26 Sec. 37C. SATISFACTION OF DEVISE. (a) Property given to a
27 person by a testator during the testator's lifetime is considered a

1 satisfaction, either wholly or partly, of a devise to the person if:

2 (1) the testator's will provides for deduction of the
3 lifetime gift;

4 (2) the testator declares in a contemporaneous writing
5 that the lifetime gift is to be deducted from or is in satisfaction
6 of the devise; or

7 (3) the devisee acknowledges in writing that the
8 lifetime gift is in satisfaction of the devise.

9 (b) Property given in partial satisfaction of a devise shall
10 be valued as of the earlier of the date on which the devisee
11 acquires possession of or enjoys the property or the date on which
12 the testator dies.

13 SECTION 8. Chapter IV, Texas Probate Code, is amended by
14 adding Section 58c to read as follows:

15 Sec. 58c. EXERCISE OF POWER OF APPOINTMENT. A testator may
16 not exercise a power of appointment through a residuary clause in
17 the testator's will or through a will providing for general
18 disposition of all the testator's property unless:

19 (1) the testator makes a specific reference to the
20 power in the will; or

21 (2) there is some other indication in writing that the
22 testator intended to include the property subject to the power in
23 the will.

24 SECTION 9. Section 59A(a), Texas Probate Code, is amended
25 to read as follows:

26 (a) A contract to make a will or devise, or not to revoke a
27 will or devise, if executed or entered into on or after September 1,

1 1979, can be established only by:

2 (1) provisions of a written agreement that is binding
3 and enforceable; or

4 (2) provisions of a will stating that a contract does
5 exist and stating the material provisions of the contract.

6 SECTION 10. Section 67(a), Texas Probate Code, is amended
7 to read as follows:

8 (a) Whenever a pretermitted child is not mentioned in the
9 testator's will, provided for in the testator's will, or otherwise
10 provided for by the testator, the pretermitted child shall succeed
11 to a portion of the testator's estate as provided by Subsection
12 (a)(1) or (a)(2) of this section.

13 (1) If the testator has one or more children living
14 when he executes his last will, and:

15 (A) No provision is made therein for any such
16 child, a pretermitted child succeeds to the portion of the
17 testator's separate and community estate to which the pretermitted
18 child would have been entitled pursuant to Section 38(a) of this
19 code had the testator died intestate without a surviving spouse
20 owning only that portion of his estate not devised or bequeathed to
21 the parent of the pretermitted child.

22 (B) Provision, whether vested or contingent, is
23 made therein for one or more of such children, a pretermitted child
24 is entitled to share in the testator's estate as follows:

25 (i) The portion of the testator's estate to
26 which the pretermitted child is entitled is limited to the
27 disposition made to children under the will.

1 (ii) The pretermitted child shall receive
2 such share of the testator's estate, as limited in Subparagraph
3 (i), as he would have received had the testator included all
4 pretermitted children with the children upon whom benefits were
5 conferred under the will, and given an equal share of such benefits
6 to each such child.

7 (iii) To the extent that it is feasible, the
8 interest of the pretermitted child in the testator's estate shall
9 be of the same character, whether an equitable or legal life estate
10 or in fee, as the interest that the testator conferred upon his
11 children under the will.

12 (2) If the testator has no child living when he
13 executes his last will, the pretermitted child succeeds to the
14 portion of the testator's separate and community estate to which
15 the pretermitted child would have been entitled pursuant to Section
16 38(a) of this code had the testator died intestate without a
17 surviving spouse owning only that portion of his estate not devised
18 or bequeathed to the parent of the pretermitted child.

19 SECTION 11. Section 84, Texas Probate Code, is amended to
20 read as follows:

21 Sec. 84. PROOF OF WRITTEN WILL PRODUCED IN COURT. (a)
22 Self-Proved Will. If a will is self-proved as provided in this
23 Code, no further proof of its execution with the formalities and
24 solemnities and under the circumstances required to make it a valid
25 will shall be necessary.

26 (b) Attested Written Will. If not self-proved as provided
27 in this Code, an attested written will produced in court may be

1 proved:

2 (1) By the sworn testimony or affidavit of one or more
3 of the subscribing witnesses thereto, taken in open court.

4 (2) If all the witnesses are non-residents of the
5 county, or those who are residents are unable to attend court, by
6 the sworn testimony of any one or more of them by deposition, either
7 written or oral, taken in the same manner and under the same rules
8 as depositions taken in other civil actions; or, if no opposition in
9 writing to such will is filed on or before the date set for hearing
10 thereon, then by the sworn testimony or affidavit of two witnesses
11 taken in open court, or by deposition in the manner provided herein,
12 to the signature or the handwriting evidenced thereby of one or more
13 of the attesting witnesses, or of the testator, if he signed the
14 will; or, if it be shown under oath to the satisfaction of the court
15 that, diligent search having been made, only one witness can be
16 found who can make the required proof, then by the sworn testimony
17 or affidavit of such one taken in open court, or by deposition in
18 the manner provided herein, to such signatures or handwriting.

19 (3) If none of the witnesses is living, or if all of
20 such witnesses are members of the armed forces of the United States
21 of America or of any auxiliary thereof, or of the armed forces
22 reserve of the United States of America or of any auxiliary thereof,
23 or of the Maritime Service, and are beyond the jurisdiction of the
24 court, by two witnesses to the handwriting of one or both of the
25 subscribing witnesses thereto, or of the testator, if signed by
26 him, and such proof may be either by sworn testimony or affidavit
27 taken in open court, or by deposition, either written or oral, taken

1 in the same manner and under the same rules as depositions taken in
2 other civil actions; or, if it be shown under oath to the
3 satisfaction of the court that, diligent search having been made,
4 only one witness can be found who can make the required proof, then
5 by the sworn testimony or affidavit of such one taken in open court,
6 or by deposition in the manner provided herein, to such signatures
7 or handwriting.

8 (c) [~~(b)~~] Holographic Will. If not self-proved as provided
9 in this Code, a will wholly in the handwriting of the testator may
10 be proved by two witnesses to his handwriting, which evidence may be
11 by sworn testimony or affidavit taken in open court, or, if such
12 witnesses are non-residents of the county or are residents who are
13 unable to attend court, by deposition, either written or oral,
14 taken in the same manner and under the same rules as depositions
15 taken in other civil actions.

16 (d) [~~(c)~~] Depositions if No Contest Filed. If no contest
17 has been filed, depositions for the purpose of establishing a will
18 may be taken in the same manner as provided in this Code for the
19 taking of depositions where there is no opposing party or attorney
20 of record upon whom notice and copies of interrogatories may be
21 served; and, in such event, this Subsection, rather than the
22 preceding portions of this Section which provide for the taking of
23 depositions under the same rules as depositions in other civil
24 actions, shall be applicable.

25 SECTION 12. Section 222A(b), Texas Probate Code, is amended
26 to read as follows:

27 (b) On the filing of an application for a hearing under this

1 section, the court clerk shall issue a notice stating that the
2 application for reinstatement was filed, the name of the [~~ward or~~
3 decedent, and the name of the applicant. The clerk shall issue the
4 notice to the applicant and to the successor representative of [~~7~~
5 ~~the ward, a person interested in the welfare of the ward,~~] the
6 decedent's estate [~~7, or the ward's estate and, if applicable, to a~~
7 ~~person who has control of the care and custody of the ward~~]. The
8 notice must cite all persons interested in the estate [~~or welfare of~~
9 ~~the ward~~] to appear at the time and place stated in the notice if
10 they wish to contest the application.

11 SECTION 13. Section 245, Texas Probate Code, is amended to
12 read as follows:

13 Sec. 245. WHEN COSTS ARE ADJUDGED AGAINST REPRESENTATIVE.
14 When a [~~the~~] personal representative [~~of an estate or person~~]
15 neglects to perform a required [~~the performance of any~~] duty
16 [~~required of him, and any costs are incurred thereby,~~] or if a
17 personal representative [~~he~~] is removed for cause, the personal
18 representative [~~he~~] and the sureties on the personal
19 representative's [~~his~~] bond are [~~shall be~~] liable for:

20 (1) costs of removal and other additional costs
21 incurred that are not authorized expenditures, as defined by this
22 code; [~~7~~] and

23 (2) [~~for~~] reasonable attorney's fees incurred in
24 removing the personal representative or [~~him and~~] in obtaining
25 [~~his~~] compliance regarding any statutory duty the personal
26 representative [~~he~~] has neglected.

27 SECTION 14. Section 322, Texas Probate Code, is amended to

1 read as follows:

2 Sec. 322. CLASSIFICATION OF CLAIMS AGAINST ESTATES OF
3 DECEDENT. Claims against an estate of a decedent shall be
4 classified and have priority of payment, as follows:

5 Class 1. Funeral expenses and expenses of last sickness for
6 a reasonable amount to be approved by the court, not to exceed a
7 total of Fifteen Thousand Dollars, with any excess to be classified
8 and paid as other unsecured claims.

9 Class 2. Expenses of administration and expenses incurred
10 in the preservation, safekeeping, and management of the estate,
11 including fees and expenses awarded under Section 243 of this code.

12 Class 3. Secured claims for money under Section 306(a)(1),
13 including tax liens, so far as the same can be paid out of the
14 proceeds of the property subject to such mortgage or other lien, and
15 when more than one mortgage, lien, or security interest shall exist
16 upon the same property, they shall be paid in order of their
17 priority.

18 Class 4. Claims for the principal amount of and accrued
19 interest on delinquent child support and child support arrearages
20 that have been confirmed and reduced to money judgment, as
21 determined under Subchapter F, Chapter 157, Family Code.

22 Class 5. Claims for taxes, penalties, and interest due
23 under Title 2, Tax Code; Chapter 8, Title 132, Revised Statutes;
24 Section 81.111, Natural Resources Code; the Municipal Sales and
25 Use Tax Act (Chapter 321, Tax Code); Section 451.404,
26 Transportation Code; or Subchapter I, Chapter 452, Transportation
27 Code.

1 Class 6. Claims for the cost of confinement established by
2 the institutional division of the Texas Department of Criminal
3 Justice under Section 501.017, Government Code.

4 Class 7. Claims for repayment of medical assistance
5 payments made by the state under Chapter 32, Human Resources Code,
6 to or for the benefit of the decedent.

7 Class 8. All other claims.

8 SECTION 15. Section 378B(f), Texas Probate Code, is amended
9 to read as follows:

10 (f) A devisee of a pecuniary bequest, whether or not in
11 trust, shall be paid interest on the bequest at the legal rate of
12 interest as provided by Section 302.002, Finance Code [~~Article~~
13 ~~1.03, Revised Statutes (Article 5069-1.03, Vernon's Texas Civil~~
14 ~~Statutes)~~], and its subsequent amendments, beginning one year after
15 the date the court grants letters testamentary or letters of
16 administration.

17 SECTION 16. Sections 5(a), 5A(c), 5A(d), 5A(e), and
18 322A(j), Texas Probate Code, are repealed.

19 SECTION 17. (a) The changes in law made by this Act to
20 Sections 5 and 5A(b), Texas Probate Code, apply only to a probate
21 proceeding or other action commenced on or after the effective date
22 of this Act without regard to whether:

23 (1) the decedent's death occurred before, on, or after
24 that date; and

25 (2) the probate proceeding or other action is the
26 original proceeding or action.

27 (b) A probate proceeding or other action commenced before

1 the effective date of this Act is governed by the law applicable to
2 the proceeding or action immediately before the effective date of
3 this Act, and that law is continued in effect for that purpose.

4 SECTION 18. (a) Sections 37C and 58c, Texas Probate Code, as
5 added by this Act, apply only to a will executed on or after the
6 effective date of this Act. A will executed before the effective
7 date of this Act is governed by the law in effect on the date the
8 will was executed, and that law is continued in effect for that
9 purpose.

10 (b) The change in law made by this Act to Section 67(a),
11 Texas Probate Code, applies only to the estate of a person who dies
12 on or after the effective date of this Act. An estate of a person who
13 dies before the effective date of this Act is governed by the law in
14 effect on the date the person died, and that law is continued in
15 effect for that purpose.

16 (c) The changes in law made by this Act to Section 222A(b),
17 Texas Probate Code, apply only to an application that is filed on or
18 after the effective date of this Act. An application that is filed
19 before the effective date of this Act is governed by the law in
20 effect on the date on which the application was filed, and that law
21 is continued in effect for that purpose.

22 SECTION 19. This Act takes effect September 1, 2003.