

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. Section 5A(b), Texas Probate Code, is amended to read as follows:

(b) In proceedings in the statutory probate courts and district courts, the phrases "appertaining to estates" and "incident to an estate" in this Code include the probate of wills, the issuance of letters testamentary and of administration, and the determination of heirship, and also include, but are not limited to, all claims by or against an estate, all actions for trial of title to land and for the enforcement of liens thereon, all actions for trial of the right of property, all actions to construe wills, the interpretation and administration of testamentary trusts and the applying of constructive trusts, and generally all matters relating to the settlement, partition, and distribution of estates of deceased persons. All statutory probate courts may, in the exercise of their jurisdiction, notwithstanding any other provisions of this Code, hear all suits, actions, and applications filed against or on behalf of any heirship proceeding or decedent's estate, including estates administered by an independent executor; all such suits, actions, and applications are appertaining to and incident to an estate. This subsection shall be construed in conjunction with and in harmony with Section 145 and all other

1 sections of this Code dealing with independent executors, but shall
2 not be construed so as to increase permissible judicial control
3 over independent executors. All statutory probate courts shall
4 have the same powers over independent executors that are
5 exercisable by the district courts. [~~In situations where the
6 jurisdiction of a statutory probate court is concurrent with that
7 of a district court, any cause of action appertaining to estates or
8 incident to an estate shall be brought in a statutory probate court
9 rather than in the district court.~~]

10 SECTION 2. Chapter II, Texas Probate Code, is amended by
11 adding Section 37C to read as follows:

12 Sec. 37C. SATISFACTION OF DEVISE. (a) Property given to a
13 person by a testator during the testator's lifetime is considered a
14 satisfaction, either wholly or partly, of a devise to the person if:

15 (1) the testator's will provides for deduction of the
16 lifetime gift;

17 (2) the testator declares in a contemporaneous writing
18 that the lifetime gift is to be deducted from or is in satisfaction
19 of the devise; or

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

22 (b) Property given in partial satisfaction of a devise shall
23 be valued as of the earlier of the date on which the devisee
24 acquires possession of or enjoys the property or the date on which
25 the testator dies.

26 SECTION 3. Chapter IV, Texas Probate Code, is amended by
27 adding Section 58c to read as follows:

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

5 (1) the testator makes a specific reference to the
6 power in the will; or

7 (2) there is some other indication in writing that the
8 testator intended to include the property subject to the power in
9 the will.

10 SECTION 4. Section 59A(a), Texas Probate Code, is amended
11 to read as follows:

12 (a) A contract to make a will or devise, or not to revoke a
13 will or devise, if executed or entered into on or after September 1,
14 2003 [~~1979~~], can be established only by:

15 (1) provisions of a written agreement that is binding
16 and enforceable; or

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

19 SECTION 5. Section 67(a), Texas Probate Code, is amended to
20 read as follows:

21 (a) Whenever a pretermitted child is not mentioned in the
22 testator's will, provided for in the testator's will, or otherwise
23 provided for by the testator, the pretermitted child shall succeed
24 to a portion of the testator's estate as provided by Subsection
25 (a)(1) or (a)(2) of this section.

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

1 (A) No provision is made therein for any such
2 child, a pretermitted child succeeds to the portion of the
3 testator's separate and community estate to which the pretermitted
4 child would have been entitled pursuant to Section 38(a) of this
5 code had the testator died intestate without a surviving spouse
6 owning only that portion of his estate not devised or bequeathed to
7 the parent of the pretermitted child.

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

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

14 (ii) The pretermitted child shall receive
15 such share of the testator's estate, as limited in Subparagraph
16 (i), as he would have received had the testator included all
17 pretermitted children with the children upon whom benefits were
18 conferred under the will, and given an equal share of such benefits
19 to each such child.

20 (iii) To the extent that it is feasible, the
21 interest of the pretermitted child in the testator's estate shall
22 be of the same character, whether an equitable or legal life estate
23 or in fee, as the interest that the testator conferred upon his
24 children under the will.

25 (2) If the testator has no child living when he
26 executes his last will, the pretermitted child succeeds to the
27 portion of the testator's separate and community estate to which

1 the pretermitted child would have been entitled pursuant to Section
2 38(a) of this code had the testator died intestate without a
3 surviving spouse owning only that portion of his estate not devised
4 or bequeathed to the parent of the pretermitted child.

5 SECTION 6. Section 84, Texas Probate Code, is amended to
6 read as follows:

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

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

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

17 (2) If all the witnesses are non-residents of the
18 county, or those who are residents are unable to attend court, by
19 the sworn testimony of any one or more of them by deposition, either
20 written or oral, taken in the same manner and under the same rules
21 as depositions taken in other civil actions; or, if no opposition in
22 writing to such will is filed on or before the date set for hearing
23 thereon, then by the sworn testimony or affidavit of two witnesses
24 taken in open court, or by deposition in the manner provided herein,
25 to the signature or the handwriting evidenced thereby of one or more
26 of the attesting witnesses, or of the testator, if he signed the
27 will; or, if it be shown under oath to the satisfaction of the court

1 that, diligent search having been made, only one witness can be
2 found who can make the required proof, then by the sworn testimony
3 or affidavit of such one taken in open court, or by deposition in
4 the manner provided herein, to such signatures or handwriting.

5 (3) If none of the witnesses is living, or if all of
6 such witnesses are members of the armed forces of the United States
7 of America or of any auxiliary thereof, or of the armed forces
8 reserve of the United States of America or of any auxiliary thereof,
9 or of the Maritime Service, and are beyond the jurisdiction of the
10 court, by two witnesses to the handwriting of one or both of the
11 subscribing witnesses thereto, or of the testator, if signed by
12 him, and such proof may be either by sworn testimony or affidavit
13 taken in open court, or by deposition, either written or oral, taken
14 in the same manner and under the same rules as depositions taken in
15 other civil actions; or, if it be shown under oath to the
16 satisfaction of the court that, diligent search having been made,
17 only one witness can be found who can make the required proof, then
18 by the sworn testimony or affidavit of such one taken in open court,
19 or by deposition in the manner provided herein, to such signatures
20 or handwriting.

21 (c) [~~(b)~~] Holographic Will. If not self-proved as provided
22 in this Code, a will wholly in the handwriting of the testator may
23 be proved by two witnesses to his handwriting, which evidence may be
24 by sworn testimony or affidavit taken in open court, or, if such
25 witnesses are non-residents of the county or are residents who are
26 unable to attend court, by deposition, either written or oral,
27 taken in the same manner and under the same rules as depositions

1 taken in other civil actions.

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

11 SECTION 7. Section 245, Texas Probate Code, is amended to
12 read as follows:

13 Sec. 245. WHEN COSTS ARE ADJUDGED AGAINST REPRESENTATIVE.
14 When a 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 8. Section 378B(f), Texas Probate Code, is amended

1 to read as follows:

2 (f) A devisee of a pecuniary bequest, whether or not in
3 trust, shall be paid interest on the bequest at the legal rate of
4 interest as provided by Section 302.002, Finance Code [~~Article~~
5 ~~1.03, Revised Statutes (Article 5069-1.03, Vernon's Texas Civil~~
6 ~~Statutes)~~], and its subsequent amendments, beginning one year after
7 the date the court grants letters testamentary or letters of
8 administration.

9 SECTION 9. Section 322A(j), Texas Probate Code, is
10 repealed.

11 SECTION 10. (a) The change in law made by this Act to
12 Section 5A(b), Texas Probate Code, applies only to a cause of action
13 that accrues on or after the effective date of this Act. A cause of
14 action that accrued before the effective date of this Act is
15 governed by the law in effect at the time the cause of action
16 accrued, and the former law is continued in effect for that purpose.

17 (b) Sections 37C and 58c, Texas Probate Code, as added by
18 this Act, apply only to a will executed on or after the effective
19 date of this Act. A will executed before the effective date of this
20 Act is governed by the law in effect on the date the will was
21 executed, and that law is continued in effect for that purpose.

22 (c) The change in law made by this Act to Section 59A(a),
23 Texas Probate Code, applies only to a contract to make a will or
24 devise or not to revoke a will or devise that is executed on or after
25 the effective date of this Act. A contract to make a will or devise
26 or not to revoke a will or devise that is executed before the
27 effective date of this Act is governed by the law in effect at the

1 time the contract was executed, and the former law is continued in
2 effect for that purpose.

3 (d) The change in law made by this Act to Section 67(a),
4 Texas Probate Code, applies only to the estate of a person who dies
5 on or after the effective date of this Act. An estate of a person who
6 dies before the effective date of this Act is governed by the law in
7 effect on the date the person died, and that law is continued in
8 effect for that purpose.

9 SECTION 11. This Act takes effect September 1, 2003.