

1-1 By: Hartnett (Senate Sponsor - Harris) H.B. No. 1473
1-2 (In the Senate - Received from the House May 12, 2003;
1-3 May 13, 2003, read first time and referred to Committee on
1-4 Jurisprudence; May 22, 2003, reported favorably by the following
1-5 vote: Yeas 5, Nays 0; May 22, 2003, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to probate matters.

1-9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-10 SECTION 1. The heading to Section 5, Texas Probate Code, is
1-11 amended to read as follows:

1-12 Sec. 5. JURISDICTION [~~OF DISTRICT COURT AND OTHER COURTS OF~~
1-13 ~~RECORD~~] WITH RESPECT TO PROBATE PROCEEDINGS [~~AND APPEALS FROM~~
1-14 ~~PROBATE ORDERS~~].

1-15 SECTION 2. Section 5, Texas Probate Code, is amended by
1-16 amending Subsections (b), (c), (d), and (e) and adding Subsections
1-17 (b-1)-(b-5), (h), and (i) to read as follows:

1-18 (b) In those counties in which there is no statutory probate
1-19 court, county court at law, or other statutory court exercising the
1-20 jurisdiction of a probate court, all applications, petitions, and
1-21 motions regarding probate and administrations shall be filed and
1-22 heard in the county court. ~~In[, except that in]~~ contested probate
1-23 matters, the judge of the county court may on the judge's own motion
1-24 [~~+~~] or shall on the motion of any party to the proceeding, according
1-25 to the motion:

1-26 (1) [~~+~~] request [~~as provided by Section 25.0022,~~
1-27 ~~Government Code,~~] the assignment of a statutory probate court judge
1-28 to hear the contested portion of the proceeding, as provided by
1-29 Section 25.0022, Government Code; or

1-30 (2) transfer the contested portion of the proceeding
1-31 to the district court, which may then hear the contested matter as
1-32 if originally filed in district court.

1-33 (b-1) If the judge of the county court has not transferred a
1-34 contested probate matter to the district court at the time a party
1-35 files a motion for assignment of a statutory probate court judge,
1-36 the county judge shall grant the motion and may not transfer the
1-37 matter to district court unless the party withdraws the motion.

1-38 (b-2) A statutory probate court judge assigned to a
1-39 contested probate matter as provided by Subsection (b) of this
1-40 section [~~this subsection~~] has [~~for that matter~~] the jurisdiction
1-41 and authority granted to a statutory probate court by Sections 5A
1-42 and 5B of this code. On resolution of a contested matter, including
1-43 an appeal of a matter, to which a statutory probate court judge has
1-44 been assigned, the statutory probate court judge shall transfer the
1-45 resolved portion of the case to the county court for further
1-46 proceedings not inconsistent with the orders of the statutory
1-47 probate court judge [~~The county court shall continue to exercise~~
1-48 ~~jurisdiction over the management of the estate with the exception~~
1-49 ~~of the contested matter until final disposition of the contested~~
1-50 ~~matter is made by the assigned judge or the district court~~].

1-51 (b-3) In contested matters transferred to the district
1-52 court [~~in those counties~~], the district court has [~~, concurrently~~
1-53 ~~with the county court, shall have~~] the general jurisdiction of a
1-54 probate court. On [~~Upon~~] resolution of a [~~all pending~~] contested
1-55 matter, including an appeal of a matter, the district court shall
1-56 transfer [~~matters,~~] the resolved [~~contested~~] portion of the case
1-57 [~~probate proceeding shall be transferred by the district court~~] to
1-58 the county court for further proceedings not inconsistent with the
1-59 orders of the district court.

1-60 (b-4) The county court shall continue to exercise
1-61 jurisdiction over the management of the estate with the exception
1-62 of the contested matter until final disposition of the contested
1-63 matter is made by the assigned statutory probate court judge or the
1-64 district court.

2-1 **(b-5)** If a contested portion of the proceeding is
 2-2 transferred to a district court under Subsection (b-3) of this
 2-3 section [~~this subsection~~], the clerk of the district court may
 2-4 perform in relation to the transferred portion of the proceeding
 2-5 any function a county clerk may perform in that type of contested
 2-6 proceeding.

2-7 (c) In those counties in which there is no statutory probate
 2-8 court, but in which there is a county court at law or other
 2-9 statutory court exercising the jurisdiction of a probate court, all
 2-10 applications, petitions, and motions regarding probate and
 2-11 administrations shall be filed and heard in those courts and the
 2-12 constitutional county court [~~, rather than in the district courts~~],
 2-13 unless otherwise provided by law. The judge of a county court may
 2-14 hear any of those matters regarding probate or administrations
 2-15 sitting for the judge of any other county court. In contested
 2-16 probate matters, the judge of the constitutional county court may
 2-17 on the judge's own motion, and shall on the motion of a party to the
 2-18 proceeding, transfer the proceeding to the county court at law or a
 2-19 statutory court exercising the jurisdiction of a probate court
 2-20 other than a statutory probate court. The court to which the
 2-21 proceeding is transferred may hear the proceeding as if originally
 2-22 filed in the court.

2-23 (d) In those counties in which there is a statutory probate
 2-24 court, all applications, petitions, and motions regarding probate
 2-25 or administrations shall be filed and heard in the statutory
 2-26 probate court [~~, unless otherwise provided by law~~].

2-27 (e) A statutory probate court has concurrent jurisdiction
 2-28 with the district court in all personal injury, survival, or
 2-29 wrongful death actions by or against a person in the person's
 2-30 capacity as a personal representative, in all actions involving an
 2-31 inter vivos trust, in all actions involving a charitable trust, and
 2-32 in all actions involving a personal representative of an estate in
 2-33 which each other party aligned with the personal representative is
 2-34 not an interested person in that estate [~~testamentary trust~~].

2-35 (h) A statutory probate court has jurisdiction over any
 2-36 matter appertaining to an estate or incident to an estate and has
 2-37 jurisdiction over any cause of action in which a personal
 2-38 representative of an estate pending in the statutory probate court
 2-39 is a party.

2-40 (i) A statutory probate court may exercise the pendent and
 2-41 ancillary jurisdiction necessary to promote judicial efficiency
 2-42 and economy.

2-43 SECTION 3. The heading to Section 5A, Texas Probate Code, is
 2-44 amended to read as follows:

2-45 Sec. 5A. MATTERS APPERTAINING AND INCIDENT TO AN ESTATE
 2-46 [~~AND OTHER PROBATE COURT JURISDICTION~~].

2-47 SECTION 4. Section 5A(b), Texas Probate Code, is amended to
 2-48 read as follows:

2-49 (b) In proceedings in the statutory probate courts [~~and~~
 2-50 ~~district courts~~], the phrases "appertaining to estates" and
 2-51 "incident to an estate" in this Code include the probate of wills,
 2-52 the issuance of letters testamentary and of administration, and the
 2-53 determination of heirship, and also include, but are not limited
 2-54 to, all claims by or against an estate, all actions for trial of
 2-55 title to land and for the enforcement of liens thereon, all actions
 2-56 for trial of the right of property, all actions to construe wills,
 2-57 the interpretation and administration of testamentary trusts and
 2-58 the applying of constructive trusts, and generally all matters
 2-59 relating to the collection, settlement, partition, and
 2-60 distribution of estates of deceased persons. All statutory probate
 2-61 courts may, in the exercise of their jurisdiction, notwithstanding
 2-62 any other provisions of this Code, hear all suits, actions, and
 2-63 applications filed against or on behalf of any heirship proceeding
 2-64 or decedent's estate, including estates administered by an
 2-65 independent executor; all such suits, actions, and applications are
 2-66 appertaining to and incident to an estate. This subsection shall be
 2-67 construed in conjunction with and in harmony with Section 145 and
 2-68 all other sections of this Code dealing with independent executors,
 2-69 but shall not be construed so as to increase permissible judicial

3-1 control over independent executors. Except for [~~All statutory~~
 3-2 ~~probate courts shall have the same powers over independent~~
 3-3 ~~executors that are exercisable by the district courts. In~~
 3-4 situations in which [~~where~~] the jurisdiction of a statutory probate
 3-5 court is concurrent with that of a district court as provided by
 3-6 Section 5(e) of this Code or any other court, any cause of action
 3-7 appertaining to estates or incident to an estate shall be brought in
 3-8 a statutory probate court [~~rather than in the district court~~].

3-9 SECTION 5. Section 8(c)(2), Texas Probate Code, is amended
 3-10 to read as follows:

3-11 (2) Transfer for Convenience of the Estate. If it
 3-12 appears to the court at any time before the estate is closed that it
 3-13 would be in the best interest of the estate, the court, in its
 3-14 discretion, may order the proceeding transferred to the proper
 3-15 court in any other county in this State. The clerk of the court from
 3-16 which the proceeding is transferred shall transmit to the court to
 3-17 which the proceeding is transferred the original file in the
 3-18 proceeding and a certified copy of the index [~~entries in the minutes~~
 3-19 ~~that relate to the proceeding~~].

3-20 SECTION 6. Chapter I, Texas Probate Code, is amended by
 3-21 adding Section 10C to read as follows:

3-22 Sec. 10C. EFFECT OF FILING OR CONTESTING PLEADING. (a) The
 3-23 filing or contesting in probate court of any pleading relating to a
 3-24 decendent's estate does not constitute tortious interference with
 3-25 inheritance of the estate.

3-26 (b) This section does not abrogate any rights of a person
 3-27 under Rule 13, Texas Rules of Civil Procedure, or Chapter 10, Civil
 3-28 Practice and Remedies Code.

3-29 SECTION 7. Chapter II, Texas Probate Code, is amended by
 3-30 adding Section 37C to read as follows:

3-31 Sec. 37C. SATISFACTION OF DEVISE. (a) Property given to a
 3-32 person by a testator during the testator's lifetime is considered a
 3-33 satisfaction, either wholly or partly, of a devise to the person if:

3-34 (1) the testator's will provides for deduction of the
 3-35 lifetime gift;

3-36 (2) the testator declares in a contemporaneous writing
 3-37 that the lifetime gift is to be deducted from or is in satisfaction
 3-38 of the devise; or

3-39 (3) the devisee acknowledges in writing that the
 3-40 lifetime gift is in satisfaction of the devise.

3-41 (b) Property given in partial satisfaction of a devise shall
 3-42 be valued as of the earlier of the date on which the devisee
 3-43 acquires possession of or enjoys the property or the date on which
 3-44 the testator dies.

3-45 SECTION 8. Chapter IV, Texas Probate Code, is amended by
 3-46 adding Section 58c to read as follows:

3-47 Sec. 58c. EXERCISE OF POWER OF APPOINTMENT. A testator may
 3-48 not exercise a power of appointment through a residuary clause in
 3-49 the testator's will or through a will providing for general
 3-50 disposition of all the testator's property unless:

3-51 (1) the testator makes a specific reference to the
 3-52 power in the will; or

3-53 (2) there is some other indication in writing that the
 3-54 testator intended to include the property subject to the power in
 3-55 the will.

3-56 SECTION 9. Section 59A(a), Texas Probate Code, is amended
 3-57 to read as follows:

3-58 (a) A contract to make a will or devise, or not to revoke a
 3-59 will or devise, if executed or entered into on or after September 1,
 3-60 1979, can be established only by:

3-61 (1) provisions of a written agreement that is binding
 3-62 and enforceable; or

3-63 (2) provisions of a will stating that a contract does
 3-64 exist and stating the material provisions of the contract.

3-65 SECTION 10. Section 67(a), Texas Probate Code, is amended
 3-66 to read as follows:

3-67 (a) Whenever a pretermitted child is not mentioned in the
 3-68 testator's will, provided for in the testator's will, or otherwise
 3-69 provided for by the testator, the pretermitted child shall succeed

4-1 to a portion of the testator's estate as provided by Subsection
 4-2 (a)(1) or (a)(2) of this section.

4-3 (1) If the testator has one or more children living
 4-4 when he executes his last will, and:

4-5 (A) No provision is made therein for any such
 4-6 child, a pretermitted child succeeds to the portion of the
 4-7 testator's separate and community estate to which the pretermitted
 4-8 child would have been entitled pursuant to Section 38(a) of this
 4-9 code had the testator died intestate without a surviving spouse
 4-10 owning only that portion of his estate not devised or bequeathed to
 4-11 the parent of the pretermitted child.

4-12 (B) Provision, whether vested or contingent, is
 4-13 made therein for one or more of such children, a pretermitted child
 4-14 is entitled to share in the testator's estate as follows:

4-15 (i) The portion of the testator's estate to
 4-16 which the pretermitted child is entitled is limited to the
 4-17 disposition made to children under the will.

4-18 (ii) The pretermitted child shall receive
 4-19 such share of the testator's estate, as limited in Subparagraph
 4-20 (i), as he would have received had the testator included all
 4-21 pretermitted children with the children upon whom benefits were
 4-22 conferred under the will, and given an equal share of such benefits
 4-23 to each such child.

4-24 (iii) To the extent that it is feasible, the
 4-25 interest of the pretermitted child in the testator's estate shall
 4-26 be of the same character, whether an equitable or legal life estate
 4-27 or in fee, as the interest that the testator conferred upon his
 4-28 children under the will.

4-29 (2) If the testator has no child living when he
 4-30 executes his last will, the pretermitted child succeeds to the
 4-31 portion of the testator's separate and community estate to which
 4-32 the pretermitted child would have been entitled pursuant to Section
 4-33 38(a) of this code had the testator died intestate without a
 4-34 surviving spouse owning only that portion of his estate not devised
 4-35 or bequeathed to the parent of the pretermitted child.

4-36 SECTION 11. Section 84, Texas Probate Code, is amended to
 4-37 read as follows:

4-38 Sec. 84. PROOF OF WRITTEN WILL PRODUCED IN COURT. (a)
 4-39 Self-Proved Will. If a will is self-proved as provided in this
 4-40 Code, no further proof of its execution with the formalities and
 4-41 solemnities and under the circumstances required to make it a valid
 4-42 will shall be necessary.

4-43 (b) Attested Written Will. If not self-proved as provided
 4-44 in this Code, an attested written will produced in court may be
 4-45 proved:

4-46 (1) By the sworn testimony or affidavit of one or more
 4-47 of the subscribing witnesses thereto, taken in open court.

4-48 (2) If all the witnesses are non-residents of the
 4-49 county, or those who are residents are unable to attend court, by
 4-50 the sworn testimony of any one or more of them by deposition, either
 4-51 written or oral, taken in the same manner and under the same rules
 4-52 as depositions taken in other civil actions; or, if no opposition in
 4-53 writing to such will is filed on or before the date set for hearing
 4-54 thereon, then by the sworn testimony or affidavit of two witnesses
 4-55 taken in open court, or by deposition in the manner provided herein,
 4-56 to the signature or the handwriting evidenced thereby of one or more
 4-57 of the attesting witnesses, or of the testator, if he signed the
 4-58 will; or, if it be shown under oath to the satisfaction of the court
 4-59 that, diligent search having been made, only one witness can be
 4-60 found who can make the required proof, then by the sworn testimony
 4-61 or affidavit of such one taken in open court, or by deposition in
 4-62 the manner provided herein, to such signatures or handwriting.

4-63 (3) If none of the witnesses is living, or if all of
 4-64 such witnesses are members of the armed forces of the United States
 4-65 of America or of any auxiliary thereof, or of the armed forces
 4-66 reserve of the United States of America or of any auxiliary thereof,
 4-67 or of the Maritime Service, and are beyond the jurisdiction of the
 4-68 court, by two witnesses to the handwriting of one or both of the
 4-69 subscribing witnesses thereto, or of the testator, if signed by

5-1 him, and such proof may be either by sworn testimony or affidavit
 5-2 taken in open court, or by deposition, either written or oral, taken
 5-3 in the same manner and under the same rules as depositions taken in
 5-4 other civil actions; or, if it be shown under oath to the
 5-5 satisfaction of the court that, diligent search having been made,
 5-6 only one witness can be found who can make the required proof, then
 5-7 by the sworn testimony or affidavit of such one taken in open court,
 5-8 or by deposition in the manner provided herein, to such signatures
 5-9 or handwriting.

5-10 (c) [~~(b)~~] Holographic Will. If not self-proved as provided
 5-11 in this Code, a will wholly in the handwriting of the testator may
 5-12 be proved by two witnesses to his handwriting, which evidence may be
 5-13 by sworn testimony or affidavit taken in open court, or, if such
 5-14 witnesses are non-residents of the county or are residents who are
 5-15 unable to attend court, by deposition, either written or oral,
 5-16 taken in the same manner and under the same rules as depositions
 5-17 taken in other civil actions.

5-18 (d) [~~(c)~~] Depositions if No Contest Filed. If no contest
 5-19 has been filed, depositions for the purpose of establishing a will
 5-20 may be taken in the same manner as provided in this Code for the
 5-21 taking of depositions where there is no opposing party or attorney
 5-22 of record upon whom notice and copies of interrogatories may be
 5-23 served; and, in such event, this Subsection, rather than the
 5-24 preceding portions of this Section which provide for the taking of
 5-25 depositions under the same rules as depositions in other civil
 5-26 actions, shall be applicable.

5-27 SECTION 12. Section 222A(b), Texas Probate Code, is amended
 5-28 to read as follows:

5-29 (b) On the filing of an application for a hearing under this
 5-30 section, the court clerk shall issue a notice stating that the
 5-31 application for reinstatement was filed, the name of the [~~ward or~~]
 5-32 decedent, and the name of the applicant. The clerk shall issue the
 5-33 notice to the applicant and to the successor representative of [
 5-34 the ward, a person interested in the welfare of the ward, the
 5-35 decedent's estate [~~, or the ward's estate and, if applicable, to a~~
 5-36 ~~person who has control of the care and custody of the ward]~~. The
 5-37 notice must cite all persons interested in the estate [~~or welfare of~~
 5-38 ~~the ward]~~ to appear at the time and place stated in the notice if
 5-39 they wish to contest the application.

5-40 SECTION 13. Section 245, Texas Probate Code, is amended to
 5-41 read as follows:

5-42 Sec. 245. WHEN COSTS ARE ADJUDGED AGAINST REPRESENTATIVE.
 5-43 When a [the] personal representative [of an estate or person]
 5-44 neglects to perform a required [the performance of any] duty
 5-45 [required of him, and any costs are incurred thereby,] or if a
 5-46 personal representative [he] is removed for cause, the personal
 5-47 representative [he] and the sureties on the personal
 5-48 representative's [his] bond are [shall be] liable for:

5-49 (1) costs of removal and other additional costs
 5-50 incurred that are not authorized expenditures, as defined by this
 5-51 code; [~~7~~] and

5-52 (2) [~~for~~] reasonable attorney's fees incurred in
 5-53 removing the personal representative or [him and] in obtaining
 5-54 [his] compliance regarding any statutory duty the personal
 5-55 representative [he] has neglected.

5-56 SECTION 14. Section 322, Texas Probate Code, is amended to
 5-57 read as follows:

5-58 Sec. 322. CLASSIFICATION OF CLAIMS AGAINST ESTATES OF
 5-59 DECEDENT. Claims against an estate of a decedent shall be
 5-60 classified and have priority of payment, as follows:

5-61 Class 1. Funeral expenses and expenses of last sickness for
 5-62 a reasonable amount to be approved by the court, not to exceed a
 5-63 total of Fifteen Thousand Dollars, with any excess to be classified
 5-64 and paid as other unsecured claims.

5-65 Class 2. Expenses of administration and expenses incurred
 5-66 in the preservation, safekeeping, and management of the estate,
 5-67 including fees and expenses awarded under Section 243 of this code.

5-68 Class 3. Secured claims for money under Section 306(a)(1),
 5-69 including tax liens, so far as the same can be paid out of the

6-1 proceeds of the property subject to such mortgage or other lien, and
6-2 when more than one mortgage, lien, or security interest shall exist
6-3 upon the same property, they shall be paid in order of their
6-4 priority.

6-5 Class 4. Claims for the principal amount of and accrued
6-6 interest on delinquent child support and child support arrearages
6-7 that have been confirmed and reduced to money judgment, as
6-8 determined under Subchapter F, Chapter 157, Family Code.

6-9 Class 5. Claims for taxes, penalties, and interest due
6-10 under Title 2, Tax Code; Chapter 8, Title 132, Revised Statutes;
6-11 Section 81.111, Natural Resources Code; the Municipal Sales and
6-12 Use Tax Act (Chapter 321, Tax Code); Section 451.404,
6-13 Transportation Code; or Subchapter I, Chapter 452, Transportation
6-14 Code.

6-15 Class 6. Claims for the cost of confinement established by
6-16 the institutional division of the Texas Department of Criminal
6-17 Justice under Section 501.017, Government Code.

6-18 Class 7. Claims for repayment of medical assistance
6-19 payments made by the state under Chapter 32, Human Resources Code,
6-20 to or for the benefit of the decedent.

6-21 Class 8. All other claims.

6-22 SECTION 15. Section 378B(f), Texas Probate Code, is amended
6-23 to read as follows:

6-24 (f) A devisee of a pecuniary bequest, whether or not in
6-25 trust, shall be paid interest on the bequest at the legal rate of
6-26 interest as provided by Section 302.002, Finance Code [~~Article~~
6-27 ~~1.03, Revised Statutes (Article 5069-1.03, Vernon's Texas Civil~~
6-28 ~~Statutes)]], and its subsequent amendments, beginning one year after
6-29 the date the court grants letters testamentary or letters of
6-30 administration.~~

6-31 SECTION 16. Sections 5(a), 5A(c), 5A(d), 5A(e), and
6-32 322A(j), Texas Probate Code, are repealed.

6-33 SECTION 17. (a) The changes in law made by this Act to
6-34 Sections 5 and 5A(b), Texas Probate Code, apply only to a probate
6-35 proceeding or other action commenced on or after the effective date
6-36 of this Act without regard to whether:

6-37 (1) the decedent's death occurred before, on, or after
6-38 that date; and

6-39 (2) the probate proceeding or other action is the
6-40 original proceeding or action.

6-41 (b) A probate proceeding or other action commenced before
6-42 the effective date of this Act is governed by the law applicable to
6-43 the proceeding or action immediately before the effective date of
6-44 this Act, and that law is continued in effect for that purpose.

6-45 SECTION 18. (a) Sections 37C and 58c, Texas Probate Code, as
6-46 added by this Act, apply only to a will executed on or after the
6-47 effective date of this Act. A will executed before the effective
6-48 date of this Act is governed by the law in effect on the date the
6-49 will was executed, and that law is continued in effect for that
6-50 purpose.

6-51 (b) The change in law made by this Act to Section 67(a),
6-52 Texas Probate Code, applies only to the estate of a person who dies
6-53 on or after the effective date of this Act. An estate of a person who
6-54 dies before the effective date of this Act is governed by the law in
6-55 effect on the date the person died, and that law is continued in
6-56 effect for that purpose.

6-57 (c) The changes in law made by this Act to Section 222A(b),
6-58 Texas Probate Code, apply only to an application that is filed on or
6-59 after the effective date of this Act. An application that is filed
6-60 before the effective date of this Act is governed by the law in
6-61 effect on the date on which the application was filed, and that law
6-62 is continued in effect for that purpose.

6-63 SECTION 19. This Act takes effect September 1, 2003.

6-64 * * * * *