

By: Naishtat

H.B. No. 1539

A BILL TO BE ENTITLED

AN ACT

relating to associate judges for statutory probate courts.

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

SECTION 1. The heading to Chapter 54, Government Code, is amended to read as follows:

CHAPTER 54. MASTERS; MAGISTRATES; REFEREES; ASSOCIATE JUDGES

SECTION 2. The heading to Subchapter G, Chapter 54, Government Code, is amended to read as follows:

SUBCHAPTER G. STATUTORY PROBATE COURT ASSOCIATE JUDGES [~~MASTERS~~]

SECTION 3. Sections 54.602-54.614, Government Code, are amended to read as follows:

Sec. 54.602. APPLICATION. This subchapter does not apply to the statutory probate courts of:

(1) Dallas County; or

(2) Harris County, except Probate Court No. 1.

Sec. 54.603. APPOINTMENT. (a) After obtaining the approval of the commissioners court, the judge of a statutory probate court by order may appoint a person to act as associate judge [~~probate master~~] for the statutory probate court.

(b) The commissioners court may authorize the appointment of an associate judge [~~a probate master~~] for each court or may authorize one or more associate judges [~~probate masters~~] to share service with two or more courts, if more than one statutory probate court exists in a county.

1 (c) If an associate judge [~~a probate master~~] serves more
2 than one court, the associate judge's [~~probate master's~~]
3 appointment must be made with the unanimous approval of all the
4 judges under whom the associate judge [~~probate master~~] serves.

5 (d) An associate judge [~~A probate master~~] must meet the
6 qualifications to serve as a judge of the court to which the
7 associate judge is appointed.

8 (e) An associate judge [~~A probate master~~] appointed under
9 this subchapter may serve as a master appointed under Section
10 574.0085, Health and Safety Code.

11 Sec. 54.604. TERMINATION OF ASSOCIATE JUDGE [~~PROBATE~~
12 ~~MASTER~~]. (a) An associate judge [~~A probate master~~] who serves a
13 single court serves at the will of the judge of that court.

14 (b) The employment of an associate judge [~~a probate master~~]
15 who serves more than two courts may only be terminated by a majority
16 vote of all the judges of the courts that the associate judge
17 [~~probate master~~] serves.

18 (c) The employment of an associate judge [~~a probate master~~]
19 who serves two courts may be terminated by either of the judges of
20 the courts that the associate judge [~~probate master~~] serves.

21 (d) The appointment of the associate judge [~~probate master~~]
22 terminates if:

23 (1) the appointing judge vacates the judge's office;
24 (2) the associate judge [~~probate master~~] becomes a
25 candidate for election to public office; or

26 (3) the commissioners court does not appropriate funds
27 in the county's budget to pay the salary of the associate judge

1 ~~[probate master]~~.

2 Sec. 54.605. COMPENSATION. (a) An associate judge [A
3 ~~probate master~~] is entitled to the compensation set by the
4 appointing judge and approved by the commissioners court. The
5 salary of the associate judge [~~probate master~~] may not exceed the
6 salary of the appointing judge.

7 (b) The compensation of the associate judge [~~probate~~
8 ~~master~~] shall be paid by the county from the county general fund in
9 the same manner that the appointing judge's salary is paid.

10 Sec. 54.606. OATH. An associate judge [A ~~probate master~~]
11 must take the constitutional oath of office required of appointed
12 officers of this state.

13 Sec. 54.607. MAGISTRATE. An associate judge [A ~~probate~~
14 ~~master~~] appointed under this subchapter is a magistrate.

15 Sec. 54.608. CASES THAT MAY BE REFERRED. (a) Except as
16 provided by this section, a judge of a court may refer to an
17 associate judge [~~a probate master~~] any aspect of a suit over which
18 the probate court has jurisdiction, including any matter ancillary
19 to the suit.

20 (b) Unless a party files a written objection to the
21 associate judge [~~probate master~~] hearing a trial on the merits, the
22 judge may refer the trial to the associate judge [~~probate master~~].
23 A trial on the merits is any final adjudication from which an appeal
24 may be taken to a court of appeals.

25 (c) A party must file an objection to an associate judge [a
26 ~~probate master~~] hearing a trial on the merits or presiding at a jury
27 trial not later than the 10th day after the date the party receives

1 notice that the associate judge [~~probate master~~] will hear the
2 trial. If an objection is filed, the referring court shall hear the
3 trial on the merits or preside at a jury trial.

4 ~~[(d) Unless all parties consent in writing to a probate
5 master hearing a contested trial on the merits of a lawsuit in which
6 the referring court's jurisdiction is concurrent with the district
7 court in the county of the referring court, the matter must be tried
8 by the referring court. In a lawsuit in which the referring court's
9 jurisdiction is concurrent with the district court, any order
10 rendered under a probate master's report is void if the parties do
11 not consent in writing to the probate master conducting the trial on
12 the merits.]~~

13 ~~[(c) If a jury trial is demanded and a jury fee paid in a
14 trial on the merits, the probate master shall refer any matters
15 requiring a jury back to the referring court for a trial before the
16 referring court and jury.]~~

17 Sec. 54.609. ORDER OF REFERRAL. (a) In referring a case to
18 an associate judge [~~a probate master~~], the judge of the referring
19 court shall render:

20 (1) an individual order of referral; or

21 (2) a general order of referral specifying the class
22 and type of cases to be heard by the associate judge [~~probate
23 master~~].

24 (b) The order of referral may limit the power or duties of an
25 associate judge [~~a probate master~~].

26 Sec. 54.610. POWERS OF ASSOCIATE JUDGE [~~PROBATE MASTER~~].
27 Except as limited by an order of referral, an associate judge [~~a~~

1 ~~probate master]~~ may:

- 2 (1) conduct a hearing;
- 3 (2) hear evidence;
- 4 (3) compel production of relevant evidence;
- 5 (4) rule on the admissibility of evidence;
- 6 (5) issue a summons for the appearance of witnesses;
- 7 (6) examine a witness;
- 8 (7) swear a witness for a hearing;
- 9 (8) make findings of fact on evidence;
- 10 (9) formulate conclusions of law;
- 11 (10) recommend an order to be rendered in a case;
- 12 (11) regulate all proceedings in a hearing before the
- 13 associate judge [~~probate master~~]; and
- 14 (12) take action as necessary and proper for the
- 15 efficient performance of the associate judge's [~~probate master's~~]
- 16 duties.

17 Sec. 54.611. ATTENDANCE OF BAILIFF. A bailiff shall attend
18 a hearing conducted by an associate judge [~~a probate master~~] if
19 directed to attend by the referring court.

20 Sec. 54.612. COURT REPORTER. (a) A court reporter is not
21 required during a hearing held by an associate judge [~~a probate~~
22 ~~master~~] appointed under this subchapter unless required by other
23 law.

24 (b) A party, the associate judge [~~probate master~~], or the
25 referring court may provide for a reporter during the hearing.

26 (c) The record of a hearing before an associate judge [~~a~~
27 ~~probate master~~] may be preserved by any means approved by the

1 referring court.

2 (d) The referring court or associate judge [~~probate master~~]
3 may impose on a party the expense of preserving the record as a
4 court cost.

5 Sec. 54.613. WITNESS. (a) A witness appearing before an
6 associate judge [~~a probate master~~] is subject to the penalties for
7 perjury provided by law.

8 (b) A referring court may fine or imprison a witness who:

9 (1) fails to appear before an associate judge [~~a~~
10 ~~probate master~~] after being summoned; or

11 (2) improperly refuses to answer a question if the
12 refusal has been certified to the court by the associate judge
13 [~~probate master~~].

14 Sec. 54.614. REPORT. (a) The associate judge's [~~probate~~
15 ~~master's~~] report may contain the associate judge's [~~probate~~
16 ~~master's~~] findings, conclusions, or recommendations. The
17 associate judge [~~probate master~~] shall prepare a written report in
18 the form directed by the referring court. The form may be a
19 notation on the referring court's docket sheet.

20 (b) After a hearing, the associate judge [~~probate master~~]
21 shall provide the parties participating in the hearing notice of
22 the substance of the associate judge's [~~probate master's~~] report.

23 (c) Notice may be given to the parties:

24 (1) in open court, by an oral statement or a copy of
25 the associate judge's [~~probate master's~~] written report; or

26 (2) by certified mail, return receipt requested.

27 (d) The associate judge [~~probate master~~] shall certify the

1 date of mailing of notice by certified mail. Notice is considered
2 given on the third day after the date of mailing.

3 (e) After a hearing conducted by an associate judge [~~a~~
4 ~~probate master~~], the associate judge [~~probate master~~] shall send
5 the associate judge's [~~probate master's~~] signed and dated report
6 and all other papers relating to the case to the referring court.

7 SECTION 4. Section 54.615(a), Government Code, is amended
8 to read as follows:

9 (a) An associate judge [~~A probate master~~] shall give all
10 parties notice of the right of appeal to the judge of the referring
11 court.

12 SECTION 5. Sections 54.616 and 54.617, Government Code, are
13 amended to read as follows:

14 Sec. 54.616. ORDER OF COURT. (a) Pending appeal of the
15 associate judge's [~~probate master's~~] report to the referring court,
16 the decisions and recommendations of the associate judge's [~~probate~~
17 ~~master's~~] report have the force and effect, and are enforceable as,
18 an order of the referring court, except for orders providing for
19 incarceration or for the appointment of a receiver.

20 (b) If an appeal to the referring court is not filed or the
21 right to an appeal to the referring court is waived, the findings
22 and recommendations of the associate judge [~~probate master~~] become
23 the order of the referring court at the time the judge of the
24 referring court signs an order conforming to the associate judge's
25 [~~probate master's~~] report.

26 Sec. 54.617. JUDICIAL ACTION ON ASSOCIATE JUDGE'S [~~A~~
27 ~~MASTER'S~~] REPORT. Unless a party files a written notice of appeal,

1 the referring court may:

2 (1) adopt, modify, or reject the associate judge's
3 [~~probate master's~~] report;

4 (2) hear further evidence; or

5 (3) recommit the matter to the associate judge
6 [~~probate master~~] for further proceedings.

7 SECTION 6. Sections 54.618(a), (b), and (g), Government
8 Code, are amended to read as follows:

9 (a) A party may appeal an associate judge's [~~a probate~~
10 ~~master's~~] report by filing notice of appeal not later than the third
11 day after the date the party receives notice of the substance of the
12 associate judge's [~~probate master's~~] report as provided by Section
13 54.614.

14 (b) An appeal to the referring court must be made in writing
15 and specify the findings and conclusions of the associate judge
16 [~~probate master~~] to which the party objects. The appeal is limited
17 to the findings and conclusions specified in the written appeal.

18 (g) Before the start of a hearing conducted by an associate
19 judge [~~a probate master~~], the parties may waive the right of appeal
20 to the referring court. The waiver may be in writing or on the
21 record.

22 SECTION 7. Section 54.619(a), Government Code, is amended
23 to read as follows:

24 (a) Failure to appeal to the referring court, by waiver or
25 otherwise, the approval by the referring court of an associate
26 judge's [~~a probate master's~~] report does not deprive a party of the
27 right to appeal to or request other relief from a court of appeals

1 or the supreme court.

2 SECTION 8. Section 54.620, Government Code, is amended to
3 read as follows:

4 Sec. 54.620. IMMUNITY. An associate judge [~~A probate~~
5 ~~master~~] appointed under this subchapter has the judicial immunity
6 of a probate judge. All existing immunity granted an associate
7 judge [~~a probate master~~] by law, express or implied, continues in
8 full force and effect.

9 SECTION 9. Article 2.09, Code of Criminal Procedure, is
10 amended to read as follows:

11 Art. 2.09. WHO ARE MAGISTRATES. Each of the following
12 officers is a magistrate within the meaning of this Code: The
13 justices of the Supreme Court, the judges of the Court of Criminal
14 Appeals, the justices of the Courts of Appeals, the judges of the
15 District Court, the magistrates appointed by the judges of the
16 district courts of Bexar County, Dallas County, Tarrant County, or
17 Travis County that give preference to criminal cases, the criminal
18 law hearing officers for Harris County appointed under Subchapter
19 L, Chapter 54, Government Code, the magistrates appointed by the
20 judges of the district courts of Lubbock County or Webb County, the
21 magistrates appointed by the judges of the criminal district courts
22 of Dallas County or Tarrant County, the masters appointed by the
23 judges of the district courts and the county courts at law that give
24 preference to criminal cases in Jefferson County, the magistrates
25 appointed by the judges of the district courts and the statutory
26 county courts of Williamson County, the county judges, the judges
27 of the county courts at law, judges of the county criminal courts,

1 the judges of statutory probate courts, the associate judges
2 [~~masters~~] appointed by the judges of the statutory probate courts
3 under Subchapter G, Chapter 54, Government Code, the justices of
4 the peace, the mayors and recorders and the judges of the municipal
5 courts of incorporated cities or towns.

6 SECTION 10. A reference in law to a probate master appointed
7 under Subchapter G, Chapter 54, Government Code, means an associate
8 judge of a statutory probate court appointed under that subchapter.

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