

By: Hartnett

H.B. No. 2432

A BILL TO BE ENTITLED

AN ACT

relating to jurisdiction of courts with respect to probate proceedings.

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

SECTION 1. The heading of 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 [~~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

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

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

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

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

proceedings not inconsistent with the orders of the district court.

(b-4) 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 statutory probate court judge or the district court.

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

(c) In those counties in which there is no statutory probate court, but in which there is a 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 those courts and the constitutional county court[, ~~rather than in the district courts~~], unless otherwise provided by law. The judge of a county court may hear any of those matters regarding probate or administrations sitting for the judge of any other county court. In contested probate matters, the judge of the constitutional county court may on the judge's own motion, and shall on the motion of a party to the proceeding, transfer the proceeding to the county court at law or a statutory court exercising the jurisdiction of a probate court other than a statutory probate court. The court to which the proceeding is transferred may hear the proceeding as if originally

1 filed in the court.

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

6 (e) A statutory probate court has concurrent jurisdiction
7 with the district court in all personal injury, survival, or
8 wrongful death actions by or against a person in the person's
9 capacity as a personal representative, in all actions involving an
10 inter vivos trust, in all actions involving a charitable trust, and
11 in all actions involving a testamentary trust.

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

17 (i) A statutory probate court may exercise the pendent and
18 ancillary jurisdiction necessary to promote judicial efficiency
19 and economy.

20 SECTION 3. The heading of Section 5A, Texas Probate Code, is
21 amended to read as follows:

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

24 SECTION 4. Section 5A(b), Texas Probate Code, is amended to
25 read as follows:

26 (b) In proceedings in the statutory probate courts and
27 district courts, the phrases "appertaining to estates" and

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

1 SECTION 5. Sections 5(a), 5A(c), 5A(d), and 5A(e), Texas
2 Probate Code, are repealed.

3 SECTION 6. The changes in law made by this Act apply only to
4 a proceeding that is instituted on or after the effective date of
5 this Act. A proceeding that is instituted before the effective date
6 of this Act is governed by the law in effect on the date the
7 proceeding was instituted, and the former law is continued in
8 effect for that purpose.

9 SECTION 7. This Act takes effect September 1, 2003.