

By: Hartnett

H.B. No. 1186

A BILL TO BE ENTITLED

AN ACT

relating to testamentary and nontestamentary transfers of property and other benefits.

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

SECTION 1. Section 58b(a), Texas Probate Code, is amended to read as follows:

(a) A devise or bequest of property in a will is void if the devise or bequest is made to:

(1) an attorney who prepares or supervises the preparation of the will;

(2) a parent, descendant of a parent, or employee of the attorney described by Subdivision (1) of this subsection; or

(3) a spouse of an individual described by Subdivision (1) or (2) of this subsection ~~[a devise or bequest of property in a will to an heir or employee of the attorney who prepares or supervises the preparation of the will is void]~~.

SECTION 2. Chapter IV, Texas Probate Code, is amended by adding Section 71A to read as follows:

Sec. 71A. NO RIGHT TO EXONERATION OF DEBTS; EXCEPTION. (a) Except as provided by Subsection (b) of this section, a specific devise passes to the devisee charged with each debt secured by the property that exists on the date of the testator's death. The devisee has no right to exoneration from the testator's estate for payment of the debt.

1        (b) A specific devise does not pass to the devisee charged  
2 with a debt described by Subsection (a) of this section if the will  
3 in which the devise is made specifically states that the devise  
4 passes without being subject to the debt. A general provision in  
5 the will stating that debts are to be paid is not a specific  
6 statement for purposes of this subsection.

7        (c) Subsection (a) of this section does not affect the  
8 rights of creditors provided under this code or the rights of other  
9 persons or entities provided under Part 3, Chapter VIII, of this  
10 code, except that if a creditor elects to have a debt described by  
11 Subsection (a) of this section allowed and approved as a matured  
12 secured claim, the claim may only be paid in accordance with Section  
13 306(c-1) of this code. To the extent of a conflict between this  
14 section and another provision of this code specified by this  
15 subsection, the other provision of this code prevails.

16        SECTION 3. Section 156, Texas Probate Code, is amended to  
17 read as follows:

18        Sec. 156. LIABILITY OF COMMUNITY PROPERTY FOR DEBTS. The  
19 community property subject to the sole or joint management,  
20 control, and disposition of a spouse during marriage continues to  
21 be subject to the liabilities of that spouse upon death. In  
22 addition, the interest that the deceased spouse owned in any other  
23 nonexempt community property passes to his or her heirs or devisees  
24 charged with the debts which were enforceable against such deceased  
25 spouse prior to his or her death, except as provided by Section  
26 71A(b) of this code. In the administration of community estates,  
27 the survivor or personal representative shall keep a separate,

1 distinct account of all community debts allowed or paid in the  
2 administration and settlement of such estate.

3 SECTION 4. Section 271, Texas Probate Code, is amended to  
4 read as follows:

5 Sec. 271. EXEMPT PROPERTY TO BE SET APART. (a) Unless an  
6 affidavit is filed under Subsection (b) of this section,  
7 immediately after the inventory, appraisement, and list of claims  
8 have been approved, the court shall, by order, set apart:

9 (1) the homestead for the use and benefit of the  
10 surviving spouse and minor children; and

11 (2) all other property of the estate that is exempt  
12 from execution or forced sale by the constitution and laws of this  
13 state for the use and benefit of the surviving spouse and minor  
14 children and unmarried children remaining with the family of the  
15 deceased~~[, all such property of the estate as is exempt from~~  
16 ~~execution or forced sale by the constitution and laws of the state]~~.

17 (b) Before the approval of the inventory, appraisement, and  
18 list of claims:

19 (1) [7] a surviving spouse or [7] any person who is  
20 authorized to act on behalf of minor children of the deceased~~[, or~~  
21 ~~any unmarried children remaining with the family of the deceased]~~  
22 may apply to the court to have exempt property, including the  
23 homestead, set aside by filing an application and a verified  
24 affidavit listing all of the property that the applicant claims is  
25 exempt; and

26 (2) any unmarried children remaining with the family  
27 of the deceased may apply to the court to have all exempt property

1 other than the homestead set aside by filing an application and a  
2 verified affidavit listing all of the other property that the  
3 applicant claims is exempt.

4 (c) An [The] applicant under Subsection (b) of this section  
5 bears the burden of proof by a preponderance of the evidence at any  
6 hearing on the application. The court shall set aside property of  
7 the decedent's estate that the court finds is exempt.

8 SECTION 5. Section 272, Texas Probate Code, is amended to  
9 read as follows:

10 Sec. 272. TO WHOM DELIVERED. The exempt property set apart  
11 to the surviving spouse and children shall be delivered by the  
12 executor or administrator without delay as follows: (a) If there be  
13 a surviving spouse and no children, or if the children be the  
14 children of the surviving spouse, the whole of such property shall  
15 be delivered to the surviving spouse. (b) If there be children and  
16 no surviving spouse, such property, except the homestead, shall be  
17 delivered to such children if they be of lawful age, or to their  
18 guardian if they be minors. (c) If there be children of the  
19 deceased of whom the surviving spouse is not the parent, the share  
20 of such children in such exempted property, except the homestead,  
21 shall be delivered to such children if they be of lawful age, or to  
22 their guardian, if they be minors. (d) In all cases, the homestead  
23 shall be delivered to the surviving spouse, if there be one, and if  
24 there be no surviving spouse, to the guardian of the minor children  
25 ~~[and unmarried children, if any, living with the family]~~.

26 SECTION 6. Section 306, Texas Probate Code, is amended by  
27 amending Subsections (a) and (c) and adding Subsection (c-1) to

1 read as follows:

2 (a) Specifications of Claim. When a secured claim for money  
3 against an estate is presented, the claimant shall specify therein,  
4 in addition to all other matters required to be specified in claims:

5 (1) Whether it is desired to have the claim allowed and  
6 approved as a matured secured claim, which shall ~~[to]~~ be paid in due  
7 course of administration if the claim is ~~[, in which event it shall~~  
8 ~~be so paid if]~~ allowed and approved or, if Subsection (c-1) of this  
9 section applies, as provided by that subsection; or

10 (2) Whether it is desired to have the claim allowed,  
11 approved, and fixed as a preferred debt and lien against the  
12 specific property securing the indebtedness and paid according to  
13 the terms of the contract which secured the lien, in which event it  
14 shall be so allowed and approved if it is a valid lien; provided,  
15 however, that the personal representative may pay said claim prior  
16 to maturity if it is for the best interest of the estate to do so.

17 (c) Matured Secured Claims. Unless Subsection (c-1) of this  
18 section applies, if ~~[If]~~ a claim has been allowed and approved as a  
19 matured secured claim under Paragraph (1) of Subsection (a) of this  
20 section, the claim shall be paid in due course of administration.  
21 The ~~[and the]~~ secured creditor is not entitled to exercise any other  
22 remedies in a manner that prevents the preferential payment of  
23 claims and allowances described by Paragraphs (1) through (3) of  
24 Section 320(a) of this code.

25 (c-1) If a claimant presents a secured claim against an  
26 estate for a debt that would otherwise pass with the property  
27 securing the debt to one or more devisees in accordance with Section

71A(a) of this code and the claim is allowed and approved as a  
matured secured claim under Subsection (a)(1) of this section, the  
personal representative shall collect from each devisee of the  
property securing the debt an amount equal to a fraction  
representing the devisee's ownership interest in the property,  
multiplied by the amount of the debt. If the personal  
representative is unable to collect from the devisees an amount  
sufficient to pay the debt, the personal representative shall sell  
the property securing the debt, subject to Part 5 of this chapter.  
The personal representative shall use the sale proceeds to pay the  
debt and any expenses associated with the sale and shall distribute  
the remaining sale proceeds to each devisee in an amount equal to a  
fraction representing the devisee's ownership interest in the  
property, multiplied by the amount of the remaining sale proceeds.  
If the sale proceeds are insufficient to pay the debt and any  
expenses associated with the sale, the difference between the sum  
of the amount of the debt and the expenses associated with the sale  
and the sale proceeds is a Class 8 claim under Section 322 of this  
code.

SECTION 7. Section 322, Texas Probate Code, is amended to  
read as follows:

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

Class 1. Funeral expenses and expenses of last sickness for a  
reasonable amount to be approved by the court, not to exceed a total  
of Fifteen Thousand Dollars, with any excess to be classified and

1 paid as other unsecured claims.

2 Class 2. Expenses of administration and expenses incurred in  
3 the preservation, safekeeping, and management of the estate,  
4 including fees and expenses awarded under Section 243 of this code,  
5 and unpaid expenses of administration awarded in a guardianship of  
6 the decedent.

7 Class 3. Secured claims for money under Section 306(a)(1),  
8 including tax liens, other than an allowed and approved matured  
9 secured claim for a debt to which Section 306(c-1) of this code  
10 applies, so far as the same can be paid out of the proceeds of the  
11 property subject to such mortgage or other lien, and when more than  
12 one mortgage, lien, or security interest shall exist upon the same  
13 property, they shall be paid in order of their priority.

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

18 Class 5. Claims for taxes, penalties, and interest due under  
19 Title 2, Tax Code; Chapter 8, Title 132, Revised Statutes; Section  
20 81.111, Natural Resources Code; the Municipal Sales and Use Tax Act  
21 (Chapter 321, Tax Code); Section 451.404, Transportation Code; or  
22 Subchapter I, Chapter 452, Transportation Code.

23 Class 6. Claims for the cost of confinement established by  
24 the institutional division of the Texas Department of Criminal  
25 Justice under Section 501.017, Government Code.

26 Class 7. Claims for repayment of medical assistance payments  
27 made by the state under Chapter 32, Human Resources Code, to or for

the benefit of the decedent.

Class 8. All other claims.

SECTION 8. The Texas Probate Code is amended by adding Chapter XI-A to read as follows:

CHAPTER XI-A. PROVISIONS APPLICABLE TO CERTAIN  
TESTAMENTARY AND NONTESTAMENTARY TRANSFERS

Sec. 471. DEFINITIONS. In this chapter:

(1) "Disposition or appointment of property" includes a transfer of property or provision of any other benefit to a beneficiary under a governing instrument.

(2) "Divorced individual" means an individual whose marriage has been dissolved, regardless of whether by divorce or annulment.

(3) "Governing instrument" means:

(A) a deed, will, trust instrument, insurance policy, or annuity contract;

(B) an account agreement or a security registered with a provision for payment or transfer at death;

(C) a pension, profit-sharing agreement, retirement account, or similar benefit plan;

(D) an instrument creating or exercising a power of appointment;

(E) a power of attorney; or

(F) any other instrument that makes a disposition of property or an appointment or that nominates a person to serve in a fiduciary or representative capacity or any similar type of instrument.



1           (4) "Revocable," with respect to a disposition,  
2 appointment, provision, or nomination, means a disposition to,  
3 appointment of, provision in favor of, or nomination of an  
4 individual's spouse in a governing instrument executed by the  
5 individual before the dissolution of the individual's marriage to  
6 the spouse that the individual was solely empowered by law or by the  
7 governing instrument to revoke, regardless of whether the  
8 individual had the capacity to exercise the power at that time.

9           Sec. 472. REVOCATION OF CERTAIN TESTAMENTARY AND  
10 NONTESTAMENTARY TRANSFERS ON DISSOLUTION OF MARRIAGE. (a) Except  
11 as otherwise provided by a court order, the express terms of a  
12 governing instrument executed by a divorced individual before the  
13 individual's marriage was dissolved, or an express provision of a  
14 contract relating to the division of the marital estate entered  
15 into between a divorced individual and the individual's former  
16 spouse before, during, or after the marriage, the dissolution of  
17 the marriage:

18           (1) revokes the following:

19           (A) a revocable disposition or appointment of  
20 property made by a divorced individual to the individual's former  
21 spouse in a governing instrument executed before the dissolution of  
22 the marriage;

23           (B) a provision in a governing instrument  
24 executed by a divorced individual before the dissolution of the  
25 marriage that confers a general or special power of appointment on  
26 the individual's former spouse; and

27           (C) a nomination in a governing instrument

1 executed by a divorced individual before the dissolution of the  
2 marriage that nominates the individual's former spouse to serve in  
3 a fiduciary or representative capacity, including as a personal  
4 representative, executor, trustee, conservator, agent, or  
5 guardian; and

6 (2) severs the ownership interests of spouses in  
7 property held by the spouses immediately before the dissolution of  
8 the marriage as joint tenants with a right of survivorship and  
9 converts that ownership interest to a tenancy in common.

10 (b) After the dissolution of a marriage, an interest granted  
11 in a provision of a governing instrument that is revoked under  
12 Subsection (a)(1)(A) or (B) of this section passes as if the former  
13 spouse of the divorced individual who executed the governing  
14 instrument disclaimed the interest granted in the provision, and an  
15 interest granted in a provision of a governing instrument that is  
16 revoked under Subsection (a)(1)(C) of this section passes as if the  
17 former spouse died immediately before the dissolution of the  
18 marriage.

19 Sec. 473. EFFECT OF SEVERANCE ON CERTAIN THIRD-PARTY  
20 INTERESTS IN PROPERTY. Section 472(a)(2) of this code does not  
21 affect a third-party interest in property described by that section  
22 if the third party acquired the interest for value and relied in  
23 good faith on evidence that title or ownership interest vested by  
24 survivorship in the survivor of the former spouses whose marriage  
25 was dissolved unless:

26 (1) a writing declaring that the joint tenancy with  
27 right of survivorship was severed under Section 472(a)(2) of this

1 code is registered, filed, or recorded, as applicable, in the  
2 appropriate records with respect to the kind of property and the  
3 location of the property to which the writing relates; and

4 (2) the records described by Subdivision (1) of this  
5 section are relied on as evidence of title or ownership interest in  
6 the ordinary course of business involving that kind of property.

7 Sec. 474. LIABILITY FOR CERTAIN PAYMENTS, BENEFITS, AND  
8 PROPERTY. (a) A bona fide purchaser of property from a divorced  
9 individual's former spouse or a person who receives from a divorced  
10 individual's former spouse a payment, benefit, or property in  
11 partial or full satisfaction of an enforceable obligation:

12 (1) is not required by this chapter to return the  
13 payment, benefit, or property; and

14 (2) is not liable under this chapter for the amount of  
15 the payment or the value of the property or benefit.

16 (b) A divorced individual's former spouse who, not for  
17 value, receives a payment, benefit, or property to which the former  
18 spouse is not entitled as a result of Section 472(a) of this code:

19 (1) shall return the payment, benefit, or property to  
20 the person who is otherwise entitled to the payment, benefit, or  
21 property as provided by this chapter; or

22 (2) is personally liable to the person described by  
23 Subdivision (1) of this subsection for the amount of the payment or  
24 the value of the benefit or property received.

25 Sec. 475. CONFLICT WITH OTHER LAW. If a provision of this  
26 chapter conflicts with a provision of Section 69 or 485A of this  
27 code or Section 9.301 or 9.302, Family Code, the provision of

1 Section 69 or 485A of this code or Section 9.301 or 9.302, Family  
2 Code, as applicable, prevails.

3         SECTION 9. (a) Section 58, Texas Probate Code, as amended  
4 by this Act, applies only to a will executed on or after the  
5 effective date of this Act. A will that is executed before the  
6 effective date of this Act is governed by the law in effect on the  
7 date the will was executed, and the former law is continued in  
8 effect for that purpose.

9         (b) Sections 156, 271, 272, 306, and 322, Texas Probate  
10 Code, as amended by this Act, and Section 71A, Texas Probate Code,  
11 as added by this Act, apply only to the estate of a decedent who dies  
12 on or after the effective date of this Act. The estate of a decedent  
13 who dies before the effective date of this Act is governed by the  
14 law in effect on the date of the decedent's death, and the former  
15 law is continued in effect for that purpose.

16         (c) Chapter XI-A, Texas Probate Code, as added by this Act,  
17 applies only to a governing instrument, as defined by Section 471,  
18 Texas Probate Code, as added by this Act, that was executed before,  
19 on, or after the effective date of this Act, by an individual whose  
20 marriage is dissolved on or after the effective date of this Act. A  
21 governing instrument that was executed by an individual whose  
22 marriage is dissolved before the effective date of this Act is  
23 governed by the law in effect on the date the marriage was  
24 dissolved, and the former law is continued in effect for that  
25 purpose.

26         SECTION 10. This Act takes effect September 1, 2005.