

By: Hartnett (Senate Sponsor - West) H.B. No. 1186
(In the Senate - Received from the House April 25, 2005;
April 26, 2005, read first time and referred to Committee on
Jurisprudence; May 19, 2005, reported favorably by the following
vote: Yeas 5, Nays 0; May 19, 2005, sent to printer.)

A BILL TO BE ENTITLED
AN ACT

relating to testamentary and nontestamentary transfers of property
and other benefits and to jurisdiction of courts over certain
probate matters.

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

SECTION 1. Sections 5(b-1), (b-2), and (e), Texas Probate
Code, are amended to read as follows:

(b-1) If the judge of the county court has not transferred a
contested probate matter to the district court under this section
by [at] the time a party files a motion for assignment of a
statutory probate court judge, the county judge shall grant the
motion and may not transfer the matter to district court unless the
party withdraws the motion. A party to a proceeding may file a
motion for assignment of a statutory probate court judge under this
section before the matter becomes a contested probate matter, and
the motion is given effect as a motion for assignment of a statutory
probate court judge under Subsection (b) of this section if the
matter later becomes contested. A transfer of a contested probate
matter to district court under any authority other than the
authority provided by this section:

(1) is disregarded for purposes of this section; and
(2) does not defeat the right of a party to the matter
to have the matter assigned to a statutory probate court judge in
accordance with this section.

(b-2) A statutory probate court judge assigned to a
contested probate matter as provided by Subsection (b) of this
section has the jurisdiction and authority granted to a statutory
probate court by this section and Sections 5A and 5B of this code.
On resolution of a contested matter, including an appeal of a
matter, to which a statutory probate court judge has been assigned,
the statutory probate court judge shall transfer the resolved
portion of the case to the county court for further proceedings not
inconsistent with the orders of the statutory probate court judge.

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

SECTION 2. Section 58b(a), Texas Probate Code, is amended
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 3. 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 subject to each debt secured by the property that exists on the date of the testator's death, and the devisee has no right to exoneration from the testator's estate for payment of the debt.

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

(c) Subsection (a) of this section does not affect the rights of creditors provided under this code or the rights of other persons or entities provided under Part 3, Chapter VIII, of this code. If a creditor elects to have a debt described by Subsection (a) of this section allowed and approved as a matured secured claim, the claim shall be paid in accordance with Section 306(c-1) of this code.

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

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

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

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

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

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

(2) any unmarried children remaining with the family of the deceased may apply to the court to have all exempt property other than the homestead set aside by filing an application and a verified affidavit listing all of the other property that the applicant claims is exempt.

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

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

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

SECTION 6. Section 306, Texas Probate Code, is amended by adding Subsection (c-1) to read as follows:

(c-1) If a claimant presents a secured claim against an estate for a debt that would otherwise pass with the property 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 the devisees the amount of the debt and pay that amount to the claimant in satisfaction of the claim. Each devisee's share of the debt is 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 shall be paid under Subsection (c) of this section.

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 paid as other unsecured claims.

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

Class 3. Secured claims for money under Section 306(a)(1), including tax liens, so far as the same can be paid out of the proceeds of the property subject to such mortgage or other lien, and when more than one mortgage, lien, or security interest shall exist upon the same property, they shall be paid in order of their priority.

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

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

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

Class 7. Claims for repayment of medical assistance payments 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 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 trust instrument.

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

annulment.

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

Sec. 472. REVOCATION OF CERTAIN NONTESTAMENTARY TRANSFERS ON DISSOLUTION OF MARRIAGE. (a) Except as otherwise provided by a court order, the express terms of a trust instrument executed by a divorced individual before the individual's marriage was dissolved, or an express provision of a contract relating to the division of the marital estate entered into between a divorced individual and the individual's former spouse before, during, or after the marriage, the dissolution of the marriage revokes the following:

(1) a revocable disposition or appointment of property made by a divorced individual to the individual's former spouse in a trust instrument executed before the dissolution of the marriage;

(2) a provision in a trust instrument executed by a divorced individual before the dissolution of the marriage that confers a general or special power of appointment on the individual's former spouse; and

(3) a nomination in a trust instrument executed by a divorced individual before the dissolution of the marriage that nominates the individual's former spouse to serve in a fiduciary or representative capacity, including as a personal representative, executor, trustee, conservator, agent, or guardian.

(b) After the dissolution of a marriage, an interest granted in a provision of a trust instrument that is revoked under Subsection (a)(1) or (2) of this section passes as if the former spouse of the divorced individual who executed the trust instrument disclaimed the interest granted in the provision, and an interest granted in a provision of a trust instrument that is revoked under Subsection (a)(3) of this section passes as if the former spouse died immediately before the dissolution of the marriage.

Sec. 473. LIABILITY FOR CERTAIN PAYMENTS, BENEFITS, AND PROPERTY. (a) A bona fide purchaser of property from a divorced individual's former spouse or a person who receives from a divorced individual's former spouse a payment, benefit, or property in partial or full satisfaction of an enforceable obligation:

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

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

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

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

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

SECTION 9. (a) Section 5, Texas Probate Code, as amended by this Act, applies only to an action filed on or after the effective date of this Act. An action filed before the effective date of this Act is governed by the law in effect on the date the action was filed, and the former law is continued in effect for that purpose.

(b) Section 58b, Texas Probate Code, as amended by this Act, and Sections 71A and 306(c-1), Texas Probate Code, as added by this Act, apply only to a will executed on or after the effective date of this Act. A will that is executed before the effective date of this Act is governed by the law in effect on the date the will was executed, and the former law is continued in effect for that purpose.

(c) Sections 271, 272, and 322, Texas Probate Code, as

5-1 amended by this Act, apply only to the estate of a decedent who dies
5-2 on or after the effective date of this Act. The estate of a decedent
5-3 who dies before the effective date of this Act is governed by the
5-4 law in effect on the date of the decedent's death, and the former
5-5 law is continued in effect for that purpose.

5-6 (d) Chapter XI-A, Texas Probate Code, as added by this Act,
5-7 applies only to a trust instrument that was executed before, on, or
5-8 after the effective date of this Act, by an individual whose
5-9 marriage is dissolved on or after the effective date of this Act. A
5-10 trust instrument that was executed by an individual whose marriage
5-11 is dissolved before the effective date of this Act is governed by
5-12 the law in effect on the date the marriage was dissolved, and the
5-13 former law is continued in effect for that purpose.

5-14 SECTION 10. This Act takes effect September 1, 2005.

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