

By: Hartnett

H.B. No. 3434

Substitute the following for H.B. No. 3434:

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C.S.H.B. No. 3434

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to testamentary and nontestamentary transfers of property  
3 and other benefits and the administration of those benefits.

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

5 SECTION 1. Section 131A(d), Probate Code, is amended to  
6 read as follows:

7 (d) Not later than the third business day after ~~[On]~~ the  
8 date of the order, the appointee shall file with the county clerk a  
9 bond in the amount ordered by the court. In this subsection,  
10 "business day" means a day other than a Saturday, Sunday, or holiday  
11 recognized by this state.

12 SECTION 2. Section 248, Probate Code, is amended to read as  
13 follows:

14 Sec. 248. APPOINTMENT OF APPRAISERS. At any time after the  
15 grant of letters testamentary or of administration, ~~[upon the~~  
16 ~~application of any interested person or if the court shall deem~~  
17 ~~necessary,]~~ the court for good cause on its own motion or on the  
18 motion of an interested party shall appoint not less than one nor  
19 more than three disinterested persons, citizens of the county in  
20 which letters were granted, to appraise the property of the estate.  
21 In such event and when part of the estate is situated in a county  
22 other than the county in which letters were granted, if the court  
23 shall deem necessary it may appoint not less than one nor more than  
24 three disinterested persons, citizens of the county where such part

1 of the estate is situated, to appraise the property of the estate  
2 situated therein.

3 SECTION 3. Subchapter A, Chapter 113, Property Code, is  
4 amended by adding Section 113.028 to read as follows:

5 Sec. 113.028. PARTICIPATION IN CERTAIN CAUSES OF ACTION  
6 PROHIBITED. (a) A trustee may not prosecute or participate in a  
7 cause of action if each beneficiary of the trust provides written  
8 notice to the trustee of the beneficiary's opposition to the  
9 trustee's prosecuting or participating in the cause of action.

10 (b) This section does not apply to a cause of action:

11 (1) that is prosecuted by a trustee in the trustee's  
12 individual capacity or in which the trustee participates in the  
13 trustee's individual capacity; or

14 (2) that relates to the administration of the trust,  
15 including a proceeding to:

16 (A) construe the trust instrument;

17 (B) determine the law applicable to the trust  
18 instrument;

19 (C) appoint or remove a trustee;

20 (D) determine the powers, responsibilities,  
21 duties, or liabilities of the trustee;

22 (E) ascertain the beneficiaries of the trust;

23 (F) make a determination of fact affecting the  
24 administration, distribution, or duration of the trust;

25 (G) determine a question arising in the  
26 administration or distribution of the trust;

27 (H) relieve the trustee from any duty,

1 limitation, or restriction otherwise existing under the trust  
2 instrument or this subtitle;

3 (I) require an accounting by the trustee, review  
4 trustee fees, or settle interim or final accounts of the trust; or

5 (J) impose a surcharge on the trustee.

6 (c) The trustee is not liable for failing to prosecute or  
7 participate in a cause of action prohibited by the beneficiaries  
8 under Subsection (a).

9 SECTION 4. (a) Sections 131A and 248, Probate Code, as  
10 amended by this Act, apply only to the estate of a decedent who dies  
11 on or after the effective date of this Act. The estate of a decedent  
12 who dies before the effective date of this Act is governed by the  
13 law in effect on the date of the decedent's death, and the former  
14 law is continued in effect for that purpose.

15 (b) Section 113.028, Property Code, as added by this Act,  
16 applies only to a cause of action filed on or after the effective  
17 date of this Act. A cause of action filed before the effective date  
18 of this Act is governed by the law in effect on the date the cause of  
19 action was filed, and the former law is continued in effect for that  
20 purpose.

21 SECTION 5. This Act takes effect September 1, 2005.