

BILL ANALYSIS

C.S.H.B. 391
By: Hartnett
Judiciary
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The Real Estate Probate and Trust Law section of the State Bar of Texas has recommended certain changes to improve the laws in its practice area. A number of such changes are contained in this bill.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

The bill relates to several sections of the Probate Code and a section of the Family Code. Article 1 pertains to definitions and amends one section.

Article 2 is amended to add make venue provisions in Section 8 of the Probate Code applicable to proceedings to determine heirship.

Article 3 pertains to disclaimers and inserts new subsection headings and assigns new letters to existing subsections in Section 37A of the Probate Code. Subsection 37A(a) is amended to permit an attorney in fact or agent appointed under a durable power of attorney authorizing disclaimers to make a disclaimer of property or an interest in property receivable from a decedent. This section is also amended to give charitable organizations and governmental entities longer time periods than exist under current law in which to file and give notice of disclaimers of present or future interests.

Article 4 of the bill adds a new section to the Probate Code which would permit a court to declare a decedent's marriage void if an applicant establishes at a hearing that the decedent did not have the requisite mental capacity at the time of the marriage and did not regain the capacity to recognize the marriage relationship and in fact recognize it. A marriage entered into within 3 years of the decedent's death would be subject to attack for a period of one year after the decedent's death. The article also revises language in a Probate Code section pertaining to treatment of a former spouse in a will and adds a provision that each relative of a former spouse who is not a relative of the testator shall, along with the former spouse, be treated for purposes of the will as if such persons failed to survive the testator. The bill also revises language in another Probate Code subsection and a section of the Family Code to take account of the new section permitting a declaration that a marriage is void. The amendments to the Probate Code in this article apply only to the estate of a decedent who dies on or after the effective date of the act, and not to pending cases.

Article 5 removes references to oral or nuncupative wills from several sections of the Probate Code. This article of the bill also repeals several sections of the Probate Code.

Article 6 inserts a spelled-out reference to the will in place of the word "it" (referring to the will) in a section of the Probate Code dealing with proof of a written will not produced in court.

Article 7 replaces the word "neglect" with the word "fail" in a section of the Probate Code dealing with the discovery of a will after the grant of letters of administration. The bill makes a similar change in Section 178(b) of the Probate Code and adds a proviso that the court must find no good cause for failure to present the will during the relevant period before administration is

granted (where necessary). The bill also adds a third express ground of necessity for administration. Article 6 further adds a requirement that a person opposing the grant of letters of administration must be an "interested" person. Article 6 also changes the oath taken by estate administrators to remove the words "or neglected" from the oath, leaving the word "failed" which now immediately precedes them.

Article 8 amends provisions relating to the contents of an emergency intervention application to remove the requirement that the application contain a social security number. This is in keeping with the general desire of the Legislature to remove social security numbers from publicly available documents.

Article 9 of the bill amends the contents of the citation to be sent to all persons interested in an estate regarding an application to sell an interest in land held by the estate. The citation is amended to reflect the right of interested persons under Section 345 of the Probate Code to file an opposition to the sale during the period prescribed by the court. Section 345 is amended to refer to this citation. The bill also adds a new Section 345A to the Probate Code, which provides for a hearing on any timely opposition to a proposed sale application and allowing the court to initiate such a hearing on its own motion. A section of Article 7 amends Section 346 of the Probate Code by removing the requirement of a hearing prior to a judicial order of sale. Article 7 also repeals Section 343 of the Probate Code.

EFFECTIVE DATE

September 1, 2007

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute adds provisions regarding the extension of time for charitable organizations and governmental entities to file memoranda and give notices of disclaimers of interests receivable from a decedent. The substitute also rewords the bill with respect to marriages subject to avoidance based on mental incapacity. The 3 year look-back provision and the one year limit to sue are added in the substitute. The substitute also adds a section not contained in the original bill amending Section 346 of the Probate Code. The substitute also adds Article 2 and Article 8 of the bill, which were not contained in the bill as filed.