

## **BILL ANALYSIS**

Senate Research Center

H.B. 2479  
By: Hartnett (Wentworth)  
Jurisprudence  
5/17/2007  
Committee Report (Amended)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Lawyers in the probate bar occasionally discover circumstances and situations in the practice of law in relation to estates that require a statutory remedy.

H.B. 2479 authorizes a person interested in an estate to petition for an accounting and distribution two years after the court clerk first issues letters testamentary or of administration to the independent executor. This bill also provides for the liability of a personal representative to a beneficiary for losses to and lost profits of an estate, and for liability of and remedies for lost profits of the personal representative arising out of a breach of duty by the representative.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 149B(a), Texas Probate Code, to authorize a person interested in an estate, rather than the estate, then subject to independent administration to petition the county court for an accounting and distribution at any time after the expiration of two years from the date the clerk of the court first issues letters testamentary or of administration to any personal representative to the estate, rather than from the date that an independent administration was created and the order appointing an independent executor was entered.

SECTION 2. Amends the heading to Part 5, Chapter VII, Texas Probate Code, to read as follows:

#### **PART 5. POWERS, DUTIES, AND LIABILITIES OF PERSONAL REPRESENTATIVES**

SECTION 3. Amends Part 5, Chapter VII, Texas Probate Code, by adding Sections 236 and 236A, as follows:

Sec. 236. **LIABILITY OF PERSONAL REPRESENTATIVE.** Provides that a personal representative who commits a breach of fiduciary duty and the sureties on the personal representative's bonds are chargeable with any damages resulting from the breach, including certain damages set forth in this section.

Sec. 236A. **REMEDIES FOR BREACH OF FIDUCIARY DUTY.** (a) Authorizes a court to take certain actions in order to remedy a breach of fiduciary duty by a personal representative.

(b) Authorizes the filing of a certified copy of an order that imposes a lien or a constructive trust on real property under Subsection (a)(10) of this section in the real property records of each county in which the real property is located. Provides that the order is constructive notice of the existence of the lien or constructive trust on the recording of the certified copy.

SECTION 4. (a) Makes application of the change in law made by this Act to Section 149B, Probate Code, prospective.

(b) Makes application of Sections 236 and 236A, Probate Code, as added by this Act, prospective.

SECTION 5. Effective date: September 1, 2007.

**SUMMARY OF COMMITTEE CHANGES**

(1) At the end of SECTION 4 of the bill (page 4, between lines 5 and 6), inserts the following:

(c) Makes application of Section 36G, Probate Code, as added by this Act, prospective.

(2) Adds the following appropriately numbered SECTION to the bill and renumbers subsequent SECTIONS of the bill as appropriate:

SECTION \_\_. Amends Chapter I, Texas Probate Code, by adding Section 36G, as follows:

Sec. 36G. CERTAIN HEIR FINDER CONTRACTS VOID. (a) Provides that a contract or other agreement is void if the contract or agreement meets certain criteria. Sets forth those criteria.

(b) Provides that this section does not apply to certain contracts.

(c) Defines "family member of a decedent."