

BILL ANALYSIS

Senate Research Center

S.B. 593
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Jurisprudence
6/29/2007
Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Beneficiaries of wills where an independent executor is appointed may not learn of the will or their rights until it is too late for them to take steps to protect their interests. Currently, only beneficiaries of wills being probated more than four years after the death of the testator currently receive notice.

S.B. 593 requires the personal representative of a decedent's estate, within a certain time period of an order admitting a will to probate, to give notice to each beneficiary named in the will whose identity is known or, through reasonable diligence, can be ascertained, and to file an affidavit with the court listing the beneficiaries notified. The bill also sets out what the notice must contain.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 128A, Texas Probate Code, as follows:

Sec. 128A. New heading: NOTICE TO CERTAIN BENEFICIARIES AFTER PROBATE OF WILL. (a) Defines "beneficiary."

(b) Requires the personal representative (representative) of the decedent's estate, including an independent executor or independent administrator, to give notice that complies with Subsection (e) of this section to each beneficiary named in the will whose identity and address are known to the personal representative or, through reasonable diligence, can be ascertained, not later than the 60th day after the date of admitting a decedent's will to probate, except as provided by Subsection (d) of this section. Requires that the representative give the notice as soon as possible to a person whose identity and address are made known to the representative after the 60th day after the date of the order.

(c) Requires that the representative give notice with respect to a beneficiary described by this subsection if the beneficiary is a trust, to the trustee, unless the representative is the trustee, in which case the representative shall give notice to the person or class of persons first eligible to receive the trust income, to be determined for purposes of this subdivision as if the trust were in existence on the date of the decedent's death; if the beneficiary has a court-appointed guardian or conservator, to that the guardian or conservator; if the beneficiary is a minor for whom no guardian or conservator has been appointed, to a parent of the minor; and if the beneficiary is a charity that for any reason cannot be notified, to the attorney general, notwithstanding the requirement under Subsection (b) of this section that the representative give the notice to the beneficiary.

(d) Provides that a representative is not required to give the notice otherwise required by this section to a beneficiary who made an appearance in the proceeding with respect to the decedent's estate before the will was admitted to probate or received a copy of the will that was admitted to probate and waived the

right to receive the notice in an instrument that acknowledges the receipt of the copy of the will, is signed by the beneficiary, and is filed with the court.

(e) Requires the notice to state certain information and to contain as attachments a copy of the will admitted to probate and the order admitting the will to probate.

(f) Requires the notice to be sent by registered or certified mail, return receipt requested.

(g) Requires the representative, not later than the 90th day after the date of an order admitting a will to probate, to file with the clerk of the court in which the decedent's estate is pending a sworn affidavit of the representative, or a certificate signed by the representative's attorney, stating certain information.

(h) Authorizes the affidavit or certificate required by Subsection (g) of this section to be included with any pleading or other document filed with the clerk of the court, including the inventory, appraisal, and list of claims or an application for an extension of the deadline to file the inventory, appraisal, and list of claims, provided that the pleading or other document with which the affidavit or certificate is included is filed not later than the date the affidavit or certificate is required to be filed as provided by Subsection (g) of this section. Deletes existing text relating to providing notice to an entity that is named as a devisee, and certain procedures relating to such notice.

SECTION 2. Amends the heading to Section 128B, Texas Probate Code, to read as follows:

Sec. 128B. NOTICE TO HEIRS ON APPLICATION TO PROBATE WILL AFTER FOUR YEARS.

SECTION 3. Amends Section 149C(a), Texas Probate Code, to make nonsubstantive changes regarding gender-neutral language, and other nonsubstantive changes.

SECTION 4. Amends Section 222(b), Texas Probate Code, to make nonsubstantive changes regarding gender-neutral language, and other nonsubstantive changes.

SECTION 5. Amends Section 6.02, H.B. 391, Acts of the 80th Legislature, Regular Session, 2007, as effective September 1, 2007, as follows:

SECTION 6.02. Deletes existing text providing that the changes in law made by this article apply only to the estate of a decedent who dies before the effective date of this article, if the probate or administration of the estate is pending on or commenced on or after the effective date of this article.

SECTION 6. Makes application of Sections 1, 2, 3, and 4 of this Act prospective.

SECTION 7. Effective date: September 1, 2007.