

BILL ANALYSIS

C.S.S.B. 593
By: Wentworth
Judiciary
Committee Report (Substituted)

BACKGROUND AND PURPOSE

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.

C.S.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

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

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

Sec. 128A. New heading: NOTICE TO 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. 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 to certain persons specified to receive the notice in circumstances described in the subsection, such as trusts, guardianships, minors and charities.

(d) Exempts the personal representative from the duty to give notice to certain beneficiaries.

(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, an affidavit (or a certificate signed by the personal representative's attorney) stating certain information. Deletes existing text

relating to providing notice to an entity that is named as a devisee, and certain procedures relating to such notice.

(h) Permits the filing of the affidavit or certificate required by subsection (g) with any pleading or other document filed with the clerk.

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 non-substantive changes regarding gender-neutral language, and other non-substantive changes.

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

SECTION 5. Makes application of this Act prospective.

EFFECTIVE DATE

September 1, 2007.

COMPARISON OF ORIGINAL TO SUBSTITUTE

Subsections 128A(d) and (h) are new in the substitute. The effect of (d) is to excuse the personal representative from giving notice to certain beneficiaries who have received, waived or are deemed not to need it. The effect of (h) is to permit the certificate or affidavit required by (g) to be included with any pleading filed with the court within 90 days of the order admitting the will to probate. Subsection (c) is also changed in the substitute to require the notice for a charity to be sent to the attorney general if the charity cannot be notified for any reason, in lieu of the language of the original, which was more complicated. The notice requirement of Section 128A(d)(F) regarding the fiduciary nature of the personal representative is also deleted in the substitute on the reasoning that it is more likely to confuse than educate the beneficiary, who may incorrectly decide he needs a lawyer.