

1-1 By: Hartnett (Senate Sponsor - Wentworth) H.B. No. 391  
1-2 (In the Senate - Received from the House March 29, 2007;  
1-3 April 3, 2007, read first time and referred to Committee on  
1-4 Jurisprudence; May 3, 2007, reported favorably by the following  
1-5 vote: Yeas 4, Nays 0; May 3, 2007, sent to printer.)

1-6 A BILL TO BE ENTITLED  
1-7 AN ACT

1-8 relating to the estates of decedents.

1-9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-10 ARTICLE 1. DEFINITIONS AND USE OF TERMS

1-11 SECTION 1.01. Section 3(r), Texas Probate Code, is amended  
1-12 to read as follows:

1-13 (r) "Interested persons" or "persons interested"  
1-14 means heirs, devisees, spouses, creditors, or any others having a  
1-15 property right in, or claim against, the estate being administered;  
1-16 and anyone interested in the welfare of an incapacitated person,  
1-17 including a minor [or incompetent ward].

1-18 SECTION 1.02. The changes in law made by this article apply  
1-19 to a proceeding that is pending or commenced on or after the  
1-20 effective date of this article.

1-21 ARTICLE 2. VENUE FOR DECEDENTS' ESTATES  
1-22 AND DETERMINATION OF HEIRSHIPS

1-23 SECTION 2.01. Sections 8(a), (b), (c), and (e), Texas  
1-24 Probate Code, are amended to read as follows:

1-25 (a) Concurrent Venue. When two or more courts have  
1-26 concurrent venue of an estate or a proceeding to declare heirship  
1-27 under Section 48(a) of this code, the court in which the application  
1-28 for a proceeding in probate or determination of heirship  
1-29 [proceedings thereon] is first filed shall have and retain  
1-30 jurisdiction of the estate or heirship proceeding, as appropriate,  
1-31 to the exclusion of the other court or courts. The proceeding  
1-32 [proceedings] shall be deemed commenced by the filing of an  
1-33 application averring facts sufficient to confer venue; and the  
1-34 proceeding first legally commenced shall extend to all of the  
1-35 property of the decedent or the decedent's estate. Provided,  
1-36 however, that a bona fide purchaser of real property in reliance on  
1-37 any such subsequent proceeding, without knowledge of its  
1-38 invalidity, shall be protected in such purchase unless the decree  
1-39 admitting the will to probate, determining heirship, or granting  
1-40 administration in the prior proceeding shall be recorded in the  
1-41 office of the county clerk of the county in which such property is  
1-42 located.

1-43 (b) Proceedings in More Than One County. If a proceeding in  
1-44 [proceedings for] probate or to declare heirship under Section  
1-45 48(a) of this code is [are] commenced in more than one county, the  
1-46 proceeding [they] shall be stayed except in the county where first  
1-47 commenced until final determination of venue in the county where  
1-48 first commenced. If the proper venue is finally determined to be in  
1-49 another county, the clerk, after making and retaining a true copy of  
1-50 the entire file in the case, shall transmit the original file to the  
1-51 proper county, and the proceeding [proceedings] shall thereupon be  
1-52 had in the proper county in the same manner as if the proceeding  
1-53 [proceedings] had originally been instituted therein.

1-54 (c) Transfer of Proceeding.

1-55 (1) Transfer for Want of Venue. If it appears to the  
1-56 court at any time before the final decree that the proceeding was  
1-57 commenced in a court which did not have priority of venue over such  
1-58 proceeding, the court shall, on the application of any interested  
1-59 person, transfer the proceeding to the proper county by  
1-60 transmitting to the proper court in such county the original file in  
1-61 such case, together with certified copies of all entries in the  
1-62 minutes theretofore made, and the probate of the will,  
1-63 determination of heirship, or administration of the estate in such  
1-64 county shall be completed in the same manner as if the proceeding

2-1 had originally been instituted therein; but, if the question as to  
 2-2 priority of venue is not raised before final decree in the  
 2-3 proceedings is announced, the finality of such decree shall not be  
 2-4 affected by any error in venue.

2-5 (2) Transfer for Convenience of the Estate. If it  
 2-6 appears to the court at any time before the estate is closed or, if  
 2-7 there is no administration of the estate, when the proceeding in  
 2-8 probate or to declare heirship is concluded that it would be in the  
 2-9 best interest of the estate or, if there is no administration of the  
 2-10 estate, that it would be in the best interest of the heirs or  
 2-11 beneficiaries of the decedent's will, the court, in its discretion,  
 2-12 may order the proceeding transferred to the proper court in any  
 2-13 other county in this State. The clerk of the court from which the  
 2-14 proceeding is transferred shall transmit to the court to which the  
 2-15 proceeding is transferred the original file in the proceeding and a  
 2-16 certified copy of the index.

2-17 (e) Jurisdiction to Determine Venue. Any court in which  
 2-18 there has been filed an application for a proceeding [~~proceedings~~]  
 2-19 in probate or determination of heirship shall have full  
 2-20 jurisdiction to determine the venue of the [~~such~~] proceeding in  
 2-21 probate or heirship proceeding, and of any proceeding relating  
 2-22 thereto, and its determination shall not be subject to collateral  
 2-23 attack.

2-24 SECTION 2.02. Section 48(a), Texas Probate Code, is amended  
 2-25 to read as follows:

2-26 (a) When a person dies intestate owning or entitled to real  
 2-27 or personal property in Texas, and there shall have been no  
 2-28 administration in this State upon his estate; or when there has  
 2-29 been a will probated in this State or elsewhere, or an  
 2-30 administration in this State upon the estate of such decedent, and  
 2-31 any real or personal property in this State has been omitted from  
 2-32 such will or from such administration, or no final disposition  
 2-33 thereof has been made in such administration, the court of the  
 2-34 county in which such proceedings were last pending, or in the event  
 2-35 no will of such decedent has been admitted to probate in this State,  
 2-36 and no administration has been granted in this State upon the estate  
 2-37 of such decedent, then the court of the county in which venue would  
 2-38 be proper for commencement of an administration of the decedent's  
 2-39 estate under Section 6 of this code [~~any of the real property~~  
 2-40 ~~belonging to such estate is situated, or if there is no such real~~  
 2-41 ~~estate, then of the county in which any personal property belonging~~  
 2-42 ~~to such estate is found], may determine and declare in the manner  
 2-43 hereinafter provided who are the heirs and only heirs of such  
 2-44 decedent, and their respective shares and interests, under the laws  
 2-45 of this State, in the estate of such decedent, and proceedings  
 2-46 therefor shall be known as proceedings to declare heirship.~~

2-47 SECTION 2.03. The changes in law made by this article apply  
 2-48 only to a proceeding commenced on or after the effective date of  
 2-49 this article. A proceeding commenced before the effective date of  
 2-50 this article is governed by the law applicable to the proceeding  
 2-51 immediately before the effective date of this article, and that law  
 2-52 is continued in effect for that purpose.

#### 2-53 ARTICLE 3. DISCLAIMERS

2-54 SECTION 3.01. Section 37A, Texas Probate Code, is amended  
 2-55 to read as follows:

2-56 Sec. 37A. MEANS OF EVIDENCING DISCLAIMER OR RENUNCIATION OF  
 2-57 PROPERTY OR INTEREST RECEIVABLE FROM A DECEDENT. (a) Persons Who  
 2-58 May Disclaim. Any person, or the guardian of an incapacitated  
 2-59 person, the personal representative of a deceased person, or the  
 2-60 guardian ad litem of an unborn or unascertained person, with prior  
 2-61 court approval of the court having, or which would have,  
 2-62 jurisdiction over such guardian, personal representative, or  
 2-63 guardian ad litem, or any independent executor of a deceased  
 2-64 person, without prior court approval, or an attorney in fact or  
 2-65 agent appointed under a durable power of attorney authorizing  
 2-66 disclaimers that is executed by a principal, who may be entitled to  
 2-67 receive any property as a beneficiary and who intends to effect  
 2-68 disclaimer irrevocably on or after September 1, 1977, of the whole  
 2-69 or any part of such property shall evidence same as herein provided.

3-1           **(b) Effective Date of Disclaimer.** A disclaimer evidenced as  
 3-2 provided by this section [~~herein~~] shall be effective as of the death  
 3-3 of decedent and shall relate back for all purposes to the death of  
 3-4 the decedent and is not subject to the claims of any creditor of the  
 3-5 disclaimant.

3-6           **(c) Effect of Disclaimer.** Unless the decedent's will  
 3-7 provides otherwise, the property subject to the disclaimer shall  
 3-8 pass as if the person disclaiming or on whose behalf a disclaimer is  
 3-9 made had predeceased the decedent and a future interest that would  
 3-10 otherwise take effect in possession or enjoyment after the  
 3-11 termination of the estate or interest that is disclaimed takes  
 3-12 effect as if the disclaiming beneficiary had predeceased the  
 3-13 decedent.

3-14           **(d) Ineffective Disclaimer.** Failure to comply with the  
 3-15 provisions of this section [~~hereof~~] shall render such disclaimer  
 3-16 ineffective except as an assignment of such property to those who  
 3-17 would have received same had the person attempting the disclaimer  
 3-18 died prior to the decedent.

3-19           **(e) Definitions.** The term "property" as used in this  
 3-20 section shall include all legal and equitable interests, powers,  
 3-21 and property, whether present or future, whether vested or  
 3-22 contingent, and whether beneficial or burdensome, in whole or in  
 3-23 part. The term "disclaimer" as used in this section shall include  
 3-24 "renunciation." In this section "beneficiary" includes a person  
 3-25 who would have been entitled, if the person had not made a  
 3-26 disclaimer, to receive property as a result of the death of another  
 3-27 person by inheritance, under a will, by an agreement between  
 3-28 spouses for community property with a right of survivorship, by a  
 3-29 joint tenancy with a right of survivorship, or by any other  
 3-30 survivorship agreement, account, or interest in which the interest  
 3-31 of the decedent passes to a surviving beneficiary, by an insurance,  
 3-32 annuity, endowment, employment, deferred compensation, or other  
 3-33 contract or arrangement, or under a pension, profit sharing,  
 3-34 thrift, stock bonus, life insurance, survivor income, incentive, or  
 3-35 other plan or program providing retirement, welfare, or fringe  
 3-36 benefits with respect to an employee or a self-employed individual.

3-37           **(f) Subsequent Disclaimers.** Nothing in this section shall  
 3-38 be construed to preclude a subsequent disclaimer by any person who  
 3-39 shall be entitled to property as a result of a disclaimer.

3-40           **(g) Form** [~~The following shall apply to such disclaimers:~~  
 3-41 [~~(a) Written Memorandum~~] of Disclaimer [~~and Filing~~  
 3-42 ~~Thereof~~]. In the case of property receivable by a beneficiary, the  
 3-43 disclaimer shall be evidenced by a written memorandum, acknowledged  
 3-44 before a notary public or other person authorized to take  
 3-45 acknowledgements of conveyances of real estate.

3-46           **(h) Filing of Disclaimer.** Unless the beneficiary is a  
 3-47 charitable organization or governmental agency of the state, a  
 3-48 written memorandum of disclaimer disclaiming a present interest  
 3-49 shall be filed not later than nine months after the death of the  
 3-50 decedent and a written memorandum of disclaimer disclaiming a  
 3-51 future interest may be filed not later than nine months after the  
 3-52 event determining that the taker of the property or interest is  
 3-53 finally ascertained and his interest is indefeasibly vested. If  
 3-54 the beneficiary is a charitable organization or a governmental  
 3-55 agency of the state, a written memorandum of disclaimer disclaiming  
 3-56 a present or future interest shall be filed not later than the first  
 3-57 anniversary of the date [~~nine months after~~] the beneficiary  
 3-58 receives the notice required by Section 128A of this code, or the  
 3-59 expiration of the six-month period following the date the personal  
 3-60 representative files the inventory, appraisal, and list of  
 3-61 claims due or owing to the estate, whichever occurs later. The  
 3-62 written memorandum of disclaimer shall be filed in the probate  
 3-63 court in which the decedent's will has been probated or in which  
 3-64 proceedings have been commenced for the administration of the  
 3-65 decedent's estate or which has before it an application for either  
 3-66 of the same; provided, however, if the administration of the  
 3-67 decedent's estate is closed, or after the expiration of one year  
 3-68 following the date of the issuance of letters testamentary in an  
 3-69 independent administration, or if there has been no will of the

4-1 decedent probated or filed for probate, or if no administration of  
 4-2 the decedent's estate has been commenced, or if no application for  
 4-3 administration of the decedent's estate has been filed, the written  
 4-4 memorandum of disclaimer shall be filed with the county clerk of the  
 4-5 county of the decedent's residence, or, if the decedent is not a  
 4-6 resident of this state but real property or an interest therein  
 4-7 located in this state is disclaimed, a written memorandum of  
 4-8 disclaimer shall be filed with the county clerk of the county in  
 4-9 which such real property or interest therein is located, and  
 4-10 recorded by such county clerk in the deed records of that county.

4-11 (i) [~~(b)~~] Notice of Disclaimer. Unless the beneficiary is a  
 4-12 charitable organization or governmental agency of the state, copies  
 4-13 of any written memorandum of disclaimer shall be delivered in  
 4-14 person to, or shall be mailed by registered or certified mail to and  
 4-15 received by, the legal representative of the transferor of the  
 4-16 interest or the holder of legal title to the property to which the  
 4-17 disclaimer relates not later than nine months after the death of the  
 4-18 decedent or, if the interest is a future interest, not later than  
 4-19 nine months after the date the person who will receive the property  
 4-20 or interest is finally ascertained and the person's interest is  
 4-21 indefeasibly vested. If the beneficiary is a charitable  
 4-22 organization or government agency of the state, the notices  
 4-23 required by this section shall be filed not later than the first  
 4-24 anniversary of the date [~~nine months after~~] the beneficiary  
 4-25 receives the notice required by Section 128A of this code, or the  
 4-26 expiration of the six-month period following the date the personal  
 4-27 representative files the inventory, appraisal, and list of  
 4-28 claims due or owing to the estate, whichever occurs later.

4-29 (j) [~~(c)~~] Power to Provide for Disclaimer. Nothing herein  
 4-30 shall prevent a person from providing in a will, insurance policy,  
 4-31 employee benefit agreement, or other instrument for the making of  
 4-32 disclaimers by a beneficiary of an interest receivable under that  
 4-33 instrument and for the disposition of disclaimed property in a  
 4-34 manner different from the provisions hereof.

4-35 (k) [~~(d)~~] Irrevocability of Disclaimer. Any disclaimer  
 4-36 filed and served under this section shall be irrevocable.

4-37 (l) [~~(e)~~] Partial Disclaimer. Any person who may be  
 4-38 entitled to receive any property as a beneficiary may disclaim such  
 4-39 property in whole or in part, including but not limited to specific  
 4-40 powers of invasion, powers of appointment, and fee estate in favor  
 4-41 of life estates; and a partial disclaimer or renunciation, in  
 4-42 accordance with the provisions of this section, shall be effective  
 4-43 whether the property so renounced or disclaimed constitutes a  
 4-44 portion of a single, aggregate gift or constitutes part or all of a  
 4-45 separate, independent gift; provided, however, that a partial  
 4-46 disclaimer shall be effective only with respect to property  
 4-47 expressly described or referred to by category in such disclaimer;  
 4-48 and provided further, that a partial disclaimer of property which  
 4-49 is subject to a burdensome interest created by the decedent's will  
 4-50 shall not be effective unless such property constitutes a gift  
 4-51 which is separate and distinct from undisclaimed gifts.

4-52 (m) [~~(f)~~] Partial Disclaimer by Spouse. Without limiting  
 4-53 Subsection (l) [~~(e)~~] of this section, a disclaimer by the  
 4-54 decedent's surviving spouse of a transfer by the decedent is not a  
 4-55 disclaimer by the surviving spouse of all or any part of any other  
 4-56 transfer from the decedent to or for the benefit of the surviving  
 4-57 spouse, regardless of whether the property or interest that would  
 4-58 have passed under the disclaimed transfer passes because of the  
 4-59 disclaimer to or for the benefit of the surviving spouse by the  
 4-60 other transfer.

4-61 (n) [~~(g)~~] Disclaimer After Acceptance. No disclaimer shall  
 4-62 be effective after the acceptance of the property by the  
 4-63 beneficiary. For the purpose of this subsection [~~section~~],  
 4-64 acceptance shall occur only if the person making such disclaimer  
 4-65 has previously taken possession or exercised dominion and control  
 4-66 of such property in the capacity of beneficiary.

4-67 (o) [~~(h)~~] Interest in Trust Property. A beneficiary who  
 4-68 accepts an interest in a trust is not considered to have a direct or  
 4-69 indirect interest in trust property that relates to a licensed or

5-1 permitted business and over which the beneficiary exercises no  
 5-2 control. Direct or indirect beneficial ownership of not more than  
 5-3 five percent of any class of equity securities that is registered  
 5-4 under the Securities Exchange Act of 1934 shall not be deemed to be  
 5-5 an ownership interest in the business of the issuer of such  
 5-6 securities within the meaning of any statute, pursuant thereto.

5-7 SECTION 3.02. Section 37B(b), Texas Probate Code, is  
 5-8 amended to read as follows:

5-9 (b) The assignment may, at the request of the assignor, be  
 5-10 filed as provided for the filing of a disclaimer under Section  
 5-11 37A(h) [37A(a)] of this code. The filing requires the service of  
 5-12 notice under Section 37A(i) [37A(b)] of this code.

5-13 ARTICLE 4. DISSOLUTION OF MARRIAGE;  
 5-14 EFFECT ON DECEDENTS' ESTATES

5-15 SECTION 4.01. Chapter II, Texas Probate Code, is amended by  
 5-16 adding Section 47A to read as follows:

5-17 Sec. 47A. MARRIAGE VOIDABLE BASED ON MENTAL INCAPACITY.

5-18 (a) If a proceeding under Chapter 6, Family Code, to declare a  
 5-19 marriage void based on the lack of mental capacity of one of the  
 5-20 parties to the marriage is pending on the date of death of one of  
 5-21 those parties, or if a guardianship proceeding in which a court is  
 5-22 requested under Chapter 6, Family Code, to declare a ward's or  
 5-23 proposed ward's marriage void based on the lack of mental capacity  
 5-24 of the ward or proposed ward is pending on the date of death of the  
 5-25 ward or proposed ward, the court may make the determination and  
 5-26 declare the marriage void after the decedent's death. In making  
 5-27 that determination after the decedent's death, the court shall  
 5-28 apply the standards for an annulment prescribed by Section  
 5-29 6.108(a), Family Code.

5-30 (b) Subject to Subsection (c) of this section, if a  
 5-31 proceeding described by Subsection (a) of this section is not  
 5-32 pending on the date of a decedent's death, an interested person may  
 5-33 file an application with the court requesting that the court void  
 5-34 the marriage of the decedent if, on the date of the decedent's  
 5-35 death, the decedent was married, and that marriage commenced not  
 5-36 earlier than three years before the decedent's date of death. The  
 5-37 notice applicable to a proceeding for a declaratory judgment under  
 5-38 Chapter 37, Civil Practice and Remedies Code, applies to a  
 5-39 proceeding under this subsection.

5-40 (c) An application requesting that the court void a  
 5-41 decedent's marriage authorized by Subsection (b) of this section  
 5-42 may not be filed after the first anniversary of the date of the  
 5-43 decedent's death.

5-44 (d) Except as provided by Subsection (e) of this section, in  
 5-45 a proceeding brought under Subsection (b) of this section, the  
 5-46 court shall declare the decedent's marriage void if the court finds  
 5-47 that, on the date the marriage occurred, the decedent did not have  
 5-48 the mental capacity to:

- 5-49 (1) consent to the marriage; and  
 5-50 (2) understand the nature of the marriage ceremony, if  
 5-51 a ceremony occurred.

5-52 (e) In a proceeding brought under Subsection (b) of this  
 5-53 section, a court that makes a finding described by Subsection (d) of  
 5-54 this section may not declare the decedent's marriage void if the  
 5-55 court finds that, after the date the marriage occurred, the  
 5-56 decedent:

- 5-57 (1) gained the mental capacity to recognize the  
 5-58 marriage relationship; and  
 5-59 (2) did recognize the marriage relationship.

5-60 (f) If the court declares a decedent's marriage void in a  
 5-61 proceeding described by Subsection (a) of this section or brought  
 5-62 under Subsection (b) of this section, the other party to the  
 5-63 marriage is not considered the decedent's surviving spouse for  
 5-64 purposes of any law of this state.

5-65 SECTION 4.02. Section 69, Texas Probate Code, is amended to  
 5-66 read as follows:

5-67 Sec. 69. WILL PROVISIONS MADE BEFORE DISSOLUTION OF  
 5-68 MARRIAGE [VOIDNESS ARISING FROM DIVORCE]. (a) In this section,  
 5-69 "relative" means an individual who is related to another individual

6-1 by consanguinity or affinity, as determined under Sections 573.022  
 6-2 and 573.024, Government Code, respectively.

6-3 (b) If, after making a will, the testator's marriage is  
 6-4 dissolved, whether by divorce, annulment, or a declaration that the  
 6-5 marriage is void [~~testator is divorced or the testator's marriage~~  
 6-6 ~~is annulled~~], all provisions in the will, including all fiduciary  
 6-7 appointments [~~in favor of the testator's former spouse, or~~  
 6-8 ~~appointing such spouse to any fiduciary capacity under the will or~~  
 6-9 ~~with respect to the estate or person of the testator's children~~],  
 6-10 shall ~~must~~ be read as if the former spouse and each relative of  
 6-11 the former spouse who is not a relative of the testator failed to  
 6-12 survive the testator, [~~and shall be null and void and of no effect~~]  
 6-13 unless the will expressly provides otherwise.

6-14 (c) [~~(b)~~] A person whose marriage to [~~who is divorced from~~]  
 6-15 the decedent has been dissolved, whether by divorce, annulment, or  
 6-16 a declaration that the marriage is void, [~~or whose marriage to the~~  
 6-17 ~~decedent has been annulled~~] is not a surviving spouse unless, by  
 6-18 virtue of a subsequent marriage, the person is married to the  
 6-19 decedent at the time of death and the subsequent marriage is not  
 6-20 declared void under Section 47A of this code.

6-21 SECTION 4.03. Section 6.111, Family Code, is amended to  
 6-22 read as follows:

6-23 Sec. 6.111. DEATH OF PARTY TO VOIDABLE MARRIAGE. Except as  
 6-24 provided by Section 47A, Texas Probate Code, a [A] marriage subject  
 6-25 to annulment may not be challenged in a proceeding instituted after  
 6-26 the death of either party to the marriage.

6-27 SECTION 4.04. (a) Except as provided by Subsection (b) of  
 6-28 this section, the changes in law made by this article apply only to:

6-29 (1) the estate of a decedent who dies before the  
 6-30 effective date of this article, if the probate or administration of  
 6-31 the estate is pending on or commenced on or after the effective date  
 6-32 of this article; and

6-33 (2) the estate of a decedent who dies on or after the  
 6-34 effective date of this article.

6-35 (b) The changes in law made by this article to Section 69,  
 6-36 Texas Probate Code, apply only to the estate of a decedent who dies  
 6-37 on or after the effective date of this article. The estate of a  
 6-38 decedent who dies before the effective date of this article is  
 6-39 governed by the law in effect on the date of the decedent's death,  
 6-40 and the former law is continued in effect for that purpose.

6-41 ARTICLE 5. NUNCUPATIVE, OR ORAL, WILLS

6-42 SECTION 5.01. Section 82, Texas Probate Code, is amended to  
 6-43 read as follows:

6-44 Sec. 82. CONTENTS OF APPLICATION FOR LETTERS OF  
 6-45 ADMINISTRATION. An application for letters of administration when  
 6-46 no will [~~written or oral~~] is alleged to exist shall state:

6-47 (a) The name and domicile of the applicant,  
 6-48 relationship to the decedent, if any, and that the applicant is not  
 6-49 disqualified by law to act as administrator;

6-50 (b) The name and intestacy of the decedent, and the  
 6-51 fact, time and place of death;

6-52 (c) Facts necessary to show venue in the court to which  
 6-53 the application is made;

6-54 (d) Whether the decedent owned real or personal  
 6-55 property, with a statement of its probable value;

6-56 (e) The name, age, marital status and address, if  
 6-57 known, and the relationship, if any, of each heir to the decedent;

6-58 (f) If known by the applicant at the time of the filing  
 6-59 of the application, whether children were born to or adopted by the  
 6-60 decedent, with the name and the date and place of birth of each;

6-61 (g) If known by the applicant at the time of the filing  
 6-62 of the application, whether the decedent was ever divorced, and if  
 6-63 so, when and from whom; and

6-64 (h) That a necessity exists for administration of the  
 6-65 estate, alleging the facts which show such necessity.

6-66 SECTION 5.02. Section 91, Texas Probate Code, is amended to  
 6-67 read as follows:

6-68 Sec. 91. WHEN WILL NOT IN CUSTODY OF COURT [~~OR ORAL~~]. If  
 6-69 for any reason a written will is not in the custody of the court, [~~or~~

7-1 ~~if the will is oral,~~] the court shall find the contents thereof by  
7-2 written order, and certified copies of same as so established by the  
7-3 court may be recorded in other counties, and may be used in  
7-4 evidence, as in the case of certified copies of written wills in the  
7-5 custody of the court.

7-6 SECTION 5.03. Section 128(b), Texas Probate Code, is  
7-7 amended to read as follows:

7-8 (b) Where Application Is for Probate of a Written Will Not  
7-9 Produced [~~or of a Nuncupative Will~~]. When the application is for the  
7-10 probate of a [~~nuncupative will, or of a~~] written will which cannot  
7-11 be produced in court, the clerk shall issue a citation to all  
7-12 parties interested in such estate, which citation shall contain  
7-13 substantially the statements made in the application for probate,  
7-14 and the time when, place where, and the court before which such  
7-15 application will be acted upon. If the heirs of the testator be  
7-16 residents of this state, and their residence be known, the citation  
7-17 shall be served upon them by personal service. Service of such  
7-18 citation may be made by publication in the following cases:

- 7-19 (1) When the heirs are non-residents of this state; or
- 7-20 (2) When their names or their residences are unknown;

7-21 or

- 7-22 (3) When they are transient persons.

7-23 SECTION 5.04. Section 128A(a), Texas Probate Code, is  
7-24 amended to read as follows:

7-25 (a) If the address of the entity can be ascertained with  
7-26 reasonable diligence, an applicant under Section 81 of this code  
7-27 shall give the state, a governmental agency of the state, or a  
7-28 charitable organization notice that the entity is named as a  
7-29 devisee in a written will or or [~~7~~] a written will not produced [~~7~~, ~~or a~~  
7-30 ~~nuncupative will~~] that has been admitted to probate.

7-31 SECTION 5.05. Sections 64, 65, 81(c), 86, and 89A(c), Texas  
7-32 Probate Code, are repealed.

7-33 SECTION 5.06. The changes in law made by this article apply  
7-34 only to a nuncupative, or oral, will made on or after the effective  
7-35 date of this article. A nuncupative, or oral, will made before the  
7-36 effective date of this article is governed by the law in effect on  
7-37 the date the will was made, and the former law is continued in  
7-38 effect for that purpose.

7-39 ARTICLE 6. WRITTEN WILLS NOT PRODUCED

7-40 SECTION 6.01. Section 85, Texas Probate Code, is amended to  
7-41 read as follows:

7-42 Sec. 85. PROOF OF WRITTEN WILL NOT PRODUCED IN COURT. A  
7-43 written will which cannot be produced in court shall be proved in  
7-44 the same manner as provided in the preceding Section for an attested  
7-45 written will or an holographic will, as the case may be, and the  
7-46 same amount and character of testimony shall be required to prove  
7-47 such will as is required to prove a written will produced in court;  
7-48 but, in addition thereto, the cause of its non-production must be  
7-49 proved, and such cause must be sufficient to satisfy the court that  
7-50 it cannot by any reasonable diligence be produced, and the contents  
7-51 of such will must be substantially proved by the testimony of a  
7-52 credible witness who has read the will, has [~~it or~~] heard the will  
7-53 [~~it~~] read, or can identify a copy of the will.

7-54 SECTION 6.02. The changes in law made by this article apply  
7-55 only to:

- 7-56 (1) the estate of a decedent who dies before the  
7-57 effective date of this article, if the probate or administration of  
7-58 the estate is pending on or commenced on or after the effective date  
7-59 of this article; and
- 7-60 (2) the estate of a decedent who dies on or after the  
7-61 effective date of this article.

7-62 ARTICLE 7. GRANTING OF ADMINISTRATION OF DECEDENTS' ESTATES

7-63 SECTION 7.01. Section 83(c), Texas Probate Code, is amended  
7-64 to read as follows:

7-65 (c) Where Letters of Administration Have Been Granted.  
7-66 Whenever letters of administration shall have been granted upon an  
7-67 estate, and it shall afterwards be discovered that the deceased  
7-68 left a lawful will, such will may be proved in the manner provided  
7-69 for the proof of wills; and, if an executor is named in such will,

8-1 and he is not disqualified, he shall be allowed to qualify and  
 8-2 accept as such executor, and the letters previously granted shall  
 8-3 be revoked; but, if no such executor be named in the will, or if the  
 8-4 executor named be disqualified, be dead, or shall renounce the  
 8-5 executorship, or shall [~~neglect or otherwise~~] fail or be unable to  
 8-6 accept and qualify within twenty days after the date of the probate  
 8-7 of the will, or shall fail [~~neglect~~] for a period of thirty days  
 8-8 after the discovery of such will to present it for probate, then  
 8-9 administration with the will annexed of the estate of such testator  
 8-10 shall be granted as in other cases. All acts done by the first  
 8-11 administrator, prior to the qualification of the executor or of the  
 8-12 administrator with the will annexed, shall be as valid as if no such  
 8-13 will had been discovered.

8-14 SECTION 7.02. Section 178(b), Texas Probate Code, is  
 8-15 amended to read as follows:

8-16 (b) Letters of Administration. When a person shall die  
 8-17 intestate, or where no executor is named in a will, or where the  
 8-18 executor is dead or shall fail [~~or neglect~~] to accept and qualify  
 8-19 within twenty days after the probate of the will, or shall fail  
 8-20 [~~neglect~~] for a period of thirty days after the death of the  
 8-21 testator to present the will for probate and the court finds there  
 8-22 was no good cause for not presenting the will for probate during  
 8-23 that period, then administration of the estate of such intestate,  
 8-24 or administration with the will annexed of the estate of such  
 8-25 testator, shall be granted, should administration appear to be  
 8-26 necessary. No administration of any estate shall be granted unless  
 8-27 there exists a necessity therefor, such necessity to be determined  
 8-28 by the court hearing the application. Such necessity shall be  
 8-29 deemed to exist if two or more debts exist against the estate, or if  
 8-30 or when it is desired to have the county court partition the estate  
 8-31 among the distributees, or if the administration is necessary to  
 8-32 receive or recover funds or other property due the estate, but  
 8-33 mention of these three [~~two~~] instances of necessity for  
 8-34 administration shall not prevent the court from finding other  
 8-35 instances of necessity upon proof before it.

8-36 SECTION 7.03. Section 179, Texas Probate Code, is amended  
 8-37 to read as follows:

8-38 Sec. 179. OPPOSITION TO GRANT OF LETTERS OF ADMINISTRATION.  
 8-39 When application is made for letters of administration, any  
 8-40 interested person may at any time before the application is  
 8-41 granted, file the person's [~~his~~] opposition thereto in writing, and  
 8-42 may apply for the grant of letters to the person [~~himself~~] or to any  
 8-43 other person; and, upon the trial, the court shall grant letters to  
 8-44 the person that may seem best entitled to them, having regard to  
 8-45 applicable provisions of this Code, without further notice than  
 8-46 that of the original application.

8-47 SECTION 7.04. Section 190(b), Texas Probate Code, is  
 8-48 amended to read as follows:

8-49 (b) Administrator. Before the issuance of letters of  
 8-50 administration, the person appointed administrator shall take and  
 8-51 subscribe an oath in form substantially as follows: "I do solemnly  
 8-52 swear that \_\_\_\_\_, deceased, died without leaving any lawful will  
 8-53 (or that the named executor in any such will is dead or has failed  
 8-54 [~~or neglected~~] to offer the same for probate, or to accept and  
 8-55 qualify as executor, within the time required, as the case may be),  
 8-56 so far as I know or believe, and that I will well and truly perform  
 8-57 all the duties of administrator of the estate of said deceased."

8-58 SECTION 7.05. The changes in law made by this article apply  
 8-59 to an application for the administration of an estate that is  
 8-60 pending on or filed on or after the effective date of this article.

#### 8-61 ARTICLE 8. EMERGENCY INTERVENTION APPLICATIONS

8-62 SECTION 8.01. Section 111(a), Texas Probate Code, is  
 8-63 amended to read as follows:

8-64 (a) An application for emergency intervention to obtain  
 8-65 funds needed for a decedent's funeral and burial expenses must be  
 8-66 sworn and must contain:

- 8-67 (1) the name, address, [~~social security number~~] and  
 8-68 interest of the applicant;  
 8-69 (2) the facts showing an immediate necessity for the



9-1 issuance of an emergency intervention order under this section by  
9-2 the court;

9-3 (3) the date of the decedent's death, place of death,  
9-4 decedent's residential address, and the name and address of the  
9-5 funeral home holding the decedent's remains;

9-6 (4) any known or ascertainable heirs and devisees of  
9-7 the decedent and the reason:

9-8 (A) the heirs and devisees cannot be contacted;  
9-9 or

9-10 (B) the heirs and devisees have refused to assist  
9-11 in the decedent's burial;

9-12 (5) a description of funeral and burial procedures  
9-13 necessary and a statement from the funeral home that contains a  
9-14 detailed and itemized description of the cost of the funeral and  
9-15 burial procedures; and

9-16 (6) the name and address of an individual, entity, or  
9-17 financial institution, including an employer, that is in possession  
9-18 of any funds of or due to the decedent, and related account numbers  
9-19 and balances, if known by the applicant.

9-20 SECTION 8.02. Section 112, Texas Probate Code, is amended  
9-21 to read as follows:

9-22 Sec. 112. CONTENTS FOR EMERGENCY INTERVENTION APPLICATION  
9-23 FOR ACCESS TO PERSONAL PROPERTY. An application for emergency  
9-24 intervention to gain access to rental accommodations of a decedent  
9-25 at the time of the decedent's death that contain the decedent's  
9-26 personal property must be sworn and must contain:

9-27 (1) the name, address, [~~social security number,~~] and  
9-28 interest of the applicant;

9-29 (2) the facts showing an immediate necessity for the  
9-30 issuance of an emergency intervention order by the court;

9-31 (3) the date and place of the decedent's death, the  
9-32 decedent's residential address, and the name and address of the  
9-33 funeral home holding the decedent's remains;

9-34 (4) any known or ascertainable heirs and devisees of  
9-35 the decedent and the reason:

9-36 (A) the heirs and devisees cannot be contacted;  
9-37 or

9-38 (B) the heirs and devisees have refused to assist  
9-39 in the protection of the decedent's personal property;

9-40 (5) the type and location of the decedent's personal  
9-41 property and the name of the person in possession of the property;  
9-42 and

9-43 (6) the name and address of the owner or manager of the  
9-44 decedent's rental accommodations and whether access to the  
9-45 accommodations is necessary.

9-46 SECTION 8.03. The changes in law made by this article apply  
9-47 to an emergency intervention application filed before, on, or after  
9-48 the effective date of this article.

9-49 ARTICLE 9. SALES OF ESTATE PROPERTY

9-50 SECTION 9.01. Section 344, Texas Probate Code, is amended  
9-51 to read as follows:

9-52 Sec. 344. CITATION [~~AND RETURN~~] ON APPLICATION. Upon the  
9-53 filing of such application and exhibit, the clerk shall issue a  
9-54 citation to all persons interested in the estate, describing the  
9-55 land or interest or part thereof sought to be sold, and informing  
9-56 [requiring] them of the right under Section 345 of this code to file  
9-57 an opposition to the sale during the period prescribed by the court  
9-58 [to appear at the time set by the court] as shown in the citation  
9-59 [and show cause why the sale should not be made], if they so elect.  
9-60 Service of such citation shall be by posting.

9-61 SECTION 9.02. Section 345, Texas Probate Code, is amended  
9-62 to read as follows:

9-63 Sec. 345. OPPOSITION TO APPLICATION. When an application  
9-64 for an order of sale is made, any person interested in the estate  
9-65 may, during the period provided in the citation issued under  
9-66 Section 344 of this code [before an order is made thereon], file his  
9-67 opposition to the sale, in writing, or may make application for the  
9-68 sale of other property of the estate.

9-69 SECTION 9.03. Part 5, Chapter VIII, Texas Probate Code, is

10-1 amended by adding Section 345A to read as follows:

10-2 Sec. 345A. HEARING ON APPLICATION AND ANY OPPOSITION. (a)  
10-3 The clerk of a court in which an application for an order of sale is  
10-4 filed shall immediately call to the attention of the judge any  
10-5 opposition to the sale that is filed during the period provided in  
10-6 the citation issued under Section 344 of this code. The court shall  
10-7 hold a hearing on an application if an opposition to the sale is  
10-8 filed during the period provided in the citation.

10-9 (b) A hearing on an application for an order of sale is not  
10-10 required under this section if no opposition to the application is  
10-11 filed during the period provided in the citation. The court, in its  
10-12 discretion, may determine that a hearing is necessary on the  
10-13 application even if no opposition was filed during that period.

10-14 (c) If the court orders a hearing under Subsection (a) or  
10-15 (b) of this section, the court shall designate in writing a date and  
10-16 time for hearing the application and any opposition, together with  
10-17 the evidence pertaining to the application and opposition. The  
10-18 clerk shall issue a notice to the applicant and to each person who  
10-19 files an opposition to the sale, if applicable, of the date and time  
10-20 of the hearing.

10-21 (d) The judge may, by entries on the docket, continue a  
10-22 hearing held under this section from time to time until the judge is  
10-23 satisfied concerning the application.

10-24 SECTION 9.04. Section 346, Texas Probate Code, is amended  
10-25 to read as follows:

10-26 Sec. 346. ORDER OF SALE. If satisfied [~~upon hearing~~] that  
10-27 the sale of the property of the estate described in the application  
10-28 is necessary or advisable, the court shall order the sale to be  
10-29 made; otherwise, the court may deny the application and may, if it  
10-30 deems best, order the sale of other property the sale of which would  
10-31 be more advantageous to the estate. An order for the sale of real  
10-32 estate shall specify:

10-33 (a) The property to be sold, giving such description  
10-34 as will identify it; and

10-35 (b) Whether the property is to be sold at public  
10-36 auction or at private sale, and, if at public auction, the time and  
10-37 place of such sale; and

10-38 (c) The necessity or advisability of the sale and its  
10-39 purpose; and

10-40 (d) Except in cases in which no general bond is  
10-41 required, that, having examined the general bond of the  
10-42 representative of the estate, the court finds it to be sufficient as  
10-43 required by law, or finds the same to be insufficient and specifies  
10-44 the necessary or increased bond, as the case may be; and

10-45 (e) That the sale shall be made and the report returned  
10-46 in accordance with law; and

10-47 (f) The terms of the sale.

10-48 SECTION 9.05. Section 343, Texas Probate Code, is repealed.

10-49 SECTION 9.06. The changes in law made by this article apply  
10-50 only to:

10-51 (1) the estate of a decedent who dies before the  
10-52 effective date of this article, if the probate or administration of  
10-53 the estate is pending on the effective date of this article; and

10-54 (2) the estate of a decedent who dies on or after the  
10-55 effective date of this article.

10-56 ARTICLE 10. EFFECTIVE DATE

10-57 SECTION 10.01. This Act takes effect September 1, 2007,  
10-58 except that Article 8 of this Act takes effect immediately if this  
10-59 Act receives a vote of two-thirds of all the members elected to each  
10-60 house, as provided by Section 39, Article III, Texas Constitution.  
10-61 If this Act does not receive the vote necessary for immediate  
10-62 effect, Article 8 takes effect September 1, 2007.

10-63 \* \* \* \* \*