

By: Hartnett

H.B. No. 2479

A BILL TO BE ENTITLED

AN ACT

relating to the estates of decedents.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter I, Texas Probate Code, is amended by adding Section 36G to read as follows:

Sec. 36G. HEIR FINDER CONTRACTS PROHIBITED DURING PENDING ADMINISTRATION OF PERSON DYING INTESTATE. (a) During the nine-month period beginning on the date the court grants letters of administration with respect to the estate of a decedent who dies intestate, a person may not enter into a contract with another person under which the person, for a fee or other consideration, provides or offers to provide information regarding the other person's right to or interest in any portion of the decedent's estate under the laws of descent and distribution of this state.

(b) A contract entered into in violation of Subsection (a) of this section is void.

SECTION 2. Section 149B(a), Texas Probate Code, is amended to read as follows:

(a) In addition to or in lieu of the right to an accounting provided by Section 149A of this code, at any time after the expiration of two years from the date the clerk of the court granting the letters testamentary or of administration issues the letters to the independent executor [~~that an independent administration was created and the order appointing an independent~~

1 ~~executor was entered~~], a person interested in the estate may
2 petition the county court, as that term is defined by Section 3 of
3 this code, for an accounting and distribution. The court may order
4 an accounting to be made with the court by the independent executor
5 at such time as the court deems proper. The accounting shall
6 include the information that the court deems necessary to determine
7 whether any part of the estate should be distributed.

8 SECTION 3. The heading to Part 5, Chapter VII, Texas Probate
9 Code, is amended to read as follows:

10 PART 5. [~~GENERAL~~] POWERS, DUTIES, AND LIABILITIES OF PERSONAL
11 REPRESENTATIVES

12 SECTION 4. Part 5, Chapter VII, Texas Probate Code, is
13 amended by adding Sections 236 and 236A to read as follows:

14 Sec. 236. LIABILITY OF PERSONAL REPRESENTATIVE TO
15 BENEFICIARY. A personal representative who commits a breach of
16 fiduciary duty is chargeable with any damages resulting from the
17 breach, including:

18 (1) any loss or depreciation in value of the estate as
19 a result of the breach;

20 (2) any profit made by the personal representative as
21 a result of the breach; or

22 (3) any profit that would have accrued to the estate if
23 there had been no breach.

24 Sec. 236A. REMEDIES FOR BREACH OF FIDUCIARY DUTY. To remedy
25 a breach of fiduciary duty by a personal representative that has
26 occurred or may occur, a court may:

27 (1) compel the personal representative to perform the

1 personal representative's duty or duties;

2 (2) enjoin the personal representative from
3 committing a breach of fiduciary duty;

4 (3) compel the personal representative to redress a
5 breach of fiduciary duty, including compelling the representative
6 to pay money or to restore property;

7 (4) order a personal representative to account;

8 (5) appoint a receiver to take possession of estate
9 property and administer the estate;

10 (6) suspend the personal representative;

11 (7) remove the personal representative as provided by
12 Section 222 of this code;

13 (8) reduce or deny compensation to the personal
14 representative;

15 (9) void an act of the personal representative;

16 (10) impose a lien or a constructive trust on estate
17 property;

18 (11) trace estate property that the personal
19 representative wrongfully disposed of and recover the property or
20 the proceeds from the property; or

21 (12) order any other appropriate relief.

22 SECTION 5. (a) Section 36G, Texas Probate Code, as added by
23 this Act, applies only to a contract that is entered into on or
24 after the effective date of this Act.

25 (b) The change in law made by this Act to Section 149B, Texas
26 Probate Code, applies only to a petition for an accounting and
27 distribution filed on or after the effective date of this Act. A

1 petition for an accounting and distribution filed before the
2 effective date of this Act is covered by the law in effect on the
3 date the petition was filed, and that law is continued in effect for
4 that purpose.

5 (c) Sections 236 and 236A, Texas Probate Code, as added by
6 this Act, apply only to conduct that occurs on or after the
7 effective date of this Act. Conduct that occurs before the
8 effective date of this Act is governed by the law in effect on the
9 date the conduct occurred, and the former law is continued in effect
10 for that purpose.

11 SECTION 6. This Act takes effect September 1, 2007.