

1-1 By: Hartnett (Senate Sponsor - Wentworth) H.B. No. 2479
1-2 (In the Senate - Received from the House May 7, 2007;
1-3 May 8, 2007, read first time and referred to Committee on
1-4 Jurisprudence; May 18, 2007, reported favorably, as amended, by
1-5 the following vote: Yeas 4, Nays 0; May 18, 2007, sent to
1-6 printer.)

1-7 COMMITTEE AMENDMENT NO. 1 By: Wentworth

1-8 Amend H.B. No. 2479 (engrossed version) as follows:

1-9 (1) At the end of SECTION 4 of the bill (page 3, between
1-10 lines 1 and 2), insert the following:

1-11 (c) Section 36G, Texas Probate Code, as added by this Act,
1-12 applies only to a contract that is entered into on or after the
1-13 effective date of this Act.

1-14 (2) Add the following appropriately numbered SECTION to the
1-15 bill and renumber subsequent SECTIONS of the bill as appropriate:

1-16 SECTION ____ Chapter I, Texas Probate Code, is amended by
1-17 adding Section 36G to read as follows:

1-18 Sec. 36G. CERTAIN HEIR FINDER CONTRACTS VOID. (a) A
1-19 contract or other agreement is void if the contract or agreement:

1-20 (1) is entered into by or on behalf of a family member
1-21 of a decedent on or before the sixth month anniversary of the filing
1-22 of the first of the following to be filed:

1-23 (A) an application for determination of heirship
1-24 of the decedent; or

1-25 (B) a pleading to determine which family members
1-26 of the decedent have a right to property, if the right to property
1-27 is principally based on the court's determination of the family
1-28 history of the decedent; and

1-29 (2) provides for payment of a fee, assignment of a
1-30 portion of any interest in the decedent's estate or property, or
1-31 other consideration by the family member out of the family member's
1-32 right to or interest in the decedent's estate or property to a
1-33 person for providing information, assistance, or other efforts
1-34 related to the family member's right to or interest in the
1-35 decedent's estate or property.

1-36 (b) This section does not apply to a contract:

1-37 (1) entered into between an attorney and a decedent's
1-38 family member for legal services, provided that the attorney has
1-39 not agreed to pay to any person a portion of the fees received from
1-40 the family member or the family member's interest in the decedent's
1-41 estate or property; or

1-42 (2) entered into by an attorney ad litem, guardian ad
1-43 litem, personal representative, or other person appointed by the
1-44 court in which a proceeding in connection with the decedent's
1-45 estate or property is pending.

1-46 (c) In this section, "family member of a decedent" means a
1-47 person who would be considered an heir of the decedent at the time
1-48 of the decedent's death.

1-49 A BILL TO BE ENTITLED
1-50 AN ACT

1-51 relating to the estates of decedents.

1-52 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-53 SECTION 1. Section 149B(a), Texas Probate Code, is amended
1-54 to read as follows:

1-55 (a) In addition to or in lieu of the right to an accounting
1-56 provided by Section 149A of this code, at any time after the
1-57 expiration of two years from the date the clerk of the court first
1-58 issues letters testamentary or of administration to any personal
1-59 representative of the estate [that an independent administration
1-60 was created and the order appointing an independent executor was
1-61 entered], a person interested in an [the] estate then subject to
1-62 independent administration may petition the county court, as that

term is defined by Section 3 of this code, for an accounting and distribution. The court may order an accounting to be made with the court by the independent executor at such time as the court deems proper. The accounting shall include the information that the court deems necessary to determine whether any part of the estate should be distributed.

SECTION 2. The heading to Part 5, Chapter VII, Texas Probate Code, is amended to read as follows:

PART 5. ~~GENERAL~~ POWERS, DUTIES, AND LIABILITIES OF PERSONAL REPRESENTATIVES

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

Sec. 236. LIABILITY OF PERSONAL REPRESENTATIVE. A personal representative who commits a breach of fiduciary duty and the sureties on the personal representative's bond are chargeable with any damages resulting from the breach, including:

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

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

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

(4) exemplary damages; or

(5) costs and fees described by Section 245 of this code.

Sec. 236A. REMEDIES FOR BREACH OF FIDUCIARY DUTY. (a) To remedy a breach of fiduciary duty by a personal representative, a court may:

(1) compel the personal representative to perform the personal representative's duty or duties;

(2) enjoin the personal representative from continuing to commit a breach of fiduciary duty or committing an additional breach of fiduciary duty;

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

(4) order a personal representative to account;

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

(6) suspend the personal representative;

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

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

(9) void an act of the personal representative;

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

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

(12) order any other appropriate relief.

(b) A certified copy of an order that imposes a lien or constructive trust on real property under Subsection (a)(10) of this section may be filed in the real property records of each county in which the real property is located. On the recording of the certified copy, the order is constructive notice of the existence of the lien or constructive trust.

SECTION 4. (a) The change in law made by this Act to Section 149B, Texas Probate Code, applies only to a petition for an accounting and distribution filed on or after the effective date of this Act. A petition for an accounting and distribution filed before the effective date of this Act is covered by the law in effect on the date the petition was filed, and that law is continued in effect for that purpose.

(b) Sections 236 and 236A, Texas Probate Code, as added by this Act, apply only to conduct that occurs on or after the effective date of this Act. Conduct that occurs before the effective date of this Act is governed by the law in effect on the date the conduct occurred, and the former law is continued in effect

3-1 for that purpose.

3-2 SECTION 5. This Act takes effect September 1, 2007.

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