

By: Wentworth

S.B. No. 593

Substitute the following for S.B. No. 593:

By: Hartnett

C.S.S.B. No. 593

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to providing notice to certain beneficiaries under a  
3 decedent's will.

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

5 SECTION 1. Section 128A, Texas Probate Code, is amended to  
6 read as follows:

7 Sec. 128A. NOTICE TO CERTAIN BENEFICIARIES [~~ENTITIES~~] AFTER  
8 PROBATE OF WILL. (a) In this section, "beneficiary" means a  
9 person, entity, state, governmental agency of the state, charitable  
10 organization, or trust entitled to receive real or personal  
11 property under the terms of a decedent's will, to be determined for  
12 purposes of this section with the assumption that each person who is  
13 alive on the date of the decedent's death survives any period  
14 required to receive the bequest as specified by the terms of the  
15 will.

16 (b) Except as provided by Subsection (d) of this section,  
17 not later than the 60th day after the date of an order admitting a  
18 decedent's will to probate, the personal representative of the  
19 decedent's estate, including an independent executor or  
20 independent administrator, shall give notice that complies with  
21 Subsection (e) of this section to each beneficiary named in the will  
22 whose identity and address are known to the personal representative  
23 or, through reasonable diligence, can be ascertained. If, after  
24 the 60th day after the date of the order, the personal

1 representative becomes aware of the identity and address of a  
2 beneficiary who was not given notice on or before the 60th day, the  
3 personal representative shall give the notice as soon as possible  
4 after becoming aware of that information.

5 (c) Notwithstanding the requirement under Subsection (b) of  
6 this section that the personal representative give the notice to  
7 the beneficiary, the personal representative shall give the notice  
8 with respect to a beneficiary described by this subsection as  
9 follows:

10 (1) if the beneficiary is a trust, to the trustee,  
11 unless the personal representative is the trustee, in which case  
12 the personal representative shall give the notice to the person or  
13 class of persons first eligible to receive the trust income, to be  
14 determined for purposes of this subdivision as if the trust were in  
15 existence on the date of the decedent's death;

16 (2) if the beneficiary has a court-appointed guardian  
17 or conservator, to that guardian or conservator;

18 (3) if the beneficiary is a minor for whom no guardian  
19 or conservator has been appointed, to a parent of the minor; and

20 (4) if the beneficiary is a charity that for any reason  
21 cannot be notified, to the attorney general.

22 (d) A personal representative is not required to give the  
23 notice otherwise required by this section to a beneficiary:

24 (1) who made an appearance in the proceeding with  
25 respect to the decedent's estate before the will was admitted to  
26 probate;

27 (2) who received a copy of the will that was admitted

1 to probate and waived the right to receive the notice in an  
2 instrument that:

3 (A) acknowledges the receipt of the copy of the  
4 will;

5 (B) is signed by the beneficiary; and

6 (C) is filed with the court; or

7 (3) whose only benefit under the will is cash in the  
8 amount of \$1,000 or less.

9 (e) The notice required by this section must:

10 (1) state:

11 (A) the name and address of the beneficiary to  
12 whom the notice is given or, for a beneficiary described by  
13 Subsection (c) of this section, the name and address of the  
14 beneficiary for whom the notice is given and of the person to whom  
15 the notice is given;

16 (B) the decedent's name;

17 (C) that the decedent's will has been admitted to  
18 probate;

19 (D) that the beneficiary to whom or for whom the  
20 notice is given is named as a beneficiary in the will; and

21 (E) the personal representative's name and  
22 contact information; and

23 (2) contain as attachments a copy of the will admitted  
24 to probate and the order admitting the will to probate.

25 (f) The notice required by this section must be sent by  
26 registered or certified mail, return receipt requested.

27 (g) Not later than the 90th day after the date of an order

1 admitting a will to probate, the personal representative shall file  
2 with the clerk of the court in which the decedent's estate is  
3 pending a sworn affidavit of the personal representative, or a  
4 certificate signed by the personal representative's attorney,  
5 stating:

6 (1) for each beneficiary to whom notice was required  
7 to be given under this section, the name and address of the  
8 beneficiary to whom the personal representative gave the notice or,  
9 for a beneficiary described by Subsection (c) of this section, the  
10 name and address of the beneficiary and of the person to whom the  
11 notice was given;

12 (2) the name and address of each beneficiary who filed  
13 a waiver of the notice;

14 (3) the name of each beneficiary whose identity or  
15 address could not be ascertained despite the personal  
16 representative's exercise of reasonable diligence; and

17 (4) any other information necessary to explain the  
18 personal representative's inability to give the notice to or for  
19 any beneficiary as required by this section.

20 (h) The affidavit or certificate required by Subsection (g)  
21 of this section may be included with any pleading or other document  
22 filed with the clerk of the court, including the inventory,  
23 appraisement, and list of claims or an application for an extension  
24 of the deadline to file the inventory, appraisement, and list of  
25 claims, provided that the pleading or other document with which the  
26 affidavit or certificate is included is filed not later than the  
27 date the affidavit or certificate is required to be filed as

1 provided by Subsection (g) of this section. [~~If the address of the~~  
2 ~~entity can be ascertained with reasonable diligence, an applicant~~  
3 ~~under Section 81 of this code shall give the state, a governmental~~  
4 ~~agency of the state, or a charitable organization notice that the~~  
5 ~~entity is named as a devisee in a written will, a written will not~~  
6 ~~produced, or a nuncupative will that has been admitted to probate.~~

7 [~~(b) The notice required by Subsection (a) of this section~~  
8 ~~must be given not later than the 30th day after the date of the~~  
9 ~~probate of the will.~~

10 [~~(c) The notice must be in writing and state the county in~~  
11 ~~which the will was admitted to probate. A copy of the application~~  
12 ~~and the order admitting the will to probate and, if the application~~  
13 ~~is for probate of a written will, a copy of the will must be attached~~  
14 ~~to the notice.~~

15 [~~(d) An entity entitled to notice under Subsection (a) of~~  
16 ~~this section must be notified by registered or certified mail,~~  
17 ~~return receipt requested.~~

18 [~~(e) The applicant must file a copy of the notice with the~~  
19 ~~court in which the will was admitted to probate.]~~

20 SECTION 2. The heading to Section 128B, Texas Probate Code,  
21 is amended to read as follows:

22 Sec. 128B. NOTICE TO HEIRS ON APPLICATION TO PROBATE [~~WHEN~~  
23 WILL [~~PROBATED~~] AFTER FOUR YEARS.

24 SECTION 3. Section 149C(a), Texas Probate Code, is amended  
25 to read as follows:

26 (a) The county court, as that term is defined by Section 3 of  
27 this code, on its own motion or on motion of any interested person,

1 after the independent executor has been cited by personal service  
2 to answer at a time and place fixed in the notice, may remove an  
3 independent executor when:

4 (1) the independent executor fails to return within  
5 ninety days after qualification, unless such time is extended by  
6 order of the court, an inventory of the property of the estate and  
7 list of claims that have come to the independent executor's [~~his~~  
8 knowledge;

9 (2) sufficient grounds appear to support belief that  
10 the independent executor [~~he~~] has misapplied or embezzled, or that  
11 the independent executor [~~he~~] is about to misapply or embezzle, all  
12 or any part of the property committed to the independent executor's  
13 [~~his~~] care;

14 (3) the independent executor [~~he~~] fails to make an  
15 accounting which is required by law to be made;

16 (4) the independent executor [~~he~~] fails to timely file  
17 the affidavit or certificate [~~notice~~] required by Section 128A of  
18 this code;

19 (5) the independent executor [~~he~~] is proved to have  
20 been guilty of gross misconduct or gross mismanagement in the  
21 performance of the independent executor's [~~his~~] duties; or

22 (6) the independent executor [~~he~~] becomes an  
23 incapacitated person, or is sentenced to the penitentiary, or from  
24 any other cause becomes legally incapacitated from properly  
25 performing the independent executor's [~~his~~] fiduciary duties.

26 SECTION 4. Section 222(b), Texas Probate Code, is amended  
27 to read as follows:

1 (b) With Notice. The court may remove a personal  
2 representative on its own motion, or on the complaint of any  
3 interested person, after the personal representative has been cited  
4 by personal service to answer at a time and place fixed in the  
5 notice, when:

6 (1) Sufficient grounds appear to support belief that  
7 the personal representative [~~he~~] has misapplied, embezzled, or  
8 removed from the state, or that the personal representative [~~he~~] is  
9 about to misapply, embezzle, or remove from the state, all or any  
10 part of the property committed to the personal representative's  
11 [~~his~~] care;

12 (2) The personal representative [~~He~~] fails to return  
13 any account which is required by law to be made;

14 (3) The personal representative [~~He~~] fails to obey any  
15 proper order of the court having jurisdiction with respect to the  
16 performance of the personal representative's [~~his~~] duties;

17 (4) The personal representative [~~He~~] is proved to have  
18 been guilty of gross misconduct, or mismanagement in the  
19 performance of the personal representative's [~~his~~] duties;

20 (5) The personal representative [~~He~~] becomes an  
21 incapacitated person, or is sentenced to the penitentiary, or from  
22 any other cause becomes incapable of properly performing the duties  
23 of the personal representative's [~~his~~] trust;

24 (6) As executor or administrator, the personal  
25 representative [~~he~~] fails to make a final settlement within three  
26 years after the grant of letters, unless the time be extended by the  
27 court upon a showing of sufficient cause supported by oath; or

1           (7) As executor or administrator, the personal  
2 representative [~~he~~] fails to timely file the affidavit or  
3 certificate [~~notice~~] required by Section 128A of this code.

4           SECTION 5. The changes in law made by this Act apply only to  
5 the estate of a decedent who dies on or after the effective date of  
6 this Act. The estate of a decedent who dies before the effective  
7 date of this Act is governed by the law in effect on the date of the  
8 decedent's death, and the former law is continued in effect for that  
9 purpose.

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