

By: Wentworth

S.B. No. 593

A BILL TO BE ENTITLED

AN ACT

relating to providing notice to the beneficiaries under a decedent's will.

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

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

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

(b) Not later than the 60th day after the date of an order admitting a decedent's will to probate, the personal representative of the decedent's estate, including an independent executor or independent administrator, shall give notice that complies with Subsection (d) 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. If, after the 60th day after the date of the order, the personal representative becomes aware of the identity and address of a

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

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

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

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

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

19 (d) The notice required by this section must:

20 (1) state:

21 (A) the name and address of the beneficiary to
22 whom the notice is given or, for a beneficiary described by
23 Subsection (c) of this section, the name and address of the
24 beneficiary for whom the notice is given and of the person to whom
25 the notice is given;

26 (B) the decedent's name;

27 (C) that the decedent's will has been admitted to

1 probate;

2 (D) that the beneficiary to whom or for whom the
3 notice is given is named as a beneficiary in the will;

4 (E) the personal representative's name and
5 contact information; and

6 (F) that the personal representative owes the
7 beneficiary a fiduciary duty of full disclosure of all material
8 facts known to the personal representative that may affect the
9 beneficiary's rights; and

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

12 (e) The notice required by this section must be sent by
13 registered or certified mail, return receipt requested.

14 (f) Not later than the 60th day after the date of an order
15 admitting a will to probate, the personal representative shall file
16 with the clerk of the court in which the decedent's estate is
17 pending an affidavit stating:

18 (1) the name and address of each beneficiary to whom
19 the personal representative gave the notice and, with respect to
20 each beneficiary described by Subsection (c) of this section, the
21 name and address of the beneficiary and of the person to whom the
22 notice was given;

23 (2) the name of each beneficiary whose identity or
24 address could not be ascertained despite the personal
25 representative's exercise of reasonable diligence; and

26 (3) any other information necessary to explain the
27 personal representative's inability to give the notice to or for

1 any beneficiary as required by 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 [~~notice~~] required by Section 128A of this code;

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

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

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

27 (b) With Notice. The court may remove a personal

1 representative on its own motion, or on the complaint of any
2 interested person, after the personal representative has been cited
3 by personal service to answer at a time and place fixed in the
4 notice, when:

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

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

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

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

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

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

27 (7) As executor or administrator, the personal

1 representative [~~he~~] fails to timely file the affidavit [~~notice~~]
2 required by Section 128A of this code.

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

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