

1-1 By: Wentworth S.B. No. 593
1-2 (In the Senate - Filed February 13, 2007; February 26, 2007,
1-3 read first time and referred to Committee on Jurisprudence;
1-4 March 19, 2007, reported favorably, as amended, by the following
1-5 vote: Yeas 5, Nays 0; March 19, 2007, sent to printer.)

1-6 COMMITTEE AMENDMENT NO. 1 By: Wentworth

1-7 Amend S.B. No. 593 (Introduced version) as follows:

1-8 (1) In SECTION 1 of the bill, strike proposed Subdivision
1-9 (1), Subsection (c), Section 128A, Texas Probate Code (page 2, line
1-10 68 through page 3, line 5), and substitute the following:

1-11 (1) if the beneficiary is a trust, to the trustee,
1-12 unless the personal representative is the trustee, in which case
1-13 the personal representative shall give the notice to:

1-14 (A) except as provided by Paragraph (B) of this
1-15 subdivision, the person, entity, or class first eligible to receive
1-16 the trust income, to be determined for purposes of this paragraph as
1-17 if the trust were in existence on the date of the decedent's death;
1-18 or

1-19 (B) the attorney general, if under Paragraph (A)
1-20 of this subdivision the notice is required to be given to:

1-21 (i) a charitable beneficiary that is no
1-22 longer in existence; or

1-23 (ii) a class of charitable beneficiaries,
1-24 but providing the notice to the class is impracticable because the
1-25 class is not composed of natural persons or is unascertainable;

1-26 (2) In SECTION 1 of the bill, at the end of proposed
1-27 Subdivision (2), Subsection (c), Section 128A, Texas Probate Code
1-28 (page 3, line 7), strike "; and" and substitute an underlined
1-29 semicolon.

1-30 (3) In SECTION 1 of the bill, at the end of proposed
1-31 Subdivision (3), Subsection (c), Section 128A, Texas Probate Code
1-32 (page 3, line 9), between "minor" and the underlined period, insert
1-33 the following:

1-34 ; and

1-35 (4) if the beneficiary is a charitable beneficiary
1-36 that is no longer in existence or is a class of charitable
1-37 beneficiaries that is not composed of natural persons or is
1-38 unascertainable, to the attorney general

1-39 (4) In SECTION 1 of the bill, strike proposed Paragraph (A),
1-40 Subdivision (1), Subsection (d), Section 128A, Texas Probate Code
1-41 (page 3, lines 12 through 16), and substitute the following:

1-42 (A) the name and address of the beneficiary to
1-43 whom the notice is given or, for a beneficiary described by
1-44 Subsection (c) of this section:

1-45 (i) the name and address of the beneficiary
1-46 for whom the notice is given or, if that beneficiary is a charitable
1-47 beneficiary or class of charitable beneficiaries described by
1-48 Subsection (c)(4) of this section, a description of the beneficiary
1-49 or class of beneficiaries; and

1-50 (ii) the name and address of the person to
1-51 whom the notice is given;

1-52 (5) In SECTION 1 of the bill, strike proposed Paragraph (F),
1-53 Subdivision (1), Subsection (d), Section 128A, Texas Probate Code
1-54 (page 3, lines 24 through 27), and substitute the following:

1-55 (F) that the personal representative is a
1-56 fiduciary and owes duties to the beneficiary, the beneficiary has
1-57 rights under the Texas Probate Code and common law, and the
1-58 beneficiary should consider retaining an attorney to advise the
1-59 beneficiary of those rights and duties; and

1-60 (6) In SECTION 1 of the bill, in proposed Subsection (f),
1-61 Section 128A, Texas Probate Code, strike page 3, lines 32 through 46
1-62 and substitute the following:

1-63 (f) Not later than the 90th day after the date of an order
1-64 admitting a will to probate, the personal representative shall file

2-1 with the clerk of the court in which the decedent's estate is
2-2 pending a sworn affidavit of the personal representative, or a
2-3 certificate signed by the personal representative's attorney,
2-4 stating:

2-5 (1) the name and address of each beneficiary to whom
2-6 the personal representative gave the notice and, with respect to
2-7 each beneficiary described by Subsection (c) of this section:

2-8 (A) the name and address of the beneficiary for
2-9 whom the personal representative gave the notice or, if a
2-10 beneficiary is a charitable beneficiary or class of charitable
2-11 beneficiaries described by Subsection (c)(4) of this section, a
2-12 description of the beneficiary or class of beneficiaries; and

2-13 (B) the name and address of the person to whom the
2-14 personal representative gave the notice;

2-15 (7) In SECTION 1 of the bill, at the end of proposed
2-16 Subsection (f), Section 128A, Texas Probate Code (page 3, line 46),
2-17 between "section." and "[~~If the address~~]", insert the following:

2-18 (g) The affidavit or certificate required by Subsection (f)
2-19 of this section may be included with any pleading or other document
2-20 filed with the clerk of the court, including the inventory,
2-21 appraisal, and list of claims or an application for an extension
2-22 of the deadline to file the inventory, appraisal, and list of
2-23 claims, provided that the pleading or other document with which the
2-24 affidavit or certificate is included is filed not later than the
2-25 date the affidavit or certificate is required to be filed as
2-26 provided by Subsection (f) of this section.

2-27 (8) In SECTION 3 of the bill, in amended Subdivision (4),
2-28 Subsection (a), Section 149C, Texas Probate Code (page 4, line 19),
2-29 strike "the affidavit" and substitute "the affidavit or
2-30 certificate".

2-31 (9) In SECTION 4 of the bill, in amended Subdivision (7),
2-32 Subsection (b), Section 222, Texas Probate Code (page 4, line 57),
2-33 strike "the affidavit" and substitute "the affidavit or
2-34 certificate".

2-35 A BILL TO BE ENTITLED
2-36 AN ACT

2-37 relating to providing notice to the beneficiaries under a
2-38 decedent's will.

2-39 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

2-40 SECTION 1. Section 128A, Texas Probate Code, is amended to
2-41 read as follows:

2-42 Sec. 128A. NOTICE TO BENEFICIARIES [~~CERTAIN ENTITIES~~] AFTER
2-43 PROBATE OF WILL. (a) In this section, "beneficiary" means a
2-44 person, entity, state, governmental agency of the state, charitable
2-45 organization, or trust entitled to receive real or personal
2-46 property under the terms of a decedent's will, to be determined for
2-47 purposes of this section with the assumption that each person who is
2-48 alive on the date of the decedent's death survives any period
2-49 required to receive the bequest as specified by the terms of the
2-50 will.

2-51 (b) Not later than the 60th day after the date of an order
2-52 admitting a decedent's will to probate, the personal representative
2-53 of the decedent's estate, including an independent executor or
2-54 independent administrator, shall give notice that complies with
2-55 Subsection (d) of this section to each beneficiary named in the will
2-56 whose identity and address are known to the personal representative
2-57 or, through reasonable diligence, can be ascertained. If, after
2-58 the 60th day after the date of the order, the personal
2-59 representative becomes aware of the identity and address of a
2-60 beneficiary who was not given notice on or before the 60th day, the
2-61 personal representative shall give the notice as soon as possible
2-62 after becoming aware of that information.

2-63 (c) Notwithstanding the requirement under Subsection (b) of
2-64 this section that the personal representative give the notice to
2-65 the beneficiary, the personal representative shall give the notice
2-66 with respect to a beneficiary described by this subsection as
2-67 follows:

2-68 (1) if the beneficiary is a trust, to the trustee,

3-1 unless the personal representative is the trustee, in which case
 3-2 the personal representative shall give the notice to the person or
 3-3 class of persons first eligible to receive the trust income, to be
 3-4 determined for purposes of this subdivision as if the trust were in
 3-5 existence on the date of the decedent's death;

3-6 (2) if the beneficiary has a court-appointed guardian
 3-7 or conservator, to that guardian or conservator; and

3-8 (3) if the beneficiary is a minor for whom no guardian
 3-9 or conservator has been appointed, to a parent of the minor.

3-10 (d) The notice required by this section must:

3-11 (1) state:

3-12 (A) the name and address of the beneficiary to
 3-13 whom the notice is given or, for a beneficiary described by
 3-14 Subsection (c) of this section, the name and address of the
 3-15 beneficiary for whom the notice is given and of the person to whom
 3-16 the notice is given;

3-17 (B) the decedent's name;

3-18 (C) that the decedent's will has been admitted to
 3-19 probate;

3-20 (D) that the beneficiary to whom or for whom the
 3-21 notice is given is named as a beneficiary in the will;

3-22 (E) the personal representative's name and
 3-23 contact information; and

3-24 (F) that the personal representative owes the
 3-25 beneficiary a fiduciary duty of full disclosure of all material
 3-26 facts known to the personal representative that may affect the
 3-27 beneficiary's rights; and

3-28 (2) contain as attachments a copy of the will admitted
 3-29 to probate and the order admitting the will to probate.

3-30 (e) The notice required by this section must be sent by
 3-31 registered or certified mail, return receipt requested.

3-32 (f) Not later than the 60th day after the date of an order
 3-33 admitting a will to probate, the personal representative shall file
 3-34 with the clerk of the court in which the decedent's estate is
 3-35 pending an affidavit stating:

3-36 (1) the name and address of each beneficiary to whom
 3-37 the personal representative gave the notice and, with respect to
 3-38 each beneficiary described by Subsection (c) of this section, the
 3-39 name and address of the beneficiary and of the person to whom the
 3-40 notice was given;

3-41 (2) the name of each beneficiary whose identity or
 3-42 address could not be ascertained despite the personal
 3-43 representative's exercise of reasonable diligence; and

3-44 (3) any other information necessary to explain the
 3-45 personal representative's inability to give the notice to or for
 3-46 any beneficiary as required by this section [If the address of the
 3-47 entity can be ascertained with reasonable diligence, an applicant
 3-48 under Section 81 of this code shall give the state, a governmental
 3-49 agency of the state, or a charitable organization notice that the
 3-50 entity is named as a devisee in a written will, a written will not
 3-51 produced, or a nuncupative will that has been admitted to probate.

3-52 [(b) The notice required by Subsection (a) of this section
 3-53 must be given not later than the 30th day after the date of the
 3-54 probate of the will.

3-55 [(c) The notice must be in writing and state the county in
 3-56 which the will was admitted to probate. A copy of the application
 3-57 and the order admitting the will to probate and, if the application
 3-58 is for probate of a written will, a copy of the will must be attached
 3-59 to the notice.

3-60 [(d) An entity entitled to notice under Subsection (a) of
 3-61 this section must be notified by registered or certified mail,
 3-62 return receipt requested.

3-63 [(e) The applicant must file a copy of the notice with the
 3-64 court in which the will was admitted to probate].

3-65 SECTION 2. The heading to Section 128B, Texas Probate Code,
 3-66 is amended to read as follows:

3-67 Sec. 128B. NOTICE TO HEIRS ON APPLICATION TO PROBATE [WHEN]
 3-68 WILL [PROBATED] AFTER FOUR YEARS.

3-69 SECTION 3. Subsection (a), Section 149C, Texas Probate
 3-70 Code, is amended to read as follows:

4-1 (a) The county court, as that term is defined by Section 3 of
 4-2 this code, on its own motion or on motion of any interested person,
 4-3 after the independent executor has been cited by personal service
 4-4 to answer at a time and place fixed in the notice, may remove an
 4-5 independent executor when:

4-6 (1) the independent executor fails to return within
 4-7 ninety days after qualification, unless such time is extended by
 4-8 order of the court, an inventory of the property of the estate and
 4-9 list of claims that have come to the independent executor's [his]
 4-10 knowledge;

4-11 (2) sufficient grounds appear to support belief that
 4-12 the independent executor [he] has misapplied or embezzled, or that
 4-13 the independent executor [he] is about to misapply or embezzle, all
 4-14 or any part of the property committed to the independent executor's
 4-15 [his] care;

4-16 (3) the independent executor [he] fails to make an
 4-17 accounting which is required by law to be made;

4-18 (4) the independent executor [he] fails to timely file
 4-19 the affidavit [notice] required by Section 128A of this code;

4-20 (5) the independent executor [he] is proved to have
 4-21 been guilty of gross misconduct or gross mismanagement in the
 4-22 performance of the independent executor's [his] duties; or

4-23 (6) the independent executor [he] becomes an
 4-24 incapacitated person, or is sentenced to the penitentiary, or from
 4-25 any other cause becomes legally incapacitated from properly
 4-26 performing the independent executor's [his] fiduciary duties.

4-27 SECTION 4. Subsection (b), Section 222, Texas Probate Code,
 4-28 is amended to read as follows:

4-29 (b) With Notice. The court may remove a personal
 4-30 representative on its own motion, or on the complaint of any
 4-31 interested person, after the personal representative has been cited
 4-32 by personal service to answer at a time and place fixed in the
 4-33 notice, when:

4-34 (1) Sufficient grounds appear to support belief that
 4-35 the personal representative [he] has misapplied, embezzled, or
 4-36 removed from the state, or that the personal representative [he] is
 4-37 about to misapply, embezzle, or remove from the state, all or any
 4-38 part of the property committed to the personal representative's
 4-39 [his] care;

4-40 (2) The personal representative [He] fails to return
 4-41 any account which is required by law to be made;

4-42 (3) The personal representative [He] fails to obey any
 4-43 proper order of the court having jurisdiction with respect to the
 4-44 performance of the personal representative's [his] duties;

4-45 (4) The personal representative [He] is proved to have
 4-46 been guilty of gross misconduct, or mismanagement in the
 4-47 performance of the personal representative's [his] duties;

4-48 (5) The personal representative [He] becomes an
 4-49 incapacitated person, or is sentenced to the penitentiary, or from
 4-50 any other cause becomes incapable of properly performing the duties
 4-51 of the personal representative's [his] trust;

4-52 (6) As executor or administrator, the personal
 4-53 representative [he] fails to make a final settlement within three
 4-54 years after the grant of letters, unless the time be extended by the
 4-55 court upon a showing of sufficient cause supported by oath; or

4-56 (7) As executor or administrator, the personal
 4-57 representative [he] fails to timely file the affidavit [notice]
 4-58 required by Section 128A of this code.

4-59 SECTION 5. The changes in law made by this Act apply only to
 4-60 the estate of a decedent who dies on or after the effective date of
 4-61 this Act. The estate of a decedent who dies before the effective
 4-62 date of this Act is governed by the law in effect on the date of the
 4-63 decedent's death, and the former law is continued in effect for that
 4-64 purpose.

4-65 SECTION 6. This Act takes effect September 1, 2007.

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