

BILL ANALYSIS

Senate Research Center
81R8724 MTB-F

H.B. 1968
By: Hartnett (Wentworth)
Jurisprudence
5/22/2009
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In 2005, in *Sauceda v. Kerlin*, it was ruled that a fiduciary cannot be liable for prejudgment interest even when the fiduciary has been enriched at the expense of the estate.

H.B. 1968 provides for the liability of and remedies for lost profits of a personal representative of a decedent's estate arising out of a breach of duty by the representative. The bill authorizes a person interested in an estate to petition for an accounting and distribution two years after the court clerk first issues letters testamentary or of administration to the independent executor. The bill also repeals Section 70 (Provision in Will for Management of Separate Property), Texas Probate Code, authorizing a husband and wife, by last will and testament, to give to the survivor of the marriage the power to keep the testator's separate property together until each of the several distributees become of lawful age and to manage and control such property.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 149B(a), Texas Probate Code, as follows:

(a) Authorizes a person interested in an estate then subject to independent administration, rather than a person interested in the estate, in addition to or in lieu of the right to an accounting provided by Section 149A (Accounting) of this code, at any time after the expiration of two years from the date the clerk of the court first issues letters testamentary or of administration to any personal representative of the estate, rather than at any time after the first expiration of two years from the date that an independent administration was created and the order appointing an independent executor was entered, to petition the county court, as that term is defined by Section 3 (Definitions and Use of Terms) of this code, for an accounting and distribution.

SECTION 2. Amends the heading to Part 5, Chapter VII, Texas Probate Code, to read as follows:

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

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

Sec. 236. **LIABILITY OF PERSONAL REPRESENTATIVE.** Provides that 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 any loss or depreciation in value of the estate as a result of the breach, any profit made by the personal representative as a result of the breach, any profit that would have accrued to the estate if there had been no breach, exemplary damages, or costs and fees described by Section 245 (When Costs Are Adjudged Against Representative) of this code.

Sec. 236A. REMEDIES FOR BREACH OF FIDUCIARY DUTY. (a) Authorizes a court, to remedy a breach of fiduciary duty by a personal representative, to take certain actions.

(b) Authorizes a certified copy of an order that imposes a lien or constructive trust on real property under Subsection (a)(10) (relating to the authorization of a court, to remedy a breach of fiduciary duty by a personal representative, to impose a lien or a constructive trust on estate property) of this section to be filed in the real property records of each county in which the real property is located. Provides that on the recording of the certified copy, the order is constructive notice of the existence of the lien or constructive trust.

SECTION 4. Repealer: Section 70 (Provision in Will for Management of Separate Property), Texas Probate Code.

SECTION 5. (a) Makes application of Section 149B, Texas Probate Code, prospective.

(b) Makes application of Sections 236 and 236A, Texas Probate Code, as added by this Act, prospective.

SECTION 6. Effective date: September 1, 2009.