

## **BILL ANALYSIS**

H.B. 1968  
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Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

Probate attorneys occasionally discover circumstances and situations in the practice of law in relation to estates that require a statutory remedy. 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 the personal representative 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 repeals Section 70, 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**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

H.B. 1968 amends the Texas Probate Code to make a personal representative of a decedent's estate who commits a breach of fiduciary duty and the sureties on the personal representative's bond 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 adjudged against the representative under the Texas Probate Code. The bill authorizes a court, to remedy a breach of fiduciary duty by a personal representative, to compel the personal representative to perform the personal representative's duty or duties; to enjoin the personal representative from continuing to commit a breach of fiduciary duty or committing an additional breach of fiduciary duty; to compel the personal representative to redress a breach of fiduciary duty, including compelling the representative to pay money or to restore property; to order a personal representative to account; to appoint a receiver to take possession of estate property and administer the estate; to suspend or remove the personal representative; to reduce or deny compensation to the personal representative; to void an act of the personal representative; to impose a lien or a constructive trust on estate property; to trace estate property that the personal representative wrongfully disposed of and recover the property or the proceeds from the property; or to order any other appropriate relief. The bill authorizes a certified copy of an order that imposes a lien or constructive trust on real property to be filed in the real property records of each county in which the real property is located. The bill provides that the order, on the recording of the certified copy, is constructive notice of the existence of the lien or constructive trust.

H.B. 1968 authorizes a person interested in an estate then subject to independent administration to petition the county court for an accounting and distribution 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 to the estate, rather than from the date that an independent administration was created and the order appointing an independent executor was entered.

H.B. 1968 repeals Section 70, Texas Probate Code, which authorizes 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.

**EFFECTIVE DATE**

September 1, 2009.