

BILL ANALYSIS

C.S.H.B. 3085
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Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Pursuant to its legislative mandate, the Texas Legislative Council is currently proposing a recodification of the Texas Probate Code into a new Estates and Guardianships Code. However, because its mandate requires that any recodification work be completely nonsubstantive, both the Texas Legislative Council and the Real Estate, Probate, and Trust Law Section of the State Bar of Texas expressed concerns whether the Texas Legislative Council could adequately recodify certain portions of the current Texas Probate Code that are particularly confusing. These include the current independent administration provisions.

C.S.H.B. 3085 specifies the authority of an independent executor or administrator to sell assets in the absence of an express grant in a will, details the procedures for presenting and dealing with creditors' claims, and provides a simpler procedure for filing a notice that an independent administration has closed without the need for a full accounting of all receipts and disbursements. The bill repeals Chapter VI, Part 4, of the Texas Probate Code, relating to the independent administration of an estate. The bill adds provisions setting forth the manner in which its provisions are to be recodified as provisions of the new Estates and Guardianships Code, contingent on H.B. 2502 or S.B. 2071, Acts of the 81st Legislature, Regular Session, 2009, being enacted and becoming law.

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

C.S.H.B. 3085 amends the Texas Probate Code to authorize any person capable of making a will to provide in the person's will that no other action shall be had in the probate court in relation to the settlement of the person's estate than the probating and recording of the will and the return of an inventory, appraisal, and list of claims of the person's estate. The bill authorizes any person capable of making a will to provide in the person's will that no independent administration of his or her estate may be allowed. The bill requires, in such case, the person's estate, if administered, to be administered and settled under the direction of the probate court as other estates are required to be settled and not as an independent administration.

C.S.H.B. 3085 establishes that all of the distributees of the decedent may agree on the advisability of having an independent administration and collectively designate in the application for probate of the decedent's will the executor named in the will to serve as independent executor and request in the application that no other action shall be had in the probate court in relation to the settlement of the decedent's estate other than the probating and recording of the decedent's will and the return of an inventory, appraisal, and list of claims of the decedent's estate, if a decedent's will names an executor but the will does not provide for independent administration, except as provided in the distribution of powers. The bill provides, in such a case, that the probate court is required to enter an order granting independent administration and appointing

the person, firm, or corporation designated in the application as independent executor, unless the court finds that it would not be in the best interest of the estate to do so.

C.S.H.B. 3085 provides that in situations where no executor is named in the decedent's will, or in situations where each executor named in the will is deceased or is disqualified to serve as executor or indicates by affidavit filed with the application for administration of the decedent's estate the executor's inability or unwillingness to serve as executor, all of the distributees of the decedent may agree on the advisability of having an independent administration and collectively designate in the application for probate of the decedent's will a qualified person, firm, or corporation to serve as independent administrator and request in the application that no other action shall be had in the probate court in relation to the settlement of the decedent's estate other than the probating and recording of the decedent's will and the return of an inventory, appraisalment, and list of claims of the decedent's estate. The bill provides, in such a case, that the probate court is required to enter an order granting independent administration and appointing the person, firm, or corporation designated in the application as independent administrator, unless the court finds that it would not be in the best interest of the estate to do so.

C.S.H.B. 3085 provides that all of the distributees of a decedent dying intestate may agree on the advisability of having an independent administration and collectively designate in the application for administration of the decedent's estate a qualified person, firm, or corporation to serve as independent administrator and request in the application that no other action shall be had in the probate court in relation to the settlement of the decedent's estate other than the return of an inventory, appraisalment, and list of claims of the decedent's estate. The bill requires the probate court, in such a case, to enter an order granting independent administration and appointing the person, firm, or corporation designated in the application as independent administrator, unless the court finds that it would not be in the best interest of the estate to do so. The bill prohibits the court from appointing an independent administrator to serve in an intestate administration unless and until the parties seeking appointment of the independent administrator have been determined, through a proceeding to declare heirship under provisions of the Texas Probate Code, to constitute all of the decedent's heirs.

C.S.H.B. 3085 requires distributees to be served with citation and notice of the application for independent administration unless the distributee waives the issuance or service of citation or enters an appearance in court. The bill authorizes the guardian of the distributee, if a distributee is an incapacitated person, to sign the application on behalf of the distributee. The bill provides that if the probate court finds that either the granting of independent administration or the appointment of the person, firm, or corporation designated in the application as independent executor would not be in the best interest of the incapacitated person, then the court shall not enter an order granting independent administration of the estate. The bill authorizes the probate court, if a distributee who is an incapacitated person has no guardian, to appoint a guardian ad litem to make application on behalf of the incapacitated person if the court considers an appointment necessary to protect the interest of the distributees. The bill authorizes the natural guardian or guardians of a minor, if the distributee who is an incapacitated person is a minor and has no guardian, to consent on behalf of such incapacitated person if there is no conflict of interest between the minor and such natural guardian or guardians. The bill requires the person or class of persons first eligible to receive the income from the trust, when determined as if the trust were to be in existence on the date of the decedent's death, if a trust is created in the decedent's will, to be considered to be the distributee or distributees on behalf of such trust, and any other trust or trusts coming into existence on the termination of such trust, and are authorized to apply for independent administration on behalf of the trusts without the consent or agreement of the trustee or any other beneficiary of the trust, or the trustee or any beneficiary of any other trust which may come into existence on the termination of such trust. The bill authorizes a person, if the person who is a trust beneficiary and is considered to be a distributee is an incapacitated person, to file the application or give the consent, provided that such trustee or cotrustee is not the person proposed to serve as the independent executor.

C.S.H.B. 3085 requires the life tenant or life tenants, if a life estate is created either in the decedent's will or by law, when determined as if the life estate were to commence on the date of the decedent's death, to be considered to be the distributee or distributees on behalf of the entire estate created, and authorizes the life tenant or tenants to apply for independent administration on behalf of the estate without the consent or approval of any remainderman. The bill establishes that if a decedent's will contains a provision that a distributee must survive the decedent by a prescribed period of time in order to take under the decedent's will, then it shall be presumed that the distributees living at the time of the filing of the application for probate of the decedent's will survived the decedent by the prescribed period. The bill establishes that in the case of all decedents, whether dying testate or intestate, for the purposes of determining who shall be the distributees, it shall be presumed that no distributee living at the time the application for independent administration is filed shall subsequently disclaim any portion of such distributee's interest in the decedent's estate. The bill provides that if a distributee of a decedent's estate should die and if by virtue of such distributee's death such distributee's share of the decedent's estate shall become payable to such distributee's estate, then the deceased distributee's personal representative may sign the application for independent administration of the decedent's estate.

C.S.H.B. 3085 sets out provisions relating to the requirements for a bond and a waiver of bond, the granting of power of sale by agreement, waiver of liability for a judge, and for a person who declines to serve or resigns as executor. The bill sets out provisions relating to the general scope and exercise of powers in an independent administration, the authorization of independent executors to act without court approval, and the power of sale. The bill sets out provisions relating to the setting aside of exempt property and allowances, claims, enforcement of claims by suit, and the requirement that heirs give bond. The bill sets out provisions relating to an accounting from the independent executor, the requirement that an independent executor give bond, the removal of an independent executor, the powers of an administrator who succeeds an independent executor, and a court-appointed successor independent executor. The bill sets out provisions relating to an accounting and distribution of the estate, receipts and releases for distributions by the independent executor, judicial discharge of an independent executor, closing an independent administration by closing report or notice of closing of the estate, partition and distribution or sale of property incapable of division, the issuance of letters testamentary, rights and remedies being cumulative, and the closing procedures that are not required to close the independent administration of an estate.

C.S.H.B. 3085 makes conforming changes to the definition of the term "independent executor."

C.S.H.B. 3085 adds provisions setting forth the manner in which its provisions are to be recodified as provisions of the new Estates and Guardianships Code, contingent on H.B. 2502 or S.B. 2071, Acts of the 81st Legislature, Regular Session, 2009, being enacted and becoming law.

C.S.H.B. 3085 repeals Sections 145, 146, 147, 148, 149, 149A, 149B, 149C, 149D, 149E, 149F, 149G, 150, 151, 152, 153, 154, and 154A, Texas Probate Code, relating to the independent administration of an estate. The bill repeals Chapter VI-1, Texas Probate Code, as added by the bill, effective January 1, 2014, contingent on H.B. 2502 or S.B. 2071, Acts of the 81st Legislature, Regular Session, 2009, being enacted and becoming law.

EFFECTIVE DATE

Except as otherwise provided, September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 3085 differs from the original in nonsubstantive ways reflective of certain bill drafting conventions.

C.S.H.B. 3085 adds provisions substantially the same as the original setting forth the manner in which its provisions are to be recodified as provisions of the new Estates and Guardianships Code, effective January 1, 2014, contingent on H.B. 2502 or S.B. 2071, Acts of the 81st Legislature, Regular Session, 2009, being enacted and becoming law.