

BILL ANALYSIS

C.S.H.B. 3086
By: Hartnett
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 current jurisdiction provisions.

The jurisdiction provisions of the new Estates and Guardianships Code are being revised with the goal of making them more streamlined and easier to understand, given the limits on streamlining imposed by the different courts in Texas that have original probate jurisdiction based on which county the probate proceeding is in.

C.S.H.B. 3086 updates provisions of the Texas Probate Code relating to jurisdiction of probate proceedings and proceedings regarding powers of attorney and certain trusts. The bill sets forth the manner in which certain Texas Probate Code provisions are to be recodified as provisions of the new Estates and Guardianships Code.

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. 3086 amends the Texas Probate Code to update provisions of the code related to jurisdiction of probate proceedings and proceedings regarding powers of attorney and trusts. The bill redefines the synonymous terms "probate proceeding," "probate matter," "proceeding in probate," and "proceedings for probate" as a matter or proceeding relating to the estate of a decedent, including: the probate of a will, with or without administration of the estate; the issuance of letters testamentary and of administration; an heirship determination or small estate affidavit, community property administration, and homestead and family allowances; an application, petition, motion, or action regarding the probate of a will or an estate administration, including a claim for money owed by the decedent; a claim arising from an estate administration and any action brought on the claim; the settling of a personal representative's account of an estate and any other matter related to the settlement, partition, or distribution of an estate; and a will construction suit. The bill makes conforming changes relating to this definition.

C.S.H.B. 3086 sets forth provisions regarding general probate court jurisdiction and appeals; matters related to probate proceedings in a county in which there is no statutory probate court or county court at law exercising original probate jurisdiction, and in a county in which there is no such statutory probate court but there is such a county court at law; original jurisdiction for probate proceedings; jurisdiction of a contested probate proceeding in a county with no statutory

probate court or statutory county court; jurisdiction of a contested probate proceeding in a county with no statutory probate court, but in which there is a county court at law exercising original probate jurisdiction; exclusive jurisdiction of probate proceedings in a county with a statutory probate court; jurisdiction of a statutory probate court with respect to trusts and powers of attorney; and concurrent jurisdiction of statutory probate courts and district courts. The bill adds the above provisions both as Sections 4A, 4B, 4C, 4D, 4E, 4F, 4G, and 4H, Texas Probate Code, and as Chapters 31 and 32, Estates and Guardianships Code. The bill repeals the sections as added to the Texas Probate Code and enacts the chapters as added to the Estates and Guardianships Code contingent on the enactment of H.B. 2502 or S.B. 2071, Acts of the 81st Legislature, Regular Session, 2008, and makes these provisions effective January 1, 2014.

C.S.H.B. 3086 amends the Government Code to make conforming changes.

C.S.H.B. 3086 amends the Property Code to provide that to the extent of a conflict between a provision of the Property Code relating to the venue in a proceeding brought by the attorney general alleging breach of a fiduciary duty by a fiduciary or managerial agent of a charitable trust and any provision of the Texas Probate Code providing for venue of a proceeding brought with respect to a charitable trust created by a will that has been admitted to probate, the Property Code provision controls.

C.S.H.B. 3086 repeals the following sections of the Texas Probate Code, which relate to the jurisdiction of a county court with respect to probate proceedings and to matters appertaining and incident to an estate:

- Section 4
- Section 5
- Section 5A

EFFECTIVE DATE

Except as otherwise provided, September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 3086 differs from the original by authorizing the judge of a statutory probate court, in certain causes of action transferred from a district, county, or statutory court to the judge's court, to consolidate the transferred cause of action with the other proceedings in the statutory probate court relating to that estate, whereas the original struck the authorization to consolidate.

C.S.H.B. 3086 removes provisions included in the original regarding venue for probate of wills and grant of letters; venue for an action related to a probate proceeding in a statutory probate court; venue for certain actions involving a personal representative; venue for heirship proceedings; concurrent venue of a probate proceeding; jurisdiction to determine venue; and transfer of venue in probate proceedings. The substitute removes provisions included in the original that make technical and conforming changes to existing statute.

C.S.H.B. 3086 adds a provision not in the original providing that to the extent of a conflict between a provision of the Property Code relating to the venue in a proceeding brought by the attorney general alleging breach of a fiduciary duty by a fiduciary or managerial agent of a charitable trust and any provision of the Texas Probate Code providing for venue of a proceeding brought with respect to a charitable trust created by a will that has been admitted to probate, the Property Code provision controls.

C.S.H.B. 3086 differs from the original by providing for the nonsubstantive recodification of certain Texas Probate Court jurisdiction provisions in the Estates and Guardianships Code, contingent on H.B. No. 2502 or S.B. No. 2071, Acts of the 81st Legislature, Regular Session, 2009, becoming law.