

BILL ANALYSIS

C.S.H.B. 3350
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Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Section 59, Texas Probate Code, allows a will to be "self-proved" by attaching the affidavit of the testator and attesting witnesses that the will was executed in accordance with the requisite formalities. This obviates the need for testimony relating to the will execution when the will is offered for probate in uncontested situations. However, because the self-proving affidavit requires that the testator and attesting witnesses sign the will a second time, problems sometimes develop when one or more required signatures are inadvertently omitted.

Section 70, Texas Probate Code, contains provisions allowing a testator to give his or her surviving spouse the power to keep the testator's property together until the distributees reach a specific age. This is an antiquated provision that is rarely, if ever, used because of the availability of custodianships and testamentary trust provisions.

Section 69, Texas Probate Code, contains provisions relating to the effect of will provisions made before dissolution of a marriage due to divorce, annulment, or a declaration that the marriage is void. In 2007, this provision was amended to, among other things, make clear that provisions in favor of an ex-spouse's relatives are also affected. Sections 471 through 473, Texas Probate Code, contain analogous provisions relating to revocable trusts that were not updated to conform to the 2007 amendments to Section 69. Use of an optional one-step method may reduce errors related to missing signatures. However, wills executed with the current two-step method will continue to be allowed as self-proved wills.

C.S.H.B. 3350 adds an optional provision for a "one-step" execution method for wills, based in part on a similar provision in the Uniform Probate 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. 3350 amends the Texas Probate Code to authorize, as an alternative to the self-proving of a last will and testament by the affidavits of the testator and the attesting witnesses, a last will and testament to be simultaneously executed, attested, and made self-proved before an officer authorized to administer oaths under state law, and the testimony of the witnesses in the probate of the will and testament may be made unnecessary with the inclusion in the will and testament, in form and content substantially, of the language set out in the bill. The bill prescribes a form to be substantially reproduced, and makes conforming changes.

C.S.H.B. 3350 provides that, for purposes of certain nontestamentary transfers, a marriage has been dissolved if the marriage terminates as a result of dissolution. The bill includes in the exceptions to a provision relating to the revocation of certain nontestamentary transfers on a dissolution of marriage a premarital agreement or marital property agreement or a court order

that is a final judgment, including dissolving the marriage and dividing marital property and an order for payment of child support in a suit affecting the parent-child relationship. The bill provides that the dissolution of marriage revokes certain trust instruments executed by the divorced individual before the dissolution of the marriage that favor any relative of the former spouse, along with the former spouse, and makes conforming changes.

C.S.H.B. 3350 expands the exemption from liability for a bona fide purchaser of property or for a person who receives a payment, benefit, or property from not only an individual's former spouse, but any relative of that former spouse. The bill extends liability for certain payments, benefits, and property to any relative of a former spouse who is not entitled to receive the payment, benefit, or property.

C.S.H.B. 3350 includes in the definition of "self-proved will" a will simultaneously executed, attested, and made self-proved. The bill defines "dissolution," "relative," and "relative of the former spouse," redefines "divorced individual," and makes conforming changes.

C.S.H.B. 3350 repeals Section 70, Texas Probate Code, relating to provisions in a will for management of separate property in a marriage.

EFFECTIVE DATE

September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 3350 omits a provision included in the original relating to venue of a cause of action and venue for certain actions appertaining to or incident to an estate or in which a personal representative is party. The substitute omits a provision included in the original relating to conflicting venue provisions.

C.S.H.B. 3350 differs from the original by adding a premarital agreement or marital property agreement or a court order that is a final judgment, including a judgment dissolving the marriage and dividing marital property and an order for payment of child support in a suit affecting the parent-child relationship to those agreements not subject to provisions relating to the revocation of certain nontestamentary transfers on dissolution of marriage.

C.S.H.B. 3350 differs from the original by removing the repeal of Section 5A(f), Texas Probate Code, relating to proper venue for certain actions.