

## BILL ANALYSIS

Senate Research Center  
81R6678 MTB-D

S.B. 2071  
By: Duncan  
Administration  
4/4/2009  
As Filed

### AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Texas Legislative Council (TLC) is required by law (Section 323.007 (Statutory Revision Program), Government Code), to carry out a complete nonsubstantive revision of the Texas statutes. The process involves reclassifying and rearranging the statutes in a more logical order, employing a numbering system and format that will accommodate future expansion of the law, eliminating repealed, invalid, duplicative, and other ineffective provisions, and improving the draftsmanship of the law, if practicable—all toward promoting the stated purpose of making the statutes "more accessible, understandable, and usable" without altering the sense, meaning, or effect of the law. In 1965, TLC adopted a long-range plan of compiling the law into 26 codes arranged by general topics; TLC now has a plan to compile the law into 27 codes.

The proposed Estates and Guardianships Code includes the substance of the provisions in the current Texas Probate Code. Proposed Title 1 and Subtitles A through M, Title 2, Estates and Guardianships Code, represent a nonsubstantive revision of the provisions of the Texas Probate Code applicable to decedents' estates. Statutes relating to independent administration and jurisdiction and venue of probate courts have been redesignated as Subtitles X and Y, Title 2, Estates and Guardianships Code, but have not been revised at this time. The proposed code also includes a redesignation of Chapter XII, Texas Probate Code, which is the Durable Power of Attorney Act, as Subtitle Z, Title 2, Estates and Guardianships Code, and a redesignation of Chapter XIII, Texas Probate Code, which is the guardianship portion of the code, as Title 25, Estates and Guardianships Code, but those chapters have not been revised at this time.

Title 1 and Subtitles A through M, Title 2, Estates and Guardianships Code, are divided into chapters. Each proposed chapter is divided into subchapters, if appropriate, and is further divided into sections. Sections are numbered decimally, and the number to the left of the decimal point is the same as the chapter number. Gaps in chapter and section numbering are for future expansion.

The TLC legal staff has taken meticulous care to ensure that no substantive change has been made in the law and to preserve any ambiguity or interpretation that may exist in current law. The TLC staff has consulted with and provided proposed chapters of the new code for comment to the codification committee of the Real Estate, Probate, and Trust Law Section of the State Bar of Texas (committee). That committee distributed chapters for review and comment to various members of that section and to statutory probate court judges. In addition, because TLC has sought the widest possible review of the proposed chapters to be incorporated into Titles 1 and 2, Estates and Guardianships Code, the chapters have been made available for that purpose on TLC's Internet website.

The proposed chapters in Title 1 and Subtitles A through M, Title 2, Estates and Guardianships Code, are a nonsubstantive revision of Texas law, meaning the substance of the law has not been altered. The sole purpose of these provisions is to compile the relevant law, arrange it in a logical fashion, and rewrite it without altering its meaning or legal effect. If a particular source statute is ambiguous and the ambiguity cannot be resolved without a potential substantive effect, the ambiguity is preserved.

As proposed, S.B. 2071 provides that Section 1 of the bill proposes Title 1 and Subtitles A through M, Title 2, Estates and Guardianships Code, which represent a nonsubstantive revision of certain provisions of the existing Texas Probate Code applicable to decedents' estates. Section 1 of the bill also establishes within the new Estates and Guardianships Code a structure for the

future revision of provisions of the Texas Probate Code that are redesignated, but not revised, by this bill and for future expansion of the law.

Sections 2, 3, 4, and 5 of the bill transfer and redesignate, but do not revise, Sections 2, 4, 5, 5A, 5B, 5C, 6, 8, and 145 through 154A, Texas Probate Code, and Chapters XII and XIII, Texas Probate Code, as portions of the proposed Estates and Guardianships Code.

Because of the revision and redesignation of provisions of the Texas Probate Code as provisions of the proposed Estates and Guardianships Code, references in the redesignated provisions to the Texas Probate Code as a whole and cross-references to certain revised provisions have been updated. Sections 6, 7, 8, and 9 of the bill include conforming amendments to the redesignated provisions as necessary to update those references and cross-references.

Section 10 of the bill expressly repeals the laws that are revised in Title 1 or 2, Estates and Guardianships Code, and laws that have no continuing effect.

Section 11 of the bill is a statement of the legislative intent that the Act is a recodification only and that no substantive change is intended by the Act.

### **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. ESTATES AND GUARDIANSHIPS CODE.  
(Pages 1-506 of this bill.)

SECTION 2. TRANSFER AND REDESIGNATION.  
(Page 506 of this bill.)

SECTION 3. TRANSFER AND REDESIGNATION.  
(Page 506 of this bill.)

SECTION 4. TRANSFER AND REDESIGNATION.  
(Page 507 of this bill.)

SECTION 5. TRANSFER AND REDESIGNATION.  
(Page 507 of this bill.)

SECTION 6. CONFORMING AMENDMENT.  
(Pages 507-509 of this bill.)

SECTION 7. CONFORMING AMENDMENT.  
(Page 509 of this bill.)

SECTION 8. CONFORMING AMENDMENT.  
(Page 509 of this bill.)

SECTION 9. CONFORMING AMENDMENT.  
(Pages 509-514 of this bill.)

SECTION 10. REPEALER.  
(Pages 514-515 of this bill.)

SECTION 11. LEGISLATIVE INTENT  
(Page 515 of this bill.)

SECTION 12. EFFECTIVE DATE. Effective date: January 1, 2014.