

1-1 By: Naishtat (Senate Sponsor - Watson) H.B. No. 585
1-2 (In the Senate - Received from the House May 13, 2009;
1-3 May 14, 2009, read first time and referred to Committee on
1-4 Jurisprudence; May 21, 2009, reported favorably by the following
1-5 vote: Yeas 5, Nays 0; May 21, 2009, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to records related to an estate of a decedent or
1-9 incapacitated person.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Section 8(c)(1), Texas Probate Code, is amended
1-12 to read as follows:

1-13 (1) Transfer for Want of Venue. If it appears to the
1-14 court at any time before the final decree that the proceeding was
1-15 commenced in a court which did not have priority of venue over such
1-16 proceeding, the court shall, on the application of any interested
1-17 person, transfer the proceeding to the proper county by
1-18 transmitting to the proper court in such county the original file in
1-19 such case, together with certified copies of all entries in the
1-20 judge's probate docket [~~minutes~~] theretofore made, and the probate
1-21 of the will, determination of heirship, or administration of the
1-22 estate in such county shall be completed in the same manner as if
1-23 the proceeding had originally been instituted therein; but, if the
1-24 question as to priority of venue is not raised before final decree
1-25 in the proceedings is announced, the finality of such decree shall
1-26 not be affected by any error in venue.

1-27 SECTION 2. Section 13, Texas Probate Code, is amended to
1-28 read as follows:

1-29 Sec. 13. JUDGE'S PROBATE DOCKET. The county clerk shall
1-30 keep a record book to be styled "Judge's Probate Docket," and shall
1-31 enter therein:

1-32 (a) The name of each person upon whose person or estate
1-33 proceedings are had or sought to be had.

1-34 (b) The name of the executor or administrator or of the
1-35 applicant for letters.

1-36 (c) The date of the filing of the original application for
1-37 probate proceedings.

1-38 (d) A notation [~~minute~~] of each order, judgment, decree, and
1-39 proceeding had in each estate, with the date thereof.

1-40 (e) A number for each estate upon the docket in the order in
1-41 which proceedings are commenced, and each paper filed in an estate
1-42 shall be given the corresponding docket number of the estate.

1-43 SECTION 3. Section 23, Texas Probate Code, is amended to
1-44 read as follows:

1-45 Sec. 23. DECREES [~~AND SIGNING OF MINUTES~~]. All decisions,
1-46 orders, decrees, and judgments of the county court in probate
1-47 matters shall be rendered in open court except in cases where it is
1-48 otherwise specially provided. [~~The probate minutes shall be~~
1-49 ~~approved and signed by the judge on the first day of each month,~~
1-50 ~~except, however, that if the first day of the month falls on a~~
1-51 ~~Sunday, such approval shall be entered on the preceding or~~
1-52 ~~succeeding day.]~~

1-53 SECTION 4. Section 51, Texas Probate Code, is amended to
1-54 read as follows:

1-55 Sec. 51. TRANSFER OF PROCEEDING WHEN WILL PROBATED OR
1-56 ADMINISTRATION GRANTED. If an administration upon the estate of
1-57 any such decedent shall be granted in the State, or if the will of
1-58 such decedent shall be admitted to probate in this State, after the
1-59 institution of a proceeding to declare heirship, the court in which
1-60 such proceeding is pending shall, by an order entered of record
1-61 therein, transfer the cause to the court of the county in which such
1-62 administration shall have been granted, or such will shall have
1-63 been probated, and thereupon the clerk of the court in which such
1-64 proceeding was originally filed shall send to the clerk of the court

2-1 named in such order, a certified transcript of all pleadings,
 2-2 [~~docket~~] entries in the judge's probate docket, and orders of the
 2-3 court in such cause. The clerk of the court to which such cause
 2-4 shall be transferred shall file the transcript and record the same
 2-5 in the judge's probate docket [~~minutes~~] of that [~~the~~] court and
 2-6 shall docket such cause, and the same shall thereafter proceed as
 2-7 though originally filed in that court. The court, in its
 2-8 discretion, may consolidate the cause so transferred with the
 2-9 pending proceeding.

2-10 SECTION 5. Section 53(a), Texas Probate Code, is amended to
 2-11 read as follows:

2-12 (a) The court in its discretion may require all or any part
 2-13 of the evidence admitted in a proceeding to declare heirship to be
 2-14 reduced to writing, and subscribed and sworn to by the witnesses,
 2-15 respectively, and filed in the cause, and recorded in the judge's
 2-16 probate docket [~~minutes of the court~~].

2-17 SECTION 6. Section 95(d), Texas Probate Code, is amended to
 2-18 read as follows:

2-19 (d) Probate Accomplished by Recording.

2-20 (1) Will admitted in domiciliary jurisdiction. If the
 2-21 will has been probated or established in the jurisdiction in which
 2-22 the testator was domiciled at the time of his death, it shall be the
 2-23 ministerial duty of the clerk to record such will and the evidence
 2-24 of its probate or establishment in the judge's probate docket
 2-25 [~~minutes of the court~~]. No order of the court is necessary. When so
 2-26 filed and recorded, the will shall be deemed to be admitted to
 2-27 probate, and shall have the same force and effect for all purposes
 2-28 as if the original will had been probated by order of the court,
 2-29 subject to contest in the manner and to the extent hereinafter
 2-30 provided.

2-31 (2) Will admitted in non-domiciliary jurisdiction. If
 2-32 the will has been probated or established in another jurisdiction
 2-33 not the domicile of the testator, its probate in this State may be
 2-34 contested in the same manner as if the testator had been domiciled
 2-35 in this State at the time of his death. If no contest is filed, the
 2-36 clerk shall record such will and the evidence of its probate or
 2-37 establishment in the judge's probate docket [~~minutes of the court~~],
 2-38 and no order of the court shall be necessary. When so filed and
 2-39 recorded, it shall be deemed to be admitted to probate, and shall
 2-40 have the same force and effect for all purposes as if the original
 2-41 will had been probated by order of the court, subject to contest in
 2-42 the manner and to the extent hereafter provided.

2-43 SECTION 7. Section 101, Texas Probate Code, is amended to
 2-44 read as follows:

2-45 Sec. 101. NOTICE OF CONTEST OF FOREIGN WILL. Within the
 2-46 time permitted for the contest of a foreign will in this State,
 2-47 verified notice may be filed and recorded in the judge's probate
 2-48 docket [~~minutes~~] of the court in this State in which the will was
 2-49 probated, or the deed records of any county in this State in which
 2-50 such will was recorded, that proceedings have been instituted to
 2-51 contest the will in the foreign jurisdiction where it was probated
 2-52 or established. Upon such filing and recording, the force and
 2-53 effect of the probate or recording of the will shall cease until
 2-54 verified proof is filed and recorded that the foreign proceedings
 2-55 have been terminated in favor of the will, or that such proceedings
 2-56 were never actually instituted.

2-57 SECTION 8. Section 190(d), Texas Probate Code, is amended
 2-58 to read as follows:

2-59 (d) Filing and Recording of Oaths. All such oaths may be
 2-60 taken before any officer authorized to administer oaths, and shall
 2-61 be filed with the clerk of the court granting the letters, and shall
 2-62 be recorded in the judge's probate docket [~~minutes of such court~~].

2-63 SECTION 9. Section 369(b), Texas Probate Code, is amended
 2-64 to read as follows:

2-65 (b) Procedure for Authorizing Pooling or Unitization.
 2-66 Pooling or unitization, when not adequately provided for by an
 2-67 existing lease or leases on property owned by the estate, may be
 2-68 authorized by the court in which the proceedings are pending
 2-69 pursuant to and in conformity with the following rules:

3-1 (1) Contents of Application. The personal
 3-2 representative of the estate shall file with the county clerk of the
 3-3 county where the probate proceeding is pending his written
 3-4 application for authority (a) to enter into pooling or unitization
 3-5 agreements supplementing, amending, or otherwise relating to, any
 3-6 existing lease or leases covering property owned by the estate, or
 3-7 (b) to commit royalties or other interest in minerals, whether
 3-8 subject to lease or not, to a pooling or unitization agreement. The
 3-9 application shall also (c) describe the property sufficiently, as
 3-10 required in original application to lease, (d) describe briefly the
 3-11 lease or leases, if any, to which the interest of the estate is
 3-12 subject, and (e) set out the reasons why the proposed agreement
 3-13 concerning such property should be made. A true copy of the
 3-14 proposed agreement shall be attached to the application and by
 3-15 reference made a part thereof, but the agreement shall not be
 3-16 recorded in the judge's probate docket [~~minutes~~]. The clerk shall
 3-17 immediately, after such application is filed, call it to the
 3-18 attention of the judge.

3-19 (2) Notice Not Necessary. No notice of the filing of
 3-20 such application by advertising, citation, or otherwise, is
 3-21 required.

3-22 (3) Hearing of Application. A hearing on such
 3-23 application may be held by the judge at any time agreeable to the
 3-24 parties to the proposed agreement, and the judge shall hear proof
 3-25 and satisfy himself as to whether or not it is to the best interest
 3-26 of the estate that the proposed agreement be authorized. The
 3-27 hearing may be continued from day to day and from time to time as the
 3-28 court finds to be necessary.

3-29 (4) Action of Court and Contents of Order. If the court
 3-30 finds that the pool or unit to which the agreement relates will be
 3-31 operated in such a manner as to protect correlative rights or to
 3-32 prevent the physical or economic waste of oil, liquid hydrocarbons,
 3-33 gas (including all liquid hydrocarbons in the gaseous phase in the
 3-34 reservoir), gaseous elements, or other mineral subject thereto;
 3-35 that it is to the best interest of the estate that the agreement be
 3-36 executed; and that the agreement conforms substantially with the
 3-37 permissible provisions of Subsection (a) hereof, he shall enter an
 3-38 order setting out the findings made by him, authorizing execution
 3-39 of the agreement (with or without payment of cash consideration
 3-40 according to the agreement). If cash consideration is to be paid
 3-41 for the agreement, findings as to the necessity of increased or
 3-42 additional bond, as in making of leases upon payment of the cash
 3-43 bonus therefor, shall also be made, and no such agreement shall be
 3-44 valid until the increased or additional bond required by the court,
 3-45 if any, has been approved by the judge and filed with the clerk. The
 3-46 date of the court's order shall be the effective date of the
 3-47 agreement, if not stipulated in such agreement.

3-48 SECTION 10. Section 409, Texas Probate Code, is amended to
 3-49 read as follows:

3-50 Sec. 409. MONEY BECOMING DUE PENDING FINAL DISCHARGE.
 3-51 Until the order of final discharge of the personal representative
 3-52 is entered in the judge's probate docket [~~minutes of the court~~],
 3-53 money or other thing of value falling due to the estate while the
 3-54 account for final settlement is pending may be paid, delivered, or
 3-55 tendered to the personal representative, who shall issue receipt
 3-56 therefor, and the obligor and/or payor shall be thereby discharged
 3-57 of the obligation for all purposes.

3-58 SECTION 11. Section 430, Texas Probate Code, is amended to
 3-59 read as follows:

3-60 Sec. 430. RECEIPT OF COMPTROLLER. Whenever an executor or
 3-61 administrator pays the comptroller any funds of the estate he
 3-62 represents, under the preceding provisions of this Code, he shall
 3-63 take from the comptroller a receipt for such payment, with official
 3-64 seal attached, and shall file the same with the clerk of the court
 3-65 ordering such payment; and such receipt shall be recorded in the
 3-66 judge's probate docket [~~minutes of the court~~].

3-67 SECTION 12. Section 609(b), Texas Probate Code, is amended
 3-68 to read as follows:

3-69 (b) The probate court that transfers a proceeding under this

4-1 section to a court with proper jurisdiction over suits affecting
 4-2 the parent-child relationship shall send to the court to which the
 4-3 transfer is made the complete files in all matters affecting the
 4-4 guardianship of the person of the minor and certified copies of all
 4-5 entries in the judge's guardianship docket [minutes]. The
 4-6 transferring court shall keep a copy of the transferred files. If
 4-7 the transferring court retains jurisdiction of the guardianship of
 4-8 the estate of the minor or of another minor who was the subject of
 4-9 the suit, the court shall send a copy of the complete files to the
 4-10 court to which the transfer is made and shall keep the original
 4-11 files.

4-12 SECTION 13. Section 623(a), Texas Probate Code, is amended
 4-13 to read as follows:

4-14 (a) The county clerk shall keep a record book to be styled
 4-15 "Judge's Guardianship Docket" and shall enter in the record book:

4-16 (1) the name of each person on whose person or estate a
 4-17 proceeding is had or is sought to be had;

4-18 (2) the name of the guardian of the estate or person or
 4-19 of the applicant for letters;

4-20 (3) the date the original application for a
 4-21 guardianship proceeding was filed;

4-22 (4) a notation [minute], including the date, of each
 4-23 order, judgment, decree, and proceeding in each estate; and

4-24 (5) a number of each guardianship on the docket in the
 4-25 order in which a proceeding is commenced.

4-26 SECTION 14. Sections 631(b) and (c), Texas Probate Code,
 4-27 are amended to read as follows:

4-28 (b) By transmitting to the proper court in the proper county
 4-29 for venue purposes the original file in the case, with certified
 4-30 copies of all entries in the judge's guardianship docket [minutes]
 4-31 made in the file, an administration of the guardianship in the
 4-32 proper county for venue purposes shall be completed in the same
 4-33 manner as if the proceeding had originally been instituted in that
 4-34 county.

4-35 (c) The clerk of the court from which the proceeding is
 4-36 transferred shall transmit to the court to which the proceeding is
 4-37 transferred the original file in the proceeding and a certified
 4-38 copy of the entries in the judge's guardianship docket [minutes]
 4-39 that relate to the proceeding.

4-40 SECTION 15. Section 650, Texas Probate Code, is amended to
 4-41 read as follows:

4-42 Sec. 650. ~~DECREEES [AND SIGNING OF MINUTES].~~ A decision,
 4-43 order, decree, or judgment of the court in a guardianship matter
 4-44 must be rendered in open court, except in a case in which it is
 4-45 otherwise expressly provided. ~~[The judge shall approve and sign~~
 4-46 ~~the guardianship minutes on the first day of each month. If the~~
 4-47 ~~first day of the month falls on a Saturday, Sunday, or legal~~
 4-48 ~~holiday, the judge's approval shall be entered on the preceding or~~
 4-49 ~~succeeding day.]~~

4-50 SECTION 16. Section 753, Texas Probate Code, is amended to
 4-51 read as follows:

4-52 Sec. 753. MONEY BECOMING DUE PENDING FINAL DISCHARGE.
 4-53 Money or any other thing of value falling due to the estate or ward
 4-54 while the account for final settlement is pending, other than money
 4-55 or any other thing of value held under Section 703(c) of this code,
 4-56 until the order of final discharge of the guardian is entered in the
 4-57 judge's guardianship docket [minutes of the court], may be paid,
 4-58 delivered, or tendered to the emancipated ward, the guardian, or
 4-59 the personal representative of the deceased ward's estate, who
 4-60 shall issue a receipt for the money or other thing of value, and the
 4-61 obligor or payor shall be discharged of the obligation for all
 4-62 purposes.

4-63 SECTION 17. Section 849(c), Texas Probate Code, is amended
 4-64 to read as follows:

4-65 (c) The guardian of the estate shall file with the county
 4-66 clerk of the county in which the guardianship proceeding is pending
 4-67 the guardian's written application for authority to enter into a
 4-68 pooling or unitization agreement supplementing, amending, or
 4-69 otherwise relating to, any existing lease covering property owned

5-1 by the estate, or to commit royalties or other interest in minerals,
 5-2 whether subject to lease or not, to a pooling or unitization
 5-3 agreement. The application must also describe the property
 5-4 sufficiently as required in the original application to lease,
 5-5 describe briefly the lease to which the interest of the estate is
 5-6 subject, and set out the reasons the proposed agreement concerning
 5-7 the property should be made. A true copy of the proposed agreement
 5-8 shall be attached to the application and by reference made a part of
 5-9 the application, but the agreement may not be recorded in the
 5-10 judge's guardianship docket [~~minutes~~]. The clerk shall
 5-11 immediately, after the application is filed, call it to the
 5-12 attention of the judge.

5-13 SECTION 18. Sections 885(a), (b), and (g), Texas Probate
 5-14 Code, are amended to read as follows:

5-15 (a) When the estate of a minor or other incapacitated person
 5-16 or any portion of the estate of the minor or other incapacitated
 5-17 person appears in danger of injury, loss, or waste and in need of a
 5-18 guardianship or other representative and there is no guardian of
 5-19 the estate who is qualified in this state and a guardian is not
 5-20 needed, the county judge of the county in which the minor or other
 5-21 incapacitated person resides or in which the endangered estate is
 5-22 located shall enter an order, with or without application,
 5-23 appointing a suitable person as receiver to take charge of the
 5-24 estate. The court order shall require a receiver appointed under
 5-25 this section to give bond as in ordinary receiverships in an amount
 5-26 the judge deems necessary to protect the estate. The court order
 5-27 shall specify the duties and powers of the receiver as the judge
 5-28 deems necessary for the protection, conservation, and preservation
 5-29 of the estate. The clerk shall enter an order made under this
 5-30 section in the judge's guardianship docket [~~on the minutes of the~~
 5-31 ~~court~~]. The person who is appointed as receiver shall make and
 5-32 submit a bond for the judge's approval and shall file the bond, when
 5-33 approved, with the clerk. The person who is appointed receiver
 5-34 shall proceed to take charge of the endangered estate pursuant to
 5-35 the powers and duties vested in the person by the order of
 5-36 appointment and subsequent orders made by the judge.

5-37 (b) During the pendency of the receivership, when the needs
 5-38 of the minor or other incapacitated person require the use of the
 5-39 income or corpus of the estate for the education, clothing, or
 5-40 subsistence of the minor or other incapacitated person, the judge,
 5-41 with or without application, shall enter an order in the judge's
 5-42 guardianship docket [~~on the minutes of the court~~] that appropriates
 5-43 an amount of income or corpus that is sufficient for that purpose.
 5-44 The receiver shall use the amount appropriated by the court to pay a
 5-45 claim for the education, clothing, or subsistence of the minor or
 5-46 other incapacitated person that is presented to the judge for
 5-47 approval and ordered by the judge to be paid.

5-48 (g) An order or a bond, report, account, or notice in a
 5-49 receivership proceeding must be recorded in the judge's
 5-50 guardianship docket [~~minutes of the court~~].

5-51 SECTION 19. The following laws are repealed:

- 5-52 (1) Section 26.004(c), Government Code; and
- 5-53 (2) Sections 3(u) and 601(17), Texas Probate Code.

5-54 SECTION 20. This Act takes effect immediately if it
 5-55 receives a vote of two-thirds of all the members elected to each
 5-56 house, as provided by Section 39, Article III, Texas Constitution.
 5-57 If this Act does not receive the vote necessary for immediate
 5-58 effect, this Act takes effect September 1, 2009.

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