

1-1 By: Hartnett (Senate Sponsor - Wentworth) H.B. No. 1968  
1-2 (In the Senate - Received from the House May 8, 2009;  
1-3 May 8, 2009, read first time and referred to Committee on  
1-4 Jurisprudence; May 23, 2009, reported favorably by the following  
1-5 vote: Yeas 5, Nays 0; May 23, 2009, sent to printer.)

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

1-8 relating to the estates of decedents.

1-9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-10 SECTION 1. Section 149B(a), Texas Probate Code, is amended  
1-11 to read as follows:

1-12 (a) In addition to or in lieu of the right to an accounting  
1-13 provided by Section 149A of this code, at any time after the  
1-14 expiration of two years from the date the clerk of the court first  
1-15 issues letters testamentary or of administration to any personal  
1-16 representative of the estate [~~that an independent administration~~  
1-17 ~~was created and the order appointing an independent executor was~~  
1-18 ~~entered~~], a person interested in an [the] estate then subject to  
1-19 independent administration may petition the county court, as that  
1-20 term is defined by Section 3 of this code, for an accounting and  
1-21 distribution. The court may order an accounting to be made with the  
1-22 court by the independent executor at such time as the court deems  
1-23 proper. The accounting shall include the information that the  
1-24 court deems necessary to determine whether any part of the estate  
1-25 should be distributed.

1-26 SECTION 2. The heading to Part 5, Chapter VII, Texas Probate  
1-27 Code, is amended to read as follows:

1-28 PART 5. [GENERAL] POWERS, DUTIES, AND LIABILITIES OF PERSONAL  
1-29 REPRESENTATIVES

1-30 SECTION 3. Part 5, Chapter VII, Texas Probate Code, is  
1-31 amended by adding Sections 236 and 236A to read as follows:

1-32 Sec. 236. LIABILITY OF PERSONAL REPRESENTATIVE. A personal  
1-33 representative who commits a breach of fiduciary duty and the  
1-34 sureties on the personal representative's bond are chargeable with  
1-35 any damages resulting from the breach, including:

1-36 (1) any loss or depreciation in value of the estate as  
1-37 a result of the breach;

1-38 (2) any profit made by the personal representative as  
1-39 a result of the breach;

1-40 (3) any profit that would have accrued to the estate if  
1-41 there had been no breach;

1-42 (4) exemplary damages; or

1-43 (5) costs and fees described by Section 245 of this  
1-44 code.

1-45 Sec. 236A. REMEDIES FOR BREACH OF FIDUCIARY DUTY. (a) To  
1-46 remedy a breach of fiduciary duty by a personal representative, a  
1-47 court may:

1-48 (1) compel the personal representative to perform the  
1-49 personal representative's duty or duties;

1-50 (2) enjoin the personal representative from  
1-51 continuing to commit a breach of fiduciary duty or committing an  
1-52 additional breach of fiduciary duty;

1-53 (3) compel the personal representative to redress a  
1-54 breach of fiduciary duty, including compelling the representative  
1-55 to pay money or to restore property;

1-56 (4) order a personal representative to account;

1-57 (5) appoint a receiver to take possession of estate  
1-58 property and administer the estate;

1-59 (6) suspend the personal representative;

1-60 (7) remove the personal representative as provided by  
1-61 Section 222 of this code;

1-62 (8) reduce or deny compensation to the personal  
1-63 representative;

1-64 (9) void an act of the personal representative;

