

By: Hartnett

H.B. No. 3086

A BILL TO BE ENTITLED

AN ACT

relating to jurisdiction and venue of probate proceedings and proceedings regarding powers of attorney and certain trusts.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 3(bb), Texas Probate Code, is amended to read as follows:

(bb) "Probate proceeding" is synonymous with the terms "Probate matter," [~~"Probate proceedings,"~~] "Proceeding in probate," and "Proceedings for probate." The term means a matter or proceeding relating to the estate of a decedent [are synonymous] and includes:

(1) the probate of a will, with or without administration of the estate;

(2) the issuance of letters testamentary and of administration;

(3) an heirship determination or small estate affidavit, community property administration, and homestead and family allowances;

(4) 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;

(5) a claim arising from an estate administration and any action brought on the claim;

(6) the settling of a personal representative's

1 account of an estate and any other matter relating to the  
2 settlement, partition, or distribution of an estate; and

3 (7) a will construction suit [~~include a matter or~~  
4 ~~proceeding relating to the estate of a decedent~~].

5 SECTION 2. Chapter I, Texas Probate Code, is amended by  
6 adding Sections 4A, 4B, 4C, 4D, 4E, 4F, 4G, and 4H to read as  
7 follows:

8 Sec. 4A. GENERAL PROBATE COURT JURISDICTION; APPEALS. (a)

9 All probate proceedings must be filed and heard in a court  
10 exercising original probate jurisdiction. The court exercising  
11 original probate jurisdiction also has jurisdiction of all matters  
12 related to the probate proceeding as specified in Section 4B of this  
13 code for that type of court.

14 (b) A probate court may exercise pendent and ancillary  
15 jurisdiction as necessary to promote judicial efficiency and  
16 economy.

17 (c) A final order issued by a probate court is appealable to  
18 the court of appeals.

19 Sec. 4B. MATTERS RELATED TO PROBATE PROCEEDING. (a) For  
20 purposes of this code, in a county in which there is no statutory  
21 probate court or county court at law exercising original probate  
22 jurisdiction, a matter related to a probate proceeding includes:

23 (1) an action against a personal representative or  
24 former personal representative arising out of the representative's  
25 performance of the duties of a personal representative;

26 (2) an action against a surety of a personal  
27 representative or former personal representative;

1           (3) a claim brought by a personal representative on  
2 behalf of an estate;

3           (4) an action brought against a personal  
4 representative in the representative's capacity as personal  
5 representative;

6           (5) an action for trial of title to real property that  
7 is estate property, including the enforcement of a lien against the  
8 property; and

9           (6) an action for trial of the right of property that  
10 is estate property.

11           (b) For purposes of this code, in a county in which there is  
12 no statutory probate court, but in which there is a county court at  
13 law exercising original probate jurisdiction, a matter related to a  
14 probate proceeding includes:

15           (1) all matters and actions described in Subsection  
16 (a) of this section;

17           (2) the interpretation and administration of a  
18 testamentary trust if the will creating the trust has been admitted  
19 to probate in the court; and

20           (3) the interpretation and administration of an inter  
21 vivos trust created by a decedent whose will has been admitted to  
22 probate in the court.

23           (c) For purposes of this code, in a county in which there is  
24 a statutory probate court, a matter related to a probate proceeding  
25 includes:

26           (1) all matters and actions described in Subsections  
27 (a) and (b) of this section; and

1           (2) any cause of action in which a personal  
2 representative of an estate pending in the statutory probate court  
3 is a party in the representative's capacity as personal  
4 representative.

5           Sec. 4C. ORIGINAL JURISDICTION FOR PROBATE PROCEEDINGS.

6 (a) In a county in which there is no statutory probate court or  
7 county court at law exercising original probate jurisdiction, the  
8 county court has original jurisdiction of probate proceedings.

9           (b) In a county in which there is no statutory probate  
10 court, but in which there is a county court at law exercising  
11 original probate jurisdiction, the county court at law exercising  
12 original probate jurisdiction and the county court have concurrent  
13 original jurisdiction of probate proceedings, unless otherwise  
14 provided by law. The judge of a county court may hear probate  
15 proceedings while sitting for the judge of any other county court.

16           (c) In a county in which there is a statutory probate court,  
17 the statutory probate court has original jurisdiction of probate  
18 proceedings.

19           Sec. 4D. JURISDICTION OF CONTESTED PROBATE PROCEEDING IN  
20 COUNTY WITH NO STATUTORY PROBATE COURT OR STATUTORY COUNTY COURT.

21 (a) In a county in which there is no statutory probate court or  
22 county court at law exercising original probate jurisdiction, when  
23 a matter in a probate proceeding is contested, the judge of the  
24 county court may, on the judge's own motion, or shall, on the motion  
25 of any party to the proceeding, according to the motion:

26           (1) request the assignment of a statutory probate  
27 court judge to hear the contested matter, as provided by Section

1 25.0022, Government Code; or

2 (2) transfer the contested matter to the district  
3 court, which may then hear the contested matter as if originally  
4 filed in the district court.

5 (b) If a party to a probate proceeding files a motion for the  
6 assignment of a statutory probate court judge to hear a contested  
7 matter in the proceeding before the judge of the county court  
8 transfers the contested matter to a district court under this  
9 section, the county judge shall grant the motion for the assignment  
10 of a statutory probate court judge and may not transfer the matter  
11 to the district court unless the party withdraws the motion.

12 (c) A party to a probate proceeding may file a motion for the  
13 assignment of a statutory probate court judge under this section  
14 before a matter in the proceeding becomes contested, and the motion  
15 is given effect as a motion for assignment of a statutory probate  
16 court judge under Subsection (a) of this section if the matter later  
17 becomes contested.

18 (d) Notwithstanding any other law, a transfer of a contested  
19 matter in a probate proceeding to a district court under any  
20 authority other than the authority provided by this section:

21 (1) is disregarded for purposes of this section; and

22 (2) does not defeat the right of a party to the  
23 proceeding to have the matter assigned to a statutory probate court  
24 judge in accordance with this section.

25 (e) A statutory probate court judge assigned to a contested  
26 matter under this section has the jurisdiction and authority  
27 granted to a statutory probate court by this code. On resolution of

1 a contested matter for which a statutory probate court judge is  
2 assigned under this section, including any appeal of the matter,  
3 the statutory probate court judge shall return the matter to the  
4 county court for further proceedings not inconsistent with the  
5 orders of the statutory probate court or court of appeals, as  
6 applicable.

7 (f) A district court to which a contested matter is  
8 transferred under this section has the jurisdiction and authority  
9 granted to a statutory probate court by this code. On resolution of  
10 a contested matter transferred to the district court under this  
11 section, including any appeal of the matter, the district court  
12 shall return the matter to the county court for further proceedings  
13 not inconsistent with the orders of the district court or court of  
14 appeals, as applicable.

15 (g) The county court shall continue to exercise  
16 jurisdiction over the management of the estate, other than a  
17 contested matter, until final disposition of the contested matter  
18 is made in accordance with this section. After a contested matter  
19 is transferred to a district court, any matter related to the  
20 probate proceeding may be brought in the district court. The  
21 district court in which a matter related to the probate proceeding  
22 is filed may, on its own motion or on the motion of any party, find  
23 that the matter is not a contested matter and transfer the matter to  
24 the county court with jurisdiction of the management of the estate.

25 (h) If a contested matter in a probate proceeding is  
26 transferred to a district court under this section, the district  
27 court has jurisdiction of any contested matter in the proceeding

1 that is subsequently filed, and the county court shall transfer  
2 those contested matters to the district court. If a statutory  
3 probate court judge is assigned under this section to hear a  
4 contested matter in a probate proceeding, the statutory probate  
5 court judge shall be assigned to hear any contested matter in the  
6 proceeding that is subsequently filed.

7 (i) The clerk of a district court to which a contested  
8 matter in a probate proceeding is transferred under this section  
9 may perform in relation to the contested matter any function a  
10 county clerk may perform with respect to that type of matter.

11 Sec. 4E. JURISDICTION OF CONTESTED PROBATE PROCEEDING IN  
12 COUNTY WITH NO STATUTORY PROBATE COURT. (a) In a county in which  
13 there is no statutory probate court, but in which there is a county  
14 court at law exercising original probate jurisdiction, when a  
15 matter in a probate proceeding is contested, the judge of the county  
16 court may, on the judge's own motion, or shall, on the motion of any  
17 party to the proceeding, transfer the contested matter to the  
18 county court at law. In addition, the judge of the county court, on  
19 the judge's own motion or on the motion of a party to the  
20 proceeding, may transfer the entire proceeding to the county court  
21 at law.

22 (b) A county court at law to which a proceeding is  
23 transferred under this section may hear the proceeding as if  
24 originally filed in that court. If only a contested matter in the  
25 proceeding is transferred, on the resolution of the matter, the  
26 matter shall be returned to the county court for further  
27 proceedings not inconsistent with the orders of the county court at

1 law.

2 Sec. 4F. EXCLUSIVE JURISDICTION OF PROBATE PROCEEDING IN  
3 COUNTY WITH STATUTORY PROBATE COURT. (a) In a county in which  
4 there is a statutory probate court, the statutory probate court has  
5 exclusive jurisdiction of all probate proceedings, regardless of  
6 whether contested or uncontested. A cause of action related to the  
7 probate proceeding must be brought in a statutory probate court  
8 unless the jurisdiction of the statutory probate court is  
9 concurrent with the jurisdiction of a district court as provided by  
10 Section 4H of this code or with the jurisdiction of any other court.

11 (b) This section shall be construed in conjunction and in  
12 harmony with Section 145 of this code and all other sections of this  
13 code relating to independent executors, but may not be construed to  
14 expand the court's control over an independent executor.

15 Sec. 4G. JURISDICTION OF STATUTORY PROBATE COURT WITH  
16 RESPECT TO TRUSTS AND POWERS OF ATTORNEY. In a county in which  
17 there is a statutory probate court, the statutory probate court has  
18 jurisdiction of:

19 (1) an action by or against a trustee;

20 (2) an action involving an inter vivos trust,  
21 testamentary trust, or charitable trust;

22 (3) an action against an agent or former agent under a  
23 power of attorney arising out of the agent's performance of the  
24 duties of an agent; and

25 (4) an action to determine the validity of a power of  
26 attorney or to determine an agent's rights, powers, or duties under  
27 a power of attorney.



1        Sec. 4H. CONCURRENT JURISDICTION WITH DISTRICT COURT. A  
2 statutory probate court has concurrent jurisdiction with the  
3 district court in:

4            (1) a personal injury, survival, or wrongful death  
5 action by or against a person in the person's capacity as a personal  
6 representative;

7            (2) an action by or against a trustee;

8            (3) an action involving an inter vivos trust,  
9 testamentary trust, or charitable trust;

10           (4) an action involving a personal representative of  
11 an estate in which each other party aligned with the personal  
12 representative is not an interested person in that estate;

13           (5) an action against an agent or former agent under a  
14 power of attorney arising out of the agent's performance of the  
15 duties of an agent; and

16           (6) an action to determine the validity of a power of  
17 attorney or to determine an agent's rights, powers, or duties under  
18 a power of attorney.

19        SECTION 3. Section 5B, Texas Probate Code, is amended to  
20 read as follows:

21        Sec. 5B. TRANSFER OF PROCEEDING BY STATUTORY PROBATE COURT.  
22 Subject to Section 6B of this code, a [(a) A] judge of a statutory  
23 probate court, on the motion of a party to the action or on the  
24 motion of a person interested in an estate, may transfer to the  
25 statutory probate [his] court from a district, county, or statutory  
26 court a cause of action related to a probate proceeding  
27 [appertaining to or incident to an estate] pending in the statutory

1 probate court or a cause of action in which a personal  
2 representative of an estate pending in the statutory probate court  
3 is a party [~~and may consolidate the transferred cause of action with~~  
4 ~~the other proceedings in the statutory probate court relating to~~  
5 ~~that estate~~].

6 [~~(b) Notwithstanding any other provision of this chapter, the~~  
7 ~~proper venue for an action by or against a personal representative~~  
8 ~~for personal injury, death, or property damages is determined under~~  
9 ~~Section 15.007, Civil Practice and Remedies Code.~~]

10 SECTION 4. Section 6, Texas Probate Code, is amended to read  
11 as follows:

12 Sec. 6. VENUE FOR PROBATE OF WILLS AND GRANT OF LETTERS  
13 [~~ADMINISTRATION OF ESTATES OF DECEDENTS~~]. Wills shall be admitted  
14 to probate, and letters testamentary or of administration shall be  
15 granted as follows:

16 (1) in [~~(a) In~~] the county where the deceased resided,  
17 if the deceased [~~he~~] had a domicile or fixed place of residence in  
18 this State; [~~+~~]

19 (2) if [~~(b) If~~] the deceased had no domicile or fixed  
20 place of residence in this State but died in this State, then either  
21 in the county where the [~~his~~] principal property of the deceased was  
22 located at the time of [~~his~~] death, or in the county where the  
23 deceased [~~he~~] died; [~~+~~]

24 (3) if the deceased [~~(c) If he~~] had no domicile or  
25 fixed place of residence in this State, and died outside the limits  
26 of this State, then in any county in this State where the [~~his~~]  
27 nearest of kin of the deceased reside; and [~~+~~]

1           (4) if the deceased [~~(d) But if he~~] had no kindred in  
2 this State, then in the county where the [~~his~~] principal estate of  
3 the deceased was situated at the time of [~~his~~] death.

4           ~~[(e) In the county where the applicant resides, when~~  
5 ~~administration is for the purpose only of receiving funds or money~~  
6 ~~due to a deceased person or his estate from any governmental source~~  
7 ~~or agency; provided, that unless the mother or father or spouse or~~  
8 ~~adult child of the deceased is applicant, citation shall be served~~  
9 ~~personally on the living parents and spouses and adult children, if~~  
10 ~~any, of the deceased person, or upon those who are alive and whose~~  
11 ~~addresses are known to the applicant.]~~

12           SECTION 5. Chapter I, Texas Probate Code, is amended by  
13 adding Sections 6A, 6B, and 6C to read as follows:

14           Sec. 6A. VENUE FOR ACTION RELATED TO PROBATE PROCEEDING IN  
15 STATUTORY PROBATE COURT. Except as provided by Section 6B of this  
16 code:

17           (1) venue of any cause of action related to a probate  
18 proceeding in a statutory probate court is proper in the statutory  
19 probate court in which the decedent's estate is pending; and

20           (2) a statutory probate court judge may transfer a  
21 cause of action as provided by Section 5B of this code from another  
22 court to the statutory probate court even if venue for the action is  
23 proper or mandatory in the county of the court from which the action  
24 is to be transferred.

25           Sec. 6B. VENUE FOR CERTAIN ACTIONS INVOLVING PERSONAL  
26 REPRESENTATIVE. Notwithstanding any other provision of this  
27 chapter, the proper venue for an action by or against a personal

1 representative for personal injury, death, or property damages  
2 related to the personal injury or death is determined under Section  
3 15.007, Civil Practice and Remedies Code.

4 Sec. 6C. VENUE FOR HEIRSHIP PROCEEDINGS. (a) Heirs of a  
5 decedent shall be determined:

6 (1) in the court of the county in which the proceedings  
7 were last pending when the decedent's will has been admitted to  
8 probate in this state or an administration has been granted in this  
9 state on the decedent's estate;

10 (2) in the court of the county in which venue would be  
11 proper for commencement of an administration of the decedent's  
12 estate under Section 6 of this code if no will of the decedent has  
13 been admitted to probate in this state and no administration has  
14 been granted in this state on the decedent's estate; and

15 (3) notwithstanding any other provision of this  
16 section or Section 6, 6A, or 6B of this code, in a probate court in  
17 which the proceedings for the guardianship of the estate of a ward  
18 who dies intestate were pending at the time of the ward's death if  
19 there is no administration pending in the deceased ward's estate.

20 (b) A proceeding described by Subsection (a)(3) of this  
21 section may be brought in the proceedings for the guardianship of  
22 the ward's estate.

23 SECTION 6. Chapter I, Texas Probate Code, is amended by  
24 amending Section 8 and adding Sections 8A and 8B to read as follows:

25 Sec. 8. CONCURRENT VENUE [~~AND TRANSFER OF PROCEEDINGS~~].

26 (a) Concurrent Venue. When two or more courts have concurrent  
27 venue of a probate proceeding [~~an estate or a proceeding to declare~~

1 ~~heirship under Section 48(a) of this code~~, the court in which the  
2 probate proceeding [~~application for a proceeding in probate or~~  
3 ~~determination of heirship~~] is first filed shall have and retain  
4 jurisdiction of the probate [~~estate or heirship~~] proceeding, [~~as~~  
5 ~~appropriate,~~] to the exclusion of the other court or courts. The  
6 proceeding shall be deemed commenced by the filing of an  
7 application averring facts sufficient to confer venue; and the  
8 proceeding first legally commenced shall extend to all of the  
9 property of the decedent or the decedent's estate. Provided,  
10 however, that a bona fide purchaser of real property in reliance on  
11 any such subsequent proceeding, without knowledge of its  
12 invalidity, shall be protected in such purchase unless the decree  
13 admitting the will to probate, determining heirship, or granting  
14 administration in the prior proceeding is [~~shall be~~] recorded in  
15 the office of the county clerk of the county in which such property  
16 is located.

17 (b) Probate Proceedings in More Than One County. If a  
18 probate proceeding [~~in probate or to declare heirship under Section~~  
19 ~~48(a) of this code~~] is commenced in more than one county, the  
20 proceeding shall be stayed except in the county where first  
21 commenced until final determination of venue in the county where  
22 first commenced. If the proper venue is finally determined to be in  
23 another county, the clerk, after making and retaining a true copy of  
24 the entire file in the case, shall transmit the original file to the  
25 proper county, and the proceeding shall, on the transfer of the  
26 file, [~~thereupon~~] be had in the proper county in the same manner as  
27 if the proceeding had originally been instituted in that county

1 ~~[therein]~~.

2       Sec. 8A. JURISDICTION TO DETERMINE VENUE. A court in which  
3 an application for a probate proceeding has been filed has the  
4 authority to determine the venue of that proceeding and of any  
5 proceeding related to the probate proceeding, subject to Section 8  
6 of this code. The court's determination is not subject to  
7 collateral attack.

8       Sec. 8B. TRANSFER OF VENUE IN PROBATE PROCEEDINGS. (a) ~~[(c)~~  
9 ~~Transfer of Proceeding.~~

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

24       (b) [(2)] Transfer for Convenience of the Estate. If it  
25 appears to the court at any time before the probate proceeding  
26 ~~[estate is closed or, if there is no administration of the estate,~~  
27 ~~when the proceeding in probate or to declare heirship]~~ is concluded

1 that it would be in the best interest of the estate or, if there is  
2 no administration of the estate, that it would be in the best  
3 interest of the heirs or beneficiaries of the decedent's will, the  
4 court, in its discretion, may order the proceeding transferred to  
5 the proper court in any other county in this State. The clerk of  
6 the court from which the proceeding is transferred shall transmit  
7 to the court to which the proceeding is transferred the original  
8 file in the proceeding and a certified copy of the index.

9 (c) [~~(d)~~] Validation of Prior Proceedings. When a probate  
10 proceeding is transferred to another county under any provision of  
11 this section or Section 8A of this code [~~Code~~], all orders entered  
12 in connection with the proceeding shall be valid and shall be  
13 recognized in the second court, provided such orders were made and  
14 entered in conformance with the procedure prescribed by this code  
15 [~~Code~~].

16 [~~(c) Jurisdiction to Determine Venue. Any court in which~~  
17 ~~there has been filed an application for a proceeding in probate or~~  
18 ~~determination of heirship shall have full jurisdiction to determine~~  
19 ~~the venue of the proceeding in probate or heirship proceeding, and~~  
20 ~~of any proceeding relating thereto, and its determination shall not~~  
21 ~~be subject to collateral attack.]~~

22 SECTION 7. Section 48(a), Texas Probate Code, is amended to  
23 read as follows:

24 (a) When a person dies intestate owning or entitled to real  
25 or personal property in Texas, and there shall have been no  
26 administration in this State upon the decedent's [~~his~~] estate; or  
27 when there has been a will probated in this State or elsewhere, or

1 an administration in this State upon the estate of such decedent,  
2 and any real or personal property in this State has been omitted  
3 from such will or from such administration, or no final disposition  
4 thereof has been made in such administration, the court of the  
5 county in which such proceedings were last pending, or in the event  
6 no will of such decedent has been admitted to probate in this State,  
7 and no administration has been granted in this State upon the estate  
8 of such decedent, then the court of the county in which venue would  
9 be proper [~~for commencement of an administration of the decedent's~~  
10 ~~estate~~] under Section 6C [~~6~~] of this code, may determine and declare  
11 in the manner hereinafter provided who are the heirs and only heirs  
12 of such decedent, and their respective shares and interests, under  
13 the laws of this State, in the estate of such decedent, and  
14 proceedings therefor shall be known as proceedings to declare  
15 heirship.

16 SECTION 8. Section 25.0022(i), Government Code, is amended  
17 to read as follows:

18 (i) A judge assigned under this section has the  
19 jurisdiction, powers, and duties given by Sections 4A, 4C, 4F, 4G,  
20 4H [~~5, 5A~~], 5B, 606, 607, and 608, Texas Probate Code, to statutory  
21 probate court judges by general law.

22 SECTION 9. Section 25.1132(c), Government Code, is amended  
23 to read as follows:

24 (c) A county court at law in Hood County has concurrent  
25 jurisdiction with the district court in:

26 (1) civil cases in which the matter in controversy  
27 exceeds \$500 but does not exceed \$250,000, excluding interest;



- 1           (2) family law cases and related proceedings;  
2           (3) contested probate matters under Section 4D(a)  
3 ~~[5(b)]~~, Texas Probate Code; and  
4           (4) contested guardianship matters under Section  
5 606(b), Texas Probate Code.

6           SECTION 10. Section 25.1863(b), Government Code, is amended  
7 to read as follows:

8           (b) A county court at law has concurrent jurisdiction with  
9 the district court over contested probate  
10 matters. Notwithstanding the requirement in ~~[Subsection (b),]~~  
11 Section 4D(a) ~~[5]~~, Texas Probate Code, that the judge of the  
12 constitutional county court transfer a contested probate  
13 proceeding to the district court, the judge of the constitutional  
14 county court shall transfer the proceeding under that section to  
15 either a county court at law in Parker County or a district court in  
16 Parker County. A county court at law has the jurisdiction, powers,  
17 and duties that a district court has under ~~[Subsection (b),]~~  
18 Section 4D(a) ~~[5]~~, Texas Probate Code, for the transferred  
19 proceeding, and the county clerk acts as clerk for the  
20 proceeding. The contested proceeding may be transferred between a  
21 county court at law in Parker County and a district court in Parker  
22 County as provided by local rules of administration.

23           SECTION 11. Sections 4, 5, and 5A, Texas Probate Code, are  
24 repealed.

25           SECTION 12. The changes in law made by this Act apply only  
26 to an action filed or a proceeding commenced on or after the  
27 effective date of this Act. An action filed or proceeding commenced

1 before the effective date of this Act is governed by the law in  
2 effect on the date the action was filed or the proceeding was  
3 commenced, and the former law is continued in effect for that  
4 purpose.

5 SECTION 13. This Act takes effect September 1, 2009.