

By: Hartnett

H.B. No. 3350

A BILL TO BE ENTITLED

AN ACT

relating to decedents' estates.

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

SECTION 1. Section 15.007, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 15.007. CONFLICT WITH CERTAIN PROVISIONS. Notwithstanding Sections 15.004, 15.005, and 15.031, to the extent that venue under this chapter for a suit by or against an executor, administrator, or guardian as such, for personal injury, death, or any property damage related to the personal injury or death suit conflicts with venue provisions under the Texas Probate Code, this chapter controls.

SECTION 2. Section 5B(b), Texas Probate Code, is amended to read as follows:

(b) Except with respect to a cause of action described by Section 15.007, Civil Practice and Remedies Code, or Section 123.005, Property Code, venue of a cause of action described by Subsection (a) of this section is proper, as provided by Section 7(a) of this code, in the statutory probate court in which the estate is pending, and the judge of the statutory probate court may transfer the cause of action as provided by Subsection (a) of this section to the statutory probate court, regardless of whether venue would otherwise be proper or mandatory in the county of the court from which the action will be transferred. [~~Notwithstanding any~~

1 ~~other provision of this chapter, the proper venue for an action by~~
2 ~~or against a personal representative for personal injury, death, or~~
3 ~~property damages is determined under Section 15.007, Civil Practice~~
4 ~~and Remedies Code.]~~

5 SECTION 3. Chapter I, Texas Probate Code, is amended by
6 adding Section 7 to read as follows:

7 Sec. 7. VENUE FOR CERTAIN ACTIONS APPERTAINING TO OR
8 INCIDENT TO AN ESTATE OR IN WHICH PERSONAL REPRESENTATIVE IS PARTY.

9 (a) Except with respect to a cause of action described by Section
10 15.007, Civil Practice and Remedies Code, venue for the following
11 is proper in the court in which the estate is pending:

12 (1) a cause of action appertaining to or incident to a
13 decedent's estate; and

14 (2) a cause of action in which the personal
15 representative of a decedent's estate is a party.

16 (b) Except with respect to a cause of action described by
17 Section 15.007, Civil Practice and Remedies Code, venue for a cause
18 of action against a former personal representative of a decedent's
19 estate is proper in the court in which the estate is pending or was
20 last pending.

21 (c) Notwithstanding any other provision of this chapter,
22 the proper venue for an action by or against a personal
23 representative for personal injury, death, or any property damages
24 related to the personal injury or death action is determined under
25 Section 15.007, Civil Practice and Remedies Code.

26 SECTION 4. Section 59, Texas Probate Code, is amended by
27 adding Subsection (a-1) and amending Subsection (b) to read as

1 follows:

2 (a-1) As an alternative to the self-proving of a last will
3 and testament by the affidavits of the testator and the attesting
4 witnesses under Subsection (a) of this section, a last will and
5 testament may be simultaneously executed, attested, and made
6 self-proved before an officer authorized to administer oaths under
7 the laws of this state, and the testimony of the witnesses in the
8 probate of the will and testament may be made unnecessary, with the
9 inclusion in the will and testament of the following in form and
10 contents substantially as follows:

11 I, _____, as testator, after being duly
12 sworn, declare to the undersigned witnesses and to the undersigned
13 authority that this instrument is my last will and testament, that I
14 have willingly made and executed it in the presence of the
15 undersigned witnesses, all of whom were present at the same time, as
16 my free act and deed, and that I have requested each of the
17 undersigned witnesses to sign this will and testament in my
18 presence and in the presence of each other. I now sign this will and
19 testament in the presence of the attesting witnesses and the
20 undersigned authority on this _____ day of _____,
21 20_____.

22 _____
23 Testator

24 The undersigned, _____ and _____, each being above
25 fourteen years of age, after being duly sworn, declare to the
26 testator and to the undersigned authority that the testator
27 declared to us that this instrument is the testator's last will and

1 testament and that the testator requested us to act as witnesses to
2 the testator's will and testament and signature. The testator then
3 signed this will and testament in our presence, all of us being
4 present at the same time. The testator is eighteen years of age or
5 over (or being under such age, is or has been lawfully married, or
6 is a member of the armed forces of the United States or of an
7 auxiliary thereof or of the Maritime Service), and we believe the
8 testator to be of sound mind. We now sign our names as attesting
9 witnesses in the presence of the testator, each other, and the
10 undersigned authority on this _____ day of _____,
11 20_____.

12 _____
13 Witness

14 _____
15 Witness

16 Subscribed and sworn to before me by the said _____,
17 testator, and by the said _____ and _____,
18 witnesses, this _____ day of _____, 20_____.

19 (SEAL)

20 (Signed) _____

21 (Official Capacity of Officer)

22 (b) An affidavit in form and content substantially as
23 provided by Subsection (a) of this section is a "self-proving
24 affidavit." A will with a self-proving affidavit subscribed and
25 sworn to by the testator and witnesses attached or annexed to the
26 will, or a will simultaneously executed, attested, and made
27 self-proved as provided by Subsection (a-1) of this section, is a

1 "self-proved will." Substantial compliance with the form of the
2 affidavit provided by Subsection (a) of this section [~~form of such~~
3 ~~affidavit~~] shall suffice to cause the will to be self-proved. For
4 this purpose, an affidavit that is subscribed and acknowledged by
5 the testator and subscribed and sworn to by the witnesses would
6 suffice as being in substantial compliance. A signature on a
7 self-proving affidavit as provided by Subsection (a) of this
8 section is considered a signature to the will if necessary to prove
9 that the will was signed by the testator or witnesses, or both, but
10 in that case, the will may not be considered a self-proved will.

11 SECTION 5. Section 471, Texas Probate Code, is amended by
12 adding Subdivisions (1-a), (2-a), and (2-b) and amending
13 Subdivision (2) to read as follows:

14 (1-a) "Dissolution" means the termination of a marriage
15 by divorce, annulment, or a declaration that the marriage is void.

16 (2) "Divorced individual" means an individual whose
17 marriage has been dissolved [~~, regardless of whether by divorce or~~
18 ~~annulment~~].

19 (2-a) "Relative" means an individual who is related to
20 another individual by consanguinity or affinity, as determined
21 under Sections 573.022 and 573.024, Government Code, respectively.

22 (2-b) "Relative of the former spouse" means a relative
23 of the former spouse who is not a relative of the divorced
24 individual.

25 SECTION 6. Chapter XI-A, Texas Probate Code, is amended by
26 adding Section 471A to read as follows:

27 Sec. 471A. DISSOLUTION OF MARRIAGE. For the purposes of

1 this chapter, a marriage has been "dissolved" if the marriage
2 terminates as a result of dissolution.

3 SECTION 7. Sections 472 and 473, Texas Probate Code, are
4 amended to read as follows:

5 Sec. 472. REVOCATION OF CERTAIN NONTESTAMENTARY TRANSFERS
6 ON DISSOLUTION OF MARRIAGE. (a) Except as otherwise provided by a
7 court order, the express terms of a trust instrument executed by a
8 divorced individual before the individual's marriage was
9 dissolved, or an express provision of a contract relating to the
10 division of the marital estate entered into between a divorced
11 individual and the individual's former spouse before, during, or
12 after the marriage, the dissolution of the marriage revokes the
13 following:

14 (1) a revocable disposition or appointment of property
15 made by a divorced individual to the individual's former spouse or
16 any relative of the former spouse in a trust instrument executed
17 before the dissolution of the marriage;

18 (2) a provision in a trust instrument executed by a
19 divorced individual before the dissolution of the marriage that
20 confers a general or special power of appointment on the
21 individual's former spouse or any relative of the former spouse;
22 and

23 (3) a nomination in a trust instrument executed by a
24 divorced individual before the dissolution of the marriage that
25 nominates the individual's former spouse or any relative of the
26 former spouse to serve in a fiduciary or representative capacity,
27 including as a personal representative, executor, trustee,

1 conservator, agent, or guardian.

2 (b) After the dissolution of a marriage, an interest granted
3 in a provision of a trust instrument that is revoked under
4 Subsection (a)(1) or (2) of this section passes as if the former
5 spouse of the divorced individual who executed the trust instrument
6 or any relative of the former spouse, as applicable, disclaimed the
7 interest granted in the provision, and an interest granted in a
8 provision of a trust instrument that is revoked under Subsection
9 (a)(3) of this section passes as if the former spouse or any
10 relative of the former spouse, as applicable, died immediately
11 before the dissolution of the marriage.

12 Sec. 473. LIABILITY FOR CERTAIN PAYMENTS, BENEFITS, AND
13 PROPERTY. (a) A bona fide purchaser of property from a divorced
14 individual's former spouse or any relative of the former spouse or a
15 person who receives from a divorced individual's former spouse or
16 any relative of the former spouse a payment, benefit, or property in
17 partial or full satisfaction of an enforceable obligation:

18 (1) is not required by this chapter to return the
19 payment, benefit, or property; and

20 (2) is not liable under this chapter for the amount of
21 the payment or the value of the property or benefit.

22 (b) A divorced individual's former spouse or any relative of
23 the former spouse who, not for value, receives a payment, benefit,
24 or property to which the former spouse or the relative of the former
25 spouse is not entitled as a result of Section 472(a) of this code:

26 (1) shall return the payment, benefit, or property to
27 the person who is otherwise entitled to the payment, benefit, or

1 property as provided by this chapter; or

2 (2) is personally liable to the person described by
3 Subdivision (1) of this subsection for the amount of the payment or
4 the value of the benefit or property received.

5 SECTION 8. The following sections of the Texas Probate Code
6 are repealed:

7 (1) Section 5A(f); and

8 (2) Section 70.

9 SECTION 9. (a) Section 7, Texas Probate Code, as added by
10 this Act, and the changes in law made by this Act to Section 15.007,
11 Civil Practice and Remedies Code, and Section 5B(b), Texas Probate
12 Code, apply only to actions commenced on or after the effective date
13 of this Act. An action that is commenced before the effective date
14 of this Act is governed by the law applicable to the action
15 immediately before the effective date of this Act, and that law is
16 continued in effect for that purpose.

17 (b) The changes in law made by this Act to Sections 471, 472,
18 and 473, Texas Probate Code, as amended by this Act, and Section
19 471A, Texas Probate Code, as added by this Act, apply only to an
20 instrument or contract that was executed or entered into before,
21 on, or after the effective date of this Act by an individual whose
22 marriage is dissolved on or after the effective date of this Act.
23 An instrument or contract that was executed or entered into by an
24 individual whose marriage is dissolved before the effective date of
25 this Act is governed by the law in effect on the date the marriage
26 was dissolved, and the former law is continued in effect for that
27 purpose.

1 SECTION 10. This Act takes effect September 1, 2009.