

By: Wentworth

S.B. No. 319

A BILL TO BE ENTITLED

AN ACT

relating to providing notice to devisees under a decedent's will.

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

SECTION 1. Part 4, Chapter V, Texas Probate Code, is amended by adding Section 128C to read as follows:

Sec. 128C. NOTICE TO CERTAIN ENTITIES AFTER PROBATE. (a) If the address of the entity can be ascertained with reasonable diligence, an applicant under Section 81 of this code shall give the state, a governmental agency of the state, or a charitable organization notice that the entity is named as a devisee in a written will or a written will not produced that has been admitted to probate.

(b) The notice required by Subsection (a) of this section must be given not later than the 30th day after the date of the probate of the will.

(c) The notice must be in writing and state the county in which the will was admitted to probate. A copy of the application and of the order admitting the will to probate and, if the application is for probate of a written will, a copy of the will must be attached to the notice.

(d) An entity entitled to notice under Subsection (a) of this section must be notified by registered or certified mail, return receipt requested.

(e) The applicant must file a copy of the notice with the

1 court in which the will was admitted to probate.

2 SECTION 2. Sections 37A(h) and (i), Texas Probate Code, are  
3 amended to read as follows:

4 (h) Filing of Disclaimer. Unless the beneficiary is a  
5 charitable organization or governmental agency of the state, a  
6 written memorandum of disclaimer disclaiming a present interest  
7 shall be filed not later than nine months after the death of the  
8 decedent and a written memorandum of disclaimer disclaiming a  
9 future interest may be filed not later than nine months after the  
10 event determining that the taker of the property or interest is  
11 finally ascertained and his interest is indefeasibly vested. If  
12 the beneficiary is a charitable organization or a governmental  
13 agency of the state, a written memorandum of disclaimer disclaiming  
14 a present or future interest shall be filed not later than the first  
15 anniversary of the date the beneficiary receives the notice  
16 required by Section 128C [~~128A~~] of this code, or the expiration of  
17 the six-month period following the date the personal representative  
18 files the inventory, appraisement, and list of claims due or owing  
19 to the estate, whichever occurs later. The written memorandum of  
20 disclaimer shall be filed in the probate court in which the  
21 decedent's will has been probated or in which proceedings have been  
22 commenced for the administration of the decedent's estate or which  
23 has before it an application for either of the same; provided,  
24 however, if the administration of the decedent's estate is closed,  
25 or after the expiration of one year following the date of the  
26 issuance of letters testamentary in an independent administration,  
27 or if there has been no will of the decedent probated or filed for

1 probate, or if no administration of the decedent's estate has been  
2 commenced, or if no application for administration of the  
3 decedent's estate has been filed, the written memorandum of  
4 disclaimer shall be filed with the county clerk of the county of the  
5 decedent's residence, or, if the decedent is not a resident of this  
6 state but real property or an interest therein located in this state  
7 is disclaimed, a written memorandum of disclaimer shall be filed  
8 with the county clerk of the county in which such real property or  
9 interest therein is located, and recorded by such county clerk in  
10 the deed records of that county.

11 (i) Notice of Disclaimer. Unless the beneficiary is a  
12 charitable organization or governmental agency of the state, copies  
13 of any written memorandum of disclaimer shall be delivered in  
14 person to, or shall be mailed by registered or certified mail to and  
15 received by, the legal representative of the transferor of the  
16 interest or the holder of legal title to the property to which the  
17 disclaimer relates not later than nine months after the death of the  
18 decedent or, if the interest is a future interest, not later than  
19 nine months after the date the person who will receive the property  
20 or interest is finally ascertained and the person's interest is  
21 indefeasibly vested. If the beneficiary is a charitable  
22 organization or government agency of the state, the notices  
23 required by this section shall be filed not later than the first  
24 anniversary of the date the beneficiary receives the notice  
25 required by Section 128C [~~128A~~] of this code, or the expiration of  
26 the six-month period following the date the personal representative  
27 files the inventory, appraisal, and list of claims due or owing

1 to the estate, whichever occurs later.

2 SECTION 3. Section 149C(a), Texas Probate Code, is amended  
3 to read as follows:

4 (a) The county court, as that term is defined by Section 3 of  
5 this code, on its own motion or on motion of any interested person,  
6 after the independent executor has been cited by personal service  
7 to answer at a time and place fixed in the notice, may remove an  
8 independent executor when:

9 (1) the independent executor fails to return within  
10 ninety days after qualification, unless such time is extended by  
11 order of the court, an inventory of the property of the estate and  
12 list of claims that have come to the independent executor's  
13 knowledge;

14 (2) sufficient grounds appear to support belief that  
15 the independent executor has misapplied or embezzled, or that the  
16 independent executor is about to misapply or embezzle, all or any  
17 part of the property committed to the independent executor's care;

18 (3) the independent executor fails to make an  
19 accounting which is required by law to be made;

20 (4) the independent executor fails to timely file the  
21 notice [~~affidavit or certificate~~] required by Section 128C [~~128A~~]  
22 of this code;

23 (5) the independent executor is proved to have been  
24 guilty of gross misconduct or gross mismanagement in the  
25 performance of the independent executor's duties; or

26 (6) the independent executor becomes an incapacitated  
27 person, or is sentenced to the penitentiary, or from any other cause

1 becomes legally incapacitated from properly performing the  
2 independent executor's fiduciary duties.

3 SECTION 4. Section 222(b), Texas Probate Code, is amended  
4 to read as follows:

5 (b) With Notice. The court may remove a personal  
6 representative on its own motion, or on the complaint of any  
7 interested person, after the personal representative has been cited  
8 by personal service to answer at a time and place fixed in the  
9 notice, when:

10 (1) Sufficient grounds appear to support belief that  
11 the personal representative has misapplied, embezzled, or removed  
12 from the state, or that the personal representative is about to  
13 misapply, embezzle, or remove from the state, all or any part of the  
14 property committed to the personal representative's care;

15 (2) The personal representative fails to return any  
16 account which is required by law to be made;

17 (3) The personal representative fails to obey any  
18 proper order of the court having jurisdiction with respect to the  
19 performance of the personal representative's duties;

20 (4) The personal representative is proved to have been  
21 guilty of gross misconduct, or mismanagement in the performance of  
22 the personal representative's duties;

23 (5) The personal representative becomes an  
24 incapacitated person, or is sentenced to the penitentiary, or from  
25 any other cause becomes incapable of properly performing the duties  
26 of the personal representative's trust;

27 (6) As executor or administrator, the personal

1 representative fails to make a final settlement within three years  
2 after the grant of letters, unless the time be extended by the court  
3 upon a showing of sufficient cause supported by oath; or

4 (7) As executor or administrator, the personal  
5 representative fails to timely file the notice [~~affidavit or~~  
6 ~~certificate~~] required by Section 128C [~~128A~~] of this code.

7 SECTION 5. Section 128A, Texas Probate Code, as amended by  
8 Chapters 801 and 1170, Acts of the 80th Legislature, Regular  
9 Session, 2007, is repealed.

10 SECTION 6. The changes in law made by this Act apply only to  
11 the estate of a decedent whose will is admitted to probate on or  
12 after the effective date of this Act. The estate of a decedent  
13 whose will is admitted to probate before the effective date of this  
14 Act is governed by the law in effect on the date the decedent's will  
15 was admitted to probate, and the former law is continued in effect  
16 for that purpose.

17 SECTION 7. This Act takes effect immediately if it receives  
18 a vote of two-thirds of all the members elected to each house, as  
19 provided by Section 39, Article III, Texas Constitution. If this  
20 Act does not receive the vote necessary for immediate effect, this  
21 Act takes effect September 1, 2009.