

## **BILL ANALYSIS**

C.S.H.B. 2046  
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Judiciary & Civil Jurisprudence  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

As part of its ongoing review of Texas probate, guardianship, and trust law, the Real Estate, Probate, and Trust Law Section of the State Bar of Texas has proposed changes affecting decedents' estates. C.S.H.B. 2046 seeks to enact those changes.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 2046 amends the Estates Code, effective January 1, 2014, as enacted by Section 1, Chapter 680 (H.B. 2502), Acts of the 81st Legislature, Regular Session, 2009, as effective January 1, 2014, to incorporate in that code the bill's substantive and nonsubstantive provisions amending the Texas Probate Code. The bill makes changes to the Estates Code that are not in the Texas Probate Code, relating to independent administration, jurisdiction, and venue, reflecting the transfer of those provisions, without amendment, from the Texas Probate Code to the Estates Code by Chapter 680 (H.B. 2502), Acts of the 81st Legislature, Regular Session, 2009, as effective January 1, 2014, in anticipation of a substantive revision of those provisions by the legislature, as set out by C.S.H.B. 2046.

C.S.H.B. 2046 amends the Texas Probate Code to authorize a judge of a county court in a county in which there is no statutory probate court or county court at law exercising original probate jurisdiction, if that judge requests the assignment of a statutory probate court judge to hear a contested matter in a probate proceeding on the judge's own motion or on the motion of a party to the proceeding, to request that the statutory probate court judge be assigned to the entire proceeding on the judge's own motion or on the motion of a party. The bill specifies that a statutory probate court judge assigned to an entire probate proceeding, as an alternative to a contested matter in the proceeding, has the jurisdiction and authority granted to a statutory probate court by the Texas Probate Code. The bill requires a statutory probate court judge assigned to the entire probate proceeding, on resolution of the contested matter in the proceeding, including any appeal of the matter, to return the entire proceeding to the county court for further proceedings not inconsistent with the orders of the statutory probate court or court of appeals, as applicable.

C.S.H.B. 2046 includes a charitable trust as defined by reference to the Property Code in the charitable trusts for which a statutory probate court has concurrent jurisdiction with the district court in an action involving that trust.

C.S.H.B. 2046 removes provisions from the Texas Probate Code requiring that wills be admitted to probate, and letters testamentary or of administration be granted in the county where the applicant resides, when administration is for the purpose only of receiving funds or money due to a deceased person or the person's estate from any governmental source or agency and providing

for service of the citation.

C.S.H.B. 2046 establishes that venue for any cause of action related to a probate proceeding pending in a statutory probate court is proper in the statutory probate court in which the decedent's estate is pending. The bill creates an exception to that provision by establishing that the proper venue for an action by or against a personal representative for personal injury, death, or property damages is determined under provisions of the Civil Practice and Remedies Code relating to venue. The bill establishes that venue for a proceeding to determine a decedent's heirs is in the court of the county in which a proceeding admitting the decedent's will to probate or administering the decedent's estate was most recently pending or the court of the county in which venue would be proper for commencement of an administration of the decedent's estate under provisions of law relating to venue for probate of wills and granting of letters testamentary and of administration if no will of the decedent has been admitted to probate in this state and no administration of the decedent's estate has been granted in this state or the proceeding is commenced by the trustee of a trust holding assets for the benefit of the decedent. The bill establishes that venue for a proceeding to determine the deceased ward's heirs is in the probate court in which the guardianship proceedings with respect to the ward's estate were pending on the date of the ward's death if there is no administration pending of the estate of a deceased ward who died intestate. The bill prohibits such a proceeding from being brought as part of the guardianship proceedings with respect to the ward's estate but rather requires the proceeding to be filed as a separate cause in which the court is authorized to determine the heirs' respective shares and interests in the estate as provided by the laws of this state.

C.S.H.B. 2046 establishes that venue for a proceeding brought by the attorney general alleging breach of a fiduciary duty by a charitable entity or a fiduciary or managerial agent of a charitable trust is determined under the Property Code.

C.S.H.B. 2046 clarifies that a bona fide purchaser of a decedent's real property in reliance on a probate proceeding subsequent to the initial proceeding in a concurrent venue is protected in the purchase unless before the purchase a decree related to the estate is recorded in the office of the county clerk of the county where the property is located, rather than being protected unless the decree is recorded in that office. The bill specifies that its provisions relating to the jurisdiction to determine venue of a probate proceeding are subject to provisions of the bill relating to concurrent venue in a probate proceeding and probate proceedings in more than one county.

C.S.H.B. 2046 requires case files maintained by the county clerk for each decedent's estate in which a probate proceeding has been filed to contain all affidavits in lieu of inventories, appraisements, and lists of claims.

C.S.H.B. 2046, in provisions relating to the deadline options for the filing of a written memorandum of disclaimer or a notice of disclaimer by a beneficiary that is a charitable organization or government agency of the state, adds the option of filing of the affidavit in lieu of the inventory, appraisal, and list of claims.

C.S.H.B. 2046 authorizes a disclaimer with respect to an interest in property passing by reason of the death of a decedent dying after December 31, 2009, but before December 17, 2010, to be executed and filed, and authorizes notice of the disclaimer to be given, not later than nine months after December 17, 2010. The bill establishes that a disclaimer filed and for which notice is given during this extended period is valid and is required to be treated as if the disclaimer had been filed and notice had been given within the normally prescribed periods. The bill makes this provision relating to the extension of time for certain disclaimers inapplicable to a disclaimer made by a beneficiary that is a charitable organization or governmental agency of the state.

C.S.H.B. 2046 adds to the circumstances under which certain courts in a county are authorized to determine and declare who are the heirs of a decedent to include the circumstance that occurs when it is necessary for the trustee of a trust holding assets for the benefit of a decedent to

determine the heirs of the decedent and removes a provision requiring that the court be the court of the county in which those proceedings were last pending, or in which venue would be proper under certain conditions for commencement of an administration of the decedent's estate. The bill specifies that a court authorized to conduct heirship proceedings when it is necessary for the trustee of a trust holding assets for the benefit of the decedent to determine the decedent's heirs, in addition to other conditions, is a court of the county in which venue would be proper under provisions of the bill relating to venue for heirship proceedings. The bill specifies that the respective shares and interests of the heirs determined and declared by the court are, if applicable, shares and interests in the trust, if applicable, in addition to shares and interests in the estate of the decedent.

C.S.H.B. 2046 adds, in the circumstances described in provisions relating to the venue for a proceeding to declare heirship, a party seeking the appointment of an independent administrator under the Texas Probate Code and the trustee of a trust holding assets for the benefit of the decedent to the persons who are authorized to institute and maintain proceedings for heirship. The bill requires an application in any proceeding to declare heirship to be filed in a proper court stating the names and residences of the decedent's heirs, the relationship of each heir to the decedent, and the true interest of the applicant and each of the heirs in the trust, in addition to in the estate, as applicable, and requires such an application to state a general description of all the real and personal property held in trust for the benefit of the decedent, in addition to such property belonging to the estate of the decedent, as applicable.

C.S.H.B. 2046 authorizes a will to be simultaneously executed, attested, and made self-proved before an officer authorized to administer oaths as an alternative to the self-proving of a will by the affidavits of the testator and the attesting witnesses under provisions of law relating to the requisites of a will and authorizes the testimony of the witnesses in the probate of the will to be made unnecessary, with the inclusion in the will of a specified statement substantially the same in form and content as the statement set out in the bill.

C.S.H.B. 2046 changes a condition under which a provision in a will that would cause a forfeiture of or void a devise or provision that is in favor of a person for bringing any court action, including contesting a will, is unenforceable from a condition in which probable cause exists for bringing the court action to a condition in which just cause existed for bringing the court action.

C.S.H.B. 2046, in provisions relating to a pretermitted child who is not mentioned or provided for in the will of a testator who has one or more children living or has no child living when a last will is executed, clarifies that a pretermitted child succeeds to the portion of the testator's estate to which the child would have been entitled had the testator died intestate without a surviving spouse, except for that portion of the estate not devised or bequeathed to the other parent of the pretermitted child. The bill prohibits the portion of the testator's estate to which such a pretermitted child is entitled from reducing the portion of the testator's estate passing to the testator's surviving spouse by more than one-half if the pretermitted child's other parent is not the surviving spouse of the testator.

C.S.H.B. 2046 provides that a will executed in another state or a foreign country and self-proved in accordance with the laws of the state or foreign country of the testator's domicile at the time of the execution, in addition to a self-proved will as provided by the Texas Probate Code, requires no further proof of its execution with the formalities and solemnities and under the circumstances required to make the will valid. The bill establishes that for such purposes, a will is considered self-proved if the will, or an affidavit of the testator and attesting witnesses attached or annexed to the will, provides the following:

- that the testator declared that the testator signed the instrument as the testator's will, the testator signed it willingly or willingly directed another to sign for the testator, the testator executed the will as the testator's free and voluntary act for the purposes expressed in the instrument, the testator is of sound mind and under no constraint or

undue influence, and the testator is 18 years of age or over, or if under that age, was or had been lawfully married, or was then a member of the armed forces of the United States, an auxiliary of the armed forces of the United States, or the United States Maritime Service; and

- that the witnesses declared that the testator signed the instrument as the testator's will, the testator signed it willingly or willingly directed another to sign for the testator, each of the witnesses, in the presence and hearing of the testator, signed the will as witness to the testator's signing, and to the best of their knowledge the testator was of sound mind and under no constraint or undue influence, and the testator was 18 years of age or over, or if under that age, was or had been lawfully married, or was then a member of the armed forces of the United States, an auxiliary of the armed forces of the United States, or the United States Maritime Service.

C.S.H.B. 2046 reenacts and amends Section 128A, Texas Probate Code, as amended by Chapters 801 (S.B. 593) and 1170 (H.B. 391), Acts of the 80th Legislature, Regular Session, 2007, to redefine "beneficiary" for purposes of provisions of law relating to a notice to certain beneficiaries after probate of a will. The bill specifies that "beneficiary" includes a trustee of a trust, rather than a trust, entitled to receive property under the terms of a decedent's will and specifies that the term does not include a person, entity, state, governmental agency of the state, charitable organization, or trustee of a trust that would be entitled to receive property under the terms of a decedent's will on the occurrence of a contingency that has not occurred as of the date of the decedent's death. The bill makes provisions of law relating to a notice to certain beneficiaries after probate of a will inapplicable to the probate of a will as a muniment of title. The bill, in a provision of law requiring a personal representative to give certain notice after a will has been admitted to probate to the person or class of persons first eligible to receive trust income if the personal representative, as the trustee of the trust, is designated as a beneficiary, exempts the personal representative from the requirement to give that notice to a person eligible to receive trust income at the sole discretion of the trustee of a trust if the personal representative has given the notice to an ancestor of the person who has a similar interest in the trust and no apparent conflict exists between the ancestor and the person eligible to receive trust income.

C.S.H.B. 2046, in that same reenacted and amended provision, exempts a personal representative from the requirement to give certain notice after a will has been admitted to probate to a beneficiary who is entitled to receive aggregate gifts under the will with an estimated value of \$2,000 or less or who has received all gifts to which the beneficiary is entitled under the will not later than the 60th day after the date of the order admitting the decedent's will to probate. The bill exempts a personal representative from the requirement to give such notice to a beneficiary who, as an alternative to having received a copy of the will that was admitted to probate and having waived the right to receive the notice in a certain instrument, has received a written summary of the gifts to the beneficiary under the will and has waived the right to receive the notice in a certain instrument. The bill requires that instrument to include the written summary of the gifts to the beneficiary under the will as an alternative to acknowledging the receipt of the copy of the will. The bill requires the notice to certain beneficiaries after a will has been admitted to probate to include a summary of the gifts to the beneficiary under the will, the court in which the will was admitted to probate, the docket number assigned to the estate, the date the will was admitted to probate, and, if different, the date the court appointed the personal representative, as an alternative to including a copy of the will that was admitted to probate and the order admitting the will to probate. The bill, in a provision setting out information required to be included in a sworn affidavit of a personal representative or a certificate signed by the personal representative's attorney filed with the clerk of the court in which the decedent's estate is pending, requires the affidavit or certificate to state the name and address of each beneficiary to whom the notice was not required to be given under certain provisions of the bill, rather than the name and address of each beneficiary who filed a waiver of the notice.

C.S.H.B. 2046, in a provision prohibiting a court from appointing an independent administrator

to serve in an intestate administration until the parties seeking the appointment have been determined, specifies that the court may not appoint the administrator unless, in addition to until, the parties are determined, and provides that the parties are determined through a proceeding to declare heirship under provisions of the Texas Probate Code relating to that determination, rather than requiring those parties to offer clear and convincing evidence to the court that they constitute all of the decedent's heirs. The bill, in provisions of law authorizing the court to appoint a guardian ad litem to make application for independent administration on behalf of a distributee of the estate who is an incapacitated person who has no guardian, alternatively authorizes, if that distributee is a minor, the natural guardian or guardians of the minor to consent on the minor's behalf if there is no conflict of interest between the minor and the natural guardian or guardians. The bill, in provisions of law authorizing a distributee or distributees of certain trusts to apply for independent administration on behalf of the trusts, authorizes the trustee or cotrustee of the trust to file the application or give the consent if the trust beneficiary who is considered to be a distributee is an incapacitated person, provided that the trustee or cotrustee is not the person proposed to serve as the independent executor.

C.S.H.B. 2046 authorizes the court, in a situation in which a decedent does not have a will or a decedent's will does not contain language authorizing the personal representative to sell real property or contains language that is not sufficient to grant the representative that authority, to include in an order appointing an independent executor under provisions of law relating to independent administration of an estate any general or specific authority regarding the power of the independent executor to sell real property that may be consented to by the beneficiaries who are to receive any interest in the real property in the application for independent administration or in their consents to the independent administration. The bill authorizes the independent executor, in such event, to sell the real property under the authority granted in the court order without the further consent of those beneficiaries. The bill authorizes, unless the Texas Probate Code specifically provides otherwise, any action that a personal representative subject to court supervision is authorized to take with or without a court order to be taken by an independent executor without a court order. The bill establishes that the other provisions of law relating to independent administration are designed to provide additional guidance regarding independent administrations in specified situations and are not designed to limit by omission or otherwise the application of the general principles set forth in those provisions.

C.S.H.B. 2046 establishes that for purposes of provisions of the bill relating to the power of sale of estate property, the term "independent executor" does not include an independent administrator. The bill establishes that an independent executor, in addition to any power of sale of estate property given in the will, and an independent administrator have the same power of sale for the same purposes as a personal representative has in a supervised administration, but without the requirement of court approval, and conditions that power upon being limited by the terms of the will. The bill makes the procedural requirements that apply to a supervised administration inapplicable to this provision. The bill provides that a person who is not a devisee or heir is not required to inquire into the power of sale of estate property of the independent executor or independent administrator or the propriety of the exercise of the power of sale if the person deals with the independent executor or independent administrator in good faith and a power of sale is granted to the independent executor in the will, a power of sale is granted under provisions of law relating to granting power of sale by agreement in the court order appointing the independent executor or independent administrator, or the independent executor or independent administrator provides an affidavit, executed and sworn to under oath and recorded in the deed records of the county where the property is located, that the sale is necessary or advisable for certain purposes described in the Texas Probate Code.

C.S.H.B. 2046 provides that, as to acts undertaken in good faith reliance, such an affidavit is conclusive proof, as between a purchaser of property from an estate, and the personal representative of the estate or the heirs and distributees of the estate, with respect to the authority of the independent executor or independent administrator to sell the property. The bill provides that the signature or joinder of a devisee or heir who has an interest in the property being sold is

not necessary for the purchaser to obtain all right, title, and interest of the estate in the property being sold. The bill specifies that its provisions relating to the power of sale of estate property do not relieve the independent executor or independent administrator from any duty owed to a devisee or heir in relation, directly or indirectly, to the sale and that those provisions do not limit the authority of an independent executor or independent administrator to take any other action without court supervision or approval with respect to estate assets that are authorized to take place in a supervised administration, for purposes and within the scope otherwise authorized by the Texas Probate Code, including the authority to enter into a lease and to borrow money.

C.S.H.B. 2046 requires the notice given by a personal representative before an estate administration is closed to an unsecured creditor having claim for money against the estate stating that the creditor must present a claim within a certain period to include, in addition to the other required information and in order to be effective, a statement that a claim may be effectively presented by only one of the methods prescribed by provisions of law relating to the payment of claims and delivery of exemptions and allowances. The bill requires such a creditor whose claim is secured by real property to record a notice of the creditor's election to have the creditor's claim approved as a matured secured claim to be paid in due course of administration in the deed records of the county in which the real property is located. The bill provides that if no election to be a matured secured creditor is made, or the election is made but not within the prescribed period or is made within the prescribed period but the creditor has a lien against real property and fails to record notice of the claim in the deed records as required within the prescribed period, the claim shall be a preferred debt and lien against the specific property securing the indebtedness and shall be paid according to the terms of the contract that secured the lien.

C.S.H.B. 2046 provides that a claim approved as a matured secured claim remains secured by any lien or security interest against the specific property securing payment of the claim but subordinated to the payment from the property of claims having a higher classification under the Texas Probate Code. The bill establishes that the secured creditor is not entitled to exercise any remedies in a manner that prevents the payment of the higher priority claims and allowances and, during the administration of the estate, is not entitled to exercise any contractual collection rights, including the power to foreclose, without either the prior written approval of the independent executor or court approval. The bill prohibits these provisions from being construed to suspend or otherwise prevent a creditor with a matured secured claim from seeking judicial relief of any kind or from executing any judgment against an independent executor. The bill authorizes any third party acting in good faith to obtain good title with respect to an estate asset, except with respect to real property, acquired through a secured creditor's extrajudicial collection rights, without regard to whether the creditor had the right to collect the asset or whether the creditor acted improperly in exercising those rights during an estate administration due to having elected matured secured status. The bill requires, if a claim approved or established by suit as a matured secured claim is secured by property passing to one or more devisees in accordance with provisions of the Texas Probate Code relating to the devisee having no right to exoneration from the testator's estate for payment of a debt, the independent executor to collect from the devisees the amount of the debt and pay that amount to the claimant or to sell the property and pay out of the sale proceeds the claim and associated expenses of sale consistent with provisions of law relating to certain secured claims against an estate applicable to court supervised administrations.

C.S.H.B. 2046 provides that during an independent administration, a secured creditor whose claim is a preferred debt and lien against property securing the indebtedness is free to exercise any judicial or extrajudicial collection rights, including the right to foreclosure and execution, conditioned upon the creditor not having the right to conduct a nonjudicial foreclosure sale within six months after letters are granted. The bill requires an unsecured creditor who has a claim for money against an estate and who receives a notice from a personal representative before an estate administration is closed stating that the creditor must present a claim within a certain time period to give to the independent executor notice of the nature and amount of the

claim not later than the 120th day after the date the notice is received or the claim is barred. The bill requires such a notice to the independent executor and the notice to the executor of a creditor's election to have the creditor's claim for money secured by real or personal property of the estate approved as a matured secured claim to be contained in specified documents. The bill specifies that this provision does not exempt a creditor who elects matured secured status from other filing requirements required under provisions of law relating to secured claims for money, to the extent those requirements are applicable. The bill limits the running of the statute of limitations to being tolled by a written approval of a claim signed by an independent executor, a pleading filed in a suit pending at the time of the decedent's death, or a suit brought by the creditor against the independent executor, except as otherwise provided by provisions of law in the Civil Practice and Remedies Code relating to the effect of death on the statute of limitations. The bill specifies that, in particular, the presentation of a statement or claim, or a notice with respect to a claim, to an independent executor does not toll the running of the statute of limitations with respect to that claim. The bill makes the procedural provisions of the Texas Probate Code governing creditor claims in supervised administrations inapplicable to independent administrations, except as otherwise provided by provisions of law relating to the payment of claims and delivery of exemptions and allowances. The bill provides examples of procedural provisions that are inapplicable to independent administrations.

C.S.H.B. 2046 changes the date a person who is interested in an estate may petition the county court for an accounting and distribution from any time after the expiration of two years from the date that an independent administration was created and the order appointing an independent executor was entered to any time after the expiration of two years from the date the court clerk first issues letters testamentary or of administration to any personal representative of the estate.

C.S.H.B. 2046 authorizes an independent executor to file with the court a notice of closing of the estate as an alternative to filing a closing report. The bill authorizes certain signed receipts or other proof of delivery of property to distributees named in the closing report to be included in the closing report filed by an independent executor and verified by affidavit, as opposed to those receipts or other proof being filed separately from the closing report. The bill authorizes a notice of closing of the estate to be verified by affidavit and sets out the information required to be stated in the closing report. The bill requires the independent executor to provide to each distributee of the estate a copy of the notice of closing estate before filing the notice. The bill requires the notice of closing estate filed by the independent executor to include signed receipts or other proof that all distributees have received that copy of the notice. The bill establishes that the independent administration of an estate is considered closed 30 days after the date of the filing of a closing report or notice of closing estate unless an interested person files an objection with the court within that time and establishes that if such an objection is filed within the 30-day period, the independent administration of the estate is closed when the objection has been disposed of or the court signs an order closing the estate. The bill provides that the closing of an independent administration by filing of a closing report or notice of closing estate, rather than filing the affidavit and proof of delivery, terminates the power and authority of the independent executor but that the closing does not relieve the executor from liability for any false statements contained in the report or notice, rather than in the affidavit. The bill establishes that the filing of a notice of closing estate does not release the sureties on the bond of an independent executor. The bill makes conforming and nonsubstantive changes relating to the independent executor's filing of either a closing report or notice instead of an affidavit.

C.S.H.B. 2046 removes a provision relating to estate property owned in common with others. The bill authorizes the independent executor, if there are no unpaid debts, except for secured debts, taxes, and administration expenses, at the time the inventory is due, including any extensions, to file with the court clerk, in lieu of the inventory, appraisal, and list of claims, an affidavit stating that all debts, except for secured debts, taxes, and administration expenses, are paid and that all beneficiaries have received a verified, full, and detailed inventory. The bill requires the affidavit in lieu of the inventory, appraisal, and list of claims to be filed within

the 90-day period after the independent executor's qualification, unless the court grants an extension. The bill defines "beneficiary" for purposes of law relating to inventory and appraisal and the affidavit in lieu of inventory, appraisal, and list of claims and makes conforming and nonsubstantive changes relating to these provisions.

C.S.H.B. 2046, if the independent executor files an affidavit in lieu of filing an inventory, appraisal, and list of claims, entitles any person interested in the estate, including a possible heir of the decedent or a beneficiary under a prior will of the decedent, to receive a copy of the inventory, appraisal, and list of claims from the independent executor on written request; authorizes the independent executor to provide a copy of the inventory, appraisal, and list of claims to any person the independent executor believes in good faith may be a person interested in the estate without liability to the estate or its beneficiaries; authorizes a person interested in the estate to apply to the court for an order compelling the independent executor to provide a copy of the inventory, appraisal, and list of claims to the interested person; and authorizes the court, in its discretion, to compel the independent executor to provide the copy of the inventory, appraisal, and list of claims to the interested person or to deny the application.

C.S.H.B. 2046 requires the representative to immediately file with the clerk of court a supplemental affidavit in lieu of the inventory and appraisal stating that all beneficiaries have received a verified, full, and detailed supplemental inventory and appraisal if, after the filing of an affidavit in lieu of the inventory and appraisal, property or claims not included in the inventory given to the beneficiaries comes to the possession or knowledge of the representative.

C.S.H.B. 2046 prohibits a survivorship agreement conferring a right of survivorship on parties to a joint account from being inferred from the mere fact that the account is designated as JT TEN, Joint Tenancy, or joint, or with other similar language, as an alternative to the mere fact that the account is a joint account. The bill prohibits a survivorship agreement to create a right of survivorship in community property from being inferred from the mere fact that an account is a joint account or that the account is designated as JT TEN, Joint Tenancy, or joint, or with other similar language.

C.S.H.B. 2046 applies provisions of law revoking certain nontestamentary transfers on the dissolution of marriage to any relative of a former spouse who is not a relative of a divorced individual, in addition to the former spouse. The bill, in a provision of law describing the limitations on liability of a bona fide purchaser of property from a divorced individual's former spouse or a person who receives from the former spouse a payment, benefit, or property in partial or full satisfaction of an enforceable obligation, extends the applicability of that provision to property purchased from any relative of the former spouse who is not a relative of the divorced individual, in addition to the former spouse. The bill, in a provision describing the liability of a divorced individual's former spouse to a person who is entitled to a payment, benefits, or property received by the former spouse, not for value, and to which the former spouse is not entitled, extends the applicability of this provision to a relative of the former spouse who is not a relative of the divorced individual, in addition to the former spouse.

C.S.H.B. 2046 defines "charitable organization" and "relative" and redefines "divorced individual," "party," and "P.O.D. payee."

C.S.H.B. 2046 amends the Government Code to make a conforming change relating to the jurisdiction, powers, and duties of statutory probate court judges.

C.S.H.B. 2046 makes changes in law made by the bill relating to the extension of time for a disclaimer with respect to an interest in property passing by reason of the death of a decedent dying after December 31, 2009, but before December 17, 2010, applicable to all disclaimers made after December 31, 2009, for decedents dying after December 31, 2009, but before December 17, 2010. The bill makes the provisions of the bill relating to the extension of time



for a disclaimer with respect to an interest in property passing by reason of the death of a decedent dying after December 31, 2009, but before December 17, 2010, effective on passage or, if the bill does not receive the necessary vote, September 1, 2011.

C.S.H.B. 2046 makes changes in law made by the bill to provisions relating to certain definitions and right of survivorship applicable only to multiple-party accounts created or existing on or after the bill's effective date and specifies that those changes are intended to clarify existing law. The bill makes changes in law made by the bill to provisions relating to formalities as they relate to an agreement for a right of survivorship in community property applicable only to agreements created or existing on or after the bill's effective date and specifies that those changes are intended to overturn the ruling of the Texas Supreme Court in *Holmes v. Beatty*, 290 S.W.3d 852 (Tex. 2009).

C.S.H.B. 2046 establishes that, to the extent of any conflict, the bill's provisions prevail over another act of the 82nd Legislature, Regular Session, 2011, relating to nonsubstantive additions to and corrections in enacted codes.

C.S.H.B. 2046 makes conforming and nonsubstantive changes.

C.S.H.B. 2046 repeals, effective January 1, 2014, the following provisions of the Estates Code:

- Section 202.003, as effective January 1, 2014, relating to the venue for a proceeding to declare heirship
- Section 352.003, as effective January 1, 2014, relating to alternate compensation for an executor, administrator, or temporary administrator of an estate

C.S.H.B. 2046 repeals, effective September 1, 2011, the following provisions of the Texas Probate Code:

- Section 5, relating to jurisdiction of probate proceedings, notwithstanding the transfer of that section to the Estates Code and its redesignation as Section 5 of that code, as effective January 1, 2014, by Section 2, Chapter 680 (H.B. 2502), Acts of the 81st Legislature, Regular Session, 2009
- Section 48(c), relating to the authorization of a probate court in which the proceedings for the guardianship of the estate of a ward who dies intestate were pending at the time of the death of the ward to determine and declare heirship and shares and interest of the heirs
- Section 70, relating to a provision in a will for the management of separate property
- Section 251(f), relating to the requirement that a list of claims state what portion of the claims, if any, is held in common with others

C.S.H.B. 2046 repeals, effective January 1, 2014, the following provisions of the Texas Probate Code, as amended by this bill:

- Section 4D, relating to jurisdiction of a contested probate proceeding in a county with no statutory probate court or statutory county court
- Section 4H, relating to concurrent jurisdiction of a statutory probate court with a district court
- Section 6, relating to the venue for probate of wills and administration of estates of decedents, notwithstanding the transfer of that section to the Estates Code and its redesignation as Section 6 of that code, as effective January 1, 2014, by Section 2, Chapter 680 (H.B. 2502), Acts of the 81st Legislature, Regular Session, 2009
- Section 8, relating to concurrent venue and transfer of proceedings, notwithstanding the transfer of that section to the Estates Code and its redesignation as Section 8 of that code,

as effective January 1, 2014, by Section 2, Chapter 680 (H.B. 2502), Acts of the 81st Legislature, Regular Session, 2009

- Section 48, relating to when and where to institute proceedings to declare heirship
- Section 49, relating to who may institute proceedings to declare heirship
- Section 59, relating to requisites of a will
- Section 64, relating to a forfeiture clause in a will
- Section 67, relating to a pretermitted child
- Section 84, relating to proof of a written will produced in court
- Section 222, provisions relating to the removal of a personal representative
- Section 241, relating to the compensation of a personal representative
- Section 250, relating to the inventory and appraisal of estate property
- Section 260, relating to the failure of joint personal representatives to return an inventory, appraisal, and list of claims
- Section 436, relating to definitions in provisions applicable to multiple-party accounts
- Section 439, relating to the right of survivorship in provisions applicable to multiple-party accounts
- Section 452, relating to formalities in a right of survivorship in community property
- Section 471, relating to definitions in provisions applicable to certain nontestamentary transfers
- Section 472, relating to the revocation of certain nontestamentary transfers on the dissolution of marriage
- Section 473, relating to liability for certain payments, benefits, and property in provisions applicable to certain nontestamentary transfers

C.S.H.B. 2046 repeals, effective January 1, 2014, the following provisions of the Texas Probate Code, as added by this bill:

- Section 6A, relating to the venue for an action related to a probate proceeding in a statutory probate court
- Section 6B, relating to the venue for certain actions involving a personal representative
- Section 6C, relating the venue for heirship proceedings
- Section 6D, relating to the venue for certain actions involving breach of fiduciary duty
- Section 8A, relating to the transfer of venue in a probate proceeding
- Section 8B, relating to the validation of prior probate proceedings upon transfer of a proceeding
- Section 145A, relating to granting power of sale by agreement
- Section 145B, relating to the authorization of independent executors to act without court approval
- Section 145C, relating to the power of sale of estate property

C.S.H.B. 2046 repeals, effective January 1, 2014, the following provisions of the Texas Probate Code, as amended by this bill, notwithstanding the transfer of Sections 145, 146, 149B, and 151, Texas Probate Code, to the Estates Code and their redesignation as Sections 145, 146, 149B, and

151 of that code, as effective January 1, 2014, by Section 3, Chapter 680 (H.B. 2502), Acts of the 81st Legislature, Regular Session, 2009:

- Section 145, relating to independent administration of an estate
- Section 146, relating to payment of claims and delivery of exemptions and allowance by the independent executor
- Section 149B, relating to the accounting and distribution of an estate
- Section 151, relating to the closing of an independent administration by affidavit

C.S.H.B. 2046 repeals, effective January 1, 2014, the following provisions of the Texas Probate Code, notwithstanding the transfer of Sections 147, 148, 149, 149A, 149C, 149D, 149E, 149F, 149G, 150, 152, 153, 154, 154A, Texas Probate Code, to the Estates Code and their redesignation as Sections 147, 148, 149, 149A, 149C, 149D, 149E, 149F, 149G, 150, 152, 153, 154, 154A of that code, as effective January 1, 2014, by Section 3, Chapter 680 (H.B. 2502), Acts of the 81st Legislature, Regular Session, 2009:

- Section 147, relating to enforcement of claims by suit against an independent executor
- Section 148, relating to the requirement of heirs and certain other persons to give bond under certain conditions
- Section 149, relating to the requirement of an independent executor to give bond under certain conditions
- Section 149A, relating to the accounting of an estate by the independent executor
- Section 149C, relating to the removal of an independent executor
- Section 149D, relating to the distribution of the remaining estate after all the estate's debts have been paid
- Section 149E, relating to the judicial discharge of an independent executor
- Section 149F, relating to court costs and other charges related to a proceeding for judicial discharge of an independent executor
- Section 149G, relating to cumulative rights and remedies
- Section 150, relating to partition and distribution or sale of property incapable of division
- Section 152, relating to closing an independent administration on application by a distributee
- Section 153, relating to the issuance of letters testamentary
- Section 154, relating to the powers of an administrator who succeeds an independent executor
- Section 154A, relating to a court-appointed successor independent executor

### **EFFECTIVE DATE**

Except as otherwise provided, September 1, 2011.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.H.B. 2046 omits a provision included in the original authorizing a judge of certain county courts, if the judge transfers a contested matter in a probate proceeding to a district court on the judge's own motion or on the motion of a party to the proceeding, to transfer the entire proceeding to that court on the judge's own motion or on the motion of a party and specifying that the district court to which the entire probate proceeding is transferred is authorized to hear the proceeding as if originally filed in that court.

C.S.H.B. 2046 omits a provision included in the original specifying that a district court to which an entire probate proceeding is transferred, as an alternative to a contested matter in the proceeding, has the jurisdiction and authority granted to a statutory probate court by the Texas Probate Code. The substitute omits a provision included in the original requiring a district court to which an entire probate proceeding is transferred, on resolution of the contested matter in the proceeding, including an appeal of the matter, to return the entire proceeding to the county court for further proceedings not inconsistent with the orders of the district court or court of appeals, as applicable. The substitute omits a provision included in the original authorizing the clerk of a district court to which an entire probate proceeding is transferred, in addition to a contested matter, to perform in relation to the transferred matter or proceeding, as applicable, any function a county clerk is authorized to perform with respect to that type of matter or proceeding.

C.S.H.B. 2046 differs from the original by prohibiting certain proceedings to determine the deceased ward's heirs from being brought as part of the guardianship proceedings with respect to the ward's estate and requiring the proceeding to be filed as a separate cause, whereas the original authorizes such a proceeding to be brought as part of the guardianship proceedings with respect to the ward's estate.

C.S.H.B. 2046 contains a provision not included in the original establishing that venue for a proceeding brought by the attorney general alleging breach of a fiduciary duty by a charitable entity or a fiduciary or managerial agent of a charitable trust is determined under the Property Code.

C.S.H.B. 2046 differs from the original in provisions relating to the deadline options for the filing of a written memorandum of disclaimer by a beneficiary that is a charitable organization or government agency of the state, by adding the option of filing of the affidavit in lieu of the inventory, appraisal, and list of claims.

C.S.H.B. 2046 contains a provision not included in the original relating to the extension of time for certain disclaimers and making the provision inapplicable to a disclaimer made by a beneficiary that is a charitable organization or a governmental agency of the state.

C.S.H.B. 2046 omits a provision included in the original, in a provision of law relating to a provision in a will that would cause a forfeiture of or void a devise in favor of a person for bringing certain court actions, including the person's descendants or a trust for the benefit of a person or the person's descendants to the persons affected by the forfeiture or void.

C.S.H.B. 2046, in provisions relating to a pretermitted child who is not mentioned or provided for in the will of a testator who has one or more children living or has no child living when a last will is executed, differs from the original by clarifying that a pretermitted child succeeds to the portion of the testator's estate to which the child would have been entitled had the testator died intestate without a surviving spouse, except for that portion of the estate not devised or bequeathed to the other parent of the pretermitted child, whereas the original makes the excepted portion of the estate the portion not devised or bequeathed to either the testator's surviving spouse or the other parent of the pretermitted child. The substitute contains a provision not included in the original prohibiting the portion of the testator's estate to which a certain pretermitted child is entitled from reducing the portion of the testator's estate passing to the testator's surviving spouse by more than one-half if the pretermitted child's other parent is not the surviving spouse of the testator.

C.S.H.B. 2046 differs from the original by providing that a will executed in another state or a foreign country and self-proved in accordance with the laws of the state or foreign country of the testator's domicile at the time of the execution requires no further proof of its execution, whereas the original provides that a self-proved will executed in another state requires no further proof of its execution.

C.S.H.B. 2046 contains provisions not included in the original establishing conditions under which a will is considered self-proved for certain purposes.

C.S.H.B. 2046 contains a provision not included in the original redefining "beneficiary" for purposes of provisions of law relating to a notice to certain beneficiaries after probate of a will. The substitute contains a provision not included in the original making provisions of law relating to a notice to certain beneficiaries after probate of a will inapplicable to the probate of a will as a muniment of title.

C.S.H.B. 2046 contains provisions not included in the original exempting a personal representative from the requirement to give certain notice after a will has been admitted to probate to a person eligible to receive trust income at the sole discretion of the trustee of a trust under certain conditions. The substitute contains a provision not included in the original exempting a personal representative from the requirement to give such notice to a beneficiary who, as an alternative to having received a copy of the will that was admitted to probate and having waived the right to receive the notice in a certain instrument, has received a written summary of the gifts to the beneficiary under the will and has waived the right to receive the notice in an instrument that contains certain information.

C.S.H.B. 2046 contains a provision not included in the original requiring the notice to certain beneficiaries after a will has been admitted to probate to include a summary of the gifts to the beneficiary under the will along with certain other information as an alternative to including a copy of the will that was admitted to probate and the order admitting the will to probate. The substitute contains a provision not included in the original requiring the personal representative to file a sworn affidavit of the personal representative, or a certificate signed by the personal representative's attorney, stating, among other information, the name and address of each beneficiary to whom such notice was not required to be given under certain provisions of the bill.

C.S.H.B. 2046 omits a provision included in the original establishing that an independent executor has the power of sale of estate property set forth in the will, if applicable, and authorizing that power to be exercised without court approval as otherwise provided for independent administrations.

C.S.H.B. 2046 omits a provision included in the original relating to the compensation of personal representatives.

C.S.H.B. 2046 differs from the original by authorizing the independent executor, under certain conditions, to file with the court clerk, in lieu of the inventory, appraisal, and list of claims, an affidavit stating that all debts, except for secured debts, taxes, and administration expenses, are paid and that all beneficiaries have received a verified, full, and detailed inventory, whereas the original authorizes the representative to file such an affidavit.

C.S.H.B. 2046 contains the following provisions not included in the original, on the condition of an independent executor filing an affidavit in lieu of an inventory, appraisal, and list of claims:

- entitling any person interested in the estate to receive a copy of the inventory, appraisal, and list of claims from the independent executor on written request;
- authorizing the independent executor to provide a copy of the inventory, appraisal, and list of claims to any person the independent executor believes in good faith may be a person interested in the estate without liability to the estate or its beneficiaries;
- authorizing a person interested in the estate to apply to the court for an order compelling the independent executor to provide a copy of the inventory, appraisal, and list of

claims to the interested person; and

- authorizing the court to compel the independent executor to provide the copy of the inventory, appraisal, and list of claims to the interested person or to deny the application.

C.S.H.B. 2046 differs from the original by authorizing a surviving spouse or any person who is authorized to act on behalf of minor children of the deceased, and any unmarried children remaining with the family of the deceased, to apply to the court to have certain exempt property set aside before the filing of the affidavit in lieu of the inventory, appraisal, and list of claims, whereas the original authorizes such application after the filing of that affidavit.

C.S.H.B. 2046 contains provisions not included in the original as follows:

- making changes in law made by the bill relating to the extension of time for a disclaimer with respect to an interest in property passing by reason of the death of a decedent dying after December 31, 2009, but before December 17, 2010, applicable to all disclaimers made after December 31, 2009, for decedents dying after December 31, 2009, but before December 17, 2010; and
- making provisions of the bill relating to the extension of time for a disclaimer with respect to an interest in property passing by reason of the death of a decedent dying after December 31, 2009, but before December 17, 2010 effective immediately if the bill receives the appropriate vote, or September 1, 2011, if the bill does not receive the vote necessary for immediate effect.

C.S.H.B. 2046 contains a provision not included in the original repealing, effective January 1, 2014, Section 6D, Texas Probate Code, the provision relating to the venue for certain actions involving breach of fiduciary duty.

C.S.H.B. 2046 contains a provision not included in the original establishing that, to the extent of any conflict, the bill's provisions prevail over another act of the 82nd Legislature, Regular Session, 2011, relating to nonsubstantive additions to and corrections in enacted codes.

C.S.H.B. 2046 differs from the original in nonsubstantive ways by conforming to certain bill drafting conventions and by making conforming changes in certain procedural provisions.