

## **BILL ANALYSIS**

H.B. 2492  
By: Naishtat  
Judiciary & Civil Jurisprudence  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

Observers note that a family allowance provided to certain members of a decedent's family does not extend to an incapacitated adult child even though such an adult child is equally in need of maintenance and support and may be left unprotected when creditors deplete an estate. The observers further note that an unprotected incapacitated adult child will inevitably require additional funds from public assistance agencies and the state. H.B. 2492 seeks to provide a solution to this issue by ensuring the availability of private funds for incapacitated adult children.

### **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**

H.B. 2492 amends the Texas Probate Code, in a provision relating to an application for an order of no administration of an estate under certain circumstances, to include adult incapacitated children of a decedent in the category of those who may file or have filed on their behalf such an application. The bill, in a provision exempting certain property of the decedent to be set apart for the use and benefit of the surviving spouse, minor children, and unmarried children remaining with the family of the deceased, clarifies that the unmarried children are adult children and includes an adult incapacitated child of the decedent among those persons for whom the property is set apart. The bill authorizes a person who is authorized to act on behalf of the child to apply to the court to have all exempt property other than the homestead set aside by filing an application and a verified affidavit listing all of the other property that the applicant claims is exempt.

H.B. 2492, in provisions of law setting out the requirements for delivering exempt property set apart to the surviving spouse and children, includes adult incapacitated children of a decedent in the category of children to whom the exempt property is required to be delivered under certain circumstances. The bill, in the same provisions, if there is no surviving spouse or if the children of the deceased are not the children of the surviving spouse, requires the delivery of that property to be made to the guardian of such a child of the deceased or to another appropriate person, as determined by the court, on behalf of each of the children who is a minor, to each of those children who is of lawful age and not incapacitated, and to the guardian of each of those children who is an incapacitated adult or to another appropriate person, as determined by the court, on behalf of the adult incapacitated child if there is no guardian.

H.B. 2492, in a provision of law setting out requirements and procedures relating to an allowance paid to certain survivors of a deceased person in lieu of exempt property, includes among the children of a decedent to whom such an allowance is required to be paid an adult incapacitated child of the decedent. The bill, in provisions of law setting out requirements and procedures relating to a family allowance paid to certain survivors of a deceased person, includes among those survivors an adult incapacitated child. The bill makes nonsubstantive and

conforming changes.

H.B. 2492 amends the Estates Code as enacted by Article 1, H.B. 2492, Acts of the 82nd Legislature, Regular Session, 2011, effective January 1, 2014, to incorporate in that code the bill's substantive and nonsubstantive provisions amending the Texas Probate Code. The bill makes these provisions effective January 1, 2014.

H.B. 2492 repeals the following provisions of the Texas Probate Code effective January 1, 2014:

- Section 139
- Section 140
- Section 143
- Sections 271(a) and (b)
- Section 272
- Section 273
- Section 274
- Section 275
- Section 276
- Section 286
- Section 287
- Section 288
- Section 290
- Section 291
- Section 292

**EFFECTIVE DATE**

Except as otherwise provided, September 1, 2011.