

## **BILL ANALYSIS**

H.B. 2759  
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Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

The Texas Legislative Council is required by law (Section 323.007, Government Code) to carry out a complete nonsubstantive revision of the Texas statutes. The process involves reclassifying and rearranging the statutes in a more logical order, employing a numbering system and format that will accommodate future expansion of the law, eliminating repealed, invalid, duplicative, and other ineffective provisions, and improving the draftsmanship of the law, if practicable, to promote the purpose of making the statutes more accessible, understandable, and usable without altering the sense, meaning, or effect of the law. In 1965 the council adopted a long-range plan of compiling the law into 26 codes arranged by general topics; the council now has a plan to compile the law into 27 codes.

The Estates Code includes the substance of the provisions in the current Texas Probate Code. The 81st Legislature enacted Title 1 and Subtitles A through M, Title 2, Estates Code, representing a nonsubstantive revision of the provisions of the Texas Probate Code applicable to decedents' estates, and redesignated without revising the remaining provisions of the Texas Probate Code as Subtitles X, Y, and Z, Title 2, Estates Code, and Title 25, Estates Code. House Bill 2759 proposes Subtitle P, Title 2, Estates Code, as a revision of the durable powers of attorney statutes and Title 3, Estates Code, as a revision of the statutes relating to guardianships, guardianship-related proceedings, and alternatives to guardianships. Provisions relating to scope, jurisdiction, and venue for guardianship proceedings, and a provision relating to payment for certain professional services in guardianship proceedings, have been redesignated without revision as Subtitles Y and Z of Title 3, Estates Code.

Subtitle P, Title 2, and the revised provisions in Title 3, Estates Code, are divided into chapters. Each proposed chapter is divided into subchapters, if appropriate, and is further divided into sections. Sections are numbered decimally, and the number to the left of the decimal point is the same as the chapter number. Gaps in chapter and section numbering are for future expansion.

The council legal staff has taken meticulous care to ensure that no substantive change has been made in the law and to preserve any ambiguity or interpretation that may exist in current law.

The council staff has consulted with and provided proposed chapters for comment to certain members of the Real Estate, Probate, and Trust Law Section of the State Bar of Texas, who distributed the chapters for review and comment to additional members of that section. Other interested persons, including statutory probate court judges, were notified about the availability of the chapters for review. The council staff consulted with all persons who sent comments to the council, including staff of the Office of Court Administration of the Texas Judicial System and the Department of Aging and Disability Services. In addition, because the council has sought the widest possible review of the proposed chapters to be incorporated into the Estates Code, the chapters have been made available for that purpose on the Texas Legislative Council's Internet website.

The proposed chapters in Subtitle P, Title 2, and Subtitles A through I, Title 3, Estates Code, are a nonsubstantive revision of Texas law, meaning the substance of the law has not been altered.

The sole purpose of these provisions is to compile the relevant law, arrange it in a logical fashion, and rewrite it without altering its meaning or legal effect. If a particular source statute is ambiguous and the ambiguity cannot be resolved without a potential substantive effect, the ambiguity is preserved.

### **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**

Article 1 of the bill proposes Subtitle P, Title 2, and Title 3, Estates Code. Section 1.01 of the bill proposes Subtitle P, Title 2, Estates Code, which represents a nonsubstantive revision of provisions of the existing Texas Probate Code applicable to durable powers of attorney. Section 1.02 of the bill proposes Title 3, Estates Code, representing a nonsubstantive revision of provisions of the existing Texas Probate Code relating to guardianships, related proceedings, and alternatives to guardianship. Section 1.02 of the bill also establishes within Title 3, Estates Code, a structure for the future revision of provisions of the Texas Probate Code that are redesignated, but not revised, by this bill and for future expansion of the law.

Article 2 of the bill contains conforming amendments to previously enacted provisions of the Estates Code that reflect changes made by the current bill.

Article 3 of the bill provides transfers, redesignations, and repealers. Section 3.01 of the bill transfers and redesignates unrevised provisions of the Texas Probate Code that had been designated as other sections of the Estates Code by the 81st Legislature. Section 3.02 of the bill expressly repeals the provisions of the Texas Probate Code that have been revised in this bill or that have no continuing effect, and repeals certain transfers and redesignations made by the 81st Legislature. Section 3.03 of the bill states the legislative intent that provisions transferred under the Act from the Texas Probate Code include amendments and reenactments made by the 82nd and 83rd Legislatures.

Article 4 of the bill provides general matters. Section 4.01 of the bill is a statement of the legislative intent that the Act is a recodification only and that no substantive change is intended by the Act. Section 4.02 of the bill provides a saving provision preserving the effect of amendments, revisions, and reenactments made by the 83rd Legislature to provisions addressed in the Act. Section 4.03 of the bill provides an effective date of January 1, 2014.

### **EFFECTIVE DATE**

The bill takes effect January 1, 2014, to provide affected persons ample time to review more closely the provisions the legislature has enacted in the bill and to coincide with the effective date of the provisions of the Estates Code enacted by the 81st Legislature.