

## **BILL ANALYSIS**

C.S.H.B. 2899  
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Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Practitioners of probate law, including members of the judiciary, occasionally encounter and identify situations that require legislative changes to more effectively and efficiently pursue the interests of the general public and their clients. The purpose of C.S.H.B. 2899 is to make changes to the Texas Probate Code that have been identified by such practitioners in order to achieve greater effectiveness and efficiency.

### **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. 2899 amends the Texas Probate Code to authorize the judge of a probate court to appoint an attorney ad litem in any probate proceeding to represent the interests of a missing, as well as an unknown, heir or an unknown or missing person entitled to property deposited in an account in the court's registry under provisions of law relating to the distribution of remaining property. The bill requires the court order appointing an attorney ad litem to require the attorney ad litem to conduct a search for the person. The bill requires the court to tax the compensation the attorney ad litem receives for services as costs in the probate proceeding or, for an attorney ad litem appointed to represent the interests of an unknown or missing person, order that the compensation be paid from money in the account in the court's registry. The bill prohibits compensation paid under the bill to the attorney ad litem from exceeding 10 percent of the amount on deposit in the account on the date the attorney ad litem reports to the court the location of the previously unknown or missing person or on the date the money in the account is paid to the comptroller.

C.S.H.B. 2899 authorizes a proceeding to declare heirship of a decedent to be brought at any time after the decedent's death. The bill adds an unsecured creditor to the list of persons authorized to institute and maintain a proceeding to declare heirship. The bill prohibits a court from severing or bifurcating a proceeding on the applications for the probate of a will or for the appointment of a general personal representative where, before an original application has been heard, another application is filed.

C.S.H.B. 2899 authorizes a court, on its own motion or on motion of any interested person, and after the independent executor has been cited by certified mail, return receipt requested, to answer at a time and place stated in the citation, to remove any independent executor, appointed under provisions of the Texas Probate Code, under certain circumstances.

C.S.H.B. 2899 authorizes the court to remove an independent executor who fails to qualify in the manner and period required by law only if the independent executor fails to qualify on or before the 30th day after the date the court sends a notice by certified mail, return receipt requested, to the last known address of the independent executor and the independent executor's attorney,

notifying the independent executor and attorney of the court's intent to remove the independent executor for failure to qualify in the manner and period required by law. The bill authorizes the court to remove an independent executor who fails to return within 90 days after qualification, unless such time is extended by court order, an inventory of the estate property and list of claims, only if the independent executor fails to file such an inventory on or before the 30th day after the date the court sends a notice by certified mail, return receipt requested, to the last known address of the independent executor and the independent executor's attorney, notifying the independent executor and the attorney of the court's intent to remove the independent executor for failure to file the inventory and list of claims.

C.S.H.B. 2899 authorizes the court to remove an independent executor who cannot be served with notices or other processes because the independent executor's location is unknown, the independent executor is eluding service, or the independent executor is a nonresident of Texas who does not have a resident agent to accept service of process in any probate proceeding or other action relating to the estate. The bill authorizes removal of an independent executor who has misapplied, embezzled, or removed from Texas, or is about to misapply, embezzle, or remove from Texas, all or any part of the property committed to the independent executor's care, only on the presentation of clear and convincing evidence given under oath of such actions or intent.

C.S.H.B. 2899 sets out provisions relating to the penalty for failure to timely file an inventory, appraisal, and list of claims, applicable only to a personal representative, including an independent executor or administrator, who does not file an inventory, appraisal, and list of claims within the period prescribed by state law or any extension granted by the court. The bill authorizes any person interested in the estate on written complaint, or the court on the court's own motion, to have such a personal representative cited to file the inventory, appraisal, and list of claims and show cause for the failure to timely file. The bill authorizes the court on hearing to fine the representative in an amount not to exceed \$1,000 if the personal representative does not file the inventory, appraisal, and list of claims after being cited or does not show good cause for the failure to timely file. The bill makes the personal representative and the representative's sureties, if any, liable for any fine imposed and for all damages and costs sustained by the representative's failure and authorizes such fines, damages, and costs to be recovered in any court of competent jurisdiction.

C.S.H.B. 2899 requires a court to order a personal representative to deposit in an account in the court's registry, after final settlement of an estate, any remaining estate property that is money and to which a person who is unknown or missing is entitled. The bill requires the court to order the representative to sell, on terms the court determines are best, remaining estate property that is not money and to which a person who is unknown or missing is entitled. The bill requires the court to order the representative to deposit the sale proceeds in an account in the court's registry and to hold money deposited in an account under these provisions until the court renders an order requiring money in the account to be paid to the previously unknown or missing person who is entitled to the money or another order regarding the disposition of the money. The bill, in a provision requiring payment of a portion of an estate into the state treasury if no person who is entitled to that portion, except a resident minor without a guardian, makes any demand of that portion from the executor or administrator within six months after an order of the court approving the report of commissioners of partition, or within six months after the settlement of the final account of an executor or administrator, specifies that the requirement includes any portion deposited in an account in the court's registry. The bill makes conforming and nonsubstantive changes.

C.S.H.B. 2899 repeals, effective January 1, 2014, the above described provisions, except the provisions authorizing the court to remove an independent executor under certain circumstances.

C.S.H.B. 2899 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, to incorporate in

that code the bill's substantive and nonsubstantive provisions amending the Texas Probate Code, except the provisions authorizing the court to remove an independent executor under certain circumstances.

C.S.H.B. 2899 repeals, effective September 1, 2011, Section 29, Texas Probate Code, relating to the prohibition on requiring a bond when an appeal is taken by an executor or administrator unless such appeal personally concerns the executor or administrator.

C.S.H.B. 2899 repeals, effective January 1, 2014, Section 351.002, Estates Code, as effective on that date, relating to an appeal bond.

C.S.H.B. 2899 repeals, effective January 1, 2014, the following provisions of the Texas Probate Code, as amended or added by the bill:

- Section 34A
- Section 49(a)
- Section 77
- Section 83(a)
- Section 407
- Sections 408(b), (c), and (d)
- Section 427
- Section 48(d)
- Section 254

#### **EFFECTIVE DATE**

Except as otherwise provided, September 1, 2011.

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

C.S.H.B. 2899, in a provision authorizing a court to remove an independent executor on its own motion or on the motion of any interested person, differs from the original by specifying that the court may remove such an executor after the executor has been cited by certified mail, return receipt requested, to answer at a time and place stated in the citation, whereas the original specifies that the executor may be removed without notice by personal service. The substitute contains a transition provision not included in the original providing for the provisions and dates on which certain changes made to the Texas Probate Code are applicable.

C.S.H.B. 2899 contains provisions not included in the original incorporating into the Estates Code certain substantive and nonsubstantive provisions amending the Texas Probate Code and repealing certain provisions of the Texas Probate Code, effective January 1, 2014. The substitute contains a provision not included in the original repealing, effective January 1, 2014, provisions of the Estates Code relating to an appeal bond. The substitute contains provisions not included in the original making technical corrections and nonsubstantive changes.