

By: Naishtat

H.B. No. 2492

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to the family allowance, treatment of exempt property, and  
3 an allowance in lieu of exempt property in the administration of a  
4 decedent's estate.

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

6 ARTICLE 1. CHANGES TO TEXAS PROBATE CODE

7 SECTION 1.01. Sections 139, 140, and 143, Texas Probate  
8 Code, are amended to read as follows:

9 Sec. 139. APPLICATION FOR ORDER OF NO ADMINISTRATION. If  
10 the value of the entire assets of an estate, not including homestead  
11 and exempt property, does not exceed the amount to which the  
12 surviving spouse, and minor children, and adult incapacitated  
13 children of the decedent are entitled as a family allowance, there  
14 may be filed by or on behalf of the surviving spouse, or minor  
15 children, or adult incapacitated children an application in any  
16 court of proper venue for administration, or, if an application for  
17 the appointment of a personal representative has been filed but not  
18 yet granted, then in the court where such application has been  
19 filed, requesting the court to make a family allowance and to enter  
20 an order that no administration shall be necessary. The  
21 application shall state the names of the heirs or devisees, a list  
22 of creditors of the estate together with the amounts of the claims  
23 so far as the same are known, and a description of all real and  
24 personal property belonging to the estate, together with the

1 estimated value thereof according to the best knowledge and  
2 information of the applicant, and the liens and encumbrances  
3 thereon, with a prayer that the court make a family allowance and  
4 that, if the entire assets of the estate, not including homestead  
5 and exempt property, are thereby exhausted, the same be set aside to  
6 the surviving spouse, ~~and~~ minor children, and adult incapacitated  
7 children, as in the case of other family allowances provided for by  
8 this Code.

9       Sec. 140. HEARING AND ORDER UPON THE APPLICATION. Upon the  
10 filing of an application for no administration such as that  
11 provided for in the preceding Section, the court may hear the same  
12 forthwith without notice, or at such time and upon such notice as  
13 the court requires. Upon the hearing of the application, if the  
14 court finds that the facts contained therein are true and that the  
15 expenses of last illness, funeral charges, and expenses of the  
16 proceeding have been paid or secured, the court shall make a family  
17 allowance and, if the entire assets of the estate, not including  
18 homestead and exempt property, are thereby exhausted, shall order  
19 that no administration be had of the estate and shall assign to the  
20 surviving spouse, ~~and~~ minor children, and adult incapacitated  
21 children the whole of the estate, in the same manner and with the  
22 same effect as provided in this Code for the making of family  
23 allowances to the surviving spouse, ~~and~~ minor children, and adult  
24 incapacitated children.

25       Sec. 143. SUMMARY PROCEEDINGS FOR SMALL ESTATES AFTER  
26 PERSONAL REPRESENTATIVE APPOINTED. Whenever, after the inventory,  
27 appraisement, and list of claims has been filed by a personal

1 representative, it is established that the estate of a decedent,  
2 exclusive of the homestead and exempt property and family allowance  
3 to the surviving spouse, ~~and~~ minor children, and adult  
4 incapacitated children, does not exceed the amount sufficient to  
5 pay the claims of Classes One to Four, inclusive, as claims are  
6 hereinafter classified, the personal representative shall, upon  
7 order of the court, pay the claims in the order provided and to the  
8 extent permitted by the assets of the estate subject to the payment  
9 of such claims, and thereafter present the personal  
10 representative's ~~his~~ account with an application for the  
11 settlement and allowance thereof. Thereupon the court, with or  
12 without notice, may adjust, correct, settle, allow or disallow such  
13 account, and, if the account is settled and allowed, may decree  
14 final distribution, discharge the personal representative, and  
15 close the administration.

16 SECTION 1.02. Sections 271(a) and (b), Texas Probate Code,  
17 are amended to read as follows:

18 (a) Unless an affidavit is filed under Subsection (b) of  
19 this section, immediately after the inventory, appraisement, and  
20 list of claims have been approved, the court shall, by order, set  
21 apart:

22 (1) the homestead for the use and benefit of the  
23 surviving spouse and minor children; and

24 (2) all other property of the estate that is exempt  
25 from execution or forced sale by the constitution and laws of this  
26 state for the use and benefit of the surviving spouse, ~~and~~ minor  
27 children, ~~and~~ unmarried adult children remaining with the family

1 of the deceased, and each other adult child who is incapacitated.

2 (b) Before the approval of the inventory, appraisement, and  
3 list of claims:

4 (1) a surviving spouse or any person who is authorized  
5 to act on behalf of minor children of the deceased may apply to the  
6 court to have exempt property, including the homestead, set aside  
7 by filing an application and a verified affidavit listing all of the  
8 property that the applicant claims is exempt; and

9 (2) any unmarried adult child [~~children~~] remaining  
10 with the family of the deceased, any other adult child who is  
11 incapacitated, or a person who is authorized to act on behalf of the  
12 adult incapacitated child may apply to the court to have all exempt  
13 property other than the homestead set aside by filing an  
14 application and a verified affidavit listing all of the other  
15 property that the applicant claims is exempt.

16 SECTION 1.03. Sections 272, 273, 274, 275, 276, 286, 287,  
17 288, 290, 291, and 292, Texas Probate Code, are amended to read as  
18 follows:

19 Sec. 272. TO WHOM DELIVERED. The exempt property set apart  
20 to the surviving spouse and children shall be delivered by the  
21 executor or administrator without delay as follows: (a) If there  
22 be a surviving spouse and no children, or if the children, including  
23 any adult incapacitated children, be the children of the surviving  
24 spouse, the whole of such property shall be delivered to the  
25 surviving spouse. (b) If there be children and no surviving  
26 spouse, such property, except the homestead, shall be delivered to  
27 the guardian of each of those [~~such~~] children who is a minor, to

1 each of those children who is of lawful age and not incapacitated,  
2 and to the guardian of each of those children who is an  
3 incapacitated adult or to another appropriate person, as determined  
4 by the court, on behalf of the adult incapacitated child if there is  
5 no guardian [~~if they be of lawful age, or to their guardian if they~~  
6 ~~be minors~~]. (c) If there be children of the deceased of whom the  
7 surviving spouse is not the parent, the share of such children in  
8 such exempted property, except the homestead, shall be delivered to  
9 the guardian of each of those [~~such~~] children who is a minor, to  
10 each of those children who is of lawful age and not incapacitated,  
11 and to the guardian of each of those children who is an  
12 incapacitated adult or to another appropriate person, as determined  
13 by the court, on behalf of the adult incapacitated child if there is  
14 no guardian [~~if they be of lawful age, or to their guardian, if they~~  
15 ~~be minors~~]. (d) In all cases, the homestead shall be delivered to  
16 the surviving spouse, if there be one, and if there be no surviving  
17 spouse, to the guardian of the minor children.

18       Sec. 273. ALLOWANCE IN LIEU OF EXEMPT PROPERTY. In case  
19 there should not be among the effects of the deceased all or any of  
20 the specific articles exempted from execution or forced sale by the  
21 Constitution and laws of this state, the court shall make a  
22 reasonable allowance in lieu thereof, to be paid to such surviving  
23 spouse and children, or such of them as there are, as hereinafter  
24 provided. The allowance in lieu of a homestead shall in no case  
25 exceed \$15,000 and the allowance for other exempted property shall  
26 in no case exceed \$5,000, exclusive of the allowance for the support  
27 of the surviving spouse, [and] minor children, and adult

1 incapacitated children which is hereinafter provided for.

2           Sec. 274. HOW ALLOWANCE PAID. The allowance made in lieu of  
3 any of the exempted property shall be paid either in money out of  
4 the funds of the estate that come to the hands of the executor or  
5 administrator, or in any property of the deceased that such  
6 surviving spouse, ~~[or]~~ children who are ~~[, if they be]~~ of lawful  
7 age, guardian of children who are ~~[or their guardian if they be]~~  
8 minors, or guardian of each adult incapacitated child or other  
9 appropriate person, as determined by the court, on behalf of the  
10 adult incapacitated child if there is no guardian, shall choose to  
11 take at the appraisement, or a part thereof, or both, as they shall  
12 select; provided, however, that property specifically bequeathed  
13 or devised to another may be so taken, or may be sold to raise funds  
14 for the allowance as hereinafter provided, only if the other  
15 available property shall be insufficient to provide the allowance.

16           Sec. 275. TO WHOM ALLOWANCE PAID. The allowance in lieu of  
17 exempt property shall be paid by the executor or administrator, as  
18 follows: (a) If there be a surviving spouse and no children, or if  
19 all the children, including any adult incapacitated children, be  
20 the children of the surviving spouse, the whole shall be paid to  
21 such surviving spouse.

22           (b) If there be children and no surviving spouse, the whole  
23 shall be ~~[paid to and]~~ equally divided among them and each of their  
24 shares shall be paid as follows:

25                   (1) if the child is ~~[they be]~~ of lawful age and not  
26 incapacitated, to the child;

27                   (2) ~~[, but]~~ if the child is a minor, ~~[any of such~~

1 ~~children are minors, their shares shall be paid]~~ to the child's  
2 ~~[their]~~ guardian; or

3 (3) if the child is an incapacitated adult, to the  
4 adult incapacitated child's guardian or another appropriate  
5 person, as determined by the court, on behalf of the adult  
6 incapacitated child if there is no guardian ~~[guardians]~~.

7 (c) If there be a surviving spouse, and children of the  
8 deceased, some of whom are not children of the surviving spouse, the  
9 surviving spouse shall receive one-half of the whole, plus the  
10 shares of the children of whom the survivor is the parent, and the  
11 remaining shares shall be paid with respect to each of the children  
12 of whom the survivor is not the parent as follows:

13 (1) if the child is an adult who is not incapacitated,  
14 to the child;

15 (2) if the child is a minor ~~[or, if they are minors]~~,  
16 to the child's ~~[their]~~ guardian; or

17 (3) if the child is an incapacitated adult, to the  
18 adult incapacitated child's guardian or another appropriate  
19 person, as determined by the court, on behalf of the adult  
20 incapacitated child if there is no guardian.

21 Sec. 276. SALE TO RAISE ALLOWANCE. If there be no property  
22 of the deceased that such surviving spouse or children are willing  
23 to take for such allowance, or not a sufficiency, and there be no  
24 funds, or not sufficient funds, of the estate in the hands of such  
25 executor or administrator to pay such allowance, or any part  
26 thereof, the court, on the application in writing of such surviving  
27 spouse and children, or of a person authorized to represent any of

1 those children, shall order a sale of so much of the estate for cash  
2 as will be sufficient to raise the amount of such allowance, or a  
3 part thereof, as the case requires.

4       Sec. 286. FAMILY ALLOWANCE TO SURVIVING SPOUSES, ~~[AND]~~  
5 MINORS, AND ADULT INCAPACITATED CHILDREN. (a) Unless an affidavit  
6 is filed under Subsection (b) of this section, immediately after  
7 the inventory, appraisement, and list of claims have been approved,  
8 the court shall fix a family allowance for the support of the  
9 surviving spouse, ~~[and]~~ minor children, and adult incapacitated  
10 children of the deceased.

11       (b) Before the approval of the inventory, appraisement, and  
12 list of claims, a surviving spouse or any person who is authorized  
13 to act on behalf of minor children or adult incapacitated children  
14 of the deceased may apply to the court to have the court fix the  
15 family allowance by filing an application and a verified affidavit  
16 describing the amount necessary for the maintenance of the  
17 surviving spouse, ~~[and]~~ minor children, and adult incapacitated  
18 children for one year after the date of the death of the decedent  
19 and describing the spouse's separate property and any property that  
20 minor children or adult incapacitated children have in their own  
21 right. The applicant bears the burden of proof by a preponderance  
22 of the evidence at any hearing on the application. The court shall  
23 fix a family allowance for the support of the surviving spouse,  
24 ~~[and]~~ minor children, and adult incapacitated children of the  
25 deceased.

26       Sec. 287. AMOUNT OF FAMILY ALLOWANCE. Such allowance shall  
27 be of an amount sufficient for the maintenance of such surviving



1 spouse, ~~and~~ minor children, and adult incapacitated children for  
2 one year from the time of the death of the testator or intestate.  
3 The allowance shall be fixed with regard to the facts or  
4 circumstances then existing and those anticipated to exist during  
5 the first year after such death. The allowance may be paid either  
6 in a lump sum or in installments, as the court shall order.

7       Sec. 288. WHEN FAMILY ALLOWANCE NOT MADE. No such allowance  
8 shall be made for the surviving spouse when the survivor has  
9 separate property adequate to the survivor's maintenance; nor shall  
10 such allowance be made for the minor children or adult  
11 incapacitated children when they have property in their own right  
12 adequate to their maintenance.

13       Sec. 290. FAMILY ALLOWANCE PREFERRED. The family allowance  
14 made for the support of the surviving spouse, ~~and~~ minor children,  
15 and adult incapacitated children of the deceased shall be paid in  
16 preference to all other debts or charges against the estate, except  
17 Class 1 claims.

18       Sec. 291. TO WHOM FAMILY ALLOWANCE PAID. The executor or  
19 administrator shall apportion and pay the family allowance:

20       (a) To the surviving spouse, if there be one, for the use of  
21 the survivor and the minor children and adult incapacitated  
22 children, if such children be the survivor's.

23       (b) If the surviving spouse is not the parent of such minor  
24 children and adult incapacitated children, or of some of them, the  
25 portion of such allowance necessary for the support of such minor  
26 child or children of which the survivor is not the parent shall be  
27 paid to the guardian or guardians of such child or children who are

1 minors, and to the guardian of each adult incapacitated child or  
2 another appropriate person, as determined by the court, on behalf  
3 of the adult incapacitated child if there is no guardian.

4 (c) If there be no surviving spouse, the allowance to the  
5 minor child or children shall be paid to the guardian or guardians  
6 of such minor child or children, and the allowance to each adult  
7 incapacitated child shall be paid to the guardian of the adult  
8 incapacitated child or another appropriate person, as determined by  
9 the court, on behalf of the adult incapacitated child if there is no  
10 guardian.

11 (d) If there be a surviving spouse and no minor child or  
12 adult incapacitated child [~~children~~], the entire allowance shall be  
13 paid to the surviving spouse.

14 Sec. 292. MAY TAKE PROPERTY FOR FAMILY ALLOWANCE. The  
15 surviving spouse, [~~or~~] the guardian of the minor children, or the  
16 guardian of an adult incapacitated child or another appropriate  
17 person, as determined by the court, on behalf of the adult  
18 incapacitated child if there is no guardian, as the case may be,  
19 shall have the right to take in payment of such allowance, or any  
20 part thereof, any of the personal property of the estate at its  
21 appraised value as shown by the appraisement; provided, however,  
22 that property specifically devised or bequeathed to another may be  
23 so taken, or may be sold to raise funds for the allowance as  
24 hereinafter provided, only if the other available property shall be  
25 insufficient to provide the allowance.

26 SECTION 1.04. The changes in law made by this article apply  
27 only to the estate of a decedent who dies on or after the effective

1 date of this Act. The estate of a decedent who dies before the  
2 effective date of this Act is governed by the law in effect on the  
3 date of the decedent's death, and the former law is continued in  
4 effect for that purpose.

5 ARTICLE 2. CHANGES TO ESTATES CODE

6 SECTION 2.01. Sections 353.051(a) and (b), Estates Code, as  
7 effective January 1, 2014, are amended to read as follows:

8 (a) Unless an application and verified affidavit are filed  
9 as provided by Subsection (b), immediately after the inventory,  
10 appraisement, and list of claims of an estate are approved, the  
11 court by order shall set aside:

12 (1) the homestead for the use and benefit of the  
13 decedent's surviving spouse and minor children; and

14 (2) all other estate property that is exempt from  
15 execution or forced sale by the constitution and laws of this state  
16 for the use and benefit of the decedent's:

17 (A) surviving spouse and minor children; ~~and~~

18 (B) unmarried adult children remaining with the  
19 decedent's family; and

20 (C) each other adult child who is incapacitated.

21 (b) Before the inventory, appraisement, and list of claims  
22 of an estate are approved:

23 (1) the decedent's surviving spouse or any other  
24 person authorized to act on behalf of the decedent's minor children  
25 may apply to the court to have exempt property, including the  
26 homestead, set aside by filing an application and a verified  
27 affidavit listing all property that the applicant claims is exempt;

1 and

2 (2) any of the decedent's unmarried adult children  
3 remaining with the decedent's family, any other adult child of the  
4 decedent who is incapacitated, or a person who is authorized to act  
5 on behalf of the adult incapacitated child may apply to the court to  
6 have all exempt property, other than the homestead, set aside by  
7 filing an application and a verified affidavit listing all  
8 property, other than the homestead, that the applicant claims is  
9 exempt.

10 SECTION 2.02. Sections 353.052(b), (c), and (d), Estates  
11 Code, as effective January 1, 2014, are amended to read as follows:

12 (b) If there is a surviving spouse and there are no children  
13 of the decedent, or if all the children, including any adult  
14 incapacitated children, of the decedent are also the children of  
15 the surviving spouse, the executor or administrator shall deliver  
16 all exempt property to the surviving spouse.

17 (c) If there is a surviving spouse and there are children of  
18 the decedent who are not also children of the surviving spouse, the  
19 executor or administrator shall deliver the share of those children  
20 in exempt property, other than the homestead, to:

21 (1) the children, if the children are of legal age;

22 [~~or~~]

23 (2) the children's guardian, if the children are  
24 minors; or

25 (3) the guardian of each of the children who is an  
26 incapacitated adult, or to another appropriate person, as  
27 determined by the court, on behalf of the adult incapacitated child

1 if there is no guardian.

2 (d) If there is no surviving spouse and there are children  
3 of the decedent, the executor or administrator shall deliver exempt  
4 property, other than the homestead, to:

5 (1) the children, if the children are of legal age;  
6 [~~or~~]

7 (2) the children's guardian, if the children are  
8 minors; or

9 (3) the guardian of each of the children who is an  
10 incapacitated adult, or to another appropriate person, as  
11 determined by the court, on behalf of the adult incapacitated child  
12 if there is no guardian.

13 SECTION 2.03. Section 353.053(b), Estates Code, as  
14 effective January 1, 2014, is amended to read as follows:

15 (b) The allowance in lieu of a homestead may not exceed  
16 \$15,000, and the allowance in lieu of other exempt property may not  
17 exceed \$5,000, excluding the family allowance for the support of  
18 the surviving spouse, [and] minor children, and adult incapacitated  
19 children provided by Subchapter C.

20 SECTION 2.04. Sections 353.054(b), (c), and (d), Estates  
21 Code, as effective January 1, 2014, are amended to read as follows:

22 (b) If there is a surviving spouse and there are no children  
23 of the decedent, or if all the children, including any adult  
24 incapacitated children, of the decedent are also the children of  
25 the surviving spouse, the executor or administrator shall pay the  
26 entire allowance to the surviving spouse.

27 (c) If there is a surviving spouse and there are children of

1 the decedent who are not also children of the surviving spouse, the  
2 executor or administrator shall pay the surviving spouse one-half  
3 of the entire allowance plus the shares of the decedent's children  
4 of whom the surviving spouse is the parent. The remaining shares  
5 must be paid to:

6 (1) the decedent's adult children of whom the  
7 surviving spouse is not a parent and who are not incapacitated; ~~[or]~~

8 (2) the guardian of the children of whom the surviving  
9 spouse is not a parent and who ~~[described by Subdivision (1), if~~  
10 ~~those children]~~ are minors; or

11 (3) the guardian or another appropriate person, as  
12 determined by the court, if there is no guardian, of each child who  
13 is an incapacitated adult.

14 (d) If there is no surviving spouse and there are children  
15 of the decedent, the executor or administrator shall divide the  
16 entire allowance equally among the children and pay the children's  
17 shares to:

18 (1) each of those [the] children who are adults and who  
19 are not incapacitated;

20 (2) the guardian of each [if the children are of  
21 legal age, or, if any] of those [the] children who are minors; or

22 (3) the guardian or another appropriate person, as  
23 determined by the court, if there is no guardian, of each of those  
24 children who is an incapacitated adult ~~[, pay the minor children's~~  
25 ~~shares to the guardian of the minor children]~~.

26 SECTION 2.05. Section 353.055(a), Estates Code, as  
27 effective January 1, 2014, is amended to read as follows:

1           (a) An allowance in lieu of any exempt property shall be  
2 paid in the manner selected by the decedent's surviving spouse or  
3 children of legal age, or by the guardian of the decedent's minor  
4 children, or by the guardian of each adult incapacitated child or  
5 other appropriate person, as determined by the court, if there is no  
6 guardian, as follows:

7           (1) in money out of estate funds that come into the  
8 executor's or administrator's possession;

9           (2) in any of the decedent's property or a part of the  
10 property chosen by those individuals at the appraisalment; or

11           (3) part in money described by Subdivision (1) and  
12 part in property described by Subdivision (2).

13           SECTION 2.06. Section 353.056(a), Estates Code, as  
14 effective January 1, 2014, is amended to read as follows:

15           (a) On the written application of the decedent's surviving  
16 spouse and children, or of a person authorized to represent any of  
17 those children, the court shall order the sale of estate property  
18 for cash in an amount that will be sufficient to raise the amount of  
19 the allowance provided under Section 353.053 or a portion of that  
20 amount, as necessary, if:

21           (1) the decedent had no property that the surviving  
22 spouse or children are willing to take for the allowance or the  
23 decedent had insufficient property; and

24           (2) there are not sufficient estate funds in the  
25 executor's or administrator's possession to pay the amount of the  
26 allowance or a portion of that amount, as applicable.

27           SECTION 2.07. Section 353.101, Estates Code, as effective

1 January 1, 2014, is amended to read as follows:

2           Sec. 353.101. FAMILY ALLOWANCE. (a) Unless an application  
3 and verified affidavit are filed as provided by Subsection (b),  
4 immediately after the inventory, appraisement, and list of claims  
5 of an estate are approved, the court shall fix a family allowance  
6 for the support of the decedent's surviving spouse, ~~and~~ minor  
7 children, and adult incapacitated children.

8           (b) Before the inventory, appraisement, and list of claims  
9 of an estate are approved, the decedent's surviving spouse or any  
10 other person authorized to act on behalf of the decedent's minor  
11 children or adult incapacitated children may apply to the court to  
12 have the court fix the family allowance by filing an application and  
13 a verified affidavit describing:

14           (1) the amount necessary for the maintenance of the  
15 surviving spouse, ~~and~~ the decedent's minor children, and the  
16 decedent's adult incapacitated children for one year after the date  
17 of the decedent's death; and

18           (2) the surviving spouse's separate property and any  
19 property that the decedent's minor children or adult incapacitated  
20 children have in their own right.

21           (c) At a hearing on an application filed under Subsection  
22 (b), the applicant has the burden of proof by a preponderance of the  
23 evidence. The court shall fix a family allowance for the support  
24 of the decedent's surviving spouse, ~~and~~ minor children, and adult  
25 incapacitated children.

26           (d) A family allowance may not be made for:

27           (1) the decedent's surviving spouse, if the surviving



1 spouse has separate property adequate for the surviving spouse's  
2 maintenance; ~~or~~]

3 (2) the decedent's minor children, if the minor  
4 children have property in their own right adequate for the  
5 children's maintenance; or

6 (3) any of the decedent's adult incapacitated  
7 children, if the adult incapacitated child has property in the  
8 person's own right adequate for the person's maintenance.

9 SECTION 2.08. Section 353.102(a), Estates Code, as  
10 effective January 1, 2014, is amended to read as follows:

11 (a) The amount of the family allowance must be sufficient  
12 for the maintenance of the decedent's surviving spouse, ~~and~~ minor  
13 children, and adult incapacitated children for one year from the  
14 date of the decedent's death.

15 SECTION 2.09. Section 353.104, Estates Code, as effective  
16 January 1, 2014, is amended to read as follows:

17 Sec. 353.104. PREFERENCE OF FAMILY ALLOWANCE. The family  
18 allowance made for the support of the decedent's surviving spouse,  
19 ~~and~~ minor children, and adult incapacitated children shall be  
20 paid in preference to all other debts of or charges against the  
21 estate, other than Class 1 claims.

22 SECTION 2.10. Sections 353.105(b), (c), (d), and (e),  
23 Estates Code, as effective January 1, 2014, are amended to read as  
24 follows:

25 (b) If there is a surviving spouse and there are no minor  
26 children or adult incapacitated children of the decedent, the  
27 executor or administrator shall pay the entire family allowance to

1 the surviving spouse.

2 (c) If there is a surviving spouse and all of the minor  
3 children and adult incapacitated children of the decedent are also  
4 the children of the surviving spouse, the executor or administrator  
5 shall pay the entire family allowance to the surviving spouse for  
6 use by the surviving spouse, ~~and~~ the decedent's minor children,  
7 and adult incapacitated children.

8 (d) If there is a surviving spouse and some or all of the  
9 minor children or adult incapacitated children of the decedent are  
10 not also children of the surviving spouse, the executor or  
11 administrator shall pay:

12 (1) the portion of the entire family allowance  
13 necessary for the support of those minor children to the guardian of  
14 those children; and

15 (2) the portion of the entire family allowance  
16 necessary for the support of each of those adult incapacitated  
17 children to the guardian of the adult incapacitated child or  
18 another appropriate person, as determined by the court, on behalf  
19 of the adult incapacitated child if there is no guardian.

20 (e) If there is no surviving spouse and there are minor  
21 children or adult incapacitated children of the decedent, the  
22 executor or administrator shall pay the family allowance:

23 (1) for the minor children, to the guardian of those  
24 children; and

25 (2) for each adult incapacitated child, to the  
26 guardian of the adult incapacitated child or another appropriate  
27 person, as determined by the court, on behalf of the adult

1 incapacitated child if there is no guardian.

2 SECTION 2.11. The heading to Section 353.106, Estates Code,  
3 as effective January 1, 2014, is amended to read as follows:

4 Sec. 353.106. SURVIVING SPOUSE, ~~[OR]~~ MINOR CHILDREN, OR  
5 ADULT INCAPACITATED CHILDREN MAY TAKE PERSONAL PROPERTY FOR FAMILY  
6 ALLOWANCE.

7 SECTION 2.12. Section 353.106(a), Estates Code, as  
8 effective January 1, 2014, is amended to read as follows:

9 (a) A decedent's surviving spouse, ~~[or]~~ the guardian of the  
10 decedent's minor children, or the guardian of an adult  
11 incapacitated child of the decedent or another appropriate person,  
12 as determined by the court, on behalf of the adult incapacitated  
13 child if there is no guardian, as applicable, is entitled to take,  
14 at the property's appraised value as shown by the appraisal, any  
15 of the estate's personal property in full or partial payment of the  
16 family allowance.

17 SECTION 2.13. Section 353.107(a), Estates Code, as  
18 effective January 1, 2014, is amended to read as follows:

19 (a) The court shall, as soon as the inventory, appraisal,  
20 and list of claims are returned and approved, order the sale of  
21 estate property for cash in an amount that will be sufficient to  
22 raise the amount of the family allowance, or a portion of that  
23 amount, as necessary, if:

24 (1) the decedent had no personal property that the  
25 surviving spouse, ~~[or]~~ the guardian of the decedent's minor  
26 children, or the guardian of the decedent's adult incapacitated  
27 child or other appropriate person acting on behalf of the adult

1 incapacitated child is willing to take for the family allowance, or  
2 the decedent had insufficient personal property; and

3 (2) there are not sufficient estate funds in the  
4 executor's or administrator's possession to pay the amount of the  
5 family allowance or a portion of that amount, as applicable.

6 SECTION 2.14. Section 354.001(a), Estates Code, as  
7 effective January 1, 2014, is amended to read as follows:

8 (a) If, after a personal representative of an estate has  
9 filed the inventory, appraisal, and list of claims as required  
10 by Chapter 309, it is established that the decedent's estate,  
11 excluding any homestead, exempt property, and family allowance to  
12 the decedent's surviving spouse, ~~and~~ minor children, and adult  
13 incapacitated children, does not exceed the amount sufficient to  
14 pay the claims against the estate classified as Classes 1 through 4  
15 under Section 355.102, the representative shall:

16 (1) on order of the court, pay those claims in the  
17 order provided and to the extent permitted by the assets of the  
18 estate subject to the payment of those claims; and

19 (2) after paying the claims in accordance with  
20 Subdivision (1), present to the court the representative's account  
21 with an application for the settlement and allowance of the  
22 account.

23 SECTION 2.15. Sections 451.001(a) and (d), Estates Code, as  
24 effective January 1, 2014, are amended to read as follows:

25 (a) If the value of the entire assets of an estate,  
26 excluding homestead and exempt property, does not exceed the amount  
27 to which the surviving spouse, ~~and~~ minor children, and adult

1 incapacitated children of the decedent are entitled as a family  
2 allowance, an application may be filed by or on behalf of the  
3 surviving spouse, ~~[or]~~ minor children, or adult incapacitated  
4 children requesting a court to make a family allowance and to enter  
5 an order that no administration of the decedent's estate is  
6 necessary.

7 (d) The application must also include a prayer that the  
8 court make a family allowance and that, if the family allowance  
9 exhausts the entire assets of the estate, excluding homestead and  
10 exempt property, the entire assets of the estate be set aside to the  
11 surviving spouse, ~~[and]~~ minor children, and adult incapacitated  
12 children, as with other family allowances provided for by  
13 Subchapter C, Chapter 353.

14 SECTION 2.16. Section 451.002(b), Estates Code, as  
15 effective January 1, 2014, is amended to read as follows:

16 (b) On the hearing of the application, if the court finds  
17 that the facts contained in the application are true and that the  
18 expenses of last illness, funeral charges, and expenses of the  
19 proceeding have been paid or secured, the court shall:

20 (1) make a family allowance; and

21 (2) if the entire assets of the estate, excluding  
22 homestead and exempt property, are exhausted by the family  
23 allowance made under Subdivision (1):

24 (A) assign to the surviving spouse, ~~[and]~~ minor  
25 children, and adult incapacitated children the entire estate in the  
26 same manner and with the same effect as provided in Subchapter C,  
27 Chapter 353, for the making of a family allowance to the surviving

1 spouse, ~~and~~ minor children, and adult incapacitated children; and

2 (B) order that there shall be no administration  
3 of the estate.

4 SECTION 2.17. The changes in law made to Sections 139, 140,  
5 143, 271(a) and (b), 272, 273, 274, 275, 276, 286, 287, 288, 290,  
6 291, and 292, Texas Probate Code, by Article 1 of this Act are  
7 repealed.

8 SECTION 2.18. This article takes effect January 1, 2014.

9 ARTICLE 3. EFFECTIVE DATE

10 SECTION 3.01. Except as otherwise provided by this Act,  
11 this Act takes effect September 1, 2011.