

1-1 By: Naishtat (Senate Sponsor - Uresti) H.B. No. 2492  
1-2 (In the Senate - Received from the House May 12, 2011;  
1-3 May 12, 2011, read first time and referred to Committee on  
1-4 Jurisprudence; May 21, 2011, reported favorably by the following  
1-5 vote: Yeas 5, Nays 0; May 21, 2011, sent to printer.)

1-6 A BILL TO BE ENTITLED  
1-7 AN ACT

1-8 relating to the family allowance, treatment of exempt property, and  
1-9 an allowance in lieu of exempt property in the administration of a  
1-10 decedent's estate.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 ARTICLE 1. CHANGES TO TEXAS PROBATE CODE

1-13 SECTION 1.01. Sections 139, 140, and 143, Texas Probate  
1-14 Code, are amended to read as follows:

1-15 Sec. 139. APPLICATION FOR ORDER OF NO ADMINISTRATION. If  
1-16 the value of the entire assets of an estate, not including homestead  
1-17 and exempt property, does not exceed the amount to which the  
1-18 surviving spouse, and minor children, and adult incapacitated  
1-19 children of the decedent are entitled as a family allowance, there  
1-20 may be filed by or on behalf of the surviving spouse, ~~or~~ minor  
1-21 children, or adult incapacitated children an application in any  
1-22 court of proper venue for administration, or, if an application for  
1-23 the appointment of a personal representative has been filed but not  
1-24 yet granted, then in the court where such application has been  
1-25 filed, requesting the court to make a family allowance and to enter  
1-26 an order that no administration shall be necessary. The  
1-27 application shall state the names of the heirs or devisees, a list  
1-28 of creditors of the estate together with the amounts of the claims  
1-29 so far as the same are known, and a description of all real and  
1-30 personal property belonging to the estate, together with the  
1-31 estimated value thereof according to the best knowledge and  
1-32 information of the applicant, and the liens and encumbrances  
1-33 thereon, with a prayer that the court make a family allowance and  
1-34 that, if the entire assets of the estate, not including homestead  
1-35 and exempt property, are thereby exhausted, the same be set aside to  
1-36 the surviving spouse, and minor children, and adult incapacitated  
1-37 children, as in the case of other family allowances provided for by  
1-38 this Code.

1-39 Sec. 140. HEARING AND ORDER UPON THE APPLICATION. Upon the  
1-40 filing of an application for no administration such as that  
1-41 provided for in the preceding Section, the court may hear the same  
1-42 forthwith without notice, or at such time and upon such notice as  
1-43 the court requires. Upon the hearing of the application, if the  
1-44 court finds that the facts contained therein are true and that the  
1-45 expenses of last illness, funeral charges, and expenses of the  
1-46 proceeding have been paid or secured, the court shall make a family  
1-47 allowance and, if the entire assets of the estate, not including  
1-48 homestead and exempt property, are thereby exhausted, shall order  
1-49 that no administration be had of the estate and shall assign to the  
1-50 surviving spouse, and minor children, and adult incapacitated  
1-51 children the whole of the estate, in the same manner and with the  
1-52 same effect as provided in this Code for the making of family  
1-53 allowances to the surviving spouse, and minor children, and adult  
1-54 incapacitated children.

1-55 Sec. 143. SUMMARY PROCEEDINGS FOR SMALL ESTATES AFTER  
1-56 PERSONAL REPRESENTATIVE APPOINTED. Whenever, after the inventory,  
1-57 appraisement, and list of claims has been filed by a personal  
1-58 representative, it is established that the estate of a decedent,  
1-59 exclusive of the homestead and exempt property and family allowance  
1-60 to the surviving spouse, and minor children, and adult  
1-61 incapacitated children, does not exceed the amount sufficient to  
1-62 pay the claims of Classes One to Four, inclusive, as claims are  
1-63 hereinafter classified, the personal representative shall, upon  
1-64 order of the court, pay the claims in the order provided and to the

2-1 extent permitted by the assets of the estate subject to the payment  
 2-2 of such claims, and thereafter present the personal  
 2-3 representative's [~~his~~] account with an application for the  
 2-4 settlement and allowance thereof. Thereupon the court, with or  
 2-5 without notice, may adjust, correct, settle, allow or disallow such  
 2-6 account, and, if the account is settled and allowed, may decree  
 2-7 final distribution, discharge the personal representative, and  
 2-8 close the administration.

2-9 SECTION 1.02. Sections 271(a) and (b), Texas Probate Code,  
 2-10 are amended to read as follows:

2-11 (a) Unless an affidavit is filed under Subsection (b) of  
 2-12 this section, immediately after the inventory, appraisal, and  
 2-13 list of claims have been approved, the court shall, by order, set  
 2-14 apart:

2-15 (1) the homestead for the use and benefit of the  
 2-16 surviving spouse and minor children; and

2-17 (2) all other property of the estate that is exempt  
 2-18 from execution or forced sale by the constitution and laws of this  
 2-19 state for the use and benefit of the surviving spouse, [~~and~~] minor  
 2-20 children, [~~and~~] unmarried adult children remaining with the family  
 2-21 of the deceased, and each other adult child who is incapacitated.

2-22 (b) Before the approval of the inventory, appraisal, and  
 2-23 list of claims:

2-24 (1) a surviving spouse or any person who is authorized  
 2-25 to act on behalf of minor children of the deceased may apply to the  
 2-26 court to have exempt property, including the homestead, set aside  
 2-27 by filing an application and a verified affidavit listing all of the  
 2-28 property that the applicant claims is exempt; and

2-29 (2) any unmarried adult child [~~children~~] remaining  
 2-30 with the family of the deceased, any other adult child who is  
 2-31 incapacitated, or a person who is authorized to act on behalf of the  
 2-32 adult incapacitated child may apply to the court to have all exempt  
 2-33 property other than the homestead set aside by filing an  
 2-34 application and a verified affidavit listing all of the other  
 2-35 property that the applicant claims is exempt.

2-36 SECTION 1.03. Sections 272, 273, 274, 275, 276, 286, 287,  
 2-37 288, 290, 291, and 292, Texas Probate Code, are amended to read as  
 2-38 follows:

2-39 Sec. 272. TO WHOM DELIVERED. The exempt property set apart  
 2-40 to the surviving spouse and children shall be delivered by the  
 2-41 executor or administrator without delay as follows: (a) If there  
 2-42 be a surviving spouse and no children, or if the children, including  
 2-43 any adult incapacitated children, be the children of the surviving  
 2-44 spouse, the whole of such property shall be delivered to the  
 2-45 surviving spouse. (b) If there be children and no surviving  
 2-46 spouse, such property, except the homestead, shall be delivered to  
 2-47 the guardian of each of those [~~such~~] children who is a minor, to  
 2-48 each of those children who is of lawful age and not incapacitated,  
 2-49 and to the guardian of each of those children who is an  
 2-50 incapacitated adult or to another appropriate person, as determined  
 2-51 by the court, on behalf of the adult incapacitated child if there is  
 2-52 no guardian [~~if they be of lawful age, or to their guardian if they~~  
 2-53 ~~be minors~~]. (c) If there be children of the deceased of whom the  
 2-54 surviving spouse is not the parent, the share of such children in  
 2-55 such exempted property, except the homestead, shall be delivered to  
 2-56 the guardian of each of those [~~such~~] children who is a minor, to  
 2-57 each of those children who is of lawful age and not incapacitated,  
 2-58 and to the guardian of each of those children who is an  
 2-59 incapacitated adult or to another appropriate person, as determined  
 2-60 by the court, on behalf of the adult incapacitated child if there is  
 2-61 no guardian [~~if they be of lawful age, or to their guardian, if they~~  
 2-62 ~~be minors~~]. (d) In all cases, the homestead shall be delivered to  
 2-63 the surviving spouse, if there be one, and if there be no surviving  
 2-64 spouse, to the guardian of the minor children.

2-65 Sec. 273. ALLOWANCE IN LIEU OF EXEMPT PROPERTY. In case  
 2-66 there should not be among the effects of the deceased all or any of  
 2-67 the specific articles exempted from execution or forced sale by the  
 2-68 Constitution and laws of this state, the court shall make a  
 2-69 reasonable allowance in lieu thereof, to be paid to such surviving

3-1 spouse and children, or such of them as there are, as hereinafter  
 3-2 provided. The allowance in lieu of a homestead shall in no case  
 3-3 exceed \$15,000 and the allowance for other exempted property shall  
 3-4 in no case exceed \$5,000, exclusive of the allowance for the support  
 3-5 of the surviving spouse, ~~[and]~~ minor children, and adult  
 3-6 incapacitated children which is hereinafter provided for.

3-7 Sec. 274. HOW ALLOWANCE PAID. The allowance made in lieu of  
 3-8 any of the exempted property shall be paid either in money out of  
 3-9 the funds of the estate that come to the hands of the executor or  
 3-10 administrator, or in any property of the deceased that such  
 3-11 surviving spouse, ~~[or]~~ children who are [if they be] of lawful  
 3-12 age, guardian of children who are [or their guardian if they be]  
 3-13 minors, or guardian of each adult incapacitated child or other  
 3-14 appropriate person, as determined by the court, on behalf of the  
 3-15 adult incapacitated child if there is no guardian, shall choose to  
 3-16 take at the appraisement, or a part thereof, or both, as they shall  
 3-17 select; provided, however, that property specifically bequeathed  
 3-18 or devised to another may be so taken, or may be sold to raise funds  
 3-19 for the allowance as hereinafter provided, only if the other  
 3-20 available property shall be insufficient to provide the allowance.

3-21 Sec. 275. TO WHOM ALLOWANCE PAID. The allowance in lieu of  
 3-22 exempt property shall be paid by the executor or administrator, as  
 3-23 follows: (a) If there be a surviving spouse and no children, or if  
 3-24 all the children, including any adult incapacitated children, be  
 3-25 the children of the surviving spouse, the whole shall be paid to  
 3-26 such surviving spouse.

3-27 (b) If there be children and no surviving spouse, the whole  
 3-28 shall be [paid to and] equally divided among them and each of their  
 3-29 shares shall be paid as follows:

3-30 (1) if the child is [they be] of lawful age and not  
 3-31 incapacitated, to the child;

3-32 (2) [, but] if the child is a minor, [any of such  
 3-33 children are minors, their shares shall be paid] to the child's  
 3-34 [their] guardian; or

3-35 (3) if the child is an incapacitated adult, to the  
 3-36 adult incapacitated child's guardian or another appropriate  
 3-37 person, as determined by the court, on behalf of the adult  
 3-38 incapacitated child if there is no guardian [guardians].

3-39 (c) If there be a surviving spouse, and children of the  
 3-40 deceased, some of whom are not children of the surviving spouse, the  
 3-41 surviving spouse shall receive one-half of the whole, plus the  
 3-42 shares of the children of whom the survivor is the parent, and the  
 3-43 remaining shares shall be paid with respect to each of the children  
 3-44 of whom the survivor is not the parent as follows:

3-45 (1) if the child is an adult who is not incapacitated,  
 3-46 to the child;

3-47 (2) if the child is a minor [or, if they are minors],  
 3-48 to the child's [their] guardian; or

3-49 (3) if the child is an incapacitated adult, to the  
 3-50 adult incapacitated child's guardian or another appropriate  
 3-51 person, as determined by the court, on behalf of the adult  
 3-52 incapacitated child if there is no guardian.

3-53 Sec. 276. SALE TO RAISE ALLOWANCE. If there be no property  
 3-54 of the deceased that such surviving spouse or children are willing  
 3-55 to take for such allowance, or not a sufficiency, and there be no  
 3-56 funds, or not sufficient funds, of the estate in the hands of such  
 3-57 executor or administrator to pay such allowance, or any part  
 3-58 thereof, the court, on the application in writing of such surviving  
 3-59 spouse and children, or of a person authorized to represent any of  
 3-60 those children, shall order a sale of so much of the estate for cash  
 3-61 as will be sufficient to raise the amount of such allowance, or a  
 3-62 part thereof, as the case requires.

3-63 Sec. 286. FAMILY ALLOWANCE TO SURVIVING SPOUSES, ~~[AND]~~  
 3-64 MINORS, AND ADULT INCAPACITATED CHILDREN. (a) Unless an affidavit  
 3-65 is filed under Subsection (b) of this section, immediately after  
 3-66 the inventory, appraisement, and list of claims have been approved,  
 3-67 the court shall fix a family allowance for the support of the  
 3-68 surviving spouse, ~~[and]~~ minor children, and adult incapacitated  
 3-69 children of the deceased.

4-1 (b) Before the approval of the inventory, appraisalment, and  
 4-2 list of claims, a surviving spouse or any person who is authorized  
 4-3 to act on behalf of minor children or adult incapacitated children  
 4-4 of the deceased may apply to the court to have the court fix the  
 4-5 family allowance by filing an application and a verified affidavit  
 4-6 describing the amount necessary for the maintenance of the  
 4-7 surviving spouse, ~~and~~ minor children, and adult incapacitated  
 4-8 children for one year after the date of the death of the decedent  
 4-9 and describing the spouse's separate property and any property that  
 4-10 minor children or adult incapacitated children have in their own  
 4-11 right. The applicant bears the burden of proof by a preponderance  
 4-12 of the evidence at any hearing on the application. The court shall  
 4-13 fix a family allowance for the support of the surviving spouse,  
 4-14 ~~and~~ minor children, and adult incapacitated children of the  
 4-15 deceased.

4-16 Sec. 287. AMOUNT OF FAMILY ALLOWANCE. Such allowance shall  
 4-17 be of an amount sufficient for the maintenance of such surviving  
 4-18 spouse, ~~and~~ minor children, and adult incapacitated children for  
 4-19 one year from the time of the death of the testator or intestate.  
 4-20 The allowance shall be fixed with regard to the facts or  
 4-21 circumstances then existing and those anticipated to exist during  
 4-22 the first year after such death. The allowance may be paid either  
 4-23 in a lump sum or in installments, as the court shall order.

4-24 Sec. 288. WHEN FAMILY ALLOWANCE NOT MADE. No such allowance  
 4-25 shall be made for the surviving spouse when the survivor has  
 4-26 separate property adequate to the survivor's maintenance; nor shall  
 4-27 such allowance be made for the minor children or adult  
 4-28 incapacitated children when they have property in their own right  
 4-29 adequate to their maintenance.

4-30 Sec. 290. FAMILY ALLOWANCE PREFERRED. The family allowance  
 4-31 made for the support of the surviving spouse, ~~and~~ minor children,  
 4-32 and adult incapacitated children of the deceased shall be paid in  
 4-33 preference to all other debts or charges against the estate, except  
 4-34 Class 1 claims.

4-35 Sec. 291. TO WHOM FAMILY ALLOWANCE PAID. The executor or  
 4-36 administrator shall apportion and pay the family allowance:

4-37 (a) To the surviving spouse, if there be one, for the use of  
 4-38 the survivor and the minor children and adult incapacitated  
 4-39 children, if such children be the survivor's.

4-40 (b) If the surviving spouse is not the parent of such minor  
 4-41 children and adult incapacitated children, or of some of them, the  
 4-42 portion of such allowance necessary for the support of such minor  
 4-43 child or children of which the survivor is not the parent shall be  
 4-44 paid to the guardian or guardians of such child or children who are  
 4-45 minors, and to the guardian of each adult incapacitated child or  
 4-46 another appropriate person, as determined by the court, on behalf  
 4-47 of the adult incapacitated child if there is no guardian.

4-48 (c) If there be no surviving spouse, the allowance to the  
 4-49 minor child or children shall be paid to the guardian or guardians  
 4-50 of such minor child or children, and the allowance to each adult  
 4-51 incapacitated child shall be paid to the guardian of the adult  
 4-52 incapacitated child or another appropriate person, as determined by  
 4-53 the court, on behalf of the adult incapacitated child if there is no  
 4-54 guardian.

4-55 (d) If there be a surviving spouse and no minor child or  
 4-56 adult incapacitated child ~~[children]~~, the entire allowance shall be  
 4-57 paid to the surviving spouse.

4-58 Sec. 292. MAY TAKE PROPERTY FOR FAMILY ALLOWANCE. The  
 4-59 surviving spouse, ~~or~~ the guardian of the minor children, or the  
 4-60 guardian of an adult incapacitated child or another appropriate  
 4-61 person, as determined by the court, on behalf of the adult  
 4-62 incapacitated child if there is no guardian, as the case may be,  
 4-63 shall have the right to take in payment of such allowance, or any  
 4-64 part thereof, any of the personal property of the estate at its  
 4-65 appraised value as shown by the appraisalment; provided, however,  
 4-66 that property specifically devised or bequeathed to another may be  
 4-67 so taken, or may be sold to raise funds for the allowance as  
 4-68 hereinafter provided, only if the other available property shall be  
 4-69 insufficient to provide the allowance.

5-1 SECTION 1.04. The changes in law made by this article apply  
 5-2 only to the estate of a decedent who dies on or after the effective  
 5-3 date of this Act. The estate of a decedent who dies before the  
 5-4 effective date of this Act is governed by the law in effect on the  
 5-5 date of the decedent's death, and the former law is continued in  
 5-6 effect for that purpose.

5-7 ARTICLE 2. CHANGES TO ESTATES CODE

5-8 SECTION 2.01. Sections 353.051(a) and (b), Estates Code, as  
 5-9 effective January 1, 2014, are amended to read as follows:

5-10 (a) Unless an application and verified affidavit are filed  
 5-11 as provided by Subsection (b), immediately after the inventory,  
 5-12 appraisal, and list of claims of an estate are approved, the  
 5-13 court by order shall set aside:

5-14 (1) the homestead for the use and benefit of the  
 5-15 decedent's surviving spouse and minor children; and

5-16 (2) all other estate property that is exempt from  
 5-17 execution or forced sale by the constitution and laws of this state  
 5-18 for the use and benefit of the decedent's:

5-19 (A) surviving spouse and minor children; ~~and~~

5-20 (B) unmarried adult children remaining with the  
 5-21 decedent's family; and

5-22 (C) each other adult child who is incapacitated.

5-23 (b) Before the inventory, appraisal, and list of claims  
 5-24 of an estate are approved:

5-25 (1) the decedent's surviving spouse or any other  
 5-26 person authorized to act on behalf of the decedent's minor children  
 5-27 may apply to the court to have exempt property, including the  
 5-28 homestead, set aside by filing an application and a verified  
 5-29 affidavit listing all property that the applicant claims is exempt;  
 5-30 and

5-31 (2) any of the decedent's unmarried adult children  
 5-32 remaining with the decedent's family, any other adult child of the  
 5-33 decedent who is incapacitated, or a person who is authorized to act  
 5-34 on behalf of the adult incapacitated child may apply to the court to  
 5-35 have all exempt property, other than the homestead, set aside by  
 5-36 filing an application and a verified affidavit listing all  
 5-37 property, other than the homestead, that the applicant claims is  
 5-38 exempt.

5-39 SECTION 2.02. Sections 353.052(b), (c), and (d), Estates  
 5-40 Code, as effective January 1, 2014, are amended to read as follows:

5-41 (b) If there is a surviving spouse and there are no children  
 5-42 of the decedent, or if all the children, including any adult  
 5-43 incapacitated children, of the decedent are also the children of  
 5-44 the surviving spouse, the executor or administrator shall deliver  
 5-45 all exempt property to the surviving spouse.

5-46 (c) If there is a surviving spouse and there are children of  
 5-47 the decedent who are not also children of the surviving spouse, the  
 5-48 executor or administrator shall deliver the share of those children  
 5-49 in exempt property, other than the homestead, to:

5-50 (1) the children, if the children are of legal age;  
 5-51 ~~or~~

5-52 (2) the children's guardian, if the children are  
 5-53 minors; or

5-54 (3) the guardian of each of the children who is an  
 5-55 incapacitated adult, or to another appropriate person, as  
 5-56 determined by the court, on behalf of the adult incapacitated child  
 5-57 if there is no guardian.

5-58 (d) If there is no surviving spouse and there are children  
 5-59 of the decedent, the executor or administrator shall deliver exempt  
 5-60 property, other than the homestead, to:

5-61 (1) the children, if the children are of legal age;  
 5-62 ~~or~~

5-63 (2) the children's guardian, if the children are  
 5-64 minors; or

5-65 (3) the guardian of each of the children who is an  
 5-66 incapacitated adult, or to another appropriate person, as  
 5-67 determined by the court, on behalf of the adult incapacitated child  
 5-68 if there is no guardian.

5-69 SECTION 2.03. Section 353.053(b), Estates Code, as

6-1 effective January 1, 2014, is amended to read as follows:

6-2 (b) The allowance in lieu of a homestead may not exceed  
6-3 \$15,000, and the allowance in lieu of other exempt property may not  
6-4 exceed \$5,000, excluding the family allowance for the support of  
6-5 the surviving spouse, ~~[and] minor children, and adult incapacitated~~  
6-6 children provided by Subchapter C.

6-7 SECTION 2.04. Sections 353.054(b), (c), and (d), Estates  
6-8 Code, as effective January 1, 2014, are amended to read as follows:

6-9 (b) If there is a surviving spouse and there are no children  
6-10 of the decedent, or if all the children, including any adult  
6-11 incapacitated children, of the decedent are also the children of  
6-12 the surviving spouse, the executor or administrator shall pay the  
6-13 entire allowance to the surviving spouse.

6-14 (c) If there is a surviving spouse and there are children of  
6-15 the decedent who are not also children of the surviving spouse, the  
6-16 executor or administrator shall pay the surviving spouse one-half  
6-17 of the entire allowance plus the shares of the decedent's children  
6-18 of whom the surviving spouse is the parent. The remaining shares  
6-19 must be paid to:

6-20 (1) the decedent's adult children of whom the  
6-21 surviving spouse is not a parent and who are not incapacitated; ~~[or]~~

6-22 (2) the guardian of the children of whom the surviving  
6-23 spouse is not a parent and who ~~[described by Subdivision (1), if~~  
6-24 ~~those children] are minors; or~~

6-25 (3) the guardian or another appropriate person, as  
6-26 determined by the court, if there is no guardian, of each child who  
6-27 is an incapacitated adult.

6-28 (d) If there is no surviving spouse and there are children  
6-29 of the decedent, the executor or administrator shall divide the  
6-30 entire allowance equally among the children and pay the children's  
6-31 shares to:

6-32 (1) each of those [the] children who are adults and who  
6-33 are not incapacitated;

6-34 (2) the guardian of each [ , if the children are of  
6-35 legal age, or, if any] of those [the] children who are minors; or

6-36 (3) the guardian or another appropriate person, as  
6-37 determined by the court, if there is no guardian, of each of those  
6-38 children who is an incapacitated adult ~~[ , pay the minor children's~~  
6-39 ~~shares to the guardian of the minor children].~~

6-40 SECTION 2.05. Section 353.055(a), Estates Code, as  
6-41 effective January 1, 2014, is amended to read as follows:

6-42 (a) An allowance in lieu of any exempt property shall be  
6-43 paid in the manner selected by the decedent's surviving spouse or  
6-44 children of legal age, or by the guardian of the decedent's minor  
6-45 children, or by the guardian of each adult incapacitated child or  
6-46 other appropriate person, as determined by the court, if there is no  
6-47 guardian, as follows:

6-48 (1) in money out of estate funds that come into the  
6-49 executor's or administrator's possession;

6-50 (2) in any of the decedent's property or a part of the  
6-51 property chosen by those individuals at the appraisement; or

6-52 (3) part in money described by Subdivision (1) and  
6-53 part in property described by Subdivision (2).

6-54 SECTION 2.06. Section 353.056(a), Estates Code, as  
6-55 effective January 1, 2014, is amended to read as follows:

6-56 (a) On the written application of the decedent's surviving  
6-57 spouse and children, or of a person authorized to represent any of  
6-58 those children, the court shall order the sale of estate property  
6-59 for cash in an amount that will be sufficient to raise the amount of  
6-60 the allowance provided under Section 353.053 or a portion of that  
6-61 amount, as necessary, if:

6-62 (1) the decedent had no property that the surviving  
6-63 spouse or children are willing to take for the allowance or the  
6-64 decedent had insufficient property; and

6-65 (2) there are not sufficient estate funds in the  
6-66 executor's or administrator's possession to pay the amount of the  
6-67 allowance or a portion of that amount, as applicable.

6-68 SECTION 2.07. Section 353.101, Estates Code, as effective  
6-69 January 1, 2014, is amended to read as follows:

7-1           Sec. 353.101. FAMILY ALLOWANCE. (a) Unless an application  
7-2 and verified affidavit are filed as provided by Subsection (b),  
7-3 immediately after the inventory, appraisement, and list of claims  
7-4 of an estate are approved, the court shall fix a family allowance  
7-5 for the support of the decedent's surviving spouse, ~~and~~ minor  
7-6 children, and adult incapacitated children.

7-7           (b) Before the inventory, appraisement, and list of claims  
7-8 of an estate are approved, the decedent's surviving spouse or any  
7-9 other person authorized to act on behalf of the decedent's minor  
7-10 children or adult incapacitated children may apply to the court to  
7-11 have the court fix the family allowance by filing an application and  
7-12 a verified affidavit describing:

7-13           (1) the amount necessary for the maintenance of the  
7-14 surviving spouse, ~~and~~ the decedent's minor children, and the  
7-15 decedent's adult incapacitated children for one year after the date  
7-16 of the decedent's death; and

7-17           (2) the surviving spouse's separate property and any  
7-18 property that the decedent's minor children or adult incapacitated  
7-19 children have in their own right.

7-20           (c) At a hearing on an application filed under Subsection  
7-21 (b), the applicant has the burden of proof by a preponderance of the  
7-22 evidence. The court shall fix a family allowance for the support  
7-23 of the decedent's surviving spouse, ~~and~~ minor children, and adult  
7-24 incapacitated children.

7-25           (d) A family allowance may not be made for:

7-26           (1) the decedent's surviving spouse, if the surviving  
7-27 spouse has separate property adequate for the surviving spouse's  
7-28 maintenance; ~~or~~

7-29           (2) the decedent's minor children, if the minor  
7-30 children have property in their own right adequate for the  
7-31 children's maintenance; or

7-32           (3) any of the decedent's adult incapacitated  
7-33 children, if the adult incapacitated child has property in the  
7-34 person's own right adequate for the person's maintenance.

7-35           SECTION 2.08. Section 353.102(a), Estates Code, as  
7-36 effective January 1, 2014, is amended to read as follows:

7-37           (a) The amount of the family allowance must be sufficient  
7-38 for the maintenance of the decedent's surviving spouse, ~~and~~ minor  
7-39 children, and adult incapacitated children for one year from the  
7-40 date of the decedent's death.

7-41           SECTION 2.09. Section 353.104, Estates Code, as effective  
7-42 January 1, 2014, is amended to read as follows:

7-43           Sec. 353.104. PREFERENCE OF FAMILY ALLOWANCE. The family  
7-44 allowance made for the support of the decedent's surviving spouse,  
7-45 ~~and~~ minor children, and adult incapacitated children shall be  
7-46 paid in preference to all other debts of or charges against the  
7-47 estate, other than Class 1 claims.

7-48           SECTION 2.10. Sections 353.105(b), (c), (d), and (e),  
7-49 Estates Code, as effective January 1, 2014, are amended to read as  
7-50 follows:

7-51           (b) If there is a surviving spouse and there are no minor  
7-52 children or adult incapacitated children of the decedent, the  
7-53 executor or administrator shall pay the entire family allowance to  
7-54 the surviving spouse.

7-55           (c) If there is a surviving spouse and all of the minor  
7-56 children and adult incapacitated children of the decedent are also  
7-57 the children of the surviving spouse, the executor or administrator  
7-58 shall pay the entire family allowance to the surviving spouse for  
7-59 use by the surviving spouse, ~~and~~ the decedent's minor children,  
7-60 and adult incapacitated children.

7-61           (d) If there is a surviving spouse and some or all of the  
7-62 minor children or adult incapacitated children of the decedent are  
7-63 not also children of the surviving spouse, the executor or  
7-64 administrator shall pay:

7-65           (1) the portion of the entire family allowance  
7-66 necessary for the support of those minor children to the guardian of  
7-67 those children; and

7-68           (2) the portion of the entire family allowance  
7-69 necessary for the support of each of those adult incapacitated

8-1 children to the guardian of the adult incapacitated child or  
 8-2 another appropriate person, as determined by the court, on behalf  
 8-3 of the adult incapacitated child if there is no guardian.

8-4 (e) If there is no surviving spouse and there are minor  
 8-5 children or adult incapacitated children of the decedent, the  
 8-6 executor or administrator shall pay the family allowance:

8-7 (1) for the minor children, to the guardian of those  
 8-8 children; and

8-9 (2) for each adult incapacitated child, to the  
 8-10 guardian of the adult incapacitated child or another appropriate  
 8-11 person, as determined by the court, on behalf of the adult  
 8-12 incapacitated child if there is no guardian.

8-13 SECTION 2.11. The heading to Section 353.106, Estates Code,  
 8-14 as effective January 1, 2014, is amended to read as follows:

8-15 Sec. 353.106. SURVIVING SPOUSE, ~~[OR]~~ MINOR CHILDREN, OR  
 8-16 ADULT INCAPACITATED CHILDREN MAY TAKE PERSONAL PROPERTY FOR FAMILY  
 8-17 ALLOWANCE.

8-18 SECTION 2.12. Section 353.106(a), Estates Code, as  
 8-19 effective January 1, 2014, is amended to read as follows:

8-20 (a) A decedent's surviving spouse, ~~[or]~~ the guardian of the  
 8-21 decedent's minor children, or the guardian of an adult  
 8-22 incapacitated child of the decedent or another appropriate person,  
 8-23 as determined by the court, on behalf of the adult incapacitated  
 8-24 child if there is no guardian, as applicable, is entitled to take,  
 8-25 at the property's appraised value as shown by the appraisal, any  
 8-26 of the estate's personal property in full or partial payment of the  
 8-27 family allowance.

8-28 SECTION 2.13. Section 353.107(a), Estates Code, as  
 8-29 effective January 1, 2014, is amended to read as follows:

8-30 (a) The court shall, as soon as the inventory, appraisal,  
 8-31 and list of claims are returned and approved, order the sale of  
 8-32 estate property for cash in an amount that will be sufficient to  
 8-33 raise the amount of the family allowance, or a portion of that  
 8-34 amount, as necessary, if:

8-35 (1) the decedent had no personal property that the  
 8-36 surviving spouse, ~~[or]~~ the guardian of the decedent's minor  
 8-37 children, or the guardian of the decedent's adult incapacitated  
 8-38 child or other appropriate person acting on behalf of the adult  
 8-39 incapacitated child is willing to take for the family allowance, or  
 8-40 the decedent had insufficient personal property; and

8-41 (2) there are not sufficient estate funds in the  
 8-42 executor's or administrator's possession to pay the amount of the  
 8-43 family allowance or a portion of that amount, as applicable.

8-44 SECTION 2.14. Section 354.001(a), Estates Code, as  
 8-45 effective January 1, 2014, is amended to read as follows:

8-46 (a) If, after a personal representative of an estate has  
 8-47 filed the inventory, appraisal, and list of claims as required  
 8-48 by Chapter 309, it is established that the decedent's estate,  
 8-49 excluding any homestead, exempt property, and family allowance to  
 8-50 the decedent's surviving spouse, ~~[and]~~ minor children, and adult  
 8-51 incapacitated children, does not exceed the amount sufficient to  
 8-52 pay the claims against the estate classified as Classes 1 through 4  
 8-53 under Section 355.102, the representative shall:

8-54 (1) on order of the court, pay those claims in the  
 8-55 order provided and to the extent permitted by the assets of the  
 8-56 estate subject to the payment of those claims; and

8-57 (2) after paying the claims in accordance with  
 8-58 Subdivision (1), present to the court the representative's account  
 8-59 with an application for the settlement and allowance of the  
 8-60 account.

8-61 SECTION 2.15. Sections 451.001(a) and (d), Estates Code, as  
 8-62 effective January 1, 2014, are amended to read as follows:

8-63 (a) If the value of the entire assets of an estate,  
 8-64 excluding homestead and exempt property, does not exceed the amount  
 8-65 to which the surviving spouse, ~~[and]~~ minor children, and adult  
 8-66 incapacitated children of the decedent are entitled as a family  
 8-67 allowance, an application may be filed by or on behalf of the  
 8-68 surviving spouse, ~~[or]~~ minor children, or adult incapacitated  
 8-69 children requesting a court to make a family allowance and to enter



9-1 an order that no administration of the decedent's estate is  
9-2 necessary.

9-3 (d) The application must also include a prayer that the  
9-4 court make a family allowance and that, if the family allowance  
9-5 exhausts the entire assets of the estate, excluding homestead and  
9-6 exempt property, the entire assets of the estate be set aside to the  
9-7 surviving spouse, ~~and~~ minor children, and adult incapacitated  
9-8 children, as with other family allowances provided for by  
9-9 Subchapter C, Chapter 353.

9-10 SECTION 2.16. Section 451.002(b), Estates Code, as  
9-11 effective January 1, 2014, is amended to read as follows:

9-12 (b) On the hearing of the application, if the court finds  
9-13 that the facts contained in the application are true and that the  
9-14 expenses of last illness, funeral charges, and expenses of the  
9-15 proceeding have been paid or secured, the court shall:

9-16 (1) make a family allowance; and

9-17 (2) if the entire assets of the estate, excluding  
9-18 homestead and exempt property, are exhausted by the family  
9-19 allowance made under Subdivision (1):

9-20 (A) assign to the surviving spouse, ~~and~~ minor  
9-21 children, and adult incapacitated children the entire estate in the  
9-22 same manner and with the same effect as provided in Subchapter C,  
9-23 Chapter 353, for the making of a family allowance to the surviving  
9-24 spouse, ~~and~~ minor children, and adult incapacitated children; and

9-25 (B) order that there shall be no administration  
9-26 of the estate.

9-27 SECTION 2.17. The changes in law made to Sections 139, 140,  
9-28 143, 271(a) and (b), 272, 273, 274, 275, 276, 286, 287, 288, 290,  
9-29 291, and 292, Texas Probate Code, by Article 1 of this Act are  
9-30 repealed.

9-31 SECTION 2.18. This article takes effect January 1, 2014.

9-32 ARTICLE 3. EFFECTIVE DATE

9-33 SECTION 3.01. Except as otherwise provided by this Act,  
9-34 this Act takes effect September 1, 2011.

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