

By: Hartnett

H.B. No. 2899

A BILL TO BE ENTITLED

AN ACT

relating to decedents' estates.

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

SECTION 1. Section 29, Texas Probate Code, is repealed.

SECTION 2. Section 34A, Texas Probate Code, is amended to read as follows:

Sec. 34A. ATTORNEYS AD LITEM. (a) Except as provided by Section 53(c) of this code, the judge of a probate court may appoint an attorney ad litem in any probate proceeding to represent the interests of:

- (1) a person having a legal disability;
- (2) ~~[ ]~~ a nonresident;
- (3) ~~[ ]~~ an unborn or unascertained person;
- (4) ~~[ ]~~ an unknown or missing heir; or
- (5) an unknown or missing person entitled to property deposited in an account in the court's registry under Section 408(b) of this code ~~[in any probate proceeding]~~.

(b) Subject to Subsection (c) of this section, an ~~Each~~ attorney ad litem appointed under this section is entitled to reasonable compensation for services in the amount set by the court. The court shall:

- (1) tax the compensation ~~[and to be taxed]~~ as costs in the probate proceeding; or
- (2) for an attorney ad litem appointed to represent

1 the interests of an unknown or missing person described by  
2 Subsection (a)(5) of this section, order that the compensation be  
3 paid from money in the account described by that subdivision.

4 (c) The court order appointing an attorney ad litem to  
5 represent the interests of an unknown or missing person described  
6 by Subsection (a)(5) of this section must require the attorney ad  
7 litem to conduct a search for the person. Compensation paid under  
8 Subsection (b) of this section to the attorney ad litem may not  
9 exceed 10 percent of the amount on deposit in the account described  
10 by Subsection (a)(5) of this section on the date:

11 (1) the attorney ad litem reports to the court the  
12 location of the previously unknown or missing person; or

13 (2) the money in the account is paid to the comptroller  
14 as provided by Section 427 of this code.

15 SECTION 3. Section 48, Texas Probate Code, is amended by  
16 adding Subsection (d) to read as follows:

17 (d) Notwithstanding Section 16.051, Civil Practice and  
18 Remedies Code, a proceeding to declare heirship of a decedent may be  
19 brought at any time after the decedent's death.

20 SECTION 4. Section 49(a), Texas Probate Code, is amended to  
21 read as follows:

22 (a) Such proceedings may be instituted and maintained in any  
23 of the instances enumerated above by the qualified personal  
24 representative of the estate of such decedent, by any person or  
25 persons claiming to be a secured or unsecured creditor or the owner  
26 of the whole or a part of the estate of such decedent, or by the  
27 guardian of the estate of a ward, if the proceedings are instituted

1 and maintained in the probate court in which the proceedings for the  
2 guardianship of the estate were pending at the time of the death of  
3 the ward. In such a case an application shall be filed in a proper  
4 court stating the following information:

5 (1) the name of the decedent and the time and place of  
6 death;

7 (2) the names and residences of the decedent's heirs,  
8 the relationship of each heir to the decedent, and the true interest  
9 of the applicant and each of the heirs in the estate of the  
10 decedent;

11 (3) all the material facts and circumstances within  
12 the knowledge and information of the applicant that might  
13 reasonably tend to show the time or place of death or the names or  
14 residences of all heirs, if the time or place of death or the names  
15 or residences of all the heirs are not definitely known to the  
16 applicant;

17 (4) a statement that all children born to or adopted by  
18 the decedent have been listed;

19 (5) a statement that each marriage of the decedent has  
20 been listed with the date of the marriage, the name of the spouse,  
21 and if the marriage was terminated, the date and place of  
22 termination, and other facts to show whether a spouse has had an  
23 interest in the property of the decedent;

24 (6) whether the decedent died testate and if so, what  
25 disposition has been made of the will;

26 (7) a general description of all the real and personal  
27 property belonging to the estate of the decedent; and

1 (8) an explanation for the omission of any of the  
2 foregoing information that is omitted from the application.

3 SECTION 5. Section 77, Texas Probate Code, is amended to  
4 read as follows:

5 Sec. 77. ORDER OF PERSONS QUALIFIED TO SERVE. Letters  
6 testamentary or of administration shall be granted to persons who  
7 are qualified to act, in the following order:

8 (a) To the person named as executor in the will of the  
9 deceased.

10 (b) To the surviving husband or wife.

11 (c) To the principal devisee or legatee of the testator.

12 (d) To any devisee or legatee of the testator.

13 (e) To the next of kin of the deceased, the nearest in order  
14 of descent first, and so on, and next of kin includes a person and  
15 his descendants who legally adopted the deceased or who have been  
16 legally adopted by the deceased.

17 (f) To a creditor of the deceased.

18 (g) To any person of good character residing in the county  
19 who applies therefor.

20 (h) To any other person not disqualified under the following  
21 Section. When persons [~~applicants~~] are equally entitled, letters  
22 shall be granted to the person [~~applicant~~] who, in the judgment of  
23 the court, is most likely to administer the estate advantageously,  
24 or letters [~~they~~] may be granted to [~~any~~] two or more of those  
25 persons [~~such applicants~~].

26 SECTION 6. Section 83(a), Texas Probate Code, is amended to  
27 read as follows:

1 (a) Where Original Application Has Not Been Heard. If, after  
2 an application for the probate of a will or for the appointment of a  
3 general personal representative has been filed, and before such  
4 application has been heard, an application for the probate of a will  
5 of the decedent, not theretofore presented for probate, is filed,  
6 the court shall hear both applications together and determine what  
7 instrument, if any, should be admitted to probate, or whether the  
8 decedent died intestate. The court may not sever or bifurcate the  
9 proceeding on the applications.

10 SECTION 7. Section 149C, Texas Probate Code, is as follows:

11 Sec. 149C. REMOVAL OF INDEPENDENT EXECUTOR

12 (a) Without Notice by Personal Service.

13 (1) The county court, on its own motion or on motion of  
14 any interested person, and without notice by personal service, may  
15 remove any independent executor, appointed under provisions of this  
16 Code, who:

17 (A) Neglects to qualify in the manner and time  
18 required by law;

19 (B) Fails to return within ninety days after  
20 qualification, unless such time is extended by order of the court,  
21 an inventory of the property of the estate and list of claims that  
22 have come to his knowledge;

23 (C) Cannot be served with notices or other  
24 processes because of the fact that the:

25 (i) independent executor's whereabouts are  
26 unknown;

27 (ii) independent executor is eluding

1 service; or

2 (iii) independent executor is a nonresident  
3 of this state who does not have a resident agent to accept service  
4 of process in any probate proceeding or other action relating to the  
5 estate; or

6 (D) Has misapplied, embezzled, or removed from  
7 the State, or is about to misapply, embezzle, or remove from the  
8 State, all or any part of the property committed to the independent  
9 executor's care.

10 (2) The court may remove a independent executor under  
11 Paragraph (A), Subdivision (1), of this subsection only if the  
12 independent executor neglects to qualify within 30 days after the  
13 court sends a notice by certified mail to the last known address of  
14 the independent executor and to the last known address of the  
15 independent executor's attorney, notifying them of the court's  
16 intent to remove the independent executor for failure to qualify in  
17 the manner and time required by law.

18 (3) The court may remove a independent executor under  
19 Paragraph (B), Subdivision (1), of this subsection only if the  
20 independent executor neglects to file an inventory as required by  
21 law within 30 days after the court sends a notice by certified mail  
22 to the last known address of the independent executor and to the  
23 last known address of the independent executor's attorney,  
24 notifying them of the court's intent to remove the independent  
25 executor for failure to file an inventory of the property of the  
26 estate and list of claims that have come to the independent  
27 executor's knowledge.

1           (4) The court may remove a independent executor under  
2 Paragraph (D), Subdivision (1), of this subsection only on the  
3 presentation of clear and convincing evidence given under oath.

4           (b) [~~(a)~~] With Notice by Personal Service. The county  
5 court, [~~as that term is defined by Section 3 of this code,~~] on its  
6 own motion or on motion of any interested person, after the  
7 independent executor has been cited by personal service to answer  
8 at a time and place fixed in the notice, may remove an independent  
9 executor when:

10           (1) the independent executor fails to return within  
11 ninety days after qualification, unless such time is extended by  
12 order of the court, an inventory of the property of the estate and  
13 list of claims that have come to the independent executor's  
14 knowledge;

15           (2) sufficient grounds appear to support belief that  
16 the independent executor has misapplied or embezzled, or that the  
17 independent executor is about to misapply or embezzle, all or any  
18 part of the property committed to the independent executor's care;

19           (3) the independent executor fails to make an  
20 accounting which is required by law to be made;

21           (4) the independent executor fails to timely file the  
22 affidavit or certificate required by Section 128A of this code;

23           (5) the independent executor is proved to have been  
24 guilty of gross misconduct or gross mismanagement in the  
25 performance of the independent executor's duties; or

26           (6) the independent executor becomes an incapacitated  
27 person, or is sentenced to the penitentiary, or from any other cause

1 becomes legally incapacitated from properly performing the  
2 independent executor's fiduciary duties.

3 (c) [~~(b)~~] The order of removal shall state the cause of  
4 removal and shall direct by order the disposition of the assets  
5 remaining in the name or under the control of the removed executor.  
6 The order of removal shall require that letters issued to the  
7 removed executor shall be surrendered and that all letters shall be  
8 canceled of record. If an independent executor is removed by the  
9 court under this section, the court may, on application, appoint a  
10 successor independent executor as provided by Section 154A of this  
11 code.

12 (d) [~~(c)~~] An independent executor who defends an action for  
13 his removal in good faith, whether successful or not, shall be  
14 allowed out of the estate his necessary expenses and disbursements,  
15 including reasonable attorney's fees, in the removal proceedings.

16 (e) [~~(d)~~] Costs and expenses incurred by the party seeking  
17 removal incident to removal of an independent executor appointed  
18 without bond, including reasonable attorney's fees and expenses,  
19 may be paid out of the estate.

20 SECTION 8. Part 1, Chapter VIII, Texas Probate Code, is  
21 amended by adding Section 254 to read as follows:

22 Sec. 254. PENALTY FOR FAILURE TO TIMELY FILE INVENTORY,  
23 APPRAISEMENT, AND LIST OF CLAIMS. (a) This section applies only to  
24 a personal representative, including an independent executor or  
25 independent administrator, who does not file an inventory,  
26 appraisal, and list of claims within the period prescribed by  
27 Section 250 of this code or any extension granted by the court.



1        (b) Any person interested in the estate on written  
2 complaint, or the court on the court's own motion, may have a  
3 personal representative to whom this section applies cited to file  
4 the inventory, appraisalment, and list of claims and show cause for  
5 the failure to timely file.

6        (c) If the personal representative does not file the  
7 inventory, appraisalment, and list of claims after being cited or  
8 does not show good cause for the failure to timely file, the court  
9 on hearing may fine the representative in an amount not to exceed  
10 \$1,000.

11        (d) The personal representative and the representative's  
12 sureties, if any, are liable for any fine imposed under this section  
13 and for all damages and costs sustained by the representative's  
14 failure. The fine, damages, and costs may be recovered in any court  
15 of competent jurisdiction.

16        SECTION 9. Section 407, Texas Probate Code, is amended to  
17 read as follows:

18        Sec. 407. CITATION AND NOTICE UPON PRESENTATION OF ACCOUNT  
19 FOR FINAL SETTLEMENT. Upon the filing of an account for final  
20 settlement by temporary or permanent personal representatives of  
21 the estates of decedents, citation shall contain a statement that  
22 such final account has been filed, the time and place when it will  
23 be considered by the court, and a statement requiring the person or  
24 persons cited to appear and contest the same if they see proper.  
25 Such citation shall be issued by the county clerk to the persons and  
26 in the manner set out below.

27        1. Citation [~~In case of the estates of deceased~~

1 ~~persons, notice]~~ shall be given [~~by the personal representative]~~ to  
2 each heir or beneficiary of the decedent by certified mail, return  
3 receipt requested, unless another method of service [~~type of~~  
4 ~~notice]~~ is directed by the court by written order. The citation  
5 [~~notice]~~ must include a copy of the account for final settlement.

6           2. If the court deems further additional notice  
7 necessary, it shall require the same by written order. In its  
8 discretion, the court may allow the waiver of citation [~~notice]~~ of  
9 an account for final settlement in a proceeding concerning a  
10 decedent's estate.

11           SECTION 10. Section 408, Texas Probate Code, is amended by  
12 amending Subsections (b), (c), and (d) to read as follows:

13           (b) Distribution of Remaining Property. Upon final  
14 settlement of an estate, if there be any of such estate remaining in  
15 the hands of the personal representative, the court shall order  
16 that a partition and distribution be made among the persons  
17 entitled to receive such estate. The court shall order the  
18 representative to deposit in an account in the court's registry any  
19 remaining estate property that is money and to which a person who is  
20 unknown or missing is entitled. In addition, the court shall order  
21 the representative to sell, on terms the court determines are best,  
22 remaining estate property that is not money and to which a person  
23 who is unknown or missing is entitled. The court shall order the  
24 representative to deposit the sale proceeds in an account in the  
25 court's registry. The court shall hold money deposited in an  
26 account under this subsection until the court renders:

27                   (1) an order requiring money in the account to be paid

1 to the previously unknown or missing person who is entitled to the  
2 money; or

3 (2) another order regarding the disposition of the  
4 money.

5 (c) Discharge of Representative When No Property Remains.  
6 If, upon such settlement, there be none of the estate remaining in  
7 the hands of the representative, the representative [~~he~~] shall be  
8 discharged from the representative's [~~his~~] trust and the estate  
9 ordered closed, subject to Subsection (e) of this section.

10 (d) Discharge When Estate Fully Administered. Whenever the  
11 representative of an estate has fully administered the same in  
12 accordance with this code [~~Code~~] and the orders of the court, and  
13 the representative's [~~his~~] final account has been approved, and the  
14 representative [~~he~~] has delivered all of said estate remaining in  
15 the representative's [~~his~~] hands to the person or persons entitled  
16 to receive the same, it shall be the duty of the court to enter an  
17 order discharging such representative from the representative's  
18 [~~his~~] trust, and declaring the estate closed.

19 SECTION 11. Section 427, Texas Probate Code, is amended to  
20 read as follows:

21 Sec. 427. WHEN ESTATES TO BE PAID INTO STATE TREASURY. If  
22 any person entitled to a portion of an estate, except a resident  
23 minor without a guardian, does [~~shall~~] not demand the person's  
24 [~~his~~] portion, including any portion deposited in an account in the  
25 court's registry under Section 408(b) of this code, from the  
26 executor or administrator within six months after an order of court  
27 approving the report of commissioners of partition, or within six

1 months after the settlement of the final account of an executor or  
2 administrator, as the case may be, the court by written order shall  
3 require the executor or administrator to pay so much of said portion  
4 as is in money to the comptroller; and such portion as is in other  
5 property the court [~~he~~] shall order the executor or administrator  
6 to sell on such terms as the court thinks best, and, when the  
7 proceeds of such sale are collected, the court shall order the same  
8 to be paid to the comptroller, in all such cases allowing the  
9 executor or administrator reasonable compensation for the  
10 executor's or administrator's [~~his~~] services. A suit to recover  
11 proceeds of the sale is governed by Section 433 of this code [~~Code~~].

12 SECTION 12. This Act takes effect September 1, 2011.