

1-1 By: Hartnett (Senate Sponsor - Harris) H.B. No. 2899
1-2 (In the Senate - Received from the House May 6, 2011;
1-3 May 9, 2011, read first time and referred to Committee on
1-4 Jurisprudence; May 19, 2011, reported favorably by the following
1-5 vote: Yeas 5, Nays 0; May 19, 2011, sent to printer.)

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

1-8 relating to decedents' estates.

1-9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-10 ARTICLE 1. AMENDMENTS TO TEXAS PROBATE CODE

1-11 SECTION 1.01. Section 34A, Texas Probate Code, is amended
1-12 to read as follows:

1-13 Sec. 34A. ATTORNEYS AD LITEM. (a) Except as provided by
1-14 Section 53(c) of this code, the judge of a probate court may appoint
1-15 an attorney ad litem in any probate proceeding to represent the
1-16 interests of:

1-17 (1) a person having a legal disability;
1-18 (2) ~~[]~~ a nonresident;
1-19 (3) ~~[]~~ an unborn or unascertained person;
1-20 (4) ~~[]~~ an unknown or missing heir; or
1-21 (5) an unknown or missing person entitled to property
1-22 deposited in an account in the court's registry under Section
1-23 408(b) of this code [in any probate proceeding].

1-24 (b) Subject to Subsection (c) of this section, an [Each]
1-25 attorney ad litem appointed under this section is entitled to
1-26 reasonable compensation for services in the amount set by the
1-27 court. The court shall:

1-28 (1) tax the compensation [and to be taxed] as costs in
1-29 the probate proceeding; or
1-30 (2) for an attorney ad litem appointed to represent
1-31 the interests of an unknown or missing person described by
1-32 Subsection (a)(5) of this section, order that the compensation be
1-33 paid from money in the account described by that subdivision.

1-34 (c) The court order appointing an attorney ad litem to
1-35 represent the interests of an unknown or missing person described
1-36 by Subsection (a)(5) of this section must require the attorney ad
1-37 litem to conduct a search for the person. Compensation paid under
1-38 Subsection (b) of this section to the attorney ad litem may not
1-39 exceed 10 percent of the amount on deposit in the account described
1-40 by Subsection (a)(5) of this section on the date:

1-41 (1) the attorney ad litem reports to the court the
1-42 location of the previously unknown or missing person; or
1-43 (2) the money in the account is paid to the comptroller
1-44 as provided by Section 427 of this code.

1-45 SECTION 1.02. Section 48, Texas Probate Code, is amended by
1-46 adding Subsection (d) to read as follows:

1-47 (d) Notwithstanding Section 16.051, Civil Practice and
1-48 Remedies Code, a proceeding to declare heirship of a decedent may be
1-49 brought at any time after the decedent's death.

1-50 SECTION 1.03. Section 49(a), Texas Probate Code, is amended
1-51 to read as follows:

1-52 (a) Such proceedings may be instituted and maintained in any
1-53 of the instances enumerated above by the qualified personal
1-54 representative of the estate of such decedent, by any person or
1-55 persons claiming to be a secured or unsecured creditor or the owner
1-56 of the whole or a part of the estate of such decedent, or by the
1-57 guardian of the estate of a ward, if the proceedings are instituted
1-58 and maintained in the probate court in which the proceedings for the
1-59 guardianship of the estate were pending at the time of the death of
1-60 the ward. In such a case an application shall be filed in a proper
1-61 court stating the following information:

1-62 (1) the name of the decedent and the time and place of
1-63 death;
1-64 (2) the names and residences of the decedent's heirs,

2-1 the relationship of each heir to the decedent, and the true interest
 2-2 of the applicant and each of the heirs in the estate of the
 2-3 decedent;

2-4 (3) all the material facts and circumstances within
 2-5 the knowledge and information of the applicant that might
 2-6 reasonably tend to show the time or place of death or the names or
 2-7 residences of all heirs, if the time or place of death or the names
 2-8 or residences of all the heirs are not definitely known to the
 2-9 applicant;

2-10 (4) a statement that all children born to or adopted by
 2-11 the decedent have been listed;

2-12 (5) a statement that each marriage of the decedent has
 2-13 been listed with the date of the marriage, the name of the spouse,
 2-14 and if the marriage was terminated, the date and place of
 2-15 termination, and other facts to show whether a spouse has had an
 2-16 interest in the property of the decedent;

2-17 (6) whether the decedent died testate and if so, what
 2-18 disposition has been made of the will;

2-19 (7) a general description of all the real and personal
 2-20 property belonging to the estate of the decedent; and

2-21 (8) an explanation for the omission of any of the
 2-22 foregoing information that is omitted from the application.

2-23 SECTION 1.04. Sections 53C(a) and (b), Texas Probate Code,
 2-24 are amended to read as follows:

2-25 (a) This section applies in a proceeding to declare heirship
 2-26 of a decedent only with respect to an individual who[+]

2-27 ~~[(1) petitions the court for a determination of right~~
 2-28 ~~of inheritance as authorized by Section 42(b) of this code; and~~

2-29 ~~[(2)] claims to be a biological child of the~~
 2-30 ~~decedent[, but with respect to whom a parent-child relationship~~
 2-31 ~~with the decedent was not established as provided by Section~~
 2-32 ~~160.201, Family Code,] or [who] claims inheritance through a~~
 2-33 ~~biological child of the decedent[, if a parent-child relationship~~
 2-34 ~~between the individual through whom the inheritance is claimed and~~
 2-35 ~~the decedent was not established as provided by Section 160.201,~~
 2-36 ~~Family Code].~~

2-37 (b) The presumption under Section 160.505, Family Code,
 2-38 that applies in establishing a parent-child relationship also
 2-39 applies in determining heirship in the probate court using the
 2-40 results of genetic testing ordered with respect to an individual
 2-41 described by Subsection (a) of this section, and the presumption
 2-42 may be rebutted in the same manner provided by Section 160.505,
 2-43 Family Code. [Unless the results of genetic testing of another
 2-44 individual who is an heir of the decedent are admitted as rebuttal
 2-45 evidence, the court shall find that the individual described by
 2-46 Subsection (a) of this section is an heir of the decedent if the
 2-47 results of genetic testing ordered under Section 53A of this
 2-48 chapter identify a tested individual who is an heir of the decedent
 2-49 as the ancestor of the individual described by Subsection (a) of
 2-50 this section.]

2-51 SECTION 1.05. Section 77, Texas Probate Code, is amended to
 2-52 read as follows:

2-53 Sec. 77. ORDER OF PERSONS QUALIFIED TO SERVE. Letters
 2-54 testamentary or of administration shall be granted to persons who
 2-55 are qualified to act, in the following order:

2-56 (a) To the person named as executor in the will of the
 2-57 deceased.

2-58 (b) To the surviving husband or wife.

2-59 (c) To the principal devisee or legatee of the testator.

2-60 (d) To any devisee or legatee of the testator.

2-61 (e) To the next of kin of the deceased, the nearest in order
 2-62 of descent first, and so on, and next of kin includes a person and
 2-63 his descendants who legally adopted the deceased or who have been
 2-64 legally adopted by the deceased.

2-65 (f) To a creditor of the deceased.

2-66 (g) To any person of good character residing in the county
 2-67 who applies therefor.

2-68 (h) To any other person not disqualified under the following
 2-69 section [Section]. When persons [applicants] are equally entitled,

3-1 letters shall be granted to the person [~~applicant~~] who, in the
 3-2 judgment of the court, is most likely to administer the estate
 3-3 advantageously, or letters [~~they~~] may be granted to [~~any~~] two or
 3-4 more of those persons [~~such applicants~~].

3-5 SECTION 1.06. Section 83(a), Texas Probate Code, is amended
 3-6 to read as follows:

3-7 (a) Where Original Application Has Not Been Heard. If, after
 3-8 an application for the probate of a will or for the appointment of a
 3-9 general personal representative has been filed, and before such
 3-10 application has been heard, an application for the probate of a will
 3-11 of the decedent, not theretofore presented for probate, is filed,
 3-12 the court shall hear both applications together and determine what
 3-13 instrument, if any, should be admitted to probate, or whether the
 3-14 decedent died intestate. The court may not sever or bifurcate the
 3-15 proceeding on the applications.

3-16 SECTION 1.07. Section 149C, Texas Probate Code, is amended
 3-17 by amending Subsection (a) and adding Subsections (a-1) and (a-2)
 3-18 to read as follows:

3-19 (a) The [~~county~~] court, [~~as that term is defined by Section~~
 3-20 ~~3 of this code,~~] on its own motion or on motion of any interested
 3-21 person, after the independent executor has been cited by personal
 3-22 service to answer at a time and place fixed in the notice, may
 3-23 remove an independent executor when:

3-24 (1) the independent executor fails to return within
 3-25 ninety days after qualification, unless such time is extended by
 3-26 order of the court, an inventory of the property of the estate and
 3-27 list of claims that have come to the independent executor's
 3-28 knowledge;

3-29 (2) sufficient grounds appear to support belief that
 3-30 the independent executor has misapplied or embezzled, or that the
 3-31 independent executor is about to misapply or embezzle, all or any
 3-32 part of the property committed to the independent executor's care;

3-33 (3) the independent executor fails to make an
 3-34 accounting which is required by law to be made;

3-35 (4) the independent executor fails to timely file the
 3-36 affidavit or certificate required by Section 128A of this code;

3-37 (5) the independent executor is proved to have been
 3-38 guilty of gross misconduct or gross mismanagement in the
 3-39 performance of the independent executor's duties; or

3-40 (6) the independent executor becomes an incapacitated
 3-41 person, or is sentenced to the penitentiary, or from any other cause
 3-42 becomes incapable of [~~legally incapacitated from~~] properly
 3-43 performing the independent executor's fiduciary duties.

3-44 (a-1) The court, on its own motion or on the motion of any
 3-45 interested person, and after the independent executor has been
 3-46 cited by certified mail, return receipt requested, to answer at a
 3-47 time and place stated in the citation, may remove an independent
 3-48 executor who is appointed under the provisions of this code if the
 3-49 independent executor:

3-50 (1) subject to Subsection (a-2)(1) of this section,
 3-51 fails to qualify in the manner and period required by law;

3-52 (2) subject to Subsection (a-2)(2) of this section,
 3-53 fails to return not later than the 90th day after the date the
 3-54 independent executor qualifies an inventory of the estate property
 3-55 and a list of claims that have come to the independent executor's
 3-56 knowledge, unless the period is extended by court order;

3-57 (3) cannot be served with notices or other processes
 3-58 because the:

3-59 (A) independent executor's location is unknown;

3-60 (B) independent executor is eluding service; or

3-61 (C) independent executor is a nonresident of this
 3-62 state who does not have a resident agent to accept service of
 3-63 process in a probate proceeding or other action relating to the
 3-64 estate; or

3-65 (4) subject to Subsection (a-2)(3) of this section,
 3-66 has misapplied, embezzled, or removed from the state, or is about to
 3-67 misapply, embezzle, or remove from the state, all or any part of the
 3-68 property committed to the independent executor's care.

3-69 (a-2) The court may remove an independent executor:

4-1 (1) under Subsection (a-1)(1) of this section only if
 4-2 the independent executor fails to qualify on or before the 30th day
 4-3 after the date the court sends a notice by certified mail, return
 4-4 receipt requested, to the independent executor's last known address
 4-5 and to the last known address of the independent executor's
 4-6 attorney, notifying the independent executor and attorney of the
 4-7 court's intent to remove the independent executor for failure to
 4-8 qualify in the manner and period required by law;

4-9 (2) under Subsection (a-1)(2) of this section only if
 4-10 the independent executor fails to file an inventory and list of
 4-11 claims as required by law on or before the 30th day after the date
 4-12 the court sends a notice by certified mail, return receipt
 4-13 requested, to the independent executor's last known address and to
 4-14 the last known address of the independent executor's attorney,
 4-15 notifying the independent executor and attorney of the court's
 4-16 intent to remove the independent executor for failure to file the
 4-17 inventory and list of claims; and

4-18 (3) under Subsection (a-1)(4) of this section only on
 4-19 presentation of clear and convincing evidence given under oath of
 4-20 the misapplication, embezzlement, or removal from this state of
 4-21 property as described by that subdivision.

4-22 SECTION 1.08. Part 1, Chapter VIII, Texas Probate Code, is
 4-23 amended by adding Section 254 to read as follows:

4-24 Sec. 254. PENALTY FOR FAILURE TO TIMELY FILE INVENTORY,
 4-25 APPRAISEMENT, AND LIST OF CLAIMS. (a) This section applies only to
 4-26 a personal representative, including an independent executor or
 4-27 administrator, who does not file an inventory, appraisal, and
 4-28 list of claims within the period prescribed by Section 250 of this
 4-29 code or any extension granted by the court.

4-30 (b) Any person interested in the estate on written
 4-31 complaint, or the court on the court's own motion, may have a
 4-32 personal representative to whom this section applies cited to file
 4-33 the inventory, appraisal, and list of claims and show cause for
 4-34 the failure to timely file.

4-35 (c) If the personal representative does not file the
 4-36 inventory, appraisal, and list of claims after being cited or
 4-37 does not show good cause for the failure to timely file, the court
 4-38 on hearing may fine the representative in an amount not to exceed
 4-39 \$1,000.

4-40 (d) The personal representative and the representative's
 4-41 sureties, if any, are liable for any fine imposed under this section
 4-42 and for all damages and costs sustained by the representative's
 4-43 failure. The fine, damages, and costs may be recovered in any court
 4-44 of competent jurisdiction.

4-45 SECTION 1.09. Section 407, Texas Probate Code, is amended
 4-46 to read as follows:

4-47 Sec. 407. CITATION AND NOTICE UPON PRESENTATION OF ACCOUNT
 4-48 FOR FINAL SETTLEMENT. Upon the filing of an account for final
 4-49 settlement by temporary or permanent personal representatives of
 4-50 the estates of decedents, citation shall contain a statement that
 4-51 such final account has been filed, the time and place when it will
 4-52 be considered by the court, and a statement requiring the person or
 4-53 persons cited to appear and contest the same if they see proper.
 4-54 Such citation shall be issued by the county clerk to the persons and
 4-55 in the manner set out below.

4-56 1. Citation [~~In case of the estates of deceased~~
 4-57 persons, notice] shall be given [~~by the personal representative~~]
 4-58 to each heir or beneficiary of the decedent by certified mail, return
 4-59 receipt requested, unless another method of service [~~type of~~
 4-60 notice] is directed by the court by written order. The citation
 4-61 [~~notice~~] must include a copy of the account for final settlement.

4-62 2. If the court deems further additional notice
 4-63 necessary, it shall require the same by written order. In its
 4-64 discretion, the court may allow the waiver of citation [~~notice~~]
 4-65 of an account for final settlement in a proceeding concerning a
 4-66 decedent's estate.

4-67 SECTION 1.10. Sections 408(b), (c), and (d), Texas Probate
 4-68 Code, are amended to read as follows:

4-69 (b) Distribution of Remaining Property. Upon final

5-1 settlement of an estate, if there be any of such estate remaining in
 5-2 the hands of the personal representative, the court shall order
 5-3 that a partition and distribution be made among the persons
 5-4 entitled to receive such estate. The court shall order the
 5-5 representative to deposit in an account in the court's registry any
 5-6 remaining estate property that is money and to which a person who is
 5-7 unknown or missing is entitled. In addition, the court shall order
 5-8 the representative to sell, on terms the court determines are best,
 5-9 remaining estate property that is not money and to which a person
 5-10 who is unknown or missing is entitled. The court shall order the
 5-11 representative to deposit the sale proceeds in an account in the
 5-12 court's registry. The court shall hold money deposited in an
 5-13 account under this subsection until the court renders:

5-14 (1) an order requiring money in the account to be paid
 5-15 to the previously unknown or missing person who is entitled to the
 5-16 money; or

5-17 (2) another order regarding the disposition of the
 5-18 money.

5-19 (c) Discharge of Representative When No Property Remains.
 5-20 If, upon such settlement, there be none of the estate remaining in
 5-21 the hands of the representative, the representative [he] shall be
 5-22 discharged from the representative's [his] trust and the estate
 5-23 ordered closed.

5-24 (d) Discharge When Estate Fully Administered. Whenever the
 5-25 representative of an estate has fully administered the same in
 5-26 accordance with this code [~~Code~~] and the orders of the court, and
 5-27 the representative's [his] final account has been approved, and the
 5-28 representative [he] has delivered all of said estate remaining in
 5-29 the representative's [his] hands to the person or persons entitled
 5-30 to receive the same, it shall be the duty of the court to enter an
 5-31 order discharging such representative from the representative's
 5-32 [his] trust, and declaring the estate closed.

5-33 SECTION 1.11. Section 427, Texas Probate Code, is amended
 5-34 to read as follows:

5-35 Sec. 427. WHEN ESTATES TO BE PAID INTO STATE TREASURY. If
 5-36 any person entitled to a portion of an estate, except a resident
 5-37 minor without a guardian, does [shall] not demand the person's
 5-38 [his] portion, including any portion deposited in an account in the
 5-39 court's registry under Section 408(b) of this code, from the
 5-40 executor or administrator within six months after an order of court
 5-41 approving the report of commissioners of partition, or within six
 5-42 months after the settlement of the final account of an executor or
 5-43 administrator, as the case may be, the court by written order shall
 5-44 require the executor or administrator to pay so much of said portion
 5-45 as is in money to the comptroller; and such portion as is in other
 5-46 property the court [he] shall order the executor or administrator
 5-47 to sell on such terms as the court thinks best, and, when the
 5-48 proceeds of such sale are collected, the court shall order the same
 5-49 to be paid to the comptroller, in all such cases allowing the
 5-50 executor or administrator reasonable compensation for the
 5-51 executor's or administrator's [his] services. A suit to recover
 5-52 proceeds of the sale is governed by Section 433 of this code [~~Code~~].

5-53 SECTION 1.12. Sections 29 and 53C(c), Texas Probate Code,
 5-54 are repealed.

5-55 SECTION 1.13. (a) Except as otherwise provided by this
 5-56 section, the changes in law made by this article apply to the estate
 5-57 of a decedent that is pending or commenced on or after September 1,
 5-58 2011, regardless of the date of the decedent's death.

5-59 (b) The changes in law made by this article to Section
 5-60 49(a), Texas Probate Code, apply only to an application for
 5-61 determination of heirship filed on or after September 1, 2011. An
 5-62 application for determination of heirship filed before that date is
 5-63 governed by the law in effect on the date the application was filed,
 5-64 and the former law is continued in effect for that purpose.

5-65 (c) The changes in law made by this article to Section 77,
 5-66 Texas Probate Code, apply only to an application for the grant of
 5-67 letters testamentary or of administration of a decedent's estate
 5-68 filed on or after September 1, 2011. An application for the grant
 5-69 of letters testamentary or of administration of a decedent's estate

6-1 filed before that date is governed by the law in effect on the date
 6-2 the application was filed, and the former law is continued in effect
 6-3 for that purpose.

6-4 (d) The changes in law made by this article to Section
 6-5 83(a), Texas Probate Code, apply only to an application for the
 6-6 probate of a will or administration of the estate of a decedent that
 6-7 is pending or filed on or after September 1, 2011.

6-8 (e) The changes in law made by this article to Sections
 6-9 53C(a) and (b), Texas Probate Code, apply only to a proceeding to
 6-10 declare heirship commenced on or after September 1, 2011. A
 6-11 proceeding to declare heirship commenced before that date is
 6-12 governed by the law in effect on the date the proceeding was
 6-13 commenced, and the former law is continued in effect for that
 6-14 purpose.

6-15 ARTICLE 2. AMENDMENTS TO ESTATES CODE

6-16 SECTION 2.01. Section 53.104, Estates Code, as effective
 6-17 January 1, 2014, is amended to read as follows:

6-18 Sec. 53.104. APPOINTMENT OF ATTORNEYS AD LITEM. (a) Except
 6-19 as provided by Section 202.009(b), the judge of a probate court may
 6-20 appoint an attorney ad litem in any probate proceeding to represent
 6-21 the interests of:

- 6-22 (1) a person who has a legal disability;
- 6-23 (2) a nonresident;
- 6-24 (3) an unborn or unascertained person; [~~or~~]
- 6-25 (4) an unknown or missing heir; or
- 6-26 (5) an unknown or missing person entitled to property
 6-27 deposited in an account in the court's registry under Section
 6-28 362.011(b).

6-29 (b) Subject to Subsection (c), an [An] attorney ad litem
 6-30 appointed under this section is entitled to reasonable compensation
 6-31 for services provided in the amount set by the court. The court
 6-32 shall:

- 6-33 (1) tax the compensation[, to be taxed] as costs in the
 6-34 probate proceeding; or
- 6-35 (2) for an attorney ad litem appointed to represent
 6-36 the interests of an unknown or missing person described by
 6-37 Subsection (a)(5), order that the compensation be paid from money
 6-38 in the account described by that subdivision.

6-39 (c) The court order appointing an attorney ad litem to
 6-40 represent the interests of an unknown or missing person described
 6-41 by Subsection (a)(5) must require the attorney ad litem to conduct a
 6-42 search for the person. Compensation paid under Subsection (b) to
 6-43 the attorney ad litem may not exceed 10 percent of the amount on
 6-44 deposit in the account described by Subsection (a)(5) on the date:

- 6-45 (1) the attorney ad litem reports to the court the
 6-46 location of the previously unknown or missing person; or
- 6-47 (2) the money in the account is paid to the comptroller
 6-48 as provided by Section 551.001.

6-49 SECTION 2.02. Subchapter A, Chapter 202, Estates Code, as
 6-50 effective January 1, 2014, is amended by adding Section 202.0025 to
 6-51 read as follows:

6-52 Sec. 202.0025. ACTION BROUGHT AFTER DECEDENT'S DEATH.
 6-53 Notwithstanding Section 16.051, Civil Practice and Remedies Code, a
 6-54 proceeding to declare heirship of a decedent may be brought at any
 6-55 time after the decedent's death.

6-56 SECTION 2.03. Section 202.004, Estates Code, as effective
 6-57 January 1, 2014, is amended to read as follows:

6-58 Sec. 202.004. PERSONS WHO MAY COMMENCE PROCEEDING TO
 6-59 DECLARE HEIRSHIP. A proceeding to declare heirship of a decedent
 6-60 may be commenced and maintained under a circumstance specified by
 6-61 Section 202.002 by:

- 6-62 (1) the personal representative of the decedent's
 6-63 estate;
- 6-64 (2) a person claiming to be a secured or unsecured
 6-65 creditor or the owner of all or part of the decedent's estate; or
- 6-66 (3) if the decedent was a ward with respect to whom a
 6-67 guardian of the estate had been appointed, the guardian of the
 6-68 estate, provided that the proceeding is commenced and maintained in
 6-69 the probate court in which the proceedings for the guardianship of

7-1 the estate were pending at the time of the decedent's death.

7-2 SECTION 2.04. Sections 204.151 and 204.152, Estates Code,
7-3 as effective January 1, 2014, are amended to read as follows:

7-4 Sec. 204.151. APPLICABILITY OF SUBCHAPTER. This subchapter
7-5 applies in a proceeding to declare heirship of a decedent only with
7-6 respect to an individual who[+]

7-7 [~~(1) petitions the court for a determination of right~~
7-8 ~~of inheritance as authorized by Section 201.052(c), and~~

7-9 [~~(2)~~] claims[+]

7-10 [~~(A)~~] to be a biological child of the decedent or
7-11 claims [~~, but with respect to whom a parent-child relationship with~~
7-12 ~~the decedent was not established as provided by Section 160.201,~~
7-13 ~~Family Code, or~~

7-14 [~~(B)~~] to inherit through a biological child of
7-15 the decedent [~~, if a parent-child relationship between the~~
7-16 ~~individual through whom the inheritance is claimed and the decedent~~
7-17 ~~was not established as provided by Section 160.201, Family Code].~~

7-18 Sec. 204.152. PRESUMPTION; [REQUIRED FINDINGS IN ABSENCE
7-19 OF] REBUTTAL [EVIDENCE]. The presumption under Section 160.505,
7-20 Family Code, that applies in establishing a parent-child
7-21 relationship also applies in determining heirship in the probate
7-22 court using the results of genetic testing ordered with respect to
7-23 an individual described by Section 204.151, and the presumption may
7-24 be rebutted in the same manner provided by Section 160.505, Family
7-25 Code. [Unless the results of genetic testing of another individual
7-26 who is an heir of the decedent who is the subject of a proceeding to
7-27 declare heirship to which this subchapter applies are admitted as
7-28 rebuttal evidence, the court shall find that the individual
7-29 described by Section 204.151:

7-30 [~~(1) is an heir of the decedent, if the results of~~
7-31 ~~genetic testing ordered under Subchapter B identify a tested~~
7-32 ~~individual who is an heir of the decedent as the ancestor of the~~
7-33 ~~individual described by Section 204.151; or~~

7-34 [~~(2) is not an heir of the decedent, if the results of~~
7-35 ~~genetic testing ordered under Subchapter B exclude a tested~~
7-36 ~~individual who is an heir of the decedent as the ancestor of the~~
7-37 ~~individual described by Section 204.151.]~~

7-38 SECTION 2.05. Section 256.101, Estates Code, as effective
7-39 January 1, 2014, is amended to read as follows:

7-40 Sec. 256.101. PROCEDURE ON FILING OF SECOND APPLICATION
7-41 WHEN ORIGINAL APPLICATION HAS NOT BEEN HEARD. (a) If, after an
7-42 application for the probate of a decedent's will or the appointment
7-43 of a personal representative for the decedent's estate has been
7-44 filed but before the application is heard, an application is filed
7-45 for the probate of a will of the same decedent that has not
7-46 previously been presented for probate, the court shall:

7-47 (1) hear both applications together; and

7-48 (2) determine:

7-49 (A) if both applications are for the probate of a
7-50 will, which will should be admitted to probate, if either, or
7-51 whether the decedent died intestate; or

7-52 (B) if only one application is for the probate of
7-53 a will, whether the will should be admitted to probate or whether
7-54 the decedent died intestate.

7-55 (b) The court may not sever or bifurcate the proceeding on
7-56 the applications described in Subsection (a).

7-57 SECTION 2.06. Section 304.001(c), Estates Code, as
7-58 effective January 1, 2014, is amended to read as follows:

7-59 (c) If persons [~~applicants for letters testamentary or of~~
7-60 ~~administration]~~ are equally entitled to letters testamentary or of
7-61 administration [~~the letters~~], the court:

7-62 (1) shall grant the letters to the person [~~applicant]~~
7-63 who, in the judgment of the court, is most likely to administer the
7-64 estate advantageously; or

7-65 (2) may grant the letters to two or more of those
7-66 persons [~~applicants~~].

7-67 SECTION 2.07. Subchapter B, Chapter 309, Estates Code, as
7-68 effective January 1, 2014, is amended by adding Section 309.056 to
7-69 read as follows:

8-1 Sec. 309.056. PENALTY FOR FAILURE TO TIMELY FILE INVENTORY,
 8-2 APPRAISEMENT, AND LIST OF CLAIMS. (a) This section applies only to
 8-3 a personal representative, including an independent executor or
 8-4 administrator, who does not file an inventory, appraisal, and
 8-5 list of claims within the period prescribed by Section 309.051 or
 8-6 any extension granted by the court.

8-7 (b) Any person interested in the estate on written
 8-8 complaint, or the court on the court's own motion, may have a
 8-9 personal representative to whom this section applies cited to file
 8-10 the inventory, appraisal, and list of claims and show cause for
 8-11 the failure to timely file.

8-12 (c) If the personal representative does not file the
 8-13 inventory, appraisal, and list of claims after being cited or
 8-14 does not show good cause for the failure to timely file, the court
 8-15 on hearing may fine the representative in an amount not to exceed
 8-16 \$1,000.

8-17 (d) The personal representative and the representative's
 8-18 sureties, if any, are liable for any fine imposed under this section
 8-19 and for all damages and costs sustained by the representative's
 8-20 failure. The fine, damages, and costs may be recovered in any court
 8-21 of competent jurisdiction.

8-22 SECTION 2.08. Section 362.005, Estates Code, as effective
 8-23 January 1, 2014, is amended to read as follows:

8-24 Sec. 362.005. CITATION AND NOTICE ON PRESENTATION OF
 8-25 ACCOUNT. (a) On the presentation of an account for final settlement
 8-26 by a temporary or permanent personal representative, the county
 8-27 clerk shall issue citation to the persons and in the manner provided
 8-28 by Subsection (b) [~~Subsections (c) and (d)~~].

8-29 (b) Citation issued under Subsection (a) must:

8-30 (1) contain:

8-31 (A) [~~(1)~~] a statement that an account for final
 8-32 settlement has been presented;

8-33 (B) [~~(2)~~] the time and place the court will
 8-34 consider the account; [~~and~~]

8-35 (C) [~~(3)~~] a statement requiring the person cited
 8-36 to appear and contest the account, if the person wishes to contest
 8-37 the account; and

8-38 (D) a copy of the account for final settlement;
 8-39 and

8-40 (2) be given[-

8-41 ~~[(c) The personal representative shall give notice]~~ to each
 8-42 heir or beneficiary of the decedent by certified mail, return
 8-43 receipt requested, unless the court by written order directs
 8-44 another method of service [~~type of notice~~] to be given[~~. The notice~~
 8-45 ~~must include a copy of the account for final settlement].~~

8-46 (c) [~~(d)~~] The court by written order shall require
 8-47 additional notice if the court considers the additional notice
 8-48 necessary.

8-49 (d) [~~(e)~~] The court may allow the waiver of citation
 8-50 ~~[notice]~~ of an account for final settlement in a proceeding
 8-51 concerning a decedent's estate.

8-52 SECTION 2.09. Section 362.011, Estates Code, as effective
 8-53 January 1, 2014, is amended to read as follows:

8-54 Sec. 362.011. PARTITION AND DISTRIBUTION OF ESTATE; DEPOSIT
 8-55 IN COURT'S REGISTRY. (a) If, on final settlement of an estate, any
 8-56 of the estate remains in the personal representative's possession,
 8-57 the court shall order that a partition and distribution be made
 8-58 among the persons entitled to receive that part of the estate.

8-59 (b) The court shall order the personal representative to
 8-60 deposit in an account in the court's registry any remaining estate
 8-61 property that is money and to which a person who is unknown or
 8-62 missing is entitled. In addition, the court shall order the
 8-63 representative to sell, on terms the court determines are best,
 8-64 remaining estate property that is not money and to which a person
 8-65 who is unknown or missing is entitled. The court shall order the
 8-66 representative to deposit the sale proceeds in an account in the
 8-67 court's registry. The court shall hold money deposited in an
 8-68 account under this subsection until the court renders:

8-69 (1) an order requiring money in the account to be paid

9-1 to the previously unknown or missing person who is entitled to the
9-2 money; or
9-3 (2) another order regarding the disposition of the
9-4 money.

9-5 SECTION 2.10. Section 551.001(a), Estates Code, as
9-6 effective January 1, 2014, is amended to read as follows:

9-7 (a) The court, by written order, shall require the executor
9-8 or administrator of an estate to pay to the comptroller as provided
9-9 by this subchapter the share of that estate of a person entitled to
9-10 that share who does not demand the share, including any portion
9-11 deposited in an account in the court's registry under Section
9-12 362.011(b), from the executor or administrator within six months
9-13 after the date of, as applicable:

9-14 (1) a court order approving the report of the
9-15 commissioners of partition made under Section 360.154; or

9-16 (2) the settlement of the final account of the
9-17 executor or administrator.

9-18 SECTION 2.11. The following are repealed:

9-19 (1) the changes in law made by Article 1 of this Act to
9-20 Sections 34A, 49(a), 53C(a) and (b), 77, 83(a), 407, 408(b), (c),
9-21 and (d), and 427, Texas Probate Code;

9-22 (2) Sections 48(d) and 254, Texas Probate Code, as
9-23 added by Article 1 of this Act; and

9-24 (3) Section 351.002, Estates Code, as effective
9-25 January 1, 2014.

9-26 SECTION 2.12. This article takes effect January 1, 2014.

9-27 ARTICLE 3. GENERAL EFFECTIVE DATE

9-28 SECTION 3.01. Except as otherwise provided by this Act,
9-29 this Act takes effect September 1, 2011.

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