

Suspending limitations on conference committee jurisdiction, S.B. No. 1198 (Rodriguez/Hartnett)

By: Hartnett

H.R. No. 2690

R E S O L U T I O N

1 BE IT RESOLVED by the House of Representatives of the State of
2 Texas, 82nd Legislature, Regular Session, 2011, That House Rule 13,
3 Section 9(a), be suspended in part as provided by House Rule 13,
4 Section 9(f), to enable the conference committee appointed to
5 resolve the differences on Senate Bill 1198 (decedents' estates) to
6 consider and take action on the following matters:

7 (1) House Rule 13, Section 9(a)(4), is suspended to permit
8 the committee to add text on matters which are not included in
9 either the house or senate version of the bill by adding the
10 following sections to the bill:

11 SECTION 1.08. Section 34A, Texas Probate Code, is amended
12 to read as follows:

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

- 17 (1) a person having a legal disability;
18 (2) [~~7~~] a nonresident;
19 (3) [~~7~~] an unborn or unascertained person;
20 (4) [~~7-er~~] an unknown or missing heir; or
21 (5) an unknown or missing person entitled to property
22 deposited in an account in the court's registry under Section
23 408(b) of this code [~~in any probate proceeding~~].

24 (b) Subject to Subsection (c) of this section, an [~~Each~~]

1 attorney ad litem appointed under this section is entitled to
2 reasonable compensation for services in the amount set by the
3 court. The court shall:

4 (1) tax the compensation [and to be taxed] as costs in
5 the probate proceeding; or

6 (2) for an attorney ad litem appointed to represent
7 the interests of an unknown or missing person described by
8 Subsection (a)(5) of this section, order that the compensation be
9 paid from money in the account described by that subdivision.

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

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

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

21 SECTION 1.13. Subsections (a) and (b), Section 53C, Texas
22 Probate Code, are amended to read as follows:

23 (a) This section applies in a proceeding to declare heirship
24 of a decedent only with respect to an individual who[+]

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

27 ~~[(2)]~~ claims to be a biological child of the

1 decedent[~~, but with respect to whom a parent-child relationship~~
2 ~~with the decedent was not established as provided by Section~~
3 ~~160.201, Family Code,~~] or [who] claims inheritance through a
4 biological child of the decedent[~~, if a parent-child relationship~~
5 ~~between the individual through whom the inheritance is claimed and~~
6 ~~the decedent was not established as provided by Section 160.201,~~
7 ~~Family Code].~~

8 (b) The presumption under Section 160.505, Family Code,
9 that applies in establishing a parent-child relationship also
10 applies in determining heirship in the probate court using the
11 results of genetic testing ordered with respect to an individual
12 described by Subsection (a) of this section, and the presumption
13 may be rebutted in the same manner provided by Section 160.505,
14 Family Code. [~~Unless the results of genetic testing of another~~
15 ~~individual who is an heir of the decedent are admitted as rebuttal~~
16 ~~evidence, the court shall find that the individual described by~~
17 ~~Subsection (a) of this section is an heir of the decedent if the~~
18 ~~results of genetic testing ordered under Section 53A of this~~
19 ~~chapter identify a tested individual who is an heir of the decedent~~
20 ~~as the ancestor of the individual described by Subsection (a) of~~
21 ~~this section.]~~

22 SECTION 1.17. Section 77, Texas Probate Code, is amended to
23 read as follows:

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

27 (a) To the person named as executor in the will of the

1 deceased.

2 (b) To the surviving husband or wife.

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

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

5 (e) To the next of kin of the deceased, the nearest in order
6 of descent first, and so on, and next of kin includes a person and
7 his descendants who legally adopted the deceased or who have been
8 legally adopted by the deceased.

9 (f) To a creditor of the deceased.

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

12 (h) To any other person not disqualified under the following
13 section [~~Section~~]. When persons [~~applicants~~] are equally entitled,
14 letters shall be granted to the person [~~applicant~~] who, in the
15 judgment of the court, is most likely to administer the estate
16 advantageously, or letters [~~they~~] may be granted to [~~any~~] two or
17 more of those persons [~~such applicants~~].

18 SECTION 1.32. Part 1, Chapter VIII, Texas Probate Code, is
19 amended by adding Section 254 to read as follows:

20 Sec. 254. PENALTY FOR FAILURE TO TIMELY FILE INVENTORY,
21 APPRAISEMENT, AND LIST OF CLAIMS OR AFFIDAVIT IN LIEU OF. (a) This
22 section applies only to a personal representative, including an
23 independent executor or administrator, who does not file an
24 inventory, appraisal, and list of claims or affidavit in lieu of
25 the inventory, appraisal, and list of claims, as applicable,
26 within the period prescribed by Section 250 of this code or any
27 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, appraisement, and list of claims or affidavit in
5 lieu of the inventory, appraisement, and list of claims, as
6 applicable, and show cause for the failure to timely file.

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

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

18 SECTION 1.40. Section 407, Texas Probate Code, is amended
19 to read as follows:

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

1 in the manner set out below.

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

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

13 SECTION 1.41. Subsections (b), (c), and (d), Section 408,
14 Texas Probate Code, are amended to read as follows:

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

1 account under this subsection until the court renders:

2 (1) an order requiring money in the account to be paid
3 to the previously unknown or missing person who is entitled to the
4 money; or

5 (2) another order regarding the disposition of the
6 money.

7 (c) Discharge of Representative When No Property Remains.

8 If, upon such settlement, there be none of the estate remaining in
9 the hands of the representative, the representative [~~he~~] shall be
10 discharged from the representative's [~~his~~] trust and the estate
11 ordered closed.

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

21 SECTION 1.42. Section 427, Texas Probate Code, is amended
22 to read as follows:

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

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

14 SECTION 2.06. Section 53.104, Estates Code, as effective
15 January 1, 2014, is amended to read as follows:

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

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

27 (b) Subject to Subsection (c), an [~~An~~] attorney ad litem

1 appointed under this section is entitled to reasonable compensation
2 for services provided in the amount set by the court. The court
3 shall:

4 (1) tax the compensation~~[, to be taxed]~~ as costs in the
5 probate proceeding; or

6 (2) for an attorney ad litem appointed to represent
7 the interests of an unknown or missing person described by
8 Subsection (a)(5), order that the compensation be paid from money
9 in the account described by that subdivision.

10 (c) The court order appointing an attorney ad litem to
11 represent the interests of an unknown or missing person described
12 by Subsection (a)(5) must require the attorney ad litem to conduct a
13 search for the person. Compensation paid under Subsection (b) to
14 the attorney ad litem may not exceed 10 percent of the amount on
15 deposit in the account described by Subsection (a)(5) on the date:

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

18 (2) the money in the account is paid to the comptroller
19 as provided by Section 551.001.

20 SECTION 2.21. Subchapter A, Chapter 202, Estates Code, as
21 effective January 1, 2014, is amended by adding Section 202.0025 to
22 read as follows:

23 Sec. 202.0025. ACTION BROUGHT AFTER DECEDENT'S DEATH.
24 Notwithstanding Section 16.051, Civil Practice and Remedies Code, a
25 proceeding to declare heirship of a decedent may be brought at any
26 time after the decedent's death.

27 SECTION 2.24. Sections 204.151 and 204.152, Estates Code,

1 as effective January 1, 2014, are amended to read as follows:

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

5 ~~[(1) petitions the court for a determination of right~~
6 ~~of inheritance as authorized by Section 201.052(c); and~~

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

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

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

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

1 ~~[(1) is an heir of the decedent, if the results of~~
2 ~~genetic testing ordered under Subchapter B identify a tested~~
3 ~~individual who is an heir of the decedent as the ancestor of the~~
4 ~~individual described by Section 204.151, or~~

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

9 SECTION 2.37. Subsection (c), Section 304.001, Estates
10 Code, as effective January 1, 2014, is amended to read as follows:

11 (c) If persons ~~[applicants for letters testamentary or of~~
12 ~~administration]~~ are equally entitled to letters testamentary or of
13 administration ~~[the letters]~~, the court:

14 (1) shall grant the letters to the person ~~[applicant]~~
15 who, in the judgment of the court, is most likely to administer the
16 estate advantageously; or

17 (2) may grant the letters to two or more of those
18 persons ~~[applicants]~~.

19 SECTION 2.57. Section 362.005, Estates Code, as effective
20 January 1, 2014, is amended to read as follows:

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

26 (b) Citation issued under Subsection (a) must:

27 (1) contain:

1 (A) [~~(1)~~] a statement that an account for final
2 settlement has been presented;

3 (B) [~~(2)~~] the time and place the court will
4 consider the account; [~~and~~]

5 (C) [~~(3)~~] a statement requiring the person cited
6 to appear and contest the account, if the person wishes to contest
7 the account; and

8 (D) a copy of the account for final settlement;
9 and

10 (2) be given[-

11 [~~(c) The personal representative shall give notice~~] to each
12 heir or beneficiary of the decedent by certified mail, return
13 receipt requested, unless the court by written order directs
14 another method of service [~~type of notice~~] to be given[~~. The notice~~
15 ~~must include a copy of the account for final settlement~~].

16 (c) [~~(d)~~] The court by written order shall require
17 additional notice if the court considers the additional notice
18 necessary.

19 (d) [~~(e)~~] The court may allow the waiver of citation
20 [~~notice~~] of an account for final settlement in a proceeding
21 concerning a decedent's estate.

22 SECTION 2.58. Section 362.011, Estates Code, as effective
23 January 1, 2014, is amended to read as follows:

24 Sec. 362.011. PARTITION AND DISTRIBUTION OF ESTATE; DEPOSIT
25 IN COURT'S REGISTRY. (a) If, on final settlement of an estate, any
26 of the estate remains in the personal representative's possession,
27 the court shall order that a partition and distribution be made

1 among the persons entitled to receive that part of the estate.

2 (b) The court shall order the personal representative to
3 deposit in an account in the court's registry any remaining estate
4 property that is money and to which a person who is unknown or
5 missing is entitled. In addition, the court shall order the
6 representative to sell, on terms the court determines are best,
7 remaining estate property that is not money and to which a person
8 who is unknown or missing is entitled. The court shall order the
9 representative to deposit the sale proceeds in an account in the
10 court's registry. The court shall hold money deposited in an
11 account under this subsection until the court renders:

12 (1) an order requiring money in the account to be paid
13 to the previously unknown or missing person who is entitled to the
14 money; or

15 (2) another order regarding the disposition of the
16 money.

17 SECTION 2.60. Subsection (a), Section 551.001, Estates
18 Code, as effective January 1, 2014, is amended to read as follows:

19 (a) The court, by written order, shall require the executor
20 or administrator of an estate to pay to the comptroller as provided
21 by this subchapter the share of that estate of a person entitled to
22 that share who does not demand the share, including any portion
23 deposited in an account in the court's registry under Section
24 362.011(b), from the executor or administrator within six months
25 after the date of, as applicable:

26 (1) a court order approving the report of the
27 commissioners of partition made under Section 360.154; or

1 (2) the settlement of the final account of the
2 executor or administrator.

3 Explanation: The addition is necessary to add provisions
4 relating to attorneys ad litem, proceedings to declare heirship,
5 granting of letters testamentary or of administration, filing of
6 inventories, appraisements, and lists of claims, citation and
7 notice on presentation of accounts for final settlement,
8 distribution of remaining estate property and discharge of
9 representatives on final settlement of estates, and estates to be
10 paid into the state treasury.

11 (2) House Rule 13, Sections 9(a)(1) and (4), are suspended
12 to permit the committee to change text which is not in disagreement
13 and to add text on a matter which is not included in either the house
14 or senate version of the bill in proposed SECTION 1.11 of the bill,
15 in amended Section 48, Texas Probate Code, to read as follows:

16 SECTION 1.11. Section 48, Texas Probate Code, is amended by
17 amending Subsection (a) and adding Subsection (d) to read as
18 follows:

19 . . .

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

23 Explanation: The change is necessary to specify when a
24 proceeding to declare heirship may be brought.

25 (3) House Rule 13, Sections 9(a)(1), (3), and (4), are
26 suspended to permit the committee to change text which is not in
27 disagreement, to add text on a matter which is not in disagreement,

1 and to add text on a matter which is not included in either the house
2 or senate version of the bill in proposed SECTION 1.12 of the bill,
3 in amended Subsection (a), Section 49, Texas Probate Code, to read
4 as follows:

5 SECTION 1.12. Subsection (a), Section 49, Texas Probate
6 Code, is amended to read as follows:

7 (a) Such proceedings may be instituted and maintained under
8 a circumstance specified in Section 48(a) of this code [~~in any of~~
9 ~~the instances enumerated above~~] by the qualified personal
10 representative of the estate of such decedent, by a party seeking
11 the appointment of an independent administrator under Section 145
12 of this code, by the trustee of a trust holding assets for the
13 benefit of the decedent, by any person or persons claiming to be a
14 secured or unsecured creditor or the owner of the whole or a part of
15 the estate of such decedent, or by the guardian of the estate of a
16 ward, if the proceedings are instituted and maintained in the
17 probate court in which the proceedings for the guardianship of the
18 estate were pending at the time of the death of the ward. In such a
19 case an application shall be filed in a proper court stating the
20 following information:

21 (1) the name of the decedent and the time and place of
22 death;

23 (2) the names and residences of the decedent's heirs,
24 the relationship of each heir to the decedent, and the true interest
25 of the applicant and each of the heirs in the estate of the decedent
26 or in the trust, as applicable;

27 (3) all the material facts and circumstances within

1 the knowledge and information of the applicant that might
2 reasonably tend to show the time or place of death or the names or
3 residences of all heirs, if the time or place of death or the names
4 or residences of all the heirs are not definitely known to the
5 applicant;

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

8 (5) a statement that each marriage of the decedent has
9 been listed with the date of the marriage, the name of the spouse,
10 and if the marriage was terminated, the date and place of
11 termination, and other facts to show whether a spouse has had an
12 interest in the property of the decedent;

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

15 (7) a general description of all the real and personal
16 property belonging to the estate of the decedent or held in trust
17 for the benefit of the decedent, as applicable; and

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

20 Explanation: The change is necessary to authorize persons
21 claiming to be unsecured creditors to institute proceedings to
22 declare heirship.

23 (4) House Rule 13, Sections 9(a)(1), (2), and (4), are
24 suspended to permit the committee to change text which is not in
25 disagreement, omit text which is not in disagreement, and add text
26 on a matter which is not included in either the house or senate
27 version of the bill in proposed SECTION 1.28 of the bill, in amended

1 Section 149C, Texas Probate Code, to read as follows:

2 SECTION 1.28. Section 149C, Texas Probate Code, is amended
3 by amending Subsection (a) and adding Subsections (a-1) and (a-2)
4 to read as follows:

5 (a) The [~~county~~] court, [~~as that term is defined by Section~~
6 ~~3 of this code,~~] on its own motion or on motion of any interested
7 person, after the independent executor has been cited by personal
8 service to answer at a time and place fixed in the notice, may
9 remove an independent 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, either an inventory of the property of the
13 estate and list of claims that have come to the independent
14 executor's knowledge or an affidavit in lieu of the inventory,
15 appraisement, and list of claims;

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

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

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

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

27 (6) the independent executor becomes an incapacitated

1 person, or is sentenced to the penitentiary, or from any other cause
2 becomes incapable of [~~legally incapacitated from~~] properly
3 performing the independent executor's fiduciary duties; or

4 (7) the independent executor becomes incapable of
5 properly performing the independent executor's fiduciary duties
6 due to a material conflict of interest.

7 (a-1) The court, on its own motion or on the motion of any
8 interested person, and after the independent executor has been
9 cited by certified mail, return receipt requested, to answer at a
10 time and place stated in the citation, may remove an independent
11 executor who is appointed under the provisions of this code if the
12 independent executor:

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

15 (2) subject to Subsection (a-2)(2) of this section,
16 fails to return not later than the 90th day after the date the
17 independent executor qualifies an inventory of the estate property
18 and a list of claims that have come to the independent executor's
19 knowledge or an affidavit in lieu of the inventory, appraisement,
20 and list of claims, unless the period is extended by court order;

21 (3) cannot be served with notices or other processes
22 because the:

23 (A) independent executor's location is unknown;
24 (B) independent executor is eluding service; or
25 (C) independent executor is a nonresident of this
26 state who does not have a resident agent to accept service of
27 process in a probate proceeding or other action relating to the

1 estate; or

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

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

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

15 (2) under Subsection (a-1)(2) of this section only if
16 the independent executor fails to file an inventory and list of
17 claims or an affidavit in lieu of the inventory, appraisement, and
18 list of claims as required by law on or before the 30th day after the
19 date the court sends a notice by certified mail, return receipt
20 requested, to the independent executor's last known address and to
21 the last known address of the independent executor's attorney,
22 notifying the independent executor and attorney of the court's
23 intent to remove the independent executor for failure to file the
24 inventory and list of claims or affidavit; and

25 (3) under Subsection (a-1)(4) of this section only on
26 presentation of clear and convincing evidence given under oath of
27 the misapplication, embezzlement, or removal from this state of

1 property as described by that subdivision.

2 Explanation: The change is necessary to make various
3 revisions to the procedures for removal of independent executors.

4 (5) House Rule 13, Sections 9(a)(1) and (4), are suspended
5 to permit the committee to change text which is not in disagreement
6 and to add text on a matter which is not included in either the house
7 or senate version of the bill in proposed SECTION 1.49 of the bill,
8 in Subsection (a) of that section, to read as follows:

9 (a) Subsection (c), Section 48, Subsection (c), Section
10 53C, Section 70, and Subsection (f), Section 251, Texas Probate
11 Code, are repealed.

12 Explanation: The change is necessary to add a repeal of
13 Subsection (c), Section 53C, Texas Probate Code.

14 (6) House Rule 13, Section 9(a)(4), is suspended to permit
15 the committee to add text on a matter which is not included in
16 either the house or senate version of the bill in proposed SECTION
17 1.50 of the bill to read as follows:

18 (i) Sections 34A, 407, 408, and 427, Texas Probate Code, as
19 amended by this article, and Section 254, Texas Probate Code, as
20 added by this article, apply to the estate of a decedent that is
21 pending or commenced on or after September 1, 2011, regardless of
22 the date of the decedent's death.

23 (j) The changes in law made by this article to Section 77,
24 Texas Probate Code, apply only to an application for the grant of
25 letters testamentary or of administration of a decedent's estate
26 filed on or after September 1, 2011. An application for the grant
27 of letters testamentary or of administration of a decedent's estate

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

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

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

15 Explanation: The change is necessary to add transition
16 provisions for sections of the Texas Probate Code that are amended
17 in the bill.

18 (7) House Rule 13, Sections 9(a)(1), (3), and (4), are
19 suspended to permit the committee to change text which is not in
20 disagreement, to add text on a matter which is not in disagreement,
21 and to add text on a matter which is not included in either the house
22 or senate version of the bill in proposed SECTION 2.22 of the bill,
23 in amended Section 202.004, Estates Code, as effective January 1,
24 2014, to read as follows:

25 SECTION 2.22. Section 202.004, Estates Code, as effective
26 January 1, 2014, is amended to read as follows:

27 Sec. 202.004. PERSONS WHO MAY COMMENCE PROCEEDING TO

1 DECLARE HEIRSHIP. A proceeding to declare heirship of a decedent
2 may be commenced and maintained under a circumstance specified by
3 Section 202.002 by:

4 (1) the personal representative of the decedent's
5 estate;

6 (2) a person claiming to be a secured or unsecured
7 creditor or the owner of all or part of the decedent's estate; [~~or~~]

8 (3) if the decedent was a ward with respect to whom a
9 guardian of the estate had been appointed, the guardian of the
10 estate, provided that the proceeding is commenced and maintained in
11 the probate court in which the proceedings for the guardianship of
12 the estate were pending at the time of the decedent's death;

13 (4) a party seeking the appointment of an independent
14 administrator under Section 401.003; or

15 (5) the trustee of a trust holding assets for the
16 benefit of a decedent.

17 Explanation: The change is necessary to authorize persons
18 claiming to be unsecured creditors to institute proceedings to
19 declare heirship.

20 (8) House Rule 13, Sections 9(a)(1) and (4), are suspended
21 to permit the committee to change text which is not in disagreement
22 and to add text on a matter which is not included in either the house
23 or senate version of the bill in proposed SECTION 2.47 of the bill,
24 in amended Subchapter B, Chapter 309, Estates Code, as effective
25 January 1, 2014, to read as follows:

26 SECTION 2.47. Subchapter B, Chapter 309, Estates Code, as
27 effective January 1, 2014, is amended by adding Sections 309.056

1 and 309.057 to read as follows:

2 . . .

3 Sec. 309.057. PENALTY FOR FAILURE TO TIMELY FILE INVENTORY,
4 APPRAISEMENT, AND LIST OF CLAIMS OR AFFIDAVIT IN LIEU OF. (a) This
5 section applies only to a personal representative, including an
6 independent executor or administrator, who does not file an
7 inventory, appraisal, and list of claims or affidavit in lieu of
8 the inventory, appraisal, and list of claims, as applicable,
9 within the period prescribed by Section 309.051 or any extension
10 granted by the court.

11 (b) Any person interested in the estate on written
12 complaint, or the court on the court's own motion, may have a
13 personal representative to whom this section applies cited to file
14 the inventory, appraisal, and list of claims or affidavit in
15 lieu of the inventory, appraisal, and list of claims, as
16 applicable, and show cause for the failure to timely file.

17 (c) If the personal representative does not file the
18 inventory, appraisal, and list of claims or affidavit in lieu of
19 the inventory, appraisal, and list of claims, as applicable,
20 after being cited or does not show good cause for the failure to
21 timely file, the court on hearing may fine the representative in an
22 amount not to exceed \$1,000.

23 (d) The personal representative and the representative's
24 sureties, if any, are liable for any fine imposed under this section
25 and for all damages and costs sustained by the representative's
26 failure. The fine, damages, and costs may be recovered in any court
27 of competent jurisdiction.

1 Explanation: The change is necessary to provide a penalty
2 against personal representatives of decedents' estates for failing
3 to timely file an inventory, appraisement, and list of claims or an
4 affidavit in lieu of the inventory, appraisement, and list of
5 claims.

6 (9) House Rule 13, Sections 9(a)(1), (2), and (3), are
7 suspended to permit the committee to change and omit text which is
8 not in disagreement and to add text on a matter which is not in
9 disagreement in proposed SECTION 2.49 of the bill, in Section
10 352.004, Estates Code, as effective January 1, 2014, to read as
11 follows:

12 SECTION 2.49. Section 352.004, Estates Code, as effective
13 January 1, 2014, is amended to read as follows:

14 Sec. 352.004. DENIAL OF COMPENSATION. The court may, on
15 application of an interested person or on the court's own motion,
16 wholly or partly deny a commission allowed by this subchapter if:

17 (1) the court finds that the executor or administrator
18 has not taken care of and managed estate property prudently; or

19 (2) the executor or administrator has been removed
20 under Section 404.003 [~~149C~~] or Subchapter B, Chapter 361.

21 Explanation: This change is necessary to make a conforming
22 change to a cross-reference in the Estates Code.

23 (10) House Rule 13, Section 9(a)(4), is suspended to permit
24 the committee to add text on a matter which is not included in
25 either the house or senate version of the bill in proposed SECTION
26 2.59 of the bill, in added Chapter 404, Estates Code, as effective
27 January 1, 2014, to read as follows:

1 Sec. 404.003. REMOVAL OF INDEPENDENT EXECUTOR. (a) The
2 probate court, on its own motion or on motion of any interested
3 person, after the independent executor has been cited by personal
4 service to answer at a time and place fixed in the notice, may
5 remove an independent executor when:

6 (1) the independent executor fails to return within 90
7 days after qualification, unless such time is extended by order of
8 the court, either an inventory of the property of the estate and
9 list of claims that have come to the independent executor's
10 knowledge or an affidavit in lieu of the inventory, appraisement,
11 and list of claims;

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

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

18 (4) the independent executor fails to timely file the
19 affidavit or certificate required by Section 308.004;

20 (5) the independent executor is proved to have been
21 guilty of gross misconduct or gross mismanagement in the
22 performance of the independent executor's duties;

23 (6) the independent executor becomes an incapacitated
24 person, or is sentenced to the penitentiary, or from any other cause
25 becomes incapable of properly performing the independent
26 executor's fiduciary duties; or

27 (7) the independent executor becomes incapable of

1 properly performing the independent executor's fiduciary duties
2 due to a material conflict of interest.

3 (b) The probate court, on its own motion or on the motion of
4 any interested person, and after the independent executor has been
5 cited by certified mail, return receipt requested, to answer at a
6 time and place stated in the citation, may remove an independent
7 executor who is appointed under the provisions of this code if the
8 independent executor:

9 (1) subject to Subsection (c)(1), fails to qualify in
10 the manner and period required by law;

11 (2) subject to Subsection (c)(2), fails to return not
12 later than the 90th day after the date the independent executor
13 qualifies an inventory of the estate property and a list of claims
14 that have come to the independent executor's knowledge or an
15 affidavit in lieu of the inventory, appraisement, and list of
16 claims, unless the period is extended by court order;

17 (3) cannot be served with notices or other processes
18 because the:

19 (A) independent executor's location is unknown;

20 (B) independent executor is eluding service; or

21 (C) independent executor is a nonresident of this
22 state who does not have a resident agent to accept service of
23 process in a probate proceeding or other action relating to the
24 estate; or

25 (4) subject to Subsection (c)(3), has misapplied,
26 embezzled, or removed from the state, or is about to misapply,
27 embezzle, or remove from the state, all or any part of the property

1 committed to the independent executor's care.

2 (c) The probate court may remove an independent executor:

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

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

21 (3) under Subsection (b)(4) only on presentation of
22 clear and convincing evidence given under oath of the
23 misapplication, embezzlement, or removal from this state of
24 property as described by that subdivision.

25 (d) The order of removal shall state the cause of removal
26 and shall direct by order the disposition of the assets remaining in
27 the name or under the control of the removed executor. The order of

1 removal shall require that letters issued to the removed executor
2 shall be surrendered and that all letters shall be canceled of
3 record. If an independent executor is removed by the court under
4 this section, the court may, on application, appoint a successor
5 independent executor as provided by Section 404.005.

6 (e) An independent executor who defends an action for the
7 independent executor's removal in good faith, whether successful or
8 not, shall be allowed out of the estate the independent executor's
9 necessary expenses and disbursements, including reasonable
10 attorney's fees, in the removal proceedings.

11 (f) Costs and expenses incurred by the party seeking removal
12 that are incident to removal of an independent executor appointed
13 without bond, including reasonable attorney's fees and expenses,
14 may be paid out of the estate.

15 Explanation: The change is necessary to make various
16 revisions to the procedures for removal of independent executors.

17 (11) House Rule 13, Sections 9(a)(1), (2), and (4), are
18 suspended to permit the committee to change text which is not in
19 disagreement, omit text which is not in disagreement, and add text
20 on a matter which is not included in either the house or senate
21 version of the bill in proposed SECTION 2.61 of the bill, in
22 Subsections (a) and (b) of that section, to read as follows:

23 (a) Sections 202.003 and 255.201, Estates Code, as
24 effective January 1, 2014, are repealed.

25 (b) The following sections of the Texas Probate Code are
26 repealed:

27 (1) Sections 4D, 4H, 15, 34A, 37A, 48(a), 49, 53C(a)

1 and (b), 59, 64, 67, 77, 81(a), 83(a), 84, 89A(a), 128A, 143, 227,
2 250, 256, 260, 271(a) and (b), 286, 293, 385(a), 407, 408(b), (c),
3 and (d), 427, 436, 439, 452, 471, 472, and 473, as amended by
4 Article 1 of this Act; and

5 (2) Sections 6A, 6B, 6C, 6D, 8A, 8B, 48(d), 145A, 145B,
6 145C, and 254, as added by Article 1 of this Act.

7 Explanation: The change is necessary to correct the repeal of
8 a provision of the Estates Code and to repeal, when the Estates Code
9 takes effect, certain provisions of the Texas Probate Code that are
10 amended or added in Article 1 of the bill.