

By: Wentworth

S.B. No. 960

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the waiver of the disqualification of a convicted felon
3 from serving as independent executor of a decedent's estate.

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

5 ARTICLE 1. CHANGES TO TEXAS PROBATE CODE

6 SECTION 1.01. Section 78, Texas Probate Code, is amended to
7 read as follows:

8 Sec. 78. PERSONS DISQUALIFIED TO SERVE AS EXECUTOR OR
9 ADMINISTRATOR. Except as provided by Section 78A of this code, no
10 ~~No~~ person is qualified to serve as an executor or administrator
11 who is:

12 (a) An incapacitated person;

13 (b) A convicted felon, under the laws either of the
14 United States or of any state or territory of the United States, or
15 of the District of Columbia, unless such person has been duly
16 pardoned, or his civil rights restored, in accordance with law;

17 (c) A non-resident (natural person or corporation) of
18 this State who has not appointed a resident agent to accept service
19 of process in all actions or proceedings with respect to the estate,
20 and caused such appointment to be filed with the court;

21 (d) A corporation not authorized to act as a fiduciary
22 in this State; or

23 (e) A person whom the court finds unsuitable.

24 SECTION 1.02. Part 1, Chapter V, Texas Probate Code, is

1 amended by adding Section 78A to read as follows:

2 Sec. 78A. WAIVER OF DISQUALIFICATION. (a) This section
3 applies only to a person who:

4 (1) is a felon convicted under the laws of the United
5 States or of any state of the United States; and

6 (2) has not, in accordance with law, been pardoned or
7 had the person's civil rights restored.

8 (b) A person is not disqualified from serving as independent
9 executor of a decedent's estate under Section 78(b) of this code if:

10 (1) the person is named as executor in the decedent's
11 will and the will provides for independent administration as
12 provided in Section 145(b) of this code;

13 (2) the decedent waives the person's disqualification
14 under Section 78(b) of this code in the decedent's will; and

15 (3) the person is otherwise qualified to serve as an
16 executor under Section 78 of this code.

17 SECTION 1.03. Section 78, Texas Probate Code, as amended by
18 this article, and Section 78A, Texas Probate Code, as added by this
19 article, apply only to the estate of a decedent who dies on or after
20 the effective date of this article. The estate of a decedent who
21 dies before the effective date of this article is governed by the
22 law in effect on the date of the decedent's death, and the former
23 law is continued in effect for that purpose.

24 ARTICLE 2. CHANGES TO ESTATES CODE

25 SECTION 2.01. Section 304.003, Estates Code, as effective
26 January 1, 2014, is amended to read as follows:

27 Sec. 304.003. PERSONS DISQUALIFIED TO SERVE AS EXECUTOR OR

1 ADMINISTRATOR. Except as provided by Section 304.004, a [A] person
2 is not qualified to serve as an executor or administrator if the
3 person is:

4 (1) incapacitated;

5 (2) a felon convicted under the laws of the United
6 States or of any state of the United States unless, in accordance
7 with law, the person has been pardoned or has had the person's civil
8 rights restored;

9 (3) a nonresident of this state who:

10 (A) is a natural person or corporation; and

11 (B) has not:

12 (i) appointed a resident agent to accept
13 service of process in all actions or proceedings with respect to the
14 estate; or

15 (ii) had that appointment filed with the
16 court;

17 (4) a corporation not authorized to act as a fiduciary
18 in this state; or

19 (5) a person whom the court finds unsuitable.

20 SECTION 2.02. Chapter 304, Estates Code, as effective
21 January 1, 2014, is amended by adding Section 304.004 to read as
22 follows:

23 Sec. 304.004. WAIVER OF DISQUALIFICATION. (a) This section
24 applies only to a person who:

25 (1) is a felon convicted under the laws of the United
26 States or of any state of the United States; and

27 (2) has not, in accordance with law, been pardoned or

1 had the person's civil rights restored.

2 (b) A person is not disqualified from serving as independent
3 executor of a decedent's estate under Section 304.003(2) if:

4 (1) the person is named as executor in the decedent's
5 will and the will provides for independent administration as
6 provided in Section 145(b);

7 (2) the decedent waives the person's disqualification
8 under Section 304.003(2) in the decedent's will; and

9 (3) the person is otherwise qualified to serve as an
10 executor under Section 304.003.

11 SECTION 2.03. Section 78, Texas Probate Code, as amended by
12 Article 1 of this Act, and Section 78A, Texas Probate Code, as added
13 by Article 1 of this Act, are repealed.

14 SECTION 2.04. This article takes effect January 1, 2014.

15 ARTICLE 3. EFFECTIVE DATE

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