

Suspending limitations on conference committee
jurisdiction, S.B. No. 1198

By: Rodriguez

S.R. No. 1254

SENATE RESOLUTION

BE IT RESOLVED by the Senate of the State of Texas, 82nd Legislature, Regular Session, 2011, That Senate Rule 12.03 be suspended in part as provided by Senate Rule 12.08 to enable the conference committee appointed to resolve the differences on Senate Bill 1198 (decedents' estates) to consider and take action on the following matters:

(1) Senate Rule 12.03(4) is suspended to permit the committee to add text on matters which are not included in either the house or senate version of the bill by adding the following sections to the bill:

SECTION 1.08. 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) [~~7~~] a nonresident;
- (3) [~~7~~] an unborn or unascertained person;
- (4) [~~7-01~~] 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 the interests of an unknown or missing person described by Subsection (a)(5) of this section, order that the compensation be paid from money in the account described by that subdivision.

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

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

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

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

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

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

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

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

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

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

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

- (a) To the person named as executor in the will of the deceased.
- (b) To the surviving husband or wife.
- (c) To the principal devisee or legatee of the testator.
- (d) To any devisee or legatee of the testator.
- (e) To the next of kin of the deceased, the nearest in

order of descent first, and so on, and next of kin includes a person and his descendants who legally adopted the deceased or who have been legally adopted by the deceased.

(f) To a creditor of the deceased.

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

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

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

Sec. 254. PENALTY FOR FAILURE TO TIMELY FILE INVENTORY, APPRAISEMENT, AND LIST OF CLAIMS OR AFFIDAVIT IN LIEU OF. (a) This section applies only to a personal representative, including an independent executor or administrator, who does not file an inventory, appraisal, and list of claims or affidavit in lieu of the inventory, appraisal, and list of claims, as applicable, within the period prescribed by Section 250 of this code or any extension granted by the court.

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

(c) If the personal representative does not file the inventory, appraisal, and list of claims or affidavit in lieu of the inventory, appraisal, and list of claims, as applicable, after being cited or does not show good cause for the

failure to timely file, the court on hearing may fine the representative in an amount not to exceed \$1,000.

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

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

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

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

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

SECTION 1.41. Subsections (b), (c), and (d), Section

408, Texas Probate Code, are amended to read as follows:

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

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

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

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

(d) Discharge When Estate Fully Administered. Whenever the representative of an estate has fully administered the same in accordance with this code ~~[Code]~~ and the orders of the court, and the representative's ~~[his]~~ final account has been approved, and the representative ~~[he]~~ has delivered all of said estate remaining in the representative's ~~[his]~~ hands to the person or

persons entitled to receive the same, it shall be the duty of the court to enter an order discharging such representative from the representative's [~~his~~] trust, and declaring the estate closed.

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

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

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

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

- (1) a person who has a legal disability;
- (2) a nonresident;

(3) an unborn or unascertained person; [~~or~~]

(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 362.011(b).

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

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

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

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

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

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

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

Sec. 202.0025. ACTION BROUGHT AFTER DECEDENT'S DEATH. Notwithstanding Section 16.051, Civil Practice and Remedies Code, a proceeding to declare heirship of a decedent may be

brought at any time after the decedent's death.

SECTION 2.24. Sections 204.151 and 204.152, Estates Code, as effective January 1, 2014, are amended to read as follows:

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

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

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

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

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

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

~~[(1) is an heir of the decedent, if the results of~~

~~genetic testing ordered under Subchapter B identify a tested individual who is an heir of the decedent as the ancestor of the individual described by Section 204.151, or~~

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

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

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

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

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

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

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

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

(1) contain:

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

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

(C) [~~(3)~~] a statement requiring the person

cited to appear and contest the account, if the person wishes to contest the account; and

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

(2) be given~~[-~~

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

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

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

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

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

(b) The court shall order the personal representative to deposit in an account in the court's registry any remaining estate property that is money and to which a person who is unknown or missing is entitled. In addition, the court shall order the representative to sell, on terms the court determines are best, remaining estate property that is not money and to which a person who is unknown or missing is entitled. The court shall order the

representative to deposit the sale proceeds in an account in the court's registry. The court shall hold money deposited in an account under this subsection until the court renders:

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

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

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

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

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

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

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

(2) Senate Rules 12.03(1) and (4) are suspended to permit the committee to change text which is not in disagreement and to

add text on a matter which is not included in either the house or senate version of the bill in proposed SECTION 1.11 of the bill, in amended Section 48, Texas Probate Code, to read as follows:

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

. . .

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

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

(3) Senate Rules 12.03(1), (3), and (4) are suspended to permit the committee to change text which is not in disagreement, to add text on a matter which is not in disagreement, and to add text on a matter which is not included in either the house or senate version of the bill in proposed SECTION 1.12 of the bill, in amended Subsection (a), Section 49, Texas Probate Code, to read as follows:

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

(a) Such proceedings may be instituted and maintained under a circumstance specified in Section 48(a) of this code [~~in any of the instances enumerated above~~] by the qualified personal representative of the estate of such decedent, by a party seeking the appointment of an independent administrator under Section 145 of this code, by the trustee of a trust holding assets for the benefit of the decedent, by any person or persons claiming to be a secured or unsecured creditor or the owner of the whole or a part of the estate of such decedent, or by the guardian of the estate of a ward, if the proceedings are instituted and maintained in the probate court in which the proceedings for the guardianship

of the estate were pending at the time of the death of the ward. In such a case an application shall be filed in a proper court stating the following information:

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

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

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

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

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

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

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

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

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

(4) Senate Rules 12.03(1), (2), and (4) are suspended to permit the committee to change text which is not in disagreement, omit text which is not in disagreement, and add text on a matter which is not included in either the house or senate version of the bill in proposed SECTION 1.28 of the bill, in amended Section 149C, Texas Probate Code, to read as follows:

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

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

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

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

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

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

(5) the independent executor is proved to have been guilty of gross misconduct or gross mismanagement in the

performance of the independent executor's duties; ~~[or]~~

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

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

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

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

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

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

(A) independent executor's location is unknown;

(B) independent executor is eluding service;

or

(C) independent executor is a nonresident of this state who does not have a resident agent to accept service of

process in a probate proceeding or other action relating to the estate; or

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

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

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

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

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

Explanation: The change is necessary to make various

revisions to the procedures for removal of independent executors.

(5) Senate Rules 12.03(1) and (4) are suspended to permit the committee to change text which is not in disagreement and to add text on a matter which is not included in either the house or senate version of the bill in proposed SECTION 1.49 of the bill, in Subsection (a) of that section, to read as follows:

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

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

(6) Senate Rule 12.03(4) is suspended to permit the committee to add text on a matter which is not included in either the house or senate version of the bill in proposed SECTION 1.50 of the bill to read as follows:

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

(j) The changes in law made by this article to Section 77, Texas Probate Code, apply only to an application for the grant of letters testamentary or of administration of a decedent's estate filed on or after September 1, 2011. An application for the grant of letters testamentary or of administration of a decedent's estate filed before that date is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose.

(k) The changes in law made by this article to Subsection (a), Section 83, Texas Probate Code, apply only to an application for the probate of a will or administration of the estate of a

decedent that is pending or filed on or after September 1, 2011.

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

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

(7) Senate Rules 12.03(1), (3), and (4) are suspended to permit the committee to change text which is not in disagreement, to add text on a matter which is not in disagreement, and to add text on a matter which is not included in either the house or senate version of the bill in proposed SECTION 2.22 of the bill, in amended Section 202.004, Estates Code, as effective January 1, 2014, to read as follows:

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

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

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

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

(3) if the decedent was a ward with respect to whom a guardian of the estate had been appointed, the guardian of the estate, provided that the proceeding is commenced and maintained

in the probate court in which the proceedings for the guardianship of the estate were pending at the time of the decedent's death;

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

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

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

(8) Senate Rules 12.03(1) and (4) are suspended to permit the committee to change text which is not in disagreement and to add text on a matter which is not included in either the house or senate version of the bill in proposed SECTION 2.47 of the bill, in amended Subchapter B, Chapter 309, Estates Code, as effective January 1, 2014, to read as follows:

SECTION 2.47. Subchapter B, Chapter 309, Estates Code, as effective January 1, 2014, is amended by adding Sections 309.056 and 309.057 to read as follows:

. . .

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

(b) Any person interested in the estate on written complaint, or the court on the court's own motion, may have a personal representative to whom this section applies cited to file the inventory, appraisal, and list of claims or affidavit

in lieu of the inventory, appraisalment, and list of claims, as applicable, and show cause for the failure to timely file.

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

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

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

(9) Senate Rules 12.03(1), (2), and (3) are suspended to permit the committee to change and omit text which is not in disagreement and to add text on a matter which is not in disagreement in proposed SECTION 2.49 of the bill, in Section 352.004, Estates Code, as effective January 1, 2014, to read as follows:

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

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

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

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

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

(10) Senate Rule 12.03(4) is suspended to permit the committee to add text on a matter which is not included in either the house or senate version of the bill in proposed SECTION 2.59 of the bill, in added Chapter 404, Estates Code, as effective January 1, 2014, to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

(A) independent executor's location is unknown;

(B) independent executor is eluding service;
or

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

(4) subject to Subsection (c)(3), has misapplied,

embezzled, or removed from the state, or is about to misapply, embezzle, or remove from the state, all or any part of the property committed to the independent executor's care.

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

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

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

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

(d) The order of removal shall state the cause of removal and shall direct by order the disposition of the assets remaining in the name or under the control of the removed executor. The order of removal shall require that letters issued to the removed executor shall be surrendered and that all letters shall be canceled of record. If an independent executor is removed by the

court under this section, the court may, on application, appoint a successor independent executor as provided by Section 404.005.

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

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

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

(11) Senate Rules 12.03(1), (2), and (4) are suspended to permit the committee to change text which is not in disagreement, omit text which is not in disagreement, and add text on a matter which is not included in either the house or senate version of the bill in proposed SECTION 2.61 of the bill, in Subsections (a) and (b) of that section, to read as follows:

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

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

(1) Sections 4D, 4H, 15, 34A, 37A, 48(a), 49, 53C(a) and (b), 59, 64, 67, 77, 81(a), 83(a), 84, 89A(a), 128A, 143, 227, 250, 256, 260, 271(a) and (b), 286, 293, 385(a), 407, 408(b), (c), and (d), 427, 436, 439, 452, 471, 472, and 473, as amended by Article 1 of this Act; and

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

Explanation: The change is necessary to correct the

repeal of a provision of the Estates Code and to repeal, when the Estates Code takes effect, certain provisions of the Texas Probate Code that are amended or added in Article 1 of the bill.

President of the Senate

I hereby certify that the above Resolution was adopted by the Senate on May 29, 2011, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate