

## **BILL ANALYSIS**

C.S.H.B. 2912  
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Judiciary & Civil Jurisprudence  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

As part of its ongoing revision of Texas probate, guardianship, and trust law, the Real Estate, Probate, and Trust Law Section of the State Bar of Texas has proposed several changes affecting decedents' estates. C.S.H.B. 2912 seeks to enact those changes.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 2912 amends the Estates Code, as effective January 1, 2014, to set out provisions governing the execution of decedents' estates. The bill establishes that Civil Practice and Remedies Code provisions authorizing the use of an unsworn declaration in lieu of a required written sworn declaration, verification, certification oath, or affidavit do not apply to Estates Code provisions relating to self-proved wills.

C.S.H.B. 2912 expands the jurisdiction of a statutory probate court with respect to trusts and powers of attorney to include jurisdiction of an action by, as well as of an action against, an agent or former agent under a power of attorney arising out of the agent's performance of duties.

C.S.H.B. 2912 specifies that at the expiration of the 10-day period prescribed for serving notice of intention to take depositions in certain probate matters, the depositions for which the notice was posted may be taken, rather than specifying that commission may issue for taking the depositions at the expiration of that period.

C.S.H.B. 2912 authorizes a probate court judge to appoint an attorney ad litem in any probate proceeding to represent the interests of any person, rather than the interest only of a person with a legal disability, a nonresident, an unborn or unascertained person, or an unknown heir, and specifies that the persons for whom a probate court judge is authorized to appoint an attorney ad litem include a missing heir or an unknown or missing person for whom cash is deposited into the court's registry. The bill requires the court to order that an appointed attorney ad litem's compensation for services provided be paid out of the estate or by any party at any time during the proceeding or, if the attorney ad litem was appointed to represent the interests of an unknown or missing person for whom cash is deposited in the court's registry, that such compensation be paid from the cash on deposit in the court's registry.

C.S.H.B. 2912 exempts a probate proceeding from certain rules of civil procedure relating to claims for relief and expedited actions. The bill specifies that the Texas Rules of Evidence, rather than rules relating to witnesses and evidence that apply in district court, apply to a proceeding involving a decedent's estate to the extent practicable, except as provided by statutory provisions governing service of notice of intention to take depositions in certain probate matters.

C.S.H.B. 2912 makes the limitation on the liability of a decedent's homestead for the payment of the debts of the estate other than those debts specified by statute contingent on the decedent being survived by a spouse or minor child.

C.S.H.B. 2912 establishes the applicability of Texas law regarding a possible nontestamentary transfer of assets or interest when either more than 50 percent of the assets in an account at a financial institution, in a retirement account, or in another similar arrangement or more than 50 percent of the interests under an insurance contract, annuity contract, beneficiary designation, or other similar arrangement are owned, immediately before a possible nontestamentary transfer of the interests, by one or more persons domiciled in Texas. The bill establishes that Texas law applies to determine whether a nontestamentary transfer of such assets or interests has occurred and to determine the ownership of the assets or interests following a possible nontestamentary transfer. The bill requires any person, including a personal representative, who is asserting an ownership interest in such assets or interests subject to a possible nontestamentary transfer to have access to the courts of this state for a judicial determination of whether a nontestamentary transfer of the assets or interests has occurred or for a judicial determination of the ownership of the assets or interests following a possible nontestamentary transfer. The bill exempts from such provisions an obligation that is owed either by a party to the contracting third party or by the contracting third party to a party. The bill establishes that such provisions apply to a community property survivorship agreement and a multiple-party account.

C.S.H.B. 2912 clarifies that the requirement for a person's estate to be divided into two parts if the person's spouse, children, children's descendants, parents, siblings, or sibling's descendants do not survive the person, with one part passing to the person's paternal kindred and one part passing to the person's maternal kindred, applies only if the person is survived by a grandparent or a descendant of a grandparent. The bill provides for the passing of an entire estate to a decedent's kindred on the side with the surviving grandparent or descendant of a grandparent in circumstances under which there is no surviving paternal grandparent or descendant of a paternal grandparent or, in the alternative, there is no surviving maternal grandparent or descendant of a maternal grandparent. The bill establishes that a person's estate escheats if no such kindred survive the person.

C.S.H.B. 2912 establishes that for the purposes of inheritance in circumstances where a child has intended parents under a validated gestational agreement, the child is the child of the intended mother and not the biological mother or gestational mother, unless the biological mother is also the intended mother, and that the child is the child of the intended father and not the biological father, unless the biological father is also the intended father.

C.S.H.B. 2912 clarifies that a proceeding to declare heirship of a decedent may be brought at any time after the decedent's death, notwithstanding the four-year residual limitations period established under the Civil Practice and Remedies Code for actions for which there is no express limitations period.

C.S.H.B. 2912 authorizes any person claiming to be a creditor of a decedent's estate to commence and maintain a proceeding to declare heirship by removing the specification that the person's claim be a claim that the person is a secured creditor of such estate.

C.S.H.B. 2912 removes provisions authorizing a court in a proceeding to declare heirship, if it appears to the court there is or may be a living heir whose name or whereabouts is unknown or that a defendant is an incapacitated person, to appoint either an attorney ad litem or a guardian ad litem to represent that person's interest and prohibiting the court from making such an appointment except on a finding that the appointment is necessary to protect such person's interest. The bill instead requires a court to appoint an attorney ad litem in such a proceeding to represent the interests of heirs whose names or locations are unknown and authorizes the court to expand the appointment of the attorney ad litem to include representation of an heir who is an incapacitated person on a finding that the appointment is necessary to protect the heir's interests.

C.S.H.B. 2912 authorizes a parent, managing conservator, guardian, attorney ad litem, or guardian ad litem of a minor distributee who is younger than 12 years of age to waive citation required to be served on the distributee with respect to notice of a proceeding to declare heirship.

C.S.H.B. 2912 requires a person who files an application for a proceeding to declare heirship to file with the court a copy of any required citation and proof of delivery of service of the citation and either an affidavit sworn to by the applicant or a certificate signed by the applicant's attorney stating that the citation was served as required, stating the name of each person to whom the citation was served if the person's name is not shown on the proof of delivery, and stating the name of each person who waived citation of a minor distributee who is younger than 12 years of age. The bill prohibits the court from entering an order in the proceeding to declare heirship until the applicant files the required affidavit.

C.S.H.B. 2912 limits a court's authority to require that evidence admitted in a proceeding to declare heirship be reduced to writing and subscribed and sworn to by the witnesses, respectively, by authorizing the court to impose that requirement only with respect to testimony admitted as evidence, rather than to all or any part of the evidence admitted. The bill removes the court's authority to require evidence admitted in such a proceeding to be filed in the proceeding and recorded in the judge's probate docket. The bill requires testimony in such a proceeding to be taken in open court, by deposition in accordance with specified statutory provisions, or in accordance with the Texas Rules of Civil Procedure.

C.S.H.B. 2912 makes statutory provisions relating to the use of genetic testing in a proceeding to declare heirship applicable with respect to any individual who claims to be a biological child of the decedent or claims to inherit through a biological child of the decedent by removing provisions making such applicability contingent on the lack of an established parent-child relationship with the decedent and on the individual petitioning the court for a determination of right of inheritance. The bill establishes that the presumption of paternity based on genetic testing that applies in establishing a parent-child relationship under the Uniform Parentage Act applies also in determining heirship in a probate court using the results of genetic testing ordered with respect to an individual who claims to be a biological child of the decedent or claims to inherit through a biological child of the decedent. The bill authorizes such a presumption to be rebutted in the same manner provided for rebuttal of a presumption of paternity based on genetic testing under the Uniform Parentage Act. The bill removes provisions requiring a court, in the absence of certain rebuttal evidence, to make a finding on whether a person is or is not an heir of the decedent in a proceeding to declare heirship based on certain genetic testing results.

C.S.H.B. 2912 establishes that any portion of a court order that purports to prohibit a person from executing a new will or a codicil to an existing will is void and may be disregarded without penalty or sanction of any kind.

C.S.H.B. 2912 removes the specification that a will in question is a written will from the following statutory provisions: provisions governing the contents of an application for probate of a will, provisions requiring the filing of the will with such an application, provisions establishing additional application requirements when no will is produced, provisions governing proof of execution of an attested will, provisions governing proof of a will that cannot be produced in court, provisions relating to the manner in which a court establishes the contents of a will that is not in the court's custody, provisions requiring a will to be filed with an application for the probate of a will as a muniment of title, and provisions establishing additional requirements for an application for the probate of a will as a muniment of title when no will is produced.

C.S.H.B. 2912 revises the contents of an application for the probate of a will to require the application to include the state of residence and physical address where service can be had of the executor named in the will or other person to whom the applicant desires that letters be issued, rather than requiring the application to include the residence of such a person, and removes the

requirement that the application state the residence of each subscribing witness to the will.

C.S.H.B. 2912 clarifies that certain conditions under which a will is considered self-proved apply to a will executed in another state or a foreign country and specifies that under such conditions, the will is considered self-proved without further evidence of the law of the other state or foreign country.

C.S.H.B. 2912 clarifies that, for certain cases in which an attested will that is not self-proved or a will wholly in the handwriting of the testator that is not self-proved may be proved by written or oral deposition of witnesses who either are not residents of the county or are residents but are unable to attend, the written or oral deposition must be taken in accordance with statutory provisions relating to service of notice of intention to take depositions in certain probate matters or the Texas Rules of Civil Procedure, rather than in the same manner and under the same rules as depositions are taken in other civil actions. The bill authorizes a witness being deposed for such purposes to testify by referring to a certified copy of the will, without the judge requiring the original will to be removed from the court's file and shown to the witness.

C.S.H.B. 2912 clarifies that, for purposes of substantially proving the contents of a will that cannot be produced in court when such contents are proved by means of the testimony of a credible witness who has read the will, such credible witness may have read either the original or a copy of the will.

C.S.H.B. 2912 authorizes a fact contained in an application for issuance of letters testamentary or of administration, or any other fact required to be proved for the issuance of such letters, to be proved by the sworn testimony of a witness with personal knowledge of the fact that is taken in open court or, if proved under oath to the satisfaction of the court that the witness is unavailable, taken by deposition on written questions in accordance with statutory provisions relating to service of notice of intention to take depositions in certain probate matters or the Texas Rules of Civil Procedure.

C.S.H.B. 2912 revises statutory provisions establishing procedures for granting letters testamentary or of administration under circumstances in which multiple individuals are equally entitled to such letters by clarifying that the entitlement is that of certain persons rather than of the applicants for such letters.

C.S.H.B. 2912 authorizes a personal representative's bond to be filed with the clerk at any time before the 21st day after the date of the order granting letters testamentary or of administration, as applicable; before the 21st day after the date of any order modifying the bond requirement; or before the date letters testamentary or of administration, as applicable, are revoked for a failure to qualify within the period allowed. The bill requires the court to act promptly to review a filed bond and, if acceptable, approve the bond. The bill authorizes the person who is appointed as personal representative, if no action has been taken by the court on the bond before the 21st day after the date the bond is filed, to file a motion requiring the judge of the court in which the bond was filed to specify on the record the reason or reasons for the judge's failure to act on the bond. The bill requires the hearing on the motion to be held before the 11th day after the date the motion is filed.

C.S.H.B. 2912 specifies that if a personal representative gives notice to an unsecured creditor who has a claim for money against a decedent's estate, the creditor's claim is barred if the claim is not presented before the 121st day, rather than within four months, after the date of the receipt of the notice. The bill revises the notice requirement for a statement regarding the deadline for presenting a claim to reflect that change.

C.S.H.B. 2912 clarifies that an independent executor's authority to file an affidavit in lieu of an inventory, appraisal, and list of claims, if there are no unpaid debts at the time the inventory is due, applies notwithstanding any contrary provision in the decedent's will that does not

specifically prohibit the filing of such an affidavit. The bill grants an independent executor immunity from liability for choosing to file an affidavit in lieu of an inventory, appraisalment, and list of claims, if permitted by law, or for filing an inventory, appraisalment, and list of claims in lieu of filing such an affidavit. The bill makes provisions relating to the correction of an inventory, appraisalment, or list of claims that is considered to be erroneous or unjust applicable also to the correction of an affidavit that likewise is considered to be erroneous or unjust.

C.S.H.B. 2912 authorizes any person interested in an estate on written complaint, or the court on the court's own motion, to have a personal representative, including an independent executor or administrator, who fails to timely file either an inventory, appraisalment, and list of claims or the alternative affidavit, cited to file the applicable documents and to show cause for the failure to timely file. The bill authorizes the court on hearing to impose a fine of up to \$1,000 on a personal representative who does not file the required documents after being cited or does not show good cause for the failure to timely file; makes the personal representative and the representative's sureties, if any, liable for any such fine and for all damages and costs sustained by the representative's failure; and authorizes recovery in any court of competent jurisdiction.

C.S.H.B. 2912 prohibits a court from making a family allowance for a decedent's adult incapacitated child if the decedent was not supporting the adult incapacitated child at the time of the decedent's death.

C.S.H.B. 2912 requires an appointee who has qualified to succeed a former personal representative of an estate and files an inventory, appraisalment, and list of claims of the estate to set out in the inventory the appointee's appraisalment of the fair market value of each item in the inventory on the date of the appointee's qualification. The bill requires the appointee, if an inventory, appraisalment, and list of claims has not been filed by any former personal representative, to set out the inventory in the manner generally required for personal representatives.

C.S.H.B. 2912 revises the citation and notice requirements on the presentation of an account for final settlement of an estate by a temporary or permanent personal representative. The bill clarifies that the county clerk is required to issue citation 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. The bill requires the personal representative to also provide to each person entitled to a citation a copy of the account for final settlement by certified mail, return receipt requested, or by electronic delivery, rather than requiring the personal representative to give notice by certified mail to such persons that includes a copy of the account. The bill requires the personal representative to file an affidavit sworn to by the personal representative or a certificate signed by the personal representative's attorney stating that the citation was given as required; stating the name of each person to whom the citation was given, if the person's name is not shown on the proof of delivery; stating the name of each person executing a waiver of citation; and stating that each person entitled to citation was provided a copy of the account for final settlement, indicating the method of delivery for each person.

C.S.H.B. 2912 requires a court, when ordering the partition and distribution of any part of a decedent's estate that remains in the personal representative's possession on final settlement of the estate, to order the personal representative to convert into money any remaining nonmonetary assets to which a person who is unknown or missing is entitled. The bill makes procedures relating to the sale of estate property applicable to the conversion of such nonmonetary assets. The bill requires the court to order the personal representative to deposit in an account in the court's registry all money, including the proceeds of any such conversion, to which a person who is unknown or missing is entitled and requires the court to hold the money deposited in such account until the court renders an order requiring money in the account to be paid to the previously unknown or missing person who is entitled to the money or renders another order regarding the disposition of the money. The bill requires the personal representative to comply with such orders before the court enters an order discharging the personal representative and

declaring the estate closed. The bill requires the court, by written order, to require the executor or administrator of the estate to pay to the comptroller of public accounts any portion of the estate deposited in an account in the court's registry under such provisions if the person who is entitled to the portion of the estate, other than a resident minor without a guardian, does not demand the portion within the specified period.

C.S.H.B. 2912 clarifies that a provision in a will prohibiting any action in probate court other than the probating and recording of the will and the return of an inventory, appraisement, and list of claims of the person's estate is a limitation on the return of an inventory, appraisement, and list of claims other than a required inventory, appraisement, or list.

C.S.H.B. 2912 establishes that if a decedent's will devises property to a trustee, the person or class of persons entitled to receive property outright from the trust on the decedent's death and those first eligible to receive the income from the trust are considered, for purposes relating to the creation of an in testate estate by agreement, to be the distributee or distributees on behalf of the trust, and any other trust or trusts coming into existence on the termination of the trust, and are authorized to apply for independent administration on behalf of the trusts without certain consent or agreement.

C.S.H.B. 2912 expands the power to sell property that a court may grant in an order appointing an independent executor when a decedent does not have a will or the will does not expressly authorize an independent executor to sell property by removing the specification limiting such power of sale to the sale of real property.

C.S.H.B. 2912 requires a written instrument containing a creditor's notice to an independent executor regarding secured or unsecured claims for money to comply with statutory provisions relating to the requirements for an affidavit authenticating a claim for money against an estate.

C.S.H.B. 2912 changes the start of the time in which any person interested in an estate may demand an accounting from the independent executor by authorizing such demand for the accounting at any time after the expiration of 15 months after the date the court clerk first issues letters testamentary or of administration to any personal representative of the estate, rather than at any time after the expiration of 15 months after the date an independent court administration was created and the order appointing an independent executor was entered by the probate court.

C.S.H.B. 2912 revises provisions establishing the grounds for removal of an independent executor by establishing the circumstances under which a probate court, on the court's own motion or on the motion of any interested person, may remove an independent executor without notice; the circumstances under which the court on its own motion may remove an independent executor with notice; and the circumstances under which the court, on the court's own motion or on the motion of any interested person, may remove an independent executor after the independent executor has been cited by personal service to answer at a time and place fixed in the notice.

C.S.H.B. 2912, in provisions relating to a court-appointed successor independent executor, provides that if a distributee is a minor and has no guardian of the person, the natural guardian of the minor is authorized to sign the application for an order continuing independent administration on the minor's behalf unless a conflict of interest exists between the minor and the natural guardian. The bill establishes that if a decedent's will devises property to a trustee, the person or class of persons entitled to receive property outright from the trust on the decedent's death and those first eligible to receive the income from the trust are included among the persons considered, for purposes of provisions relating to appointment of a successor independent executor, to be the distributee or distributees on behalf of the trust, and any other trust or trusts coming into existence on the termination of the trust, and are authorized to apply for an order continuing independent administration on behalf of the trust without certain consent or agreement. The bill authorizes a trustee or cotrustee, if a person considered to be a distributee for

such purposes is an incapacitated person, to apply for the order continuing independent administration or sign the application on the incapacitated person's behalf if the trustee or cotrustee is not the person proposed to serve as the independent executor.

C.S.H.B. 2912 authorizes, rather than requires, a court, if any portion of an estate that is ordered to be distributed is incapable of distribution without prior partition or sale, to order partition and distribution, or sale, in the manner provided for the partition and distribution of property incapable of division in supervised estates. The bill also gives the court the option to order distribution of that portion of the estate incapable of distribution without prior partition or sale in undivided interests.

C.S.H.B. 2912 repeals Section 122.057, Estates Code, as effective January 1, 2014.

**EFFECTIVE DATE**

January 1, 2014.

**COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 2912 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED	HOUSE COMMITTEE SUBSTITUTE
SECTION 1. Section 21.005, Estates Code, as effective January 1, 2014, is amended.	SECTION 1. Same as introduced version.
SECTION 2. Notwithstanding the transfer of Section 2, Texas Probate Code, to the Estates Code and redesignation as Section 2 of that code effective January 1, 2014, by Section 2, Chapter 680 (H.B. 2502), Acts of the 81st Legislature, Regular Session, 2009, Subsection (e), Section 2, Texas Probate Code, is transferred to Chapter 32, Estates Code, redesignated as Subsection (d), Section 32.001, Estates Code, and amended.	SECTION 2. Same as introduced version.
SECTION 3. Section 32.006, Estates Code, as effective January 1, 2014, is amended.	SECTION 3. Same as introduced version.
SECTION 4. Section 51.203(c), Estates Code, as effective January 1, 2014, is amended.	SECTION 4. Same as introduced version.
SECTION 5. Section 53.104, Estates Code, as effective January 1, 2014, is amended.	SECTION 5. Same as introduced version.
No equivalent provision.	SECTION 6. Subchapter C, Chapter 53,

Estates Code, as effective January 1, 2014, is amended by adding Section 53.107 to read as follows:

Sec. 53.107. INAPPLICABILITY OF CERTAIN RULES OF CIVIL PROCEDURE. The following do not apply to probate proceedings:

(1) Rules 47(c) and 169, Texas Rules of Civil Procedure; and

(2) the portions of Rule 190.2, Texas Rules of Civil Procedure, concerning expedited actions under Rule 169, Texas Rules of Civil Procedure.

No equivalent provision.

SECTION 7. Section 54.051, Estates Code, as effective January 1, 2014, is amended to read as follows:

Sec. 54.051. APPLICABILITY OF CERTAIN RULES RELATING TO WITNESSES AND EVIDENCE. Except as provided by Section 51.203, the Texas Rules of Evidence [~~rules relating to witnesses and evidence that apply in the district court~~] apply in a proceeding arising under this title to the extent practicable.

SECTION 6. Section 102.004, Estates Code, as effective January 1, 2014, is amended.

SECTION 8. Same as introduced version.

SECTION 7. Section 111.051, Estates Code, as effective January 1, 2014, is amended.

SECTION 9. Same as introduced version.

SECTION 8. Subchapter B, Chapter 111, Estates Code, is amended by adding Section 111.054 to read as follows:

Sec. 111.054. APPLICATION OF STATE LAW TO CERTAIN NONTESTAMENTARY TRANSFERS. (a) This section applies if more than 50 percent of the:

(1) money in an account at a financial institution, in a retirement account, or in another similar arrangement is owned, immediately before a possible nontestamentary transfer of the money, by one or more persons domiciled in this state;  
or

(2) benefits due under an insurance contract, annuity contract, beneficiary designation, or other similar arrangement are owned, immediately before a possible

SECTION 10. Subchapter B, Chapter 111, Estates Code, is amended by adding Section 111.054 to read as follows:

Sec. 111.054. APPLICATION OF STATE LAW TO CERTAIN NONTESTAMENTARY TRANSFERS. (a) This section applies if more than 50 percent of the:

(1) assets in an account at a financial institution, in a retirement account, or in another similar arrangement are owned, immediately before a possible nontestamentary transfer of the assets, by one or more persons domiciled in this state;  
or

(2) interests under an insurance contract, annuity contract, beneficiary designation, or other similar arrangement are owned, immediately before a possible

nontestamentary transfer of the benefits, by one or more persons domiciled in this state.

(b) Notwithstanding a choice of law or other contractual provision in an agreement prepared or provided by a contracting third party, Texas law applies to determine:

(1) whether a nontestamentary transfer of money or benefits described by Subsection (a) has occurred; and

(2) the ownership of the money or benefits following a possible nontestamentary transfer.

(c) Notwithstanding a choice of law or other contractual provision in an agreement prepared or provided by a contracting third party, any person, including a personal representative, who is asserting an ownership interest in money or benefits described by Subsection (a) subject to a possible nontestamentary transfer shall have access to the courts of this state for a judicial determination of:

(1) whether a nontestamentary transfer of the money or benefits has occurred; or

(2) the ownership of the money or benefits following a possible nontestamentary transfer.

(d) Subsections (a), (b), and (c) do not apply to an obligation:

(1) owed by a party to the contracting third party; or

(2) owed by the contracting third party to a party.

(e) This section applies to a community property survivorship agreement governed by Chapter 112 and a multiple-party account governed by Chapter 113.

SECTION 9. Section 201.001, Estates Code, as effective January 1, 2014, is amended by amending Subsections (f) and (g) and adding Subsections (i), (j), and (k) to read as follows:

(f) If none of the kindred described by Subsections (b)-(e) survive the person, but the person is survived by a grandparent or a descendant of a grandparent, the person's estate shall be divided into two moieties, with:

(1) one moiety passing to the person's paternal kindred as provided by Subsection (g); and

(2) one moiety passing to the person's maternal kindred as provided by Subsection

nontestamentary transfer of the interests, by one or more persons domiciled in this state.

(b) Notwithstanding a choice of law or other contractual provision in an agreement prepared or provided by a contracting third party, Texas law applies to determine:

(1) whether a nontestamentary transfer of assets or interests described by Subsection (a) has occurred; and

(2) the ownership of the assets or interests following a possible nontestamentary transfer.

(c) Notwithstanding a choice of law or other contractual provision in an agreement prepared or provided by a contracting third party, any person, including a personal representative, who is asserting an ownership interest in assets or interests described by Subsection (a) subject to a possible nontestamentary transfer shall have access to the courts of this state for a judicial determination of:

(1) whether a nontestamentary transfer of the assets or interests has occurred; or

(2) the ownership of the assets or interests following a possible nontestamentary transfer.

(d) Subsections (a), (b), and (c) do not apply to an obligation:

(1) owed by a party to the contracting third party; or

(2) owed by the contracting third party to a party.

(e) This section applies to a community property survivorship agreement governed by Chapter 112 and a multiple-party account governed by Chapter 113.

SECTION 11. Section 201.001, Estates Code, as effective January 1, 2014, is amended by amending Subsections (f) and (g) and adding Subsections (i) and (j) to read as follows:

(f) If none of the kindred described by Subsections (b)-(e) survive the person, but the person is survived by a grandparent or a descendant of a grandparent, the person's estate shall be divided into two moieties, with:

(1) one moiety passing to the person's paternal kindred as provided by Subsection (g); and

(2) one moiety passing to the person's maternal kindred as provided by Subsection

(h).  
(g) The moiety passing to the person's paternal kindred passes in the following order:

(1) if both paternal grandparents survive the person, equal portions pass to the person's paternal grandfather and grandmother;

(2) if only the person's paternal grandfather or grandmother survives the person, the person's estate shall:

(A) be divided into two equal portions, with:

(i) one portion passing to the surviving grandparent; and

(ii) one portion passing to the descendants of the deceased grandparent; or

(B) pass entirely to the surviving grandparent if no descendant of the deceased grandparent survives the person; and

(3) if neither the person's paternal grandfather nor grandmother survives the person, the moiety passing to the decedent's paternal kindred passes to the descendants of the person's paternal grandfather and grandmother [~~and so on without end, passing~~] in like manner [~~to the nearest lineal ancestors and their descendants~~].

(i) If none of the kindred described by Subsections (b)-(e) survive the person and there is no surviving paternal grandparent or descendant of a paternal grandparent or, in the alternative, there is no surviving maternal grandparent or descendant of a maternal grandparent, the entire estate passes to the decedent's kindred on the side with the surviving grandparent or descendant of a grandparent in the manner provided for a moiety under Subsection (g) or (h).

(j) If none of the kindred described by Subsections (b)-(i) survive the person, the person's estate escheats under Chapter 71, Property Code.

(k) The limitation of heirs to grandparents and their descendants provided in this section does not apply to a gift in a written instrument to a person's heirs, unless the instrument provides otherwise.

SECTION 10. Section 201.051, Estates Code, as effective January 1, 2014, is amended.

(h).  
(g) The moiety passing to the person's paternal kindred passes in the following order:

(1) if both paternal grandparents survive the person, equal portions pass to the person's paternal grandfather and grandmother;

(2) if only the person's paternal grandfather or grandmother survives the person, the person's estate shall:

(A) be divided into two equal portions, with:

(i) one portion passing to the surviving grandparent; and

(ii) one portion passing to the descendants of the deceased grandparent; or

(B) pass entirely to the surviving grandparent if no descendant of the deceased grandparent survives the person; and

(3) if neither the person's paternal grandfather nor grandmother survives the person, the moiety passing to the decedent's paternal kindred passes to the descendants of the person's paternal grandfather and grandmother [~~and so on without end, passing~~] in like manner [~~to the nearest lineal ancestors and their descendants~~].

(i) If none of the kindred described by Subsections (b)-(e) survive the person and there is no surviving paternal grandparent or descendant of a paternal grandparent or, in the alternative, there is no surviving maternal grandparent or descendant of a maternal grandparent, the entire estate passes to the decedent's kindred on the side with the surviving grandparent or descendant of a grandparent in the manner provided for a moiety under Subsection (g) or (h).

(j) If none of the kindred described by Subsections (b)-(i) survive the person, the person's estate escheats under Chapter 71, Property Code.

SECTION 12. Same as introduced version.

SECTION 11. Section 201.052, Estates Code, as effective January 1, 2014, is amended.

SECTION 12. Subchapter A, Chapter 202, Estates Code, as effective January 1, 2014, is amended.

SECTION 13. Section 202.004, Estates Code, as effective January 1, 2014, is amended.

SECTION 14. Section 202.009, Estates Code, as effective January 1, 2014, is amended.

SECTION 15. Section 202.056, Estates Code, as effective January 1, 2014, is amended.

SECTION 16. Subchapter B, Chapter 202, Estates Code, as effective January 1, 2014, is amended by adding Section 202.057 to read as follows:

Sec. 202.057. AFFIDAVIT OF SERVICE OF CITATION. (a) A person who files an application under Section 202.005 shall file with the court:

(1) a copy of any citation required by this subchapter and the proof of delivery of service of the citation; and

(2) an affidavit sworn to by the applicant or a certificate signed by the applicant's attorney stating:

(A) that the citation was served as required by this subchapter;

(B) the name of each person to whom the citation was served, if the person's name is not shown on the proof of delivery; and

(C) the name of each person who waived citation under Section 202.056.

(b) The court may not render a judgment in the proceeding to declare heirship under Subchapter E until the applicant files the affidavit required by this section.

SECTION 17. Section 202.151, Estates Code, as effective January 1, 2014, is amended to read as follows:

SECTION 13. Same as introduced version.

SECTION 14. Same as introduced version.

SECTION 15. Same as introduced version.

SECTION 16. Same as introduced version.

SECTION 17. Same as introduced version.

SECTION 18. Subchapter B, Chapter 202, Estates Code, as effective January 1, 2014, is amended by adding Section 202.057 to read as follows:

Sec. 202.057. AFFIDAVIT OF SERVICE OF CITATION. (a) A person who files an application under Section 202.005 shall file with the court:

(1) a copy of any citation required by this subchapter and the proof of delivery of service of the citation; and

(2) an affidavit sworn to by the applicant or a certificate signed by the applicant's attorney stating:

(A) that the citation was served as required by this subchapter;

(B) the name of each person to whom the citation was served, if the person's name is not shown on the proof of delivery; and

(C) the name of each person who waived citation under Section 202.056.

(b) The court may not enter an order in the proceeding to declare heirship under Subchapter E until the applicant files the affidavit required by this section.

SECTION 19. Section 202.151, Estates Code, as effective January 1, 2014, is amended to read as follows:

Sec. 202.151. ~~[WRITTEN]~~ EVIDENCE IN PROCEEDING TO DECLARE HEIRSHIP. (a) The court may require that ~~[all or]~~ any testimony ~~[part of the evidence]~~ admitted as evidence in a proceeding to declare heirship be [; ~~(1)~~] reduced to writing and subscribed and sworn to by the witnesses, respectively [; ~~and~~ ~~(2)~~ ~~filed in the proceeding and recorded in the judge's probate docket~~]. (b) Testimony in a proceeding to declare heirship must be taken in open court or by deposition under the Texas Rules of Civil Procedure.

No equivalent provision.

Sec. 202.151. ~~[WRITTEN]~~ EVIDENCE IN PROCEEDING TO DECLARE HEIRSHIP. (a) The court may require that ~~[all or]~~ any testimony ~~[part of the evidence]~~ admitted as evidence in a proceeding to declare heirship be [; ~~(1)~~] reduced to writing and subscribed and sworn to by the witnesses, respectively [; ~~and~~ ~~(2)~~ ~~filed in the proceeding and recorded in the judge's probate docket~~]. (b) Testimony in a proceeding to declare heirship must be taken in open court, by deposition in accordance with Section 51.203, or in accordance with the Texas Rules of Civil Procedure.

SECTION 20. 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(e); 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 18. Section 253.001, Estates Code, as effective January 1, 2014, is amended.

SECTION 21. Same as introduced version.

SECTION 19. The heading to Section 256.052, Estates Code, as effective January 1, 2014, is amended.

SECTION 22. Same as introduced version.

SECTION 20. Section 256.052(a), Estates Code, as effective January 1, 2014, is amended to read as follows:

SECTION 23. Section 256.052(a), Estates Code, as effective January 1, 2014, is amended to read as follows:

(a) An application for the probate of a ~~[written]~~ will must state and aver the following to the extent each is known to the applicant or can, with reasonable diligence, be ascertained by the applicant:

(a) An application for the probate of a ~~[written]~~ will must state and aver the following to the extent each is known to the applicant or can, with reasonable diligence, be ascertained by the applicant:

- (1) each applicant's name and domicile;
- (2) the testator's name, domicile, and, if known, age, on the date of the testator's death;
- (3) the fact, time, and place of the testator's death;
- (4) facts showing that the court with which the application is filed has venue;
- (5) that the testator owned property, including a statement generally describing the property and the property's probable value;
- (6) the date of the will;
- (7) the name, state of residence, and residence or business address of the ~~[:~~ ~~[(A) any]~~ executor named in the will or other ~~[-, if no executor is named, of the]~~ person to whom the applicant desires that letters be issued; ~~[and]~~

- (1) each applicant's name and domicile;
- (2) the testator's name, domicile, and, if known, age, on the date of the testator's death;
- (3) the fact, time, and place of the testator's death;
- (4) facts showing that the court with which the application is filed has venue;
- (5) that the testator owned property, including a statement generally describing the property and the property's probable value;
- (6) the date of the will;
- (7) the name, state of residence, and physical address where service can be had ~~[:~~ ~~[(A) any]~~ [residence] of the ~~[:~~ ~~[(A) any]~~ executor named in the will or other ~~[-, if no executor is named, of the]~~ person to whom the applicant desires that letters be issued; ~~[and]~~

(8) the name of [~~B~~] each subscribing witness to the will, if any;  
(9) [~~8~~] whether one or more children born to or adopted by the testator after the testator executed the will survived the testator and, if so, the name of each of those children;  
(10) [~~9~~] whether a marriage of the testator was ever dissolved after the will was made and, if so, when and from whom;  
(11) [~~10~~] whether the state, a governmental agency of the state, or a charitable organization is named in the will as a devisee; and  
(12) [~~11~~] that the executor named in the will, the applicant, or another person to whom the applicant desires that letters be issued is not disqualified by law from accepting the letters.

SECTION 21. The heading to Section 256.053, Estates Code, as effective January 1, 2014, is amended.

SECTION 22. Section 256.053(a), Estates Code, as effective January 1, 2014, is amended.

SECTION 23. Section 256.054, Estates Code, as effective January 1, 2014, is amended.

SECTION 24. Section 256.152(c), Estates Code, as effective January 1, 2014, is amended.

SECTION 25. Section 256.153, Estates Code, as effective January 1, 2014, is amended to read as follows:

Sec. 256.153. PROOF OF EXECUTION OF [~~AUTHORIZED METHODS OF PROVING~~] ATTESTED [~~WRITTEN~~] WILL. (a) An attested [~~written~~] will produced in court that is not self-proved as provided by this title may be proved in the manner provided by this section.  
(b) A will described by Subsection (a) may be proved by the sworn testimony or affidavit of one or more of the subscribing witnesses to the will taken in open court.  
(c) If all the witnesses to a will described by Subsection (a) are nonresidents of the

(8) the name of [~~B~~] each subscribing witness to the will, if any;  
(9) [~~8~~] whether one or more children born to or adopted by the testator after the testator executed the will survived the testator and, if so, the name of each of those children;  
(10) [~~9~~] whether a marriage of the testator was ever dissolved after the will was made and, if so, when and from whom;  
(11) [~~10~~] whether the state, a governmental agency of the state, or a charitable organization is named in the will as a devisee; and  
(12) [~~11~~] that the executor named in the will, the applicant, or another person to whom the applicant desires that letters be issued is not disqualified by law from accepting the letters.

SECTION 24. Same as introduced version.

SECTION 25. Same as introduced version.

SECTION 26. Same as introduced version.

SECTION 27. Same as introduced version.

SECTION 28. Section 256.153, Estates Code, as effective January 1, 2014, is amended to read as follows:

Sec. 256.153. PROOF OF EXECUTION OF [~~AUTHORIZED METHODS OF PROVING~~] ATTESTED [~~WRITTEN~~] WILL. (a) An attested [~~written~~] will produced in court that is not self-proved as provided by this title may be proved in the manner provided by this section.  
(b) A will described by Subsection (a) may be proved by the sworn testimony or affidavit of one or more of the subscribing witnesses to the will taken in open court.  
(c) If all the witnesses to a will described by Subsection (a) are nonresidents of the

county or the witnesses who are residents of the county are unable to attend court, the will may be proved:

(1) by the sworn testimony of one or more of the witnesses by written or oral deposition taken in accordance with the provisions of the Texas Rules of Civil Procedure relating to written or oral depositions [~~in the same manner and under the same rules as depositions are taken in other civil actions~~];

(2) if no opposition in writing to the will is filed on or before the date set for the hearing on the will, by the sworn testimony or affidavit of two witnesses taken in open court, or by deposition as provided by Subdivision (1), to the signature or the handwriting evidenced by the signature of:

(A) one or more of the attesting witnesses; or

(B) the testator, if the testator signed the will; or

(3) if it is shown under oath to the court's satisfaction that, after a diligent search was made, only one witness can be found who can make the required proof, by the sworn testimony or affidavit of that witness taken in open court, or by deposition as provided by Subdivision (1), to a signature, or the handwriting evidenced by a signature, described by Subdivision (2).

(d) If none of the witnesses to a will described by Subsection (a) are living, or if each of the witnesses is a member of the armed forces or the armed forces reserves of the United States, an auxiliary of the armed forces or armed forces reserves, or the United States Maritime Service and is beyond the court's jurisdiction, the will may be proved:

(1) by two witnesses to the handwriting of one or both of the subscribing witnesses to the will or the testator, if the testator signed the will, by:

(A) sworn testimony or affidavit taken in open court; or

(B) written or oral deposition taken in accordance with the provisions of the Texas Rules of Civil Procedure relating to written or oral depositions [~~in the same manner and under the same rules as depositions are taken in other civil actions~~]; or

(2) if it is shown under oath to the court's satisfaction that, after a diligent search was made, only one witness can be found who

county or the witnesses who are residents of the county are unable to attend court, the will may be proved:

(1) by the sworn testimony of one or more of the witnesses by written or oral deposition taken in accordance with Section 51.203 or the Texas Rules of Civil Procedure [~~in the same manner and under the same rules as depositions are taken in other civil actions~~];

(2) if no opposition in writing to the will is filed on or before the date set for the hearing on the will, by the sworn testimony or affidavit of two witnesses taken in open court, or by deposition as provided by Subdivision (1), to the signature or the handwriting evidenced by the signature of:

(A) one or more of the attesting witnesses; or

(B) the testator, if the testator signed the will; or

(3) if it is shown under oath to the court's satisfaction that, after a diligent search was made, only one witness can be found who can make the required proof, by the sworn testimony or affidavit of that witness taken in open court, or by deposition as provided by Subdivision (1), to a signature, or the handwriting evidenced by a signature, described by Subdivision (2).

(d) If none of the witnesses to a will described by Subsection (a) are living, or if each of the witnesses is a member of the armed forces or the armed forces reserves of the United States, an auxiliary of the armed forces or armed forces reserves, or the United States Maritime Service and is beyond the court's jurisdiction, the will may be proved:

(1) by two witnesses to the handwriting of one or both of the subscribing witnesses to the will or the testator, if the testator signed the will, by:

(A) sworn testimony or affidavit taken in open court; or

(B) written or oral deposition taken in accordance with Section 51.203 or the Texas Rules of Civil Procedure [~~in the same manner and under the same rules as depositions are taken in other civil actions~~]; or

(2) if it is shown under oath to the court's satisfaction that, after a diligent search was made, only one witness can be found who

can make the required proof, by the sworn testimony or affidavit of that witness taken in open court, or by deposition as provided by Subdivision (1), to a signature or the handwriting described by Subdivision (1).

(e) A witness being deposed for purposes of proving the will as provided by Subsection (c) or (d) may testify by referring to a certified copy of the will, without the judge requiring the original will to be removed from the court's file and shown to the witness.

SECTION 26. Section 256.154, Estates Code, as effective January 1, 2014, is amended to read as follows:

Sec. 256.154. PROOF OF EXECUTION ~~[AUTHORIZED—METHODS]~~ OF ~~[PROVING]~~ HOLOGRAPHIC WILL. (a) A will wholly in the handwriting of the testator that is not self-proved as provided by this title may be proved by two witnesses to the testator's handwriting. The evidence may be by:

(1) sworn testimony or affidavit taken in open court; or

(2) if the witnesses are nonresidents of the county or are residents who are unable to attend court, written or oral deposition taken in accordance with the provisions of the Texas Rules of Civil Procedure relating to written or oral depositions ~~[in the same manner and under the same rules as depositions are taken in other civil actions].~~

(b) A witness being deposed for purposes of proving the will as provided by Subsection (a)(2) may testify by referring to a certified copy of the will, without the judge requiring the original will to be removed from the court's file and shown to the witness.

SECTION 27. Section 256.155(a), Estates Code, as effective January 1, 2014, is amended.

SECTION 28. Section 256.156, Estates Code, as effective January 1, 2014, is amended.

SECTION 29. Section 256.203, Estates Code, as effective January 1, 2014, is

can make the required proof, by the sworn testimony or affidavit of that witness taken in open court, or by deposition as provided by Subdivision (1), to a signature or the handwriting described by Subdivision (1).

(e) A witness being deposed for purposes of proving the will as provided by Subsection (c) or (d) may testify by referring to a certified copy of the will, without the judge requiring the original will to be removed from the court's file and shown to the witness.

SECTION 29. Section 256.154, Estates Code, as effective January 1, 2014, is amended to read as follows:

Sec. 256.154. PROOF OF EXECUTION ~~[AUTHORIZED—METHODS]~~ OF ~~[PROVING]~~ HOLOGRAPHIC WILL. (a) A will wholly in the handwriting of the testator that is not self-proved as provided by this title may be proved by two witnesses to the testator's handwriting. The evidence may be by:

(1) sworn testimony or affidavit taken in open court; or

(2) if the witnesses are nonresidents of the county or are residents who are unable to attend court, written or oral deposition taken in accordance with Section 51.203 or the Texas Rules of Civil Procedure ~~[in the same manner and under the same rules as depositions are taken in other civil actions].~~

(b) A witness being deposed for purposes of proving the will as provided by Subsection (a)(2) may testify by referring to a certified copy of the will, without the judge requiring the original will to be removed from the court's file and shown to the witness.

SECTION 30. Same as introduced version.

SECTION 31. Same as introduced version.

SECTION 32. Same as introduced version.

amended.

SECTION 30. Section 257.052, Estates Code, as effective January 1, 2014, is amended.

SECTION 31. Section 257.053, Estates Code, as effective January 1, 2014, is amended.

SECTION 32. Subchapter D, Chapter 301, Estates Code, as effective January 1, 2014, is amended by adding Section 301.155 to read as follows:

Sec. 301.155. AUTHORIZED METHODS OF PROOF. A fact contained in an application for issuance of letters testamentary or of administration or any other fact required to be proved by this subchapter may be proved by the sworn testimony of a witness with personal knowledge of the fact that is:

- (1) taken in open court; or
- (2) if proved under oath to the satisfaction of the court that the witness is unavailable, taken by deposition on written questions under Rule 200, Texas Rules of Civil Procedure.

No equivalent provision.

SECTION 33. Section 305.002(a), Estates Code, as effective January 1, 2014, is amended.

SECTION 34. Section 305.003, Estates Code, as effective January 1, 2014, is

SECTION 33. Same as introduced version.

SECTION 34. Same as introduced version.

SECTION 35. Subchapter D, Chapter 301, Estates Code, as effective January 1, 2014, is amended by adding Section 301.155 to read as follows:

Sec. 301.155. AUTHORIZED METHODS OF PROOF. A fact contained in an application for issuance of letters testamentary or of administration or any other fact required to be proved by this subchapter may be proved by the sworn testimony of a witness with personal knowledge of the fact that is:

- (1) taken in open court; or
- (2) if proved under oath to the satisfaction of the court that the witness is unavailable, taken by deposition on written questions in accordance with Section 51.203 or the Texas Rules of Civil Procedure.

SECTION 36. Section 304.001(c), 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 37. Same as introduced version.

SECTION 38. Section 305.003, Estates Code, as effective January 1, 2014, is

amended to read as follows:

Sec. 305.003. PERIOD FOR TAKING OATH [~~AND GIVING BOND~~]. (a) ~~If an executor is named in a will that directs that the executor not be required to give a bond or security, the [An] oath of the executor may be taken and subscribed [and a bond may be given and approved] at any time. An oath taken and subscribed by the executor before the date of the order granting the letters testamentary is effective on the date of the order granting the letters.~~

~~(b) The oath of a personal representative, other than an executor described by Subsection (a), may be taken and subscribed at any time after the date of the order granting letters testamentary or of administration, as applicable.~~

~~(c) An oath under Subsection (a) or (b) must be taken, subscribed, and filed before:~~

- (1) the 21st day after the date of the order granting letters testamentary or of administration, as applicable; or
- (2) the letters testamentary or of administration, as applicable, are revoked for a failure to qualify within the period allowed.

SECTION 35. Subchapter A, Chapter 305, Estates Code, as effective January 1, 2014, is amended by adding Section 305.004 to read as follows:

Sec. 305.004. PERIOD FOR GIVING BOND. (a) A bond may be filed with the clerk at any time before:

(1) the 21st day after:

(A) the date of the order granting letters testamentary or of administration, as applicable; or

(B) the date of any order modifying the bond requirement; or

(2) the date letters testamentary or of administration, as applicable, are revoked for a failure to qualify within the period allowed.

(b) The court shall act promptly to review a bond filed as provided by Subsection (a) and, if acceptable, shall approve the bond.

(c) Notwithstanding Subsection (b), a bond filed with the clerk within the period prescribed by Subsection (a) is considered to have been approved by the court following the 21st day after the bond has

amended to read as follows:

Sec. 305.003. PERIOD FOR TAKING OATH [~~AND GIVING BOND~~].

~~An oath may be taken and subscribed [and a bond may be given and approved] at any time before:~~

- (1) the 21st day after the date of the order granting letters testamentary or of administration, as applicable; or
- (2) the letters testamentary or of administration, as applicable, are revoked for a failure to qualify within the period allowed.

SECTION 39. Subchapter A, Chapter 305, Estates Code, as effective January 1, 2014, is amended by adding Section 305.004 to read as follows:

Sec. 305.004. PERIOD FOR GIVING BOND. (a) A bond may be filed with the clerk at any time before:

(1) the 21st day after:

(A) the date of the order granting letters testamentary or of administration, as applicable; or

(B) the date of any order modifying the bond requirement; or

(2) the date letters testamentary or of administration, as applicable, are revoked for a failure to qualify within the period allowed.

(b) The court shall act promptly to review a bond filed as provided by Subsection (a) and, if acceptable, shall approve the bond.

(c) If no action has been taken by the court on the bond before the 21st day after the date the bond is filed, the person appointed personal representative may file a motion requiring the judge of the court in which the

been filed, until the court takes action on the bond.

(d) A bond that is not filed with the clerk within the period prescribed by Subsection (a) may still be approved by the court, if acceptable, but may not be considered approved without action of the court.

SECTION 36. Section 308.054(b), Estates Code, as effective January 1, 2014, is amended.

SECTION 37. Section 309.051(a), Estates Code, as effective January 1, 2014, is amended.

SECTION 38. Section 309.056, Estates Code, as effective January 1, 2014, is amended by amending Subsection (b) and adding Subsection (d) to read as follows:

(b) Notwithstanding Sections 309.051 and 309.052, or any contrary provision in a decedent's will that does not specifically prohibit the filing of an affidavit described by this subsection, if there are no unpaid debts, except for secured debts, taxes, and administration expenses, at the time the inventory is due, including any extensions, an independent executor may file with the court clerk, in lieu of the inventory, appraisalment, and list of claims, an affidavit stating that all debts, except for secured debts, taxes, and administration expenses, are paid and that all beneficiaries have received a verified, full, and detailed inventory and appraisalment. The affidavit in lieu of the inventory, appraisalment, and list of claims must be filed within the 90-day period prescribed by Section 309.051(a), unless the court grants an extension.

(d) An independent executor is not liable to any person for filing:

(1) an affidavit under this section in lieu of filing an inventory, appraisalment, and list of claims, if permitted by law; or

(2) an inventory, appraisalment, and list of claims in lieu of filing an affidavit under this section.

bond was filed to specify on the record the reason or reasons for the judge's failure to act on the bond. The hearing on the motion must be held before the 11th day after the date the motion is filed.

SECTION 40. Same as introduced version.

SECTION 41. Same as introduced version.

SECTION 42. Section 309.056, Estates Code, as effective January 1, 2014, is amended by amending Subsection (b) and adding Subsection (d) to read as follows:

(b) Notwithstanding Sections 309.051 and 309.052, or any contrary provision in a decedent's will that does not specifically prohibit the filing of an affidavit described by this subsection, if there are no unpaid debts, except for secured debts, taxes, and administration expenses, at the time the inventory is due, including any extensions, an independent executor may file with the court clerk, in lieu of the inventory, appraisalment, and list of claims, an affidavit stating that all debts, except for secured debts, taxes, and administration expenses, are paid and that all beneficiaries have received a verified, full, and detailed inventory and appraisalment. The affidavit in lieu of the inventory, appraisalment, and list of claims must be filed within the 90-day period prescribed by Section 309.051(a), unless the court grants an extension.

(d) An independent executor is not liable for choosing to file:

(1) an affidavit under this section in lieu of filing an inventory, appraisalment, and list of claims, if permitted by law; or

(2) an inventory, appraisalment, and list of claims in lieu of filing an affidavit under this section.

No equivalent provision.

SECTION 43. Subchapter B, Chapter 309, Estates Code, as effective January 1, 2014, is amended by adding Section 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, 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 39. Sections 309.103(a) and (b), Estates Code, as effective January 1, 2014, are amended.

SECTION 44. Same as introduced version.

SECTION 40. Section 353.101(d), Estates Code, as effective January 1, 2014, is amended.

SECTION 45. Same as introduced version.

SECTION 41. Section 355.060, Estates

SECTION 46. Same as introduced version.

Code, as effective January 1, 2014, is amended.

SECTION 42. Section 361.155, Estates Code, as effective January 1, 2014, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) Except as otherwise provided by this subsection, an appointee who files an inventory, appraisal, and list of claims under Subsection (a) shall set out in the inventory the appointee's appraisal of the fair market value of each item in the inventory on the date of the appointee's qualification. If an inventory, appraisal, and list of claims have not been filed by any former personal representative, the appointee shall set out the inventory as provided by Section 309.051(b).

(c) On the application of any person interested in the estate, the court shall, in an order appointing a successor representative of an estate, appoint appraisers as in an original appointment.

No equivalent provision.

SECTION 47. Section 361.155, Estates Code, as effective January 1, 2014, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) Except as otherwise provided by this subsection, an appointee who files an inventory, appraisal, and list of claims under Subsection (a) shall set out in the inventory the appointee's appraisal of the fair market value of each item in the inventory on the date of the appointee's qualification. If an inventory, appraisal, and list of claims has not been filed by any former personal representative, the appointee shall set out the inventory as provided by Sections 309.051 and 309.052.

(c) On the application of any person interested in the estate, the court shall, in an order appointing a successor representative of an estate, appoint appraisers as in an original appointment.

SECTION 48. 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

(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) The personal representative shall also provide to each person entitled to citation under Subsection (b) a copy of the account for final settlement either by:

(1) certified mail, return receipt requested;  
or

(2) electronic delivery, including facsimile or e-mail.

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

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

(f) The personal representative shall file an affidavit sworn to by the personal representative or a certificate signed by the personal representative's attorney stating:

(1) that the citation was given as required by this section;

(2) the name of each person to whom the citation was given, if the person's name is not shown on the proof of delivery;

(3) the name of each person executing a waiver of citation; and

(4) that each person entitled to citation was provided a copy of the account for final settlement, indicating the method of delivery for each person.

SECTION 43. 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 convert any remaining nonmonetary assets distributable to an unknown or missing person into cash to be deposited into the court's registry. The procedures in Chapter 356 apply to the conversion of nonmonetary assets under this subsection.

SECTION 49. 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 convert into money any remaining nonmonetary assets to which a person who is unknown or missing is entitled. The procedures in Chapter 356 apply to the conversion of nonmonetary assets under this subsection.

(c) The court shall order the personal

representative to deposit in an account in the court's registry all money, including the proceeds of any conversion under Subsection (b), to which a person who is unknown or missing is entitled. 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 44. Section 362.013, Estates Code, as effective January 1, 2014, is amended.

SECTION 50. Same as introduced version.

SECTION 45. Section 401.001(a), Estates Code, as effective January 1, 2014, is amended.

SECTION 51. Same as introduced version.

SECTION 46. Section 401.004(d), Estates Code, as effective January 1, 2014, is amended.

SECTION 52. Same as introduced version.

SECTION 47. Section 401.006, Estates Code, as effective January 1, 2014, is amended.

SECTION 53. Same as introduced version.

SECTION 48. Section 403.055, Estates Code, as effective January 1, 2014, is amended.

SECTION 54. Same as introduced version.

SECTION 49. Section 403.056(a), Estates Code, as effective January 1, 2014, is amended to read as follows:

SECTION 55. Section 403.056(a), Estates Code, as effective January 1, 2014, is amended to read as follows:

(a) Notice to the independent executor required by Sections 403.052 and 403.055 must be contained in:

(a) Notice to the independent executor required by Sections 403.052 and 403.055 must be contained in:

(1) a written instrument in the form required by Section 355.004 that is hand-delivered with proof of receipt, or mailed by certified mail, return receipt requested with proof of receipt, to the independent executor or the executor's attorney;

(1) a written instrument that complies with Section 355.004 and is hand-delivered with proof of receipt, or mailed by certified mail, return receipt requested with proof of receipt, to the independent executor or the executor's attorney;

(2) a pleading filed in a lawsuit with respect to the claim; or

(2) a pleading filed in a lawsuit with respect to the claim; or

(3) a written instrument in the form required by Section 355.004 or pleading filed in the

(3) a written instrument that complies with Section 355.004 or a pleading filed in the

court in which the administration of the estate is pending.

SECTION 50. Section 404.001(a), Estates Code, as effective January 1, 2014, is amended.

SECTION 51. Chapter 404, Estates Code, as effective January 1, 2014, is amended.

SECTION 52. Sections 404.005(b) and (c), Estates Code, as effective January 1, 2014, are amended.

SECTION 53. Section 405.001(b), Estates Code, as effective January 1, 2014, is amended.

**No equivalent provision.**

SECTION 54. Section 122.057, Estates Code, as effective January 1, 2014, is repealed.

SECTION 55. (a) The changes in law made by Section 111.051, Estates Code, as amended by this Act, and Section 111.054, Estates Code, as added by this Act, represent the fundamental policy of this state for the protection of its residents and are intended to prevail over the laws of

court in which the administration of the estate is pending.

SECTION 56. Same as introduced version.

SECTION 57. Same as introduced version.

SECTION 58. Same as introduced version.

SECTION 59. Same as introduced version.

SECTION 60. Section 551.001(a), 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(c), 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.

SECTION 61. Same as introduced version.

SECTION 62. Same as introduced version.

another state or jurisdiction, to the extent those laws are in conflict with Texas law.

(b) The changes in law made by Section 111.051, Estates Code, as amended by this Act, and Section 111.054, Estates Code, as added by this Act, apply to an account at a financial institution, an insurance contract, an annuity contract, a retirement account, a beneficiary designation, or another similar arrangement of a person who dies on or after the effective date of this Act.

SECTION 56. (a) Section 21.005(b), Estates Code, as added by this Act, applies only to a will executed on or after the effective date of this Act. A will executed before the effective date of this Act is governed by the law in effect on the date the will was executed, and the former law is continued in effect for that purpose.

(b) The changes in law made by Sections 32.006, 256.052, 256.053, 256.054, 256.152(c), 256.153, 256.154, 256.155(a), 256.156, 256.203, 257.052, 257.053, 401.001(a), 401.004(d), and 401.006, Estates Code, as amended by this Act, apply only to an action filed or other proceeding commenced on or after the effective date of this Act. An action filed or other proceeding commenced before the effective date of this Act is governed by the law in effect on the date the action was filed or the proceeding was commenced, and the former law is continued in effect for that purpose.

SECTION 63. (a) Section 21.005(b), Estates Code, as added by this Act, applies only to a will executed on or after the effective date of this Act. A will executed before the effective date of this Act is governed by the law in effect on the date the will was executed, and the former law is continued in effect for that purpose.

(b) The changes in law made by this Act to Sections 204.151 and 204.152, Estates Code, apply only to a proceeding to declare heirship commenced on or after January 1, 2014. 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.

(c) The changes in law made by this Act to Section 304.001(c), Estates Code, apply only to an application for the grant of letters testamentary or of administration of a decedent's estate filed on or after January 1, 2014. 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.

(d) The changes in law made by Sections 32.006, 256.052, 256.053, 256.054, 256.152(c), 256.153, 256.154, 256.155(a), 256.156, 256.203, 257.052, 257.053, 401.001(a), 401.004(d), and 401.006, Estates Code, as amended by this Act, and Section 53.107, Estates Code, as added by this Act, apply only to an action filed or other proceeding commenced on or after the effective date of this Act. An action filed or other proceeding commenced before the effective date of this Act is governed by the law in effect on the date the action was filed or the proceeding was commenced, and the

(c) The changes in law made by Sections 51.203(c), 53.104, 305.002(a), 305.003, 308.054(b), 309.051(a), 309.056, 309.103(a) and (b), 355.060, 361.155(b), 362.011, 362.013, 404.001, 404.003, 404.005(b) and (c), and 405.001(b), Estates Code, as amended by this Act, and Sections 253.001(c), 301.155, 305.004, 361.155(c), 404.0035, 404.0036, and 404.0037, Estates Code, as added by this Act, apply to the administration of the estate of a decedent that is pending or commenced on or after the effective date of this Act.

(d) The changes in law made by Sections 102.004, 201.001(f) and (g), 201.051, 201.052(b), 202.004, 202.009, 202.056, 202.151, 353.101(d), 403.055, and 403.056(a), Estates Code, as amended by this Act, and Sections 201.001(i), (j), and (k), 201.052(a-1), 202.0025, and 202.057, Estates Code, as added by this Act, apply only to the estate of a decedent who dies on or after the effective date of this Act. The estate of a decedent who dies before the effective date of this Act is governed by the law in effect on the date of the decedent's death, and the former law is continued in effect for that purpose.

(e) Section 202.0025, Estates Code, as added by this Act, is intended to clarify current law in regard to the commencement of proceedings to declare heirship, and an inference may not be made regarding the statute of limitations for a proceeding to declare heirship filed before the effective date of this Act.

(f) An inference may not be made from the changes in law made by this Act to Section 401.006, Estates Code, as to whether an independent executor had the authority to sell personal property of the estate in a probate proceeding filed before the effective date of this Act.

SECTION 57. To the extent of any conflict, this Act prevails over another Act of the 83rd Legislature, Regular Session, 2013, relating to nonsubstantive additions to and corrections in enacted codes.

former law is continued in effect for that purpose.

(e) The changes in law made by Sections 51.203(c), 53.104, 305.002(a), 305.003, 308.054(b), 309.051(a), 309.056, 309.103(a) and (b), 355.060, 361.155(b), 362.005, 362.011, 362.013, 404.001(a), 404.003, 404.005(b) and (c), 405.001(b), and 555.001(a), Estates Code, as amended by this Act, and Sections 253.001(c), 301.155, 305.004, 309.057, 361.155(c), 404.0035, 404.0036, and 404.0037, Estates Code, as added by this Act, apply to the administration of the estate of a decedent that is pending or commenced on or after the effective date of this Act.

(f) The changes in law made by Sections 102.004, 201.001(f) and (g), 201.051, 201.052(b), 202.004, 202.009, 202.056, 202.151, 353.101(d), 403.055, and 403.056(a), Estates Code, as amended by this Act, and Sections 201.001(i) and (j), 201.052(a-1), 202.0025, and 202.057, Estates Code, as added by this Act, apply only to the estate of a decedent who dies on or after the effective date of this Act. The estate of a decedent who dies before the effective date of this Act is governed by the law in effect on the date of the decedent's death, and the former law is continued in effect for that purpose.

(g) Section 202.0025, Estates Code, as added by this Act, is intended to clarify current law in regard to the commencement of proceedings to declare heirship, and an inference may not be made regarding the statute of limitations for a proceeding to declare heirship filed before the effective date of this Act.

(h) An inference may not be made from the changes in law made by this Act to Section 401.006, Estates Code, as to whether an independent executor had the authority to sell personal property of the estate in a probate proceeding filed before the effective date of this Act.

SECTION 64. Same as introduced version.

SECTION 58. This Act takes effect January 1, 2014.

SECTION 65. Same as introduced version.