

By: Patrick

H.B. No. 1755

A BILL TO BE ENTITLED

AN ACT

1
2 relating to authorizing the appointment of a public probate
3 administrator; authorizing fees.

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

5 SECTION 1. Subchapter B, Chapter 25, Government Code, is
6 amended by adding Section 25.00251 to read as follows:

7 Sec. 25.00251. PUBLIC PROBATE ADMINISTRATOR. (a) A
8 statutory probate court judge, with the concurrence of the
9 commissioners court, may appoint a public probate administrator for
10 the county in which the statutory probate court is located. One
11 person shall serve as the public probate administrator for all
12 statutory probate courts in the county unless the commissioners
13 court has authorized additional public probate administrators.

14 (b) If a county has more than one statutory probate court,
15 the presiding judges of all of the statutory probate courts located
16 in the county shall designate, by a majority vote, a specific
17 statutory probate court judge to appoint and administer the office
18 of the public probate administrator in that county. If the
19 statutory probate court judges cannot, by a majority vote,
20 determine which statutory probate court judge shall appoint and
21 administer the office of the public probate administrator in that
22 county, the chief presiding statutory probate court judge shall
23 cast the tiebreaking vote to decide which statutory probate court
24 judge shall appoint and administer the office of the public probate

1 administrator in that county.

2 (c) The public probate administrator may be a person, a
3 charitable organization, or any other suitable entity.

4 (d) The commissioners court shall set the compensation of
5 the public probate administrator.

6 (e) The public probate administrator, with the consent of
7 and at salaries set by the commissioners court, may employ
8 assistants, deputies, clerks, and any other employees as necessary
9 to carry out Chapter 455, Estates Code.

10 SECTION 2. Subtitle J, Title 2, Estates Code, as effective
11 January 1, 2014, is amended by adding Chapter 455 to read as
12 follows:

13 CHAPTER 455. PUBLIC PROBATE ADMINISTRATOR

14 Sec. 455.001. DEFINITION. In this chapter, "public probate
15 administrator" means the public probate administrator appointed
16 under Section 25.00251, Government Code.

17 Sec. 455.002. BOND OF PUBLIC PROBATE ADMINISTRATOR. (a)
18 The public probate administrator must execute an official bond of
19 at least \$100,000 conditioned as required by law and payable to the
20 statutory probate court judge who appointed the public probate
21 administrator.

22 (b) In addition to the official bond of office, at any time,
23 for good cause, the statutory probate court judge who appointed the
24 public probate administrator may require the administrator to post
25 an additional corporate surety bond for individual estates. The
26 additional bonds shall bear the written approval of the judge
27 requesting the additional bond.

1 (c) The county may choose to self-insure the public probate
2 administrator for the minimum bond amount required by this section.

3 Sec. 455.003. FUNDING OF PUBLIC PROBATE ADMINISTRATOR'S
4 OFFICE. A public probate administrator is entitled to commissions
5 under Subchapter A, Chapter 352, to be paid into the county
6 treasury. The public probate administrator's office, including
7 salaries, is funded, in part, by the commissions.

8 Sec. 455.004. POWERS AND DUTIES. (a) On receipt of notice
9 of a decedent for whose estate a personal representative has not
10 been appointed and who has no known or suitable next of kin, the
11 public probate administrator shall take prompt possession or
12 control of the decedent's property located in the county that:

13 (1) is considered by the public probate administrator
14 to be subject to loss, injury, waste, or misappropriation; or

15 (2) the court orders into the possession and control
16 of the public probate administrator after notice to the public
17 probate administrator.

18 (b) The public probate administrator is responsible for
19 determining if the decedent has any heirs or a will and, if
20 necessary, shall make burial arrangements with the appropriate
21 county facility in charge of indigent burial if there are no known
22 personal representatives.

23 (c) If the public probate administrator determines the
24 decedent executed a will, the administrator shall file the will
25 with the county clerk.

26 (d) The public probate administrator has all of the powers
27 and duties of an administrator under this title.

1 (e) The public probate administrator may dispose of any
2 unclaimed property by public auction or private sale, or donation
3 to a charity, if appropriate.

4 (f) The statutory probate court judge or commissioners
5 court may request accountings in addition to accountings otherwise
6 required by this title.

7 Sec. 455.005. INFORMING PUBLIC PROBATE ADMINISTRATOR. (a)
8 If a public officer or employee knows of a decedent without known or
9 suitable next of kin or knows of property of a decedent that is
10 subject to loss, injury, waste, or misappropriation, the officer or
11 employee may inform the public probate administrator of that fact.

12 (b) If a person dies in a hospital, mental health facility,
13 or board and care facility without known or suitable next of kin,
14 the person in charge of the hospital or facility may give immediate
15 notice of that fact to the public probate administrator of the
16 county in which the hospital or facility is located.

17 (c) A funeral director in control of a decedent's remains
18 may notify the public probate administrator if:

19 (1) none of the persons listed in Section 711.002,
20 Health and Safety Code, can be found after a reasonable inquiry or
21 contacted by reasonable means; or

22 (2) any of the persons listed in Section 711.002,
23 Health and Safety Code, refuses to act.

24 Sec. 455.006. PUBLIC PROBATE ADMINISTRATOR'S INITIATION OF
25 ADMINISTRATION. (a) The public probate administrator shall
26 investigate a decedent's estate and circumstances to determine if
27 the opening of an administration is necessary if the public probate

1 administrator has reasonable cause to believe that the decedent
2 found in the county or believed to be domiciled in the county in
3 which the administrator is appointed does not have a personal
4 representative appointed for the decedent's estate.

5 (b) The public probate administrator shall secure a
6 decedent's estate or resolve any other circumstances related to a
7 decedent, if, after the investigation, the public probate
8 administrator determines that:

9 (1) the decedent has an estate that may be subject to
10 loss, injury, waste, or misappropriation; or

11 (2) there are other circumstances relating to the
12 decedent that require action by the public probate administrator.

13 (c) To establish reasonable cause under Subsection (a), the
14 public probate administrator may require an information letter
15 about the decedent that contains the following:

16 (1) the name, address, date of birth, and county of
17 residence of the decedent;

18 (2) a description of the relationship between the
19 interested person and the decedent;

20 (3) a statement of the suspected cause of death of the
21 decedent;

22 (4) the names and telephone numbers of any known
23 friends or relatives of the decedent;

24 (5) a description of any known property of the
25 decedent, including the estimated value of the property; and

26 (6) a statement of whether the property is subject to
27 loss, injury, waste, or misappropriation.

1 Sec. 455.007. ACCESS TO INFORMATION. (a) A public probate
2 administrator who has made an investigation under Section 455.006
3 may present to the statutory probate court judge a statement of the
4 known facts relating to a decedent with a request for permission to
5 take possession or control of property of the decedent and further
6 investigate the matter.

7 (b) On presentation of a statement under Subsection (a), a
8 statutory probate court judge may issue an order authorizing the
9 public probate administrator to take possession or control of
10 property under this chapter. A public probate administrator may
11 record the order in any county in which property subject to the
12 order is located.

13 (c) On presentation of an order issued under this section, a
14 financial institution, governmental or private agency, retirement
15 fund administrator, insurance company, licensed securities dealer,
16 or any other person shall perform the following without requiring a
17 death certificate or letters of administration and without
18 inquiring into the truth of the order:

19 (1) provide the public probate administrator complete
20 information concerning property held in the name of the decedent
21 referenced in the order, without charge, including the names and
22 addresses of any beneficiaries and any evidence of a beneficiary
23 designation; and

24 (2) grant the public probate administrator access to a
25 safe deposit box rented in the name of the decedent referenced in
26 the order, without charge, for the purpose of inspection and
27 removal of its contents.

1 (d) Costs and expenses incurred in drilling or forcing a
2 safe deposit box open under Subsection (c) shall be paid by the
3 decedent's estate.

4 Sec. 455.008. SMALL ESTATES. (a) If gross assets of an
5 estate do not exceed 10 percent of the maximum amount authorized for
6 a small estate affidavit under Section 205.001, the public probate
7 administrator may act without issuance of letters testamentary or
8 of administration if the court approves a statement of
9 administration stating:

10 (1) the name and domicile of the decedent;

11 (2) the date and place of death of the decedent; and

12 (3) the name, address, and relationship of each known
13 heir or devisee of the decedent.

14 (b) On approval of the statement of administration, the
15 public probate administrator may:

16 (1) take possession of, collect, manage, and secure
17 the personal property of the decedent;

18 (2) sell the decedent's personal property at private
19 or public sale or auction, without a court order;

20 (3) distribute personal property to the estate's
21 personal representative if one is appointed after the statement of
22 administration is filed;

23 (4) distribute personal property to a distributee of
24 the decedent who presents an affidavit complying with Chapter 205;

25 (5) sell or abandon perishable property of the
26 decedent if necessary to preserve the estate;

27 (6) make necessary funeral arrangements for the

1 decedent and pay reasonable funeral charges with estate assets;

2 (7) distribute to a minor heir or devisee for whom a
3 guardian has not been appointed the share of an intestate estate or
4 a devise to which the heir or devisee is entitled; and

5 (8) distribute allowances and exempt property as
6 provided by this title.

7 (c) On the distribution of property and internment of the
8 decedent under this section, the public probate administrator shall
9 file with the clerk an affidavit, to be approved by the court,
10 detailing:

- 11 (1) the property collected;
- 12 (2) the property's distribution;
- 13 (3) the cost of internment; and
- 14 (4) the place of internment.

15 Sec. 455.009. SMALL ESTATE AFFIDAVIT. (a) If gross assets
16 of an estate do not exceed the maximum amount authorized for a small
17 estate affidavit under Section 205.001, the public probate
18 administrator may file an affidavit that complies with Chapter 205
19 for approval by the statutory probate court judge.

20 (b) If the statutory probate court judge approves the
21 affidavit, the affidavit:

- 22 (1) must be maintained or recorded as provided by
23 Section 205.005; and
- 24 (2) has the effect described by Section 205.007.

25 Sec. 455.010. GRANT OF ADMINISTRATION. (a) A public
26 probate administrator shall file an application for letters of
27 administration or administration with will annexed as provided by

1 this title:

2 (1) if gross assets of an estate exceed the maximum
3 amount authorized for a small estate affidavit under Section
4 205.001;

5 (2) if the property of the decedent cannot be disposed
6 of using other methods detailed in this chapter; or

7 (3) at the discretion of the public probate
8 administrator or on order of the statutory probate court judge.

9 (b) After issuance of letters of administration, the public
10 probate administrator is considered a personal representative
11 under this title and has all of the powers and duties of a personal
12 representative under this title.

13 Sec. 455.011. WITHDRAWAL OF PUBLIC PROBATE ADMINISTRATOR
14 AND APPOINTMENT OF SUCCESSOR. (a) If a public probate
15 administrator has taken any action under Section 455.008, 455.009,
16 or 455.010 and a qualified person more entitled to serve as a
17 personal representative under Section 304.001 comes forward or a
18 will of a decedent is found naming an executor, the public probate
19 administrator may surrender the administration of the estate and
20 the assets of the estate to the person once the person has qualified
21 under this title.

22 (b) Before surrendering the administration of the estate,
23 the public probate administrator must file a verified affidavit
24 that shows fully and in detail:

25 (1) the condition of the estate;

26 (2) the charges and claims that have been approved or
27 established by suit or that have been rejected and may be

1 established later;

2 (3) the amount of each claim that has been rejected and
3 may be established later;

4 (4) the property of the estate in the administrator's
5 possession; and

6 (5) any other facts that are necessary in determining
7 the condition of the estate.

8 (c) The court may require any other filing from the public
9 probate administrator that the court considers appropriate to fully
10 show the condition of the estate before surrendering the estate
11 under this section.

12 Sec. 455.012. DEPOSIT OF FUNDS INTO THE COUNTY TREASURY.
13 The public probate administrator shall deposit all funds coming
14 into the custody of the administrator in the county treasury. Funds
15 deposited must be dispersed at the direction of the public probate
16 administrator and according to the guidelines of the county
17 treasurer or auditor.

18 SECTION 3. Section 304.001(a), Estates Code, as effective
19 January 1, 2014, is amended to read as follows:

20 (a) The court shall grant letters testamentary or of
21 administration to persons qualified to act, in the following order:

22 (1) the person named as executor in the decedent's
23 will;

24 (2) the decedent's surviving spouse;

25 (3) the principal devisee of the decedent;

26 (4) any devisee of the decedent;

27 (5) the next of kin of the decedent;

- 1 (6) a creditor of the decedent;
- 2 (7) any person of good character residing in the
- 3 county who applies for the letters; ~~and~~
- 4 (8) any other person who is not disqualified under
- 5 Section 304.003; and
- 6 (9) any appointed public probate administrator.

7 SECTION 4. Section 118.052, Local Government Code, is

8 amended to read as follows:

9 Sec. 118.052. FEE SCHEDULE. Each clerk of a county court

10 shall collect the following fees for services rendered to any

11 person:

- 12 (1) CIVIL COURT ACTIONS
- 13 (A) Filing of Original Action (Sec. 118.053):
- 14 (i) Garnishment after judgment . . . \$15.00
- 15 (ii) All others . . . \$40.00
- 16 (B) Filing of Action Other than Original (Sec.
- 17 118.054) . . . \$30.00
- 18 (C) Services Rendered After Judgment in Original
- 19 Action (Sec. 118.0545):
- 20 (i) Abstract of judgment . . . \$ 5.00
- 21 (ii) Execution, order of sale, writ, or
- 22 other process . . . \$ 5.00
- 23 (2) PROBATE COURT ACTIONS
- 24 (A) Probate Original Action (Sec. 118.055):
- 25 (i) Probate of a will with independent
- 26 executor, administration with will attached, administration of an
- 27 estate, guardianship or receivership of an estate, or muniment of

- 1 title . . . \$40.00
- 2 (ii) Community survivors . . . \$40.00
- 3 (iii) Small estates . . . \$40.00
- 4 (iv) Declarations of heirship . . . \$40.00
- 5 (v) Mental health or chemical dependency
- 6 services . . . \$40.00
- 7 (vi) Additional, special fee (Sec. 118.064)
- 8 . . . \$ 5.00
- 9 (B) Services in Pending Probate Action (Sec.
- 10 118.056):
- 11 (i) Filing an inventory and appraisement as
- 12 provided by Section 118.056(d) . . . \$25.00
- 13 (ii) Approving and recording bond . . . \$
- 14 3.00
- 15 (iii) Administering oath . . . \$ 2.00
- 16 (iv) Filing annual or final account of
- 17 estate . . . \$25.00
- 18 (v) Filing application for sale of real or
- 19 personal property . . . \$25.00
- 20 (vi) Filing annual or final report of
- 21 guardian of a person . . . \$10.00
- 22 (vii) Filing a document not listed under
- 23 this paragraph after the filing of an order approving the inventory
- 24 and appraisement or after the 120th day after the date of the
- 25 initial filing of the action, whichever occurs first, if more than
- 26 25 pages . . . \$25.00
- 27 (C) Adverse Probate Action (Sec. 118.057) . . .

1 \$40.00
2 (D) Claim Against Estate (Sec. 118.058) . . . \$
3 2.00
4 (E) Supplemental Court-Initiated Guardianship
5 Fee in Probate Original Actions and Adverse Probate Actions (Sec.
6 118.067) . . . \$20.00
7 (F) Supplemental Public Probate Administrator
8 Fee For Counties That Have Appointed a Public Probate Administrator
9 (Sec. 118.068) . . . \$10.00
10 (3) OTHER FEES
11 (A) Issuing Document (Sec. 118.059): original
12 document and one copy . . . \$ 4.00
13 each additional set of an original and one copy . . . \$ 4.00
14 (B) Certified Papers (Sec. 118.060): for the
15 clerk's certificate . . . \$ 5.00
16 plus a fee per page or part of a page of . . . \$ 1.00
17 (C) Noncertified Papers (Sec. 118.0605): for
18 each page or part of a page . . . \$ 1.00
19 (D) Letters Testamentary, Letter of
20 Guardianship, Letter of Administration, or Abstract of Judgment
21 (Sec. 118.061) . . . \$ 2.00
22 (E) Safekeeping of Wills (Sec. 118.062) . . . \$
23 5.00
24 (F) Mail Service of Process (Sec. 118.063) . . .
25 same as sheriff
26 (G) Records Management and Preservation Fee
27 . . . \$ 5.00

1 SECTION 5. Subchapter C, Chapter 118, Local Government
2 Code, is amended by adding Section 118.068 to read as follows:

3 Sec. 118.068. SUPPLEMENTAL PUBLIC PROBATE ADMINISTRATOR
4 FEE. (a) The "supplemental public probate administrator fee" under
5 Section 118.052(2)(F) is for the support of the office of public
6 probate administrator under Chapter 455, Estates Code. Fees
7 collected under Section 118.052(2)(F) shall be deposited in the
8 county treasury to fund the expenses of the public probate
9 administrator's office.

10 (b) The supplemental public probate administrator fee is
11 charged for:

12 (1) a probate original action described by Section
13 118.055 and for which a fee is charged in accordance with Section
14 118.052(2)(A)(i), (ii), (iii), (iv), or (v); and

15 (2) an adverse probate action described by Section
16 118.057 and for which a fee is charged in accordance with Section
17 118.052(2)(C).

18 (c) The supplemental public probate administrator fee must
19 be paid by the person against whom the fee for a probate original
20 action or adverse probate action, as applicable, is charged and is
21 due at the time that fee is due.

22 (d) The supplemental public probate administrator fee is in
23 addition to all other fees charged in probate original actions and
24 adverse probate actions.

25 SECTION 6. Subchapter E, Chapter 101, Government Code, is
26 amended by adding Section 101.08145 to read as follows:

27 Sec. 101.08145. ADDITIONAL STATUTORY COUNTY COURT FEES AND

1 COSTS: LOCAL GOVERNMENT CODE. The clerk of a statutory county court
2 shall collect a supplemental public probate administrator fee of
3 \$10 under Sections 118.052 and 118.068, Local Government Code.

4 SECTION 7. Subchapter F, Chapter 101, Government Code, is
5 amended by adding Section 101.103 to read as follows:

6 Sec. 101.103. ADDITIONAL STATUTORY PROBATE COURT FEES AND
7 COSTS: LOCAL GOVERNMENT CODE. The clerk of a statutory probate
8 court shall collect a supplemental public probate administrator fee
9 of \$10 under Sections 118.052 and 118.068, Local Government Code.

10 SECTION 8. Subchapter G, Chapter 101, Government Code, is
11 amended by adding Section 101.12145 to read as follows:

12 Sec. 101.12145. ADDITIONAL COUNTY COURT FEES AND COSTS:
13 LOCAL GOVERNMENT CODE. The clerk of a county court shall collect a
14 supplemental public probate administrator fee of \$10 under Sections
15 118.052 and 118.068, Local Government Code.

16 SECTION 9. This Act takes effect January 1, 2014.