

# SENATE AMENDMENTS

2<sup>nd</sup> Printing

By: Thompson of Harris

H.B. No. 2912

A BILL TO BE ENTITLED

AN ACT

relating to decedents' estates.

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

SECTION 1. Section 21.005, Estates Code, as effective January 1, 2014, is amended to conform to Section 2.54, Chapter 1338 (S.B. 1198), Acts of the 82nd Legislature, Regular Session, 2011, and is further amended to read as follows:

Sec. 21.005. APPLICABILITY OF CERTAIN LAWS. (a) Notwithstanding Section 21.002(b) of this code and Section 311.002, Government Code:

(1) Section 311.032(c), Government Code, applies to Subtitle [~~Subtitles~~] X [~~and Y~~], Title 2, and Subtitles Y and Z, Title 3; and

(2) Sections 311.005(4) and 311.012(b) and (c), Government Code, apply to Subtitle [~~Subtitles~~] X [~~and Y~~], Title 2, and Subtitles Y and Z, Title 3.

(b) Chapter 132, Civil Practice and Remedies Code, does not apply to Subchapter C, Chapter 251.

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

1 32.001, Estates Code, and amended to read as follows:

2 (d) [~~(e) Nature of Proceeding.~~] The administration of the  
3 estate of a decedent, from the filing of the application for probate  
4 and administration, or for administration, until the decree of  
5 final distribution and the discharge of the last personal  
6 representative, shall be considered as one proceeding for purposes  
7 of jurisdiction. The entire proceeding is a proceeding in rem.

8 SECTION 3. Section 32.006, Estates Code, as effective  
9 January 1, 2014, is amended to read as follows:

10 Sec. 32.006. JURISDICTION OF STATUTORY PROBATE COURT WITH  
11 RESPECT TO TRUSTS AND POWERS OF ATTORNEY. In a county in which  
12 there is a statutory probate court, the statutory probate court has  
13 jurisdiction of:

- 14 (1) an action by or against a trustee;
- 15 (2) an action involving an inter vivos trust,  
16 testamentary trust, or charitable trust;
- 17 (3) an action by or against an agent or former agent  
18 under a power of attorney arising out of the agent's performance of  
19 the duties of an agent; and
- 20 (4) an action to determine the validity of a power of  
21 attorney or to determine an agent's rights, powers, or duties under  
22 a power of attorney.

23 SECTION 4. Section 51.203(c), Estates Code, as effective  
24 January 1, 2014, is amended to read as follows:

25 (c) At the expiration of the 10-day period prescribed by  
26 Subsection (a):

- 27 (1) [~~commission may issue for taking~~] the depositions

1 for which the notice was posted may be taken; and

2 (2) the judge may file cross-interrogatories if no  
3 person appears.

4 SECTION 5. Section 53.104, Estates Code, as effective  
5 January 1, 2014, is amended to read as follows:

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

10 (1) a person who has a legal disability under state or  
11 federal law;

12 (2) a nonresident;

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

14 (4) an unknown heir;

15 (5) a missing heir; or

16 (6) an unknown or missing person for whom cash is  
17 deposited into the court's registry under Section 362.011.

18 (b) An attorney ad litem appointed under this section is  
19 entitled to reasonable compensation for services provided in the  
20 amount set by the court. The court shall:

21 (1) tax the compensation as costs in the probate  
22 proceeding and order the compensation to be paid out of the estate  
23 or by any party at any time during [~~to be taxed as costs in~~] the  
24 proceeding; or

25 (2) for an attorney ad litem appointed under  
26 Subsection (a)(6), order that the compensation be paid from the  
27 cash on deposit in the court's registry as provided by Section

1 362.011.

2 SECTION 6. Subchapter C, Chapter 53, Estates Code, as  
3 effective January 1, 2014, is amended by adding Section 53.107 to  
4 read as follows:

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

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

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

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

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

19 SECTION 8. Section 102.004, Estates Code, as effective  
20 January 1, 2014, is amended to read as follows:

21 Sec. 102.004. LIABILITY OF HOMESTEAD FOR DEBTS. If the  
22 decedent was survived by a spouse or minor child, the [~~The~~]  
23 homestead is not liable for the payment of any of the debts of the  
24 estate, other than:

- 25 (1) purchase money for the homestead;  
26 (2) taxes due on the homestead;  
27 (3) work and material used in constructing

1 improvements on the homestead if the requirements of Section  
2 50(a)(5), Article XVI, Texas Constitution, are met;

3 (4) an owelty of partition imposed against the  
4 entirety of the property by a court order or written agreement of  
5 the parties to the partition, including a debt of one spouse in  
6 favor of the other spouse resulting from a division or an award of a  
7 family homestead in a divorce proceeding;

8 (5) the refinance of a lien against the homestead,  
9 including a federal tax lien resulting from the tax debt of both  
10 spouses, if the homestead is a family homestead, or from the tax  
11 debt of the decedent;

12 (6) an extension of credit on the homestead if the  
13 requirements of Section 50(a)(6), Article XVI, Texas Constitution,  
14 are met; or

15 (7) a reverse mortgage.

16 SECTION 9. Section 111.051, Estates Code, as effective  
17 January 1, 2014, is amended by amending Subdivision (1) and adding  
18 Subdivision (1-a) to read as follows:

19 (1) "Contracting third party" means a financial  
20 institution, insurance company, plan custodian, plan  
21 administrator, or other person who is a party to an account  
22 agreement, insurance contract, annuity contract, retirement  
23 account, beneficiary designation, or other similar contract the  
24 terms of which control whether a nontestamentary transfer has  
25 occurred or to whom property passes as a result of a possible  
26 nontestamentary transfer. The term does not include a person who  
27 is:

1           (A) an owner of the property subject to a  
2 possible nontestamentary transfer; or

3           (B) a possible recipient of the property subject  
4 to a possible nontestamentary transfer.

5           (1-a) "Employees' trust" means:

6                   (A) a trust that forms a part of a stock-bonus,  
7 pension, or profit-sharing plan under Section 401, Internal Revenue  
8 Code of 1954 (26 U.S.C. Section 401 (1986));

9                   (B) a pension trust under Chapter 111, Property  
10 Code; and

11                   (C) an employer-sponsored benefit plan or  
12 program, or any other retirement savings arrangement, including a  
13 pension plan created under Section 3, Employee Retirement Income  
14 Security Act of 1974 (29 U.S.C. Section 1002 (1986)), regardless of  
15 whether the plan, program, or arrangement is funded through a  
16 trust.

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

19           Sec. 111.054. APPLICATION OF STATE LAW TO CERTAIN  
20 NONTESTAMENTARY TRANSFERS. (a) This section applies if more than  
21 50 percent of the:

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

26                   (2) interests under an insurance contract, annuity  
27 contract, beneficiary designation, or other similar arrangement

1 are owned, immediately before a possible nontestamentary transfer  
2 of the interests, by one or more persons domiciled in this state.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (3) if neither the person's paternal grandfather nor  
27 grandmother survives the person, the moiety passing to the



1 decedent's paternal kindred passes to the descendants of the  
2 person's paternal grandfather and grandmother [~~, and so on without~~  
3 ~~end, passing~~] in like manner [~~to the nearest lineal ancestors and~~  
4 ~~their descendants~~].

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

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

16 SECTION 12. Section 201.051, Estates Code, as effective  
17 January 1, 2014, is amended to read as follows:

18 Sec. 201.051. MATERNAL INHERITANCE. For purposes of  
19 inheritance, a child is the child of the child's biological or  
20 adopted mother, and the child and the child's issue shall inherit  
21 from the child's mother and the child's maternal kindred, both  
22 descendants, ascendants, and collateral kindred in all degrees, and  
23 they may inherit from the child and the child's issue. However, if a  
24 child has intended parents, as defined by Section 160.102, Family  
25 Code, under a gestational agreement validated under Subchapter I,  
26 Chapter 160, Family Code, the child is the child of the intended  
27 mother and not the biological mother or gestational mother unless

1 the biological mother is also the intended mother.

2 SECTION 13. Section 201.052, Estates Code, as effective  
3 January 1, 2014, is amended by adding Subsection (a-1) and amending  
4 Subsection (b) to read as follows:

5 (a-1) Notwithstanding Subsection (a), if a child has  
6 intended parents, as defined by Section 160.102, Family Code, under  
7 a gestational agreement validated under Subchapter I, Chapter 160,  
8 Family Code, the child is the child of the intended father and not  
9 the biological father unless the biological father is also the  
10 intended father.

11 (b) A child described by Subsection (a) or (a-1) and the  
12 child's issue shall inherit from the child's father and the child's  
13 paternal kindred, both descendants, ascendants, and collateral  
14 kindred in all degrees, and they may inherit from the child and the  
15 child's issue.

16 SECTION 14. Subchapter A, Chapter 202, Estates Code, as  
17 effective January 1, 2014, is amended by adding Section 202.0025 to  
18 read as follows:

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

23 SECTION 15. Section 202.004, Estates Code, as effective  
24 January 1, 2014, is amended to read as follows:

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

1 Section 202.002 by:

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

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

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

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

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

15 SECTION 16. Section 202.009, Estates Code, as effective  
16 January 1, 2014, is amended to read as follows:

17 Sec. 202.009. ATTORNEY AD LITEM ~~[REPRESENTATION OF~~  
18 ~~INTERESTS OF CERTAIN PERSONS]~~. (a) The ~~[If it appears to the court~~  
19 ~~in a proceeding to declare heirship that there is or may be a living~~  
20 ~~heir whose name or whereabouts is unknown, or that a defendant is an~~  
21 ~~incapacitated person, the]~~ court shall ~~[may]~~ appoint an attorney ad  
22 litem in a proceeding to declare heirship ~~[or guardian ad litem]~~ to  
23 represent the interests of heirs whose names or locations are  
24 unknown ~~[that person. The court may not appoint an attorney ad~~  
25 ~~litem or guardian ad litem unless the court finds that the~~  
26 ~~appointment is necessary to protect the interests of the living~~  
27 ~~heir or incapacitated person].~~

1 (b) The court may expand the appointment of the [~~shall~~  
2 ~~appoint an~~] attorney ad litem appointed under Subsection (a) to  
3 include representation of an heir who is an incapacitated person on  
4 a finding that the appointment is necessary to protect the  
5 interests of the heir [~~to represent the interests of unknown~~  
6 ~~heirs~~].

7 SECTION 17. Section 202.056, Estates Code, as effective  
8 January 1, 2014, is amended to read as follows:

9 Sec. 202.056. WAIVER OF SERVICE OF CITATION [~~ON CERTAIN~~  
10 ~~PERSONS NOT PERMITTED~~]. A parent, managing conservator, guardian,  
11 attorney ad litem, or guardian ad litem of a minor distributee who:

12 (1) is younger than 12 years of age [~~or older, but~~  
13 ~~younger than 19 years of age,~~] may [~~not~~] waive citation required by  
14 this subchapter to be served on the distributee; and

15 (2) is 12 years of age or older may not waive citation  
16 required by this subchapter to be served on the distributee.

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

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

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

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

27 (A) that the citation was served as required by

1 this subchapter;

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

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

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

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

12 Sec. 202.151. [~~WRITTEN~~] EVIDENCE IN PROCEEDING TO DECLARE  
13 HEIRSHIP. (a) The court may require that [~~all or~~] any testimony  
14 [~~part of the evidence~~] admitted as evidence in a proceeding to  
15 declare heirship be [+

16 [~~(1)~~] reduced to writing and subscribed and sworn to  
17 by the witnesses, respectively [~~, and~~

18 [~~(2) filed in the proceeding and recorded in the~~  
19 ~~judge's probate docket~~].

20 (b) Testimony in a proceeding to declare heirship must be  
21 taken in open court, by deposition in accordance with Section  
22 51.203, or in accordance with the Texas Rules of Civil Procedure.

23 SECTION 20. Sections 204.151 and 204.152, Estates Code, as  
24 effective January 1, 2014, are amended to read as follows:

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

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

3           ~~[(2)]~~ claims~~+~~

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

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

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

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

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

5           SECTION 21. Section 253.001, Estates Code, as effective  
6 January 1, 2014, is amended by adding Subsection (c) to read as  
7 follows:

8           (c) Any portion of a court order that purports to prohibit a  
9 person from executing a new will or a codicil to an existing will is  
10 void and may be disregarded without penalty or sanction of any kind.

11           SECTION 22. The heading to Section 256.052, Estates Code,  
12 as effective January 1, 2014, is amended to read as follows:

13           Sec. 256.052. CONTENTS OF APPLICATION FOR PROBATE OF  
14 ~~[WRITTEN]~~ WILL ~~[GENERALLY]~~.

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

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

- 21           (1) each applicant's name and domicile;
- 22           (2) the testator's name, domicile, and, if known, age,  
23 on the date of the testator's death;
- 24           (3) the fact, time, and place of the testator's death;
- 25           (4) facts showing that the court with which the  
26 application is filed has venue;
- 27           (5) that the testator owned property, including a

1 statement generally describing the property and the property's  
2 probable value;

3 (6) the date of the will;

4 (7) the name, state of residence, and physical address  
5 where service can be had [~~residence~~] of the [~~+~~

6 [~~(A) any~~] executor named in the will or other [~~+~~  
7 ~~if no executor is named, of the~~] person to whom the applicant  
8 desires that letters be issued; [~~and~~]

9 (8) the name of [~~(B)~~] each subscribing witness to the  
10 will, if any;

11 (9) [~~(8)~~] whether one or more children born to or  
12 adopted by the testator after the testator executed the will  
13 survived the testator and, if so, the name of each of those  
14 children;

15 (10) [~~(9)~~] whether a marriage of the testator was ever  
16 dissolved after the will was made and, if so, when and from whom;

17 (11) [~~(10)~~] whether the state, a governmental agency  
18 of the state, or a charitable organization is named in the will as a  
19 devisee; and

20 (12) [~~(11)~~] that the executor named in the will, the  
21 applicant, or another person to whom the applicant desires that  
22 letters be issued is not disqualified by law from accepting the  
23 letters.

24 SECTION 24. The heading to Section 256.053, Estates Code,  
25 as effective January 1, 2014, is amended to read as follows:

26 Sec. 256.053. FILING OF [~~WRITTEN~~] WILL WITH APPLICATION FOR  
27 PROBATE GENERALLY REQUIRED.



1 SECTION 25. Section 256.053(a), Estates Code, as effective  
2 January 1, 2014, is amended to read as follows:

3 (a) An applicant for the probate of a ~~written~~ will shall  
4 file the will with the application if the will is in the applicant's  
5 control.

6 SECTION 26. Section 256.054, Estates Code, as effective  
7 January 1, 2014, is amended to read as follows:

8 Sec. 256.054. ADDITIONAL APPLICATION REQUIREMENTS WHEN NO  
9 ~~WRITTEN~~ WILL IS PRODUCED. In addition to the requirements for an  
10 application under Section 256.052, if an applicant for the probate  
11 of a ~~written~~ will cannot produce the will in court, the  
12 application must state:

- 13 (1) the reason the will cannot be produced;  
14 (2) the contents of the will, as far as known; and  
15 (3) the name, age, marital status, and address, if  
16 known, and the relationship to the testator, if any, of:  
17 (A) each devisee;  
18 (B) each person who would inherit as an heir of  
19 the testator in the absence of a valid will; and  
20 (C) in the case of partial intestacy, each heir  
21 of the testator.

22 SECTION 27. Section 256.152(c), Estates Code, as effective  
23 January 1, 2014, is amended to read as follows:

24 (c) As an alternative to Subsection (b) [For purposes of  
25 Subsection (b)], a will executed in another state or a foreign  
26 country is considered self-proved without further evidence of the  
27 law of the other state or foreign country if the will, or an

1 affidavit of the testator and attesting witnesses attached or  
2 annexed to the will, provides that:

3           (1) the testator declared that the testator signed the  
4 instrument as the testator's will, the testator signed it willingly  
5 or willingly directed another to sign for the testator, the  
6 testator executed the will as the testator's free and voluntary act  
7 for the purposes expressed in the instrument, the testator is of  
8 sound mind and under no constraint or undue influence, and the  
9 testator is eighteen years of age or over or, if under that age, was  
10 or had been lawfully married, or was then a member of the armed  
11 forces of the United States, an auxiliary of the armed forces of the  
12 United States, or the United States Maritime Service; and

13           (2) the witnesses declared that the testator signed  
14 the instrument as the testator's will, the testator signed it  
15 willingly or willingly directed another to sign for the testator,  
16 each of the witnesses, in the presence and hearing of the testator,  
17 signed the will as witness to the testator's signing, and to the  
18 best of their knowledge the testator was of sound mind and under no  
19 constraint or undue influence, and the testator was eighteen years  
20 of age or over or, if under that age, was or had been lawfully  
21 married, or was then a member of the armed forces of the United  
22 States, an auxiliary of the armed forces of the United States, or  
23 the United States Maritime Service.

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

26           Sec. 256.153. PROOF OF EXECUTION OF [AUTHORIZED METHODS OF  
27 PROVING] ATTESTED [~~WRITTEN~~] WILL. (a) An attested [~~written~~] will

1 produced in court that is not self-proved as provided by this title  
2 may be proved in the manner provided by this section.

3 (b) A will described by Subsection (a) may be proved by the  
4 sworn testimony or affidavit of one or more of the subscribing  
5 witnesses to the will taken in open court.

6 (c) If all the witnesses to a will described by Subsection  
7 (a) are nonresidents of the county or the witnesses who are  
8 residents of the county are unable to attend court, the will may be  
9 proved:

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

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

- 20 (A) one or more of the attesting witnesses; or  
21 (B) the testator, if the testator signed the  
22 will; or

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

1 handwriting evidenced by a signature, described by Subdivision (2).

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

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

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

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

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

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

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

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

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

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

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

20 SECTION 30. Section 256.155(a), Estates Code, as effective  
21 January 1, 2014, is amended to read as follows:

22 (a) This section, rather than Sections 256.153(c) and (d)  
23 and 256.154 regarding the taking of depositions [~~under the same~~  
24 ~~rules as depositions in other civil actions~~], applies if no contest  
25 has been filed with respect to an application for the probate of a  
26 will.

27 SECTION 31. Section 256.156, Estates Code, as effective

1 January 1, 2014, is amended to read as follows:

2           Sec. 256.156. PROOF OF [~~WRITTEN~~] WILL NOT PRODUCED IN  
3 COURT. (a) A [~~written~~] will that cannot be produced in court must  
4 be proved in the same manner as provided in Section 256.153 for an  
5 attested [~~written~~] will or Section 256.154 for a holographic will,  
6 as applicable. The same amount and character of testimony is  
7 required to prove the [~~written~~] will not produced in court as is  
8 required to prove a [~~written~~] will produced in court.

9           (b) In addition to the proof required by Subsection (a):

10           (1) the cause of the nonproduction of a [~~written~~] will  
11 not produced in court must be proved, which must be sufficient to  
12 satisfy the court that the will cannot by any reasonable diligence  
13 be produced; and

14           (2) the contents of the will must be substantially  
15 proved by the testimony of a credible witness who has read either  
16 the original or a copy of the will, has heard the will read, or can  
17 identify a copy of the will.

18           SECTION 32. Section 256.203, Estates Code, as effective  
19 January 1, 2014, is amended to read as follows:

20           Sec. 256.203. ESTABLISHING CONTENTS OF WILL NOT IN COURT'S  
21 CUSTODY. If for any reason a [~~written~~] will is not in the court's  
22 custody, the court shall find the contents of the will by written  
23 order. Certified copies of the contents as established by the  
24 order may be:

25           (1) recorded in other counties; and

26           (2) used in evidence, as certified copies of [~~written~~]  
27 wills in the custody of the court may be used.

1 SECTION 33. Section 257.052, Estates Code, as effective  
2 January 1, 2014, is amended to read as follows:

3 Sec. 257.052. FILING OF [~~WRITTEN~~] WILL WITH APPLICATION  
4 GENERALLY REQUIRED. (a) An applicant for the probate of a  
5 [~~written~~] will as a muniment of title shall file the will with the  
6 application if the will is in the applicant's control.

7 (b) A will filed under Subsection (a) must remain in the  
8 custody of the county clerk unless removed from the clerk's custody  
9 by court order.

10 SECTION 34. Section 257.053, Estates Code, as effective  
11 January 1, 2014, is amended to read as follows:

12 Sec. 257.053. ADDITIONAL APPLICATION REQUIREMENTS WHEN NO  
13 [~~WRITTEN~~] WILL IS PRODUCED. In addition to the requirements for an  
14 application under Section 257.051, if an applicant for the probate  
15 of a [~~written~~] will as a muniment of title cannot produce the will  
16 in court, the application must state:

- 17 (1) the reason the will cannot be produced;
- 18 (2) the contents of the will, to the extent known; and
- 19 (3) the name, age, marital status, and address, if  
20 known, and the relationship to the testator, if any, of:
- 21 (A) each devisee;
- 22 (B) each person who would inherit as an heir of  
23 the testator in the absence of a valid will; and
- 24 (C) in the case of partial intestacy, each heir  
25 of the testator.

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

1 read as follows:

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

7 (1) taken in open court; or

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

12 SECTION 36. Section 304.001(c), Estates Code, as effective  
13 January 1, 2014, is amended to read as follows:

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

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

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

22 SECTION 37. Section 305.002(a), Estates Code, as effective  
23 January 1, 2014, is amended to read as follows:

24 (a) A personal representative, other than an executor  
25 described by Subsection (b), is considered to have qualified when  
26 the representative has:

27 (1) taken and filed the oath prescribed by Subchapter



1 B;

2 (2) filed [~~given~~] the required bond with the clerk;  
3 and

4 (3) obtained the judge's approval of the bond [~~and~~  
5 [~~(4) filed the bond with the clerk~~].

6 SECTION 38. Section 305.003, Estates Code, as effective  
7 January 1, 2014, is amended to read as follows:

8 Sec. 305.003. PERIOD FOR TAKING OATH [~~AND GIVING BOND~~]. An  
9 oath may be taken and subscribed [~~and a bond may be given and~~  
10 ~~approved~~] at any time before:

11 (1) the 21st day after the date of the order granting  
12 letters testamentary or of administration, as applicable; or

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

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

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

21 (1) the 21st day after:

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

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

26 (2) the date letters testamentary or of  
27 administration, as applicable, are revoked for a failure to qualify

1 within the period allowed.

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

5 (c) If no action has been taken by the court on the bond  
6 before the 21st day after the date the bond is filed, the person  
7 appointed personal representative may file a motion requiring the  
8 judge of the court in which the bond was filed to specify on the  
9 record the reason or reasons for the judge's failure to act on the  
10 bond. The hearing on the motion must be held before the 11th day  
11 after the date the motion is filed.

12 SECTION 40. Section 308.054(b), Estates Code, as effective  
13 January 1, 2014, is amended to read as follows:

14 (b) Notice given under Subsection (a) must:

15 (1) expressly state that the creditor must present the  
16 claim before the 121st day [~~within four months~~] after the date of  
17 the receipt of the notice or the claim is barred, if the claim is not  
18 barred by the general statutes of limitation; and

19 (2) include:

20 (A) the date the letters testamentary or of  
21 administration held by the personal representative were issued to  
22 the representative;

23 (B) the address to which the claim may be  
24 presented; and

25 (C) an instruction of the representative's  
26 choice that the claim be addressed in care of:

27 (i) the representative;

- 1 (ii) the representative's attorney; or  
2 (iii) "Representative, Estate of \_\_\_\_\_"  
3 (naming the estate).

4 SECTION 41. Section 309.051(a), Estates Code, as effective  
5 January 1, 2014, is amended to read as follows:

6 (a) Except as provided by Subsection (c) or Section 309.056  
7 or unless a longer period is granted by the court, before the 91st  
8 day after the date the personal representative qualifies, the  
9 representative shall prepare and file with the court clerk a single  
10 written instrument that contains a verified, full, and detailed  
11 inventory of all estate property that has come into the  
12 representative's possession or of which the representative has  
13 knowledge. The inventory must:

14 (1) include:

15 (A) all estate real property located in this  
16 state; and

17 (B) all estate personal property regardless of  
18 where the property is located; and

19 (2) specify which portion of the property, if any, is  
20 separate property and which, if any, is community property.

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

24 (b) Notwithstanding Sections 309.051 and 309.052, or any  
25 contrary provision in a decedent's will that does not specifically  
26 prohibit the filing of an affidavit described by this subsection,  
27 if there are no unpaid debts, except for secured debts, taxes, and

1 administration expenses, at the time the inventory is due,  
2 including any extensions, an independent executor may file with the  
3 court clerk, in lieu of the inventory, appraisement, and list of  
4 claims, an affidavit stating that all debts, except for secured  
5 debts, taxes, and administration expenses, are paid and that all  
6 beneficiaries have received a verified, full, and detailed  
7 inventory and appraisement. The affidavit in lieu of the  
8 inventory, appraisement, and list of claims must be filed within  
9 the 90-day period prescribed by Section 309.051(a), unless the  
10 court grants an extension.

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

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

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

18 SECTION 43. Subchapter B, Chapter 309, Estates Code, as  
19 effective January 1, 2014, is amended by adding Section 309.057 to  
20 read as follows:

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

1 granted by the court.

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

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

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

19 SECTION 44. Sections 309.103(a) and (b), Estates Code, as  
20 effective January 1, 2014, are amended to read as follows:

21 (a) Any interested person who considers an inventory,  
22 appraisement, or list of claims or an affidavit in lieu of the  
23 inventory, appraisement, and list of claims [~~filed for the estate~~]  
24 to be erroneous or unjust in any particular may:

25 (1) file a written complaint setting forth the alleged  
26 erroneous or unjust item; and

27 (2) have the personal representative cited to appear

1 before the court and show cause why the item should not be  
2 corrected.

3 (b) On the hearing of the complaint, if the court is  
4 satisfied from the evidence that the inventory, appraisalment, or  
5 list of claims or an affidavit in lieu of the inventory,  
6 appraisalment, and list of claims is erroneous or unjust as alleged  
7 in the complaint, the court shall enter an order:

8 (1) specifying the erroneous or unjust item and the  
9 corrections to be made; and

10 (2) if the complaint relates to an inventory,  
11 appraisalment, or list of claims, appointing appraisers to make a  
12 new appraisalment correcting the erroneous or unjust item and  
13 requiring the filing of the new appraisalment before the 21st day  
14 after the date of the order.

15 SECTION 45. Section 353.101(d), Estates Code, as effective  
16 January 1, 2014, is amended to read as follows:

17 (d) A family allowance may not be made for:

18 (1) the decedent's surviving spouse, if the surviving  
19 spouse has separate property adequate for the surviving spouse's  
20 maintenance;

21 (2) the decedent's minor children, if the minor  
22 children have property in their own right adequate for the  
23 children's maintenance; or

24 (3) any of the decedent's adult incapacitated  
25 children, if:

26 (A) the adult incapacitated child has property in  
27 the person's own right adequate for the person's maintenance; or

1           (B) at the time of the decedent's death, the  
2 decedent was not supporting the adult incapacitated child.

3           SECTION 46. Section 355.060, Estates Code, as effective  
4 January 1, 2014, is amended to read as follows:

5           Sec. 355.060. UNSECURED CLAIMS BARRED UNDER CERTAIN  
6 CIRCUMSTANCES. If a personal representative gives a notice  
7 permitted by Section 308.054 to an unsecured creditor for money and  
8 the creditor's claim is not presented before the 121st day [~~within~~  
9 ~~four months~~] after the date of receipt of the notice, the claim is  
10 barred.

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

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

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

26           SECTION 48. Section 362.005, Estates Code, as effective  
27 January 1, 2014, is amended to read as follows:

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

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

7                 (1) contain:

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

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

12                        (C) [~~(3)~~] a statement requiring the person cited  
13 to appear and contest the account, if the person wishes to contest  
14 the account; and

15                        (2) be given [~~-~~

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

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

24                        (1) certified mail, return receipt requested; or

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

27           (d) The court by written order shall require additional



1 notice if the court considers the additional notice necessary.

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

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

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

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

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

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

17 SECTION 49. Section 362.011, Estates Code, as effective  
18 January 1, 2014, is amended to read as follows:

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

24 (b) The court shall order the personal representative to  
25 convert into money any remaining nonmonetary assets to which a  
26 person who is unknown or missing is entitled. The procedures in  
27 Chapter 356 apply to the conversion of nonmonetary assets under

1 this subsection.

2 (c) The court shall order the personal representative to  
3 deposit in an account in the court's registry all money, including  
4 the proceeds of any conversion under Subsection (b), to which a  
5 person who is unknown or missing is entitled. The court shall hold  
6 money deposited in an account under this subsection until the court  
7 renders:

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

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

13 SECTION 50. Section 362.013, Estates Code, as effective  
14 January 1, 2014, is amended to read as follows:

15 Sec. 362.013. DISCHARGE OF PERSONAL REPRESENTATIVE WHEN  
16 ESTATE FULLY ADMINISTERED. The court shall enter an order  
17 discharging a personal representative from the representative's  
18 trust and declaring the estate closed when:

19 (1) the representative has fully administered the  
20 estate in accordance with this title and the court's orders;

21 (2) the representative's account for final settlement  
22 has been approved; and

23 (3) the representative has:

24 (A) delivered all of the estate remaining in the  
25 representative's possession to the person or persons entitled to  
26 receive that part of the estate; and

27 (B) with respect to the portion of the estate

1 distributable to an unknown or missing person, complied with an  
2 order of the court under Section 362.011.

3 SECTION 51. Section 401.001(a), Estates Code, as effective  
4 January 1, 2014, is amended to read as follows:

5 (a) Any person capable of making a will may provide in the  
6 person's will that no other action shall be had in the probate court  
7 in relation to the settlement of the person's estate than the  
8 probating and recording of the will and the return of any required  
9 ~~an~~ inventory, appraisement, and list of claims of the person's  
10 estate.

11 SECTION 52. Section 401.004(d), Estates Code, as effective  
12 January 1, 2014, is amended to read as follows:

13 (d) If a trust is created in the decedent's will or if the  
14 decedent's will devises property to a trustee as described by  
15 Section 254.001, the person or class of persons entitled to receive  
16 property outright from the trust on the decedent's death and those  
17 first eligible to receive the income from the trust, when  
18 determined as if the trust were to be in existence on the date of the  
19 decedent's death, shall, for the purposes of Section 401.002, be  
20 considered to be the distributee or distributees on behalf of the  
21 trust, and any other trust or trusts coming into existence on the  
22 termination of the trust, and are authorized to apply for  
23 independent administration on behalf of the trusts without the  
24 consent or agreement of the trustee or any other beneficiary of the  
25 trust, or the trustee or any beneficiary of any other trust which  
26 may come into existence on the termination of the trust. If a trust  
27 beneficiary who is considered to be a distributee under this

1 subsection is an incapacitated person, the trustee or cotrustee may  
2 file the application or give the consent, provided that the trustee  
3 or cotrustee is not the person proposed to serve as the independent  
4 executor.

5 SECTION 53. Section 401.006, Estates Code, as effective  
6 January 1, 2014, is amended to read as follows:

7 Sec. 401.006. GRANTING POWER OF SALE BY AGREEMENT. In a  
8 situation in which a decedent does not have a will, or a decedent's  
9 will does not contain language authorizing the personal  
10 representative to sell [~~real~~] property or contains language that is  
11 not sufficient to grant the representative that authority, the  
12 court may include in an order appointing an independent executor  
13 under Section 401.002 or 401.003 any general or specific authority  
14 regarding the power of the independent executor to sell [~~real~~]  
15 property that may be consented to by the beneficiaries who are to  
16 receive any interest in the [~~real~~] property in the application for  
17 independent administration or in their consents to the independent  
18 administration. The independent executor, in such event, may sell  
19 the [~~real~~] property under the authority granted in the court order  
20 without the further consent of those beneficiaries.

21 SECTION 54. Section 403.055, Estates Code, as effective  
22 January 1, 2014, is amended to read as follows:

23 Sec. 403.055. CERTAIN UNSECURED CLAIMS; BARRING OF CLAIMS.  
24 An unsecured creditor who has a claim for money against an estate  
25 and who receives a notice under Section 308.054 shall give to the  
26 independent executor notice of the nature and amount of the claim  
27 before the 121st [~~not later than the 120th~~] day after the date the

1 notice is received or the claim is barred.

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

4 (a) Notice to the independent executor required by Sections  
5 403.052 and 403.055 must be contained in:

6 (1) a written instrument that complies with Section  
7 355.004 and is hand-delivered with proof of receipt, or mailed by  
8 certified mail, return receipt requested with proof of receipt, to  
9 the independent executor or the executor's attorney;

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

12 (3) a written instrument that complies with Section  
13 355.004 or a pleading filed in the court in which the administration  
14 of the estate is pending.

15 SECTION 56. Section 404.001(a), Estates Code, as effective  
16 January 1, 2014, is amended to read as follows:

17 (a) At any time after the expiration of 15 months after the  
18 date that the court clerk first issues letters testamentary or of  
19 administration to any personal representative of an estate [~~an~~  
20 ~~independent administration was created and the order appointing an~~  
21 ~~independent executor was entered by the probate court], any person  
22 interested in the estate may demand an accounting from the  
23 independent executor. The independent executor shall furnish to  
24 the person or persons making the demand an exhibit in writing, sworn  
25 and subscribed by the independent executor, setting forth in  
26 detail:~~

27 (1) the property belonging to the estate that has come

1 into the executor's possession as executor;

2 (2) the disposition that has been made of the property  
3 described by Subdivision (1);

4 (3) the debts that have been paid;

5 (4) the debts and expenses, if any, still owing by the  
6 estate;

7 (5) the property of the estate, if any, still  
8 remaining in the executor's possession;

9 (6) other facts as may be necessary to a full and  
10 definite understanding of the exact condition of the estate; and

11 (7) the facts, if any, that show why the  
12 administration should not be closed and the estate distributed.

13 SECTION 57. Chapter 404, Estates Code, as effective January  
14 1, 2014, is amended by amending Section 404.003 and adding Sections  
15 404.0035, 404.0036, and 404.0037 to read as follows:

16 Sec. 404.003. REMOVAL OF INDEPENDENT EXECUTOR WITHOUT  
17 NOTICE. The probate court, on the court's own motion or on the  
18 motion of any interested person, and without notice, may remove an  
19 independent executor appointed under this subtitle when:

20 (1) the independent executor cannot be served with  
21 notice or other processes because:

22 (A) the independent executor's whereabouts are  
23 unknown;

24 (B) the independent executor is eluding service;  
25 or

26 (C) the independent executor is a nonresident of  
27 this state without a designated resident agent; or

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

5           Sec. 404.0035. REMOVAL OF INDEPENDENT EXECUTOR WITH NOTICE.

6 (a) The probate court, on the court's own motion, may remove an  
7 independent executor appointed under this subtitle after providing  
8 30 days' written notice of the court's intent to remove the  
9 independent executor, by certified mail, return receipt requested,  
10 to the independent executor's last known address and to the last  
11 known address of the independent executor's attorney of record, if  
12 the independent executor:

13           (1) neglects to qualify in the manner and time  
14 required by law; or

15           (2) fails to return, before the 91st day after the date  
16 the independent executor qualifies, either an inventory of the  
17 estate property and a list of claims that have come to the  
18 independent executor's knowledge or an affidavit in lieu of the  
19 inventory, appraisement, and list of claims, unless that deadline  
20 is extended by court order.

21           (b) The probate court, on its own motion or on motion of any  
22 interested person, after the independent executor has been cited by  
23 personal service to answer at a time and place fixed in the notice,  
24 may remove an independent executor when:

25           (1) [~~the independent executor fails to return within~~  
26 ~~90 days after qualification, unless such time is extended by order~~  
27 ~~of the court, either an inventory of the property of the estate and~~

1 ~~list of claims that have come to the independent executor's~~  
2 ~~knowledge or an affidavit in lieu of the inventory, appraisement,~~  
3 ~~and list of claims,~~

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

8 ~~[(3)]~~ the independent executor fails to make an  
9 accounting which is required by law to be made;

10 (2) ~~[(4)]~~ the independent executor fails to timely  
11 file the affidavit or certificate required by Section 308.004;

12 (3) ~~[(5)]~~ the independent executor is proved to have  
13 been guilty of gross misconduct or gross mismanagement in the  
14 performance of the independent executor's duties;

15 (4) ~~[(6)]~~ the independent executor becomes an  
16 incapacitated person, or is sentenced to the penitentiary, or from  
17 any other cause becomes legally incapacitated from properly  
18 performing the independent executor's fiduciary duties; or

19 (5) ~~[(7)]~~ the independent executor becomes incapable  
20 of properly performing the independent executor's fiduciary duties  
21 due to a material conflict of interest.

22 Sec. 404.0036. REMOVAL ORDER. (a) ~~[(b)]~~ The order of  
23 removal of an independent executor shall state the cause of removal  
24 and shall direct by order the disposition of the assets remaining in  
25 the name or under the control of the removed independent  
26 executor. The order of removal shall require that letters issued  
27 to the removed independent executor shall be surrendered and that



1 all letters shall be canceled of record.

2 (b) If an independent executor is removed by the court under  
3 Section 404.003 or 404.0035 [~~this section~~], the court may, on  
4 application, appoint a successor independent executor as provided  
5 by Section 404.005.

6 Sec. 404.0037. COSTS AND EXPENSES RELATED TO REMOVAL OF  
7 INDEPENDENT EXECUTOR. (a) [~~(e)~~] An independent executor who  
8 defends an action for the independent executor's removal in good  
9 faith, whether successful or not, shall be allowed out of the estate  
10 the independent executor's necessary expenses and disbursements,  
11 including reasonable attorney's fees, in the removal proceedings.

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

16 SECTION 58. Sections 404.005(b) and (c), Estates Code, as  
17 effective January 1, 2014, are amended to read as follows:

18 (b) Except as otherwise provided by this subsection, if [~~if~~]  
19 a distributee described in this section is an incapacitated person,  
20 the guardian of the person of the distributee may sign the  
21 application on behalf of the distributee. If the probate court  
22 finds that either the continuing of independent administration or  
23 the appointment of the person, firm, or corporation designated in  
24 the application as successor independent executor would not be in  
25 the best interest of the incapacitated person, then,  
26 notwithstanding Subsection (a), the court may not enter an order  
27 continuing independent administration of the estate. If the

1 distributee is an incapacitated person and has no guardian of the  
2 person, the court may appoint a guardian ad litem to make  
3 application on behalf of the incapacitated person if the probate  
4 court considers such an appointment necessary to protect the  
5 interest of that distributee. If a distributee described in this  
6 section is a minor and has no guardian of the person, a natural  
7 guardian of the minor may sign the application for the order  
8 continuing independent administration on the minor's behalf unless  
9 a conflict of interest exists between the minor and the natural  
10 guardian.

11 (c) Except as otherwise provided by this subsection, if [~~If~~  
12 a trust is created in the decedent's will or if the decedent's will  
13 devises property to a trustee as described by Section 254.001, the  
14 person or class of persons entitled to receive property outright  
15 from the trust on the decedent's death and those first eligible to  
16 receive the income from the trust, determined as if the trust were  
17 to be in existence on the date of the filing of the application for  
18 an order continuing independent administration, shall, for the  
19 purposes of this section, be considered to be the distributee or  
20 distributees on behalf of the trust, and any other trust or trusts  
21 coming into existence on the termination of the trust, and are  
22 authorized to apply for an order continuing independent  
23 administration on behalf of the trust without the consent or  
24 agreement of the trustee or any other beneficiary of the trust, or  
25 the trustee or any beneficiary of any other trust which may come  
26 into existence on the termination of the trust. If a person  
27 considered to be a distributee under this subsection is an

1 incapacitated person, the trustee or cotrustee may apply for the  
2 order continuing independent administration or sign the  
3 application on the incapacitated person's behalf if the trustee or  
4 cotrustee is not the person proposed to serve as the independent  
5 executor.

6 SECTION 59. Section 405.001(b), Estates Code, as effective  
7 January 1, 2014, is amended to read as follows:

8 (b) On receipt of the accounting and, after notice to the  
9 independent executor and a hearing, unless the court finds a  
10 continued necessity for administration of the estate, the court  
11 shall order its distribution by the independent executor to the  
12 distributees entitled to the property. If the court finds there is  
13 a continued necessity for administration of the estate, the court  
14 shall order the distribution of any portion of the estate that the  
15 court finds should not be subject to further administration by the  
16 independent executor. If any portion of the estate that is ordered  
17 to be distributed is incapable of distribution without prior  
18 partition or sale, the court may:

19 (1) [shall] ~~shall~~ order partition and distribution, or sale,  
20 in the manner provided for the partition and distribution of  
21 property incapable of division in supervised estates; or

22 (2) order distribution of that portion of the estate  
23 incapable of distribution without prior partition or sale in  
24 undivided interests.

25 SECTION 60. Section 551.001(a), Estates Code, as effective  
26 January 1, 2014, is amended to read as follows:

27 (a) The court, by written order, shall require the executor

1 or administrator of an estate to pay to the comptroller as provided  
2 by this subchapter the share of that estate of a person entitled to  
3 that share who does not demand the share, including any portion  
4 deposited in an account in the court's registry under Section  
5 362.011(c), from the executor or administrator within six months  
6 after the date of, as applicable:

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

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

11 SECTION 61. Section 122.057, Estates Code, as effective  
12 January 1, 2014, is repealed.

13 SECTION 62. (a) The changes in law made by Section 111.051,  
14 Estates Code, as amended by this Act, and Section 111.054, Estates  
15 Code, as added by this Act, represent the fundamental policy of this  
16 state for the protection of its residents and are intended to  
17 prevail over the laws of another state or jurisdiction, to the  
18 extent those laws are in conflict with Texas law.

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

25 SECTION 63. (a) Section 21.005(b), Estates Code, as added  
26 by this Act, applies only to a will executed on or after the  
27 effective date of this Act. A will executed before the effective

1 date of this Act is governed by the law in effect on the date the  
2 will was executed, and the former law is continued in effect for  
3 that purpose.

4 (b) The changes in law made by this Act to Sections 204.151  
5 and 204.152, Estates Code, apply only to a proceeding to declare  
6 heirship commenced on or after January 1, 2014. A proceeding to  
7 declare heirship commenced before that date is governed by the law  
8 in effect on the date the proceeding was commenced, and the former  
9 law is continued in effect for that purpose.

10 (c) The changes in law made by this Act to Section  
11 304.001(c), Estates Code, apply only to an application for the  
12 grant of letters testamentary or of administration of a decedent's  
13 estate filed on or after January 1, 2014. An application for the  
14 grant of letters testamentary or of administration of a decedent's  
15 estate filed before that date is governed by the law in effect on  
16 the date the application was filed, and the former law is continued  
17 in effect for that purpose.

18 (d) The changes in law made by Sections 32.006, 256.052,  
19 256.053, 256.054, 256.152(c), 256.153, 256.154, 256.155(a),  
20 256.156, 256.203, 257.052, 257.053, 401.001(a), 401.004(d), and  
21 401.006, Estates Code, as amended by this Act, and Section 53.107,  
22 Estates Code, as added by this Act, apply only to an action filed or  
23 other proceeding commenced on or after the effective date of this  
24 Act. An action filed or other proceeding commenced before the  
25 effective date of this Act is governed by the law in effect on the  
26 date the action was filed or the proceeding was commenced, and the  
27 former law is continued in effect for that purpose.

1           (e) The changes in law made by Sections 51.203(c), 53.104,  
2 305.002(a), 305.003, 308.054(b), 309.051(a), 309.056, 309.103(a)  
3 and (b), 355.060, 361.155(b), 362.005, 362.011, 362.013,  
4 404.001(a), 404.003, 404.005(b) and (c), 405.001(b), and  
5 551.001(a), Estates Code, as amended by this Act, and Sections  
6 253.001(c), 301.155, 305.004, 309.057, 361.155(c), 404.0035,  
7 404.0036, and 404.0037, Estates Code, as added by this Act, apply to  
8 the administration of the estate of a decedent that is pending or  
9 commenced on or after the effective date of this Act.

10           (f) The changes in law made by Sections 102.004, 201.001(f)  
11 and (g), 201.051, 201.052(b), 202.004, 202.009, 202.056, 202.151,  
12 353.101(d), 403.055, and 403.056(a), Estates Code, as amended by  
13 this Act, and Sections 201.001(i) and (j), 201.052(a-1), 202.0025,  
14 and 202.057, Estates Code, as added by this Act, apply only to the  
15 estate of a decedent who dies on or after the effective date of this  
16 Act. The estate of a decedent who dies before the effective date of  
17 this Act is governed by the law in effect on the date of the  
18 decedent's death, and the former law is continued in effect for that  
19 purpose.

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

25           (h) An inference may not be made from the changes in law made  
26 by this Act to Section 401.006, Estates Code, as to whether an  
27 independent executor had the authority to sell personal property of

1 the estate in a probate proceeding filed before the effective date  
2 of this Act.

3 SECTION 64. To the extent of any conflict, this Act prevails  
4 over another Act of the 83rd Legislature, Regular Session, 2013,  
5 relating to nonsubstantive additions to and corrections in enacted  
6 codes.

7 SECTION 65. This Act takes effect January 1, 2014.

# ADOPTED

MAY 21 2013

*Patry Spaw*  
Secretary of the Senate

COMMITTEE AMENDMENT NO. 1

BY: *Jose Rodriguez*

1 Amend H.B. 2912 (house engrossment) as follows:

2 (1) On page 13, lines 8-9, strike "until the applicant files  
3 the affidavit required by this section" and substitute "until the  
4 affidavit or certificate required by Subsection (a) is filed".

5 (2) On page 46, line 4, strike "405.001(b),".

6 (3) On page 46, line 12, strike "and 403.056(a)" and  
7 substitute "403.056(a), and 405.001(b)".



# ADOPTED

MAY 21 2013

COMMITTEE AMENDMENT NO. 2

*Atty. Gen.*  
Secretary of the Senate

BY:

*Jose Rodriguez*

- 1 Amend H.B. 2912 (house engrossment) as follows:
- 2 (1) Strike SECTION 11 of the bill.
- 3 (2) On page 46, lines 10 and 11, strike "201.001(f) and
- 4 (g),".
- 5 (3) On page 46, line 13, strike "201.001(i) and (j),".
- 6 (4) Renumber SECTIONS of the bill appropriately.

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION**

**May 23, 2013**

**TO:** Honorable Joe Straus, Speaker of the House, House of Representatives

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB2912** by Thompson, Senfronia (Relating to decedents' estates.), **As Passed 2nd House**

<b>No fiscal implication to the State is anticipated.</b>
---

The bill creates Estates Code section 309.057. The bill authorizes, the court or any person interested in the estate may complain when a personal representative fails to timely to timely file its section 309.051 inventory and assessment. The bill codifies usual practice and existing contempt law and procedure. The court gives the personal representative a clear and specific written order. The court then sets the case for a show cause hearing. Under the bill, the court could then find the personal representative in contempt of court with a fine of up to \$1,000. In addition to establishing a fine of up to \$1,000, the bill calls for the personal representative to pay damages and costs for the representative's failure to timely complete the inventory and assessment. The personal representative and his surety would be liable for the fine, damages, and costs. Because the bill codifies existing court procedures, no increase in state court workloads are anticipated. No fiscal impact to the state judiciary is anticipated.

The bill with its amendments to section 362.005, requires the clerk of the court (as opposed to the personal representative) to give notice/citation of the hearing to contest the personal representative's accounting to each heir or beneficiary. The notice/citation must be sent by certified mail, return receipt requested, unless the court directs another method of service by written order. The notice and citation will increase the clerk of the county, county court at law, or probate court's workload. The county will incur the cost of certified/return receipt or other delivery. The fiscal impact is not expected to be significant.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 212 Office of Court Administration, Texas Judicial Council

**LBB Staff:** UP, CL, SD, SJS

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION**

**May 17, 2013**

**TO:** Honorable Royce West, Chair, Senate Committee on Jurisprudence

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB2912** by Thompson, Senfronia (Relating to decedents' estates.), **Committee Report**  
**2nd House, As Amended**

<b>No fiscal implication to the State is anticipated.</b>
---

The bill creates Estates Code section 309.057. The bill authorizes, the court or any person interested in the estate may complain when a personal representative fails to timely file its section 309.051 inventory and assessment. The bill codifies usual practice and existing contempt law and procedure. The court gives the personal representative a clear and specific written order. The court then sets the case for a show cause hearing. Under the bill, the court could then find the personal representative in contempt of court with a fine of up to \$1,000. In addition to establishing a fine of up to \$1,000, the bill calls for the personal representative to pay damages and costs for the representative's failure to timely complete the inventory and assessment. The personal representative and his surety would be liable for the fine, damages, and costs. Because the bill codifies existing court procedures, no increase in state court workloads are anticipated. No fiscal impact to the state judiciary is anticipated.

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**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 212 Office of Court Administration, Texas Judicial Council

**LBB Staff:** UP, CL, SD, SJS

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION**

**May 15, 2013**

**TO:** Honorable Royce West, Chair, Senate Committee on Jurisprudence

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB2912** by Thompson, Senfronia (Relating to decedents' estates.), **As Engrossed**

<b>No fiscal implication to the State is anticipated.</b>
---

The bill creates Estates Code section 309.057. The bill authorizes, the court or any person interested in the estate may complain when a personal representative fails to timely to timely file its section 309.051 inventory and assessment. The bill codifies usual practice and existing contempt law and procedure. The court gives the personal representative a clear and specific written order. The court then sets the case for a show cause hearing. Under the bill, the court could then find the personal representative in contempt of court with a fine of up to \$1,000. In addition to establishing a fine of up to \$1,000, the bill calls for the personal representative to pay damages and costs for the representative's failure to timely complete the inventory and assessment. The personal representative and his surety would be liable for the fine, damages, and costs. Because the bill codifies existing court procedures, no increase in state court workloads are anticipated. No fiscal impact to the state judiciary is anticipated.

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**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 212 Office of Court Administration, Texas Judicial Council

**LBB Staff:** UP, CL, SD, SJS

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION**

**April 22, 2013**

**TO:** Honorable Tryon D. Lewis, Chair, House Committee on Judiciary & Civil Jurisprudence

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB2912** by Thompson, Senfronia (Relating to decedents' estates.), **Committee Report 1st House, Substituted**

**No fiscal implication to the State is anticipated.**

The bill creates Estates Code section 309.057. The bill authorizes, the court or any person interested in the estate may complain when a personal representative fails to timely to timely file its section 309.051 inventory and assessment. The bill codifies usual practice and existing contempt law and procedure. The court gives the personal representative a clear and specific written order. The court then sets the case for a show cause hearing. Under the bill, the court could then find the personal representative in contempt of court with a fine of up to \$1,000. In addition to establishing a fine of up to \$1,000, the bill calls for the personal representative to pay damages and costs for the representative's failure to timely complete the inventory and assessment. The personal representative and his surety would be liable for the fine, damages, and costs. Because the bill codifies existing court procedures, no increase in state court workloads are anticipated. No fiscal impact to the state judiciary is anticipated.

The bill with its amendments to section 362.005, requires the clerk of the court (as opposed to the personal representative) to give notice/citation of the hearing to contest the personal representative's accounting to each heir or beneficiary. The notice/citation must be sent by certified mail, return receipt requested, unless the court directs another method of service by written order. The notice and citation will increase the clerk of the county, county court at law, or probate court's workload. The county will incur the cost of certified/return receipt or other delivery. The fiscal impact is not expected to be significant.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 212 Office of Court Administration, Texas Judicial Council

**LBB Staff:** UP, CL, SD, SJS

**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION**

**April 14, 2013**

**TO:** Honorable Tryon D. Lewis, Chair, House Committee on Judiciary & Civil Jurisprudence

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB2912** by Thompson, Senfronia (Relating to decedents' estates.), **As Introduced**

**No fiscal implication to the State is anticipated.**

The bill makes a number of modifications and amendments to the Estates Code. The bill provides the court may appoint an attorney ad litem to represent a missing heir or for an unknown or missing person for whom the court registry is holding cash. An attorney ad litem may be appointed to an incapacitated heir for heirs unknown or whose address is unknown. The court may continue an independent administration if the decedent's will or while a still alive, decedent created a trust, i.e. a life insurance trust, and the beneficiary is incapacitated. The courts may decide the ownership of the money or benefits from a nontestamentary transfer pursuant to community property survivorship agreement or a multiple-party account.

The bill provides that heirship can be brought up at any time, even after the decedent's death. The bill provides, if there is no will, the surviving grandparents may benefit rather than the estate escheating to the state. For purpose of inheritance, the child is considered to be the child of the intended parents and not the child of the surrogate/biological/gestational parent.

The bill mandates courts cannot prohibit a person from executing a new will or codicil. Any such court order is void.

The bill provides if a witness is not a resident of the county or is unable to attend court, the witness's written or oral deposition may be used to prove up a handwritten/holographic will.

The bill allows for the estate to have privacy for its holdings. Provided all debts have been paid and the will doesn't provide otherwise, the independent executor may file, but is not required to file, an affidavit in lieu of inventory.

The bill prohibits the court from awarding a family allowance for an incapacitated adult child if the deceased was not supporting the incapacitated adult child at the time of his death.

The bill requires, upon final settlement, the court shall order the personal representative to convert any remaining nonmonetary assets into cash and deposit the cash into the court's registry for any unknown or missing person.

Finally, the bill provides the court, on its own or any interested person's motion and without notice may remove an independent executor if the independent executor's whereabouts are unknown, he is eluding service, he is a nonresident of the state without a designated resident agent, or there is

sufficient support the independent executor has or is about to misapply or embezzle any property committed to his care.

**Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 212 Office of Court Administration, Texas Judicial Council

**LBB Staff:** UP, CL, SJS