

## **BILL ANALYSIS**

Senate Research Center  
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H.B. 2271  
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State Affairs  
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Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

H.B. 2271 provides several updates to the law regarding decedents' estates. H.B. 2271 clarifies definitions that currently exist in the Estates Code, specifically:

- who is considered a decedent's next of kin;
- that the generation-skipping transfer tax is a separate tax from the estate tax; and
- that a child adopted by estoppel is treated the same as any other child and is a decedent's child.

H.B. 2271 clarifies the effect of divorce in certain testamentary and nontestamentary circumstances, including:

- that with regard to revocable trusts, divorce revokes certain provisions only as to a divorced settlor of the trust;
- that if a revocable trust is established by married persons who later divorce and then one dies, if not handled otherwise before death, the trust is to be divided; and
- that if married persons enter into a multiple-party account with survivorship provisions in favor of the other spouse or a relative of the other spouse who is not a common relative and the persons later divorce, the provisions in favor of the former spouse or former spouse's relative are ineffective.

H.B. 2271 updates requirements for administration of an estate by requiring the name of a person waiving service on a minor's behalf be reported to the court and clarify the time period for issuance of letters testamentary.

H.B. 2271 makes it clear that for class gifts, the time period for determining the persons who are class members is based on the date of death of the person designated as the measuring life, including for class members who are in gestation at the time of the person's death. H.B. 2271, makes a similar addition regarding gestation and class gifts in the Property Code to provide conformity between the two codes.

H.B. 2271 addresses various issues to aid in the efficient administration of a decedent's estate, including:

- providing clarity for the payment of estate taxes, when other assets of a decedent's estate are insufficient, a personal representative may obtain funds from an account passing because of a survivorship provision;
- increasing the value of an estate that may qualify for a small estate affidavit proceeding to \$75,000, an increase from the current amount of \$50,000 established in 1979;
- clarifying that the proof required for a muniment of title proceeding conforms to the existing statutory requirements for an application to seek this type of proceeding;

- updating the published claim notice requirements for counties that do not have a newspaper printed in them;
- providing that for estates required to prepare annual accountings, a personal representative has 60 days after the anniversary of qualification to file the accounting, allowing time to gather needed information;
- allowing, in certain instances, an independent executor to make non pro rata distributions of estate assets among beneficiaries in order to alleviate potential adverse income tax consequences;
- providing clarification regarding the administration of a lawyer's trust account in a deceased lawyer's estate; and
- providing a deadline in the recent will reformation statute by which a reformation action can be brought.

H.B. 2271 modifies existing language by correcting a statutory header, deleting words "last" and "testament" where appropriate to make the statutes less wordy, conforming terms among various provisions, and updating language to conform with recent codification of the Estates Code and repeal of other statutes.

H.B. 2271 amends current law relating to decedents' estates and certain posthumous gifts.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 22.004(a), Estates Code, to redefine "child."

SECTION 2. Amends Section 33.001, Estates Code, as follows:

Sec. 33.001. PROBATE OF WILLS AND GRANTING OF LETTERS TESTAMENTARY AND OF ADMINISTRATION. (a) Creates this subsection from existing text.

(b) Provides that for purposes of this section the descendant's next of kin is the decedent's surviving spouse, or if there is no surviving spouse, other relatives of the decedent within the third degree by consanguinity, and includes a person who legally adopted the decedent or has been legally adopted by the decedent and that person's descendants; and the decedent's nearest of kin is determined in accordance with order of descent, with the decedent's next of kin who is nearest in order of descent first, and so on.

SECTION 3. Amends Sections 112.103(a) and (b), Estates Code, as follows:

(a) Authorizes the deceased spouse's signature to an agreement that is the subject of an application under Section 112.101 (Application Authorized) to be proved by the written or oral deposition of one witness taken in accordance with Section 51.203 (Service of Notice of Intention to Take Depositions in Certain Matters) or the Texas Rules of Civil Procedure, rather than take in the same manner and under the same rules as depositions in other civil actions.

(b) Authorizes the surviving spouse's signature to the agreement, if the surviving spouse is competent to make an oath, to be proved by the written or oral deposition of the surviving spouse taken in accordance with Section 51.203 or the Texas Rules of Civil

Procedure, rather than the same manner and under the same rules as depositions in other civil actions.

SECTION 4. Amends Sections 113.252(a), (b), and (c), Estates Code, as follows:

(a) Provides that the multiple-party account is not effective against an estate of a deceased party to transfer to a survivor amounts equal to the amounts of estate taxes and expenses charged under Subchapter A (Apportionment of Taxes), Chapter 124 (Valuation and Taxation of Estate Property), to the deceased party, Pay on Death (P.O.D.) payee, or beneficiary of the account, or, if other assets of the estate are insufficient, amounts needed to pay debts, other taxes, and expenses of administration, including statutory allowances to the surviving spouse and minor children. Makes a nonsubstantive change.

(b) Provides that a party, P.O.D. payee, or beneficiary who receives payment from a multiple-party account or causes a payment to be made to another person from a multiple-party account after the death of a deceased party is liable to account to the deceased party's personal representative for amounts the deceased party owned beneficially immediately before the party's death to the extent necessary to discharge the claims, expenses, and charges described by Subsection (a), rather than described by Subsection (a) that remain unpaid after application of the deceased party's estate. Provides that the party, P.O.D. payee, or beneficiary is not liable in an amount greater than the amount the party, P.O.D. payee, or beneficiary received or caused to be paid to another person from the multiple-party account after the deceased party's death.

(c) Requires any proceeding by the personal representative of a deceased party to assert liability under Subsection (b), rather than providing that a proceeding to assert liability under Subsection (b), to be commenced on or before the second anniversary of the death of the deceased party. Deletes existing text relating to when a proceeding to assert liability may commence in certain circumstances.

SECTION 5. Amends Section 123.052(a), Estates Code, to provide that the dissolution of the marriage revokes a provision in a trust instrument that was executed by a divorced individual as settlor before the divorced individual's marriage was dissolved and that is revocable in certain instances.

SECTION 6. Amends Subchapter B, Chapter 123, Estates Code, by adding Section 123.056, as follows:

Sec. 123.056. CERTAIN TRUSTS WITH DIVORCED INDIVIDUALS AS JOINT SETTLORS. (a) Provides that this section applies only to a trust created under a trust instrument that was executed by two married individuals as settlors whose marriage to each other is subsequently dissolved and includes a provision described by Section 123.052(a).

(b) Requires the trustee, on the death of one of the divorced individuals who is a settlor of a trust to which this section applies, to divide the trust into two trusts, each of which is to be composed of the property attributable to the contributions of only one of the divorced individuals.

(c) Authorizes an action authorized in a trust instrument described by Subsection (a) that requires the actions of both divorced individuals to be taken with respect to a trust established in accordance with Subsection (b) from the surviving divorced individual's contributions solely by that divorced individual.

(d) Provides that the provisions of this subchapter apply independently to each trust established in accordance with Subsection (b) as if the divorced individual from whose contributions the trust was established had been the only settlor to execute the trust instrument described by Subsection (a).

(e) Provides that this section does not apply if a court order, the express terms of a trust instrument executed by the two divorced individuals before their marriage was dissolved, or an express provision of a contract relating to the division of the marital estate entered into between the two divorced individuals before, during, or after their marriage, provides otherwise.

SECTION 7. Amends Section 123.151, Estates Code, by amending Subsections (a) and (b) and adding Subsections (c-1) and (d-1), as follows:

(a) Defines "party" and "survivor ship agreement."

(b) Provides that if a decedent established a P.O.D. account or other multi-party account and the decedent's marriage was later dissolved by divorce, annulment, or a declaration that the marriage is void, any payable on request after death designation provision or provision of a survivorship agreement with respect to that account in favor of the decedent's former spouse or a relative of the former spouse who is not a relative of the decedent is not effective as to that spouse or relative unless:

(1) the court decree dissolving the marriage reaffirms the survivorship agreement or the relevant provision of the survivorship agreement in favor of the former spouse or the former spouse's relative. Makes nonsubstantive changes;

(2) after the marriage was dissolved, the decedent reaffirmed the survivorship agreement in writing, rather than after the marriage was dissolved. Makes nonsubstantive changes; or

(3) the former spouse or the former spouse's relative is designated to receive, or under the survivorship agreement would receive, the proceeds or benefits in trust for, on behalf of, or for the benefit of a child or dependent of either the decedent or the former spouse.

Deletes existing text providing that if, after a decedent designates a spouse or a relative of a spouse who is not a relative of the decedent as a P.O.D. payee or beneficiary, including alternative P.O.D. payee or beneficiary, on a P.O.D. account or other multiple-party account, the decedent's marriage is dissolved by divorce, annulment, or a declaration that the marriage is void, the designation provision on the account is not effective as to the former spouse or the former spouse's relative unless a certain determination was made regarding marriage

(c-1) Provides that if the provision of a survivorship agreement is not effective under Subsection (b), for purposes of determining the disposition of the decedent's interest in the account, the former spouse or former spouse's relative who would have received the decedent's interest if the provision were effective is treated as if that spouse or relative predeceased the decedent.

(d-1) Provides that a financial institution is not liable for payment of an account to a former spouse or the former spouse's relative as a party to the account, notwithstanding the fact that a designation or provision of a survivorship agreement in favor of that person is not effective under Subsection (b).

SECTION 8. Amends Section 124.001(3), Estates Code, to redefine "estate tax."

SECTION 9. Amends Section 201.054, Estates Code, by adding Subsection (e), to define "adopted child."

SECTION 10. Amends the heading to Section 202.052, Estates Code, to read as follows:

Sec. 202.052. SERVICE OF CITATION BY PUBLICATION.

SECTION 11. Amends Section 202.057(a), Estates Code, to require a person who files an application under Section 202.005 (Application for Proceeding to Declare Heirship) to file with the court an affidavit sworn to by the applicant or a certificate signed by the applicant's attorney stating certain language if service of citation is waived under Section 202.056 (Waiver of Service of Citation).

SECTION 12. Amends Section 205.001, Estates Code, as follows:

Sec. 205.001. ENTITLEMENT TO ESTATE WITHOUT APPOINTMENT OF PERSONAL REPRESENTATIVE. Provides that the distributees of the estate of a decedent who dies intestate are entitled to the decedent's estate without waiting for the appointment of a personal representative of the estate to the extent the estate assets, excluding homestead and exempt property, exceed the known liabilities of the estate, excluding any liabilities secured by homestead and exempt property, if the value of estate assets on the date of the affidavit described by Subsection (4) (relating to an affidavit that meets certain requirements and is filed with the clerk of the court that has jurisdiction and venue of the estate).

SECTION 13. Amends Section 251.001, Estates Code, as follows:

Sec. 251.001. WHO MAY EXECUTE WILL. Provides that under the rules and limitations prescribed by law, a person of sound mind has the right and power to make a will, rather than last will and testament, if, at the time the will is made the person meets certain criteria.

SECTION 14. Amends Section 251.002, Estates Code, as follows:

Sec. 251.002. INTERESTS THAT MAY PASS BY WILL; DISINHERITANCE. (a) Changes a reference to last will and testament to will and a reference to will and testament to will.

(b) Makes a conforming change.

SECTION 15. Amends Section 251.051, Estates Code, as follows:

Sec. 251.051. WRITTEN, SIGNED, AND ATTESTED. Makes a conforming change.

SECTION 16. Amends Section 251.103, Estates Code, as follows:

Sec. 251.103. PERIOD FOR MAKING ATTESTED WILLS SELF-PROVED. Makes a conforming change.

SECTION 17. Amends Sections 251.104(c), (d), and (e), Estates Code, as follows:

(c) Requires a self-proving affidavit to be attached or annexed to the will, rather than will or testament.

(d) and (e) Makes conforming changes.

SECTION 18. Amends Section 251.107, Estates Code, as follows:

Sec. 251.107. SELF-PROVED HOLOGRAPHIC WILL. Makes a conforming change.

SECTION 19. Amends Section 252.152, Estates Code, as follows:

Sec. 252.152. PRIOR DEPOSITED WILL IN RELATION TO LATER WILL. Makes a conforming change.

SECTION 20. Amends Section 255.151, Estates Code, as follows:

Sec. 255.151. APPLICABILITY OF SUBCHAPTER. Makes a conforming change.

SECTION 21. Amends Section 255.401, Estates Code, by amending Subsection (a) and adding Subsection (a-1), as follows:

(a) Provides that a right to take as a member under a class gift does not accrue to any person unless the person is born before, or is in gestation at, the time of death of the person by which class is measured and survives that person by at least 120 hours, rather than on the time of the testator's death and survives for at least 120 hours.

(a-1) Provides that for purposes of this section (Posthumous Class Gift Membership), a person is considered to be in gestation, rather than in gestation at the time of the testator's death, if insemination or implantation occurs at or before the time of death of the person by which the class is measured, rather than before the time of the testator's death and is presumed to be in gestation at the time of the death of the person by which the class is measured if the person was born before the 301st day after the date of the person's death. Makes conforming changes.

SECTION 22. Amends Section 255.451, Estates Code, by amending Subsection (a) and adding Subsections (a-1) and (c), as follows:

(a) Authorizes a court, subject to the requirements of this section (Circumstances Under Which Will May Be Modified or Reformed), on the petition of a personal representative, to make certain orders.

(a-1) Requires a personal representative seeking to modify or reform a will under this section to file a petition on or before the fourth anniversary of the date the will was admitted to probate.

(c) Provides that Chapter 123 (Attorney General Participation in Proceedings Involving Charitable Trusts), Property Code, applies to a proceeding under Subsection (a) that involves a charitable trust.

SECTION 23. Amends Section 256.003(b), Estates Code, to prohibit letters testamentary except as provided by Section 501.006 (Ancillary Letters Testamentary) with respect to a foreign will, from being issued if a will is admitted to probate after the fourth anniversary of the testator's death unless it is shown that the application for probate was filed on or before the fourth anniversary of the testator's death.

SECTION 24. Amends Section 257.051(a), Estates Code, to require that an application for the probate of a will as a muniment of title state and aver that the testator's estate does not owe an unpaid debt, other than any debt secured by a lien on real estate, or that for another reason there is no necessity for administration of the estate, to the extent each is known to the applicant or can, with reasonable diligence, be ascertained by the applicant.

SECTION 25. Amends Section 257.054, Estates Code, as follows:

Sec. 257.054. PROOF REQUIRED. Requires an applicant for the probate of a will as a muniment of title to prove to the court's satisfaction that the testator's estate does not owe an unpaid debt, other than any debt secured by a lien on real estate, or that for another reason there is no necessity for administration of the estate.

SECTION 26. Amends Section 305.108, Estates Code, as follows:

Sec. 305.108. FORM OF BOND. Makes a conforming change.

SECTION 27. Amends Sections 308.051(a) and (c), Estates Code, as follows:

(a) Requires a personal representative of an estate, within one month after receiving letters testamentary or of administration, to provide notice requiring each person who has

a claim against the estate to present the claim within the period prescribed by law by having the notice published in a newspaper of general circulation, rather than printed, in the county in which the letters were issued.

(c) Requires the notice, if there is no newspaper of general circulation, rather than if a newspaper is not printed, in the county in which the letters testamentary or of administration were issued, to be posted and the return made and filed as otherwise required by this title (Estates of Decedents; Durable Powers of Attorney).

SECTION 28. Amends Section 310.006, Estates Code, as follows:

Sec. 310.006. FREQUENCY AND METHOD OF DETERMINING INTERESTS IN CERTAIN ESTATE ASSETS. Provides that, except as required by Sections 2055 and 2056, Internal Revenue Code of 1986 (26 U.S.C. Sections 2055 and 2056), the frequency and method of determining the distributees', rather than beneficiaries'; respective interests in the undistributed assets of an estate are in the sole and absolute discretion of the executor of the estate. Authorizes the executor to consider all relevant factors, including administrative convenience and expense and the interests of the various distributees, rather than beneficiaries, of the estate, to reach a fair and equitable result among distributees, rather than beneficiaries.

SECTION 29. Amends Section 359.001(a), Estates Code, as follows:

(a) Requires the personal representative of the estate (representative), not later than the 60th day after the first anniversary of the date a representative qualifies and receives letters testamentary or of administration, rather than on the expiration of 12 months from the date a representative qualifies and receives letters testamentary or of administration, to administer a decedent's estate under court order, unless the court authorizes an extension, to file with the court an account consisting of a written exhibit made under oath that lists all claims against the estate presented to the representative during the 12-month period following the representative's qualification and receipt of letters, rather than the period covered by the account.

SECTION 30. Amends Section 359.002(a), Estates Code, as follows:

(a) Requires the representative, not than the 60th day after each anniversary of the date a representative of a decedent qualifies and receives letters testamentary or of administration to administer the decedent's estate under court order, unless the court authorizes an extension, rather than each personal representative of the estate of the decedent, to file an annual account conforming to the essential requirements of Section 359.001 (Account of Estate Required), regarding changes in the estate assets occurring during the 12-month period after the date the most recent previous account was filed. Makes nonsubstantive changes.

SECTION 31. Amends Section 362.005(b), Estates Code, to require a citation issued under Subsection (a) (relating to requiring the county clerk on the presentation of an account for final settlement by a temporary or permanent representative to issue citation to certain persons) to contain certain information and be given to each heir or distributee, rather than beneficiary, of the decedent by certified mail, return receipt requested, unless the court by written order directs another method of service to be given.

SECTION 32. Amends Section 401.006, Estates Code, to make conforming changes.

SECTION 33. Amends Chapter 405, Estates Code, by adding Section 405.0015, as follows:

Sec. 405.0015. DISTRIBUTIONS GENERALLY. Authorizes an independent executor, unless the will, if any, or a court order provides otherwise, to, in distributing property not specifically devised that the independent executor is authorized to sell:

(1) make distributions in divided or undivided interests;

- (2) allocate particular assets in proportionate or disproportionate shares;
- (3) value the estate property for the purposes of acting under Subdivision (1) or (2); and
- (4) adjust the distribution, division, or termination for resulting differences in valuation.

SECTION 34. Amends Sections 405.003(b) and (d), Estates Code, to make conforming changes.

SECTION 35. Amends Section 456.003, Estates Code, as follows:

Sec. 456.003. DUTY OF ELIGIBLE INSTITUTIONS. Requires the eligible institution, not later than the seventh business day, rather than within a reasonable time, after the date an eligible institution receives certain documents regarding how to disburse the funds or close a trust or escrow account, to disburse the funds and close the account in compliance with the instructions. Makes nonsubstantive changes.

SECTION 36. Amends Chapter 456, Estates Code, by adding Section 456.0045, as follows:

Sec. 456.0045. PRIVATE CLAUSE OF ACTION. (a) Authorizes a person aggrieved by the violation, if an eligible institution violates Section 456.003, to bring an action against the eligible institution to obtain declaratory or injunctive relief to enforce this section and recover damages to the same extent the person would be entitled to damages had the eligible institution acted in the same manner with respect to the deceased lawyer before the lawyer's death.

(b) Authorizes a person who prevails in an action under this section to recover court costs and reasonable attorney's fees.

SECTION 37. Amends Subchapter A, Chapter 112, Property Code, by adding Section 112.011, as follows:

Sec. 112.011. POSTHUMOUS CLASS GIFTS MEMBERSHIP. (a) Provides that a right to take as a member under a class gift does not accrue to any person unless the person is born before, or is in gestation at, the time of death of the person by which the class is measured and survives that person by at least 120 hours.

(b) Provides that, for purposes of Subsection (a), a person is considered to be in gestation if insemination or implementation occurs at or before the time of death of the person by which the class is measured and is presumed to be in gestation at the time of death of the person by which the class is measured if the person was born before the 301st day after the date of the person's death.

(c) Provides that a provision in the trust instrument that is contrary to this section prevails over this section.

SECTION 38. Repealer: Section 303.003 (Service by Publication or other Substituted Service), Estates Code.

Repealer: Section 362.010 (Payment of Inheritance Taxes Required), Estates Code.

SECTION 39. Makes application of Section 33.001, Estates Code, as amended by this Act, prospective.

SECTION 40. Makes application of Section 112.103, Estates Code, as amended by this Act, prospective, regarding only a proceeding under Subchapter C (Adjudication to Prove Community Property Survivorship Agreement), Chapter 112 (Community Property with Right of Survivorship), Estates Code.



SECTION 41. Provides that Section 113.252(c), Estates Code, as amended by this Act, applies to a proceeding commenced before, on, or after the effective date of this Act, regardless of the date of the decedent's death.

SECTION 42. Provides that Section 123.056, Estates Code, as added by this Act, applies to a trust created before, on, or after the effective date of this Act with respect to which the marriage of the settlors is dissolved on or after that date.

SECTION 43. Makes application of Sections 123.151(a) and (b), Estates Code, as amended by this Act, and Section 123.151(c-1), Estates Code, as added by this Act, prospective.

SECTION 44. Makes application of Section 123.151(d-1), Estates Code, as added by this Act, and Section 456.0045, Estates Code, as added by this Act, prospective.

SECTION 45. Makes application of Section 202.057, Estates Code, as amended by this Act, prospective.

SECTION 46. Makes application of Section 205.001, Estates Code, as amended by this Act, prospective.

SECTION 47. Provides that Section 255.401, Estates Code, as amended by this Act, and Section 112.011, Property Code, as added by this Act, apply to the estate of a decedent who dies before, on, or after the effective date of this Act.

SECTION 48. Makes application of Section 255.451, Estates Code, as amended by this Act, prospective.

SECTION 49. Makes application of Sections 256.003(b), 257.051(a), and 257.054, Estates Code, as amended by this Act, prospective.

SECTION 50. Provides that Sections 359.001(a) and 359.002(a), Estates Code, as amended by this Act, apply to an account filed on or after the effective date of this Act, regardless of whether the representative was appointed before, on, or after that date.

SECTION 51. Makes application of Section 405.0015, Estates Code, as added by this Act, prospective.

SECTION 52. Effective date: September 1, 2017.