

By: Wray

H.B. No. 2271

Substitute the following for H.B. No. 2271:

By: Smithee

C.S.H.B. No. 2271

A BILL TO BE ENTITLED

1 AN ACT

2 relating to decedents' estates and certain posthumous gifts.

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

4 SECTION 1. Section 22.004(a), Estates Code, is amended to
5 read as follows:

6 (a) "Child" includes an adopted child, regardless of
7 whether the adoption occurred through:

8 (1) an existing or former statutory procedure; or

9 (2) an equitable adoption or acts of estoppel.

10 SECTION 2. Section 33.001, Estates Code, is amended to read
11 as follows:

12 Sec. 33.001. PROBATE OF WILLS AND GRANTING OF LETTERS
13 TESTAMENTARY AND OF ADMINISTRATION. (a) Venue for a probate
14 proceeding to admit a will to probate or for the granting of letters
15 testamentary or of administration is:

16 (1) in the county in which the decedent resided, if the
17 decedent had a domicile or fixed place of residence in this state;
18 or

19 (2) with respect to a decedent who did not have a
20 domicile or fixed place of residence in this state:

21 (A) if the decedent died in this state, in the
22 county in which:

23 (i) the decedent's principal estate was
24 located at the time of the decedent's death; or

1 (ii) the decedent died; or

2 (B) if the decedent died outside of this state:

3 (i) in any county in this state in which the
4 decedent's nearest of kin reside; or

5 (ii) if there is no next of kin of the
6 decedent in this state, in the county in which the decedent's
7 principal estate was located at the time of the decedent's death.

8 (b) For purposes of this section:

9 (1) the decedent's next of kin:

10 (A) is the decedent's surviving spouse, or if
11 there is no surviving spouse, other relatives of the decedent
12 within the third degree by consanguinity; and

13 (B) includes a person who legally adopted the
14 decedent or has been legally adopted by the decedent and that
15 person's descendants; and

16 (2) the decedent's nearest of kin is determined in
17 accordance with order of descent, with the decedent's next of kin
18 who is nearest in order of descent first, and so on.

19 SECTION 3. Sections 112.103(a) and (b), Estates Code, are
20 amended to read as follows:

21 (a) The deceased spouse's signature to an agreement that is
22 the subject of an application under Section 112.101 may be proved
23 by:

24 (1) the sworn testimony of one witness taken in open
25 court;

26 (2) the affidavit of one witness; or

27 (3) the written or oral deposition of one witness

1 taken in accordance with Section 51.203 or the Texas Rules of Civil
2 Procedure [~~the same manner and under the same rules as depositions~~
3 ~~in other civil actions~~].

4 (b) If the surviving spouse is competent to make an oath,
5 the surviving spouse's signature to the agreement may be proved by:

6 (1) the sworn testimony of the surviving spouse taken
7 in open court;

8 (2) the surviving spouse's affidavit; or

9 (3) the written or oral deposition of the surviving
10 spouse taken in accordance with Section 51.203 or the Texas Rules of
11 Civil Procedure [~~the same manner and under the same rules as~~
12 ~~depositions in other civil actions~~].

13 SECTION 4. Sections 113.252(a), (b), and (c), Estates Code,
14 are amended to read as follows:

15 (a) A multiple-party account is not effective against:

16 (1) an estate of a deceased party to transfer to a
17 survivor:

18 (A) amounts equal to the amounts of estate taxes
19 and expenses charged under Subchapter A, Chapter 124, to the
20 deceased party, P.O.D. payee, or beneficiary of the account; or

21 (B) if other assets of the estate are
22 insufficient, amounts needed to pay debts, other taxes, and
23 expenses of administration, including statutory allowances to the
24 surviving spouse and minor children[~~, if other assets of the estate~~
25 ~~are insufficient~~]; or

26 (2) the claim of a secured creditor who has a lien on
27 the account.

1 (b) A party, P.O.D. payee, or beneficiary who receives
2 payment from a multiple-party account or causes a payment to be made
3 to another person from a multiple-party account after the death of a
4 deceased party is liable to account to the deceased party's
5 personal representative for amounts the deceased party owned
6 beneficially immediately before the party's death to the extent
7 necessary to discharge the claims, expenses, and charges described
8 by Subsection (a) [~~that remain unpaid after application of the~~
9 ~~deceased party's estate~~]. The party, P.O.D. payee, or beneficiary
10 is not liable in an amount greater than the amount the party, P.O.D.
11 payee, or beneficiary received or caused to be paid to another
12 person from the multiple-party account after the deceased party's
13 death.

14 (c) Any [A] proceeding by the personal representative of a
15 deceased party to assert liability under Subsection (b) [~~+~~

16 [~~(1) may only be commenced if the personal~~
17 ~~representative receives a written demand by a surviving spouse, a~~
18 ~~creditor, or one acting for a minor child of the deceased party; and~~

19 [~~(2)~~] must be commenced on or before the second
20 anniversary of the death of the deceased party.

21 SECTION 5. Section 123.052(a), Estates Code, is amended to
22 read as follows:

23 (a) The dissolution of the marriage revokes a provision in a
24 trust instrument that was executed by a divorced individual as
25 settlor before the divorced individual's marriage was dissolved and
26 that:

27 (1) is a revocable disposition or appointment of

1 property made to the divorced individual's former spouse or any
2 relative of the former spouse who is not a relative of the divorced
3 individual;

4 (2) revocably confers a general or special power of
5 appointment on the divorced individual's former spouse or any
6 relative of the former spouse who is not a relative of the divorced
7 individual; or

8 (3) revocably nominates the divorced individual's
9 former spouse or any relative of the former spouse who is not a
10 relative of the divorced individual to serve:

11 (A) as a personal representative, trustee,
12 conservator, agent, or guardian; or

13 (B) in another fiduciary or representative
14 capacity.

15 SECTION 6. Subchapter B, Chapter 123, Estates Code, is
16 amended by adding Section 123.056 to read as follows:

17 Sec. 123.056. CERTAIN TRUSTS WITH DIVORCED INDIVIDUALS AS
18 JOINT SETTLORS. (a) This section applies only to a trust created
19 under a trust instrument that:

20 (1) was executed by two married individuals as
21 settlers whose marriage to each other is subsequently dissolved;
22 and

23 (2) includes a provision described by Section
24 123.052(a).

25 (b) On the death of one of the divorced individuals who is a
26 settlor of a trust to which this section applies, the trustee shall
27 divide the trust into two trusts, each of which shall be composed of

1 the property attributable to the contributions of only one of the
2 divorced individuals.

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

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

13 (e) This section does not apply if one of the following
14 provides otherwise:

15 (1) a court order;

16 (2) the express terms of a trust instrument executed
17 by the two divorced individuals before their marriage was
18 dissolved; or

19 (3) an express provision of a contract relating to the
20 division of the marital estate entered into between the two
21 divorced individuals before, during, or after their marriage.

22 SECTION 7. Section [123.151](#), Estates Code, is amended by
23 amending Subsections (a) and (b) and adding Subsections (c-1) and
24 (d-1) to read as follows:

25 (a) In this section:

26 (1) "Beneficiary," "multiple-party account," "party,"
27 "P.O.D. account," and "P.O.D. payee" have the meanings assigned by

1 Chapter 113.

2 (2) "Public retirement system" has the meaning
3 assigned by Section 802.001, Government Code.

4 (3) "Relative" has the meaning assigned by Section
5 123.051.

6 (4) "Survivorship agreement" means an agreement
7 described by Section 113.151.

8 (b) If [~~after~~] a decedent established [~~designates a spouse~~
9 ~~or a relative of a spouse who is not a relative of the decedent as a~~
10 ~~P.O.D. payee or beneficiary, including alternative P.O.D. payee or~~
11 ~~beneficiary, on~~] a P.O.D. account or other multiple-party account
12 and [~~the~~] the decedent's marriage was later [~~is~~] dissolved by divorce,
13 annulment, or a declaration that the marriage is void, any payable
14 on request after death [~~the~~] designation provision or provision of
15 a survivorship agreement with respect to that account in favor of
16 the decedent's former spouse or a relative of the former spouse who
17 is not a relative of the decedent [~~on the account~~] is not effective
18 as to that [~~the former~~] spouse or [~~the former spouse's~~] relative
19 unless:

20 (1) the court decree dissolving the marriage:

21 (A) designates the former spouse or the former
22 spouse's relative as the P.O.D. payee or beneficiary; or

23 (B) reaffirms the survivorship agreement or the
24 relevant provision of the survivorship agreement in favor of the
25 former spouse or the former spouse's relative;

26 (2) after the marriage was dissolved, the decedent:

27 (A) redesignated the former spouse or the former

1 spouse's relative as the P.O.D payee or beneficiary; or

2 (B) reaffirmed the survivorship agreement in
3 writing [~~after the marriage was dissolved~~]; or

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

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

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

20 SECTION 8. Section 124.001(3), Estates Code, is amended to
21 read as follows:

22 (3) "Estate tax" means any estate, inheritance, or
23 death tax levied or assessed on the property of a decedent's estate
24 because of the death of a person and imposed by federal, state,
25 local, or foreign law, including the federal estate tax and the
26 inheritance tax imposed by former Chapter 211, Tax Code, and
27 including interest and penalties imposed in addition to those

1 taxes. The term does not include a tax imposed under Section 2601
2 or 2701(d)(1)(A), Internal Revenue Code of 1986 (26 U.S.C. Section
3 2601 or 2701(d)).

4 SECTION 9. Section 201.054, Estates Code, is amended by
5 adding Subsection (e) to read as follows:

6 (e) For purposes of this section, "adopted child" means a
7 child:

8 (1) adopted through an existing or former statutory
9 procedure; or

10 (2) considered by a court to be equitably adopted or
11 adopted by acts of estoppel.

12 SECTION 10. The heading to Section 202.052, Estates Code,
13 is amended to read as follows:

14 Sec. 202.052. SERVICE OF CITATION BY PUBLICATION [~~WHEN~~
15 ~~RECIPIENT'S NAME OR ADDRESS IS NOT ASCERTAINABLE~~].

16 SECTION 11. Section 202.057(a), Estates Code, is amended to
17 read as follows:

18 (a) A person who files an application under Section 202.005
19 shall file with the court:

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

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

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

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

1 delivery; and

2 (C) if service of citation is waived under
3 Section 202.056:

4 (i) the name of each person who waived
5 citation under that section; and

6 (ii) if citation is waived under Section
7 202.056(b)(1), the name of the distributee and the representative
8 capacity of the person who waived citation required to be served on
9 the distributee [Section 202.056].

10 SECTION 12. Section 205.001, Estates Code, is amended to
11 read as follows:

12 Sec. 205.001. ENTITLEMENT TO ESTATE WITHOUT APPOINTMENT OF
13 PERSONAL REPRESENTATIVE. The distributees of the estate of a
14 decedent who dies intestate are entitled to the decedent's estate
15 without waiting for the appointment of a personal representative of
16 the estate to the extent the estate assets, excluding homestead and
17 exempt property, exceed the known liabilities of the estate,
18 excluding any liabilities secured by homestead and exempt property,
19 if:

20 (1) 30 days have elapsed since the date of the
21 decedent's death;

22 (2) no petition for the appointment of a personal
23 representative is pending or has been granted;

24 (3) the value of the estate assets on the date of the
25 affidavit described by Subsection (4), excluding homestead and
26 exempt property, does not exceed \$75,000 [~~\$50,000~~];

27 (4) an affidavit that meets the requirements of

1 Section 205.002 is filed with the clerk of the court that has
2 jurisdiction and venue of the estate;

3 (5) the judge approves the affidavit as provided by
4 Section 205.003; and

5 (6) the distributees comply with Section 205.004.

6 SECTION 13. Section 251.001, Estates Code, is amended to
7 read as follows:

8 Sec. 251.001. WHO MAY EXECUTE WILL. Under the rules and
9 limitations prescribed by law, a person of sound mind has the right
10 and power to make a [~~last~~] will [~~and testament~~] if, at the time the
11 will is made, the person:

12 (1) is 18 years of age or older;

13 (2) is or has been married; or

14 (3) is a member of the armed forces of the United
15 States, an auxiliary of the armed forces of the United States, or
16 the United States Maritime Service.

17 SECTION 14. Section 251.002, Estates Code, is amended to
18 read as follows:

19 Sec. 251.002. INTERESTS THAT MAY PASS BY WILL;
20 DISINHERITANCE. (a) Subject to limitations prescribed by law, a
21 person competent to make a [~~last~~] will [~~and testament~~] may devise
22 under the will [~~and testament~~] all the estate, right, title, and
23 interest in property the person has at the time of the person's
24 death.

25 (b) A person who makes a [~~last~~] will [~~and testament~~] may:

26 (1) disinherit an heir; and

27 (2) direct the disposition of property or an interest

1 passing under the will or by intestacy.

2 SECTION 15. Section 251.051, Estates Code, is amended to
3 read as follows:

4 Sec. 251.051. WRITTEN, SIGNED, AND ATTESTED. Except as
5 otherwise provided by law, a ~~[last]~~ will ~~[and testament]~~ must be:

- 6 (1) in writing;
- 7 (2) signed by:
 - 8 (A) the testator in person; or
 - 9 (B) another person on behalf of the testator:
 - 10 (i) in the testator's presence; and
 - 11 (ii) under the testator's direction; and
- 12 (3) attested by two or more credible witnesses who are
13 at least 14 years of age and who subscribe their names to the will in
14 their own handwriting in the testator's presence.

15 SECTION 16. Section 251.103, Estates Code, is amended to
16 read as follows:

17 Sec. 251.103. PERIOD FOR MAKING ATTESTED WILLS SELF-PROVED.
18 A will ~~[or testament]~~ that meets the requirements of Section
19 251.051 may be made self-proved at:

- 20 (1) the time of the execution of the will ~~[or~~
21 ~~testament]~~; or
- 22 (2) a later date during the lifetime of the testator
23 and the witnesses.

24 SECTION 17. Sections 251.104(c), (d), and (e), Estates
25 Code, are amended to read as follows:

26 (c) The self-proving affidavit shall be attached or annexed
27 to the will ~~[or testament]~~.

1 (d) An affidavit that is in substantial compliance with the
2 form of the affidavit provided by Subsection (e), that is
3 subscribed and acknowledged by the testator, and that is subscribed
4 and sworn to by the attesting witnesses is sufficient to self-prove
5 the will. No other affidavit or certificate of a testator is
6 required to self-prove a will [~~or testament~~] other than the
7 affidavit provided by Subsection (e).

8 (e) The form and content of the self-proving affidavit must
9 be substantially as follows:

10 THE STATE OF TEXAS
11 COUNTY OF _____

12 Before me, the undersigned authority, on this day personally
13 appeared _____, _____, and _____, known to
14 me to be the testator and the witnesses, respectively, whose names
15 are subscribed to the annexed or foregoing instrument in their
16 respective capacities, and, all of said persons being by me duly
17 sworn, the said _____, testator, declared to me and to the
18 said witnesses in my presence that said instrument is [his/her]
19 [~~last~~] will [~~and testament~~], and that [he/she] had willingly made
20 and executed it as [his/her] free act and deed; and the said
21 witnesses, each on [his/her] oath stated to me, in the presence and
22 hearing of the said testator, that the said testator had declared to
23 them that said instrument is [his/her] [~~last~~] will [~~and testament~~],
24 and that [he/she] executed same as such and wanted each of them to
25 sign it as a witness; and upon their oaths each witness stated
26 further that they did sign the same as witnesses in the presence of
27 the said testator and at [his/her] request; that [he/she] was at

1 that time eighteen years of age or over (or being under such age,
2 was or had been lawfully married, or was then a member of the armed
3 forces of the United States, or an auxiliary of the armed forces of
4 the United States, or the United States Maritime Service) and was of
5 sound mind; and that each of said witnesses was then at least
6 fourteen years of age.

7 _____
8 Testator

9 _____
10 Witness

11 _____
12 Witness

13 Subscribed and sworn to before me by the said _____,
14 testator, and by the said _____ and _____,
15 witnesses, this _____ day of _____ A.D.
16 _____.

17 (SEAL)

18 (Signed) _____
19 (Official Capacity of Officer)

20 SECTION 18. Section 251.107, Estates Code, is amended to
21 read as follows:

22 Sec. 251.107. SELF-PROVED HOLOGRAPHIC WILL.
23 Notwithstanding any other provision of this subchapter, a will
24 written wholly in the testator's handwriting may be made
25 self-proved at any time during the testator's lifetime by the
26 attachment or annexation to the will of an affidavit by the testator
27 to the effect that:

28 (1) the instrument is the testator's ~~last~~ will;

1 (2) the testator was 18 years of age or older at the
2 time the will was executed or, if the testator was younger than 18
3 years of age, that the testator:

4 (A) was or had been married; or

5 (B) was a member of the armed forces of the United
6 States, an auxiliary of the armed forces of the United States, or
7 the United States Maritime Service at the time the will was
8 executed;

9 (3) the testator was of sound mind; and

10 (4) the testator has not revoked the will.

11 SECTION 19. Section [252.152](#), Estates Code, is amended to
12 read as follows:

13 Sec. 252.152. PRIOR DEPOSITED WILL IN RELATION TO LATER
14 WILL. A will that is not deposited as provided by Subchapter A
15 shall be admitted to probate on proof that the will is the last will
16 [~~and testament~~] of the testator, notwithstanding the fact that the
17 testator has a prior will that has been deposited in accordance with
18 Subchapter A.

19 SECTION 20. Section [255.151](#), Estates Code, is amended to
20 read as follows:

21 Sec. 255.151. APPLICABILITY OF SUBCHAPTER. This subchapter
22 applies unless the testator's [~~last~~] will [~~and testament~~] provides
23 otherwise. For example, a devise in the testator's will stating "to
24 my surviving children" or "to such of my children as shall survive
25 me" prevents the application of Sections [255.153](#) and [255.154](#).

26 SECTION 21. Section [255.401](#), Estates Code, is amended by
27 amending Subsection (a) and adding Subsection (a-1) to read as

1 follows:

2 (a) A right to take as a member under a class gift does not
3 accrue to any person unless the person is born before, or is in
4 gestation at, the time of [~~the testator's~~] death of the person by
5 which the class is measured and survives that person by [~~for~~] at
6 least 120 hours.

7 (a-1) For purposes of this section, a [A] person is:

8 (1) considered to be in gestation [~~at the time of the~~
9 ~~testator's death~~] if insemination or implantation occurs at or
10 before the time of [~~the testator's~~] death of the person by which the
11 class is measured; and

12 (2) presumed to be in gestation at the time of death of
13 the person by which the class is measured [~~the testator's death~~] if
14 the person was born before the 301st day after the date of the
15 person's [~~testator's~~] death.

16 SECTION 22. Section 255.451, Estates Code, is amended by
17 amending Subsection (a) and adding Subsections (a-1) and (c) to
18 read as follows:

19 (a) Subject to the requirements of this section, on [~~On~~] the
20 petition of a personal representative, a court may order that the
21 terms of the will be modified or reformed, that the personal
22 representative be directed or permitted to perform acts that are
23 not authorized or that are prohibited by the terms of the will, or
24 that the personal representative be prohibited from performing acts
25 that are required by the terms of the will, if:

26 (1) modification of administrative, nondispositive
27 terms of the will is necessary or appropriate to prevent waste or

1 impairment of the estate's administration;

2 (2) the order is necessary or appropriate to achieve
3 the testator's tax objectives or to qualify a distributee for
4 government benefits and is not contrary to the testator's intent;
5 or

6 (3) the order is necessary to correct a scrivener's
7 error in the terms of the will, even if unambiguous, to conform with
8 the testator's intent.

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

12 (c) Chapter 123, Property Code, applies to a proceeding
13 under Subsection (a) that involves a charitable trust.

14 SECTION 23. Section 256.003(b), Estates Code, is amended to
15 read as follows:

16 (b) Except as provided by Section 501.006 with respect to a
17 foreign will, letters testamentary may not be issued if a will is
18 admitted to probate after the fourth anniversary of the testator's
19 death unless it is shown that the application for probate was filed
20 on or before the fourth anniversary of the testator's death.

21 SECTION 24. Section 257.051(a), Estates Code, is amended to
22 read as follows:

23 (a) An application for the probate of a will as a muniment of
24 title must state and aver the following to the extent each is known
25 to the applicant or can, with reasonable diligence, be ascertained
26 by the applicant:

27 (1) each applicant's name and domicile;

1 (2) the testator's name, domicile, and, if known, age,
2 on the date of the testator's death;

3 (3) the fact, date, and place of the testator's death;

4 (4) facts showing that the court with which the
5 application is filed has venue;

6 (5) that the testator owned property, including a
7 statement generally describing the property and the property's
8 probable value;

9 (6) the date of the will;

10 (7) the name, state of residence, and physical address
11 where service can be had of the executor named in the will;

12 (8) the name of each subscribing witness to the will,
13 if any;

14 (9) whether one or more children born to or adopted by
15 the testator after the testator executed the will survived the
16 testator and, if so, the name of each of those children;

17 (10) that the testator's estate does not owe an unpaid
18 debt, other than any debt secured by a lien on real estate, or that
19 for another reason there is no necessity for administration of the
20 estate;

21 (11) whether a marriage of the testator was ever
22 dissolved after the will was made and, if so, when and from whom;
23 and

24 (12) whether the state, a governmental agency of the
25 state, or a charitable organization is named in the will as a
26 devisee.

27 SECTION 25. Section 257.054, Estates Code, is amended to

1 read as follows:

2 Sec. 257.054. PROOF REQUIRED. An applicant for the probate
3 of a will as a muniment of title must prove to the court's
4 satisfaction that:

5 (1) the testator is dead;

6 (2) four years have not elapsed since the date of the
7 testator's death and before the application;

8 (3) the court has jurisdiction and venue over the
9 estate;

10 (4) citation has been served and returned in the
11 manner and for the period required by this title;

12 (5) the testator's estate does not owe an unpaid debt,
13 other than any debt secured by a lien on real estate, or that for
14 another reason there is no necessity for administration of the
15 estate;

16 (6) the testator did not revoke the will; and

17 (7) if the will is not self-proved in the manner
18 provided by this title, the testator:

19 (A) executed the will with the formalities and
20 solemnities and under the circumstances required by law to make the
21 will valid; and

22 (B) at the time of executing the will was of sound
23 mind and:

24 (i) was 18 years of age or older;

25 (ii) was or had been married; or

26 (iii) was a member of the armed forces of
27 the United States, an auxiliary of the armed forces of the United

1 States, or the United States Maritime Service.

2 SECTION 26. Section 305.108, Estates Code, is amended to
3 read as follows:

4 Sec. 305.108. FORM OF BOND. The following form, or a form
5 with the same substance, may be used for the bond of a personal
6 representative:

7 The State of Texas

8 County of _____

9 Know all persons by these presents that we, _____ (insert
10 name of each principal), as principal, and _____ (insert name of
11 each surety), as sureties, are held and firmly bound unto the judge
12 of _____ (insert reference to appropriate judge), and that
13 judge's successors in office, in the sum of _____ dollars,
14 conditioned that the above bound principal or principals, appointed
15 as _____ (insert "executor of the [~~last~~] will [~~and testament~~],"
16 "administrator with the will annexed of the estate," "administrator
17 of the estate," or "temporary administrator of the estate," as
18 applicable) of _____ (insert name of decedent), deceased, shall
19 well and truly perform all of the duties required of the principal
20 or principals by law under that appointment.

21 SECTION 27. Sections 308.051(a) and (c), Estates Code, are
22 amended to read as follows:

23 (a) Within one month after receiving letters testamentary
24 or of administration, a personal representative of an estate shall
25 provide notice requiring each person who has a claim against the
26 estate to present the claim within the period prescribed by law by:

27 (1) having the notice published in a newspaper of

1 general circulation [~~printed~~] in the county in which the letters
2 were issued; and

3 (2) if the decedent remitted or should have remitted
4 taxes administered by the comptroller, sending the notice to the
5 comptroller by certified or registered mail.

6 (c) If there is no [~~a~~] newspaper of general circulation [~~is~~
7 ~~not printed~~] in the county in which the letters testamentary or of
8 administration were issued, the notice must be posted and the
9 return made and filed as otherwise required by this title.

10 SECTION 28. Section 310.006, Estates Code, is amended to
11 read as follows:

12 Sec. 310.006. FREQUENCY AND METHOD OF DETERMINING INTERESTS
13 IN CERTAIN ESTATE ASSETS. Except as required by Sections 2055 and
14 2056, Internal Revenue Code of 1986 (26 U.S.C. Sections 2055 and
15 2056), the frequency and method of determining the distributees'
16 [~~beneficiaries'~~] respective interests in the undistributed assets
17 of an estate are in the sole and absolute discretion of the executor
18 of the estate. The executor may consider all relevant factors,
19 including administrative convenience and expense and the interests
20 of the various distributees [~~beneficiaries~~] of the estate, to reach
21 a fair and equitable result among distributees [~~beneficiaries~~].

22 SECTION 29. Section 359.001(a), Estates Code, is amended to
23 read as follows:

24 (a) Not later than the 60th day after [~~On~~] the first
25 anniversary of [~~expiration of 12 months from~~] the date a personal
26 representative qualifies and receives letters testamentary or of
27 administration to administer a decedent's estate under court order,

1 unless the court authorizes an extension, the representative shall
2 file with the court an account consisting of a written exhibit made
3 under oath that lists all claims against the estate presented to the
4 representative during the 12-month period following the
5 representative's qualification and receipt of letters [~~covered by~~
6 ~~the account~~]. The exhibit must specify:

- 7 (1) the claims allowed by the representative;
- 8 (2) the claims paid by the representative;
- 9 (3) the claims rejected by the representative and the
10 date the claims were rejected; and
- 11 (4) the claims for which a lawsuit has been filed and
12 the status of that lawsuit.

13 SECTION 30. Section 359.002(a), Estates Code, is amended to
14 read as follows:

15 (a) Not later than the 60th day after each anniversary of
16 the date a personal representative of the estate of a decedent
17 qualifies and receives letters testamentary or of administration to
18 administer the decedent's estate under court order, unless the
19 court authorizes an extension, the [~~Each personal~~ representative
20 [~~of the estate of a decedent~~] shall [~~continue to~~] file an annual
21 account conforming to the essential requirements of Section 359.001
22 regarding changes in the estate assets occurring during the
23 12-month period after [~~since~~] the date the most recent previous
24 account was filed.

25 SECTION 31. Section 362.005(b), Estates Code, is amended to
26 read as follows:

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

1 (1) contain:

2 (A) a statement that an account for final
3 settlement has been presented;

4 (B) the time and place the court will consider
5 the account; and

6 (C) a statement requiring the person cited to
7 appear and contest the account, if the person wishes to contest the
8 account; and

9 (2) be given to each heir or distributee [~~beneficiary~~]
10 of the decedent by certified mail, return receipt requested, unless
11 the court by written order directs another method of service to be
12 given.

13 SECTION 32. Section 401.006, Estates Code, is amended to
14 read as follows:

15 Sec. 401.006. GRANTING POWER OF SALE BY AGREEMENT. In a
16 situation in which a decedent does not have a will, or a decedent's
17 will does not contain language authorizing the personal
18 representative to sell property or contains language that is not
19 sufficient to grant the representative that authority, the court
20 may include in an order appointing an independent executor any
21 general or specific authority regarding the power of the
22 independent executor to sell property that may be consented to by
23 the distributees [~~beneficiaries~~] who are to receive any interest in
24 the property in the application for independent administration or
25 for the appointment of an independent executor or in their consents
26 to the independent administration or to the appointment of an
27 independent executor. The independent executor, in such event, may

1 sell the property under the authority granted in the court order
2 without the further consent of those distributees [~~beneficiaries~~].

3 SECTION 33. Chapter 405, Estates Code, is amended by adding
4 Section 405.0015 to read as follows:

5 Sec. 405.0015. DISTRIBUTIONS GENERALLY. Unless the will,
6 if any, or a court order provides otherwise, an independent
7 executor may, in distributing property not specifically devised
8 that the independent executor is authorized to sell:

9 (1) make distributions in divided or undivided
10 interests;

11 (2) allocate particular assets in proportionate or
12 disproportionate shares;

13 (3) value the estate property for the purposes of
14 acting under Subdivision (1) or (2); and

15 (4) adjust the distribution, division, or termination
16 for resulting differences in valuation.

17 SECTION 34. Sections 405.003(b) and (d), Estates Code, are
18 amended to read as follows:

19 (b) On the filing of an action under this section, each
20 distributee [~~beneficiary~~] of the estate shall be personally served
21 with citation, except for a distributee [~~beneficiary~~] who has
22 waived the issuance and service of citation.

23 (d) On or before filing an action under this section, the
24 independent executor must distribute to the distributees
25 [~~beneficiaries~~] of the estate any of the remaining assets or
26 property of the estate that remains in the independent executor's
27 possession after all of the estate's debts have been paid, except

1 for a reasonable reserve of assets that the independent executor
2 may retain in a fiduciary capacity pending court approval of the
3 final account. The court may review the amount of assets on reserve
4 and may order the independent executor to make further
5 distributions under this section.

6 SECTION 35. Section 456.003, Estates Code, is amended to
7 read as follows:

8 Sec. 456.003. DUTY OF ELIGIBLE INSTITUTIONS. Not later
9 than the seventh business day [~~Within a reasonable time~~] after the
10 date an eligible institution receives [~~receiving~~] a copy of a
11 written agreement under Section 456.002(a) or a statement from a
12 personal representative under Section 456.002(b) and instructions
13 from the lawyer identified in the agreement or statement, as
14 applicable, regarding how to disburse the funds or close a trust or
15 escrow account, the [~~an~~] eligible institution shall disburse the
16 funds and close the account in compliance with the instructions.

17 SECTION 36. Chapter 456, Estates Code, is amended by adding
18 Section 456.0045 to read as follows:

19 Sec. 456.0045. PRIVATE CAUSE OF ACTION. (a) If an eligible
20 institution violates Section 456.003, a person aggrieved by the
21 violation may bring an action against the eligible institution to:

22 (1) obtain declaratory or injunctive relief to enforce
23 the section; and

24 (2) recover damages to the same extent the person
25 would be entitled to damages had the eligible institution acted in
26 the same manner with respect to the deceased lawyer before the
27 lawyer's death.

1 (b) A person who prevails in an action under this section
2 may recover court costs and reasonable attorney's fees.

3 SECTION 37. Subchapter A, Chapter 112, Property Code, is
4 amended by adding Section 112.011 to read as follows:

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

10 (b) For purposes of Subsection (a), a person is:

11 (1) considered to be in gestation if insemination or
12 implantation occurs at or before the time of death of the person by
13 which the class is measured; and

14 (2) presumed to be in gestation at the time of death of
15 the person by which the class is measured if the person was born
16 before the 301st day after the date of the person's death.

17 (c) A provision in the trust instrument that is contrary to
18 this section prevails over this section.

19 SECTION 38. Sections 303.003 and 362.010, Estates Code, are
20 repealed.

21 SECTION 39. Section 33.001, Estates Code, as amended by
22 this Act, applies only to an application for the probate of a will
23 or for the granting of letters testamentary or of administration of
24 a decedent's estate that is filed on or after the effective date of
25 this Act. An application for the probate of a will or the granting
26 of letters filed before that date is governed by the law in effect
27 on the date the application was filed, and the former law is

1 continued in effect for that purpose.

2 SECTION 40. Section 112.103, Estates Code, as amended by
3 this Act, applies only to a proceeding under Subchapter C, Chapter
4 112, Estates Code, commenced on or after the effective date of this
5 Act. A proceeding under that subchapter commenced before that date
6 is governed by the law in effect on the date the proceeding was
7 commenced, and the former law is continued in effect for that
8 purpose.

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

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

17 SECTION 43. Sections 123.151(a) and (b), Estates Code, as
18 amended by this Act, and Section 123.151(c-1), as added by this Act,
19 apply only to a multiple-party account for which the marriage of a
20 party to the account is dissolved on or after the effective date of
21 this Act.

22 SECTION 44. Section 123.151(d-1), Estates Code, as added by
23 this Act, and Section 456.0045, Estates Code, as added by this Act,
24 apply only to a cause of action that accrues on or after the
25 effective date of this Act. A cause of action that accrued before
26 the effective date of this Act is governed by the law applicable to
27 the cause of action immediately before the effective date of this

1 Act, and that law is continued in effect for that purpose.

2 SECTION 45. Section 202.057, Estates Code, as amended by
3 this Act, applies only to an application for a proceeding to declare
4 heirship that is filed on or after the effective date of this Act.
5 An application for a proceeding to declare heirship filed before
6 that date is governed by the law in effect on the date the
7 application was filed, and the former law is continued in effect for
8 that purpose.

9 SECTION 46. Section 205.001, Estates Code, as amended by
10 this Act, applies to a small estate administration commenced on or
11 after the effective date of this Act, regardless of the date of the
12 decedent's death.

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

17 SECTION 48. Section 255.451, Estates Code, as amended by
18 this Act, applies only to a petition filed on or after the effective
19 date of this Act. A petition filed before that date is governed by
20 the law in effect on the date the petition was filed, and the former
21 law is continued in effect for that purpose.

22 SECTION 49. Sections 256.003(b), 257.051(a), and 257.054,
23 Estates Code, as amended by this Act, apply only to an application
24 for the probate of a will or administration of a decedent's estate
25 that is filed on or after the effective date of this Act. An
26 application for the probate of a will or administration of a
27 decedent's estate filed before that date is governed by the law in

1 effect on the date the application was filed, and the former law is
2 continued in effect for that purpose.

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

7 SECTION 51. Section 405.0015, Estates Code, as added by
8 this Act, applies to the administration of the estate of a decedent
9 that is pending or commenced on or after the effective date of this
10 Act.

11 SECTION 52. This Act takes effect September 1, 2017.