

BILL ANALYSIS

C.S.H.B. 2782
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Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

As part of its ongoing review of relevant law, the Real Estate, Probate, and Trust Law Section of the State Bar of Texas has recommended certain revisions and updates to state law governing probate matters for purposes of making the administration of these matters more efficient. C.S.H.B. 2782 seeks to provide for such a revision and update by making changes to the law relating to decedents' estates, to transfer on death deeds, and to matters involving probate courts.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

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

ANALYSIS

C.S.H.B. 2782 amends the Estates Code to require a contracting third party to provide to the personal representative of a deceased party's estate, on request, all information the contracting third party would have provided to the deceased party as of the date of the deceased party's death if the deceased party had requested the information, without regard to whether the deceased party's estate has an interest in the applicable multiple-party account, the property subject to a possible nontestamentary transfer, or the insurance contract. This requirement applies to an agreement, account, contract, or designation made or entered into before, on, or after the bill's effective date, regardless of the date of the deceased party's death.

C.S.H.B. 2782, with respect to the rights of creditors, conditions the commencement of any proceeding by the personal representative of a deceased party to assert liability regarding a multiple-party account on the personal representative's receipt of a written demand by a surviving spouse, a creditor, or a person acting on behalf of a minor child of the deceased party.

C.S.H.B. 2782 includes as a condition voiding an otherwise valid transfer on death deed as to any interest in real property conveyed by the transferor during the transferor's lifetime after the transfer on death deed is executed and recorded that a memorandum sufficient to give notice of a conveyance of interest is recorded in the deed records in the county clerk's office of the applicable county and the recording of the memorandum occurs before the transferor's death. The bill repeals provisions that establish optional forms for a transfer on death deed and for creating an instrument of revocation for a transfer on death deed. The bill clarifies that the repeal of these provisions does not affect the validity of a transfer on death deed or a cancellation of a transfer on death deed executed before, on, or after the bill's effective date.

C.S.H.B. 2782, with respect to the provision regarding the community estate of an intestate who leaves a surviving spouse and a child or other descendant who is not also a child or other descendant of the surviving spouse, changes the provision specifying that one-half of the community estate is retained by the surviving spouse and the other one-half passes to the deceased spouse's children or other descendants by specifying that the deceased spouse's undivided one-half interest in the community estate passes to the deceased spouse's children or other descendants.

C.S.H.B. 2782 specifies that testimony in a proceeding to declare heirship must be taken from two disinterested and credible witnesses. The bill provides for an exception in which the testimony may be taken from only one disinterested and credible witness if it is shown to the court's satisfaction that, after a diligent search was made, only one such witness can be found who can make the required proof in the proceeding. The bill makes Estates Code provisions relating to the failure of a devise other than a residuary devise and the effect on the residuary estate inapplicable to a devise to a charitable trust that has failed for any reason, unless a will provides otherwise.

C.S.H.B. 2782, with respect to the designation of an administrator of a testator's estate:

- authorizes a testator to grant in a will to an executor named in the will or to another person identified by name, office, or function the authority to designate one or more persons to serve as administrator of the testator's estate;
- requires a designation of an administrator of a testator's estate as authorized by such a will, in order to be effective, to be in writing and acknowledged before an officer authorized to take acknowledgments and administer oaths;
- sets out the requisite conditions under which a person may serve as an administrator and establishes that a person so designated has the same rights, powers, and duties as an executor named in the will, unless the will or designation provides otherwise;
- includes an administrator so designated among the entities who may file an application with the court for an order admitting a will to probate, for letters testamentary or of administration, and for the appointment of such a designated administrator; and
- specifies that an administrator so designated immediately follows the executor in the order of qualification for those granted such letters.

C.S.H.B. 2782, with respect to judicial modification or reformation of wills and for purposes of the transfer of proceedings:

- establishes that, if a personal representative petitions a county court in a county in which there is no statutory probate court or county court at law exercising original probate jurisdiction for purposes of modifying or reforming the terms of a will:
 - the judge of the county court may, on the judge's own motion, request the assignment of a statutory probate court judge to hear the proceeding or transfer the proceeding to the district court, which may then hear the proceeding as if originally filed in the district court;
 - the judge of the county court is required, on the motion of any party to the proceeding, according to the motion, to request the assignment of a statutory probate court judge to hear the proceeding or transfer the proceeding to the district court, which may then hear the proceeding as if originally filed in the district court;
 - establishes that a statutory probate court judge assigned to such a proceeding has the jurisdiction and authority granted to a statutory probate court by applicable law; and
 - establishes that the district court has the jurisdiction and authority granted to a

statutory probate court by applicable law;

- establishes that, if a personal representative petitions a county court at law exercising original probate jurisdiction and there is no statutory probate court in that county for the purpose of modifying or reforming the terms of a will, the judge of the county court, on the judge's own motion, may transfer the proceeding to the county court at law and, on the motion of any party to the proceeding, must transfer the proceeding to the county court at law, which may then hear the proceeding as if originally filed in the county court at law;
- requires the county court to continue to exercise jurisdiction over the management of the estate, other than the proceeding, until final disposition of the proceeding is made in accordance with applicable law;
- requires the statutory probate court judge assigned to hear the proceeding or the district court or county court at law to which a proceeding is transferred, on resolution of the proceeding, to return the matter to the county court for further proceedings not inconsistent with the orders of the statutory probate court, district court, or county court at law, as applicable; and
- authorizes the clerk of a district court to which a proceeding is transferred to perform in relation to the proceeding any function a county clerk may perform with respect to that type of matter.

C.S.H.B. 2782, with respect to application requirements for probate of a will and to custody of a probated will:

- removes the specification that a will for which an application for probate may be filed is a written or unwritten will;
- specifies that the court order by which a will filed with an application for probate in the custody of a county clerk may be removed from such custody is a court order for the original will to be removed to another place for inspection or is a court order issued under statutory provisions relating to the transfer of probate proceeding and establishes that, in such a case of the latter order, the clerk is required to deliver the will directly to the clerk of the court to which the probate proceeding is transferred; and
- requires the will to be delivered back to the office of the county clerk of the county in which the will was probated after the inspection is completed, if a court orders the original will to be removed to another place for inspection.

C.S.H.B. 2782, with respect to the probate of a will as muniment of title and with respect to subsequent estate administration:

- establishes that a court order admitting a will to probate as a muniment of title does not preclude the subsequent appointment of a personal representative and opening of an administration for the testator's estate if an application for letters testamentary or of administration is filed not later than the fourth anniversary of the testator's death or if the administration of the testator's estate is necessary to receive or recover property due a decedent's estate or to prevent real property in a decedent's estate from becoming a danger to the health, safety, or welfare of the general public; and
- establishes that, if a personal representative is appointed for a testator's estate after the testator's will has been admitted to probate as a muniment of title, certain statutorily prescribed periods as specified by the bill begin to run from the date of qualification of the personal representative rather than from the date the will is admitted to probate as a muniment of title.

C.S.H.B. 2782 includes as conditions under which an eligible applicant may file an application with a court for the appointment of an administrator, if there is a will, the conditions that:

- an administrator designated under the bill's provisions is disqualified, refuses to serve, or is dead or resigns; or
- an authorized person other than the executor has not designated an administrator under the bill's provisions as of the date of the filing of the application and the applicant notifies the court that the authorized person has no intention of doing so.

C.S.H.B. 2782 includes as an exception to the requirement for an applicant for the issuance of letters testamentary or of administration to prove to the court's satisfaction that the application has been filed within a certain period an exception for any lapse of time out of that period that occurred in preventing real property of the estate from becoming a danger. The bill establishes that any extension granted by a court of the period in which to file an inventory, appraisal, and list of claims is considered an extension of the filing period for an affidavit under applicable law.

C.S.H.B. 2782, with respect to certain digital assets of a decedent's estate:

- authorizes a personal representative of a decedent's estate to apply for and obtain a court order, either at the time the personal representative is appointed or at any time before the administration of the estate is closed, that:
 - directs disclosure of the content of electronic communications of the decedent to the personal representative and that contains certain court findings as provided and described, respectively, by applicable provisions of the Texas Revised Uniform Fiduciary Access to Digital Assets Act;
 - with respect to a catalog of electronic communications sent or received by the decedent and other digital assets of the decedent, other than the content of an electronic communication, contains certain court findings described by applicable provisions of the act; or
 - directs a custodian to comply with a request to disclose digital assets under the act; and
- authorizes the court to enter such an order with regard to such assets.

C.S.H.B. 2782 removes the provision subjecting a personal representative's conveyance or entry into a contract to convey for attorney services a contingent interest in any property sought to be recovered to approval of the court in which the estate is being administered and specifies that such conveyance or entry may be made without court approval.

C.S.H.B. 2782 authorizes an interested person, other than a creditor or any other having a claim against the estate, who in good faith and with just cause successfully prosecutes a proceeding to contest the validity of a will or alleged will offered for or admitted to probate to be allowed out of the estate the person's necessary expenses and disbursements in that proceeding, including reasonable attorney's fees.

C.S.H.B. 2782, with respect to the presentment and payment of claims against an estate:

- clarifies that Class 1 claims include reimbursement for funeral expenses and expenses of a decedent's last illness;
- revises the cap on Class 1 claims from \$15,000 to \$15,000 for funeral expenses and \$15,000 for expenses of a decedent's last illness;
- includes as Class 2 claims court costs and commissions to which a public probate administrator who has taken any action for an estate is entitled under applicable law; and
- revises the authorization for a court to require the sale of a property free of a lien and to apply the proceeds to the payment of the whole debt if a claim holder fails to take

possession or sell secured property within the time determined by the court by specifying that court may require the proceeds to be applied to such payment of the whole debt in full satisfaction of the claim.

C.S.H.B. 2782 makes certain clarifications relating to the time and place of a public sale of real estate of an estate to specify, among other things, that such a required public sale must be made at public auction. The bill replaces the requirement that a private sale of real estate be made in the manner the court directs in the order of sale with an authorization for the personal representative of an estate to enter into a contract for the private sale of real estate of the estate made in the manner the court directs in the order of sale.

C.S.H.B. 2782 establishes that, if a decedent's will does not contain language directing that no bond or security be required of a person named as executor, unless the court finds that it would not be in the best interest of the estate, the court may waive the requirement of a bond if all of the distributees of the decedent agree to the waiver of bond in the application for probate of the decedent's will or in one or more separate documents consenting to the application for probate of the decedent's will.

C.S.H.B. 2782 makes applicable to a claim of the Medicaid estate recovery program in an independent administration the procedural provisions of the Estates Code governing creditor claims in supervised administrations.

C.S.H.B. 2782, with respect to provisions relating to a public probate administrator:

- increases from 10 percent to 20 percent the maximum amount of gross assets of an estate authorized for a small estate affidavit for which the public probate administrator may act without issuance of letters testamentary or of administration if the court approves an applicable statement of administration;
- authorizes a public probate administrator to file a small estate affidavit for approval by the statutory probate court judge after the public probate administrator has acted under statutory provisions relating to access of information or small estates; and
- changes the provision regarding the deposit of all funds coming into the custody of the public administrator by requiring deposit in the court registry, by requiring the disbursement to be made according to an order issued by the statutory probate court judge who appointed the administrator, and by removing the requirement that such deposit be in the county treasury and according to guidelines of the county treasurer or auditor.

C.S.H.B. 2782 amends the Government Code to require a presiding judge of a statutory probate court who is the subject of a motion of recusal or disqualification to sign and file with the applicable clerk an order referring the motion to the chief justice of the supreme court for assignment of a presiding judge of an administrative judicial region, a statutory probate court judge, or a former or retired judge of a statutory probate court to hear and rule on the motion. The bill removes the authorization for the chief justice to assign a regional presiding judge as a judge to hear a case in which the subject of an order of recusal or disqualification is the presiding judge of the statutory probate courts.

C.S.H.B. 2782 repeals the following provisions of the Estates Code:

- Section 114.002(b)
- Subchapter D, Chapter 114

EFFECTIVE DATE

September 1, 2019.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2782 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute, for purposes of the bill's provisions regarding judicial modification or reformation of wills, includes the following:

- a provision relating to the request of an assignment of a statutory probate court judge to hear a proceeding in a county in which there is no statutory probate court or county court at law exercising original probate jurisdiction;
- a provision granting a statutory probate court judge assigned to such a proceeding the authority and jurisdiction granted to a statutory probate court; and
- a prohibition against a county judge who grants a motion for the assignment of a statutory probate judge in such a proceeding transferring the proceeding to a district court unless the applicable party withdraws the motion.

The substitute includes a provision making Estates Code provisions relating to the failure of a devise other than a residuary devise and the effect on the residuary estate inapplicable to a devise to a charitable trust, unless a will provides otherwise.

The substitute includes a provision establishing that any extension granted by a court of the period in which to file an inventory, appraisal, and list of claims is considered an extension of the filing period for an affidavit.