

## **BILL ANALYSIS**

Senate Research Center  
86R33585 MTB-F

C.S.H.B. 2782  
By: Wray (Rodríguez)  
State Affairs  
5/18/2019  
Committee Report (Substituted)

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

C.S.H.B. 2782 amends current law relating to decedents' estates, transfer on death deeds, and matters involving probate courts.

### **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 31.001, Estates Code, to redefine probate proceeding, for purposes of this code, as certain proceedings, including a will modification or reformation proceeding under Subchapter J, Chapter 255, and to make nonsubstantive changes to this section.

SECTION 2. Amends Chapter 111, Estates Code, by adding Subchapter C, as follows:

#### **SUBCHAPTER C. PROVISION OF CERTAIN INFORMATION ON DEATH**

Sec. 111.101. DEFINITIONS. Defines "contracting third party" and "deceased party."

Sec. 111.102. PROVISION OF INFORMATION TO PERSONAL REPRESENTATIVE OF DECEASED PARTY. Requires a contracting third party, to the extent not prohibited by federal or other state law, to, on request, provide to the personal representative of a deceased party's estate 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 multiple-party account, the property subject to a possible nontestamentary transfer, or the insurance contract.

SECTION 3. Amends Section 113.252(c), Estates Code, to authorize any proceeding by the personal representative of a deceased party to assert liability under Subsection (b) (relating to providing that certain persons are liable to account to a deceased party's personal representative for certain amounts to a certain extent) to be commenced only if the personal representative receives a written demand by a surviving spouse, a creditor, or a person acting on behalf of a minor child of the deceased party and to make nonsubstantive changes to this subsection.

SECTION 4. Amends Section 114.102, Estates Code, as follows:

Sec. 114.102. EFFECT OF SUBSEQUENT CONVEYANCE ON TRANSFER ON DEATH DEED. Provides that an otherwise valid transfer on death deed is void as to a subsequent grantee of an interest in real property, rather than void as to any interest in real property, that is conveyed by the transferor during the transferor's lifetime after the transfer on death deed is executed and recorded if:

- (1) a valid instrument conveying the interest or a memorandum sufficient to give notice of the conveyance of the interest, rather than a valid instrument conveying the interest, is recorded in the deed records in the

county clerk's office of the same county in which the transfer on death deed is recorded; and

(2) the recording of the instrument or memorandum, rather than the recording of the instrument, occurs before the transferor's death.

SECTION 5. Amends Section 201.003(c), Estates Code, to provide that, if the deceased spouse is survived by a child or other descendant who is not also a child or other descendant of the surviving spouse, the deceased spouse's undivided one-half interest in the community estate passes to the deceased spouse's children or other descendants, rather than providing that, if the deceased spouse is survived by a child or other descendant who is not also a child or descendant of the surviving spouse, 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 descendants.

SECTION 6. Amends Section 202.151, Estates Code, by amending Subsection (b) and adding Subsection (c), as follows:

(b) Requires testimony regarding a decedent's heirs and family history, except as provided by Subsection (c), in a proceeding to declare heirship, to be taken from two disinterested and credible witnesses in open court, by deposition in accordance with Section 51.203 (Service of Notice of Intention to Take Depositions in Certain Matters), or in accordance with the Texas Rules of Civil Procedure, rather than requiring testimony in a proceeding to declare heirship to be taken in open court, by deposition in accordance with Section 51.203, or in accordance with the Texas Rules of Civil Procedure.

(c) Requires the testimony of a certain witness, if it is shown to the court's satisfaction in a proceeding to declare heirship that, after a diligent search was made, only one disinterested and credible witness can be found who can make the required proof in the proceeding, to be taken in open court, by deposition in accordance with Section 51.203, or in accordance with the Texas Rules of Civil Procedure.

SECTION 7. Amends the heading to Chapter 254, Estates Code, to read as follows:

CHAPTER 254. CERTAIN PROVISIONS IN, AND CONTRACTS RELATING TO,  
WILLS

SECTION 8. Amends Chapter 254, Estates Code, by adding Section 254.006, as follows:

Sec. 254.006. DESIGNATION OF ADMINISTRATOR. (a) 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.

(b) Requires a designation of an administrator of a testator's estate as authorized by a will under Subsection (a) to be in writing and acknowledged before an officer authorized to take acknowledgments and administer oaths to be effective.

(c) Authorizes a person designated to serve as administrator of a testator's estate as provided by Subsection (a), unless the will provides otherwise, to serve only if:

(1) each executor named in the testator's will:

(A) is deceased;

(B) is disqualified to serve as executor; or

(C) indicates by affidavit filed with the county clerk of the county in which the application for letters testamentary is filed or, if an application has not been filed, a county described by Section 33.001(a)(1) (relating to providing that venue for certain probate

proceedings is in the county in which the decedent resided, if the decedent had a domicile or fixed place of residence in this state) or (2) (relating to providing that venue for certain probate proceedings, with respect to a decedent who did not have a domicile or fixed place of residence in this state, is in a certain other county) the executor's inability or unwillingness to serve as executor;

(2) the designation is effective as provided by Subsection (b); and

(3) the person is not disqualified from serving under Section 304.003 (Persons Disqualified to Serve as Executor or Administrator).

(d) Provides that, unless the will or designation provides otherwise, a person designated as administrator of a testator's estate as provided by this section has the same rights, powers, and duties as an executor named in the will, including the right to serve as an independent administrator with the power to sell property without the need for consent of the distributees under Section 401.002 (Creation in Testate Estate by Agreement) or 401.006 (Granting Power of Sale by Agreement).

SECTION 9. Amends Section 255.152, Estates Code, by adding Subsection (d) to provide that Subsections (a) (relating to providing that, except as provided by certain exceptions, if a devise, other than a residuary devise, fails for any reason, the devise becomes a part of the residuary estate), (b) (relating to providing, except as provided by certain exceptions, that if the residuary estate is devised to two or more persons and the share of one of the residuary devisees fails for any reason, that residuary devisee's share passes to the other residuary devisees, in proportion to the residuary devisee's interest in the residuary estate), and (c) (relating to providing, except as provided by certain exceptions, that the residuary estate passes as if the testator had died intestate if all residuary devisees meet certain criteria), unless the will provides otherwise, do not apply to a devise to a charitable trust, as defined by Section 123.001 (Definitions), Property Code.

SECTION 10. Amends Subchapter J, Chapter 255, Estates Code, by adding Section 255.456, as follows:

Sec. 255.456. JURISDICTION AND TRANSFER OF PROCEEDING. (a) Provides that to the extent that this section conflicts with other provisions of this title, this section prevails.

(b) Provides that the judge of a county court, in a county in which there is no statutory probate court or county court at law exercising original probate jurisdiction, if a personal representative petitions the county court to modify or reform the terms of a will, is authorized to, on the judge's own motion, or required to, on the motion of any party to the proceeding, according to the motion:

(1) request the assignment of a statutory probate court judge to hear the proceeding, as provided by Section 25.0022 (Administration of Statutory Probate Courts), Government Code; or

(2) transfer the proceeding to the district court, which is authorized to then hear the proceeding as if originally filed in the district court.

(c) Provides that a district court to which a proceeding is transferred under Subsection (b) has the jurisdiction and authority granted to a statutory probate court by Subtitle A (Scope, Jurisdiction, Venue, and Courts).

(d) Provides that a county judge, if a party to a modification or reformation proceeding files a motion for the assignment of a statutory probate court judge to hear the proceeding before the judge of the county court transfers the proceeding to a district court under this section, is required to grant the motion for the

assignment of a statutory probate court judge and is prohibited from transferring the proceeding to the district court unless the party withdraws the motion.

(e) Provides that a statutory probate court judge assigned to a proceeding under this section has the jurisdiction and authority granted to a statutory probate court by Subtitle A.

(f) Provides that the judge of a county court, in a county in which there is no statutory probate court, but in which there is a county court at law exercising original probate jurisdiction, if a personal representative petitions the county court to modify or reform the terms of a will, is authorized to, on the judge's own motion, or required to, on the motion of any party to the proceeding, transfer the proceeding to the county court at law, which is authorized to then hear the proceeding as if originally filed in the county court at law.

(g) Requires the county court to continue to exercise jurisdiction over the management of the estate, other than the modification or reformation proceeding, until final disposition of the modification or reformation proceeding is made in accordance with this subchapter (Judicial Modification or Reformation of Wills).

(h) Requires the statutory probate court judge assigned to hear the proceeding or the district court or county court at law to which the proceeding is transferred under this section, on resolution of the modification or reformation 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.

(i) Authorizes the clerk of a district court to which a modification or reformation proceeding is transferred under this section to perform in relation to the proceeding any function a county clerk is authorized to perform with respect to that type of matter.

SECTION 11. Amends Section 256.051(a), Estates Code, as follows:

(a) Authorizes certain parties, including an administrator designated as authorized under Section 254.006, to file an application with the court for an order admitting a will to probate, whether the will is:

(1) Creates this subdivision from existing Subdivision (2) and renumbers subsequent subdivisions accordingly. Deletes existing text authorizing certain parties to file an application with the court for an order admitting a will to probate, whether the will is written or unwritten.

(2)–(4) Makes no further changes to these subdivisions.

SECTION 12. Amends Section 256.052(a), Estates Code, to require that an application for the probate of a will state and aver certain information to the extent known to the applicant or can, with reasonable diligence, be ascertained by the applicant, including the last three numbers of each applicant's driver's license number and social security number, if the applicant has been issued one, rather than if applicable.

SECTION 13. Amends Section 256.053(b), Estates Code, as follows:

(b) Requires a certain will to remain in the custody of the county clerk unless removed from the clerk's custody:

(1) by a court order under Section 256.202, rather than by a court order; or

(2) by a court order issued under Subchapter C (Transfer of Probate Proceeding), Chapter 33, in which case the clerk is required to deliver the will directly to the clerk of the court to which the probate proceeding is transferred.

SECTION 14. Amends Section 256.202, Estates Code, to require an original will, if a court orders the original will to be removed to another place for inspection, 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 and to make nonsubstantive changes to this section.

SECTION 15. Amends Section 257.051(a), Estates Code, to make a conforming change to this subsection.

SECTION 16. Amends Chapter 257, Estates Code, by adding Subchapter D, as follows:

#### SUBCHAPTER D. SUBSEQUENT ESTATE ADMINISTRATION

Sec. 257.151. APPOINTMENT OF PERSONAL REPRESENTATIVE AND OPENING OF ADMINISTRATION AFTER WILL ADMITTED TO PROBATE AS MUNIMENT OF TITLE. Provides that a court order admitting a will to probate as a muniment of title under this chapter (Probate of Will as 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 under Chapter 301 (Application For Letters Testamentary or of Administration) is filed not later than the fourth anniversary of the testator's death or the administration of the testator's estate is necessary for a reason provided by Section 301.002(b) (relating to providing that this section (Period For Filing Application For Letters Testamentary or of Administration) does not apply if administration is necessary to achieve certain goals).

Sec. 257.152. COMPUTATION OF CERTAIN PERIODS. Provides 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, the periods prescribed by the following sections 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:

- (1) Section 306.001 (Granting of Letters Testamentary);
- (2) Section 306.002(a)(2)(B)(ii) (relating to requiring a court hearing a certain application, subject to a certain exception, to grant the administration of the decedent's estate with the will annexed if the decedent died leaving a will, but the executor named in the will fails to accept and qualify before the 21st day after the date the will is probated)
- (3) Section 308.002 (Required Notice to Certain Beneficiaries After Probate of Will); and
- (4) Section 308.004 (Affidavit or Certificate).

SECTION 17. Amends Section 301.051, Estates Code, as follows:

Sec. 301.051. ELIGIBLE APPLICANTS FOR LETTERS. Authorizes certain persons, including an administrator designated as authorized under Section 254.006, to file an application with the court for:

- (1) makes no changes to this subdivision;
- (1-a) the appointment of the designated administrator; or
- (2) the appointment of an administrator, if:
  - (A) there is a will, but:

(i) makes a nonsubstantive change to this subparagraph;

(ii) makes no changes to this subparagraph;

(iii) a person designated to serve as administrator under Section 254.006 is disqualified, refuses to serve, is dead, or resigns; or

(iv) an authorized person other than the executor has not designated any person to serve as administrator under Section 254.006 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; or

(B) makes no changes to this paragraph.

SECTION 18. Amends Section 301.052(a), Estates Code, to make nonsubstantive changes.

SECTION 19. Reenacts Section 301.151, Estates Code, as amended by Chapters 576 (H.B. 3160) and 949 (S.B. 995), Acts of the 84th Legislature, Regular Session, 2015, and amends it as follows:

Sec. 301.151. GENERAL PROOF REQUIREMENTS. Requires an applicant for the issuance of letters testamentary or of administration of an estate to prove to the court's satisfaction that:

(1) makes no changes to this subdivision;

(2) except as provided by Sections 301.002(b)(1) (relating to exempting a certain application from a certain filing deadline if administration of an estate is necessary to receive or recover property due a decedent's estate) and (2) (relating to exempting a certain application from a certain filing deadline if administration of an estate is necessary to prevent real property in a decedent's estate from becoming a danger to the health, safety, or welfare of the general public and the applicant for the issuance of letters testamentary or of administration is a home-rule municipality that is a creditor of the estate) with respect to administration necessary to receive or recover property or to prevent real property of the estate from becoming a danger, and Section 501.006 with respect to a foreign will, four years have not elapsed since the date of the decedent's death and before the application, rather than except as provided by Section 301.002(b) (relating to exempting a certain application from a certain filing deadline if administration of an estate is necessary to achieve certain goals) with respect to administration necessary to receive or recover property due a decedent's estate, and Section 501.006 (Ancillary Letters Testamentary) with respect to a foreign will, except as provided by Section 301.002(b)(2), four years have not elapsed since the date of the decedent's death and before the application; and

(3)–(5) makes no changes to these subdivisions.

SECTION 20. Amends Section 304.001(a), Estates Code, to require a court to grant letters testamentary or of administration to persons qualified to act in a certain order and includes the person designated as administrator as authorized under Section 254.006 in that list.

SECTION 21. Amends Section 309.056, Estates Code, by adding Subsection (e) to provide that any extension granted by a court of the period in which to file an inventory, appraisal, and list of claims prescribed by Section 309.051 (Inventory and Appraisal) is considered an

extension of the filing period for an affidavit under this section (Affidavit in Lieu of Inventory, Appraisal, and List of Claims).

SECTION 22. Amends Subchapter C, Chapter 351, Estates Code, by adding Section 351.106, as follows:

Sec. 351.106. DIGITAL ASSETS. 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:

(1) directs disclosure of the content of electronic communications of the decedent to the personal representative as provided by Section 2001.101 (Disclosure of Content of Electronic Communications of Deceased User) and that contains any court finding described by Section 2001.101(b)(3) (relating to requiring the personal representative, if requested by the custodian, to provide a certain finding by the court);

(2) 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 any court finding described by Section 2001.102(b)(4); or

(3) directs under Section 2001.231 (Custodian Compliance and Immunity) a custodian to comply with a request to disclose digital assets under Chapter 2001 (Texas Revised Uniform Fiduciary Access to Digital Assets Act).

SECTION 23. Amends Sections 351.152(a) and (b), Estates Code, as follows:

(a) Authorizes a personal representative to, without court approval, rather than authorizing a personal representative to, except as provided by Subsection (b) and subject only to the approval of the court in which the estate is being administered, convey or enter into a contract to convey for attorney services a contingent interest in any property sought to be recovered, not to exceed a one-third interest in the property.

(b) Requires the court to approve a contract or conveyance described by this subsection, rather than approve a contract entered into or conveyance made under this section, before an attorney performs any legal services. Provides that a contract entered into or a conveyance made in violation of this subsection is void unless the court ratifies or reforms the contract or documents relating to the conveyance to the extent necessary to make the contract or conveyance meet the requirements of this subsection, rather than providing that a contract entered into or a conveyance made in violation of this section is void unless the court ratifies or reforms the contract or documents relating to the conveyance to the extent necessary to make the contract or conveyance meet the requirements of this section.

SECTION 24. Amends the heading to Section 352.052, Estates Code, to read as follows:

Sec. 352.052. ALLOWANCE FOR DEFENSE OR SUCCESSFUL CONTEST OF WILL.

SECTION 25. Amends Section 352.052, Estates Code, by adding Subsection (c), as follows:

(c) Provides that, in this subsection, "interested person" does not include a creditor or any other having a claim against the estate. Provides that an interested person 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 may be allowed out of the estate the person's necessary expenses and disbursements in that proceeding, including reasonable attorney's fees.

SECTION 26. Amends Sections 355.102(b) and (c), Estates Code, as follows:

(b) Provides that Class 1 claims are composed of funeral expenses and expenses of the decedent's last illness, including claims for reimbursement of those expenses, for a reasonable amount approved by the court, not to exceed \$15,000 for funeral expenses and \$15,000 for expenses of the decedent's last illness, rather than providing that Class 1 claims are composed of funeral expenses and expenses of the decedent's last illness for a reasonable amount approved by the court, not to exceed \$15,000.

(c) Class 2 claims are composed of:

(1)–(3) creates these subdivisions from existing text and makes nonsubstantive changes to these subdivisions; and

(4) for an estate with respect to which a public probate administrator has taken any action under Chapter 455 (Public Probate Administrator), court costs and commissions to which the administrator is entitled under Subchapter A (Compensation of Personal Representatives), Chapter 352.

SECTION 27. Amends Section 355.103, Estates Code, to require a personal representative, when the personal representative has estate funds in the representative's possession, to pay in certain expenses in a certain order, including funeral expenses in an amount not to exceed \$15,000, rather than funeral expenses.

SECTION 28. Amends Sections 355.1551(a) and (b), Estates Code, as follows:

(a) Makes nonsubstantive changes to this subsection.

(b) Authorizes a court, if the claim holder fails to take possession or sell secured property within the time determined by the court under Subsection (a), on application by the personal representative, to require the sale of the property free of the lien and apply the proceeds to the payment of the whole debt in full satisfaction of the claim, rather than if the claim holder fails to take possession or sell secured property within a reasonable time under Subsection (a), on application by the personal representative, to require the sale of the property free of the lien and apply the proceeds to the payment of the whole debt.

SECTION 29. Amends Sections 356.105(a) and (b), Estates Code, to make nonsubstantive changes to these subsections.

SECTION 30. Amends Subchapters I and J, Chapter 356, Estates Code, as follows:

#### SUBCHAPTER I. New heading: SALE OF REAL ESTATE: PUBLIC AUCTION

Sec. 356.401. New heading: METHOD OF SALE; REQUIRED NOTICE. (a) Requires a public sale of real estate of an estate to be made at public auction. Requires the personal representative of an estate, except for a certain exception, to advertise a public auction, rather than sale, of real estate of the estate by a certain notice.

Sec. 356.402. New heading: COMPLETION OF AUCTION. Makes conforming changes to this section.

Sec. 356.403. New heading: TIME AND PLACE OF AUCTION. (a) Makes conforming and nonsubstantive changes to this section. Requires a public auction of real estate of an estate, except as provided by Subsection (c), to be held at:

(1) the courthouse door in the county in which the real estate is located, or if the real estate is located in more than one county, the courthouse door in any county in which the real estate is located, rather than the courthouse door in the county in which the proceedings are pending; or



(2) another place in a county described by Subdivision (1) at which auctions of real estate are specifically authorized to be held as designated by the commissioners court of the county under Section 51.002(a), Property Code, rather than another place in that county at which sales of real estate are specifically authorized to be made.

(b) Requires the auction, except as otherwise provided by this subsection, to occur at a certain time. Requires the auction, if first Tuesday of the month occurs on January 1 or July 4, to occur between 10 a.m. and 4 p.m. on the first Wednesday of the month.

(c) Authorizes the court, if the court considers it advisable, to order the auction to be held in the county in which the proceedings are pending, in which event notice is required to be published both in that county and in the county in which the real estate is located, rather than order the sale to be made in the county in which the real estate is located, in which event notice is required to be published both in that county and in the county in which the proceedings are pending.

Sec. 356.404. New heading: CONTINUANCE OF AUCTION. (a) and (b) Makes conforming changes to these subsections.

(c) Requires the continuance of an auction under this section to be shown in the report made to the court under Section 356.551 (Report), rather than requiring the continuance of a sale under this section to be shown in the report of the sale made to the court.

Sec. 356.405. FAILURE OF BIDDER TO COMPLY. Makes conforming changes to this section.

#### SUBCHAPTER J. New heading: SALE OF REAL ESTATE: CONTRACT FOR PRIVATE SALE

Sec. 356.451. New heading: TERMS OF SALE. Authorizes the personal representative of an estate to enter into a contract for the private sale of real estate of the estate, rather than requiring a private sale of real estate of the estate to be, made in the manner the court directs in the order of sale.

SECTION 31. Amends Section 356.502, Estates Code, as follows:

Sec. 356.502. PROCEDURE. Provides that the procedure for the sale of an easement or right-of-way authorized under Section 356.501 (Authorization) is the same as the procedure provided by law for a private sale of estate real property by contract, rather than for a sale of estate real property at private sale.

SECTION 32. Amends the heading to Subchapter L, Chapter 356, Estates Code, to read as follows:

#### SUBCHAPTER L. APPROVAL OF SALE OF REAL PROPERTY AND TRANSFER OF TITLE

SECTION 33. Amends Section 356.551, Estates Code, as follows:

Sec. 356.551. REPORT. Requires a successful bid or contract for the sale of estate real property to be reported to the court ordering the sale not later than the 30th day after the date the bid is made or the property is placed under contract, rather than requiring a sale of estate real property to be reported to the court ordering the sale not later than the 30th day after the date the sale is made. Requires the report to:

(1) makes no changes to this subdivision;

(2) include:

(A) makes no changes to this paragraph;

(B) makes a nonsubstantive change to this paragraph;

(C) the time and place of the auction or date the property is placed under contract, rather than the time and place of sale;

(D) makes no changes to this paragraph;

(E) the amount of the successful bid or the purchase price for each parcel of property or interest in property auctioned or placed under contract, rather than the amount for which each parcel of property or interest in property was sold;

(F) makes no changes to this paragraph;

(G) whether the proposed sale of the property was made at public auction or by contract, rather than whether the sale was made at public auction or privately; and

(H) makes no changes to this paragraph; and

(3) makes no changes to this subdivision.

SECTION 34. Amends Section 356.552, Estates Code, as follows:

Sec. 356.552. New heading: ACTION OF COURT ON REPORT. Makes conforming changes to this section.

SECTION 35. Amends Section 356.553, Estates Code, as follows:

Sec. 356.553. New heading: APPROVAL OF SALE WHEN BOND NOT REQUIRED. Authorizes a court, if the personal representative of an estate is not required by this title to give a general bond, to approve, rather than confirm, the sale of estate real property in a certain manner if the court finds that the sale is satisfactory and made in accordance with law.

SECTION 36. Amends Sections 356.554(a), (b), and (c), Estates Code, to make conforming changes.

SECTION 37. Amends Section 356.556, Estates Code, as follows:

Sec. 356.556. New heading: APPROVAL OR DISAPPROVAL ORDER. (a) Makes nonsubstantive and conforming changes to this subsection. Requires a court, if the court is satisfied that the proposed sale of real property, rather than satisfied that a sale, reported under Section 356.551 meets certain criteria, to enter certain orders.

(b) and (c) Makes conforming changes to these subsections.

SECTION 38. Amends Section 356.557, Estates Code, to make a conforming change.

SECTION 39. Amends Section 356.558(a), Estates Code, to make a conforming change.

SECTION 40. Amends Section 401.005, Estates Code, by adding Subsection (a-1), as follows:

(a-1) Authorizes a court, 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, to 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 one or more separate documents consenting to the application for probate of the decedent's will.

SECTION 41. Amends Subchapter A, Chapter 402, Estates Code, by adding Section 402.003, as follows:

Sec. 402.003. **DIGITAL ASSETS.** Authorizes a court, either at the time the independent executor of an estate is appointed or at any time before the administration of the estate is closed, to enter an order that:

(1) directs disclosure of the content of electronic communications of the decedent to the independent executor as provided by Section 2001.101 and that contains any court finding described by Section 2001.101(b)(3);

(2) 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 any court finding described by Section 2001.102(b)(4); or

(3) directs under Section 2001.231 a custodian to comply with a request to disclose digital assets under Chapter 2001.

SECTION 42. Amends Section 455.008(a), Estates Code, to authorize the public probate administrator, if gross assets of an estate do not exceed 20 percent, rather than do not exceed 10 percent, of the maximum amount authorized for a small estate affidavit under Section 205.001 (Entitlement to Estate Without Appointment of Personal Representative), to act without issuance of letters testamentary or of administration if the court approves a statement of administration containing certain statements.

SECTION 43. Amends Section 455.009, Estates Code, by adding Subsection (a-1), to authorize the public probate administrator to file a small estate affidavit in a certain manner after the public probate administrator has acted under Section 455.007 (Access to Information) or 455.008 (Small Estates).

SECTION 44. Amends Section 455.012, Estates Code, as follows:

Sec. 455.012. **DEPOSIT OF FUNDS IN COURT REGISTRY.** Requires the public probate administrator to deposit all funds coming into the custody of the administrator in the court registry, except as provided by Section 455.003, rather than in the county treasury. Requires funds deposited to be disbursed at the direction of the public probate administrator and according to an order issued by the statutory probate court judge who appointed the administrator, rather than be dispersed at the direction of the public probate administrator and according to the guidelines of the county treasurer or auditor.

SECTION 45. Amends Section 25.002201(b), Government Code, to require the chief justice of the supreme court of Texas (supreme court), if the judge who is the subject of an order of recusal or disqualification is the presiding judge of the statutory probate courts, to assign a statutory probate judge or a former or retired judge of a statutory probate court, rather than assign a regional presiding judge, a statutory probate judge, or a former or retired judge of a statutory probate court, to hear the case

SECTION 46. Amends Section 25.00255(a), Government Code, as follows:

(a) Provides that the presiding judge for the recusal and disqualification of a statutory probate court judge:

(1) has the authority and is required to perform the functions and duties of the presiding judge of the administrative judicial region under the rules, including the duty to hear or rule on a referred motion of recusal or disqualification or, subject

to Subdivisions (2) and (3), rather than subject to Subdivisions (2) and (3) and to Section 25.002201 (Assignment of Judge on Recusal or Disqualification), assign a judge to hear and rule on a referred motion of recusal or disqualification;

(2) and (3) makes nonsubstantive changes to these subdivisions; and

(4) is required, if the presiding judge is the subject of the motion of recusal or disqualification, to sign and file with the 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, subject to Subdivisions (2) and (3).

SECTION 47. Repealer: Section 114.002(b) (relating to providing that the terms "cancel" and "revoke" are synonymous in this chapter (Transfer on Death Deed)), Estates Code.

Repealer: Subchapter D (Forms For Transfer on Death Deed), Chapter 114, Estates Code.

SECTION 48. (a) Provides that Subchapter C, Chapter 111, Estates Code, as added by this Act, applies to an agreement, account, contract, or designation made or entered into before, on, or after the effective date of this Act, regardless of the date of the deceased party's death.

(b) Makes application of Sections 31.001 and 113.252(c), Estates Code, as amended by this Act, prospective.

(c) Provides that the repeal of Subchapter D, Chapter 114, Estates Code, by this Act 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 effective date of this Act.

(d) Makes application of Section 202.151, Estates Code, as amended by this Act, prospective.

(e) Makes application of Section 255.456, Estates Code, as added by this Act, prospective.

(f) Makes application of Sections 256.052(a), 256.053(b), and 257.051(a), Estates Code, as amended by this Act, and Section 401.005(a-1), Estates Code, as added by this Act, prospective.

(g) Makes application of Section 301.052(a), Estates Code, as amended by this Act, prospective.

(h) Provides that Sections 351.106 and 402.003, Estates Code, as added by this Act, apply only to the administration of a decedent's estate that is pending or commenced on or after the effective date of this Act.

(i) Makes application of Sections 351.152(a) and (b), Estates Code, as amended by this Act, prospective.

(j) Makes application of Sections 352.052(c) and 455.009(a-1), Estates Code, as added by this Act, and Subchapters I and J, Chapter 356, and Sections 255.152, 355.102(b) and (c), 355.103, 355.1551(a) and (b), 356.502, 356.551, 356.552, 356.553, 356.554(a), (b), and (c), 356.556, 356.557, 356.558(a), 455.008(a), and 455.012, Estates Code, as amended by this Act, prospective.

(k) Makes application of Section 25.00255(a), Government Code, as amended by this Act, prospective.

(l) Provides that the addition by this Act of Section 309.056(e), Estates Code, is intended to clarify rather than change existing law.

SECTION 49. Effective date: September 1, 2019.