

By: Wray

H.B. No. 2782

Substitute the following for H.B. No. 2782:

By: Smith

C.S.H.B. No. 2782

A BILL TO BE ENTITLED

1 AN ACT
2 relating to decedents' estates, transfer on death deeds, and
3 matters involving probate courts.

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

5 SECTION 1. Section 31.001, Estates Code, is amended to read
6 as follows:

7 Sec. 31.001. SCOPE OF "PROBATE PROCEEDING" FOR PURPOSES OF
8 CODE. The term "probate proceeding," as used in this code,
9 includes:

10 (1) the probate of a will, with or without
11 administration of the estate;

12 (2) the issuance of letters testamentary and of
13 administration;

14 (3) an heirship determination or small estate
15 affidavit, community property administration, and homestead and
16 family allowances;

17 (4) an application, petition, motion, or action
18 regarding the probate of a will or an estate administration,
19 including a claim for money owed by the decedent;

20 (5) a claim arising from an estate administration and
21 any action brought on the claim;

22 (6) the settling of a personal representative's
23 account of an estate and any other matter related to the settlement,
24 partition, or distribution of an estate; ~~and~~

1 (7) a will construction suit; and

2 (8) a will modification or reformation proceeding
3 under Subchapter J, Chapter 255.

4 SECTION 2. Chapter 111, Estates Code, is amended by adding
5 Subchapter C to read as follows:

6 SUBCHAPTER C. PROVISION OF CERTAIN INFORMATION ON DEATH

7 Sec. 111.101. DEFINITIONS. In this subchapter:

8 (1) "Contracting third party" has the meaning assigned
9 by Section 111.051.

10 (2) "Deceased party" means a deceased:

11 (A) party to a multiple-party account governed by
12 Chapter 113;

13 (B) owner of property subject to a possible
14 nontestamentary transfer as described by Section 111.051(1); or

15 (C) insured under an insurance contract.

16 Sec. 111.102. PROVISION OF INFORMATION TO PERSONAL
17 REPRESENTATIVE OF DECEASED PARTY. To the extent not prohibited by
18 federal or other state law, a contracting third party shall, on
19 request, provide to the personal representative of a deceased
20 party's estate all information the contracting third party would
21 have provided to the deceased party as of the date of the deceased
22 party's death, if the deceased party had requested the information,
23 without regard to whether the deceased party's estate has an
24 interest in the multiple-party account, the property subject to a
25 possible nontestamentary transfer, or the insurance contract.

26 SECTION 3. Section 113.252(c), Estates Code, is amended to
27 read as follows:

1 (c) Any proceeding by the personal representative of a
2 deceased party to assert liability under Subsection (b):

3 (1) may be commenced only if the personal
4 representative receives a written demand by a surviving spouse, a
5 creditor, or a person acting on behalf of a minor child of the
6 deceased party; and

7 (2) must be commenced on or before the second
8 anniversary of the death of the deceased party.

9 SECTION 4. Section 114.102, Estates Code, is amended to
10 read as follows:

11 Sec. 114.102. EFFECT OF SUBSEQUENT CONVEYANCE ON TRANSFER
12 ON DEATH DEED. An otherwise valid transfer on death deed is void as
13 to any interest in real property that is conveyed by the transferor
14 during the transferor's lifetime after the transfer on death deed
15 is executed and recorded if:

16 (1) a valid instrument conveying the interest or a
17 memorandum sufficient to give notice of the conveyance of the
18 interest is recorded in the deed records in the county clerk's
19 office of the same county in which the transfer on death deed is
20 recorded; and

21 (2) the recording of the instrument or memorandum
22 occurs before the transferor's death.

23 SECTION 5. Section 201.003(c), Estates Code, is amended to
24 read as follows:

25 (c) If the deceased spouse is survived by a child or other
26 descendant who is not also a child or other descendant of the
27 surviving spouse, the deceased spouse's undivided one-half

1 interest in the community estate [~~one-half of the community estate~~
2 ~~is retained by the surviving spouse and the other one-half~~] passes
3 to the deceased spouse's children or other descendants. The
4 descendants inherit only the portion of that estate to which they
5 would be entitled under Section 201.101. In every case, the
6 community estate passes charged with the debts against the
7 community estate.

8 SECTION 6. Section 202.151, Estates Code, is amended by
9 amending Subsection (b) and adding Subsection (c) to read as
10 follows:

11 (b) Except as provided by Subsection (c), [Testimony] in a
12 proceeding to declare heirship, testimony regarding a decedent's
13 heirs and family history must be taken from two disinterested and
14 credible witnesses in open court, by deposition in accordance with
15 Section 51.203, or in accordance with the Texas Rules of Civil
16 Procedure.

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

24 SECTION 7. The heading to Chapter 254, Estates Code, is
25 amended to read as follows:

1 CHAPTER 254. [~~VALIDITY OF~~] CERTAIN PROVISIONS IN, AND CONTRACTS

2 RELATING TO, WILLS

3 SECTION 8. Chapter 254, Estates Code, is amended by adding
4 Section 254.006 to read as follows:

5 Sec. 254.006. DESIGNATION OF ADMINISTRATOR. (a) A
6 testator may grant in a will to an executor named in the will or to
7 another person identified by name, office, or function the
8 authority to designate one or more persons to serve as
9 administrator of the testator's estate.

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

14 (c) Unless the will provides otherwise, a person designated
15 to serve as administrator of a testator's estate as provided by
16 Subsection (a) may serve only if:

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

18 (A) is deceased;

19 (B) is disqualified to serve as executor; or

20 (C) indicates by affidavit filed with the county
21 clerk of the county in which the application for letters
22 testamentary is filed or, if an application has not been filed, a
23 county described by Section 33.001(a)(1) or (2) the executor's
24 inability or unwillingness to serve as executor;

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

27 (3) the person is not disqualified from serving under

1 Section 304.003.

2 (d) Unless the will or designation provides otherwise, a
3 person designated as administrator of a testator's estate as
4 provided by this section has the same rights, powers, and duties as
5 an executor named in the will, including the right to serve as an
6 independent administrator with the power to sell property without
7 the need for consent of the distributees under Section 401.002 or
8 401.006.

9 SECTION 9. Section 255.152, Estates Code, is amended by
10 adding Subsection (d) to read as follows:

11 (d) Unless the will provides otherwise, Subsections (a),
12 (b), and (c) do not apply to a devise to a charitable trust, as
13 defined by Section 123.001, Property Code.

14 SECTION 10. Subchapter J, Chapter 255, Estates Code, is
15 amended by adding Section 255.456 to read as follows:

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

19 (b) In a county in which there is no statutory probate court
20 or county court at law exercising original probate jurisdiction, if
21 a personal representative petitions the county court to modify or
22 reform the terms of a will, the judge of the county court may, on the
23 judge's own motion, or shall, on the motion of any party to the
24 proceeding, according to the motion:

25 (1) request the assignment of a statutory probate
26 court judge to hear the proceeding, as provided by Section 25.0022,
27 Government Code; or

1 (2) transfer the proceeding to the district court,
2 which may then hear the proceeding as if originally filed in the
3 district court.

4 (c) A district court to which a proceeding is transferred
5 under Subsection (b) has the jurisdiction and authority granted to
6 a statutory probate court by Subtitle A.

7 (d) If a party to a modification or reformation proceeding
8 files a motion for the assignment of a statutory probate court judge
9 to hear the proceeding before the judge of the county court
10 transfers the proceeding to a district court under this section,
11 the county judge shall grant the motion for the assignment of a
12 statutory probate court judge and may not transfer the proceeding
13 to the district court unless the party withdraws the motion.

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

17 (f) In a county in which there is no statutory probate
18 court, but in which there is a county court at law exercising
19 original probate jurisdiction, if a personal representative
20 petitions the county court to modify or reform the terms of a will,
21 the judge of the county court may, on the judge's own motion, or
22 shall, on the motion of any party to the proceeding, transfer the
23 proceeding to the county court at law, which may then hear the
24 proceeding as if originally filed in the county court at law.

25 (g) The county court shall continue to exercise
26 jurisdiction over the management of the estate, other than the
27 modification or reformation proceeding, until final disposition of

1 the modification or reformation proceeding is made in accordance
2 with this subchapter.

3 (h) On resolution of the modification or reformation
4 proceeding, the statutory probate court judge assigned to hear the
5 proceeding or the district court or county court at law to which the
6 proceeding is transferred under this section shall return the
7 matter to the county court for further proceedings not inconsistent
8 with the orders of the statutory probate court, district court, or
9 county court at law, as applicable.

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

14 SECTION 11. Section 256.051(a), Estates Code, is amended to
15 read as follows:

16 (a) An executor named in a will, an administrator designated
17 as authorized under Section 254.006, an independent administrator
18 designated by all of the distributees of the decedent under Section
19 401.002(b), or an interested person may file an application with
20 the court for an order admitting a will to probate, whether the will
21 is:

- 22 (1) ~~[written or unwritten,~~
23 ~~[(2)]~~ in the applicant's possession or not;
24 (2) ~~[(3)]~~ lost;
25 (3) ~~[(4)]~~ destroyed; or
26 (4) ~~[(5)]~~ outside of this state.

27 SECTION 12. Section 256.052(a), Estates Code, is amended to

1 read as follows:

2 (a) An application for the probate of a will must state and
3 aver the following to the extent each is known to the applicant or
4 can, with reasonable diligence, be ascertained by the applicant:

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

6 (1-a) the last three numbers of each applicant's
7 driver's license number and social security number, if the
8 applicant has been issued one ~~[applicable]~~;

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

11 (2-a) the last three numbers of the testator's
12 driver's license number and social security number;

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

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

16 (5) that the testator owned property, including a
17 statement generally describing the property and the property's
18 probable value;

19 (6) the date of the will;

20 (7) the name, state of residence, and physical address
21 where service can be had of the executor named in the will or other
22 person to whom the applicant desires that letters be issued;

23 (8) the name of each subscribing witness to the will,
24 if any;

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

1 (10) whether a marriage of the testator was ever
2 dissolved after the will was made and, if so, when and from whom;

3 (11) whether the state, a governmental agency of the
4 state, or a charitable organization is named in the will as a
5 devisee; and

6 (12) that the executor named in the will, the
7 applicant, or another person to whom the applicant desires that
8 letters be issued is not disqualified by law from accepting the
9 letters.

10 SECTION 13. Section 256.053(b), Estates Code, is amended to
11 read as follows:

12 (b) A will filed under Subsection (a) must remain in the
13 custody of the county clerk unless removed from the clerk's
14 custody:

15 (1) by a court order under Section 256.202; or

16 (2) by a court order issued under Subchapter C,
17 Chapter 33, in which case the clerk shall deliver the will directly
18 to the clerk of the court to which the probate proceeding is
19 transferred.

20 SECTION 14. Section 256.202, Estates Code, is amended to
21 read as follows:

22 Sec. 256.202. CUSTODY OF PROBATED WILL. An original will
23 and the probate of the will shall be deposited in the office of the
24 county clerk of the county in which the will was probated. The will
25 and probate of the will shall remain in that office except during a
26 time the will and the probate of the will are removed for inspection
27 to another place on an order of the court where the will was

1 probated. If that court orders the original will to be removed to
2 another place for inspection:

3 (1) the person removing the will shall give a receipt
4 for the will; ~~and~~

5 (2) the court clerk shall make and retain a copy of the
6 will; and

7 (3) the will shall be delivered back to the office of
8 the county clerk of the county in which the will was probated after
9 the inspection is completed.

10 SECTION 15. Section 257.051(a), Estates Code, is amended to
11 read as follows:

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

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

17 (1-a) the last three numbers of each applicant's
18 driver's license number and social security number, if the
19 applicant has been issued one ~~[applicable]~~;

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

22 (2-a) the last three numbers of the testator's
23 driver's license number and social security number;

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

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

27 (5) that the testator owned property, including a

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

3 (6) the date of the will;

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

6 (8) the name of each subscribing witness to the will,
7 if any;

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

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

15 (11) whether a marriage of the testator was ever
16 dissolved after the will was made and, if so, when and from whom;
17 and

18 (12) whether the state, a governmental agency of the
19 state, or a charitable organization is named in the will as a
20 devisee.

21 SECTION 16. Chapter 257, Estates Code, is amended by adding
22 Subchapter D to read as follows:

23 SUBCHAPTER D. SUBSEQUENT ESTATE ADMINISTRATION

24 Sec. 257.151. APPOINTMENT OF PERSONAL REPRESENTATIVE AND
25 OPENING OF ADMINISTRATION AFTER WILL ADMITTED TO PROBATE AS
26 MUNIMENT OF TITLE. A court order admitting a will to probate as a
27 muniment of title under this chapter does not preclude the

1 subsequent appointment of a personal representative and opening of
2 an administration for the testator's estate if:

3 (1) an application under Chapter 301 is filed not
4 later than the fourth anniversary of the testator's death; or

5 (2) the administration of the testator's estate is
6 necessary for a reason provided by Section 301.002(b).

7 Sec. 257.152. COMPUTATION OF CERTAIN PERIODS. If a
8 personal representative is appointed for a testator's estate after
9 the testator's will has been admitted to probate as a muniment of
10 title, the periods prescribed by the following sections begin to
11 run from the date of qualification of the personal representative
12 rather than from the date the will is admitted to probate as a
13 muniment of title:

14 (1) Section 306.001;

15 (2) Section 306.002(a)(2)(B)(ii);

16 (3) Section 308.002; and

17 (4) Section 308.004.

18 SECTION 17. Section 301.051, Estates Code, is amended to
19 read as follows:

20 Sec. 301.051. ELIGIBLE APPLICANTS FOR LETTERS. An
21 executor named in a will, an administrator designated as authorized
22 under Section 254.006, an independent administrator designated by
23 all of the distributees of the decedent under Section 401.002(b) or
24 401.003, or an interested person may file an application with the
25 court for:

26 (1) the appointment of the executor named in the will;

27 (1-a) the appointment of the designated

1 administrator; or

2 (2) the appointment of an administrator, if:

3 (A) there is a will, but:

4 (i) no executor is named in the will; [~~or~~]

5 (ii) the executor named in the will is
6 disqualified, refuses to serve, is dead, or resigns;

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

10 (iv) an authorized person other than the
11 executor has not designated any person to serve as administrator
12 under Section 254.006 as of the date of the filing of the
13 application and the applicant notifies the court that the
14 authorized person has no intention of doing so; or

15 (B) there is no will.

16 SECTION 18. Section 301.052(a), Estates Code, is amended to
17 read as follows:

18 (a) An application for letters of administration when no
19 will is alleged to exist must state:

20 (1) the applicant's name, domicile, and, if any,
21 relationship to the decedent;

22 (1-a) the last three numbers of:

23 (A) the applicant's driver's license number, if
24 the applicant has been issued one [~~applicable~~]; and

25 (B) the applicant's social security number, if
26 the applicant has been issued one [~~applicable~~];

27 (2) the decedent's name and that the decedent died

1 intestate;

2 (2-a) if known by the applicant at the time the
3 applicant files the application, the last three numbers of the
4 decedent's driver's license number and social security number;

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

6 (4) facts necessary to show that the court with which
7 the application is filed has venue;

8 (5) whether the decedent owned property and, if so,
9 include a statement of the property's probable value;

10 (6) the name and address, if known, whether the heir is
11 an adult or minor, and the relationship to the decedent of each of
12 the decedent's heirs;

13 (7) if known by the applicant at the time the applicant
14 files the application, whether one or more children were born to or
15 adopted by the decedent and, if so, the name, birth date, and place
16 of birth of each child;

17 (8) if known by the applicant at the time the applicant
18 files the application, whether the decedent was ever divorced and,
19 if so, when and from whom;

20 (9) that a necessity exists for administration of the
21 decedent's estate and an allegation of the facts that show that
22 necessity; and

23 (10) that the applicant is not disqualified by law
24 from acting as administrator.

25 SECTION 19. Section [301.151](#), Estates Code, as amended by
26 Chapters 576 (H.B. 3160) and 949 (S.B. 995), Acts of the 84th
27 Legislature, Regular Session, 2015, is reenacted and amended to

1 read as follows:

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

5 (1) the person whose estate is the subject of the
6 application is dead;

7 (2) except as provided by Sections 301.002(b)(1) and
8 (2) [Section 301.002(b)] with respect to administration necessary
9 to receive or recover property or to prevent real property of the
10 estate from becoming a danger [due a decedent's estate], and
11 Section 501.006 with respect to a foreign will, [~~except as provided~~
12 ~~by Section 301.002(b)(2),~~] four years have not elapsed since the
13 date of the decedent's death and before the application;

14 (3) the court has jurisdiction and venue over the
15 estate;

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

18 (5) the person for whom letters testamentary or of
19 administration are sought is entitled by law to the letters and is
20 not disqualified.

21 SECTION 20. Section 304.001(a), Estates Code, is amended to
22 read as follows:

23 (a) The court shall grant letters testamentary or of
24 administration to persons qualified to act, in the following order:

25 (1) the person named as executor in the decedent's
26 will;

27 (1-a) the person designated as administrator as

1 authorized under Section 254.006;

2 (2) the decedent's surviving spouse;

3 (3) the principal devisee of the decedent;

4 (4) any devisee of the decedent;

5 (5) the next of kin of the decedent;

6 (6) a creditor of the decedent;

7 (7) any person of good character residing in the
8 county who applies for the letters;

9 (8) any other person who is not disqualified under
10 Section 304.003; and

11 (9) any appointed public probate administrator.

12 SECTION 21. Section 309.056, Estates Code, is amended by
13 adding Subsection (e) to read as follows:

14 (e) Any extension granted by a court of the period in which
15 to file an inventory, appraisement, and list of claims prescribed
16 by Section 309.051 is considered an extension of the filing period
17 for an affidavit under this section.

18 SECTION 22. Subchapter C, Chapter 351, Estates Code, is
19 amended by adding Section 351.106 to read as follows:

20 Sec. 351.106. DIGITAL ASSETS. A personal representative
21 of a decedent's estate may apply for and obtain a court order,
22 either at the time the personal representative is appointed or at
23 any time before the administration of the estate is closed, that:

24 (1) directs disclosure of the content of electronic
25 communications of the decedent to the personal representative as
26 provided by Section 2001.101 and that contains any court finding
27 described by Section 2001.101(b)(3);

1 (2) with respect to a catalog of electronic
2 communications sent or received by the decedent and other digital
3 assets of the decedent, other than the content of an electronic
4 communication, contains any court finding described by Section
5 2001.102(b)(4); or

6 (3) directs under Section 2001.231 a custodian to
7 comply with a request to disclose digital assets under Chapter
8 2001.

9 SECTION 23. Sections 351.152(a) and (b), Estates Code, are
10 amended to read as follows:

11 (a) A [~~Except as provided by Subsection (b) and subject only~~
12 ~~to the approval of the court in which the estate is being~~
13 ~~administered, a] personal representative may, without court
14 approval, convey or enter into a contract to convey for attorney
15 services a contingent interest in any property sought to be
16 recovered, not to exceed a one-third interest in the property.~~

17 (b) A personal representative, including an independent
18 executor or independent administrator, may convey or enter into a
19 contract to convey for attorney services a contingent interest in
20 any property sought to be recovered under this subchapter in an
21 amount that exceeds a one-third interest in the property only on the
22 approval of the court in which the estate is being administered.
23 The court must approve a contract [~~entered into~~] or conveyance
24 described by [~~made under~~] this subsection [~~section~~] before an
25 attorney performs any legal services. A contract entered into or a
26 conveyance made in violation of this subsection [~~section~~] is void
27 unless the court ratifies or reforms the contract or documents

1 relating to the conveyance to the extent necessary to make the
2 contract or conveyance meet the requirements of this subsection
3 [~~section~~].

4 SECTION 24. The heading to Section 352.052, Estates Code,
5 is amended to read as follows:

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

8 SECTION 25. Section 352.052, Estates Code, is amended by
9 adding Subsection (c) to read as follows:

10 (c) In this subsection, "interested person" does not
11 include a creditor or any other having a claim against the estate.
12 An interested person who, in good faith and with just cause,
13 successfully prosecutes a proceeding to contest the validity of a
14 will or alleged will offered for or admitted to probate may be
15 allowed out of the estate the person's necessary expenses and
16 disbursements in that proceeding, including reasonable attorney's
17 fees.

18 SECTION 26. Sections 355.102(b) and (c), Estates Code, are
19 amended to read as follows:

20 (b) Class 1 claims are composed of funeral expenses and
21 expenses of the decedent's last illness, including claims for
22 reimbursement of those expenses, for a reasonable amount approved
23 by the court, not to exceed [~~a total of~~] \$15,000 for funeral
24 expenses and \$15,000 for expenses of the decedent's last
25 illness. Any excess shall be classified and paid as other
26 unsecured claims.

27 (c) Class 2 claims are composed of:

- 1 (1) expenses of administration;
- 2 (2) [~~7~~] expenses incurred in preserving, safekeeping,
3 and managing the estate, including fees and expenses awarded under
4 Section [352.052](#);
- 5 (3) [~~7~~ and] unpaid expenses of administration awarded
6 in a guardianship of the decedent; and
- 7 (4) for an estate with respect to which a public
8 probate administrator has taken any action under Chapter [455](#), court
9 costs and commissions to which the administrator is entitled under
10 Subchapter A, Chapter [352](#).

11 SECTION 27. Section [355.103](#), Estates Code, is amended to
12 read as follows:

13 Sec. 355.103. PRIORITY OF CERTAIN PAYMENTS. When a
14 personal representative has estate funds in the representative's
15 possession, the representative shall pay in the following order:

- 16 (1) funeral expenses in an amount not to exceed
17 \$15,000 and expenses of the decedent's last illness[~~7~~] in an amount
18 not to exceed \$15,000;
- 19 (2) allowances made to the decedent's surviving spouse
20 and children, or to either the surviving spouse or children;
- 21 (3) expenses of administration and expenses incurred
22 in preserving, safekeeping, and managing the estate; and
- 23 (4) other claims against the estate in the order of the
24 claims' classifications.

25 SECTION 28. Sections [355.1551](#)(a) and (b), Estates Code, are
26 amended to read as follows:

- 27 (a) A [~~claim~~] holder of a claim allowed and approved under

1 Section 355.151(a)(2) who elects to take possession or sell the
2 property securing the debt before final maturity in satisfaction of
3 the [~~claim~~] holder's claim must do so within a reasonable time, as
4 determined by the court.

5 (b) If the claim holder fails to take possession or sell
6 secured property within the [~~a reasonable~~] time determined by the
7 court under Subsection (a), on application by the personal
8 representative, the court may require the sale of the property free
9 of the lien and apply the proceeds to the payment of the whole debt
10 in full satisfaction of the claim.

11 SECTION 29. Sections 356.105(a) and (b), Estates Code, are
12 amended to read as follows:

13 (a) A sale of estate personal property shall be reported to
14 the court. The laws regulating the approval [~~confirmation~~] or
15 disapproval of a sale of real estate apply to the sale, except that
16 a conveyance is not required.

17 (b) The court's order approving [~~confirming~~] the sale of
18 estate personal property:

19 (1) vests the right and title of the intestate's estate
20 in the purchaser who has complied with the terms of the sale; and

21 (2) is prima facie evidence that all requirements of
22 the law in making the sale have been met.

23 SECTION 30. Subchapters I and J, Chapter 356, Estates Code,
24 are amended to read as follows:

25 SUBCHAPTER I. SALE OF REAL ESTATE: PUBLIC AUCTION [~~SALE~~]

26 Sec. 356.401. METHOD OF SALE; REQUIRED NOTICE. (a) A
27 public sale of real estate of an estate shall be made at public

1 auction. Except as otherwise provided by Section 356.403(c), the
2 personal representative of an estate shall advertise a public
3 auction [~~sale~~] of real estate of the estate by a notice published in
4 the county in which the estate is pending, as provided by this title
5 for publication of notices or citations. The notice must:

- 6 (1) include a reference to the order of sale;
- 7 (2) include the time, place, and required terms of
8 sale; and
- 9 (3) briefly describe the real estate to be sold.

10 (b) The notice required by Subsection (a) is not required to
11 contain field notes, but if the real estate to be sold is rural
12 property, the notice must include:

- 13 (1) the name of the original survey of the real estate;
- 14 (2) the number of acres comprising the real estate;
- 15 (3) the location of the real estate in the county; and
- 16 (4) any name by which the real estate is generally
17 known.

18 Sec. 356.402. COMPLETION [~~METHOD~~] OF AUCTION [~~SALE~~]. A
19 public auction [~~sale~~] of real estate of an estate shall be completed
20 on the bid of [~~made at public auction to~~] the highest bidder.

21 Sec. 356.403. TIME AND PLACE OF AUCTION [~~SALE~~]. (a) Except
22 as provided by Subsection (c), a public auction [~~sale~~] of real
23 estate of an estate shall be held [~~made~~] at:

- 24 (1) the courthouse door in the county in which the real
25 estate is located, or if the real estate is located in more than one
26 county, the courthouse door in any county in which the real estate
27 is located [~~proceedings are pending~~]; or

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

6 (b) Except as otherwise provided by this subsection, the
7 auction ~~[The sale]~~ must occur between 10 a.m. and 4 p.m. on the
8 first Tuesday of the month after publication of notice has been
9 completed. If the first Tuesday of the month occurs on January 1 or
10 July 4, the auction must occur between 10 a.m. and 4 p.m. on the
11 first Wednesday of the month.

12 (c) If the court considers it advisable, the court may order
13 the auction ~~[sale]~~ to be held ~~[made]~~ in the county in which the
14 proceedings are pending ~~[real estate is located]~~, in which event
15 notice shall be published both in that county and in the county in
16 which the real estate is located ~~[proceedings are pending]~~.

17 Sec. 356.404. CONTINUANCE OF AUCTION ~~[SALE]~~. (a) A public
18 auction ~~[sale]~~ of real estate of an estate that is not completed on
19 the day advertised may be continued from day to day by an oral
20 public announcement of the continuance made at the conclusion of
21 the auction ~~[sale]~~ each day.

22 (b) A continued auction ~~[sale]~~ must occur within the hours
23 prescribed by Section 356.403(b).

24 (c) The continuance of an auction ~~[a sale]~~ under this
25 section shall be shown in the report ~~[of the sale]~~ made to the court
26 under Section 356.551.

27 Sec. 356.405. FAILURE OF BIDDER TO COMPLY. (a) If a person

1 bids off real estate of the estate offered [~~for sale~~] at public
2 auction and fails to comply with the terms of the bid [~~sale~~], the
3 property shall be readvertised and auctioned [~~sold~~] without any
4 further order.

5 (b) The person defaulting on a bid as described by
6 Subsection (a) is liable for payment to the personal representative
7 of the estate, for the estate's benefit, of:

8 (1) 10 percent of the amount of the bid; and

9 (2) the amount of any deficiency in price on the second
10 auction [~~sale~~].

11 (c) The personal representative may recover the amounts
12 under Subsection (b) by suit in any court in the county in which the
13 auction [~~sale~~] was made that has jurisdiction of the amount
14 claimed.

15 SUBCHAPTER J. SALE OF REAL ESTATE: CONTRACT FOR PRIVATE SALE

16 Sec. 356.451. TERMS OF [~~MANNER OF~~] SALE. The personal
17 representative of an estate may enter into a contract for the [~~A~~]
18 private sale of real estate of the estate [~~shall be~~] made in the
19 manner the court directs in the order of sale. Unless the court
20 directs otherwise, additional advertising, notice, or citation
21 concerning the sale is not required.

22 SECTION 31. Section 356.502, Estates Code, is amended to
23 read as follows:

24 Sec. 356.502. PROCEDURE. The procedure for the sale of an
25 easement or right-of-way authorized under Section 356.501 is the
26 same as the procedure provided by law for a private sale of estate
27 real property by contract [~~at private sale~~].

1 SECTION 32. The heading to Subchapter L, Chapter 356,
2 Estates Code, is amended to read as follows:

3 SUBCHAPTER L. APPROVAL [~~CONFIRMATION~~] OF SALE OF REAL PROPERTY AND
4 TRANSFER OF TITLE

5 SECTION 33. Section 356.551, Estates Code, is amended to
6 read as follows:

7 Sec. 356.551. REPORT. A successful bid or contract for the
8 sale of estate real property shall be reported to the court ordering
9 the sale not later than the 30th day after the date the bid [~~sale~~] is
10 made or the property is placed under contract. The report must:

- 11 (1) be sworn to, in writing, and filed with the clerk;
- 12 (2) include:
 - 13 (A) the date of the order of sale;
 - 14 (B) a description of the property being sold;
 - 15 (C) the time and place of the auction or date the
16 property is placed under contract [~~sale~~];
 - 17 (D) the purchaser's name;
 - 18 (E) the amount of the successful bid or the
19 purchase price for [~~which~~] each parcel of property or interest in
20 property auctioned or placed under contract [~~was sold~~];
 - 21 (F) the terms of the sale;
 - 22 (G) whether the proposed sale of the property was
23 made at public auction or by contract [~~privately~~]; and
 - 24 (H) whether the purchaser is ready to comply with
25 the order of sale; and
- 26 (3) be noted on the probate docket.

27 SECTION 34. Section 356.552, Estates Code, is amended to

1 read as follows:

2 Sec. 356.552. ACTION OF COURT ON REPORT [~~OF SALE~~]. After
3 the expiration of five days from the date a report [~~of sale~~] is
4 filed under Section 356.551, the court shall:

5 (1) inquire into the manner in which the auction or
6 contract described in the report [~~sale~~] was made;

7 (2) hear evidence in support of or against the report;
8 and

9 (3) determine the sufficiency or insufficiency of the
10 personal representative's general bond, if any has been required
11 and given.

12 SECTION 35. Section 356.553, Estates Code, is amended to
13 read as follows:

14 Sec. 356.553. APPROVAL [~~CONFIRMATION~~] OF SALE WHEN BOND NOT
15 REQUIRED. If the personal representative of an estate is not
16 required by this title to give a general bond, the court may approve
17 [~~confirm~~] the sale of estate real property in the manner provided by
18 Section 356.556(a) if the court finds that the sale is satisfactory
19 and made in accordance with law.

20 SECTION 36. Sections 356.554(a), (b), and (c), Estates
21 Code, are amended to read as follows:

22 (a) If the personal representative of an estate is required
23 by this title to give a general bond, before the court approves
24 [~~confirms~~] any sale of real estate, the court shall determine
25 whether the bond is sufficient to protect the estate after the sale
26 proceeds are received.

27 (b) If the court finds that the general bond is sufficient,

1 the court may approve [~~confirm~~] the sale as provided by Section
2 356.556(a).

3 (c) If the court finds that the general bond is
4 insufficient, the court may not approve [~~confirm~~] the sale until
5 the general bond is increased to the amount required by the court,
6 or an additional bond is given, and approved by the court.

7 SECTION 37. Section 356.556, Estates Code, is amended to
8 read as follows:

9 Sec. 356.556. APPROVAL [~~CONFIRMATION~~] OR DISAPPROVAL
10 ORDER. (a) If the court is satisfied that the proposed sale of real
11 property [~~a sale~~] reported under Section 356.551 is [~~was~~] for a fair
12 price, properly made, and in conformity with law, and the court has
13 approved any increased or additional bond that the court found
14 necessary to protect the estate, the court shall enter an order:

- 15 (1) approving [~~confirming~~] the sale;
16 (2) showing conformity with this chapter;
17 (3) detailing the terms of the sale; and
18 (4) authorizing the personal representative to convey
19 the property on the purchaser's compliance with the terms of the
20 sale.

21 (b) If the court is not satisfied that the proposed sale of
22 real property is [~~sale was~~] for a fair price, properly made, and in
23 conformity with law, the court shall enter an order setting aside
24 the bid or contract [~~sale~~] and ordering a new sale to be made, if
25 necessary.

26 (c) The court's action in approving [~~confirming~~] or
27 disapproving a report under Section 356.551 [~~of a sale~~] has the

1 effect of a final judgment. Any person interested in the estate or
2 in the sale is entitled to have an order entered under this section
3 reviewed as in other final judgments in probate proceedings.

4 SECTION 38. Section 356.557, Estates Code, is amended to
5 read as follows:

6 Sec. 356.557. DEED. Real estate of an estate that is sold
7 shall be conveyed by a proper deed that refers to and identifies the
8 court order approving [~~confirming~~] the sale. The deed:

9 (1) vests in the purchaser all right and title of the
10 estate to, and all interest of the estate in, the property; and

11 (2) is prima facie evidence that the sale has met all
12 applicable requirements of the law.

13 SECTION 39. Section 356.558(a), Estates Code, is amended to
14 read as follows:

15 (a) After the court has approved [~~confirmed~~] a sale and the
16 purchaser has complied with the terms of the sale, the personal
17 representative of the estate shall promptly execute and deliver to
18 the purchaser a proper deed conveying the property.

19 SECTION 40. Section 401.005, Estates Code, is amended by
20 adding Subsection (a-1) to read as follows:

21 (a-1) If a decedent's will does not contain language
22 directing that no bond or security be required of a person named as
23 executor, unless the court finds that it would not be in the best
24 interest of the estate, the court may waive the requirement of a
25 bond if all of the distributees of the decedent agree to the waiver
26 of bond in:

27 (1) the application for probate of the decedent's

1 will; or

2 (2) one or more separate documents consenting to the
3 application for probate of the decedent's will.

4 SECTION 41. Subchapter A, Chapter 402, Estates Code, is
5 amended by adding Section 402.003 to read as follows:

6 Sec. 402.003. DIGITAL ASSETS. The court, either at the time
7 the independent executor of an estate is appointed or at any time
8 before the administration of the estate is closed, may enter an
9 order that:

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

14 (2) with respect to a catalog of electronic
15 communications sent or received by the decedent and other digital
16 assets of the decedent, other than the content of an electronic
17 communication, contains any court finding described by Section
18 2001.102(b)(4); or

19 (3) directs under Section 2001.231 a custodian to
20 comply with a request to disclose digital assets under Chapter
21 2001.

22 SECTION 42. Subchapter B, Chapter 403, Estates Code, is
23 amended by adding Section 403.05851 to read as follows:

24 Sec. 403.05851. OTHER CLAIM PROCEDURES APPLY TO MEDICAID
25 ESTATE RECOVERY PROGRAM CLAIM. The procedural provisions of this
26 title governing creditor claims in supervised administrations
27 apply to a claim of the Medicaid estate recovery program under

1 Section 531.077, Government Code, in an independent
2 administration.

3 SECTION 43. Section 455.008(a), Estates Code, is amended to
4 read as follows:

5 (a) If gross assets of an estate do not exceed 20 [~~10~~]
6 percent of the maximum amount authorized for a small estate
7 affidavit under Section 205.001, the public probate administrator
8 may act without issuance of letters testamentary or of
9 administration if the court approves a statement of administration
10 stating:

- 11 (1) the name and domicile of the decedent;
12 (2) the date and place of death of the decedent; and
13 (3) the name, address, and relationship of each known
14 heir or devisee of the decedent.

15 SECTION 44. Section 455.009, Estates Code, is amended by
16 adding Subsection (a-1) to read as follows:

17 (a-1) The public probate administrator may file the
18 affidavit as provided by Subsection (a) after the public probate
19 administrator has acted under Section 455.007 or 455.008.

20 SECTION 45. Section 455.012, Estates Code, is amended to
21 read as follows:

22 Sec. 455.012. DEPOSIT OF FUNDS IN COURT REGISTRY [~~INTO THE~~
23 ~~COUNTY TREASURY~~]. The public probate administrator shall deposit
24 all funds coming into the custody of the administrator in the court
25 registry, except as provided by Section 455.003 [~~county treasury~~].
26 Funds deposited must be disbursed [~~dispersed~~] at the direction of
27 the public probate administrator and according to an order issued

1 by the statutory probate court judge who appointed the
2 administrator [~~the guidelines of the county treasurer or auditor~~].

3 SECTION 46. Section 25.002201(b), Government Code, is
4 amended to read as follows:

5 (b) If the judge who is the subject of an order of recusal or
6 disqualification is the presiding judge of the statutory probate
7 courts, the chief justice of the supreme court shall assign [~~a~~
8 ~~regional presiding judge,~~] a statutory probate judge[~~7~~] or a former
9 or retired judge of a statutory probate court to hear the case.

10 SECTION 47. Section 25.00255(a), Government Code, is
11 amended to read as follows:

12 (a) Notwithstanding any conflicting provision in the Texas
13 Rules of Civil Procedure, Rules 18a and 18b, Texas Rules of Civil
14 Procedure, apply to the recusal and disqualification of a statutory
15 probate court judge except as otherwise provided by this section or
16 another provision of this subchapter. The presiding judge:

17 (1) has the authority and shall perform the functions
18 and duties of the presiding judge of the administrative judicial
19 region under the rules, including the duty to hear or rule on a
20 referred motion of recusal or disqualification or, subject to
21 Subdivisions (2) and (3) [~~and to Section 25.002201~~], assign a judge
22 to hear and rule on a referred motion of recusal or
23 disqualification;

24 (2) may assign a presiding judge of the administrative
25 judicial region to hear and rule on a referred motion of recusal or
26 disqualification only with the consent of the presiding judge of
27 the administrative judicial region; [~~and~~]

1 (3) may not assign a judge of a statutory probate court
2 located in the same county as the statutory probate court served by
3 the judge who is the subject of the motion of recusal or
4 disqualification; and

5 (4) if the presiding judge is the subject of the motion
6 of recusal or disqualification, shall sign and file with the clerk
7 an order referring the motion to the chief justice of the supreme
8 court for assignment of a presiding judge of an administrative
9 judicial region, a statutory probate court judge, or a former or
10 retired judge of a statutory probate court to hear and rule on the
11 motion, subject to Subdivisions (2) and (3).

12 SECTION 48. The following provisions of the Estates Code
13 are repealed:

14 (1) Section 114.002(b); and

15 (2) Subchapter D, Chapter 114.

16 SECTION 49. (a) Subchapter C, Chapter 111, Estates Code, as
17 added by this Act, applies to an agreement, account, contract, or
18 designation made or entered into before, on, or after the effective
19 date of this Act, regardless of the date of the deceased party's
20 death.

21 (b) Sections 31.001 and 113.252(c), Estates Code, as
22 amended by this Act, apply to a proceeding commenced on or after the
23 effective date of this Act. A proceeding commenced before the
24 effective date of this Act is governed by the law in effect on the
25 date the proceeding was commenced, and the former law is continued
26 in effect for that purpose.

27 (c) The repeal of Subchapter D, Chapter 114, Estates Code,

1 by this Act does not affect the validity of a transfer on death deed
2 or a cancellation of a transfer on death deed executed before, on,
3 or after the effective date of this Act.

4 (d) Section 202.151, Estates Code, as amended by this Act,
5 applies only to a proceeding to declare heirship commenced on or
6 after the effective date of this Act. A proceeding to declare
7 heirship commenced before that date is governed by the law in effect
8 on the date the proceeding was commenced, and the former law is
9 continued in effect for that purpose.

10 (e) Section 255.456, Estates Code, as added by this Act,
11 applies only to a petition filed on or after the effective date of
12 this Act. A petition filed before the effective date of this Act is
13 governed by the law in effect on the date the petition was filed,
14 and the former law is continued in effect for that purpose.

15 (f) Sections 256.052(a), 256.053(b), and 257.051(a),
16 Estates Code, as amended by this Act, and Section 401.005(a-1),
17 Estates Code, as added by this Act, apply only to an application for
18 the probate of a will filed on or after the effective date of this
19 Act. An application for the probate of a will filed before that
20 date is governed by the law in effect on the date the application
21 was filed, and the former law is continued in effect for that
22 purpose.

23 (g) Section 301.052(a), Estates Code, as amended by this
24 Act, applies only to an application for letters of administration
25 filed on or after the effective date of this Act. An application
26 for letters of administration filed before the effective date of
27 this Act is governed by the law in effect on the date the

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

3 (h) Sections 309.056(e), 351.106, and 402.003, Estates
4 Code, as added by this Act, apply only to the administration of a
5 decedent's estate that is pending or commenced on or after the
6 effective date of this Act.

7 (i) Sections 351.152(a) and (b), Estates Code, as amended by
8 this Act, apply only to a contract entered into or a conveyance made
9 on or after the effective date of this Act. A contract entered into
10 or a conveyance made before the effective date of this Act is
11 governed by the law in effect on the date the contract was entered
12 into or the conveyance was made, and the former law is continued in
13 effect for that purpose.

14 (j) Sections 352.052(c), 403.05851, and 455.009(a-1),
15 Estates Code, as added by this Act, and Subchapters I and J, Chapter
16 356, and Sections 255.152, 355.102(b) and (c), 355.103, 355.1551(a)
17 and (b), 356.502, 356.551, 356.552, 356.553, 356.554(a), (b), and
18 (c), 356.556, 356.557, 356.558(a), 455.008(a), and 455.012,
19 Estates Code, as amended by this Act, apply only to the estate of a
20 decedent who dies on or after the effective date of this Act. The
21 estate of a decedent who dies before the effective date of this Act
22 is governed by the law in effect on the date of the decedent's
23 death, and the former law is continued in effect for that purpose.

24 (k) Section 25.00255(a), Government Code, as amended by
25 this Act, applies only to a motion of recusal or disqualification
26 made on or after the effective date of this Act. A motion of recusal
27 or disqualification made before the effective date of this Act is

C.S.H.B. No. 2782

1 governed by the law in effect on the date the motion was made, and
2 the former law is continued in effect for that purpose.

3 SECTION 50. This Act takes effect September 1, 2019.