

House Bill 2782
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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

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

- (1) the probate of a will, with or without administration of the estate;
- (2) the issuance of letters testamentary and of administration;
- (3) an heirship determination or small estate affidavit, community property administration, and homestead and family allowances;
- (4) an application, petition, motion, or action regarding the probate of a will or an estate administration, including a claim for money owed by the decedent;
- (5) a claim arising from an estate administration and any action brought on the claim;
- (6) the settling of a personal representative's account of an estate and any other matter related to the settlement, partition, or distribution of an estate; ~~and~~
- (7) a will construction suit; and
- (8) a will modification or reformation proceeding under Subchapter J, Chapter 255.

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

SUBCHAPTER C. PROVISION OF CERTAIN INFORMATION ON DEATH

Sec. 111.101. DEFINITIONS. In this subchapter:

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

SENATE VERSION (CS)

SECTION 1. Same as House version.

SECTION 2. Same as House version.

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(2) "Deceased party" means a deceased:

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

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

(C) insured under an insurance contract.

Sec. 111.102. PROVISION OF INFORMATION TO PERSONAL REPRESENTATIVE OF DECEASED PARTY. To the extent not prohibited by federal or other state law, a contracting third party shall, 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. Section 113.252(c), Estates Code, is amended to read as follows:

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

(1) may 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

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

SECTION 3. Same as House version.

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

Sec. 114.102. EFFECT OF SUBSEQUENT CONVEYANCE ON TRANSFER ON DEATH DEED. An otherwise valid transfer on death deed is void as to a subsequent grantee of an ~~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 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 occurs before the transferor's death.

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

(c) 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 ~~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. The descendants inherit only the portion of that estate to which they would be entitled under Section 201.101. In every case, the community estate passes charged with the debts against the community estate.

SENATE VERSION (CS)

SECTION 4. Same as House version.

SECTION 5. Same as House version.

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

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

(c) 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, the testimony of that witness must 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. The heading to Chapter 254, Estates Code, is amended to read as follows:

CHAPTER 254. ~~[VALIDITY—OF]~~ CERTAIN PROVISIONS IN, AND CONTRACTS RELATING TO, WILLS

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

Sec. 254.006. DESIGNATION OF ADMINISTRATOR.

(a) A testator may 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.

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SECTION 6. Same as House version.

SECTION 7. Same as House version.

SECTION 8. Same as House version.

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

(c) Unless the will provides otherwise, a person designated to serve as administrator of a testator's estate as provided by Subsection (a) may 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) or (2) 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.

(d) 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 or 401.006.

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

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SECTION 9. Same as House version.

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

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

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

(b) 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, the judge of the county court may, on the judge's own motion, or shall, 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, Government Code; or

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

(c) 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.

(d) 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, the county judge shall grant the motion for the assignment of a statutory probate court judge and may not

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transfer the proceeding to the district court unless the party withdraws the motion.

(e) 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) 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, the judge of the county court may, on the judge's own motion, or shall, on the motion of any party to the proceeding, 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.

(g) The county court shall 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.

(h) On resolution of the modification or reformation proceeding, 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 shall 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) The clerk of a district court to which a modification or reformation proceeding is transferred under this section may perform in relation to the proceeding any function a county clerk may perform with respect to that type of matter.

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

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

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

SECTION 12. Section 256.052(a), Estates Code, is amended to read as follows:

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

- (1) each applicant's name and domicile;
- (1-a) the last three numbers of each applicant's driver's license number and social security number, if the applicant has been issued one [~~applicable~~];
- (2) the testator's name, domicile, and, if known, age, on the date of the testator's death;
- (2-a) the last three numbers of the testator's driver's license number and social security number;
- (3) the fact, date, and place of the testator's death;
- (4) facts showing that the court with which the application is filed has venue;

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SECTION 11. Same as House version.

SECTION 12. Same as House version.

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- (5) that the testator owned property, including a statement generally describing the property and the property's probable value;
- (6) the date of the will;
- (7) the name, state of residence, and physical address where service can be had of the executor named in the will or other person to whom the applicant desires that letters be issued;
- (8) the name of each subscribing witness to the will, if any;
- (9) whether one or more children born to or adopted by the testator after the testator executed the will survived the testator and, if so, the name of each of those children;
- (10) whether a marriage of the testator was ever dissolved after the will was made and, if so, when and from whom;
- (11) whether the state, a governmental agency of the state, or a charitable organization is named in the will as a devisee; and
- (12) that the executor named in the will, the applicant, or another person to whom the applicant desires that letters be issued is not disqualified by law from accepting the letters.

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

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

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

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

SENATE VERSION (CS)

SECTION 13. Same as House version.

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

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

- (1) the person removing the will shall give a receipt for the will; ~~and~~
- (2) the court clerk shall make and retain a copy of the will; and
- (3) the will shall be delivered back to the office of the county clerk of the county in which the will was probated after the inspection is completed.

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

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

- (1) each applicant's name and domicile;
 - (1-a) the last three numbers of each applicant's driver's license number and social security number, if the applicant has been issued one ~~applicable~~;
- (2) the testator's name, domicile, and, if known, age, on the date of the testator's death;

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SECTION 14. Same as House version.

SECTION 15. Same as House version.

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- (2-a) the last three numbers of the testator's driver's license number and social security number;
- (3) the fact, date, and place of the testator's death;
- (4) facts showing that the court with which the application is filed has venue;
- (5) that the testator owned property, including a statement generally describing the property and the property's probable value;
- (6) the date of the will;
- (7) the name, state of residence, and physical address where service can be had of the executor named in the will;
- (8) the name of each subscribing witness to the will, if any;
- (9) whether one or more children born to or adopted by the testator after the testator executed the will survived the testator and, if so, the name of each of those children;
- (10) that the testator's estate does not owe an unpaid debt, other than any debt secured by a lien on real estate, or that for another reason there is no necessity for administration of the estate;
- (11) whether a marriage of the testator was ever dissolved after the will was made and, if so, when and from whom; and
- (12) whether the state, a governmental agency of the state, or a charitable organization is named in the will as a devisee.

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

SUBCHAPTER D. SUBSEQUENT ESTATE ADMINISTRATION
Sec. 257.151. APPOINTMENT OF PERSONAL REPRESENTATIVE AND OPENING OF ADMINISTRATION AFTER WILL ADMITTED TO

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SECTION 16. Same as House version.

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PROBATE AS MUNIMENT OF TITLE. A court order admitting a will to probate as a muniment of title under this chapter does not preclude the subsequent appointment of a personal representative and opening of an administration for the testator's estate if:

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

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

Sec. 257.152. COMPUTATION OF CERTAIN PERIODS.

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;

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

(3) Section 308.002; and

(4) Section 308.004.

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

Sec. 301.051. ELIGIBLE APPLICANTS FOR LETTERS.

An executor named in a will, an administrator designated as authorized under Section 254.006, an independent administrator designated by all of the distributees of the decedent under Section 401.002(b) or 401.003, or an interested person may file an application with the court for:

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

(1-a) the appointment of the designated administrator; or

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SECTION 17. Same as House version.

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- (2) the appointment of an administrator, if:
- (A) there is a will, but:
- (i) no executor is named in the will; [ø]
- (ii) the executor named in the will is disqualified, refuses to serve, is dead, or resigns;
- (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) there is no will.

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

- (a) An application for letters of administration when no will is alleged to exist must state:
- (1) the applicant's name, domicile, and, if any, relationship to the decedent;
- (1-a) the last three numbers of:
- (A) the applicant's driver's license number, if the applicant has been issued one [applicable]; and
- (B) the applicant's social security number, if the applicant has been issued one [applicable];
- (2) the decedent's name and that the decedent died intestate;
- (2-a) if known by the applicant at the time the applicant files the application, the last three numbers of the decedent's driver's license number and social security number;
- (3) the fact, date, and place of the decedent's death;

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SECTION 18. Same as House version.

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- (4) facts necessary to show that the court with which the application is filed has venue;
- (5) whether the decedent owned property and, if so, include a statement of the property's probable value;
- (6) the name and address, if known, whether the heir is an adult or minor, and the relationship to the decedent of each of the decedent's heirs;
- (7) if known by the applicant at the time the applicant files the application, whether one or more children were born to or adopted by the decedent and, if so, the name, birth date, and place of birth of each child;
- (8) if known by the applicant at the time the applicant files the application, whether the decedent was ever divorced and, if so, when and from whom;
- (9) that a necessity exists for administration of the decedent's estate and an allegation of the facts that show that necessity; and
- (10) that the applicant is not disqualified by law from acting as administrator.

SECTION 19. 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, is reenacted and amended to read as follows:

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

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

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SECTION 19. Same as House version.

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- (2) except as provided by Sections 301.002(b)(1) and (2) [~~Section 301.002(b)~~] with respect to administration necessary to receive or recover property or to prevent real property of the estate from becoming a danger [~~due a decedent's estate~~], and Section 501.006 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;
- (3) the court has jurisdiction and venue over the estate;
- (4) citation has been served and returned in the manner and for the period required by this title; and
- (5) the person for whom letters testamentary or of administration are sought is entitled by law to the letters and is not disqualified.

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

- (a) The court shall grant letters testamentary or of administration to persons qualified to act, in the following order:
- (1) the person named as executor in the decedent's will;
- (1-a) the person designated as administrator as authorized under Section 254.006;
- (2) the decedent's surviving spouse;
- (3) the principal devisee of the decedent;
- (4) any devisee of the decedent;
- (5) the next of kin of the decedent;
- (6) a creditor of the decedent;
- (7) any person of good character residing in the county who applies for the letters;

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SECTION 20. Same as House version.

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- (8) any other person who is not disqualified under Section 304.003; and
- (9) any appointed public probate administrator.

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

(e) 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 is considered an extension of the filing period for an affidavit under this section.

SECTION 22. Section 351.052(a), Estates Code, is amended to read as follows:

(a) A personal representative of an estate may, without application to or order of the court:

- (1) release a lien on payment at maturity of the debt secured by the lien;
- (2) vote stocks by limited or general proxy;
- (3) pay calls and assessments;
- (4) insure the estate against liability in appropriate cases;
- (5) insure estate property against fire, theft, and other hazards; ~~[or]~~
- (6) pay taxes, court costs, and bond premiums;
- (7) hire an accountant, bookkeeper, or other tax professional to assist with any tax filing required for the decedent or the estate;
- (8) hire a real estate agent to assist with the marketing and selling of any real property of the estate;

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SECTION 21. Same as House version.

No equivalent provision.

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(9) hire an appraiser to assist with any valuations required for estate property for which the court has not appointed an appraiser to appraise the property;

(10) pay all reasonable costs necessary to exercise the personal representative's duty of care under Section 351.101;

or

(11) pay all reasonable costs related to the exercise of any power listed in Subdivisions (1)-(9).

SECTION 23. Subchapter C, Chapter 351, Estates Code, is amended by adding Section 351.106 to read as follows:

Sec. 351.106. DIGITAL ASSETS. A personal representative of a decedent's estate may 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 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.

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SECTION 22. Same as House version.

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SECTION 24. Sections 351.152(a) and (b), Estates Code, are amended to read as follows:

(a) ~~A [Except as provided by Subsection (b) and subject only to the approval of the court in which the estate is being administered, a]~~ personal representative may, without court approval, 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) A personal representative, including an independent executor or independent administrator, may convey or enter into a contract to convey for attorney services a contingent interest in any property sought to be recovered under this subchapter in an amount that exceeds a one-third interest in the property only on the approval of the court in which the estate is being administered. The court must approve a contract ~~[entered into]~~ or conveyance described by ~~[made under]~~ this subsection ~~[section]~~ before an attorney performs any legal services. A contract entered into or a conveyance made in violation of this subsection ~~[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 subsection ~~[section]~~.

SECTION 25. The heading to Section 352.052, Estates Code, is amended to read as follows:

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

SENATE VERSION (CS)

SECTION 23. Same as House version.

SECTION 24. Same as House version.

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SECTION 26. Section 352.052, Estates Code, is amended by adding Subsection (c) to read as follows:

(c) In this subsection, "interested person" does not include a creditor or any other having a claim against the estate. 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 27. Sections 355.102(b) and (c), Estates Code, are amended to read as follows:

(b) 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 ~~[a total of]~~ \$15,000 for funeral expenses and \$15,000 for expenses of the decedent's last illness. Any excess shall be classified and paid as other unsecured claims.

(c) Class 2 claims are composed of:

(1) expenses of administration;

(2) [;] expenses incurred in preserving, safekeeping, and managing the estate, including fees and expenses awarded under Section 352.052;

(3) [~~;~~ and] unpaid expenses of administration awarded in a guardianship of the decedent; and

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

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SECTION 25. Same as House version.

SECTION 26. Same as House version.

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SECTION 28. Section 355.103, Estates Code, is amended to read as follows:

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

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

SECTION 29. Sections 355.1551(a) and (b), Estates Code, are amended to read as follows:

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

(b) If the claim holder fails to take possession or sell secured property within the [a-reasonable] time determined by the court under Subsection (a), on application by the personal representative, the court may 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.

SECTION 27. Same as House version.

SECTION 28. Same as House version.

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SECTION 30. Sections 356.105(a) and (b), Estates Code, are amended to read as follows:

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

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

- (1) vests the right and title of the intestate's estate in the purchaser who has complied with the terms of the sale; and
- (2) is prima facie evidence that all requirements of the law in making the sale have been met.

SECTION 31. Subchapters I and J, Chapter 356, Estates Code, are amended to read as follows:

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

Sec. 356.401. METHOD OF SALE; REQUIRED NOTICE.

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

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

SECTION 29. Same as House version.

SECTION 30. Same as House version.

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

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

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

Sec. 356.403. TIME AND PLACE OF AUCTION [SALE].

(a) Except as provided by Subsection (c), a public auction [sale] of real estate of an estate shall be held [made] 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 [proceedings are pending]; or
- (2) another place in a [that] county described by Subdivision (1) at which auctions [sales] 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 [made].

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

(c) If the court considers it advisable, the court may order the auction [sale] to be held [made] in the county in which the proceedings are pending [real estate is located], in which

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event notice shall be published both in that county and in the county in which the real estate is located [~~proceedings are pending~~].

Sec. 356.404. CONTINUANCE OF AUCTION [~~SALE~~].

(a) A public auction [~~sale~~] of real estate of an estate that is not completed on the day advertised may be continued from day to day by an oral public announcement of the continuance made at the conclusion of the auction [~~sale~~] each day.

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

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

Sec. 356.405. FAILURE OF BIDDER TO COMPLY. (a)

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

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

- (1) 10 percent of the amount of the bid; and
- (2) the amount of any deficiency in price on the second auction [~~sale~~].

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

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

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

SECTION 32. Section 356.502, Estates Code, is amended to read as follows:

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

SECTION 33. The heading to Subchapter L, Chapter 356, Estates Code, is amended to read as follows:

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

SECTION 34. Section 356.551, Estates Code, is amended to read as follows:

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

The report must:

- (1) be sworn to, in writing, and filed with the clerk;

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SECTION 31. Same as House version.

SECTION 32. Same as House version.

SECTION 33. Same as House version.

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- (2) include:
- (A) the date of the order of sale;
 - (B) a description of the property being sold;
 - (C) the time and place of the auction or date the property is placed under contract [~~sale~~];
 - (D) the purchaser's name;
 - (E) the amount of the successful bid or the purchase price for [~~which~~] each parcel of property or interest in property auctioned or placed under contract [~~was sold~~];
 - (F) the terms of the sale;
 - (G) whether the proposed sale of the property was made at public auction or by contract [~~privately~~]; and
 - (H) whether the purchaser is ready to comply with the order of sale; and
- (3) be noted on the probate docket.

SECTION 35. Section 356.552, Estates Code, is amended to read as follows:

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

- (1) inquire into the manner in which the auction or contract described in the report [~~sale~~] was made;
- (2) hear evidence in support of or against the report; and
- (3) determine the sufficiency or insufficiency of the personal representative's general bond, if any has been required and given.

SECTION 36. Section 356.553, Estates Code, is amended to read as follows:

SECTION 34. Same as House version.

SECTION 35. Same as House version.

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

SECTION 37. Sections 356.554(a), (b), and (c), Estates Code, are amended to read as follows:

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

(b) If the court finds that the general bond is sufficient, the court may approve [~~confirm~~] the sale as provided by Section 356.556(a).

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

SECTION 38. Section 356.556, Estates Code, is amended to read as follows:

Sec. 356.556. APPROVAL [~~CONFIRMATION~~] OR DISAPPROVAL ORDER. (a) If the court is satisfied that the proposed sale of real property [~~a sale~~] reported under Section 356.551 is [~~was~~] for a fair price, properly made, and in conformity with law, and the court has approved any

SENATE VERSION (CS)

SECTION 36. Same as House version.

SECTION 37. Same as House version.

CONFERENCE

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increased or additional bond that the court found necessary to protect the estate, the court shall enter an order:

- (1) approving [~~confirming~~] the sale;
 - (2) showing conformity with this chapter;
 - (3) detailing the terms of the sale; and
 - (4) authorizing the personal representative to convey the property on the purchaser's compliance with the terms of the sale.
- (b) If the court is not satisfied that the proposed sale of real property is [~~sale was~~] for a fair price, properly made, and in conformity with law, the court shall enter an order setting aside the bid or contract [~~sale~~] and ordering a new sale to be made, if necessary.
- (c) The court's action in approving [~~confirming~~] or disapproving a report under Section 356.551 [~~of a sale~~] has the effect of a final judgment. Any person interested in the estate or in the sale is entitled to have an order entered under this section reviewed as in other final judgments in probate proceedings.

SECTION 39. Section 356.557, Estates Code, is amended to read as follows:

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

- (1) vests in the purchaser all right and title of the estate to, and all interest of the estate in, the property; and
- (2) is prima facie evidence that the sale has met all applicable requirements of the law.

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SECTION 38. Same as House version.

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SECTION 40. Section 356.558(a), Estates Code, is amended to read as follows:

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

SECTION 41. Section 401.005, Estates Code, is amended by adding Subsection (a-1) to read as follows:

(a-1) 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:

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

SECTION 42. Subchapter A, Chapter 402, Estates Code, is amended by adding Section 402.003 to read as follows:

Sec. 402.003. DIGITAL ASSETS. The 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, may 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);

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SECTION 39. Same as House version.

SECTION 40. Same as House version.

SECTION 41. Same as House version.

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

(a) If gross assets of an estate do not exceed 20 [~~40~~] percent of the maximum amount authorized for a small estate affidavit under Section 205.001, the public probate administrator may act without issuance of letters testamentary or of administration if the court approves a statement of administration stating:

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

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

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

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

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SECTION 42. Same as House version.

SECTION 43. Same as House version.

SECTION 44. Same as House version.

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Sec. 455.012. DEPOSIT OF FUNDS IN COURT REGISTRY ~~[INTO THE COUNTY TREASURY]~~. The public probate administrator shall deposit all funds coming into the custody of the administrator in the court registry, ~~except as provided by Section 455.003 [county treasury]~~. Funds deposited must be disbursed ~~[dispersed]~~ at the direction of the public probate administrator and according to an order issued by the statutory probate court judge who appointed the administrator ~~[the guidelines of the county treasurer or auditor]~~.

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

(b) If the judge who is the subject of an order of recusal or disqualification is the presiding judge of the statutory probate courts, the chief justice of the supreme court shall 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 47. Section 25.00255(a), Government Code, is amended to read as follows:

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

(1) has the authority and shall perform the functions and duties of the presiding judge of the administrative judicial

SENATE VERSION (CS)

SECTION 45. Same as House version.

SECTION 46. Same as House version.

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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) [~~and to Section 25.002201~~], assign a judge to hear and rule on a referred motion of recusal or disqualification;

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

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

(4) if the presiding judge is the subject of the motion of recusal or disqualification, shall 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 48. The following provisions of the Estates Code are repealed:

- (1) Section 114.002(b); and
- (2) Subchapter D, Chapter 114.

SECTION 49. (a) 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

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SECTION 47. Same as House version.

SECTION 48. (a) 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

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after the effective date of this Act, regardless of the date of the deceased party's death.

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

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

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

(f) 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, apply only to an application for the probate of a will filed on or after the effective date of this Act. An application for the probate of a will filed before that date is governed by the law in effect

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after the effective date of this Act, regardless of the date of the deceased party's death.

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

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

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

(f) 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, apply only to an application for the probate of a will filed on or after the effective date of this Act. An application for the probate of a will filed before that date is governed by the law in effect

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

(g) Section 301.052(a), Estates Code, as amended by this Act, applies only to an application for letters of administration filed on or after the effective date of this Act. An application for letters of administration filed before the effective date of this Act is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose.

(h) The changes in law made by this Act to Section 351.052(a), Estates Code, apply only to the administration of the estate of a decedent who dies on or after the effective date of this Act. The administration of the estate of a decedent who dies before the effective date of this Act is governed by the law in effect on the date of the decedent's death, and the former law is continued in effect for that purpose.

(i) 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.

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

(k) 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),

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

(g) Section 301.052(a), Estates Code, as amended by this Act, applies only to an application for letters of administration filed on or after the effective date of this Act. An application for letters of administration filed before the effective date of this Act is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose.

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

(j) 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),

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(b), and (c), 356.556, 356.557, 356.558(a), 455.008(a), and 455.012, Estates Code, as amended by this Act, apply only to the estate of a decedent who dies on or after the effective date of this Act. The estate of a decedent who dies before the effective date of this Act is governed by the law in effect on the date of the decedent's death, and the former law is continued in effect for that purpose.

(l) Section 25.00255(a), Government Code, as amended by this Act, applies only to a motion of recusal or disqualification made on or after the effective date of this Act. A motion of recusal or disqualification made before the effective date of this Act is governed by the law in effect on the date the motion was made, and the former law is continued in effect for that purpose.

(m) The addition by this Act of Section 309.056(e), Estates Code, is intended to clarify rather than change existing law.

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

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(b), and (c), 356.556, 356.557, 356.558(a), 455.008(a), and 455.012, Estates Code, as amended by this Act, apply only to the estate of a decedent who dies on or after the effective date of this Act. The estate of a decedent who dies before the effective date of this Act is governed by the law in effect on the date of the decedent's death, and the former law is continued in effect for that purpose.

(k) Section 25.00255(a), Government Code, as amended by this Act, applies only to a motion of recusal or disqualification made on or after the effective date of this Act. A motion of recusal or disqualification made before the effective date of this Act is governed by the law in effect on the date the motion was made, and the former law is continued in effect for that purpose.

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

SECTION 49. Same as House version.

CONFERENCE