

BILL ANALYSIS

Senate Research Center
87R3040 KFF-F

H.B. 2182
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State Affairs
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Real Estate, Probate, and Trust Law Section of the State Bar of Texas has pointed out that certain notice procedures relating to the disposition of decedents' or multiple-party estates are outdated or require clarification, in addition to other issues. H.B. 2182, among other changes, provides for the following changes: alternatives to registered or certified mail to meet statutory notice requirements; clarification regarding the liability of community property assets of a married couple to creditors' claims when a spouse dies; and the waiver of citation by certain persons on behalf of a minor under the age of 16.

H.B. 2182 amends current law relating to decedents' estates and the delivery of certain notices or other communications in connection with those estates or multiple-party accounts.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 22, Estates Code, by adding Section 22.0295, as follows:

Sec. 22.0295. QUALIFIED DELIVERY METHOD. Defines "qualified delivery method."

SECTION 2. Amends the heading to Section 51.052, Estates Code, to read as follows:

Sec. 51.052. SERVICE BY MAIL OR PRIVATE DELIVERY.

SECTION 3. Amends Sections 51.052(b), (c), (d), (e), (f), and (g), Estates Code, as follows:

(b) Requires the county clerk, except as provided by Subsection (c), to issue a citation or notice required or permitted to be served by a qualified delivery method, rather than by registered or certified mail, and to serve the citation or notice by sending the original citation or notice by a qualified delivery method. Makes conforming changes.

(c) Requires a personal representative to issue a notice required to be given by the representative by a qualified delivery method and to serve the notice by sending the original notice by a qualified delivery method, rather than by a registered or certified mail.

(d) Requires the county clerk or personal representative, as applicable, to send a citation or notice under Subsection (b) or (c) with an instruction to deliver the citation or notice to the addressee only and with return receipt or other proof of delivery requested, rather than with return receipt requested. Makes a conforming change.

(e) Requires that service by a qualified delivery method be made at least 20 days before the return day of the service, excluding the date of service. Provides that the date of

service is the date of mailing, the date of deposit with the private delivery service, or the date of delivery by the courier, as applicable. Makes conforming changes.

(f) Requires that a copy of a citation or notice served under certain subsections, together with a certificate of the person serving the citation or notice showing that the citation or notice was sent and the date of the mailing, date of deposit with a private delivery service, or date of delivery by courier, as applicable, be filed and recorded. Requires that a returned receipt or proof of delivery receipt for a citation or notice served under Subsection (b) or (c) be attached to the certificate. Makes a conforming change.

(g) Makes a conforming change in this subsection.

SECTION 4. Amends Section 51.005(a), Estates Code, to make a conforming change.

SECTION 5. Amends Section 51.056, Estates Code, to make conforming changes.

SECTION 6. Amends Section 51.103(b), Estates Code, as follows:

(b) Provides that proof of services consists of:

(1) and (2) makes no changes to these subdivisions;

(3) if the service is made by a qualified delivery method:

(A) the certificate of the county clerk making the service, or the affidavit of the personal representative or other person making the service, stating that the citation or notice was mailed, deposited with a private delivery service, or delivered by courier, as applicable, and the date of the mailing or deposit with the delivery service or the date of the courier delivery, as applicable; and

(B) the return receipt or other proof of delivery receipt attached to the certificate or affidavit, as applicable, if the sending was by a qualified delivery method and a receipt is available; and

(4) if the service is made by publication, certain affidavits, including an affidavit that states the date of publication on the public information Internet website maintained as required by Section 72.034 (Public Information Internet Website), Government Code, as added by Chapter 606 (S.B. 891), Acts of the 86th Legislature, Regular Session, 2019.

Makes conforming changes.

SECTION 7. Amends Section 56.002(b), Estates Code, to make conforming changes.

SECTION 8. Amends the heading to Section 101.052, Estates Code, to read as follows:

Sec. 101.052. LIABILITY OF COMMUNITY PROPERTY FOR DEBTS.

SECTION 9. Amends Section 101.052, Estates Code, by amending Subsections (a) and (b) and adding Subsection (a-1), as follows:

(a) Provides that the community property that was by law under the sole management, control, and disposition of a spouse or under the joint management, control, and disposition of the spouses during marriage continues to be subject to the liabilities of that spouse on the death of either spouse, rather than the community property subject to the sole or joint management, control, and disposition of a spouse during marriage continues to be subject to the liabilities of that spouse on death.

(a-1) Provides that the undivided one-half interest that the surviving spouse owned in community property that was by law under the sole management, control, and disposition of the deceased spouse during marriage is subject to the liabilities of the surviving spouse on the death of the deceased spouse.

(b) Provides that the undivided one-half interest that the deceased spouse owned in community property, rather than the interest that the deceased spouse owned in any other nonexempt community property, that was by law under the sole management, control, and disposition of the surviving spouse during marriage passes to the deceased spouse's heirs or devisees charged with the liabilities of the deceased spouse, rather than the debts that were enforceable against the deceased spouse before death. Makes a conforming change.

SECTION 10. Amends Section 113.251(c), Estates Code, to make a conforming change.

SECTION 11. Amends Section 202.005, Estates Code, to require that an application in a court specified by Section 33.004 (Heirship Proceedings) to commence a proceeding to declare heirship state a general description of all property, as applicable, belonging to the decedent's estate that is subject to distribution under a judgment in the proceeding or held in trust for the benefit of the decedent. Makes nonsubstantive changes.

SECTION 12. Amends Section 202.051, Estates Code, as follows:

Sec. 202.051. New heading: SERVICE OF CITATION BY QUALIFIED DELIVERY METHOD WHEN RECIPIENT'S NAME AND ADDRESS ARE KNOWN OR ASCERTAINABLE. Makes a conforming change to this section.

SECTION 13. Amends Section 202.056, Estates Code, as follows:

Sec. 202.056. WAIVER OF SERVICE OF CITATION. (a) Authorizes a distributee who is 16 years of age or older, rather than a distributee, to waive citation required by Subchapter B (Notice of Proceeding to Declare Heirship) to be served on the distributee. Makes conforming and nonsubstantive changes.

(b) Authorizes a parent, managing conservator, guardian, attorney ad litem, or guardian ad litem of a distributee who is younger than 16 years of age, rather than younger than 12 years of age, to waive citation required by Subchapter B to be served on the distributee. Deletes existing text prohibiting a parent, managing conservator, guardian, attorney ad litem, or guardian ad litem of a minor distributee who is 12 years of age or older from waiving citation required by Subchapter B to be served on the distributee. Makes nonsubstantive changes.

SECTION 14. Amends Sections 202.151(b) and (c), Estates Code, as follows:

(b) Requires that, except as provided by Subsection (c), in a proceeding to declare heirship, testimony regarding a decedent's heirs and family history be taken in certain manners, including by a recorded statement of facts contained in an affidavit or instrument that satisfies the requirements of Section 203.001 (Recorded Statement of Facts as Prima Facie Evidence of Heirship), or in a judgment of a court of record as specified by Section 203.001(a)(1)(B) (relating to a judgment of a court of record contained in a statement in a proceeding to declare heirship). Makes nonsubstantive changes.

(c) Requires that, 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 be taken in certain manners, including by a recorded statement of facts contained in an affidavit or instrument that satisfies the requirements of Section 203.001 or a judgment of a court of record as specified by Section 203.001(a)(1)(B). Makes nonsubstantive changes.

SECTION 15. Amends Section 202.203, Estates Code, to make a conforming change.

SECTION 16. Amends Section 256.052(a), Estates Code, to delete existing text requiring that an application for the probate of a will state and aver, to the extent it is known to the applicant or can, with reasonable diligence, be ascertained by the applicant, the last three numbers of each applicant's driver's license number and social security number, if the applicant has been issued one.

SECTION 17. Amends 257.051(a), Estates Code, to delete existing text requiring that an application for the probate of a will as a muniment of title state and aver, to the extent it is known to the applicant or can, with reasonable diligence, be ascertained by the applicant, the last three numbers of each applicant's driver's license number and social security number, if the applicant has been issued one.

SECTION 18. Amends Section 258.002, Estates Code, by adding Subsections (d) and (e), as follows:

(d) Authorizes an heir who is 16 years of age or older to waive citation required by Section 258.002 (Citation on Application for Probate of Will Not Produced in Court) to be served on the heir.

(e) Authorizes the parent, managing conservator, guardian, attorney ad litem, or guardian ad litem of an heir who is younger than 16 years of age to waive citation required by Section 258.002 to be served on the heir.

SECTION 19. Amends Section 301.052(a), Estates Code, to delete existing text requiring that an application for letters of administration when no will is alleged to exist state the last three numbers of the applicant's driver's license number, if the applicant has been issued one, and the applicant's social security number, if the applicant has been issued one.

SECTION 20. Amends Section 305.001, Estates Code, to redefine "oath" and to define "declaration" for Chapter 305 (Qualification of Personal Representatives).

SECTION 21. Amends Section 305.002, Estates Code, as follows:

Sec. 305.002. MANNER OF QUALIFICATION OF PERSONAL REPRESENTATIVE.

(a) Provides that a personal representative, other than an executor described by Subsection (b), is considered to have qualified when the representative has met certain criteria, including that they have taken and filed the oath prescribed by Subchapter B or made, signed, and filed the declaration prescribed by Subchapter B.

(b) Provides that an executor who is not required to give a bond is considered to have qualified when the executor has taken and filed the oath prescribed by Subchapter B or made, signed, and filed the declaration prescribed by Subchapter B.

SECTION 22. Amends Section 305.003, Estates Code, as follows:

Sec. 305.003. New heading: PERIOD FOR TAKING OATH OR MAKING AND SIGNING DECLARATION. Authorizes an oath to be taken and subscribed or a declaration to be made and signed at certain times.

SECTION 23. Amends the heading to Subchapter B, Chapter 305, to read as follows:

SUBCHAPTER B. OATHS OR DECLARATIONS

SECTION 24. Amends Section 305.051, Estates Code, as follows:

Sec. 305.051. New heading: OATH OR DECLARATION OF EXECUTOR OR ADMINISTRATOR WITH WILL ANNEXED. (a) Creates this subsection from existing text. Requires the person named as executor or appointed as administrator with the will annexed, before the issuance of letters testamentary or letters of administration with the will annexed, to take and subscribe an oath as prescribed by Subsection (b) or to make and sign a declaration as prescribed by Subsection (c). Makes nonsubstantive changes.

(b) Creates this subsection from existing text. Requires the person named as executor or appointed as administrator with the will annexed, if the person elects to take an oath under this section, to take and subscribe an oath in substantially a certain form. Sets forth the required language of the oath.

(c) Requires the person named as executor or appointed as administrator with the will annexed, if the person elects to make a declaration under this section, to make and sign a declaration in substantially a certain form. Sets forth the required language of the form.

SECTION 25. Amends Section 305.052, Estates Code, as follows:

Sec. 305.052. New heading: OATH OR DECLARATION OF ADMINISTRATOR. (a) Creates this subsection from existing text. Requires the person appointed as administrator, before the issuance of letters of administration, to take and subscribe an oath as prescribed by Subsection (b) or make and sign a declaration as prescribed by Subsection (c). Makes nonsubstantive changes.

(b) Creates this subsection from existing text. Requires the person appointed as administrator, if the person elects to take an oath under this section, to take and subscribe an oath in substantially a certain form. Sets forth the required language of the oath.

(c) Requires the person appointed as administrator, if the person elects to make a declaration under this section, to make and sign a declaration in substantially a certain form. Sets forth the required language of the declaration.

SECTION 26. Amends Section 305.053, Estates Code, as follows:

Sec. 305.053. New heading: OATH OR DECLARATION OF TEMPORARY ADMINISTRATOR. (a) Creates this subsection from existing text. Requires the person appointed as temporary administrator, before the issuance of temporary letters of administration, to take and subscribe an oath as prescribed by Subsection (b) or make and sign a declaration as prescribed by Subsection (c). Makes nonsubstantive changes.

(b) Creates this subsection from existing text. Requires the person appointed as temporary administrator, if the person elects to take an oath under this section, to take and subscribe an oath in substantially a certain form. Sets forth the required language of the oath.

(c) Requires the person appointed as temporary administrator, if the person elects to make a declaration under this section, to make and sign a declaration in substantially a certain form. Sets forth the required language of the declaration.

SECTION 27. Amends Section 305.055, Estates Code, as follows:

Sec. 305.055. New heading: FILING AND RECORDING OF OATH OR DECLARATION. Requires that an oath or declaration, rather than an oath, be filed with the clerk of the court granting the letters testamentary or of administration, as applicable, and recorded in the judge's probate docket.

SECTION 28. Amends Section 308.002(d), Estates Code, to make a conforming change.

SECTION 29. Amends Section 308.051(a), Estates Code, to make a conforming change.

SECTION 30. Amends 308.053(c) and (d), Estates Code, as follows:

(c) Makes a conforming change to this subsection.

(d) Requires that certain items, including a copy of each notice and of each return receipt or other proof of delivery receipt, be filed with the clerk of the court in which the letters testamentary or of administration were issued. Makes conforming changes.

SECTION 31. Amends Section 308.054(a), Estates Code, to make a conforming change.

SECTION 32. Amends Section 356.105(a), Estates Code, to require that a successful bid or contract for the sale of estate personal property, rather than a sale of estate personal property, be reported to the court.

SECTION 33. Amends Section 356.654(b), Estates Code, to make a conforming change.

SECTION 34. Amends Section 361.052(b), Estates Code, to make a conforming change.

SECTION 35. Amends Section 362.005(b) and (c), Estates Code, to make conforming changes.

SECTION 36. Amends Section 403.056(a), Estates Code, as follows:

(a) Requires that notice to the independent executor required by Sections 403.052 (Secured Claims for Money) and 403.055 (Certain Unsecured Claims; Barring of Claims) be contained in a written instrument that complies with Section 355.004 (Affidavit Authenticating Claim for Money in General) and is sent by a qualified delivery method to the independent executor or the executor's attorney, rather than by hand-delivered with proof of receipt or mailed by certified mail, return receipt requested with proof of receipt, to the independent executor or the executor's attorney.

SECTION 37. Amends Section 404.0035(a), Estates Code, to make a conforming change.

SECTION 38. Amends Section 452.006(a), Estates Code, to make a conforming change.

SECTION 39. Amends Section 453.003(a), Estates Code, as follows:

(a) Authorizes the surviving spouse, as the surviving partner of the marital partnership, if there is no qualified executor or administrator of a deceased spouse's estate, to take certain actions, including to sell, mortgage, lease, and otherwise dispose of community property to pay community debts, for which a portion of community property is liable for payment, and to exercise other powers as necessary to discharge community obligations, for which a portion of community property is liable for payment.

SECTION 40. Amends Section 453.006, Estates Code, as follows:

Sec. 453.006. New heading: ACCOUNT OF DEBTS AND DISPOSITION OF COMMUNITY PROPERTY. (a) Requires the surviving spouse to keep a fair and full account and statement of all debts, rather than community debts, and expenses paid by the surviving spouse, and of the disposition made of community property.

(b) Requires the surviving spouse or personal representative to keep a separate, distinct account of all debts allowed or paid in the administration and settlement of an estate described by Section 101.052, rather than an estate described by Sections 101.052(a) and (b). Makes a conforming change.

SECTION 41. Amends Section 453.007, Estates Code, to make a conforming change.

SECTION 42. Amends Section 501.003(b), Estates Code, to make a conforming change.

SECTION 43. Amends Section 505.005(a), Estates Code, to make a conforming change.

SECTION 44. Amends Section 505.101(a), Estates Code, to make a conforming change.

SECTION 45. Makes application of Sections 51.052(b), (c), (d), (e), (f), and (g), 51.055(a), 51.056, 51.103(b), 56.002(b), 113.251(c), 202.051, 202.203, 305.001, 305.002, 305.003, 305.051, 305.052, 305.053, 305.055, 308.002(d), 308.051(a), 308.053(c) and (d), 308.054(a), 356.654(b), 361.052(b), 362.005(b) and (c), 403.056(a), 404.0035(a), 452.006(a), 501.003(b), 505.005(a), and 505.101(a), Estates Code, as amended by this Act, prospective.

SECTION 46. Provides that the amendments of this Act to Sections 101.052, 202.005, 202.151, 356.105(a), 453.003(a), 453.006, and 453.007, Estates Code, are intended to clarify rather than change existing law.

SECTION 47. Provides that Section 113.251(c), Estates Code, as amended by this Act, applies only to multiple-party accounts created or existing on or after the effective date of this Act.

SECTION 48. Makes application of Section 202.056, Estates Code, as amended by this Act, prospective.

SECTION 49. Makes application of Sections 256.052(a) and 257.051(a), Estates Code, as amended by this Act, and Sections 258.002(d) and (e), Estates Code, as added by this Act, prospective.

SECTION 50. Makes application of Section 301.052(a), Estates Code, as amended by this Act, prospective.

SECTION 51. Makes application of Section 308.051(a), Estates Code, as amended by this Act, prospective.

SECTION 52. Effective date: September 1, 2021.