

## **BILL ANALYSIS**

C.S.H.B. 2821

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Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Practicing attorneys have identified areas of probate and estate planning law that lack clarity and need to be modified so as to preclude unnecessary litigation. For instance, the Estates Code requires serving notice by certified mail with proof of delivery. However, practitioners often do not get the return receipt back, making certified mail an often unreliable method for satisfying notice requirements. In another instance, a statute relating to community property liability is considered by many to be misleading because it appears to only address the deceased spouse's debts. The Estates Code also sets out procedures relating to multiparty accounts but clearly does not address brokerage accounts, which is an oversight that must be corrected. And with respect to heirships, the law is unclear on what property must be listed on an application and there is confusion about what evidence can be used and who is allowed to testify in a proceeding. Additionally, problems may arise if an individual named as an executor is a felon, as even in circumstances where the members of a family agree that this individual should serve as executor, felons are disqualified under current law. Lastly, executors are required by law to have their oath notarized, but some have argued that this is unnecessary. C.S.H.B. 2821 seeks to address these issues.

### **CRIMINAL JUSTICE IMPACT**

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

### **RULEMAKING AUTHORITY**

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

### **ANALYSIS**

C.S.H.B. 2821 amends the Estates Code to revise provisions relating to decedents' estates and to authorize the delivery of certain communications in connection with those estates or multiple-party accounts to be made by a qualified delivery method as an alternative to certified or registered mail in an action filed or a proceeding commenced on or after the bill's effective date. The bill defines "qualified delivery method" as the following:

- delivery by a courier by hand, with courier's proof of delivery receipt;
- a private delivery service designated as a designated delivery service by the U.S. Secretary of the Treasury, with proof of delivery receipt; or
- certified or registered mail, return receipt requested, with return receipt.

C.S.H.B. 2821 expands the approved delivery methods for the following notices and citations to include delivery by any qualified method:

- certain citations and required notices in probate proceedings;

- notice of the resignation of a resident agent of a personal representative to allow service of process;
- notice of the pledge of a security interest on a multi-party account created or existing on or after the bill's effective date sent by the applicable secured creditor to any other party to that account;
- citation in a proceeding to declare heirship when the recipient's name and address are known or ascertainable;
- certain notices sent by a personal representative of an estate to beneficiaries and claimants for the purposes of administering the estate;
- notice sent by a personal representative of an estate, before the purchase of the estate by the representative, to distributees and creditors;
- notice sent by the court to a personal representative or independent executor regarding the removal of that representative or executor;
- citation on the presentation of an account for final settlement and the copies of that account;
- notice of certain claims against an estate sent by creditors to the independent executor of that estate or the executor's attorney;
- notice of the appointment of a temporary administrator of an estate sent by the appointee to the decedent's known heirs;
- citation for an application for the ancillary probate of a certain type of foreign will to be sent to each devisee and heir identified in the application;
- certain notices or processes relating to an action or proceeding regarding a trust, estate, fund, or other matter involving a foreign corporate fiduciary required to be forwarded by the secretary of state to the officer, agent, or other person designated by the fiduciary;
- notice sent by a foreign executor or administrator of a person who was a nonresident at the time of their death to all creditors of that decedent in Texas who have filed a claim against the decedent's estate; and
- notice sent by a court clerk to the comptroller of public accounts of an order for an executor or administrator to pay certain shares of an estate to the comptroller.

C.S.H.B. 2821, with respect to provisions governing multiple-party accounts, revises the definition of:

- "account" to include a contract of deposit of securities between a depositor and a financial institution; and
- "sums on deposit" to include a balance transferable on a multiple-party account, cash, and any type of securities, including stocks, bonds, and mutual funds.

This revision applies to an account established before, on, or after the bill's effective date.

C.S.H.B. 2821 clarifies that a surviving spouse is liable for 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 and clarifies that the deceased spouse's heirs or devisees are liable for the undivided one-half interest that the deceased spouse owned in community property that was by law under the sole management, control, and disposition of the surviving spouse during marriage.

C.S.H.B. 2821 clarifies that a surviving spouse, as surviving partner of a marital relationship, is entitled to exercise any power authorized by applicable law over community property that was legally under the sole management of the surviving spouse during the marriage as if there is no administration pending on the deceased spouse's estate. The bill also clarifies that this entitlement, and that to retain possession and control of such property, applies during administration of the deceased spouse's estate.

C.S.H.B. 2821 clarifies that the requirement to report to the court a sale of estate personal property applies to a successful bid or contract for the sale.

C.S.H.B. 2821, with respect to a waiver of service of citation in a proceeding to declare heirship commenced on or after the bill's effective date, increases from 12 years of age to younger than 16 years of age the maximum age of a distributee for whom a parent, managing conservator, guardian, attorney ad litem, or guardian ad litem may waive the citation required to be served on the distributee.

C.S.H.B. 2821 authorizes a required testimony regarding a decedent's heirs and family history, in a proceeding to declare heirship commenced on or after the bill's effective date to be taken by a recorded statement of facts contained in an affidavit or instrument or in a judgment of a court of record if the affidavit, instrument, or judgment qualifies as prima facie evidence of heirship under related statutory provisions. The bill authorizes a person interested in an estate solely because the person is a creditor or has a claim against the estate to serve as a witness in such a proceeding if the person is otherwise a credible witness.

C.S.H.B. 2821 authorizes the following persons to waive the citation required to be served on an heir on the filing on or after the bill's effective date of an application for the probate of a will that cannot be produced in court:

- an heir who is 16 years of age or older; and
- the parent, managing conservator, guardian, attorney ad litem, or guardian ad litem of an heir who is younger than 16 years of age.

C.S.H.B. 2821 qualifies a felon who is convicted under the laws of the United States or any state in the United States to serve as an executor or administrator of an estate if all of the distributees of the decedent agree on and collectively designate the person to serve as executor or administrator and acknowledge the conviction in:

- an application for probate of the decedent's will;
- an application for letters testamentary or of administration of the decedent's estate; or
- one or more separate documents consenting to an application.

This applies to an application for letters testamentary or letters of administration filed on or after the bill's effective date.

C.S.H.B. 2821 authorizes a person to make and sign a declaration as an alternative to taking an oath to be qualified to serve as a personal representative or to be issued letters of administration to serve as an executor or administrator or temporary administrator for the estate of a deceased person. The bill sets out the form to which the declaration must substantially conform.

### **EFFECTIVE DATE**

September 1, 2023.

### **COMPARISON OF INTRODUCED AND SUBSTITUTE**

While C.S.H.B. 2821 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The introduced revised the definition of "sums on deposit" for purposes of multi-party accounts by including any type of securities, as added to the account by reason of the death of a party. The substitute clarifies that "sums on deposit" for purposes of multi-party accounts includes any type of securities. The substitute's inclusion of securities is not conditioned on the death of a party.

The substitute includes a clarification absent from the introduced that a surviving spouse, as surviving partner of a marital relationship, is entitled to exercise any power authorized by applicable law over community property that was legally under the sole management of the surviving spouse during the marriage as if there is no administration pending on the deceased spouse's estate.