

By: Wray

H.B. No. 2418

A BILL TO BE ENTITLED

AN ACT

relating to decedents' estates.

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

SECTION 1. Section 113.004(4), Estates Code, is amended to read as follows:

(4) "P.O.D. account," including an account designated as a transfer on death or T.O.D. account, means an account payable on request to:

(A) one person during the person's lifetime and, on the person's death, to one or more P.O.D. payees; or

(B) one or more persons during their lifetimes and, on the death of all of those persons, to one or more P.O.D. payees.

SECTION 2. Section 113.152, Estates Code, is amended by adding Subsection (c) to read as follows:

(c) A guardian of the estate or an attorney in fact or agent of an original payee may sign a written agreement described by Subsection (a) on behalf of the original payee.

SECTION 3. Section 123.001, Estates Code, is amended to read as follows:

Sec. 123.001. WILL PROVISIONS MADE BEFORE DISSOLUTION OF MARRIAGE. (a) In this section:

(1) "Irrevocable trust" means a trust:

(A) for which the trust instrument was executed

1 before the dissolution of a testator's marriage; and

2 (B) that the testator was not solely empowered by
3 law or by the trust instrument to revoke.

4 (2) "Relative" [~~,"relative"~~] means an individual
5 related to another individual by:

6 (A) [~~(1)~~] consanguinity, as determined under
7 Section 573.022, Government Code; or

8 (B) [~~(2)~~] affinity, as determined under Section
9 573.024, Government Code.

10 (b) If, after the testator makes a will, the testator's
11 marriage is dissolved by divorce, annulment, or a declaration that
12 the marriage is void, unless the will expressly provides otherwise:

13 (1) all provisions in the will, including all
14 fiduciary appointments, shall be read as if the former spouse and
15 each relative of the former spouse who is not a relative of the
16 testator had failed to survive the testator; and

17 (2) all provisions in the will disposing of property
18 to an irrevocable trust in which a former spouse or a relative of a
19 former spouse who is not a relative of the testator is a beneficiary
20 or is nominated to serve as trustee or in another fiduciary capacity
21 or that confers a general or special power of appointment on a
22 former spouse or a relative of a former spouse who is not a relative
23 of the testator shall be read to instead dispose of the property to
24 a trust the provisions of which are identical to the irrevocable
25 trust, except any provision in the irrevocable trust:

26 (A) conferring a beneficial interest or a general
27 or special power of appointment to the former spouse or a relative

of the former spouse who is not a relative of the testator shall be treated as if the former spouse and each relative of the former spouse who is not a relative of the testator had disclaimed the interest granted in the provision; and

(B) nominating the former spouse or a relative of the former spouse who is not a relative of the testator to serve as trustee or in another fiduciary capacity shall be treated as if the former spouse and each relative of the former spouse who is not a relative of the testator had died immediately before the dissolution of the marriage ~~[, unless the will expressly provides otherwise].~~

(c) Subsection (b)(2) does not apply if one of the following provides otherwise:

(1) a court order; or

(2) an express provision of a contract relating to the division of the marital estate entered into between the testator and the testator's former spouse before, during, or after the marriage.

SECTION 4. Section [123.052](#)(a), Estates Code, is amended to read as follows:

(a) The dissolution of the marriage revokes a provision in a trust instrument that was executed by a divorced individual before the divorced individual's marriage was dissolved and that:

(1) is a revocable disposition or appointment of property made to the divorced individual's former spouse or any relative of the former spouse who is not a relative of the divorced individual;

(2) revocably confers a general or special power of appointment on the divorced individual's former spouse or any relative of the former spouse who is not a relative of the divorced individual; or

(3) revocably nominates the divorced individual's former spouse or any relative of the former spouse who is not a relative of the divorced individual to serve:

(A) as a personal representative, trustee, conservator, agent, or guardian; or

(B) in another fiduciary or representative capacity.

SECTION 5. Chapter 123, Estates Code, is amended by adding Subchapter D to read as follows:

SUBCHAPTER D. EFFECT OF DISSOLUTION OF MARRIAGE ON CERTAIN
MULTIPLE-PARTY ACCOUNTS

Sec. 123.151. DESIGNATION OF FORMER SPOUSE OR RELATIVE OF
FORMER SPOUSE ON CERTAIN MULTIPLE-PARTY ACCOUNTS. (a) In this
section:

(1) "Beneficiary," "multiple-party account," "P.O.D.
account," and "P.O.D. payee" have the meanings assigned by Chapter
113.

(2) "Public retirement system" has the meaning
assigned by Section 802.001, Government Code.

(3) "Relative" has the meaning assigned by Section
123.051.

(b) If, after a decedent designates a spouse or a relative
of a spouse who is not a relative of the decedent as a P.O.D. payee

1 or beneficiary, including alternative P.O.D. payee or beneficiary,
2 on a P.O.D. account or other multiple-party account, the decedent's
3 marriage is dissolved by divorce, annulment, or a declaration that
4 the marriage is void, the designation provision on the account is
5 not effective as to the former spouse or the former spouse's
6 relative unless:

7 (1) the court decree dissolving the marriage
8 designates the former spouse or the former spouse's relative as the
9 P.O.D. payee or beneficiary;

10 (2) the decedent redesignated the former spouse or the
11 former spouse's relative as the P.O.D payee or beneficiary after
12 the marriage was dissolved; or

13 (3) the former spouse or the former spouse's relative
14 is designated to receive the proceeds or benefits in trust for, on
15 behalf of, or for the benefit of a child or dependent of either the
16 decedent or the former spouse.

17 (c) If a designation is not effective under Subsection (b),
18 a multiple-party account is payable to the named alternative P.O.D.
19 payee or beneficiary or, if an alternative P.O.D. payee or
20 beneficiary is not named, to the estate of the decedent.

21 (d) A financial institution or other person obligated to pay
22 an account described by Subsection (b) that pays the account to the
23 former spouse or the former spouse's relative as P.O.D. payee or
24 beneficiary under a designation that is not effective under
25 Subsection (b) is liable for payment of the account to the person
26 provided by Subsection (c) only if:

27 (1) before payment of the account to the designated

1 P.O.D. payee or beneficiary, the payor receives written notice at
2 the home office or principal office of the payor from an interested
3 person that the designation of the P.O.D. payee or beneficiary is
4 not effective under Subsection (b); and

5 (2) the payor has not interpleaded the account funds
6 into the registry of a court of competent jurisdiction in
7 accordance with the Texas Rules of Civil Procedure.

8 (e) This section does not affect the right of a former
9 spouse to assert an ownership interest in an undivided
10 multiple-party account described by Subsection (b).

11 (f) This section does not apply to the disposition of a
12 beneficial interest in a retirement benefit or other financial plan
13 of a public retirement system.

14 SECTION 6. Section 201.051, Estates Code, is amended to
15 read as follows:

16 Sec. 201.051. MATERNAL INHERITANCE. (a) For purposes of
17 inheritance, a child is the child of the child's biological or
18 adopted mother, and the child and the child's issue shall inherit
19 from the child's mother and the child's maternal kindred, both
20 descendants, ascendants, and collateral kindred in all degrees, and
21 they may inherit from the child and the child's issue. However, if a
22 child has intended parents, as defined by Section 160.102, Family
23 Code, under a gestational agreement validated under Subchapter I,
24 Chapter 160, Family Code, the child is the child of the intended
25 mother and not the biological mother or gestational mother unless
26 the biological mother is also the intended mother.

27 (b) This section does not permit inheritance by a child for

1 whom no right of inheritance accrues under Section 201.056 or by the
2 child's issue.

3 SECTION 7. Section 201.052, Estates Code, is amended by
4 adding Subsection (f) to read as follows:

5 (f) This section does not permit inheritance by a child for
6 whom no right of inheritance accrues under Section 201.056 or by the
7 child's issue.

8 SECTION 8. Section 201.056, Estates Code, is amended to
9 read as follows:

10 Sec. 201.056. PERSONS NOT IN BEING. No right of inheritance
11 accrues to any person ~~[other than to a child or lineal descendant of~~
12 ~~an intestate,~~ unless the person is born before, or is in gestation
13 at, [in being and capable in law to take as an heir at] the time of
14 the intestate's death and survives for at least 120 hours. A person
15 is:

16 (1) considered to be in gestation at the time of the
17 intestate's death if insemination or implantation occurs at or
18 before the time of the intestate's death; and

19 (2) presumed to be in gestation at the time of the
20 intestate's death if the person is born before the 301st day after
21 the date of the intestate's death.

22 SECTION 9. Section 202.005, Estates Code, is amended to
23 read as follows:

24 Sec. 202.005. APPLICATION FOR PROCEEDING TO DECLARE
25 HEIRSHIP. A person authorized by Section 202.004 to commence a
26 proceeding to declare heirship must file an application in a court
27 specified by Section 33.004 to commence the proceeding. The

1 application must state:

2 (1) the decedent's name and date [~~time~~] and place of
3 death;

4 (2) the names and physical addresses where service can
5 be had [~~residences~~] of the decedent's heirs, the relationship of
6 each heir to the decedent, whether each heir is an adult or minor,
7 and the true interest of the applicant and each of the heirs in the
8 decedent's estate or in the trust, as applicable;

9 (3) if the date [~~time~~] or place of the decedent's death
10 or the name or physical addresses where service can be had
11 [~~residence~~] of an heir is not definitely known to the applicant, all
12 the material facts and circumstances with respect to which the
13 applicant has knowledge and information that might reasonably tend
14 to show the date [~~time~~] or place of the decedent's death or the name
15 or physical addresses where service can be had [~~residence~~] of the
16 heir;

17 (4) that all children born to or adopted by the
18 decedent have been listed;

19 (5) that each of the decedent's marriages has been
20 listed with:

21 (A) the date of the marriage;

22 (B) the name of the spouse;

23 (C) the date and place of termination if the
24 marriage was terminated; and

25 (D) other facts to show whether a spouse has had
26 an interest in the decedent's property;

27 (6) whether the decedent died testate and, if so, what

1 disposition has been made of the will;

2 (7) a general description of all property belonging to
3 the decedent's estate or held in trust for the benefit of the
4 decedent, as applicable; and

5 (8) an explanation for the omission from the
6 application of any of the information required by this section.

7 SECTION 10. Section 202.055, Estates Code, is amended to
8 read as follows:

9 Sec. 202.055. SERVICE OF CITATION ON CERTAIN PERSONS NOT
10 REQUIRED. A party to a proceeding to declare heirship who executed
11 the application filed under Section 202.005, entered an appearance
12 in the proceeding, or waived citation under this subchapter is not
13 required to be served by any method.

14 SECTION 11. Section 202.056, Estates Code, is amended to
15 read as follows:

16 Sec. 202.056. WAIVER OF SERVICE OF CITATION. (a) Except as
17 provided by Subsection (b)(2), a distributee may waive citation
18 required by this subchapter to be served on the distributee.

19 (b) A parent, managing conservator, guardian, attorney ad
20 litem, or guardian ad litem of a minor distributee who:

21 (1) is younger than 12 years of age may waive citation
22 required by this subchapter to be served on the distributee; and

23 (2) is 12 years of age or older may not waive citation
24 required by this subchapter to be served on the distributee.

25 SECTION 12. Section 202.201(a), Estates Code, is amended to
26 read as follows:

27 (a) The judgment in a proceeding to declare heirship must

state:

(1) the names [~~and places of residence~~] of the heirs of the decedent who is the subject of the proceeding; and

(2) the heirs' respective shares and interests in the decedent's property.

SECTION 13. Subchapter B, Chapter 251, Estates Code, is amended by adding Section 251.053 to read as follows:

Sec. 251.053. EXCEPTION FOR FOREIGN AND CERTAIN OTHER WILLS. Section 251.051 does not apply to a written will executed in compliance with:

(1) the law of the state or foreign country where the will was executed, as that law existed at the time of the will's execution; or

(2) the law of the state or foreign country where the testator was domiciled or had a place of residence, as that law existed at the time of the will's execution or at the time of the testator's death.

SECTION 14. Section 251.1045(a), Estates Code, is amended to read as follows:

(a) As an alternative to the self-proving of a will by the affidavits of the testator and the attesting witnesses as provided by Section 251.104, a will may be simultaneously executed, attested, and made self-proved before an officer authorized to administer oaths, and the testimony of the witnesses in the probate of the will may be made unnecessary, with the inclusion in the will of the following in form and contents substantially as follows:

I, _____, as testator, after being duly

sworn, declare to the undersigned witnesses and to the undersigned authority that this instrument is my will, that I ~~[have]~~ willingly make ~~[made]~~ and execute ~~[executed]~~ it in the presence of the undersigned witnesses, all of whom are ~~[were]~~ present at the same time, as my free act and deed, and that I request ~~[have requested]~~ each of the undersigned witnesses to sign this will in my presence and in the presence of each other. I now sign this will in the presence of the attesting witnesses and the undersigned authority on this _____ day of _____, 20_____.

Testator

The undersigned, _____ and _____, each being at least fourteen years of age, after being duly sworn, declare to the testator and to the undersigned authority that the testator declared to us that this instrument is the testator's will and that the testator requested us to act as witnesses to the testator's will and signature. The testator then signed this will in our presence, all of us being present at the same time. The testator is eighteen years of age or over (or being under such age, is or has been lawfully married, or is a member of the armed forces of the United States or of an auxiliary of the armed forces of the United States or of the United States Maritime Service), and we believe the testator to be of sound mind. We now sign our names as attesting witnesses in the presence of the testator, each other, and the undersigned authority on this _____ day of _____, 20_____.

Witness

Witness

Subscribed and sworn to before me by the said _____,
testator, and by the said _____ and _____,
witnesses, this _____ day of _____, 20_____.

(SEAL)

(Signed) _____

(Official Capacity of Officer)

SECTION 15. Sections 253.001(b) and (c), Estates Code, are
amended to read as follows:

(b) A court may not prohibit a person from:

(1) executing a new will;

(2) executing ~~or~~ a codicil to an existing will; or

(3) revoking an existing will or codicil in whole or in
part.

(c) Any portion of a court order that purports to prohibit a
person from engaging in an action described by Subsection (b)
~~[executing a new will or a codicil to an existing will]~~ is void and
may be disregarded without penalty or sanction of any kind.

SECTION 16. Section 254.005, Estates Code, is amended to
read as follows:

Sec. 254.005. FORFEITURE CLAUSE. (a) A provision in a will
that would cause a forfeiture of or void a devise or provision in
favor of a person for bringing any court action, including
contesting a will, is enforceable unless in a court action
determining whether the forfeiture clause should be enforced, the

1 person who brought the action contrary to the forfeiture clause
2 establishes by a preponderance of the evidence that:

- 3 (1) just cause existed for bringing the action; and
4 (2) the action was brought and maintained in good
5 faith.

6 **(b) This section is not intended to and does not repeal any**
7 **law recognizing that forfeiture clauses generally will not be**
8 **construed to prevent a beneficiary from seeking to compel a**
9 **fiduciary to perform the fiduciary's duties, seeking redress**
10 **against a fiduciary for a breach of the fiduciary's duties, or**
11 **seeking a judicial construction of a will or trust.**

12 SECTION 17. Subchapter G, Chapter 255, Estates Code, is
13 amended by adding Section 255.304 to read as follows:

14 **Sec. 255.304. APPLICABILITY OF SUBCHAPTER. This subchapter**
15 **is applicable only to wills executed on or after September 1, 2005.**

16 SECTION 18. Chapter 255, Estates Code, is amended by adding
17 Subchapters I and J to read as follows:

18 **SUBCHAPTER I. CLASS GIFTS**

19 **Sec. 255.401. POSTHUMOUS CLASS GIFT MEMBERSHIP. (a) A**
20 **right to take as a member of a class gift does not accrue to any**
21 **person unless the person is born before, or is in gestation at, the**
22 **time of the testator's death and survives for at least 120 hours. A**
23 **person is:**

24 **(1) considered to be in gestation at the time of the**
25 **testator's death if insemination or implantation occurs at or**
26 **before the time of the testator's death; and**

27 **(2) presumed to be in gestation at the time of the**

1 testator's death if the person was born before the 301st day after
2 the date of the testator's death.

3 (b) A provision in the testator's will that is contrary to
4 this section prevails over this section.

5 SUBCHAPTER J. JUDICIAL MODIFICATION OR REFORMATION

6 OF WILLS

7 Sec. 255.451. CIRCUMSTANCES UNDER WHICH WILL MAY BE
8 MODIFIED OR REFORMED. (a) On the petition of a personal
9 representative, a court may order that the terms of the will be
10 modified or reformed, that the personal representative be directed
11 or permitted to perform acts that are not authorized or that are
12 prohibited by the terms of the will, or that the personal
13 representative be prohibited from performing acts that are required
14 by the terms of the will, if:

15 (1) modification of administrative, nondispositive
16 terms of the will is necessary or appropriate to prevent waste or
17 impairment of the estate's administration;

18 (2) the order is necessary or appropriate to achieve
19 the testator's tax objectives or to qualify a distributee for
20 government benefits and is not contrary to the testator's intent;
21 or

22 (3) the order is necessary to correct a scrivener's
23 error in the terms of the will, even if unambiguous, to conform with
24 the testator's intent.

25 (b) An order described in Subsection (a)(3) may be issued
26 only if the testator's intent is established by clear and
27 convincing evidence.

1 Sec. 255.452. JUDICIAL DISCRETION. The court shall
2 exercise the court's discretion to order a modification or
3 reformation under this subchapter in the manner that conforms as
4 nearly as possible to the probable intent of the testator.

5 Sec. 255.453. RETROACTIVE EFFECT. The court may direct
6 that an order described by this subchapter has retroactive effect.

7 Sec. 255.454. POWERS CUMULATIVE. This subchapter does not
8 limit a court's powers under other law, including the power to
9 modify, reform, or terminate a testamentary trust under Section
10 [112.054](#), Property Code.

11 Sec. 255.455. DUTIES AND LIABILITY OF PERSONAL
12 REPRESENTATIVE UNDER SUBCHAPTER. (a) This subchapter does not
13 create or imply a duty for a personal representative to:

14 (1) petition a court for modification or reformation
15 of a will, to be directed or permitted to perform acts that are not
16 authorized or that are prohibited by the terms of the will, or to be
17 prohibited from performing acts that are required by the terms of
18 the will;

19 (2) inform devisees about the availability of relief
20 under this subchapter; or

21 (3) review the will or other evidence to determine
22 whether any action should be taken under this subchapter.

23 (b) A personal representative is not liable for failing to
24 file a petition under Section 255.451.

25 SECTION 19. Sections [256.003](#)(a) and (b), Estates Code, are
26 amended to read as follows:

27 (a) Except as provided by Section [501.001](#) with respect to a

1 foreign will, a [A] will may not be admitted to probate after the
2 fourth anniversary of the testator's death unless it is shown by
3 proof that the applicant for the probate of the will was not in
4 default in failing to present the will for probate on or before the
5 fourth anniversary of the testator's death.

6 (b) Except as provided by Section 501.006 with respect to a
7 foreign will, letters [~~Letters~~] testamentary may not be issued if a
8 will is admitted to probate after the fourth anniversary of the
9 testator's death.

10 SECTION 20. Section 256.051(a), Estates Code, is amended
11 to read as follows:

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

- 17 (1) written or unwritten;
18 (2) in the applicant's possession or not;
19 (3) lost;
20 (4) destroyed; or
21 (5) outside of this state.

22 SECTION 21. Section 256.052(a), Estates Code, is amended to
23 read as follows:

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

- 27 (1) each applicant's name and domicile;

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

3 (3) the fact, date [~~time~~], and place of the testator's
4 death;

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

7 (5) that the testator owned property, including a
8 statement generally describing the property and the property's
9 probable value;

10 (6) the date of the will;

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

14 (8) the name of each subscribing witness to the will,
15 if any;

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

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

21 (11) whether the state, a governmental agency of the
22 state, or a charitable organization is named in the will as a
23 devisee; and

24 (12) that the executor named in the will, the
25 applicant, or another person to whom the applicant desires that
26 letters be issued is not disqualified by law from accepting the
27 letters.

SECTION 22. Section 256.054, Estates Code, is amended to read as follows:

Sec. 256.054. ADDITIONAL APPLICATION REQUIREMENTS WHEN NO WILL IS PRODUCED. In addition to the requirements for an application under Section 256.052, if an applicant for the probate of a will cannot produce the will in court, the application must state:

- (1) the reason the will cannot be produced;
- (2) the contents of the will, as far as known; and
- (3) the name~~[, age, marital status,]~~ and address, if known, whether the person is an adult or minor, and the relationship to the testator, if any, of:
 - (A) each devisee;
 - (B) each person who would inherit as an heir of the testator in the absence of a valid will; and
 - (C) in the case of partial intestacy, each heir of the testator.

SECTION 23. Sections 256.152(b) and (c), Estates Code, are amended to read as follows:

(b) A will that is self-proved as provided by Subchapter C, Chapter 251, that ~~[or, if executed in another state or a foreign country,]~~ is self-proved in accordance with the law ~~[laws]~~ of another [the] state or foreign country where the will was executed, as that law existed at the time of the will's execution, or that is self-proved in accordance with the law of another state or foreign country where the testator was domiciled or had a place of residence, as that law existed at the time of the will's execution

or the time of the testator's death, ~~[of the testator's domicile at the time of the execution]~~ is not required to have any additional proof that the will was executed with the formalities and solemnities and under the circumstances required to make the will valid.

(c) As an alternative to Subsection (b), a will ~~[executed in another state or a foreign country]~~ is considered self-proved without further evidence of the law of any ~~[the other]~~ state or foreign country if:

(1) the will was executed in another state or a foreign country or the testator was domiciled or had a place of residence in another state or a foreign country at the time of the will's execution or the time of the testator's death; and

(2) the will, or an affidavit of the testator and attesting witnesses attached or annexed to the will, provides that:

(A) ~~[(1)]~~ the testator declared that the testator signed the instrument as the testator's will, the testator signed it willingly or willingly directed another to sign for the testator, the testator executed the will as the testator's free and voluntary act for the purposes expressed in the instrument, the testator is of sound mind and under no constraint or undue influence, and the testator is eighteen years of age or over or, if under that age, was or had been lawfully married, or was then a member of the armed forces of the United States, an auxiliary of the armed forces of the United States, or the United States Maritime Service; and

(B) ~~[(2)]~~ the witnesses declared that the

1 testator signed the instrument as the testator's will, the testator
2 signed it willingly or willingly directed another to sign for the
3 testator, each of the witnesses, in the presence and hearing of the
4 testator, signed the will as witness to the testator's signing, and
5 to the best of their knowledge the testator was of sound mind and
6 under no constraint or undue influence, and the testator was
7 eighteen years of age or over or, if under that age, was or had been
8 lawfully married, or was then a member of the armed forces of the
9 United States, an auxiliary of the armed forces of the United
10 States, or the United States Maritime Service.

11 SECTION 24. Section 257.051(a), Estates Code, is amended to
12 read as follows:

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

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

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

20 (3) the fact, date ~~[time]~~, and place of the testator's
21 death;

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

24 (5) that the testator owned property, including a
25 statement generally describing the property and the property's
26 probable value;

27 (6) the date of the will;

(7) the name, state of [~~and~~] residence, and physical
address where service can be had of the [~~of~~;

[~~(A)~~—~~any~~] executor named in the will;

(8) the name of [~~and~~

[~~(B)~~] each subscribing witness to the will, if
any;

(9) [~~(8)~~] 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) [~~(9)~~] that the testator's estate does not owe an
unpaid debt, other than any debt secured by a lien on real estate;

(11) [~~(10)~~] whether a marriage of the testator was
ever dissolved after the will was made and, if so, when and from
whom; and

(12) [~~(11)~~] whether the state, a governmental agency
of the state, or a charitable organization is named in the will as a
devisee.

SECTION 25. Section 257.053, Estates Code, is amended to
read as follows:

Sec. 257.053. ADDITIONAL APPLICATION REQUIREMENTS WHEN NO
WILL IS PRODUCED. In addition to the requirements for an
application under Section 257.051, if an applicant for the probate
of a will as a muniment of title cannot produce the will in court,
the application must state:

(1) the reason the will cannot be produced;

(2) the contents of the will, to the extent known; and

1 (3) the name~~[, age, marital status,]~~ and address, if
2 known, whether the person is an adult or minor, and the relationship
3 to the testator, if any, of:

4 (A) each devisee;

5 (B) each person who would inherit as an heir of
6 the testator in the absence of a valid will; and

7 (C) in the case of partial intestacy, each heir
8 of the testator.

9 SECTION 26. Section 301.002(a), Estates Code, is amended to
10 read as follows:

11 (a) Except as provided by Subsection (b) and Section 501.006
12 with respect to a foreign will, an application for the grant of
13 letters testamentary or of administration of an estate must be
14 filed not later than the fourth anniversary of the decedent's
15 death.

16 SECTION 27. Section 301.051, Estates Code, is amended to
17 read as follows:

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

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

24 or

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

26 (A) there is a will, but:

27 (i) no executor is named in the will; or

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

(B) there is no will.

SECTION 28. Section 301.052, Estates Code, is amended to read as follows:

Sec. 301.052. CONTENTS OF APPLICATION FOR LETTERS OF ADMINISTRATION. 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;

(2) the decedent's name and that the decedent died intestate;

(3) the fact, date ~~[time]~~, and place of the decedent's death;

(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~~[, age, marital status]~~ 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,

1 if so, when and from whom;

2 (9) that a necessity exists for administration of the
3 decedent's estate and an allegation of the facts that show that
4 necessity; and

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

7 SECTION 29. Section 301.151, Estates Code, is amended to
8 read as follows:

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

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

14 (2) except as provided by Section 501.006 with respect
15 to a foreign will, four years have not elapsed since the date of the
16 decedent's death and before the application;

17 (3) the court has jurisdiction and venue over the
18 estate;

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

21 (5) the person for whom letters testamentary or of
22 administration are sought is entitled by law to the letters and is
23 not disqualified.

24 SECTION 30. Section 308.004(a), Estates Code, is amended to
25 read as follows:

26 (a) Not later than the 90th day after the date of an order
27 admitting a will to probate, the personal representative shall file

1 with the clerk of the court in which the decedent's estate is
2 pending a sworn affidavit of the representative or a certificate
3 signed by the representative's attorney stating:

4 (1) for each beneficiary to whom notice was required
5 to be given under this subchapter, the name ~~[and address]~~ of the
6 beneficiary to whom the representative gave the notice or, for a
7 beneficiary described by Section 308.002(b), the name ~~[and address]~~
8 of the beneficiary and of the person to whom the notice was given;

9 (2) the name ~~[and address]~~ of each beneficiary to whom
10 notice was not required to be given under Section 308.002(c)(2),
11 (3), or (4);

12 (3) the name of each beneficiary whose identity or
13 address could not be ascertained despite the representative's
14 exercise of reasonable diligence; and

15 (4) any other information necessary to explain the
16 representative's inability to give the notice to or for any
17 beneficiary as required by this subchapter.

18 SECTION 31. Sections 309.001(a) and (c), Estates Code, are
19 amended to read as follows:

20 (a) At any time after letters testamentary or of
21 administration are granted, the court, for good cause, on the
22 court's own motion or on the motion of an interested person ~~[party]~~
23 shall appoint at least one but not more than three disinterested
24 persons who are residents of the county in which the letters were
25 granted to appraise the estate property.

26 (c) If the court makes an appointment under Subsection (a)
27 ~~[or (b)]~~ and part of the estate is located in a county other than the

1 county in which the letters were granted, the court, if the court
2 considers necessary, may appoint at least one but not more than
3 three disinterested persons who are residents of the county in
4 which the relevant part of the estate is located to appraise the
5 estate property located in that county.

6 SECTION 32. Section 309.056, Estates Code, is amended by
7 amending Subsections (b) and (c) and adding Subsection (b-1) to
8 read as follows:

9 (b) Notwithstanding Sections 309.051 and 309.052, or any
10 contrary provision in a decedent's will that does not specifically
11 prohibit the filing of an affidavit described by this subsection,
12 if there are no unpaid debts, except for secured debts, taxes, and
13 administration expenses, at the time the inventory is due,
14 including any extensions, an independent executor may file with the
15 court clerk, in lieu of the inventory, appraisement, and list of
16 claims, an affidavit stating that all debts, except for secured
17 debts, taxes, and administration expenses, are paid and that all
18 beneficiaries other than those described by Subsection (b-1) have
19 received a verified, full, and detailed inventory and
20 appraisement. The affidavit in lieu of the inventory,
21 appraisement, and list of claims must be filed within the 90-day
22 period prescribed by Section 309.051(a), unless the court grants an
23 extension.

24 (b-1) Absent a written request by a beneficiary, an
25 independent executor is not required to provide a verified, full,
26 and detailed inventory and appraisement to a beneficiary who:

27 (1) is entitled to receive aggregate devises under the

1 will with an estimated value of \$2,000 or less;

2 (2) has received all devises to which the beneficiary
3 is entitled under the will on or before the date an affidavit under
4 this section is filed; or

5 (3) has waived in writing the beneficiary's right to
6 receive a verified, full, and detailed inventory and appraisement.

7 (c) If the independent executor files an affidavit in lieu
8 of the inventory, appraisement, and list of claims as authorized
9 under Subsection (b):

10 (1) any person interested in the estate, including a
11 possible heir of the decedent, [ex] a beneficiary under a prior will
12 of the decedent, or a beneficiary described by Subsection (b-1), is
13 entitled to receive a copy of the inventory, appraisement, and list
14 of claims from the independent executor on written request;

15 (2) the independent executor may provide a copy of the
16 inventory, appraisement, and list of claims to any person the
17 independent executor believes in good faith may be a person
18 interested in the estate without liability to the estate or its
19 beneficiaries; and

20 (3) a person interested in the estate may apply to the
21 court for an order compelling compliance with Subdivision (1), and
22 the court, in its discretion, may compel the independent executor
23 to provide a copy of the inventory, appraisement, and list of claims
24 to the interested person or may deny the application.

25 SECTION 33. Section 352.052(b), Estates Code, is amended to
26 read as follows:

27 (b) A person designated as a devisee in or beneficiary of a

will or an alleged will~~[, or as administrator with the will or~~
~~alleged will annexed,~~] who, for the purpose of having the will or
alleged will admitted to probate, defends the will or alleged will
or prosecutes any proceeding in good faith and with just cause,
whether or not successful, may be allowed out of the estate the
person's necessary expenses and disbursements in those
proceedings, including reasonable attorney's fees.

SECTION 34. Subchapter A, Chapter 353, Estates Code, is
amended by adding Section 353.002 to read as follows:

Sec. 353.002. DEFINITION. Notwithstanding Section 22.013,
in this chapter, "exempt property" means the following property in
a decedent's estate that is exempt from execution or forced sale by
the constitution or laws of this state, and any allowance paid
instead of that property:

(1) the homestead; and

(2) property described by Section 42.002(a), Property
Code.

SECTION 35. Sections 353.051(a) and (b), Estates Code, are
amended to read as follows:

(a) Unless an application and verified affidavit are filed
as provided by Subsection (b), immediately after the inventory,
appraisement, and list of claims of an estate are approved or after
the affidavit in lieu of the inventory, appraisement, and list of
claims is filed, the court by order shall set aside:

(1) the homestead for the use and benefit of the
decedent's surviving spouse and minor children; and

(2) all other exempt ~~[estate]~~ property ~~[that is exempt~~

1 ~~from execution or forced sale by the constitution and laws of this~~
2 ~~state]~~ for the use and benefit of the decedent's:

3 (A) surviving spouse and minor children;

4 (B) unmarried adult children remaining with the
5 decedent's family; and

6 (C) each other adult child who is incapacitated.

7 (b) Before the inventory, appraisement, and list of claims
8 of an estate are approved or, if applicable, before the affidavit in
9 lieu of the inventory, appraisement, and list of claims is filed:

10 (1) the decedent's surviving spouse or any other
11 person authorized to act on behalf of the decedent's minor children
12 may apply to the court to have exempt property, including the
13 homestead, set aside by filing an application and a verified
14 affidavit listing all the property that the applicant claims is
15 exempt for purposes of this chapter; and

16 (2) any of the decedent's unmarried adult children
17 remaining with the decedent's family, any other adult child of the
18 decedent who is incapacitated, or a person who is authorized to act
19 on behalf of the adult incapacitated child may apply to the court to
20 have all exempt property, other than the homestead, set aside by
21 filing an application and a verified affidavit listing all the
22 property, other than the homestead, that the applicant claims is
23 exempt for purposes of this chapter.

24 SECTION 36. Section 353.053(a), Estates Code, is amended to
25 read as follows:

26 (a) If all or any of the specific articles of exempt
27 property [~~from execution or forced sale by the constitution and~~

1 ~~laws of this state]~~ are not among the decedent's effects, the court
2 shall make, in lieu of the articles not among the effects, a
3 reasonable allowance to be paid to the decedent's surviving spouse
4 and children as provided by Section 353.054.

5 SECTION 37. Sections 353.153 and 353.154, Estates Code, are
6 amended to read as follows:

7 Sec. 353.153. TITLE TO PROPERTY OF INSOLVENT ESTATE. If on
8 final settlement an estate proves to be insolvent, the decedent's
9 surviving spouse and children have absolute title to all property
10 and allowances set aside or paid to them under this title. The
11 distributees are entitled to distribution of any remaining exempt
12 property held by the executor or administrator in the same manner as
13 other estate property. The property and allowances set aside or
14 paid to the decedent's surviving spouse or children, and any
15 remaining exempt property held by the executor or administrator,
16 may not be taken for any of the estate debts except as provided by
17 Section 353.155.

18 Sec. 353.154. CERTAIN PROPERTY NOT CONSIDERED IN
19 DETERMINING SOLVENCY. In determining whether an estate is solvent
20 or insolvent, the exempt property set aside for the decedent's
21 surviving spouse or children, any allowance made in lieu of that
22 exempt property, ~~and~~ the family allowance under Subchapter C, and
23 any remaining exempt property held by the executor or administrator
24 may not be estimated or considered as estate assets.

25 SECTION 38. Section 401.002, Estates Code, is amended to
26 read as follows:

27 Sec. 401.002. CREATION IN TESTATE ESTATE BY AGREEMENT. (a)

1 Except as provided in Section 401.001(b), if a decedent's will
 2 names an executor but the will does not provide for independent
 3 administration as provided in Section 401.001(a), all of the
 4 distributees of the decedent may agree on the advisability of
 5 having an independent administration and collectively designate in
 6 the application for probate of the decedent's will, or in one or
 7 more separate documents consenting to the application for probate
 8 of the decedent's will, the executor named in the will to serve as
 9 independent executor and request [~~in the application~~] that no other
 10 action shall be had in the probate court in relation to the
 11 settlement of the decedent's estate other than the probating and
 12 recording of the decedent's will and the return of an inventory,
 13 appraisement, and list of claims of the decedent's estate. In such
 14 case the probate court shall enter an order granting independent
 15 administration and appointing the person, firm, or corporation
 16 designated by the distributees [~~in the application~~] as independent
 17 executor, unless the court finds that it would not be in the best
 18 interest of the estate to do so.

19 (b) Except as provided in Section 401.001(b), in situations
 20 where no executor is named in the decedent's will, or in situations
 21 where each executor named in the will is deceased or is disqualified
 22 to serve as executor or indicates by affidavit filed with the
 23 application for administration of the decedent's estate the
 24 executor's inability or unwillingness to serve as executor, all of
 25 the distributees of the decedent may agree on the advisability of
 26 having an independent administration and collectively designate in
 27 the application for probate of the decedent's will, or in one or

1 more separate documents consenting to the application for probate
 2 of the decedent's will, a qualified person, firm, or corporation to
 3 serve as independent administrator and request [~~in the application~~]
 4 that no other action shall be had in the probate court in relation
 5 to the settlement of the decedent's estate other than the probating
 6 and recording of the decedent's will and the return of an inventory,
 7 appraisement, and list of claims of the decedent's estate. In such
 8 case the probate court shall enter an order granting independent
 9 administration and appointing the person, firm, or corporation
 10 designated by the distributees [~~in the application~~] as independent
 11 administrator, unless the court finds that it would not be in the
 12 best interest of the estate to do so.

13 SECTION 39. Section 401.003(a), Estates Code, is amended to
 14 read as follows:

15 (a) All of the distributees of a decedent dying intestate
 16 may agree on the advisability of having an independent
 17 administration and collectively designate in the application for
 18 administration of the decedent's estate, or in one or more
 19 documents consenting to the application for administration of the
 20 decedent's estate, a qualified person, firm, or corporation to
 21 serve as independent administrator and request [~~in the application~~]
 22 that no other action shall be had in the probate court in relation
 23 to the settlement of the decedent's estate other than the return of
 24 an inventory, appraisement, and list of claims of the decedent's
 25 estate. In such case the probate court shall enter an order
 26 granting independent administration and appointing the person,
 27 firm, or corporation designated by the distributees [~~in the~~]

1 ~~application~~] as independent administrator, unless the court finds
2 that it would not be in the best interest of the estate to do so.

3 SECTION 40. Sections 401.004(c) and (h), Estates Code, are
4 amended to read as follows:

5 (c) If a distributee is an incapacitated person, the
6 guardian of the person of the distributee may consent to the
7 creation of an independent administration ~~[sign the application]~~ on
8 behalf of the distributee. If the probate court finds that either
9 the granting of independent administration or the appointment of
10 the person, firm, or corporation designated by the distributees ~~[in~~
11 ~~the application]~~ as independent executor would not be in the best
12 interest of the incapacitated person, then, notwithstanding
13 anything to the contrary in Section 401.002 or 401.003, the court
14 may not enter an order granting independent administration of the
15 estate. If a distributee who is an incapacitated person has no
16 guardian of the person, the probate court may appoint a guardian ad
17 litem to act ~~[make application]~~ on behalf of the incapacitated
18 person if the court considers such an appointment necessary to
19 protect the interest of the distributees. Alternatively, if the
20 distributee who is an incapacitated person is a minor and has no
21 guardian of the person, the natural guardian or guardians of the
22 minor may consent on the minor's behalf if there is no conflict of
23 interest between the minor and the natural guardian or guardians.

24 (h) If a distributee of a decedent's estate dies and if by
25 virtue of the distributee's death the distributee's share of the
26 decedent's estate becomes payable to the distributee's estate, the
27 deceased distributee's personal representative may consent to the

1 ~~[sign the application for]~~ independent administration of the
2 decedent's estate under Section 401.002 or 401.003 and under
3 Subsection (c).

4 SECTION 41. Section 401.006, Estates Code, is amended to
5 read as follows:

6 Sec. 401.006. GRANTING POWER OF SALE BY AGREEMENT. In a
7 situation in which a decedent does not have a will, or a decedent's
8 will does not contain language authorizing the personal
9 representative to sell property or contains language that is not
10 sufficient to grant the representative that authority, the court
11 may include in an order appointing an independent executor ~~[under~~
12 ~~Section 401.002 or 401.003]~~ any general or specific authority
13 regarding the power of the independent executor to sell property
14 that may be consented to by the beneficiaries who are to receive any
15 interest in the property in the application for independent
16 administration or for the appointment of an independent executor or
17 in their consents to the independent administration or to the
18 appointment of an independent executor. The independent executor,
19 in such event, may sell the property under the authority granted in
20 the court order without the further consent of those beneficiaries.

21 SECTION 42. Subtitle J, Title 2, Estates Code, is amended by
22 adding Chapter 456 to read as follows:

23 CHAPTER 456. DISBURSEMENT AND CLOSING OF LAWYER TRUST OR ESCROW

24 ACCOUNTS

25 Sec. 456.001. DEFINITION. In this chapter, "eligible
26 institution" means a financial institution or investment company in
27 which a lawyer has established an escrow or trust account for

purposes of holding client funds or the funds of third persons that are in the lawyer's possession in connection with representation as required by the Texas Disciplinary Rules of Professional Conduct.

Sec. 456.002. AUTHORITY TO DESIGNATE LAWYER ON CERTAIN TRUST OR ESCROW ACCOUNTS. (a) When administering the estate of a deceased lawyer who established one or more trust or escrow accounts for client funds or the funds of third persons that are in the lawyer's possession in connection with representation as required by the Texas Disciplinary Rules of Professional Conduct, the personal representative may hire through written agreement a lawyer authorized to practice in this state to:

(1) be the authorized signer on the trust or escrow account;

(2) determine who is entitled to receive the funds in the account;

(3) disburse the funds to the appropriate persons or to the decedent's estate; and

(4) close the account.

(b) If the personal representative is a lawyer authorized to practice in this state, the personal representative may state that fact and disburse the trust or escrow account funds of a deceased lawyer in accordance with Subsection (a).

(c) An agreement under Subsection (a) or a statement under Subsection (b) must be made in writing, and a copy of the agreement or statement must be delivered to each eligible institution in which the trust or escrow accounts are established.

Sec. 456.003. DUTY OF ELIGIBLE INSTITUTIONS. Within a

1 reasonable time after receiving a copy of a written agreement under
2 Section 456.002(a) or a statement from a personal representative
3 under Section 456.002(b) and instructions from the lawyer
4 identified in the agreement or statement, as applicable, regarding
5 how to disburse the funds or close a trust or escrow account, an
6 eligible institution shall disburse the funds and close the account
7 in compliance with the instructions unless otherwise prohibited by
8 rule.

9 Sec. 456.004. LIABILITY OF ELIGIBLE INSTITUTIONS. An
10 eligible institution is not liable for any act respecting an
11 account taken in compliance with this chapter.

12 Sec. 456.005. RULES. The supreme court may adopt rules
13 necessary to implement this chapter.

14 SECTION 43. Section 501.001, Estates Code, is amended to
15 read as follows:

16 Sec. 501.001. AUTHORITY FOR ANCILLARY PROBATE OF FOREIGN
17 WILL. The written will of a testator who was not domiciled in this
18 state at the time of the testator's death may be admitted to probate
19 at any time in this state if:

20 (1) the will would affect any property in this state;
21 and

22 (2) proof is presented that the will stands probated
23 or otherwise established in any state of the United States or a
24 foreign nation.

25 SECTION 44. Section 501.006(a), Estates Code, is amended to
26 read as follows:

27 (a) On application, an executor named in a foreign will

1 admitted to ancillary probate in this state in accordance with this
2 chapter is entitled to receive ancillary letters testamentary on
3 proof made to the court that:

4 (1) the executor has qualified to serve as executor in
5 the jurisdiction in which the will was previously admitted to
6 probate or otherwise established; ~~and~~

7 (2) the executor is not disqualified from serving in
8 that capacity in this state; and

9 (3) if the will is admitted to ancillary probate in
10 this state after the fourth anniversary of the testator's death,
11 the executor continues to serve in that capacity in the
12 jurisdiction in which the will was previously admitted to probate
13 or otherwise established.

14 SECTION 45. Section 309.001(b), Estates Code, is repealed.

15 SECTION 46. The amendment by this Act of Sections
16 113.004(4) and 253.001, Estates Code, is intended to clarify rather
17 than change existing law.

18 SECTION 47. Section 113.152(c), Estates Code, as added by
19 this Act, applies to a P.O.D. account held by a financial
20 institution on or after the effective date of this Act, regardless
21 of the date on which the account was opened.

22 SECTION 48. Sections 201.051, 201.052, 201.056,
23 308.004(a), 309.056, 352.052(b), 353.051(a) and (b), 353.053(a),
24 353.153, and 353.154, Estates Code, as amended by this Act, and
25 Subchapters I and J, Chapter 255, and Section 353.002, Estates
26 Code, as added by this Act, apply only to the estate of a decedent
27 who dies on or after the effective date of this Act. The estate of a

1 decedent who dies before the effective date of this Act is governed
2 by the law in effect on the date of the decedent's death, and the
3 former law is continued in effect for that purpose.

4 SECTION 49. Sections 123.001 and 123.052(a), Estates Code,
5 as amended by this Act, and Subchapter D, Chapter 123, Estates Code,
6 as added by this Act, apply only to a divorced individual who dies
7 on or after the effective date of this Act.

8 SECTION 50. Sections 202.005, 202.055, 202.056,
9 202.201(a), 257.051(a), and 257.053, Estates Code, as amended by
10 this Act, apply to an action filed or other proceeding commenced on
11 or after the effective date of this Act. An action filed or other
12 proceeding commenced before that date is governed by the law in
13 effect on the date the action was filed or the proceeding was
14 commenced, and the former law is continued in effect for that
15 purpose.

16 SECTION 51. Section 251.053, Estates Code, as added by this
17 Act, and Sections 251.1045(a), 256.003(a) and (b), 256.152(b) and
18 (c), 501.001, and 501.006(a), Estates Code, as amended by this Act,
19 apply only to a will executed on or after the effective date of this
20 Act. A will executed before the effective date of this Act is
21 governed by the law in effect on the date the will was executed, and
22 the former law is continued in effect for that purpose.

23 SECTION 52. Sections 401.002, 401.003(a), 401.004(c) and
24 (h), and 401.006, Estates Code, as amended by this Act, apply to the
25 administration of the estate of a decedent that is pending or
26 commenced on or after the effective date of this Act.

27 SECTION 53. Sections 256.051(a), 256.052(a), 256.054,

1 301.002(a), 301.051, 301.052, and 301.151, Estates Code, as amended
2 by this Act, apply only to an application for the probate of a will
3 or administration of a decedent's estate that is filed on or after
4 the effective date of this Act. An application for the probate of a
5 will or administration of a decedent's estate filed before that
6 date is governed by the law in effect on the date the application
7 was filed, and the former law is continued in effect for that
8 purpose.

9 SECTION 54. Chapter 456, Estates Code, as added by this Act,
10 applies only to a trust or escrow account established by a lawyer
11 who dies on or after the effective date of this Act. A trust or
12 escrow account established by a lawyer who dies before the
13 effective date of this Act is governed by the law in effect on the
14 date of the decedent's death, and the former law is continued in
15 effect for that purpose.

16 SECTION 55. This Act takes effect September 1, 2015.