

SUBJECT: Conforming the Texas Probate Code with the Texas Constitution, and broadening the inheritance rights of legitimated children.

COMMITTEE: Judiciary: favorable, with amendment

VOTE: 9 ayes--Grant, Chavez, Benedict, Cain, Coleman, Denton, Danny Hill, Moreno, Uribe

0 nays

0 present, not voting

2 absent--Maloney, Rangel

WITNESSES: For--Mrs. Hermine D. Tobolowsky, attorney, Texas Federation of Business and Professional Women's Clubs, Inc; Thomas A. Forbes, attorney, Texas Young Lawyers' Association.

Against--NONE

DIGEST: This bill amends 25 sections of the Texas Probate Code to conform with the equal rights provisions added to the Texas Constitution in 1972. It eliminates language in the Probate Code which refers to the sex of persons granted rights of guardianship, administration, bond execution, homestead, family allowance, and exempt property. The bill also broadens the inheritance rights of all legitimated children and their fathers.

PRO: Many sections of the present Texas Probate Code conflict with the equal rights guarantees provided in the Constitution. If challenged in court, these sections would be declared unconstitutional because they do not treat both sexes equally. People should not have to go to court to enjoy the rights they were given in 1972 with the approval of the Texas Equal Rights Amendment.

The inheritance rights of legitimated children and their fathers are not equal to the inheritance rights which children and their mothers now have.

This bill is primarily a housekeeping measure that would keep the code in compliance with the constitution.

CON: No apparent opposition.

COMMENTARY: The Texas Probate Code gives certain benefits expressly to "widows" and "unmarried daughters." HB 648 changes references from "wife" or "widow" to "surviving spouse." It also changes references from "daughters" to "children."

COMMENTARY
(continued)

The bill further establishes that when parents live together, both parents are the natural guardians of minor children. The present code names the father as the natural guardian.

A recent U.S. Supreme Court decision ruled unconstitutional any distinction in inheritance rights of legitimate and illegitimate children from and through their mothers and fathers. The present Texas Probate Code contains these distinctions in inheritance rights of children and their fathers. Expressing its desire to remove the stigma of illegitimacy from such children, the Court held that all legitimated children should inherit equally from both parents.

The caption of HB 648 was amended in committee. The original caption read, "conforming the Texas Probate Code to the Equal Rights Amendment."

The committee amended the caption to read "relating to family allowance, homestead, property exempt from estate debts, natural guardians, remarriage by surviving spouse, bonds of married persons, and inheritance rights of legitimated children under the Texas Probate Code."

The bill's author plans to amend the committee's version further on the floor. It would then read, "relating to the inheritance rights of legitimated children and conforming various sections of the Texas Probate Code to the equal rights law."