

BILL ANALYSIS

C.S.H.B. 2271
By: Wray
Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties assert the need to update the law relating to decedents' estates and certain posthumous gifts to reflect developments in relevant case law. C.S.H.B. 2271 seeks to provide for this update.

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. 2271 amends the Estates Code to specify that a child adopted through an equitable adoption is considered a child for purposes of that code. The bill establishes for purposes of determining venue for the probate of a will or for the granting of letters testamentary or of administration that a decedent's next of kin is the decedent's surviving spouse or, if there is no surviving spouse, other relatives of the decedent within the third degree by consanguinity and includes a person who legally adopted the decedent or has been legally adopted by the decedent and that person's descendants. The bill also establishes for such purposes that a decedent's nearest of kin is determined in accordance with order of descent, with the decedent's next of kin who is nearest in order of descent first and so on. The bill changes one of the methods by which a deceased spouse's signature or a competent surviving spouse's signature to a community property survivorship agreement may be proved from a method by which the written or oral deposition of one witness or the surviving spouse, respectively, is taken in the same manner and under the same rules as depositions in other civil actions to a method by which such a deposition is taken in accordance with statutory provisions relating to the service of a notice of intention to take depositions for the probate of a will or another probate matter in which there is no opposing party or attorney of record on whom to serve notice or in accordance with the Texas Rules of Civil Procedure.

C.S.H.B. 2271 establishes that a multiple-party account is not effective against a decedent's estate to transfer to a survivor amounts equal to the amounts of estate taxes and expenses charged to the decedent, P.O.D. payee, or beneficiary of the account. The bill makes a party, P.O.D. payee, or beneficiary who causes a payment to be made to another person from a multiple-party account after the decedent's death liable to account to the decedent's personal representative for amounts the decedent owned beneficially immediately before death to the extent necessary to discharge the claims and charges against and expenses of the decedent's estate, capped at the amount caused to be paid to another person. The bill removes the provision conditioning the

commencement, by a certain deadline, of a proceeding to assert such liability on receipt by the decedent's personal representative of a written demand by a surviving spouse, a creditor, or one acting for a minor child of the decedent and makes this change applicable to a proceeding commenced before, on, or after the bill's effective date.

C.S.H.B. 2271 requires a trustee, on the death of one of the divorced individuals who is a settlor of a trust created before, on, or after the bill's effective date under a trust instrument that was executed by two married individuals as settlors whose marriage to each other is subsequently dissolved on or after such date and that includes certain nontestamentary transfers, to divide the trust into two trusts, each of which must be composed of the property attributable to the contributions of only one of the divorced individuals. The bill authorizes an action authorized in such a trust instrument that requires the actions of both divorced individuals to be taken with respect to a trust established by such a division from the surviving divorced individual's contributions solely by that divorced individual. The bill establishes that statutory provisions governing the effect the dissolution of a marriage has on certain nontestamentary transfers apply independently to each trust established by such a division as if the divorced individual from whose contributions the trust was established had been the only settlor to execute the trust instrument. The bill establishes that these provisions do not apply if one of the following provides otherwise: a court order; the express terms of a trust instrument executed by the two divorced individuals before their marriage was dissolved; or an express provision of a contract relating to the division of the marital estate entered into between the two divorced individuals before, during, or after their marriage.

C.S.H.B. 2271 establishes that, if a decedent established a P.O.D. account or other multiple-party account and the decedent's marriage was later dissolved by divorce, annulment, or a declaration that the marriage is void, any provision of an agreement establishing a right of survivorship in a joint account with respect to that account in favor of the decedent's former spouse or a relative of the former spouse who is not a relative of the decedent is not effective as to that spouse or relative unless the court decree dissolving the marriage reaffirms such survivorship agreement or the relevant provision of the survivorship agreement in favor of the former spouse or the former spouse's relative, the decedent reaffirmed the survivorship agreement in writing after the marriage was dissolved, or the spouse or relative would receive the proceeds or benefits in trust for, on behalf of, or for the benefit of a child or dependent of either the decedent or the spouse. The bill establishes that if such a provision is not effective, for purposes of determining the disposition of the decedent's interest in the account, the spouse or relative who would have received the decedent's interest if the provision were effective is treated as if that spouse or relative predeceased the decedent. The bill exempts a financial institution from liability for payment of an account to such a spouse or relative as a party to the account.

C.S.H.B. 2271 excludes a tax imposed under federal law relating to generation-skipping transfers from the definition of "estate tax" for purposes of statutory provisions governing the valuation and taxation of estate property. The bill requires a person, for the purposes of the filing requirements for an application for a proceeding to declare heirship the required citation for which was waived by a parent, managing conservator, guardian, attorney ad litem, or guardian ad litem of a minor distributee younger than 12 years of age, to file with the court an affidavit sworn to by the applicant or a certificate signed by the applicant's attorney stating the name of the distributee and the representative capacity of the person who waived the required citation. The bill changes one of the conditions that together trigger the entitlement of the distributees of the estate of a decedent who dies intestate to such estate without waiting for the appointment of a personal representative of the estate, to the extent the estate assets, excluding homestead and exempt property, exceed the known liabilities of the estate, from the value of the estate assets with such exclusion not exceeding \$50,000 to such value not exceeding \$75,000 on the date a specified affidavit is filed with the clerk of the court that has jurisdiction and venue of the estate.

C.S.H.B. 2271 changes the references to a testator's death, for purposes of statutory provisions governing posthumous class gift membership and regarding a decedent who dies before, on, or

after the bill's effective date, to references to the death of the person by which the class is measured. The bill requires a personal representative seeking judicial modification or reformation of a will to file a petition on or before the fourth anniversary of the date the will was admitted to probate. The bill applies statutory provisions governing the attorney general's participation in proceedings involving charitable trusts to a proceeding for judicial modification or reformation of a will that involves charitable trust. The bill creates an exception to the prohibition against letters testamentary being issued for a will other than a foreign will that is admitted to probate after the fourth anniversary of the testator's death if it is shown that the application for probate was filed on or before the fourth anniversary of the testator's death. The bill adds as an alternative to the requirements that an application for the probate of a will as a muniment of title contain a statement, and that an applicant for such probate prove, that the testator's estate does not owe an unpaid debt other than a debt secured by a lien on real estate the option that the application so state or an applicant so prove, as applicable, that for another reason there is no necessity for administration of the estate.

C.S.H.B. 2271 changes the type of newspaper in which a personal representative of an estate is required to provide notice by publication regarding the presentment of claims within one month after receiving letters testamentary or of administration from a newspaper printed in the county in which the letters were issued to a newspaper of general circulation in such county. The bill replaces certain statutory references to "beneficiary" and "beneficiaries" with references to "distributee" and "distributees." The bill changes the deadlines by which a personal representative is required to file an initial account of the estate and a continuing annual account with the probate court from the expiration of 12 months from the date the representative qualifies and receives letters testamentary or of administration to administer a decedent's estate under court order and each anniversary thereafter, respectively, to not later than the 60th day after the first anniversary of the date the representative so qualifies and receives such letters and after each subsequent anniversary, respectively, unless the court authorizes an extension.

C.S.H.B. 2271 authorizes an independent executor, unless a will or a court order provides otherwise, in distributing property not specifically devised that the independent executor is authorized to sell to make distributions in divided or undivided interests, to allocate particular assets in proportionate or disproportionate shares, to value the estate property for such distributions or allocations, and to adjust the distribution, division, or termination for resulting differences in valuation.

C.S.H.B. 2271 changes the deadline by which a financial institution or investment company, when administering the estate of a deceased lawyer who established an escrow or trust account for purposes of holding client funds or the funds of third persons in the lawyer's possession in connection with representation, is required to disburse such funds and close the account from disbursal and closure within a reasonable time after receiving a copy of a specified written agreement or statement from a personal representative and instructions in the agreement or statement regarding how to disburse the funds or close a trust or escrow account to disbursal or closure not later than the seventh business day after the date of such receipt. The bill authorizes a person aggrieved by a violation of such disbursal requirement by such an institution to bring an action against the institution to obtain declaratory or injunctive relief to enforce the requirement and to recover damages to the same extent the person would be entitled to damages had the eligible institution acted in the same manner with respect to the deceased lawyer before the lawyer's death. The bill authorizes a person who prevails in such an action to recover court costs and reasonable attorney's fees.

C.S.H.B. 2271 repeals provisions relating to unsuccessful attempts to make service under statutory provisions governing the citation required in connection with the filing of an application for letters of administration and relating to the required payment of inheritance taxes before the closing of an estate.

C.S.H.B. 2271 amends the Property Code to make conforming changes.

C.S.H.B. 2271 repeals Sections 303.003 and 362.010, Estates Code.

EFFECTIVE DATE

September 1, 2017.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2271 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED	HOUSE COMMITTEE SUBSTITUTE
SECTION 1. Section 22.004(a), Estates Code, is amended.	SECTION 1. Same as introduced version.
SECTION 2. Section 33.001, Estates Code, is amended.	SECTION 2. Same as introduced version.
SECTION 3. Sections 112.103(a) and (b), Estates Code, are amended.	SECTION 3. Same as introduced version.
SECTION 4. Sections 113.252(a), (b), and (c), Estates Code, are amended.	SECTION 4. Same as introduced version.
SECTION 5. Section 123.052(a), Estates Code, is amended.	SECTION 5. Same as introduced version.
SECTION 6. Subchapter B, Chapter 123, Estates Code, is amended.	SECTION 6. Same as introduced version.
SECTION 7. Section 123.151, Estates Code, is amended.	SECTION 7. Same as introduced version.
SECTION 8. Section 124.001(3), Estates Code, is amended.	SECTION 8. Same as introduced version.
SECTION 9. Section 201.054, Estates Code, is amended.	SECTION 9. Same as introduced version.
SECTION 10. The heading to Section 202.052, Estates Code, is amended.	SECTION 10. Same as introduced version.

SECTION 11. Section 202.057(a), Estates Code, is amended.

SECTION 11. Same as introduced version.

SECTION 12. Section 205.001, Estates Code, is amended.

SECTION 12. Same as introduced version.

SECTION 13. Section 251.001, Estates Code, is amended.

SECTION 13. Same as introduced version.

SECTION 14. Section 251.002, Estates Code, is amended.

SECTION 14. Same as introduced version.

SECTION 15. Section 251.051, Estates Code, is amended.

SECTION 15. Same as introduced version.

SECTION 16. Section 251.103, Estates Code, is amended.

SECTION 16. Same as introduced version.

SECTION 17. Sections 251.104(c), (d), and (e), Estates Code, are amended.

SECTION 17. Same as introduced version.

SECTION 18. Section 251.107, Estates Code, is amended.

SECTION 18. Same as introduced version.

SECTION 19. Section 252.152, Estates Code, is amended.

SECTION 19. Same as introduced version.

SECTION 20. Section 255.151, Estates Code, is amended.

SECTION 20. Same as introduced version.

SECTION 21. Section 255.401, Estates Code, is amended.

SECTION 21. Same as introduced version.

SECTION 22. Section 255.451, Estates Code, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

SECTION 22. Section 255.451, Estates Code, is amended by amending Subsection (a) and adding Subsections (a-1) and (c) to read as follows:

(a) Subject to Subsection (a-1), on [On] the petition of a personal representative, a court may order that the terms of the will be modified or reformed, that the personal representative be directed or permitted to perform acts that are not authorized or that

(a) Subject to the requirements of this section, on [On] the petition of a personal representative, a court may order that the terms of the will be modified or reformed, that the personal representative be directed or permitted to perform acts that are not

are prohibited by the terms of the will, or that the personal representative be prohibited from performing acts that are required by the terms of the will, if:

- (1) modification of administrative, nondispositive terms of the will is necessary or appropriate to prevent waste or impairment of the estate's administration;
- (2) the order is necessary or appropriate to achieve the testator's tax objectives or to qualify a distributee for government benefits and is not contrary to the testator's intent; or
- (3) the order is necessary to correct a scrivener's error in the terms of the will, even if unambiguous, to conform with the testator's intent.

(a-1) A personal representative seeking to modify or reform a will under this section must file a petition on or before the fourth anniversary of the date the will was admitted to probate.

SECTION 23. Section 256.003(b), Estates Code, is amended.

SECTION 24. Section 257.051(a), Estates Code, is amended.

SECTION 25. Section 257.054, Estates Code, is amended.

SECTION 26. Section 305.108, Estates Code, is amended.

SECTION 27. Sections 308.051(a) and (c), Estates Code, are amended.

SECTION 28. Section 310.006, Estates Code, is amended.

SECTION 29. Section 362.005(b), Estates Code, is amended.

authorized or that are prohibited by the terms of the will, or that the personal representative be prohibited from performing acts that are required by the terms of the will, if:

- (1) modification of administrative, nondispositive terms of the will is necessary or appropriate to prevent waste or impairment of the estate's administration;
- (2) the order is necessary or appropriate to achieve the testator's tax objectives or to qualify a distributee for government benefits and is not contrary to the testator's intent; or
- (3) the order is necessary to correct a scrivener's error in the terms of the will, even if unambiguous, to conform with the testator's intent.

(a-1) A personal representative seeking to modify or reform a will under this section must file a petition on or before the fourth anniversary of the date the will was admitted to probate.

(c) Chapter 123, Property Code, applies to a proceeding under Subsection (a) that involves a charitable trust.

SECTION 23. Same as introduced version.

SECTION 24. Same as introduced version.

SECTION 25. Same as introduced version.

SECTION 26. Same as introduced version.

SECTION 27. Same as introduced version.

SECTION 28. Same as introduced version.

SECTION 31. Same as introduced version.

SECTION 30. Section 359.001(a), Estates Code, is amended.

SECTION 29. Same as introduced version.

SECTION 31. Section 359.002(a), Estates Code, is amended.

SECTION 30. Same as introduced version.

SECTION 32. Section 401.006, Estates Code, is amended.

SECTION 32. Same as introduced version.

SECTION 33. Chapter 405, Estates Code, is amended.

SECTION 33. Same as introduced version.

SECTION 34. Sections 405.003(b) and (d), Estates Code, are amended.

SECTION 34. Same as introduced version.

SECTION 35. Section 456.003, Estates Code, is amended.

SECTION 35. Same as introduced version.

SECTION 36. Chapter 456, Estates Code, is amended.

SECTION 36. Same as introduced version.

SECTION 37. Subchapter A, Chapter 112, Property Code, is amended.

SECTION 37. Same as introduced version.

SECTION 38. Sections 303.003 and 362.010, Estates Code, are repealed.

SECTION 38. Same as introduced version.

SECTION 39. Section 33.001, Estates Code, as amended by this Act, applies only to an application for the probate of a will or for the granting of letters testamentary or of administration of a decedent's estate that is filed on or after the effective date of this Act. An application for the probate of a will or the granting of letters filed before that date 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.

SECTION 39. Same as introduced version.

SECTION 40. Section 112.103, Estates Code, as amended by this Act, applies only to a proceeding under Subchapter C, Chapter 112, Estates Code, commenced on or after the effective date of this Act. A

SECTION 40. Same as introduced version.

proceeding under that subchapter 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.

SECTION 41. Section 113.252(c), Estates Code, as amended by this Act, applies to a proceeding commenced before, on, or after the effective date of this Act, regardless of the date of the decedent's death.

SECTION 42. Section 123.056, Estates Code, as added by this Act, applies to a trust created before, on, or after the effective date of this Act with respect to which the marriage of the settlors is dissolved on or after that date.

SECTION 43. Sections 123.151(a) and (b), Estates Code, as amended by this Act, and Section 123.151(c-1), as added by this Act, apply only to a multiple-party account for which the marriage of a party to the account is dissolved on or after the effective date of this Act.

SECTION 44. Section 123.151(d-1), Estates Code, as added by this Act, and Section 456.0045, Estates Code, as added by this Act, apply only to a cause of action that accrues on or after the effective date of this Act. A cause of action that accrued before the effective date of this Act is governed by the law applicable to the cause of action immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 45. Section 202.057, Estates Code, as amended by this Act, applies only to an application for a proceeding to declare heirship that is filed on or after the effective date of this Act. An application for a proceeding to declare heirship filed before that date 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.

SECTION 41. Same as introduced version.

SECTION 42. Same as introduced version.

SECTION 43. Same as introduced version.

SECTION 44. Same as introduced version.

SECTION 45. Same as introduced version.

SECTION 46. Section 205.001, Estates Code, as amended by this Act, applies to a small estate administration commenced on or after the effective date of this Act, regardless of the date of the decedent's death.

SECTION 46. Same as introduced version.

SECTION 47. Section 255.401, Estates Code, as amended by this Act, and Section 112.011, Property Code, as added by this Act, apply to the estate of a decedent who dies before, on, or after the effective date of this Act.

SECTION 47. Same as introduced version.

SECTION 48. Section 255.451, Estates Code, as amended by this Act, applies only to a petition filed on or after the effective date of this Act. A petition filed before that date 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.

SECTION 48. Same as introduced version.

SECTION 49. Sections 256.003(b), 257.051(a), and 257.054, Estates Code, as amended by this Act, apply only to an application for the probate of a will or administration of a decedent's estate that is filed on or after the effective date of this Act. An application for the probate of a will or administration of a decedent's estate filed before that date 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.

SECTION 49. Same as introduced version.

SECTION 50. Sections 359.001(a) and 359.002(a), Estates Code, as amended by this Act, apply to an account filed on or after the effective date of this Act, regardless of whether the personal representative was appointed before, on, or after that date.

SECTION 50. Same as introduced version.

SECTION 51. Section 405.0015, Estates Code, as added by this Act, applies to the administration of the estate of a decedent that is pending or commenced on or after the effective date of this Act.

SECTION 51. Same as introduced version.

SECTION 52. This Act takes effect

SECTION 52. Same as introduced version.

September 1, 2017.

85R 23235

Substitute Document Number: 85R 21347

17.104.389