

SUBJECT: Treating references to the Probate Code as references to the Estates Code

COMMITTEE: Judiciary and Civil Jurisprudence — favorable, without amendment

VOTE: 8 ayes — Smithee, Farrar, Clardy, Laubenberg, Raymond, Schofield, Sheets, S. Thompson

0 nays

1 absent — Hernandez

WITNESSES: For — Craig Hopper, Real Estate, Probate, and Trust Law Section (REPTL) of State Bar of Texas

(Registered, but did not testify: Glenn Karisch, Real Estate, Probate, and Trust Law Section of the State Bar of Texas); Guy Herman; Julia Jonas

Against — None

BACKGROUND: In 2009, the 81st Legislature enacted HB 2502 by Hartnett. This, combined with the enactment of HB 2759 by Hartnett in 2011, made technical additions and conforming changes to the Texas Probate Code and transferred the substance of that code to a new Estates Code, effective January 1, 2014.

DIGEST: HB 2419 would combine the former Texas Probate Code and the Texas Estates Code. The two codes would be considered one continuous statute. If any instrument referred to the Probate Code, the Estates Code would be considered an amendment to the Probate Code.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2015.

SUPPORTERS SAY: HB 2419 would clarify that references to the former Probate Code in instruments such as wills and trusts would maintain their intended effect.

It is common for drafting attorneys to include in wills, trusts, and other documents references to current statutes. References to the Probate Code were appropriate before its provisions were transferred to the Estates Code. Now references to the Probate Code could be confusing because it no longer contains substantive law. The bill would ensure that documents referring to the Probate Code maintained their intended meaning and did not have to be redrafted.

OPPONENTS
SAY:

No apparent opposition.

NOTES:

The companion bill, SB 993 by Rodriguez, was referred to the Senate Committee on State Affairs on March 10.