

## **BILL ANALYSIS**

Senate Research Center  
81R28448 KLA-F

H.B. 3086  
By: Hartnett (Watson)  
Jurisprudence  
5/21/2009  
Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

This bill is proposed in conjunction with the nonsubstantive recodification of the Probate Code by the Texas Legislative Council pursuant to its legislative mandate (currently incorporated in H.B. 2502). The revised jurisdiction provisions of the new Estates Code are more streamlined and easier to understand, given the limits on streamlining imposed by the different courts in Texas that have original probate jurisdiction based on which county the probate proceeding is in. The changes are designed to go into effect this year, in addition to being included in the new Estates Code (effective January 1, 2014).

This bill amends the Texas Probate Code to update provisions of the code related to jurisdiction of probate proceedings and proceedings regarding powers of attorney and trusts.

The bill sets forth provisions regarding general probate court jurisdiction and appeals, matters related to probate proceedings in a county in which there is no statutory probate court or county court at law exercising original probate jurisdiction, and matters related to probate proceedings in a county in which there is no such statutory probate court but there is such a county court at law.

It also amends the Property Code to provide that, to the extent of a conflict between a provision of the Property Code relating to the venue in a proceeding brought by the attorney general alleging breach of a fiduciary duty by a fiduciary or managerial agent of a charitable trust and any provision of the Texas Probate Code providing for venue of a proceeding brought with respect to a charitable trust created by a will that has been admitted to probate, the Property Code provision controls.

H.B. 3086 amends current law relating to jurisdiction of probate proceedings and proceedings regarding powers of attorney and certain trusts.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

#### ARTICLE 1. JURISDICTION OF CERTAIN PROCEEDINGS: TEXAS PROBATE CODE

SECTION 1.01. Amends Section 3(bb), Texas Probate Code, to redefine "probate proceeding."

SECTION 1.02. Amends Chapter I, Texas Probate Code, by adding Sections 4A, 4B, 4C, 4D, 4E, 4F, 4G, and 4H, as follows:

Sec. 4A. GENERAL PROBATE COURT JURISDICTION; APPEALS. (a) Requires that all probate proceedings be filed and heard in a court exercising original probate jurisdiction. Provides that the court exercising original probate jurisdiction also has jurisdiction of all matters related to the probate proceeding as specified in Section 4B of this code for that type of court.

(b) Authorizes a probate court to exercise pendent and ancillary jurisdiction as necessary to promote judicial efficiency and economy.

(c) Provides that a final order issued by a probate court is appealable to the court of appeals.

**Sec. 4B. MATTERS RELATED TO PROBATE PROCEEDING.** (a) Provides that for purposes of this code, in a county in which there is no statutory probate court or county court at law exercising original probate jurisdiction, a matter related to a probate proceeding includes an action against a personal representative or former personal representative arising out of the representative's performance of the duties of a personal representative; an action against a surety of a personal representative or former personal representative; a claim brought by a personal representative on behalf of an estate; an action brought against a personal representative in the representative's capacity as personal representative; an action for trial of title to real property that is estate property, including the enforcement of a lien against the property; and an action for trial of the right of property that is estate property.

(b) Provides that for purposes of this code, in a county in which there is no statutory probate court, but in which there is a county court at law exercising original probate jurisdiction, a matter related to a probate proceeding includes all matters and actions described in Subsection (a) of this section, the interpretation and administration of a testamentary trust if the will creating the trust has been admitted to probate in the court, and the interpretation and administration of an inter vivos trust created by a decedent whose will has been admitted to probate in the court.

(c) Provides that for purposes of this code, in a county in which there is a statutory probate court, a matter related to a probate proceeding includes all matters and actions described in Subsections (a) and (b) of this section and any cause of action in which a personal representative of an estate pending in the statutory probate court is a party in the representative's capacity as personal representative.

**Sec. 4C. ORIGINAL JURISDICTION FOR PROBATE PROCEEDINGS.** (a) Provides that in a county in which there is no statutory probate court or county court at law exercising original probate jurisdiction, the county court has original jurisdiction of probate proceedings.

(b) Provides that in a county in which there is no statutory probate court, but in which there is a county court at law exercising original probate jurisdiction, the county court at law exercising original probate jurisdiction and the county court have concurrent original jurisdiction of probate proceedings, unless otherwise provided by law. Authorizes the judge of a county court to hear probate proceedings while sitting for the judge of any other county court.

(c) Provides that in a county in which there is a statutory probate court, the statutory probate court has original jurisdiction of probate proceedings.

**Sec. 4D. JURISDICTION OF CONTESTED PROBATE PROCEEDING IN COUNTY WITH NO STATUTORY PROBATE COURT OR STATUTORY COUNTY COURT.**

(a) Provides that in a county in which there is no statutory probate court or county court at law exercising original probate jurisdiction, when a matter in a probate proceeding is contested, the judge of the county court is authorized to, on the judge's own motion, or the judge of the county court is required to, on the motion of any party to the proceeding, according to the motion request the assignment of a statutory probate court judge to hear the contested matter, as provided by Section 25.0022 (Administration of Statutory Probate Codes), Government Code; or transfer the contested matter to the district court, which is authorized to then hear the contested matter as if originally filed in the district court.

(b) Requires the county judge, if a party to a probate proceeding files a motion for the assignment of a statutory probate court judge to hear a contested matter in

the proceeding before the judge of the county court transfers the contested matter to a district court under this section, to grant the motion for the assignment of a statutory probate court judge and prohibits the county judge from transferring the matter to the district court unless the party withdraws the motion.

(c) Authorizes a party to a probate proceeding to file a motion for the assignment of a statutory probate court judge under this section before a matter in the proceeding becomes contested, and provides that the motion is given effect as a motion for assignment of a statutory probate court judge under Subsection (a) of this section if the matter later becomes contested.

(d) Provides that notwithstanding any other law, a transfer of a contested matter in a probate proceeding to a district court under any authority other than the authority provided by this section is disregarded for purposes of this section and does not defeat the right of a party to the proceeding to have the matter assigned to a statutory probate court judge in accordance with this section.

(e) Provides that a statutory probate court judge assigned to a contested matter under this section has the jurisdiction and authority granted to a statutory probate court by this code. Requires the statutory probate court judge, on resolution of a contested matter for which a statutory probate court judge is assigned under this section, including any appeal of the matter, to return the matter to the county court for further proceedings not inconsistent with the orders of the statutory probate court or court of appeals, as applicable.

(f) Provides that a district court to which a contested matter is transferred under this section has the jurisdiction and authority granted to a statutory probate court by this code. Requires the district court, on resolution of a contested matter transferred to the district court under this section, including any appeal of the matter, to return the matter to the county court for further proceedings not inconsistent with the orders of the district court or court of appeals, as applicable.

(g) Requires the county court to continue to exercise jurisdiction over the management of the estate, other than a contested matter, until final disposition of the contested matter is made in accordance with this section. Authorizes any matter related to the probate proceeding, after a contested matter is transferred to a district court, to be brought in the district court. Authorizes the district court in which a matter related to the probate proceeding is filed, on its own motion or on the motion of any party, to find that the matter is not a contested matter and transfer the matter to the county court with jurisdiction of the management of the estate.

(h) Provides that if a contested matter in a probate proceeding is transferred to a district court under this section, the district court has jurisdiction of any contested matter in the proceeding that is subsequently filed, and requires the county court to transfer those contested matters to the district court. Requires a statutory probate court judge, if the statutory probate court judge is assigned under this section to hear a contested matter in a probate proceeding, to be assigned to hear any contested matter in the proceeding that is subsequently filed.

(i) Authorizes the clerk of a district court to which a contested matter in a probate proceeding is transferred under this section to perform in relation to the contested matter any function a county clerk is authorized to perform with respect to that type of matter.

**Sec. 4E. JURISDICTION OF CONTESTED PROBATE PROCEEDING IN COUNTY WITH NO STATUTORY PROBATE COURT.** (a) Provides that in a county in which there is no statutory probate court, but in which there is a county court at law exercising original probate jurisdiction, when a matter in a probate proceeding is contested, the judge of the county court is authorized to, on the judge's own motion, or is required to, on the motion of any party to the proceeding, transfer the contested matter to the county

court at law. Authorizes the judge of the county court, on the judge's own motion or on the motion of a party to the proceeding, in addition, to transfer the entire proceeding to the county court at law.

(b) Authorizes a county court at law to which a proceeding is transferred under this section to hear the proceeding as if originally filed in that court. Requires that the matter, if only a contested matter in the proceeding is transferred, on the resolution of the matter, be returned to the county court for further proceedings not inconsistent with the orders of the county court at law.

Sec. 4F. EXCLUSIVE JURISDICTION OF PROBATE PROCEEDING IN COUNTY WITH STATUTORY PROBATE COURT. (a) Provides that in a county in which there is a statutory probate court, the statutory probate court has exclusive jurisdiction of all probate proceedings, regardless of whether contested or uncontested. Requires that a cause of action related to the probate proceeding be brought in a statutory probate court unless the jurisdiction of the statutory probate court is concurrent with the jurisdiction of a district court as provided by Section 4H of this code or with the jurisdiction of any other court.

(b) Requires that this section be construed in conjunction and in harmony with Section 145 (Independent Administration) of this code and all other sections of this code relating to independent executors, but prohibits this section from being construed to expand the court's control over an independent executor.

Sec. 4G. JURISDICTION OF STATUTORY PROBATE COURT WITH RESPECT TO TRUSTS AND POWERS OF ATTORNEY. Provides that in a county in which there is a statutory probate court, the statutory probate court has jurisdiction of an action by or against a trustee; an action involving an inter vivos trust, testamentary trust, or charitable trust; an action against an agent or former agent under a power of attorney arising out of the agent's performance of the duties of an agent; and an action to determine the validity of a power of attorney or to determine an agent's rights, powers, or duties under a power of attorney.

Sec. 4H. CONCURRENT JURISDICTION WITH DISTRICT COURT. Provides that a statutory probate court has concurrent jurisdiction with the district court in a personal injury, survival, or wrongful death action by or against a person in the person's capacity as a personal representative; an action by or against a trustee; an action involving an inter vivos trust, testamentary trust, or charitable trust; an action involving a personal representative of an estate in which each other party aligned with the personal representative is not an interested person in that estate; an action against an agent or former agent under a power of attorney arising out of the agent's performance of the duties of an agent; and an action to determine the validity of a power of attorney or to determine an agent's rights, powers, or duties under a power of attorney.

SECTION 1.03. Amends Section 5B(a), Texas Probate Code, to authorize a judge of a statutory probate court, on the motion of a party to the action or on the motion of a person interested in an estate, to transfer to the judge's court, rather than his court, from a district, county, or statutory court a cause of action related to a probate proceeding, rather than appertaining to or incident to an estate, pending in the statutory probate court or a cause of action in which a personal representative of an estate pending in the statutory probate court is a party and is authorized to consolidate the transferred cause of action with the other proceedings in the statutory probate court relating to the estate.

SECTION 1.04. Amends Section 25.0022(i), Government Code, to provide that a judge assigned under this section has the jurisdiction, powers, and duties given by Sections 4A, 4C, 4F, 4G, 4H, 5B (Transfer of Proceeding), 606 (Jurisdiction with Respect to Guardianship Proceedings), 607 (Matters Appertaining and Incident to an Estate), and 608 (Transfer of Guardianship Proceeding), rather than 5 (Jurisdiction with Respect to Probate Proceedings), 5A (Matters Appertaining and Incident to an Estate), 5B, 606, 607, and 608, Texas Probate Code, to statutory probate court judges by general law.

SECTION 1.05. Amends Section 25.1132(c), Government Code, to provide that a county court at law in Hood County has concurrent jurisdiction with the district court in certain matters, including contested probate matters under Section 4D(a), rather than 5(b) (relating to requirements of filing applications, petitions, and motions regarding probate and administrations), Texas Probate Code.

SECTION 1.06. Amends Section 25.1863(b), Government Code, to require the judge of the constitutional county court, notwithstanding the requirement in Section 4D(a), rather than in Subsection (b), Section 5, Texas Probate Code, to transfer the proceeding under that section to either a county court at law in Parker County or a district court in Parker County. Makes conforming changes.

SECTION 1.07. Amends Section 123.005(a), Property Code, to provide that to the extent of a conflict between this subsection and any provision of the Texas Probate Code providing for venue of a proceeding brought with respect to a charitable trust created by a will that has been admitted to probate, this subsection controls.

SECTION 1.08. Repealer: Sections 4 (Jurisdiction of County Court with Respect to Probate Proceedings), 5 (Jurisdiction with Respect to Probate Proceedings), and 5A (Matters Appertaining and Incident to an Estate), Texas Probate Code.

SECTION 1.09. Makes application of the changes in law made by this article prospective.

## ARTICLE 2. JURISDICTION OF CERTAIN PROCEEDINGS: TEXAS PROBATE CODE RECODIFICATION

SECTION 2.01. Provides that effective January 1, 2014, Subtitle A, Title 2, Estates Code, as adopted by H.B. No. 2502, Acts of the 81st Legislature, Regular Session, 2009, if that act is enacted and becomes law, and Subtitle A, Title 2, Estates and Guardianships Code, as adopted by S.B. No. 2071, Acts of the 81st Legislature, Regular Session, 2009, if that Act is enacted and becomes law, are amended by adding Chapters 31 and 32, as follows:

### CHAPTER 31. GENERAL PROVISIONS

Sec. 31.001. SCOPE OF "PROBATE PROCEEDING" FOR PURPOSES OF CODE. Defines "probate proceeding."

Sec. 31.002. MATTERS RELATED TO PROBATE PROCEEDING. (a) Provides that for purposes of this code, in a county in which there is no statutory probate court or county court at law exercising original probate jurisdiction, a matter related to a probate proceeding includes an action against a personal representative or former personal representative arising out of the representative's performance of the duties of a personal representative; an action against a surety of a personal representative or former personal representative; a claim brought by a personal representative on behalf of an estate; an action brought against a personal representative in the representative's capacity as personal representative; an action for trial of title to real property that is estate property, including the enforcement of a lien against the property; and an action for trial of the right of property that is estate property.

(b) Provides that for purposes of this code, in a county in which there is no statutory probate court, but in which there is a county court at law exercising original probate jurisdiction, a matter related to a probate proceeding includes all matters and actions described in Subsection (a), the interpretation and administration of a testamentary trust if the will creating the trust has been admitted to probate in the court, and the interpretation and administration of an inter vivos trust created by a decedent whose will has been admitted to probate in the court.

(c) Provides that for purposes of this code, in a county in which there is a statutory probate court, a matter related to a probate proceeding includes all matters and actions described in Subsections (a) and (b) and any cause of action

in which a personal representative of an estate pending in the statutory probate court is a party in the representative's capacity as personal representative.

## CHAPTER 32. JURISDICTION

Sec. 32.001. GENERAL PROBATE COURT JURISDICTION; APPEALS. (a) Requires that all probate proceedings be filed and heard in a court exercising original probate jurisdiction. Provides that the court exercising original probate jurisdiction also has jurisdiction of all matters related to the probate proceeding as specified in Section 31.002 for that type of court.

(b) Authorizes a probate court to exercise pendent and ancillary jurisdiction as necessary to promote judicial efficiency and economy.

(c) Provides that a final order issued by a probate court is appealable to the court of appeals.

Sec. 32.002. ORIGINAL JURISDICTION FOR PROBATE PROCEEDINGS. (a) Provides that in a county in which there is no statutory probate court or county court at law exercising original probate jurisdiction, the county court has original jurisdiction of probate proceedings.

(b) Provides that in a county in which there is no statutory probate court, but in which there is a county court at law exercising original probate jurisdiction, the county court at law exercising original probate jurisdiction and the county court have concurrent original jurisdiction of probate proceedings, unless otherwise provided by law. Authorizes the judge of a county court to hear probate proceedings while sitting for the judge of any other county court.

(c) Provides that in a county in which there is a statutory probate court, the statutory probate court has original jurisdiction of probate proceedings.

Sec. 32.003. JURISDICTION OF CONTESTED PROBATE PROCEEDING IN COUNTY WITH NO STATUTORY PROBATE COURT OR STATUTORY COUNTY COURT. (a) Provides that in a county in which there is no statutory probate court or county court at law exercising original probate jurisdiction, when a matter in a probate proceeding is contested, the judge of the county court is authorized to, on the judge's own motion, or is required to, on the motion of any party to the proceeding, according to the motion request the assignment of a statutory probate court judge to hear the contested matter, as provided by Section 25.0022, Government Code; or transfer the contested matter to the district court, which may then hear the contested matter as if originally filed in the district court.

(b) Requires a county judge, if a party to a probate proceeding files a motion for the assignment of a statutory probate court judge to hear a contested matter in the proceeding before the judge of the county court transfers the contested matter to a district court under this section, to grant the motion for the assignment of a statutory probate court judge and prohibits the county judge from transferring the matter to the district court unless the party withdraws the motion.

(c) Authorizes a party to a probate proceeding to file a motion for the assignment of a statutory probate court judge under this section before a matter in the proceeding becomes contested, and the motion is given effect as a motion for assignment of a statutory probate court judge under Subsection (a) if the matter later becomes contested.

(d) Provides that notwithstanding any other law, a transfer of a contested matter in a probate proceeding to a district court under any authority other than the authority provided by this section is disregarded for purposes of this section and does not defeat the right of a party to the proceeding to have the matter assigned to a statutory probate court judge in accordance with this section.

(e) Provides that a statutory probate court judge assigned to a contested matter under this section has the jurisdiction and authority granted to a statutory probate court by this subtitle. Requires a statutory probate court judge, on resolution of a contested matter for which a statutory probate court judge is assigned under this section, including any appeal of the matter, to return the matter to the county court for further proceedings not inconsistent with the orders of the statutory probate court or court of appeals, as applicable.

(f) Provides that a district court to which a contested matter is transferred under this section has the jurisdiction and authority granted to a statutory probate court by this subtitle. Requires a district court, on resolution of a contested matter transferred to the district court under this section, including any appeal of the matter, to return the matter to the county court for further proceedings not inconsistent with the orders of the district court or court of appeals, as applicable.

(g) Requires the county court to continue to exercise jurisdiction over the management of the estate, other than a contested matter, until final disposition of the contested matter is made in accordance with this section. Authorizes any matter related to the probate proceeding, after a contested matter is transferred to a district court, to be brought in the district court. Authorizes the district court in which a matter related to the probate proceeding is filed to, on its own motion or on the motion of any party, find that the matter is not a contested matter and transfer the matter to the county court with jurisdiction of the management of the estate.

(h) Provides that if a contested matter in a probate proceeding is transferred to a district court under this section, the district court has jurisdiction of any contested matter in the proceeding that is subsequently filed, and requires the county court to transfer those contested matters to the district court. Requires a statutory probate court judge, if a statutory probate court judge is assigned under this section to hear a contested matter in a probate proceeding, to be assigned to hear any contested matter in the proceeding that is subsequently filed.

(i) Authorizes the clerk of a district court to which a contested matter in a probate proceeding is transferred under this section to perform in relation to the contested matter any function a county clerk is authorized to perform with respect to that type of matter.

**Sec. 32.004. JURISDICTION OF CONTESTED PROBATE PROCEEDING IN COUNTY WITH NO STATUTORY PROBATE COURT.** (a) Provides that in a county in which there is no statutory probate court, but in which there is a county court at law exercising original probate jurisdiction, when a matter in a probate proceeding is contested, the judge of the county court is authorized to, on the judge's own motion, or is required to, on the motion of any party to the proceeding, transfer the contested matter to the county court at law. Authorizes the judge of the county court, in addition, on the judge's own motion or on the motion of a party to the proceeding, to transfer the entire proceeding to the county court at law.

(b) Authorizes a county court at law to which a proceeding is transferred under this section to hear the proceeding as if originally filed in that court. Requires that the matter, if only a contested matter in the proceeding is transferred, on the resolution of the matter, be returned to the county court for further proceedings not inconsistent with the orders of the county court at law.

**Sec. 32.005. EXCLUSIVE JURISDICTION OF PROBATE PROCEEDING IN COUNTY WITH STATUTORY PROBATE COURT.** (a) Provides that in a county in which there is a statutory probate court, the statutory probate court has exclusive jurisdiction of all probate proceedings, regardless of whether contested or uncontested. Requires that a cause of action related to the probate proceeding be brought in a statutory probate court unless the jurisdiction of the statutory probate court is concurrent with the

jurisdiction of a district court as provided by Section 32.007 or with the jurisdiction of any other court.

(b) Requires that this section be construed in conjunction and in harmony with Section 145 and all other sections of this title relating to independent executors, but prohibits this section from being be construed to expand the court's control over an independent executor.

Sec. 32.006. JURISDICTION OF STATUTORY PROBATE COURT WITH RESPECT TO TRUSTS AND POWERS OF ATTORNEY. Provides that in a county in which there is a statutory probate court, the statutory probate court has jurisdiction of an action by or against a trustee; an action involving an inter vivos trust, testamentary trust, or charitable trust; an action against an agent or former agent under a power of attorney arising out of the agent's performance of the duties of an agent; and an action to determine the validity of a power of attorney or to determine an agent's rights, powers, or duties under a power of attorney.

Sec. 32.007. CONCURRENT JURISDICTION WITH DISTRICT COURT. Provides that a statutory probate court has concurrent jurisdiction with the district court in a personal injury, survival, or wrongful death action by or against a person in the person's capacity as a personal representative; an action by or against a trustee; an action involving an inter vivos trust, testamentary trust, or charitable trust; an action involving a personal representative of an estate in which each other party aligned with the personal representative is not an interested person in that estate; an action against an agent or former agent under a power of attorney arising out of the agent's performance of the duties of an agent; and an action to determine the validity of a power of attorney or to determine an agent's rights, powers, or duties under a power of attorney.

SECTION 2.02. Repealer: Sections 4A, 4B, 4C, 4D, 4E, 4F, 4G, and 4H, Texas Probate Code, as added by Article 1 of this Act.

SECTION 2.03. (a) Effective date, except as provided by Subsection (b) of this section: January 1, 2014.

(b) Makes application of the changes in law made by this article contingent upon passage of H.B. 2502 or S.B. 2071, Acts of the 81st Legislature, Regular Session, 2009.

### ARTICLE 3. EFFECTIVE DATE

SECTION 3.01. Effective date, except as otherwise provided by this Act: September 1, 2009.