

BILL ANALYSIS

Senate Research Center
82R4142 ATP-D

H.B. 2759
By: Hartnett (Duncan)
Administration
5/12/2011
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Texas Legislative Council (TLC) is required by law under Section 323.007 (Statutory Revision Program), Government Code, to carry out a complete nonsubstantive revision of the Texas statutes. The process involves reclassifying and rearranging the statutes in a more logical order, employing a numbering system and format that will accommodate future expansion of the law, eliminating repealed, invalid, duplicative, and other ineffective provisions, and improving the draftsmanship of the law, if practicable, to promote the purpose of making the statutes more accessible, understandable, and usable without altering the sense, meaning, or effect of the law. In 1965 TLC adopted a long-range plan of compiling the law into 26 codes arranged by general topics; TLC now has a plan to compile the law into 27 codes.

The Estates Code includes the substance of the provisions in the current Texas Probate Code. The 81st Legislature enacted Title 1 and Subtitles A through M, Title 2, Estates Code, representing a nonsubstantive revision of the provisions of the Texas Probate Code applicable to decedents' estates, and redesignated without revising the remaining provisions of the Texas Probate Code as Subtitles X, Y, and Z, Title 2, Estates Code, and Title 25, Estates Code. H.B. 2759 proposes Subtitle P, Title 2, Estates Code, as a revision of the durable powers of attorney statutes and Title 3, Estates Code, as a revision of the statutes relating to guardianships, guardianship-related proceedings, and alternatives to guardianships. Provisions relating to scope, jurisdiction, and venue for guardianship proceedings, and a provision relating to payment for certain professional services in guardianship proceedings, have been redesignated without revision as Subtitles Y and Z of Title 3, Estates Code.

Subtitle P, Title 2, and the revised provisions in Title 3, Estates Code, are divided into chapters. Each proposed chapter is divided into subchapters, if appropriate, and is further divided into sections. Sections are numbered decimally, and the number to the left of the decimal point is the same as the chapter number. Gaps in chapter and section numbering are for future expansion.

TLC legal staff has taken meticulous care to ensure that no substantive change has been made in the law and preserve any ambiguity or interpretation that may exist in current law.

TLC staff has consulted with and provided proposed chapters for comment to certain members of the Real Estate, Probate, and Trust Law Section of the State Bar of Texas, who distributed chapters for review and comment to additional members of that section. Other interested persons, including statutory probate court judges, were notified about the availability of the chapters for review. TLC staff consulted with all persons who sent comments to TLC, including staff of the Office of Court Administration of the Texas Judicial System and the Department of Aging and Disability Services. In addition, because TLC has sought the widest possible review of the proposed chapters to be incorporated into the Estates Code, the chapters have been made available for that purpose on TLC's Internet website.

H.B. 2759 amends current law relating to the nonsubstantive revision of provisions of the Texas Probate Code relating to durable powers of attorney, guardianships, and other related proceedings and alternatives, and the redesignation of certain other provisions of the Texas Probate Code, including conforming amendments and repeals.

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. NONSUBSTANTIVE REVISION OF PROVISIONS RELATING TO
DURABLE POWERS OF ATTORNEY, GUARDIANSHIPS, AND OTHER RELATED
PROCEEDINGS AND ALTERNATIVES

SECTION 1.01. SUBTITLE P, TITLE 2, ESTATES CODE. Amends Title 2, Estates Code, by adding Subtitle P, as follows:

SUBTITLE P. DURABLE POWERS OF ATTORNEY

CHAPTER 751. GENERAL PROVISIONS REGARDING DURABLE POWERS OF
ATTORNEY
(Pages 1-12 of this bill.)

CHAPTER 752. STATUTORY DURABLE POWER OF ATTORNEY
(Pages 12-40 of this bill.)

SECTION 1.02. TITLE 3, ESTATES CODE. Amends the Estates Code by adding Title 3, as follows:

TITLE 3. GUARDIANSHIP AND RELATED PROCEDURES

SUBTITLE A. GENERAL PROVISIONS

CHAPTERS 1001-1030
(Pages 43-52 of this bill.)

SUBTITLE B. SCOPE, JURISDICTION, AND VENUE

CHAPTERS 1031-1050
(Page 52 of this bill.)

SUBTITLE C. PROCEDURAL MATTERS

CHAPTERS 1051-1100
(Pages 52-94 of this bill.)

SUBTITLE D. CREATION OF GUARDIANSHIP

CHAPTERS 1101-1150
(Pages 94-177 of this bill.)

SUBTITLE E. ADMINISTRATION OF GUARDIANSHIP

CHAPTERS 1151-1200
(Pages 177-326 of this bill.)

SUBTITLE F. EVALUATION, MODIFICATION, OR TERMINATION OF GUARDIANSHIP

CHAPTERS 1201-1250
(Pages 326-374 of this bill.)

SUBTITLE G. SPECIAL TYPES OF GUARDIANSHIPS

CHAPTERS 1251-1300
(Pages 374-392 of this bill.)

SUBTITLE H. COURT-AUTHORIZED TRUSTS AND ACCOUNTS

CHAPTERS 1301-1350
(Pages 392-408 of this bill.)

SUBTITLE I. OTHER SPECIAL PROCEEDINGS AND ALTERNATIVES TO
GUARDIANSHIP

CHAPTERS 1351-1356
(Pages 408-450 of this bill.)

[Reserves Subtitles J-X for expansion.]
(Page 450 of this bill.)

SUBTITLE Y. TEXAS PROBATE CODE: SCOPE, JURISDICTION, AND VENUE

PART 1. GENERAL PROVISIONS

SUBPART A. PROCEEDINGS IN REM

[Reserved for expansion.]

PART 2. GUARDIANSHIP PROCEEDINGS AND MATTERS

SUBPART A. JURISDICTION

[Reserved for expansion.]

SUBPART B. VENUE

[Reserved for expansion.]

SUBPART C. DUTIES AND RECORDS OF CLERK

[Reserved for expansion.]

SUBTITLE Z. TEXAS PROBATE CODE; ADDITIONAL GUARDIANSHIP PROVISIONS

PART 2. GUARDIANSHIP PROCEEDINGS AND MATTERS

SUBPART H. COMPENSATION, EXPENSES, AND COURT COSTS

[Reserved for expansion.]

ARTICLE 2. CONFORMING AMENDMENTS

SECTION 2.01. CONFORMING AMENDMENT. Amends Section 21.001, Estates Code, as effective January 1, 2014, to make conforming changes.

SECTION 2.02. CONFORMING AMENDMENT. Amends Section 21.002, Estates Code, as effective January 1, 2014, to make conforming changes.

SECTION 2.03. CONFORMING AMENDMENT. Amends Section 21.003(b), Estates Code, as effective January 1, 2014, to make conforming changes.

SECTION 2.04. CONFORMING AMENDMENT. Amends Section 21.005, Estates Code, as effective January 1, 2014, to make conforming changes.

SECTION 2.05. CONFORMING AMENDMENT. Amends the heading to Title 2, Estates Code, as effective January 1, 2014, to read as follows:

TITLE 2. ESTATES OF DECEDENTS; DURABLE POWERS OF ATTORNEY

ARTICLE 3. TRANSFER AND REDESIGNATION; REPEALER

SECTION 3.01. TRANSFER AND REDESIGNATION. (a) Provides that Section 604, Texas Probate Code, is transferred to Subpart A, Part 1, Subtitle Y, Title 3, Estates Code, as added by Section 1.02 of this Act, and redesignated as Section 604, Estates Code.

(b) Provides that Sections 605, 606, 607, 608, and 609, Texas Probate Code, are transferred to Subpart A, Part 2, Subtitle Y, Title 3, Estates Code, as added by Section 1.02 of this Act, and redesignated as Sections 605, 606, 607, 608, and 609, Estates Code, respectively.

(c) Provides that Sections 610, 611, 612, 613, 614, 615, 616, 617, and 618, Texas Probate Code, are transferred to Subpart B, Part 2, Subtitle Y, Title 3, Estates Code, as added by Section 1.02 of this Act, and redesignated as Sections 610, 611, 612, 613, 614, 615, 616, 617, and 618, Estates Code, respectively.

(d) Provides that Section 631, Texas Probate Code, is transferred to Subpart C, Part 2, Subtitle Y, Title 3, Estates Code, as added by Section 1.02 of this Act, and redesignated as Section 631, Estates Code.

(e) Provides that Section 665B, Texas Probate Code, as amended by Chapters 314 (H.B. 587) and 930 (H.B. 3080), Acts of the 81st Legislature, Regular Session, 2009, is transferred to Subpart H, Part 2, Subtitle Z, Title 3, Estates Code, as added by Section 1.02 of this Act, and redesignated as Section 665B, Estates Code.

SECTION 3.02. REPEALER. (a) Repealers: Sections 481-916, Texas Probate Code.

(b) Repealers: Subtitles M and Z, Title 2, and Title 25, Estates Code, as effective January 1, 2014.

(c) Repealers: Sections 4 and 5, Chapter 680 (H.B. 2502), Acts of the 81st Legislature, Regular Session, 2009, which transferred and redesignated Chapters XII and XIII, Texas Probate Code.

SECTION 3.03. LEGISLATIVE INTENT: TRANSFERS FROM TEXAS PROBATE CODE. Provides that it is the intent of the legislature that, with respect to any provision of the Texas Probate Code that is transferred by this Act to the Estates Code and redesignated as a provision of that code effective January 1, 2014, the transferred provision include all amendments to that provision enacted by the 82nd and 83rd Legislatures and any reenactments of the provision by those legislatures.

ARTICLE 4. GENERAL MATTERS

SECTION 4.01. LEGISLATIVE INTENT. Provides that this Act is enacted under Section 43 (Revision of Laws), Article III, Texas Constitution. Provides that this Act is intended as recodification only, and no substantive change in law is intended by this Act.

SECTION 4.02. SAVING PROVISION. Provides that this section applies in addition to the saving provisions specified by Sections 311.031(c) (providing that the repeal of a statute by a code does not affect an amendment, revision, or reenactment of the statute by the same legislature that enacted the code) and (d) (providing that if any provision of a code conflicts with a statute enacted by the same legislature that enacted the code, the statute controls), Government Code (Code Construction Act).

(b) Provides that the repeal of a statute by this Act does not affect an amendment, revision, or reenactment of the statute by the 83rd Legislature. Provides that the amendment, revision, or reenactment made by the 83rd Legislature is preserved and given effect as part of the code provision that revised the statute so amended, revised, or reenacted.

(c) Provides that if any provision of Subtitle P, Title 2, or Subtitle A, C, D, E, F, G, H, or I, Title 3, Estates Code, as added by this Act effective January 1, 2014, conflicts with a statute enacted by the 83rd Legislature, the statute controls.

SECTION 4.03. Effective date: January 1, 2014.