

BILL ANALYSIS

Senate Research Center
83R6408 MTB-F

H.B. 1755
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Jurisprudence
5/16/2013
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

H.B. 1755 amends current law relating to authorizing the appointment of a public probate administrator, and authorizes fees.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter B, Chapter 25, Government Code, by adding Section 25.00251, as follows:

Sec. 25.00251. PUBLIC PROBATE ADMINISTRATOR. (a) Authorizes a statutory probate court judge, with the concurrence of the commissioners court, to appoint a public probate administrator for the county in which the statutory probate court is located. Requires one person to serve as the public probate administrator for all statutory probate courts in the county unless the commissioners court has authorized additional public probate administrators.

(b) Requires the presiding judges of all of the statutory probate courts located in the county, if a county has more than one statutory probate court, to designate, by a majority vote, a specific statutory probate court judge to appoint and administer the office of the public probate administrator in that county. Requires the chief presiding statutory probate court judge, if the statutory probate court judges cannot, by a majority vote, determine which statutory probate court judge is required to appoint and administer the office of the public probate administrator in that county, to cast the tiebreaking vote to decide which statutory probate court judge is required to appoint and administer the office of the public probate administrator in that county.

(c) Authorizes the public probate administrator to be a person, a charitable organization, or any other suitable entity.

(d) Requires the commissioners court to set the compensation of the public probate administrator.

(e) Authorizes the public probate administrator, with the consent of and at salaries set by the commissioners court, to employ assistants, deputies, clerks, and any other employees as necessary to carry out Chapter 455, Estates Code.

SECTION 2. Amends Subtitle J, Title 2, Estates Code, as effective January 1, 2014, by adding Chapter 455, as follows:

CHAPTER 455. PUBLIC PROBATE ADMINISTRATOR

Sec. 455.001. DEFINITION. Defines, in this chapter, "public probate administrator" to mean the public probate administrator appointed under Section 25.00251, Government Code.

Sec. 455.002. BOND OF PUBLIC PROBATE ADMINISTRATOR. (a) Requires the public probate administrator to execute an official bond of at least \$100,000 conditioned as required by law and payable to the statutory probate court judge who appointed the public probate administrator.

(b) Authorizes the statutory probate court judge who appointed the public probate administrator, in addition to the official bond of office, at any time, for good cause, to require the administrator to post an additional corporate surety bond for individual estates. Requires that the additional bonds bear the written approval of the judge requesting the additional bond.

(c) Authorizes the county to choose to self-insure the public probate administrator for the minimum bond amount required by this section.

Sec. 455.003. FUNDING OF PUBLIC PROBATE ADMINISTRATOR'S OFFICE. Entitles a public probate administrator to commissions under Subchapter A (Compensation of Personal Representatives), Chapter 352 (Compensation and Expenses of Personal Representatives and Others), to be paid into the county treasury. Provides that the public probate administrator's office, including salaries, is funded, in part, by the commissions.

Sec. 455.004. POWERS AND DUTIES. (a) Requires the public probate administrator, on receipt of notice of a decedent for whose estate a personal representative has not been appointed and who has no known or suitable next of kin, to take prompt possession or control of the decedent's property located in the county that is considered by the public probate administrator to be subject to loss, injury, waste, or misappropriation, or the court orders into the possession and control of the public probate administrator after notice to the public probate administrator.

(b) Provides that the public probate administrator is responsible for determining if the decedent has any heirs or a will and, if necessary, is required to make burial arrangements with the appropriate county facility in charge of indigent burial if there are no known personal representatives.

(c) Requires the administrator, if the public probate administrator determines the decedent executed a will, to file the will with the county clerk.

(d) Provides that the public probate administrator has all of the powers and duties of an administrator under this title.

(e) Authorizes the public probate administrator to dispose of any unclaimed property by public auction or private sale, or donation to a charity, if appropriate.

(f) Authorizes the statutory probate court judge or commissioners court to request accountings in addition to accountings otherwise required by this title.

Sec. 455.005. INFORMING PUBLIC PROBATE ADMINISTRATOR. (a) Authorizes the officer or employee, if a public officer or employee knows of a decedent without known or suitable next of kin or knows of property of a decedent that is subject to loss, injury, waste, or misappropriation, to inform the public probate administrator of that fact.

(b) Authorizes the person in charge of the hospital or facility, if a person dies in a hospital, mental health facility, or board and care facility without known or suitable next of kin, to give immediate notice of that fact to the public probate administrator of the county in which the hospital or facility is located.

(c) Authorizes a funeral director in control of a decedent's remains to notify the public probate administrator if none of the persons listed in Section 711.002 (Disposition of Remains; Duty to Inter), Health and Safety Code, can be found after a reasonable inquiry or contacted by reasonable means, or any of the persons listed in Section 711.002, Health and Safety Code, refuses to act.

Sec. 455.006. PUBLIC PROBATE ADMINISTRATOR'S INITIATION OF ADMINISTRATION. (a) Requires the public probate administrator to investigate a decedent's estate and circumstances to determine if the opening of an administration is necessary if the public probate administrator has reasonable cause to believe that the decedent found in the county or believed to be domiciled in the county in which the administrator is appointed does not have a personal representative appointed for the decedent's estate.

(b) Requires the public probate administrator to secure a decedent's estate or resolve any other circumstances related to a decedent, if, after the investigation, the public probate administrator determines that the decedent has an estate that may be subject to loss, injury, waste, or misappropriation, or there are other circumstances relating to the decedent that require action by the public probate administrator.

(c) Authorizes the public probate administrator, to establish reasonable cause under Subsection (a), to require an information letter about the decedent that contains the following:

- (1) the name, address, date of birth, and county of residence of the decedent;
- (2) a description of the relationship between the interested person and the decedent;
- (3) a statement of the suspected cause of death of the decedent;
- (4) the names and telephone numbers of any known friends or relatives of the decedent;
- (5) a description of any known property of the decedent, including the estimated value of the property; and
- (6) a statement of whether the property is subject to loss, injury, waste, or misappropriation.

Sec. 455.007. ACCESS TO INFORMATION. (a) Authorizes a public probate administrator who has made an investigation under Section 455.006 to present to the statutory probate court judge a statement of the known facts relating to a decedent with a request for permission to take possession or control of property of the decedent and further investigate the matter.

(b) Authorizes a statutory probate court judge, on presentation of a statement under Subsection (a), to issue an order authorizing the public probate administrator to take possession or control of property under this chapter. Authorizes a public probate administrator to record the order in any county in which property subject to the order is located.

(c) Requires a financial institution, governmental or private agency, retirement fund administrator, insurance company, licensed securities dealer, or any other person, on presentation of an order issued under this section, to perform the following without requiring a death certificate or letters of administration and without inquiring into the truth of the order:

- (1) provide the public probate administrator complete information concerning property held in the name of the decedent referenced in the

order, without charge, including the names and addresses of any beneficiaries and any evidence of a beneficiary designation; and

(2) grant the public probate administrator access to a safe deposit box rented in the name of the decedent referenced in the order, without charge, for the purpose of inspection and removal of its contents.

(d) Requires that costs and expenses incurred in drilling or forcing a safe deposit box open under Subsection (c) be paid by the decedent's estate.

Sec. 455.008. SMALL ESTATES. (a) Authorizes a public probate administrator, if gross assets of an estate do not exceed 10 percent of the maximum amount authorized for a small estate affidavit under Section 205.001 (Entitlement to Estate Without Appointment of Personal Representative), to act without issuance of letters testamentary or of administration if the court approves a statement of administration stating the name and domicile of the decedent; the date and place of death of the decedent; and the name, address, and relationship of each known heir or devisee of the decedent.

(b) Authorizes the public probate administrator, on approval of the statement of administration, to:

(1) take possession of, collect, manage, and secure the personal property of the decedent;

(2) sell the decedent's personal property at private or public sale or auction, without a court order;

(3) distribute personal property to the estate's personal representative if one is appointed after the statement of administration is filed;

(4) distribute personal property to a distributee of the decedent who presents an affidavit complying with Chapter 205 (Small Estate Affidavit);

(5) sell or abandon perishable property of the decedent if necessary to preserve the estate;

(6) make necessary funeral arrangements for the decedent and pay reasonable funeral charges with estate assets;

(7) distribute to a minor heir or devisee for whom a guardian has not been appointed the share of an intestate estate or a devise to which the heir or devisee is entitled; and

(8) distribute allowances and exempt property as provided by this title.

(c) Requires the public probate administrator, on the distribution of property and internment of the decedent under this section, to file with the clerk an affidavit, to be approved by the court, detailing the property collected, the property's distribution, the cost of internment, and the place of internment.

Sec. 455.009. SMALL ESTATE AFFIDAVIT. (a) Authorizes the public probate administrator, if gross assets of an estate do not exceed the maximum amount authorized for a small estate affidavit under Section 205.001, to file an affidavit that complies with Chapter 205 for approval by the statutory probate court judge.

(b) Provides that, if the statutory probate court judge approves the affidavit, the affidavit is required to be maintained or recorded as provided by Section 205.005 (Affidavit as Local Government Record), and has the effect described by Section 205.007 (Liability of Certain Persons).

Sec. 455.010. GRANT OF ADMINISTRATION. (a) Requires a public probate administrator to file an application for letters of administration or administration with will annexed as provided by this title if gross assets of an estate exceed the maximum amount authorized for a small estate affidavit under Section 205.001, if the property of the decedent cannot be disposed of using other methods detailed in this chapter, or at the discretion of the public probate administrator or on order of the statutory probate court judge.

(b) Provides that, after issuance of letters of administration, the public probate administrator is considered a personal representative under this title and has all of the powers and duties of a personal representative under this title.

Sec. 455.011. WITHDRAWAL OF PUBLIC PROBATE ADMINISTRATOR AND APPOINTMENT OF SUCCESSOR. (a) Authorizes the public probate administrator, if a public probate administrator has taken any action under Section 455.008, 455.009, or 455.010 and a qualified person more entitled to serve as a personal representative under Section 304.001 (Order of Persons Qualified to Serve as Personal Representative) comes forward or a will of a decedent is found naming an executor, to surrender the administration of the estate and the assets of the estate to the person once the person has qualified under this title.

(b) Requires the public probate administrator, before surrendering the administration of the estate, to file a verified affidavit that shows fully and in detail:

(1) the condition of the estate;

(2) the charges and claims that have been approved or established by suit or that have been rejected and may be established later;

(3) the amount of each claim that has been rejected and may be established later;

(4) the property of the estate in the administrator's possession; and

(5) any other facts that are necessary in determining the condition of the estate.

(c) Authorizes the court to require any other filing from the public probate administrator that the court considers appropriate to fully show the condition of the estate before surrendering the estate under this section.

Sec. 455.012. DEPOSIT OF FUNDS INTO THE COUNTY TREASURY. Requires the public probate administrator to deposit all funds coming into the custody of the administrator in the county treasury. Requires that funds deposited be dispersed at the direction of the public probate administrator and according to the guidelines of the county treasurer or auditor.

SECTION 3. Amends Section 304.001(a), Estates Code, as effective January 1, 2014, as follows:

(a) Requires the court to grant letters testamentary or of administration to persons qualified to act, in a certain order, including any appointed public probate administrator. Makes nonsubstantive changes.

SECTION 4. Amends Section 118.052, Local Government Code, as follows:

Sec. 118.052. FEE SCHEDULE. Requires each clerk of a county court to collect the following fees for services rendered to any person:

(1) Makes no change to this subdivision.

(2) PROBATE COURT ACTIONS

(A) Probate Original Action (Sec. 118.055):

- (i) Probate of a will with independent executor, administration with will attached, administration of an estate, guardianship or receivership of an estate, or muniment of title . . . \$40.00
- (ii) Community survivors . . . \$40.00
- (iii) Small estates . . . \$40.00
- (iv) Declarations of heirship . . . \$40.00
- (v) Mental health or chemical dependency services . . . \$40.00
- (vi) Additional, special fee (Sec. 118.064) . . . \$ 5.00

(B) Services in Pending Probate Action (Sec. 118.056):

- (i) Filing an inventory and appraisal as provided by Section 118.056(d) . . . \$25.00
- (ii) Approving and recording bond . . . \$ 3.00
- (iii) Administering oath . . . \$ 2.00
- (iv) Filing annual or final account of estate . . . \$25.00
- (v) Filing application for sale of real or personal property . . . \$25.00
- (vi) Filing annual or final report of guardian of a person . . . \$10.00
- (vii) Filing a document not listed under this paragraph after the filing of an order approving the inventory and appraisal or after the 120th day after the date of the initial filing of the action, whichever occurs first, if more than 25 pages . . . \$25.00

(C) Adverse Probate Action (Sec. 118.057) . . . \$40.00

(D) Claim Against Estate (Sec. 118.058) . . . \$ 2.00

(E) Supplemental Court-Initiated Guardianship Fee in Probate Original Actions and Adverse Probate Actions (Sec. 118.067) . . . \$20.00

(F) Supplemental Public Probate Administrator Fee For Counties That Have Appointed a Public Probate Administrator (Sec. 118.068) . . . \$10.00

(3) Makes no change to this subdivision.

SECTION 5. Amends Subchapter C, Chapter 118, Local Government Code, by adding Section 118.068, as follows:

Sec. 118.068. SUPPLEMENTAL PUBLIC PROBATE ADMINISTRATOR FEE. (a) Provides that the "supplemental public probate administrator fee" under Section 118.052(2)(F) is for the support of the office of public probate administrator under

Chapter 455, Estates Code. Requires that fees collected under Section 118.052(2)(F) be deposited in the county treasury to fund the expenses of the public probate administrator's office.

(b) Provides that the supplemental public probate administrator fee is charged for a probate original action described by Section 118.055 (Probate Original Action) and for which a fee is charged in accordance with Section 118.052(2)(A)(i), (ii), (iii), (iv), or (v); and an adverse probate action described by Section 118.057 and for which a fee is charged in accordance with Section 118.052(2)(C).

(c) Requires that the supplemental public probate administrator fee be paid by the person against whom the fee for a probate original action or adverse probate action, as applicable, is charged and is due at the time that fee is due.

(d) Provides that the supplemental public probate administrator fee is in addition to all other fees charged in probate original actions and adverse probate actions.

SECTION 6. Amends Subchapter E, Chapter 101, Government Code, by adding Section 101.08145, as follows:

Sec. 101.08145. **ADDITIONAL STATUTORY COUNTY COURT FEES AND COSTS: LOCAL GOVERNMENT CODE.** Requires the clerk of a statutory county court to collect a supplemental public probate administrator fee of \$10 under Sections 118.052 and 118.068, Local Government Code.

SECTION 7. Amends Subchapter F, Chapter 101, Government Code, by adding Section 101.103, as follows:

Sec. 101.103. **ADDITIONAL STATUTORY PROBATE COURT FEES AND COSTS: LOCAL GOVERNMENT CODE.** Requires the clerk of a statutory probate court to collect a supplemental public probate administrator fee of \$10 under Sections 118.052 and 118.068, Local Government Code.

SECTION 8. Amends Subchapter G, Chapter 101, Government Code, by adding Section 101.12145, as follows:

Sec. 101.12145. **ADDITIONAL COUNTY COURT FEES AND COSTS: LOCAL GOVERNMENT CODE.** Requires the clerk of a county court to collect a supplemental public probate administrator fee of \$10 under Sections 118.052 and 118.068, Local Government Code.

SECTION 9. Effective date: January 1, 2014.