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## **Accounts, Disclosure to Customer of Account Type** S.B. No. 1791

Section 113.053, Estates Code, is amended to read as follows:

Sec. 113.053. ~~REQUIRED DISCLOSURE; USE OF FORM~~ [~~DISCLOSURE~~]. (a) A financial institution shall disclose the information provided in this subchapter to a customer at the time the customer selects or modifies an account. A financial institution is considered to have [~~adequately~~] disclosed the information provided in this subchapter if:

- (1) the financial institution uses the form provided by Section 113.052; and
- (2) the customer places the customer's initials to the right of each paragraph of the form.

(b) If a financial institution varies the format of the form provided by Section 113.052, the financial institution may make disclosures in the account agreement or in any other form that [~~adequately~~] discloses the information provided by this subchapter. Disclosures under this subsection must:

- (1) be given separately from other account information;
- (2) be provided before account selection or modification;
- (3) be printed in 14-point boldfaced type; and
- (4) if the discussions that precede the account opening or modification are conducted primarily in

a language other than English, be in that language.

(c) The financial institution shall notify the customer of the type of account the customer selected [~~If the customer receives adequate disclosure of the ownership rights to an account and the names of the parties are appropriately indicated, a financial institution may combine any of the provisions in, and vary the format of, the form and notices described in Section 113.052 in:~~

~~(1) a universal account form with options listed for selection and additional disclosures provided in the account agreement; or~~

~~(2) any other manner that adequately discloses the information provided by this subchapter].~~

(d) This section does not apply to a credit union.

SECTION 2. Subchapter B, Chapter 113, Estates Code, is amended by adding Section 113.0531 to read as follows:

Sec. 113.0531. USE OF FORM AND DISCLOSURE BY CREDIT UNIONS. (a) A credit union is considered to have disclosed the information provided by this subchapter if the credit union uses the form provided by Section 113.052.

(b) If a credit union varies the format of the form provided by Section 113.052, the credit union may make disclosures in the account agreement or in any other form that discloses the information provided by this subchapter.

(c) If the customer receives disclosure of the ownership rights to an account and the names of the parties are indicated, a credit union may combine any of the provisions in, and vary the format of, the form and notices described in Section 113.052 in:

(1) a universal account form with options listed for selection and additional disclosures provided in the account agreement; or

(2) any other manner that adequately discloses the information provided by this subchapter.

SECTION 3. This Act applies only to an account created or modified on or after the effective date of this Act. An account created or modified before the effective date of this Act is governed by the law in effect when the account was created or modified, and the former law is continued in effect for that purpose.

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### **Administration, Application – Dependent Administration** (SB995)

Sec. 301.052. CONTENTS OF APPLICATION FOR LETTERS OF ADMINISTRATION. An application for letters of administration when no will is alleged to exist must state:

- (1) the applicant's name, domicile, and, if any, relationship to the decedent;
- (2) the decedent's name and that the decedent died intestate;
- (3) the fact, date [~~time~~], and place of the decedent's death;
- (4) facts necessary to show that the court with which the application is filed has venue;
- (5) whether the decedent owned property and, if so, include a statement of the property's probable value;
- (6) the name [~~age, marital status,~~] and address, if known, whether the heir is an adult or minor, and the relationship to the decedent of each of the decedent's heirs;
- (7) if known by the applicant at the time the applicant files the application, whether one or more children were born to or adopted by the decedent and, if so, the name, birth date, and place of birth of each child;
- (8) if known by the applicant at the time the applicant files the application, whether the decedent was ever divorced and, if so, when and from whom;
- (9) that a necessity exists for administration of the decedent's estate and an allegation of the facts that show that necessity; and
- (10) that the applicant is not disqualified by law from acting as administrator.

### **Administration – Application – Letters – General Proof** (SB 995)

SECTION 30. Section 301.151, Estates Code, is amended to read as follows:

Sec. 301.151. GENERAL PROOF REQUIREMENTS. An applicant for the issuance of letters testamentary or of administration of an estate must prove to the court's satisfaction that:

- (1) the person whose estate is the subject of the application is dead;
  - (2) except as provided by Section 301.002(b) with respect to administration necessary to receive or recover property due a decedent's estate, and Section 501.006 with respect to a foreign will, four years have not elapsed since the date of the decedent's death and before the application;
  - (3) the court has jurisdiction and venue over the estate;
  - (4) citation has been served and returned in the manner and for the period required by this title;
- and
- (5) the person for whom letters testamentary or of administration are sought is entitled by law to the letters and is not disqualified.

### **Administration, Application for Letters** (SB995)

Estates Code Section 256.052(a)

(a) An application for the probate of a will must state and aver the following to the extent each is known to the applicant or can, with reasonable diligence, be ascertained by the applicant:

- (1) each applicant's name and domicile;
- (2) the testator's name, domicile, and, if known, age, on the date of the testator's death;
- (3) the fact, date [~~time~~], and place of the testator's death;
- (4) facts showing that the court with which the application is filed has venue;
- (5) that the testator owned property, including a statement generally describing the property and the property's probable value;
- (6) the date of the will;
- (7) the name, state of residence, and physical address where service can be had of the executor named in the will or other person to whom the applicant desires that letters be issued;
- (8) the name of each subscribing witness to the will, if any;
- (9) whether one or more children born to or adopted by the testator after the testator executed the will survived the testator and, if so, the name of each of those children;
- (10) whether a marriage of the testator was ever dissolved after the will was made and, if so, when and from whom;

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(11) whether the state, a governmental agency of the state, or a charitable organization is named in the will as a devisee; and

(12) that the executor named in the will, the applicant, or another person to whom the applicant desires that letters be issued is not disqualified by law from accepting the letters.

### **Administration, Application for Letters – Will Not Produced** (SB995)

Estates Code Sec. 256.054. ADDITIONAL APPLICATION REQUIREMENTS WHEN NO WILL IS PRODUCED. In addition to the requirements for an application under Section 256.052, if an applicant for the probate of a will cannot produce the will in court, the application must state:

(1) the reason the will cannot be produced;

(2) the contents of the will, as far as known; and

(3) the name~~[-age, marital status,]~~ and address, if known, whether the person is an adult or minor, and the relationship to the testator, if any, of:

(A) each devisee;

and  
(B) each person who would inherit as an heir of the testator in the absence of a valid will;

(C) in the case of partial intestacy, each heir of the testator.

### **Administration, Application – Muniment** (SB995)

SECTION 25. Section 257.051(a), Estates Code, is amended to read as follows:

(a) An application for the probate of a will as a muniment of title must state and aver the following to the extent each is known to the applicant or can, with reasonable diligence, be ascertained by the applicant:

(1) each applicant's name and domicile;

(2) the testator's name, domicile, and, if known, age, on the date of the testator's death;

(3) the fact, date [time], and place of the testator's death;

(4) facts showing that the court with which the application is filed has venue;

(5) that the testator owned property, including a statement generally describing the property and the property's probable value;

(6) the date of the will;

(7) the name, state of [and] residence, and physical address where service can be had of the [of:

~~[(A) any]~~ executor named in the will;

(8) the name of [and

~~[(B)]~~ each subscribing witness to the will, if any;

(9) [(8)] whether one or more children born to or adopted by the testator after the testator executed the will survived the testator and, if so, the name of each of those children;

(10) [(9)] that the testator's estate does not owe an unpaid debt, other than any debt secured by a lien on real estate;

(11) [(10)] whether a marriage of the testator was ever dissolved after the will was made and, if so, when and from whom; and

(12) [(11)] whether the state, a governmental agency of the state, or a charitable organization is named in the will as a devisee.

### **Administration, Application – Muniment - Will Not Produced** (SB995)

SECTION 26. Section 257.053, Estates Code, is amended to read as follows:

Sec. 257.053. ADDITIONAL APPLICATION REQUIREMENTS WHEN NO WILL IS PRODUCED. In addition to the requirements for an application under Section 257.051, if an applicant for the probate of a will as a muniment of title cannot produce the will in court, the application must state:

(1) the reason the will cannot be produced;

(2) the contents of the will, to the extent known; and

(3) the name~~[-age, marital status,]~~ and address, if known, whether the person is an adult or minor, and the relationship to the testator, if any, of:

(A) each devisee;

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- and
- (B) each person who would inherit as an heir of the testator in the absence of a valid will;
  - (C) in the case of partial intestacy, each heir of the testator.

### **Administration, Appraisers, Appointment of** (SB995)

SECTION 32. Section 309.001, Estates Code, is amended to read as follows:

Sec. 309.001. APPOINTMENT OF APPRAISERS. (a) At any time after letters testamentary or of administration are granted, the court, for good cause, on the court's own motion or on the motion of an interested person [~~party~~] shall appoint at least one but not more than three disinterested persons who are residents of the county in which the letters were granted to appraise the estate property.

(b) [~~At any time after letters testamentary or of administration are granted, the court, for good cause shown, on the court's own motion or on the motion of an interested person shall appoint at least one but not more than three disinterested persons who are residents of the county in which the letters were granted to appraise the estate property.~~]

[~~(e)~~] If the court makes an appointment under Subsection (a) [~~or (b)~~] and part of the estate is located in a county other than the county in which the letters were granted, the court, if the court considers necessary, may appoint at least one but not more than three disinterested persons who are residents of the county in which the relevant part of the estate is located to appraise the estate property located in that county.

### **Administration, Claims – Secured Creditors, Prompt Action by** (SB995, § 39)

Estates Code Sec. 355.1551. CLAIM HOLDER DUTY TO POSSESS OR SELL WITHIN REASONABLE TIME. (a) A claim holder of a claim allowed and approved under Section 355.151(a)(2) who elects to take possession or sell the property securing the debt before final maturity in satisfaction of the claim holder's claim must do so within a reasonable time, as determined by the court.

(b) If the claim holder fails to take possession or sell secured property within a reasonable time under Subsection (a), on application by the personal representative, the court may require the sale of the property free of the lien and apply the proceeds to the payment of the whole debt.

(c) This section does not apply to an estate administered as an independent administration under Subtitle I.

### **Administration, Court-Created Independent – Eligible Applicants** (SB995)

SECTION 28. Section 301.051, Estates Code, is amended to read as follows:

Sec. 301.051. ELIGIBLE APPLICANTS FOR LETTERS. An executor named in a will, an independent administrator designated by all of the distributees of the decedent under Section 401.002(b) or 401.003, or an interested person may file an application with the court for:

(1) the appointment of the executor named in the will; or

(2) the appointment of an administrator, if:

(A) there is a will, but:

(i) no executor is named in the will; or

(ii) the executor named in the will is disqualified, refuses to serve, is dead, or

resigns; or

(B) there is no will.

### **Administration, Court-Created Independent – Consent** (SB995, §00 40, 41, 42)

Estates Code Section 401.002

Sec. 401.002. CREATION IN TESTATE ESTATE BY AGREEMENT. (a) Except as provided in Section 401.001(b), if a decedent's will names an executor but the will does not provide for independent administration as provided in Section 401.001(a), all of the distributees of the decedent may agree on the advisability of having an independent administration and collectively designate in the application for probate of the decedent's will, or in one or more separate documents consenting to the application for probate of the decedent's will, the executor named in the will to serve as independent executor and request [~~in the application~~] that no other action shall be had in the probate court in relation to the settlement of the decedent's estate other than the probating and recording of the decedent's will and the return of an inventory, appraisalment, and list of claims of the

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decedent's estate. In such case the probate court shall enter an order granting independent administration and appointing the person, firm, or corporation designated by the distributees ~~[in the application]~~ as independent executor, unless the court finds that it would not be in the best interest of the estate to do so.

(b) Except as provided in Section 401.001(b), in situations where no executor is named in the decedent's will, or in situations where each executor named in the will is deceased or is disqualified to serve as executor or indicates by affidavit filed with the application for administration of the decedent's estate the executor's inability or unwillingness to serve as executor, all of the distributees of the decedent may agree on the advisability of having an independent administration and collectively designate in the application for probate of the decedent's will, or in one or more separate documents consenting to the application for probate of the decedent's will, a qualified person, firm, or corporation to serve as independent administrator and request ~~[in the application]~~ that no other action shall be had in the probate court in relation to the settlement of the decedent's estate other than the probating and recording of the decedent's will and the return of an inventory, appraisal, and list of claims of the decedent's estate. In such case the probate court shall enter an order granting independent administration and appointing the person, firm, or corporation designated by the distributees ~~[in the application]~~ as independent administrator, unless the court finds that it would not be in the best interest of the estate to do so.

Section 401.003(a) All of the distributees of a decedent dying intestate may agree on the advisability of having an independent administration and collectively designate in the application for administration of the decedent's estate, or in one or more documents consenting to the application for administration of the decedent's estate, a qualified person, firm, or corporation to serve as independent administrator and request ~~[in the application]~~ that no other action shall be had in the probate court in relation to the settlement of the decedent's estate other than the return of an inventory, appraisal, and list of claims of the decedent's estate. In such case the probate court shall enter an order granting independent administration and appointing the person, firm, or corporation designated by the distributees ~~[in the application]~~ as independent administrator, unless the court finds that it would not be in the best interest of the estate to do so.

Sections 401.004(c) If a distributee is an incapacitated person, the guardian of the person of the distributee may consent to the creation of an independent administration ~~[sign the application]~~ on behalf of the distributee. If the probate court finds that either the granting of independent administration or the appointment of the person, firm, or corporation designated by the distributees ~~[in the application]~~ as independent executor would not be in the best interest of the incapacitated person, then, notwithstanding anything to the contrary in Section 401.002 or 401.003, the court may not enter an order granting independent administration of the estate. If a distributee who is an incapacitated person has no guardian of the person, the probate court may appoint a guardian ad litem to act ~~[make application]~~ on behalf of the incapacitated person if the court considers such an appointment necessary to protect the interest of the distributees. Alternatively, if the distributee who is an incapacitated person is a minor and has no guardian of the person, the natural guardian or guardians of the minor may consent on the minor's behalf if there is no conflict of interest between the minor and the natural guardian or guardians.

Sections 401.004 (h) If a distributee of a decedent's estate dies and if by virtue of the distributee's death the distributee's share of the decedent's estate becomes payable to the distributee's estate, the deceased distributee's personal representative may consent to the ~~[sign the application for]~~ independent administration of the decedent's estate under Section 401.002 or 401.003 and under Subsection (c).

### **Administration, Court-Created Independent - Designee May File Application** (SB995)

SECTION 21. Section 256.051(a), Estates Code, is amended to read as follows:

(a) An executor named in a will, an independent administrator designated by all of the distributees of the decedent under Section 401.002(b), or an interested person may file an application with the court for an order admitting a will to probate, whether the will is:

- (1) written or unwritten;
- (2) in the applicant's possession or not;
- (3) lost;
- (4) destroyed; or
- (5) outside of this state.

### **Administration, Court-Created Independent - Power of Sale** (SB995, §43)

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Estates Code Sec. 401.006. GRANTING POWER OF SALE BY AGREEMENT. In a situation in which a decedent does not have a will, or a decedent's will does not contain language authorizing the personal representative to sell property or contains language that is not sufficient to grant the representative that authority, the court may include in an order appointing an independent executor [~~under Section 401.002 or 401.003~~] any general or specific authority regarding the power of the independent executor to sell property that may be consented to by the beneficiaries who are to receive any interest in the property in the application for independent administration or for the appointment of an independent executor or in their consents to the independent administration or to the appointment of an independent executor. The independent executor, in such event, may sell the property under the authority granted in the court order without the further consent of those beneficiaries.

### **Administration - Exempt Property** (SB995, §35)

SECTION 35. Sections 353.051(a) and (b), Estates Code, are amended to read as follows:

(a) Unless an application and verified affidavit are filed as provided by Subsection (b), immediately after the inventory, appraisal, and list of claims of an estate are approved or after the affidavit in lieu of the inventory, appraisal, and list of claims is filed, the court by order shall set aside:

(1) the homestead for the use and benefit of the decedent's surviving spouse and minor children; and

(2) all other exempt [estate] property described by Section 42.002(a), Property Code, [that is exempt from execution or forced sale by the constitution and laws of this state] for the use and benefit of the decedent's:

(A) surviving spouse and minor children;

(B) unmarried adult children remaining with the decedent's family; and

(C) each other adult child who is incapacitated.

(b) Before the inventory, appraisal, and list of claims of an estate are approved or, if applicable, before the affidavit in lieu of the inventory, appraisal, and list of claims is filed:

(1) the decedent's surviving spouse or any other person authorized to act on behalf of the decedent's minor children may apply to the court to have exempt property described by Subsection (a), including the homestead, set aside by filing an application and a verified affidavit listing all exempt property that the applicant claims is exempt property described by Subsection (a); and

(2) any of the decedent's unmarried adult children remaining with the decedent's family, any other adult child of the decedent who is incapacitated, or a person who is authorized to act on behalf of the adult incapacitated child may apply to the court to have all exempt property described by Subsection (a), other than the homestead, set aside by filing an application and a verified affidavit listing all the exempt property, other than the homestead, that the applicant claims is exempt property described by Subsection (a).

### **Administration - Exempt Property, Allowance in Lieu** (SB995, § 37)

Estates Code Section 353.053(a), Estates Code, is amended to read as follows:

(a) If all or any of the specific articles of exempt property described by Section 353.051(a) [from execution or forced sale by the constitution and laws of this state] are not among the decedent's effects, the court shall make, in lieu of the articles not among the effects, a reasonable allowance to be paid to the decedent's surviving spouse and children as provided by Section 353.054.

### **Administration, Exempt Property, Delivery of** (SB995, §36)

Estates Code Section 353.052, Estates Code, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

(a) This section only applies to exempt property described by Section 353.051(a).

(a-1) The executor or administrator of an estate shall deliver, without delay, exempt property that has been set aside for the decedent's surviving spouse and children in accordance with this section.

### **Administration - Exempt Property, Increase in Amount** HB 2706

Value of personal property exempt from seizure by creditors increases.

Section 42.001(a), Property Code, is amended to read as follows:

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(a) Personal property, as described in Section 42.002, is exempt from garnishment, attachment, execution, or other seizure if:

(1) the property is provided for a family and has an aggregate fair market value of not more than \$100,000 [~~\$60,000~~], exclusive of the amount of any liens, security interests, or other charges encumbering the property; or

(2) the property is owned by a single adult, who is not a member of a family, and has an aggregate fair market value of not more than \$50,000 [~~\$30,000~~], exclusive of the amount of any liens, security interests, or other charges encumbering the property.

SECTION 2. The changes in law made this Act do not apply to property that is, as of the effective date of this Act, subject to a voluntary bankruptcy proceeding or to a valid claim of a holder of a final judgment who has, by levy, garnishment, or other legal process, obtained rights superior to those that would otherwise be held by a trustee in bankruptcy if a bankruptcy petition were then pending against the debtor. That property is subject to the law as it existed immediately before the effective date of this Act, and the prior law is continued in effect for that purpose.

### **Administration – Insolvent Estate** HB 995, § 38

Estates Code Sections 353.153 and 353.154, Estates Code, are amended to read as follows:

Sec. 353.153. TITLE TO PROPERTY OF INSOLVENT ESTATE. If on final settlement an estate proves to be insolvent, the decedent's surviving spouse and children have absolute title to all property and allowances set aside or paid to them under this title. The distributees are entitled to distribution of any remaining exempt property held by the executor or administrator in the same manner as other estate property. The property and allowances set aside or paid to the decedent's surviving spouse or children, and any remaining exempt property held by the executor or administrator, may not be taken for any of the estate debts except as provided by Section 353.155.

Sec. 353.154. CERTAIN PROPERTY NOT CONSIDERED IN DETERMINING SOLVENCY. In determining whether an estate is solvent or insolvent, the exempt property set aside for the decedent's surviving spouse or children, any allowance made in lieu of that exempt property, [~~and~~] the family allowance under Subchapter C, and any remaining exempt property held by the executor or administrator may not be estimated or considered as estate assets.

### **Administration, Notice to Beneficiaries** (SB995)

SECTION 31. Section 308.004(a), Estates Code, is amended to read as follows:

(a) Not later than the 90th day after the date of an order admitting a will to probate, the personal representative shall file with the clerk of the court in which the decedent's estate is pending a sworn affidavit of the representative or a certificate signed by the representative's attorney stating:

(1) for each beneficiary to whom notice was required to be given under this subchapter, the name [~~and address~~] of the beneficiary to whom the representative gave the notice or, for a beneficiary described by Section 308.002(b), the name [~~and address~~] of the beneficiary and of the person to whom the notice was given;

(2) the name [~~and address~~] of each beneficiary to whom notice was not required to be given under Section 308.002(c)(2), (3), or (4);

(3) the name of each beneficiary whose identity or address could not be ascertained despite the representative's exercise of reasonable diligence; and

(4) any other information necessary to explain the representative's inability to give the notice to or for any beneficiary as required by this subchapter.

### **Administration, Time Limit for Opening** H.B. No. 3160

AN ACT

relating to an exception to the period of filing an application for the grant of letters testamentary or of administration of a decedent's estate.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 301.002(b), Estates Code, is amended to read as follows:

(b) This section does not apply if administration is necessary to:

(1) receive or recover property due a decedent's estate; or

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(2) prevent real property in a decedent's estate from becoming a danger to the health, safety, or welfare of the general public and the applicant for the issuance of letters testamentary or of administration is a home-rule municipality that is a creditor of the estate.

SECTION 2. Section 301.151, Estates Code, is amended to read as follows:

Sec. 301.151. GENERAL PROOF REQUIREMENTS. An applicant for the issuance of letters testamentary or of administration of an estate must prove to the court's satisfaction that:

(1) the person whose estate is the subject of the application is dead;

(2) except as provided by Section 301.002(b)(2), four years have not elapsed since the date of the decedent's death and before the application;

(3) the court has jurisdiction and venue over the estate;

(4) citation has been served and returned in the manner and for the period required by this title; and

(5) the person for whom letters testamentary or of administration are sought is entitled by law to the letters and is not disqualified.

SECTION 3. Section 306.002(c), Estates Code, is amended to read as follows:

(c) The court may find other instances of necessity for an administration based on proof before the court, but a necessity is considered to exist if:

(1) there are two or more debts against the estate;

(2) there is a desire for the county court to partition the estate among the distributees; ~~or~~

(3) the administration is necessary to receive or recover funds or other property due the estate; or

(4) the administration is necessary to prevent real property in a decedent's estate from becoming a danger to the health, safety, or welfare of the general public.

SECTION 4. The changes in law made by this Act apply only to an application for the grant of letters testamentary or of administration of a decedent's estate filed on or after the effective date of this Act. An application for the grant of letters testamentary or of administration of a decedent's estate filed before the effective date of this Act 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.

### **Administration, Temporary Pending Contest** (SB995, § 44)

Estates Code 452.051(a) If a contest related to probating a will or granting letters testamentary or of administration is pending, the court may appoint a temporary administrator, with powers limited as the circumstances of the case require.

### **Administration – Who Gets Inventory?** (SB995 §33)

Estates Code Section 309.056:

(b) Notwithstanding Sections 309.051 and 309.052, or any contrary provision in a decedent's will that does not specifically prohibit the filing of an affidavit described by this subsection, if there are no unpaid debts, except for secured debts, taxes, and administration expenses, at the time the inventory is due, including any extensions, an independent executor may file with the court clerk, in lieu of the inventory, appraisal, and list of claims, an affidavit stating that all debts, except for secured debts, taxes, and administration expenses, are paid and that all beneficiaries other than those described by Subsection (b-1) have received a verified, full, and detailed inventory and appraisal. The affidavit in lieu of the inventory, appraisal, and list of claims must be filed within the 90-day period prescribed by Section 309.051(a), unless the court grants an extension.

(b-1) Absent a written request by a beneficiary, an independent executor is not required to provide a verified, full, and detailed inventory and appraisal to a beneficiary who:

(1) is entitled to receive aggregate devises under the will with an estimated value of \$2,000 or less;

(2) has received all devises to which the beneficiary is entitled under the will on or before the date an affidavit under this section is filed; or

(3) has waived in writing the beneficiary's right to receive a verified, full, and detailed inventory and appraisal.

(c) If the independent executor files an affidavit in lieu of the inventory, appraisal, and list of claims as authorized under Subsection (b):

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(1) any person interested in the estate, including a possible heir of the decedent, ~~[or]~~ a beneficiary under a prior will of the decedent, or a beneficiary described by Subsection (b-1), is entitled to receive a copy of the inventory, appraisal, and list of claims from the independent executor on written request;

(2) the independent executor may provide a copy of the inventory, appraisal, and list of claims to any person the independent executor believes in good faith may be a person interested in the estate without liability to the estate or its beneficiaries; and

(3) a person interested in the estate may apply to the court for an order compelling compliance with Subdivision (1), and the court, in its discretion, may compel the independent executor to provide a copy of the inventory, appraisal, and list of claims to the interested person or may deny the application.

### **Administration, Wrongful Death Actions** HB 1692 forum non conveniens.

SECTION 1. Sections 71.051(e) and (h), Civil Practice and Remedies Code, are amended to read as follows:

(e) The court may not stay or dismiss a plaintiff's claim under Subsection (b) if the plaintiff is a legal resident of this state or a derivative claimant of a legal resident of this state. The determination of whether a claim may be stayed or dismissed under Subsection (b) shall be made with respect to each plaintiff without regard to whether the claim of any other plaintiff may be stayed or dismissed under Subsection (b) and without regard to a plaintiff's country of citizenship or national origin. If an action involves both plaintiffs who are legal residents of this state and plaintiffs who are not, the court shall consider the factors provided by Subsection (b) and determine whether to deny the motion or to ~~[may not]~~ stay or dismiss the claim of any plaintiff who is not a ~~[action under Subsection (b) if the plaintiffs who are]~~ legal resident ~~[residents]~~ of this state ~~[are properly joined in the action and the action arose out of a single occurrence. The court shall dismiss a claim under Subsection (b) if the court finds by a preponderance of the evidence that a party was joined solely for the purpose of obtaining or maintaining jurisdiction in this state and the party's claim would be more properly heard in a forum outside this state].~~

(h) For purposes of Subsection (e) [In this section]:

(1) "Derivative claimant" means a person whose damages were caused by personal injury to or the wrongful death of another ~~["Legal resident" means an individual who intends the specified political subdivision to be his permanent residence and who intends to return to the specified political subdivision despite temporary residence elsewhere or despite temporary absences, without regard to the individual's country of citizenship or national origin. The term does not include an individual who adopts a residence in the specified political subdivision in bad faith for purposes of avoiding the application of this section].~~

(2) "Plaintiff" means a party seeking recovery of damages for personal injury or wrongful death. ~~[In a cause of action in which a party seeks recovery of damages for personal injury to or the wrongful death of another person, "plaintiff" includes both that other person and the party seeking such recovery.]~~ The term does not include:

(A) a counterclaimant, cross-claimant, or third-party plaintiff or a person who is assigned a cause of action for personal injury; or

(B) a representative, administrator, guardian, or next friend who is not otherwise a derivative claimant of a legal resident of this state ~~[, or who accepts an appointment as a personal representative in a wrongful death action, in bad faith for purposes of affecting in any way the application of this section].~~

SECTION 2. The change in law made by this Act applies only to an action commenced on or after the effective date of this Act. An action commenced before the effective date of this Act is governed by the law applicable to the action immediately before the effective date of this Act, and that law is continued in effect for that purpose.

### **Anatomical Gifts, Contributions to Donor Registry** HB 3283

Transportation Code Sec. 502.405. VOLUNTARY CONTRIBUTION TO DONOR REGISTRY [EDUCATION, AWARENESS, AND REGISTRY PROGRAM].

SECTION 2. Sections 502.405(a) and (b), Transportation Code, are amended to read as follows:

(a) The department shall provide to each county assessor-collector the educational materials for prospective donors provided under Section 502.189 ~~[as required by the Donor Education, Awareness, and Registry Program of Texas under Chapter 49, Health and Safety Code. The educational materials shall be made available in each office authorized to accept applications for registration of motor vehicles].~~

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(b) When a person applies for the registration or renewal of registration of a motor vehicle, the person may elect to contribute \$1 or more to the nonprofit organization administering the Glenda Dawson Donate Life-Texas Registry established under Chapter 692A, Health and Safety Code. The department shall remit any contribution paid under this subsection to the comptroller for deposit to the credit of the Glenda Dawson Donate Life-Texas Registry fund created under Section 692A.020, Health and Safety Code. Money received under this subsection by the organization may be used only for the purposes described by Section 692A.020(i), Health and Safety Code [~~to manage the organization's registry, provide donor education, and promote donor awareness~~]. The organization shall submit an annual report to the legislature and the comptroller that includes the total dollar amount of money received by the organization under this subsection. If a person makes a contribution under this section and does not pay the full amount of the registration fee, the department may credit all or a portion of the contribution to the person's registration fee. The department shall:

(1) include space on each motor vehicle registration renewal notice, on the page that states the total fee for registration renewal, that allows a person renewing a registration to voluntarily contribute \$1 or more to the organization;

(2) provide an opportunity for a person to contribute \$1 or more to the organization during the registration renewal process on the department's Internet website; and

(3) provide an opportunity to contribute \$1 or more to the organization in any registration renewal system that succeeds the registration renewal system in place on September 1, 2015 [2013].

SECTION 3. Section 521.008(a), Transportation Code, as added by Chapter 121 (S.B. 1815), Acts of the 83rd Legislature, Regular Session, 2013, is amended to read as follows:

(a) When a person applies for an original or renewal driver's license under this chapter, the person may contribute \$1 or more to the nonprofit organization administering the Glenda Dawson Donate Life-Texas Registry under Chapter 692A, Health and Safety Code.

SECTION 4. Section 521.126, Transportation Code, is amended by amending Subsections (b) and (i) and adding Subsection (n) to read as follows:

(b) Except as provided by Subsections (d), (e), (e-1), (g), (i), [~~and~~] (j), and (n), and Section 501.101, Business & Commerce Code, a person commits an offense if the person:

(1) accesses or uses electronically readable information derived from a driver's license, commercial driver's license, or personal identification certificate; or

(2) compiles or maintains a database of electronically readable information derived from driver's licenses, commercial driver's licenses, or personal identification certificates.

(i) The prohibition provided by Subsection (b) does not apply to a health care provider or hospital that accesses, uses, compiles, or maintains a database of the information to provide health care services to the individual who holds the driver's license, commercial driver's license, or personal identification certificate. If an individual objects to the collection of information under this subsection, the health care provider or hospital must use an alternative method to collect the individual's information.

(n) The prohibition provided by Subsection (b) does not apply to the nonprofit organization administering the Glenda Dawson Donate Life-Texas Registry under Section 692A.020, Health and Safety Code, or an organ procurement organization, tissue bank, or eye bank, as those terms are defined by Section 692A.002, Health and Safety Code, for the purpose of scanning the individual's information on the individual's driver's license, commercial driver's license, or personal identification certificate to register the individual as an anatomical gift donor. Before transmitting information scanned under this subsection, the nonprofit organization, organ procurement organization, tissue bank, or eye bank shall:

(1) notify the individual of the registry's purpose and the purposes for which the information will be used;

(2) require the individual to verify the accuracy of the information; and

(3) require the individual to affirm consent to make an anatomical gift through the individual's use of the individual's electronic signature.

SECTION 5. Section 521.422(c), Transportation Code, is amended to read as follows:

(c) When a person applies for the issuance or renewal of a personal identification card, including a duplicate personal identification card or a personal identification card issued or renewed over the Internet or by other electronic means, the person may elect to contribute \$1 or more to the nonprofit organization administering

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the Glenda Dawson Donate Life-Texas Registry established under Chapter 692A, Health and Safety Code. The department shall remit any contribution paid under this subsection to the comptroller for deposit to the credit of the Glenda Dawson Donate Life-Texas Registry fund created under Section 692A.020, Health and Safety Code. Before sending the money to the comptroller, the department may deduct money equal to the amount of reasonable expenses for administering this subsection, not to exceed five percent of the money collected under this subsection. The organization shall submit an annual report to the director of the department that includes the total dollar amount of money received by the organization under this subsection.

SECTION 6. Section 522.021, Transportation Code, is amended by adding Subsection (e) to read as follows:

(e) When the department issues a license to which this section applies, the department shall provide the person to whom the license is issued with written information about the Glenda Dawson Donate Life-Texas Registry operated under Chapter 692A, Health and Safety Code.

SECTION 7. Chapter 522, Transportation Code, is amended by adding Subchapter J to read as follows:

### SUBCHAPTER J. ANATOMICAL GIFTS

Sec. 522.151. DEFINITION. In this subchapter, "registry" means the Glenda Dawson Donate Life-Texas Registry established under Section 692A.020, Health and Safety Code.

Sec. 522.152. VOLUNTARY CONTRIBUTION TO DONOR REGISTRY. (a) When an individual applies for an original or renewal commercial driver's license under this chapter, the individual may contribute \$1 or more to the nonprofit organization administering the registry.

(b) The department shall:

(1) include space on each application for a new or renewal commercial driver's license that allows an individual applying for a new or renewal commercial driver's license to indicate that the individual is voluntarily contributing \$1 or more to the organization; and

(2) provide an opportunity for the individual to contribute \$1 or more to the organization during the application process for a new or renewal commercial driver's license on the department's Internet website.

(c) The department shall remit any contribution made under this section to the comptroller for deposit to the credit of the Glenda Dawson Donate Life-Texas Registry fund created under Section 692A.020, Health and Safety Code. Before sending the money to the comptroller, the department may deduct an amount, not to exceed five percent of the money collected under this section, for the reasonable expenses incurred by the department in administering this section.

(d) The organization shall submit an annual report to the director of the department that includes the total dollar amount of contributions received by the organization under this section.

Sec. 522.153. STATEMENT OF GIFT; PROVISION OF REGISTRY INFORMATION. (a) An individual who wishes to be an organ, tissue, or eye donor may execute a statement of gift.

(b) The statement of gift may be shown on a donor's commercial driver's license or by a card designed to be carried by the donor to evidence the donor's consent with respect to organ, tissue, and eye donation. A donor card signed by the donor shall be given effect as if executed under Section 692A.005, Health and Safety Code.

(c) The donor registry or organ procurement organizations, tissue banks, or eye banks, as those terms are defined by Section 692A.002, Health and Safety Code, shall provide donor registry information to the department and the Texas Department of Transportation. The department, with expert input and support from the nonprofit organization administering the registry, shall:

(1) provide to each applicant for the issuance of an original, renewal, corrected, or duplicate commercial driver's license who applies in person, by mail, over the Internet, or by other electronic means:

(A) the opportunity to indicate on the person's commercial driver's license or personal identification certificate that the person is willing to make an anatomical gift, in the event of death, in accordance with Section 692A.005, Health and Safety Code; and

(B) an opportunity for the individual to consent to inclusion in the registry and release to procurement organizations in the manner provided by Subsection (d); and

(2) provide a means to distribute registry information to interested individuals in each office authorized to issue commercial driver's licenses.

(d) The department shall:

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(1) specifically ask each applicant only the question, "Would you like to register as an organ donor?"; and

(2) if the applicant responds affirmatively to the question asked under Subdivision (1), provide the individual's name, date of birth, commercial driver's license number, most recent address, and other information needed for identification purposes at the time of donation to the nonprofit organization contracted to maintain the registry for inclusion in the registry.

(e) An affirmative statement of gift on an individual's commercial driver's license executed after August 31, 2015, shall be conclusive evidence of a decedent's status as a donor and serve as consent for organ, tissue, and eye removal.

(f) The department shall distribute at all field offices Donate Life brochures that provide basic donation information in English and Spanish and include a contact phone number and e-mail address. The department shall include the question required under Subsection (d)(1) and information on the donor registry Internet website in renewal notices.

Sec. 522.154. REVOCATION OF STATEMENT OF GIFT. (a) To revoke an affirmative statement of gift on an individual's commercial driver's license, the individual must apply to the department for an amendment to the license.

(b) The fee for an amendment is the same as the fee for a duplicate license.

(c) To have an individual's name removed from the registry, the individual must provide written notice to the nonprofit organization selected under Chapter 692A, Health and Safety Code, to maintain the registry directing the removal of the individual's name from the registry. On receipt of a written notice under this subsection, the organization shall promptly remove the individual's name and information from the registry.

SECTION 8. Section 521.126(k), Transportation Code, is repealed.

### **Anatomical Gifts – Disposition of Remains** H.B. No. 3070

Section 711.002, Health and Safety Code, is amended by amending Subsections (a), (b), (c), and (g) and adding Subsection (a-3) to read as follows:

(a) Except as provided by Subsection (l), unless a decedent has left directions in writing for the disposition of the decedent's remains as provided in Subsection (g), the following persons, in the priority listed, have the right to control the disposition, including cremation, of the decedent's remains, shall inter the remains, and in accordance with Subsection (a-1) are liable for the reasonable cost of interment:

- (1) the person designated in a written instrument signed by the decedent;
- (2) the decedent's surviving spouse;
- (3) any one of the decedent's surviving adult children;
- (4) either one of the decedent's surviving parents;
- (5) any one of the decedent's surviving adult siblings; ~~[or]~~
- (6) any one or more of the duly qualified executors or administrators of the decedent's estate; or
- (7) any adult person in the next degree of kinship in the order named by law to inherit the estate of

the decedent.

(a-3) A person exercising the right to control the disposition of remains under Subsection (a), other than a duly qualified executor or administrator of the decedent's estate, is liable for the reasonable cost of interment and may seek reimbursement for that cost from the decedent's estate. When an executor or administrator exercises the right to control the disposition of remains under Subsection (a)(6), the decedent's estate is liable for the reasonable cost of interment, and the executor or administrator is not individually liable for that cost.

(b) The written instrument referred to in Subsection (a)(1) may ~~shall~~ be in substantially the following form:

#### APPOINTMENT FOR ~~[OF AGENT TO CONTROL]~~ DISPOSITION OF REMAINS

I, ,

(your name and address)

being of sound mind, willfully and voluntarily make known my desire that, upon my death, the disposition of my remains shall be controlled by

(name of agent)

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in accordance with Section 711.002 of the Health and Safety Code and, with respect to that subject only, I hereby appoint such person as my agent (attorney-in-fact).

All decisions made by my agent with respect to the disposition of my remains, including cremation, shall be binding.

### SPECIAL DIRECTIONS:

Set forth below are any special directions limiting the power granted to my agent:

### AGENT:

Name:

Address:

Telephone Number:

~~[Acceptance of Appointment:-~~

~~[(signature of agent)~~

~~[Date of Signature:-]~~

### SUCCESSORS:

If my agent or a successor agent dies, becomes legally disabled, resigns, or refuses to act, or if I divorce my agent or successor agent and this instrument does not state that the divorced agent or successor agent continues to serve after my divorce from that agent or successor agent, I hereby appoint the following persons (each to act alone and successively, in the order named) to serve as my agent (attorney-in-fact) to control the disposition of my remains as authorized by this document:

1. First Successor

Name:

Address:

Telephone Number:

~~[Acceptance of Appointment:-~~

~~[(signature of first successor)~~

~~[Date of Signature:-]~~

2. Second Successor

Name:

Address:

Telephone Number:

~~[Acceptance of Appointment:-~~

~~[(signature of second successor)~~

~~[Date of Signature:-]~~

### DURATION:

This appointment becomes effective upon my death.

### PRIOR APPOINTMENTS REVOKED:

I hereby revoke any prior appointment of any person to control the disposition of my remains.

### RELIANCE:

I hereby agree that any cemetery organization, business operating a crematory or columbarium or both, funeral director or embalmer, or funeral establishment who receives a copy of this document may act under it. Any modification or revocation of this document is not effective as to any such party until that party receives actual notice of the modification or revocation. No such party shall be liable because of reliance on a copy of this document.

### ASSUMPTION:

THE AGENT, AND EACH SUCCESSOR AGENT, BY ACCEPTING THIS APPOINTMENT, ASSUMES THE OBLIGATIONS PROVIDED IN, AND IS BOUND BY THE PROVISIONS OF, SECTION 711.002 OF THE HEALTH AND SAFETY CODE.

### SIGNATURES:

This written instrument and my appointments of an agent and any successor agent in this instrument are valid without the signature of my agent and any successor agents below. Each agent, or a successor agent, acting

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pursuant to this appointment must indicate acceptance of the appointment by signing below before acting as my agent.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20 [49]\_\_\_\_\_.

(your signature)

State of \_\_\_\_\_

County of \_\_\_\_\_

This document was acknowledged before me on \_\_\_\_\_ (date) by \_\_\_\_\_  
(name of principal).

\_\_\_\_\_  
(signature of notarial officer)

(Seal, if any, of notary)

\_\_\_\_\_  
(printed name)

My commission expires:  
\_\_\_\_\_

### ACCEPTANCE AND ASSUMPTION BY AGENT:

I have no knowledge of or any reason to believe this Appointment for Disposition of Remains has been revoked. I hereby accept the appointment made in this instrument with the understanding that I will be individually liable for the reasonable cost of the decedent's interment, for which I may seek reimbursement from the decedent's estate.

Acceptance of Appointment:

(signature of agent)

Date of Signature:

Acceptance of Appointment:

(signature of first successor)

Date of Signature:

Acceptance of Appointment:

(signature of second successor)

Date of Signature:

(c) A written instrument is legally sufficient under Subsection (a)(1) if the instrument designates a person to control the disposition of the decedent's remains, the instrument is signed by the decedent, the signature of the decedent is acknowledged, and the agent or successor agent signs the instrument before acting as the decedent's agent. Unless the instrument provides otherwise, the designation of the decedent's spouse as an agent or successor agent in the instrument is revoked on the divorce of the decedent and the spouse appointed as an agent or successor agent [wording of the instrument complies substantially with Subsection (b), the instrument is properly completed, the instrument is signed by the decedent, the agent, and each successor agent, and the signature of the decedent is acknowledged]. Such written instrument may be modified or revoked only by a subsequent written instrument that complies with this subsection.

(g) A person may provide written directions for the disposition, including cremation, of the person's remains in a will, a prepaid funeral contract, or a written instrument signed and acknowledged by such person. A party to the prepaid funeral contract or a written contract providing for all or some of a decedent's funeral arrangements who fails to honor the contract is liable for the additional expenses incurred in the disposition of the decedent's remains as a result of the breach of contract. The directions may govern the inscription to be placed on a grave marker attached to any plot in which the decedent had the right of sepulture at the time of death and in which plot the decedent is subsequently interred. The directions may be modified or revoked only by a subsequent writing signed and acknowledged by such person. The person otherwise entitled to control the disposition of a decedent's remains under this section shall faithfully carry out the directions of the decedent to the extent that the decedent's estate or the person controlling the disposition are financially able to do so.

SECTION 2. Section 711.002, Health and Safety Code, as amended by this Act, applies only to the validity of a document executed on or after the effective date of this Act. The validity of a document executed

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before the effective date of this Act is governed by the law in effect on the date the document was executed, and that law continues in effect for that purpose.

SECTION 3. (a) Except as otherwise provided in this section, the changes in law made by this Act apply to:

(1) an instrument described by Section 711.002(a)(1), Health and Safety Code, as amended by this Act, created before, on, or after the effective date of this Act; and

(2) a judicial proceeding concerning an instrument described by Section 711.002(a)(1), Health and Safety Code, as amended by this Act, that:

(A) commences on or after the effective date of this Act; or

(B) is pending on the effective date of this Act.

(b) If the court finds that application of a provision of this Act would substantially interfere with the effective conduct of a judicial proceeding concerning an instrument described by Section 711.002(a)(1), Health and Safety Code, as amended by this Act, that is pending on the effective date of this Act or prejudice the rights of a party to the proceeding, the provision of this Act does not apply, and the law in effect immediately before the effective date of this Act applies in those circumstances.

### **Birth Certificate, Delayed – Registration** HB 2794

relating to a delayed birth certificate; creating a criminal offense.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 192.026(b), Health and Safety Code, is amended to read as follows:

(b) On the state registrar's refusal to register a certificate under Subsection (a), the state registrar shall:

(1) furnish the applicant a statement of the reasons for the refusal; and

(2) advise the applicant of the right to appeal to the statutory probate [county] court or district court in [for probate matters of] the county in which the birth occurred, or in the statutory probate court or district court in the county in which the person resides, as provided by Section 192.027.

SECTION 2. Sections 192.027(a), (b), and (d), Health and Safety Code, are amended to read as follows:

(a) If a delayed birth certificate is not accepted for registration by the state registrar, the person may file a petition in the statutory [county] probate court or district court in [of] the county in which the birth occurred, or in the statutory probate court or district court in the county in which the person resides, for an order establishing a record of the person's date of birth, place of birth, and parentage.

(b) The petition must include:

(1) the petitioner's:

(A) full name;

(B) place of residence;

(C) date of birth;

(D) city or town, if applicable, and county of birth;

(E) race or ethnicity; and

(F) gender;

(2) the full name and county of birth of the petitioner's father;

(3) the full name, including any maiden name, and county of birth of the petitioner's mother;

(4) whether the petitioner has been the subject of a final felony conviction;

(5) whether the petitioner is subject to the registration requirements of Chapter 62, Code of

Criminal Procedure; and

(6) a legible and complete set of the petitioner's fingerprints on a fingerprint card format acceptable to the Department of Public Safety and the Federal Bureau of Investigation [be on a form prescribed and furnished by the department].

(d) If, after a hearing, the court finds from the evidence submitted to the registrar and any other relevant evidence presented by the person that the person was born in this state, the court shall:

(1) make findings as to the person's date and place of birth and parentage;

(2) make other findings required by the case; and

(3) enter an order on a form prescribed and furnished by the department to establish a record of

birth.

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SECTION 3. Subchapter B, Chapter 192, Health and Safety Code, is amended by adding Sections 192.028 and 192.029 to read as follows:

Sec. 192.028. APPOINTMENT OF ATTORNEY AD LITEM. A judge of a statutory probate court or district court may appoint an attorney ad litem in a proceeding under Section 192.027 to represent the interests of the person seeking the delayed birth certificate.

Sec. 192.029. REFUSAL TO SIGN AFFIDAVIT OF PERSONAL KNOWLEDGE. (a) A parent of a person who is seeking a delayed birth certificate under this subchapter shall sign an affidavit of personal knowledge acknowledging that the individual is the parent of the person seeking the delayed birth certificate if:

(1) the person seeking a delayed birth certificate, a managing conservator or guardian of the person, or, if the person is a minor, another person with custody of the minor has requested the person's parent to sign the affidavit of personal knowledge; and

(2) the parent's affidavit of personal knowledge is necessary for the issuance of the birth certificate because the person seeking the delayed birth certificate is unable to provide sufficient alternative documentary evidence as required by Section 192.025.

(b) A parent shall sign an affidavit as described by Subsection (a) not later than the 30th day after the date a request is made as described by Subsection (a)(1).

(c) A person who is a parent of a person seeking a delayed birth certificate and who fails to sign an affidavit of personal knowledge as required by this section:

(1) commits an offense punishable as a Class B misdemeanor if the request under Subsection (a)(1) is made on or after the fourth anniversary of the date of birth but before the 15th anniversary of the date of birth; or

(2) commits an offense punishable as a Class A misdemeanor if the request under Subsection (a)(1) is made on or after the 15th anniversary of the date of birth

**Code Update Bill (Tex. Leg. Council)** S.B. No. 1296 – References in other statutes to Texas Probate Code updated to Texas Estates Code

### **Construction - "One Continuous Statute"** H.B. No. 2419

(b) Section 21.002, Estates Code, is amended to read as follows:

Sec. 21.002. CONSTRUCTION. (a) Except as provided by ~~[this section,]~~ Section 22.027~~[,]~~ or ~~[Section]~~ 1002.023, Chapter 311, Government Code (Code Construction Act), applies to the construction of a provision of this code.

(b) This code and the Texas Probate Code, as amended, shall be considered one continuous statute, and for the purposes of any instrument that refers to the Texas Probate Code, this code shall be considered an amendment to the Texas Probate Code [Chapter 311, Government Code (Code Construction Act), does not apply to the construction of a provision of Subtitle X, Title 2, or Subtitle Y or Z, Title 3].

SECTION 2. (a) This section takes effect only if the Act of the 84th Legislature, Regular Session, 2015, relating to nonsubstantive additions to and corrections in enacted codes does not become law.

(b) Section 21.002, Estates Code, is amended by adding Subsection (c) to read as follows:

(c) This code and the Texas Probate Code, as amended, shall be considered one continuous statute, and for the purposes of any instrument that refers to the Texas Probate Code, this code shall be considered an amendment to the Texas Probate Code.

### **Custodianships** S.B. No. 1202

relating to the value of property that may be transferred to a custodian or other person for the benefit of a minor under certain circumstances.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 141.007(c), Property Code, is amended to read as follows:

(c) A transfer under Subsection (a) or (b) may be made only if:

(1) the legal representative or trustee considers the transfer to be in the best interest of the minor;

(2) the transfer is not prohibited by or inconsistent with provisions of the applicable will, trust agreement, or other governing instrument; and

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(3) the transfer is authorized by the court if it exceeds \$25,000 [~~\$10,000~~] in value.

SECTION 2. Section 141.008(c), Property Code, is amended to read as follows:

(c) If a custodian has not been nominated under Section 141.004, or all persons nominated as custodian die before the transfer or are unable, decline, or are ineligible to serve, a transfer under this section may be made to an adult member of the minor's family or to a trust company unless the property exceeds \$25,000 [~~\$15,000~~] in value.

SECTION 3. The changes in law made by this Act apply only to a transfer made on or after the effective date of this Act. A transfer made before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and the prior law is continued in effect for that purpose.

### **Disclaimers - Texas Uniform Disclaimer of Property Interests Act HB 2428**

SECTION 1. Section 24.002(12), Business & Commerce Code, is amended to read as follows:

(12) "Transfer" means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease, and creation of a lien or other encumbrance. The term does not include a transfer under a disclaimer filed under Chapter 240, [Section 37A, Texas Probate Code, or Section 112.010,] Property Code.

SECTION 2. The heading to Subchapter A, Chapter 122, Estates Code, is amended to read as follows:

SUBCHAPTER A. [GENERAL PROVISIONS RELATING TO] DISCLAIMER OF INTEREST OR POWER

SECTION 3. Sections 122.001 and 122.002, Estates Code, are amended to read as follows:

Sec. 122.001. DEFINITIONS. In this subchapter [~~chapter, other than Subchapter E~~]:

(1) "Beneficiary" includes a person who would have been entitled, if the person had not made a disclaimer, to receive property as a result of the death of another person:

(A) by inheritance;

(B) under a will;

(C) by an agreement between spouses for community property with a right of survivorship;

(D) by a joint tenancy with a right of survivorship;

(E) by a survivorship agreement, account, or interest in which the interest of the decedent passes to a surviving beneficiary;

(F) by an insurance, annuity, endowment, employment, deferred compensation, or other contract or arrangement; or

(G) under a pension, profit sharing, thrift, stock bonus, life insurance, survivor income, incentive, or other plan or program providing retirement, welfare, or fringe benefits with respect to an employee or a self-employed individual.

(2) "Disclaim" and "disclaimer" have the meanings assigned by Section 240.002, Property Code [~~"Disclaimer" includes renunciation~~].

~~[(3) "Property" includes all legal and equitable interests, powers, and property, present or future, vested or contingent, and beneficial or burdensome, in whole or in part.]~~

Sec. 122.002. DISCLAIMER [WHO MAY DISCLAIM]. [~~(a)~~] A person who may be entitled to receive property as a beneficiary may disclaim the person's interest in or power over the property in accordance with Chapter 240, Property Code [~~who on or after September 1, 1977, intends to irrevocably disclaim all or any part of the property shall evidence the disclaimer as provided by this chapter~~].

~~[(b) Subject to Subsection (e), the legally authorized representative of a person who may be entitled to receive property as a beneficiary who on or after September 1, 1977, intends to irrevocably disclaim all or any part of the property on the beneficiary's behalf shall evidence the disclaimer as provided by this chapter.~~

~~[(c) A disclaimer made by a legally authorized representative described by Subsection (d)(1), (2), or (3), other than an independent executor, must be made with prior court approval of the court that has or would have jurisdiction over the legally authorized representative. A disclaimer made by an independent executor on behalf of a decedent may be made without prior court approval.~~

~~[(d) In this section, "legally authorized representative" means:~~

~~[(1) a guardian if the person entitled to receive the property as a beneficiary is an incapacitated person;~~

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~~[(2) a guardian ad litem if the person entitled to receive the property as a beneficiary is an unborn or unascertained person;~~

~~[(3) a personal representative, including an independent executor, if the person entitled to receive the property as a beneficiary is a decedent; or~~

~~[(4) an attorney in fact or agent appointed under a durable power of attorney authorizing disclaimers if the person entitled to receive the property as a beneficiary executed the power of attorney as a principal.]~~

SECTION 4. Section 122.201, Estates Code, is amended to read as follows:

Sec. 122.201. ASSIGNMENT. A person who is entitled to receive property or an interest in property from a decedent under a will, by inheritance, or as a beneficiary under a life insurance contract, and does not disclaim the property under Chapter 240, Property Code, ~~[this chapter]~~ may assign the property or interest in property to any person.

SECTION 5. Section 122.202, Estates Code, is amended to read as follows:

Sec. 122.202. FILING OF ASSIGNMENT. An assignment may, at the request of the assignor, be ~~delivered or~~ filed as provided for the delivery or filing of a disclaimer under Subchapter C, Chapter 240, Property Code ~~[B]~~.

SECTION 6. Section 122.204, Estates Code, is amended to read as follows:

Sec. 122.204. FAILURE TO COMPLY. Failure to comply with Chapter 240, Property Code, ~~[Subchapters A, B, C, and D]~~ does not affect an assignment.

SECTION 7. Section 122.205, Estates Code, is amended to read as follows:

Sec. 122.205. GIFT. An assignment under this subchapter is a gift to the assignee and is not a disclaimer under Chapter 240, Property Code ~~[Subchapters A, B, C, and D]~~.

SECTION 8. Section 124.004, Estates Code, is amended to read as follows:

Sec. 124.004. EFFECT OF DISCLAIMERS. This subchapter shall be applied after giving effect to any disclaimers made in accordance with Chapter 240, Property Code ~~[Subchapters A, B, C, and D, Chapter 122]~~.

SECTION 9. Section 814.005(a), Government Code, is amended to read as follows:

(a) A person may, on a form prescribed by and filed with the retirement system, waive all or a portion of any benefits from the retirement system to which the person is entitled. The retirement system also shall give effect as a waiver to a full or partial disclaimer executed in accordance with Chapter 240, Property ~~[Section 37A, Texas Probate]~~ Code, unless the benefit to be disclaimed is a lifetime annuity. A person may revoke a waiver of benefits in the same manner as the original waiver was made, unless the original waiver by its terms was made irrevocable.

SECTION 10. Section 834.005, Government Code, is amended to read as follows:

Sec. 834.005. DISCLAIMER OF BENEFITS. The retirement system shall give effect to a full or partial disclaimer of benefits executed in accordance with Chapter 240, Property ~~[Section 37A, Texas Probate]~~ Code, unless the benefit to be disclaimed is a lifetime annuity.

SECTION 11. Section 839.004, Government Code, is amended to read as follows:

Sec. 839.004. DISCLAIMER OF BENEFITS. The retirement system shall give effect to a full or partial disclaimer of benefits executed in accordance with Chapter 240, Property ~~[Section 37A, Texas Probate]~~ Code, unless the benefit to be disclaimed is a lifetime annuity.

SECTION 12. Section 1551.259(e), Insurance Code, is amended to read as follows:

(e) The board of trustees shall give effect to a full or partial disclaimer of benefits executed in accordance with Chapter 240, Property ~~[Section 37A, Texas Probate]~~ Code.

SECTION 13. The heading to Section 112.010, Property Code, is amended to read as follows:

Sec. 112.010. PRESUMED ACCEPTANCE ~~[OR DISCLAIMER]~~ BY ~~[OR ON BEHALF OF]~~ BENEFICIARY; DISCLAIMER.

SECTION 14. Section 112.010(b), Property Code, is amended to read as follows:

(b) A disclaimer of an interest in or power over trust property is governed by Chapter 240 ~~[If a trust is created by will, a beneficiary may disclaim an interest in the manner and with the effect for which provision is made in the applicable probate law].~~

SECTION 15. The Property Code is amended by adding Title 13 to read as follows:

### TITLE 13. DISCLAIMER OF PROPERTY INTERESTS CHAPTER 240. TEXAS UNIFORM DISCLAIMER OF PROPERTY INTERESTS ACT

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## SUBCHAPTER A. GENERAL PROVISIONS

Sec. 240.001. SHORT TITLE. This chapter may be cited as the Texas Uniform Disclaimer of Property Interests Act.

Sec. 240.002. DEFINITIONS. In this chapter:

(1) "Current beneficiary" and "presumptive remainder beneficiary" have the meanings assigned by Section 112.071.

(2) "Disclaim" means to refuse to accept an interest in or power over property, including an interest or power the person is entitled to:

(A) by inheritance;

(B) under a will;

(C) by an agreement between spouses for community property with a right of survivorship;

(D) by a joint tenancy with a right of survivorship;

(E) by a survivorship agreement, account, or interest in which the interest of the decedent passes to a surviving beneficiary;

(F) by an insurance, annuity, endowment, employment, deferred compensation, or other contract or arrangement;

(G) under a pension, profit sharing, thrift, stock bonus, life insurance, survivor income, incentive, or other plan or program providing retirement, welfare, or fringe benefits with respect to an employee or a self-employed individual; or

(H) by an instrument creating a trust.

(3) "Disclaimant" means:

(A) the person to whom a disclaimed interest or power would have passed had the disclaimer not been made;

(B) the estate to which a disclaimed interest or power would have passed had the disclaimer not been made by the personal representative of the estate; or

(C) the trust into which a disclaimed interest or power would have passed had the disclaimer not been made by the trustee of the trust.

(4) "Disclaimed interest" means the interest that would have passed to the disclaimant had the disclaimer not been made.

(5) "Disclaimed power" means the power that would have been possessed by the disclaimant had the disclaimer not been made.

(6) "Disclaimer" means the refusal to accept an interest in or power over property.

(7) "Estate" has the meaning assigned by Section 22.012, Estates Code.

(8) "Fiduciary" means a personal representative, a trustee, an attorney in fact or agent acting under a power of attorney, or any other person authorized to act as a fiduciary with respect to the property of another person.

(9) "Guardian" has the meaning assigned by Section 1002.012, Estates Code.

(10) Notwithstanding Section 311.005, Government Code, "person" means an individual, corporation, including a public corporation, business trust, partnership, limited liability company, association, joint venture, governmental entity, including a political subdivision, agency, or instrumentality, or any other legal entity.

(11) "Personal representative" has the meanings assigned by Sections 22.031 and 1002.028, Estates Code.

(12) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band, or Alaskan native village, recognized by federal law or formally acknowledged by a state.

(13) "Survivorship property" means property held in the name of two or more persons under an arrangement in which, on the death of one of the persons, the property passes to and is vested in the other person or persons. The term includes:

(A) property held by an agreement described in Section 111.001, Estates Code;

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(B) property held by a community property survivorship agreement defined in Section 112.001, Estates Code; and

(C) property in a joint account held by an agreement described in Section 113.151, Estates Code.

(14) "Trust" has the meaning assigned by Section 111.003.

(15) "Ward" has the meaning assigned by Section 22.033, Estates Code.

Sec. 240.003. APPLICABILITY OF CHAPTER. This chapter applies to disclaimers of any interest in or power over property, whenever created.

Sec. 240.004. CHAPTER SUPPLEMENTED BY OTHER LAW. (a) Unless displaced by a provision of this chapter, the principles of law and equity supplement this chapter.

(b) This chapter does not limit any right of a person to waive, release, disclaim, or renounce an interest in or power over property under a statute other than this chapter.

Sec. 240.005. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law, with respect to the subject matter of this chapter, among states that enact a law based on the uniform act on which this chapter is based.

Sec. 240.006. POWER TO DISCLAIM BY PERSON OTHER THAN FIDUCIARY. (a) A person other than a fiduciary may disclaim, in whole or in part, any interest in or power over property, including a power of appointment.

(b) A person other than a fiduciary may disclaim an interest or power under this section even if the creator of the interest or power imposed a spendthrift provision or similar restriction on transfer or a restriction or limitation on the right to disclaim.

Sec. 240.007. POWER TO DISCLAIM POWER HELD IN FIDUCIARY CAPACITY BY PERSON DESIGNATED TO SERVE AS OR SERVING AS FIDUCIARY. (a) Subject to Subsection (b) and except to the extent the person's right to disclaim is expressly restricted or limited by a law of this state or by the instrument creating the fiduciary relationship, a person designated to serve or serving as a fiduciary may disclaim, in whole or in part, any power over property, including a power of appointment and the power to disclaim, held in a fiduciary capacity.

(b) If a power being disclaimed under Subsection (a) by a person designated to serve or serving as a trustee affects the distributive rights of any beneficiary of the trust:

(1) the person may disclaim only on or after accepting the trust;

(2) the disclaimer must be compatible with the trustee's fiduciary obligations; and

(3) if the disclaimer is made on accepting the trust, the trustee is considered to have never possessed the power disclaimed.

(c) A person designated to serve or serving as a fiduciary may disclaim a power under this section even if the creator of the power imposed a spendthrift provision or similar restriction on transfer.

Sec. 240.008. POWER TO DISCLAIM BY FIDUCIARY ACTING IN FIDUCIARY CAPACITY. (a) Subject to this section and except to the extent the fiduciary's right to disclaim is expressly restricted or limited by a law of this state or by the instrument creating the fiduciary relationship, a fiduciary acting in a fiduciary capacity may disclaim, in whole or in part, any interest in or power over property, including a power of appointment and the power to disclaim, that would have passed to the ward, estate, trust, or principal with respect to which the fiduciary was acting had the disclaimer not been made even if:

(1) the creator of the interest or power imposed a spendthrift provision or similar restriction on transfer or a restriction or limitation on the right to disclaim; or

(2) an instrument other than the instrument that created the fiduciary relationship imposed a restriction or limitation on the right to disclaim.

(b) Except as provided by Subsection (c), (d), or (f), a disclaimer by a fiduciary acting in a fiduciary capacity does not require court approval to be effective unless the instrument that created the fiduciary relationship requires court approval.

(c) The following disclaimers by a fiduciary acting in a fiduciary capacity are not effective unless approved by a court of competent jurisdiction:

(1) a disclaimer by a personal representative who is not an independent administrator or independent executor;

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(2) a disclaimer by the trustee of a management trust created under Chapter 1301, Estates Code;

(3) a disclaimer by the trustee of a trust created under Section 142.005; or

(4) a disclaimer that would result in an interest in or power over property passing to the person making the disclaimer.

(d) A trustee acting in a fiduciary capacity may not disclaim an interest in property that would cause the interest in property not to become trust property unless:

(1) a court of competent jurisdiction approves the disclaimer; or

(2) the trustee provides written notice of the disclaimer in accordance with Section 240.0081.

(e) In the absence of a court-appointed guardian, without court approval, a natural guardian as described by Section 1104.051, Estates Code, may disclaim on behalf of a minor child of the natural guardian, in whole or in part, any interest in or power over property, including a power of appointment, that the minor child is to receive solely as a result of another disclaimer, but only if the disclaimed interest or power does not pass to or for the benefit of the natural guardian as a result of the disclaimer.

(f) Unless a court of competent jurisdiction approves the disclaimer, a disclaimer by a fiduciary acting in a fiduciary capacity must be compatible with the fiduciary's fiduciary obligations. A disclaimer by a fiduciary acting in a fiduciary capacity is not a per se breach of the fiduciary's fiduciary obligations.

(g) Possible remedies for a breach of fiduciary obligations do not include declaring an otherwise effective disclaimer void or granting other legal or equitable relief that would make the disclaimer ineffective.

Sec. 240.0081. NOTICE REQUIRED BY TRUSTEE DISCLAIMING CERTAIN INTERESTS IN PROPERTY; EFFECT OF NOTICE. (a) A trustee acting in a fiduciary capacity may disclaim an interest in property that would cause the interest in property not to become trust property without court approval if the trustee provides written notice of the disclaimer to all of the current beneficiaries and presumptive remainder beneficiaries of the trust.

(b) For the purpose of determining who is a current beneficiary or presumptive remainder beneficiary entitled to the notice under Subsection (a), a beneficiary is determined as of the date the notice is sent.

(c) In addition to the notice required under Subsection (a), the trustee shall give written notice of the trustee's disclaimer to the attorney general if:

(1) a charity is entitled to notice;

(2) a charity entitled to notice is no longer in existence;

(3) the trustee has the authority to distribute trust assets to one or more charities that are not named in the trust instrument; or

(4) the trustee has the authority to make distributions for a charitable purpose described in the trust instrument, but no charity is named as a beneficiary for that purpose.

(d) If the beneficiary has a court-appointed guardian or conservator, the notice required to be given by this section must be given to that guardian or conservator. If the beneficiary is a minor for whom no guardian or conservator has been appointed, the notice required to be given by this section must be given to a parent of the minor.

(e) The trustee is not required to provide the notice to a beneficiary who:

(1) is known to the trustee and cannot be located by the trustee after reasonable diligence;

(2) is not known to the trustee;

(3) waives the requirement of the notice under this section; or

(4) is a descendant of a beneficiary to whom the trustee has given notice if the beneficiary and the beneficiary's ancestor have similar interests in the trust and no apparent conflict of interest exists between them.

(f) The notice required under Subsection (a) must:

(1) include a statement that:

(A) the trustee intends to disclaim an interest in property;

(B) if the trustee makes the disclaimer, the property will not become trust property and will not be available to distribute to the beneficiary from the trust;

(C) the beneficiary has the right to object to the disclaimer; and

(D) the beneficiary may petition a court to approve, modify, or deny the disclaimer;

(2) describe the interest in property the trustee intends to disclaim;

(3) specify the earliest date the trustee intends to make the disclaimer;

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(4) include the name and mailing address of the trustee;

(5) be given not later than the 30th day before the date the disclaimer is made; and

(6) be sent by personal delivery, first-class mail, facsimile, e-mail, or any other method likely to result in the notice's receipt.

(g) A beneficiary is not considered to have accepted the disclaimed interest solely because the beneficiary acts or does not act on receipt of a notice provided under this section.

(h) If the trustee makes the disclaimer for which notice is provided under this section, the beneficiary does not lose the beneficiary's right, if any, to sue the trustee for breach of the trustee's fiduciary obligations in connection with making the disclaimer. Section 240.008(g) applies to remedies sought in connection with the alleged breach.

Sec. 240.009. POWER TO DISCLAIM; GENERAL REQUIREMENTS; WHEN IRREVOCABLE. (a) To be effective, a disclaimer must:

(1) be in writing;

(2) declare the disclaimer;

(3) describe the interest or power disclaimed;

(4) be signed by the person making the disclaimer; and

(5) be delivered or filed in the manner provided by Subchapter C.

(b) A partial disclaimer may be expressed as a fraction, percentage, monetary amount, term of years, limitation of a power, or any other interest or estate in the property.

(c) A disclaimer is irrevocable on the later of the date the disclaimer:

(1) is delivered or filed under Subchapter C; or

(2) takes effect as provided in Sections 240.051-240.056.

(d) A disclaimer made under this chapter is not a transfer, assignment, or release.

### SUBCHAPTER B. TYPE AND EFFECT OF DISCLAIMER

Sec. 240.0501. DEFINITION. In this subchapter, "future interest" means an interest that:

(1) takes effect in possession or enjoyment, if at all, later than the time at which the instrument creating the interest becomes irrevocable; and

(2) passes to the holder of the interest at the time of the event that causes the taker of the interest to be finally ascertained and the interest to be indefeasibly vested.

Sec. 240.051. DISCLAIMER OF INTEREST IN PROPERTY. (a) This section and Sections 240.0511 and 240.0512 apply to a disclaimer of an interest in property other than a disclaimer subject to Section 240.052 or 240.053.

(b) If an interest in property passes because of the death of a decedent:

(1) a disclaimer of the interest:

(A) takes effect as of the time of the decedent's death; and

(B) relates back for all purposes to the time of the decedent's death; and

(2) the disclaimed interest is not subject to the claims of any creditor of the disclaimant.

(c) If an interest in property passes because of an event not related to the death of a decedent:

(1) a disclaimer of the interest:

(A) takes effect:

(i) as of the time the instrument creating the interest became irrevocable; or

(ii) in the case of an irrevocable transfer made without an instrument, at the time

of the irrevocable transfer; and

(B) relates back for all purposes to the time the instrument became irrevocable or the time of the irrevocable transfer, as applicable; and

(2) the disclaimed interest is not subject to the claims of any creditor of the disclaimant.

(d) A disclaimed interest passes according to any provision in the instrument creating the interest that provides for:

(1) the disposition of the interest if the interest were to be disclaimed; or

(2) the disposition of disclaimed interests in general.

(e) If the instrument creating the disclaimed interest does not contain a provision described by Subsection (d) and:

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(1) if the disclaimant is not an individual, the disclaimed interest passes as if the disclaimant did not exist; or

(2) if the disclaimant is an individual:

(A) except as provided by Section 240.0511, if the interest is passing because of the death of a decedent, the disclaimed interest passes as if the disclaimant had died immediately before the time as of which the disclaimer takes effect under Subsection (b); or

(B) except as provided by Section 240.0512, if the interest is passing because of an event not related to the death of a decedent, the disclaimed interest passes as if the disclaimant had died immediately before the time as of which the disclaimer takes effect under Subsection (c).

(f) A disclaimed interest that passes by intestacy passes as if the disclaimant died immediately before the decedent.

Sec. 240.0511. DISPOSITION OF INTEREST PASSING BECAUSE OF DECEDENT'S DEATH AND DISCLAIMED BY INDIVIDUAL. (a) Subject to Subsection (b):

(1) if by law or under the instrument creating the disclaimed interest the descendants of a disclaimant of an interest passing because of the death of a decedent would share in the disclaimed interest by any method of representation under Section 240.051(e)(2)(A), the disclaimed interest passes only to the descendants of the disclaimant who survive the decedent; or

(2) if the disclaimed interest would have passed to the disclaimant's estate under Section 240.051(e)(2)(A), the disclaimed interest instead passes by representation to the descendants of the disclaimant who survive the decedent.

(b) If no descendant of the disclaimant survives the decedent, the disclaimed interest passes to those persons, including the state but excluding the disclaimant, and in such shares as would succeed to the transferor's intestate estate under the intestate succession law of the transferor's domicile had the transferor died immediately before the decedent, except that if the transferor's surviving spouse is living but remarried before the decedent's death, the transferor is considered to have died unmarried immediately before the decedent's death.

(c) On the disclaimer of a preceding interest, a future interest held by a person other than the disclaimant takes effect as if the disclaimant had died immediately before the decedent, but a future interest held by the disclaimant is not accelerated in possession or enjoyment.

Sec. 240.0512. DISPOSITION OF INTEREST PASSING BECAUSE OF EVENT OTHER THAN DECEDENT'S DEATH AND DISCLAIMED BY INDIVIDUAL. (a) Subject to Subsection (b):

(1) if by law or under the instrument creating the disclaimed interest the descendants of a disclaimant of an interest passing because of an event not related to the death of a decedent would share in the disclaimed interest by any method of representation under Section 240.051(e)(2)(B), the disclaimed interest passes only to the descendants of the disclaimant living at the time of the event that causes the interest to pass; or

(2) if the disclaimed interest would have passed to the disclaimant's estate under Section 240.051(e)(2)(B), the disclaimed interest instead passes by representation to the descendants of the disclaimant living at the time of the event that causes the interest to pass.

(b) If no descendant of the disclaimant is living at the time of the event described by Subsection (a)(1), the disclaimed interest passes to those persons, including the state but excluding the disclaimant, and in such shares as would succeed to the transferor's intestate estate under the intestate succession law of the transferor's domicile had the transferor died immediately before the event described by Subsection (a)(1), except that if the transferor's surviving spouse is living but remarried before the event, the transferor is considered to have died unmarried immediately before the event.

(c) On the disclaimer of a preceding interest, a future interest held by a person other than the disclaimant takes effect as if the disclaimant had died immediately before the time the disclaimer takes effect under Section 240.051(c)(1)(A), but a future interest held by the disclaimant is not accelerated in possession or enjoyment.

Sec. 240.052. DISCLAIMER OF RIGHTS IN SURVIVORSHIP PROPERTY. (a) On the death of a holder of survivorship property, a surviving holder may disclaim, in whole or in part, an interest in the property of the deceased holder that would have otherwise passed to the surviving holder by reason of the deceased holder's death.

(b) If an interest in survivorship property is disclaimed by a surviving holder of the property:

(1) the disclaimer:

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(A) takes effect as of the time of the deceased holder's death; and

(B) relates back for all purposes to the time of the deceased holder's death; and

(2) the disclaimed interest is not subject to the claims of any creditor of the disclaimant.

(c) An interest in survivorship property disclaimed by a surviving holder of the property passes as if the disclaimant predeceased the holder to whose death the disclaimer relates.

Sec. 240.053. DISCLAIMER OF INTEREST BY TRUSTEE. (a) If a trustee disclaims an interest in property that otherwise would have become trust property:

(1) the interest does not become trust property;

(2) the disclaimer:

(A) takes effect as of the time the trust became irrevocable; and

(B) relates back for all purposes to the time the trust became irrevocable; and

(3) the disclaimed interest is not subject to the claims of any creditor of the trustee, the trust, or any trust beneficiary.

(b) If the instrument creating the disclaimed interest contains a provision that provides for the disposition of the interest if the interest were to be disclaimed, the disclaimed interest passes according to that provision.

(c) If the instrument creating the disclaimed interest does not contain a provision described by Subsection (b), the disclaimed interest passes as if:

(1) all of the current beneficiaries, presumptive remainder beneficiaries, and contingent beneficiaries of the trust affected by the disclaimer who are individuals died before the trust became irrevocable; and

(2) all beneficiaries of the trust affected by the disclaimer who are not individuals ceased to exist without successor organizations and without substitution of beneficiaries under the cy pres doctrine before the trust became irrevocable.

(d) Subsection (c) applies only for purposes of determining the disposition of an interest in property disclaimed by a trustee that otherwise would have become trust property and applies only with respect to the trust affected by the disclaimer. Subsection (c) does not apply with respect to other trusts governed by the instrument and does not apply for other purposes under the instrument or under the laws of intestacy.

Sec. 240.054. DISCLAIMER OF POWER OF APPOINTMENT OR OTHER POWER NOT HELD IN FIDUCIARY CAPACITY. (a) If a holder disclaims a power of appointment or other power not held in a fiduciary capacity, this section applies.

(b) If the holder:

(1) has not exercised the power, the disclaimer takes effect as of the time the instrument creating the power becomes irrevocable; or

(2) has exercised the power and the disclaimer is of a power other than a presently exercisable general power of appointment, the disclaimer takes effect immediately after the last exercise of the power.

(c) The instrument creating the power is construed as if the power had expired when the disclaimer became effective.

Sec. 240.055. DISCLAIMER BY APPOINTEE OF, OR OBJECT OR TAKER IN DEFAULT OF EXERCISE OF, POWER OF APPOINTMENT. (a) A disclaimer of an interest in property by an appointee of a power of appointment takes effect as of the time the instrument by which the holder exercises the power becomes irrevocable.

(b) A disclaimer of an interest in property by an object or taker in default of an exercise of a power of appointment takes effect as of the time the instrument creating the power becomes irrevocable.

Sec. 240.056. DISCLAIMER OF POWER HELD IN FIDUCIARY CAPACITY. (a) If a person designated to serve or serving as a fiduciary disclaims a power held or to be held in a fiduciary capacity that has not been exercised, the disclaimer takes effect as of the time the instrument creating the power becomes irrevocable.

(b) If a person designated to serve or serving as a fiduciary disclaims a power held or to be held in a fiduciary capacity that has been exercised, the disclaimer takes effect immediately after the last exercise of the power.

(c) A disclaimer subject to this section is effective as to another person designated to serve or serving as a fiduciary if:

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(1) the disclaimer provides that it is effective as to another person designated to serve or serving as a fiduciary; and

(2) the person disclaiming has the authority to bind the estate, trust, or other person for whom the person is acting.

Sec. 240.057. TAX QUALIFIED DISCLAIMER. (a) In this section, "Internal Revenue Code" has the meaning assigned by Section 111.004.

(b) Notwithstanding any other provision of this chapter, if, as a result of a disclaimer or transfer, the disclaimed or transferred interest is treated under the Internal Revenue Code as never having been transferred to the disclaimant, the disclaimer or transfer is effective as a disclaimer under this chapter.

Sec. 240.058. PARTIAL DISCLAIMER BY SPOUSE. A disclaimer by a decedent's surviving spouse of an interest in property transferred as the result of the death of the decedent is not a disclaimer by the surviving spouse of any other transfer from the decedent to or for the benefit of the surviving spouse, regardless of whether the interest that would have passed under the disclaimed transfer passes because of the disclaimer to or for the benefit of the surviving spouse by the other transfer.

### SUBCHAPTER C. DELIVERY OR FILING

Sec. 240.101. DELIVERY OR FILING GENERALLY. (a) Subject to applicable requirements of this subchapter, a disclaimant may deliver a disclaimer by personal delivery, first-class mail, facsimile, e-mail, or any other method likely to result in the disclaimer's receipt.

(b) If a disclaimer is mailed to the intended recipient by certified mail, return receipt requested, at an address the disclaimant in good faith believes is likely to result in the disclaimer's receipt, delivery is considered to have occurred on the date of mailing regardless of receipt.

Sec. 240.102. DISCLAIMER OF INTEREST CREATED UNDER INTESTATE SUCCESSION OR WILL. In the case of an interest created under the law of intestate succession or an interest created by will, other than an interest in a testamentary trust:

(1) a disclaimer must be delivered to the personal representative of the decedent's estate; or

(2) if no personal representative is then serving, a disclaimer must be filed in the official public records of any county in which the decedent:

(A) was domiciled on the date of the decedent's death; or

(B) owned real property.

Sec. 240.103. DISCLAIMER OF INTEREST IN TESTAMENTARY TRUST. In the case of an interest in a testamentary trust:

(1) a disclaimer must be delivered to the trustee then serving;

(2) if no trustee is then serving, a disclaimer must be delivered to the personal representative of the decedent's estate; or

(3) if no trustee or personal representative is then serving, a disclaimer must be filed in the official public records of any county in which the decedent:

(A) was domiciled on the date of the decedent's death; or

(B) owned real property.

Sec. 240.104. DISCLAIMER OF INTEREST IN INTER VIVOS TRUST. In the case of an interest in an inter vivos trust:

(1) a disclaimer must be delivered to the trustee then serving, or, if no trustee is then serving, a disclaimer must be filed:

(A) with a court having jurisdiction to enforce the trust; or

(B) in the official public records of the county in which:

(i) the situs of administration of the trust is maintained; or

(ii) the settlor is domiciled or was domiciled on the date of the settlor's death; and

(2) if a disclaimer is made before the time the instrument creating the trust becomes irrevocable, a disclaimer must be delivered to the settlor of a revocable trust or the transferor of the interest.

Sec. 240.105. DISCLAIMER OF INTEREST CREATED BY BENEFICIARY DESIGNATION. (a) In this section, "beneficiary designation" means an instrument, other than an instrument creating a trust, naming the beneficiary of:

(1) an annuity or insurance policy;

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- (2) an account with a designation for payment on death;
- (3) a security registered in beneficiary form;
- (4) a pension, profit-sharing, retirement, or other employment-related benefit plan; or
- (5) any other nonprobate transfer at death.

(b) In the case of an interest created by a beneficiary designation that is disclaimed before the designation becomes irrevocable, the disclaimer must be delivered to the person making the beneficiary designation.

(c) In the case of an interest created by a beneficiary designation that is disclaimed after the designation becomes irrevocable:

(1) a disclaimer of an interest in personal property must be delivered to the person obligated to distribute the interest; and

(2) a disclaimer of an interest in real property must be recorded in the official public records of the county where the real property that is the subject of the disclaimer is located.

Sec. 240.106. DISCLAIMER BY SURVIVING HOLDER OF SURVIVORSHIP PROPERTY. In the case of a disclaimer by a surviving holder of survivorship property, the disclaimer must be delivered to the person to whom the disclaimed interest passes.

Sec. 240.107. DISCLAIMER BY OBJECT OR TAKER IN DEFAULT OF EXERCISE OF POWER OF APPOINTMENT. In the case of a disclaimer by an object or taker in default of an exercise of a power of appointment at any time after the power was created:

(1) the disclaimer must be delivered to the holder of the power or to the fiduciary acting under the instrument that created the power; or

(2) if no fiduciary is then serving, the disclaimer must be filed:

(A) with a court having authority to appoint the fiduciary; or

(B) in the official public records of the county in which the creator of the power is domiciled or was domiciled on the date of the creator's death.

Sec. 240.108. DISCLAIMER BY CERTAIN APPOINTEES. In the case of a disclaimer by an appointee of a nonfiduciary power of appointment:

(1) the disclaimer must be delivered to the holder, the personal representative of the holder's estate, or the fiduciary under the instrument that created the power; or

(2) if no fiduciary is then serving, the disclaimer must be filed:

(A) with a court having authority to appoint the fiduciary; or

(B) in the official public records of the county in which the creator of the power is domiciled or was domiciled on the date of the creator's death.

Sec. 240.109. DISCLAIMER BY CERTAIN FIDUCIARIES. In the case of a disclaimer by a fiduciary of a power over a trust or estate, the disclaimer must be delivered as provided by Section 240.102, 240.103, or 240.104 as if the power disclaimed were an interest in property.

Sec. 240.110. DISCLAIMER OF POWER BY AGENT. In the case of a disclaimer of a power by an agent, the disclaimer must be delivered to the principal or the principal's representative.

Sec. 240.111. RECORDING OF DISCLAIMER. If an instrument transferring an interest in or power over property subject to a disclaimer is required or authorized by law to be filed, recorded, or registered, the disclaimer may be filed, recorded, or registered as that instrument. Except as otherwise provided by Section 240.105(c)(2), failure to file, record, or register the disclaimer does not affect the disclaimer's validity between the disclaimant and persons to whom the property interest or power passes by reason of the disclaimer.

### SUBCHAPTER D. DISCLAIMER BARRED OR LIMITED

Sec. 240.151. WHEN DISCLAIMER BARRED OR LIMITED. (a) A disclaimer is barred by a written waiver of the right to disclaim.

(b) A disclaimer of an interest in property is barred if any of the following events occur before the disclaimer becomes effective:

(1) the disclaimant accepts the interest sought to be disclaimed by:

(A) taking possession of the interest; or

(B) exercising dominion and control over the interest;

(2) the disclaimant voluntarily assigns, conveys, encumbers, pledges, or transfers the interest sought to be disclaimed or contracts to do so; or

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(3) the interest sought to be disclaimed is sold under a judicial sale.

(c) The acceptance of an interest in property by a person in the person's fiduciary capacity is not an acceptance of the interest in the person's individual capacity and does not bar the person from disclaiming the interest in the person's individual capacity.

(d) A disclaimer, in whole or in part, of the future exercise of a power held in a fiduciary capacity is not barred by the previous exercise of the power.

(e) A disclaimer, in whole or in part, of the future exercise of a power not held in a fiduciary capacity is not barred by the previous exercise of the power unless the power is exercisable in favor of the disclaimant.

(f) A disclaimer of:

(1) a power over property that is barred by this section is ineffective; and

(2) an interest in property that is barred by this section takes effect as a transfer of the interest disclaimed to the persons who would have taken the interest under Subchapter B had the disclaimer not been barred.

(g) A disclaimer by a child support obligor is barred as to disclaimed property that could be applied to satisfy the disclaimant's child support obligations if those obligations have been:

(1) administratively determined by the Title IV-D agency as defined by Section 101.033, Family Code, in a Title IV-D case as defined by Section 101.034, Family Code; or

(2) confirmed and reduced to judgment as provided by Section 157.263, Family Code.

(h) If Subsection (g) applies, the child support obligee to whom child support arrearages are owed may enforce the child support obligation against the disclaimant as to disclaimed property by a lien or by any other remedy provided by law.

SECTION 16. The following provisions are repealed:

(1) Sections 122.003, 122.004, and 122.005, Estates Code;

(2) Subchapters B, C, and D, Chapter 122, Estates Code;

(3) Section 122.203, Estates Code; and

(4) Sections 112.010(c), (c-1), (c-2), (d), and (e), Property Code.

SECTION 17. Title 13, Property Code, as added by this Act, applies to an interest in or power over property existing on or after the effective date of this Act if the time for delivering or filing a disclaimer under former law, including the time for filing a written memorandum of disclaimer under Section 122.055, Estates Code, the time for delivering notice of the disclaimer under Section 122.056, Estates Code, or the time for delivering a written memorandum of disclaimer under Section 112.010, Property Code, as those sections existed immediately before the effective date of this Act, has not elapsed. If the time for filing or delivering notice of a written memorandum of disclaimer under former law has elapsed, the former law applies and is continued in effect for that purpose.

SECTION 18. Sections 122.201, 122.202, 122.204, and 122.205, Estates Code, as amended by this Act, apply to property or an interest in or power over property existing on or after the effective date of this Act if the time for delivering or filing an assignment under former law, including the time for filing an assignment under Section 122.202, Estates Code, or the time for delivering notice of the filing of assignment under Section 122.203, Estates Code, as those sections existed immediately before the effective date of this Act, has not elapsed. If the time for filing or delivering notice of an assignment under former law has elapsed, the former law applies and is continued in effect for that purpose.

### **Dissolution of Marriage, Effect on Provisions Benefiting Former Spouses or Their Relatives** (SB995)

Estates Code Sec. 123.001. WILL PROVISIONS MADE BEFORE DISSOLUTION OF MARRIAGE. (a) In this section:

(1) "Irrevocable trust" means a trust:

(A) for which the trust instrument was executed before the dissolution of a testator's marriage; and

(B) that the testator was not solely empowered by law or by the trust instrument to revoke.

(2) "Relative"["relative"] means an individual related to another individual by:

(A) [(+) ] consanguinity, as determined under Section 573.022, Government Code; or

(B) [(+) ] affinity, as determined under Section 573.024, Government Code.

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(b) If, after the testator makes a will, the testator's marriage is dissolved by divorce, annulment, or a declaration that the marriage is void, unless the will expressly provides otherwise:

(1) all provisions in the will, including all fiduciary appointments, shall be read as if the former spouse and each relative of the former spouse who is not a relative of the testator had failed to survive the testator; and

(2) all provisions in the will disposing of property to an irrevocable trust in which a former spouse or a relative of a former spouse who is not a relative of the testator is a beneficiary or is nominated to serve as trustee or in another fiduciary capacity or that confers a general or special power of appointment on a former spouse or a relative of a former spouse who is not a relative of the testator shall be read to instead dispose of the property to a trust the provisions of which are identical to the irrevocable trust, except any provision in the irrevocable trust:

(A) conferring a beneficial interest or a general or special power of appointment to the former spouse or a relative of the former spouse who is not a relative of the testator shall be treated as if the former spouse and each relative of the former spouse who is not a relative of the testator had disclaimed the interest granted in the provision; and

(B) nominating the former spouse or a relative of the former spouse who is not a relative of the testator to serve as trustee or in another fiduciary capacity shall be treated as if the former spouse and each relative of the former spouse who is not a relative of the testator had died immediately before the dissolution of the marriage~~[, unless the will expressly provides otherwise].~~

(c) Subsection (b)(2) does not apply if one of the following provides otherwise:

(1) a court order; or

(2) an express provision of a contract relating to the division of the marital estate entered into between the testator and the testator's former spouse before, during, or after the marriage.

SECTION 4. Section 123.052(a), Estates Code, is amended to read as follows:

(a) The dissolution of the marriage revokes a provision in a trust instrument that was executed by a divorced individual before the divorced individual's marriage was dissolved and that:

(1) is a revocable disposition or appointment of property made to the divorced individual's former spouse or any relative of the former spouse who is not a relative of the divorced individual;

(2) revocably confers a general or special power of appointment on the divorced individual's former spouse or any relative of the former spouse who is not a relative of the divorced individual; or

(3) revocably nominates the divorced individual's former spouse or any relative of the former spouse who is not a relative of the divorced individual to serve:

(A) as a personal representative, trustee, conservator, agent, or guardian; or

(B) in another fiduciary or representative capacity.

SECTION 5. Chapter 123, Estates Code, is amended by adding Subchapter D to read as follows:

### SUBCHAPTER D. EFFECT OF DISSOLUTION OF MARRIAGE ON CERTAIN MULTIPLE-PARTY ACCOUNTS

Sec. 123.151. DESIGNATION OF FORMER SPOUSE OR RELATIVE OF FORMER SPOUSE ON CERTAIN MULTIPLE-PARTY ACCOUNTS. (a) In this section:

(1) "Beneficiary," "multiple-party account," "P.O.D. account," and "P.O.D. payee" have the meanings assigned by Chapter 113.

(2) "Public retirement system" has the meaning assigned by Section 802.001, Government Code.

(3) "Relative" has the meaning assigned by Section 123.051.

(b) If, after a decedent designates a spouse or a relative of a spouse who is not a relative of the decedent as a P.O.D. payee or beneficiary, including alternative P.O.D. payee or beneficiary, on a P.O.D. account or other multiple-party account, the decedent's marriage is dissolved by divorce, annulment, or a declaration that the marriage is void, the designation provision on the account is not effective as to the former spouse or the former spouse's relative unless:

(1) the court decree dissolving the marriage designates the former spouse or the former spouse's relative as the P.O.D. payee or beneficiary;

(2) the decedent redesignated the former spouse or the former spouse's relative as the P.O.D. payee or beneficiary after the marriage was dissolved; or

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(3) the former spouse or the former spouse's relative is designated to 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 former spouse.

(c) If a designation is not effective under Subsection (b), a multiple-party account is payable to the named alternative P.O.D. payee or beneficiary or, if an alternative P.O.D. payee or beneficiary is not named, to the estate of the decedent.

(d) A financial institution or other person obligated to pay an account described by Subsection (b) that pays the account to the former spouse or the former spouse's relative as P.O.D. payee or beneficiary under a designation that is not effective under Subsection (b) is liable for payment of the account to the person provided by Subsection (c) only if:

(1) before payment of the account to the designated P.O.D. payee or beneficiary, the payor receives written notice at the home office or principal office of the payor from an interested person that the designation of the P.O.D. payee or beneficiary is not effective under Subsection (b); and

(2) the payor has not interpleaded the account funds into the registry of a court of competent jurisdiction in accordance with the Texas Rules of Civil Procedure.

(e) This section does not affect the right of a former spouse to assert an ownership interest in an undivided multiple-party account described by Subsection (b).

(f) This section does not apply to the disposition of a beneficial interest in a retirement benefit or other financial plan of a public retirement system.

### **Effective Dates and Application** (SB995)

SECTION 48. The addition by this Act of Section 255.304, Estates Code, and the amendment by this Act of Sections 113.004(4), 251.1045(a), 253.001(b) and (c), 254.005, 256.003(a), 353.051(a) and (b), 353.052, 353.053(a), 353.153, 353.154, 452.051(a), and 501.001, Estates Code, is intended to clarify rather than change existing law.

SECTION 49. Section 113.152(c), Estates Code, as added by this Act, applies to a P.O.D. account held by a financial institution on or after the effective date of this Act, regardless of the date on which the account was opened.

SECTION 50. Sections 201.051, 201.052, 201.056, 308.004(a), 309.056, and 352.052(b), Estates Code, as amended by this Act, and Section 251.053 and Subchapter I, Chapter 255, Estates Code, as added by this Act, apply only to the estate of a decedent who dies on or after the effective date of this Act. The estate of a decedent who dies before the effective date of this Act is governed by the law in effect on the date of the decedent's death, and the former law is continued in effect for that purpose.

SECTION 51. Sections 123.001 and 123.052(a), Estates Code, as amended by this Act, and Subchapter D, Chapter 123, Estates Code, as added by this Act, apply only to an individual whose marriage is dissolved on or after the effective date of this Act.

SECTION 52. Sections 202.005, 202.055, 202.056, 202.201(a), and 257.053, Estates Code, as amended by this Act, apply to an action filed or other proceeding commenced on or after the effective date of this Act. An action filed or other proceeding commenced before that date is governed by the law in effect on the date the action was filed or the proceeding was commenced, and the former law is continued in effect for that purpose.

SECTION 53. Subchapter J, Chapter 255, Section 355.1551, and Chapter 456, Estates Code, as added by this Act, and Sections 309.001, 401.002, 401.003(a), 401.004(c) and (h), and 401.006, Estates Code, as amended by this Act, apply to the administration of the estate of a decedent that is pending or commenced on or after the effective date of this Act.

SECTION 54. Sections 256.003(b), 256.051(a), 256.052(a), 256.054, 256.152(b) and (c), 257.051(a), 301.002(a), 301.051, 301.052, 301.151, and 501.006(a), 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 55. This Act takes effect September 1, 2015.

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## **Fees, Filing** H.B. No. 2182

Section 51.305(b), Government Code, is amended to read as follows:

(b) The commissioners court of a county may adopt a district court records archive fee of not more than \$10 for the filing of a suit, including an appeal from an inferior court, or a cross-action, counterclaim, intervention, contempt action, motion for new trial, or third-party petition, in any [a-district] court in the county for which the district clerk accepts filings as part of the county's annual budget. The fee must be set and itemized in the county's budget as part of the budget preparation process and must be approved in a public meeting. The fee is for preservation and restoration services performed in connection with maintaining a district court records archive.

(b) Section 51.305(b), Government Code, as effective September 1, 2019, is amended to read as follows:

(b) The commissioners court of a county may adopt a district court records archive fee of not more than \$5 for the filing of a suit, including an appeal from an inferior court, or a cross-action, counterclaim, intervention, contempt action, motion for new trial, or third-party petition, in any [a-district] court in the county for which the district clerk accepts filings as part of the county's annual budget. The fee must be set and itemized in the county's budget as part of the budget preparation process and must be approved in a public meeting. The fee is for preservation and restoration services performed in connection with maintaining a district court records archive.

SECTION 4. Section 51.319, Government Code, is amended to read as follows:

Sec. 51.319. OTHER FEES. The district clerk shall collect the following fees for services performed by the clerk:

(1) for performing services related to the matter of the estate of a deceased person or a minor transacted in the district court, the same fees allowed the county clerk for those services;

(2) for serving process by certified or registered mail, the same fee that sheriffs and constables are authorized to charge for the service under Section 118.131, Local Government Code; ~~and~~

(3) for performing any other service prescribed or authorized by law for which no fee is set by law, a reasonable fee; and

(4) for performing services related to a matter filed in a statutory county court, the same fees allowed the district clerk for those services in the district court.

SECTION 5. Section 51.604(a), Government Code, is amended to read as follows:

(a) The district clerk shall collect a \$40 [~~\$30~~] jury fee for each civil case in which a person applies for a jury trial. The clerk of a county court or statutory county court shall collect a \$40 [~~\$22~~] jury fee for each civil case in which a person applies for a jury trial. The clerk shall note the payment of the fee on the court's docket.

SECTION 6. Section 118.052, Local Government Code, is amended to read as follows:

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

### (1) CIVIL COURT ACTIONS

#### (A) Filing of Original Action (Sec. 118.053):

- (i) Garnishment after judgment . . . \$15.00
- (ii) All others . . . \$40.00

#### (B) Filing of Action Other than Original (Sec. 118.054) . . . \$30.00

#### (C) Services Rendered After Judgment in Original Action (Sec. 118.0545):

- (i) Abstract of judgment . . . \$ 5.00
- (ii) Execution, order of sale, writ, or other process . . . \$ 5.00

### (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):

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- \$25.00
- (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) . . . \$10.00 [~~\$ 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) OTHER FEES
- (A) Issuing Document (Sec. 118.059): original document and one copy . . . \$ 4.00
- each additional set of an original and one copy . . . \$ 4.00
- (B) Certified Papers (Sec. 118.060): for the clerk's certificate . . . \$ 5.00
- plus a fee per page or part of a page of . . . \$ 1.00
- (C) Noncertified Papers (Sec. 118.0605): for each page or part of a page . . . \$ 1.00
  - (D) Letters Testamentary, Letter of Guardianship, Letter of Administration, or Abstract of Judgment (Sec. 118.061) . . . \$ 2.00
  - (E) Safekeeping of Wills (Sec. 118.062) . . . \$ 5.00
  - (F) Mail Service of Process (Sec. 118.063) . . . same as sheriff
  - (G) Records Management and Preservation Fee . . . \$ 5.00

SECTION 7. The changes in law made by this Act apply only to a fee that becomes payable on or after the effective date of this Act. A fee that becomes payable before that date is governed by the law in effect when the fee became payable, and the former law is continued in effect for that purpose.

### Forms – Pro Se SB 512

Government Code Sec. 22.020. PROMULGATION OF CERTAIN PROBATE FORMS. (a) The supreme court shall, as the court considers appropriate, promulgate forms and instructions for the use of those forms for use by individuals representing themselves in certain probate matters or making certain wills, including forms for use in:

- (1) a small estate affidavit proceeding under Chapter 205, Estates Code;
  - (2) the probate of a will as a muniment of title under Chapter 257, Estates Code; and
  - (3) the making of a will for:
    - (A) a married individual with an adult child;
    - (B) a married individual with a minor child;
    - (C) a married individual with no children;
    - (D) an unmarried individual with an adult child;
    - (E) an unmarried individual with a minor child; and
    - (F) an unmarried individual with no children.
- (b) The forms and instructions must:
- (1) be written in plain language that is easy to understand by the general public;
  - (2) clearly and conspicuously state that the form is not a substitute for the advice of an attorney;
  - (3) be made readily available to the general public in the manner prescribed by the supreme court;
- and

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- (4) be translated into the Spanish language and the Spanish language translation of the form must either:
  - (A) state that the Spanish language-translated form is to be used solely for the purpose of assisting in understanding the form and may not be submitted to the court, and that the English version of the form must be submitted to the court; or
  - (B) be incorporated into the English language form in a manner that is understandable to both the court and members of the public.
- (c) The clerk of a court shall inform members of the public of the availability of a form promulgated under this section as appropriate and make the form available free of charge.
- (d) A court shall accept a form promulgated by the supreme court under this section unless the form has been completed in a manner that causes a substantive defect that cannot be cured.

### **Heirship - Access to Intestate's Account Information** HB 705

Estates Code ACCESS TO INTESTATE'S ACCOUNT WITH FINANCIAL INSTITUTION

Sec. 153.001. DEFINITIONS. In this chapter:

- (1) "Account" has the meaning assigned by Section 113.001.
- (2) "Financial institution" has the meaning assigned by Section 201.101, Finance Code.
- (3) "P.O.D. account" and "trust account" have the meanings assigned by Section 113.004.

Sec. 153.002. INAPPLICABILITY OF CHAPTER. This chapter does not apply to:

- (1) an account with a beneficiary designation;
- (2) a P.O.D. account;
- (3) a trust account; or
- (4) an account that provides for a right of survivorship.

Sec. 153.003. COURT-ORDERED ACCESS TO INTESTATE'S ACCOUNT INFORMATION. (a) In this section, "interested person" means an heir, spouse, creditor, or any other having a property right in or claim against the decedent's estate.

(b) On application of an interested person or on the court's own motion, a court may issue an order requiring a financial institution to release to the person named in the order information concerning the balance of each account that is maintained at the financial institution of a decedent who dies intestate if:

- (1) 90 days have elapsed since the date of the decedent's death;
- (2) no petition for the appointment of a personal representative for the decedent's estate is pending;

and

- (3) no letters testamentary or of administration have been granted with respect to the estate.

### **Heirship - Disclosures of Mortgage Info to Surv Spouse** HB 831

Finance Code Sec. 343.103. DISCLOSURE OF MORTGAGE INFORMATION TO SURVIVING SPOUSE. (a) In this section:

- (1) "Estate" has the meaning assigned by Section 22.012, Estates Code.
- (2) "Heir" has the meaning assigned by Section 22.015, Estates Code.
- (3) "Mortgage servicer" and "mortgagor" have the meanings assigned by Section 51.0001,

Property Code.

(b) Not later than the 30th day after a mortgage servicer of a home loan receives a request for the information from the surviving spouse of a mortgagor of the home loan, accompanied by the proof required under Subsection (c), the mortgage servicer shall provide the surviving spouse with information that the mortgagor would have received in a standard monthly statement, including:

- (1) the current balance information, including the due dates and the amount of any installments;
- (2) whether the loan is current and any amounts that are delinquent;
- (3) any loan number; and
- (4) the amount of any escrow deposit for taxes and insurance purposes.

(c) A surviving spouse must prove the person's status by providing:

- (1) a death certificate of the mortgagor;

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(2) an affidavit of disinterested witnesses that is in the form referenced in Section 203.002, Estates Code, including language stating that the surviving spouse was married to the mortgagor at the time of the mortgagor's death; and

(3) an affidavit signed by the surviving spouse stating that the surviving spouse is currently residing in the underlying mortgaged property as the primary residence.

(d) The request from the surviving spouse must also include a notice to the mortgage servicer that states in bold-faced, capital, or underlined letters: "THIS REQUEST IS MADE PURSUANT TO TEXAS FINANCE CODE SECTION 343.103. SUBSEQUENT DISCLOSURE OF INFORMATION IS NOT IN CONFLICT WITH THE GRAMM-LEACH-BLILEY ACT UNDER 15 U.S.C. SECTION 6802(e)(8)."

(e) A mortgage servicer that provides the information as required under this section is not liable to the estate of the mortgagor or any heir or beneficiary of the mortgagor as a result of providing this information to the surviving spouse.

### **Heirship -Inheritance by Child in Gestation** (SB995)

Estates Code Sec. 201.051. MATERNAL INHERITANCE. (a) For purposes of inheritance, a child is the child of the child's biological or adopted mother, and the child and the child's issue shall inherit from the child's mother and the child's maternal kindred, both descendants, ascendants, and collateral kindred in all degrees, and they may inherit from the child and the child's issue. However, if a child has intended parents, as defined by Section 160.102, Family Code, under a gestational agreement validated under Subchapter I, Chapter 160, Family Code, the child is the child of the intended mother and not the biological mother or gestational mother unless the biological mother is also the intended mother.

(b) This section does not permit inheritance by a child for whom no right of inheritance accrues under Section 201.056 or by the child's issue.

SECTION 7. Section 201.052, Estates Code, is amended by adding Subsection (f) to read as follows:

(f) This section does not permit inheritance by a child for whom no right of inheritance accrues under Section 201.056 or by the child's issue.

SECTION 8. Section 201.056, Estates Code, is amended to read as follows:

Sec. 201.056. PERSONS NOT IN BEING. No right of inheritance accrues to any person [~~other than to a child or lineal descendant of an intestate,~~] unless the person is born before, or is in gestation at, [in being and ~~capable in law to take as an heir at]~~ the time of the intestate's death and survives for at least 120 hours. A person is:

(1) considered to be in gestation at the time of the intestate's death if insemination or implantation occurs at or before the time of the intestate's death; and

(2) presumed to be in gestation at the time of the intestate's death if the person is born before the 301st day after the date of the intestate's death.

### **Heirship - Updating Procedures** (SB995)

Sec. 202.005. APPLICATION FOR PROCEEDING TO DECLARE HEIRSHIP. A person authorized by Section 202.004 to commence a proceeding to declare heirship must file an application in a court specified by Section 33.004 to commence the proceeding. The application must state:

- (1) the decedent's name and date [time] and place of death;
- (2) the names and physical addresses where service can be had [residences] of the decedent's heirs, the relationship of each heir to the decedent, whether each heir is an adult or minor, and the true interest of the applicant and each of the heirs in the decedent's estate or in the trust, as applicable;
- (3) if the date [time] or place of the decedent's death or the name or physical address where service can be had [residence] of an heir is not definitely known to the applicant, all the material facts and circumstances with respect to which the applicant has knowledge and information that might reasonably tend to show the date [time] or place of the decedent's death or the name or physical address where service can be had [residence] of the heir;
- (4) that all children born to or adopted by the decedent have been listed;
- (5) that each of the decedent's marriages has been listed with:
  - (A) the date of the marriage;
  - (B) the name of the spouse;

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- (C) the date and place of termination if the marriage was terminated; and
- (D) other facts to show whether a spouse has had an interest in the decedent's property;
- (6) whether the decedent died testate and, if so, what disposition has been made of the will;
- (7) a general description of all property belonging to the decedent's estate or held in trust for the benefit of the decedent, as applicable; and
- (8) an explanation for the omission from the application of any of the information required by this section.

Sec. 202.055. SERVICE OF CITATION ON CERTAIN PERSONS NOT REQUIRED. A party to a proceeding to declare heirship who executed the application filed under Section 202.005, entered an appearance in the proceeding, or waived citation under this subchapter is not required to be served by any method.

Sec. 202.056. WAIVER OF SERVICE OF CITATION.

- (a) Except as provided by Subsection (b)(2), a distributee may waive citation required by this subchapter to be served on the distributee.
- (b) A parent, managing conservator, guardian, attorney ad litem, or guardian ad litem of a minor distributee who:
  - (1) is younger than 12 years of age may waive citation required by this subchapter to be served on the distributee; and
  - (2) is 12 years of age or older may not waive citation required by this subchapter to be served on the distributee.

Section 202.201(a), Estates Code, is amended to read as follows:

- (a) The judgment in a proceeding to declare heirship must state:
  - (1) the names [~~and places of residence~~] of the heirs of the decedent who is the subject of the proceeding; and
  - (2) the heirs' respective shares and interests in the decedent's property.

### **Judges, Special – Statutory Probate** H.B. No. 1923

Civil Practice and Remedies Code Sec. 151.003. QUALIFICATIONS OF JUDGE. The special judge must be a retired or former district court, statutory county court, statutory probate court, or appellate court judge who:

- (1) has served as a judge for at least four years in a district court, statutory county court, statutory probate court, or appellate court;
- (2) has developed substantial experience in the judge's [~~his~~] area of specialty;
- (3) has not been removed from office or resigned while under investigation for discipline or removal; and
- (4) annually demonstrates completion [~~that he has completed~~] in the past calendar year of at least five days of continuing legal education in courses approved by the state bar or the supreme court.

SECTION 2. This Act applies only to a referral of a case to a special judge under Chapter 151, Civil Practice and Remedies Code, made on or after the effective date of this Act. A referral made before the effective date of this Act is governed by the law applicable to the referral immediately before the effective date of this Act, and that law is continued in effect for that purpose.

### **Judges – Assignment of Visiting Statutory Probate** (HB1438, §32)

Government Code Sec. 26.012. ASSIGNMENT OF VISITING JUDGE FOR PROBATE, GUARDIANSHIP, AND MENTAL HEALTH MATTERS. If the county judge is absent, incapacitated, recused, or disqualified to act in a probate, guardianship, or mental health matter, a visiting judge shall be assigned in accordance with Section 25.0022(h).

### **Judges - Recusal or Disqualification of Statutory Probate** (HB1438)

SECTION 29. Sections 25.0022(d) and (h), Government Code, are amended to read as follows:

- (d) The presiding judge shall:

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(1) ensure the promulgation of local rules of administration in accordance with policies and guidelines set by the supreme court;

(2) advise local statutory probate court judges on case flow management practices and auxiliary court services;

(3) perform a duty of a local administrative statutory probate court judge if the local administrative judge does not perform that duty;

(4) appoint an assistant presiding judge of the statutory probate courts;

(5) call and preside over annual meetings of the judges of the statutory probate courts at a time and place in the state as designated by the presiding judge;

(6) call and convene other meetings of the judges of the statutory probate courts as considered necessary by the presiding judge to promote the orderly and efficient administration of justice in the statutory probate courts;

(7) study available statistics reflecting the condition of the dockets of the probate courts in the state to determine the need for the assignment of judges under this section;

(8) compare local rules of court to achieve uniformity of rules to the extent practical and consistent with local conditions; and

(9) assign or order the clerk who serves the statutory probate courts to randomly assign a judge or former or retired judge of a statutory probate court to hear a case under Section 25.002201(a) or 25.00255, as applicable [~~the circumstances described by Section 25.002201(b)~~].

(h) Subject to Section 25.002201, a judge or a former or retired judge of a statutory probate court may be assigned by the presiding judge of the statutory probate courts to hold court in a statutory probate court, a county court, or any statutory court exercising probate jurisdiction when:

(1) a statutory probate judge requests assignment of another judge to the judge's court;

(2) a statutory probate judge is absent, disabled, or disqualified for any reason;

(3) a statutory probate judge is present or is trying cases as authorized by the constitution and laws of this state and the condition of the court's docket makes it necessary to appoint an additional judge;

(4) the office of a statutory probate judge is vacant;

(5) the presiding judge of an administrative judicial district requests the assignment of a statutory probate judge to hear a probate matter in a county court or statutory county court;

(6) ~~the statutory probate [presiding] judge is [of the administrative judicial district fails to timely assign a judge to replace a]~~ recused or disqualified [~~statutory probate court judge~~] as described by Section 25.002201(a) [~~Section 25.002201(b)~~];

(7) a county court judge requests the assignment of a statutory probate judge to hear a probate matter in the county court; or

(8) a local administrative statutory probate court judge requests the assignment of a statutory probate judge to hear a matter in a statutory probate court.

SECTION 30. Sections 25.002201(a) and (b), Government Code, are amended to read as follows:

(a) Except as provided by Subsection (b), not [~~Not~~] later than the 15th day after the date an order of recusal or disqualification of a statutory probate court judge is issued in a case, the presiding judge [~~of the administrative judicial district~~] shall assign a statutory probate court judge or a former or retired judge of a statutory probate court to hear the case if:

(1) the judge of the statutory probate court recused himself or herself under Section 25.00255(g)(1)(A);

(2) the judge of the statutory probate court disqualified himself or herself under Section 25.00255(g-1);

(3) the order was issued under Section 25.00255(i-3)(1); or

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(4) the presiding judge ~~[of the administrative judicial district]~~ receives notice and a request for assignment from the clerk of the statutory probate court under Section 25.00255(l).

(b) If the ~~[presiding]~~ judge who is the subject of an order of recusal or disqualification is ~~[of an administrative judicial district does not assign a judge under Subsection (a) within the time prescribed by that subsection,]~~ the presiding judge of the statutory probate courts, ~~the chief justice of the supreme court shall [may]~~ assign a regional presiding judge, a statutory probate judge, or a former or retired judge of a statutory probate court to hear the case ~~[instead of the presiding judge of the administrative judicial district making the assignment under that subsection].~~

SECTION 31. Section 25.00255, Government Code, is amended by amending Subsections (a), (g), (g-1), (i-2), (i-3), (i-5), and (l) and adding Subsection (a-1) to read as follows:

(a) Notwithstanding any conflicting provision in the Texas Rules of Civil Procedure, Rules 18a and 18b, Texas Rules of Civil Procedure, apply to the recusal and disqualification of a statutory probate court judge except as otherwise provided by this section or another provision of this subchapter. The presiding judge:

(1) has the authority and shall perform the functions and duties of the presiding judge of the administrative judicial region under the rules, including the duty to hear or rule on a referred motion of recusal or disqualification or, subject to Subdivisions (2) and (3) and to Section 25.002201, assign a judge to hear and rule on a referred motion of recusal or disqualification;

(2) may assign a presiding judge of the administrative judicial region to hear and rule on a referred motion of recusal or disqualification only with the consent of the presiding judge of the administrative judicial region; and

(3) may not assign a judge of a statutory probate court located in the same county as the statutory probate court served by the judge who is the subject of the motion of recusal or disqualification ~~[A party in a hearing or trial in a statutory probate court may file with the clerk of the court a motion stating grounds for the recusal or disqualification of the judge. The grounds may include any disability of the judge to preside over the case].~~

(a-1) Notwithstanding Rule 18a(h), Texas Rules of Civil Procedure, or any other conflicting provision of the rules, the judge who hears a motion of recusal or disqualification, after notice and hearing, may:

(1) order the party or attorney who filed the motion, or both, to pay the reasonable attorney's fees and expenses incurred by another party if the judge determines that the motion was:

(A) groundless and filed in bad faith or for the purpose of harassment; or

(B) clearly brought for unnecessary delay and without sufficient cause; and

(2) enjoin the movant from filing other recusal motions in the case without the prior written consent of the presiding judge of the statutory probate courts.

(g) A judge who recuses himself or herself:

(1) shall enter an order of recusal and:

(A) if the judge serves a statutory probate court located in a county with only one statutory probate court, request that the presiding judge ~~[of the administrative judicial district]~~ assign a judge under Section 25.002201 to hear the case; or

(B) subject to Subsection (l), if the judge serves a statutory probate court located in a county with more than one statutory probate court, request that the presiding judge order ~~[request that]~~ the clerk who serves the statutory probate courts in that county to randomly reassign the case to a judge of one of the other statutory probate courts located in the county; and

(2) may not take other action in the case except for good cause stated in the order in which the action is taken.

(g-1) A judge who disqualifies himself or herself:

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(1) shall enter an order of disqualification and:

(A) if the judge serves a statutory probate court located in a county with only one statutory probate court, request that the presiding judge [of the administrative judicial district] assign a judge under Section 25.002201 to hear the case; or

(B) subject to Subsection (1), if the judge serves a statutory probate court located in a county with more than one statutory probate court, request that the presiding judge order the clerk who serves the statutory probate courts in that county to randomly reassign the case to a judge of one of the other statutory probate courts; and

(2) may not take other action in the case.

(i-2) A judge who hears a motion for recusal or disqualification [~~under Subsection (i) or (i-1)~~] may also hear any amended or supplemented motion for recusal or disqualification filed in the case.

(i-3) If a motion for recusal or disqualification is granted [~~after a hearing conducted as provided by Subsection (i) or (i-1)~~], the presiding judge [who heard the motion] shall transfer the case to another court or assign another judge to the case and:

(1) if the judge subject to recusal or disqualification serves a statutory probate court located in a county with only one statutory probate court, the presiding judge or judge assigned to decide the motion shall enter an order of recusal or disqualification, as appropriate, and request that the presiding judge [of the administrative judicial district] assign a judge under Section 25.002201 to hear the case; or

(2) subject to Subsection (1), if the judge subject to recusal or disqualification serves a statutory probate court located in a county with more than one statutory probate court, the presiding judge or judge assigned to decide the motion shall enter an order of recusal or disqualification, as appropriate, and request that the clerk who serves the statutory probate courts in that county randomly reassign the case to a judge of one of the other statutory probate courts located in the county.

(i-5) A judge assigned to hear a motion for recusal or disqualification [~~under Subsection (i)~~] is entitled to receive the same salary, compensation, and expenses, and to be paid in the same manner and from the same fund, as a judge otherwise assigned under Section 25.0022[~~, except that a judge assigned under Subsection (i) shall provide the information required by Section 25.0022(1) to the presiding judge of the administrative judicial district, who shall immediately forward the information to the presiding judge of the statutory probate courts~~].

(l) If a clerk of a statutory probate court is unable to reassign a case as requested under Subsection (g)(1)(B), ~~(g-1)(1)(B)~~, or (i-3)(2) because the other statutory probate court judges in the county have been recused or disqualified or are otherwise unavailable to hear the case, the clerk shall immediately notify the presiding judge [~~of the administrative judicial district~~] and request that the presiding judge [~~of the administrative judicial district~~] assign a judge under Section 25.002201 to hear the case.

### **Lawyer Trust Accounts** (SB995, §45)

Estates Code, Chapter 456

#### **DISBURSEMENT AND CLOSING OF LAWYER TRUST OR ESCROW ACCOUNTS**

**Sec. 456.001. DEFINITION.** In this chapter, "eligible institution" means a financial institution or investment company in which a lawyer has established an escrow or trust account for purposes of holding client funds or the funds of third persons that are in the lawyer's possession in connection with representation as required by the Texas Disciplinary Rules of Professional Conduct.

**Sec. 456.002. AUTHORITY TO DESIGNATE LAWYER ON CERTAIN TRUST OR ESCROW ACCOUNTS.** (a) When administering the estate of a deceased lawyer who established one or more trust or escrow accounts for client funds or the funds of third persons that are in the lawyer's possession in connection with representation as required by the Texas Disciplinary Rules of Professional Conduct, the personal representative may hire through written agreement a lawyer authorized to practice in this state to:

(1) be the authorized signer on the trust or escrow account;

(2) determine who is entitled to receive the funds in the account;

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(3) disburse the funds to the appropriate persons or to the decedent's estate; and

(4) close the account.

(b) If the personal representative is a lawyer authorized to practice in this state, the personal representative may state that fact and disburse the trust or escrow account funds of a deceased lawyer in accordance with Subsection (a).

(c) An agreement under Subsection (a) or a statement under Subsection (b) must be made in writing, and a copy of the agreement or statement must be delivered to each eligible institution in which the trust or escrow accounts were established.

Sec. 456.003. DUTY OF ELIGIBLE INSTITUTIONS. Within a reasonable time after receiving a copy of a written agreement under Section 456.002(a) or a statement from a personal representative under Section 456.002(b) and instructions from the lawyer identified in the agreement or statement, as applicable, regarding how to disburse the funds or close a trust or escrow account, an eligible institution shall disburse the funds and close the account in compliance with the instructions.

Sec. 456.004. LIABILITY OF ELIGIBLE INSTITUTIONS. An eligible institution is not liable for any act respecting an account taken in compliance with this chapter.

Sec. 456.005. RULES. The supreme court may adopt rules regarding the administration of funds in a trust or escrow account subject to this chapter.

### **Non-Testamentary Transfers. P.O.D. Accounts/ T.O.D. accounts sb995**

SECTION 1. Section 113.004(4), Estates Code, is amended to read as follows:

(4) "P.O.D. account," including an account designated as a transfer on death or T.O.D. account, means an account payable on request to:

(A) one person during the person's lifetime and, on the person's death, to one or more P.O.D. payees; or

(B) one or more persons during their lifetimes and, on the death of all of those persons, to one or more P.O.D. payees.

SECTION 2. Section 113.152, Estates Code, is amended by adding Subsection (c) to read as follows:

(c) A guardian of the estate or an attorney in fact or agent of an original payee may sign a written agreement described by Subsection (a) on behalf of the original payee.

### **Non-Testamentary Transfers. P.O.D. Accounts** S.B. No. 1020

Allowing the trustee of an express trust to be designated as a beneficiary of a trust account or a P.O.D. payee of a P.O.D. account.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 113.001, Estates Code, is amended by amending Subdivisions (2) and (5) and adding Subdivision (2-b) to read as follows:

(2) "Beneficiary" means a person or trustee of an express trust evidenced by a writing who is named in a trust account as a person for whom a party to the account is named as trustee.

(2-b) "Express trust" has the meaning assigned by Section 111.004, Property Code.

(5) "P.O.D. payee" means a person, trustee of an express trust evidenced by a writing, or charitable organization designated on a P.O.D. account as a person to whom the account is payable on request after the death of one or more persons.

SECTION 2. The changes in law made by this Act apply only to an account created on or after the effective date of this Act. An account created before the effective date of this Act is covered by the law in effect on the date the account was created, and the former law is continued in effect for that purpose.

### **Non-Testamentary Transfers. P.O.D. Accounts/ T.O.D. accounts/ Transfer on Death Deeds** SB 462

Estates Code Sec. 114.001. SHORT TITLE. This chapter may be cited as the Texas Real Property Transfer on Death Act.

Sec. 114.002. DEFINITIONS. (a) In this chapter:

(1) "Beneficiary" means a person who receives real property under a transfer on death deed.

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(2) "Designated beneficiary" means a person designated to receive real property in a transfer on death deed.

(3) "Joint owner with right of survivorship" or "joint owner" means an individual who owns real property concurrently with one or more other individuals with a right of survivorship. The term does not include a tenant in common or an owner of community property with or without a right of survivorship.

(4) "Person" has the meaning assigned by Section 311.005, Government Code.

(5) "Real property" means an interest in real property located in this state.

(6) "Transfer on death deed" means a deed authorized under this chapter and does not refer to any other deed that transfers an interest in real property on the death of an individual.

(7) "Transferor" means an individual who makes a transfer on death deed.

(b) In this chapter, the terms "cancel" and "revoke" are synonymous.

Sec. 114.003. APPLICABILITY. This chapter applies to a transfer on death deed executed and acknowledged on or after September 1, 2015, by a transferor who dies on or after September 1, 2015.

Sec. 114.004. NONEXCLUSIVITY. This chapter does not affect any method of transferring real property otherwise permitted under the laws of this state.

Sec. 114.005. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to the subject matter of this chapter among states that enact a law similar to this chapter.

Sec. 114.006. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7001 et seq.), except that this chapter does not modify, limit, or supersede Section 101(c) of that Act (15 U.S.C. Section 7001(c)) or authorize electronic delivery of any of the notices described in Section 103(b) of that Act (15 U.S.C. Section 7003(b)).

### SUBCHAPTER B. AUTHORIZATION, EXECUTION, AND REVOCATION OF TRANSFER ON DEATH DEED

Sec. 114.051. TRANSFER ON DEATH DEED AUTHORIZED. An individual may transfer the individual's interest in real property to one or more beneficiaries effective at the transferor's death by a transfer on death deed.

Sec. 114.052. TRANSFER ON DEATH DEED REVOCABLE. A transfer on death deed is revocable regardless of whether the deed or another instrument contains a contrary provision.

Sec. 114.053. TRANSFER ON DEATH DEED NONTTESTAMENTARY. A transfer on death deed is a nontestamentary instrument.

Sec. 114.054. CAPACITY OF TRANSFEROR; USE OF POWER OF ATTORNEY. (a) The capacity required to make or revoke a transfer on death deed is the same as the capacity required to make a contract.

(b) A transfer on death deed may not be created through use of a power of attorney.

Sec. 114.055. REQUIREMENTS. To be effective, a transfer on death deed must:

(1) except as otherwise provided in Subdivision (2), contain the essential elements and formalities of a recordable deed;

(2) state that the transfer of an interest in real property to the designated beneficiary is to occur at the transferor's death; and

(3) be recorded before the transferor's death in the deed records in the county clerk's office of the county where the real property is located.

Sec. 114.056. NOTICE, DELIVERY, ACCEPTANCE, OR CONSIDERATION NOT REQUIRED. A transfer on death deed is effective without:

(1) notice or delivery to or acceptance by the designated beneficiary during the transferor's life; or

(2) consideration.

Sec. 114.057. REVOCATION BY CERTAIN INSTRUMENTS; EFFECT OF WILL OR MARRIAGE DISSOLUTION. (a) Subject to Subsections (d) and (e), an instrument is effective to revoke a recorded transfer on death deed, or any part of it, if the instrument:

(1) is one of the following:

(A) a subsequent transfer on death deed that revokes the preceding transfer on death deed or part of the deed expressly or by inconsistency; or

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(B) except as provided by Subsection (b), an instrument of revocation that expressly revokes the transfer on death deed or part of the deed;

(2) is acknowledged by the transferor after the acknowledgment of the deed being revoked; and

(3) is recorded before the transferor's death in the deed records in the county clerk's office of the county where the deed being revoked is recorded.

(b) A will may not revoke or supersede a transfer on death deed.

(c) If a marriage between the transferor and a designated beneficiary is dissolved after a transfer on death deed is recorded, a final judgment of the court dissolving the marriage operates to revoke the transfer on death deed as to that designated beneficiary if notice of the judgment is recorded before the transferor's death in the deed records in the county clerk's office of the county where the deed is recorded, notwithstanding Section 111.052.

(d) If a transfer on death deed is made by more than one transferor, revocation by a transferor does not affect the deed as to the interest of another transferor who does not make that revocation.

(e) A transfer on death deed made by joint owners with right of survivorship is revoked only if it is revoked by all of the living joint owners.

(f) This section does not limit the effect of an inter vivos transfer of the real property.

### SUBCHAPTER C. EFFECT OF TRANSFER ON DEATH DEED; LIABILITY OF TRANSFERRED PROPERTY FOR CREDITORS' CLAIMS

Sec. 114.101. EFFECT OF TRANSFER ON DEATH DEED DURING TRANSFEROR'S LIFE. During a transferor's life, a transfer on death deed does not:

(1) affect an interest or right of the transferor or any other owner, including:

(A) the right to transfer or encumber the real property that is the subject of the deed;

(B) homestead rights in the real property, if applicable; and

(C) ad valorem tax exemptions, including exemptions for residence homestead, persons 65 years of age or older, persons with disabilities, and veterans;

(2) affect an interest or right of a transferee of the real property that is the subject of the deed, even if the transferee has actual or constructive notice of the deed;

(3) affect an interest or right of a secured or unsecured creditor or future creditor of the transferor, even if the creditor has actual or constructive notice of the deed;

(4) affect the transferor's or designated beneficiary's eligibility for any form of public assistance, subject to applicable federal law;

(5) constitute a transfer triggering a "due on sale" or similar clause;

(6) invoke statutory real estate notice or disclosure requirements;

(7) create a legal or equitable interest in favor of the designated beneficiary; or

(8) subject the real property to claims or process of a creditor of the designated beneficiary.

Sec. 114.102. EFFECT OF SUBSEQUENT CONVEYANCE ON TRANSFER ON DEATH DEED. An otherwise valid transfer on death deed is void as to any interest in real property that is conveyed by the transferor during the transferor's lifetime after the transfer on death deed is executed and recorded if:

(1) a valid instrument conveying the interest is recorded in the deed records in the county clerk's office of the same county in which the transfer on death deed is recorded; and

(2) the recording of the instrument occurs before the transferor's death.

Sec. 114.103. EFFECT OF TRANSFER ON DEATH DEED AT TRANSFEROR'S DEATH. (a) Except as otherwise provided in the transfer on death deed, this section, or any other statute or the common law of this state governing a decedent's estate, on the death of the transferor, the following rules apply to an interest in real property that is the subject of a transfer on death deed and owned by the transferor at death:

(1) if the designated beneficiary survives the transferor by 120 hours, the interest in the real property is transferred to the designated beneficiary in accordance with the deed;

(2) the interest of a designated beneficiary that fails to survive the transferor by 120 hours lapses, notwithstanding Section 111.052;

(3) subject to Subdivision (4), concurrent interests are transferred to the beneficiaries in equal and undivided shares with no right of survivorship; and

(4) notwithstanding Subdivision (2), if the transferor has identified two or more designated beneficiaries to receive concurrent interests in the real property, the share of a designated beneficiary who

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predeceases the transferor lapses and is subject to and passes in accordance with Subchapter D, Chapter 255, as if the transfer on death deed were a devise made in a will.

(b) If a transferor is a joint owner with right of survivorship who is survived by one or more other joint owners, the real property that is the subject of the transfer on death deed belongs to the surviving joint owner or owners. If a transferor is a joint owner with right of survivorship who is the last surviving joint owner, the transfer on death deed is effective.

(c) If a transfer on death deed is made by two or more transferors who are joint owners with right of survivorship, the last surviving joint owner may revoke the transfer on death deed subject to Section 114.057.

(d) A transfer on death deed transfers real property without covenant of warranty of title even if the deed contains a contrary provision.

Sec. 114.104. TRANSFER ON DEATH DEED PROPERTY SUBJECT TO LIENS AND ENCUMBRANCES AT TRANSFEROR'S DEATH; CREDITORS' CLAIMS. (a) Subject to Section 13.001, Property Code, a beneficiary takes the real property subject to all conveyances, encumbrances, assignments, contracts, mortgages, liens, and other interests to which the real property is subject at the transferor's death. For purposes of this subsection and Section 13.001, Property Code, the recording of the transfer on death deed is considered to have occurred at the transferor's death.

(b) If a personal representative has been appointed for the transferor's estate, an administration of the estate has been opened, and the real property transferring under a transfer on death deed is subject to a lien or security interest, including a deed of trust or mortgage, the personal representative shall give notice to the creditor of the transferor as the personal representative would any other secured creditor under Section 308.053. The creditor shall then make an election under Section 355.151 in the period prescribed by Section 355.152 to have the claim treated as a matured secured claim or a preferred debt and lien claim, and the claim is subject to the claims procedures prescribed by this section.

(c) If the secured creditor elects to have the claim treated as a preferred debt and lien claim, Sections 355.154 and 355.155 apply as if the transfer on death deed were a devise made in a will, and the creditor may not pursue any other claims or remedies for any deficiency against the transferor's estate.

(d) If the secured creditor elects to have the claim treated as a matured secured claim, Section 355.153 applies as if the transfer on death deed were a devise made in a will, and the claim is subject to the procedural provisions of this title governing creditor claims.

Sec. 114.105. DISCLAIMER. A designated beneficiary may disclaim all or part of the designated beneficiary's interest as provided by Chapter 122.

Sec. 114.106. LIABILITY FOR CREDITOR CLAIMS; ALLOWANCES IN LIEU OF EXEMPT PROPERTY AND FAMILY ALLOWANCES. (a) To the extent the transferor's estate is insufficient to satisfy a claim against the estate, expenses of administration, any estate tax owed by the estate, or an allowance in lieu of exempt property or family allowance to a surviving spouse, minor children, or incapacitated adult children, the personal representative may enforce that liability against real property transferred at the transferor's death by a transfer on death deed to the same extent the personal representative could enforce that liability if the real property were part of the probate estate.

(b) Notwithstanding Subsection (a), real property transferred at the transferor's death by a transfer on death deed is not considered property of the probate estate for any purpose, including for purposes of Section 531.077, Government Code.

(c) If a personal representative does not commence a proceeding to enforce a liability under Subsection (a) on or before the 90th day after the date the representative receives a demand for payment, a proceeding to enforce the liability may be brought by a creditor, a distributee of the estate, a surviving spouse of the decedent, a guardian or other appropriate person on behalf of a minor child or adult incapacitated child of the decedent, or any taxing authority.

(d) If more than one real property interest is transferred by one or more transfer on death deeds or if there are other nonprobate assets of the transferor that may be liable for the claims, expenses, and other payments specified in Subsection (a), the liability for those claims, expenses, and other payments may be apportioned among those real property interests and other assets in proportion to their net values at the transferor's death.

(e) A proceeding to enforce liability under this section must be commenced not later than the second anniversary of the transferor's death, except for any rights arising under Section 114.104(d).

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(f) In connection with any proceeding brought under this section, a court may award costs and reasonable and necessary attorney's fees in amounts the court considers equitable and just.

## SUBCHAPTER D. FORMS FOR TRANSFER ON DEATH DEED

Sec. 114.151. OPTIONAL FORM FOR TRANSFER ON DEATH DEED. The following form may be used to create a transfer on death deed.

### REVOCABLE TRANSFER ON DEATH DEED

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

IMPORTANT NOTICE TO OWNER: You should carefully read all the information included in the instructions to this form. You may want to consult a lawyer before using this form.

MUST RECORD DEED: Before your death, this deed must be recorded with the county clerk where the property is located, or it will not be effective.

MARRIED PERSONS: If you are married and want your spouse to own the property on your death, you must name your spouse as the primary beneficiary. If your spouse does not survive you, the property will transfer to any listed alternate beneficiary or beneficiaries on your death.

1. Owner (Transferor) Making this Deed:

\_\_\_\_\_  
Printed name                      Mailing address

2. Legal Description of the Property:

\_\_\_\_\_  
3. Address of the Property (if any) (include county):

\_\_\_\_\_  
4. Primary Beneficiary (Transferee) or Beneficiaries (Transferees)

I designate the following beneficiary or beneficiaries, if the beneficiary survives me:

\_\_\_\_\_  
Printed name                      Mailing address

5. Alternate Beneficiary or Beneficiaries (Optional)

If no primary beneficiary survives me, I designate the following alternate beneficiary or beneficiaries:

\_\_\_\_\_  
Printed name                      Mailing address

6. Transfer on Death

At my death, I grant and convey to the primary beneficiary or beneficiaries my interest in the property, to have and hold forever. If at my death I am not survived by any primary beneficiary, I grant and convey to the alternate beneficiary or beneficiaries, if designated, my interest in the property, to have and hold forever. If the primary and alternate beneficiaries do not survive me, this transfer on death deed shall be deemed canceled by me.

7. Printed Name and Signature of Owner Making this Deed:

\_\_\_\_\_  
Printed Name                      Date

\_\_\_\_\_  
Signature

BELOW LINE FOR NOTARY ONLY

### Acknowledgment

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

by \_\_\_\_\_.

Notary Public, State of

After recording, return to:

# Decedent's Estates Changes - 2015

(insert name and mailing address)

INSTRUCTIONS FOR TRANSFER ON DEATH DEED  
DO NOT RECORD THESE INSTRUCTIONS

Instructions for Completing the Form

1. Owner (Transferor) Making this Deed: Enter your first, middle (if any), and last name here, along with your mailing address.
2. Legal Description of the Property: Enter the formal legal description of the property. This information is different from the mailing and physical address for the property and is necessary to complete the form. To find this information, look on the deed you received when you became an owner of the property. This information may also be available in the office of the county clerk for the county where the property is located. Do NOT use your tax bill to find this information. If you are not absolutely sure, consult a lawyer.
3. Address of the Property: Enter the physical address of the property.
4. Primary Beneficiary or Beneficiaries: Enter the first and last name of each person you want to get the property when you die. If you are married and want your spouse to get the property when you die, enter your spouse's first and last name (even if you and your spouse own the property together).
5. Alternate Beneficiary or Beneficiaries: Enter the first and last name of each person you want to get the property if no primary beneficiary survives you.
6. Transfer on Death: No action needed.
7. Printed Name and Signature of Owner: Do not sign your name or enter the date until you are before a notary. Include your printed name.
8. Acknowledgment: This deed must be signed before a notary. The notary will fill out this section of the deed.  
Sec. 114.152. OPTIONAL FORM OF REVOCATION. The following form may be used to create an instrument of revocation under this chapter.

CANCELLATION OF TRANSFER ON DEATH DEED

IMPORTANT NOTICE TO OWNER: You should carefully read all the information included in the instructions to this form. You may want to consult a lawyer before using this form.

MUST RECORD FORM: Before your death, this cancellation form must be recorded with the county clerk where the property is located, or it will not be effective. This cancellation is effective only as to the interests in the property of owners who sign this cancellation form.

1. Owner (Transferor) Making this Cancellation:

Printed name \_\_\_\_\_ Mailing address \_\_\_\_\_

2. Legal Description of the Property:

3. Address of the Property (if any) (include county): \_\_\_\_\_

4. Cancellation

I cancel all my previous transfers of this property by transfer on death deed.

5. Printed Name and Signature of Owner (Transferor) Making this Cancellation:

Printed Name \_\_\_\_\_ Date \_\_\_\_\_

Signature \_\_\_\_\_

BELOW LINE FOR NOTARY ONLY

Acknowledgment

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

by \_\_\_\_\_.

# Decedent's Estates Changes - 2015

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

After recording, return to:

(insert name and mailing address)

\_\_\_\_\_  
INSTRUCTIONS FOR CANCELING A TRANSFER ON DEATH (TOD) DEED  
DO NOT RECORD THESE INSTRUCTIONS

Instructions for Completing the Form

1. Owner (Transferor) Making this Cancellation: Enter your first, middle (if any), and last name here, along with your mailing address.
2. Legal Description of the Property: Enter the formal legal description of the property. This information is different from the mailing and physical address for the property and is necessary to complete the form. To find this information, look on the deed you received when you became an owner of the property. This information may also be available in the office of the county clerk for the county where the property is located. Do NOT use your tax bill to find this information. If you are not absolutely sure, consult a lawyer.
3. Address of the Property: Enter the physical address of the property.
4. Cancellation: No action needed.
5. Printed Name and Signature of Owner: Do not sign your name or enter the date until you are before a notary. Include your printed name.
6. Acknowledgment: This cancellation form must be signed before a notary. The notary will fill out this section of the form.

SECTION 2. Section 22.027(b), Estates Code, is amended to read as follows:

(b) Except as otherwise provided by this code, the [The] definition of "person" assigned by Section 311.005, Government Code, does not apply to any provision in this code.

SECTION 3. Section 122.001(1), Estates Code, is amended to read as follows:

(1) "Beneficiary" includes a person who would have been entitled, if the person had not made a disclaimer, to receive property as a result of the death of another person:

- (A) by inheritance;
- (B) under a will;
- (C) by an agreement between spouses for community property with a right of survivorship;
- (D) by a joint tenancy with a right of survivorship;
- (E) by a survivorship agreement, account, or interest in which the interest of the decedent passes to a surviving beneficiary;
- (F) by an insurance, annuity, endowment, employment, deferred compensation, or other contract or arrangement; [or]
- (G) under a pension, profit sharing, thrift, stock bonus, life insurance, survivor income, incentive, or other plan or program providing retirement, welfare, or fringe benefits with respect to an employee or a self-employed individual; or
- (H) by a transfer on death deed.

**Notices (E-Notices) from Clerk and Court SB 1116**

TEX. GOVT CODE Subtitle F, Title 2

**CHAPTER 80. DELIVERY OF NOTICE AND DOCUMENTS**

**Sec. 80.001. DELIVERY OF NOTICE OR DOCUMENT. A court, justice, judge, magistrate, or clerk may send any notice or document by a method authorized by Section 80.002.**

**Sec. 80.002. AUTHORIZED DELIVERY OF NOTICE OR DOCUMENT. A court, justice, judge, magistrate, or clerk may send any notice or document using mail or electronic mail. This section applies to all civil and criminal statutes requiring delivery of a notice or document.**

## Decedent's Estates Changes - 2015

### Sec. 80.003. ELECTRONIC MAIL ADDRESS.

- (a) If electronic mail is used to send a notice or document and the person who will receive the notice or document is registered with the electronic filing system established under Section 72.031, as added by Chapter 1290 (H.B. 2302), Acts of the 83rd Legislature, Regular Session, 2013, the court, justice, judge, magistrate, or clerk sending the notice or document must use the electronic mail address on file with the electronic filing system, if the court uses the electronic filing system.
- (b) If electronic mail is used to send a notice or document and the person who will receive the notice or document is not registered with the electronic filing system established under Section 72.031, as added by Chapter 1290 (H.B. 2302), Acts of the 83rd Legislature, Regular Session, 2013, or the court does not use the electronic filing system, the court, justice, judge, magistrate, or clerk must use the electronic mail address provided by the person.

### Sec. 80.004. MAIL.

- (a) The definition of mail in this chapter includes:
  - (1) first-class mail;
  - (2) first-class United States mail;
  - (3) ordinary or regular mail; and
  - (4) international first-class mail.
- (b) The definition of mail in this chapter does not include:
  - (1) any form of mail that requires proof of delivery;
  - (2) certified mail;
  - (3) certified mail or a comparable mailing method that provides proof of delivery;
  - (4) certified mail, restricted delivery;
  - (5) certified mail, return receipt requested;
  - (6) delivery by the United States Postal Service using a signature confirmation service;
  - (7) documents delivered by common or contract carriers, including Federal Express or United Parcel Service;
  - (8) express mail offered by the United States Postal Service;
  - (9) first-class mail, return receipt requested;
  - (10) freight mail;
  - (11) interagency mail;
  - (12) international registered mail, return receipt requested;
  - (13) mail, return receipt requested;
  - (14) personal service or hand delivery;
  - (15) prepaid registered mail;
  - (16) registered mail;
  - (17) registered mail, return receipt requested; and
  - (18) certified or registered mail, restricted delivery, return receipt requested.

### Sec. 80.005. ELECTRONIC MAIL.

- (a) Authorized methods of delivering a notice or document by electronic mail include:
  - (1) electronic notice sent through the electronic filing system under Section 72.031, as added by Chapter 1290 (H.B. 2302), Acts of the 83rd Legislature, Regular Session, 2013;
  - (2) electronic notice;
  - (3) electronic mail messages;
  - (4) e-mail; and
  - (5) secure electronic mail.
- (b) Authorized methods of delivering a notice or document by electronic mail do not include:
  - (1) facsimiles;
  - (2) instant messaging;
  - (3) messages on a social network website, including Facebook and Twitter;
  - (4) telegraphs;
  - (5) telephone messages;

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- (6) text messages;
- (7) videoconferencing;
- (8) voice messages; or
- (9) webcams.

### **Powers of Attorney – Real Estate - Timely Recording** HB 3316

Section 751.151, Estates Code, is amended to read as follows:

Sec. 751.151. RECORDING FOR REAL PROPERTY TRANSACTIONS REQUIRING EXECUTION AND DELIVERY OF INSTRUMENTS. A durable power of attorney for a real property transaction requiring the execution and delivery of an instrument that is to be recorded, including a release, assignment, satisfaction, mortgage, security agreement, deed of trust, encumbrance, deed of conveyance, oil, gas, or other mineral lease, memorandum of a lease, lien, or other claim or right to real property, must be recorded in the office of the county clerk of the county in which the property is located not later than the 30th day after the date the instrument is filed for recording.

SECTION 2. This Act applies only to a real property transaction entered into on or after the effective date of this Act. A real property transaction entered into before the effective date of this Act is governed by the law in effect when the transaction was entered into, and the former law is continued in effect for that purpose.

### **Small Estate Affidavits – Designation** H.B. No. 3136

SECTION 1. Section 205.002, Estates Code, is amended to read as follows:

Sec. 205.002. AFFIDAVIT REQUIREMENTS. (a) An affidavit filed under Section 205.001 must:

(1) be sworn to by:

- (A) two disinterested witnesses;
- (B) each distributee of the estate who has legal capacity; and
- (C) if warranted by the facts, the natural guardian or next of kin of any minor distributee

or the guardian of any other incapacitated distributee;

(2) show the existence of the conditions prescribed by Sections 205.001(1), (2), and (3); and

(3) include:

- (A) a list of all known estate assets and liabilities;
- (B) the name and address of each distributee; and
- (C) the relevant family history facts concerning heirship that show each distributee's right

to receive estate money or other property or to have any evidence of money, property, or other right of the estate as is determined to exist transferred to the distributee as an heir or assignee.

(b) A list of all known estate assets under Subsection (a)(3)(A) must indicate which assets the applicant claims are exempt.

SECTION 2. Chapter 205, Estates Code, is amended by adding Section 205.009 to read as follows:

Sec. 205.009. CONSTRUCTION OF CERTAIN REFERENCES. A reference in this chapter to "homestead" or "exempt property" means only a homestead or other exempt property that would be eligible to be set aside under Section 353.051 if the decedent's estate was being administered.

SECTION 3. Section 205.009, Estates Code, as added by this Act, applies to the estate of a decedent that is pending on or after the effective date of this Act, regardless of the decedent's date of death.

### **Tax, Inheritance - Repeal of** S.B. No. 752

SECTION 1. Chapter 211, Tax Code, is repealed.

SECTION 2. Section 124.001(3), Estates Code, is amended to read as follows:

(3) "Estate tax" means any estate, inheritance, or death tax levied or assessed on the property of a decedent's estate because of the death of a person and imposed by federal, state, local, or foreign law, including the federal estate tax and the inheritance tax imposed by former Chapter 211, Tax Code, and including interest and penalties imposed in addition to those taxes. The term does not include a tax imposed under Section 2701(d)(1)(A), Internal Revenue Code of 1986 (26 U.S.C. Section 2701(d)).

SECTION 3. The changes in law made by this Act do not affect tax liability accruing before the effective date of this Act. That liability continues in effect as if this Act had not been enacted, and the former law is

## Decedent's Estates Changes - 2015

continued in effect for the collection of taxes due and for civil and criminal enforcement of the liability for those taxes.

### **Wills - Allowance for Defending Will** (SB995, §34)

Estates Code Section 352.052(b):

(b) A person designated as a devisee in or beneficiary of a will or an alleged will ~~[, or as administrator with the will or alleged will annexed,]~~ who, for the purpose of having the will or alleged will admitted to probate, defends the will or alleged will or prosecutes any proceeding in good faith and with just cause, whether or not successful, may be allowed out of the estate the person's necessary expenses and disbursements in those proceedings, including reasonable attorney's fees.

### **Wills – Class Gift Posthumous (SB995)**

Sec. 255.401. POSTHUMOUS CLASS GIFT MEMBERSHIP. (a) A right to take as a member under a class gift does not accrue to any person unless the person is born before, or is in gestation at, the time of the testator's death and survives for at least 120 hours. A person is:

(1) considered to be in gestation at the time of the testator's death if insemination or implantation occurs at or before the time of the testator's death; and

(2) presumed to be in gestation at the time of the testator's death if the person was born before the 301st day after the date of the testator's death.

(b) A provision in the testator's will that is contrary to this section prevails over this section.

### **Wills - Exoneration of Liens (SB995)**

Estates Code Sec. 255.304. APPLICABILITY OF SUBCHAPTER. This subchapter is applicable only to wills executed on or after September 1, 2005.

### **Wills - Forfeiture Clauses** (SB995)

Estates Code Sec. 254.005. FORFEITURE CLAUSE. (a) A provision in a will that would cause a forfeiture of or void a devise or provision in favor of a person for bringing any court action, including contesting a will, is enforceable unless in a court action determining whether the forfeiture clause should be enforced, the person who brought the action contrary to the forfeiture clause establishes by a preponderance of the evidence that:

(1) just cause existed for bringing the action; and

(2) the action was brought and maintained in good faith.

(b) This section is not intended to and does not repeal any law recognizing that forfeiture clauses generally will not be construed to prevent a beneficiary from seeking to compel a fiduciary to perform the fiduciary's duties, seeking redress against a fiduciary for a breach of the fiduciary's duties, or seeking a judicial construction of a will or trust.

### **Wills – Modification/Reformation** (SB995)

#### SUBCHAPTER J. JUDICIAL MODIFICATION OR REFORMATION OF WILLS

Sec. 255.451. CIRCUMSTANCES UNDER WHICH WILL MAY BE MODIFIED OR REFORMED. (a) 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 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.

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(b) An order described in Subsection (a)(3) may be issued only if the testator's intent is established by clear and convincing evidence.

Sec. 255.452. JUDICIAL DISCRETION. The court shall exercise the court's discretion to order a modification or reformation under this subchapter in the manner that conforms as nearly as possible to the probable intent of the testator.

Sec. 255.453. RETROACTIVE EFFECT. The court may direct that an order described by this subchapter has retroactive effect.

Sec. 255.454. POWERS CUMULATIVE. This subchapter does not limit a court's powers under other law, including the power to modify, reform, or terminate a testamentary trust under Section 112.054, Property Code.

Sec. 255.455. DUTIES AND LIABILITY OF PERSONAL REPRESENTATIVE UNDER SUBCHAPTER. (a) This subchapter does not create or imply a duty for a personal representative to:

(1) petition a court for modification or reformation of a will, to be directed or permitted to perform acts that are not authorized or that are prohibited by the terms of the will, or to be prohibited from performing acts that are required by the terms of the will;

(2) inform devisees about the availability of relief under this subchapter; or

(3) review the will or other evidence to determine whether any action should be taken under this subchapter.

(b) A personal representative is not liable for failing to file a petition under Section 255.451.

### **Wills, Period for Probate** (SB995)

SECTION 27. Section 301.002(a), Estates Code, is amended to read as follows:

(a) Except as provided by Subsection (b) and Section 501.006 with respect to a foreign will, an application for the grant of letters testamentary or of administration of an estate must be filed not later than the fourth anniversary of the decedent's death.

### **Wills, Prohibition Against Revocation Void** (SB995)

Estates Code Sec. 253.001. COURT MAY NOT PROHIBIT CHANGING OR REVOKING A WILL.

(b) A court may not prohibit a person from:

(1) executing a new will;

(2) executing ~~or~~ a codicil to an existing will; or

(3) revoking an existing will or codicil in whole or in part.

(c) Any portion of a court order that purports to prohibit a person from engaging in an action described by Subsection (b) ~~[executing a new will or a codicil to an existing will]~~ is void and may be disregarded without penalty or sanction of any kind.

### **Wills, Self Proving Affidavits** (SB995)

SECTION 14. Section 251.1045(a), Estates Code, is amended to read as follows:

(a) As an alternative to the self-proving of a will by the affidavits of the testator and the attesting witnesses as provided by Section 251.104, a will may be simultaneously executed, attested, and made self-proved before an officer authorized to administer oaths, and the testimony of the witnesses in the probate of the will may be made unnecessary, with the inclusion in the will of the following in form and contents substantially as follows:

I, \_\_\_\_\_, as testator, after being duly sworn, declare to the undersigned witnesses and to the undersigned authority that this instrument is my will, that I ~~[have]~~ willingly make ~~[made]~~ and execute ~~[executed]~~ it in the presence of the undersigned witnesses, all of whom are ~~[were]~~ present at the same time, as my free act and deed, and that I request ~~[have requested]~~ each of the undersigned witnesses to sign this will in my presence and in the presence of each other. I now sign this will in the presence of the attesting witnesses and the undersigned authority on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Testator

The undersigned, \_\_\_\_\_ and \_\_\_\_\_, each being at least fourteen years of age, after being duly sworn, declare to the testator and to the undersigned authority that the testator declared to us that this instrument is

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the testator's will and that the testator requested us to act as witnesses to the testator's will and signature. The testator then signed this will in our presence, all of us being present at the same time. The testator is eighteen years of age or over (or being under such age, is or has been lawfully married, or is a member of the armed forces of the United States or of an auxiliary of the armed forces of the United States or of the United States Maritime Service), and we believe the testator to be of sound mind. We now sign our names as attesting witnesses in the presence of the testator, each other, and the undersigned authority on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

Subscribed and sworn to before me by the said \_\_\_\_\_, testator, and by the said \_\_\_\_\_ and \_\_\_\_\_, witnesses, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

(SEAL)

(Signed)

(Official Capacity of Officer)

### **Wills, Foreign – Ancillary Probate** (SB995, § 46)

Estates Code Sec. 501.001. **AUTHORITY FOR ANCILLARY PROBATE OF FOREIGN WILL.** The written will of a testator who was not domiciled in this state at the time of the testator's death may be admitted to probate at any time in this state if:

- (1) the will would affect any property in this state; and
- (2) proof is presented that the will stands probated or otherwise established in any state of the United States or a foreign nation.

SECTION 47. Section 501.006(a), Estates Code, is amended to read as follows:

(a) On application, an executor named in a foreign will admitted to ancillary probate in this state in accordance with this chapter is entitled to receive ancillary letters testamentary on proof made to the court that:

- (1) the executor has qualified to serve as executor in the jurisdiction in which the will was previously admitted to probate or otherwise established; ~~and~~
- (2) the executor is not disqualified from serving in that capacity in this state; and
- (3) if the will is admitted to ancillary probate in this state after the fourth anniversary of the testator's death, the executor continues to serve in that capacity in the jurisdiction in which the will was previously admitted to probate or otherwise established.

### **Wills, Foreign – Period for Probate and Ancillary Administration** (SB995)

Estates Code Section 256.00

(a) Except as provided by Section 501.001 with respect to a foreign will, a [A] will may not be admitted to probate after the fourth anniversary of the testator's death unless it is shown by proof that the applicant for the probate of the will was not in default in failing to present the will for probate on or before the fourth anniversary of the testator's death.

(b) Except as provided by Section 501.006 with respect to a foreign will, letters [Letters] testamentary may not be issued if a will is admitted to probate after the fourth anniversary of the testator's death.

### **Wills, Foreign - Self Proving Affidavits** (SB995)

SECTION 24. Sections 256.152(b) and (c), Estates Code, are amended to read as follows:

(b) A will that is self-proved as provided by Subchapter C, Chapter 251, ~~that [or, if executed in another state or a foreign country,]~~ is self-proved in accordance with the law [laws] of another [the] state or foreign country where the will was executed, as that law existed at the time of the will's execution, or that is self-proved in accordance with the law of another state or foreign country where the testator was domiciled or had a place of residence, as that law existed at the time of the will's execution or the time of the testator's death, [of the testator's domicile at the time of the execution] is not required to have any additional proof that the will was executed with the formalities and solemnities and under the circumstances required to make the will valid.

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(c) As an alternative to Subsection (b), a will [~~executed in another state or a foreign country~~] is considered self-proved without further evidence of the law of any [~~the other~~] state or foreign country if:

(1) the will was executed in another state or a foreign country or the testator was domiciled or had a place of residence in another state or a foreign country at the time of the will's execution or the time of the testator's death; and

(2) the will, or an affidavit of the testator and attesting witnesses attached or annexed to the will, provides that:

(A) [(+)] the testator declared that the testator signed the instrument as the testator's will, the testator signed it willingly or willingly directed another to sign for the testator, the testator executed the will as the testator's free and voluntary act for the purposes expressed in the instrument, the testator is of sound mind and under no constraint or undue influence, and the testator is eighteen years of age or over or, if under that age, was or had been lawfully married, or was then a member of the armed forces of the United States, an auxiliary of the armed forces of the United States, or the United States Maritime Service; and

(B) [(2)] the witnesses declared that the testator signed the instrument as the testator's will, the testator signed it willingly or willingly directed another to sign for the testator, each of the witnesses, in the presence and hearing of the testator, signed the will as witness to the testator's signing, and to the best of their knowledge the testator was of sound mind and under no constraint or undue influence, and the testator was eighteen years of age or over or, if under that age, was or had been lawfully married, or was then a member of the armed forces of the United States, an auxiliary of the armed forces of the United States, or the United States Maritime Service.

### **Wills, Foreign – Valid if in Compliance with Laws Where Executed** (SB995)

Estates Code Sec. 251.053. EXCEPTION FOR FOREIGN AND CERTAIN OTHER WILLS. Section 251.051 does not apply to a written will executed in compliance with:

(1) the law of the state or foreign country where the will was executed, as that law existed at the time of the will's execution; or

(2) the law of the state or foreign country where the testator was domiciled or had a place of residence, as that law existed at the time of the will's execution or at the time of the testator's death.