

1-1 By: Wray (Senate Sponsor - Rodríguez) H.B. No. 2271
 1-2 (In the Senate - Received from the House May 1, 2017;
 1-3 May 4, 2017, read first time and referred to Committee on State
 1-4 Affairs; May 12, 2017, reported favorably by the following vote:
 1-5 Yeas 9, Nays 0; May 12, 2017, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	X			
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16	X			

1-17 A BILL TO BE ENTITLED
 1-18 AN ACT

1-19 relating to decedents' estates and certain posthumous gifts.
 1-20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
 1-21 SECTION 1. Section 22.004(a), Estates Code, is amended to
 1-22 read as follows:
 1-23 (a) "Child" includes an adopted child, regardless of
 1-24 whether the adoption occurred through:
 1-25 (1) an existing or former statutory procedure; or
 1-26 (2) an equitable adoption or acts of estoppel.
 1-27 SECTION 2. Section 33.001, Estates Code, is amended to read
 1-28 as follows:
 1-29 Sec. 33.001. PROBATE OF WILLS AND GRANTING OF LETTERS
 1-30 TESTAMENTARY AND OF ADMINISTRATION. (a) Venue for a probate
 1-31 proceeding to admit a will to probate or for the granting of letters
 1-32 testamentary or of administration is:
 1-33 (1) in the county in which the decedent resided, if the
 1-34 decedent had a domicile or fixed place of residence in this state;
 1-35 or
 1-36 (2) with respect to a decedent who did not have a
 1-37 domicile or fixed place of residence in this state:
 1-38 (A) if the decedent died in this state, in the
 1-39 county in which:
 1-40 (i) the decedent's principal estate was
 1-41 located at the time of the decedent's death; or
 1-42 (ii) the decedent died; or
 1-43 (B) if the decedent died outside of this state:
 1-44 (i) in any county in this state in which the
 1-45 decedent's nearest of kin reside; or
 1-46 (ii) if there is no next of kin of the
 1-47 decedent in this state, in the county in which the decedent's
 1-48 principal estate was located at the time of the decedent's death.
 1-49 (b) For purposes of this section:
 1-50 (1) the decedent's next of kin:
 1-51 (A) is the decedent's surviving spouse, or if
 1-52 there is no surviving spouse, other relatives of the decedent
 1-53 within the third degree by consanguinity; and
 1-54 (B) includes a person who legally adopted the
 1-55 decedent or has been legally adopted by the decedent and that
 1-56 person's descendants; and
 1-57 (2) the decedent's nearest of kin is determined in
 1-58 accordance with order of descent, with the decedent's next of kin
 1-59 who is nearest in order of descent first, and so on.
 1-60 SECTION 3. Sections 112.103(a) and (b), Estates Code, are
 1-61 amended to read as follows:

2-1 (a) The deceased spouse's signature to an agreement that is
 2-2 the subject of an application under Section 112.101 may be proved
 2-3 by:
 2-4 (1) the sworn testimony of one witness taken in open
 2-5 court;
 2-6 (2) the affidavit of one witness; or
 2-7 (3) the written or oral deposition of one witness
 2-8 taken in accordance with Section 51.203 or the Texas Rules of Civil
 2-9 Procedure ~~[the same manner and under the same rules as depositions~~
 2-10 ~~in other civil actions]~~.

2-11 (b) If the surviving spouse is competent to make an oath,
 2-12 the surviving spouse's signature to the agreement may be proved by:
 2-13 (1) the sworn testimony of the surviving spouse taken
 2-14 in open court;
 2-15 (2) the surviving spouse's affidavit; or
 2-16 (3) the written or oral deposition of the surviving
 2-17 spouse taken in accordance with Section 51.203 or the Texas Rules of
 2-18 Civil Procedure ~~[the same manner and under the same rules as~~
 2-19 ~~depositions in other civil actions]~~.

2-20 SECTION 4. Sections 113.252(a), (b), and (c), Estates Code,
 2-21 are amended to read as follows:

2-22 (a) A multiple-party account is not effective against:
 2-23 (1) an estate of a deceased party to transfer to a
 2-24 survivor:

2-25 (A) amounts equal to the amounts of estate taxes
 2-26 and expenses charged under Subchapter A, Chapter 124, to the
 2-27 deceased party, P.O.D. payee, or beneficiary of the account; or

2-28 (B) if other assets of the estate are
 2-29 insufficient, amounts needed to pay debts, other taxes, and
 2-30 expenses of administration, including statutory allowances to the
 2-31 surviving spouse and minor children~~[, if other assets of the estate~~
 2-32 ~~are insufficient]; or~~

2-33 (2) the claim of a secured creditor who has a lien on
 2-34 the account.

2-35 (b) A party, P.O.D. payee, or beneficiary who receives
 2-36 payment from a multiple-party account or causes a payment to be made
 2-37 to another person from a multiple-party account after the death of a
 2-38 deceased party is liable to account to the deceased party's
 2-39 personal representative for amounts the deceased party owned
 2-40 beneficially immediately before the party's death to the extent
 2-41 necessary to discharge the claims, expenses, and charges described
 2-42 by Subsection (a) [that remain unpaid after application of the
 2-43 deceased party's estate]. The party, P.O.D. payee, or beneficiary
 2-44 is not liable in an amount greater than the amount the party, P.O.D.
 2-45 payee, or beneficiary received or caused to be paid to another
 2-46 person from the multiple-party account after the deceased party's
 2-47 death.

2-48 (c) Any [A] proceeding by the personal representative of a
 2-49 deceased party to assert liability under Subsection (b) [+

2-50 ~~(1) may only be commenced if the personal~~
 2-51 ~~representative receives a written demand by a surviving spouse, a~~
 2-52 ~~creditor, or one acting for a minor child of the deceased party, and~~

2-53 ~~(2)] must be commenced on or before the second~~
 2-54 ~~anniversary of the death of the deceased party.~~

2-55 SECTION 5. Section 123.052(a), Estates Code, is amended to
 2-56 read as follows:

2-57 (a) The dissolution of the marriage revokes a provision in a
 2-58 trust instrument that was executed by a divorced individual as
 2-59 settlor before the divorced individual's marriage was dissolved and
 2-60 that:

2-61 (1) is a revocable disposition or appointment of
 2-62 property made to the divorced individual's former spouse or any
 2-63 relative of the former spouse who is not a relative of the divorced
 2-64 individual;

2-65 (2) revocably confers a general or special power of
 2-66 appointment on the divorced individual's former spouse or any
 2-67 relative of the former spouse who is not a relative of the divorced
 2-68 individual; or

2-69 (3) revocably nominates the divorced individual's

3-1 former spouse or any relative of the former spouse who is not a
 3-2 relative of the divorced individual to serve:

3-3 (A) as a personal representative, trustee,
 3-4 conservator, agent, or guardian; or

3-5 (B) in another fiduciary or representative
 3-6 capacity.

3-7 SECTION 6. Subchapter B, Chapter 123, Estates Code, is
 3-8 amended by adding Section 123.056 to read as follows:

3-9 Sec. 123.056. CERTAIN TRUSTS WITH DIVORCED INDIVIDUALS AS
 3-10 JOINT SETTLORS. (a) This section applies only to a trust created
 3-11 under a trust instrument that:

3-12 (1) was executed by two married individuals as
 3-13 settlers whose marriage to each other is subsequently dissolved;
 3-14 and

3-15 (2) includes a provision described by Section
 3-16 123.052(a).

3-17 (b) On the death of one of the divorced individuals who is a
 3-18 settlor of a trust to which this section applies, the trustee shall
 3-19 divide the trust into two trusts, each of which shall be composed of
 3-20 the property attributable to the contributions of only one of the
 3-21 divorced individuals.

3-22 (c) An action authorized in a trust instrument described by
 3-23 Subsection (a) that requires the actions of both divorced
 3-24 individuals may be taken with respect to a trust established in
 3-25 accordance with Subsection (b) from the surviving divorced
 3-26 individual's contributions solely by that divorced individual.

3-27 (d) The provisions of this subchapter apply independently
 3-28 to each trust established in accordance with Subsection (b) as if
 3-29 the divorced individual from whose contributions the trust was
 3-30 established had been the only settlor to execute the trust
 3-31 instrument described by Subsection (a).

3-32 (e) This section does not apply if one of the following
 3-33 provides otherwise:

3-34 (1) a court order;

3-35 (2) the express terms of a trust instrument executed
 3-36 by the two divorced individuals before their marriage was
 3-37 dissolved; or

3-38 (3) an express provision of a contract relating to the
 3-39 division of the marital estate entered into between the two
 3-40 divorced individuals before, during, or after their marriage.

3-41 SECTION 7. Section 123.151, Estates Code, is amended by
 3-42 amending Subsections (a) and (b) and adding Subsections (c-1) and
 3-43 (d-1) to read as follows:

3-44 (a) In this section:

3-45 (1) "Beneficiary," "multiple-party account," "party,"
 3-46 "P.O.D. account," and "P.O.D. payee" have the meanings assigned by
 3-47 Chapter 113.

3-48 (2) "Public retirement system" has the meaning
 3-49 assigned by Section 802.001, Government Code.

3-50 (3) "Relative" has the meaning assigned by Section
 3-51 123.051.

3-52 (4) "Survivorship agreement" means an agreement
 3-53 described by Section 113.151.

3-54 (b) If ~~[, after]~~ a decedent established ~~[designates a spouse~~
 3-55 ~~or a relative of a spouse who is not a relative of the decedent as a~~
 3-56 ~~P.O.D. payee or beneficiary, including alternative P.O.D. payee or~~
 3-57 ~~beneficiary, on]~~ a P.O.D. account or other multiple-party account
 3-58 and ~~[,]~~ the decedent's marriage was later ~~[is]~~ dissolved by divorce,
 3-59 annulment, or a declaration that the marriage is void, any payable
 3-60 on request after death ~~[the]~~ designation provision or provision of
 3-61 a survivorship agreement with respect to that account in favor of
 3-62 the decedent's former spouse or a relative of the former spouse who
 3-63 is not a relative of the decedent ~~[on the account]~~ is not effective
 3-64 as to that ~~[the former]~~ spouse or ~~[the former spouse's]~~ relative
 3-65 unless:

3-66 (1) the court decree dissolving the marriage:

3-67 (A) designates the former spouse or the former
 3-68 spouse's relative as the P.O.D. payee or beneficiary; or

3-69 (B) reaffirms the survivorship agreement or the

4-1 relevant provision of the survivorship agreement in favor of the
 4-2 former spouse or the former spouse's relative;

4-3 (2) after the marriage was dissolved, the decedent:
 4-4 (A) redesignated the former spouse or the former
 4-5 spouse's relative as the P.O.D payee or beneficiary; or
 4-6 (B) reaffirmed the survivorship agreement in
 4-7 writing [after the marriage was dissolved]; or

4-8 (3) the former spouse or the former spouse's relative
 4-9 is designated to receive, or under the survivorship agreement would
 4-10 receive, the proceeds or benefits in trust for, on behalf of, or for
 4-11 the benefit of a child or dependent of either the decedent or the
 4-12 former spouse.

4-13 (c-1) If the provision of a survivorship agreement is not
 4-14 effective under Subsection (b), for purposes of determining the
 4-15 disposition of the decedent's interest in the account, the former
 4-16 spouse or former spouse's relative who would have received the
 4-17 decedent's interest if the provision were effective is treated as
 4-18 if that spouse or relative predeceased the decedent.

4-19 (d-1) A financial institution is not liable for payment of
 4-20 an account to a former spouse or the former spouse's relative as a
 4-21 party to the account, notwithstanding the fact that a designation
 4-22 or provision of a survivorship agreement in favor of that person is
 4-23 not effective under Subsection (b).

4-24 SECTION 8. Section 124.001(3), Estates Code, is amended to
 4-25 read as follows:

4-26 (3) "Estate tax" means any estate, inheritance, or
 4-27 death tax levied or assessed on the property of a decedent's estate
 4-28 because of the death of a person and imposed by federal, state,
 4-29 local, or foreign law, including the federal estate tax and the
 4-30 inheritance tax imposed by former Chapter 211, Tax Code, and
 4-31 including interest and penalties imposed in addition to those
 4-32 taxes. The term does not include a tax imposed under Section 2601
 4-33 or 2701(d)(1)(A), Internal Revenue Code of 1986 (26 U.S.C. Section
 4-34 2601 or 2701(d)).

4-35 SECTION 9. Section 201.054, Estates Code, is amended by
 4-36 adding Subsection (e) to read as follows:

4-37 (e) For purposes of this section, "adopted child" means a
 4-38 child:

4-39 (1) adopted through an existing or former statutory
 4-40 procedure; or

4-41 (2) considered by a court to be equitably adopted or
 4-42 adopted by acts of estoppel.

4-43 SECTION 10. The heading to Section 202.052, Estates Code,
 4-44 is amended to read as follows:

4-45 Sec. 202.052. SERVICE OF CITATION BY PUBLICATION [~~WHEN~~
 4-46 ~~RECIPIENT'S NAME OR ADDRESS IS NOT ASCERTAINABLE~~].

4-47 SECTION 11. Section 202.057(a), Estates Code, is amended to
 4-48 read as follows:

4-49 (a) A person who files an application under Section 202.005
 4-50 shall file with the court:

4-51 (1) a copy of any citation required by this subchapter
 4-52 and the proof of delivery of service of the citation; and

4-53 (2) an affidavit sworn to by the applicant or a
 4-54 certificate signed by the applicant's attorney stating:

4-55 (A) that the citation was served as required by
 4-56 this subchapter;

4-57 (B) the name of each person to whom the citation
 4-58 was served, if the person's name is not shown on the proof of
 4-59 delivery; and

4-60 (C) if service of citation is waived under
 4-61 Section 202.056:

4-62 (i) the name of each person who waived
 4-63 citation under that section; and

4-64 (ii) if citation is waived under Section
 4-65 202.056(b)(1), the name of the distributee and the representative
 4-66 capacity of the person who waived citation required to be served on
 4-67 the distributee [Section 202.056].

4-68 SECTION 12. Section 205.001, Estates Code, is amended to
 4-69 read as follows:

5-1 Sec. 205.001. ENTITLEMENT TO ESTATE WITHOUT APPOINTMENT OF
 5-2 PERSONAL REPRESENTATIVE. The distributees of the estate of a
 5-3 decedent who dies intestate are entitled to the decedent's estate
 5-4 without waiting for the appointment of a personal representative of
 5-5 the estate to the extent the estate assets, excluding homestead and
 5-6 exempt property, exceed the known liabilities of the estate,
 5-7 excluding any liabilities secured by homestead and exempt property,
 5-8 if:

5-9 (1) 30 days have elapsed since the date of the
 5-10 decedent's death;

5-11 (2) no petition for the appointment of a personal
 5-12 representative is pending or has been granted;

5-13 (3) the value of the estate assets on the date of the
 5-14 affidavit described by Subsection (4), excluding homestead and
 5-15 exempt property, does not exceed \$75,000 [~~\$50,000~~];

5-16 (4) an affidavit that meets the requirements of
 5-17 Section 205.002 is filed with the clerk of the court that has
 5-18 jurisdiction and venue of the estate;

5-19 (5) the judge approves the affidavit as provided by
 5-20 Section 205.003; and

5-21 (6) the distributees comply with Section 205.004.

5-22 SECTION 13. Section 251.001, Estates Code, is amended to
 5-23 read as follows:

5-24 Sec. 251.001. WHO MAY EXECUTE WILL. Under the rules and
 5-25 limitations prescribed by law, a person of sound mind has the right
 5-26 and power to make a [~~last~~] will [~~and testament~~] if, at the time the
 5-27 will is made, the person:

5-28 (1) is 18 years of age or older;

5-29 (2) is or has been married; or

5-30 (3) is a member of the armed forces of the United
 5-31 States, an auxiliary of the armed forces of the United States, or
 5-32 the United States Maritime Service.

5-33 SECTION 14. Section 251.002, Estates Code, is amended to
 5-34 read as follows:

5-35 Sec. 251.002. INTERESTS THAT MAY PASS BY WILL;
 5-36 DISINHERITANCE. (a) Subject to limitations prescribed by law, a
 5-37 person competent to make a [~~last~~] will [~~and testament~~] may devise
 5-38 under the will [~~and testament~~] all the estate, right, title, and
 5-39 interest in property the person has at the time of the person's
 5-40 death.

5-41 (b) A person who makes a [~~last~~] will [~~and testament~~] may:

5-42 (1) disinherit an heir; and

5-43 (2) direct the disposition of property or an interest
 5-44 passing under the will or by intestacy.

5-45 SECTION 15. Section 251.051, Estates Code, is amended to
 5-46 read as follows:

5-47 Sec. 251.051. WRITTEN, SIGNED, AND ATTESTED. Except as
 5-48 otherwise provided by law, a [~~last~~] will [~~and testament~~] must be:

5-49 (1) in writing;

5-50 (2) signed by:

5-51 (A) the testator in person; or

5-52 (B) another person on behalf of the testator:

5-53 (i) in the testator's presence; and

5-54 (ii) under the testator's direction; and

5-55 (3) attested by two or more credible witnesses who are
 5-56 at least 14 years of age and who subscribe their names to the will in
 5-57 their own handwriting in the testator's presence.

5-58 SECTION 16. Section 251.103, Estates Code, is amended to
 5-59 read as follows:

5-60 Sec. 251.103. PERIOD FOR MAKING ATTESTED WILLS SELF-PROVED.
 5-61 A will [~~or testament~~] that meets the requirements of Section
 5-62 251.051 may be made self-proved at:

5-63 (1) the time of the execution of the will [~~or~~
 5-64 ~~testament~~]; or

5-65 (2) a later date during the lifetime of the testator
 5-66 and the witnesses.

5-67 SECTION 17. Sections 251.104(c), (d), and (e), Estates
 5-68 Code, are amended to read as follows:

5-69 (c) The self-proving affidavit shall be attached or annexed

6-1 to the will [~~or testament~~].

6-2 (d) An affidavit that is in substantial compliance with the
6-3 form of the affidavit provided by Subsection (e), that is
6-4 subscribed and acknowledged by the testator, and that is subscribed
6-5 and sworn to by the attesting witnesses is sufficient to self-prove
6-6 the will. No other affidavit or certificate of a testator is
6-7 required to self-prove a will [~~or testament~~] other than the
6-8 affidavit provided by Subsection (e).

6-9 (e) The form and content of the self-proving affidavit must
6-10 be substantially as follows:

6-11 THE STATE OF TEXAS

6-12 COUNTY OF _____

6-13 Before me, the undersigned authority, on this day personally
6-14 appeared _____, _____, and _____, known to
6-15 me to be the testator and the witnesses, respectively, whose names
6-16 are subscribed to the annexed or foregoing instrument in their
6-17 respective capacities, and, all of said persons being by me duly
6-18 sworn, the said _____, testator, declared to me and to the
6-19 said witnesses in my presence that said instrument is [his/her]
6-20 [~~last~~] will [~~and testament~~], and that [he/she] had willingly made
6-21 and executed it as [his/her] free act and deed; and the said
6-22 witnesses, each on [his/her] oath stated to me, in the presence and
6-23 hearing of the said testator, that the said testator had declared to
6-24 them that said instrument is [his/her] [~~last~~] will [~~and testament~~],
6-25 and that [he/she] executed same as such and wanted each of them to
6-26 sign it as a witness; and upon their oaths each witness stated
6-27 further that they did sign the same as witnesses in the presence of
6-28 the said testator and at [his/her] request; that [he/she] was at
6-29 that time eighteen years of age or over (or being under such age,
6-30 was or had been lawfully married, or was then a member of the armed
6-31 forces of the United States, or an auxiliary of the armed forces of
6-32 the United States, or the United States Maritime Service) and was of
6-33 sound mind; and that each of said witnesses was then at least
6-34 fourteen years of age.

6-35 _____
6-36 Testator

6-37 _____
6-38 Witness

6-39 _____
6-40 Witness

6-41 Subscribed and sworn to before me by the said _____,
6-42 testator, and by the said _____ and _____,
6-43 witnesses, this _____ day of _____ A.D.
6-44 _____.

6-45 (SEAL)

6-46 (Signed) _____
6-47 (Official Capacity of Officer)

6-48 SECTION 18. Section 251.107, Estates Code, is amended to
6-49 read as follows:

6-50 Sec. 251.107. SELF-PROVED HOLOGRAPHIC WILL.
6-51 Notwithstanding any other provision of this subchapter, a will
6-52 written wholly in the testator's handwriting may be made
6-53 self-proved at any time during the testator's lifetime by the
6-54 attachment or annexation to the will of an affidavit by the testator
6-55 to the effect that:

6-56 (1) the instrument is the testator's [~~last~~] will;

6-57 (2) the testator was 18 years of age or older at the
6-58 time the will was executed or, if the testator was younger than 18
6-59 years of age, that the testator:

6-60 (A) was or had been married; or

6-61 (B) was a member of the armed forces of the United
6-62 States, an auxiliary of the armed forces of the United States, or
6-63 the United States Maritime Service at the time the will was
6-64 executed;

6-65 (3) the testator was of sound mind; and

6-66 (4) the testator has not revoked the will.

6-67 SECTION 19. Section 252.152, Estates Code, is amended to
6-68 read as follows:

6-69 Sec. 252.152. PRIOR DEPOSITED WILL IN RELATION TO LATER

7-1 WILL. A will that is not deposited as provided by Subchapter A
 7-2 shall be admitted to probate on proof that the will is the last will
 7-3 ~~[and testament]~~ of the testator, notwithstanding the fact that the
 7-4 testator has a prior will that has been deposited in accordance with
 7-5 Subchapter A.

7-6 SECTION 20. Section 255.151, Estates Code, is amended to
 7-7 read as follows:

7-8 Sec. 255.151. APPLICABILITY OF SUBCHAPTER. This subchapter
 7-9 applies unless the testator's ~~[last]~~ will ~~[and testament]~~ provides
 7-10 otherwise. For example, a devise in the testator's will stating "to
 7-11 my surviving children" or "to such of my children as shall survive
 7-12 me" prevents the application of Sections 255.153 and 255.154.

7-13 SECTION 21. Section 255.401, Estates Code, is amended by
 7-14 amending Subsection (a) and adding Subsection (a-1) to read as
 7-15 follows:

7-16 (a) A right to take as a member under a class gift does not
 7-17 accrue to any person unless the person is born before, or is in
 7-18 gestation at, the time of ~~[the testator's]~~ death of the person by
 7-19 which the class is measured and survives that person by ~~[for]~~ at
 7-20 least 120 hours.

7-21 (a-1) For purposes of this section, a [A] person is:

7-22 (1) considered to be in gestation [at the time of the
 7-23 testator's death] if insemination or implantation occurs at or
 7-24 before the time of [the testator's] death of the person by which the
 7-25 class is measured; and

7-26 (2) presumed to be in gestation at the time of death of
 7-27 the person by which the class is measured [the testator's death] if
 7-28 the person was born before the 301st day after the date of the
 7-29 person's [testator's] death.

7-30 SECTION 22. Section 255.451, Estates Code, is amended by
 7-31 amending Subsection (a) and adding Subsections (a-1) and (c) to
 7-32 read as follows:

7-33 (a) Subject to the requirements of this section, on [On] the
 7-34 petition of a personal representative, a court may order that the
 7-35 terms of the will be modified or reformed, that the personal
 7-36 representative be directed or permitted to perform acts that are
 7-37 not authorized or that are prohibited by the terms of the will, or
 7-38 that the personal representative be prohibited from performing acts
 7-39 that are required by the terms of the will, if:

7-40 (1) modification of administrative, nondispositive
 7-41 terms of the will is necessary or appropriate to prevent waste or
 7-42 impairment of the estate's administration;

7-43 (2) the order is necessary or appropriate to achieve
 7-44 the testator's tax objectives or to qualify a distributee for
 7-45 government benefits and is not contrary to the testator's intent;
 7-46 or

7-47 (3) the order is necessary to correct a scrivener's
 7-48 error in the terms of the will, even if unambiguous, to conform with
 7-49 the testator's intent.

7-50 (a-1) A personal representative seeking to modify or reform
 7-51 a will under this section must file a petition on or before the
 7-52 fourth anniversary of the date the will was admitted to probate.

7-53 (c) Chapter 123, Property Code, applies to a proceeding
 7-54 under Subsection (a) that involves a charitable trust.

7-55 SECTION 23. Section 256.003(b), Estates Code, is amended to
 7-56 read as follows:

7-57 (b) Except as provided by Section 501.006 with respect to a
 7-58 foreign will, letters testamentary may not be issued if a will is
 7-59 admitted to probate after the fourth anniversary of the testator's
 7-60 death unless it is shown that the application for probate was filed
 7-61 on or before the fourth anniversary of the testator's death.

7-62 SECTION 24. Section 257.051(a), Estates Code, is amended to
 7-63 read as follows:

7-64 (a) An application for the probate of a will as a muniment of
 7-65 title must state and aver the following to the extent each is known
 7-66 to the applicant or can, with reasonable diligence, be ascertained
 7-67 by the applicant:

7-68 (1) each applicant's name and domicile;

7-69 (2) the testator's name, domicile, and, if known, age,

8-1 on the date of the testator's death;
8-2 (3) the fact, date, and place of the testator's death;
8-3 (4) facts showing that the court with which the
8-4 application is filed has venue;
8-5 (5) that the testator owned property, including a
8-6 statement generally describing the property and the property's
8-7 probable value;
8-8 (6) the date of the will;
8-9 (7) the name, state of residence, and physical address
8-10 where service can be had of the executor named in the will;
8-11 (8) the name of each subscribing witness to the will,
8-12 if any;
8-13 (9) whether one or more children born to or adopted by
8-14 the testator after the testator executed the will survived the
8-15 testator and, if so, the name of each of those children;
8-16 (10) that the testator's estate does not owe an unpaid
8-17 debt, other than any debt secured by a lien on real estate, or that
8-18 for another reason there is no necessity for administration of the
8-19 estate;
8-20 (11) whether a marriage of the testator was ever
8-21 dissolved after the will was made and, if so, when and from whom;
8-22 and
8-23 (12) whether the state, a governmental agency of the
8-24 state, or a charitable organization is named in the will as a
8-25 devisee.

8-26 SECTION 25. Section 257.054, Estates Code, is amended to
8-27 read as follows:
8-28 Sec. 257.054. PROOF REQUIRED. An applicant for the probate
8-29 of a will as a muniment of title must prove to the court's
8-30 satisfaction that:
8-31 (1) the testator is dead;
8-32 (2) four years have not elapsed since the date of the
8-33 testator's death and before the application;
8-34 (3) the court has jurisdiction and venue over the
8-35 estate;
8-36 (4) citation has been served and returned in the
8-37 manner and for the period required by this title;
8-38 (5) the testator's estate does not owe an unpaid debt,
8-39 other than any debt secured by a lien on real estate, or that for
8-40 another reason there is no necessity for administration of the
8-41 estate;
8-42 (6) the testator did not revoke the will; and
8-43 (7) if the will is not self-proved in the manner
8-44 provided by this title, the testator:
8-45 (A) executed the will with the formalities and
8-46 solemnities and under the circumstances required by law to make the
8-47 will valid; and
8-48 (B) at the time of executing the will was of sound
8-49 mind and:
8-50 (i) was 18 years of age or older;
8-51 (ii) was or had been married; or
8-52 (iii) was a member of the armed forces of
8-53 the United States, an auxiliary of the armed forces of the United
8-54 States, or the United States Maritime Service.

8-55 SECTION 26. Section 305.108, Estates Code, is amended to
8-56 read as follows:
8-57 Sec. 305.108. FORM OF BOND. The following form, or a form
8-58 with the same substance, may be used for the bond of a personal
8-59 representative:
8-60 The State of Texas
8-61 County of _____
8-62 Know all persons by these presents that we, _____ (insert
8-63 name of each principal), as principal, and _____ (insert name of
8-64 each surety), as sureties, are held and firmly bound unto the judge
8-65 of _____ (insert reference to appropriate judge), and that
8-66 judge's successors in office, in the sum of _____ dollars,
8-67 conditioned that the above bound principal or principals, appointed
8-68 as _____ (insert "executor of the [~~last~~] will [~~and testament~~],"
8-69 "administrator with the will annexed of the estate," "administrator

9-1 of the estate," or "temporary administrator of the estate," as
 9-2 applicable) of _____ (insert name of decedent), deceased, shall
 9-3 well and truly perform all of the duties required of the principal
 9-4 or principals by law under that appointment.

9-5 SECTION 27. Sections 308.051(a) and (c), Estates Code, are
 9-6 amended to read as follows:

9-7 (a) Within one month after receiving letters testamentary
 9-8 or of administration, a personal representative of an estate shall
 9-9 provide notice requiring each person who has a claim against the
 9-10 estate to present the claim within the period prescribed by law by:

9-11 (1) having the notice published in a newspaper of general
 9-12 circulation [~~printed~~] in the county in which the letters
 9-13 were issued; and

9-14 (2) if the decedent remitted or should have remitted
 9-15 taxes administered by the comptroller, sending the notice to the
 9-16 comptroller by certified or registered mail.

9-17 (c) If there is no [~~a~~] newspaper of general circulation [~~is~~
 9-18 ~~not printed~~] in the county in which the letters testamentary or of
 9-19 administration were issued, the notice must be posted and the
 9-20 return made and filed as otherwise required by this title.

9-21 SECTION 28. Section 310.006, Estates Code, is amended to
 9-22 read as follows:

9-23 Sec. 310.006. FREQUENCY AND METHOD OF DETERMINING INTERESTS
 9-24 IN CERTAIN ESTATE ASSETS. Except as required by Sections 2055 and
 9-25 2056, Internal Revenue Code of 1986 (26 U.S.C. Sections 2055 and
 9-26 2056), the frequency and method of determining the distributees'
 9-27 [~~beneficiaries'~~] respective interests in the undistributed assets
 9-28 of an estate are in the sole and absolute discretion of the executor
 9-29 of the estate. The executor may consider all relevant factors,
 9-30 including administrative convenience and expense and the interests
 9-31 of the various distributees [~~beneficiaries~~] of the estate, to reach
 9-32 a fair and equitable result among distributees [~~beneficiaries~~].

9-33 SECTION 29. Section 359.001(a), Estates Code, is amended to
 9-34 read as follows:

9-35 (a) Not later than the 60th day after [~~On~~] the first
 9-36 anniversary of [~~expiration of 12 months from~~] the date a personal
 9-37 representative qualifies and receives letters testamentary or of
 9-38 administration to administer a decedent's estate under court order,
 9-39 unless the court authorizes an extension, the representative shall
 9-40 file with the court an account consisting of a written exhibit made
 9-41 under oath that lists all claims against the estate presented to the
 9-42 representative during the 12-month period following the
 9-43 representative's qualification and receipt of letters [~~covered by~~
 9-44 ~~the account~~]. The exhibit must specify:

9-45 (1) the claims allowed by the representative;
 9-46 (2) the claims paid by the representative;
 9-47 (3) the claims rejected by the representative and the
 9-48 date the claims were rejected; and

9-49 (4) the claims for which a lawsuit has been filed and
 9-50 the status of that lawsuit.

9-51 SECTION 30. Section 359.002(a), Estates Code, is amended to
 9-52 read as follows:

9-53 (a) Not later than the 60th day after each anniversary of
 9-54 the date a personal representative of the estate of a decedent
 9-55 qualifies and receives letters testamentary or of administration to
 9-56 administer the decedent's estate under court order, unless the
 9-57 court authorizes an extension, the [~~Each personal~~] representative
 9-58 [~~of the estate of a decedent~~] shall [~~continue to~~] file an annual
 9-59 account conforming to the essential requirements of Section 359.001
 9-60 regarding changes in the estate assets occurring during the
 9-61 12-month period after [~~since~~] the date the most recent previous
 9-62 account was filed.

9-63 SECTION 31. Section 362.005(b), Estates Code, is amended to
 9-64 read as follows:

9-65 (b) Citation issued under Subsection (a) must:

9-66 (1) contain:

9-67 (A) a statement that an account for final
 9-68 settlement has been presented;

9-69 (B) the time and place the court will consider

10-1 the account; and

10-2 (C) a statement requiring the person cited to
10-3 appear and contest the account, if the person wishes to contest the
10-4 account; and

10-5 (2) be given to each heir or distributee ~~[beneficiary]~~
10-6 of the decedent by certified mail, return receipt requested, unless
10-7 the court by written order directs another method of service to be
10-8 given.

10-9 SECTION 32. Section 401.006, Estates Code, is amended to
10-10 read as follows:

10-11 Sec. 401.006. GRANTING POWER OF SALE BY AGREEMENT. In a
10-12 situation in which a decedent does not have a will, or a decedent's
10-13 will does not contain language authorizing the personal
10-14 representative to sell property or contains language that is not
10-15 sufficient to grant the representative that authority, the court
10-16 may include in an order appointing an independent executor any
10-17 general or specific authority regarding the power of the
10-18 independent executor to sell property that may be consented to by
10-19 the distributees ~~[beneficiaries]~~ who are to receive any interest in
10-20 the property in the application for independent administration or
10-21 for the appointment of an independent executor or in their consents
10-22 to the independent administration or to the appointment of an
10-23 independent executor. The independent executor, in such event, may
10-24 sell the property under the authority granted in the court order
10-25 without the further consent of those distributees ~~[beneficiaries]~~.

10-26 SECTION 33. Chapter 405, Estates Code, is amended by adding
10-27 Section 405.0015 to read as follows:

10-28 Sec. 405.0015. DISTRIBUTIONS GENERALLY. Unless the will,
10-29 if any, or a court order provides otherwise, an independent
10-30 executor may, in distributing property not specifically devised
10-31 that the independent executor is authorized to sell:

10-32 (1) make distributions in divided or undivided
10-33 interests;

10-34 (2) allocate particular assets in proportionate or
10-35 disproportionate shares;

10-36 (3) value the estate property for the purposes of
10-37 acting under Subdivision (1) or (2); and

10-38 (4) adjust the distribution, division, or termination
10-39 for resulting differences in valuation.

10-40 SECTION 34. Sections 405.003(b) and (d), Estates Code, are
10-41 amended to read as follows:

10-42 (b) On the filing of an action under this section, each
10-43 distributee ~~[beneficiary]~~ of the estate shall be personally served
10-44 with citation, except for a distributee ~~[beneficiary]~~ who has
10-45 waived the issuance and service of citation.

10-46 (d) On or before filing an action under this section, the
10-47 independent executor must distribute to the distributees
10-48 ~~[beneficiaries]~~ of the estate any of the remaining assets or
10-49 property of the estate that remains in the independent executor's
10-50 possession after all of the estate's debts have been paid, except
10-51 for a reasonable reserve of assets that the independent executor
10-52 may retain in a fiduciary capacity pending court approval of the
10-53 final account. The court may review the amount of assets on reserve
10-54 and may order the independent executor to make further
10-55 distributions under this section.

10-56 SECTION 35. Section 456.003, Estates Code, is amended to
10-57 read as follows:

10-58 Sec. 456.003. DUTY OF ELIGIBLE INSTITUTIONS. Not later
10-59 than the seventh business day ~~[Within a reasonable time]~~ after the
10-60 date an eligible institution receives ~~[receiving]~~ a copy of a
10-61 written agreement under Section 456.002(a) or a statement from a
10-62 personal representative under Section 456.002(b) and instructions
10-63 from the lawyer identified in the agreement or statement, as
10-64 applicable, regarding how to disburse the funds or close a trust or
10-65 escrow account, the ~~[an]~~ eligible institution shall disburse the
10-66 funds and close the account in compliance with the instructions.

10-67 SECTION 36. Chapter 456, Estates Code, is amended by adding
10-68 Section 456.0045 to read as follows:

10-69 Sec. 456.0045. PRIVATE CAUSE OF ACTION. (a) If an eligible

11-1 institution violates Section 456.003, a person aggrieved by the
 11-2 violation may bring an action against the eligible institution to:

11-3 (1) obtain declaratory or injunctive relief to enforce
 11-4 the section; and

11-5 (2) recover damages to the same extent the person
 11-6 would be entitled to damages had the eligible institution acted in
 11-7 the same manner with respect to the deceased lawyer before the
 11-8 lawyer's death.

11-9 (b) A person who prevails in an action under this section
 11-10 may recover court costs and reasonable attorney's fees.

11-11 SECTION 37. Subchapter A, Chapter 112, Property Code, is
 11-12 amended by adding Section 112.011 to read as follows:

11-13 Sec. 112.011. POSTHUMOUS CLASS GIFTS MEMBERSHIP. (a) A
 11-14 right to take as a member under a class gift does not accrue to any
 11-15 person unless the person is born before, or is in gestation at, the
 11-16 time of death of the person by which the class is measured and
 11-17 survives that person by at least 120 hours.

11-18 (b) For purposes of Subsection (a), a person is:

11-19 (1) considered to be in gestation if insemination or
 11-20 implantation occurs at or before the time of death of the person by
 11-21 which the class is measured; and

11-22 (2) presumed to be in gestation at the time of death of
 11-23 the person by which the class is measured if the person was born
 11-24 before the 301st day after the date of the person's death.

11-25 (c) A provision in the trust instrument that is contrary to
 11-26 this section prevails over this section.

11-27 SECTION 38. Sections 303.003 and 362.010, Estates Code, are
 11-28 repealed.

11-29 SECTION 39. Section 33.001, Estates Code, as amended by
 11-30 this Act, applies only to an application for the probate of a will
 11-31 or for the granting of letters testamentary or of administration of
 11-32 a decedent's estate that is filed on or after the effective date of
 11-33 this Act. An application for the probate of a will or the granting
 11-34 of letters filed before that date is governed by the law in effect
 11-35 on the date the application was filed, and the former law is
 11-36 continued in effect for that purpose.

11-37 SECTION 40. Section 112.103, Estates Code, as amended by
 11-38 this Act, applies only to a proceeding under Subchapter C, Chapter
 11-39 112, Estates Code, commenced on or after the effective date of this
 11-40 Act. A proceeding under that subchapter commenced before that date
 11-41 is governed by the law in effect on the date the proceeding was
 11-42 commenced, and the former law is continued in effect for that
 11-43 purpose.

11-44 SECTION 41. Section 113.252(c), Estates Code, as amended by
 11-45 this Act, applies to a proceeding commenced before, on, or after the
 11-46 effective date of this Act, regardless of the date of the decedent's
 11-47 death.

11-48 SECTION 42. Section 123.056, Estates Code, as added by this
 11-49 Act, applies to a trust created before, on, or after the effective
 11-50 date of this Act with respect to which the marriage of the settlors
 11-51 is dissolved on or after that date.

11-52 SECTION 43. Sections 123.151(a) and (b), Estates Code, as
 11-53 amended by this Act, and Section 123.151(c-1), as added by this Act,
 11-54 apply only to a multiple-party account for which the marriage of a
 11-55 party to the account is dissolved on or after the effective date of
 11-56 this Act.

11-57 SECTION 44. Section 123.151(d-1), Estates Code, as added by
 11-58 this Act, and Section 456.0045, Estates Code, as added by this Act,
 11-59 apply only to a cause of action that accrues on or after the
 11-60 effective date of this Act. A cause of action that accrued before
 11-61 the effective date of this Act is governed by the law applicable to
 11-62 the cause of action immediately before the effective date of this
 11-63 Act, and that law is continued in effect for that purpose.

11-64 SECTION 45. Section 202.057, Estates Code, as amended by
 11-65 this Act, applies only to an application for a proceeding to declare
 11-66 heirship that is filed on or after the effective date of this Act.
 11-67 An application for a proceeding to declare heirship filed before
 11-68 that date is governed by the law in effect on the date the
 11-69 application was filed, and the former law is continued in effect for

12-1 that purpose.

12-2 SECTION 46. Section 205.001, Estates Code, as amended by
12-3 this Act, applies to a small estate administration commenced on or
12-4 after the effective date of this Act, regardless of the date of the
12-5 decedent's death.

12-6 SECTION 47. Section 255.401, Estates Code, as amended by
12-7 this Act, and Section 112.011, Property Code, as added by this Act,
12-8 apply to the estate of a decedent who dies before, on, or after the
12-9 effective date of this Act.

12-10 SECTION 48. Section 255.451, Estates Code, as amended by
12-11 this Act, applies only to a petition filed on or after the effective
12-12 date of this Act. A petition filed before that date is governed by
12-13 the law in effect on the date the petition was filed, and the former
12-14 law is continued in effect for that purpose.

12-15 SECTION 49. Sections 256.003(b), 257.051(a), and 257.054,
12-16 Estates Code, as amended by this Act, apply only to an application
12-17 for the probate of a will or administration of a decedent's estate
12-18 that is filed on or after the effective date of this Act. An
12-19 application for the probate of a will or administration of a
12-20 decedent's estate filed before that date is governed by the law in
12-21 effect on the date the application was filed, and the former law is
12-22 continued in effect for that purpose.

12-23 SECTION 50. Sections 359.001(a) and 359.002(a), Estates
12-24 Code, as amended by this Act, apply to an account filed on or after
12-25 the effective date of this Act, regardless of whether the personal
12-26 representative was appointed before, on, or after that date.

12-27 SECTION 51. Section 405.0015, Estates Code, as added by
12-28 this Act, applies to the administration of the estate of a decedent
12-29 that is pending or commenced on or after the effective date of this
12-30 Act.

12-31 SECTION 52. This Act takes effect September 1, 2017.

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