

1-1 By: Naishtat (Senate Sponsor - Watson) H.B. No. 585  
1-2 (In the Senate - Received from the House May 13, 2009;  
1-3 May 14, 2009, read first time and referred to Committee on  
1-4 Jurisprudence; May 21, 2009, reported favorably by the following  
1-5 vote: Yeas 5, Nays 0; May 21, 2009, sent to printer.)

1-6 A BILL TO BE ENTITLED  
1-7 AN ACT

1-8 relating to records related to an estate of a decedent or  
1-9 incapacitated person.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Section 8(c)(1), Texas Probate Code, is amended  
1-12 to read as follows:

1-13 (1) Transfer for Want of Venue. If it appears to the  
1-14 court at any time before the final decree that the proceeding was  
1-15 commenced in a court which did not have priority of venue over such  
1-16 proceeding, the court shall, on the application of any interested  
1-17 person, transfer the proceeding to the proper county by  
1-18 transmitting to the proper court in such county the original file in  
1-19 such case, together with certified copies of all entries in the  
1-20 judge's probate docket [minutes] theretofore made, and the probate  
1-21 of the will, determination of heirship, or administration of the  
1-22 estate in such county shall be completed in the same manner as if  
1-23 the proceeding had originally been instituted therein; but, if the  
1-24 question as to priority of venue is not raised before final decree  
1-25 in the proceedings is announced, the finality of such decree shall  
1-26 not be affected by any error in venue.

1-27 SECTION 2. Section 13, Texas Probate Code, is amended to  
1-28 read as follows:

1-29 Sec. 13. JUDGE'S PROBATE DOCKET. The county clerk shall  
1-30 keep a record book to be styled "Judge's Probate Docket," and shall  
1-31 enter therein:

1-32 (a) The name of each person upon whose person or estate  
1-33 proceedings are had or sought to be had.

1-34 (b) The name of the executor or administrator or of the  
1-35 applicant for letters.

1-36 (c) The date of the filing of the original application for  
1-37 probate proceedings.

1-38 (d) A notation [minute] of each order, judgment, decree, and  
1-39 proceeding had in each estate, with the date thereof.

1-40 (e) A number for each estate upon the docket in the order in  
1-41 which proceedings are commenced, and each paper filed in an estate  
1-42 shall be given the corresponding docket number of the estate.

1-43 SECTION 3. Section 23, Texas Probate Code, is amended to  
1-44 read as follows:

1-45 Sec. 23. DECREES [AND SIGNING OF MINUTES]. All decisions,  
1-46 orders, decrees, and judgments of the county court in probate  
1-47 matters shall be rendered in open court except in cases where it is  
1-48 otherwise specially provided. [The probate minutes shall be  
1-49 approved and signed by the judge on the first day of each month,  
1-50 except, however, that if the first day of the month falls on a  
1-51 Sunday, such approval shall be entered on the preceding or  
1-52 succeeding day.]

1-53 SECTION 4. Section 51, Texas Probate Code, is amended to  
1-54 read as follows:

1-55 Sec. 51. TRANSFER OF PROCEEDING WHEN WILL PROBATED OR  
1-56 ADMINISTRATION GRANTED. If an administration upon the estate of  
1-57 any such decedent shall be granted in the State, or if the will of  
1-58 such decedent shall be admitted to probate in this State, after the  
1-59 institution of a proceeding to declare heirship, the court in which  
1-60 such proceeding is pending shall, by an order entered of record  
1-61 therein, transfer the cause to the court of the county in which such  
1-62 administration shall have been granted, or such will shall have  
1-63 been probated, and thereupon the clerk of the court in which such  
1-64 proceeding was originally filed shall send to the clerk of the court

2-1 named in such order, a certified transcript of all pleadings,  
 2-2 [docket] entries in the judge's probate docket, and orders of the  
 2-3 court in such cause. The clerk of the court to which such cause  
 2-4 shall be transferred shall file the transcript and record the same  
 2-5 in the judge's probate docket [minutes] of that [the] court and  
 2-6 shall docket such cause, and the same shall thereafter proceed as  
 2-7 though originally filed in that court. The court, in its  
 2-8 discretion, may consolidate the cause so transferred with the  
 2-9 pending proceeding.

2-10 SECTION 5. Section 53(a), Texas Probate Code, is amended to  
 2-11 read as follows:

2-12 (a) The court in its discretion may require all or any part  
 2-13 of the evidence admitted in a proceeding to declare heirship to be  
 2-14 reduced to writing, and subscribed and sworn to by the witnesses,  
 2-15 respectively, and filed in the cause, and recorded in the judge's  
 2-16 probate docket [minutes of the court].

2-17 SECTION 6. Section 95(d), Texas Probate Code, is amended to  
 2-18 read as follows:

2-19 (d) Probate Accomplished by Recording.

2-20 (1) Will admitted in domiciliary jurisdiction. If the  
 2-21 will has been probated or established in the jurisdiction in which  
 2-22 the testator was domiciled at the time of his death, it shall be the  
 2-23 ministerial duty of the clerk to record such will and the evidence  
 2-24 of its probate or establishment in the judge's probate docket  
 2-25 [minutes of the court]. No order of the court is necessary. When so  
 2-26 filed and recorded, the will shall be deemed to be admitted to  
 2-27 probate, and shall have the same force and effect for all purposes  
 2-28 as if the original will had been probated by order of the court,  
 2-29 subject to contest in the manner and to the extent hereinafter  
 2-30 provided.

2-31 (2) Will admitted in non-domiciliary jurisdiction. If  
 2-32 the will has been probated or established in another jurisdiction  
 2-33 not the domicile of the testator, its probate in this State may be  
 2-34 contested in the same manner as if the testator had been domiciled  
 2-35 in this State at the time of his death. If no contest is filed, the  
 2-36 clerk shall record such will and the evidence of its probate or  
 2-37 establishment in the judge's probate docket [minutes of the court],  
 2-38 and no order of the court shall be necessary. When so filed and  
 2-39 recorded, it shall be deemed to be admitted to probate, and shall  
 2-40 have the same force and effect for all purposes as if the original  
 2-41 will had been probated by order of the court, subject to contest in  
 2-42 the manner and to the extent hereinafter provided.

2-43 SECTION 7. Section 101, Texas Probate Code, is amended to  
 2-44 read as follows:

2-45 Sec. 101. NOTICE OF CONTEST OF FOREIGN WILL. Within the  
 2-46 time permitted for the contest of a foreign will in this State,  
 2-47 verified notice may be filed and recorded in the judge's probate  
 2-48 docket [minutes] of the court in this State in which the will was  
 2-49 probated, or the deed records of any county in this State in which  
 2-50 such will was recorded, that proceedings have been instituted to  
 2-51 contest the will in the foreign jurisdiction where it was probated  
 2-52 or established. Upon such filing and recording, the force and  
 2-53 effect of the probate or recording of the will shall cease until  
 2-54 verified proof is filed and recorded that the foreign proceedings  
 2-55 have been terminated in favor of the will, or that such proceedings  
 2-56 were never actually instituted.

2-57 SECTION 8. Section 190(d), Texas Probate Code, is amended  
 2-58 to read as follows:

2-59 (d) Filing and Recording of Oaths. All such oaths may be  
 2-60 taken before any officer authorized to administer oaths, and shall  
 2-61 be filed with the clerk of the court granting the letters, and shall  
 2-62 be recorded in the judge's probate docket [minutes of such court].

2-63 SECTION 9. Section 369(b), Texas Probate Code, is amended  
 2-64 to read as follows:

2-65 (b) Procedure for Authorizing Pooling or Unitization.  
 2-66 Pooling or unitization, when not adequately provided for by an  
 2-67 existing lease or leases on property owned by the estate, may be  
 2-68 authorized by the court in which the proceedings are pending  
 2-69 pursuant to and in conformity with the following rules:

(1) Contents of Application. The personal representative of the estate shall file with the county clerk of the county where the probate proceeding is pending his written application for authority (a) to enter into pooling or unitization agreements supplementing, amending, or otherwise relating to, any existing lease or leases covering property owned by the estate, or (b) to commit royalties or other interest in minerals, whether subject to lease or not, to a pooling or unitization agreement. The application shall also (c) describe the property sufficiently, as required in original application to lease, (d) describe briefly the lease or leases, if any, to which the interest of the estate is subject, and (e) set out the reasons why the proposed agreement concerning such property should be made. A true copy of the proposed agreement shall be attached to the application and by reference made a part thereof, but the agreement shall not be recorded in the judge's probate docket ~~[minutes]~~. The clerk shall immediately, after such application is filed, call it to the attention of the judge.

(2) Notice Not Necessary. No notice of the filing of such application by advertising, citation, or otherwise, is required.

(3) Hearing of Application. A hearing on such application may be held by the judge at any time agreeable to the parties to the proposed agreement, and the judge shall hear proof and satisfy himself as to whether or not it is to the best interest of the estate that the proposed agreement be authorized. The hearing may be continued from day to day and from time to time as the court finds to be necessary.

(4) Action of Court and Contents of Order. If the court finds that the pool or unit to which the agreement relates will be operated in such a manner as to protect correlative rights or to prevent the physical or economic waste of oil, liquid hydrocarbons, gas (including all liquid hydrocarbons in the gaseous phase in the reservoir), gaseous elements, or other mineral subject thereto; that it is to the best interest of the estate that the agreement be executed; and that the agreement conforms substantially with the permissible provisions of Subsection (a) hereof, he shall enter an order setting out the findings made by him, authorizing execution of the agreement (with or without payment of cash consideration according to the agreement). If cash consideration is to be paid for the agreement, findings as to the necessity of increased or additional bond, as in making of leases upon payment of the cash bonus therefor, shall also be made, and no such agreement shall be valid until the increased or additional bond required by the court, if any, has been approved by the judge and filed with the clerk. The date of the court's order shall be the effective date of the agreement, if not stipulated in such agreement.

SECTION 10. Section 409, Texas Probate Code, is amended to read as follows:

Sec. 409. MONEY BECOMING DUE PENDING FINAL DISCHARGE. Until the order of final discharge of the personal representative is entered in the judge's probate docket [~~minutes of the court~~], money or other thing of value falling due to the estate while the account for final settlement is pending may be paid, delivered, or tendered to the personal representative, who shall issue receipt therefor, and the obligor and/or payor shall be thereby discharged of the obligation for all purposes.

SECTION 11. Section 430, Texas Probate Code, is amended to read as follows:

Sec. 430. RECEIPT OF COMPTROLLER. Whenever an executor or administrator pays the comptroller any funds of the estate he represents, under the preceding provisions of this Code, he shall take from the comptroller a receipt for such payment, with official seal attached, and shall file the same with the clerk of the court ordering such payment; and such receipt shall be recorded in the judge's probate docket [~~minutes of the court~~].

SECTION 12. Section 609(b), Texas Probate Code, is amended to read as follows:

(b) The probate court that transfers a proceeding under this

4-1 section to a court with proper jurisdiction over suits affecting  
 4-2 the parent-child relationship shall send to the court to which the  
 4-3 transfer is made the complete files in all matters affecting the  
 4-4 guardianship of the person of the minor and certified copies of all  
 4-5 entries in the judge's guardianship docket [minutes]. The  
 4-6 transferring court shall keep a copy of the transferred files. If  
 4-7 the transferring court retains jurisdiction of the guardianship of  
 4-8 the estate of the minor or of another minor who was the subject of  
 4-9 the suit, the court shall send a copy of the complete files to the  
 4-10 court to which the transfer is made and shall keep the original  
 4-11 files.

4-12 SECTION 13. Section 623(a), Texas Probate Code, is amended  
 4-13 to read as follows:

4-14 (a) The county clerk shall keep a record book to be styled  
 4-15 "Judge's Guardianship Docket" and shall enter in the record book:

4-16 (1) the name of each person on whose person or estate a  
 4-17 proceeding is had or is sought to be had;

4-18 (2) the name of the guardian of the estate or person or  
 4-19 of the applicant for letters;

4-20 (3) the date the original application for a  
 4-21 guardianship proceeding was filed;

4-22 (4) a notation [minute], including the date, of each  
 4-23 order, judgment, decree, and proceeding in each estate; and

4-24 (5) a number of each guardianship on the docket in the  
 4-25 order in which a proceeding is commenced.

4-26 SECTION 14. Sections 631(b) and (c), Texas Probate Code,  
 4-27 are amended to read as follows:

4-28 (b) By transmitting to the proper court in the proper county  
 4-29 for venue purposes the original file in the case, with certified  
 4-30 copies of all entries in the judge's guardianship docket [minutes]  
 4-31 made in the file, an administration of the guardianship in the  
 4-32 proper county for venue purposes shall be completed in the same  
 4-33 manner as if the proceeding had originally been instituted in that  
 4-34 county.

4-35 (c) The clerk of the court from which the proceeding is  
 4-36 transferred shall transmit to the court to which the proceeding is  
 4-37 transferred the original file in the proceeding and a certified  
 4-38 copy of the entries in the judge's guardianship docket [minutes]  
 4-39 that relate to the proceeding.

4-40 SECTION 15. Section 650, Texas Probate Code, is amended to  
 4-41 read as follows:

4-42 Sec. 650. DECREES [AND SIGNING OF MINUTES]. A decision,  
 4-43 order, decree, or judgment of the court in a guardianship matter  
 4-44 must be rendered in open court, except in a case in which it is  
 4-45 otherwise expressly provided. [The judge shall approve and sign  
 4-46 the guardianship minutes on the first day of each month. If the  
 4-47 first day of the month falls on a Saturday, Sunday, or legal  
 4-48 holiday, the judge's approval shall be entered on the preceding or  
 4-49 succeeding day.]

4-50 SECTION 16. Section 753, Texas Probate Code, is amended to  
 4-51 read as follows:

4-52 Sec. 753. MONEY BECOMING DUE PENDING FINAL DISCHARGE.  
 4-53 Money or any other thing of value falling due to the estate or ward  
 4-54 while the account for final settlement is pending, other than money  
 4-55 or any other thing of value held under Section 703(c) of this code,  
 4-56 until the order of final discharge of the guardian is entered in the  
 4-57 judge's guardianship docket [minutes of the court], may be paid,  
 4-58 delivered, or tendered to the emancipated ward, the guardian, or  
 4-59 the personal representative of the deceased ward's estate, who  
 4-60 shall issue a receipt for the money or other thing of value, and the  
 4-61 obligor or payor shall be discharged of the obligation for all  
 4-62 purposes.

4-63 SECTION 17. Section 849(c), Texas Probate Code, is amended  
 4-64 to read as follows:

4-65 (c) The guardian of the estate shall file with the county  
 4-66 clerk of the county in which the guardianship proceeding is pending  
 4-67 the guardian's written application for authority to enter into a  
 4-68 pooling or unitization agreement supplementing, amending, or  
 4-69 otherwise relating to, any existing lease covering property owned

5-1 by the estate, or to commit royalties or other interest in minerals,  
 5-2 whether subject to lease or not, to a pooling or unitization  
 5-3 agreement. The application must also describe the property  
 5-4 sufficiently as required in the original application to lease,  
 5-5 describe briefly the lease to which the interest of the estate is  
 5-6 subject, and set out the reasons the proposed agreement concerning  
 5-7 the property should be made. A true copy of the proposed agreement  
 5-8 shall be attached to the application and by reference made a part of  
 5-9 the application, but the agreement may not be recorded in the  
 5-10 judge's guardianship docket ~~[minutes]~~. The clerk shall  
 5-11 immediately, after the application is filed, call it to the  
 5-12 attention of the judge.

5-13 SECTION 18. Sections 885(a), (b), and (g), Texas Probate  
 5-14 Code, are amended to read as follows:

5-15 (a) When the estate of a minor or other incapacitated person  
 5-16 or any portion of the estate of the minor or other incapacitated person appears in danger of injury, loss, or waste and in need of a  
 5-17 guardianship or other representative and there is no guardian of  
 5-18 the estate who is qualified in this state and a guardian is not  
 5-19 needed, the county judge of the county in which the minor or other  
 5-20 incapacitated person resides or in which the endangered estate is  
 5-21 located shall enter an order, with or without application,  
 5-22 appointing a suitable person as receiver to take charge of the  
 5-23 estate. The court order shall require a receiver appointed under  
 5-24 this section to give bond as in ordinary receiverships in an amount  
 5-25 the judge deems necessary to protect the estate. The court order  
 5-26 shall specify the duties and powers of the receiver as the judge  
 5-27 deems necessary for the protection, conservation, and preservation  
 5-28 of the estate. The clerk shall enter an order made under this  
 5-29 section in the judge's guardianship docket ~~[on the minutes of the~~  
 5-30 ~~court]~~. The person who is appointed as receiver shall make and  
 5-31 submit a bond for the judge's approval and shall file the bond, when  
 5-32 approved, with the clerk. The person who is appointed receiver  
 5-33 shall proceed to take charge of the endangered estate pursuant to  
 5-34 the powers and duties vested in the person by the order of  
 5-35 appointment and subsequent orders made by the judge.

5-36 (b) During the pendency of the receivership, when the needs  
 5-37 of the minor or other incapacitated person require the use of the  
 5-38 income or corpus of the estate for the education, clothing, or  
 5-39 subsistence of the minor or other incapacitated person, the judge,  
 5-40 with or without application, shall enter an order in the judge's  
 5-41 guardianship docket ~~[on the minutes of the court]~~ that appropriates  
 5-42 an amount of income or corpus that is sufficient for that purpose.  
 5-43 The receiver shall use the amount appropriated by the court to pay a  
 5-44 claim for the education, clothing, or subsistence of the minor or  
 5-45 other incapacitated person that is presented to the judge for  
 5-46 approval and ordered by the judge to be paid.

5-47 (g) An order or a bond, report, account, or notice in a  
 5-48 receivership proceeding must be recorded in the judge's  
 5-49 guardianship docket ~~[minutes of the court]~~.

5-50 SECTION 19. The following laws are repealed:

5-51 (1) Section 26.004(c), Government Code; and  
 5-52 (2) Sections 3(u) and 601(17), Texas Probate Code.

5-53 SECTION 20. This Act takes effect immediately if it  
 5-54 receives a vote of two-thirds of all the members elected to each  
 5-55 house, as provided by Section 39, Article III, Texas Constitution.  
 5-56 If this Act does not receive the vote necessary for immediate  
 5-57 effect, this Act takes effect September 1, 2009.