

IT'S GOING TO BE OK:
Transition to the New *Estates Code*

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IT'S GOING TO BE OK: Transition to the New *Estates Code*

I. INTRODUCTION

I am not afraid to say it – I just love the Texas Probate Code. I say that mostly because it is familiar – at 57 years old, it is the only probate code that most of us Texas probate and estate planning practitioners have ever known. Sure, it is illogical and disorganized, but we can look past those faults if it means avoiding change for the sake of comfort, right?

Well, you may want to sit down for this: the Probate Code is soon going to be going to the big Probate Court in the sky. You heard me right – the Texas Probate Code is a goner and will be replaced in a few short months with a newer model that promises to be more accessible, more understandable, and more usable.

But fear not brethren! We are not the first section of the State Bar to get a replacement code, and in this case, the discomfort might not be as bad as you think. Here's why:

II. IT'S A LONG STORY, BUT...

A. Back in the day.

For a while, our state laws were simply enacted. The Texas Legislature would meet and vote on the passage of important legislation, but the new statutes were left to fall where they may. The Legislature – realizing the need for some order – made a few early attempts to provide for the organization of existing laws, but those efforts provided some illogical, although alphabetical, results. For example, the statutes began with “accountants” and ended with “wrecks,” and in between the laws of descent and distributions were found adjacent to the laws governing detectives and regulating drainage systems. But those were simpler times when it was a misdemeanor for having a potty mouth “over or through any telephone in this state.” Art. 472,

Revised Civil and Criminal Statutes of Texas, 1911.

B. Vernon's Texas Civil Statutes.

Before the initiation of the current “code” organization system, Texas statutes were last revised in 1925, and no expansion room was built in to the 1925 revision for future laws. Most of the laws enacted after that time had no place to go, so a private publisher unofficially arranged and organized the new statutes in what is now called “Vernon's Texas Civil Statutes.” However, without uniform drafting guidelines, these efforts resulted in grammatical inconsistencies, bizarre numbering schemes, and surplus substance. *See Texas Legislative Council Drafting Manual, Page 137 (2006).*

C. The Texas Probate “Code.”

In 1955 during the 54th Legislative Session, the Legislature adopted an *act* that is known and cited as the “Texas Probate Code.” *Tex. Prob. Code §1*. That's right – the Probate Code that we have come to know is not *really* a Code, but rather a serious of statutes that pretends to be a *code* hanging out in the middle of Vernon's. Though it has been subject to many amendments throughout its 57 years of existence, the Probate Code looks and feels the same, at least as to style and organization. In fact, the Legislature had an opportunity to scratch the Probate Code by adopting the Uniform Probate Code, but determined that “for the most part, the Texas Probate Code is superior.” *43 TEX. B.J. 892 (1980).*

D. Continuing Statutory Revision Program.

In 1963, the Legislature recognized that the current state of our statutes was in disarray and that modern law dictated a “sensible statutory arrangement.” *See Texas Legislative Council Drafting Manual*. And so, a statute was enacted to create the Continuing Statutory Revisions Program. *Tex. Gov't Code §323.007*. The

Program mandates that the Texas Legislative Council, a nonpartisan professional support agency of the legislative branch (unofficially referred to by some as the Legislature’s law firm), “plan and execute a permanent statutory revision program for the systematic and continuous study of the statutes of this state and for the formal revision of the statutes on a topical or code basis...to clarify and simplify the statutes and to make [them] more accessible, understandable, and useable.” *Id.* According to the *Texas Legislative Council Drafting Manual*, the revision process “involves reclassifying and rearranging the statutes in a more logical order, employing a numbering system and format that will accommodate future expansion of the law, eliminating repealed, invalid, duplicative, and other ineffective provisions, and improving the draftsmanship of the law.” The statute creating the revision program concludes with perhaps the most important mandate – ensure that the revision program is implemented in a manner that makes subsequent revisions to the collection of laws unnecessary, for goodness sake.

Example 1: breaking apart current sections and moving to different parts of the Code

The Estates Code is full of remodeled provisions. Take, for example, Section 156 of the Probate Code. That section deals with two different concepts that both just happen to involve the same topic, a deceased spouse’s community property, even though the concepts do not necessarily work together. The first concept discussed in Section 156 relates to the liability of community property for debts of the decedent. The second concept relates to the administration of community property. The Estates Code splits up Section 156 and neatly places the two topics among more relevant provisions. The aspect relating to liability for debts is placed in Section 101.052 of the Estates Code, which happens to be in a chapter that contains provisions relating to the passage of title and distribution of decedents’ property. The aspect relating to the administration of

community property is placed in Section 453.006(b) of the Estates Code among other provisions relating to a surviving spouse’s rights, duties, and limitations over community property in the context of a probate estate.

Example 2: collapsing multiple sections into one section of the Code

Another example would be the collapse of four sections of the Probate Code relating to the bonding requirements of certain executors into one section of the Estates Code. Sections 214 through 217 of the Probate Code are now located together in Section 305.102.

Example 3: clarifying intent through the use of more logical punctuation and format

A final example from the Estates Code project is seemingly mundane, but nonetheless important. Section 100 of the Probate Code provides three grounds for contesting a foreign will. Each ground listed is concluded with a period. The reader is left to interpret the statute as to whether a contestant must plead and prove each of the three grounds or just one of the grounds to contest a foreign will. Section 100 is revised as Section 504.001(b) of the Estates Code, which clarifies that a contestant must prove only one of the three grounds by replacing the period after each ground with a semicolon or the “or.”

The original blueprint for the revision program envisioned breaking the law into 26 different codes, but a 27th code was later added to the plan. *See Bill Analysis for the engrossed version of H.B. 2505 (81st Legislative Session, Regular)*. Since the beginning of the revision program, most of the permanent statutes have been codified into various codes. The Legislative Council decided to save the best of the uncoded statutes for the last of the initial revision program – the Texas Probate Code.

With the adoption of the actual code to house our probate laws, one of the last codes will be

enacted. However, the law requires that all of the codes be continuously updated in an effort to preserve the Legislative Council’s massive overhaul that began five decades ago. Although we will probably not see another systematic reorganization of our laws, each code will receive routine maintenance to ensure maximum accessibility and usability.

III. IT’S LIKE PLASTIC SURGERY, EXCEPT FOR LAWS

1. You can call it an *improvement*.

The revision process involves redrafting and reorganizing current statutes involving a particular area of law. Some statutes, such as those creating municipal utility districts, have never been compiled before the adoption of the Special District Local Laws Code. Other statutes, such as probate statutes, have at least been compiled together although not officially as a “code.”

In between each legislative session, the legal staff of the Texas Legislative Council works on revising at least one proposed code. This involves a thorough review of the current law, analyzing such law against case law interpreting the law, identifying statutes that are invalid, duplicative, or ineffective, and redrafting the statutes into “a single, well-organized, well-written statutes that conforms to the format and consistent manner of expression in the codes that have already been revised.” See *Texas Legislative Council Drafting Manual*. For example, if the Estates Code is being revised to use the term “Person,” the goal is that the meaning of that terms is the same across all of the codes instead of having varying meanings of the same term.

As you can imagine, it is no small task to be as consistent as possible over 27 codes that have been enacted over a 50 year period. To ensure consistency, the Legislative Council has adopted drafting conventions and guidelines

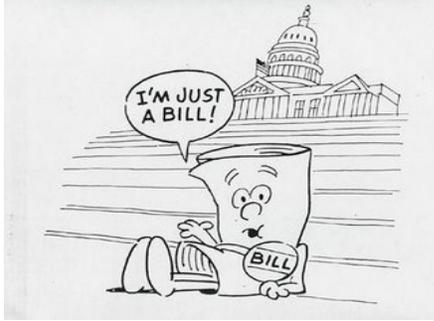
that are published in a drafting manual for its staff but is also available to the public at www.tlc.state.tx.us/lege_ref.htm. Although not intended for drafting outside of the legislative process, I find the manual helpful in my legal practice when attempting to draft motions, briefs and other pleadings in plain English. After all, your pleading standing to be more persuasive if the Judge actually understands it.



You may have heard the Otto von Bismarck quote, “Laws are like sausages, it is better not to see them being made.” While this is no doubt a fair assessment of most

law making which can be subject to last minute amendments, the statutory revision program is a thorough process that involves several levels of internal review and the opportunity for external comment. Typically, an attorney is assigned a particular chapter of the old law to revise into a logical, clear and concise product. The drafter’s task is to use simple language, not fancy legalese. After that attorney completes the initial draft, it is then reviewed by at least two other experienced attorneys and edited by at least one professional legal editor for form, style, internal consistency, and grammar.¹

After a preliminary draft is prepared, the Legislative Council solicits comments from the public and from certain stakeholders. For instance, the Real Estate, Probate & Trust Law section of the State Bar of Texas provided significant support, guidance and review of the proposed Estates Code. Once a final version of the proposed Code is ready, it is presented to the Legislature as a bill. For reasons discussed below, it is unlikely that the bill will be amended throughout the legislative process. How do you like them apples, Otto von Bismarck?!



A document called a “revisor’s report” is prepared to go along with the bill for the new code. This report is helpful to understand the proposed new law, the old law (referred to as the “source law”), and a “Revisor’s Note” that explains the revision. By way of example, the following appeared in one of the two Revisor’s Reports for the Estates Code:

Revised Law

Sec. 22.001. APPLICABILITY OF DEFINITIONS. (a) Except as provided by Subsection (b), the definition for a term provided by this chapter applies in this code unless a different meaning of the term is otherwise apparent from the context in which the term is used.

(b) If Chapter XIII provides a definition for a term that is different from the definition provided by this chapter, the definition for the term provided by Chapter XIII applies in that chapter.

Source Law

Sec. 3. Except as otherwise provided by Chapter XIII of this Code, when used in this Code, unless otherwise apparent from the context: . . .

Revisor’s Note

Section 3, Texas Probate Code, refers to "Chapter XIII of this Code," meaning Chapter XIII, Texas Probate Code. That chapter has been redesignated in the Estates Code as

Chapter XIII, Title 25, and the revised law therefore retains the reference to Chapter XIII. However, the revised law omits the reference to "of this Code" as unnecessary because the revised law is also part of the Estates Code, and Section 311.006(1), Government Code (Code Construction Act), applicable to the revised law, provides in part that a reference to a chapter in a code without further identification is a reference to a chapter of that code.

As you get familiar with the Estates Code, it may be helpful to refer to the Revisor’s Reports if you do not understand why a certain revision was made.

Practice tip: After the Estates Code becomes operative law, the Revisor’s Report may be helpful in arguing statutory construction or legislative intent.

2. But don’t you dare call it substantive.

You see, there is this one, small thing: when a code is put together under the Revision Program, no part of the revision process may alter the sense, meaning, or effect of the statute. That means that the Legislative Council must take painstaking measures to organize and refine the statutes in a logical order and in modernized language without making any substantive changes. §323.007(b), *Tex. Gov’t Code*. This means that if a particular statute is ambiguous and the ambiguity cannot be resolved without a potential substantive effect, the ambiguity is preserved. *See Bill Analysis to the engrossed version of H.B. 2505 (81st Legislative Session, Regular Session)*.

This is an exacting task. But what happens if the Legislative Council makes an unintended departure from the prior law? Several cases have examined this question with mixed and controversial results.

The Supreme Court of Texas has held that when a nonsubstantive bill makes a substantive change, the new law controls if the new law is

clear, direct, unambiguous, and irreconcilable with the prior law. *Fleming Foods of Texas, Inc. v. Rylander*, 6 S.W.3d 278, 285 (Tex. 1999). The Court reasons that prior law and legislative history cannot be used to alter or disregard the express terms of a code provision when its meaning is clear from the code when considered in its entirety, unless there is an obvious error such as a typographical one that resulted in the omission of a word, or application of the literal language of a legislative enactment would produce an absurd result. *Id.* at 284.

In *American Indemnity Co. v. City of Austin*, the Supreme Court upheld the recodification of previously unconstitutional law and found the recodification to be constitutional. 246 S.W. 1019, 1024 (Tex. 1922). The Court reasoned that “the general rule...is that such [revised] Codes are not mere compilations of laws previously existing, but bodies of law so enacted that laws previously existing...cease to exist.” *Id.*

The holding in a more recent case, *Entergy Gulf States, Inc. v. Summers*, is based on the same premise as *Fleming Foods* and *American Indemnity*, although the Legislative Council contends the holding is flawed because the alleged substantive change was enacted four years prior to and outside of the Council’s recodification of the same statute. 282 S.W.3d 433 (Tex. 2009).

Several intermediate courts have held that when a substantive change is made to a statute through legislation intending to make nonsubstantive revisions, the former law should be considered, or even govern, if the codification is ambiguous. *See Minton v. Perez*, 783 S.W.2d 803, 805 (Tex.App.–San Antonio 1990, orig. proceeding); *Bryant v. Metropolitan Transit Authority*, 722 S.W.2d 738 (Tex.App.–Hou. [14th Dist.] 1986, no writ).

Although the Legislative Council is prohibited by law from making substantive revisions as a

part of its revision program, substantive changes may be made concurrently through separate legislation. For instance particular substantive changes to the Estates Code were amended in the same legislative session that the nonsubstantive Estates Code bill was adopted. When this happens, the Legislative Council is tasked with conforming the newly enacted code to the substantive changes made to it by the same legislature.

IV. ENTER THE ESTATES CODE

The Legislative Council started working on the Estates Code in the summer of 2007. The Council anticipated it would take two interim legislative sessions to complete the review of the Probate Code and proposed enacting the Estates Code in two installments.

1. 81st Regular Session.

The first installment of the Estates Code was carried in House Bill 2502 and enacted by the 81st Legislature. Although the 81st Legislature adjourned in 2009, the changes adopted by HB 2502 become effective January 1, 2014. The initial installment includes revisions to general provisions of the Probate Code, most sections relating to decedent’s estates, and nontestamentary transfers.

The sections of the Probate Code relating to the scope of a “probate proceeding” and jurisdiction were not included in either of the Legislative Council’s nonsubstantive revisions bills. However, during the 81st Legislative Session, these sections underwent substantive revisions and were added to the Estates Code as Chapters 31 and 32 through the enactment of Senate Bill 408. Even though the Estates Code is not even effective until 2014, certain sections of Chapters 31 and 32 were also amended during the 82nd Legislature by Senate Bill 1198.

2. 82nd Regular Session.

The second installment of the Estates Code was carried in House Bill 2759 and enacted by the 82nd Legislature. Although the 82nd Legislature adjourned in 2011, the changes adopted by HB 2759 become effective January 1, 2014. The second installment includes revisions to guardianships (except for provisions relating to the scope, jurisdiction, and venue of guardianship proceedings), and the Durable Power of Attorney Act.

The sections of the Probate Code relating to venue (except for Section 5B and 5C), the creation, administration, and closing of an independent administration, and the exemption, allowances and claims in an independent administration were not included in either of the Legislative Council's nonsubstantive revisions bills. However, during the 82nd Legislative Session, these sections underwent substantive revisions and were added to the Estates Code through the enactment of Senate Bill 1198.

3. 82nd First Called Session/83rd Regular Session.

Sections 5B and 5C of the Texas Probate Code relating to the transfer of a probate proceeding and actions to collect delinquent property taxes, and the sections of the Probate Code relating to the scope, jurisdiction, and venue of guardianship proceedings were not included in either of the prior nonsubstantive revision bills.

Through a series of legislation in the 81st and 83rd Legislative Sessions, Sections 5B and 5C were transferred from the Probate Code and redesignated as Sections 34.001 and 34.002 of the Estates Code. Through a series of legislation in the 82nd regular, 82nd First Called Special Session, and 83rd regular legislative sessions, the sections relating to the scope, jurisdiction, and venue of guardianship proceedings were added to the Estates Code or transferred from the Probate Code and redesignated as Chapters 1021, 1022, and 1023

of the Estates Code.

3. Organization.

The Probate Code has a knack for jumping around from topic to topic. For instance, smack dab in the middle of Sections 221 and 222 regarding the resignation and removal of a personal representative are two Sections relating to Resident Agents. Wouldn't the sections relating to Resident Agents be more appropriately located with more procedural sections?

The Estates Code reorganized the Probate Code in an attempt to group together provisions that logically work or go together. Sure, we may have memorized the numbering of all of the sections of the Probate Code, but the Estates Code attempts at being a more logical and intuitive collection of laws. My humble guess is that it will not take you very long to adjust.

The Estates Code is now broken into three Titles: Title 1 being general provisions, including definitions; Title 2 contains statutes relating to Decedent's Estates and Durable Powers of Attorney; and Title 3 houses statutes relating to Guardianships. While this seems to follow the Probate Code's approach, most reorganization occurs within each Title.

Title 2

Title 2 is broken into Subtitles A through L, and Subtitle P. Subtitles A and B contain provisions mostly found in the front of the Probate Code – jurisdiction/venue and procedural matters. Those provisions relating to Resident Agents? They are now found in Subtitle B.

Subtitle C regards the passage of title and distribution of decedents' property. Sections from all over the Probate Code are grouped together here, including the sections relating to nonprobate assets (former Section 450) multiple-party accounts (former Sections 436-439), homestead (former Sections 270, 284,

285), and valuation/taxation of estate property (former Sections 322 and 378A).

Subtitle D groups together proceeding that occur prior to administration of an estate, such as entry into safe deposit boxes (former Sections 36B-36F) and emergency intervention (former Sections 108-115).

Subtitle E regards intestate succession, including small estate affidavits which were formerly sandwiched in between temporary administrations and independent administrations.

Subtitle F contains provisions relating to the making, safekeeping, and probate of wills. The notices to beneficiaries after probate of will (former Section 128A) or on application to probate will after four years (former Section 128B) are now found at the end of this subtitle. Those same notice provisions were located between emergency intervention sections and temporary administration sections in the Probate Code.

Subtitle G groups together provision relating to the initial appoint of personal representative and opening of administration—from the application through the inventory, appraisal and list of claims.

Subtitle H relates to most issues that come up during the continuation of administration after the inventory, appraisal and list of claims has been filed.

Subtitle I relates to the creation, administration and closing of an independent administration, and Subtitle J relates to additional matters relating to the administration of certain estates – including temporary administrations, the administration of community property, and orders of no administration.

Subtitle K relates to ancillary probates and the probate of a foreign will. Subtitle L relates to the payment of estates into the state Treasury.

Subtitles M-O do not contain any current statutes and are reserved for expansion (future probate laws).

Subtitle P contains statutes relating to the durable powers of attorney.

Title 3

Perhaps due extensive changes to the guardianship statutes in 1993, the transformation and reorganization of the guardianship provisions is not as dramatic as the reorganization of the probate provisions. *See Acts 1993, 73 Leg., ch. 957.*² Title 3 is broken into Subtitles A through I. Subtitles A, B and C contain general jurisdiction/venue, and procedural statutes. Subtitle D contains provisions relating to the creation of a guardianship. Subtitle E relates to the administration of a guardianship, and Subtitle F relates to the evaluation, modification, or termination of a guardianship.

Subtitle G contains statutes relating to special types of guardianships, including temporary guardianships, guardianships for nonresident wards, and interstate guardianships. Subtitle H relates to management trusts (sadly, the new section designation is 1301, not 867) and pooled trust subaccounts.

Finally, Subtitle I relates to a potpourri of provisions, including special proceedings and alternatives to guardianship

4. T minus not enough days.

Our fair legislature knew just how hard it would be to pry our Probate Codes from us probate attorneys. In order to give practitioners (and the public) time to come to grips with the transition from the old law to the new law, the Legislature has delayed the effective date of the Estates Code until January 1, 2014. While January 1, 2014 seemed a world away when the Legislature first contemplated the Estates Code in June 2007, all of the planning, revisions,

comments, review, and legislative wrangling is now complete.

5. 50 Shades of Probate.

A little known (a somewhat dull) fact is that the original title proposed for the new Probate Code was “Estates and Guardianship Code” because the Probate Code was a collection of laws covering not only probate, but also guardianships, durable powers of attorney, and non-testamentary transfers. This is sound logic, but the Legislature decided to revert back to a less inclusive (though less cumbersome) title by changing the “Estates and Guardianship Code” to simply the “Estates Code.” In fact, the sole amendment to the bill adopting the first installment of the Estates Code was to strike “and Guardianships” from the title.

V. TIPS, TAKE-A-WAYS, AND SMART REMARKS

The following are a few suggestions to help your transition into the new Estates Code:

Tips:

1. The full text of the Estates Code is available at www.statutes.legis.state.tx.us/.
2. If you are having trouble locating provisions in the Estates Code, there are several sources of derivation tables (Estates Code » Probate Code) and disposition tables (Probate Code » Estates Code) at your disposal. Tables are found at the front of Johanson’s Texas Probate Code Annotated. Tables are found at the end of both Revisor’s Reports, which can be found at www.tlc.state.tx.us/code_current_estates.htm. Professor Gerry W. Beyer has also published his Conversion Table on his website at www.professorbeyer.Estates_Code.html.
3. After January 1, use the Revisor’s Report to argue legislative history. Before January 1, use the Estates Code to argue a more favorable interpretation of the Probate Code (after all, most of the Estates Code is nonsubstantive).

Take-A-Ways:

1. The Code Construction Act applies to the Estates Code (it did not apply to the Probate Code). The Code Construction Act is found in Chapter 311 of the Texas Government Code, and it contains general statutory construction rules (and aids) for each code enacted as a part of the statutory revision program. The current version of the Code Construction Act is attached as Appendix A.
2. The Probate Code is repealed as of January 1, 2014, but some of its provisions may still apply to some estates and guardianships pending on that date. Accordingly, during this time of transition, do not throw away your Probate Code just yet.

Smart Remarks:

1. So that you are not so overwhelmed on January 1, begin updating references in your pleadings and estate planning forms now.
2. To help you become fluent in the Estates Code by January 1, start citing to both the Probate Code and the Estates Code. Your advocacy skills may be more sharp if you are not fumbling around for the new code provision.

VI. CONCLUSION

Granted, the Estates Code is the biggest thing to happen to the Probate Section of the States Bar since 1956. But remember, although the Estates Code will look and feel different, it is not intended to be a change of the meaning, intent, or substance of the law. Accordingly, not much will change at 11:59 p.m., December 31, 2012. Use the next few months by getting familiar with the Estates Code, but keep your cool and don’t stress out!

APPENDIX A

GOVERNMENT CODE

TITLE 3. LEGISLATIVE BRANCH

SUBTITLE B. LEGISLATION

CHAPTER 311. CODE CONSTRUCTION ACT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 311.001. **SHORT TITLE.** This chapter may be cited as the Code Construction Act.

Sec. 311.002. **APPLICATION.** This chapter applies to:

- (1) each code enacted by the 60th or a subsequent legislature as part of the state's continuing statutory revision program;
- (2) each amendment, repeal, revision, and reenactment of a code or code provision by the 60th or a subsequent legislature;
- (3) each repeal of a statute by a code; and
- (4) each rule adopted under a code.

Sec. 311.003. **RULES NOT EXCLUSIVE.** The rules provided in this chapter are not exclusive but are meant to describe and clarify common situations in order to guide the preparation and construction of codes.

Sec. 311.004. **CITATION OF CODES.** A code may be cited by its name preceded by the specific part concerned. Examples of citations are:

- (1) Title 1, Business & Commerce Code;
- (2) Chapter 5, Business & Commerce Code;
- (3) Section 9.304, Business & Commerce Code;
- (4) Section 15.06(a), Business & Commerce Code; and
- (5) Section 17.18(b)(1)(B)(ii), Business & Commerce Code.

Sec. 311.005. **GENERAL DEFINITIONS.** The following definitions apply unless the statute or context in which the word or phrase is used requires a different definition:

- (1) "Oath" includes affirmation.
- (2) "Person" includes corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity.
- (3) "Population" means the population shown by the most recent federal decennial census.
- (4) "Property" means real and personal property.
- (5) "Rule" includes regulation.

- (6) "Signed" includes any symbol executed or adopted by a person with present intention to authenticate a writing.
- (7) "State," when referring to a part of the United States, includes any state, district, commonwealth, territory, and insular possession of the United States and any area subject to the legislative authority of the United States of America.
- (8) "Swear" includes affirm.
- (9) "United States" includes a department, bureau, or other agency of the United States of America.
- (10) "Week" means seven consecutive days.
- (11) "Written" includes any representation of words, letters, symbols, or figures.
- (12) "Year" means 12 consecutive months.
- (13) "Includes" and "including" are terms of enlargement and not of limitation or exclusive enumeration, and use of the terms does not create a presumption that components not expressed are excluded.

Sec. 311.006. INTERNAL REFERENCES. In a code:

- (1) a reference to a title, chapter, or section without further identification is a reference to a title, chapter, or section of the code; and
- (2) a reference to a subtitle, subchapter, subsection, subdivision, paragraph, or other numbered or lettered unit without further identification is a reference to a unit of the next larger unit of the code in which the reference appears.

SUBCHAPTER B. CONSTRUCTION OF WORDS AND PHRASES

Sec. 311.011. COMMON AND TECHNICAL USAGE OF WORDS. (a) Words and phrases shall be read in context and construed according to the rules of grammar and common usage.

(b) Words and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly.

Sec. 311.012. TENSE, NUMBER, AND GENDER. (a) Words in the present tense include the future tense.

(b) The singular includes the plural and the plural includes the singular.

(c) Words of one gender include the other genders.

Sec. 311.013. AUTHORITY AND QUORUM OF PUBLIC BODY. (a) A grant of authority to three or more persons as a public body confers the authority on a majority of the number of members fixed by statute.

(b) A quorum of a public body is a majority of the number of members fixed by statute.

Sec. 311.014. COMPUTATION OF TIME. (a) In computing a period of days, the first day is excluded and the last day is included.

(b) If the last day of any period is a Saturday, Sunday, or legal holiday, the period is extended to include the next day that is not a Saturday, Sunday, or legal holiday.

(c) If a number of months is to be computed by counting the months from a particular day, the period ends on the same numerical day in the concluding month as the day of the month from which the computation is begun, unless there are not that many days in the concluding month, in which case the period ends on the last day of that month.

Sec. 311.015. REFERENCE TO A SERIES. If a statute refers to a series of numbers or letters, the first and last numbers or letters are included.

Sec. 311.016. "MAY," "SHALL," "MUST," ETC. The following constructions apply unless the context in which the word or phrase appears necessarily requires a different construction or unless a different construction is expressly provided by statute:

- (1) "May" creates discretionary authority or grants permission or a power.
- (2) "Shall" imposes a duty.
- (3) "Must" creates or recognizes a condition precedent.
- (4) "Is entitled to" creates or recognizes a right.
- (5) "May not" imposes a prohibition and is synonymous with "shall not."
- (6) "Is not entitled to" negates a right.
- (7) "Is not required to" negates a duty or condition precedent.

SUBCHAPTER C. CONSTRUCTION OF STATUTES

Sec. 311.021. INTENTION IN ENACTMENT OF STATUTES. In enacting a statute, it is presumed that:

- (1) compliance with the constitutions of this state and the United States is intended;
- (2) the entire statute is intended to be effective;
- (3) a just and reasonable result is intended;
- (4) a result feasible of execution is intended; and
- (5) public interest is favored over any private interest.

Sec. 311.022. PROSPECTIVE OPERATION OF STATUTES. A statute is presumed to be prospective in its operation unless expressly made retrospective.

Sec. 311.023. STATUTE CONSTRUCTION AIDS. In construing a statute, whether or not the statute is considered ambiguous on its face, a court may consider among other matters the:

- (1) object sought to be attained;
- (2) circumstances under which the statute was enacted;
- (3) legislative history;

- (4) common law or former statutory provisions, including laws on the same or similar subjects;
- (5) consequences of a particular construction;
- (6) administrative construction of the statute; and
- (7) title (caption), preamble, and emergency provision.

Sec. 311.024. HEADINGS. The heading of a title, subtitle, chapter, subchapter, or section does not limit or expand the meaning of a statute.

Sec. 311.025. IRRECONCILABLE STATUTES AND AMENDMENTS. (a) Except as provided by Section 311.031(d), if statutes enacted at the same or different sessions of the legislature are irreconcilable, the statute latest in date of enactment prevails.

(b) Except as provided by Section 311.031(d), if amendments to the same statute are enacted at the same session of the legislature, one amendment without reference to another, the amendments shall be harmonized, if possible, so that effect may be given to each. If the amendments are irreconcilable, the latest in date of enactment prevails.

(c) In determining whether amendments are irreconcilable, text that is reenacted because of the requirement of Article III, Section 36, of the Texas Constitution is not considered to be irreconcilable with additions or omissions in the same text made by another amendment. Unless clearly indicated to the contrary, an amendment that reenacts text in compliance with that constitutional requirement does not indicate legislative intent that the reenacted text prevail over changes in the same text made by another amendment, regardless of the relative dates of enactment.

(d) In this section, the date of enactment is the date on which the last legislative vote is taken on the bill enacting the statute.

(e) If the journals or other legislative records fail to disclose which of two or more bills in conflict is latest in date of enactment, the date of enactment of the respective bills is considered to be, in order of priority:

- (1) the date on which the last presiding officer signed the bill;
- (2) the date on which the governor signed the bill; or
- (3) the date on which the bill became law by operation of law.

Sec. 311.026. SPECIAL OR LOCAL PROVISION PREVAILS OVER GENERAL. (a) If a general provision conflicts with a special or local provision, the provisions shall be construed, if possible, so that effect is given to both.

(b) If the conflict between the general provision and the special or local provision is irreconcilable, the special or local provision prevails as an exception to the general provision, unless the general provision is the later enactment and the manifest intent is that the general provision prevail.

Sec. 311.027. STATUTORY REFERENCES. Unless expressly provided otherwise, a reference to any portion of a statute or rule applies to all reenactments, revisions, or amendments of the statute or rule.

Sec. 311.028. UNIFORM CONSTRUCTION OF UNIFORM ACTS. A uniform act included in a code shall be construed to effect its general purpose to make uniform the law of those states that enact it.

Sec. 311.029. ENROLLED BILL CONTROLS. If the language of the enrolled bill version of a statute conflicts with the language of any subsequent printing or reprinting of the statute, the language of the enrolled bill version controls.

Sec. 311.030. REPEAL OF REPEALING STATUTE. The repeal of a repealing statute does not revive the statute originally repealed nor impair the effect of any saving provision in it.

Sec. 311.031. SAVING PROVISIONS. (a) Except as provided by Subsection (b), the reenactment, revision, amendment, or repeal of a statute does not affect:

- (1) the prior operation of the statute or any prior action taken under it;
 - (2) any validation, cure, right, privilege, obligation, or liability previously acquired, accrued, accorded, or incurred under it;
 - (3) any violation of the statute or any penalty, forfeiture, or punishment incurred under the statute before its amendment or repeal; or
 - (4) any investigation, proceeding, or remedy concerning any privilege, obligation, liability, penalty, forfeiture, or punishment; and the investigation, proceeding, or remedy may be instituted, continued, or enforced, and the penalty, forfeiture, or punishment imposed, as if the statute had not been repealed or amended.
- (b) If the penalty, forfeiture, or punishment for any offense is reduced by a reenactment, revision, or amendment of a statute, the penalty, forfeiture, or punishment, if not already imposed, shall be imposed according to the statute as amended.
- (c) The repeal of a statute by a code does not affect an amendment, revision, or reenactment of the statute by the same legislature that enacted the code. The amendment, revision, or reenactment is preserved and given effect as part of the code provision that revised the statute so amended, revised, or reenacted.
- (d) If any provision of a code conflicts with a statute enacted by the same legislature that enacted the code, the statute controls.

Sec. 311.032. SEVERABILITY OF STATUTES. (a) If any statute contains a provision for severability, that provision prevails in interpreting that statute.

(b) If any statute contains a provision for nonseverability, that provision prevails in interpreting that statute.

(c) In a statute that does not contain a provision for severability or nonseverability, if any provision of the statute or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the statute that can be given effect without the invalid provision or application, and to this end the provisions of the statute are severable.

Sec. 311.034. WAIVER OF SOVEREIGN IMMUNITY. In order to preserve the legislature's interest in managing state fiscal matters through the appropriations process, a statute shall not be construed as a waiver of sovereign immunity unless the waiver is effected by clear and unambiguous language. In a statute, the use of "person," as defined by Section 311.005 to include governmental entities, does not indicate legislative intent to waive sovereign immunity unless the context of the statute indicates no other reasonable construction. Statutory prerequisites to a suit, including the provision of notice, are jurisdictional requirements in all suits against a governmental entity.

APPENDIX B
Excerpt of House Bill 2912, 83rd Legislature

SECTION 62. (a) Section 21.005(b), Estates Code, as added by this Act, applies only to a will executed on or after the effective date of this Act. A will executed before the effective date of this Act is governed by the law in effect on the date the will was executed, and the former law is continued in effect for that purpose.

(b) The changes in law made by this Act to Sections 204.151 and 204.152, Estates Code, apply only to a proceeding to declare heirship commenced on or after January 1, 2014. A proceeding to declare heirship commenced before that date is governed by the law in effect on the date the proceeding was commenced, and the former law is continued in effect for that purpose.

(c) The changes in law made by this Act to Section 304.001(c), Estates Code, apply only to an application for the grant of letters testamentary or of administration of a decedent's estate filed on or after January 1, 2014. An application for the grant of letters testamentary or of 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.

(d) The changes in law made by Sections 32.006, 256.052, 256.053, 256.054, 256.152(c), 256.153, 256.154, 256.155(a), 256.156, 256.203, 257.052, 257.053, 401.001(a), 401.004(d), and 401.006, Estates Code, as amended by this Act, and Section 53.107, Estates Code, as added by this Act, apply only 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 the effective date of this Act 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.

(e) The changes in law made by Sections 51.203(c), 53.104, 305.002(a), 305.003, 308.054(b), 309.051(a), 309.056, 309.103(a) and (b), 355.060, 361.155(b), 362.005, 362.011, 362.013, 404.001(a), 404.003, 404.005(b) and (c), and 551.001(a), Estates Code, as amended by this Act, and Sections 253.001(c), 301.155, 305.004, 309.057, 361.155(c), 404.0035, 404.0036, and 404.0037, Estates Code, as added 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.

(f) The changes in law made by Sections 102.004, 201.051, 201.052(b), 202.004, 202.009, 202.056, 202.151, 353.101(d), 403.055, 403.056(a), and 405.001(b), Estates Code, as amended by this Act, and Sections 201.052(a-1), 202.0025, and 202.057, 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.

(g) Section 202.0025, Estates Code, as added by this Act, is intended to clarify current law in regard to the commencement of proceedings to declare heirship, and an inference may not be made regarding the statute of limitations for a proceeding to declare heirship filed before the effective date of this Act.

(h) An inference may not be made from the changes in law made by this Act to Section 401.006, Estates Code, as to whether an independent executor had the authority to sell personal property of the estate in a probate proceeding filed before the effective date of this Act.

ENDNOTES

1. Suggested Editing and Proofreading Marks:



2. Session laws can be searched at www.lrl.state.tx.us/legis/billsearch/lrlhome.cfm.