

# CONFERENCE COMMITTEE REPORT FORM

Austin, Texas

May 30, 2009

Date

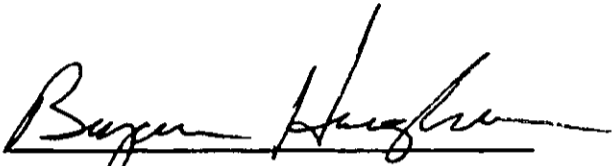
Honorable David Dewhurst  
President of the Senate

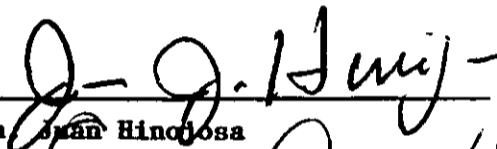
Honorable Joe Straus  
Speaker of the House of Representatives


Sirs:

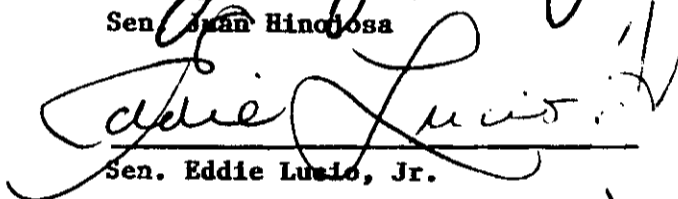
We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on SB 408 have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.


  
Sen. John Carona

  
Rep. Bryan Hughes

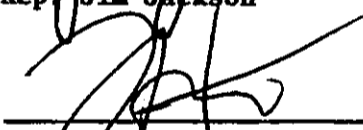
  
Sen. Juan Hinojosa

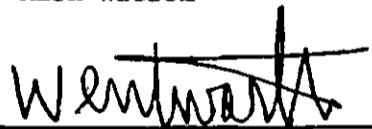
  
Rep. Charles "Doc" Anderson

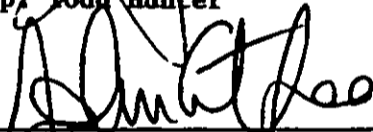
  
Sen. Eddie Lucio, Jr.

  
Rep. Jim Jackson

  
Sen. Kirk Watson

  
Rep. Todd Hunter

  
On the part of the Senate  
Sen. Jeff Wentworth

  
On the part of the House  
Rep. John Smithee

Note to Conference Committee Clerk:

Please type the names of the members of the Conference Committee under the lines provided for signature. Those members desiring to sign the report should sign each of the six copies. Attach a copy of the Conference Committee Report and a Section by Section side by side comparison to each of the six reporting forms. The original and two copies are filed in house of origin of the bill, and three copies in the other house.

# CONFERENCE COMMITTEE REPORT

3<sup>rd</sup> Printing

S.B. No. 408

A BILL TO BE ENTITLED

1

AN ACT

2 relating to jurisdiction, venue, and appeals in certain matters,  
3 including the jurisdiction of and appeals from certain courts and  
4 administrative decisions and the appointment of counsel in certain  
5 appeals.

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

7 SECTION 1. Section 51.012, Civil Practice and Remedies  
8 Code, is amended to read as follows:

9 Sec. 51.012. APPEAL OR WRIT OF ERROR TO COURT OF APPEALS.

10 In a civil case in which the judgment or amount in controversy  
11 exceeds \$250 [~~\$100~~], exclusive of interest and costs, a person may  
12 take an appeal or writ of error to the court of appeals from a final  
13 judgment of the district or county court.

14 SECTION 2. (a) Section 82.003, Civil Practice and Remedies  
15 Code, is amended by adding Subsection (c) to read as follows:

16 (c) If after service on a nonresident manufacturer through  
17 the secretary of state in the manner prescribed by Subchapter C,  
18 Chapter 17, the manufacturer fails to answer or otherwise make an  
19 appearance in the time required by law, it is conclusively presumed  
20 for the purposes of Subsection (a)(7)(B) that the manufacturer is  
21 not subject to the jurisdiction of the court unless the seller is  
22 able to secure personal jurisdiction over the manufacturer in the  
23 action.

24 (b) The change in law made by this section applies to an

1 action filed on or after the effective date of this Act or pending  
2 on the effective date of this Act.

3 SECTION 3. Subsection (a), Section 22.220, Government Code,  
4 is amended to read as follows:

5 (a) Each court of appeals has appellate jurisdiction of all  
6 civil cases within its district of which the district courts or  
7 county courts have jurisdiction when the amount in controversy or  
8 the judgment rendered exceeds \$250 [~~\$100~~], exclusive of interest  
9 and costs.

10 SECTION 4. Subchapter A, Chapter 25, Government Code, is  
11 amended by adding Section 25.0020 to read as follows:

12 Sec. 25.0020. APPOINTMENT OF COUNSEL IN CERTAIN APPEALS.

13 (a) On a written application of any party to an eviction suit, the  
14 county court or county court at law in which an appeal of the suit is  
15 filed may appoint any qualified attorney who is willing to provide  
16 pro bono services in the matter or counsel from a list provided by a  
17 pro bono legal services program of counsel willing to be appointed  
18 to handle appeals under this section to attend to the cause of a  
19 party who:

20 (1) was in possession of the residence at the time the  
21 eviction suit was filed in the justice court; and

22 (2) has perfected the appeal on a pauper's affidavit  
23 approved in accordance with Rule 749a, Texas Rules of Civil  
24 Procedure.

25 (b) The appointed counsel shall represent the individual in  
26 the proceedings of the suit in the county court or county court at  
27 law. At the conclusion of those proceedings, the appointment

1 terminates.

2 (c) The court may terminate representation appointed under  
3 this section for cause.

4 (d) Appointed counsel may not receive attorney's fees  
5 unless the recovery of attorney's fees is provided for by contract,  
6 statute, common law, court rules, or other regulations. The county  
7 is not responsible for payment of attorney's fees to appointed  
8 counsel.

9 (e) The court shall provide for a method of service of  
10 written notice on the parties to an eviction suit of the right to  
11 request an appointment of counsel on perfection of appeal on  
12 approval of a pauper's affidavit.

13 SECTION 5. Subchapter A, Chapter 26, Government Code, is  
14 amended by adding Section 26.010 to read as follows:

15 Sec. 26.010. APPOINTMENT OF COUNSEL IN CERTAIN APPEALS.

16 (a) On a written application of any party to an eviction suit, the  
17 county court or county court at law in which an appeal of the suit is  
18 filed may appoint any qualified attorney who is willing to provide  
19 pro bono services in the matter or counsel from a list provided by a  
20 pro bono legal services program of counsel willing to be appointed  
21 to handle appeals under this section to attend to the cause of a  
22 party who:

23 (1) was in possession of the residence at the time the  
24 eviction suit was filed in the justice court; and

25 (2) has perfected the appeal on a pauper's affidavit  
26 approved in accordance with Rule 749a, Texas Rules of Civil  
27 Procedure.

1        (b) The appointed counsel shall represent the individual in  
2 the proceedings of the suit in the county court or county court at  
3 law. At the conclusion of those proceedings, the appointment  
4 terminates.

5        (c) The court may terminate representation appointed under  
6 this section for cause.

7        (d) Appointed counsel may not receive attorney's fees  
8 unless the recovery of attorney's fees is provided for by contract,  
9 statute, common law, court rules, or other regulations. The county  
10 is not responsible for payment of attorney's fees to appointed  
11 counsel.

12        (e) The court shall provide for a method of service of  
13 written notice on the parties to an eviction suit of the right to  
14 request an appointment of counsel on perfection of appeal on  
15 approval of a pauper's affidavit.

16        SECTION 6. Subsection (c), Section 26.042, Government Code,  
17 is amended to read as follows:

18        (c) If under Subchapter E a county court has original  
19 concurrent jurisdiction with the justice courts in all civil  
20 matters in which the justice courts have jurisdiction, an appeal or  
21 writ of error may not be taken to the court of appeals from a final  
22 judgment of the county court in a civil case in which:

23                (1) the county court has appellate or original  
24 concurrent jurisdiction with the justice courts; and

25                (2) the judgment or amount in controversy does not  
26 exceed \$250 [~~\$100~~], exclusive of interest and costs.

27        SECTION 7. Subsection (b), Section 28.052, Government Code,

1 is amended to read as follows:

2 (b) Except to the extent of any conflict with this  
3 subchapter, appeal [~~Appeal~~] is in the manner provided by law for  
4 appeals [~~appeal~~] from justice courts [~~court to county court~~].

5 SECTION 8. The heading to Section 28.053, Government Code,  
6 is amended to read as follows:

7 Sec. 28.053. DE NOVO TRIAL [~~HEARING~~] ON APPEAL.

8 SECTION 9. Subsections (b) and (d), Section 28.053,  
9 Government Code, are amended to read as follows:

10 (b) Trial on appeal to the county court or county court at  
11 law is de novo. No further pleadings are required [~~and the~~  
12 ~~procedure is the same as in small claims court~~].

13 (d) A person may appeal the final judgment [~~Judgment~~] of the  
14 county court or county court at law on the appeal to the court of  
15 appeals [~~is final~~].

16 SECTION 10. (a) Subsections (a) and (e), Section 531.019,  
17 Government Code, as added by Chapter 1161 (H.B. 75), Acts of the  
18 80th Legislature, Regular Session, 2007, are amended to read as  
19 follows:

20 (a) In this section, "public assistance benefits" means  
21 benefits provided under a public assistance program under Chapter  
22 31, 32, or 33, Human Resources Code.

23 (e) For purposes of Section 2001.171, an applicant for or  
24 recipient of public assistance benefits has exhausted all available  
25 administrative remedies and a decision, including a decision under  
26 Section 31.034 or 32.035, Human Resources Code, is final and  
27 appealable on the date that, after a hearing:

1           (1) the hearing officer for the commission or a health  
2 and human services agency reaches a final decision related to the  
3 benefits; and

4           (2) the appropriate attorney completes an  
5 administrative review of the decision and notifies the applicant or  
6 recipient in writing of the results of that review.

7           (b) The changes in law made by this section apply only to an  
8 appeal of a final decision by the Health and Human Services  
9 Commission related to financial assistance benefits under Chapter  
10 31, Human Resources Code, that is rendered on or after the effective  
11 date of this Act. A final decision rendered by the commission  
12 before the effective date of this Act is governed by the law in  
13 effect on the date the decision was rendered, and the former law is  
14 continued in effect for that purpose.

15           SECTION 11. (a) Subsection (a), Section 821.025, Health and  
16 Safety Code, is amended to read as follows:

17           (a) An owner divested of ownership of an animal under  
18 Section 821.023 [~~ordered sold at public auction as provided in this~~  
19 ~~subchapter~~] may appeal the order to a county court or county court  
20 at law in the county in which the justice or municipal court is  
21 located. As a condition of perfecting an appeal, not later than the  
22 10th calendar day after the date the order is issued, the owner must  
23 file a notice of appeal and an appeal bond in an amount determined  
24 by the [~~justice or municipal~~] court from which the appeal is taken  
25 to be adequate to cover the estimated expenses incurred in housing  
26 and caring for the impounded animal during the appeal process. Not  
27 later than the fifth calendar day after the date the notice of

1 appeal and appeal bond is filed, the court from which the appeal is  
2 taken shall deliver a copy of the court's transcript to the county  
3 court or county court at law to which the appeal is made. Not later  
4 than the 10th calendar day after the date the county court or county  
5 court at law, as appropriate, receives the transcript, the court  
6 shall dispose of the appeal. The decision of the county court or  
7 county court at law under this section is final and may not be  
8 further appealed. [~~An owner may not appeal an order~~

9           ~~[(1) to give the animal to a nonprofit animal shelter,~~  
10 ~~pound, or society for the protection of animals, or~~

11           ~~[(2) to humanely destroy the animal.]~~

12           (b) Subsection (a), Section 821.025, Health and Safety  
13 Code, as amended by this section, applies only to an appeal of a  
14 court order issued on or after the effective date of this Act. An  
15 appeal of a court order issued before the effective date of this Act  
16 is covered by the law in effect when the appeal was issued, and the  
17 former law is continued in effect for that purpose.

18           SECTION 12. (a) Section 3(bb), Texas Probate Code, is  
19 amended to read as follows:

20           (bb) "Probate proceeding" is synonymous with the terms  
21 "Probate matter," [~~"Probate proceedings,"~~] "Proceeding in  
22 probate," and "Proceedings for probate." The term means a matter or  
23 proceeding related to the estate of a decedent [~~are synonymous~~] and  
24 includes:

25                   (1) the probate of a will, with or without  
26 administration of the estate;

27                   (2) the issuance of letters testamentary and of



1 administration;

2 (3) an heirship determination or small estate  
3 affidavit, community property administration, and homestead and  
4 family allowances;

5 (4) an application, petition, motion, or action  
6 regarding the probate of a will or an estate administration,  
7 including a claim for money owed by the decedent;

8 (5) a claim arising from an estate administration  
9 and any action brought on the claim;

10 (6) the settling of a personal representative's  
11 account of an estate and any other matter related to the settlement,  
12 partition, or distribution of an estate; and

13 (7) a will construction suit [~~include a matter or~~  
14 ~~proceeding relating to the estate of a decedent].~~

15 (b) Chapter I, Texas Probate Code, is amended by adding  
16 Sections 4A, 4B, 4C, 4D, 4E, 4F, 4G, and 4H to read as follows:

17 Sec. 4A. GENERAL PROBATE COURT JURISDICTION; APPEALS. (a)  
18 All probate proceedings must be filed and heard in a court  
19 exercising original probate jurisdiction. The court exercising  
20 original probate jurisdiction also has jurisdiction of all matters  
21 related to the probate proceeding as specified in Section 4B of this  
22 code for that type of court.

23 (b) A probate court may exercise pendent and ancillary  
24 jurisdiction as necessary to promote judicial efficiency and  
25 economy.

26 (c) A final order issued by a probate court is appealable to  
27 the court of appeals.

1       Sec. 4B. MATTERS RELATED TO PROBATE PROCEEDING. (a) For  
2 purposes of this code, in a county in which there is no statutory  
3 probate court or county court at law exercising original probate  
4 jurisdiction, a matter related to a probate proceeding includes:

5           (1) an action against a personal representative or  
6 former personal representative arising out of the representative's  
7 performance of the duties of a personal representative;

8           (2) an action against a surety of a personal  
9 representative or former personal representative;

10          (3) a claim brought by a personal representative on  
11 behalf of an estate;

12          (4) an action brought against a personal  
13 representative in the representative's capacity as personal  
14 representative;

15          (5) an action for trial of title to real property that  
16 is estate property, including the enforcement of a lien against the  
17 property; and

18          (6) an action for trial of the right of property that  
19 is estate property.

20       (b) For purposes of this code, in a county in which there is  
21 no statutory probate court, but in which there is a county court at  
22 law exercising original probate jurisdiction, a matter related to a  
23 probate proceeding includes:

24           (1) all matters and actions described in Subsection  
25 (a) of this section;

26           (2) the interpretation and administration of a  
27 testamentary trust if the will creating the trust has been admitted

1 to probate in the court; and

2 (3) the interpretation and administration of an inter  
3 vivos trust created by a decedent whose will has been admitted to  
4 probate in the court.

5 (c) For purposes of this code, in a county in which there is  
6 a statutory probate court, a matter related to a probate proceeding  
7 includes:

8 (1) all matters and actions described in Subsections  
9 (a) and (b) of this section; and

10 (2) any cause of action in which a personal  
11 representative of an estate pending in the statutory probate court  
12 is a party in the representative's capacity as personal  
13 representative.

14 Sec. 4C. ORIGINAL JURISDICTION FOR PROBATE PROCEEDINGS.

15 (a) In a county in which there is no statutory probate court or  
16 county court at law exercising original probate jurisdiction, the  
17 county court has original jurisdiction of probate proceedings.

18 (b) In a county in which there is no statutory probate  
19 court, but in which there is a county court at law exercising  
20 original probate jurisdiction, the county court at law exercising  
21 original probate jurisdiction and the county court have concurrent  
22 original jurisdiction of probate proceedings, unless otherwise  
23 provided by law. The judge of a county court may hear probate  
24 proceedings while sitting for the judge of any other county court.

25 (c) In a county in which there is a statutory probate court,  
26 the statutory probate court has original jurisdiction of probate  
27 proceedings.

1       Sec. 4D. JURISDICTION OF CONTESTED PROBATE PROCEEDING IN  
2 COUNTY WITH NO STATUTORY PROBATE COURT OR STATUTORY COUNTY COURT.

3       (a) In a county in which there is no statutory probate court or  
4 county court at law exercising original probate jurisdiction, when  
5 a matter in a probate proceeding is contested, the judge of the  
6 county court may, on the judge's own motion, or shall, on the motion  
7 of any party to the proceeding, according to the motion:

8               (1) request the assignment of a statutory probate  
9 court judge to hear the contested matter, as provided by Section  
10 25.0022, Government Code; or

11               (2) transfer the contested matter to the district  
12 court, which may then hear the contested matter as if originally  
13 filed in the district court.

14       (b) If a party to a probate proceeding files a motion for the  
15 assignment of a statutory probate court judge to hear a contested  
16 matter in the proceeding before the judge of the county court  
17 transfers the contested matter to a district court under this  
18 section, the county judge shall grant the motion for the assignment  
19 of a statutory probate court judge and may not transfer the matter  
20 to the district court unless the party withdraws the motion.

21       (c) A party to a probate proceeding may file a motion for the  
22 assignment of a statutory probate court judge under this section  
23 before a matter in the proceeding becomes contested, and the motion  
24 is given effect as a motion for assignment of a statutory probate  
25 court judge under Subsection (a) of this section if the matter later  
26 becomes contested.

27       (d) Notwithstanding any other law, a transfer of a contested

1 matter in a probate proceeding to a district court under any  
2 authority other than the authority provided by this section:

3 (1) is disregarded for purposes of this section; and

4 (2) does not defeat the right of a party to the  
5 proceeding to have the matter assigned to a statutory probate court  
6 judge in accordance with this section.

7 (e) A statutory probate court judge assigned to a contested  
8 matter under this section has the jurisdiction and authority  
9 granted to a statutory probate court by this code. On resolution of  
10 a contested matter for which a statutory probate court judge is  
11 assigned under this section, including any appeal of the matter,  
12 the statutory probate court judge shall return the matter to the  
13 county court for further proceedings not inconsistent with the  
14 orders of the statutory probate court or court of appeals, as  
15 applicable.

16 (f) A district court to which a contested matter is  
17 transferred under this section has the jurisdiction and authority  
18 granted to a statutory probate court by this code. On resolution of  
19 a contested matter transferred to the district court under this  
20 section, including any appeal of the matter, the district court  
21 shall return the matter to the county court for further proceedings  
22 not inconsistent with the orders of the district court or court of  
23 appeals, as applicable.

24 (g) The county court shall continue to exercise  
25 jurisdiction over the management of the estate, other than a  
26 contested matter, until final disposition of the contested matter  
27 is made in accordance with this section. After a contested matter

1 is transferred to a district court, any matter related to the  
2 probate proceeding may be brought in the district court. The  
3 district court in which a matter related to the probate proceeding  
4 is filed may, on its own motion or on the motion of any party, find  
5 that the matter is not a contested matter and transfer the matter to  
6 the county court with jurisdiction of the management of the estate.

7 (h) If a contested matter in a probate proceeding is  
8 transferred to a district court under this section, the district  
9 court has jurisdiction of any contested matter in the proceeding  
10 that is subsequently filed, and the county court shall transfer  
11 those contested matters to the district court. If a statutory  
12 probate court judge is assigned under this section to hear a  
13 contested matter in a probate proceeding, the statutory probate  
14 court judge shall be assigned to hear any contested matter in the  
15 proceeding that is subsequently filed.

16 (i) The clerk of a district court to which a contested  
17 matter in a probate proceeding is transferred under this section  
18 may perform in relation to the contested matter any function a  
19 county clerk may perform with respect to that type of matter.

20 Sec. 4E. JURISDICTION OF CONTESTED PROBATE PROCEEDING IN  
21 COUNTY WITH NO STATUTORY PROBATE COURT. (a) In a county in which  
22 there is no statutory probate court, but in which there is a county  
23 court at law exercising original probate jurisdiction, when a  
24 matter in a probate proceeding is contested, the judge of the county  
25 court may, on the judge's own motion, or shall, on the motion of any  
26 party to the proceeding, transfer the contested matter to the  
27 county court at law. In addition, the judge of the county court, on

1 the judge's own motion or on the motion of a party to the  
2 proceeding, may transfer the entire proceeding to the county court  
3 at law.

4 (b) A county court at law to which a proceeding is  
5 transferred under this section may hear the proceeding as if  
6 originally filed in that court. If only a contested matter in the  
7 proceeding is transferred, on the resolution of the matter, the  
8 matter shall be returned to the county court for further  
9 proceedings not inconsistent with the orders of the county court at  
10 law.

11 Sec. 4F. EXCLUSIVE JURISDICTION OF PROBATE PROCEEDING IN  
12 COUNTY WITH STATUTORY PROBATE COURT. (a) In a county in which  
13 there is a statutory probate court, the statutory probate court has  
14 exclusive jurisdiction of all probate proceedings, regardless of  
15 whether contested or uncontested. A cause of action related to the  
16 probate proceeding must be brought in a statutory probate court  
17 unless the jurisdiction of the statutory probate court is  
18 concurrent with the jurisdiction of a district court as provided by  
19 Section 4H of this code or with the jurisdiction of any other court.

20 (b) This section shall be construed in conjunction and in  
21 harmony with Section 145 of this code and all other sections of this  
22 code relating to independent executors, but may not be construed to  
23 expand the court's control over an independent executor.

24 Sec. 4G. JURISDICTION OF STATUTORY PROBATE COURT WITH  
25 RESPECT TO TRUSTS AND POWERS OF ATTORNEY. In a county in which  
26 there is a statutory probate court, the statutory probate court has  
27 jurisdiction of:

1           (1) an action by or against a trustee;

2           (2) an action involving an inter vivos trust,  
3 testamentary trust, or charitable trust;

4           (3) an action against an agent or former agent under a  
5 power of attorney arising out of the agent's performance of the  
6 duties of an agent; and

7           (4) an action to determine the validity of a power of  
8 attorney or to determine an agent's rights, powers, or duties under  
9 a power of attorney.

10           Sec. 4H. CONCURRENT JURISDICTION WITH DISTRICT COURT. A  
11 statutory probate court has concurrent jurisdiction with the  
12 district court in:

13           (1) a personal injury, survival, or wrongful death  
14 action by or against a person in the person's capacity as a personal  
15 representative;

16           (2) an action by or against a trustee;

17           (3) an action involving an inter vivos trust,  
18 testamentary trust, or charitable trust;

19           (4) an action involving a personal representative of  
20 an estate in which each other party aligned with the personal  
21 representative is not an interested person in that estate;

22           (5) an action against an agent or former agent under a  
23 power of attorney arising out of the agent's performance of the  
24 duties of an agent; and

25           (6) an action to determine the validity of a power of  
26 attorney or to determine an agent's rights, powers, or duties under  
27 a power of attorney.



1 (c) Section 5B(a), Texas Probate Code, is amended to read as  
2 follows:

3 (a) A judge of a statutory probate court, on the motion of a  
4 party to the action or on the motion of a person interested in an  
5 estate, may transfer to the judge's [his] court from a district,  
6 county, or statutory court a cause of action related to a probate  
7 proceeding [~~appertaining to or incident to an estate~~] pending in  
8 the statutory probate court or a cause of action in which a personal  
9 representative of an estate pending in the statutory probate court  
10 is a party and may consolidate the transferred cause of action with  
11 the other proceedings in the statutory probate court relating to  
12 that estate.

13 (d) Section 25.0022(i), Government Code, is amended to read  
14 as follows:

15 (i) A judge assigned under this section has the  
16 jurisdiction, powers, and duties given by Sections 4A, 4C, 4F, 4G,  
17 4H [~~5, 5A~~], 5B, 606, 607, and 608, Texas Probate Code, to statutory  
18 probate court judges by general law.

19 (e) Section 25.1132(c), Government Code, is amended to read  
20 as follows:

21 (c) A county court at law in Hood County has concurrent  
22 jurisdiction with the district court in:

23 (1) civil cases in which the matter in controversy  
24 exceeds \$500 but does not exceed \$250,000, excluding interest;

25 (2) family law cases and related proceedings;

26 (3) contested probate matters under Section 4D(a)  
27 [~~5(b)~~], Texas Probate Code; and

1           (4) contested guardianship matters under Section  
2 606(b), Texas Probate Code.

3           (f) Section 25.1863(b), Government Code, is amended to read  
4 as follows:

5           (b) A county court at law has concurrent jurisdiction with  
6 the district court over contested probate  
7 matters. Notwithstanding the requirement in [~~Subsection (b),~~]  
8 Section 4D(a) [5], Texas Probate Code, that the judge of the  
9 constitutional county court transfer a contested probate  
10 proceeding to the district court, the judge of the constitutional  
11 county court shall transfer the proceeding under that section to  
12 either a county court at law in Parker County or a district court in  
13 Parker County. A county court at law has the jurisdiction, powers,  
14 and duties that a district court has under [~~Subsection (b),~~]  
15 Section 4D(a) [5], Texas Probate Code, for the transferred  
16 proceeding, and the county clerk acts as clerk for the  
17 proceeding. The contested proceeding may be transferred between a  
18 county court at law in Parker County and a district court in Parker  
19 County as provided by local rules of administration.

20           (g) Section 123.005(a), Property Code, is amended to read as  
21 follows:

22           (a) Venue in a proceeding brought by the attorney general  
23 alleging breach of a fiduciary duty by a fiduciary or managerial  
24 agent of a charitable trust shall be a court of competent  
25 jurisdiction in Travis County or in the county where the defendant  
26 resides or has its principal office. To the extent of a conflict  
27 between this subsection and any provision of the Texas Probate Code

1 providing for venue of a proceeding brought with respect to a  
2 charitable trust created by a will that has been admitted to  
3 probate, this subsection controls.

4 (h) Sections 4, 5, and 5A, Texas Probate Code, are repealed.

5 (i) The changes in law made by this section apply only to an  
6 action filed or a proceeding commenced on or after the effective  
7 date of this Act. An action filed or proceeding commenced before  
8 the effective date of this Act is governed by the law in effect on  
9 the date the action was filed or the proceeding was commenced, and  
10 the former law is continued in effect for that purpose.

11 SECTION 13. (a) Effective January 1, 2014, Subtitle A,  
12 Title 2, Estates Code, as adopted by H.B. No. 2502, Acts of the 81st  
13 Legislature, Regular Session, 2009, if that Act is enacted and  
14 becomes law, is amended by adding Chapters 31 and 32 to read as  
15 follows:

16 CHAPTER 31. GENERAL PROVISIONS

17 Sec. 31.001. SCOPE OF "PROBATE PROCEEDING" FOR PURPOSES OF  
18 CODE. The term "probate proceeding," as used in this code,  
19 includes:

20 (1) the probate of a will, with or without  
21 administration of the estate;

22 (2) the issuance of letters testamentary and of  
23 administration;

24 (3) an heirship determination or small estate  
25 affidavit, community property administration, and homestead and  
26 family allowances;

27 (4) an application, petition, motion, or action

1 regarding the probate of a will or an estate administration,  
2 including a claim for money owed by the decedent;

3 (5) a claim arising from an estate administration and  
4 any action brought on the claim;

5 (6) the settling of a personal representative's  
6 account of an estate and any other matter related to the settlement,  
7 partition, or distribution of an estate; and

8 (7) a will construction suit.

9 Sec. 31.002. MATTERS RELATED TO PROBATE PROCEEDING. (a)

10 For purposes of this code, in a county in which there is no  
11 statutory probate court or county court at law exercising original  
12 probate jurisdiction, a matter related to a probate proceeding  
13 includes:

14 (1) an action against a personal representative or  
15 former personal representative arising out of the representative's  
16 performance of the duties of a personal representative;

17 (2) an action against a surety of a personal  
18 representative or former personal representative;

19 (3) a claim brought by a personal representative on  
20 behalf of an estate;

21 (4) an action brought against a personal  
22 representative in the representative's capacity as personal  
23 representative;

24 (5) an action for trial of title to real property that  
25 is estate property, including the enforcement of a lien against the  
26 property; and

27 (6) an action for trial of the right of property that

1 is estate property.

2 (b) For purposes of this code, in a county in which there is  
3 no statutory probate court, but in which there is a county court at  
4 law exercising original probate jurisdiction, a matter related to a  
5 probate proceeding includes:

6 (1) all matters and actions described in Subsection  
7 (a);

8 (2) the interpretation and administration of a  
9 testamentary trust if the will creating the trust has been admitted  
10 to probate in the court; and

11 (3) the interpretation and administration of an inter  
12 vivos trust created by a decedent whose will has been admitted to  
13 probate in the court.

14 (c) For purposes of this code, in a county in which there is  
15 a statutory probate court, a matter related to a probate proceeding  
16 includes:

17 (1) all matters and actions described in Subsections  
18 (a) and (b); and

19 (2) any cause of action in which a personal  
20 representative of an estate pending in the statutory probate court  
21 is a party in the representative's capacity as personal  
22 representative.

23 CHAPTER 32. JURISDICTION

24 Sec. 32.001. GENERAL PROBATE COURT JURISDICTION; APPEALS.

25 (a) All probate proceedings must be filed and heard in a court  
26 exercising original probate jurisdiction. The court exercising  
27 original probate jurisdiction also has jurisdiction of all matters

1 related to the probate proceeding as specified in Section 31.002  
2 for that type of court.

3 (b) A probate court may exercise pendent and ancillary  
4 jurisdiction as necessary to promote judicial efficiency and  
5 economy.

6 (c) A final order issued by a probate court is appealable to  
7 the court of appeals.

8 Sec. 32.002. ORIGINAL JURISDICTION FOR PROBATE

9 PROCEEDINGS. (a) In a county in which there is no statutory  
10 probate court or county court at law exercising original probate  
11 jurisdiction, the county court has original jurisdiction of probate  
12 proceedings.

13 (b) In a county in which there is no statutory probate  
14 court, but in which there is a county court at law exercising  
15 original probate jurisdiction, the county court at law exercising  
16 original probate jurisdiction and the county court have concurrent  
17 original jurisdiction of probate proceedings, unless otherwise  
18 provided by law. The judge of a county court may hear probate  
19 proceedings while sitting for the judge of any other county court.

20 (c) In a county in which there is a statutory probate court,  
21 the statutory probate court has original jurisdiction of probate  
22 proceedings.

23 Sec. 32.003. JURISDICTION OF CONTESTED PROBATE PROCEEDING

24 IN COUNTY WITH NO STATUTORY PROBATE COURT OR STATUTORY COUNTY

25 COURT. (a) In a county in which there is no statutory probate court  
26 or county court at law exercising original probate jurisdiction,  
27 when a matter in a probate proceeding is contested, the judge of the

1 county court may, on the judge's own motion, or shall, on the motion  
2 of any party to the proceeding, according to the motion:

3 (1) request the assignment of a statutory probate  
4 court judge to hear the contested matter, as provided by Section  
5 25.0022, Government Code; or

6 (2) transfer the contested matter to the district  
7 court, which may then hear the contested matter as if originally  
8 filed in the district court.

9 (b) If a party to a probate proceeding files a motion for the  
10 assignment of a statutory probate court judge to hear a contested  
11 matter in the proceeding before the judge of the county court  
12 transfers the contested matter to a district court under this  
13 section, the county judge shall grant the motion for the assignment  
14 of a statutory probate court judge and may not transfer the matter  
15 to the district court unless the party withdraws the motion.

16 (c) A party to a probate proceeding may file a motion for the  
17 assignment of a statutory probate court judge under this section  
18 before a matter in the proceeding becomes contested, and the motion  
19 is given effect as a motion for assignment of a statutory probate  
20 court judge under Subsection (a) if the matter later becomes  
21 contested.

22 (d) Notwithstanding any other law, a transfer of a contested  
23 matter in a probate proceeding to a district court under any  
24 authority other than the authority provided by this section:

25 (1) is disregarded for purposes of this section; and

26 (2) does not defeat the right of a party to the  
27 proceeding to have the matter assigned to a statutory probate court

1 judge in accordance with this section.

2 (e) A statutory probate court judge assigned to a contested  
3 matter under this section has the jurisdiction and authority  
4 granted to a statutory probate court by this subtitle. On  
5 resolution of a contested matter for which a statutory probate  
6 court judge is assigned under this section, including any appeal of  
7 the matter, the statutory probate court judge shall return the  
8 matter to the county court for further proceedings not inconsistent  
9 with the orders of the statutory probate court or court of appeals,  
10 as applicable.

11 (f) A district court to which a contested matter is  
12 transferred under this section has the jurisdiction and authority  
13 granted to a statutory probate court by this subtitle. On  
14 resolution of a contested matter transferred to the district court  
15 under this section, including any appeal of the matter, the  
16 district court shall return the matter to the county court for  
17 further proceedings not inconsistent with the orders of the  
18 district court or court of appeals, as applicable.

19 (g) The county court shall continue to exercise  
20 jurisdiction over the management of the estate, other than a  
21 contested matter, until final disposition of the contested matter  
22 is made in accordance with this section. After a contested matter  
23 is transferred to a district court, any matter related to the  
24 probate proceeding may be brought in the district court. The  
25 district court in which a matter related to the probate proceeding  
26 is filed may, on its own motion or on the motion of any party, find  
27 that the matter is not a contested matter and transfer the matter to



1 the county court with jurisdiction of the management of the estate.

2 (h) If a contested matter in a probate proceeding is  
3 transferred to a district court under this section, the district  
4 court has jurisdiction of any contested matter in the proceeding  
5 that is subsequently filed, and the county court shall transfer  
6 those contested matters to the district court. If a statutory  
7 probate court judge is assigned under this section to hear a  
8 contested matter in a probate proceeding, the statutory probate  
9 court judge shall be assigned to hear any contested matter in the  
10 proceeding that is subsequently filed.

11 (i) The clerk of a district court to which a contested  
12 matter in a probate proceeding is transferred under this section  
13 may perform in relation to the contested matter any function a  
14 county clerk may perform with respect to that type of matter.

15 Sec. 32.004. JURISDICTION OF CONTESTED PROBATE PROCEEDING  
16 IN COUNTY WITH NO STATUTORY PROBATE COURT. (a) In a county in which  
17 there is no statutory probate court, but in which there is a county  
18 court at law exercising original probate jurisdiction, when a  
19 matter in a probate proceeding is contested, the judge of the county  
20 court may, on the judge's own motion, or shall, on the motion of any  
21 party to the proceeding, transfer the contested matter to the  
22 county court at law. In addition, the judge of the county court, on  
23 the judge's own motion or on the motion of a party to the  
24 proceeding, may transfer the entire proceeding to the county court  
25 at law.

26 (b) A county court at law to which a proceeding is  
27 transferred under this section may hear the proceeding as if

1 originally filed in that court. If only a contested matter in the  
2 proceeding is transferred, on the resolution of the matter, the  
3 matter shall be returned to the county court for further  
4 proceedings not inconsistent with the orders of the county court at  
5 law.

6 Sec. 32.005. EXCLUSIVE JURISDICTION OF PROBATE PROCEEDING  
7 IN COUNTY WITH STATUTORY PROBATE COURT. (a) In a county in which  
8 there is a statutory probate court, the statutory probate court has  
9 exclusive jurisdiction of all probate proceedings, regardless of  
10 whether contested or uncontested. A cause of action related to the  
11 probate proceeding must be brought in a statutory probate court  
12 unless the jurisdiction of the statutory probate court is  
13 concurrent with the jurisdiction of a district court as provided by  
14 Section 32.007 or with the jurisdiction of any other court.

15 (b) This section shall be construed in conjunction and in  
16 harmony with Section 145 and all other sections of this title  
17 relating to independent executors, but may not be construed to  
18 expand the court's control over an independent executor.

19 Sec. 32.006. JURISDICTION OF STATUTORY PROBATE COURT WITH  
20 RESPECT TO TRUSTS AND POWERS OF ATTORNEY. In a county in which  
21 there is a statutory probate court, the statutory probate court has  
22 jurisdiction of:

- 23 (1) an action by or against a trustee;  
24 (2) an action involving an inter vivos trust,  
25 testamentary trust, or charitable trust;  
26 (3) an action against an agent or former agent under a  
27 power of attorney arising out of the agent's performance of the

1 duties of an agent; and

2 (4) an action to determine the validity of a power of  
3 attorney or to determine an agent's rights, powers, or duties under  
4 a power of attorney.

5 Sec. 32.007. CONCURRENT JURISDICTION WITH DISTRICT COURT.

6 A statutory probate court has concurrent jurisdiction with the  
7 district court in:

8 (1) a personal injury, survival, or wrongful death  
9 action by or against a person in the person's capacity as a personal  
10 representative;

11 (2) an action by or against a trustee;

12 (3) an action involving an inter vivos trust,  
13 testamentary trust, or charitable trust;

14 (4) an action involving a personal representative of  
15 an estate in which each other party aligned with the personal  
16 representative is not an interested person in that estate;

17 (5) an action against an agent or former agent under a  
18 power of attorney arising out of the agent's performance of the  
19 duties of an agent; and

20 (6) an action to determine the validity of a power of  
21 attorney or to determine an agent's rights, powers, or duties under  
22 a power of attorney.

23 (b) Sections 4A, 4B, 4C, 4D, 4E, 4F, 4G, and 4H, Texas  
24 Probate Code, as added by Section 12 of this Act, are repealed.

25 (c) Except as otherwise provided by this subsection, this  
26 section takes effect January 1, 2014. The changes in law made by  
27 this section take effect only if H.B. No. 2502, Acts of the 81st

1 Legislature, Regular Session, 2009, is enacted and becomes law. If  
2 that bill does not become law, this section has no effect.

3       SECTION 14. Except as otherwise provided by this Act, the  
4 changes in law made by this Act apply only to an action filed on or  
5 after the effective date of this Act. An action filed before the  
6 effective date of this Act is governed by the law applicable to the  
7 action immediately before the effective date of this Act, and the  
8 former law is continued in effect for that purpose.

9       SECTION 15. Except as otherwise provided by this Act, this  
10 Act takes effect September 1, 2009.

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SECTION 1. Section 51.012, Civil Practice and Remedies Code, is amended.

No equivalent provision.

SECTION 2. Section 22.220(a), Government Code, is amended.

No equivalent provision.

No equivalent provision.

HOUSE VERSION

SECTION 1. Same as Senate version.

SECTION \_\_. (a) Adds Section 82.003(c), Civil Practice and Remedies Code, relating to the liability of a nonmanufacturing seller in a products liability suit, to provide that if after service of process or complaint through the secretary of state on a nonresident manufacturer, the manufacturer fails to answer or otherwise make an appearance in the time required by law, it is conclusively presumed that a manufacturer is not subject to the jurisdiction of the court unless the seller is able to secure personal jurisdiction over the manufacturer in the action.

(b) *Notwithstanding any other provision of this Act*, the change in law made by this section applies to an action filed on or after the effective date of this Act or pending on the effective date of this Act.

SECTION 2. Same as Senate version.

SECTION \_\_. Adds Section 25.0020, Government Code Appointment of Counsel in Certain Appeals, as follows:

(a) Authorizes the county court or county court at law in which an appeal of an eviction suit is filed to appoint, on a written application of any party to the suit, any

CONFERENCE

SECTION 1. Same as Senate version.

SECTION 2. Same as House version except removes the *Notwithstanding any other provision of this Act* in Subsection (b)

SECTION 3. Same as Senate version.

SECTION 4. Same as House version.

(a) Same as House version.

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qualified attorney who is willing to provide pro bono services in the matter or counsel from a list provided by a pro bono legal services program to be appointed to handle appeals under this section to attend to the cause of a party who was in possession of the residence at the time the eviction suit was filed in the justice court and who has perfected the appeal on a pauper's affidavit.

No equivalent provision.

(b) Requires the appointed counsel to represent the individual in the proceedings and provides that the appointment terminates at the conclusion of those proceedings.

(b) Same as House version.

No equivalent provision.

(c) Authorizes the court to terminate representation for cause.

(c) Same as House version.

No equivalent provision.

(d) Prohibits appointed counsel from receiving attorney's fees, with certain exceptions.

(d) Same as House version.

No equivalent provision.

(e) Requires the court to provide for a method of service of written notice on the parties of the right to request an appointment of counsel on perfection of appeal on approval of a pauper's affidavit.

(e) Same as House version.

SECTION \_\_\_. Adds Section 26.010, Government Code Appointment of Counsel in Certain Appeals. [Provisions in this added statute are identical to the provisions of Section 25.0020 described above.]

SECTION 5. Same as House version.

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SECTIONS 3 - 6. Sections 26.042(c) and 28.052(b), the heading to 28.053, and Sections 28.053(b) and (d), Government Code, are amended.

SECTION 7. Saving provision.

No equivalent provision.

No equivalent provision.

HOUSE VERSION

SECTIONS 3 - 6. Same as Senate version.

SECTION 7. Same as Senate version except adds *except as otherwise provided by this Act* at the beginning of the saving provision.

SECTION \_\_. (a) Amends Sections 531.019(a) and (e), Government Code, as added by Chapter 1161 (H.B. 75), Acts of the 80th Legislature, Regular Session, 2007, to add statutory citations to certain provisions in the Human Resources Code with respect to public assistance benefits and adds a saving provision.

SECTION \_\_. (a) Amends Section 821.025(a), Health and Safety Code, as follows:

(a) *[part]* Authorizes an owner divested of ownership of an animal under 821.023 to appeal the order to certain courts. Requires the owner, as a condition of perfecting an appeal, to file an appeal bond in an amount determined by the court from which the appeal is taken to be to be adequate to cover the estimated expenses incurred in housing and caring for the impounded animal during the appeal process.

(a) *[part]* ~~No equivalent provision.~~

CONFERENCE

SECTIONS 6 - 9. Same as Senate version.

SECTION 14. Same as House version.

SECTION 10. Same as House version.

SECTION 11. (a) Same as House version except as follows:

(a) *[part]* Same as House version except requires the owner, as a condition of perfecting an appeal, to file *a notice of appeal* and bond *not later than the 10th calendar day after the date the order is issued*

(a) *[part]* Requires the court from which the appeal is taken, not later than the fifth calendar day after the date

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the notice of appeal and appeal bond is filed, to deliver a copy of the court's transcript to the county court or county court at law to which the appeal is made. Requires the appropriate court, not later than the 10th calendar day after the date the court receives the transcript, to dispose of the appeal. Provides that the decision of the county court or county court at law under this section is final and may not be further appealed.

(b) Saving provision relating to an appeal of a court order.

(b) Same as House version except refers to an appeal of a court order issued, rather than made.

SECTION 8. This Act takes effect September 1, 2009.

SECTION 8. Same as Senate version.

SECTION 15. Same as Senate version except adds *except as otherwise provided by this Act.*

*(The conference committee may have exceeded the limitations imposed on its jurisdiction, but only the presiding officer can make the final determination on this issue.)*

*(For SECTIONS 12-13, the conference committee may have exceeded the limitations imposed on its jurisdiction, but only the presiding officer can make the final determination on this issue.)*



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No equivalent provision.

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No equivalent provision.

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SECTION 12. (a) Section 3(bb), Texas Probate Code, is amended to read as follows:

(bb) "Probate proceeding" is synonymous with the terms "Probate matter," ["Probate proceedings,"] "Proceeding in probate," and "Proceedings for probate." The term means a matter or proceeding related to the estate of a decedent [are synonymous] and includes:

(1) the probate of a will, with or without administration of the estate;

(2) the issuance of letters testamentary and of administration;

(3) an heirship determination or small estate affidavit, community property administration, and homestead and family allowances;

(4) an application, petition, motion, or action regarding the probate of a will or an estate administration, including a claim for money owed by the decedent;

(5) a claim arising from an estate administration and any action brought on the claim;

(6) the settling of a personal representative's account of an estate and any other matter related to the settlement, partition, or distribution of an estate; and

(7) a will construction suit [include a matter or proceeding relating to the estate of a decedent].

(b) Chapter I, Texas Probate Code, is amended by adding Sections 4A, 4B, 4C, 4D, 4E, 4F, 4G, and 4H to read as follows:

Sec. 4A. GENERAL PROBATE COURT JURISDICTION; APPEALS. (a) All probate

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proceedings must be filed and heard in a court exercising original probate jurisdiction. The court exercising original probate jurisdiction also has jurisdiction of all matters related to the probate proceeding as specified in Section 4B of this code for that type of court.

(b) A probate court may exercise pendent and ancillary jurisdiction as necessary to promote judicial efficiency and economy.

(c) A final order issued by a probate court is appealable to the court of appeals.

Sec. 4B. MATTERS RELATED TO PROBATE PROCEEDING. (a) For purposes of this code, in a county in which there is no statutory probate court or county court at law exercising original probate jurisdiction, a matter related to a probate proceeding includes:

(1) an action against a personal representative or former personal representative arising out of the representative's performance of the duties of a personal representative;

(2) an action against a surety of a personal representative or former personal representative;

(3) a claim brought by a personal representative on behalf of an estate;

(4) an action brought against a personal representative in the representative's capacity as personal representative;

(5) an action for trial of title to real property that is estate property, including the enforcement of a lien against the property; and

(6) an action for trial of the right of property that is

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estate property.

(b) For purposes of this code, in a county in which there is no statutory probate court, but in which there is a county court at law exercising original probate jurisdiction, a matter related to a probate proceeding includes:

(1) all matters and actions described in Subsection (a) of this section;

(2) the interpretation and administration of a testamentary trust if the will creating the trust has been admitted to probate in the court; and

(3) the interpretation and administration of an inter vivos trust created by a decedent whose will has been admitted to probate in the court.

(c) For purposes of this code, in a county in which there is a statutory probate court, a matter related to a probate proceeding includes:

(1) all matters and actions described in Subsections (a) and (b) of this section; and

(2) any cause of action in which a personal representative of an estate pending in the statutory probate court is a party in the representative's capacity as personal representative.

Sec. 4C. ORIGINAL JURISDICTION FOR PROBATE PROCEEDINGS. (a) In a county in which there is no statutory probate court or county court at law exercising original probate jurisdiction, the county court has original jurisdiction of probate proceedings.

(b) In a county in which there is no statutory probate

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court, but in which there is a county court at law exercising original probate jurisdiction, the county court at law exercising original probate jurisdiction and the county court have concurrent original jurisdiction of probate proceedings, unless otherwise provided by law. The judge of a county court may hear probate proceedings while sitting for the judge of any other county court.

(c) In a county in which there is a statutory probate court, the statutory probate court has original jurisdiction of probate proceedings.

Sec. 4D. JURISDICTION OF CONTESTED PROBATE PROCEEDING IN COUNTY WITH NO STATUTORY PROBATE COURT OR STATUTORY COUNTY COURT. (a) In a county in which there is no

statutory probate court or county court at law exercising original probate jurisdiction, when a matter in a probate proceeding is contested, the judge of the county court may, on the judge's own motion, or shall, on the motion of any party to the proceeding, according to the motion:

(1) request the assignment of a statutory probate court judge to hear the contested matter, as provided by Section 25.0022, Government Code; or

(2) transfer the contested matter to the district court, which may then hear the contested matter as if originally filed in the district court.

(b) If a party to a probate proceeding files a motion for the assignment of a statutory probate court judge to hear a contested matter in the proceeding before the judge of

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the county court transfers the contested matter to a district court under this section, the county judge shall grant the motion for the assignment of a statutory probate court judge and may not transfer the matter to the district court unless the party withdraws the motion.

(c) A party to a probate proceeding may file a motion for the assignment of a statutory probate court judge under this section before a matter in the proceeding becomes contested, and the motion is given effect as a motion for assignment of a statutory probate court judge under Subsection (a) of this section if the matter later becomes contested.

(d) Notwithstanding any other law, a transfer of a contested matter in a probate proceeding to a district court under any authority other than the authority provided by this section:

(1) is disregarded for purposes of this section; and

(2) does not defeat the right of a party to the proceeding to have the matter assigned to a statutory probate court judge in accordance with this section.

(e) A statutory probate court judge assigned to a contested matter under this section has the jurisdiction and authority granted to a statutory probate court by this code. On resolution of a contested matter for which a statutory probate court judge is assigned under this section, including any appeal of the matter, the statutory probate court judge shall return the matter to the county court for further proceedings not inconsistent with the orders of the statutory probate court or court of appeals.

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as applicable.

(f) A district court to which a contested matter is transferred under this section has the jurisdiction and authority granted to a statutory probate court by this code. On resolution of a contested matter transferred to the district court under this section, including any appeal of the matter, the district court shall return the matter to the county court for further proceedings not inconsistent with the orders of the district court or court of appeals, as applicable.

(g) The county court shall continue to exercise jurisdiction over the management of the estate, other than a contested matter, until final disposition of the contested matter is made in accordance with this section. After a contested matter is transferred to a district court, any matter related to the probate proceeding may be brought in the district court. The district court in which a matter related to the probate proceeding is filed may, on its own motion or on the motion of any party, find that the matter is not a contested matter and transfer the matter to the county court with jurisdiction of the management of the estate.

(h) If a contested matter in a probate proceeding is transferred to a district court under this section, the district court has jurisdiction of any contested matter in the proceeding that is subsequently filed, and the county court shall transfer those contested matters to the district court. If a statutory probate court judge is assigned under this section to hear a contested matter in a probate

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proceeding, the statutory probate court judge shall be assigned to hear any contested matter in the proceeding that is subsequently filed.

(i) The clerk of a district court to which a contested matter in a probate proceeding is transferred under this section may perform in relation to the contested matter any function a county clerk may perform with respect to that type of matter.

Sec. 4E. JURISDICTION OF CONTESTED PROBATE PROCEEDING IN COUNTY WITH NO STATUTORY PROBATE COURT. (a) In a county in which there is no statutory probate court, but in which there is a county court at law exercising original probate jurisdiction, when a matter in a probate proceeding is contested, the judge of the county court may, on the judge's own motion, or shall, on the motion of any party to the proceeding, transfer the contested matter to the county court at law. In addition, the judge of the county court, on the judge's own motion or on the motion of a party to the proceeding, may transfer the entire proceeding to the county court at law.

(b) A county court at law to which a proceeding is transferred under this section may hear the proceeding as if originally filed in that court. If only a contested matter in the proceeding is transferred, on the resolution of the matter, the matter shall be returned to the county court for further proceedings not inconsistent with the orders of the county court at law.

Sec. 4F. EXCLUSIVE JURISDICTION OF PROBATE

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PROCEEDING IN COUNTY WITH STATUTORY PROBATE COURT. (a) In a county in which there is a statutory probate court, the statutory probate court has exclusive jurisdiction of all probate proceedings, regardless of whether contested or uncontested. A cause of action related to the probate proceeding must be brought in a statutory probate court unless the jurisdiction of the statutory probate court is concurrent with the jurisdiction of a district court as provided by Section 4H of this code or with the jurisdiction of any other court.

(b) This section shall be construed in conjunction and in harmony with Section 145 of this code and all other sections of this code relating to independent executors, but may not be construed to expand the court's control over an independent executor.

Sec. 4G. JURISDICTION OF STATUTORY PROBATE COURT WITH RESPECT TO TRUSTS AND POWERS OF ATTORNEY. In a county in which there is a statutory probate court, the statutory probate court has jurisdiction of:

- (1) an action by or against a trustee;
- (2) an action involving an inter vivos trust, testamentary trust, or charitable trust;
- (3) an action against an agent or former agent under a power of attorney arising out of the agent's performance of the duties of an agent; and
- (4) an action to determine the validity of a power of attorney or to determine an agent's rights, powers, or



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duties under a power of attorney.

Sec. 4H. CONCURRENT JURISDICTION WITH DISTRICT COURT. A statutory probate court has concurrent jurisdiction with the district court in:

(1) a personal injury, survival, or wrongful death action by or against a person in the person's capacity as a personal representative;

(2) an action by or against a trustee;

(3) an action involving an inter vivos trust, testamentary trust, or charitable trust;

(4) an action involving a personal representative of an estate in which each other party aligned with the personal representative is not an interested person in that estate;

(5) an action against an agent or former agent under a power of attorney arising out of the agent's performance of the duties of an agent; and

(6) an action to determine the validity of a power of attorney or to determine an agent's rights, powers, or duties under a power of attorney.

(c) Section 5B(a), Texas Probate Code, is amended to read as follows:

(a) A judge of a statutory probate court, on the motion of a party to the action or on the motion of a person interested in an estate, may transfer to the judge's [his] court from a district, county, or statutory court a cause of action related to a probate proceeding [appertaining to or incident to an estate] pending in the statutory probate court or a cause of action in which a personal

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representative of an estate pending in the statutory probate court is a party and may consolidate the transferred cause of action with the other proceedings in the statutory probate court relating to that estate.

(d) Section 25.0022(i), Government Code, is amended to read as follows:

(i) A judge assigned under this section has the jurisdiction, powers, and duties given by Sections 4A, 4C, 4F, 4G, 4H [~~5~~, ~~5A~~], 5B, 606, 607, and 608, Texas Probate Code, to statutory probate court judges by general law.

(e) Section 25.1132(c), Government Code, is amended to read as follows:

(c) A county court at law in Hood County has concurrent jurisdiction with the district court in:

(1) civil cases in which the matter in controversy exceeds \$500 but does not exceed \$250,000, excluding interest;

(2) family law cases and related proceedings;

(3) contested probate matters under Section 4D(a) [~~5(b)~~], Texas Probate Code; and

(4) contested guardianship matters under Section 606(b), Texas Probate Code.

(f) Section 25.1863(b), Government Code, is amended to read as follows:

(b) A county court at law has concurrent jurisdiction with the district court over contested probate matters. Notwithstanding the requirement in [~~Subsection (b)~~], Section 4D(a) [~~5~~], Texas Probate Code, that the

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judge of the constitutional county court transfer a contested probate proceeding to the district court, the judge of the constitutional county court shall transfer the proceeding under that section to either a county court at law in Parker County or a district court in Parker County. A county court at law has the jurisdiction, powers, and duties that a district court has under ~~[Subsection (b),]~~ Section 4D(a) [5], Texas Probate Code, for the transferred proceeding, and the county clerk acts as clerk for the proceeding. The contested proceeding may be transferred between a county court at law in Parker County and a district court in Parker County as provided by local rules of administration.

(g) Section 123.005(a), Property Code, is amended to read as follows:

(a) Venue in a proceeding brought by the attorney general alleging breach of a fiduciary duty by a fiduciary or managerial agent of a charitable trust shall be a court of competent jurisdiction in Travis County or in the county where the defendant resides or has its principal office. To the extent of a conflict between this subsection and any provision of the Texas Probate Code providing for venue of a proceeding brought with respect to a charitable trust created by a will that has been admitted to probate, this subsection controls.

(h) Sections 4, 5, and 5A, Texas Probate Code, are repealed.

(i) The changes in law made by this section apply only to an action filed or a proceeding commenced on or after

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No equivalent provision.

No equivalent provision.

the effective date of this Act. An action filed or 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.

SECTION 13. (a) Effective January 1, 2014, Subtitle A, Title 2, Estates Code, as adopted by H.B. No. 2502, Acts of the 81st Legislature, Regular Session, 2009, if that Act is enacted and becomes law, is amended by adding Chapters 31 and 32 to read as follows:

CHAPTER 31. GENERAL PROVISIONS

Sec. 31.001. SCOPE OF "PROBATE PROCEEDING" FOR PURPOSES OF CODE. The term "probate proceeding," as used in this code, includes:

- (1) the probate of a will, with or without administration of the estate;
- (2) the issuance of letters testamentary and of administration;
- (3) an heirship determination or small estate affidavit, community property administration, and homestead and family allowances;
- (4) an application, petition, motion, or action regarding the probate of a will or an estate administration, including a claim for money owed by the decedent;
- (5) a claim arising from an estate administration and any action brought on the claim;
- (6) the settling of a personal representative's account of an estate and any other matter related to the settlement.

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partition, or distribution of an estate; and  
(7) a will construction suit.

Sec. 31.002. MATTERS RELATED TO PROBATE PROCEEDING. (a) For purposes of this code, in a county in which there is no statutory probate court or county court at law exercising original probate jurisdiction, a matter related to a probate proceeding includes:

(1) an action against a personal representative or former personal representative arising out of the representative's performance of the duties of a personal representative;

(2) an action against a surety of a personal representative or former personal representative;

(3) a claim brought by a personal representative on behalf of an estate;

(4) an action brought against a personal representative in the representative's capacity as personal representative;

(5) an action for trial of title to real property that is estate property, including the enforcement of a lien against the property; and

(6) an action for trial of the right of property that is estate property.

(b) For purposes of this code, in a county in which there is no statutory probate court, but in which there is a county court at law exercising original probate jurisdiction, a matter related to a probate proceeding includes:

(1) all matters and actions described in Subsection (a);

(2) the interpretation and administration of a

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testamentary trust if the will creating the trust has been admitted to probate in the court; and

(3) the interpretation and administration of an inter vivos trust created by a decedent whose will has been admitted to probate in the court.

(c) For purposes of this code, in a county in which there is a statutory probate court, a matter related to a probate proceeding includes:

(1) all matters and actions described in Subsections (a) and (b); and

(2) any cause of action in which a personal representative of an estate pending in the statutory probate court is a party in the representative's capacity as personal representative.

CHAPTER 32. JURISDICTION

Sec. 32.001. GENERAL PROBATE COURT JURISDICTION; APPEALS. (a) All probate proceedings must be filed and heard in a court exercising original probate jurisdiction. The court exercising original probate jurisdiction also has jurisdiction of all matters related to the probate proceeding as specified in Section 31.002 for that type of court.

(b) A probate court may exercise pendent and ancillary jurisdiction as necessary to promote judicial efficiency and economy.

(c) A final order issued by a probate court is appealable to the court of appeals.

Sec. 32.002. ORIGINAL JURISDICTION FOR PROBATE PROCEEDINGS. (a) In a county in which

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there is no statutory probate court or county court at law exercising original probate jurisdiction, the county court has original jurisdiction of probate proceedings.

(b) In a county in which there is no statutory probate court, but in which there is a county court at law exercising original probate jurisdiction, the county court at law exercising original probate jurisdiction and the county court have concurrent original jurisdiction of probate proceedings, unless otherwise provided by law. The judge of a county court may hear probate proceedings while sitting for the judge of any other county court.

(c) In a county in which there is a statutory probate court, the statutory probate court has original jurisdiction of probate proceedings.

Sec. 32.003. JURISDICTION OF CONTESTED PROBATE PROCEEDING IN COUNTY WITH NO STATUTORY PROBATE COURT OR STATUTORY COUNTY COURT. (a) In a county in which there is no

statutory probate court or county court at law exercising original probate jurisdiction, when a matter in a probate proceeding is contested, the judge of the county court may, on the judge's own motion, or shall, on the motion of any party to the proceeding, according to the motion:

(1) request the assignment of a statutory probate court judge to hear the contested matter, as provided by Section 25.0022, Government Code; or

(2) transfer the contested matter to the district court, which may then hear the contested matter as if originally

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filed in the district court.

(b) If a party to a probate proceeding files a motion for the assignment of a statutory probate court judge to hear a contested matter in the proceeding before the judge of the county court transfers the contested matter to a district court under this section, the county judge shall grant the motion for the assignment of a statutory probate court judge and may not transfer the matter to the district court unless the party withdraws the motion.

(c) A party to a probate proceeding may file a motion for the assignment of a statutory probate court judge under this section before a matter in the proceeding becomes contested, and the motion is given effect as a motion for assignment of a statutory probate court judge under Subsection (a) if the matter later becomes contested.

(d) Notwithstanding any other law, a transfer of a contested matter in a probate proceeding to a district court under any authority other than the authority provided by this section:

(1) is disregarded for purposes of this section; and  
(2) does not defeat the right of a party to the proceeding to have the matter assigned to a statutory probate court judge in accordance with this section.

(e) A statutory probate court judge assigned to a contested matter under this section has the jurisdiction and authority granted to a statutory probate court by this subtitle. On resolution of a contested matter for which a statutory probate court judge is assigned under this



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section, including any appeal of the matter, the statutory probate court judge shall return the matter to the county court for further proceedings not inconsistent with the orders of the statutory probate court or court of appeals, as applicable.

(f) A district court to which a contested matter is transferred under this section has the jurisdiction and authority granted to a statutory probate court by this subtitle. On resolution of a contested matter transferred to the district court under this section, including any appeal of the matter, the district court shall return the matter to the county court for further proceedings not inconsistent with the orders of the district court or court of appeals, as applicable.

(g) The county court shall continue to exercise jurisdiction over the management of the estate, other than a contested matter, until final disposition of the contested matter is made in accordance with this section. After a contested matter is transferred to a district court, any matter related to the probate proceeding may be brought in the district court. The district court in which a matter related to the probate proceeding is filed may, on its own motion or on the motion of any party, find that the matter is not a contested matter and transfer the matter to the county court with jurisdiction of the management of the estate.

(h) If a contested matter in a probate proceeding is transferred to a district court under this section, the district court has jurisdiction of any contested matter in

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the proceeding that is subsequently filed, and the county court shall transfer those contested matters to the district court. If a statutory probate court judge is assigned under this section to hear a contested matter in a probate proceeding, the statutory probate court judge shall be assigned to hear any contested matter in the proceeding that is subsequently filed.

(i) The clerk of a district court to which a contested matter in a probate proceeding is transferred under this section may perform in relation to the contested matter any function a county clerk may perform with respect to that type of matter.

Sec. 32.004. JURISDICTION OF CONTESTED PROBATE PROCEEDING IN COUNTY WITH NO STATUTORY PROBATE COURT. (a) In a county in which there is no statutory probate court, but in which there is a county court at law exercising original probate jurisdiction, when a matter in a probate proceeding is contested, the judge of the county court may, on the judge's own motion, or shall, on the motion of any party to the proceeding, transfer the contested matter to the county court at law. In addition, the judge of the county court, on the judge's own motion or on the motion of a party to the proceeding, may transfer the entire proceeding to the county court at law.

(b) A county court at law to which a proceeding is transferred under this section may hear the proceeding as if originally filed in that court. If only a contested matter in the proceeding is transferred, on the resolution of the

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matter, the matter shall be returned to the county court for further proceedings not inconsistent with the orders of the county court at law.

Sec. 32.005. EXCLUSIVE JURISDICTION OF PROBATE PROCEEDING IN COUNTY WITH STATUTORY PROBATE COURT. (a) In a county in which there is a statutory probate court, the statutory probate court has exclusive jurisdiction of all probate proceedings, regardless of whether contested or uncontested. A cause of action related to the probate proceeding must be brought in a statutory probate court unless the jurisdiction of the statutory probate court is concurrent with the jurisdiction of a district court as provided by Section 32.007 or with the jurisdiction of any other court.

(b) This section shall be construed in conjunction and in harmony with Section 145 and all other sections of this title relating to independent executors, but may not be construed to expand the court's control over an independent executor.

Sec. 32.006. JURISDICTION OF STATUTORY PROBATE COURT WITH RESPECT TO TRUSTS AND POWERS OF ATTORNEY. In a county in which there is a statutory probate court, the statutory probate court has jurisdiction of:

- (1) an action by or against a trustee;
- (2) an action involving an inter vivos trust, testamentary trust, or charitable trust;
- (3) an action against an agent or former agent under a

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power of attorney arising out of the agent's performance of the duties of an agent; and

(4) an action to determine the validity of a power of attorney or to determine an agent's rights, powers, or duties under a power of attorney.

Sec. 32.007. CONCURRENT JURISDICTION WITH DISTRICT COURT. A statutory probate court has concurrent jurisdiction with the district court in:

(1) a personal injury, survival, or wrongful death action by or against a person in the person's capacity as a personal representative;

(2) an action by or against a trustee;

(3) an action involving an inter vivos trust, testamentary trust, or charitable trust;

(4) an action involving a personal representative of an estate in which each other party aligned with the personal representative is not an interested person in that estate;

(5) an action against an agent or former agent under a power of attorney arising out of the agent's performance of the duties of an agent; and

(6) an action to determine the validity of a power of attorney or to determine an agent's rights, powers, or duties under a power of attorney.

(b) Sections 4A, 4B, 4C, 4D, 4E, 4F, 4G, and 4H, Texas Probate Code, as added by Section 12 of this Act, are repealed.

(c) Except as otherwise provided by this subsection, this section takes effect January 1, 2014. The changes in law

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made by this section take effect only if H.B. No. 2502, Acts of the 81st Legislature, Regular Session, 2009, is enacted and becomes law. If that bill does not become law, this section has no effect.

**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION**

**May 30, 2009**

**TO: Honorable David Dewhurst , Lieutenant Governor, Senate  
Honorable Joe Straus, Speaker of the House, House of Representatives**

**FROM: John S. O'Brien, Director, Legislative Budget Board**

**IN RE: SB408 by Carona (Relating to jurisdiction, venue, and appeals in certain matters, including the jurisdiction of and appeals from certain courts and administrative decisions and the appointment of counsel in certain appeals.), Conference Committee Report**

**No significant fiscal implication to the State is anticipated.**

The bill would amend the Civil Practice and Remedies Code relating to the jurisdiction of and appeals from certain courts. The bill would allow a person to appeal the final judgment of a county or statutory county court to a court of appeals. The bill also would amend the Government Code to clarify the definition of decision in the context of public assistance benefits. The bill would amend the Health and Safety Code concerning appeals of court decisions that work to divest ownership of animals. The bill would also amend the Government Code to authorize a court to appoint a pro bono attorney to represent certain parties in appeals of eviction suits. The bill would amend the Probate Code relating to jurisdiction of probate proceedings and proceedings regarding powers of attorney and certain trusts.

To the extent the bill would add new case filings to the dockets of the courts of appeals, or amend probate proceedings, no significant change to the workload of the court system is anticipated. Except as otherwise provided by bill provisions, the bill would take effect September 1, 2009.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

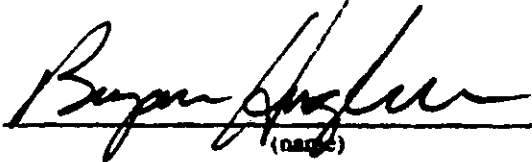
**Source Agencies:** 529 Health and Human Services Commission, 212 Office of Court Administration, Texas Judicial Council

**LBB Staff:** JOB, TP, JP, TB, MN

## Certification of Compliance with Rule 13, Section 6(b), House Rules of Procedure

Rule 13, Section 6(b), House Rules of Procedure, requires that a copy of a conference committee report signed by a majority of each committee of the conference must be furnished to each member of the committee in person or if unable to deliver in person by placing a copy in the member's newspaper mailbox at least one hour before the report is furnished to each member of the house under Section 10(a) of this rule. The paper copies of the report submitted to the chief clerk under Section 10(b) of this rule must contain a certificate that the requirement of this subsection has been satisfied, and that certificate must be attached to the printed copy of the report furnished to each member under Section 10(d) of this rule. Failure to comply with this subsection is not a sustainable point of order under this rule.

I certify that a copy of the conference committee report on S B. 408 was furnished to each member of the conference committee in compliance with Rule 13, Section 6(b), House Rules of Procedure, before submission of the paper copies of the report to the chief clerk under Section 10(b), Rule 13, House Rules of Procedure.

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

MAY 30, 2009  
(date)