

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 615
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Jurisprudence
4/7/2021
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

C.S.S.B. 615 includes recommendations from statutory probate judges to clean up the Estates Code in light of guardianship legislation passed during previous sessions.

C.S.S.B. 615 would require a guardianship applicant to include the last digits of his or her driver's license and social security numbers in the initial pleadings, as required in other civil cases. It also would allow a clerk to transfer an original file electronically in a probate or guardianship proceeding to increase efficiency. What's more, C.S.S.B. 615 would require all attorneys representing a party in a guardianship case to be certified by the Texas Bar to ensure all parties are represented by competent attorneys and no time is wasted in unnecessary motions.

C.S.S.B. 615 also would require a court to confirm that a proposed guardian has completed the guardianship training before waiving that training requirement. What's more, current law requires guardians of estates with less than \$50,000 in assets to undergo a DPS name-based background check. Guardians of estates of more than \$50,000 in assets must undergo a more comprehensive FBI fingerprint background check. To facilitate this process, C.S.S.B. 615 would require all guardianship applications to include the proposed guardian's former names, if any, as well as the value of the ward's liquid assets. It also would require FBI background checks for out-of-state guardians.

What's more, this bill would clarify that a bond covering judges with probate and guardianship jurisdiction also covers visiting and associate judges in that court. It would require the Office of the Attorney General to also represent visiting probate judges who get sued due to their role presiding over a guardianship case. C.S.S.B. 615 would allow parties in probate cases to request trials with less than 12 jurors, as is permitted in other civil cases.

C.S.S.B. 615 amends current law relating to probate and guardianship matters and proceedings and other matters involving probate courts.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 30.014(a), Civil Practice and Remedies Code, to require each party or the party's attorney to include certain information in its initial pleading in a civil action, including a probate or guardianship proceeding, filed in a district court, county court, statutory county court, or statutory probate court. Makes a nonsubstantive change.

SECTION 2. Amends Section 33.101, Estates Code, to require the court clerk to make and retain a copy of the entire file in the case and transmit the original file in electronic or paper form to the court in the county in which venue is proper if probate proceedings involving the same estate are commenced in more than one county and the court making a determination of venue as provided by Section 33.053 (Probate Proceedings in More Than One County) determines that venue is proper in another county.

SECTION 3. Amends Section 33.102(a), Estates Code, to make a conforming change.

SECTION 4. Amends Section 33.103, Estates Code, by adding Subsection (c), to provide that the transmittal under Subsection (b) (relating to the transmission of certain information regarding the probate proceeding) of the original file and the certified copy of the index is authorized to be in electronic or paper form, except that an original will filed in the probate proceeding, if any, is required to be delivered to the court to which the proceeding is transferred.

SECTION 5. Amends Section 51.003(b), Estates Code, to require that a citation or notice issued by the county clerk be styled "The State of Texas" and be signed by the clerk under the court's, rather than the clerk's, seal.

SECTION 6. Amends Section 202.054, Estates Code, as follows:

Sec. 202.054. **PERSONAL SERVICE OF CITATION MAY BE REQUIRED.** (a) Creates this subsection from existing text. Makes no further changes to this subsection.

(b) Authorizes any disinterested person competent to make an oath that the citation was served to serve the citation if a distributee to be cited under Subsection (a) is absent from or is not a resident of Texas.

SECTION 7. Amends Section 351.351, Estates Code, to provide that Subchapter H (Certain Administered Estates) does not apply to, among other things, the appointment of a successor independent administrator, rather than executor, under Section 404.005.

SECTION 8. Amends Section 404.0036(b), Estates Code, to make a conforming change.

SECTION 9. Amends the heading to Section 404.005, Estates Code, to read as follows:

Sec. 404.005. **COURT-APPOINTED SUCCESSOR INDEPENDENT ADMINISTRATOR.**

SECTION 10. Amends Sections 404.005(a), (b), (c), (h), and (i), Estates Code, to make conforming changes.

SECTION 11. Amends Section 452.006, Estates Code, by adding Subsection (c), to require the appointee to file with the court proof of service of the notice required under Subsection (a) (relating to requirements for the notice of appointment of temporary administration) in the manner provided by Section 51.103(b)(3) (relating to certain information required for proof of service made by mail in each case requiring citation or notice).

SECTION 12. Amends Section 503.002, Estates Code, as follows:

Sec. 503.002. New heading: **RECORDING OF CERTAIN FOREIGN TESTAMENTARY INSTRUMENTS IN LANGUAGE OTHER THAN ENGLISH.** (a) Authorizes an authenticated copy of a will or other testamentary instrument described by Section 503.001(a) (relating to the authority of a county to record certain wills or other testamentary instruments in its deed records), along with a copy of the judgment, order, or decree by which the instrument was admitted to probate that has the attestation and certificate required by Section 501.002(c) (relating to certain information required for filing an application for ancillary probate of foreign will), that is written in whole or in part in a language other than English, to be filed for recording in the deed records in any county in Texas in which the land conveyed or disposed of in the instrument is located if:

(1) a correct English translation is recorded with the authenticated copies of the will or other testamentary instrument and judgment, order, or decree by which the instrument was admitted to probate; and

(2) the accuracy of the translation is sworn to before an officer authorized to administer oaths.

Deletes existing text prohibiting the original signatures required by Section 501.002(c), notwithstanding that section, from being required for a recordation in the deed records in accordance with Section 503.001 (Authorization to Record Certain Foreign Testamentary Instruments in Deed Records) or for a purpose described by Section 503.051 (Recorded Foreign Testamentary Instrument as Conveyance) or 503.052 (Recorded Foreign Testamentary Instrument as Notice of Title).

(b) Provides that the recording of an authenticated copy of a will or other testamentary instrument and a copy of the judgment, order, or decree in the manner provided by Subsection (a) operates as constructive notice from the date of filing to all persons of the existence of the instrument, and title or titles conferred by the instrument.

SECTION 13. Amends Section 1023.006, Estates Code, to make a conforming change.

SECTION 14. Amends Section 1023.007, Estates Code, to make conforming changes.

SECTION 15. Amends Section 1051.003(b), Estates Code, to make a conforming change.

SECTION 16. Amends the heading to Chapter 1054, Estates Code, to read as follows:

CHAPTER 1054. COURT OFFICERS, COURT-APPOINTED PERSONS, AND ATTORNEYS

SECTION 17. Amends the heading to Subchapter E, Chapter 1054, Estates Code, to read as follows:

SUBCHAPTER E. QUALIFICATIONS TO SERVE AS ATTORNEY

SECTION 18. Amends Section 1054.201, Estates Code, by amending Subsection (a) and adding Subsection (c), as follows:

(a) Requires an attorney representing any person's interests, rather than an attorney for an applicant for guardianship and a court-appointed attorney, in a guardianship proceeding, including an attorney ad litem, except as provided by Subsection (c), to be certified by the State Bar of Texas (state bar), or a person or other entity designated by the state bar, as having successfully completed a course of study in guardianship law and procedure sponsored by the state bar or the state bar's designee.

(c) Provides that an attorney is authorized to commence representation of a person's interests and file an appearance in a guardianship proceeding before completing the course required for certification under Subsection (a), but is required to complete the course not later than the 14th day after the date of filing the appearance and before filing any substantive motion in the guardianship proceeding.

SECTION 19. Amends Section 1101.001(b), Estates Code, to require that the application be sworn to by the applicant and state certain information, including the former name, if any, of the person the applicant seeks to have appointed as guardian, and the approximate value and a detailed description of the proposed ward's property, including certain liquid and non-liquid assets.

SECTION 20. Amends Section 1101.153(a), Estates Code, as follows:

(a) Requires that a court order appointing a guardian:

(1) creates this subdivision from existing text and makes nonsubstantive changes; and

(2) if the court waives the guardian's training requirement, contain a finding that the waiver is in accordance with rules adopted by the Supreme Court of Texas under Section 155.203 (Duty to Provide Assistance in Qualifying Guardians; Supreme Court Rulemaking), Government Code.

SECTION 21. Amends Subchapter A, Chapter 1151, Estates Code, by adding Section 1151.005, as follows:

Sec. 1151.005. **LEGAL PROCEEDINGS IN WHICH WARD IS PARTY OR WITNESS.** Prohibits the guardian of the person or of the estate of a ward from being excluded from attending a legal proceeding in which the ward is a party or is participating as a witness.

SECTION 22. Amends Section 1251.005, Estates Code, as follows:

Sec. 1251.005. New heading: **CITATION AND NOTICE OF APPLICATION.** (a) Requires the court clerk, on the filing of an application for temporary guardianship, to issue:

(1) citation, rather than notice, to be served on the proposed ward, and the proposed temporary guardian named in the application, if that person is not the applicant. Makes nonsubstantive changes; and

(2) notice to be served on the proposed ward's appointed attorney.

(b) Requires that the citation or notice issued as provided by Subsection (a) describe certain information. Makes a conforming change.

(b-1) Requires that the citation issued as provided by Subsection (a) contain a statement regarding the authority of a person under Section 1051.252 (Request for Notice of Filing of Pleading) who is interested in the estate or welfare of a proposed ward or, if a guardianship is created, the ward to file with the county clerk a written request to be notified of all, or any specified, motions, applications, or pleadings filed with respect to the temporary guardianship proceeding by any person or by a person specifically designated in the request.

(c) Creates this subsection from existing text. Requires that a copy of the application be attached to the citation or notice, rather than the notice.

SECTION 23. Amends the heading to Section 1251.153, Estates Code, to read as follows:

Sec. 1251.153. **DELIVERY OF ESTATE, FILING OF FINAL REPORT, AND DISCHARGE OF TEMPORARY GUARDIAN.**

SECTION 24. Amends Section 1251.153, Estates Code, by adding Subsection (a-1) and amending Subsection (b), as follows:

(a-1) Requires the temporary guardian, at the expiration of a temporary guardianship of the person, to file with the court clerk a final report that:

(1) if the ward is living, describes each reason the temporary guardianship of the person expired, including a statement of facts regarding whether the temporary guardianship expired because:

(A) the ward was found by the court to have full capacity, or sufficient capacity with supports and services, to care for himself or herself;

(B) alternatives to guardianship have been established to meet the needs of the ward; or

(C) a permanent guardian appointed by the court has qualified to serve as the ward's guardian; or

(2) if the ward is deceased, includes the date and place of death, if known, in the form and manner of the report required to be filed by a guardian of the person under Section 1163.103 (Report in Case of Deceased Ward).

(b) Requires that, on proof of delivery under Subsection (a) (relating to requiring a court, when temporary letters expire or cease to be effective for any reason, to immediately enter an order requiring the temporary guardian to deliver the estate remaining in the temporary guardian's possession to the person legally entitled to possession of the estate) and approval by the court of a final report filed with the court clerk under Subsection (a-1), as applicable, the temporary guardian be discharged and the sureties on the temporary guardian's bond be released as to future liability.

SECTION 25. Amends Section 1253.001, Estates Code, to authorize a court that has jurisdiction over the guardianship, on application of the guardian or on the court's own motion, to transfer the guardianship to a court in a foreign jurisdiction to which the ward has permanently moved. Deletes existing text authorizing a guardian of the person or estate to apply to the court that has jurisdiction over the guardianship to transfer the guardianship to a court in a foreign jurisdiction to which the ward has permanently moved.

SECTION 26. Amends Section 25.0006, Government Code, by amending Subsection (a) and adding Subsection (a-5), as follows:

(a) Provides that certain subsections, including (a-5), notwithstanding any other law except Subsection (a-4) (relating to exceptions for certain county court judges), control over a specific provision for a particular court or county that attempts to create a requirement for a bond or insurance that conflicts with those subsections. Makes a nonsubstantive change.

(a-5) Requires that a bond executed under Subsection (a-1) (relating to the requirement that a statutory county court judge execute a bond that meets certain criteria) by the judge elected or appointed to a statutory county court or an insurance policy obtained under Subsection (a-3) (relating to a county's insurance against potential negligence of a statutory county court judge) provide the same coverage to a visiting judge assigned to the court or associate judge appointed to serve the court as the bond or insurance policy provides to the judge elected or appointed to the court.

SECTION 27. Amends Section 25.00231, Government Code, by adding Subsection (f), as follows:

(f) Requires that a bond executed under Subsection (b) (relating to the requirement that a statutory probate court judge execute a bond that meets certain criteria) by the judge elected or appointed to a statutory probate court or an insurance policy obtained under Subsection (c) (relating to a county's insurance against potential negligence of a statutory probate court judge), notwithstanding Subsection (e) (relating to the exception of an assigned or visiting judge sitting by assignment in a statutory probate court for this section), provide the same coverage to a visiting judge assigned to the court or to an associate judge appointed by the court as the bond or insurance policy provides to the judge elected or appointed to the court.

SECTION 28. Amends Section 25.0027, Government Code, as follows:

Sec. 25.0027. JURIES; PRACTICE AND PROCEDURE. Provides that certain matters pertaining to the conduct of trials and hearings in the statutory probate courts involving matters of concurrent jurisdiction with district courts, including the number of jurors provided the parties to a proceeding may agree to try a particular case with fewer than 12 jurors, are governed by the laws and rules pertaining to district courts.

SECTION 29. Amends Section 74.141, Government Code, as follows:

Sec. 74.141. DEFENSE OF JUDGES. Requires the attorney general to defend certain judges, including a visiting judge assigned to hear a guardianship or probate matter by the presiding judge of the statutory probate courts, in any action or suit in any court in which the judge is a defendant because of his office or capacity as judge, rather than because of his office as judge, if the judge requests the attorney general's assistance in the defense of the suit.

SECTION 30. Amends Section 81.114, Government Code, by amending Subsection (a) and adding Subsection (e), as follows:

(a) Requires the state bar to provide a course of instruction for attorneys who represent any person's interests, rather than who represent parties, in guardianship cases or who serve as court-appointed guardians.

(e) Requires that the course of instruction described by Section 81.114 (Attorney Instruction Related to Guardianship Issues) be low-cost and available to persons throughout Texas, including on the Internet provided through the state bar.

SECTION 31. Amends Section 155.205(b), Government Code, as follows:

(b) Requires the Judicial Branch Certification Commission to obtain:

(1) fingerprint-based criminal history record information of a proposed guardian, rather than an applicant, if certain criteria are met, including if the proposed guardian is not a resident of this state; or

(2) name-based criminal history record information of a proposed guardian, including any criminal history record information under the current name and all former names of the proposed guardian, if certain criteria are met. Makes conforming changes.

SECTION 32. (a) Makes application of Section 202.054, Estates Code, as amended by this Act, prospective.

(b) Makes application of Section 452.006(c), Estates Code, as added by this Act, prospective.

(c) Makes application of Section 503.002, Estates Code, as amended by this Act, prospective.

(d) Makes application of Sections 1101.001 (Application for Appointment of Guardian; Contents) and 1251.005, Estates Code, as amended by this Act, prospective.

(e) Makes application of Sections 1054.201 (Certification Required) and 1101.153 (General Contents of Order Appointing Guardian), Estates Code, as amended by this Act, and Section 155.205 (Duty to Obtain Criminal History Record Information), Government Code, as amended by this Act, prospective.

(f) Provides that Sections 1251.153 and 1253.001 (Application to Transfer Guardianship to Foreign Jurisdiction), Estates Code, as amended by this Act, apply to a guardianship created before, on, or after the effective date of this Act.

(g) Makes application of Sections 25.0006 (Bond; Removal) and 25.00231 (Bond; Insurance), Government Code, as amended by this Act, prospective to January 1, 2022.

(h) Makes application of Section 74.141, Government Code, as amended by this Act, prospective.

SECTION 33. Effective date: September 1, 2021.