

## **BILL ANALYSIS**

C.S.H.B. 1826  
By: Lucio III  
Juvenile Justice & Family Issues  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Currently, a party to a divorce suit who voluntarily acknowledges being named a party to a suit may file a waiver of service in accordance with state law. Interested parties contend that provisions of law governing a suit to remove the disabilities of minority, a suit to change the name of an adult or a child, or a suit relating to the parent-child relationship lack the specificity to adequately provide for such a waiver. C.S.H.B. 1826 seeks to address issues relating to waivers of citation and service in certain suits.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 1826 amends the Family Code to specify that the requirement that a waiver of service in a suit for dissolution of a marriage be sworn before a notary public who is not an attorney in the suit does not apply if the party executing the waiver is incarcerated and to prohibit a party from executing a waiver of service using a digitized signature. The bill authorizes a party to a suit to remove the disabilities of minority, a suit to change the name of an adult or a child, or a suit relating to the parent-child relationship to waive the issuance or service of citation after the suit is filed by filing with the clerk of the court in which the suit is filed the waiver of the party acknowledging receipt of a copy of the filed petition. The bill prohibits the party executing the waiver from signing the waiver using a digitized signature and requires the waiver to contain the mailing address of the party executing the waiver. The bill requires the waiver to be sworn before a notary public who is not an attorney in the suit, unless the party executing the waiver is incarcerated. The bill exempts a waiver executed under its provisions from the Texas Rules of Civil Procedure.

### **EFFECTIVE DATE**

September 1, 2015.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 1826 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

No equivalent provision.

SECTION 1. Chapter 31, Family Code, is amended by adding Section 31.008 to read as follows:

Sec. 31.008. WAIVER OF CITATION. (a) A party to a suit under this chapter may waive the issuance or service of citation after the suit is filed by filing with the clerk of the court in which the suit is filed the waiver of the party acknowledging receipt of a copy of the filed petition.

(b) The party executing the waiver may not sign the waiver using a digitized signature.

(c) The waiver must contain the mailing address of the party executing the waiver.

(d) Notwithstanding Section 132.001, Civil Practice and Remedies Code, the waiver must be sworn before a notary public who is not an attorney in the suit.

(e) The Texas Rules of Civil Procedure do not apply to a waiver executed under this section.

(f) For purposes of this section, "digitized signature" has the meaning assigned by Section 101.0096.

SECTION 2. Subchapter A, Chapter 45, Family Code, is amended by adding Section 45.0031 to read as follows:

Sec. 45.0031. WAIVER OF CITATION. (a) A party to a suit under this subchapter may waive the issuance or service of citation after the suit is filed by filing with the clerk of the court in which the suit is filed the waiver of the party acknowledging

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 6.4035, Family Code, is amended by amending Subsection (c) and adding Subsections (e) and (f) to read as follows:

(c) Notwithstanding Section 132.001, Civil Practice and Remedies Code, the waiver must be sworn before a notary public who is not an attorney in the suit. This subsection does not apply if the party executing the waiver is incarcerated.

(e) The party executing the waiver may not sign the waiver using a digitized signature.

(f) For purposes of this section, "digitized signature" has the meaning assigned by Section 101.0096.

SECTION 2. Chapter 31, Family Code, is amended by adding Section 31.008 to read as follows:

Sec. 31.008. WAIVER OF CITATION. (a) A party to a suit under this chapter may waive the issuance or service of citation after the suit is filed by filing with the clerk of the court in which the suit is filed the waiver of the party acknowledging receipt of a copy of the filed petition.

(b) The party executing the waiver may not sign the waiver using a digitized signature.

(c) The waiver must contain the mailing address of the party executing the waiver.

(d) Notwithstanding Section 132.001, Civil Practice and Remedies Code, the waiver must be sworn before a notary public who is not an attorney in the suit. This subsection does not apply if the party executing the waiver is incarcerated.

(e) The Texas Rules of Civil Procedure do not apply to a waiver executed under this section.

(f) For purposes of this section, "digitized signature" has the meaning assigned by Section 101.0096.

SECTION 3. Subchapter A, Chapter 45, Family Code, is amended by adding Section 45.0031 to read as follows:

Sec. 45.0031. WAIVER OF CITATION. (a) A party to a suit under this subchapter may waive the issuance or service of citation after the suit is filed by filing with the clerk of the court in which the suit is filed the waiver of the party acknowledging

receipt of a copy of the filed petition.

(b) The party executing the waiver may not sign the waiver using a digitized signature.

(c) The waiver must contain the mailing address of the party executing the waiver.

(d) Notwithstanding Section 132.001, Civil Practice and Remedies Code, the waiver must be sworn before a notary public who is not an attorney in the suit.

(e) The Texas Rules of Civil Procedure do not apply to a waiver executed under this section.

(f) For purposes of this section, "digitized signature" has the meaning assigned by Section 101.0096.

SECTION 3. Subchapter B, Chapter 45, Family Code, is amended by adding Section 45.107 to read as follows:

Sec. 45.107. WAIVER OF CITATION. (a) A party to a suit under this subchapter may waive the issuance or service of citation after the suit is filed by filing with the clerk of the court in which the suit is filed the waiver of the party acknowledging receipt of a copy of the filed petition.

(b) The party executing the waiver may not sign the waiver using a digitized signature.

(c) The waiver must contain the mailing address of the party executing the waiver.

(d) Notwithstanding Section 132.001, Civil Practice and Remedies Code, the waiver must be sworn before a notary public who is not an attorney in the suit.

(e) The Texas Rules of Civil Procedure do not apply to a waiver executed under this section.

(f) For purposes of this section, "digitized signature" has the meaning assigned by Section 101.0096.

SECTION 4. Chapter 102, Family Code, is amended by adding Section 102.0091 to read as follows:

Sec. 102.0091. WAIVER OF CITATION. (a) A party to a suit under this title may waive the issuance or service of citation after the suit is filed by filing with the clerk of the court in which the suit is filed the waiver of the party acknowledging receipt

receipt of a copy of the filed petition.

(b) The party executing the waiver may not sign the waiver using a digitized signature.

(c) The waiver must contain the mailing address of the party executing the waiver.

(d) Notwithstanding Section 132.001, Civil Practice and Remedies Code, the waiver must be sworn before a notary public who is not an attorney in the suit. This subsection does not apply if the party executing the waiver is incarcerated.

(e) The Texas Rules of Civil Procedure do not apply to a waiver executed under this section.

(f) For purposes of this section, "digitized signature" has the meaning assigned by Section 101.0096.

SECTION 4. Subchapter B, Chapter 45, Family Code, is amended by adding Section 45.107 to read as follows:

Sec. 45.107. WAIVER OF CITATION. (a) A party to a suit under this subchapter may waive the issuance or service of citation after the suit is filed by filing with the clerk of the court in which the suit is filed the waiver of the party acknowledging receipt of a copy of the filed petition.

(b) The party executing the waiver may not sign the waiver using a digitized signature.

(c) The waiver must contain the mailing address of the party executing the waiver.

(d) Notwithstanding Section 132.001, Civil Practice and Remedies Code, the waiver must be sworn before a notary public who is not an attorney in the suit. This subsection does not apply if the party executing the waiver is incarcerated.

(e) The Texas Rules of Civil Procedure do not apply to a waiver executed under this section.

(f) For purposes of this section, "digitized signature" has the meaning assigned by Section 101.0096.

SECTION 5. Chapter 102, Family Code, is amended by adding Section 102.0091 to read as follows:

Sec. 102.0091. WAIVER OF CITATION. (a) A party to a suit under this title may waive the issuance or service of citation after the suit is filed by filing with the clerk of the court in which the suit is filed the waiver of the party acknowledging receipt

of a copy of the filed petition.

(b) The party executing the waiver may not sign the waiver using a digitized signature.

(c) The waiver must contain the mailing address of the party executing the waiver.

(d) Notwithstanding Section 132.001, Civil Practice and Remedies Code, the waiver must be sworn before a notary public who is not an attorney in the suit.

(e) The Texas Rules of Civil Procedure do not apply to a waiver executed under this section.

SECTION 5. The changes in law made by this Act apply only to a suit that is commenced on or after the effective date of this Act. A suit that is commenced before that date is governed by the law as it existed on the date the suit was commenced, and the former law is continued in effect for that purpose.

SECTION 6. This Act takes effect September 1, 2015.

of a copy of the filed petition.

(b) The party executing the waiver may not sign the waiver using a digitized signature.

(c) The waiver must contain the mailing address of the party executing the waiver.

(d) Notwithstanding Section 132.001, Civil Practice and Remedies Code, the waiver must be sworn before a notary public who is not an attorney in the suit. This subsection does not apply if the party executing the waiver is incarcerated.

(e) The Texas Rules of Civil Procedure do not apply to a waiver executed under this section.

SECTION 6. Same as introduced version.

SECTION 7. Same as introduced version.