

SUBJECT: Standardizing procedures for transferring certain cases between courts

COMMITTEE: Judiciary & Civil Jurisprudence — committee substitute recommended

VOTE: 8 ayes — Leach, Julie Johnson, Flores, Moody, Murr, Schofield, Slawson, Vasut

0 nays

1 absent — Davis

WITNESSES: For — (*Registered, but did not testify:* Lisa David, Cary Roberts, County and District Clerks' Association of Texas; Guy Herman, Statutory Probate Courts of Texas)

Against — None

BACKGROUND: Some have suggested that the Legislature should standardize the methods for transferring probate and guardianship matters similarly to civil and family cases.

DIGEST: CSHB 2893 would add provisions relating to the electronic transfer of records for probate proceedings, guardianship proceedings, and certain other cases.

Transfer of probate and guardianship proceedings. If a probate or guardianship proceeding was transferred to a court in another county, the clerk of the transferring court would be required to send to the clerk of the other court, using the electronic filing system, the following:

- a transfer certificate and index of transferred documents;
- a copy of each final order;
- a copy of the order of transfer signed by the transferring court;
- a copy of the original papers filed in the transferring court;
- a copy of the transfer certificate and index of transferred

- documents from each previous transfer; and
- a bill of any costs accrued in the transferring court.

The clerk of the transferring court would be required to keep a copy of these documents. When transferring a proceeding, the clerk would be required to use the standardized transfer certificate and index of transferred documents form developed by the Office of Court Administration (OCA).

The clerk of the transferee court would be required to accept the transferred documents and docket the proceeding or suit. The clerk also would be required to, using the electronic filing system, notify all parties to the proceeding or suit, the clerk of the transferring court, and if appropriate, the transferring court's local registry that the proceeding or suit had been docketed. CSHB 2893 would require the clerk of the transferee court to physically or electronically mark or stamp the transfer certificate and index of transferred documents to indicate the date and time of acceptance. The clerk could not, however, mark or stamp any other transferred document.

The clerks of both courts each could produce certified and uncertified copies of the transferred documents but would be required to include a copy of the transfer certificate and index of transferred documents with each document produced.

A court could not send any of the applicable documents using mail or electronic mail.

Probate proceedings. For probate proceedings, the clerk also would be required to transfer a copy of any will, along with all other documents specified by the bill. The clerk of the transferring court would be required to deliver the original will to the clerk of the other court by registered or certified mail, common or contract carrier, or a designated delivery service, with a proof of receipt. The party requesting the transfer would be required to pay the cost of delivery.

Guardianship proceedings. CSHB 2893 would require the clerk to record any unrecorded papers of the guardianship within 10 days after the date an order of transfer was signed.

For guardianship proceedings, the clerk of the transferring court also would be required to send a certified copy of the order directing payments to the transferee courts to:

- any party affected by the order and, if appropriate, to the local registry of the transferee court using the electronic filing system; and
- an employer affected by the order, through first class mail or electronically.

The bill would specify that the order of transfer or guardianship would not take effect until the clerk of the transferee court accepted and docketed the case record. This provision would replace provisions relating to the filing of case files and other records in electronic or paper form.

Transfer of cases between courts. The bill would specify that the electronic filing system requirements for a transfer of a case from a district to a county court also would apply to a transfer from a district court to a constitutional or statutory county court or another district court. These requirements also would apply to a transfer from a county court to a statutory county court or a county court of another county.

For the transfer of cases between any of the applicable courts, the clerks of both courts each could produce certified and uncertified copies of the transferred documents but would be required to include a copy of the transfer certificate and index of transferred documents with each document produced. These provisions related to the transfer of cases would apply regardless of whether the transferring court and transferee court were in the same or different counties.

Rulemaking authority. OCA would be required to develop and make available a standardized transferred certificate and an index of transferred

documents form to be used for the transfer of probate and guardianship proceedings. As soon as practicable, OCA would be required to adopt rules and develop and make available all forms and materials.

Other provisions. CSHB 2893 would make conforming changes relating to the transfer of court files throughout established code.

The bill also would repeal, throughout statute, provisions relating to the transfer of the original case file and copy of an index in a probate proceeding.

The bill would take effect September 1, 2023.