

BILL ANALYSIS

Senate Research Center
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S.B. 392
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Jurisprudence
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Since 1983, statutory probate courts (courts) have had the power to transfer cases filed elsewhere that are appertaining or incident to an estate pending in that court for trial and disposition. One of the reasons for authorizing the courts to make such a transfer is to permit these courts to resolve issues upon which the prompt and efficient administration of an estate depends. However, this transfer authority has generated some controversy and accusations of forum shopping due to the occasional transfer of personal injury or wrongful death cases by a statutory probate court to itself where the appropriateness of the new venue was considered questionable. Subsequent legislation and court rulings have not resolved confusion over the transfer authority.

As proposed, S.B. 392 clarifies that courts are prohibited from hearing, and transferring to themselves, personal injury, death, and related property damage claims unless venue for those actions is proper in the county where the court is located. This bill clarifies that courts are authorized to hear and transfer to themselves non-tort cases which are appertaining or incident to the estate being administered.

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 15.007, Civil Practice and Remedies Code, as follows:

Sec. 15.007. CONFLICT WITH CERTAIN PROVISIONS. Provides that Chapter 15 (Venue), Civil Practice and Remedies Code (Chapter 15), controls a suit by or against an executor, administrator, or guardian for personal injury, death, or any property damage related to the personal injury or death suit, with respect to conflicts with venue provisions under Probate Code, notwithstanding Sections 15.004, 15.005, and 15.006.

SECTION 2. Amends Section 5B(b), Texas Probate Code, as follows:

(b) Provides that venue of a cause of action described by Subsection (a) of this section is proper in the statutory probate court in which the estate is pending and authorizes the judge of a court to transfer the cause of action, as provided by Subsection (a) of this section, to the court, regardless of whether venue would otherwise be proper or mandatory, in the county of the court from which the action will be transferred, except with respect to a cause of action described by Section 15.007, Civil Practice and Remedies Code. Deletes existing text providing that, notwithstanding any other provision of this chapter, the proper venue for an action by or against a personal representative for personal injury, death, or property damages is determined under Section 15.007, Civil Practice and Remedies Code.

SECTION 3. Amends Chapter I, Texas Probate Code, by adding Section 7, as follows:

Sec. 7. VENUE FOR CERTAIN ACTIONS APPERTAINING TO OR INCIDENT TO AN ESTATE OR IN WHICH PERSONAL REPRESENTATIVE IS PARTY. (a) Provides that venue for a cause of action appertaining to or incident to a decedent's estate is proper in the court in which the estate is pending except with respect to a suit by or

against an executor, administrator, or guardian for personal injury, death, or any related property damage related to the property damage or death suit.

(b) Provides that venue for a cause of action in which the personal representative of a decedent's estate is a party is proper in the court in which the estate is pending except with respect to the regulations under Chapter 15 that control a death, injury, or property damage suit.

(c) Provides that venue for a cause of action against a former personal representative of a decedent's estate is a party is proper in the court in which the estate is pending or was last pending except with respect to the regulations under Chapter 15 that control a death, injury, or property damage suit.

(d) Provides that the proper venue for an action by or against a personal representative for personal injury, death, or any related property damage, is determined by regulations under Chapter 15 notwithstanding of any other provision in Chapter I (General Provisions), Probate Code.

SECTION 4. Amends Section 608, Texas Probate Code, as follows:

Sec. 608. TRANSFER OF GUARDIANSHIP PROCEEDING. Provides that the venue of a cause of action relating to a guardianship in which a guardian, ward, or proposed ward in a guardianship pending in the court is a party, or other proceedings relating to the guardianship estate, is proper, as provided by Section 610A(a) or (b), Probate Code, in the court in which the guardianship is pending. Authorizes the judge of the court to transfer the pending guardianship to the statutory probate court regardless of whether venue would otherwise be proper or mandatory in the county of the court from which the pending guardianship will be transferred. Makes a conforming change.

SECTION 5. Amends Subpart B, Part 2, Chapter XIII, Texas Probate Code, by adding Section 610A, as follows:

Sec. 610A. VENUE FOR CERTAIN ACTIONS APPERTAINING TO OR INCIDENT TO AN ESTATE OR IN WHICH GUARDIAN, WARD, OR PROPOSED WARD IS PARTY. (a) Provides venues for causes of action pertaining to a guardianship estate except for a cause of action described by Section 15.007, Civil Practices and Remedies Code.

(b) Provides venue for a cause of action related to a guardianship in which a guardian, ward, or proposed ward is a party, except for a cause of action described by Section 15.007, Civil Practices and Remedies Code.

(c) Provides venue for a cause of action by or against a guardian for personal injury, death, or any property damages related to the personal injury or death suit, except for a cause of action described by Section 15.007, Civil Practices and Remedies Code.

(d) Provides that proper venue for an action by or against a guardian for personal injury, death, or any property damages related to the personal injury or death action is determined under Section 15.007, Civil Practice and Remedies Code, notwithstanding any other provisions of this chapter.

SECTION 6. Repealer: Section 5A(f) (regarding priority of Section 15.007, Civil Practice and Remedies Code, in determining proper venue for matters appertaining and incident to an estate), and Section 607(e) (regarding priority of Section 15.007, Civil Practice and Remedies Code, in determining proper venue for matters appertaining and incident to an estate), Texas Probate Code.

SECTION 7. Makes application of this Act prospective.

SECTION 8. Effective date: September 1, 2007.