

BILL ANALYSIS

Senate Research Center

S.B. 615
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Jurisprudence
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

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

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, 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. S.B. 615 also would conform multiple statutes with current requirements for the Judicial Branch Certification Commission (JBCC) to conduct guardians' background checks and training. Specifically, S.B. 615 would require a court to find that a proposed guardian's training requirement has been completed prior to waiving the training and 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. This bill would also clarify that a bond covering judges with probate and guardianship jurisdiction also covers visiting and associate judges in that court. Lastly, S.B. 615 would allow parties in probate cases to request trials with less than 12 jurors, as is permitted in other civil cases.

As proposed, 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. 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 a citation or notice served as provided by Subsection (a) describe certain information. Makes a conforming change.

(c) Requires that a citation served as provided by Subsection (a) contain the statement regarding the right under Section 1051.252 (Request for Notice of Filing of Pleading) to be notified of any or all motions, applications, or pleadings relating to the application for the guardianship or any subsequent guardianship proceeding involving the ward after the guardianship is created, if any.

(d) Creates this subsection from existing text and makes no further changes.

SECTION 23. 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 24. 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 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 25. 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 26. Amends Section 26.001, Government Code, by adding Subsection (d), as follows:

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

SECTION 27. Amends Section 25.0027, Government Code, to authorize the parties in a statutory probate court to agree to try a particular case with fewer than 12 jurors.

SECTION 28. 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 29. (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 Section 1101.001 (Application for Appointment of Guardian; Contents), 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, prospective.

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

(g) Makes application of Sections 25.0006 (Bond; Removal), 25.00231 (Bond; Insurance), and 26.001 (Bond), Government Code, as amended by this Act, prospective to January 1, 2022.

SECTION 30. Effective date: September 1, 2021.