

BILL ANALYSIS

S.B. 615
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Judiciary & Civil Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

In light of guardianship legislation passed during previous sessions, statutory probate judges made recommendations to clean up statutes regarding probate and guardianship proceedings. S.B. 615 includes provisions to improve guardianship applicants' identification, increase file transfer efficiency through electronic means, and require attorneys in guardianship cases to be certified by the State Bar of Texas. It also conforms several statutes with requirements for the Judicial Branch Certification Commission regarding guardians' background checks and training. These changes altogether improve the quality of guardians and ensure the smooth operation of guardianships.

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

S.B. 615 revises provisions relating to statutory probate courts and probate and guardianship proceedings.

Initial Pleading Requirement

S.B. 615 amends the Civil Practice and Remedies Code to require each party or the party's attorney in a probate or guardianship proceeding filed in a district court, county court, statutory county court, or statutory probate court to include in its initial pleading the last three numbers of the party's driver's license number, if the party has been issued a driver's license, and the last three numbers of the party's social security number, if the party has been issued a social security number.

Probate Proceedings

S.B. 615 amends the Estates Code to specify that in the transfer of a probate proceeding for which venue is proper, for want of venue, or for convenience, the transmittal of requisite documents to the proper court may be in either electronic or paper form but that in a transfer of a probate proceeding for convenience, the original will filed in the proceeding, if any, must be delivered to the court to which the proceeding is transferred. The bill clarifies that the seal under which a citation or notice issued by a county clerk in a probate proceeding must be signed is the court's seal. The bill establishes that if a distributee to be cited for a proceeding to declare

heirship is absent from or is not a resident of Texas, any disinterested person competent to make an oath that the citation was served may serve the citation.

S.B. 615 requires a person appointed as a temporary administrator of a decedent's will to file with the court proof of service of the required notice to the decedent's known heirs of the appointment that includes the following:

- the certificate of the county clerk making the service, or the affidavit of the personal representative or other person making the service, stating that the notice was mailed and the date of the mailing; and
- the return receipt attached to the certificate or affidavit, as applicable, if the mailing was by registered or certified mail and a receipt has been returned.

S.B. 615 removes the exemption for a recordation of a copy of a foreign will or other foreign testamentary instrument in deed records from the requirement to include the following:

- original signatures of the court official who has custody of the will or who is in charge of the probate records;
- a certificate with the original signature of the judge or presiding magistrate of the court stating that the attestation is in proper form; and
- the court seal affixed, if a court seal exists.

The bill authorizes the recording of an authenticated copy of a foreign will or testamentary instrument that conveys, or in any other manner disposes of, land in Texas and that has been probated according to any law, and a copy of the judgment, order, or decree by which the instrument was admitted to probate that has the required attestation and certificate that is written in whole or in part in a language other than English, in the deed records in any county in Texas in which the land conveyed or disposed of in the instrument is located if the following conditions are met:

- 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
- the accuracy of the translation is sworn to before an officer authorized to administer oaths.

The bill establishes that such a recording 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.

Guardianship Proceedings

S.B. 615 specifies that in a transfer of a guardianship from one county to another, the transmittal of requisite documents to the county clerk of the county to which the guardianship is transferred may be in either electronic or paper form. The bill clarifies that the seal under which a citation or notice issued by a county clerk in a guardianship proceeding must be signed is the court's seal.

S.B. 615 subjects every attorney representing a person's interests in a guardianship proceeding to the statutory requirement to be certified by the State Bar of Texas, or a person or other entity designated by the state bar, as having successfully completed a state bar course of study in guardianship law and procedure. The bill provides an exception to this requirement by which an attorney may commence representation of a person's interests and file an appearance in a guardianship proceeding before completing the required course if the attorney completes the course not later than the 14th day after the date of filing the appearance and before filing any substantive motion in the proceeding.

S.B. 615 requires an application for the appointment of a guardian to include the following:

- the former name, if any, of the person the applicant seeks to have appointed as guardian; and
- a detailed description of the proposed ward's property, including liquid and non-liquid assets.

The bill requires a court order appointing a guardian, if the court waives the guardian's training requirement, to contain a finding that the waiver is in accordance with rules adopted by the Texas Supreme Court regarding qualifications for guardians.

S.B. 615 prohibits the exclusion of a guardian of the person or of the estate of a ward from attending a legal proceeding in which the ward is a party or participating as a witness.

S.B. 615 revises provisions relating to notice of an application for temporary guardianship as follows:

- by requiring only notice to be served on the ward's appointed attorney; and
- by requiring citation to be served on the proposed ward and the proposed temporary guardian named in the application, if that person is not the applicant.

The bill requires a copy of the application to be attached to the citation and requires the citation to contain the following:

- a description of the rights of the parties and the date, time, place, purpose, and possible consequences of a hearing on the application; and
- a statement regarding the authority of an applicable person who is interested in the estate or welfare of a ward or proposed 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.

S.B. 615 requires the temporary guardian of the person, at the expiration of the temporary guardianship, to file with the court clerk a final report with the following contents:

- if the ward is living, a description of each reason the temporary guardianship of the person expired, including a statement of facts regarding whether the temporary guardianship expired for specified reasons; and
- if the ward is deceased, the date and place of death, if known, in the form and manner of the report required to be filed in such cases.

The bill requires the report to be approved by the court before the temporary guardian is discharged and the sureties on the guardian's bond are released as to future liability, in addition to proof of delivery of the remaining estate to the person legally entitled to its possession. The bill authorizes a court that has jurisdiction over a guardianship to transfer the guardianship to a court in a foreign jurisdiction to which the ward has permanently moved on the court's own motion. These provisions relating to the final report on the expiration of a temporary guardianship and the transfer of a guardianship to a foreign jurisdiction apply to a guardianship created before, on, or after the bill's effective date.

Statutory Probate Courts

S.B. 615 amends the Government Code to require a bond executed by a judge elected or appointed to a statutory county court or an insurance policy obtained instead of the bond to 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. These provisions apply only to an insurance policy delivered, issued for delivery, or renewed on or after January 1, 2022.

S.B. 615 authorizes the parties to a proceeding in a statutory probate court to agree to try a particular case with fewer than 12 jurors. The bill requires the attorney general to defend a visiting judge, assigned by the presiding judge of a statutory probate court to hear a guardianship or probate matter, in any applicable action or suit if the judge requests the attorney general's assistance in the defense of the action or suit.

S.B. 615 requires the course of instruction provided through the state bar for every attorney who represents a party in guardianship cases or who serves as a court-appointed guardian to be low-cost and available to persons throughout Texas, including on the Internet provided through

the state bar. The bill requires the Judicial Branch Certification Commission to do the following with respect to a proposed guardian:

- obtain fingerprint-based criminal history record information of the proposed guardian if the person is not a resident of Texas; and
- obtain all name-based criminal history record information of the proposed guardian, including any criminal history record information under the current name and all former names of the guardian, with respect to a person who applies for guardianship on behalf of a ward whose liquid assets from the ward's estate are \$50,000 or less.

EFFECTIVE DATE

September 1, 2021.