

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 38
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State Affairs
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, courts must request that law enforcement personnel serve guardians and estate administrators or executors personally when the court needs them to appear at a hearing to explain failure to comply with statutory requirements or to be removed from their roles. Because this antiquated formality is not a priority among the many other duties of law enforcement, however, these requests often are not addressed in a timely manner. This delay in service is not only inefficient, but also particularly detrimental, especially in guardianship cases, when the welfare or assets of the person with a guardian are at risk.

What's more, when a guardian moves a person under guardianship to a different county, current law does not provide a judge with a mechanism to transfer guardianship to the county where the person with a guardian is moved, unless the guardian applies for the transfer. The court is then left with the responsibility and liability of monitoring the welfare of a person who could be hundreds of miles away, which limits severely the ability of the court to check the circumstances of the person with a guardian.

C.S.S.B. 38 would authorize courts to provide notice to appear to guardians and estate administrators or executors via certified mail and to transfer, on their own motion, jurisdiction on a guardianship case to the county where a person with a guardian has been moved. These changes would streamline current processes and enhance judicial oversight of probate cases.

C.S.S.B. 38 amends current law relating to certain procedural matters in courts exercising probate jurisdiction.

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 361.052, Estates Code, as follows:

Sec. 361.052. REMOVAL WITH NOTICE. (a) Creates this subsection from existing text. Authorizes a court to remove a personal representative on the court's own motion, or on the complaint of any interested person, after the representative has been cited by personal service to answer at a time and place set, rather than fixed, in the notice if certain conditions are met. Deletes the existing condition that the representative, as executor or administrator, fails to timely file the affidavit or certificate required by Section 308.004 (Affidavit or Certificate). Makes nonsubstantive changes.

(b) Authorizes the court, on the court's own motion, if a personal representative, as executor or administrator, fails to timely file the affidavit or certificate required by Section 308.004, to remove the personal representative after providing 30 days' written notice to the personal representative to answer at a time and place set in the notice, by certified mail, return receipt, requested to certain addresses.

SECTION 2. Amends Section 404.0035, Estates Code, as follows:

Sec. 404.0035. REMOVAL OF INDEPENDENT EXECUTOR WITH NOTICE. (a) Authorizes the probate court, on the court's own motion, to remove an independent executor appointed under this subtitle (Independent Administration) after providing 30 days' written notice of the court's intention to the independent executor, requiring answering at a time and place set in the notice, rather than 30 days' written notice of the court's intent to remove the independent executor, by a certain medium to certain addresses, if the independent executor meets certain conditions, including failing to timely file the affidavit or certificate required by Section 308.004. Makes nonsubstantive changes.

(b) Authorizes the probate court, on its own motion or on motion of any interested person, after the independent executor has been cited by personal service to answer at a time and place set, rather than fixed, in the notice, to remove an independent executor when certain conditions are met. Deletes existing text relating to the independent executor failing to timely file the affidavit or certificate required by Section 308.004. Makes nonsubstantive changes.

SECTION 3. Amends Section 1023.003, Estates Code, as follows:

Sec. 1023.003. New heading: TRANSFER OF GUARDIANSHIP TO ANOTHER COUNTY. (a) Creates this subsection from existing text and makes no further changes to this subsection.

(b) Authorizes the court in which a guardianship is pending, with notice as provided by Section 1023.004, on the court's own motion, to transfer the transaction of the business of the guardianship to another county if the ward resides in the county to which the guardianship is to be transferred.

SECTION 4. Amends Section 1023.004, Estates Code, as follows:

Sec. 1023.004. NOTICE. (a) Requires the sureties on the bond of the guardian, on filing an application or on motion of a court to transfer a guardianship to another county under Section 1023.003, to be cited by personal service to appear and show cause why the guardianship should not be transferred, rather than requires the sureties on the bond of the guardian, on filing an application to transfer a guardianship to another county, to be cited by personal service to appear and show cause why the application should not be granted.

(b) Requires the guardian, if an application is filed by a person other than the guardian or if a court made a motion to transfer a guardianship, to be cited by personal service to appear and show cause why the guardianship should not be transferred, rather than requires the guardian, if an application is filed by a person other than the guardian, to be cited by personal service to appear and show cause why the application should not be granted.

SECTION 5. Amends Section 1023.005, Estates Code, to require the court to enter a certain order on hearing an application or motion under Section 1023.003, if good cause is not shown to deny the transfer and it appears that the transfer of the guardianship is in the best interests of the ward, rather than on hearing an application under Section 1023.003, if good cause is not shown to deny the application and it appears that transfer of the guardianship is in the best interests of the ward.

SECTION 6. Amends Section 1203.052, Estates Code, by amending Subsection (a) and adding Subsection (a-1), as follows:

(a) Authorizes the court to remove a guardian as provided by Subsection (a-1) if certain conditions are met. Deletes existing text authorizing the court to remove a guardian on the court's own motion, or on the complaint of an interested person, after the guardian has been cited by personal service to answer at a time and place set in the notice, if certain conditions are met.

(a-1) Authorizes the court to remove a guardian for a reason listed in Subsection (a) on the court's own motion, after the guardian has been notified, by certified mail, return receipt requested, to answer at a time and place set in the notice; or on the complaint of an interested person, after the guardian has been cited by personal service to answer at a time and place set in the notice.

SECTION 7. Provides that Sections 361.052 and 404.0035, Estates Code, as amended by this Act, apply to the estate of a decedent who dies before, on, or after the effective date of this Act.

SECTION 8. Provides that Sections 1023.003, 1023.004, 1023.005, and 1203.052, Estates Code, as amended by this Act, apply to a guardianship created before, on, or after the effective date of this Act.

SECTION 9. Effective date: September 1, 2017.