

BILL ANALYSIS

Senate Research Center
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C.S.H.B. 2207
By: Kuempel (Zaffirini)
State Affairs
5/15/2017
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Current law provides little guidance regarding the circumstances under which a will may be deposited with the county clerk when a testator cannot be found. What's more, due to inflation, the cost of providing certified mail notices to numerous beneficiaries and will safe-keeping services is becoming burdensome. H.B. 2207 clarifies that a will may be deposited with the county clerk of the testator's last known residence if the attorney, business entity, or other person is unable to maintain custody of the will and, after a diligent search, is unable to contact or locate the testator. What's more, H.B. 2207 allows notification to the will beneficiaries to be sent via regular mail, rather than certified mail. Lastly, H.B. 2207 raises the fee charged by a county clerk to keep a will from \$5 to \$10. These changes would provide needed clarity and ensure that clerks can continue to provide will safe-keeping services. (Original Author's / Sponsor's Statement of Intent)

C.S.H.B. 2207 amends current law relating to procedures and fees for the deposit and safekeeping of wills.

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 252.001, Estates Code, by adding Subsection (a-1) and amending Subsection (b), as follows:

(a-1) Authorizes an attorney, business entity, or other person in possession of a testator's will to deposit the will with the county clerk of the county of the testator's last known residence if the attorney, business entity, or other person is unable to maintain custody of the will and, after a diligent search, the attorney, business entity, or other person is not able to contact or locate the testator. Requires the attorney, business entity, or other person to provide to the county clerk at the time the will is deposited the name and last known address of the testator, and, if the will names an executor, the name and last known address, if available, of each executor named in the will, including any alternate executors.

(b) Requires the county clerk to receive and keep a will deposited under this section on payment of a \$10 fee, rather than keep the will on the payment of a \$5 fee.

SECTION 2. Amends Section 252.002, Estates Code, by amending Subsection (b) and adding Subsection (c), as follows:

(b) Requires that the wrapper of a will deposited under Section 252.001(a) (relating to a certain individual depositing the testator's will with the county clerk of the county of the testator's residence) be endorsed in a certain manner, rather than requiring the wrapper to be endorsed in a certain manner.

(c) Requires that the wrapper of a will deposited under Section 252.001(a-1) be endorsed in a certain manner.

SECTION 3. Amends Section 252.101, Estates Code, to require a county clerk to notify, rather than notify by registered mail, return receipt requested, each person named on the endorsement of the will wrapper that the will is on deposit on the clerk's office if certain conditions are met.

SECTION 4. Amends Section 252.104, Estates Code, to require the clerk, if certain conditions are met, to notify the person named as executor, rather than notify the person named executor, by registered mail, return receipt requested, that the will is on deposit with the clerk.

SECTION 5. Amends Section 252.105(a), Estates Code, to require the county clerk, if certain conditions are met, to notify, rather than notify by registered mail, return receipt requested, the devisees named in the will that the will is on deposit with the clerk.

SECTION 6. Amends Section 252.151, Estates Code, to provide that the provisions of Subchapter A (Deposit of Will With County Clerk) providing for the deposit of a will with a county clerk, rather than with a county clerk during the lifetime of a testator, are solely for the purpose of providing a safe and convenient repository for a will.

SECTION 7. Amends Section 252.201, Estates Code, as follows:

Sec. 252.201. WILL DELIVERY. (a) Creates this subsection from existing text.

(b) Requires the clerk of the court to handle the will in the same manner prescribed by Subchapter A for a will deposited under Section 252.001 (Will Deposit; Certificate) other than collection of a fee under Section 252.001(b).

SECTION 8. Amends Subchapter E, Chapter 252, Estates Code, by adding Section 252.2015, as follows:

Sec. 252.2015. NOTICE AND DELIVERY OF WILL TO EXECUTOR OR DEVISEES. (a) Requires the clerk of the court, on the deposit of a will under Section 252.201 that names an executor, to notify the person named as executor in the manner prescribed by Section 252.104 (Notice and Delivery of Will to Executor) and deliver, on request, the will to the person named as executor.

(b) Requires the clerk of the court, on the deposit of a will under Section 252.201, to notify the devisees named in the will in the manner prescribed by Section 252.105(a) (relating to a county clerk notifying a named devisee in the will) if certain conditions are met.

(c) Requires the clerk of the court, on request, to deliver the will to any or all of the devisees notified under Subsection (b).

SECTION 9. Amends Section 101.0815, Government Code, to require the clerk of a county court to collect certain fees and costs under the Estates Code, including a fee for deposit of a will with the county clerk by a testator or another person for a testator during the testator's lifetime or by an attorney, business entity, or other person unable to maintain custody of a testator's will and unable to contact or locate the testator (Sec. 252.001, Estates Code), rather than a fee for the deposit of a will with the county clerk during testator's lifetime, . . . \$5.

SECTION 10. Amends Section 101.1014, Government Code, to require the clerk of a statutory probate court to collect certain fees and costs under the Estates Code, including a fee for deposit of a will with the county clerk by a testator or another person for a testator during the testator's lifetime or by an attorney, business entity, or other person unable to maintain custody of a testator's will and unable to contact or locate the testator (Sec. 252.001, Estates Code), rather than a fee for the deposit of a will with the county clerk during testator's lifetime, . . . \$5.

SECTION 11. Amends Section 101.1215, Government Code, to require the clerk of a county court to collect certain fees and costs under the Estates Code, including a fee for deposit of a will with the county clerk by a testator or another person for a testator during the testator's lifetime or by an attorney, business entity, or other person unable to maintain custody of a testator's will and unable to contact or locate the testator (Sec. 252.001, Estates Code), rather than a fee for deposit of a will with the county clerk during testator's lifetime, . . . \$5.

SECTION 12. Amends Section 118.052, Local Government Code, to require each clerk of a county court to collect certain fees for services rendered to any person, including Deposit and Safekeeping of Wills (Sec. 118.062), rather than Safekeeping of Wills), ... \$5.00.

SECTION 13. Amends Section 118.062, Local Government Code, as follows:

Sec. 118.062. New heading: DEPOSIT AND SAFEKEEPING OF WILLS. Provides that the fee for "Deposit and Safekeeping of Wills" under Section 118.052(3) is for receiving and keeping wills deposited for safekeeping, rather than the fee for "Safekeeping of Wills" under Section 118.052(3) is for filing and keeping wills held for safekeeping. Requires that the fee be paid at the time the will is deposited with the county clerk, rather than the time the will is filed.

SECTION 14. Makes application of Sections 252.001 and 252.201, Estates Code, as amended by this Act, and Section 252.2015, Estates Code, as added by this Act, prospective.

SECTION 15. Effective date: September 1, 2017.