

BILL ANALYSIS

S.B. 38
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Judiciary & Civil Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Interested parties assert that certain procedures used by courts exercising probate jurisdiction are antiquated and inefficient. S.B. 38 seeks to streamline certain current processes and enhance judicial oversight of probate cases.

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. 38 amends the Estates Code to replace the authorization for a court, on the court's own motion or on the complaint of any interested person, to remove a personal representative after the representative has been cited by personal service to answer at a time and place fixed in the notice if the personal representative, as executor or administrator, fails to timely file the required affidavit or certificate stating that notice was given to certain beneficiaries after the probate of a will with an authorization for the court, on the court's own motion, to remove a personal representative who, as executor or administrator, fails to timely file such affidavit or certificate 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 the representative's last known address and to the last known address of the representative's attorney of record.

S.B. 38 replaces the authorization for a probate court, on its own motion or on motion of any interested person and after an independent executor has been cited by personal service to answer at a time and place fixed in the notice, to remove an independent executor when the independent executor fails to timely file the required affidavit or certificate stating that notice was given to certain beneficiaries after the probate of a will with an authorization for a probate court, on the court's own motion, to remove an independent executor who fails to timely file such affidavit or certificate 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, by certified mail, return receipt requested, to the independent executor's last known address and to the last known address of the independent executor's attorney of record. The bill specifies that, for purposes of such 30 days' written notice of the court's intention to remove the independent executor on certain grounds other than such failure to timely file the affidavit or certificate, the notice requires answering at a time and place set in the notice.

S.B. 38 authorizes a court in which a guardianship is pending, with certain notice relating to an

application to transfer a guardianship to another county and 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.

S.B. 38 replaces the authorization for a 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 under certain conditions with an authorization for a court to remove a guardian under such conditions 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 and to remove a guardian under such conditions 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.

S.B. 38 applies to the estate of a decedent who dies, and to a guardianship created, before, on, or after the bill's effective date, as applicable.

EFFECTIVE DATE

September 1, 2017.