

By: Kuempel

H.B. No. 2207

A BILL TO BE ENTITLED

AN ACT

1
2 relating to procedures and fees for the deposit and safekeeping of
3 wills and other fees collected by court clerks in probate matters;
4 authorizing and increasing fees.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Section 252.001, Estates Code, is amended by
7 adding Subsection (a-1) and amending Subsection (b) to read as
8 follows:

9 (a-1) An attorney, business entity, or other person in
10 possession of a testator's will may deposit the will with the county
11 clerk of the county of the testator's last known residence if the
12 attorney, business entity, or other person is unable to maintain
13 custody of the will and, after a diligent search, the attorney,
14 business entity, or other person is not able to contact or locate
15 the testator. The attorney, business entity, or other person shall
16 provide to the county clerk at the time the will is deposited:

17 (1) the name and last known address of the testator;

18 and

19 (2) if the will names an executor, the name and last
20 known address, if available, of each executor named in the will,
21 including any alternate executors.

22 (b) The county clerk shall receive and keep a a ~~[the]~~ will
23 deposited under this section on the payment of a \$10 ~~[\$5]~~ fee.

24 SECTION 2. Section 252.002, Estates Code, is amended by

1 amending Subsection (b) and adding Subsection (c) to read as
2 follows:

3 (b) The wrapper of a will deposited under Section 252.001(a)
4 must be endorsed with:

5 (1) "Will of," followed by the name, address, and
6 signature of the testator; and

7 (2) the name and current address of each person who is
8 to be notified of the deposit of the will after the testator's
9 death.

10 (c) The wrapper of a will deposited under Section
11 252.001(a-1) must be endorsed with:

12 (1) "Will of," followed by the name and last known
13 address of the testator; and

14 (2) if the will names an executor, the name and last
15 known address, if available, of each executor named in the will,
16 including any alternate executors.

17 SECTION 3. Section 252.101, Estates Code, is amended to
18 read as follows:

19 Sec. 252.101. NOTIFICATION BY COUNTY CLERK. A county clerk
20 shall notify~~[, by registered mail, return receipt requested,]~~ each
21 person named on the endorsement of the will wrapper that the will is
22 on deposit in the clerk's office if:

23 (1) an affidavit is submitted to the clerk stating
24 that the testator has died; or

25 (2) the clerk receives other notice or proof of the
26 testator's death sufficient to convince the clerk that the testator
27 has died.

1 SECTION 4. Section 252.104, Estates Code, is amended to
2 read as follows:

3 Sec. 252.104. NOTICE AND DELIVERY OF WILL TO EXECUTOR. If a
4 county clerk inspects a will under Section 252.103 and the will
5 names an executor, the clerk shall:

6 (1) notify the person named as executor [~~by~~
7 ~~registered mail, return receipt requested,~~] that the will is on
8 deposit with the clerk; and

9 (2) deliver, on request, the will to the person named
10 as executor.

11 SECTION 5. Section 252.105(a), Estates Code, is amended to
12 read as follows:

13 (a) If a county clerk inspects a will under Section 252.103,
14 the clerk shall notify [~~by registered mail, return receipt~~
15 ~~requested,~~] the devisees named in the will that the will is on
16 deposit with the clerk if:

17 (1) the will does not name an executor;

18 (2) the person named as executor in the will:

19 (A) has died; or

20 (B) fails to take the will before the 31st day
21 after the date the notice required by Section 252.104 is mailed to
22 the person; or

23 (3) the notice mailed to the person named as executor
24 is returned as undelivered.

25 SECTION 6. Section 252.151, Estates Code, is amended to
26 read as follows:

27 Sec. 252.151. DEPOSIT HAS NO LEGAL SIGNIFICANCE. The

1 provisions of Subchapter A providing for the deposit of a will with
2 a county clerk [~~during the lifetime of a testator~~] are solely for
3 the purpose of providing a safe and convenient repository for a
4 will. For purposes of probate, a will deposited as provided by
5 Subchapter A may not be treated differently than a will that has not
6 been deposited.

7 SECTION 7. Section [252.201](#), Estates Code, is amended to
8 read as follows:

9 Sec. 252.201. WILL DELIVERY. (a) On receiving notice of a
10 testator's death, the person who has custody of the testator's will
11 shall deliver the will to the clerk of the court that has
12 jurisdiction of the testator's estate.

13 (b) The clerk of the court shall handle the will in the same
14 manner prescribed by Subchapter A for a will deposited under
15 Section [252.001](#) other than collection of a fee under Section
16 [252.001](#)(b).

17 SECTION 8. Subchapter E, Chapter [252](#), Estates Code, is
18 amended by adding Section 252.2015 to read as follows:

19 Sec. 252.2015. NOTICE AND DELIVERY OF WILL TO EXECUTOR OR
20 DEVISEES. (a) On the deposit of a will under Section [252.201](#) that
21 names an executor, the clerk of the court shall:

22 (1) notify the person named as executor in the manner
23 prescribed by Section [252.104](#); and

24 (2) deliver, on request, the will to the person named
25 as executor.

26 (b) On the deposit of a will under Section [252.201](#), the
27 clerk of the court shall notify the devisees named in the will in

1 the manner prescribed by Section 252.105(a) if:

2 (1) the will does not name an executor;

3 (2) the person named as executor in the will:

4 (A) has died; or

5 (B) fails to take the will before the 31st day
6 after the date the notice required by Subsection (a) is mailed to
7 the person; or

8 (3) the notice mailed to the person named as executor
9 is returned as undelivered.

10 (c) On request, the clerk of the court shall deliver the
11 will to any or all of the devisees notified under Subsection (b).

12 SECTION 9. Section 101.0815, Government Code, is amended to
13 read as follows:

14 Sec. 101.0815. STATUTORY COUNTY COURT FEES AND COSTS:
15 ESTATES CODE. The clerk of a statutory county court shall collect
16 fees and costs under the Estates Code as follows:

17 (1) fee for deposit of a will with the county clerk by
18 a testator or another person for a testator during the testator's
19 lifetime or by an attorney, business entity, or other person unable
20 to maintain custody of a testator's will and unable to contact or
21 locate the testator (Sec. 252.001, Estates Code) . . . \$10 [~~\$5~~];

22 (2) security deposit on filing, by any person other
23 than the personal representative of an estate, an application,
24 complaint, or opposition in relation to the estate, if required by
25 the clerk (Sec. 53.052, Estates Code) . . . probable cost of the
26 proceeding;

27 (3) fee on filing an application, complaint, petition,

1 or other paper in a guardianship proceeding, which includes a
2 deposit for payment to an attorney ad litem (Sec. 1052.051, Estates
3 Code) . . . cost of filing and payment of attorney ad litem;

4 (4) security deposit on filing, by any person other
5 than the guardian, attorney ad litem, or guardian ad litem, an
6 application, complaint, or opposition in relation to a guardianship
7 matter, if required by the clerk (Sec. 1053.052, Estates Code)
8 . . . probable cost of the guardianship proceeding;

9 (5) nonrefundable fee to cover the cost of
10 administering Subchapter G, Chapter 1104, Estates Code
11 (Sec. 1104.303, Estates Code) . . . \$40; and

12 (6) costs for attorney ad litem appointed to pursue
13 the restoration of a ward's capacity or modification of the ward's
14 guardianship (Sec. 1202.102, Estates Code) . . . reasonable
15 compensation.

16 SECTION 10. Section 101.1014, Government Code, is amended
17 to read as follows:

18 Sec. 101.1014. STATUTORY PROBATE COURT FEES AND COSTS:
19 ESTATES CODE. The clerk of a statutory probate court shall collect
20 fees and costs under the Estates Code as follows:

21 (1) fee for deposit of a will with the county clerk by
22 a testator or another person for a testator during the testator's
23 lifetime or by an attorney, business entity, or other person unable
24 to maintain custody of a testator's will and unable to contact or
25 locate the testator (Sec. 252.001, Estates Code) . . . \$10 [~~\$5~~];

26 (2) security deposit on filing, by any person other
27 than the personal representative of an estate, an application,

1 complaint, or opposition in relation to the estate, if required by
2 the clerk (Sec. 53.052, Estates Code) . . . probable cost of the
3 proceeding;

4 (3) fee on filing an application, complaint, petition,
5 or other paper in a guardianship proceeding, which includes a
6 deposit for payment to an attorney ad litem (Sec. 1052.051, Estates
7 Code) . . . cost of filing and payment of attorney ad litem;

8 (4) security deposit on filing, by any person other
9 than the guardian, attorney ad litem, or guardian ad litem, an
10 application, complaint, or opposition in relation to a guardianship
11 matter, if required by the clerk (Sec. 1053.052, Estates Code)
12 . . . probable cost of the guardianship proceeding;

13 (5) nonrefundable fee to cover the cost of
14 administering Subchapter G, Chapter 1104, Estates Code
15 (Sec. 1104.303, Estates Code) . . . \$40; and

16 (6) costs for attorney ad litem appointed to pursue
17 the restoration of a ward's capacity or modification of the ward's
18 guardianship (Sec. 1202.102, Estates Code) . . . reasonable
19 compensation.

20 SECTION 11. Section 101.1215, Government Code, is amended
21 to read as follows:

22 Sec. 101.1215. COUNTY COURT FEES AND COSTS: ESTATES CODE.
23 The clerk of a county court shall collect the following fees and
24 costs under the Estates Code:

25 (1) fee for deposit of a will with the county clerk by
26 a testator or another person for a testator during the testator's
27 lifetime or by an attorney, business entity, or other person unable

1 to maintain custody of a testator's will and unable to contact or
2 locate the testator (Sec. 252.001, Estates Code) . . . \$10 [~~\$5~~];

3 (2) security deposit on filing, by any person other
4 than the personal representative of an estate, an application,
5 complaint, or opposition in relation to the estate, if required by
6 the clerk (Sec. 53.052, Estates Code) . . . probable cost of the
7 proceeding;

8 (3) fee on filing an application, complaint, petition,
9 or other paper in a guardianship proceeding, which includes a
10 deposit for payment to an attorney ad litem (Sec. 1052.051, Estates
11 Code) . . . cost of filing and payment of attorney ad litem;

12 (4) security deposit on filing, by any person other
13 than the guardian, attorney ad litem, or guardian ad litem, an
14 application, complaint, or opposition in relation to a guardianship
15 matter, if required by the clerk (Sec. 1053.052, Estates Code)
16 . . . probable cost of the guardianship proceeding;

17 (5) nonrefundable fee to cover the cost of
18 administering Subchapter G, Chapter 1104, Estates Code
19 (Sec. 1104.303, Estates Code) . . . \$40; and

20 (6) costs for attorney ad litem appointed to pursue
21 the restoration of a ward's capacity or modification of the ward's
22 guardianship (Sec. 1202.102, Estates Code) . . . reasonable
23 compensation.

24 SECTION 12. Section 118.052, Local Government Code, is
25 amended to read as follows:

26 Sec. 118.052. FEE SCHEDULE. Each clerk of a county court
27 shall collect the following fees for services rendered to any

1 person:

2 (1) CIVIL COURT ACTIONS

3 (A) Filing of Original Action (Sec. 118.053):

4 (i) Garnishment after judgment . . . \$15.00

5 (ii) All others . . . \$40.00

6 (B) Filing of Action Other than Original (Sec.
7 118.054) . . . \$30.00

8 (C) Services Rendered After Judgment in Original
9 Action (Sec. 118.0545):

10 (i) Abstract of judgment . . . \$ 5.00

11 (ii) Execution, order of sale, writ, or
12 other process . . . \$ 5.00

13 (2) PROBATE COURT ACTIONS

14 (A) Probate Original Action (Sec. 118.055):

15 (i) Probate of a will with independent
16 executor, administration with will attached, administration of an
17 estate, guardianship or receivership of an estate, or muniment of
18 title . . . \$40.00

19 (ii) Community survivors . . . \$40.00

20 (iii) Small estates . . . \$40.00

21 (iv) Declarations of heirship . . . \$40.00

22 (v) Mental health or chemical dependency
23 services . . . \$40.00

24 (vi) Additional, special fee (Sec. 118.064)
25 . . . \$ 5.00

26 (B) Services in Pending Probate Action (Sec.
27 118.056):

- 1 (i) Filing an inventory and appraisement as
2 provided by Section [118.056](#)(d) . . . \$25.00
- 3 (ii) Approving and recording bond . . .
4 \$ 3.00
- 5 (iii) Administering oath . . . \$ 2.00
- 6 (iv) Filing annual or final account of
7 estate . . . \$25.00
- 8 (v) Filing application for sale of real or
9 personal property . . . \$25.00
- 10 (vi) Filing annual or final report of
11 guardian of a person . . . \$10.00
- 12 (vii) Filing a document not listed under
13 this paragraph after the filing of an order approving the inventory
14 and appraisement or after the 120th day after the date of the
15 initial filing of the action, whichever occurs first, if more than
16 25 pages . . . \$25.00
- 17 (C) Adverse Probate Action (Sec. [118.057](#)) . . .
18 \$40.00
- 19 (D) Claim Against Estate (Sec. [118.058](#)) . . .
20 \$10.00
- 21 (E) Supplemental Court-Initiated Guardianship
22 Fee in Probate Original Actions and Adverse Probate Actions
23 (Sec. [118.067](#)) . . . \$20.00
- 24 (F) Supplemental Public Probate Administrator
25 Fee For Counties That Have Appointed a Public Probate Administrator
26 (Sec. [118.068](#)) . . . \$10.00
- 27 (3) OTHER FEES

- 1 (A) Issuing Document (Sec. 118.059):
2 original document and one copy . . . \$ 4.00
3 each additional set of an original and one copy . . . \$ 4.00
- 4 (B) Certified Papers (Sec. 118.060):
5 for the clerk's certificate . . . \$ 5.00
6 plus a fee per page or part of a page of . . . \$ 1.00
- 7 (C) Noncertified Papers (Sec. 118.0605):
8 for each page or part of a page . . . \$ 1.00
- 9 (D) Letters Testamentary, Letter of
10 Guardianship, Letter of Administration, or Abstract of Judgment
11 (Sec. 118.061) . . . \$ 2.00
- 12 (E) Deposit and Safekeeping of Wills (Sec.
13 118.062) . . . \$10.00 [~~\$ 5.00~~]
- 14 (F) Mail Service of Process (Sec. 118.063) . . .
15 same as sheriff
- 16 (G) Records Management and Preservation Fee
17 . . . \$ 5.00
- 18 (H) Records Technology and Infrastructure Fee if
19 authorized by the commissioners court of the county (Sec. 118.026)
20 . . . \$ 2.00

21 SECTION 13. Section 118.062, Local Government Code, is
22 amended to read as follows:

23 Sec. 118.062. DEPOSIT AND SAFEKEEPING OF WILLS. The fee for
24 "Deposit and Safekeeping of Wills" under Section 118.052(3) is for
25 receiving [~~filing~~] and keeping wills deposited [~~held~~] for
26 safekeeping. The fee must be paid at the time the will is deposited
27 with the county clerk [~~filed~~].

1 SECTION 14. Sections 252.001 and 252.201, Estates Code, as
2 amended by this Act, and Section 252.2015, Estates Code, as added by
3 this Act, apply to a will deposited with or delivered to a clerk
4 described by those sections on or after the effective date of this
5 Act. A will deposited with or delivered to a clerk described by
6 those sections before the effective date of this Act is governed by
7 the law in effect on the date the will was deposited or delivered,
8 and the former law is continued in effect for that purpose.

9 SECTION 15. This Act takes effect September 1, 2017.