

BILL ANALYSIS

C.S.S.B. 1975
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Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

There have been suggestions, including recommendations from statutory probate judges, for certain revisions and updates to the Estates Code to harmonize with guardianship legislation passed during previous sessions. C.S.S.B. 1975 seeks to implement such suggestions and recommendations by revising, among other provisions, requirements for transferring certain records between counties, guardianship training requirements, provisions relating to criminal history background checks, and provisions relating to the coverage provided to visiting judges by certain bonds and insurance policies.

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

C.S.S.B. 1975 amends the Civil Practice and Remedies Code, Estates Code, and Government Code to update and clarify certain provisions relating to probate and guardianship matters and proceedings and other matters involving probate courts. The bill requires each party or party's attorney in a probate or guardianship proceeding, including an action filed in a statutory probate court, to include the last three numbers of the party's driver's license number and social security number, as applicable, in its initial pleading.

C.S.S.B. 1975 specifies that the required transmittal of the original case file and certain other records for a probate proceeding that is transferred to another county for reasons relating to proper venue or priority of venue or convenience, or for a guardianship that is transferred to another county, may be in electronic or paper form, except that an original will filed in a probate proceeding, if any, must be delivered to the court to which the proceeding is transferred. The bill specifies that for a transfer of guardianship, the filing of applicable records and a related certificate by the county clerk of the receiving county required to make the transfer effective may be in electronic or paper form.

C.S.S.B. 1975 authorizes a citation in a proceeding to declare heirship required by the court to be served personally on a distributee who is absent from or is not a resident of Texas to be served by any disinterested person competent to make an oath that the citation was served. The bill requires a person appointed as a temporary administrator of an estate to file with the court proof of service of the required notice of the appointment to the decedent's known heirs in the manner prescribed by law.

C.S.S.B. 1975 removes a provision establishing that original signatures on a copy of a foreign will accompanying an application for ancillary probate of the will may not be required for recording in the deed records a copy of a foreign will that conveys or disposes of land in Texas and that meets certain other requirements, or for purposes of recording such a copy as a conveyance or as notice of title. The bill sets out provisions relating instead to the recording in the deed records of an applicable county in Texas of an authenticated copy of a qualifying foreign will or other testamentary instrument that is written in whole or in part in a language other than English.

C.S.S.B. 1975 expands the applicability of a requirement for certain attorneys to complete a certain course of study for certification in guardianship law and procedure to include an attorney representing any person's interests in a guardianship proceeding. The bill authorizes an attorney to commence representation of a person's interests and file an appearance in a guardianship proceeding before completing the required course of study but requires the attorney to complete the course not later than the 14th day after the date of filing the appearance and before filing any substantive motion in the proceeding. The bill requires the course provided for attorneys who represent any person's interests in guardianship cases or who serve as court-appointed guardians to be low-cost and available to persons throughout Texas, including on the Internet provided through the state bar.

C.S.S.B. 1975 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 relating to the qualification of guardians.

C.S.S.B. 1975 repeals a provision authorizing a person proposed to serve as a guardian to submit a copy of the person's own required criminal history record information by a certain deadline. The bill removes an authorization for the clerk of a county court to charge a \$10 fee to recover the costs of obtaining criminal history record information relating to specified persons proposed to serve as a guardian, as required in a proceeding for the appointment of a guardian.

C.S.S.B. 1975 prohibits the exclusion of the guardian of the person or of the estate of a ward from attending a legal proceeding in which the ward is a party or is participating as a witness. The bill revises a provision relating to the transfer of a guardianship to a court in a foreign jurisdiction to which the ward has permanently moved by authorizing the court that has jurisdiction over the guardianship to make such a transfer on the court's own motion.

C.S.S.B. 1975 requires a bond executed by the judge of a constitutional county court, statutory county court, or statutory probate court or an insurance policy obtained by a county in lieu of such a bond to provide the same coverage to a visiting judge assigned to 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, 2020.

C.S.S.B. 1975 repeals Section 1104.403, Estates Code.

EFFECTIVE DATE

September 1, 2019.

COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE

While C.S.S.B. 1975 may differ from the engrossed in minor or nonsubstantive ways, the following summarizes the substantial differences between the engrossed and committee substitute versions of the bill.

The substitute does not include a provision prohibiting the provider of a course of instruction for attorneys who represent any person's interests in guardianship cases or who serve as court-appointed guardians from charging more than the amount necessary to cover the costs of providing the course, but the substitute requires such a course to be low-cost and available to persons throughout Texas, including on the Internet provided through the state bar.