

## **BILL ANALYSIS**

Senate Research Center  
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C.S.S.B. 1975  
By: Zaffirini  
State Affairs  
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Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

S.B. 1975 includes recommendations from statutory probate judges to clean up the Estates Code in light of guardianship legislation passed during previous sessions.

Specifically, S.B. 1975 would require a guardianship applicant to include in the initial pleadings the last digits of his or her driver's license and social security numbers, as required in other civil cases. It also would allow a clerk to transfer an original file in a probate or guardianship proceeding in electronic form to increase efficiency. What's more, S.B. 1975 would require all attorneys representing a party in a guardianship case to be certified by the Texas Bar to ensure all parties are represented by competent attorneys and no time is wasted in unnecessary motions. S.B. 1975 also would conform multiple statutes with current requirements for the Judicial Branch Certification Commission (JBCC) to conduct guardians' background checks and training.

Specifically, S.B. 1975 would require a court to find that a proposed guardian's training requirement has been completed prior to waiving the training; eliminate clerks' authority to charge a \$10 fee for guardians' background checks, as all background checks are now done by JBCC; and require all guardianship applications to include the proposed guardian's former names, if any, as well as the value of the ward's liquid assets. This bill also clarifies that a bond covering judges with probate and guardianship jurisdiction also covers visiting judges in that court. (Original Author's/Sponsor's Statement of Intent)

C.S.S.B. 1975 amends current law relating to probate and guardianship matters and proceedings and other matters involving probate courts.

### **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 30.014(a), Civil Practice and Remedies Code, to require each party or the party's attorney, in a civil action, including a probate or guardianship proceeding, filed in a district court, county court, statutory county court, or statutory probate court, rather than a civil action filed in a district court, county court, or statutory court, to include in its initial pleading certain numbers of the party's identification.

SECTION 2. Amends Section 33.101, Estates Code, as follows:

Sec. 33.101. TRANSFER TO OTHER COUNTY IN WHICH VENUE IS PROPER. Requires the court clerk, if probate proceedings involving the same estate are commenced in more than one county and the court making a determination of venue as provided by Section 33.053 (Probate Proceedings in More Than One County) determines that venue is proper in another county, to make and retain a copy of the entire file in the case and transmit the original file in electronic or paper form, rather than the original file, to the court in the county in which venue is proper.

SECTION 3. Amends Section 33.102(a), Estates Code, to make a conforming change.

SECTION 4. Amends Section 33.103, Estates Code, by adding Subsection (c) to authorize the transmittal under Subsection (b) (relating to requirements of the clerk of the court upon a transfer) of the original file and the certified copy of the index to be in electronic or paper form, except that an original will filed in the probate proceeding, if any, is required to be delivered to the court to which the proceeding is transferred.

SECTION 5. Amends Section 51.003(b), Estates Code, to require a citation or notice issued by the county clerk to be styled "The State of Texas" and be signed by the clerk under the court's seal, rather than under the clerk's seal.

SECTION 6. Amends Section 202.054, Estates Code, as follows:

Sec. 202.054. **PERSONAL SERVICE OF CITATION MAY BE REQUIRED.** (a) Creates this subsection from existing text and makes no further changes.

(b) Provides that if a distributee to be cited under Subsection (a) is absent from or is not a resident of this state, any disinterested person competent to make an oath that the citation was served is authorized to serve the citation.

SECTION 7. Amends Section 351.351, Estates Code, as follows:

Sec. 351.351. **APPLICABILITY.** Provides that this subchapter (Certain Administered Estates) does not apply to:

(1) makes no changes to this subdivision; or

(2) the appointment of a successor independent administrator, rather than independent executor, under Section 404.005.

SECTION 8. Amends Section 404.0036(b), Estates Code, to make a conforming change.

SECTION 9. Amends the heading to Section 404.005, Estates Code, to read as follows:

Sec. 404.005. **COURT-APPOINTED SUCCESSOR INDEPENDENT ADMINISTRATOR.**

SECTION 10. Amends Section 404.005(a), (b), (c), (h), and (i), to make conforming changes.

SECTION 11. Amends Section 452.006, Estates Code, to require an appointed temporary administrator to file with the court proof of service of the notice required under Subsection (a) (relating to required notice by certain parties) in the manner provide by Section 51.103(b)(3) (relating to proof or service by mail).

SECTION 12. Amends Section 503.002, Estates Code, as follows:

Sec. 503.002. New heading: **RECORDING OF CERTAIN FOREIGN TESTAMENTARY INSTRUMENTS IN LANGUAGE OTHER THAN ENGLISH.** (a) Authorizes an authenticated copy of a will or other testamentary instrument described by Section 503.001(a) (relating to authorizing a copy of certain instruments to be filed and recorded in the deed records in any county in this state in which the land is located), along with a copy of the judgment, order, or decree by which the instrument was admitted to probate that has the attestation and certificate required by Section 501.002(c) (relating to requiring certain application to include for filing a copy of the foreign will and the judgment, order, or decree by which the will was admitted to probate or otherwise established), that is written in whole or in part in a language other than English to be filed for recording in the deed records in any county in this state in which the land conveyed or disposed of in the instrument is located if:

(1) a correct English translation is recorded with the authenticated copies of the will or other testamentary instrument and judgment, order, or decree by which the instrument was admitted to probate; and

(2) the accuracy of the translation is sworn to before an officer authorized to administer oaths. Deletes existing text prohibiting the original signatures required by Section 501.002(c), notwithstanding that section, from being required for a recordation in the deed records in accordance with Section 503.001 (Authorization to Record Certain Foreign Testamentary Instruments in Deed Records) or for a purpose described by Section 503.051 (Recorded Foreign Testamentary Instrument as Conveyance) or 503.052 (Recorded Foreign Testamentary Instrument as Notice of Title).

(b) Provides that the recording of an authenticated copy of a will or other testamentary instrument and a copy of the judgment, order, or decree in the manner provided by Subsection (a) operates as constructive notice from the date of filing to all persons of the existence of the instrument and title or titles conferred by the instrument.

SECTION 13. Amends Section 1023.006, Estates Code, to require the clerk, on payment of the clerk's fee, to transmit in electronic or paper form, rather than to transmit, to the county clerk of the county to which the guardianship was ordered transferred certain documents.

SECTION 14. Amends Section 1023.007, Estates Code, to make conforming changes.

SECTION 15. Amends Section 1051.003(b), Estates Code, to require a citation or notice issued by the county clerk to be styled "The State of Texas" and be signed by the clerk under the courts' seal, rather than under the clerk's seal.

SECTION 16. Amends the heading to Chapter 1054, Estates Code, to read as follows:

#### CHAPTER 1054. COURT OFFICERS, COURT-APPOINTED PERSONS, AND ATTORNEYS

SECTION 17. Amends the heading to Subchapter E, Chapter 1054, Estates Code, to read as follows:

#### SUBCHAPTER E. QUALIFICATIONS TO SERVE AS ATTORNEY

SECTION 18. Amends Section 1054.201, Estates Code, by amending Subsection (a) and adding Subsection (c), as follows:

(a) Requires an attorney representing any person's interests in a guardianship proceeding, including an attorney ad litem, except as provided by Subsection (c), to be certified by the State Bar of Texas (state bar), or a person or other entity designated by the state bar, as having successfully completed a course of study in guardianship law and procedure sponsored by the state bar or the state bar's designee, rather than requiring an attorney for an applicant for guardianship and a court-appointed attorney in a guardianship proceeding, including an attorney ad litem, to be certified by the state bar, or a person or other entity designated by the state bar, as having successfully completed a course of study in guardianship law and procedure sponsored by the state bar or the state bar's designee.

(c) Authorizes an attorney to commence representation of a person's interests and file an appearance in a guardianship proceeding before completing the course required for certification under Subsection (a), 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 guardianship proceeding.

SECTION 19. Amends Section 1101.001(b), Estates Code, to require the application for the appointment of a guardian to be sworn to by the applicant and state the name, former name, if any, relationship, and address of the person the applicant seeks to have appointed as guardian and the approximate value and a detailed description of the proposed ward's liquid assets including liquid assets, including any compensation, pension, insurance, or allowance to which the proposed ward may be entitled, and non-liquid assets, including real property, rather than property, including any compensation, pension, insurance, or allowance to which the proposed ward may be entitled.

SECTION 20. Amends Section 1101.153(a), Estates Code, as follows:

(a) Redesignates existing Subsections (a)(1)–(6) as Subsections (a)(1)(A)–(F), creates Subdivision (1) from existing text, and makes a nonsubstantive change. Requires a court order appointing a guardian to:

(1) makes no further changes to this subdivision; and

(2) if the court waives the guardian's training requirement, contain a finding that the waiver is in accordance with rules adopted by the Supreme Court of Texas under Section 155.203 (Duty to Provide Assistance in Qualifying Guardians; Supreme Court Rulemaking), Government Code.

SECTION 21. Amends Section 1104.402, Estates Code, as follows:

Sec. 1104.402. New heading: COURT CLERK'S DUTY TO OBTAIN CRIMINAL HISTORY RECORD INFORMATION. Deletes existing designation for Subsection (a). Removes Section 1104.403 (Submission of Criminal History Record Information by Proposed Guardian) from a list of sections providing exceptions to the requirement that the clerk of the county having venue of the proceeding for the appointment of a guardian obtain criminal history record information that is maintained by the Department of Public Safety of the State of Texas or the Federal Bureau of Investigation identification division relating to certain persons.

Deletes existing Subsection (b) authorizing the clerk to charge a \$10 fee to recover the costs of obtaining criminal history record information under Subsection (a).

SECTION 22. Amends Section 1104.405(a), Estates Code, to make a conforming change.

SECTION 23. Amends Subchapter A, Chapter 1151, Estates Code, by adding Section 1151.005, as follows:

Sec. 1151.005. LEGAL PROCEEDINGS IN WHICH WARD IS PARTY OR WITNESS. Prohibits the guardian of the person or of the estate of a ward from being excluded from attending a legal proceeding in which the ward is a party or participating as a witness.

SECTION 24. Amends Section 1253.001, Estates Code, as follows:

Sec. 1253.001. APPLICATION TO TRANSFER GUARDIANSHIP TO FOREIGN JURISDICTION. Authorizes a court that has jurisdiction over the guardianship, on application of the guardian or on the court's own motion, to transfer the guardianship to a court in a foreign jurisdiction to which the ward has permanently moved, rather than authorizing a guardian of the person or estate to apply to the court that has jurisdiction over the guardianship to transfer the guardianship to a court in a foreign jurisdiction to which the ward has permanently moved.

SECTION 25. Amends Section 25.0006, Government Code, by amending Subsection (a) and adding Subsection (a-5), as follows:

(a) Adds Subsection (a-5) to a list of sections that control over a specific provision for a particular court or county that attempts to create a requirement for a bond or insurance that conflicts with those subsections. Makes a nonsubstantive change.

(a-5) Requires a bond executed under Subsection (a-1) (relating to requiring the judge of a statutory county court to execute a certain bond) by the judge elected or appointed to a statutory county court or an insurance policy obtained under Subsection (a-3) (relating to authorizing a county to obtain insurance in lieu of the judge executing 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.

SECTION 26. Amends Section 25.00231, Government Code, by adding Subsection (f), as follows:

(f) Requires a bond executed under Subsection (b) (relating to requiring the judge of a statutory county court to execute a certain bond) by the judge elected or appointed to a statutory probate court or an insurance policy obtained under Subsection (c) (relating to authorizing a county to obtain insurance in lieu of the judge executing a bond), notwithstanding Subsection (e) (relating to certain bond or insurance requirements not applying to a visiting judge), 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.

SECTION 27. Amends Section 26.001, Government Code, by adding Subsection (d), as follows:

(d) Requires a bond executed under Subsection (a) (relating to requiring the county judge to execute a certain bond) by the judge elected or appointed to a county court or an insurance policy obtained under Subsection (c) (relating to authorizing a county to obtain insurance in lieu of the judge executing 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.

SECTION 28. Amends Section 81.114, Government Code, by amending Subsection (a) and adding Subsection (e), as follows:

(a) Requires the state bar to provide a course of instruction for attorneys who represent any person's interests, rather than who represent parties, in guardianship cases or who serve as court-appointed guardians.

(e) Prohibits the provider of a course described by this section (Attorney Instruction Related to Guardianship Issues) from charging more than the amount necessary to cover the costs of providing the course.

SECTION 29. Repealer: Section 1104.403 (Submission of Criminal History Record Information by Proposed Guardian), Estates Code.

SECTION 30. (a) Makes application of Section 202.054, Estates Code, as amended by this Act, prospective.

(b) Make application of Section 452.006(c), Estates Code, as added by this Act, prospective.

(c) Makes application of Section 503.002, Estates Code, as amended by this Act, prospective.

(d) Makes application of Section 1101.001, Estates Code, as amended by this Act, prospective.

(e) Makes application of Sections 1054.201 and 1101.153, as amended by this Act, prospective.

(f) Provides that Section 1253.001, Estates Code, as amended by this Act, applies to a guardianship created before, on, or after the effective date of this Act.

(g) Makes application of Sections 25.0006, 25.00231, and 26.001, Government Code, as amended by this Act, prospective to January 1, 2020.

SECTION 31. Effective date: September 1, 2019.