

BILL ANALYSIS

Senate Research Center
88R19055 EAS-F

H.B. 785
By: Swanson (Zaffirini)
Jurisprudence
5/1/2023
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Guardianship stakeholders have raised concerns about the costly and inefficient process of delivering guardianship notices. Under current law, these communications can be sent only via registered or certified mail with the United States Postal Service. H.B. 785 would allow notices and communications during guardianship proceedings to be sent by any "qualified delivery method," including notices by either certified/registered mail or by any private delivery service that is designated as such by the United States Secretary of the Treasury.

H.B. 785 amends current law relating to the delivery of certain notices or other communications in connection with guardianship proceedings.

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 Chapter 1002, Estates Code, by adding Section 1002.0265, as follows:

Sec. 1002.0265. QUALIFIED DELIVERY METHOD. Defines "qualified delivery method."

SECTION 2. Amends Section 1023.004(c), Estates Code, as follows:

(c) Requires the guardian, if a court made a motion to transfer a guardianship, to be given notice by a qualified delivery method, rather than by certified mail, to appear and show cause why the guardianship should not be transferred.

SECTION 3. Amends the heading to Section 1051.052, Estates Code, to read as follows:

Sec. 1051.052. SERVICE BY MAIL OR QUALIFIED DELIVERY METHOD.

SECTION 4. Amends Section 1051.052, Estates Code, by amending Subsections (b), (c), (d), (e), and (f) and adding Subsection (h), as follows:

(b) Requires the county clerk, except as provided by Subsection (c), to issue a citation or notice required or permitted to be served by a qualified delivery method, rather than by registered or certified mail, and to serve the citation or notice by sending the original citation or notice by a qualified delivery method, rather than mailing the original citation or notice by registered or certified mail.

(c) Requires a guardian to issue a notice required to be given by the guardian by a qualified delivery method, rather than by registered or certified mail, and to serve the notice by sending the original notice by a qualified delivery method, rather than by mailing the original notice by registered or certified mail.

(d) Requires the county clerk or guardian, as applicable, to send, rather than to mail, a citation or notice under Subsection (b) or (c) with an instruction to deliver the citation or notice to the addressee only and with return receipt or other proof of delivery requiring recipient signature requested.

(e) Provides that the date of service, rather than the date of service by mail, is the date of mailing, the date of deposit with the private delivery service, or the date of delivery by courier, as applicable. Makes a conforming change.

(f) Makes conforming changes to this subsection.

(h) Requires the applicant or movant, in a guardianship proceeding to pay the cost of delivery of a citation or notice under this section, to be taxed as costs in the proceeding.

SECTION 5. Amends Sections 1051.055(a) and (b), Estates Code, as follows:

(a) Requires that a citation or notice required to be served on a party, if the party is represented by an attorney of record in a guardianship proceeding, including a proposed ward who has been personally served with notice of the proceeding and is represented by an attorney ad litem, be served instead on that attorney.

(b) Authorizes a notice served on an attorney under Section 1051.055 (Service on Party's Attorney of Record) to be served by delivery to the attorney in person or by a qualified delivery method. Deletes existing text authorizing a notice served on an attorney under this section to be served by delivery to the attorney in person; by registered or certified mail, return receipt requested; or by any other form of mail that requires proof of delivery. Makes nonsubstantive changes.

SECTION 6. Amends Section 1051.056, Estates Code, as follows:

Sec. 1051.056. SERVICE ON GUARDIAN OR RECEIVER. Makes conforming changes to this section.

SECTION 7. Amends Sections 1051.104(a) and (b), Estates Code, to make conforming changes.

SECTION 8. Amends Section 1051.153(b), Estates Code, as follows:

(b) Provides that proof of service consists of certain information, including, if the service is made by publication, certain documents, including a statement that meets certain criteria, including stating the date of publication on the public information Internet website maintained as required by Section 72.034 (Public Information Internet Website), Government Code, rather than Section 72.034, Government Code, as added by Chapter 606 (S.B. 891), Acts of the 86th Legislature, Regular Session, 2019. Makes conforming changes.

SECTION 9. Amends Section 1057.002(b), Estates Code, to make conforming changes.

SECTION 10. Amends Section 1153.001(a), Estates Code, to make conforming changes.

SECTION 11. Amends Sections 1153.003(b) and (c), Estates Code, to make conforming changes.

SECTION 12. Amends Section 1156.052(c), Estates Code, to make conforming changes.

SECTION 13. Amends Section 1162.003, Estates Code, as follows:

Sec. 1162.003. NOTICE OF APPLICATION FOR ESTABLISHMENT OF ESTATE OR OTHER TRANSFER PLAN. Makes conforming changes to this section.

SECTION 14. Amends Section 1162.006(b), Estates Code, to make conforming changes.

SECTION 15. Amends Section 1202.054(b-2), Estates Code, to make conforming changes

SECTION 16. Amends Sections 1203.052(a-1) and (b), Estates Code, to make conforming changes.

SECTION 17. Makes application of this Act prospective.

SECTION 18. Effective date: September 1, 2023.