

## **BILL ANALYSIS**

C.S.H.B. 785  
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Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Legal professionals have raised concerns regarding the cost and inefficiency of delivering guardianship notices. Under current law, all notices and communications during guardianship proceedings can only be sent via registered or certified mail with the United States Postal Service (USPS). In practice, USPS is often slow and cost-inefficient but nevertheless has an effective monopoly on all confidential communication during guardianship proceedings. C.S.H.B. 785 seeks to address this issue by changing the method of delivering communications and notices related to guardianship proceedings, which still includes certified or registered mail by USPS.

### **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.H.B. 785 amends the Estates Code to change the delivery method from certified or registered mail to a qualified delivery method for serving a citation or notice for a guardianship proceeding, including the following:

- the transfer of a guardianship to another county, on the court's motion;
- the resignation of a resident agent of a guardian;
- an application for an allowance out of a ward's estate for the education and maintenance of the ward's spouse or dependent;
- an application to establish an estate plan or transfer plan for a ward shown to probably remain incapacitated during the ward's lifetime;
- an application for inspection of certain documents;
- a court's acknowledgment of receipt of an informal request by a ward to investigate necessity of a guardianship and notice regarding a court investigator;
- for claimants to an estate; and
- before the removal of a guardian.

C.S.H.B. 785 defines "qualified delivery method" as delivery by one of the following methods:

- hand delivery by courier, with courier's proof of delivery receipt;
- certified or registered mail, return receipt requested, with return receipt; or
- a private delivery service designated as a designated delivery service by the United States secretary of the treasury under the federal Internal Revenue Code of 1986, with proof of delivery receipt.

The date of service is the date of delivery by courier, the date of the mailing, or the date of deposit with the private delivery service, as applicable. The bill requires the applicant or movant in a guardianship proceeding to pay the cost of delivery of a citation or notice, to be taxed as costs in the proceeding.

C.S.H.B. 785 specifies that the requirement for a citation or notice in a guardianship proceeding to be served on an attorney instead of the party to the proceeding applies with respect to a proposed ward who has been personally served with notice of a guardianship proceeding and is represented by an attorney ad litem.

C.S.H.B. 785 applies only to an action filed or a guardianship proceeding commenced on or after the bill's effective date.

### **EFFECTIVE DATE**

September 1, 2023.

### **COMPARISON OF INTRODUCED AND SUBSTITUTE**

While C.S.H.B. 785 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute revises the definition of "qualified delivery method" as it appeared in the introduced as follows:

- by including hand delivery by courier, with courier's proof of delivery receipt;
- by specifying that certified or registered mail must include return receipt requested, with return receipt; and
- by specifying that the private delivery service must include proof of delivery receipt.

The substitute includes a provision not in the introduced that sets the date of service for the following:

- hand delivery by courier as the date of delivery; and
- private delivery service as the date of deposit with the service.

While both the introduced and substitute change the delivery method for providing notice in a guardianship proceeding from certified or registered mail to a qualified delivery method, the substitute changes the method for the following statutory provisions, which did not appear in the introduced:

- the transfer of a guardianship to another county, on the court's motion;
- the resignation of a resident agent of a guardian;
- an application for an allowance out of a ward's estate for the education and maintenance of the ward's spouse or dependent;
- an application to establish an estate plan or transfer plan;
- an application for inspection of certain documents; and
- a court's acknowledgment of receipt of an informal request by a ward and notice regarding a court investigator.

The substitute includes a requirement not in the introduced for the applicant or movant in a guardianship proceeding to pay the costs of delivering a citation or notice, to be taxed as costs in the proceeding.

The substitute includes a provision not in the introduced that specifies that the statutory requirement to serve a citation or notice to a party's attorney instead of the party in a

guardianship proceeding applies with respect to a proposed ward who has been personally served and is represented by an attorney ad litem.

The substitute changes the bill's effective date from on passage, contingent on receiving the requisite constitutional vote, or September 1, 2023, as in the introduced, to September 1, 2023.