

BILL ANALYSIS

C.S.H.B. 2893
By: Clardy
Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

With the successful implementation of last session's court omnibus legislation, which standardized the methods for transferring civil and family cases among other changes, there have been calls for standardizing the methods by which court clerks transfer probate and guardianship matters. C.S.H.B. 2893 seeks to bring the same consistency to transferring cases governed by the Estates Code and the Government Code, standardize the court case transfer process between court clerk's offices, and preserve the integrity of the original documents.

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 rulemaking authority is expressly granted to the Office of Court Administration of the Texas Judicial System in SECTION 12 of this bill.

ANALYSIS

C.S.H.B. 2893 amends the Estates Code to establish the following with respect to the transfer of probate and guardianship proceeding records:

- the clerk of the transferring court must send to the clerk of the court to which the proceeding is transferred using the statewide electronic filing system established by the Texas Supreme Court for the filing of documents in Texas courts the following documents:
 - a transfer certificate and index of transferred documents;
 - a copy of each final order;
 - a copy of the order of transfer signed by the transferring court;
 - a copy of the original papers filed in the transferring court, including a copy of any will;
 - a copy of the transfer certificate and index of transferred documents from each previous transfer; and
 - a bill of any costs accrued in the transferring court;
- the clerk of the transferring court must use the standardized transfer certificate and index of transferred documents form developed by the Office of Court Administration of the Texas Judicial System (OCA) when transferring a proceeding;
- the clerk of the transferring court must keep a copy of the transferred documents;
- the clerk of the court to which the proceeding is transferred must accept the transferred documents, docket the proceeding, and notify, using the electronic filing system, all parties to the proceeding, the clerk of the transferring court, and, if appropriate, notify the transferring court's local registry that the proceeding has been docketed; and

- the clerk of the transferee court must physically or electronically mark or stamp the transfer certificate and index of transferred documents to evidence the date and time of acceptance but may not physically or electronically mark or stamp any other transferred document.

The bill requires the clerk of the transferring court to deliver the original will to the clerk of the transferee court by the following delivery methods:

- registered or certified mail, return receipt requested;
- common or contract carrier, with proof of delivery receipt; or
- designated delivery service, as defined by federal law, with proof of delivery receipt.

The bill requires the party requesting the transfer to pay the costs of delivery.

C.S.H.B. 2893 authorizes the clerks of both the transferee and transferring courts to each produce certified or uncertified copies of the transferred probate or guardianship documents, as applicable, but must include a copy of the transfer certificate and index of transferred documents with each document produced. The bill establishes that Government Code provisions relating to the delivery of a notice or document do not apply to the transfer of those proceeding documents.

C.S.H.B. 2893 revises provisions relating to the transfer of a guardianship proceeding as follows:

- sets the deadline by which the clerk must record any unrecorded papers of the guardianship required to be recorded at not later than the 10th working day after the date an order of transfer is signed;
- removes the following from the documents required to be transferred:
 - the case file of the guardianship proceedings; and
 - a certified copy of the index of the guardianship records;
- requires the clerk of the transferring court to send a certified copy of the order directing payments to the transferee court to:
 - any party affected by the order and, if appropriate, to the local registry of the transferee court using the statewide electronic filing system; and
 - an employer affected by the order electronically or by first class mail; and
- clarifies that the transfer of a guardianship does not take effect until the clerk of the court to which the proceeding is transferred accepts and docket the case record according to the bill's provisions.

C.S.H.B. 2893 amends the Government Code to revise statutory provisions as follows relating to the transfer of cases from a district court or from a county court, as applicable:

- specifies that the electronic filing system requirements for a transfer from a district court to a county court are applicable to a transfer from a district court to a constitutional or statutory county court or another district court;
- specifies that electronic system filing requirements for a transfer from a county court to a district court are also applicable to a transfer from a county court to a statutory county court or a county court of another county;
- authorizes the clerks of both the transferee and transferring courts to produce certified or uncertified copies of transferred documents;
- requires the clerks of both the transferee and transferring courts to include a copy of the transfer certificate and index of transferred documents with each document produced; and
- makes provisions regarding these transfers applicable regardless of whether the transferee court and the transferring court are in the same or different counties.

C.S.H.B. 2893 requires OCA to develop and make available a standardized transfer certificate and an index of transferred documents form to be used for the transfer of probate and guardianship proceedings. Accordingly, the bill requires OCA to adopt rules and develop and make available all applicable forms and materials.

C.S.H.B. 2893 amends the Family Code to make conforming changes.

C.S.H.B. 2893 repeals Section 33.103(c), Estates Code.

EFFECTIVE DATE

September 1, 2023.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 2893 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 includes a requirement absent from the introduced for the clerk of the transferring court of a probate proceeding to deliver the original will to the clerk of the transferee court by the following methods:

- registered or certified mail, return receipt requested;
- common or contract carrier, with proof of delivery receipt; or
- designated delivery service, with proof of delivery receipt.

The substitute includes a related requirement for the party requesting the transfer to pay the cost of such delivery, whereas the introduced did not include this requirement.

While the introduced revised statutory provisions relating to the transfer of cases from a county court to a district court to specify that the electronic system filing requirements for such a transfer are also applicable to a transfer from a county court to a statutory county court or a county court, the substitute includes the condition that the transfer must be to a statutory county court or county court of another county for purposes of the applicability of the filing requirements.