

BILL ANALYSIS

Senate Research Center
88R29472 AMF-F

C.S.H.B. 2893
By: Clardy (Zaffirini)
Jurisprudence
5/12/2023
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

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.

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.

(Original Author's/Sponsor's Statement of Intent)

C.S.H.B. 2893 amends current law relating to the procedures for transferring certain cases and proceedings between courts.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. 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 transmit the file for the proceeding in accordance with the procedures provided by Section 33.105, rather than make and retain a copy of the entire file in the case and transmit the original file in electronic or paper form, to the court in the county in which venue is proper.

SECTION 2. Amends Section 33.102(a), Estates Code, as follows:

(a) Requires the court, if it appears to the court at any time before the final order in a probate proceeding is rendered that the court does not have priority of venue over the proceeding, to transfer the proceeding, on the application of an interested person, to the proper county by transmitting the file for the proceeding in accordance with the procedures provided by Section 33.105 to the proper court in that county, rather than transmitting in electronic or paper form the original file in the case and certified copies of all entries that have been made in the judge's probate docket in the proceeding.

SECTION 3. Amends Section 33.103(b), Estates Code, as follows:

(b) Requires the clerk of the court from which the probate proceeding described by Subsection (a) is transferred to transmit the file for the proceeding in accordance with the procedures provided by Section 33.105 to the court to which the proceeding is

transferred, rather than transmit the original file in the proceeding and a certified copy of the index.

SECTION 4. Amends Subchapter C, Chapter 33, Estates Code, by adding Section 33.105, as follows:

Sec. 33.105. TRANSFER OF PROBATE PROCEEDING RECORD. (a) Requires the clerk of the transferring court, if a probate proceeding is transferred to a court in another county under Chapter 33 (Venue), to send to the clerk of the court to which the proceeding is transferred, using the electronic filing system established under Section 72.031 (Electronic Filing System), Government Code:

- (1) a transfer certificate and index of transferred documents;
- (2) a copy of each final order;
- (3) a copy of the order of transfer signed by the transferring court;
- (4) a copy of the original papers filed in the transferring court, including a copy of any will;
- (5) a copy of the transfer certificate and index of transferred documents from each previous transfer; and
- (6) a bill of any costs accrued in the transferring court.

(b) Requires the clerk of the transferring court to use the standardized transfer certificate and index of transferred documents form developed by the Office of Court Administration of the Texas Judicial System (OCA) under Section 72.037 (Transfer Certificate and Index of Transferred Documents Form), Government Code, when transferring a proceeding under this section.

(c) Requires the clerk of the transferring court to keep a copy of the documents transferred under Subsection (a).

(d) Requires the clerk of the court to which the proceeding is transferred to:

- (1) accept documents transferred under Subsection (a);
- (2) docket the proceeding; and
- (3) notify, using the electronic filing system established under Section 72.031, Government Code, all parties to the proceeding, the clerk of the transferring court, and, if appropriate, the transferring court's local registry that the proceeding has been docketed.

(e) Requires the clerk of the transferee court to physically or electronically mark or stamp the transfer certificate and index of transferred documents to evidence the date and time of acceptance under Subsection (d) but prohibits the clerk from physically or electronically marking or stamping any other document transferred under Subsection (a).

(f) Authorizes the clerks of both the transferee and transferring courts to each produce under Chapter 51 (Clerks), Government Code, certified or uncertified copies of documents transferred under Subsection (a) but requires the clerks to include a copy of the transfer certificate and index of transferred documents with each document produced.

(g) Provides that Sections 80.001 (Delivery of Notice or Document) and 80.002 (Authorized Delivery of Notice or Document), Government Code, do not apply to the transfer of documents under this section.

(h) Requires the clerk of the transferring court to deliver the original will, or the copy of the will offered for probate in lieu of a lost original will, as applicable, to the clerk of the transferee court by:

(1) registered or certified mail, return receipt requested;

(2) common or contract carrier, with proof of delivery receipt; or

(3) designated delivery service, as defined by 26 U.S.C. Section 7502(f)(2), with proof of delivery receipt.

(i) Requires the party requesting the transfer to pay the cost of delivery under Subsection (h).

SECTION 5. Amends Section 1023.006, Estates Code, as follows:

Sec. 1023.006. TRANSFER OF RECORD. (a) Requires the clerk, not later than the 10th working day after the date an order of transfer is signed under Section 1023.005 (Court Action), rather than when an order of transfer is made under Section 1023.005, to record any unrecorded papers of the guardianship required to be recorded. Requires the clerk, on payment of the clerk's fee, to send, using the electronic filing system established under Section 72.031, Government Code, rather than to transmit in electronic or paper form, to the county clerk of the county to which the guardianship was ordered transferred:

(1) a transfer certificate and index of transferred documents, rather than the case file of the guardianship proceedings;

(2) a copy of each final order, rather than a certified copy of the index of the guardianship records;

(3) a copy of the order of transfer signed by the transferring court;

(4) a copy of the original papers filed in the transferring court;

(5) a copy of the transfer certificate and index of transferred documents from each previous transfer; and

(6) a bill of any costs accrued in the transferring court.

(b) Requires the clerk of the transferring court to use the standardized transfer certificate and index of transferred documents form developed by OCA under Section 72.037, Government Code, when transferring a proceeding under this section.

(c) Requires the clerk of the transferring court to keep a copy of the documents transferred under Subsection (a).

(d) Requires the clerk of the court to which the proceeding is transferred to:

(1) accept documents transferred under Subsection (a);

(2) docket the case; and

(3) notify, using the electronic filing system established under Section 72.031, Government Code, all parties, the clerk of the transferring court,

and, if appropriate, the transferring court's local registry that the suit has been docketed.

(e) Requires the clerk of the transferee court to physically or electronically mark or stamp the transfer certificate and index of transferred documents to evidence the date and time of acceptance under Subsection (d), but prohibits the clerk from physically or electronically marking or stamping any other document transferred under Subsection (a).

(f) Authorizes the clerks of both the transferee and transferring courts to each produce under Chapter 51, Government Code, certified or uncertified copies of documents transferred under Subsection (a) but requires the clerks to include a copy of the transfer certificate and index of transferred documents with each document produced.

(g) Provides that Sections 80.001 and 80.002, Government Code, do not apply to the transfer of documents under this section.

SECTION 6. Amends Section 1023.007, Estates Code, as follows:

Sec. 1023.007. TRANSFER EFFECTIVE. Provides that the order transferring a guardianship does not take effect until the clerk of the court to which the proceeding is transferred accepts and docketed the case record under Section 1023.006 (Transfer of Record). Deletes existing text providing that the order transferring a guardianship does not take effect until:

(1) the case file and a certified copy of the index required by Section 1023.006 are filed in electronic or paper form in the office of the county clerk of the county to which the guardianship was ordered transferred; and

(2) a certificate under the clerk's official seal and reporting the filing of the case file and a certified copy of the index is filed in electronic or paper form in the court ordering the transfer by the county clerk of the county to which the guardianship was ordered transferred.

SECTION 7. Amends Sections 155.207(a), (b), and (e), Family Code, as follows:

(a) Requires the clerk of the court transferring a proceeding, not later than the 10th working day after the date an order of transfer is signed, to send, using the electronic filing system established under Section 72.031, Government Code, to the proper court, rather than the proper court in the county, to which transfer is being made certain documents.

(b) Requires the clerk of the transferring court to keep a copy of the documents transferred under Subsection (a), rather than a copy of transferred pleadings.

(e) Authorizes the clerks of both the transferee and transferring courts to each produce under Chapter 51, Government Code, certified or uncertified copies of documents transferred under Subsection (a), rather than copies of documents filed in a case transferred under Section 155.207 (Transfer of Court Files), and requires the clerks to include a copy of the transfer certificate and index of transferred documents with each document produced. Makes a nonsubstantive change.

SECTION 8. Amends Section 51.3071, Government Code, by amending Subsection (a) and adding Subsections (f) and (g), as follows:

(a) Requires the clerk of the transferring court, rather than district court, if a case is transferred from a district court to a constitutional or statutory county court or another district court, to send to the clerk of the court to which the case is transferred, rather than

county clerk, using the electronic filing system established under Section 72.031, certain documents.

(f) Authorizes the clerks of both the transferee and transferring courts to each produce, under this chapter, certified or uncertified copies of documents transferred under Subsection (a) and requires the clerks to include a copy of the transfer certificate and index of transferred documents with each document produced.

(g) Provides that Section 51.3071 (Transfer of Cases) applies regardless of whether the transferee court and the transferring court are in the same or different counties.

SECTION 9. Amends Section 51.403, Government Code, by amending Subsection (a) and adding Subsections (d) and (e), as follows:

(a) Requires the clerk of the transferring court, rather than county court, if a case is transferred from a county court to a district or statutory county court or a county court of another county, to send to the clerk of the court to which the case is transferred, rather than district clerk, using the electronic filing system established under Section 72.031, certain documents.

(d) Authorizes the clerks of both the transferee and transferring courts to each produce, under this chapter, certified or uncertified copies of documents transferred under Subsection (a) and requires the clerks to include a copy of the transfer certificate and index of transferred documents with each document produced.

(e) Provides that Section 51.403 (Transfer of Cases) applies to a case transferred between a district court and a county court regardless of whether the transferee court and the transferring court are in the same or different counties. Provides that a case transferred between two county courts in the same county is not subject to the requirements of this section. Requires the clerk serving the county courts to reassign the case on receipt of an order of transfer.

SECTION 10. Amends Section 72.037(a), Government Code, to require OCA to develop and make available a standardized transfer certificate and an index of transferred documents form to be used for the transfer of cases and proceedings under Sections 33.105 and 1023.006, Estates Code, Section 155.207, Family Code, and Sections 51.3071 and 51.403 of this code.

SECTION 11. Repealer: Section 33.103(c) (relating to authorizing the transmittal 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), Estates Code.

SECTION 12. Requires OCA, as soon as practicable after the effective date of this Act, to adopt rules and develop and make available all forms and materials required by Section 72.037, Government Code, as amended by this Act.

SECTION 13. Effective date: September 1, 2023.