

BILL ANALYSIS

Senate Research Center
88R6186 KFF-F

S.B. 1373
By: Hughes
State Affairs
3/21/2023
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

There are certain notice procedures relating to the disposition of decedents' or multiple-party estates that are outdated or require clarification, in addition to other issues. S.B. 1373, among other changes, provides for the following: alternatives to registered or certified mail to meet statutory notice requirements; clarification regarding the liability of community property assets of a married couple to creditors' claims when a spouse dies; use of affidavits of heirship in proceedings to declare heirship; removing certain personal identification information from court documents; and the waiving of citation by certain persons on behalf of a minor under the age of 16.

S.B. 1373 also amends current law relating to decedents' estates and the delivery of certain notices or other communications in connection with those estates or multiple-party accounts; when a felon may serve as an executor or estate administrator; and when a creditor may serve as a witness in probate proceedings.

As proposed, S.B. 1373 amends current law relating to decedents' estates and the delivery of certain notices or other communications in connection with those estates or multiple-party accounts.

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 22, Estates Code, by adding Section 22.0295, as follows:

Sec. 22.0295. QUALIFIED DELIVERY METHOD. Defines "qualified delivery method."

SECTION 2. Amends the heading to Section 51.052, Estates Code, to read as follows:

Sec. 51.052. SERVICE BY MAIL OR PRIVATE DELIVERY.

SECTION 3. Amends Sections 51.052(b), (c), (d), (e), (f), and (g), Estates Code, 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 by mailing the original citation or notice by registered or certified mail.

(c) Makes conforming changes to this subsection.

(d) Requires the county clerk or personal representative, as applicable, to send, rather than 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 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 the courier, as applicable. Makes a conforming change.

(f)-(g) Makes conforming changes to these subsections.

SECTION 4. Amends Section 51.055(a), Estates Code, to authorize a notice under this subsection to be served by delivery to the attorney in person or by a qualified delivery method, rather than by registered or certified mail.

SECTION 5. Amends Section 51.056, Estates Code, as follows:

Sec. 51.056. SERVICE ON PERSONAL REPRESENTATIVE OR RECEIVER. Requires the county clerk who issues a citation or notice required to be served on a personal representative or receiver, unless Title 2 (Estates of Decedents; Durable Powers of Attorney) expressly provides for another method of service, to serve the citation or notice by sending the original citation or notice by a qualified delivery method, rather than by mailing the original citation or notice by registered or certified mail, to certain persons.

SECTION 6. Amends Section 51.103(b), Estates Code, as follows:

(b) Provides that proof of service consists of:

(1)-(2) makes no changes to these subdivisions;

(3) if the service is made by a qualified delivery method, rather than by mail:

(A) the certificate of the county clerk making the service, or the affidavit of the personal representative or other person making the service, stating that the citation or notice was mailed, deposited with a private delivery service, or delivered by courier, as applicable, and the date of the mailing or deposit with the delivery service or the date of the courier delivery, as applicable; and

(B) the return receipt or other proof of delivery receipt attached to the certificate or affidavit, as applicable, if the sending was by a qualified delivery method and a receipt is available, rather than if the mailing was by registered or certified mail and a receipt has been returned; and

(4) if the service is made by publication, a statement and an affidavit meeting certain criteria.

Deletes existing text providing that proof of service consists of, if the service is made by a publication, a statement that states the date of publication on the public information Internet website maintained as required by Section 72.034 (Public Information Internet Website), Government Code, as added by Chapter 606 (S.B. 891), Acts of the 86th Legislature, Regular Session, 2019.

SECTION 7. Amends Section 56.002(b), Estates Code, to require the resident agent to send, by a qualified delivery method, rather than by certified mail, return receipt requested, a copy of a certain resignation statement to certain recipients.

SECTION 8. Amends the heading to Section 101.052, Estates Code, to read as follows:

Sec. 101.052. LIABILITY OF COMMUNITY PROPERTY FOR DEBTS.

SECTION 9. Amends Section 101.052, Estates Code, by amending Subsections (a) and (b) and adding Subsection (a-1), as follows:

(a) Provides that the community property that was by law under the sole management, control, and disposition of a spouse or under the joint management, control, and disposition of the spouses during marriage, rather than the community property subject to the sole or joint management, control, and disposition of a spouse during marriage, continues to be subject to the liabilities of that spouse on the death of either spouse.

(a-1) Provides that the undivided one-half interest that the surviving spouse owned in community property that was by law under the sole management, control, and disposition of the deceased spouse during marriage is subject to the liabilities of the surviving spouse on the death of the deceased spouse.

(b) Provides that the undivided one-half interest that the deceased spouse owned in community property, rather than any other nonexempt community property, that was by law under the sole management, control, and disposition of the surviving spouse during marriage passes to the deceased spouse's heirs or devisees charged with the liabilities of the deceased spouse, rather than charged with the debts that were enforceable against the deceased spouse before death.

SECTION 10. Amends Sections 113.001(1) and (8), Estates Code, to redefine "account" and "sums on deposit."

SECTION 11. Amends Section 113.251(c), Estates Code, to require that the notice of the pledge of the account be sent by a qualified delivery method, rather than by certified mail, to each other party at the last address the party provided to the depository bank.

SECTION 12. Amends Section 202.005, Estates Code, as follows:

Sec. 202.005. APPLICATION FOR PROCEEDING TO DECLARE HEIRSHIP. Requires that the application for a proceeding to declare heirship state certain information, including a general description of all property, as applicable, belonging to the decedent's estate that is subject to distribution under a judgment in the proceeding or held in trust for the benefit of the decedent.

SECTION 13. Amends Section 202.051, Estates Code, as follows:

Sec. 202.051. New heading: SERVICE OF CITATION BY QUALIFIED DELIVERY METHOD WHEN RECIPIENT'S NAME AND ADDRESS ARE KNOWN OR ASCERTAINABLE. Requires that citation in a proceeding to declare heirship, except as provided by Section 202.054 (Personal Service of Citation May Be Required), be served by a qualified delivery method, rather than by registered or certified mail, on certain persons.

SECTION 14. Amends Section 202.056, Estates Code, as follows:

Sec. 202.056. WAIVER OF SERVICE OF CITATION. (a) Authorizes a distributee who is 16 years of age or older to waive citation required by Subchapter B (Notice of Proceeding to Declare Heirship) to be served on the distributee. Makes a conforming change.

(b) Authorizes a parent, managing conservator, guardian, attorney ad litem, or guardian ad litem of a distributee who is younger than 16 years of age to waive citation required by this subchapter to be served on the distributee. Deletes existing text authorizing a parent, managing conservator, guardian, attorney ad litem, or guardian ad litem of a minor distributee who is younger than 12 years of age to waive citation required by this subchapter to be served on the distributee and prohibiting a parent, managing conservator, guardian, attorney ad litem, or

guardian ad litem of a minor distributee who is 12 years of age or older from waiving citation required by this subchapter to be served on the distributee.

SECTION 15. Amends Section 202.151, Estates Code, by amending Subsections (b) and (c) and adding Subsection (d), as follows:

(b) Requires that testimony regarding a decedent's heirs and family history, in a proceeding to declare heirship, except as provided by Subsection (c), be taken in certain manners, including by a recorded statement of facts contained in an affidavit or instrument that satisfies the requirements of Section 203.001 (Recorded Statement of Facts as Prima Facie Evidence of Heirship) or a judgment of a court of record as specified by Section 203.001(a)(1)(B) (relating to requiring a court to receive in a proceeding to declare heirship or a suit involving title to property a statement of facts concerning certain information as prima facie evidence of the facts contained in the statement if the statement is contained in a judgment of a court of record). Makes nonsubstantive changes.

(c) Requires that the testimony of a disinterested and credible witness, if it is shown to the court's satisfaction in a proceeding to declare heirship that, after a diligent search was made, only one disinterested and credible witness can be found who can make the required proof in the proceeding, be taken in certain manners, including by a recorded statement of facts contained in an affidavit or instrument that satisfies the requirements of Section 203.001 or a judgment of a court of record as specified by Section 203.001(a)(1)(B). Makes nonsubstantive changes.

(d) Authorizes a person interested in an estate solely because the person is a creditor or has a claim against the estate, notwithstanding any other law, to serve as a witness under Section 202.151 (Evidence in Proceeding to Declare Heirship) if the person is otherwise a credible witness.

SECTION 16. Amends Section 202.203, Estates Code, as follows:

Sec. 202.203. CORRECTION OF JUDGMENT AT REQUEST OF HEIR NOT PROPERLY SERVED. Authorizes an heir of a decedent who is the subject of a proceeding to declare heirship, if the heir is not served with citation by a qualified delivery method, rather than by registered or certified mail, or personal service in the proceeding, to take certain actions.

SECTION 17. Amends Section 251.053, Estates Code, as follows:

Sec. 251.053. EXCEPTION FOR FOREIGN AND CERTAIN OTHER WILLS. Provides that a written will does not need to meet the requirements of Section 251.051 (Written, Signed, and Attested) if the will is executed in compliance with certain laws. Deletes existing text providing that Section 251.051 does not apply to a written will executed in compliance with certain laws.

SECTION 18. Amends Section 258.002, Estates Code, by adding Subsections (d) and (e), as follows:

(d) Authorizes an heir who is 16 years of age or older to waive citation required by Section 258.002 (Citation on Application for Probate of Will Not Produced in Court) to be served on the heir.

(e) Authorizes a parent, managing conservator, guardian, attorney ad litem, or guardian ad litem of an heir who is younger than 16 years of age to waive citation required by this section to be served on the heir.

SECTION 19. Amends Section 304.003, Estates Code, as follows:

Sec. 304.003. PERSONS DISQUALIFIED TO SERVE AS EXECUTOR OR ADMINISTRATOR. Provides that a person is not qualified to serve as an executor or administrator if the person is:

(1) makes no changes to this subdivision;

(2) a felon convicted under the laws of the United States or of any state of the United States unless:

(A) creates this paragraph from existing text; or

(B) all of the distributees of the decedent agree on and collectively designate the person to serve as executor or administrator of the decedent's estate and acknowledge the conviction in:

(i) an application for probate of the decedent's will;

(ii) an application for letters testamentary or of administration of the decedent's estate; or

(iii) one or more separate documents consenting to an application; or

(3)-(5) makes no changes to these subdivisions.

SECTION 20. Amends Section 305.001, Estates Code, as follows:

Sec. 305.001. DEFINITIONS. Defines "declaration" and redefines "oath."

SECTION 21. Amends Section 305.002, Estates Code, as follows:

Sec. 305.002. MANNER OF QUALIFICATION OF PERSONAL REPRESENTATIVE.

(a) Provides that a personal representative, other than an executor described by Subsection (b), is considered to have qualified when the representative has taken certain actions, including made, signed, and filed the declaration prescribed by Subchapter B (Procedural Matters).

(b) Provides that an executor who is not required to give a bond is considered to have qualified when the executor has made, signed, and filed the declaration prescribed by Subchapter B.

SECTION 22. Amends Section 305.003, Estates Code, as follows:

Sec. 305.003. New heading: PERIOD FOR TAKING OATH OR MAKING AND SIGNING DECLARATION. Authorizes an oath to be taken and subscribed or a declaration to be made and signed at any time before certain times.

SECTION 23. Amends heading to Subchapter B, Chapter 305, Estates Code, to read as follows:

SUBCHAPTER B. OATHS OR DECLARATIONS

SECTION 24. Amends Section 305.051, Estates Code, as follows:

Sec. 305.051. New heading: OATH OR DECLARATION OF EXECUTOR OR ADMINISTRATOR WITH WILL ANNEXED. (a) Creates this subsection from existing text. Requires the person named as executor or appointed as administrator with the will annexed, before the issuance of letters testamentary or letters of administration with the will annexed, to take and subscribe an oath as prescribed by Subsection (b) or make and sign a declaration as prescribed by Subsection (c).

(b) Requires the person named as executor or appointed as administrator with the will annexed, if the person elects to take an oath under this section, to take and subscribe an oath in substantially a certain form. Sets forth the language required to be included in the oath.

(c) Requires the person named as executor or appointed as administrator with the will annexed, if the person elects to make a declaration under this section, to make and sign a declaration in substantially a certain form. Sets forth the language required to be included in the declaration.

SECTION 25. Amends Section 305.052, Estates Code, as follows:

Sec. 305.052. New heading: OATH OR DECLARATION OF ADMINISTRATOR. (a) Requires the person appointed as administrator, before the issuance of letters of administration, to take and subscribe an oath as prescribed by Subsection (b) or make and sign a declaration as prescribed by Subsection (c).

(b) Requires the person appointed as administrator, if the person elects to take an oath under this section, to take and subscribe an oath in substantially a certain form. Sets forth the language required to be included in the oath.

(c) Requires the person appointed as administrator, if the person elects to make a declaration under this section, to make and sign a declaration in substantially a certain form. Sets forth the language required to be included in the declaration.

SECTION 26. Amends Section 305.053, Estates Code, as follows:

Sec. 305.053. New heading: OATH OR DECLARATION OF TEMPORARY ADMINISTRATOR. (a) Creates this subsection from existing text. Requires the person appointed as temporary administrator, before the issuance of temporary letters of administration, to take and subscribe an oath as prescribed by Subsection (b) or make and sign a declaration as prescribed by Subsection (c).

(b) Requires the person appointed as temporary administrator, if the person elects to take an oath under this section, to take and subscribe an oath in substantially a certain form. Sets forth the language required to be included in the oath.

(c) Requires the person appointed as temporary administrator, if the person elects to make a declaration under this section, to make and sign a declaration in substantially a certain form. Sets forth the language required to be included in the declaration.

SECTION 27. Amends Section 305.055, Estates Code, as follows:

Sec. 305.055. New heading: FILING AND RECORDING OF OATH OR DECLARATION. Requires that an oath or declaration meet certain requirements.

SECTION 28. Amends Section 308.002(d), Estates Code, to require that the notice required by Section 308.002 (Required Notice to Certain Beneficiaries after Probate of Will) be sent by a qualified delivery method, rather than by registered or certified mail, return receipt requested.

SECTION 29. Amends Section 308.051(a), Estates Code, as follows:

(a) Requires a personal representative of an estate, within one month after receiving letters testamentary or of administration, to provide notice requiring each person who has a claim against the estate to present the claim within the period prescribed by law by taking certain actions, including, if the decedent remitted or should have remitted taxes administered by the Comptroller of Public Accounts of the State of Texas (comptroller), sending the notice to the comptroller by a qualified delivery method, rather than by certified or registered mail.

SECTION 30. Amends Sections 308.053(c) and (d), Estates Code, as follows:

(c) Requires that notice provided under Section 308.053 (Required Notice to Secured Creditor) meet certain requirements, including being sent by a qualified delivery method, rather than by certified or registered mail, return receipt requested.

(d) Makes conforming changes to this subsection.

SECTION 31. Amends Section 308.054(a), Estates Code, as follows:

(a) Authorizes a personal representative, at any time before an estate administration is closed, to give notice by a qualified delivery method, rather than by certified or registered mail, return receipt requested, to an unsecured creditor who has a claim for money against the estate.

SECTION 32. Amends Section 356.105(a), Estates Code, to require that a successful bid or contract for the sale of estate personal property be reported to the court.

SECTION 33. Amends Section 356.654(b), Estates Code, to require the personal representative, before purchasing certain estate property, to give notice of the purchase by a qualified delivery method, rather than by certified mail, return receipt requested, unless the court requires another form of notice, to certain entities.

SECTION 34. Amends Section 361.052(b), Estates Code, as follows:

(b) Authorizes the court, on the court's own motion, if a personal representative, as executor or administrator, fails to timely file the affidavit or certificate required by Section 308.004 (Affidavit or Certificate), to remove the personal representative after providing 30 days' written notice to the personal representative to answer at a time and place set in the notice, by a qualified delivery method, rather than by certified mail, return receipt requested, to certain addresses.

SECTION 35. Amends Sections 362.005(b) and (c), Estates Code, as follows:

(b) Requires that citation issued under Subsection (a) (relating to requiring the county clerk, on the presentation of an account for final settlement by a temporary or permanent personal representative, to issue citation to certain persons in a certain manner) meet certain requirements, including being given to each heir or distributee of the decedent by a qualified delivery method, rather than by certified mail, return receipt requested, unless the court by written order directs another method of service to be given.

(c) Requires the personal representative to also provide to each person entitled to citation under Subsection (b) a copy of the account for final settlement by certain methods, including by a qualified delivery method, rather than by certified mail, return receipt requested.

SECTION 36. Amends Section 403.056(a), Estates Code, as follows:

(a) Requires that notice to the independent executor required by Sections 403.052 (Secured Claims for Money) and 403.055 (Certain Unsecured Claims; Barring of Claims) be contained in certain documents, including a written instrument that complies with Section 355.004 (Affidavit Authenticating Claim for Money in General) and is sent by a qualified delivery method to the independent executor or the executor's attorney, rather than is hand-delivered with proof of receipt, or mailed by certified mail, return receipt requested with proof of receipt, to the independent executor or the executor's attorney.

SECTION 37. Amends Section 404.0035(a), Estates Code, as follows:

(a) Authorizes the probate court, on the court's own motion, to remove an independent executor appointed under Subtitle I (Independent Administration) after providing 30 days' written notice of the court's intention to the independent executor, requiring answering at a time and place set in the notice, by a qualified delivery method, rather than by certified mail, return receipt requested, to the independent executor's last known address and to the last known address of the independent executor's attorney of record, if the independent executor meets certain criteria.

SECTION 38. Amends Section 452.006(a), Estates Code, to require the appointee, on the date the county clerk issues letters of temporary administration, to notify, by a qualified delivery method, rather than by certified mail, return receipt requested, the decedent's known heirs of the appointment.

SECTION 39. Amends Section 453.003(a), Estates Code, as follows:

(a) Authorizes the surviving spouse, if there is no qualified executor or administrator of a deceased spouse's estate, as the surviving partner of the marital partnership, to:

(1) make no changes to this subdivision;

(2) sell, mortgage, lease, and otherwise dispose of community property to pay community debts, for which a portion of community property is liable for payment;

(3) makes no changes to this subdivision; and

(4) exercise other powers as necessary to take certain actions, including discharging community obligations, for which a portion of community property is liable for payment.

SECTION 40. Amends Section 453.006, Estates Code, as follows:

Sec. 453.006. New heading: ACCOUNT OF DEBTS AND DISPOSITION OF COMMUNITY PROPERTY. (a) Requires the surviving spouse to keep a fair and full account and statement of certain information, including all debts, rather than all community debts, and expenses paid by the surviving spouse.

(b) Requires the surviving spouse or personal representative to keep a separate, distinct account of all debts, rather than all community debts, allowed or paid in the administration and settlement of an estate described by Section 101.052, rather than by Sections 101.052(a) and (b).

SECTION 41. Amends Section 453.007, Estates Code, as follows:

Sec. 453.007. DELIVERY OF COMMUNITY ESTATE ON FINAL PARTITION. Requires the surviving spouse, on final partition of the community estate, to deliver to the deceased spouse's heirs or devisees their interest in the estate, and the increase in and profits of the interest, after deducting from the interest certain amounts, including the proportion of the debts, rather than the community debts, chargeable to the interest.

SECTION 42. Amends the heading to Section 453.009, Estates Code, to read as follows:

Sec. 453.009. DISTRIBUTION OF POWERS BETWEEN PERSONAL REPRESENTATIVE AND SURVIVING SPOUSE DURING ADMINISTRATION.

SECTION 43. Amends Section 453.009(b), Estates Code, to provide that the surviving spouse, as surviving partner of the marital partnership, during administration of a deceased spouse's estate, is entitled to take certain actions.

SECTION 44. Amends Section 501.003(b), Estates Code, as follows:

(b) Requires a citation, for an application described by Section 501.002(b) (relating to requiring that an application for ancillary probate of a foreign will meeting certain criteria contain certain information), to be issued and served by a qualified delivery method, rather than by registered or certified mail, on each devisee and heir identified in the application.

SECTION 45. Amends Section 505.005(a), Estates Code, as follows:

(a) Requires the secretary of state, on receipt of a notice or process described by Section 505.004(a)(2) (relating to requiring a foreign corporate fiduciary to file a properly executed written instrument meeting certain criteria, appointing certain entities as the fiduciary's agent for service or process before qualifying or serving in a fiduciary capacity) to promptly forward the notice or process by a qualified delivery method, rather than by registered or certified mail, to the officer, agent, or other person designated by the foreign corporate fiduciary under Section 505.004 (Filing Requirements; Designation) to receive the notice or process.

SECTION 46. Amends Section 505.101(a), Estates Code, as follows:

(a) Authorizes a foreign executor or administrator of a person who was a nonresident at the time of death, on giving notice by a qualified delivery method, rather than by registered or certified mail, to all creditors of a decedent in this state who have filed a claim against the decedent's estate for a debt due to the creditor, to maintain a suit in this state for the recovery of debts due to the decedent.

SECTION 47. Amends Section 551.005(b), Estates Code, as follows:

(b) Requires the clerk of a court that orders an executor or administrator to pay funds to the comptroller under Section 551.001 (Payment of Certain Shares of Estate to State) to provide to the comptroller, by a qualified delivery method, rather than by certified mail, or e-mail, a certified copy of the court order not later than the fifth day after the date the order is issued.

SECTION 48. Makes application of Sections 51.052(b), (c), (d), (e), (f), and (g), 51.055(a), 51.056, 51.103(b), 56.002(b), 113.251(c), 202.051, 202.203, 305.001, 305.002, 305.003, 305.051, 305.052, 305.053, 305.055, 308.002(d), 308.051(a), 308.053(c) and (d), 308.054(a), 356.654(b), 361.052(b), 362.005(b) and (c), 403.056(a), 404.0035(a), 452.006(a), 501.003(b), 505.005(a), 505.101(a), and 551.005(b), Estates Code, as amended by this Act, prospective.

SECTION 49. Provides that the amendments of this Act to Sections 101.052, 202.005, 202.151(b) and (c), 251.053, 356.105(a), 453.003(a), 453.006, 453.007, and 453.009, Estates Code, are intended to clarify rather than change existing law.

SECTION 50. Provides that Section 113.001, Estates Code, as amended by this Act, applies to an account established before, on, or after the effective date of this Act.

SECTION 51. Provides that Section 113.251(c), Estates Code, as amended by this Act, applies only to multiple-party accounts created or existing on or after the effective date of this Act.

SECTION 52. Makes application of Section 202.056, Estates Code, as amended by this Act, prospective.

SECTION 53. Makes application of Section 202.151(d), Estates Code, as amended by this Act, prospective.

SECTION 54. Makes application of Sections 258.002(d) and (e), Estates Code, as added by this Act, prospective.

SECTION 55. Makes application of Section 304.003, Estates Code, as amended by this Act, prospective.

SECTION 56. Effective date: September 1, 2023.