

BILL ANALYSIS

Senate Research Center
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S.B. 1612
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Jurisprudence
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In 2021 the legislature unanimously passed S.B. 41, which consolidated civil court filing fees and established a more streamlined system while remaining revenue neutral to the greatest extent possible. Some court fees, however, were missed inadvertently in S.B. 41.

S.B. 1612 is clean-up legislation for S.B. 41 (2021). Generally, it would specify when the court clerk should send the file for the proceeding to the appropriate court; establish a standard reduced cost per page for the clerk's preparation of a transfer record; outline the procedures for transferring the probate proceeding record from one county to another; require the transferring court's clerk to record and send all necessary documents electronically to the receiving court within 10 working days of the transfer; state that the sending county is responsible financially for any special treatment program or placement that the juvenile court of the sending county requires as a condition of probation if the child's family is financially unable to pay for it; increase the filing fees for various types of court motions; enact specific requirements for transferring a case from one court to another; and align cross-references in the Family Code with the Estates Code.

Accordingly, S.B. 1612 would ensure that the legislature's intent in S.B. 41 is fulfilled. What's more, it would reduce delays and costs associated with transferring cases, make the process more transparent, and provide all necessary documents are accurately and efficiently transferred between courts.

As proposed, S.B. 1612 amends current law relating to court administration and costs, increases certain court costs, and authorizes fees.

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 Section 33.101, Estates Code, as follows:

Sec. 33.101. TRANSFER TO OTHER COUNTY IN WHICH VENUE IS PROPER. Requires the county 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 to 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, on the application of an interested person, to transfer the proceeding 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 by transmitting to the proper court in that county 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) (relating to authorizing the court to order that a probate proceeding be transferred to the proper court in another county in this state if it appears to the court at any time before the proceeding is concluded) 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 to transmit to the court to which the proceeding is transferred 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, 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.

(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 accept documents transferred under Subsection (a), docket the proceeding, and 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 provides that the clerk is not authorized to physically or electronically mark or stamp any other document transferred under Subsection (a).

(f) Provides that the clerks of both the transferee and transferring courts are each authorized to produce under Chapter 51 (Clerks), Government Code, certified or uncertified copies of documents transferred under Subsection (a) but are required 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.

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, rather than made, under Section 1023.005 (Court Action), 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, to the county clerk of the county to which the guardianship was ordered transferred:

- (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;
- (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.

Deletes existing text requiring the clerk, on payment of the clerk's fee, to transmit in electronic or paper form to the county clerk of the county to which the guardianship was ordered transferred the case file of the guardianship proceedings and a certified copy of the index of the guardianship records. Makes nonsubstantive changes.

(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 accept documents transferred under Subsection (a), docket the suit, and 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) Provides that the clerk of the transferee court is required 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 is prohibited from physically or electronically marking or stamping any other document transferred under Subsection (a).

(f) 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 electronic filing system established under Section 72.031, Government Code, and an employer affected by the order electronically or by first class mail.

(g) Provides that the clerks of both the transferee and transferring courts are each authorized to produce under Chapter 51, Government Code, certified or uncertified copies of documents transferred under Subsection (a) but are required

to include a copy of the transfer certificate and index of transferred documents with each document produced.

(h) 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 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 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 Section 51.072(l), Family Code, as follows:

(1) Deletes existing text providing that the sending county is financially responsible for any special treatment program or placement that the juvenile court of the sending county requires as a condition of probation if the child's family is financially unable to pay for the program or placement.

SECTION 8. Amends Section 61.002, Family Code, as follows:

Sec. 61.002. APPLICABILITY. Deletes existing text providing that Chapter 61 (Rights and Responsibilities of Parents and Other Eligible Persons), except as provided by Subsection (b), applies to a proceeding to enter a juvenile court order for payment of probation fees under a certain section, requiring a parent or other eligible person to pay reasonable attorney's fees for representing the child under a certain subsection, requiring the parent or other eligible person to reimburse the county for payments the county has made to an attorney appointed to represent the child under a certain subsection, requiring payment of deferred prosecution supervision fees under a certain subsection, and for payment of the cost of attending an educational program under a certain section. Deletes existing Subsection (b) providing that Subchapter A (Entry of Orders Against Parents and Other Eligible Persons) does not apply to the entry and enforcement of a child support order under Section 54.06 (Judgments for Support). Makes nonsubstantive changes.

SECTION 9. Amends Section 110.002, Family Code, by amending Subsection (a) and adding Subsection (d), as follows:

(a) Increases from \$15 to \$80 the amount of the filing fee the clerk may collect for certain other filings. Deletes existing text authorizing the clerk of the court to collect a filing fee of \$15 in a suit for filing a motion to transfer. Makes nonsubstantive changes.

(d) Provides that fees collected under Section 110.002 (Filing Fees and Deposits) are to be remitted and allocated as provided by Chapters 133 (Criminal and Civil Fees Payable to the Comptroller) and 135 (Civil Fees Payable to Local Government), Local Government Code, as applicable.

SECTION 10. Amends Section 110.005(a), Family Code, as follows:

(a) Provides that the fee for filing a transferred case is \$80, rather than \$45, payable to the clerk of the court to which the case is transferred. Provides that the fees collected under Section 110.005 (Transfer Fee) are to be remitted and allocated as provided by Chapters

133 and 135, Local Government Code, as applicable. Deletes existing text prohibiting any portion of this fee from being sent to the state.

SECTION 11. 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 certain information, 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) Provides that the clerks of both the transferee and transferring courts are authorized to each produce under Chapter 51, Government Code, certified or uncertified copies of documents transferred under Subsection (a), rather than documents filed in a case transferred under Section 155.207 (Transfer of Court Files), and are required to include a copy of the transfer certificate and index of transferred documents with each document produced.

SECTION 12. 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 the district court, if a case is transferred from a district court to a constitutional or statutory county court or another district court, to send certain information to the clerk of the court to which the case is transferred, rather than to the county clerk, using the electronic filing system established under Section 72.031.

(f) Provides that the clerks of both the transferee and transferring courts are each authorized to produce, under this chapter, certified or uncertified copies of documents transferred under Subsection (a) and are required 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 13. Amends Section 51.318(b), Government Code, as follows:

(b) Provides that the fees are:

(1)-(6) makes nonsubstantive changes;

(7) for a certified copy of a record, judgment, order, pleading, or paper on file or of record in the district clerk's office:

(A) makes no changes to this paragraph;

(B) for each page or part of a page:

(i) printed on paper.....1;

(ii) that is a paper document converted to electronic format.....\$1;
or

(iii) that is an electronic copy of an electronic document:

(a) for a document up to 10 pages in length \$1;
and

(b) for each page or part of a page over 10 pages. . . . \$0.10;

(8) makes a nonsubstantive change;

(9) for preparation of the clerk's record of transfer under Sections 33.105 and 1023.006 (Transfer of Record), Estates Code, Section 155.207 (Transfer of Court Files), Family Code, and certain sections of this code:

(A) for the clerk's transfer certificate and index \$5;

(B) for each page or part of a page of a case record up to 10 pages in length.....\$1.00;
and

(C) for each page or part of a page of a case record over 10 pages ...\$0.10.

SECTION 14. Amends Section 51.403, Government Code, by amending Subsection (a) and adding Subsections (d) and (e), to make conforming changes.

SECTION 15. 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 certain sections.

SECTION 16. Amends Section 118.011(a), Local Government Code, to require a county clerk to collect certain allotted fees for services rendered to any person.

SECTION 17. Amends Section 118.052, Local Government Code, as follows:

Sec. 118.052. FEE SCHEDULE. Requires each clerk of a county court to collect certain fees for services rendered to any person.

SECTION 18. Amends Section 118.131(a), Local Government Code, to authorize the commissioners court of a county to set reasonable fees to be charged for service of process, including service of writs, rather than for services, by the offices of the sheriff and constables.

SECTION 19. Amends Sections 133.151(a) and (a-1), Local Government Code, as follows:

(a) Requires the clerk of a district court, statutory county court, statutory probate court, or county court to collect:

(1) a fee in the amount of \$137 on the filing of any civil, probate, guardianship, or mental health case; and

(2) a fee in the amount of \$45 on any action other than an original action subject to Subdivision (1), including any counterclaim, cross-action, intervention, contempt action, adverse probate action, interpleader, motion for new trial, motion to reinstate, or third-party action, rather than an appeal and any counterclaim, cross-action, intervention, contempt action, adverse probate action, interpleader, motion for new trial, or third-party action.

(a-1) Makes a conforming change to this subsection.

SECTION 20. Amends Section 134.101(b), Local Government Code, as follows:

(b) Requires the treasurer to allocate the court costs received under Section 134.101 (Local Consolidated Fee on Conviction of Felony) to the following accounts and funds so that each receives to the extent practicable, utilizing historical data as applicable, the same amount of money the account or fund would have received if the court costs for the

accounts and funds had been collected and reported separately, except that the account or fund is prohibited from receiving less than the following percentages:

(1) makes no changes to this subdivision;

(2) the clerks records, rather than the county records, management and preservation fund.....23.8095 percent;
and

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

SECTION 21. Amends Section 134.102(b), Local Government Code, to make conforming changes.

SECTION 22. Amends Section 134.155, Local Government Code, as follows:

Sec. 134.155. New heading: CLERKS RECORDS MANAGEMENT AND PRESERVATION FUND. Authorizes the money allocated under Section 134.101 or 134.102 (Local Consolidated Fee on Conviction of Class A or B Misdemeanor) to the clerks records management and preservation fund maintained in the county treasury as required by Section 134.151 (Maintenance of Funds and Accounts) to be used by a clerk, rather than a county, only to fund records management and preservation services performed by the clerk, rather than the court clerk, who collects the fee. Makes a conforming change.

SECTION 23. Amends Section 135.101, Local Government Code, as follows:

Sec. 135.101. LOCAL CONSOLIDATED CIVIL FEE FOR CERTAIN CIVIL CASES IN DISTRICT COURT, STATUTORY COUNTY COURT, OR COUNTY COURT.
(a)-(c) Makes conforming changes to these subsections.

SECTION 24. Amends Sections 135.102(b) and (c), Local Government Code, to make conforming changes.

SECTION 25. Amends Section 135.103(a), Local Government Code, to make a conforming change.

SECTION 26. Amends Section 135.154, Local Government Code, as follows:

Sec. 135.154. New heading: CLERKS RECORDS MANAGEMENT AND PRESERVATION ACCOUNT. Makes conforming changes to this section.

SECTION 27. (a) Repealers, effective September 1, 2023: Article 26.057 (Cost of Employment of Counsel for Certain Minors), Code of Criminal Procedure, and Section 33.103(c) (relating to authorizing the transmittal under a certain subsection of the original file to be in electronic or paper form, with an exception), Estates Code.

Repealers, effective September 1, 2023: Sections 51.10(e) (relating to authorizing the court to enforce certain orders by certain proceedings or by appointing counsel and ordering a responsible guardian for support of the child to pay a reasonable attorney's fee set by the court) and (k) (relating to authorizing the juvenile court, subject to Chapter 61, to order a guardian responsible for support of the child to reimburse the county for payments the county made to counsel appointed to represent the child under certain subsections), Family Code.

Repealer, effective September 1, 2023: Section 51.10(l) (relating to prohibiting the court from ordering payments under Subsection (k) that exceed the financial ability of the responsible guardian for support of the child to meet the payment schedule by the court), Family Code.

Repealer, effective September 1, 2023: Section 53.03(d) (relating to authorizing the juvenile board to adopt a fee schedule for deferred prosecution services and rules for the waiver of a fee for financial hardship in accordance with guidelines that the Texas Juvenile Justice Department is required to provide), Family Code.

Repealer, effective September 1, 2023: Section 54.0404(b) (relating to requiring a child or responsible guardian to pay the cost of attending a certain educational program if the juvenile court finds that the child or responsible guardian is financially capable of making the payment), Family Code.

Repealers, effective September 1, 2023: Sections 54.06 (Judgments for Support) and 54.061 (Payment of Probation Fees), Family Code.

Repealer, effective September 1, 2023: Section 56.01(l) (relating to authorizing the court to order the child or the responsible guardian to pay the child's costs of appeal, including attorney's fees, unless the court finds the person ordered to pay is indigent), Family Code.

(b) Repealer, effective January 1, 2024: Section 291.008 (Document Filing Fee), Local Government Code.

SECTION 28. (a) Provides that Sections 51.072(l) and 61.002, Family Code, as amended by this Act, and the repeal of Sections 51.10(e), (k), and (l), 53.03(d), 54.0404(b), and 56.01(l), Family Code, by this Act, apply to the authority of a juvenile court to impose a fee or cost on or after September 1, 2023, regardless of whether the underlying action commenced before, on, or after September 1, 2023, notwithstanding Section 51.607 (c) (relating to providing that the imposition or change in the amount of the court cost or fee, with an exception, does not take effect until the next January 1 after the law takes effect), Government Code. Provides that the imposition of a fee or cost by a juvenile court before September 1, 2023, is governed by the law in effect on the date the fee or cost was imposed, and the former law is continued in effect for that purpose.

(b) Requires OCA, as soon as practicable after January 1, 2024, to develop and make available all forms and materials required by Section 72.037, Government Code, as amended by this Act.

(c) Provides that the repeal of Article 26.057, Code of Criminal Procedure, by this Act, applies to a case transferred to a criminal court under Section 54.02, Family Code, on or after September 1, 2023. Provides that a case transferred to a criminal court before September 1, 2023, is governed by the law in effect on the date the case was transferred, and the former law is continued in effect for that purpose.

(d) Makes application of the repeal of Section 54.06, Family Code, by this Act prospective to September 1, 2023.

SECTION 29. (a) Effective date: except as provided by Subsection (b) of this section or as otherwise provided by this Act: January 1, 2024.

(b) Provides that the following provisions take effect September 1, 2023:

(1) Sections 33.101, 33.102(a), 33.103(b), 1023.006, and 1023.007, Estates Code, as amended by this Act;

(2) Section 33.105, Estates Code, as added by this Act;

(3) Sections 51.072(l), 61.002, and 155.207(a), (b), and (e), Family Code, as amended by this Act; and

(4) Sections 51.3071 and 51.403, Government Code, as amended by this Act.