

**SCAC MEETING AGENDA**  
**Friday, December 1, 2023**  
*In Person at TAB*  
**502 E. 11<sup>th</sup> St., Ste. 200**  
**Austin, TX 78701**

**FRIDAY, December 1, 2023:**

**I. WELCOME FROM CHIP BABCOCK**

**II. STATUS REPORT FROM CHIEF JUSTICE HECHT**

Chief Justice Hecht will report on Supreme Court actions and those of other courts related to the Supreme Court Advisory Committee since the October 13, 2023 meeting.

**III. COMMENTS FROM JUSTICE BLAND**

**IV. SVP STATEMENT OF INABILITY TO AFFORD PAYMENT OF COURT COSTS**

*500-510 Subcommittee:*

*Hon. Levi Benton – Chair*

*Hon. Ana Estevez – Vice-Chair*

*Prof. Elaine Carlson*

*Stephen Yelenosky*

A. November 29, 2023 Subcommittee Report re: SVP Statement of Inability to Afford Payment of Court Costs

B. Texas Rule of Civil Procedure 145

C. S.B. 1179 Excerpt

D. S.B. 1180

**V. NOTICE BY QUALIFIED DELIVERY METHOD**

*1-14C Subcommittee:*

*Hon. Harvey Brown – Chair*

*John Kim – Vice-Chair*

*Connie Pfeiffer*

*Pamela Baron*

*Marcy Greer*

E. November 28, 2023 Subcommittee Report re: Notice by Qualified Delivery Method

F. H.B. 785

G. S.B. 1373

H. S.B. 1457

I. S.B. 2248

**VI. WAIVER OF CITATION IN PROBATE PROCEEDINGS**

*1-14C Subcommittee:*

*Hon. Harvey Brown – Chair  
John Kim – Vice-Chair  
Connie Pfeiffer  
Pamela Baron  
Marcy Greer*

*15-165a Subcommittee:*

*Richard Orsinger – Chair  
Hon. Ana Estevez – Vice-Chair  
Prof. Alexandra Albright  
Prof. Elaine Carlson  
Nina Cortell  
Prof. William Dorsaneo  
John Kim  
Pete Schenkkan  
Hon. John Warren*

- J.** November 28, 2023 Subcommittee Report re: Waiver of Citation in Probate Proceedings  
**K.** S.B. 1373

# Tab A

## Memorandum

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**TO:** Supreme Court Advisory Committee  
**FROM:** Subcommittee on Rules 500-510  
**RE:** SVP Statement of Inability to Afford Payment of Court Costs  
**DATE:** November 29, 2023

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### I. Matter Referred to Subcommittee:

On June 3, 2023, Chief Justice Nathan Hecht sent a letter to SCAC Chairman Chip Babcock referring the following matter to this subcommittee:

**SVP Statement of Inability to Afford Payment of Court Costs.** SB 1179 (Section 10) and SB 1180 (Section 1) add Civil Practice and Remedies Code Chapter 14A to govern actions brought by a sexually violent predator who has filed a Statement of Inability to Afford Payment of Court Costs. New § 14A.054 allows a court to order the sexually violent predator to pay court costs but allows payment by installment. The Committee should consider whether Texas Rule of Civil Procedure 145 should be changed or a comment added to reference or restate the statute and draft any recommended amendments.

### II. Background

This topic was referred to the Subcommittee on Rules 500-510 on June 5, 2023, and was first placed on a draft agenda on November 27, 2023. Chapter 14A of the Texas Civil Practice and Remedies Code was based on Chapter 14 of the Texas Civil Practice and Remedies Code.

Current Rule 145 does not reference Section 14.006 of the Texas Civil Practice and Remedies Code even though that provision has been an option for installment payments of court fees and costs for incarcerated litigants since 1995. As the new Section 14A.054 is nearly identical to 14.006 of the Texas Civil Procedure and Remedies Code, the subcommittee believes that if Rule 145 is changed to reference the statute or a comment is added to Rule 145, Section 14.006 of the Texas Civil Practice and Remedies Code should be included in that change as well.

### III. Discussion

Texas Civil Practice and Remedies Code Section 14A.054 provides as follows:

Sec. 14A.054. COURT FEES, COURT COSTS, OTHER COSTS. (a) A court may order a civilly committed individual who has filed a claim to pay court fees, court costs, and other costs in accordance with this section and Section [14A.055](#). The court clerk shall mail a copy of the court's order and a certified bill of costs to the office or facility under contract with the office, as appropriate.

(b) On the court's order, the civilly committed individual shall pay an amount equal to the lesser of:

(1) 20 percent of the preceding six months' deposits to the individual's trust account; or

(2) the total amount of court fees, court costs, and other costs.

(c) In each month following the month in which payment is made under Subsection (b), the civilly committed individual shall pay an amount equal to the lesser of:

(1) 10 percent of that month's deposits to the trust account; or

(2) the total amount of court fees, court costs, and other costs that remains unpaid.

(d) Payments under Subsection (c) shall continue until the total amount of court fees, court costs, and other costs are paid or until the civilly committed individual is released from confinement.

(e) On receipt of a copy of an order issued under Subsection (a), the office or facility under contract with the office shall withdraw money from the trust account in accordance with Subsections (b), (c), and (d). The office or facility shall hold the money in a separate account and shall forward the money to the court clerk on the earlier of the following dates:

(1) the date the total amount to be forwarded equals the total amount of court fees, court costs, and other costs that remains unpaid; or

(2) the date the civilly committed individual is released.

(f) The civilly committed individual shall file a certified copy of the individual's trust account statement with the court. The statement must reflect the balance of the account at the time the claim is filed and activity in the account during the six months preceding the date on which the claim is filed. The court may request the office to provide the information required under this subsection.

(g) A civilly committed individual may authorize payment in addition to that required by this section.

(h) The court may dismiss a claim if the civilly committed individual fails to pay fees and costs assessed under this section.

(i) A civilly committed individual may not avoid the fees and costs assessed under this section by nonsuiting a party or by voluntarily dismissing the action.

Added by Acts 2023, 88th Leg., R.S., Ch. 203 (S.B. [1180](#)), Sec. 1, eff. May 24, 2023.

Added by Acts 2023, 88th Leg., R.S., Ch. 351 (S.B. [1179](#)), Sec. 10, eff. September 1, 2023.

Texas Rule of Civil Procedure 145(f)(7) provides:

*(7) Partial and Delayed Payment.* The court may order that the declarant pay the part of the costs the declarant can afford or that payment be made in installments. But the court must not delay the case if payment is made in installments.

Because the payment provisions of Section 14A.054 are so narrowly tailored to sexually violent predators and are not applicable to most litigants, the subcommittee would not recommend amending TRCP 145.

#### **IV. Recommendation**

The majority of the subcommittee recommends that a comment be added to current TRCP 145 as follows:

“The Texas Civil Practice and Remedies Code provides for specific payment arrangements for those in criminal and civil custody. See Chapters 14 and 14A of the Texas Civil Practice and Remedies Code.”

# Tab B

## **Rule 145. Payment of Costs Not Required**

**(a) Costs Defined.** "Costs" mean any fee charged by the court or an officer of the court, including, but not limited to, filing fees, fees for issuance and service of process, fees for copies, fees for a court-appointed professional, and fees charged by the clerk or court reporter for preparation of the appellate record.

**(b) Sworn Statement Required.** A party who cannot afford payment of court costs must file the Statement of Inability to Afford Payment of Court Costs approved by the Supreme Court or another sworn document containing the same information. A "sworn" Statement is one that is signed before a notary or made under penalty of perjury. In this rule, "declarant" means the party filing the Statement.

**(c) Duties of the Clerk.** The clerk:

- (1) must make the Statement available to any person for free without request;
- (2) may return a Statement for correction only if it is not sworn-not for failure to attach evidence or any other reason; and
- (3) must, on the filing of a sworn Statement, docket the case, issue citation, and provide any other service that is ordinarily provided to a party.

**(d) Prima Facie Evidence of Inability to Afford Payment of Costs.** The declarant should submit with the Statement any available evidence of the declarant's inability to afford payment of costs. An attachment demonstrating any of the following is prima facie evidence:

- (1) the declarant or the declarant's dependent receives benefits from a means-tested government entitlement program;
- (2) the declarant is being represented in the case by an attorney who is providing legal services to the declarant through:
  - (A) a provider funded by the Texas Access to Justice Foundation;
  - (B) a provider funded by the Legal Services Corporation; or
  - (C) a nonprofit that provides civil legal services to persons living at or below 200% of the federal poverty guidelines published annually by the United States Department of Health and Human Services; or
- (3) the declarant has applied for free legal services for the case through a provider listed in (2) and was determined to be financially eligible but was declined representation.

**(e) Motion to Require Payment of Costs.** A motion to require the declarant to pay costs must comply with this paragraph.

(1) *By the Clerk, the Reporter, or a Party.* A motion filed by the clerk, the court reporter, or a party must contain sworn evidence-not merely allegations-either that the Statement was materially false when made or that because of changed circumstances, it is no longer true.

(2) *By the Court.* The court on its own may require the declarant to prove the inability to afford costs when evidence comes before the court that the declarant may be able to afford costs or when an officer or professional must be appointed in the case.

**(f) Notice; Hearing; Requirements of Order.** When a Statement has been filed, the declarant must not be ordered to pay costs unless these procedural requirements have been satisfied:

(1) *Notice and Hearing.* The declarant must not be required to pay costs without an oral evidentiary hearing. The declarant must be given 10 days' notice of the hearing. Notice must either be in writing and served in accordance with Rule 21a or given in open court. At the hearing, the burden is on the declarant to prove the inability to afford costs.

(2) *Findings Required.* An order requiring the declarant to pay costs must be supported by detailed findings that the declarant can afford to pay costs.

(3) *Partial and Delayed Payment.* The court may order that the declarant pay the part of the costs the declarant can afford or that payment be made in installments. But the court must not delay the case if payment is made in installments.

(4) *Order Must State Notice of Right to Appeal.* An order requiring the declarant to pay costs must state in conspicuous type: "You may challenge this order by filing a motion in the court of appeals within 10 days after the date this order is signed. See Texas Rule of Civil Procedure 145."

**(g) Review of Trial Court Order**

(1) *Only Declarant May Challenge; Motion.* Only the declarant may challenge an order issued by the trial court under this rule. The declarant may challenge the order by motion filed in the court of appeals with jurisdiction over an appeal from the judgment in the case. The declarant is not required to pay any filing fees related to the motion in the court of appeals.

(2) *Time for Filing; Extension.* The motion must be filed within 10 days after the trial court's order is signed. The court of appeals may extend the deadline by 15 days if the declarant demonstrates good cause for the extension in writing.

(3) *Record.* After a motion is filed, the court of appeals must promptly send notice to the trial court clerk and the court reporter requesting preparation of the record of all trial court proceedings on the declarant's claim of indigence. The court may set a deadline for filing the record. The record must be provided without charge.

(4) *Court of Appeals to Rule Promptly.* The court of appeals must rule on the motion at the earliest practicable time.

**(h) Judgment.** The judgment must not require the declarant to pay costs, and a provision in the judgment purporting to do so is void, unless the court has issued an order that complies with (f), or the declarant has obtained a monetary recovery, and the court orders the recovery to be applied toward payment of costs.

**(i) Court to Designate Record.** When the declarant requests preparation of the reporter's record, the court must designate the portions to be transcribed.

Amended effective 9/1/2016; amended December 23, 2020, effective 12/23/2020; amended July 9, 2021, effective 9/1/2021.

Comment to 2016 Change: The rule has been rewritten. Access to the civil justice system cannot be denied because a person cannot afford to pay court costs. Whether a particular fee is a court cost is governed by this rule, Civil Practice and Remedies Code Section 31.007, and case law.

The issue is not merely whether a person can pay costs, but whether the person can afford to pay costs. A person may have sufficient cash on hand to pay filing fees, but the person cannot afford the fees if paying them would preclude the person from paying for basic essentials, like housing or food. Experience indicates that almost all filers described in (e)(1)-(3), and most filers described in (e)(4), cannot in fact afford to pay costs.

Because costs to access the system-filing fees, fees for issuance of process and notices, and fees for service and return-are kept relatively small, the expense involved in challenging a claim of inability to afford costs often exceeds the costs themselves. Thus, the rule does not allow the clerk or a party to challenge a litigant's claim of inability to afford costs without sworn evidence that the claim is false. The filing of a Statement of Inability to Afford Payment of Court Costs-which may either be sworn to before a notary or made under penalty of perjury, as permitted by Civil Practice and Remedies Code Section 132.001 -is all that is needed to require the clerk to provide ordinary services without payment of fees and costs. But evidence may come to light that the claim was false when made. And the declarant's circumstances may change, so that the claim is no longer true. Importantly, costs may increase with the appointment of officers or professionals in the case, or when a reporter's record must be prepared. The reporter is always allowed to challenge a claim of inability to afford costs before incurring the substantial expense of record preparation. The trial court always retains discretion to require evidence of an inability to afford costs.

Comment to 2021 Change: A number of changes have been made to reduce frivolous challenges to a Statement, which cost time and money, and to streamline proceedings. Former paragraph (c)(4) has been deleted. Paragraph (d) has been amended to clarify that proof of any listed criterion is prima facie evidence of the declarant's inability to afford court costs. Paragraph (e) has been amended to require that a contest by the court reporter satisfy the same conditions as a contest by the clerk or a party. New paragraph (i) requires that the trial court designate the portions of the reporter's record to be transcribed for appeal.

The rule has also been amended to require in paragraph (f)(3) that an order requiring payment of costs include conspicuous notice of the declarant's right to appeal.

To accommodate these substantive changes, some paragraphs have been rearranged and relettered or renumbered. Other clarifying and stylistic changes have been made.

# Tab C

1 the person is released or, for a person who is civilly committed as  
2 a sexually violent predator under Chapter 841, Health and Safety  
3 Code, authorized to reside outside of the civil commitment center,  
4 a person for whom registration is completed under this chapter  
5 shall report to the applicable local law enforcement authority to  
6 verify the information in the registration form received by the  
7 authority under this chapter. The authority shall require the  
8 person to produce proof of the person's identity and residence  
9 before the authority gives the registration form to the person for  
10 verification. If the information in the registration form is  
11 complete and accurate, the person shall verify registration by  
12 signing the form. If the information is not complete or not  
13 accurate, the person shall make any necessary additions or  
14 corrections before signing the form.

15 SECTION 10. Subtitle A, Title 2, Civil Practice and  
16 Remedies Code, is amended by adding Chapter 14A to read as follows:

17 CHAPTER 14A. LITIGATION BY CIVILLY COMMITTED INDIVIDUAL

18 SUBCHAPTER A. GENERAL PROVISIONS

19 Sec. 14A.001. DEFINITIONS. In this chapter:

20 (1) "Civilly committed individual" means a sexually  
21 violent predator as described by Section 841.003, Health and Safety  
22 Code, who has been committed to a facility operated by or under  
23 contract with the office.

24 (2) "Claim" means a cause of action governed by this  
25 chapter.

26 (3) "Office" means the Texas Civil Commitment Office.

27 (4) "Trust account" means a civilly committed

1 individual's trust account administered by the office or by a  
2 facility under contract with the office.

3 (5) "Unsworn declaration" means a document executed in  
4 accordance with Chapter 132.

5 Sec. 14A.002. SCOPE OF CHAPTER. (a) This chapter applies  
6 only to an action, including an appeal or original proceeding,  
7 brought by a civilly committed individual in a district, county, or  
8 justice court or an appellate court, including the supreme court or  
9 the court of criminal appeals, in which an affidavit or unsworn  
10 declaration of inability to pay costs is filed by the civilly  
11 committed individual.

12 (b) This chapter does not apply to an action brought under  
13 the Family Code.

14 SUBCHAPTER B. DISMISSAL OF AND REQUIREMENTS FOR CLAIM

15 Sec. 14A.051. DISMISSAL OF FALSE, FRIVOLOUS, OR MALICIOUS  
16 CLAIM. (a) A court may dismiss a claim, either before or after  
17 service of process, if the court finds that:

18 (1) the allegation of poverty in the affidavit or  
19 unsworn declaration is false;

20 (2) the claim is frivolous or malicious; or

21 (3) the civilly committed individual filed an  
22 affidavit or unsworn declaration required by this chapter that the  
23 individual knew was false.

24 (b) In determining whether a claim is frivolous or  
25 malicious, the court may consider whether:

26 (1) the claim's realistic chance of ultimate success  
27 is slight;

1           (2) the claim has no arguable basis in law or in fact;

2           (3) it is clear that the civilly committed individual  
3 cannot prove the facts in support of the claim; or

4           (4) the claim is substantially similar to a previous  
5 claim filed by the civilly committed individual because the claim  
6 arises from the same operative facts.

7           (c) In determining whether Subsection (a) applies, the  
8 court may hold a hearing. The hearing may be held before or after  
9 service of process, and it may be held on motion of the court, a  
10 party, or the court clerk.

11           (d) On the filing of a motion under Subsection (c), the  
12 court shall suspend discovery relating to the claim pending the  
13 hearing.

14           (e) A court that dismisses a claim brought by a civilly  
15 committed individual housed in a facility operated by or under  
16 contract with the office may notify the office of the dismissal and,  
17 on the court's own motion or the motion of any party or the court  
18 clerk, may advise the office that a mental health evaluation of the  
19 individual may be appropriate.

20           Sec. 14A.052. AFFIDAVIT RELATING TO PREVIOUS FILINGS. (a)  
21 A civilly committed individual who files an affidavit or unsworn  
22 declaration of inability to pay costs shall file a separate  
23 affidavit or declaration:

24           (1) identifying the court that ordered the  
25 individual's civil commitment under Chapter 841, Health and Safety  
26 Code;

27           (2) indicating whether any cause of action or

1 allegation contained in the petition has previously been filed in  
2 any other court, and if so, stating the cause of action or  
3 allegation previously filed and complying with Subdivision (6) and  
4 Subsection (b);

5 (3) identifying each action, other than an action  
6 under the Family Code, previously brought by the individual in  
7 which the individual was not represented by an attorney, without  
8 regard to whether the individual was civilly committed at the time  
9 the action was brought;

10 (4) certifying that all grievance processes  
11 applicable to the matter that is the basis of the claim, if any,  
12 have been exhausted;

13 (5) certifying that no court has found the individual  
14 to be a vexatious litigant under Chapter 11; and

15 (6) describing each action that was previously brought  
16 by:

17 (A) stating the operative facts for which relief  
18 was sought;

19 (B) listing the case name, the cause number, and  
20 the court in which the action was brought;

21 (C) identifying each party named in the action;  
22 and

23 (D) stating the result of the action, including  
24 whether the action or a claim that was a basis for the action was  
25 dismissed as frivolous or malicious under Section 13.001, 14.003,  
26 or 14A.051 or otherwise.

27 (b) If the affidavit or unsworn declaration filed under this

1 section states that a previous action or claim was dismissed as  
2 frivolous or malicious, the affidavit or unsworn declaration must  
3 state the date of the final order affirming the dismissal.

4 (c) The affidavit or unsworn declaration must be  
5 accompanied by the certified copy of the trust account statement  
6 required by Section 14A.054(f).

7 Sec. 14A.053. GRIEVANCE SYSTEM DECISION; EXHAUSTION OF  
8 ADMINISTRATIVE REMEDIES. (a) A civilly committed individual who  
9 files a claim that is subject to a grievance system established by  
10 the office or a facility under contract with the office shall file  
11 with the court:

12 (1) an affidavit or unsworn declaration stating the  
13 date that the grievance was filed and the date the written decision  
14 was received by the individual; and

15 (2) a copy of the written decision from the grievance  
16 system.

17 (b) A court shall dismiss a claim if the civilly committed  
18 individual fails to file the claim before the 31st day after the  
19 date the individual receives the written decision from the  
20 grievance system.

21 (c) If a claim is filed before the grievance system  
22 procedure is complete, the court shall stay the proceeding with  
23 respect to the claim for a period not to exceed 180 days to permit  
24 completion of the grievance system procedure.

25 Sec. 14A.054. COURT FEES, COURT COSTS, OTHER COSTS. (a) A  
26 court may order a civilly committed individual who has filed a claim  
27 to pay court fees, court costs, and other costs in accordance with

1 this section and Section 14A.055. The court clerk shall mail a copy  
2 of the court's order and a certified bill of costs to the office or  
3 facility under contract with the office, as appropriate.

4 (b) On the court's order, the civilly committed individual  
5 shall pay an amount equal to the lesser of:

6 (1) 20 percent of the preceding six months' deposits to  
7 the individual's trust account; or

8 (2) the total amount of court fees, court costs, and  
9 other costs.

10 (c) In each month following the month in which payment is  
11 made under Subsection (b), the civilly committed individual shall  
12 pay an amount equal to the lesser of:

13 (1) 10 percent of that month's deposits to the trust  
14 account; or

15 (2) the total amount of court fees, court costs, and  
16 other costs that remains unpaid.

17 (d) Payments under Subsection (c) shall continue until the  
18 total amount of court fees, court costs, and other costs are paid or  
19 until the civilly committed individual is released from  
20 confinement.

21 (e) On receipt of a copy of an order issued under Subsection  
22 (a), the office or facility under contract with the office shall  
23 withdraw money from the trust account in accordance with  
24 Subsections (b), (c), and (d). The office or facility shall hold the  
25 money in a separate account and shall forward the money to the court  
26 clerk on the earlier of the following dates:

27 (1) the date the total amount to be forwarded equals

1 the total amount of court fees, court costs, and other costs that  
2 remains unpaid; or

3 (2) the date the civilly committed individual is  
4 released.

5 (f) The civilly committed individual shall file a certified  
6 copy of the individual's trust account statement with the court.  
7 The statement must reflect the balance of the account at the time  
8 the claim is filed and activity in the account during the six months  
9 preceding the date on which the claim is filed. The court may  
10 request the office to provide the information required under this  
11 subsection.

12 (g) A civilly committed individual may authorize payment in  
13 addition to that required by this section.

14 (h) The court may dismiss a claim if the civilly committed  
15 individual fails to pay fees and costs assessed under this section.

16 (i) A civilly committed individual may not avoid the fees  
17 and costs assessed under this section by nonsuiting a party or by  
18 voluntarily dismissing the action.

19 Sec. 14A.055. OTHER COSTS. (a) An order under Section  
20 14A.054(a) must include the costs described by Subsection (b) if  
21 the court finds that:

22 (1) the civilly committed individual has previously  
23 filed an action to which this chapter or Chapter 14 applies; and

24 (2) a final order has been issued that affirms that the  
25 action was dismissed as frivolous or malicious under Section  
26 13.001, 14.003, or 14A.051 or otherwise.

27 (b) If Subsection (a) applies, costs of court must include

1 expenses incurred by the court or by the office or facility under  
2 contract with the office, in connection with the claim and not  
3 otherwise charged to the civilly committed individual under Section  
4 14A.054, including:

5 (1) expenses of service of process;

6 (2) postage; and

7 (3) transportation, housing, or medical care incurred  
8 in connection with the appearance of the individual in the court for  
9 any proceeding.

10 Sec. 14A.056. HEARING. (a) The court may hold a hearing  
11 under this chapter at a facility operated by or under contract with  
12 the office or may conduct the hearing with video communications  
13 technology that permits the court to see and hear the civilly  
14 committed individual and that permits the individual to see and  
15 hear the court and any other witness.

16 (b) A hearing conducted under this section by video  
17 communications technology shall be recorded on videotape or by  
18 other electronic means. The recording is sufficient to serve as a  
19 permanent record of the hearing.

20 Sec. 14A.057. SUBMISSION OF EVIDENCE. (a) The court may  
21 request a person with an admissible document or admissible  
22 testimony relevant to the subject matter of the hearing to submit a  
23 copy of the document or written statement stating the substance of  
24 the testimony.

25 (b) A written statement submitted under this section must be  
26 made under oath or made as an unsworn declaration under Section  
27 132.001.

1        (c) A copy of a document submitted under this section must  
2 be accompanied by a certification executed under oath by an  
3 appropriate custodian of the record stating that the copy is  
4 correct and any other matter relating to the admissibility of the  
5 document that the court requires.

6        (d) A person submitting a written statement or document  
7 under this section is not required to appear at the hearing.

8        (e) The court shall require that the civilly committed  
9 individual be provided with a copy of each written statement or  
10 document not later than the 14th day before the date on which the  
11 hearing is to begin.

12        Sec. 14A.058. DISMISSAL OF CLAIM. (a) The court may enter  
13 an order dismissing the entire claim or a portion of the claim under  
14 this chapter.

15        (b) If a portion of the claim is dismissed, the court shall  
16 designate the issues and defendants on which the claim may proceed,  
17 subject to Sections 14A.054 and 14A.055.

18        (c) An order under this section is not subject to  
19 interlocutory appeal by the civilly committed individual.

20        Sec. 14A.059. EFFECT ON OTHER CLAIMS. (a) Except as  
21 provided by Subsection (b), on receipt of an order assessing fees  
22 and costs under Section 14A.054 that indicates that the court made  
23 the finding described by Section 14A.055(a), a court clerk may not  
24 accept for filing another claim by the civilly committed individual  
25 until the fees and costs assessed under Section 14A.054 are paid.

26        (b) A court may allow a civilly committed individual who has  
27 not paid the fees and costs assessed against the individual to file

1 a claim for injunctive relief seeking to enjoin an act or failure to  
2 act that creates a substantial threat of irreparable injury or  
3 serious physical harm to the individual.

4 Sec. 14A.060. QUESTIONNAIRE. To implement this chapter, a  
5 court may develop, for use in that court, a questionnaire to be  
6 filed by the civilly committed individual.

7 Sec. 14A.061. REVIEW AND RECOMMENDATION BY MAGISTRATES.

8 (a) The supreme court shall, by rule, adopt a system under which a  
9 court may refer a suit governed by this chapter to a magistrate for  
10 review and recommendation.

11 (b) The system adopted under Subsection (a) may be funded  
12 from money appropriated to the supreme court or from money received  
13 by the supreme court through interagency contract or contracts.

14 (c) For the purposes of Section 14A.062, the adoption of a  
15 system by rule under Subsection (a) does not constitute a  
16 modification or repeal of a provision of this chapter.

17 Sec. 14A.062. CONFLICT WITH TEXAS RULES OF CIVIL PROCEDURE.  
18 Notwithstanding Section 22.004, Government Code, this chapter may  
19 not be modified or repealed by a rule adopted by the supreme court.

20 SECTION 11. Title 4, Civil Practice and Remedies Code, is  
21 amended by adding Chapter 78B to read as follows:

22 CHAPTER 78B. LIMITED LIABILITY FOR FIRST RESPONDER WELLNESS CHECK  
23 AT CIVIL COMMITMENT FACILITY

24 Sec. 78B.001. DEFINITIONS. In this chapter:

25 (1) "First responder" means a law enforcement, fire  
26 protection, or emergency medical services employee, volunteer, or  
27 agency, including:

# Tab D

1 AN ACT

2 relating to civil actions by a civilly committed individual.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

4 SECTION 1. Subtitle A, Title 2, Civil Practice and Remedies  
5 Code, is amended by adding Chapter 14A to read as follows:

6 CHAPTER 14A. LITIGATION BY CIVILLY COMMITTED INDIVIDUAL

7 SUBCHAPTER A. GENERAL PROVISIONS

8 Sec. 14A.001. DEFINITIONS. In this chapter:

9 (1) "Civilly committed individual" means a sexually  
10 violent predator as defined by Section 841.003, Health and Safety  
11 Code, who has been committed to a facility operated by or under  
12 contract with the Texas Civil Commitment Office.

13 (2) "Claim" means a cause of action governed by this  
14 chapter.

15 (3) "Office" means the Texas Civil Commitment Office.

16 (4) "Trust account" means a civilly committed  
17 individual's trust account administered by the office or by a  
18 facility under contract with the office.

19 (5) "Unsworn declaration" means a document executed in  
20 accordance with Chapter 132.

21 Sec. 14A.002. SCOPE OF CHAPTER. (a) This chapter applies  
22 only to an action, including an appeal or original proceeding,  
23 brought by a civilly committed individual in a district, county, or  
24 justice court or an appellate court, including the supreme court or

1 the court of criminal appeals, in which an affidavit or unsworn  
2 declaration of inability to pay costs is filed by the civilly  
3 committed individual.

4 (b) This chapter does not apply to an action brought under  
5 the Family Code.

6 SUBCHAPTER B. DISMISSAL OF AND REQUIREMENTS FOR CLAIM

7 Sec. 14A.051. DISMISSAL OF FALSE, FRIVOLOUS, OR MALICIOUS

8 CLAIM. (a) A court may dismiss a claim, either before or after  
9 service of process, if the court finds that:

10 (1) the allegation of poverty in the affidavit or  
11 unsworn declaration is false;

12 (2) the claim is frivolous or malicious; or

13 (3) the civilly committed individual filed an  
14 affidavit or unsworn declaration required by this chapter that the  
15 individual knew was false.

16 (b) In determining whether a claim is frivolous or  
17 malicious, the court may consider whether:

18 (1) the claim's realistic chance of ultimate success  
19 is slight;

20 (2) the claim has no arguable basis in law or in fact;

21 (3) it is clear that the civilly committed individual  
22 cannot prove the facts in support of the claim; or

23 (4) the claim is substantially similar to a previous  
24 claim filed by the civilly committed individual because the claim  
25 arises from the same operative facts.

26 (c) In determining whether Subsection (a) applies, the  
27 court may hold a hearing. The hearing may be held before or after

1 service of process, and it may be held on motion of the court, a  
2 party, or the court clerk.

3 (d) On the filing of a motion under Subsection (c), the  
4 court shall suspend discovery relating to the claim pending the  
5 hearing.

6 (e) A court that dismisses a claim brought by a civilly  
7 committed individual housed in a facility operated by or under  
8 contract with the office may notify the office of the dismissal and,  
9 on the court's own motion or the motion of any party or the court  
10 clerk, may advise the office that a mental health evaluation of the  
11 individual may be appropriate.

12 Sec. 14A.052. AFFIDAVIT RELATING TO PREVIOUS FILINGS.

13 (a) A civilly committed individual who files an affidavit or  
14 unsworn declaration of inability to pay costs shall file a separate  
15 affidavit or declaration:

16 (1) identifying the court that ordered the  
17 individual's civil commitment under Chapter 841, Health and Safety  
18 Code;

19 (2) indicating whether any cause of action or  
20 allegation contained in the petition has previously been filed in  
21 any other court, and if so, stating the cause of action or  
22 allegation previously filed and complying with Subdivision (6) and  
23 Subsection (b);

24 (3) identifying each action, other than an action  
25 under the Family Code, previously brought by the individual in  
26 which the individual was not represented by an attorney, without  
27 regard to whether the individual was civilly committed at the time

1 the action was brought;

2 (4) certifying that all grievance processes  
3 applicable to the matter that is the basis of the claim, if any,  
4 have been exhausted;

5 (5) certifying that no court has found the individual  
6 to be a vexatious litigant under Chapter 11; and

7 (6) describing each action that was previously brought  
8 by:

9 (A) stating the operative facts for which relief  
10 was sought;

11 (B) listing the case name, the cause number, and  
12 the court in which the action was brought;

13 (C) identifying each party named in the action;  
14 and

15 (D) stating the result of the action, including  
16 whether the action or a claim that was a basis for the action was  
17 dismissed as frivolous or malicious under Section 13.001, 14.003,  
18 or 14A.051 or otherwise.

19 (b) If the affidavit or unsworn declaration filed under this  
20 section states that a previous action or claim was dismissed as  
21 frivolous or malicious, the affidavit or unsworn declaration must  
22 state the date of the final order affirming the dismissal.

23 (c) The affidavit or unsworn declaration must be  
24 accompanied by the certified copy of the trust account statement  
25 required by Section 14A.054(f).

26 Sec. 14A.053. GRIEVANCE SYSTEM DECISION; EXHAUSTION OF  
27 ADMINISTRATIVE REMEDIES. (a) A civilly committed individual who

1 files a claim that is subject to a grievance system established by  
2 the office or a facility under contract with the office shall file  
3 with the court:

4 (1) an affidavit or unsworn declaration stating the  
5 date that the grievance was filed and the date the written decision  
6 was received by the individual; and

7 (2) a copy of the written decision from the grievance  
8 system.

9 (b) A court shall dismiss a claim if the civilly committed  
10 individual fails to file the claim before the 31st day after the  
11 date the individual receives the written decision from the  
12 grievance system.

13 (c) If a claim is filed before the grievance system  
14 procedure is complete, the court shall stay the proceeding with  
15 respect to the claim for a period not to exceed 180 days to permit  
16 completion of the grievance system procedure.

17 Sec. 14A.054. COURT FEES, COURT COSTS, OTHER COSTS. (a) A  
18 court may order a civilly committed individual who has filed a claim  
19 to pay court fees, court costs, and other costs in accordance with  
20 this section and Section 14A.055. The court clerk shall mail a copy  
21 of the court's order and a certified bill of costs to the office or  
22 facility under contract with the office, as appropriate.

23 (b) On the court's order, the civilly committed individual  
24 shall pay an amount equal to the lesser of:

25 (1) 20 percent of the preceding six months' deposits to  
26 the individual's trust account; or

27 (2) the total amount of court fees, court costs, and

1 other costs.

2 (c) In each month following the month in which payment is  
3 made under Subsection (b), the civilly committed individual shall  
4 pay an amount equal to the lesser of:

5 (1) 10 percent of that month's deposits to the trust  
6 account; or

7 (2) the total amount of court fees, court costs, and  
8 other costs that remains unpaid.

9 (d) Payments under Subsection (c) shall continue until the  
10 total amount of court fees, court costs, and other costs are paid or  
11 until the civilly committed individual is released from  
12 confinement.

13 (e) On receipt of a copy of an order issued under Subsection  
14 (a), the office or facility under contract with the office shall  
15 withdraw money from the trust account in accordance with  
16 Subsections (b), (c), and (d). The office or facility shall hold  
17 the money in a separate account and shall forward the money to the  
18 court clerk on the earlier of the following dates:

19 (1) the date the total amount to be forwarded equals  
20 the total amount of court fees, court costs, and other costs that  
21 remains unpaid; or

22 (2) the date the civilly committed individual is  
23 released.

24 (f) The civilly committed individual shall file a certified  
25 copy of the individual's trust account statement with the court.  
26 The statement must reflect the balance of the account at the time  
27 the claim is filed and activity in the account during the six months

1 preceding the date on which the claim is filed. The court may  
2 request the office to furnish the information required under this  
3 subsection.

4 (g) A civilly committed individual may authorize payment in  
5 addition to that required by this section.

6 (h) The court may dismiss a claim if the civilly committed  
7 individual fails to pay fees and costs assessed under this section.

8 (i) A civilly committed individual may not avoid the fees  
9 and costs assessed under this section by nonsuiting a party or by  
10 voluntarily dismissing the action.

11 Sec. 14A.055. OTHER COSTS. (a) An order under Section  
12 14A.054(a) must include the costs described by Subsection (b) if  
13 the court finds that:

14 (1) the civilly committed individual has previously  
15 filed an action to which this chapter or Chapter 14 applies; and

16 (2) a final order has been issued that affirms that the  
17 action was dismissed as frivolous or malicious under Section  
18 13.001, 14.003, or 14A.051 or otherwise.

19 (b) If Subsection (a) applies, costs of court must include  
20 expenses incurred by the court or by the office or facility under  
21 contract with the office, in connection with the claim and not  
22 otherwise charged to the civilly committed individual under Section  
23 14A.054, including:

24 (1) expenses of service of process;

25 (2) postage; and

26 (3) transportation, housing, or medical care incurred  
27 in connection with the appearance of the individual in the court for

1 any proceeding.

2 Sec. 14A.056. HEARING. (a) The court may hold a hearing  
3 under this chapter at a facility operated by or under contract with  
4 the office or may conduct the hearing with video communications  
5 technology that permits the court to see and hear the civilly  
6 committed individual and that permits the individual to see and  
7 hear the court and any other witness.

8 (b) A hearing conducted under this section by video  
9 communications technology shall be recorded on videotape or by  
10 other electronic means. The recording is sufficient to serve as a  
11 permanent record of the hearing.

12 Sec. 14A.057. SUBMISSION OF EVIDENCE. (a) The court may  
13 request a person with an admissible document or admissible  
14 testimony relevant to the subject matter of the hearing to submit a  
15 copy of the document or written statement stating the substance of  
16 the testimony.

17 (b) A written statement submitted under this section must be  
18 made under oath or made as an unsworn declaration under Section  
19 132.001.

20 (c) A copy of a document submitted under this section must  
21 be accompanied by a certification executed under oath by an  
22 appropriate custodian of the record stating that the copy is  
23 correct and any other matter relating to the admissibility of the  
24 document that the court requires.

25 (d) A person submitting a written statement or document  
26 under this section is not required to appear at the hearing.

27 (e) The court shall require that the civilly committed

1 individual be provided with a copy of each written statement or  
2 document not later than the 14th day before the date on which the  
3 hearing is to begin.

4 Sec. 14A.058. DISMISSAL OF CLAIM. (a) The court may enter  
5 an order dismissing the entire claim or a portion of the claim under  
6 this chapter.

7 (b) If a portion of the claim is dismissed, the court shall  
8 designate the issues and defendants on which the claim may proceed,  
9 subject to Sections 14A.054 and 14A.055.

10 (c) An order under this section is not subject to  
11 interlocutory appeal by the civilly committed individual.

12 Sec. 14A.059. EFFECT ON OTHER CLAIMS. (a) Except as  
13 provided by Subsection (b), on receipt of an order assessing fees  
14 and costs under Section 14A.054 that indicates that the court made  
15 the finding described by Section 14A.055(a), a court clerk may not  
16 accept for filing another claim by the civilly committed individual  
17 until the fees and costs assessed under Section 14A.054 are paid.

18 (b) A court may allow a civilly committed individual who has  
19 not paid the fees and costs assessed against the individual to file  
20 a claim for injunctive relief seeking to enjoin an act or failure to  
21 act that creates a substantial threat of irreparable injury or  
22 serious physical harm to the individual.

23 Sec. 14A.060. QUESTIONNAIRE. To implement this chapter, a  
24 court may develop, for use in that court, a questionnaire to be  
25 filed by the civilly committed individual.

26 Sec. 14A.061. REVIEW AND RECOMMENDATION BY MAGISTRATES.  
27 (a) The supreme court shall, by rule, adopt a system under which a

1 court may refer a suit governed by this chapter to a magistrate for  
2 review and recommendation.

3 (b) The system adopted under Subsection (a) may be funded  
4 from money appropriated to the supreme court or from money received  
5 by the supreme court through interagency contract or contracts.

6 (c) For the purposes of Section 14A.062, the adoption of a  
7 system by rule under Subsection (a) does not constitute a  
8 modification or repeal of a provision of this chapter.

9 Sec. 14A.062. CONFLICT WITH TEXAS RULES OF CIVIL PROCEDURE.  
10 Notwithstanding Section 22.004, Government Code, this chapter may  
11 not be modified or repealed by a rule adopted by the supreme court.

12 SECTION 2. Chapter 14A, Civil Practice and Remedies Code,  
13 as added by this Act, applies only to an action filed on or after the  
14 effective date of this Act.

15 SECTION 3. This Act takes effect immediately if it receives  
16 a vote of two-thirds of all the members elected to each house, as  
17 provided by Section 39, Article III, Texas Constitution. If this  
18 Act does not receive the vote necessary for immediate effect, this  
19 Act takes effect September 1, 2023.

S.B. No. 1180

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I hereby certify that S.B. No. 1180 passed the Senate on April 12, 2023, by the following vote: Yeas 31, Nays 0.

\_\_\_\_\_  
Secretary of the Senate

I hereby certify that S.B. No. 1180 passed the House on May 12, 2023, by the following vote: Yeas 135, Nays 7, two present not voting.

\_\_\_\_\_  
Chief Clerk of the House

Approved:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governor

# Tab E

## Memorandum

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**To:** SCAC

**From:** Subcommittee on Rules 1-14c

**Date:** November 28, 2023

**Re:** SB 1373, HB 785, SB 1457, and SB 2248 and June 3, 2023 Referral Letter

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### I. Matter referred to subcommittee

**Notice by Qualified Delivery Methods.** HB 785, SB 1373, SB 1457, and SB 2248 amend multiple sections of the Estates Code to allow service in guardianship and probate proceedings by certain qualified delivery methods, including private delivery services like UPS and FedEx. The Committee should consider whether the Texas Rules of Civil Procedure governing citation and service should be changed or a comment added to reference or restate the statutes and draft any recommended amendments.

**Waiver of Citation in Probate Proceedings.** Sections 14 and 18 of SB 1373 amend Estates Code §§ 202.056 and 258.002 to allow for waiver of citation on minors in heirship and probate proceedings. The Committee should consider whether the citation rules should be changed or a comment added to reference or restate the statutes and draft any recommended amendments.

### II. Relevant materials

SB 1373, HB 785, SB 1457, and SB 2248 are attached.

### III. Overview

The new statutes provide additional methods of service of notice and citation in lawsuits brought under the Estates Code. We recommend adding three comments to the rules in view of these issues. The three recommendations are in italics below. We do not believe we need to amend the rules.

If, as we suggest, the expanded service methods are limited to estate and guardianship matters, *we recommend adding a comment to Rule 21a governing service and Rule 106 governing citation and not amending the rules applicable to all other actions. “The Estates Code provides for other methods of service and citation, and proof thereof, in estate and guardianship proceedings and governs those proceedings.”*

The Estates Code was already permissive about the use of certified mail rather than formal service of process. The gist of the changes expands the options beyond the offerings of the USPS so that couriers and private shippers like FedEx or UPS can be used as well.

The TRCP already functioned in a world where the Estates Code let probate lawyers use certified mail in many situations. This is why no changes are needed to the text of the Rules. Because the new statutes simply replace “certified mail” with “qualified delivery methods,” they do not require fresh accommodation in the TRCP. Notably, each of the qualified delivery methods comes with a method for the carrier to certify delivery and receipt. Thus, there are no new dangers in these methods that the Rules need to address.

Nevertheless, new comments in Rule 21a governing service and Rule 106 governing citation would be helpful to practitioners. The current text and commentary to the Rules do nothing to alert practitioners to the alternatives to formal service of process in the Estates Code. Adding a comment to the Rules that acknowledges the availability of qualified delivery methods under the Estates Code puts that information in a convenient place.

*We also recommend adding a comment to TRCP 106 to note that certain provisions of the Estates Code specify that a citation or summons in a particular proceeding must be “personally served on” certain parties. We recommend adding the following comment: “However, some statutes specify that citations or summons must be personally served on certain parties in certain specialized proceedings.” See, e.g., TEX. ESTATES CODE § 1251.005(a) (citation in temporary guardianship must “be personally served on” the proposed ward and the proposed temporary guardian (if that person is not the applicant)).*

*Additionally, we recommend adding a comment to TRCP 119 to address the new waiver of citation rule set forth in Section 14 of SB 1373, which provides for waiver of citation on minors in heirship and probate proceedings. We recommend the following comment: “The Estates Code provides for waiver of citation by certain parties in probate and heirship proceedings and governs those proceedings.”*

There are two other issues where we do not recommend a change in the rules or a new comment. First, a lurking sub-issue is whether the new methods should be limited solely to guardianship and probate proceedings or should apply across the board to all actions.

Taking the second lurking issue first, we recommend against making an across the board change absent some request by the bar for such a change. Moreover, the new statute

already went into effect on September 1, 2023, so any change in service beyond the statutorily required changes should undergo further study.

But if SCAC recommends permitting expanded methods of delivery *in all actions*, then SCAC would need to amend both the service and citation rules to parallel the new statutory definition of qualified delivery methods and the required proof of delivery.

One other issue for the full committee is whether we need a new comment to Rule 21a. Section 19 amends Estates Code § 1251.005(a) to add a requirement that the citation issued by the clerk of court must “be personally served on ... (A) the proposed ward; and (B) the proposed temporary guardian” for any application for a temporary guardianship. It also specifies that “notice is to be served in the manner provided under Rule 21a, Texas Rules of Civil Procedure, on the proposed ward’s appointed attorney.” *We do not recommend any change in the rules or a comment as a result of this change. This is a requirement for the clerk of court in issuing the citation, so it is less likely to trip up a practitioner. On the other hand, clerks often rely on the practitioner’s request to issue a citation. On balance, we don’t think we need to make a specific comment about this change.*

#### **IV. Notice by Qualified Delivery Methods**

SB 1373 defines “qualified delivery method” to expand methods of service and citation to include certain private delivery services. The definition is the same as that in HB 785, SB 1457, and SB 2248. The amendment to chapter 22 of the Estates Code adds an entirely new section 22.095. It provides:

Sec. 22.0295. QUALIFIED DELIVERY METHOD. "Qualified delivery method" means delivery by:

- (1) hand delivery by courier, with courier’s proof of delivery receipt;
- (2) certified or registered mail, return receipt requested, with return receipt; or
- (3) a private delivery service designated as a designated delivery service by the United States Secretary of the Treasury under Section 7502(f)(2), Internal Revenue Code of 1986, with proof of delivery receipt.

Sections 2 and 3 of SB 1373 amend the title of Section 51.052 and its provisions regarding service by mail or private delivery. The amendment adds the following underlined words to the existing text: “The date of service is the date of mailing, the date of deposit with the private delivery service, or the date of delivery by the courier, as applicable.”

## V. Other changes in SB 1373.

### A. Proof of Service

Section 6 of SB 1373 amends section 51.103(b)'s definition of what constitutes proof of service for citation and notice. Section 51.103(a) requires "proof of service in each case requiring citation or notice must be filed before the hearing. Tex. Estates Code Ann. § 51.103(b) is amended by adding that service can be by a qualified delivery method. The changes are underlined below:

(b) Proof of service consists of:

- (1) if the service is made by a sheriff or constable, the return of service;
- (2) if the service is made by a private person, the person's affidavit;
- (3) if the service is made by *a qualified delivery method* ~~[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 ...

SB 1373 amends numerous Estates Code provisions to consistently provide for service of notice or citation by qualified delivery methods.

### B. Waiver of Citation in Probate Proceedings

Section 14 of SB 1373 provides for waiver of citation on minors in heirship and probate proceedings. The change to Estates Code § 202.056 replaces the term "minor" with an age cut-off of 16, to read as follows:

Sec. 202.056. WAIVER OF SERVICE OF CITATION. (a) A distributee who is 16 years of age or older may waive citation required by this subchapter to be served on the distributee.

(b) A parent, managing conservator, guardian, attorney ad litem, or guardian ad litem of a distributee who is younger than 16 years of age may waive citation required by this subchapter to be served on the distributee.

Section 18 of SB 1373 adds new subsections d and e to the provisions for waiver of citation in Estates Code § 258.002, which is entitled “Citation on Application for Probate of Will Not Produced in Court:”

(d) An heir who is 16 years of age or older may waive citation required by this section to be served on the heir.

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

Current TRCP 119 provides for waiver of citation as follows:

#### RULE 119. ACCEPTANCE OF SERVICE

The defendant may accept service of process, or waive the issuance or service thereof by a written memorandum signed by him, or by his duly authorized agent or attorney, after suit is brought, sworn to before a proper officer other than an attorney in the case, and filed among the papers of the cause, and such waiver or acceptance shall have the same force and effect as if the citation had been issued and served as provided by law. The party signing such memorandum shall be delivered a copy of plaintiff’s petition, and the receipt of the same shall be acknowledged in such memorandum. In every divorce action such memorandum shall also include the defendant’s mailing address.

Current Rule 119 does not reference waiver of citation by a distributee in a probate proceeding, minor or otherwise, even though the Estates Code has provided for such waiver since at least the 2009 codification, and it was likely in the statutes prior to that.

Because the waiver provisions are so narrowly tailored to probate and heirship proceedings and not of general applicability, we would not recommend amending TRCP 119 to duplicate the statute. We could instead add a comment: “The Estates Code provides for waiver of citation by certain parties in probate and heirship proceedings and governs those proceedings.”

### **C. Miscellaneous Provisions**

Sections 15, 17, 18, 19, 20, 21, 22, 24, 25, 26, 27, 32, 39, 40, 41, and 43 are substantive amendments, such as the evidence in a proceeding to declare heirship. They do not require any change in the TRCP.

## V. Changes in HB 785

HB 785 has sixteen sections that make changes to the Texas Estate Codes. These amendments address service of notices under the Estates Code. They do not require any changes in the TRCP; they can be handled by the comment discussed above. Each section is discussed briefly below.

Section 1 creates a new Estates Code § 1002.065, which is titled Qualified Delivery Method, sets forth three “qualified delivery method[s].” These methods are incorporated in various other parts of HB 785 as well as SB 1373, SB 1457, and SB 2248. It only applies in proceedings under the Estates Code.

Section 2 amends Estates Code § 1023.004(c), which is titled “Notice.” It permits notice of motions to transfer a guardian to be served by a “qualified delivery method” (defined in new section 1002.065 and in the other new statutes) rather than just by certified mail. The former rule is not referenced in Rule 21s governing service for pleadings, motions, and requests.

Section 4 concerns Estates Code § 1051.052, which is titled Service by Mail. The amendment allows service by citation in Guardianship proceeding not only by regular mail but also by a qualified delivery method. *See Guardianship of Fairley*, 650 S.W.3d 372, 382 (Tex. 2022) (“Chapter 1051 of the Estates Code governs the issuance of notice and service of citation in guardianship proceedings.”).

Section 5 amends Estates Code § 1051.055, which is titled Service on Party’s Attorney of Record, and governs service on a party’s attorney of record in guardianship proceedings. The amendment allows services on the attorney by a qualified delivery method.

Section 6 amends Estates Code § 1051.056, which is titled Service on Guardian or Receiver and governs service on a guardian or receiver. The amendment also expands service to allow service by a qualified delivery method.

Section 7 amends Estates Code § 1051.104, which is titled Notice by Applicant for Guardianship and which governs an application for a guardianship. The amendment also expands service to allow service by a qualified delivery method.

Section 8 amends Estate Codes § 1051.153, which is titled Proof of Service and Notice by Applicant for Guardianship and which governs proof of service. The amendment sets forth requirements for proof of service by a qualified delivery method.

Section 9 amends Estates Code § 1057.002, which is titled Resignation of Resident Agent Guardianship. The amendment permits a resident agent to send a resignation letter by a qualified delivery method instead of just by certified mail.

Section 10 amends Estates Code § 1153.001, which is titled Required Notice Regarding Presentment of Claims in General. Section 1153.001 requires a guardian to notify any person with a claim against an estate to assert it within a certain time frame with notice by publication and by service on the comptroller. It is amended to allow service on the comptroller not only by certified mail but by a qualified delivery method.

Section 11 amends Estates Code § 1153.003, which is titled Required Notice to Certain Claimants, governs the service of notice of these claims. The amendment allows service not only by certified mail but also by a qualified delivery method.

Section 12 amends Estates Code § 1156.052, which is titled Allowance for Ward's Spouse of Dependent, permits an application seeking a court order to compel a guardian of a ward's estate to spend money for certain expenses. The amendment permits service of the application not only by certified mail but also by a qualified delivery method.

Section 13 amends Estates Code § 1162.003, which is titled Notice of Application for Establishment of Estate or Other Transfer Plan and governs the service of an application to the court under Este Codes § 1162.001. The amendment permits service of the application not only by certified mail but also by a qualified delivery method.

Section 14 amends Estates Code § 1162.006, which is titled Notice of Application for Inspection and governs service of an application for inspection under § 1162.005. The amendment permits service of the application not only by certified mail but also by a qualified delivery method.

Section 15 amends Estates Code § 1202.054, which is titled Informal Request for Order by Ward and permits a ward to make request for a court order under section 1202.051 by an informal letter to the court. The amendment permits service of the request not only by certified mail but also by a qualified delivery method.

Section 16 amends Estates Code Section 1203.052, which is titled Removal by Notice and which permit a court to remove a guardian. The amendment permits service of the notice on the guardian not only by certified mail but also by a qualified delivery method.

## **VII. Changes in SB 1457**

SB 1457 makes several changes that are identical to those in HB 785. When it comes to changes that are relevant to the Texas Rules of Civil Procedure, it makes the same changes to the Estates Code that HB 785 makes.

Like HB 785, SB 1457 adds a new Estates Code section 1002.065 that defines a “qualified delivery method” in identical terms to the other statutes discussed here. It goes on to replace references to certified mail with references to “qualified delivery methods” throughout the guardianship sections of the Estates Code. The evident purpose of this new language is to allow private delivery services and couriers anywhere the use of certified mail that was allowed under prior law in the Estates Code.

Sections 24 through 31 are substantive amendments. For example, Section 24 lifts the maximum value of a child’s property that her parent can sell without being appointed guardian to \$250,000 from \$100,000. These sections do not require any change in the TRCP. Notably, the differences between SB 1457 and HB 785 are in these substantive amendments that the former includes and the latter does not.

## **VIII. Changes in SB 2248**

SB 2248 has 21 sections that make changes to the Texas Estate Codes relating to guardianship actions for persons who are incapacitated.

Section 1 amends Estates Code Chapter 1002 by adding § 1002.0265, providing a new definition of “qualified delivery method” that is identical to amendments in SB1373, SB1457 and HB785.

Section 2 amends Estates Code § 1023.002(c) to clarify that when a guardianship proceeding is transferred to a proper venue, it should be done “in the manner prescribed by Section 1023.006.” *See infra* Section 5.

Section 3 amends Estates Code §§ 1023.004(a) and (c) to add “qualified delivery method” for notices provided to guardians and sureties when a motion is made to transfer a guardianship proceeding to a proper venue.

Section 4 amends Estates Code §1023.005(c) to direct the “clerk of the court to which the guardianship is transferred” to accept it, rather than the “county.”

Section 5 then amends Estates Code § 1023.006 to modify requirements for a transfer of the record to delineate a number of specific items that should be transferred by the clerk of the transferor court to the transferee court “using the electronic filing system.” Other additions include directions to the clerks of both courts as to accepting, marking, and filing the documents in the transferred files.

Section 6 amends Estates Code § 1023.007 to clarify when the order transferring the guardianship takes effect.

Section 7 adds Estates Code § 1023.0071 to provide for the method and amount of a transfer fee for a guardianship proceeding transferred to another county.

Section 8 amends Estates Code § 1105.002(a) to separate out the qualifications for a guardian such that “obtained the judge’s approval on the bond” is now subsection (3), and “filed the bond with the clerk” is now in a new subsection (4). These continue to be conjunctive requirements.

Section 9 amends Estates Code § 1105.157(a) and (d) to permit a guardian to deposit cash or securities in lieu of a surety bond in the registry of the court and provides the terminology for the receipt.

Section 10 amends Estates Code § 1106.001(a) to clarify that the “seal” for the certificate appointing a guardian is “the court’s.”

Section 11 amends Estates Code § 1106.005 to make a similar clarification to subsection (a) and delete the option for a “certificate” in favor of “letters of guardianship.”

Section 12 amends Estates Code § 1151.051(c) to add three new substantive duties to a guardian’s role—subsections (c)(6) to (8)—and renumbers.

Section 13 amends Estates Code § 1155.151(a) to require additional findings before ordering costs of a guardianship proceeding to be awarded out of the guardianship estate.

Section 14 amends Estates Code § 1156.052 to change “dependent” to “minor children or incapacitated adult children” throughout that provision. It also amends subsection (c) to provide for notice of an application for permission to spend the ward’s money on these dependents by “qualified delivery method” and adds subsection (d) to require that such notices be filed with the court together with proof-of-delivery receipts.

Section 15 amends Estates Code § 1203.006 regarding the requirements for discharge of a resigning guardian: changing the term “applicant” to “guardian” throughout the provision; adding a new subsection (b)(3) requiring the court to cancel letters issued to the guardian; renumbering former subsection (b)(3) to (b)(4); and clarifying that the sureties on the guardian’s bond are to be discharged and released when the guardian is discharged.

Section 16 adds subsection (h) to Estates Code § 1204.105 to require a guardian to file an affidavit (or a certificate from the guardian’s attorney) certifying service of citation on the statutorily specified recipients when a presentation is made for final settlement of an account by a guardian of the estate of a ward. The amendment also sets out the required contents of the affidavit or certificate.

Section 17 amends Estates Code § 1204.151 to confirm that the court’s order discharging a guardian when no estate property remains shall also cancel the letters issued to the guardian when closing the estate.

Section 18 amends Estates Code § 1204.152 to make the same change to the discharge of a guardian when the estate is fully administered.

Section 19 amends Estates Code § 1251.005(a) to add a requirement that the citation issued by the clerk of court must “be personally served on ... (A) the proposed ward; and (B) the proposed temporary guardian” for any application for a temporary guardianship. It also specifies that “notice is to be served in the manner provided under Rule 21a, Texas Rules of Civil Procedure, on the proposed ward’s appointed attorney.” *We do not recommend any change in the rules or a comment as a result of this change. This is a requirement for the clerk of court in issuing the citation, so it is less likely to trip up a practitioner. On the other hand, clerks often rely on the practitioner’s request to issue a citation. On balance, we don’t think we need to make a specific comment about this change.*

Section 20 repeals amends Estates Code § 1023.008, addressing transfer of venue of a guardianship proceeding.

Section 21 provides that these changes “apply to a guardianship created before, on, or after the effective date of this Act” except for certain specified provisions that “apply only to an application filed or motion made to transfer a guardianship on or after the effective date of the Act” and still other specified changes (like to the requirements for transferring the record) that “apply only to an application filed on or after the effective date.

Section 22 provides that the effective date of the Act is September 1, 2023.

# Tab F

1 AN ACT

2 relating to the delivery of certain notices or other communications  
3 in connection with guardianship proceedings.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Chapter 1002, Estates Code, is amended by adding  
6 Section 1002.0265 to read as follows:

7 Sec. 1002.0265. QUALIFIED DELIVERY METHOD. "Qualified  
8 delivery method" means delivery by:

9 (1) hand delivery by courier, with courier's proof of  
10 delivery receipt;

11 (2) certified or registered mail, return receipt  
12 requested, with return receipt; or

13 (3) a private delivery service designated as a  
14 designated delivery service by the United States Secretary of the  
15 Treasury under Section 7502(f)(2), Internal Revenue Code of 1986,  
16 with proof of delivery receipt.

17 SECTION 2. Section 1023.004(c), Estates Code, is amended to  
18 read as follows:

19 (c) If a court made a motion to transfer a guardianship, the  
20 guardian shall be given notice by a qualified delivery method  
21 [~~certified mail~~] to appear and show cause why the guardianship  
22 should not be transferred.

23 SECTION 3. The heading to Section 1051.052, Estates Code,  
24 is amended to read as follows:

1           Sec. 1051.052. SERVICE BY MAIL OR QUALIFIED DELIVERY  
2 METHOD.

3           SECTION 4. Section 1051.052, Estates Code, is amended by  
4 amending Subsections (b), (c), (d), (e), and (f) and adding  
5 Subsection (h) to read as follows:

6           (b) Except as provided by Subsection (c), the county clerk  
7 shall issue a citation or notice required or permitted to be served  
8 by a qualified delivery method [~~registered or certified mail~~] and  
9 shall serve the citation or notice by sending [~~mailing~~] the  
10 original citation or notice by a qualified delivery method  
11 [~~registered or certified mail~~].

12           (c) A guardian shall issue a notice required to be given by  
13 the guardian by a qualified delivery method [~~registered or~~  
14 ~~certified mail~~] and shall serve the notice by sending [~~mailing~~] the  
15 original notice by a qualified delivery method [~~registered or~~  
16 ~~certified mail~~].

17           (d) The county clerk or guardian, as applicable, shall send  
18 [~~mail~~] a citation or notice under Subsection (b) or (c) with an  
19 instruction to deliver the citation or notice to the addressee only  
20 and with return receipt or other proof of delivery requiring  
21 recipient signature requested. The clerk or guardian, as  
22 applicable, shall address the envelope containing the citation or  
23 notice to:

24           (1) the attorney of record in the proceeding for the  
25 person to be cited or notified; or

26           (2) the person to be cited or notified, if the citation  
27 or notice to the attorney is returned undelivered or the person to

1 be cited or notified has no attorney of record in the proceeding.

2 (e) Service by a qualified delivery method [~~mail~~] must be  
3 made at least 20 days before the return day of the citation or  
4 notice, excluding the date of service. The date of service [~~by~~  
5 ~~mail~~] is the date of mailing, the date of deposit with the private  
6 delivery service, or the date of delivery by courier, as  
7 applicable.

8 (f) A copy of a citation or notice served under Subsection  
9 (a), (b), or (c) and a certificate of the person serving the  
10 citation or notice showing that the citation or notice was sent  
11 [~~mailed~~] and the date of the mailing, the date of deposit with a  
12 private delivery service, or the date of delivery by courier, as  
13 applicable, shall be filed and recorded. A returned receipt or  
14 other proof of delivery receipt for a citation or notice served  
15 under Subsection (b) or (c) shall be attached to the certificate.

16 (h) The applicant or movant in a guardianship proceeding  
17 shall pay the cost of delivery of a citation or notice under this  
18 section, to be taxed as costs in the proceeding.

19 SECTION 5. Sections 1051.055(a) and (b), Estates Code, are  
20 amended to read as follows:

21 (a) If a party is represented by an attorney of record in a  
22 guardianship proceeding, including a proposed ward who has been  
23 personally served with notice of the proceeding and is represented  
24 by an attorney ad litem, a citation or notice required to be served  
25 on the party shall be served instead on that attorney.

26 (b) A notice served on an attorney under this section may be  
27 served by[+]

1           ~~[(1)]~~ delivery to the attorney in person or by a  
2 qualified delivery method [~~+~~  
3           ~~[(2)]~~ ~~registered or certified mail, return receipt~~  
4 ~~requested, or~~  
5           ~~[(3)]~~ ~~any other form of mail that requires proof of~~  
6 ~~delivery~~].

7           SECTION 6. Section 1051.056, Estates Code, is amended to  
8 read as follows:

9           Sec. 1051.056. SERVICE ON GUARDIAN OR RECEIVER. Unless  
10 this title expressly provides for another method of service, the  
11 county clerk who issues a citation or notice required to be served  
12 on a guardian or receiver shall serve the citation or notice by  
13 sending [~~mailing~~] the original citation or notice by a qualified  
14 delivery method [~~registered or certified mail~~] to:

- 15           (1) the guardian's or receiver's attorney of record;  
16 or  
17           (2) the guardian or receiver, if the guardian or  
18 receiver does not have an attorney of record.

19           SECTION 7. Sections 1051.104(a) and (b), Estates Code, are  
20 amended to read as follows:

21           (a) The person filing an application for guardianship shall  
22 send [~~mail~~] a copy of the application and a notice containing the  
23 information required in the citation issued under Section 1051.102  
24 by a qualified delivery method [~~registered or certified mail,~~  
25 ~~return receipt requested, or by any other form of mail that provides~~  
26 ~~proof of delivery,~~] to the following persons, if their whereabouts  
27 are known or can be reasonably ascertained:

- 1 (1) each adult child of the proposed ward;
- 2 (2) each adult sibling of the proposed ward;
- 3 (3) the administrator of a nursing home facility or  
4 similar facility in which the proposed ward resides;
- 5 (4) the operator of a residential facility in which  
6 the proposed ward resides;
- 7 (5) a person whom the applicant knows to hold a power  
8 of attorney signed by the proposed ward;
- 9 (6) a person designated to serve as guardian of the  
10 proposed ward by a written declaration under Subchapter E, Chapter  
11 1104, if the applicant knows of the existence of the declaration;
- 12 (7) a person designated to serve as guardian of the  
13 proposed ward in the probated will of the last surviving parent of  
14 the proposed ward;
- 15 (8) a person designated to serve as guardian of the  
16 proposed ward by a written declaration of the proposed ward's last  
17 surviving parent, if the declarant is deceased and the applicant  
18 knows of the existence of the declaration; and
- 19 (9) each adult named in the application as an "other  
20 living relative" of the proposed ward within the third degree by  
21 consanguinity, as required by Section 1101.001(b)(11) or (13), if  
22 the proposed ward's spouse and each of the proposed ward's parents,  
23 adult siblings, and adult children are deceased or there is no  
24 spouse, parent, adult sibling, or adult child.

25 (b) The applicant shall file with the court:

- 26 (1) a copy of any notice required by Subsection (a) and  
27 the return receipts or other proofs of delivery of the notice; and

1 (2) an affidavit sworn to by the applicant or the  
2 applicant's attorney stating:

3 (A) that the notice was sent [~~mailed~~] as required  
4 by Subsection (a); and

5 (B) the name of each person to whom the notice was  
6 sent [~~mailed~~], if the person's name is not shown on the return  
7 receipt or other proof of delivery.

8 SECTION 8. Section 1051.153(b), Estates Code, is amended to  
9 read as follows:

10 (b) Proof of service consists of:

11 (1) if the service is made by a sheriff or constable,  
12 the return of service;

13 (2) if the service is made by a private person, the  
14 person's affidavit;

15 (3) if the service is made by mail or by a qualified  
16 delivery method:

17 (A) the certificate of the county clerk making  
18 the service, or the affidavit of the guardian or other person making  
19 the service that states that the citation or notice was mailed or  
20 sent by a qualified delivery method and the date of the mailing, the  
21 date of deposit with the private delivery service, or the date of  
22 delivery by courier, as applicable; and

23 (B) the return receipt or other proof of delivery  
24 receipt attached to the certificate or affidavit, as applicable, if  
25 the service [~~mailing~~] was made by a qualified delivery method  
26 [~~registered or certified mail and a receipt has been returned~~]; and

27 (4) if the service is made by publication:

1 (A) a statement that:

2 (i) is made by the Office of Court  
3 Administration of the Texas Judicial System or an employee of the  
4 office;

5 (ii) contains or to which is attached a copy  
6 of the published citation or notice; and

7 (iii) states the date of publication on the  
8 public information Internet website maintained as required by  
9 Section 72.034, Government Code [~~, as added by Chapter 606 (S.B.~~  
10 ~~891), Acts of the 86th Legislature, Regular Session, 2019~~]; and

11 (B) an affidavit that:

12 (i) is made by the publisher of the  
13 newspaper in which the citation or notice was published or an  
14 employee of the publisher;

15 (ii) contains or to which is attached a copy  
16 of the published citation or notice; and

17 (iii) states the date of publication  
18 printed on the newspaper in which the citation or notice was  
19 published.

20 SECTION 9. Section 1057.002(b), Estates Code, is amended to  
21 read as follows:

22 (b) The resident agent shall send, by a qualified delivery  
23 method [~~certified mail, return receipt requested~~], a copy of a  
24 resignation statement filed under Subsection (a) to:

25 (1) the guardian at the address most recently known by  
26 the resident agent; and

27 (2) each party in the case or the party's attorney or

1 other designated representative of record.

2 SECTION 10. Section 1153.001(a), Estates Code, is amended  
3 to read as follows:

4 (a) Within one month after receiving letters of  
5 guardianship, a guardian of an estate shall provide notice  
6 requiring each person who has a claim against the estate to present  
7 the claim within the period prescribed by law. The notice must be:

8 (1) published in a newspaper of general circulation in  
9 the county in which the letters were issued; and

10 (2) sent to the comptroller by a qualified delivery  
11 method [~~certified or registered mail~~], if the ward remitted or  
12 should have remitted taxes administered by the comptroller.

13 SECTION 11. Sections 1153.003(b) and (c), Estates Code, are  
14 amended to read as follows:

15 (b) Notice provided under this section must be:

16 (1) sent by a qualified delivery method [~~certified or~~  
17 ~~registered mail, return receipt requested~~]; and

18 (2) addressed to the record holder of the claim at the  
19 record holder's last known post office address.

20 (c) The following shall be filed in the court from which the  
21 letters of guardianship were issued:

22 (1) a copy of each notice required by Subsection  
23 (a)(1) with the return receipt or other proof of delivery, if  
24 available; and

25 (2) the guardian's affidavit stating:

26 (A) that the notice was sent [~~mailed~~] as required  
27 by law; and

1 (B) the name of the person to whom the notice was  
2 sent [~~mailed~~], if that name is not shown on the notice or receipt.

3 SECTION 12. Section 1156.052(c), Estates Code, is amended  
4 to read as follows:

5 (c) A person who makes an application to the court under  
6 this section shall send [~~mail~~] notice of the application by a  
7 qualified delivery method [~~certified mail~~] to all interested  
8 persons.

9 SECTION 13. Section 1162.003, Estates Code, is amended to  
10 read as follows:

11 Sec. 1162.003. NOTICE OF APPLICATION FOR ESTABLISHMENT OF  
12 ESTATE OR OTHER TRANSFER PLAN. A person who makes an application  
13 to the court under Section 1162.001 shall send [~~mail~~] notice of the  
14 application by a qualified delivery method [~~certified mail~~] to:

- 15 (1) all devisees under a will, trust, or other  
16 beneficial instrument relating to the ward's estate;  
17 (2) the ward's spouse;  
18 (3) the ward's dependents; and  
19 (4) any other person as directed by the court.

20 SECTION 14. Section 1162.006(b), Estates Code, is amended  
21 to read as follows:

22 (b) Notice required by Subsection (a) must be sent  
23 [~~delivered~~] by a qualified delivery method [+

24 [~~(1) registered or certified mail to a person~~  
25 ~~described by Subsection (a)(1), and~~

26 [~~(2) certified mail to a person described by~~  
27 ~~Subsection (a)(2), (3), (4), or (5)]].~~

1 SECTION 15. Section 1202.054(b-2), Estates Code, is amended  
2 to read as follows:

3 (b-2) Not later than the 30th day after the date the court  
4 receives an informal letter from a ward under Subsection (a), the  
5 court shall send the ward a letter by a qualified delivery method  
6 ~~[certified mail]~~:

- 7 (1) acknowledging receipt of the informal letter; and  
8 (2) advising the ward of the date on which the court  
9 appointed the court investigator or guardian ad litem as required  
10 under Subsection (b) and the contact information for the court  
11 investigator or guardian ad litem.

12 SECTION 16. Sections 1203.052(a-1) and (b), Estates Code,  
13 are amended to read as follows:

14 (a-1) The court may remove a guardian for a reason listed in  
15 Subsection (a) on the:

16 (1) court's own motion, after the guardian has been  
17 notified~~[7]~~ by a qualified delivery method ~~[certified mail, return~~  
18 ~~receipt requested,7]~~ to answer at a time and place set in the notice;  
19 or

20 (2) complaint of an interested person, after the  
21 guardian has been cited by personal service to answer at a time and  
22 place set in the notice.

23 (b) In addition to the authority granted to the court under  
24 Subsection (a), the court may, on the complaint of the guardianship  
25 certification program of the Judicial Branch Certification  
26 Commission, remove a guardian who would be ineligible for  
27 appointment under Subchapter H, Chapter 1104, because of the

1 guardian's failure to maintain the certification required under  
2 Subchapter F, Chapter 1104. The guardian shall be given notice[7]  
3 by a qualified delivery method [~~certified mail, return receipt~~  
4 ~~requested,~~] to appear and contest the request for removal under  
5 this subsection at a time and place set in the notice.

6 SECTION 17. The changes in law made by this Act apply only  
7 to an action filed or a guardianship proceeding commenced on or  
8 after the effective date of this Act.

9 SECTION 18. This Act takes effect September 1, 2023.

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President of the Senate

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Speaker of the House

I certify that H.B. No. 785 was passed by the House on April 14, 2023, by the following vote: Yeas 141, Nays 2, 2 present, not voting.

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Chief Clerk of the House

I certify that H.B. No. 785 was passed by the Senate on May 9, 2023, by the following vote: Yeas 31, Nays 0.

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Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

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Governor

# Tab G

AN ACT

relating to decedents' estates and the delivery of certain notices or other communications in connection with those estates or multiple-party accounts.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 22, Estates Code, is amended by adding Section 22.0295 to read as follows:

Sec. 22.0295. QUALIFIED DELIVERY METHOD. "Qualified delivery method" means delivery by:

(1) hand delivery by courier, with courier's proof of delivery receipt;

(2) certified or registered mail, return receipt requested, with return receipt; or

(3) a private delivery service designated as a designated delivery service by the United States Secretary of the Treasury under Section 7502(f)(2), Internal Revenue Code of 1986, with proof of delivery receipt.

SECTION 2. The heading to Section 51.052, Estates Code, is amended to read as follows:

Sec. 51.052. SERVICE BY MAIL OR PRIVATE DELIVERY.

SECTION 3. Sections 51.052(b), (c), (d), (e), (f), and (g), Estates Code, are amended to read as follows:

(b) Except as provided by Subsection (c), the county clerk shall issue a citation or notice required or permitted to be served

1 by a qualified delivery method [~~registered or certified mail~~] and  
2 shall serve the citation or notice by sending [~~mailing~~] the  
3 original citation or notice by a qualified delivery method  
4 [~~registered or certified mail~~].

5 (c) A personal representative shall issue a notice required  
6 to be given by the representative by a qualified delivery method  
7 [~~registered or certified mail~~] and shall serve the notice by  
8 sending [~~mailing~~] the original notice by a qualified delivery  
9 method [~~registered or certified mail~~].

10 (d) The county clerk or personal representative, as  
11 applicable, shall send [~~mail~~] a citation or notice under Subsection  
12 (b) or (c) with an instruction to deliver the citation or notice to  
13 the addressee only and with return receipt or other proof of  
14 delivery requested. The clerk or representative, as applicable,  
15 shall address the envelope containing the citation or notice to:

16 (1) the attorney of record in the proceeding for the  
17 person to be cited or notified; or

18 (2) the person to be cited or notified, if the citation  
19 or notice to the attorney is returned undelivered or the person to  
20 be cited or notified has no attorney of record in the proceeding.

21 (e) Service by a qualified delivery method [~~mail~~] shall be  
22 made at least 20 days before the return day of the service,  
23 excluding the date of service. The date of service [~~by mail~~] is the  
24 date of mailing, the date of deposit with the private delivery  
25 service, or the date of delivery by the courier, as applicable.

26 (f) A copy of a citation or notice served under Subsection  
27 (a), (b), or (c), together with a certificate of the person serving

1 the citation or notice showing that the citation or notice was sent  
2 ~~[mailed]~~ and the date of the mailing, date of deposit with a private  
3 delivery service, or date of delivery by courier, as applicable,  
4 shall be filed and recorded. A returned receipt or proof of  
5 delivery receipt for a citation or notice served under Subsection  
6 (b) or (c) shall be attached to the certificate.

7 (g) If a citation or notice served by a qualified delivery  
8 method ~~[mail]~~ is returned undelivered, a new citation or notice  
9 shall be issued. Service of the new citation or notice must be made  
10 by posting.

11 SECTION 4. Section 51.055(a), Estates Code, is amended to  
12 read as follows:

13 (a) If a party is represented by an attorney of record in a  
14 probate proceeding, each citation or notice required to be served  
15 on the party in that proceeding shall be served instead on that  
16 attorney. A notice under this subsection may be served by delivery  
17 to the attorney in person or by a qualified delivery method  
18 ~~[registered or certified mail]~~.

19 SECTION 5. Section 51.056, Estates Code, is amended to read  
20 as follows:

21 Sec. 51.056. SERVICE ON PERSONAL REPRESENTATIVE OR  
22 RECEIVER. Unless this title expressly provides for another method  
23 of service, the county clerk who issues a citation or notice  
24 required to be served on a personal representative or receiver  
25 shall serve the citation or notice by sending ~~[mailing]~~ the  
26 original citation or notice by a qualified delivery method  
27 ~~[registered or certified mail]~~ to:

1           (1) the representative's or receiver's attorney of  
2 record; or

3           (2) the representative or receiver, if the  
4 representative or receiver does not have an attorney of record.

5           SECTION 6. Section 51.103(b), Estates Code, is amended to  
6 read as follows:

7           (b) Proof of service consists of:

8           (1) if the service is made by a sheriff or constable,  
9 the return of service;

10           (2) if the service is made by a private person, the  
11 person's affidavit;

12           (3) if the service is made by a qualified delivery  
13 method [~~mail~~]:

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

21           (B) the return receipt or other proof of delivery  
22 receipt attached to the certificate or affidavit, as applicable, if  
23 the sending [~~mailing~~] was by a qualified delivery method  
24 [~~registered or certified mail~~] and a receipt is available [~~has been~~  
25 ~~returned~~]; and

26           (4) if the service is made by publication:

27           (A) a statement:

1 (i) made by the Office of Court  
2 Administration of the Texas Judicial System or an employee of the  
3 office;

4 (ii) that contains or to which is attached a  
5 copy of the published citation or notice; and

6 (iii) that states the date of publication  
7 on the public information Internet website maintained as required  
8 by Section 72.034, Government Code [~~as added by Chapter 606 (S.B.  
9 891), Acts of the 86th Legislature, Regular Session, 2019~~]; and

10 (B) an affidavit:

11 (i) made by the publisher of the newspaper  
12 in which the citation or notice was published or an employee of the  
13 publisher;

14 (ii) that contains or to which is attached a  
15 copy of the published citation or notice; and

16 (iii) that states the date of publication  
17 printed on the newspaper in which the citation or notice was  
18 published.

19 SECTION 7. Section 56.002(b), Estates Code, is amended to  
20 read as follows:

21 (b) The resident agent shall send, by a qualified delivery  
22 method [~~certified mail, return receipt requested~~], a copy of a  
23 resignation statement filed under Subsection (a) to:

24 (1) the personal representative at the address most  
25 recently known by the resident agent; and

26 (2) each party in the case or the party's attorney or  
27 other designated representative of record.

1 SECTION 8. The heading to Section 101.052, Estates Code, is  
2 amended to read as follows:

3 Sec. 101.052. LIABILITY OF COMMUNITY PROPERTY FOR DEBTS [~~OF~~  
4 ~~DECEASED SPOUSE~~].

5 SECTION 9. Section 101.052, Estates Code, is amended by  
6 amending Subsections (a) and (b) and adding Subsection (a-1) to  
7 read as follows:

8 (a) The community property that was by law under [~~subject~~  
9 ~~to~~] the sole management, control, and disposition of a spouse or  
10 under the joint management, control, and disposition of the spouses  
11 [a spouse] during marriage continues to be subject to the  
12 liabilities of that spouse on the death of either spouse.

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

18 (b) The undivided one-half interest that the deceased  
19 spouse owned in [~~any other nonexempt~~] community property that was  
20 by law under the sole management, control, and disposition of the  
21 surviving spouse during marriage passes to the deceased spouse's  
22 heirs or devisees charged with the liabilities of [~~debts that were~~  
23 ~~enforceable against~~] the deceased spouse [~~before death~~].

24 SECTION 10. Sections 113.001(1) and (8), Estates Code, are  
25 amended to read as follows:

26 (1) "Account" means a contract of deposit of funds or  
27 securities between a depositor and a financial institution. The

1 term includes:

2 (A) an account with cash deposits, including a  
3 checking account, savings account, certificate of deposit, and  
4 share account;

5 (B) an account holding securities, including  
6 stocks, bonds, and mutual funds; and

7 (C) another~~[, or other]~~ similar arrangement.

8 (8) "Sums on deposit" means the balance payable or  
9 transferable on a multiple-party account including cash, interest,  
10 dividends, any type of securities, including stocks, bonds, and  
11 mutual funds, and any deposit of life insurance proceeds added to  
12 the account by reason of the death of a party.

13 SECTION 11. Section [113.251\(c\)](#), Estates Code, is amended to  
14 read as follows:

15 (c) Not later than the 30th day after the date a security  
16 interest on a multiple-party account is perfected, a secured  
17 creditor that is a financial institution with accounts insured by  
18 the Federal Deposit Insurance Corporation shall provide written  
19 notice of the pledge of the account to any other party to the  
20 account who did not create the security interest. The notice must  
21 be sent by a qualified delivery method [~~certified mail~~] to each  
22 other party at the last address the party provided to the depository  
23 bank.

24 SECTION 12. Section [202.005](#), Estates Code, is amended to  
25 read as follows:

26 Sec. 202.005. APPLICATION FOR PROCEEDING TO DECLARE  
27 HEIRSHIP. A person authorized by Section [202.004](#) to commence a

1 proceeding to declare heirship must file an application in a court  
2 specified by Section 33.004 to commence the proceeding. The  
3 application must state:

4 (1) the decedent's name and date and place of death;

5 (2) the names and physical addresses where service can  
6 be had of the decedent's heirs, the relationship of each heir to the  
7 decedent, whether each heir is an adult or minor, and the true  
8 interest of the applicant and each of the heirs in the decedent's  
9 estate or in the trust, as applicable;

10 (3) if the date or place of the decedent's death or the  
11 name or physical address where service can be had of an heir is not  
12 definitely known to the applicant, all the material facts and  
13 circumstances with respect to which the applicant has knowledge and  
14 information that might reasonably tend to show the date or place of  
15 the decedent's death or the name or physical address where service  
16 can be had of the heir;

17 (4) that all children born to or adopted by the  
18 decedent have been listed;

19 (5) that each of the decedent's marriages has been  
20 listed with:

21 (A) the date of the marriage;

22 (B) the name of the spouse;

23 (C) the date and place of termination if the  
24 marriage was terminated; and

25 (D) other facts to show whether a spouse has had  
26 an interest in the decedent's property;

27 (6) whether the decedent died testate and, if so, what

1 disposition has been made of the will;

2 (7) a general description of all property, as  
3 applicable:

4 (A) belonging to the decedent's estate that is  
5 subject to distribution under a judgment in the proceeding; or

6 (B) held in trust for the benefit of the  
7 decedent [~~as applicable~~]; and

8 (8) an explanation for the omission from the  
9 application of any of the information required by this section.

10 SECTION 13. Section 202.051, Estates Code, is amended to  
11 read as follows:

12 Sec. 202.051. SERVICE OF CITATION BY QUALIFIED DELIVERY  
13 METHOD [~~MAIL~~] WHEN RECIPIENT'S NAME AND ADDRESS ARE KNOWN OR  
14 ASCERTAINABLE. Except as provided by Section 202.054, citation in  
15 a proceeding to declare heirship must be served by a qualified  
16 delivery method [~~registered or certified mail~~] on:

17 (1) each distributee who is 12 years of age or older  
18 and whose name and address are known or can be ascertained through  
19 the exercise of reasonable diligence; and

20 (2) the parent, managing conservator, or guardian of  
21 each distributee who is younger than 12 years of age if the name and  
22 address of the parent, managing conservator, or guardian are known  
23 or can be reasonably ascertained.

24 SECTION 14. Section 202.056, Estates Code, is amended to  
25 read as follows:

26 Sec. 202.056. WAIVER OF SERVICE OF CITATION. (a) A [~~Except~~  
27 ~~as provided by Subsection (b)(2), a~~] distributee who is 16 years of

1 age or older may waive citation required by this subchapter to be  
2 served on the distributee.

3 (b) A parent, managing conservator, guardian, attorney ad  
4 litem, or guardian ad litem of a [~~minor~~] distributee who is younger  
5 than 16 years of age may[+]

6 [~~(1) is younger than 12 years of age may~~] waive  
7 citation required by this subchapter to be served on the  
8 distributee[ ~~and~~

9 [~~(2) is 12 years of age or older may not waive citation~~  
10 ~~required by this subchapter to be served on the distributee~~].

11 SECTION 15. Section 202.151, Estates Code, is amended by  
12 amending Subsections (b) and (c) and adding Subsection (d) to read  
13 as follows:

14 (b) Except as provided by Subsection (c), in a proceeding to  
15 declare heirship, testimony regarding a decedent's heirs and family  
16 history must be taken:

17 (1) from two disinterested and credible witnesses in  
18 open court;

19 (2) [ ~~]~~ by deposition in accordance with Section  
20 51.203;

21 (3) by a recorded statement of facts contained in:

22 (A) an affidavit or instrument that satisfies the  
23 requirements of Section 203.001; or

24 (B) a judgment of a court of record as specified  
25 by Section 203.001(a)(1)(B);[ ~~]~~ or

26 (4) in accordance with the Texas Rules of Civil  
27 Procedure.

1 (c) If it is shown to the court's satisfaction in a  
2 proceeding to declare heirship that, after a diligent search was  
3 made, only one disinterested and credible witness can be found who  
4 can make the required proof in the proceeding, the testimony of that  
5 witness must be taken:

6 (1) in open court;

7 (2)  by deposition in accordance with Section  
8 51.203;

9 (3) by a recorded statement of facts contained in:

10 (A) an affidavit or instrument that satisfies the  
11 requirements of Section 203.001; or

12 (B) a judgment of a court of record as specified  
13 by Section 203.001(a)(1)(B);  or

14 (4) in accordance with the Texas Rules of Civil  
15 Procedure.

16 (d) Notwithstanding any other law, a person interested in an  
17 estate solely because the person is a creditor or has a claim  
18 against the estate may serve as a witness under this section if the  
19 person is otherwise a credible witness.

20 SECTION 16. Section 202.203, Estates Code, is amended to  
21 read as follows:

22 Sec. 202.203. CORRECTION OF JUDGMENT AT REQUEST OF HEIR NOT  
23 PROPERLY SERVED. If an heir of a decedent who is the subject of a  
24 proceeding to declare heirship is not served with citation by a  
25 qualified delivery method [~~registered or certified mail~~] or  
26 personal service in the proceeding, the heir may:

27 (1) have the judgment in the proceeding corrected by

1 bill of review:

2 (A) at any time, but not later than the fourth  
3 anniversary of the date of the judgment; or

4 (B) after the passage of any length of time, on  
5 proof of actual fraud; and

6 (2) recover the heir's just share of the property or  
7 the value of that share from:

8 (A) the heirs named in the judgment; and

9 (B) those who claim under the heirs named in the  
10 judgment and who are not bona fide purchasers for value.

11 SECTION 17. Section 251.053, Estates Code, is amended to  
12 read as follows:

13 Sec. 251.053. EXCEPTION FOR FOREIGN AND CERTAIN OTHER  
14 WILLS. A [Section 251.051 does not apply to a] written will does  
15 not need to meet the requirements of Section 251.051 if the will is  
16 executed in compliance with:

17 (1) the law of the state or foreign country where the  
18 will was executed, as that law existed at the time of the will's  
19 execution; or

20 (2) the law of the state or foreign country where the  
21 testator was domiciled or had a place of residence, as that law  
22 existed at the time of the will's execution or at the time of the  
23 testator's death.

24 SECTION 18. Section 258.002, Estates Code, is amended by  
25 adding Subsections (d) and (e) to read as follows:

26 (d) An heir who is 16 years of age or older may waive  
27 citation required by this section to be served on the heir.

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

5       SECTION 19. Section 304.003, Estates Code, is amended to  
6 read as follows:

7       Sec. 304.003. PERSONS DISQUALIFIED TO SERVE AS EXECUTOR OR  
8 ADMINISTRATOR. (a) Except as provided by Subsection (b), a [A]  
9 person is not qualified to serve as an executor or administrator if  
10 the person is:

11               (1) incapacitated;

12               (2) a felon convicted under the laws of the United  
13 States or of any state of the United States unless, in accordance  
14 with law, the person has been pardoned or has had the person's civil  
15 rights restored;

16               (3) a nonresident of this state who:

17                       (A) is a natural person or corporation; and

18                       (B) has not:

19                               (i) appointed a resident agent to accept  
20 service of process in all actions or proceedings with respect to the  
21 estate; or

22                               (ii) had that appointment filed with the  
23 court;

24               (4) a corporation not authorized to act as a fiduciary  
25 in this state; or

26               (5) a person whom the court finds unsuitable.

27       (b) A person described by Subsection (a)(2) is not

1 disqualified from serving as an executor of a decedent's estate  
2 under Subsection (a)(2) if:

3 (1) the person is named as executor in the decedent's  
4 will;

5 (2) the person is otherwise qualified to serve as an  
6 executor; and

7 (3) the court approves the person serving as an  
8 executor.

9 SECTION 20. Section 305.001, Estates Code, is amended to  
10 read as follows:

11 Sec. 305.001. DEFINITIONS. In this chapter:

12 (1) "Bond" means a bond required by this chapter to be  
13 given by a person appointed to serve as a personal representative.

14 (2) "Declaration" means a written declaration that may  
15 be made and signed by a person appointed to serve as a personal  
16 representative.

17 (3) "Oath" means an oath that may [~~required by this~~  
18 ~~chapter to~~] be taken by a person appointed to serve as a personal  
19 representative.

20 SECTION 21. Section 305.002, Estates Code, is amended to  
21 read as follows:

22 Sec. 305.002. MANNER OF QUALIFICATION OF PERSONAL  
23 REPRESENTATIVE. (a) A personal representative, other than an  
24 executor described by Subsection (b), is considered to have  
25 qualified when the representative has:

26 (1) taken and filed the oath prescribed by Subchapter  
27 B or made, signed, and filed the declaration prescribed by

1 Subchapter B;

2 (2) filed the required bond with the clerk; and

3 (3) obtained the judge's approval of the bond.

4 (b) An executor who is not required to give a bond is  
5 considered to have qualified when the executor has taken and filed  
6 the oath prescribed by Subchapter B or made, signed, and filed the  
7 declaration prescribed by Subchapter B.

8 SECTION 22. Section 305.003, Estates Code, is amended to  
9 read as follows:

10 Sec. 305.003. PERIOD FOR TAKING OATH OR MAKING AND SIGNING  
11 DECLARATION. An oath may be taken and subscribed or a declaration  
12 may be made and signed at any time before:

13 (1) the 21st day after the date of the order granting  
14 letters testamentary or of administration, as applicable; or

15 (2) the letters testamentary or of administration, as  
16 applicable, are revoked for a failure to qualify within the period  
17 allowed.

18 SECTION 23. The heading to Subchapter B, Chapter 305,  
19 Estates Code, is amended to read as follows:

20 SUBCHAPTER B. OATHS OR DECLARATIONS

21 SECTION 24. Section 305.051, Estates Code, is amended to  
22 read as follows:

23 Sec. 305.051. OATH OR DECLARATION OF EXECUTOR OR  
24 ADMINISTRATOR WITH WILL ANNEXED. (a) Before the issuance of  
25 letters testamentary or letters of administration with the will  
26 annexed, the person named as executor or appointed as administrator  
27 with the will annexed shall:

1           (1) take and subscribe an oath as prescribed by  
2 Subsection (b); or

3           (2) make and sign a declaration as prescribed by  
4 Subsection (c).

5           (b) If the person named as executor or appointed as  
6 administrator with the will annexed elects to take an oath under  
7 this section, the person shall take and subscribe an oath in  
8 substantially the following form:

9           I do solemnly swear that the writing offered for probate is  
10 the last will of \_\_\_\_\_ (insert name of testator), so far as I  
11 know or believe, and that I will well and truly perform all the  
12 duties of \_\_\_\_\_ (insert "executor of the will" or  
13 "administrator with the will annexed," as applicable) for the  
14 estate of \_\_\_\_\_ (insert name of testator).

15           (c) If the person named as executor or appointed as  
16 administrator with the will annexed elects to make a declaration  
17 under this section, the person shall make and sign a declaration in  
18 substantially the following form:

19           My name is \_\_\_\_\_ (insert name of "executor of the will" or  
20 "administrator with the will annexed" as it appears on the order  
21 appointing the person as executor or administrator with the will  
22 annexed), my date of birth is \_\_\_\_\_ (insert date of birth of  
23 "executor of the will" or "administrator with the will annexed," as  
24 applicable), and my address is \_\_\_\_\_ (insert street, city,  
25 state, zip code, and country of "executor of the will" or  
26 "administrator with the will annexed," as applicable). I declare  
27 under penalty of perjury that the writing offered for probate is the

1 last will of \_\_\_\_\_ (insert name of testator), so far as I know or  
2 believe. I also solemnly declare that I will well and truly perform  
3 all the duties of \_\_\_\_\_ (insert "executor of will" or  
4 "administrator with the will annexed," as applicable) for the  
5 estate of \_\_\_\_\_ (insert name of testator).

6 SECTION 25. Section 305.052, Estates Code, is amended to  
7 read as follows:

8 Sec. 305.052. OATH OR DECLARATION OF ADMINISTRATOR.

9 (a) Before the issuance of letters of administration, the person  
10 appointed as administrator shall:

11 (1) take and subscribe an oath as prescribed by  
12 Subsection (b); or

13 (2) make and sign a declaration as prescribed by  
14 Subsection (c).

15 (b) If the person appointed as administrator elects to take  
16 an oath under this section, the person shall take and subscribe an  
17 oath in substantially the following form:

18 I do solemnly swear that \_\_\_\_\_ (insert name of  
19 decedent), deceased, died \_\_\_\_\_ (insert "without leaving any  
20 lawful will" or "leaving a lawful will, but the executor named in  
21 the will is dead or has failed to offer the will for probate or to  
22 accept and qualify as executor, within the period required," as  
23 applicable), so far as I know or believe, and that I will well and  
24 truly perform all the duties of administrator of the estate of  
25 \_\_\_\_\_ (insert name of testator) [~~the deceased~~].

26 (c) If the person appointed as administrator elects to make  
27 a declaration under this section, the person shall make and sign a

1 declaration in substantially the following form:

2 My name is \_\_\_\_\_ (insert name of administrator as it  
3 appears on the order appointing the person as administrator), my  
4 date of birth is \_\_\_\_\_ (insert date of birth of  
5 "administrator"), and my address is \_\_\_\_\_ (insert street, city,  
6 state, zip code, and country of "administrator"). I declare under  
7 penalty of perjury that \_\_\_\_\_ (insert name of decedent),  
8 deceased, died \_\_\_\_\_ (insert "without leaving any lawful will"  
9 or "leaving a lawful will, but the executor named in the will is  
10 dead or has failed to offer the will for probate or to accept and  
11 qualify as executor, within the period required," as applicable),  
12 so far as I know or believe. I also solemnly declare that I will  
13 well and truly perform all the duties of administrator of the estate  
14 of \_\_\_\_\_ (insert name of decedent).

15 SECTION 26. Section 305.053, Estates Code, is amended to  
16 read as follows:

17 Sec. 305.053. OATH OR DECLARATION OF TEMPORARY  
18 ADMINISTRATOR. (a) Before the issuance of temporary letters of  
19 administration, the person appointed as temporary administrator  
20 shall:

21 (1) take and subscribe an oath as prescribed by  
22 Subsection (b); or

23 (2) make and sign a declaration as prescribed by  
24 Subsection (c).

25 (b) If the person appointed as temporary administrator  
26 elects to take an oath under this section, the person shall take and  
27 subscribe an oath in substantially the following form:

1 I do solemnly swear that I will well and truly perform the  
2 duties of temporary administrator of the estate of \_\_\_\_\_  
3 (insert name of decedent), deceased, in accordance with the law,  
4 and with the order of the court appointing me as temporary  
5 administrator.

6 (c) If the person appointed as temporary administrator  
7 elects to make a declaration under this section, the person shall  
8 make and sign a declaration in substantially the following form:

9 My name is \_\_\_\_\_ (insert name of temporary administrator as  
10 it appears on the order appointing the person as temporary  
11 administrator), my date of birth is \_\_\_\_\_ (insert date of birth of  
12 "temporary administrator"), and my address is \_\_\_\_\_ (insert  
13 street, city, state, zip code, and country of "temporary  
14 administrator"). I solemnly declare that I will well and truly  
15 perform all the duties of temporary administrator of the estate of  
16 \_\_\_\_\_ (insert name of decedent), in accordance with the law, and  
17 with the order of the court appointing me as temporary  
18 administrator.

19 SECTION 27. Section 305.055, Estates Code, is amended to  
20 read as follows:

21 Sec. 305.055. FILING AND RECORDING OF OATH OR  
22 DECLARATION. An oath or declaration shall be:

- 23 (1) filed with the clerk of the court granting the
- 24 letters testamentary or of administration, as applicable; and
- 25 (2) recorded in the judge's probate docket.

26 SECTION 28. Section 308.002(d), Estates Code, is amended to  
27 read as follows:

1 (d) The notice required by this section must be sent by a  
2 qualified delivery method [~~registered or certified mail, return~~  
3 ~~receipt requested~~].

4 SECTION 29. Section 308.051(a), Estates Code, is amended to  
5 read as follows:

6 (a) Within one month after receiving letters testamentary  
7 or of administration, a personal representative of an estate shall  
8 provide notice requiring each person who has a claim against the  
9 estate to present the claim within the period prescribed by law by:

10 (1) having the notice published in a newspaper of  
11 general circulation in the county in which the letters were issued;  
12 and

13 (2) if the decedent remitted or should have remitted  
14 taxes administered by the comptroller, sending the notice to the  
15 comptroller by a qualified delivery method [~~certified or registered~~  
16 ~~mail~~].

17 SECTION 30. Sections 308.053(c) and (d), Estates Code, are  
18 amended to read as follows:

19 (c) Notice provided under this section must be:

20 (1) sent by a qualified delivery method [~~certified or~~  
21 ~~registered mail, return receipt requested~~]; and

22 (2) addressed to the record holder of the claim at the  
23 record holder's last known post office address.

24 (d) The following shall be filed with the clerk of the court  
25 in which the letters testamentary or of administration were issued:

26 (1) a copy of each notice and of each return receipt or  
27 other proof of delivery receipt; and

1 (2) the personal representative's affidavit stating:

2 (A) that the notice was sent [~~mailed~~] as required  
3 by law; and

4 (B) the name of the person to whom the notice was  
5 sent [~~mailed~~], if that name is not shown on the notice or receipt.

6 SECTION 31. Section 308.054(a), Estates Code, is amended to  
7 read as follows:

8 (a) At any time before an estate administration is closed, a  
9 personal representative may give notice by a qualified delivery  
10 method [~~certified or registered mail, return receipt requested,~~] to  
11 an unsecured creditor who has a claim for money against the estate.

12 SECTION 32. Section 356.105(a), Estates Code, is amended to  
13 read as follows:

14 (a) A successful bid or contract for the sale of estate  
15 personal property shall be reported to the court. The laws  
16 regulating the approval or disapproval of a sale of real estate  
17 apply to the sale, except that a conveyance is not required.

18 SECTION 33. Section 356.654(b), Estates Code, is amended to  
19 read as follows:

20 (b) Before purchasing estate property as authorized by  
21 Subsection (a), the personal representative shall give notice of  
22 the purchase by a qualified delivery method [~~certified mail, return~~  
23 ~~receipt requested~~], unless the court requires another form of  
24 notice, to:

25 (1) each distributee of the estate; and

26 (2) each creditor whose claim remains unsettled after  
27 being presented within six months of the date letters testamentary

1 or of administration are originally granted.

2 SECTION 34. Section 361.052(b), Estates Code, is amended to  
3 read as follows:

4 (b) If a personal representative, as executor or  
5 administrator, fails to timely file the affidavit or certificate  
6 required by Section 308.004, the court, on the court's own motion,  
7 may remove the personal representative after providing 30 days'  
8 written notice to the personal representative to answer at a time  
9 and place set in the notice, by a qualified delivery method  
10 [~~certified mail, return receipt requested,~~] to:

- 11 (1) the representative's last known address; and  
12 (2) the last known address of the representative's  
13 attorney of record.

14 SECTION 35. Sections 362.005(b) and (c), Estates Code, are  
15 amended to read as follows:

16 (b) Citation issued under Subsection (a) must:

17 (1) contain:

18 (A) a statement that an account for final  
19 settlement has been presented;

20 (B) the time and place the court will consider  
21 the account; and

22 (C) a statement requiring the person cited to  
23 appear and contest the account, if the person wishes to contest the  
24 account; and

25 (2) be given to each heir or distributee of the  
26 decedent by a qualified delivery method [~~certified mail, return  
27 receipt requested,~~] unless the court by written order directs

1 another method of service to be given.

2 (c) The personal representative shall also provide to each  
3 person entitled to citation under Subsection (b) a copy of the  
4 account for final settlement either by:

5 (1) a qualified delivery method [~~certified mail,~~  
6 ~~return receipt requested~~]; or

7 (2) electronic delivery, including facsimile or  
8 e-mail.

9 SECTION 36. Section 403.056(a), Estates Code, is amended to  
10 read as follows:

11 (a) Notice to the independent executor required by Sections  
12 403.052 and 403.055 must be contained in:

13 (1) a written instrument that complies with Section  
14 355.004 and is sent by a qualified delivery method [~~hand-delivered~~  
15 ~~with proof of receipt, or mailed by certified mail, return receipt~~  
16 ~~requested with proof of receipt,~~] to the independent executor or  
17 the executor's attorney;

18 (2) a pleading filed in a lawsuit with respect to the  
19 claim; or

20 (3) a written instrument that complies with Section  
21 355.004 or a pleading filed in the court in which the administration  
22 of the estate is pending.

23 SECTION 37. Section 404.0035(a), Estates Code, is amended  
24 to read as follows:

25 (a) The probate court, on the court's own motion, may remove  
26 an independent executor appointed under this subtitle after  
27 providing 30 days' written notice of the court's intention to the

1 independent executor, requiring answering at a time and place set  
2 in the notice, by a qualified delivery method [~~certified mail,~~  
3 ~~return receipt requested~~], to the independent executor's last known  
4 address and to the last known address of the independent executor's  
5 attorney of record, if the independent executor:

6 (1) neglects to qualify in the manner and time  
7 required by law;

8 (2) fails to return, before the 91st day after the date  
9 the independent executor qualifies, either an inventory of the  
10 estate property and a list of claims that have come to the  
11 independent executor's knowledge or an affidavit in lieu of the  
12 inventory, appraisement, and list of claims, unless that deadline  
13 is extended by court order; or

14 (3) fails to timely file the affidavit or certificate  
15 required by Section 308.004.

16 SECTION 38. Section 452.006(a), Estates Code, is amended to  
17 read as follows:

18 (a) On the date the county clerk issues letters of temporary  
19 administration:

20 (1) the county clerk shall post on the courthouse door  
21 a notice of the appointment to all interested persons; and

22 (2) the appointee shall notify, by a qualified  
23 delivery method [~~certified mail, return receipt requested~~], the  
24 decedent's known heirs of the appointment.

25 SECTION 39. Section 453.003(a), Estates Code, is amended to  
26 read as follows:

27 (a) If there is no qualified executor or administrator of a

1 deceased spouse's estate, the surviving spouse, as the surviving  
2 partner of the marital partnership, may:

- 3 (1) sue and be sued to recover community property;
- 4 (2) sell, mortgage, lease, and otherwise dispose of  
5 community property to pay community debts, for which a portion of  
6 community property is liable for payment;
- 7 (3) collect claims due to the community estate; and
- 8 (4) exercise other powers as necessary to:
  - 9 (A) preserve the community property;
  - 10 (B) discharge community obligations, for which a  
11 portion of community property is liable for payment; and
  - 12 (C) wind up community affairs.

13 SECTION 40. Section 453.006, Estates Code, is amended to  
14 read as follows:

15 Sec. 453.006. ACCOUNT OF [~~COMMUNITY~~] DEBTS AND DISPOSITION  
16 OF COMMUNITY PROPERTY. (a) The surviving spouse shall keep a fair  
17 and full account and statement of:

- 18 (1) all [~~community~~] debts and expenses paid by the  
19 surviving spouse; and
- 20 (2) the disposition made of the community property.

21 (b) The surviving spouse or personal representative shall  
22 keep a separate, distinct account of all [~~community~~] debts allowed  
23 or paid in the administration and settlement of an estate described  
24 by Section 101.052 [~~Sections 101.052(a) and (b)~~].

25 SECTION 41. Section 453.007, Estates Code, is amended to  
26 read as follows:

27 Sec. 453.007. DELIVERY OF COMMUNITY ESTATE ON FINAL

1 PARTITION. On final partition of the community estate, the  
2 surviving spouse shall deliver to the deceased spouse's heirs or  
3 devisees their interest in the estate, and the increase in and  
4 profits of the interest, after deducting from the interest:

- 5 (1) the proportion of the [~~community~~] debts chargeable  
6 to the interest;
- 7 (2) unavoidable losses;
- 8 (3) necessary and reasonable expenses; and
- 9 (4) a reasonable commission for the management of the  
10 interest.

11 SECTION 42. The heading to Section 453.009, Estates Code,  
12 is amended to read as follows:

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

15 SECTION 43. Section 453.009(b), Estates Code, is amended to  
16 read as follows:

17 (b) During administration of a deceased spouse's estate,  
18 the [~~The~~] surviving spouse, as surviving partner of the marital  
19 partnership, is entitled to:

20 (1) retain possession and control of the community  
21 property that was legally under the sole management of the  
22 surviving spouse during the marriage; and

23 (2) exercise over that property any power this chapter  
24 authorizes the surviving spouse to exercise as if there is no  
25 administration pending on the deceased spouse's estate.

26 SECTION 44. Section 501.003(b), Estates Code, is amended to  
27 read as follows:

1 (b) For an application described by Section 501.002(b), a  
2 citation shall be issued and served by a qualified delivery method  
3 [~~registered or certified mail~~] on each devisee and heir identified  
4 in the application.

5 SECTION 45. Section 505.005(a), Estates Code, is amended to  
6 read as follows:

7 (a) On receipt of a notice or process described by Section  
8 505.004(a)(2), the secretary of state shall promptly forward the  
9 notice or process by a qualified delivery method [~~registered or~~  
10 ~~certified mail~~] to the officer, agent, or other person designated  
11 by the foreign corporate fiduciary under Section 505.004 to receive  
12 the notice or process.

13 SECTION 46. Section 505.101(a), Estates Code, is amended to  
14 read as follows:

15 (a) On giving notice by a qualified delivery method  
16 [~~registered or certified mail~~] to all creditors of a decedent in  
17 this state who have filed a claim against the decedent's estate for  
18 a debt due to the creditor, a foreign executor or administrator of a  
19 person who was a nonresident at the time of death may maintain a  
20 suit in this state for the recovery of debts due to the decedent.

21 SECTION 47. Section 551.005(b), Estates Code, is amended to  
22 read as follows:

23 (b) The clerk of a court that orders an executor or  
24 administrator to pay funds to the comptroller under Section 551.001  
25 shall provide to the comptroller, by a qualified delivery method  
26 [~~certified mail~~] or e-mail, a certified copy of the court order not  
27 later than the fifth day after the date the order is issued.

1 SECTION 48. Sections 51.052(b), (c), (d), (e), (f), and  
2 (g), 51.055(a), 51.056, 51.103(b), 56.002(b), 113.251(c), 202.051,  
3 202.203, 305.001, 305.002, 305.003, 305.051, 305.052, 305.053,  
4 305.055, 308.002(d), 308.051(a), 308.053(c) and (d), 308.054(a),  
5 356.654(b), 361.052(b), 362.005(b) and (c), 403.056(a),  
6 404.0035(a), 452.006(a), 501.003(b), 505.005(a), 505.101(a), and  
7 551.005(b), Estates Code, as amended by this Act, apply only to an  
8 action filed or proceeding commenced on or after the effective date  
9 of this Act.

10 SECTION 49. The amendments of this Act to Sections 101.052,  
11 202.005, 202.151(b) and (c), 251.053, 356.105(a), 453.003(a),  
12 453.006, 453.007, and 453.009, Estates Code, are intended to  
13 clarify rather than change existing law.

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

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

20 SECTION 52. Section 202.056, Estates Code, as amended by  
21 this Act, applies only to a proceeding to declare heirship  
22 commenced on or after the effective date of this Act. A proceeding  
23 to declare heirship commenced before that date is governed by the  
24 law in effect on the date the proceeding was commenced, and the  
25 former law is continued in effect for that purpose.

26 SECTION 53. Section 202.151(d), Estates Code, as added by  
27 this Act, applies only to a proceeding to declare heirship

1 commenced on or after the effective date of this Act. A proceeding  
2 to declare heirship commenced before that date is governed by the  
3 law in effect on the date the proceeding was commenced, and the  
4 former law is continued in effect for that purpose.

5 SECTION 54. Sections 258.002(d) and (e), Estates Code, as  
6 added by this Act, apply only to an application for the probate of a  
7 will filed on or after the effective date of this Act. An  
8 application for the probate of a will filed before that date is  
9 governed by the law in effect on the date the application was filed,  
10 and the former law is continued in effect for that purpose.

11 SECTION 55. Section 304.003, Estates Code, as amended by  
12 this Act, applies only to an application for letters testamentary  
13 or for letters of administration filed on or after the effective  
14 date of this Act. An application for letters testamentary or for  
15 letters of administration filed before the effective date of this  
16 Act is governed by the law in effect on the date the application was  
17 filed, and the former law is continued in effect for that purpose.

18 SECTION 56. This Act takes effect September 1, 2023.

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I hereby certify that S.B. No. 1373 passed the Senate on April 12, 2023, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendments on May 11, 2023, by the following vote: Yeas 30, Nays 0.

\_\_\_\_\_  
Secretary of the Senate

I hereby certify that S.B. No. 1373 passed the House, with amendments, on May 6, 2023, by the following vote: Yeas 132, Nays 4, one present not voting.

\_\_\_\_\_  
Chief Clerk of the House

Approved:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governor

# Tab H

AN ACT

relating to guardianships and the delivery of certain notices or other communications in connection with guardianship proceedings.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 1002, Estates Code, is amended by adding Section 1002.0265 to read as follows:

Sec. 1002.0265. QUALIFIED DELIVERY METHOD. "Qualified delivery method" means delivery by:

(1) hand delivery by courier, with courier's proof of delivery receipt;

(2) certified or registered mail, return receipt requested, with return receipt; or

(3) a private delivery service designated as a designated delivery service by the United States Secretary of the Treasury under Section 7502(f)(2), Internal Revenue Code of 1986, with proof of delivery receipt.

SECTION 2. Section 1023.004(c), Estates Code, is amended to read as follows:

(c) If a court made a motion to transfer a guardianship, the guardian shall be given notice by a qualified delivery method [~~certified mail~~] to appear and show cause why the guardianship should not be transferred.

SECTION 3. The heading to Section 1051.052, Estates Code, is amended to read as follows:

1           Sec. 1051.052. SERVICE BY MAIL OR QUALIFIED DELIVERY  
2 METHOD.

3           SECTION 4. Section 1051.052, Estates Code, is amended by  
4 amending Subsections (b), (c), (d), (e), and (f) and adding  
5 Subsection (h) to read as follows:

6           (b) Except as provided by Subsection (c), the county clerk  
7 shall issue a citation or notice required or permitted to be served  
8 by a qualified delivery method [~~registered or certified mail~~] and  
9 shall serve the citation or notice by sending [~~mailing~~] the  
10 original citation or notice by a qualified delivery method  
11 [~~registered or certified mail~~].

12           (c) A guardian shall issue a notice required to be given by  
13 the guardian by a qualified delivery method [~~registered or~~  
14 ~~certified mail~~] and shall serve the notice by sending [~~mailing~~] the  
15 original notice by a qualified delivery method [~~registered or~~  
16 ~~certified mail~~].

17           (d) The county clerk or guardian, as applicable, shall send  
18 [~~mail~~] a citation or notice under Subsection (b) or (c) with an  
19 instruction to deliver the citation or notice to the addressee only  
20 and with return receipt or other proof of delivery requiring  
21 recipient signature requested. The clerk or guardian, as  
22 applicable, shall address the envelope containing the citation or  
23 notice to:

24                   (1) the attorney of record in the proceeding for the  
25 person to be cited or notified; or

26                   (2) the person to be cited or notified, if the citation  
27 or notice to the attorney is returned undelivered or the person to

1 be cited or notified has no attorney of record in the proceeding.

2 (e) Service by a qualified delivery method [~~mail~~] must be  
3 made at least 20 days before the return day of the citation or  
4 notice, excluding the date of service. The date of service [~~by~~  
5 ~~mail~~] is the date of mailing, the date of deposit with the private  
6 delivery service, or the date of delivery by courier, as  
7 applicable.

8 (f) A copy of a citation or notice served under Subsection  
9 (a), (b), or (c) and a certificate of the person serving the  
10 citation or notice showing that the citation or notice was sent  
11 [~~mailed~~] and the date of the mailing, the date of deposit with a  
12 private delivery service, or the date of delivery by courier, as  
13 applicable, shall be filed and recorded. A returned receipt or  
14 other proof of delivery receipt for a citation or notice served  
15 under Subsection (b) or (c) shall be attached to the certificate.

16 (h) The applicant or movant in a guardianship proceeding  
17 shall pay the cost of delivery of a citation or notice under this  
18 section.

19 SECTION 5. Sections [1051.055](#)(a) and (b), Estates Code, are  
20 amended to read as follows:

21 (a) If a party is represented by an attorney of record in a  
22 guardianship proceeding, including a proposed ward who has been  
23 personally served with notice of the proceeding and is represented  
24 by an attorney ad litem, a citation or notice required to be served  
25 on the party shall be served instead on that attorney.

26 (b) A notice served on an attorney under this section may be  
27 served by[+]

1           ~~[(1)]~~ delivery to the attorney in person or by a  
2 qualified delivery method~~[+~~  
3           ~~[(2) registered or certified mail, return receipt~~  
4 ~~requested, or~~  
5           ~~[(3) any other form of mail that requires proof of~~  
6 ~~delivery].~~

7           SECTION 6. Section 1051.056, Estates Code, is amended to  
8 read as follows:

9           Sec. 1051.056. SERVICE ON GUARDIAN OR RECEIVER. Unless  
10 this title expressly provides for another method of service, the  
11 county clerk who issues a citation or notice required to be served  
12 on a guardian or receiver shall serve the citation or notice by  
13 sending ~~[mailing]~~ the original citation or notice by a qualified  
14 delivery method ~~[registered or certified mail]~~ to:

- 15           (1) the guardian's or receiver's attorney of record;
- 16 or
- 17           (2) the guardian or receiver, if the guardian or
- 18 receiver does not have an attorney of record.

19           SECTION 7. Sections 1051.104(a) and (b), Estates Code, are  
20 amended to read as follows:

21           (a) The person filing an application for guardianship shall  
22 send ~~[mail]~~ a copy of the application and a notice containing the  
23 information required in the citation issued under Section 1051.102  
24 by a qualified delivery method ~~[registered or certified mail,~~  
25 ~~return receipt requested, or by any other form of mail that provides~~  
26 ~~proof of delivery,~~] to the following persons, if their whereabouts  
27 are known or can be reasonably ascertained:

- 1 (1) each adult child of the proposed ward;
- 2 (2) each adult sibling of the proposed ward;
- 3 (3) the administrator of a nursing home facility or  
4 similar facility in which the proposed ward resides;
- 5 (4) the operator of a residential facility in which  
6 the proposed ward resides;
- 7 (5) a person whom the applicant knows to hold a power  
8 of attorney signed by the proposed ward;
- 9 (6) a person designated to serve as guardian of the  
10 proposed ward by a written declaration under Subchapter E, Chapter  
11 1104, if the applicant knows of the existence of the declaration;
- 12 (7) a person designated to serve as guardian of the  
13 proposed ward in the probated will of the last surviving parent of  
14 the proposed ward;
- 15 (8) a person designated to serve as guardian of the  
16 proposed ward by a written declaration of the proposed ward's last  
17 surviving parent, if the declarant is deceased and the applicant  
18 knows of the existence of the declaration; and
- 19 (9) each adult named in the application as an "other  
20 living relative" of the proposed ward within the third degree by  
21 consanguinity, as required by Section 1101.001(b)(11) or (13), if  
22 the proposed ward's spouse and each of the proposed ward's parents,  
23 adult siblings, and adult children are deceased or there is no  
24 spouse, parent, adult sibling, or adult child.

25 (b) The applicant shall file with the court:

- 26 (1) a copy of any notice required by Subsection (a) and  
27 the return receipts or other proofs of delivery of the notice; and

1           (2) an affidavit sworn to by the applicant or the  
2 applicant's attorney stating:

3                   (A) that the notice was sent [~~mailed~~] as required  
4 by Subsection (a); and

5                   (B) the name of each person to whom the notice was  
6 sent [~~mailed~~], if the person's name is not shown on the return  
7 receipt or other proof of delivery.

8           SECTION 8. Section 1051.153(b), Estates Code, is amended to  
9 read as follows:

10           (b) Proof of service consists of:

11                   (1) if the service is made by a sheriff or constable,  
12 the return of service;

13                   (2) if the service is made by a private person, the  
14 person's affidavit;

15                   (3) if the service is made by mail or by a qualified  
16 delivery method:

17                           (A) the certificate of the county clerk making  
18 the service, or the affidavit of the guardian or other person making  
19 the service that states that the citation or notice was mailed or  
20 sent by a qualified delivery method and the date of the mailing, the  
21 date of deposit with the private delivery service, or the date of  
22 delivery by courier, as applicable; and

23                           (B) the return receipt or other proof of delivery  
24 receipt attached to the certificate or affidavit, as applicable, if  
25 the service [~~mailing~~] was made by a qualified delivery method  
26 [~~registered or certified mail and a receipt has been returned~~]; and

27                   (4) if the service is made by publication:

1 (A) a statement that:

2 (i) is made by the Office of Court  
3 Administration of the Texas Judicial System or an employee of the  
4 office;

5 (ii) contains or to which is attached a copy  
6 of the published citation or notice; and

7 (iii) states the date of publication on the  
8 public information Internet website maintained as required by  
9 Section 72.034, Government Code [~~, as added by Chapter 606 (S.B.~~  
10 ~~891), Acts of the 86th Legislature, Regular Session, 2019~~]; and

11 (B) an affidavit that:

12 (i) is made by the publisher of the  
13 newspaper in which the citation or notice was published or an  
14 employee of the publisher;

15 (ii) contains or to which is attached a copy  
16 of the published citation or notice; and

17 (iii) states the date of publication  
18 printed on the newspaper in which the citation or notice was  
19 published.

20 SECTION 9. Section 1057.002(b), Estates Code, is amended to  
21 read as follows:

22 (b) The resident agent shall send, by a qualified delivery  
23 method [~~certified mail, return receipt requested~~], a copy of a  
24 resignation statement filed under Subsection (a) to:

25 (1) the guardian at the address most recently known by  
26 the resident agent; and

27 (2) each party in the case or the party's attorney or

1 other designated representative of record.

2 SECTION 10. Section 1104.103, Estates Code, is amended by  
3 amending Subsections (a) and (b) and adding Subsection (a-1) to  
4 read as follows:

5 (a) The surviving parent of an adult individual who is an  
6 incapacitated person may, if the parent is the guardian of the  
7 person or estate of the adult individual, by will or written  
8 declaration appoint an eligible person to serve as guardian of the  
9 person or estate, as applicable, of the adult individual:

10 (1) after the parent dies;

11 (2) in the event the parent resigns as guardian of the  
12 person or estate; or

13 (3) in the event of the parent's incapacity.

14 (a-1) If the surviving parent is both the guardian of the  
15 person and estate of the adult individual, the surviving parent may  
16 by will or written declaration appoint different eligible persons  
17 to serve as guardian of the person and guardian of the estate.

18 (b) After the surviving parent dies or resigns as guardian,  
19 or if the court finds the surviving parent has become an  
20 incapacitated person after being appointed the adult individual's  
21 guardian, the court shall appoint the person or persons designated  
22 in the will or declaration to serve as guardian of the person,  
23 guardian of the estate, or both, in preference to any other person  
24 otherwise entitled to serve as guardian under this title, unless  
25 the court finds that the person designated to serve as guardian:

26 (1) is disqualified;

27 (2) is deceased;

- 1 (3) refuses to serve; or  
2 (4) would not serve the adult individual's best  
3 interests.

4 SECTION 11. Section 1105.002(a), Estates Code, is amended  
5 to read as follows:

6 (a) Except as provided by Subsection (b), a guardian is  
7 considered to have qualified when the guardian has:

- 8 (1) taken and filed the oath, or made and filed the  
9 declaration, required under Section 1105.051;  
10 (2) given the required bond;  
11 (3) ~~[filed the bond with the clerk; and~~  
12 ~~[(4)]~~ obtained the judge's approval of the bond; and  
13 (4) filed the bond with the clerk.

14 SECTION 12. Section 1106.001(a), Estates Code, is amended  
15 to read as follows:

16 (a) When a person who is appointed guardian has qualified  
17 under Section 1105.002, the clerk shall issue to the guardian a  
18 certificate under the court's seal stating:

- 19 (1) the fact of the appointment and of the  
20 qualification;  
21 (2) the date of the appointment and of the  
22 qualification; and  
23 (3) the date the letters of guardianship expire.

24 SECTION 13. Section 1106.005, Estates Code, is amended to  
25 read as follows:

26 Sec. 1106.005. EFFECT OF LETTERS ~~[OR~~  
27 ~~CERTIFICATE]~~. (a) Letters of guardianship ~~[or a certificate]~~

1 issued as prescribed by [~~under~~] Section [1106.001](#) under the court's  
2 seal by [~~of~~] the clerk of the court that granted the letters are  
3 [~~is~~] sufficient evidence of:

4 (1) the appointment and qualification of the guardian;  
5 and

6 (2) the date of qualification.

7 (b) The court order that appoints the guardian is evidence  
8 of the authority granted to the guardian and of the scope of the  
9 powers and duties that the guardian may exercise only after the date  
10 letters of guardianship [~~or a certificate has~~] have been issued  
11 under Section [1106.001](#).

12 SECTION 14. Subchapter [B](#), Chapter [1151](#), Estates Code, is  
13 amended by adding Section 1151.0525 to read as follows:

14 Sec. 1151.0525. ACCESS AND MANAGEMENT OF WARD'S FUNDS BY  
15 GUARDIAN OF PERSON. (a) This section applies only to the guardian  
16 of the person of a ward for whom the court has not appointed a  
17 guardian of the estate.

18 (b) On application to and order from the court, the guardian  
19 of the person of a ward may access, manage, and spend the ward's  
20 funds in an amount not to exceed \$20,000 per year for the ward's  
21 benefit. The court shall require the guardian to file a new bond or  
22 a rider to an existing bond that meets the surety requirements for a  
23 guardian of the estate's bond under Section [1105.160](#).

24 (c) A guardian of the person shall include any expenditures  
25 made for the benefit of the ward if authorized by court order under  
26 Subsection (b) in the annual report required by Section [1163.101](#).

27 (d) When there is no longer a need for the guardian of the

1 person to access, manage, or spend the ward's funds, the guardian of  
2 the person shall file a sworn affidavit of fulfillment with the  
3 court. After the filing of the affidavit, the court, on motion  
4 filed with the court, may authorize the guardian to file a new bond  
5 or a rider to an existing bond that meets the requirements for a  
6 guardian of the person's bond under Section 1105.102, and may  
7 discharge the guardian of the person and the guardian's sureties on  
8 a bond required by Subsection (b).

9 SECTION 15. Section 1153.001(a), Estates Code, is amended  
10 to read as follows:

11 (a) Within one month after receiving letters of  
12 guardianship, a guardian of an estate shall provide notice  
13 requiring each person who has a claim against the estate to present  
14 the claim within the period prescribed by law. The notice must be:

15 (1) published in a newspaper of general circulation in  
16 the county in which the letters were issued; and

17 (2) sent to the comptroller by a qualified delivery  
18 method [~~certified or registered mail~~], if the ward remitted or  
19 should have remitted taxes administered by the comptroller.

20 SECTION 16. Sections 1153.003(b) and (c), Estates Code, are  
21 amended to read as follows:

22 (b) Notice provided under this section must be:

23 (1) sent by a qualified delivery method [~~certified or~~  
24 ~~registered mail, return receipt requested~~]; and

25 (2) addressed to the record holder of the claim at the  
26 record holder's last known post office address.

27 (c) The following shall be filed in the court from which the

1 letters of guardianship were issued:

2 (1) a copy of each notice required by Subsection  
3 (a)(1) with the return receipt or other proof of delivery, if  
4 available; and

5 (2) the guardian's affidavit stating:

6 (A) that the notice was sent [~~mailed~~] as required  
7 by law; and

8 (B) the name of the person to whom the notice was  
9 sent [~~mailed~~], if that name is not shown on the notice or receipt.

10 SECTION 17. Section [1153.005](#)(a), Estates Code, is amended  
11 to read as follows:

12 (a) A guardian of an estate is not required to give a notice  
13 required by Section [1153.001](#) or [1153.003](#) if another person also  
14 appointed as guardian or a former guardian has given that notice.

15 SECTION 18. Section [1155.002](#)(a), Estates Code, is amended  
16 to read as follows:

17 (a) The court may authorize compensation for a guardian  
18 serving as a guardian of the person alone from available funds of  
19 the ward's estate or other funds available for that purpose. The  
20 court may set the compensation in an amount not to exceed the  
21 greater of \$3,000 per year or five percent of the ward's gross  
22 income.

23 SECTION 19. Section [1156.052](#)(c), Estates Code, is amended  
24 to read as follows:

25 (c) A person who makes an application to the court under  
26 this section shall send [~~mail~~] notice of the application by a  
27 qualified delivery method [~~certified mail~~] to all interested

1 persons.

2 SECTION 20. Section 1162.003, Estates Code, is amended to  
3 read as follows:

4 Sec. 1162.003. NOTICE OF APPLICATION FOR ESTABLISHMENT OF  
5 ESTATE OR OTHER TRANSFER PLAN. A person who makes an application  
6 to the court under Section 1162.001 shall send ~~mail~~ notice of the  
7 application by a qualified delivery method ~~[certified mail]~~ to:

- 8 (1) all devisees under a will, trust, or other  
9 beneficial instrument relating to the ward's estate;  
10 (2) the ward's spouse;  
11 (3) the ward's dependents; and  
12 (4) any other person as directed by the court.

13 SECTION 21. Section 1162.006(b), Estates Code, is amended  
14 to read as follows:

15 (b) Notice required by Subsection (a) must be sent  
16 ~~[delivered]~~ by a qualified delivery method ~~[+~~

17 ~~[(1) registered or certified mail to a person~~  
18 ~~described by Subsection (a)(1), and~~

19 ~~[(2) certified mail to a person described by~~  
20 ~~Subsection (a)(2), (3), (4), or (5)].~~

21 SECTION 22. Section 1202.054(b-2), Estates Code, is amended  
22 to read as follows:

23 (b-2) Not later than the 30th day after the date the court  
24 receives an informal letter from a ward under Subsection (a), the  
25 court shall send the ward a letter by a qualified delivery method  
26 ~~[certified mail]~~:

- 27 (1) acknowledging receipt of the informal letter; and

1           (2) advising the ward of the date on which the court  
2 appointed the court investigator or guardian ad litem as required  
3 under Subsection (b) and the contact information for the court  
4 investigator or guardian ad litem.

5           SECTION 23. Sections 1203.052(a-1) and (b), Estates Code,  
6 are amended to read as follows:

7           (a-1) The court may remove a guardian for a reason listed in  
8 Subsection (a) on the:

9           (1) court's own motion, after the guardian has been  
10 notified~~[7]~~ by a qualified delivery method ~~[certified mail, return~~  
11 ~~receipt requested,]~~ to answer at a time and place set in the notice;  
12 or

13           (2) complaint of an interested person, after the  
14 guardian has been cited by personal service to answer at a time and  
15 place set in the notice.

16           (b) In addition to the authority granted to the court under  
17 Subsection (a), the court may, on the complaint of the guardianship  
18 certification program of the Judicial Branch Certification  
19 Commission, remove a guardian who would be ineligible for  
20 appointment under Subchapter H, Chapter 1104, because of the  
21 guardian's failure to maintain the certification required under  
22 Subchapter F, Chapter 1104. The guardian shall be given notice~~[7]~~  
23 by a qualified delivery method ~~[certified mail, return receipt~~  
24 ~~requested,]~~ to appear and contest the request for removal under  
25 this subsection at a time and place set in the notice.

26           SECTION 24. Section 1351.001(a), Estates Code, is amended  
27 to read as follows:

1 (a) A parent or managing conservator of a minor who is not a  
2 ward may apply to the court under this subchapter for an order to  
3 sell an interest of the minor in property without being appointed  
4 guardian if the net value of the interest does not exceed \$250,000  
5 [~~\$100,000~~].

6 SECTION 25. Section [1351.052](#), Estates Code, is amended to  
7 read as follows:

8 Sec. 1351.052. AUTHORITY TO SELL WARD'S INTEREST IN  
9 PROPERTY WITHOUT APPOINTMENT AS GUARDIAN OF THE ESTATE IN THIS  
10 STATE. A guardian of the person of a ward or a guardian of the  
11 person or estate of a ward appointed by a foreign court may apply to  
12 the court under this subchapter for an order to sell an interest in  
13 property in the ward's estate without being appointed guardian of  
14 the ward's estate in this state if the net value of the interest  
15 does not exceed \$250,000 [~~\$100,000~~].

16 SECTION 26. Section [1352.052](#)(a), Estates Code, is amended  
17 to read as follows:

18 (a) If the net value of a minor's interest in a residence  
19 homestead does not exceed \$250,000 [~~\$100,000~~], a parent, subject to  
20 Subsection (b), or managing conservator of the minor may apply to  
21 the court under this subchapter for an order authorizing the parent  
22 or managing conservator to receive on the minor's behalf, without  
23 being appointed guardian, an extension of credit that is secured  
24 wholly or partly by a lien on the homestead.

25 SECTION 27. Section [1352.102](#), Estates Code, is amended to  
26 read as follows:

27 Sec. 1352.102. AUTHORITY TO MORTGAGE MINOR WARD'S INTEREST

1 WITHOUT GUARDIANSHIP OF THE ESTATE. If the net value of a minor  
2 ward's interest in a residence homestead does not exceed \$250,000  
3 [~~\$100,000~~], the guardian of the person of the ward may apply to the  
4 court under this subchapter for an order authorizing the guardian  
5 to receive on the ward's behalf an extension of credit that is  
6 secured wholly or partly by a lien on the homestead.

7 SECTION 28. Section 1353.004, Estates Code, is amended by  
8 adding Subsection (c-1) to read as follows:

9 (c-1) If the court finds that the ward's spouse fails to  
10 comply with an order described by Subsection (c), the court may,  
11 after notice and a hearing, order any third party or entity in  
12 possession to deliver to the incapacitated spouse's guardian of the  
13 estate the community property described by Subsection (c).

14 SECTION 29. Section 1355.001(a), Estates Code, is amended  
15 to read as follows:

16 (a) In this section, "resident creditor" means a person who:  
17 (1) is a resident of this state; and  
18 (2) is entitled to money in an amount that is \$250,000  
19 [~~\$100,000~~] or less, the right to which is liquidated and is  
20 uncontested in any pending lawsuit.

21 SECTION 30. Sections 1355.002(a) and (b), Estates Code, are  
22 amended to read as follows:

23 (a) In this section, "creditor" means a person who is  
24 entitled to money in an amount that is not more than \$250,000  
25 [~~\$100,000~~] owing as a result of transactions in this state, the  
26 right to which is liquidated and is uncontested in any pending  
27 lawsuit in this state.

1 (b) This section applies only to a nonresident creditor who  
2 is:

3 (1) a nonresident minor [~~and has a nonresident~~  
4 ~~guardian of the estate appointed by a foreign court~~];

5 (2) a nonresident person who is adjudged by a foreign  
6 court to be incapacitated [~~and has a nonresident guardian of the~~  
7 ~~estate appointed by that court~~]; or

8 (3) the nonresident former ward of a guardianship  
9 terminated under Chapter 1204 who has no legal guardian qualified  
10 in this state.

11 SECTION 31. Section 1104.103(c), Estates Code, is repealed.

12 SECTION 32. (a) The changes in law made by this Act to the  
13 following provisions of the Estates Code apply only to an action  
14 filed or a guardianship proceeding commenced on or after the  
15 effective date of this Act:

16 (1) Sections 1023.004(c), 1051.153(b), 1057.002(b),  
17 1153.001(a), 1153.005(a), 1156.052(c), 1162.006(b),  
18 1202.054(b-2), and 1353.004;

19 (2) Sections 1051.052(b), (c), (d), (e), (f), and (h);

20 (3) Sections 1051.055(a) and (b);

21 (4) Sections 1051.056 and 1162.003;

22 (5) Sections 1051.104(a) and (b);

23 (6) Sections 1153.003(b) and (c); and

24 (7) Sections 1203.052(a-1) and (b).

25 (b) Sections 1105.002(a), 1106.001(a), 1106.005, and  
26 1155.002(a), Estates Code, as amended by this Act, and Section  
27 1151.0525, Estates Code, as added by this Act, apply to a

1 guardianship created before, on, or after the effective date of  
2 this Act.

3 (c) Sections 1351.001(a), 1351.052, 1352.052(a), and  
4 1352.102, Estates Code, as amended by this Act, apply only to an  
5 application for a court order filed on or after the effective date  
6 of this Act. An application for a court order filed before the  
7 effective date of this Act is governed by the law in effect on the  
8 date the application was filed, and the former law is continued in  
9 effect for that purpose.

10 (d) Sections 1355.001(a) and 1355.002(a) and (b), Estates  
11 Code, as amended by this Act, apply only to a payment made by a  
12 debtor on or after the effective date of this Act. A payment made by  
13 a debtor before the effective date of this Act is governed by the  
14 law in effect on the date the payment was made, and the former law is  
15 continued in effect for that purpose.

16 SECTION 33. This Act takes effect September 1, 2023.

S.B. No. 1457

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I hereby certify that S.B. No. 1457 passed the Senate on April 12, 2023, by the following vote: Yeas 31, Nays 0.

\_\_\_\_\_  
Secretary of the Senate

I hereby certify that S.B. No. 1457 passed the House on May 11, 2023, by the following vote: Yeas 136, Nays 3, one present not voting.

\_\_\_\_\_  
Chief Clerk of the House

Approved:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governor

# Tab I

AN ACT

relating to guardianships for persons who are incapacitated;  
changing a fee.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 1002, Estates Code, is amended by adding  
Section 1002.0265 to read as follows:

Sec. 1002.0265. QUALIFIED DELIVERY METHOD. "Qualified  
delivery method" means delivery by:

(1) hand delivery by courier, with courier's proof of  
delivery receipt;

(2) certified or registered mail, return receipt  
requested, with return receipt; or

(3) a private delivery service designated as a  
designated delivery service by the United States Secretary of the  
Treasury under Section 7502(f)(2), Internal Revenue Code of 1986,  
with proof of delivery receipt.

SECTION 2. Section 1023.002(c), Estates Code, is amended to  
read as follows:

(c) If it appears to the court at any time before the  
guardianship is closed that the proceeding was commenced in a court  
that did not have venue over the proceeding, the court shall, on the  
application of any interested person, transfer the proceeding to  
the proper county in the manner prescribed by Section 1023.006.

SECTION 3. Sections 1023.004(a) and (c), Estates Code, are

1 amended to read as follows:

2 (a) On filing an application or on motion of a court to  
3 transfer a guardianship to another county under Section 1023.002 or  
4 1023.003, the sureties on the bond of the guardian shall be cited by  
5 a qualified delivery method [~~personal service~~] to appear and show  
6 cause why the guardianship should not be transferred.

7 (c) If a court made a motion to transfer a guardianship, the  
8 guardian shall be given notice by a qualified delivery method  
9 [~~certified mail~~] to appear and show cause why the guardianship  
10 should not be transferred.

11 SECTION 4. Section 1023.005(c), Estates Code, is amended to  
12 read as follows:

13 (c) On receipt of an order described by Subsection (a), the  
14 clerk of the court to which the guardianship is transferred  
15 [~~county~~] shall accept the transfer of the guardianship.

16 SECTION 5. Section 1023.006, Estates Code, is amended to  
17 read as follows:

18 Sec. 1023.006. TRANSFER OF RECORD. (a) When an order of  
19 transfer is made under Section 1023.002 or 1023.005, the clerk of  
20 the court transferring a proceeding shall, using the electronic  
21 filing system established under Section 72.031, Government Code,  
22 send to the proper court in the county to which the transfer is  
23 made:

24 (1) a transfer certificate and certified index of  
25 transferred documents;

26 (2) a copy of each order, including a copy of the order  
27 of transfer signed by the transferring court;

1           (3) a copy of the original papers filed in the  
2 transferring court, including any papers previously received on  
3 transfer from a court in another county;

4           (4) a copy of the transfer certificate and certified  
5 index of transferred documents from each previous transfer, if  
6 applicable; and

7           (5) a bill of any costs that have accrued in the  
8 transferring court.

9           (b) The clerk of the transferring court shall use the  
10 standardized transfer certificate and index of transferred  
11 documents form created by the Office of Court Administration of the  
12 Texas Judicial System under Section 72.037, Government Code, when  
13 transferring a proceeding under this section.

14           (c) The clerk of the transferring court shall keep a copy of  
15 transferred pleadings, orders, and all other papers filed into the  
16 case record.

17           (d) The clerk of the transferee court shall, subject to  
18 Section 1023.005, accept the documents transferred under  
19 Subsection (a) and docket the case.

20           (e) The clerk of the transferee court shall physically or  
21 electronically mark or stamp the transfer certificate and index of  
22 transferred documents to evidence the date and time of acceptance  
23 under Subsection (c) but may not physically or electronically mark  
24 or stamp any other document transferred under Subsection (a).

25           (f) Sections 80.001 and 80.002, Government Code, do not  
26 apply to the transfer of documents under this section ~~[shall record~~  
27 ~~any unrecorded papers of the guardianship required to be~~

1 ~~recorded. On payment of the clerk's fee, the clerk shall transmit~~  
2 ~~in electronic or paper form to the county clerk of the county to~~  
3 ~~which the guardianship was ordered transferred:~~

4 ~~(1) the case file of the guardianship proceedings,~~  
5 ~~and~~

6 ~~(2) a certified copy of the index of the guardianship~~  
7 ~~records].~~

8 SECTION 6. Section 1023.007, Estates Code, is amended to  
9 read as follows:

10 Sec. 1023.007. TRANSFER EFFECTIVE. The order transferring  
11 a guardianship does not take effect until:

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

16 (2) a certificate under the court's ~~clerk's~~ official  
17 seal and reporting the filing of the case file and a certified copy  
18 of the index is filed using the electronic filing system  
19 established under Section 72.031, Government Code, ~~[in electronic~~  
20 ~~or paper form]~~ in the court ordering the transfer by the county  
21 clerk of the county to which the guardianship was ordered  
22 transferred.

23 SECTION 7. Chapter 1023, Estates Code, is amended by adding  
24 Section 1023.0071 to read as follows:

25 Sec. 1023.0071. TRANSFER FEE. (a) The fee for filing a  
26 guardianship case transferred from another county under this  
27 chapter in which the guardian has previously been appointed and

1 qualified in accordance with this title is \$45 payable to the clerk  
2 of the court to which the case is transferred. No portion of this  
3 fee may be sent to the state.

4 (b) A party may not be assessed any other filing fee by the  
5 clerk of the court to which the guardianship is transferred in  
6 connection with the filing and docketing of the transferred case.

7 (c) To the extent that this section conflicts with another  
8 state statute, the Texas Rules of Civil Procedure, or other rules,  
9 this section prevails.

10 SECTION 8. Section 1105.002(a), Estates Code, is amended to  
11 read as follows:

12 (a) Except as provided by Subsection (b), a guardian is  
13 considered to have qualified when the guardian has:

14 (1) taken and filed the oath, or made and filed the  
15 declaration, required under Section 1105.051;

16 (2) given the required bond;

17 (3) ~~[filed the bond with the clerk; and~~

18 ~~[(4)]~~ obtained the judge's approval of the bond; and

19 (4) filed the bond with the clerk.

20 SECTION 9. Section 1105.157, Estates Code, is amended by  
21 amending Subsections (a) and (d) and adding Subsection (d-1) to  
22 read as follows:

23 (a) Instead of giving a surety or sureties on a bond, or to  
24 reduce the amount of a bond, the guardian of an estate may deposit  
25 the guardian's own cash or securities acceptable to the court with:

26 (1) a financial institution as defined by Section  
27 201.101, Finance Code, that has its main office or a branch office

1 in this state; or

2 (2) the registry of the court, for which the clerk of  
3 the court shall issue a receipt.

4 (d) A receipt issued by a depository under Subsection (c) or  
5 a record of deposit to the registry of the court must be attached to  
6 the guardian's bond and must be in substantially the following  
7 form:

8 The State of Texas

9 County of \_\_\_\_\_ (insert name of county)

10 Know all persons by these presents that I/we, \_\_\_\_\_  
11 (name of each principal), as principal, have deposited cash or  
12 securities as evidenced by the attached receipt or record of  
13 deposit issued by \_\_\_\_\_ (name of depository where cash or  
14 securities are deposited or the name of the court) on \_\_\_\_\_ (date of  
15 deposit), are held and firmly bound to the judge of \_\_\_\_\_ (insert  
16 reference to appropriate judge), and that judge's successors in  
17 office, in the sum of \$\_\_\_\_\_, having been so deposited;  
18 conditioned that the above bound principal or principals, appointed  
19 by the judge as guardian or temporary guardian of the person or of  
20 the estate, or both, of \_\_\_\_\_ (name of ward and whether the  
21 person is a minor or is an incapacitated person other than a minor),  
22 shall well and truly perform all of the duties required of the  
23 guardian or temporary guardian by law under appointment.

24 (d-1) The guardian's bond and depository receipt, if  
25 applicable, shall ~~and~~ be delivered to and filed by the county  
26 clerk after the bond ~~receipt~~ is approved by the judge.

27 SECTION 10. Section 1106.001(a), Estates Code, is amended

1 to read as follows:

2 (a) When a person who is appointed guardian has qualified  
3 under Section 1105.002, the clerk shall issue to the guardian a  
4 certificate under the court's seal stating:

5 (1) the fact of the appointment and of the  
6 qualification;

7 (2) the date of the appointment and of the  
8 qualification; and

9 (3) the date the letters of guardianship expire.

10 SECTION 11. Section 1106.005, Estates Code, is amended to  
11 read as follows:

12 Sec. 1106.005. EFFECT OF LETTERS [~~OR~~  
13 ~~CERTIFICATE~~]. (a) Letters of guardianship [~~or a certificate~~]  
14 issued as prescribed by [~~under~~] Section 1106.001 under the court's  
15 seal by [~~of~~] the clerk of the court that granted the letters are  
16 [~~is~~] sufficient evidence of:

17 (1) the appointment and qualification of the guardian;  
18 and

19 (2) the date of qualification.

20 (b) The court order that appoints the guardian is evidence  
21 of the authority granted to the guardian and of the scope of the  
22 powers and duties that the guardian may exercise only after the date  
23 letters of guardianship [~~or a certificate has~~] have been issued  
24 under Section 1106.001.

25 SECTION 12. Section 1151.051(c), Estates Code, is amended  
26 to read as follows:

27 (c) A guardian of the person has:

1 (1) the right to have physical possession of the ward  
2 and to establish the ward's legal domicile;

3 (2) the duty to provide care, supervision, and  
4 protection for the ward;

5 (3) the duty to provide the ward with clothing, food,  
6 medical care, and shelter;

7 (4) the power to consent to medical, psychiatric, and  
8 surgical treatment other than the inpatient psychiatric commitment  
9 of the ward;

10 (5) on application to and order of the court, the power  
11 to establish a trust in accordance with 42 U.S.C. Section  
12 1396p(d)(4)(B) and direct that the income of the ward as defined by  
13 that section be paid directly to the trust, solely for the purpose  
14 of the ward's eligibility for medical assistance under Chapter 32,  
15 Human Resources Code; ~~and~~

16 (6) the duty to notify the court, as soon as  
17 practicable, if the ward has died or is admitted to a medical  
18 facility for acute care for a period of three or more days;

19 (7) the duty to notify the court not later than the  
20 30th day after the date the ward's residence or address has changed;

21 (8) the duty to notify the court not later than the  
22 30th day after the date of a change in the guardian's residence,  
23 address, phone number, or any other information used by the court to  
24 contact the guardian; and

25 (9) the power to sign documents necessary or  
26 appropriate to facilitate employment of the ward if:

27 (A) the guardian was appointed with full

1 authority over the person of the ward under Section 1101.151; or

2 (B) the power is specified in the court order  
3 appointing the guardian with limited powers over the person of the  
4 ward under Section 1101.152.

5 SECTION 13. Section 1155.151(a), Estates Code, is amended  
6 to read as follows:

7 (a) In a guardianship proceeding, the court costs of the  
8 proceeding, including the costs described by Subsection (a-1),  
9 shall, except as provided by Subsection (c), be paid as follows, and  
10 the court shall issue the judgment accordingly:

11 (1) out of the guardianship estate, if a guardian of  
12 the estate has been created for the benefit of the ward and the  
13 court determines it is in the ward's best interest;

14 (2) out of the management trust, if a management trust  
15 has been created for the benefit of the ward under Chapter 1301 and  
16 the court determines it is in the ward's best interest;

17 (3) by the party to the proceeding who incurred the  
18 costs, unless that party filed, on the party's own behalf, an  
19 affidavit of inability to pay the costs under Rule 145, Texas Rules  
20 of Civil Procedure, that shows the party is unable to afford the  
21 costs, if:

22 (A) there is no guardianship estate or ~~no~~  
23 management trust that has been created for the ward's benefit; or

24 (B) the assets of the guardianship estate or  
25 management trust, as appropriate, are insufficient to pay the  
26 costs; or

27 (4) out of the county treasury if:

1 (A) there is no guardianship estate or management  
2 trust or the assets of the guardianship estate or management trust,  
3 as appropriate, are insufficient to pay the costs; and

4 (B) the party to the proceeding who incurred the  
5 costs filed, on the party's own behalf, an affidavit of inability to  
6 pay the costs under Rule 145, Texas Rules of Civil Procedure, that  
7 shows the party is unable to afford the costs.

8 SECTION 14. Section 1156.052, Estates Code, is amended to  
9 read as follows:

10 Sec. 1156.052. ALLOWANCE FOR WARD'S SPOUSE, MINOR CHILDREN,  
11 OR INCAPACITATED ADULT CHILDREN [~~DEPENDENT~~]. (a) Subject to  
12 Section 1156.051 and on application to the court, the court may  
13 order the guardian of the estate of a ward to spend money from the  
14 ward's estate for the education and maintenance of the ward's  
15 spouse, minor children, or incapacitated adult children  
16 [~~dependent~~].

17 (b) In determining whether to order the expenditure of money  
18 from a ward's estate for the ward's spouse, minor children, or  
19 incapacitated adult children [~~dependent~~], as appropriate, under  
20 this section, the court shall consider:

21 (1) the circumstances of the ward, the ward's spouse,  
22 and the ward's minor children and incapacitated adult children  
23 [~~dependents~~];

24 (2) the ability and duty of the ward's spouse to  
25 support himself or herself and the ward's minor children or  
26 incapacitated adult children [~~dependent~~];

27 (3) the size of the ward's estate;

1 (4) a beneficial interest the ward or the ward's  
2 spouse, minor children, or incapacitated adult children have [~~or~~  
3 ~~dependent has~~] in a trust; and

4 (5) an existing estate plan, including a trust or  
5 will, that provides a benefit to the ward's spouse, minor children,  
6 or incapacitated adult children [~~dependent~~].

7 (c) A person who makes an application to the court under  
8 this section shall send [~~mail~~] notice of the application by a  
9 qualified delivery method [~~certified mail~~] to all interested  
10 persons.

11 (d) Copies of the notices sent under Subsection (c) must be  
12 filed with the court with a copy of the proof of delivery receipt  
13 for each notice sent.

14 SECTION 15. Section 1203.006, Estates Code, is amended to  
15 read as follows:

16 Sec. 1203.006. REQUIREMENTS FOR DISCHARGE. (a) A  
17 guardian applying to resign may not be discharged until:

- 18 (1) the resignation application has been heard;  
19 (2) the exhibit and final account or report required  
20 under Section 1203.001 has been examined, settled, and approved;  
21 and

22 (3) the guardian [~~applicant~~] has satisfied the court  
23 that the guardian [~~applicant~~] has:

- 24 (A) delivered any estate property remaining in  
25 the guardian's [~~applicant's~~] possession; or  
26 (B) complied with all court orders relating to  
27 the guardian's [~~applicant's~~] trust as guardian.

1 (b) When a guardian applying to resign has fully complied  
2 with the court orders, the court shall enter an order:

- 3 (1) accepting the resignation; ~~and~~  
4 (2) discharging the guardian;  
5 (3) canceling the letters issued to the guardian; and  
6 (4) ~~[applicant and,~~ if the guardian ~~[applicant]~~ is  
7 under bond, discharging and releasing the ~~[applicant's]~~ sureties on  
8 the guardian's bond.

9 SECTION 16. Section [1204.105](#), Estates Code, is amended by  
10 adding Subsection (h) to read as follows:

11 (h) The guardian of the estate shall file an affidavit sworn  
12 to by the guardian or a certificate signed by the guardian's  
13 attorney stating:

14 (1) the name of each person to whom citation was served  
15 under this section, indicating the method of service;

16 (2) the name of each person executing a waiver of  
17 citation under Subsection (d); and

18 (3) that each person whose whereabouts are known or  
19 can be reasonably ascertained who is entitled to citation under  
20 this section was provided a copy of the account for final  
21 settlement, indicating the method of delivery for each person to  
22 whom a copy was provided.

23 SECTION 17. Section [1204.151](#), Estates Code, is amended to  
24 read as follows:

25 Sec. 1204.151. DISCHARGE OF GUARDIAN WHEN NO ESTATE  
26 PROPERTY REMAINS. The court shall enter an order discharging a  
27 guardian from the guardian's trust, canceling the letters issued to

1 the guardian of the estate, and closing the guardianship estate if,  
2 on final settlement of the estate, none of the estate remains in the  
3 guardian's possession.

4 SECTION 18. Section [1204.152](#), Estates Code, is amended to  
5 read as follows:

6 Sec. 1204.152. DISCHARGE OF GUARDIAN WHEN ESTATE FULLY  
7 ADMINISTERED. The court shall enter an order discharging a  
8 guardian of the estate from the guardian's trust, canceling the  
9 letters issued to the guardian of the estate, and declaring the  
10 estate closed when:

11 (1) the guardian has fully administered the estate in  
12 accordance with this title and the court's orders;

13 (2) the guardian's account for final settlement has  
14 been approved; and

15 (3) the guardian has delivered all of the estate  
16 remaining in the guardian's possession to any person entitled to  
17 receive the estate.

18 SECTION 19. Section [1251.005\(a\)](#), Estates Code, is amended  
19 to read as follows:

20 (a) On the filing of an application for temporary  
21 guardianship, the court clerk shall issue:

22 (1) citation to be personally served on:

23 (A) the proposed ward; and

24 (B) the proposed temporary guardian named in the  
25 application, if that person is not the applicant; and

26 (2) notice to be served in the manner provided under  
27 Rule 21a, Texas Rules of Civil Procedure, on the proposed ward's

1 appointed attorney.

2 SECTION 20. Section 1023.008, Estates Code, is repealed.

3 SECTION 21. (a) Except as otherwise provided by this  
4 section, the changes in law made by this Act apply to a guardianship  
5 created before, on, or after the effective date of this Act.

6 (b) Sections 1023.002(c), 1023.004(a) and (c), 1023.005(c),  
7 1023.006, and 1023.007, Estates Code, as amended by this Act, and  
8 Section 1023.0071, Estates Code, as added by this Act, apply only to  
9 an application filed or motion made to transfer a guardianship on or  
10 after the effective date of this Act.

11 (c) Sections 1023.006, 1156.052, and 1251.005(a), Estates  
12 Code, as amended by this Act, apply only to an application filed on  
13 or after the effective date of this Act. An application filed  
14 before the effective date of this Act is governed by the law in  
15 effect on the date the application was filed, and the former law is  
16 continued in effect for that purpose.

17 SECTION 22. This Act takes effect September 1, 2023.

S.B. No. 2248

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I hereby certify that S.B. No. 2248 passed the Senate on April 27, 2023, by the following vote: Yeas 31, Nays 0.

\_\_\_\_\_  
Secretary of the Senate

I hereby certify that S.B. No. 2248 passed the House on May 24, 2023, by the following vote: Yeas 133, Nays 5, one present not voting.

\_\_\_\_\_  
Chief Clerk of the House

Approved:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governor

# Tab J

## Memorandum

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**To:** SCAC

**From:** Subcommittee on Rules 1-14c

**Date:** November 28, 2023

**Re:** SB 1373, HB 785, SB 1457, and SB 2248 and June 3, 2023 Referral Letter

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### I. Matter referred to subcommittee

**Notice by Qualified Delivery Methods.** HB 785, SB 1373, SB 1457, and SB 2248 amend multiple sections of the Estates Code to allow service in guardianship and probate proceedings by certain qualified delivery methods, including private delivery services like UPS and FedEx. The Committee should consider whether the Texas Rules of Civil Procedure governing citation and service should be changed or a comment added to reference or restate the statutes and draft any recommended amendments.

**Waiver of Citation in Probate Proceedings.** Sections 14 and 18 of SB 1373 amend Estates Code §§ 202.056 and 258.002 to allow for waiver of citation on minors in heirship and probate proceedings. The Committee should consider whether the citation rules should be changed or a comment added to reference or restate the statutes and draft any recommended amendments.

### II. Relevant materials

SB 1373, HB 785, SB 1457, and SB 2248 are attached.

### III. Overview

The new statutes provide additional methods of service of notice and citation in lawsuits brought under the Estates Code. We recommend adding three comments to the rules in view of these issues. The three recommendations are in italics below. We do not believe we need to amend the rules.

If, as we suggest, the expanded service methods are limited to estate and guardianship matters, *we recommend adding a comment to Rule 21a governing service and Rule 106 governing citation and not amending the rules applicable to all other actions. “The Estates Code provides for other methods of service and citation, and proof thereof, in estate and guardianship proceedings and governs those proceedings.”*

The Estates Code was already permissive about the use of certified mail rather than formal service of process. The gist of the changes expands the options beyond the offerings of the USPS so that couriers and private shippers like FedEx or UPS can be used as well.

The TRCP already functioned in a world where the Estates Code let probate lawyers use certified mail in many situations. This is why no changes are needed to the text of the Rules. Because the new statutes simply replace “certified mail” with “qualified delivery methods,” they do not require fresh accommodation in the TRCP. Notably, each of the qualified delivery methods comes with a method for the carrier to certify delivery and receipt. Thus, there are no new dangers in these methods that the Rules need to address.

Nevertheless, new comments in Rule 21a governing service and Rule 106 governing citation would be helpful to practitioners. The current text and commentary to the Rules do nothing to alert practitioners to the alternatives to formal service of process in the Estates Code. Adding a comment to the Rules that acknowledges the availability of qualified delivery methods under the Estates Code puts that information in a convenient place.

*We also recommend adding a comment to TRCP 106 to note that certain provisions of the Estates Code specify that a citation or summons in a particular proceeding must be “personally served on” certain parties. We recommend adding the following comment: “However, some statutes specify that citations or summons must be personally served on certain parties in certain specialized proceedings.” See, e.g., TEX. ESTATES CODE § 1251.005(a) (citation in temporary guardianship must “be personally served on” the proposed ward and the proposed temporary guardian (if that person is not the applicant)).*

*Additionally, we recommend adding a comment to TRCP 119 to address the new waiver of citation rule set forth in Section 14 of SB 1373, which provides for waiver of citation on minors in heirship and probate proceedings. We recommend the following comment: “The Estates Code provides for waiver of citation by certain parties in probate and heirship proceedings and governs those proceedings.”*

There are two other issues where we do not recommend a change in the rules or a new comment. First, a lurking sub-issue is whether the new methods should be limited solely to guardianship and probate proceedings or should apply across the board to all actions.

Taking the second lurking issue first, we recommend against making an across the board change absent some request by the bar for such a change. Moreover, the new statute

already went into effect on September 1, 2023, so any change in service beyond the statutorily required changes should undergo further study.

But if SCAC recommends permitting expanded methods of delivery *in all actions*, then SCAC would need to amend both the service and citation rules to parallel the new statutory definition of qualified delivery methods and the required proof of delivery.

One other issue for the full committee is whether we need a new comment to Rule 21a. Section 19 amends Estates Code § 1251.005(a) to add a requirement that the citation issued by the clerk of court must “be personally served on ... (A) the proposed ward; and (B) the proposed temporary guardian” for any application for a temporary guardianship. It also specifies that “notice is to be served in the manner provided under Rule 21a, Texas Rules of Civil Procedure, on the proposed ward’s appointed attorney.” *We do not recommend any change in the rules or a comment as a result of this change. This is a requirement for the clerk of court in issuing the citation, so it is less likely to trip up a practitioner. On the other hand, clerks often rely on the practitioner’s request to issue a citation. On balance, we don’t think we need to make a specific comment about this change.*

#### **IV. Notice by Qualified Delivery Methods**

SB 1373 defines “qualified delivery method” to expand methods of service and citation to include certain private delivery services. The definition is the same as that in HB 785, SB 1457, and SB 2248. The amendment to chapter 22 of the Estates Code adds an entirely new section 22.095. It provides:

Sec. 22.0295. QUALIFIED DELIVERY METHOD. "Qualified delivery method" means delivery by:

- (1) hand delivery by courier, with courier’s proof of delivery receipt;
- (2) certified or registered mail, return receipt requested, with return receipt; or
- (3) a private delivery service designated as a designated delivery service by the United States Secretary of the Treasury under Section 7502(f)(2), Internal Revenue Code of 1986, with proof of delivery receipt.

Sections 2 and 3 of SB 1373 amend the title of Section 51.052 and its provisions regarding service by mail or private delivery. The amendment adds the following underlined words to the existing text: “The date of service is the date of mailing, the date of deposit with the private delivery service, or the date of delivery by the courier, as applicable.”

## V. Other changes in SB 1373.

### A. Proof of Service

Section 6 of SB 1373 amends section 51.103(b)'s definition of what constitutes proof of service for citation and notice. Section 51.103(a) requires "proof of service in each case requiring citation or notice must be filed before the hearing. Tex. Estates Code Ann. § 51.103(b) is amended by adding that service can be by a qualified delivery method. The changes are underlined below:

(b) Proof of service consists of:

- (1) if the service is made by a sheriff or constable, the return of service;
- (2) if the service is made by a private person, the person's affidavit;
- (3) if the service is made by *a qualified delivery method* ~~[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 ...

SB 1373 amends numerous Estates Code provisions to consistently provide for service of notice or citation by qualified delivery methods.

### B. Waiver of Citation in Probate Proceedings

Section 14 of SB 1373 provides for waiver of citation on minors in heirship and probate proceedings. The change to Estates Code § 202.056 replaces the term "minor" with an age cut-off of 16, to read as follows:

Sec. 202.056. WAIVER OF SERVICE OF CITATION. (a) A distributee who is 16 years of age or older may waive citation required by this subchapter to be served on the distributee.

(b) A parent, managing conservator, guardian, attorney ad litem, or guardian ad litem of a distributee who is younger than 16 years of age may waive citation required by this subchapter to be served on the distributee.

Section 18 of SB 1373 adds new subsections d and e to the provisions for waiver of citation in Estates Code § 258.002, which is entitled “Citation on Application for Probate of Will Not Produced in Court:”

(d) An heir who is 16 years of age or older may waive citation required by this section to be served on the heir.

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

Current TRCP 119 provides for waiver of citation as follows:

#### RULE 119. ACCEPTANCE OF SERVICE

The defendant may accept service of process, or waive the issuance or service thereof by a written memorandum signed by him, or by his duly authorized agent or attorney, after suit is brought, sworn to before a proper officer other than an attorney in the case, and filed among the papers of the cause, and such waiver or acceptance shall have the same force and effect as if the citation had been issued and served as provided by law. The party signing such memorandum shall be delivered a copy of plaintiff’s petition, and the receipt of the same shall be acknowledged in such memorandum. In every divorce action such memorandum shall also include the defendant’s mailing address.

Current Rule 119 does not reference waiver of citation by a distributee in a probate proceeding, minor or otherwise, even though the Estates Code has provided for such waiver since at least the 2009 codification, and it was likely in the statutes prior to that.

Because the waiver provisions are so narrowly tailored to probate and heirship proceedings and not of general applicability, we would not recommend amending TRCP 119 to duplicate the statute. We could instead add a comment: “The Estates Code provides for waiver of citation by certain parties in probate and heirship proceedings and governs those proceedings.”

### **C. Miscellaneous Provisions**

Sections 15, 17, 18, 19, 20, 21, 22, 24, 25, 26, 27, 32, 39, 40, 41, and 43 are substantive amendments, such as the evidence in a proceeding to declare heirship. They do not require any change in the TRCP.

## V. Changes in HB 785

HB 785 has sixteen sections that make changes to the Texas Estate Codes. These amendments address service of notices under the Estates Code. They do not require any changes in the TRCP; they can be handled by the comment discussed above. Each section is discussed briefly below.

Section 1 creates a new Estates Code § 1002.065, which is titled Qualified Delivery Method, sets forth three “qualified delivery method[s].” These methods are incorporated in various other parts of HB 785 as well as SB 1373, SB 1457, and SB 2248. It only applies in proceedings under the Estates Code.

Section 2 amends Estates Code § 1023.004(c), which is titled “Notice.” It permits notice of motions to transfer a guardian to be served by a “qualified delivery method” (defined in new section 1002.065 and in the other new statutes) rather than just by certified mail. The former rule is not referenced in Rule 21s governing service for pleadings, motions, and requests.

Section 4 concerns Estates Code § 1051.052, which is titled Service by Mail. The amendment allows service by citation in Guardianship proceeding not only by regular mail but also by a qualified delivery method. *See Guardianship of Fairley*, 650 S.W.3d 372, 382 (Tex. 2022) (“Chapter 1051 of the Estates Code governs the issuance of notice and service of citation in guardianship proceedings.”).

Section 5 amends Estates Code § 1051.055, which is titled Service on Party’s Attorney of Record, and governs service on a party’s attorney of record in guardianship proceedings. The amendment allows services on the attorney by a qualified delivery method.

Section 6 amends Estates Code § 1051.056, which is titled Service on Guardian or Receiver and governs service on a guardian or receiver. The amendment also expands service to allow service by a qualified delivery method.

Section 7 amends Estates Code § 1051.104, which is titled Notice by Applicant for Guardianship and which governs an application for a guardianship. The amendment also expands service to allow service by a qualified delivery method.

Section 8 amends Estate Codes § 1051.153, which is titled Proof of Service and Notice by Applicant for Guardianship and which governs proof of service. The amendment sets forth requirements for proof of service by a qualified delivery method.

Section 9 amends Estates Code § 1057.002, which is titled Resignation of Resident Agent Guardianship. The amendment permits a resident agent to send a resignation letter by a qualified delivery method instead of just by certified mail.

Section 10 amends Estates Code § 1153.001, which is titled Required Notice Regarding Presentment of Claims in General. Section 1153.001 requires a guardian to notify any person with a claim against an estate to assert it within a certain time frame with notice by publication and by service on the comptroller. It is amended to allow service on the comptroller not only by certified mail but by a qualified delivery method.

Section 11 amends Estates Code § 1153.003, which is titled Required Notice to Certain Claimants, governs the service of notice of these claims. The amendment allows service not only by certified mail but also by a qualified delivery method.

Section 12 amends Estates Code § 1156.052, which is titled Allowance for Ward's Spouse of Dependent, permits an application seeking a court order to compel a guardian of a ward's estate to spend money for certain expenses. The amendment permits service of the application not only by certified mail but also by a qualified delivery method.

Section 13 amends Estates Code § 1162.003, which is titled Notice of Application for Establishment of Estate or Other Transfer Plan and governs the service of an application to the court under Este Codes § 1162.001. The amendment permits service of the application not only by certified mail but also by a qualified delivery method.

Section 14 amends Estates Code § 1162.006, which is titled Notice of Application for Inspection and governs service of an application for inspection under § 1162.005. The amendment permits service of the application not only by certified mail but also by a qualified delivery method.

Section 15 amends Estates Code § 1202.054, which is titled Informal Request for Order by Ward and permits a ward to make request for a court order under section 1202.051 by an informal letter to the court. The amendment permits service of the request not only by certified mail but also by a qualified delivery method.

Section 16 amends Estates Code Section 1203.052, which is titled Removal by Notice and which permit a court to remove a guardian. The amendment permits service of the notice on the guardian not only by certified mail but also by a qualified delivery method.

## **VII. Changes in SB 1457**

SB 1457 makes several changes that are identical to those in HB 785. When it comes to changes that are relevant to the Texas Rules of Civil Procedure, it makes the same changes to the Estates Code that HB 785 makes.

Like HB 785, SB 1457 adds a new Estates Code section 1002.065 that defines a “qualified delivery method” in identical terms to the other statutes discussed here. It goes on to replace references to certified mail with references to “qualified delivery methods” throughout the guardianship sections of the Estates Code. The evident purpose of this new language is to allow private delivery services and couriers anywhere the use of certified mail that was allowed under prior law in the Estates Code.

Sections 24 through 31 are substantive amendments. For example, Section 24 lifts the maximum value of a child’s property that her parent can sell without being appointed guardian to \$250,000 from \$100,000. These sections do not require any change in the TRCP. Notably, the differences between SB 1457 and HB 785 are in these substantive amendments that the former includes and the latter does not.

## **VIII. Changes in SB 2248**

SB 2248 has 21 sections that make changes to the Texas Estate Codes relating to guardianship actions for persons who are incapacitated.

Section 1 amends Estates Code Chapter 1002 by adding § 1002.0265, providing a new definition of “qualified delivery method” that is identical to amendments in SB1373, SB1457 and HB785.

Section 2 amends Estates Code § 1023.002(c) to clarify that when a guardianship proceeding is transferred to a proper venue, it should be done “in the manner prescribed by Section 1023.006.” *See infra* Section 5.

Section 3 amends Estates Code §§ 1023.004(a) and (c) to add “qualified delivery method” for notices provided to guardians and sureties when a motion is made to transfer a guardianship proceeding to a proper venue.

Section 4 amends Estates Code §1023.005(c) to direct the “clerk of the court to which the guardianship is transferred” to accept it, rather than the “county.”

Section 5 then amends Estates Code § 1023.006 to modify requirements for a transfer of the record to delineate a number of specific items that should be transferred by the clerk of the transferor court to the transferee court “using the electronic filing system.” Other additions include directions to the clerks of both courts as to accepting, marking, and filing the documents in the transferred files.

Section 6 amends Estates Code § 1023.007 to clarify when the order transferring the guardianship takes effect.

Section 7 adds Estates Code § 1023.0071 to provide for the method and amount of a transfer fee for a guardianship proceeding transferred to another county.

Section 8 amends Estates Code § 1105.002(a) to separate out the qualifications for a guardian such that “obtained the judge’s approval on the bond” is now subsection (3), and “filed the bond with the clerk” is now in a new subsection (4). These continue to be conjunctive requirements.

Section 9 amends Estates Code § 1105.157(a) and (d) to permit a guardian to deposit cash or securities in lieu of a surety bond in the registry of the court and provides the terminology for the receipt.

Section 10 amends Estates Code § 1106.001(a) to clarify that the “seal” for the certificate appointing a guardian is “the court’s.”

Section 11 amends Estates Code § 1106.005 to make a similar clarification to subsection (a) and delete the option for a “certificate” in favor of “letters of guardianship.”

Section 12 amends Estates Code § 1151.051(c) to add three new substantive duties to a guardian’s role—subsections (c)(6) to (8)—and renumbers.

Section 13 amends Estates Code § 1155.151(a) to require additional findings before ordering costs of a guardianship proceeding to be awarded out of the guardianship estate.

Section 14 amends Estates Code § 1156.052 to change “dependent” to “minor children or incapacitated adult children” throughout that provision. It also amends subsection (c) to provide for notice of an application for permission to spend the ward’s money on these dependents by “qualified delivery method” and adds subsection (d) to require that such notices be filed with the court together with proof-of-delivery receipts.

Section 15 amends Estates Code § 1203.006 regarding the requirements for discharge of a resigning guardian: changing the term “applicant” to “guardian” throughout the provision; adding a new subsection (b)(3) requiring the court to cancel letters issued to the guardian; renumbering former subsection (b)(3) to (b)(4); and clarifying that the sureties on the guardian’s bond are to be discharged and released when the guardian is discharged.

Section 16 adds subsection (h) to Estates Code § 1204.105 to require a guardian to file an affidavit (or a certificate from the guardian’s attorney) certifying service of citation on the statutorily specified recipients when a presentation is made for final settlement of an account by a guardian of the estate of a ward. The amendment also sets out the required contents of the affidavit or certificate.

Section 17 amends Estates Code § 1204.151 to confirm that the court’s order discharging a guardian when no estate property remains shall also cancel the letters issued to the guardian when closing the estate.

Section 18 amends Estates Code § 1204.152 to make the same change to the discharge of a guardian when the estate is fully administered.

Section 19 amends Estates Code § 1251.005(a) to add a requirement that the citation issued by the clerk of court must “be personally served on ... (A) the proposed ward; and (B) the proposed temporary guardian” for any application for a temporary guardianship. It also specifies that “notice is to be served in the manner provided under Rule 21a, Texas Rules of Civil Procedure, on the proposed ward’s appointed attorney.” *We do not recommend any change in the rules or a comment as a result of this change. This is a requirement for the clerk of court in issuing the citation, so it is less likely to trip up a practitioner. On the other hand, clerks often rely on the practitioner’s request to issue a citation. On balance, we don’t think we need to make a specific comment about this change.*

Section 20 repeals amends Estates Code § 1023.008, addressing transfer of venue of a guardianship proceeding.

Section 21 provides that these changes “apply to a guardianship created before, on, or after the effective date of this Act” except for certain specified provisions that “apply only to an application filed or motion made to transfer a guardianship on or after the effective date of the Act” and still other specified changes (like to the requirements for transferring the record) that “apply only to an application filed on or after the effective date.

Section 22 provides that the effective date of the Act is September 1, 2023.

# Tab K

AN ACT

relating to decedents' estates and the delivery of certain notices or other communications in connection with those estates or multiple-party accounts.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 22, Estates Code, is amended by adding Section 22.0295 to read as follows:

Sec. 22.0295. QUALIFIED DELIVERY METHOD. "Qualified delivery method" means delivery by:

(1) hand delivery by courier, with courier's proof of delivery receipt;

(2) certified or registered mail, return receipt requested, with return receipt; or

(3) a private delivery service designated as a designated delivery service by the United States Secretary of the Treasury under Section 7502(f)(2), Internal Revenue Code of 1986, with proof of delivery receipt.

SECTION 2. The heading to Section 51.052, Estates Code, is amended to read as follows:

Sec. 51.052. SERVICE BY MAIL OR PRIVATE DELIVERY.

SECTION 3. Sections 51.052(b), (c), (d), (e), (f), and (g), Estates Code, are amended to read as follows:

(b) Except as provided by Subsection (c), the county clerk shall issue a citation or notice required or permitted to be served

1 by a qualified delivery method [~~registered or certified mail~~] and  
2 shall serve the citation or notice by sending [~~mailing~~] the  
3 original citation or notice by a qualified delivery method  
4 [~~registered or certified mail~~].

5 (c) A personal representative shall issue a notice required  
6 to be given by the representative by a qualified delivery method  
7 [~~registered or certified mail~~] and shall serve the notice by  
8 sending [~~mailing~~] the original notice by a qualified delivery  
9 method [~~registered or certified mail~~].

10 (d) The county clerk or personal representative, as  
11 applicable, shall send [~~mail~~] a citation or notice under Subsection  
12 (b) or (c) with an instruction to deliver the citation or notice to  
13 the addressee only and with return receipt or other proof of  
14 delivery requested. The clerk or representative, as applicable,  
15 shall address the envelope containing the citation or notice to:

16 (1) the attorney of record in the proceeding for the  
17 person to be cited or notified; or

18 (2) the person to be cited or notified, if the citation  
19 or notice to the attorney is returned undelivered or the person to  
20 be cited or notified has no attorney of record in the proceeding.

21 (e) Service by a qualified delivery method [~~mail~~] shall be  
22 made at least 20 days before the return day of the service,  
23 excluding the date of service. The date of service [~~by mail~~] is the  
24 date of mailing, the date of deposit with the private delivery  
25 service, or the date of delivery by the courier, as applicable.

26 (f) A copy of a citation or notice served under Subsection  
27 (a), (b), or (c), together with a certificate of the person serving

1 the citation or notice showing that the citation or notice was sent  
2 ~~[mailed]~~ and the date of the mailing, date of deposit with a private  
3 delivery service, or date of delivery by courier, as applicable,  
4 shall be filed and recorded. A returned receipt or proof of  
5 delivery receipt for a citation or notice served under Subsection  
6 (b) or (c) shall be attached to the certificate.

7 (g) If a citation or notice served by a qualified delivery  
8 method ~~[mail]~~ is returned undelivered, a new citation or notice  
9 shall be issued. Service of the new citation or notice must be made  
10 by posting.

11 SECTION 4. Section 51.055(a), Estates Code, is amended to  
12 read as follows:

13 (a) If a party is represented by an attorney of record in a  
14 probate proceeding, each citation or notice required to be served  
15 on the party in that proceeding shall be served instead on that  
16 attorney. A notice under this subsection may be served by delivery  
17 to the attorney in person or by a qualified delivery method  
18 ~~[registered or certified mail]~~.

19 SECTION 5. Section 51.056, Estates Code, is amended to read  
20 as follows:

21 Sec. 51.056. SERVICE ON PERSONAL REPRESENTATIVE OR  
22 RECEIVER. Unless this title expressly provides for another method  
23 of service, the county clerk who issues a citation or notice  
24 required to be served on a personal representative or receiver  
25 shall serve the citation or notice by sending ~~[mailing]~~ the  
26 original citation or notice by a qualified delivery method  
27 ~~[registered or certified mail]~~ to:

1           (1) the representative's or receiver's attorney of  
2 record; or

3           (2) the representative or receiver, if the  
4 representative or receiver does not have an attorney of record.

5           SECTION 6. Section 51.103(b), Estates Code, is amended to  
6 read as follows:

7           (b) Proof of service consists of:

8           (1) if the service is made by a sheriff or constable,  
9 the return of service;

10           (2) if the service is made by a private person, the  
11 person's affidavit;

12           (3) if the service is made by a qualified delivery  
13 method [~~mail~~]:

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

21           (B) the return receipt or other proof of delivery  
22 receipt attached to the certificate or affidavit, as applicable, if  
23 the sending [~~mailing~~] was by a qualified delivery method  
24 [~~registered or certified mail~~] and a receipt is available [~~has been~~  
25 ~~returned~~]; and

26           (4) if the service is made by publication:

27           (A) a statement:

1 (i) made by the Office of Court  
2 Administration of the Texas Judicial System or an employee of the  
3 office;

4 (ii) that contains or to which is attached a  
5 copy of the published citation or notice; and

6 (iii) that states the date of publication  
7 on the public information Internet website maintained as required  
8 by Section 72.034, Government Code [~~as added by Chapter 606 (S.B.  
9 891), Acts of the 86th Legislature, Regular Session, 2019~~]; and

10 (B) an affidavit:

11 (i) made by the publisher of the newspaper  
12 in which the citation or notice was published or an employee of the  
13 publisher;

14 (ii) that contains or to which is attached a  
15 copy of the published citation or notice; and

16 (iii) that states the date of publication  
17 printed on the newspaper in which the citation or notice was  
18 published.

19 SECTION 7. Section 56.002(b), Estates Code, is amended to  
20 read as follows:

21 (b) The resident agent shall send, by a qualified delivery  
22 method [~~certified mail, return receipt requested~~], a copy of a  
23 resignation statement filed under Subsection (a) to:

24 (1) the personal representative at the address most  
25 recently known by the resident agent; and

26 (2) each party in the case or the party's attorney or  
27 other designated representative of record.

1 SECTION 8. The heading to Section 101.052, Estates Code, is  
2 amended to read as follows:

3 Sec. 101.052. LIABILITY OF COMMUNITY PROPERTY FOR DEBTS [~~OF~~  
4 ~~DECEASED SPOUSE~~].

5 SECTION 9. Section 101.052, Estates Code, is amended by  
6 amending Subsections (a) and (b) and adding Subsection (a-1) to  
7 read as follows:

8 (a) The community property that was by law under [~~subject~~  
9 ~~to~~] the sole management, control, and disposition of a spouse or  
10 under the joint management, control, and disposition of the spouses  
11 [a spouse] during marriage continues to be subject to the  
12 liabilities of that spouse on the death of either spouse.

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

18 (b) The undivided one-half interest that the deceased  
19 spouse owned in [~~any other nonexempt~~] community property that was  
20 by law under the sole management, control, and disposition of the  
21 surviving spouse during marriage passes to the deceased spouse's  
22 heirs or devisees charged with the liabilities of [~~debts that were~~  
23 ~~enforceable against~~] the deceased spouse [~~before death~~].

24 SECTION 10. Sections 113.001(1) and (8), Estates Code, are  
25 amended to read as follows:

26 (1) "Account" means a contract of deposit of funds or  
27 securities between a depositor and a financial institution. The

1 term includes:

2                   (A) an account with cash deposits, including a  
3 checking account, savings account, certificate of deposit, and  
4 share account;

5                   (B) an account holding securities, including  
6 stocks, bonds, and mutual funds; and

7                   (C) another~~[, or other]~~ similar arrangement.

8           (8) "Sums on deposit" means the balance payable or  
9 transferable on a multiple-party account including cash, interest,  
10 dividends, any type of securities, including stocks, bonds, and  
11 mutual funds, and any deposit of life insurance proceeds added to  
12 the account by reason of the death of a party.

13           SECTION 11. Section [113.251\(c\)](#), Estates Code, is amended to  
14 read as follows:

15           (c) Not later than the 30th day after the date a security  
16 interest on a multiple-party account is perfected, a secured  
17 creditor that is a financial institution with accounts insured by  
18 the Federal Deposit Insurance Corporation shall provide written  
19 notice of the pledge of the account to any other party to the  
20 account who did not create the security interest. The notice must  
21 be sent by a qualified delivery method [~~certified mail~~] to each  
22 other party at the last address the party provided to the depository  
23 bank.

24           SECTION 12. Section [202.005](#), Estates Code, is amended to  
25 read as follows:

26           Sec. 202.005. APPLICATION FOR PROCEEDING TO DECLARE  
27 HEIRSHIP. A person authorized by Section [202.004](#) to commence a

1 proceeding to declare heirship must file an application in a court  
2 specified by Section 33.004 to commence the proceeding. The  
3 application must state:

4 (1) the decedent's name and date and place of death;

5 (2) the names and physical addresses where service can  
6 be had of the decedent's heirs, the relationship of each heir to the  
7 decedent, whether each heir is an adult or minor, and the true  
8 interest of the applicant and each of the heirs in the decedent's  
9 estate or in the trust, as applicable;

10 (3) if the date or place of the decedent's death or the  
11 name or physical address where service can be had of an heir is not  
12 definitely known to the applicant, all the material facts and  
13 circumstances with respect to which the applicant has knowledge and  
14 information that might reasonably tend to show the date or place of  
15 the decedent's death or the name or physical address where service  
16 can be had of the heir;

17 (4) that all children born to or adopted by the  
18 decedent have been listed;

19 (5) that each of the decedent's marriages has been  
20 listed with:

21 (A) the date of the marriage;

22 (B) the name of the spouse;

23 (C) the date and place of termination if the  
24 marriage was terminated; and

25 (D) other facts to show whether a spouse has had  
26 an interest in the decedent's property;

27 (6) whether the decedent died testate and, if so, what

1 disposition has been made of the will;

2 (7) a general description of all property, as  
3 applicable:

4 (A) belonging to the decedent's estate that is  
5 subject to distribution under a judgment in the proceeding; or

6 (B) held in trust for the benefit of the  
7 decedent [~~as applicable~~]; and

8 (8) an explanation for the omission from the  
9 application of any of the information required by this section.

10 SECTION 13. Section 202.051, Estates Code, is amended to  
11 read as follows:

12 Sec. 202.051. SERVICE OF CITATION BY QUALIFIED DELIVERY  
13 METHOD [~~MAIL~~] WHEN RECIPIENT'S NAME AND ADDRESS ARE KNOWN OR  
14 ASCERTAINABLE. Except as provided by Section 202.054, citation in  
15 a proceeding to declare heirship must be served by a qualified  
16 delivery method [~~registered or certified mail~~] on:

17 (1) each distributee who is 12 years of age or older  
18 and whose name and address are known or can be ascertained through  
19 the exercise of reasonable diligence; and

20 (2) the parent, managing conservator, or guardian of  
21 each distributee who is younger than 12 years of age if the name and  
22 address of the parent, managing conservator, or guardian are known  
23 or can be reasonably ascertained.

24 SECTION 14. Section 202.056, Estates Code, is amended to  
25 read as follows:

26 Sec. 202.056. WAIVER OF SERVICE OF CITATION. (a) A [~~Except~~  
27 ~~as provided by Subsection (b)(2), a~~] distributee who is 16 years of

1 age or older may waive citation required by this subchapter to be  
2 served on the distributee.

3 (b) A parent, managing conservator, guardian, attorney ad  
4 litem, or guardian ad litem of a [~~minor~~] distributee who is younger  
5 than 16 years of age may[+]

6 [~~(1) is younger than 12 years of age may~~] waive  
7 citation required by this subchapter to be served on the  
8 distributee[ ~~and~~

9 [~~(2) is 12 years of age or older may not waive citation~~  
10 ~~required by this subchapter to be served on the distributee~~].

11 SECTION 15. Section 202.151, Estates Code, is amended by  
12 amending Subsections (b) and (c) and adding Subsection (d) to read  
13 as follows:

14 (b) Except as provided by Subsection (c), in a proceeding to  
15 declare heirship, testimony regarding a decedent's heirs and family  
16 history must be taken:

17 (1) from two disinterested and credible witnesses in  
18 open court;

19 (2) [ ~~]~~ by deposition in accordance with Section  
20 51.203;

21 (3) by a recorded statement of facts contained in:

22 (A) an affidavit or instrument that satisfies the  
23 requirements of Section 203.001; or

24 (B) a judgment of a court of record as specified  
25 by Section 203.001(a)(1)(B);[ ~~]~~ or

26 (4) in accordance with the Texas Rules of Civil  
27 Procedure.

1 (c) If it is shown to the court's satisfaction in a  
2 proceeding to declare heirship that, after a diligent search was  
3 made, only one disinterested and credible witness can be found who  
4 can make the required proof in the proceeding, the testimony of that  
5 witness must be taken:

6 (1) in open court;

7 (2)  by deposition in accordance with Section  
8 51.203;

9 (3) by a recorded statement of facts contained in:

10 (A) an affidavit or instrument that satisfies the  
11 requirements of Section 203.001; or

12 (B) a judgment of a court of record as specified  
13 by Section 203.001(a)(1)(B);  or

14 (4) in accordance with the Texas Rules of Civil  
15 Procedure.

16 (d) Notwithstanding any other law, a person interested in an  
17 estate solely because the person is a creditor or has a claim  
18 against the estate may serve as a witness under this section if the  
19 person is otherwise a credible witness.

20 SECTION 16. Section 202.203, Estates Code, is amended to  
21 read as follows:

22 Sec. 202.203. CORRECTION OF JUDGMENT AT REQUEST OF HEIR NOT  
23 PROPERLY SERVED. If an heir of a decedent who is the subject of a  
24 proceeding to declare heirship is not served with citation by a  
25 qualified delivery method [~~registered or certified mail~~] or  
26 personal service in the proceeding, the heir may:

27 (1) have the judgment in the proceeding corrected by

1 bill of review:

2 (A) at any time, but not later than the fourth  
3 anniversary of the date of the judgment; or

4 (B) after the passage of any length of time, on  
5 proof of actual fraud; and

6 (2) recover the heir's just share of the property or  
7 the value of that share from:

8 (A) the heirs named in the judgment; and

9 (B) those who claim under the heirs named in the  
10 judgment and who are not bona fide purchasers for value.

11 SECTION 17. Section 251.053, Estates Code, is amended to  
12 read as follows:

13 Sec. 251.053. EXCEPTION FOR FOREIGN AND CERTAIN OTHER  
14 WILLS. A [Section 251.051 does not apply to a] written will does  
15 not need to meet the requirements of Section 251.051 if the will is  
16 executed in compliance with:

17 (1) the law of the state or foreign country where the  
18 will was executed, as that law existed at the time of the will's  
19 execution; or

20 (2) the law of the state or foreign country where the  
21 testator was domiciled or had a place of residence, as that law  
22 existed at the time of the will's execution or at the time of the  
23 testator's death.

24 SECTION 18. Section 258.002, Estates Code, is amended by  
25 adding Subsections (d) and (e) to read as follows:

26 (d) An heir who is 16 years of age or older may waive  
27 citation required by this section to be served on the heir.

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

5       SECTION 19. Section 304.003, Estates Code, is amended to  
6 read as follows:

7       Sec. 304.003. PERSONS DISQUALIFIED TO SERVE AS EXECUTOR OR  
8 ADMINISTRATOR. (a) Except as provided by Subsection (b), a [A]  
9 person is not qualified to serve as an executor or administrator if  
10 the person is:

11           (1) incapacitated;

12           (2) a felon convicted under the laws of the United  
13 States or of any state of the United States unless, in accordance  
14 with law, the person has been pardoned or has had the person's civil  
15 rights restored;

16           (3) a nonresident of this state who:

17                   (A) is a natural person or corporation; and

18                   (B) has not:

19                           (i) appointed a resident agent to accept  
20 service of process in all actions or proceedings with respect to the  
21 estate; or

22                           (ii) had that appointment filed with the  
23 court;

24           (4) a corporation not authorized to act as a fiduciary  
25 in this state; or

26           (5) a person whom the court finds unsuitable.

27       (b) A person described by Subsection (a)(2) is not

1 disqualified from serving as an executor of a decedent's estate  
2 under Subsection (a)(2) if:

3 (1) the person is named as executor in the decedent's  
4 will;

5 (2) the person is otherwise qualified to serve as an  
6 executor; and

7 (3) the court approves the person serving as an  
8 executor.

9 SECTION 20. Section 305.001, Estates Code, is amended to  
10 read as follows:

11 Sec. 305.001. DEFINITIONS. In this chapter:

12 (1) "Bond" means a bond required by this chapter to be  
13 given by a person appointed to serve as a personal representative.

14 (2) "Declaration" means a written declaration that may  
15 be made and signed by a person appointed to serve as a personal  
16 representative.

17 (3) "Oath" means an oath that may [~~required by this~~  
18 ~~chapter to~~] be taken by a person appointed to serve as a personal  
19 representative.

20 SECTION 21. Section 305.002, Estates Code, is amended to  
21 read as follows:

22 Sec. 305.002. MANNER OF QUALIFICATION OF PERSONAL  
23 REPRESENTATIVE. (a) A personal representative, other than an  
24 executor described by Subsection (b), is considered to have  
25 qualified when the representative has:

26 (1) taken and filed the oath prescribed by Subchapter  
27 B or made, signed, and filed the declaration prescribed by

1 Subchapter B;

2 (2) filed the required bond with the clerk; and

3 (3) obtained the judge's approval of the bond.

4 (b) An executor who is not required to give a bond is  
5 considered to have qualified when the executor has taken and filed  
6 the oath prescribed by Subchapter B or made, signed, and filed the  
7 declaration prescribed by Subchapter B.

8 SECTION 22. Section 305.003, Estates Code, is amended to  
9 read as follows:

10 Sec. 305.003. PERIOD FOR TAKING OATH OR MAKING AND SIGNING  
11 DECLARATION. An oath may be taken and subscribed or a declaration  
12 may be made and signed at any time before:

13 (1) the 21st day after the date of the order granting  
14 letters testamentary or of administration, as applicable; or

15 (2) the letters testamentary or of administration, as  
16 applicable, are revoked for a failure to qualify within the period  
17 allowed.

18 SECTION 23. The heading to Subchapter B, Chapter 305,  
19 Estates Code, is amended to read as follows:

20 SUBCHAPTER B. OATHS OR DECLARATIONS

21 SECTION 24. Section 305.051, Estates Code, is amended to  
22 read as follows:

23 Sec. 305.051. OATH OR DECLARATION OF EXECUTOR OR  
24 ADMINISTRATOR WITH WILL ANNEXED. (a) Before the issuance of  
25 letters testamentary or letters of administration with the will  
26 annexed, the person named as executor or appointed as administrator  
27 with the will annexed shall:

1           (1) take and subscribe an oath as prescribed by  
2 Subsection (b); or

3           (2) make and sign a declaration as prescribed by  
4 Subsection (c).

5           (b) If the person named as executor or appointed as  
6 administrator with the will annexed elects to take an oath under  
7 this section, the person shall take and subscribe an oath in  
8 substantially the following form:

9           I do solemnly swear that the writing offered for probate is  
10 the last will of \_\_\_\_\_ (insert name of testator), so far as I  
11 know or believe, and that I will well and truly perform all the  
12 duties of \_\_\_\_\_ (insert "executor of the will" or  
13 "administrator with the will annexed," as applicable) for the  
14 estate of \_\_\_\_\_ (insert name of testator).

15           (c) If the person named as executor or appointed as  
16 administrator with the will annexed elects to make a declaration  
17 under this section, the person shall make and sign a declaration in  
18 substantially the following form:

19           My name is \_\_\_\_\_ (insert name of "executor of the will" or  
20 "administrator with the will annexed" as it appears on the order  
21 appointing the person as executor or administrator with the will  
22 annexed), my date of birth is \_\_\_\_\_ (insert date of birth of  
23 "executor of the will" or "administrator with the will annexed," as  
24 applicable), and my address is \_\_\_\_\_ (insert street, city,  
25 state, zip code, and country of "executor of the will" or  
26 "administrator with the will annexed," as applicable). I declare  
27 under penalty of perjury that the writing offered for probate is the

1 last will of \_\_\_\_\_ (insert name of testator), so far as I know or  
2 believe. I also solemnly declare that I will well and truly perform  
3 all the duties of \_\_\_\_\_ (insert "executor of will" or  
4 "administrator with the will annexed," as applicable) for the  
5 estate of \_\_\_\_\_ (insert name of testator).

6 SECTION 25. Section 305.052, Estates Code, is amended to  
7 read as follows:

8 Sec. 305.052. OATH OR DECLARATION OF ADMINISTRATOR.

9 (a) Before the issuance of letters of administration, the person  
10 appointed as administrator shall:

11 (1) take and subscribe an oath as prescribed by  
12 Subsection (b); or

13 (2) make and sign a declaration as prescribed by  
14 Subsection (c).

15 (b) If the person appointed as administrator elects to take  
16 an oath under this section, the person shall take and subscribe an  
17 oath in substantially the following form:

18 I do solemnly swear that \_\_\_\_\_ (insert name of  
19 decedent), deceased, died \_\_\_\_\_ (insert "without leaving any  
20 lawful will" or "leaving a lawful will, but the executor named in  
21 the will is dead or has failed to offer the will for probate or to  
22 accept and qualify as executor, within the period required," as  
23 applicable), so far as I know or believe, and that I will well and  
24 truly perform all the duties of administrator of the estate of  
25 \_\_\_\_\_ (insert name of testator) [~~the deceased~~].

26 (c) If the person appointed as administrator elects to make  
27 a declaration under this section, the person shall make and sign a

1 declaration in substantially the following form:

2 My name is \_\_\_\_\_ (insert name of administrator as it  
3 appears on the order appointing the person as administrator), my  
4 date of birth is \_\_\_\_\_ (insert date of birth of  
5 "administrator"), and my address is \_\_\_\_\_ (insert street, city,  
6 state, zip code, and country of "administrator"). I declare under  
7 penalty of perjury that \_\_\_\_\_ (insert name of decedent),  
8 deceased, died \_\_\_\_\_ (insert "without leaving any lawful will"  
9 or "leaving a lawful will, but the executor named in the will is  
10 dead or has failed to offer the will for probate or to accept and  
11 qualify as executor, within the period required," as applicable),  
12 so far as I know or believe. I also solemnly declare that I will  
13 well and truly perform all the duties of administrator of the estate  
14 of \_\_\_\_\_ (insert name of decedent).

15 SECTION 26. Section 305.053, Estates Code, is amended to  
16 read as follows:

17 Sec. 305.053. OATH OR DECLARATION OF TEMPORARY  
18 ADMINISTRATOR. (a) Before the issuance of temporary letters of  
19 administration, the person appointed as temporary administrator  
20 shall:

21 (1) take and subscribe an oath as prescribed by  
22 Subsection (b); or

23 (2) make and sign a declaration as prescribed by  
24 Subsection (c).

25 (b) If the person appointed as temporary administrator  
26 elects to take an oath under this section, the person shall take and  
27 subscribe an oath in substantially the following form:

1 I do solemnly swear that I will well and truly perform the  
2 duties of temporary administrator of the estate of \_\_\_\_\_  
3 (insert name of decedent), deceased, in accordance with the law,  
4 and with the order of the court appointing me as temporary  
5 administrator.

6 (c) If the person appointed as temporary administrator  
7 elects to make a declaration under this section, the person shall  
8 make and sign a declaration in substantially the following form:

9 My name is \_\_\_\_\_ (insert name of temporary administrator as  
10 it appears on the order appointing the person as temporary  
11 administrator), my date of birth is \_\_\_\_\_ (insert date of birth of  
12 "temporary administrator"), and my address is \_\_\_\_\_ (insert  
13 street, city, state, zip code, and country of "temporary  
14 administrator"). I solemnly declare that I will well and truly  
15 perform all the duties of temporary administrator of the estate of  
16 \_\_\_\_\_ (insert name of decedent), in accordance with the law, and  
17 with the order of the court appointing me as temporary  
18 administrator.

19 SECTION 27. Section 305.055, Estates Code, is amended to  
20 read as follows:

21 Sec. 305.055. FILING AND RECORDING OF OATH OR  
22 DECLARATION. An oath or declaration shall be:

23 (1) filed with the clerk of the court granting the  
24 letters testamentary or of administration, as applicable; and

25 (2) recorded in the judge's probate docket.

26 SECTION 28. Section 308.002(d), Estates Code, is amended to  
27 read as follows:

1 (d) The notice required by this section must be sent by a  
2 qualified delivery method [~~registered or certified mail, return~~  
3 ~~receipt requested~~].

4 SECTION 29. Section 308.051(a), Estates Code, is amended to  
5 read as follows:

6 (a) Within one month after receiving letters testamentary  
7 or of administration, a personal representative of an estate shall  
8 provide notice requiring each person who has a claim against the  
9 estate to present the claim within the period prescribed by law by:

10 (1) having the notice published in a newspaper of  
11 general circulation in the county in which the letters were issued;  
12 and

13 (2) if the decedent remitted or should have remitted  
14 taxes administered by the comptroller, sending the notice to the  
15 comptroller by a qualified delivery method [~~certified or registered~~  
16 ~~mail~~].

17 SECTION 30. Sections 308.053(c) and (d), Estates Code, are  
18 amended to read as follows:

19 (c) Notice provided under this section must be:

20 (1) sent by a qualified delivery method [~~certified or~~  
21 ~~registered mail, return receipt requested~~]; and

22 (2) addressed to the record holder of the claim at the  
23 record holder's last known post office address.

24 (d) The following shall be filed with the clerk of the court  
25 in which the letters testamentary or of administration were issued:

26 (1) a copy of each notice and of each return receipt or  
27 other proof of delivery receipt; and

1 (2) the personal representative's affidavit stating:

2 (A) that the notice was sent [~~mailed~~] as required  
3 by law; and

4 (B) the name of the person to whom the notice was  
5 sent [~~mailed~~], if that name is not shown on the notice or receipt.

6 SECTION 31. Section 308.054(a), Estates Code, is amended to  
7 read as follows:

8 (a) At any time before an estate administration is closed, a  
9 personal representative may give notice by a qualified delivery  
10 method [~~certified or registered mail, return receipt requested,~~] to  
11 an unsecured creditor who has a claim for money against the estate.

12 SECTION 32. Section 356.105(a), Estates Code, is amended to  
13 read as follows:

14 (a) A successful bid or contract for the sale of estate  
15 personal property shall be reported to the court. The laws  
16 regulating the approval or disapproval of a sale of real estate  
17 apply to the sale, except that a conveyance is not required.

18 SECTION 33. Section 356.654(b), Estates Code, is amended to  
19 read as follows:

20 (b) Before purchasing estate property as authorized by  
21 Subsection (a), the personal representative shall give notice of  
22 the purchase by a qualified delivery method [~~certified mail, return~~  
23 ~~receipt requested~~], unless the court requires another form of  
24 notice, to:

25 (1) each distributee of the estate; and

26 (2) each creditor whose claim remains unsettled after  
27 being presented within six months of the date letters testamentary

1 or of administration are originally granted.

2 SECTION 34. Section 361.052(b), Estates Code, is amended to  
3 read as follows:

4 (b) If a personal representative, as executor or  
5 administrator, fails to timely file the affidavit or certificate  
6 required by Section 308.004, the court, on the court's own motion,  
7 may remove the personal representative after providing 30 days'  
8 written notice to the personal representative to answer at a time  
9 and place set in the notice, by a qualified delivery method  
10 [~~certified mail, return receipt requested,~~] to:

- 11 (1) the representative's last known address; and  
12 (2) the last known address of the representative's  
13 attorney of record.

14 SECTION 35. Sections 362.005(b) and (c), Estates Code, are  
15 amended to read as follows:

16 (b) Citation issued under Subsection (a) must:

17 (1) contain:

18 (A) a statement that an account for final  
19 settlement has been presented;

20 (B) the time and place the court will consider  
21 the account; and

22 (C) a statement requiring the person cited to  
23 appear and contest the account, if the person wishes to contest the  
24 account; and

25 (2) be given to each heir or distributee of the  
26 decedent by a qualified delivery method [~~certified mail, return  
27 receipt requested,~~] unless the court by written order directs

1 another method of service to be given.

2 (c) The personal representative shall also provide to each  
3 person entitled to citation under Subsection (b) a copy of the  
4 account for final settlement either by:

5 (1) a qualified delivery method [~~certified mail,~~  
6 ~~return receipt requested~~]; or

7 (2) electronic delivery, including facsimile or  
8 e-mail.

9 SECTION 36. Section 403.056(a), Estates Code, is amended to  
10 read as follows:

11 (a) Notice to the independent executor required by Sections  
12 403.052 and 403.055 must be contained in:

13 (1) a written instrument that complies with Section  
14 355.004 and is sent by a qualified delivery method [~~hand-delivered~~  
15 ~~with proof of receipt, or mailed by certified mail, return receipt~~  
16 ~~requested with proof of receipt,~~] to the independent executor or  
17 the executor's attorney;

18 (2) a pleading filed in a lawsuit with respect to the  
19 claim; or

20 (3) a written instrument that complies with Section  
21 355.004 or a pleading filed in the court in which the administration  
22 of the estate is pending.

23 SECTION 37. Section 404.0035(a), Estates Code, is amended  
24 to read as follows:

25 (a) The probate court, on the court's own motion, may remove  
26 an independent executor appointed under this subtitle after  
27 providing 30 days' written notice of the court's intention to the

1 independent executor, requiring answering at a time and place set  
2 in the notice, by a qualified delivery method [~~certified mail,~~  
3 ~~return receipt requested~~], to the independent executor's last known  
4 address and to the last known address of the independent executor's  
5 attorney of record, if the independent executor:

6 (1) neglects to qualify in the manner and time  
7 required by law;

8 (2) fails to return, before the 91st day after the date  
9 the independent executor qualifies, either an inventory of the  
10 estate property and a list of claims that have come to the  
11 independent executor's knowledge or an affidavit in lieu of the  
12 inventory, appraisement, and list of claims, unless that deadline  
13 is extended by court order; or

14 (3) fails to timely file the affidavit or certificate  
15 required by Section 308.004.

16 SECTION 38. Section 452.006(a), Estates Code, is amended to  
17 read as follows:

18 (a) On the date the county clerk issues letters of temporary  
19 administration:

20 (1) the county clerk shall post on the courthouse door  
21 a notice of the appointment to all interested persons; and

22 (2) the appointee shall notify, by a qualified  
23 delivery method [~~certified mail, return receipt requested~~], the  
24 decedent's known heirs of the appointment.

25 SECTION 39. Section 453.003(a), Estates Code, is amended to  
26 read as follows:

27 (a) If there is no qualified executor or administrator of a

1 deceased spouse's estate, the surviving spouse, as the surviving  
2 partner of the marital partnership, may:

- 3 (1) sue and be sued to recover community property;
- 4 (2) sell, mortgage, lease, and otherwise dispose of  
5 community property to pay community debts, for which a portion of  
6 community property is liable for payment;
- 7 (3) collect claims due to the community estate; and
- 8 (4) exercise other powers as necessary to:
  - 9 (A) preserve the community property;
  - 10 (B) discharge community obligations, for which a  
11 portion of community property is liable for payment; and
  - 12 (C) wind up community affairs.

13 SECTION 40. Section 453.006, Estates Code, is amended to  
14 read as follows:

15 Sec. 453.006. ACCOUNT OF [~~COMMUNITY~~] DEBTS AND DISPOSITION  
16 OF COMMUNITY PROPERTY. (a) The surviving spouse shall keep a fair  
17 and full account and statement of:

- 18 (1) all [~~community~~] debts and expenses paid by the  
19 surviving spouse; and
- 20 (2) the disposition made of the community property.

21 (b) The surviving spouse or personal representative shall  
22 keep a separate, distinct account of all [~~community~~] debts allowed  
23 or paid in the administration and settlement of an estate described  
24 by Section 101.052 [~~Sections 101.052(a) and (b)~~].

25 SECTION 41. Section 453.007, Estates Code, is amended to  
26 read as follows:

27 Sec. 453.007. DELIVERY OF COMMUNITY ESTATE ON FINAL

1 PARTITION. On final partition of the community estate, the  
2 surviving spouse shall deliver to the deceased spouse's heirs or  
3 devisees their interest in the estate, and the increase in and  
4 profits of the interest, after deducting from the interest:

- 5 (1) the proportion of the [~~community~~] debts chargeable  
6 to the interest;
- 7 (2) unavoidable losses;
- 8 (3) necessary and reasonable expenses; and
- 9 (4) a reasonable commission for the management of the  
10 interest.

11 SECTION 42. The heading to Section 453.009, Estates Code,  
12 is amended to read as follows:

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

15 SECTION 43. Section 453.009(b), Estates Code, is amended to  
16 read as follows:

17 (b) During administration of a deceased spouse's estate,  
18 the [~~The~~] surviving spouse, as surviving partner of the marital  
19 partnership, is entitled to:

20 (1) retain possession and control of the community  
21 property that was legally under the sole management of the  
22 surviving spouse during the marriage; and

23 (2) exercise over that property any power this chapter  
24 authorizes the surviving spouse to exercise as if there is no  
25 administration pending on the deceased spouse's estate.

26 SECTION 44. Section 501.003(b), Estates Code, is amended to  
27 read as follows:

1 (b) For an application described by Section 501.002(b), a  
2 citation shall be issued and served by a qualified delivery method  
3 [~~registered or certified mail~~] on each devisee and heir identified  
4 in the application.

5 SECTION 45. Section 505.005(a), Estates Code, is amended to  
6 read as follows:

7 (a) On receipt of a notice or process described by Section  
8 505.004(a)(2), the secretary of state shall promptly forward the  
9 notice or process by a qualified delivery method [~~registered or~~  
10 ~~certified mail~~] to the officer, agent, or other person designated  
11 by the foreign corporate fiduciary under Section 505.004 to receive  
12 the notice or process.

13 SECTION 46. Section 505.101(a), Estates Code, is amended to  
14 read as follows:

15 (a) On giving notice by a qualified delivery method  
16 [~~registered or certified mail~~] to all creditors of a decedent in  
17 this state who have filed a claim against the decedent's estate for  
18 a debt due to the creditor, a foreign executor or administrator of a  
19 person who was a nonresident at the time of death may maintain a  
20 suit in this state for the recovery of debts due to the decedent.

21 SECTION 47. Section 551.005(b), Estates Code, is amended to  
22 read as follows:

23 (b) The clerk of a court that orders an executor or  
24 administrator to pay funds to the comptroller under Section 551.001  
25 shall provide to the comptroller, by a qualified delivery method  
26 [~~certified mail~~] or e-mail, a certified copy of the court order not  
27 later than the fifth day after the date the order is issued.

1 SECTION 48. Sections 51.052(b), (c), (d), (e), (f), and  
2 (g), 51.055(a), 51.056, 51.103(b), 56.002(b), 113.251(c), 202.051,  
3 202.203, 305.001, 305.002, 305.003, 305.051, 305.052, 305.053,  
4 305.055, 308.002(d), 308.051(a), 308.053(c) and (d), 308.054(a),  
5 356.654(b), 361.052(b), 362.005(b) and (c), 403.056(a),  
6 404.0035(a), 452.006(a), 501.003(b), 505.005(a), 505.101(a), and  
7 551.005(b), Estates Code, as amended by this Act, apply only to an  
8 action filed or proceeding commenced on or after the effective date  
9 of this Act.

10 SECTION 49. The amendments of this Act to Sections 101.052,  
11 202.005, 202.151(b) and (c), 251.053, 356.105(a), 453.003(a),  
12 453.006, 453.007, and 453.009, Estates Code, are intended to  
13 clarify rather than change existing law.

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

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

20 SECTION 52. Section 202.056, Estates Code, as amended by  
21 this Act, applies only to a proceeding to declare heirship  
22 commenced on or after the effective date of this Act. A proceeding  
23 to declare heirship commenced before that date is governed by the  
24 law in effect on the date the proceeding was commenced, and the  
25 former law is continued in effect for that purpose.

26 SECTION 53. Section 202.151(d), Estates Code, as added by  
27 this Act, applies only to a proceeding to declare heirship

1 commenced on or after the effective date of this Act. A proceeding  
2 to declare heirship commenced before that date is governed by the  
3 law in effect on the date the proceeding was commenced, and the  
4 former law is continued in effect for that purpose.

5 SECTION 54. Sections 258.002(d) and (e), Estates Code, as  
6 added by this Act, apply only to an application for the probate of a  
7 will filed on or after the effective date of this Act. An  
8 application for the probate of a will filed before that date is  
9 governed by the law in effect on the date the application was filed,  
10 and the former law is continued in effect for that purpose.

11 SECTION 55. Section 304.003, Estates Code, as amended by  
12 this Act, applies only to an application for letters testamentary  
13 or for letters of administration filed on or after the effective  
14 date of this Act. An application for letters testamentary or for  
15 letters of administration filed before the effective date of this  
16 Act is governed by the law in effect on the date the application was  
17 filed, and the former law is continued in effect for that purpose.

18 SECTION 56. This Act takes effect September 1, 2023.

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I hereby certify that S.B. No. 1373 passed the Senate on April 12, 2023, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendments on May 11, 2023, by the following vote: Yeas 30, Nays 0.

\_\_\_\_\_  
Secretary of the Senate

I hereby certify that S.B. No. 1373 passed the House, with amendments, on May 6, 2023, by the following vote: Yeas 132, Nays 4, one present not voting.

\_\_\_\_\_  
Chief Clerk of the House

Approved:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governor