

By: Zaffirini

S.B. No. 23

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to guardianships for persons who are incapacitated;  
3 changing a fee.

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 1023.002(c), Estates Code, is amended to  
18 read as follows:

19 (c) If it appears to the court at any time before the  
20 guardianship is closed that the proceeding was commenced in a court  
21 that did not have venue over the proceeding, the court shall, on the  
22 application of any interested person, transfer the proceeding to  
23 the proper county in the manner prescribed by Section 1023.006.

24 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  
15 of 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; conditioned  
18 that the above bound principal or principals, appointed by the  
19 judge as guardian or temporary guardian of the person or of the  
20 estate, or both, of \_\_\_\_\_ (name of ward and whether the person is a  
21 minor or is an incapacitated person other than a minor), shall well  
22 and truly perform all of the duties required of the guardian or  
23 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.