

By: Zaffirini

S.B. No. 44

A BILL TO BE ENTITLED

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

(a) On filing an application or on motion of a court to
transfer a guardianship to another county under Section 1023.002 or
1023.003, the sureties on the bond of the guardian shall be cited by
a qualified delivery method [~~personal service~~] to appear and show
cause why the guardianship should not be transferred.

SECTION 3. Section 1023.005(c), Estates Code, is amended to
read as follows:

(c) On receipt of an order described by Subsection (a), the
clerk of the court to which the guardianship is transferred
[~~county~~] shall accept the transfer of the guardianship.

SECTION 4. Sections 1023.006(a), (b), (c), (d), (e), and

1 (g), Estates Code, are amended to read as follows:

2 (a) Not later than the 10th working day after the date an
3 order of transfer is signed under Section 1023.002 or 1023.005, the
4 clerk shall record any unrecorded papers of the guardianship
5 required to be recorded. On payment of the clerk's fee, the clerk
6 shall send, using the electronic filing system established under
7 Section 72.031, Government Code, to the county clerk of the county
8 to which the guardianship was ordered transferred:

9 (1) a transfer certificate and certified index of
10 transferred documents;

11 (2) a copy of each [~~final~~] order;

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

14 (4) a copy of the original papers filed in the
15 transferring court, including any papers previously received on
16 transfer from a court in another county;

17 (5) a copy of the transfer certificate and certified
18 index of transferred documents from each previous transfer, if
19 applicable; and

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

22 (b) The clerk of the transferring court shall use the
23 standardized transfer certificate and certified index of
24 transferred documents form developed by the Office of Court
25 Administration of the Texas Judicial System under Section 72.037,
26 Government Code, when transferring a proceeding under this section.

27 (c) The clerk of the transferring court shall keep a copy of

1 the documents transferred under Subsection (a), including
2 transferred pleadings, orders, and all other papers filed into the
3 case record.

4 (d) The clerk of the court to which the proceeding is
5 transferred shall, subject to Section 1023.005:

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

8 (2) docket the suit; and

9 (3) notify, using the electronic filing system
10 established under Section 72.031, Government Code, all parties, the
11 clerk of the transferring court, and, if appropriate, the
12 transferring court's local registry that the suit has been
13 docketed.

14 (e) The clerk of the transferee court shall physically or
15 electronically mark or stamp the transfer certificate and certified
16 index of transferred documents to evidence the date and time of
17 acceptance under Subsection (d), but may not physically or
18 electronically mark or stamp any other document transferred under
19 Subsection (a).

20 (g) The clerks of both the transferee and transferring
21 courts may each produce under Chapter 51, Government Code,
22 certified or uncertified copies of documents transferred under
23 Subsection (a) but must include a copy of the transfer certificate
24 and certified index of transferred documents with each document
25 produced.

26 SECTION 5. Chapter 1023, Estates Code, is amended by adding
27 Section 1023.0071 to read as follows:

1 Sec. 1023.0071. TRANSFER FEE. (a) The fee for filing a
2 guardianship case transferred from another county under this
3 chapter in which the guardian has previously been appointed and
4 qualified in accordance with this title is \$45 payable to the clerk
5 of the court to which the case is transferred. No portion of this
6 fee may be sent to the state.

7 (b) A party may not be assessed any other filing fee by the
8 clerk of the court to which the guardianship is transferred in
9 connection with the filing and docketing of the transferred case.

10 (c) To the extent that this section conflicts with another
11 state statute, the Texas Rules of Civil Procedure, or other rules,
12 this section prevails.

13 SECTION 6. Section [1105.157](#), Estates Code, is amended by
14 amending Subsections (a) and (d) and adding Subsection (d-1) to
15 read as follows:

16 (a) Instead of giving a surety or sureties on a bond, or to
17 reduce the amount of a bond, the guardian of an estate may deposit
18 the guardian's own cash or securities acceptable to the court with:

19 (1) a financial institution as defined by Section
20 [201.101](#), Finance Code, that has its main office or a branch office
21 in this state; or

22 (2) the registry of the court, for which the clerk of
23 the court shall issue a receipt.

24 (d) A receipt issued by a depository under Subsection (c) or
25 a record of deposit to the registry of the court must be attached to
26 the guardian's bond and must be in substantially the following
27 form:

The State of Texas

County of _____ (insert name of county)

Know all persons by these presents that I/we, _____
(name of each principal), as principal, have deposited cash or
securities as evidenced by the attached receipt or record of
deposit issued by _____ (name of depository where cash or
securities are deposited or the name of the court) on _____ (date of
deposit), are held and firmly bound to the judge of _____ (insert
reference to appropriate judge), and that judge's successors in
office, in the sum of \$_____, having been so deposited;
conditioned that the above bound principal or principals, appointed
by the judge as guardian or temporary guardian of the person or of
the estate, or both, of _____ (name of ward and whether the
person is a minor or is an incapacitated person other than a minor),
shall well and truly perform all of the duties required of the
guardian or temporary guardian by law under appointment.

(d-1) The guardian's bond and depository receipt, if
applicable, shall ~~and~~ be delivered to and filed by the county
clerk after the bond ~~receipt~~ is approved by the judge.

SECTION 7. Section 1151.051(c), Estates Code, is amended to read as follows:

(c) A guardian of the person has:

(1) the right to have physical possession of the ward and to establish the ward's legal domicile;

(2) the duty to provide care, supervision, and protection for the ward;

(3) the duty to provide the ward with clothing, food,

1 medical care, and shelter;

2 (4) the power to consent to medical, psychiatric, and
3 surgical treatment other than the inpatient psychiatric commitment
4 of the ward;

5 (5) on application to and order of the court, the power
6 to establish a trust in accordance with 42 U.S.C. Section
7 1396p(d)(4)(B) and direct that the income of the ward as defined by
8 that section be paid directly to the trust, solely for the purpose
9 of the ward's eligibility for medical assistance under Chapter 32,
10 Human Resources Code; ~~and~~

11 (6) the duty to notify the court, as soon as
12 practicable, if the ward has died or is admitted to a medical
13 facility for acute care for a period of three or more days;

14 (7) the duty to notify the court not later than the
15 30th day after the date the ward's residence or address has changed;

16 (8) the duty to notify the court not later than the
17 30th day after the date of a change in the guardian's residence,
18 address, phone number, or any other information used by the court to
19 contact the guardian; and

20 (9) the power to sign documents necessary or
21 appropriate to facilitate employment of the ward if:

22 (A) the guardian was appointed with full
23 authority over the person of the ward under Section 1101.151; or

24 (B) the power is specified in the court order
25 appointing the guardian with limited powers over the person of the
26 ward under Section 1101.152.

27 SECTION 8. Section 1155.151(a), Estates Code, is amended to

1 read as follows:

2 (a) In a guardianship proceeding, the court costs of the
3 proceeding, including the costs described by Subsection (a-1),
4 shall, except as provided by Subsection (c), be paid as follows, and
5 the court shall issue the judgment accordingly:

6 (1) out of the guardianship estate, if a guardian of
7 the estate has been created for the benefit of the ward and the
8 court determines it is in the ward's best interest;

9 (2) out of the management trust, if a management trust
10 has been created for the benefit of the ward under Chapter 1301 and
11 the court determines it is in the ward's best interest;

12 (3) by the party to the proceeding who incurred the
13 costs, unless that party filed, on the party's own behalf, an
14 affidavit of inability to pay the costs under Rule 145, Texas Rules
15 of Civil Procedure, that shows the party is unable to afford the
16 costs, if:

17 (A) there is no guardianship estate or ~~[no]~~
18 management trust that has been created for the ward's benefit; or

19 (B) the assets of the guardianship estate or
20 management trust, as appropriate, are insufficient to pay the
21 costs; or

22 (4) out of the county treasury if:

23 (A) there is no guardianship estate or management
24 trust or the assets of the guardianship estate or management trust,
25 as appropriate, are insufficient to pay the costs; and

26 (B) the party to the proceeding who incurred the
27 costs filed, on the party's own behalf, an affidavit of inability to

1 pay the costs under Rule 145, Texas Rules of Civil Procedure, that
2 shows the party is unable to afford the costs.

3 SECTION 9. The heading to Section 1156.052, Estates Code,
4 is amended to read as follows:

5 Sec. 1156.052. ALLOWANCE FOR WARD'S SPOUSE, MINOR CHILDREN,
6 OR INCAPACITATED ADULT CHILDREN [~~DEPENDENT~~].

7 SECTION 10. Section 1156.052, Estates Code, is amended by
8 amending Subsections (a) and (b) and adding Subsection (d) to read
9 as follows:

10 (a) Subject to Section 1156.051 and on application to the
11 court, the court may order the guardian of the estate of a ward to
12 spend money from the ward's estate for the education and
13 maintenance of the ward's spouse, minor children, or incapacitated
14 adult children [~~dependent~~].

15 (b) In determining whether to order the expenditure of money
16 from a ward's estate for the ward's spouse, minor children, or
17 incapacitated adult children [~~dependent~~], as appropriate, under
18 this section, the court shall consider:

19 (1) the circumstances of the ward, the ward's spouse,
20 and the ward's minor children and incapacitated adult children
21 [~~dependents~~];

22 (2) the ability and duty of the ward's spouse to
23 support himself or herself and the ward's minor children or
24 incapacitated adult children [~~dependent~~];

25 (3) the size of the ward's estate;

26 (4) a beneficial interest the ward or the ward's
27 spouse, minor children, or incapacitated adult children have [~~or~~

1 ~~dependent has]~~ in a trust; and

2 (5) an existing estate plan, including a trust or
3 will, that provides a benefit to the ward's spouse, minor children,
4 or incapacitated adult children ~~[dependent]~~.

5 (d) Copies of the notices sent under Subsection (c) must be
6 filed with the court with a copy of the proof of delivery receipt
7 for each notice sent.

8 SECTION 11. Section 1203.006, Estates Code, is amended to
9 read as follows:

10 Sec. 1203.006. REQUIREMENTS FOR DISCHARGE. (a) A
11 guardian applying to resign may not be discharged until:

- 12 (1) the resignation application has been heard;
13 (2) the exhibit and final account or report required
14 under Section 1203.001 has been examined, settled, and approved;
15 and

16 (3) the guardian ~~[applicant]~~ has satisfied the court
17 that the guardian ~~[applicant]~~ has:

18 (A) delivered any estate property remaining in
19 the guardian's ~~[applicant's]~~ possession; or

20 (B) complied with all court orders relating to
21 the guardian's ~~[applicant's]~~ trust as guardian.

22 (b) When a guardian applying to resign has fully complied
23 with the court orders, the court shall enter an order:

- 24 (1) accepting the resignation; ~~[and]~~
25 (2) discharging the guardian;
26 (3) canceling the letters issued to the guardian; and
27 (4) [applicant and,] if the guardian ~~[applicant]~~ is

1 under bond, discharging and releasing the [~~applicant's~~] sureties on
2 the guardian's bond.

3 SECTION 12. Section 1204.105, Estates Code, is amended by
4 adding Subsection (h) to read as follows:

5 (h) The guardian of the estate shall file an affidavit sworn
6 to by the guardian or a certificate signed by the guardian's
7 attorney stating:

8 (1) the name of each person to whom citation was served
9 under this section, indicating the method of service;

10 (2) the name of each person executing a waiver of
11 citation under Subsection (d); and

12 (3) that each person whose whereabouts are known or
13 can be reasonably ascertained who is entitled to citation under
14 this section was provided a copy of the account for final
15 settlement, indicating the method of delivery for each person to
16 whom a copy was provided.

17 SECTION 13. Section 1204.151, Estates Code, is amended to
18 read as follows:

19 Sec. 1204.151. DISCHARGE OF GUARDIAN WHEN NO ESTATE
20 PROPERTY REMAINS. The court shall enter an order discharging a
21 guardian from the guardian's trust, canceling the letters issued to
22 the guardian of the estate, and closing the guardianship estate if,
23 on final settlement of the estate, none of the estate remains in the
24 guardian's possession.

25 SECTION 14. Section 1204.152, Estates Code, is amended to
26 read as follows:

27 Sec. 1204.152. DISCHARGE OF GUARDIAN WHEN ESTATE FULLY

1 ADMINISTERED. The court shall enter an order discharging a
2 guardian of the estate from the guardian's trust, canceling the
3 letters issued to the guardian of the estate, and declaring the
4 estate closed when:

5 (1) the guardian has fully administered the estate in
6 accordance with this title and the court's orders;

7 (2) the guardian's account for final settlement has
8 been approved; and

9 (3) the guardian has delivered all of the estate
10 remaining in the guardian's possession to any person entitled to
11 receive the estate.

12 SECTION 15. Section 1251.005(a), Estates Code, is amended
13 to read as follows:

14 (a) On the filing of an application for temporary
15 guardianship, the court clerk shall issue:

16 (1) citation to be personally served on:

17 (A) the proposed ward; and

18 (B) the proposed temporary guardian named in the
19 application, if that person is not the applicant; and

20 (2) notice to be served in the manner provided under
21 Rule 21a, Texas Rules of Civil Procedure, on the proposed ward's
22 appointed attorney.

23 SECTION 16. Section 1023.008, Estates Code, is repealed.

24 SECTION 17. (a) Except as otherwise provided by this
25 section, the changes in law made by this Act apply to a guardianship
26 created before, on, or after the effective date of this Act.

27 (b) Sections 1023.002(c), 1023.004(a), 1023.005(c), and

1 1023.006(a), (b), (c), (d), (e), and (g), Estates Code, as amended
2 by this Act, and Section 1023.0071, Estates Code, as added by this
3 Act, apply only to an application filed or motion made to transfer a
4 guardianship on or after the effective date of this Act. An
5 application filed or motion made before the effective date of this
6 Act is governed by the law in effect on the date the application was
7 filed or motion was made, and the former law is continued in effect
8 for that purpose.

9 (c) Sections 1156.052 and 1251.005(a), Estates Code, as
10 amended by this Act, apply only to an application filed on or after
11 the effective date of this Act. An application filed before the
12 effective date of this Act is governed by the law in effect on the
13 date the application was filed, and the former law is continued in
14 effect for that purpose.

15 SECTION 18. This Act takes effect on the 91st day after the
16 last day of the legislative session.