

By: Zaffirini

S.B. No. 2248

A BILL TO BE ENTITLED

AN ACT

1
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. Section 1023.002(c), Estates Code, is amended to
6 read as follows:

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

12 SECTION 2. Sections 1023.004(a) and (c), Estates Code, are
13 amended to read as follows:

14 (a) On filing an application or on motion of a court to
15 transfer a guardianship to another county under Section 1023.002 or
16 1023.003, the sureties on the bond of the guardian shall be cited by
17 certified mail, return receipt requested, [~~personal service~~] to
18 appear and show cause why the guardianship should not be
19 transferred.

20 (c) If a court made a motion to transfer a guardianship, the
21 guardian shall be given notice by certified mail, return receipt
22 requested, to appear and show cause why the guardianship should not
23 be transferred.

24 SECTION 3. Section 1023.005(c), Estates Code, is amended to

1 read as follows:

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

5 SECTION 4. Section 1023.006, Estates Code, is amended to
6 read as follows:

7 Sec. 1023.006. TRANSFER OF RECORD. (a) When an order of
8 transfer is made under Section 1023.002 or 1023.005, the clerk of
9 the court transferring a proceeding shall, using the electronic
10 filing system established under Section 72.031, Government Code,
11 send to the proper court in the county to which the transfer is
12 made:

13 (1) a transfer certificate and certified index of
14 transferred documents;

15 (2) a copy of each order, including a copy of the order
16 of transfer signed by the transferring court;

17 (3) a copy of the original papers filed in the
18 transferring court, including any papers previously received on
19 transfer from a court in another county;

20 (4) a copy of the transfer certificate and certified
21 index of transferred documents from each previous transfer, if
22 applicable; and

23 (5) a bill of any costs that have accrued in the
24 transferring court.

25 (b) The clerk of the transferring court shall use the
26 standardized transfer certificate and index of transferred
27 documents form created by the Office of Court Administration of the

1 Texas Judicial System under Section 72.037, Government Code, when
2 transferring a proceeding under this section.

3 (c) The clerk of the transferring court shall keep a copy of
4 transferred pleadings, orders, and all other papers filed into the
5 case record.

6 (d) The clerk of the transferee court shall, subject to
7 Section 1023.005, accept the documents transferred under
8 Subsection (a) and docket the case.

9 (e) The clerk of the transferee court shall physically or
10 electronically mark or stamp the transfer certificate and index of
11 transferred documents to evidence the date and time of acceptance
12 under Subsection (c) but may not physically or electronically mark
13 or stamp any other document transferred under Subsection (a).

14 (f) Sections 80.001 and 80.002, Government Code, do not
15 apply to the transfer of documents under this section [~~shall record~~
16 ~~any unrecorded papers of the guardianship required to be~~
17 ~~recorded. On payment of the clerk's fee, the clerk shall transmit~~
18 ~~in electronic or paper form to the county clerk of the county to~~
19 ~~which the guardianship was ordered transferred:~~

20 ~~[(1) the case file of the guardianship proceedings,~~
21 ~~and~~

22 ~~[(2) a certified copy of the index of the guardianship~~
23 ~~records].~~

24 SECTION 5. Section 1023.007, Estates Code, is amended to
25 read as follows:

26 Sec. 1023.007. TRANSFER EFFECTIVE. The order transferring
27 a guardianship does not take effect until:

1 (1) the case file and a certified copy of the index
2 required by Section 1023.006 are filed in electronic or paper form
3 in the office of the county clerk of the county to which the
4 guardianship was ordered transferred; and

5 (2) a certificate under the court's ~~[clerk's]~~ official
6 seal and reporting the filing of the case file and a certified copy
7 of the index is filed using the electronic filing system
8 established under Section 72.031, Government Code, ~~[in electronic~~
9 ~~or paper form]~~ in the court ordering the transfer by the county
10 clerk of the county to which the guardianship was ordered
11 transferred.

12 SECTION 6. Chapter 1023, Estates Code, is amended by adding
13 Section 1023.0071 to read as follows:

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

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

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

26 SECTION 7. Subchapter I, Chapter 1104, Estates Code, is
27 amended by adding Section 1104.4015 to read as follows:

1 Sec. 1104.4015. CRIMINAL HISTORY RECORD INFORMATION
2 REQUIRED. A court may not appoint an individual to serve as
3 guardian or temporary guardian under this title unless the criminal
4 history record information relating to the proposed guardian has
5 been:

6 (1) provided to the court by the Judicial Branch
7 Certification Commission in accordance with Subchapter E, Chapter
8 155, Government Code; and

9 (2) considered by the court as required by Section
10 1104.409.

11 SECTION 8. Section 1104.405, Estates Code, is amended to
12 read as follows:

13 Sec. 1104.405. INFORMATION FOR EXCLUSIVE USE OF
14 COURT. (a) Criminal history record information [~~obtained or~~]
15 provided to the court as specified under Section 1104.4015
16 [~~1104.402, 1104.403, or 1104.404~~] is privileged and confidential
17 and is for the exclusive use of the court. The criminal history
18 record information may not be released or otherwise disclosed to
19 any person or agency except on court order or consent of the person
20 being investigated.

21 (b) The county clerk shall [~~may~~] destroy the criminal
22 history record information after the information is used for the
23 purposes authorized by this subchapter.

24 SECTION 9. Section 1104.408(a), Estates Code, is amended to
25 read as follows:

26 (a) Criminal history record information obtained under
27 Section 1104.407 is privileged and confidential and is for the

1 exclusive use of the court or guardianship certification program of
2 the Judicial Branch Certification Commission, as appropriate. The
3 information may not be released or otherwise disclosed to any
4 person or agency except:

- 5 (1) on court order;
- 6 (2) with the consent of the person being investigated;
- 7 or
- 8 (3) as authorized by [~~Section 1104.404 of this code~~
9 ~~or~~] Section 411.1386(a-6), Government Code.

10 SECTION 10. Section 1105.002(a), Estates Code, is amended
11 to 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 11. 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 ~~receipt~~ bond is approved by the judge.

27 SECTION 12. 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 13. 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 14. 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 15. 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 16. 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 mail notice of the application by certified
9 mail, return receipt requested, to all interested persons.

10 (d) Copies of the notices mailed under Subsection (c) must
11 be filed with the court with a copy of the certified mail return
12 receipt for each notice mailed.

13 SECTION 17. Section 1203.006, Estates Code, is amended to
14 read as follows:

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

- 17 (1) the resignation application has been heard;
18 (2) the exhibit and final account or report required
19 under Section 1203.001 has been examined, settled, and approved;
20 and

21 (3) the guardian [~~applicant~~] has satisfied the court
22 that the guardian [~~applicant~~] has:

- 23 (A) delivered any estate property remaining in
24 the guardian's [~~applicant's~~] possession; or
25 (B) complied with all court orders relating to
26 the guardian's [~~applicant's~~] trust as guardian.

27 (b) When a guardian applying to resign has fully complied

1 with the court orders, the court shall enter an order:

- 2 (1) accepting the resignation; ~~[and]~~
- 3 (2) discharging the guardian;
- 4 (3) canceling the letters issued to the guardian; and
- 5 (4) [applicant and,] if the guardian ~~[applicant]~~ is
- 6 under bond, discharging and releasing the ~~[applicant's]~~ sureties on
- 7 the guardian's bond.

8 SECTION 18. Section 1204.105, Estates Code, is amended by

9 adding Subsection (h) to read as follows:

10 (h) The guardian of the estate shall file an affidavit sworn

11 to by the guardian or a certificate signed by the guardian's

12 attorney stating:

13 (1) the name of each person to whom citation was served

14 under this section, indicating the method of service;

15 (2) the name of each person executing a waiver of

16 citation under Subsection (d); and

17 (3) that each person whose whereabouts are known or

18 can be reasonably ascertained who is entitled to citation under

19 this section was provided a copy of the account for final

20 settlement, indicating the method of delivery for each person to

21 whom a copy was provided.

22 SECTION 19. Section 1204.151, Estates Code, is amended to

23 read as follows:

24 Sec. 1204.151. DISCHARGE OF GUARDIAN WHEN NO ESTATE

25 PROPERTY REMAINS. The court shall enter an order discharging a

26 guardian from the guardian's trust, canceling the letters issued to

27 the guardian of the estate, and closing the guardianship estate if,

1 on final settlement of the estate, none of the estate remains in the
2 guardian's possession.

3 SECTION 20. Section 1204.152, Estates Code, is amended to
4 read as follows:

5 Sec. 1204.152. DISCHARGE OF GUARDIAN WHEN ESTATE FULLY
6 ADMINISTERED. The court shall enter an order discharging a
7 guardian of the estate from the guardian's trust, canceling the
8 letters issued to the guardian of the estate, and declaring the
9 estate closed when:

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

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

14 (3) the guardian has delivered all of the estate
15 remaining in the guardian's possession to any person entitled to
16 receive the estate.

17 SECTION 21. Section 1251.005(a), Estates Code, is amended
18 to read as follows:

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

21 (1) citation to be personally served on:

22 (A) the proposed ward; and

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

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

1 SECTION 22. Section 411.1386(d), Government Code, is
2 amended to read as follows:

3 (d) The criminal history record information obtained under
4 Subsection (a-4) is for the exclusive use of the court or
5 guardianship certification program of the Judicial Branch
6 Certification Commission, as appropriate, and is privileged and
7 confidential. The information may not be released or otherwise
8 disclosed to any person or agency except on court order, with the
9 consent of the person being investigated, or as authorized by
10 Subsection (a-6) [~~or Section 1104.404, Estates Code~~]. The county
11 clerk or guardianship certification program of the Judicial Branch
12 Certification Commission may destroy the criminal history record
13 information after the information is used for the purposes
14 authorized by this section.

15 SECTION 23. Section 411.1408(c), Government Code, is
16 amended to read as follows:

17 (c) Criminal history record information obtained by the
18 commission under Subsection (b):

19 (1) may be used by the commission for any purpose
20 related to the issuance, denial, suspension, revocation, or renewal
21 of a certificate, registration, or license issued by the commission
22 or otherwise under Subtitle L, Title 2;

23 (2) may not be released or disclosed to any person
24 except:

25 (A) on court order;

26 (B) with the consent of the person who is the
27 subject of the information; or

1 (C) as authorized by Section 411.1386(a-6) [~~of~~
2 ~~this code or Section 1104.404, Estates Code~~], if applicable; and

3 (3) shall be destroyed by the commission after the
4 information is used for the authorized purposes.

5 SECTION 24. The following provisions of the Estates Code
6 are repealed:

7 (1) Section 1023.008;

8 (2) Section 1104.402;

9 (3) Section 1104.403; and

10 (4) Section 1104.404.

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

14 (b) Sections 1023.002(c), 1023.004(a) and (c), 1023.005(c),
15 1023.006, and 1023.007, Estates Code, as amended by this Act, and
16 Section 1023.0071, Estates Code, as added by this Act, apply only to
17 an application filed or motion made to transfer a guardianship on or
18 after the effective date of this Act.

19 (c) Sections 1023.006, 1156.052, and 1251.005(a), Estates
20 Code, as amended by this Act, apply only to an application filed on
21 or after the effective date of this Act. An application filed
22 before the effective date of this Act is governed by the law in
23 effect on the date the application was filed, and the former law is
24 continued in effect for that purpose.

25 SECTION 26. This Act takes effect September 1, 2023.