

1-1 By: Zaffirini S.B. No. 2248
1-2 (In the Senate - Filed March 10, 2023; March 22, 2023, read
1-3 first time and referred to Committee on Jurisprudence;
1-4 April 24, 2023, reported favorably by the following vote: Yeas 5,
1-5 Nays 0; April 24, 2023, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	X			
1-9	X			
1-10	X			
1-11	X			
1-12	X			

1-13 A BILL TO BE ENTITLED
1-14 AN ACT

1-15 relating to guardianships for persons who are incapacitated;
1-16 changing a fee.

1-17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-18 SECTION 1. Section 1023.002(c), Estates Code, is amended to
1-19 read as follows:

1-20 (c) If it appears to the court at any time before the
1-21 guardianship is closed that the proceeding was commenced in a court
1-22 that did not have venue over the proceeding, the court shall, on the
1-23 application of any interested person, transfer the proceeding to
1-24 the proper county in the manner prescribed by Section 1023.006.

1-25 SECTION 2. Sections 1023.004(a) and (c), Estates Code, are
1-26 amended to read as follows:

1-27 (a) On filing an application or on motion of a court to
1-28 transfer a guardianship to another county under Section 1023.002 or
1-29 1023.003, the sureties on the bond of the guardian shall be cited by
1-30 certified mail, return receipt requested, [~~personal service~~] to
1-31 appear and show cause why the guardianship should not be
1-32 transferred.

1-33 (c) If a court made a motion to transfer a guardianship, the
1-34 guardian shall be given notice by certified mail, return receipt
1-35 requested, to appear and show cause why the guardianship should not
1-36 be transferred.

1-37 SECTION 3. Section 1023.005(c), Estates Code, is amended to
1-38 read as follows:

1-39 (c) On receipt of an order described by Subsection (a), the
1-40 clerk of the court to which the guardianship is transferred
1-41 [county] shall accept the transfer of the guardianship.

1-42 SECTION 4. Section 1023.006, Estates Code, is amended to
1-43 read as follows:

1-44 Sec. 1023.006. TRANSFER OF RECORD. (a) When an order of
1-45 transfer is made under Section 1023.002 or 1023.005, the clerk of
1-46 the court transferring a proceeding shall, using the electronic
1-47 filing system established under Section 72.031, Government Code,
1-48 send to the proper court in the county to which the transfer is
1-49 made:

1-50 (1) a transfer certificate and certified index of
1-51 transferred documents;

1-52 (2) a copy of each order, including a copy of the order
1-53 of transfer signed by the transferring court;

1-54 (3) a copy of the original papers filed in the
1-55 transferring court, including any papers previously received on
1-56 transfer from a court in another county;

1-57 (4) a copy of the transfer certificate and certified
1-58 index of transferred documents from each previous transfer, if
1-59 applicable; and

1-60 (5) a bill of any costs that have accrued in the
1-61 transferring court.

2-1 (b) The clerk of the transferring court shall use the
2-2 standardized transfer certificate and index of transferred
2-3 documents form created by the Office of Court Administration of the
2-4 Texas Judicial System under Section 72.037, Government Code, when
2-5 transferring a proceeding under this section.

2-6 (c) The clerk of the transferring court shall keep a copy of
2-7 transferred pleadings, orders, and all other papers filed into the
2-8 case record.

2-9 (d) The clerk of the transferee court shall, subject to
2-10 Section 1023.005, accept the documents transferred under
2-11 Subsection (a) and docket the case.

2-12 (e) The clerk of the transferee court shall physically or
2-13 electronically mark or stamp the transfer certificate and index of
2-14 transferred documents to evidence the date and time of acceptance
2-15 under Subsection (c) but may not physically or electronically mark
2-16 or stamp any other document transferred under Subsection (a).

2-17 (f) Sections 80.001 and 80.002, Government Code, do not
2-18 apply to the transfer of documents under this section [~~shall record~~
2-19 ~~any unrecorded papers of the guardianship required to be~~
2-20 ~~recorded. On payment of the clerk's fee, the clerk shall transmit~~
2-21 ~~in electronic or paper form to the county clerk of the county to~~
2-22 ~~which the guardianship was ordered transferred.~~

2-23 [~~(1) the case file of the guardianship proceedings,~~
2-24 ~~and~~

2-25 [~~(2) a certified copy of the index of the guardianship~~
2-26 ~~records].~~

2-27 SECTION 5. Section 1023.007, Estates Code, is amended to
2-28 read as follows:

2-29 Sec. 1023.007. TRANSFER EFFECTIVE. The order transferring
2-30 a guardianship does not take effect until:

2-31 (1) the case file and a certified copy of the index
2-32 required by Section 1023.006 are filed in electronic or paper form
2-33 in the office of the county clerk of the county to which the
2-34 guardianship was ordered transferred; and

2-35 (2) a certificate under the court's [~~clerk's~~] official
2-36 seal and reporting the filing of the case file and a certified copy
2-37 of the index is filed using the electronic filing system
2-38 established under Section 72.031, Government Code, [~~in electronic~~
2-39 ~~or paper form]~~ in the court ordering the transfer by the county
2-40 clerk of the county to which the guardianship was ordered
2-41 transferred.

2-42 SECTION 6. Chapter 1023, Estates Code, is amended by adding
2-43 Section 1023.0071 to read as follows:

2-44 Sec. 1023.0071. TRANSFER FEE. (a) The fee for filing a
2-45 guardianship case transferred from another county under this
2-46 chapter in which the guardian has previously been appointed and
2-47 qualified in accordance with this title is \$45 payable to the clerk
2-48 of the court to which the case is transferred. No portion of this
2-49 fee may be sent to the state.

2-50 (b) A party may not be assessed any other filing fee by the
2-51 clerk of the court to which the guardianship is transferred in
2-52 connection with the filing and docketing of the transferred case.

2-53 (c) To the extent that this section conflicts with another
2-54 state statute, the Texas Rules of Civil Procedure, or other rules,
2-55 this section prevails.

2-56 SECTION 7. Subchapter I, Chapter 1104, Estates Code, is
2-57 amended by adding Section 1104.4015 to read as follows:

2-58 Sec. 1104.4015. CRIMINAL HISTORY RECORD INFORMATION
2-59 REQUIRED. A court may not appoint an individual to serve as
2-60 guardian or temporary guardian under this title unless the criminal
2-61 history record information relating to the proposed guardian has
2-62 been:

2-63 (1) provided to the court by the Judicial Branch
2-64 Certification Commission in accordance with Subchapter E, Chapter
2-65 155, Government Code; and

2-66 (2) considered by the court as required by Section
2-67 1104.409.

2-68 SECTION 8. Section 1104.405, Estates Code, is amended to
2-69 read as follows:

3-1 Sec. 1104.405. INFORMATION FOR EXCLUSIVE USE OF
3-2 COURT. (a) Criminal history record information [~~obtained or~~
3-3 provided to the court as specified under Section 1104.4015
3-4 [~~1104.402, 1104.403, or 1104.404~~] is privileged and confidential
3-5 and is for the exclusive use of the court. The criminal history
3-6 record information may not be released or otherwise disclosed to
3-7 any person or agency except on court order or consent of the person
3-8 being investigated.

3-9 (b) The county clerk shall [~~may~~] destroy the criminal
3-10 history record information after the information is used for the
3-11 purposes authorized by this subchapter.

3-12 SECTION 9. Section 1104.408(a), Estates Code, is amended to
3-13 read as follows:

3-14 (a) Criminal history record information obtained under
3-15 Section 1104.407 is privileged and confidential and is for the
3-16 exclusive use of the court or guardianship certification program of
3-17 the Judicial Branch Certification Commission, as appropriate. The
3-18 information may not be released or otherwise disclosed to any
3-19 person or agency except:

- 3-20 (1) on court order;
- 3-21 (2) with the consent of the person being investigated;

3-22 or

- 3-23 (3) as authorized by [~~Section 1104.404 of this code~~
3-24 ~~or~~] Section 411.1386(a-6), Government Code.

3-25 SECTION 10. Section 1105.002(a), Estates Code, is amended
3-26 to read as follows:

3-27 (a) Except as provided by Subsection (b), a guardian is
3-28 considered to have qualified when the guardian has:

- 3-29 (1) taken and filed the oath, or made and filed the
3-30 declaration, required under Section 1105.051;
- 3-31 (2) given the required bond;
- 3-32 (3) [~~filed the bond with the clerk; and~~
3-33 [~~4~~] obtained the judge's approval of the bond; and
3-34 (4) filed the bond with the clerk.

3-35 SECTION 11. Section 1105.157, Estates Code, is amended by
3-36 amending Subsections (a) and (d) and adding Subsection (d-1) to
3-37 read as follows:

3-38 (a) Instead of giving a surety or sureties on a bond, or to
3-39 reduce the amount of a bond, the guardian of an estate may deposit
3-40 the guardian's own cash or securities acceptable to the court with:

- 3-41 (1) a financial institution as defined by Section
3-42 201.101, Finance Code, that has its main office or a branch office
3-43 in this state; or
3-44 (2) the registry of the court, for which the clerk of
3-45 the court shall issue a receipt.

3-46 (d) A receipt issued by a depository under Subsection (c) or
3-47 a record of deposit to the registry of the court must be attached to
3-48 the guardian's bond and must be in substantially the following
3-49 form:

3-50 The State of Texas
3-51 County of _____ (insert name of county)
3-52 Know all persons by these presents that I/we, _____
3-53 (name of each principal), as principal, have deposited cash or
3-54 securities as evidenced by the attached receipt or record of
3-55 deposit issued by _____ (name of depository where cash or
3-56 securities are deposited or the name of the court) on _____ (date of
3-57 deposit), are held and firmly bound to the judge of _____ (insert
3-58 reference to appropriate judge), and that judge's successors in
3-59 office, in the sum of \$_____, having been so deposited;
3-60 conditioned that the above bound principal or principals, appointed
3-61 by the judge as guardian or temporary guardian of the person or of
3-62 the estate, or both, of _____ (name of ward and whether the
3-63 person is a minor or is an incapacitated person other than a minor),
3-64 shall well and truly perform all of the duties required of the
3-65 guardian or temporary guardian by law under appointment.

3-66 (d-1) The guardian's bond and depository receipt, if
3-67 applicable, shall [~~and~~] be delivered to and filed by the county
3-68 clerk after the bond [~~receipt~~] is approved by the judge.

3-69 SECTION 12. Section 1106.001(a), Estates Code, is amended

4-1 to read as follows:

4-2 (a) When a person who is appointed guardian has qualified
4-3 under Section 1105.002, the clerk shall issue to the guardian a
4-4 certificate under the court's seal stating:

4-5 (1) the fact of the appointment and of the
4-6 qualification;

4-7 (2) the date of the appointment and of the
4-8 qualification; and

4-9 (3) the date the letters of guardianship expire.

4-10 SECTION 13. Section 1106.005, Estates Code, is amended to
4-11 read as follows:

4-12 Sec. 1106.005. EFFECT OF LETTERS [OR
4-13 ~~CERTIFICATE~~]. (a) Letters of guardianship [~~or a certificate~~]
4-14 issued as prescribed by [under] Section 1106.001 under the court's
4-15 seal by [of] the clerk of the court that granted the letters are
4-16 [~~is~~] sufficient evidence of:

4-17 (1) the appointment and qualification of the guardian;
4-18 and

4-19 (2) the date of qualification.

4-20 (b) The court order that appoints the guardian is evidence
4-21 of the authority granted to the guardian and of the scope of the
4-22 powers and duties that the guardian may exercise only after the date
4-23 letters of guardianship [~~or a certificate has~~] have been issued
4-24 under Section 1106.001.

4-25 SECTION 14. Section 1151.051(c), Estates Code, is amended
4-26 to read as follows:

4-27 (c) A guardian of the person has:

4-28 (1) the right to have physical possession of the ward
4-29 and to establish the ward's legal domicile;

4-30 (2) the duty to provide care, supervision, and
4-31 protection for the ward;

4-32 (3) the duty to provide the ward with clothing, food,
4-33 medical care, and shelter;

4-34 (4) the power to consent to medical, psychiatric, and
4-35 surgical treatment other than the inpatient psychiatric commitment
4-36 of the ward;

4-37 (5) on application to and order of the court, the power
4-38 to establish a trust in accordance with 42 U.S.C. Section
4-39 1396p(d)(4)(B) and direct that the income of the ward as defined by
4-40 that section be paid directly to the trust, solely for the purpose
4-41 of the ward's eligibility for medical assistance under Chapter 32,
4-42 Human Resources Code; [~~and~~]

4-43 (6) the duty to notify the court, as soon as
4-44 practicable, if the ward has died or is admitted to a medical
4-45 facility for acute care for a period of three or more days;

4-46 (7) the duty to notify the court not later than the
4-47 30th day after the date the ward's residence or address has changed;

4-48 (8) the duty to notify the court not later than the
4-49 30th day after the date of a change in the guardian's residence,
4-50 address, phone number, or any other information used by the court to
4-51 contact the guardian; and

4-52 (9) the power to sign documents necessary or
4-53 appropriate to facilitate employment of the ward if:

4-54 (A) the guardian was appointed with full
4-55 authority over the person of the ward under Section 1101.151; or

4-56 (B) the power is specified in the court order
4-57 appointing the guardian with limited powers over the person of the
4-58 ward under Section 1101.152.

4-59 SECTION 15. Section 1155.151(a), Estates Code, is amended
4-60 to read as follows:

4-61 (a) In a guardianship proceeding, the court costs of the
4-62 proceeding, including the costs described by Subsection (a-1),
4-63 shall, except as provided by Subsection (c), be paid as follows, and
4-64 the court shall issue the judgment accordingly:

4-65 (1) out of the guardianship estate, if a guardian of
4-66 the estate has been created for the benefit of the ward and the
4-67 court determines it is in the ward's best interest;

4-68 (2) out of the management trust, if a management trust
4-69 has been created for the benefit of the ward under Chapter 1301 and

5-1 the court determines it is in the ward's best interest;

5-2 (3) by the party to the proceeding who incurred the
 5-3 costs, unless that party filed, on the party's own behalf, an
 5-4 affidavit of inability to pay the costs under Rule 145, Texas Rules
 5-5 of Civil Procedure, that shows the party is unable to afford the
 5-6 costs, if:

5-7 (A) there is no guardianship estate or [~~no~~]
 5-8 management trust that has been created for the ward's benefit; or

5-9 (B) the assets of the guardianship estate or
 5-10 management trust, as appropriate, are insufficient to pay the
 5-11 costs; or

5-12 (4) out of the county treasury if:

5-13 (A) there is no guardianship estate or management
 5-14 trust or the assets of the guardianship estate or management trust,
 5-15 as appropriate, are insufficient to pay the costs; and

5-16 (B) the party to the proceeding who incurred the
 5-17 costs filed, on the party's own behalf, an affidavit of inability to
 5-18 pay the costs under Rule 145, Texas Rules of Civil Procedure, that
 5-19 shows the party is unable to afford the costs.

5-20 SECTION 16. Section 1156.052, Estates Code, is amended to
 5-21 read as follows:

5-22 Sec. 1156.052. ALLOWANCE FOR WARD'S SPOUSE, MINOR CHILDREN,
 5-23 OR INCAPACITATED ADULT CHILDREN [~~DEPENDENT~~]. (a) Subject to
 5-24 Section 1156.051 and on application to the court, the court may
 5-25 order the guardian of the estate of a ward to spend money from the
 5-26 ward's estate for the education and maintenance of the ward's
 5-27 spouse, minor children, or incapacitated adult children
 5-28 [~~dependent~~].

5-29 (b) In determining whether to order the expenditure of money
 5-30 from a ward's estate for the ward's spouse, minor children, or
 5-31 incapacitated adult children [~~dependent~~], as appropriate, under
 5-32 this section, the court shall consider:

5-33 (1) the circumstances of the ward, the ward's spouse,
 5-34 and the ward's minor children and incapacitated adult children
 5-35 [~~dependents~~];

5-36 (2) the ability and duty of the ward's spouse to
 5-37 support himself or herself and the ward's minor children or
 5-38 incapacitated adult children [~~dependent~~];

5-39 (3) the size of the ward's estate;

5-40 (4) a beneficial interest the ward or the ward's
 5-41 spouse, minor children, or incapacitated adult children have [~~or~~
 5-42 ~~dependent has~~] in a trust; and

5-43 (5) an existing estate plan, including a trust or
 5-44 will, that provides a benefit to the ward's spouse, minor children,
 5-45 or incapacitated adult children [~~dependent~~].

5-46 (c) A person who makes an application to the court under
 5-47 this section shall mail notice of the application by certified
 5-48 mail, return receipt requested, to all interested persons.

5-49 (d) Copies of the notices mailed under Subsection (c) must
 5-50 be filed with the court with a copy of the certified mail return
 5-51 receipt for each notice mailed.

5-52 SECTION 17. Section 1203.006, Estates Code, is amended to
 5-53 read as follows:

5-54 Sec. 1203.006. REQUIREMENTS FOR DISCHARGE. (a) A
 5-55 guardian applying to resign may not be discharged until:

5-56 (1) the resignation application has been heard;

5-57 (2) the exhibit and final account or report required
 5-58 under Section 1203.001 has been examined, settled, and approved;
 5-59 and

5-60 (3) the guardian [~~applicant~~] has satisfied the court
 5-61 that the guardian [~~applicant~~] has:

5-62 (A) delivered any estate property remaining in
 5-63 the guardian's [~~applicant's~~] possession; or

5-64 (B) complied with all court orders relating to
 5-65 the guardian's [~~applicant's~~] trust as guardian.

5-66 (b) When a guardian applying to resign has fully complied
 5-67 with the court orders, the court shall enter an order:

5-68 (1) accepting the resignation; [~~and~~]

5-69 (2) discharging the guardian;

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

6-5 SECTION 18. Section 1204.105, Estates Code, is amended by
6-6 adding Subsection (h) to read as follows:

6-7 (h) The guardian of the estate shall file an affidavit sworn
6-8 to by the guardian or a certificate signed by the guardian's
6-9 attorney stating:

6-10 (1) the name of each person to whom citation was served
6-11 under this section, indicating the method of service;

6-12 (2) the name of each person executing a waiver of
6-13 citation under Subsection (d); and

6-14 (3) that each person whose whereabouts are known or
6-15 can be reasonably ascertained who is entitled to citation under
6-16 this section was provided a copy of the account for final
6-17 settlement, indicating the method of delivery for each person to
6-18 whom a copy was provided.

6-19 SECTION 19. Section 1204.151, Estates Code, is amended to
6-20 read as follows:

6-21 Sec. 1204.151. DISCHARGE OF GUARDIAN WHEN NO ESTATE
6-22 PROPERTY REMAINS. The court shall enter an order discharging a
6-23 guardian from the guardian's trust, canceling the letters issued to
6-24 the guardian of the estate, and closing the guardianship estate if,
6-25 on final settlement of the estate, none of the estate remains in the
6-26 guardian's possession.

6-27 SECTION 20. Section 1204.152, Estates Code, is amended to
6-28 read as follows:

6-29 Sec. 1204.152. DISCHARGE OF GUARDIAN WHEN ESTATE FULLY
6-30 ADMINISTERED. The court shall enter an order discharging a
6-31 guardian of the estate from the guardian's trust, canceling the
6-32 letters issued to the guardian of the estate, and declaring the
6-33 estate closed when:

6-34 (1) the guardian has fully administered the estate in
6-35 accordance with this title and the court's orders;

6-36 (2) the guardian's account for final settlement has
6-37 been approved; and

6-38 (3) the guardian has delivered all of the estate
6-39 remaining in the guardian's possession to any person entitled to
6-40 receive the estate.

6-41 SECTION 21. Section 1251.005(a), Estates Code, is amended
6-42 to read as follows:

6-43 (a) On the filing of an application for temporary
6-44 guardianship, the court clerk shall issue:

6-45 (1) citation to be personally served on:

6-46 (A) the proposed ward; and

6-47 (B) the proposed temporary guardian named in the
6-48 application, if that person is not the applicant; and

6-49 (2) notice to be served in the manner provided under
6-50 Rule 21a, Texas Rules of Civil Procedure, on the proposed ward's
6-51 appointed attorney.

6-52 SECTION 22. Section 411.1386(d), Government Code, is
6-53 amended to read as follows:

6-54 (d) The criminal history record information obtained under
6-55 Subsection (a-4) is for the exclusive use of the court or
6-56 guardianship certification program of the Judicial Branch
6-57 Certification Commission, as appropriate, and is privileged and
6-58 confidential. The information may not be released or otherwise
6-59 disclosed to any person or agency except on court order, with the
6-60 consent of the person being investigated, or as authorized by
6-61 Subsection (a-6) ~~[or Section 1104.404, Estates Code]~~. The county
6-62 clerk or guardianship certification program of the Judicial Branch
6-63 Certification Commission may destroy the criminal history record
6-64 information after the information is used for the purposes
6-65 authorized by this section.

6-66 SECTION 23. Section 411.1408(c), Government Code, is
6-67 amended to read as follows:

6-68 (c) Criminal history record information obtained by the
6-69 commission under Subsection (b):

7-1 (1) may be used by the commission for any purpose
7-2 related to the issuance, denial, suspension, revocation, or renewal
7-3 of a certificate, registration, or license issued by the commission
7-4 or otherwise under Subtitle L, Title 2;

7-5 (2) may not be released or disclosed to any person
7-6 except:

7-7 (A) on court order;

7-8 (B) with the consent of the person who is the
7-9 subject of the information; or

7-10 (C) as authorized by Section 411.1386(a-6) [~~of~~
7-11 ~~this code or Section 1104.404, Estates Code~~], if applicable; and

7-12 (3) shall be destroyed by the commission after the
7-13 information is used for the authorized purposes.

7-14 SECTION 24. The following provisions of the Estates Code
7-15 are repealed:

7-16 (1) Section 1023.008;

7-17 (2) Section 1104.402;

7-18 (3) Section 1104.403; and

7-19 (4) Section 1104.404.

7-20 SECTION 25. (a) Except as otherwise provided by this
7-21 section, the changes in law made by this Act apply to a guardianship
7-22 created before, on, or after the effective date of this Act.

7-23 (b) Sections 1023.002(c), 1023.004(a) and (c), 1023.005(c),
7-24 1023.006, and 1023.007, Estates Code, as amended by this Act, and
7-25 Section 1023.0071, Estates Code, as added by this Act, apply only to
7-26 an application filed or motion made to transfer a guardianship on or
7-27 after the effective date of this Act.

7-28 (c) Sections 1023.006, 1156.052, and 1251.005(a), Estates
7-29 Code, as amended by this Act, apply only to an application filed on
7-30 or after the effective date of this Act. An application filed
7-31 before the effective date of this Act is governed by the law in
7-32 effect on the date the application was filed, and the former law is
7-33 continued in effect for that purpose.

7-34 SECTION 26. This Act takes effect September 1, 2023.

7-35 * * * * *