

## **BILL ANALYSIS**

S.B. 1196  
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Judiciary & Civil Jurisprudence  
Committee Report (Amended)

### **BACKGROUND AND PURPOSE**

Interested parties observe a variety of issues in the Texas Probate Code relating to guardianship and alternatives to guardianship for persons who have physical disabilities or who are incapacitated. The bill is endorsed by the Real Estate, Probate, and Trust Law Section of the State Bar of Texas, acting with approval of the board of directors of the state bar. S.B. 1196 amends current law relating to guardianships and alternatives to guardianship for persons who have physical disabilities or who are incapacitated.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

S.B. 1196 amends the Texas Probate Code to require all guardianship proceedings to be filed and heard in a court exercising original probate jurisdiction and to grant jurisdiction of all matters related to the guardianship proceeding to such a court. The bill authorizes a probate court to exercise pendent and ancillary jurisdiction as necessary to promote judicial efficiency and economy. The bill provides that a final order issued by a probate court is appealable to the court of appeals. The bill removes provisions granting a county court the general jurisdiction of a probate court and establishing the court's authority. The bill sets out matters related to a guardianship proceeding in a county in which there is no statutory probate court and sets out matters related to a guardianship proceeding in a county in which there is a statutory probate court.

S.B. 1196 grants original jurisdiction for a guardianship proceeding for a county in which there is no statutory probate court or county court at law exercising original probate jurisdiction to a county court. The bill, when a matter in a guardianship proceeding is contested, authorizes a judge of a county court in such a county on the judge's own motion, or requires the judge on the motion of any party to the proceeding, to request the assignment of a statutory probate court judge to hear the contested matter or transfer the contested matter to the district court, which may then hear the contested matter as if originally filed in the district court. The bill requires a county judge, if a party to a guardianship proceeding files a motion for the assignment of a statutory probate court judge to hear a contested matter in the proceeding before the judge of the county court transfers the contested matter to a district court, to grant the motion for the assignment of a statutory probate court judge and prohibits the judge from transferring the matter to the district court unless the party withdraws the option. The bill authorizes the judge of a county court who requests the assignment of a statutory probate court judge to hear a contested matter in a guardianship proceeding on the judge's own motion or on the motion of a party to the proceeding to request that the statutory probate court judge be assigned to the entire proceeding on the judge's own motion or on the motion of a party. The bill authorizes a party to a guardianship proceeding to file a motion for the assignment of a statutory probate court judge before a matter in the proceeding becomes contested, and the motion is given effect as a motion

for assignment of a statutory probate court judge if the matter later becomes contested. The bill provides that a transfer of a contested matter in a guardianship proceeding to a district court under any authority other than the authority provided by the bill's provisions on such matters is disregarded and does not defeat the right of a party to the proceeding to have the matter assigned to a statutory probate court judge.

S.B. 1196 grants the jurisdiction and authority of a statutory probate court to a statutory probate court judge assigned to a contested matter in a guardianship proceeding. The bill requires a statutory probate court judge assigned to hear only a contested matter in a guardianship proceeding, on resolution of the matter and including any appeal of the matter, to return the matter to the county court for further proceedings not inconsistent with the orders of the statutory probate court or court of appeals, as applicable. The bill requires a statutory probate judge assigned to the entire guardianship proceeding, on resolution of the contested matter, including any appeal, to return the entire proceeding to the county court for further proceedings not inconsistent with the orders of the statutory probate court or court of appeals, as applicable. The bill grants the jurisdiction and authority of a statutory probate court to a district court to which a contested matter in a guardianship proceeding is transferred. The bill requires a district court to which a contested matter is transferred, on resolution of the matter, including any appeal, to return the matter to the county court for further proceedings not inconsistent with the orders of the district court or court of appeals, as applicable.

S.B. 1196 requires a county court, if only the contested matter in a guardianship proceeding is assigned to a statutory probate court judge or if the contested matter in a guardianship proceeding is transferred to a district court, to continue to exercise jurisdiction over the management of the guardianship, other than a contested matter, until final disposition of the contested matter is made. The bill authorizes any matter related to a guardianship proceeding in which a contested matter is transferred to a district court to be brought in the district court. The bill authorizes the district court in which a matter related to the proceeding is filed, on the court's own motion or on the motion of any party, to find that the matter is not a contested matter and transfer the matter to the county court with jurisdiction of the management of the guardianship. The bill grants the district court jurisdiction of any contested matter in a proceeding that is subsequently filed if a contested matter in a guardianship proceeding is transferred to the district court and requires the county court to transfer those contested matters to the district court. The bill requires a statutory probate court judge to be assigned to hear any contested matter in the proceeding that is subsequently filed if a statutory probate court judge is assigned to hear a contested matter. The bill authorizes the clerk of a district court to which a contested matter in a guardianship proceeding is transferred to perform in relation to the transferred matter any function a county clerk is authorized to perform with respect to that type of matter.

S.B. 1196 provides that, in a county in which there is no statutory probate court but in which there is a county court at law exercising original probate jurisdiction, the county court at law exercising original probate jurisdiction and the county court have concurrent original jurisdiction of guardianship proceedings, unless otherwise provided by law. The bill authorizes the judge of a county court to hear guardianship proceedings while sitting for the judge of any other county court. The bill authorizes a judge of a county court, on the judge's own motion, or requires the judge, on the motion of any party to the proceeding, in a county in which there is no statutory probate court but in which there is a county court a law exercising original probate jurisdiction, when a matter in a guardianship proceeding is contested, to transfer the contested matter to the county court at law. The bill authorizes the judge of the county court to transfer the entire proceeding to the county court at law on the judge's own motion or on the motion of a party to the proceeding. The bill authorizes a county court at law to which a proceeding is transferred to hear the proceeding as if originally filed in that court. The bill requires the contested matter, on the resolution of the matter, to be returned to the county court for further proceedings not inconsistent with the orders of the county court at law if only a contested matter in the proceeding is transferred.

S.B. 1196 grants original jurisdiction of guardianship proceedings to a statutory probate court in a county in which there is no statutory probate court and grants exclusive jurisdiction of guardianship proceedings to a statutory probate court in a county in which there is a statutory probate court, regardless of whether contested or uncontested. The bill requires a cause of action related to a guardianship proceeding of which the statutory probate court has exclusive jurisdiction to be brought in the statutory probate court unless the jurisdiction of the statutory probate court is concurrent with the jurisdiction of a district court or with the jurisdiction of any other court. The bill grants a statutory probate court concurrent jurisdiction with the district court in a personal injury, survival, or wrongful death action by or against a person in the person's capacity as a guardian and an action involving a guardian in which each other party aligned with the guardian is not an interested person in the guardianship.

S.B. 1196 provides that the proper venue for an action by or against a guardian, ward, or proposed ward for personal injury, death, or property damages is determined under the Civil Practice and Remedies Code. The bill includes the date of the appointment of a successor guardian as a condition under which the term of appointment of an attorney ad litem expires without a court order. The bill provides that the term of appointment of an attorney ad litem continues after the court appoints a temporary guardian unless a court order provides for the termination or expiration of the attorney ad litem's appointment.

S.B. 1196, in a provision setting out the conditions under which an applicant for appointment as a guardian of a minor or the estate is authorized to present to the court a written letter or certificate that meets qualification requirements, adds a condition to that authorization making it contingent on the proceeding being a guardianship proceeding in which the proposed ward is an incapacitated adult with respect to whom another court obtained continuing, exclusive jurisdiction in a suit affecting the parent-child relationship when the person was a child, in addition to the applicant being a person who was appointed conservator of a disabled child.

S.B. 1196, in a provision relating to the granting of an application to create a guardianship for an incapacitated person if the proposed ward's alleged incapacity is mental retardation, removes a provision requiring the applicant to present to the court a written letter or certificate that states that the physician has made a determination of mental retardation and requires the physician or psychologist's findings and recommendations to be presented to the court. The bill, in a provision setting out what the inventory of a ward's property must specify, removes a provision specifying that the interest in property owned by the ward in any property owned in common with other persons must be shown in the inventory, together with the names and relationship, if known, of co-owners. The bill removes a provision requiring that the list of claims attached to the inventory include the names and the relationships of other part owners of a claim.

S.B. 1196 includes as a requirement for when the guardianship of an estate shall be settled the circumstance when all of the assets of the estate have been transferred to a pooled trust subaccount in accordance with a court order and the court determines that a guardianship of the ward's estate is no longer necessary. The bill authorizes the court to allow the attorney ad litem reasonable compensation to be taxed as costs, and removes a provision basing the compensation on services provided by the attorney out of the ward's estate. The bill, in a provision establishing the age at which a guardian may voluntarily admit a person to a public or private inpatient psychiatric facility for care and treatment, changes that age from younger than 16 years of age to younger than 18 years of age and in that same provision removes a reference to the admitted person as an incapacitated person. The bill includes in the orders a court may enter on application of the guardian of the estate or any interested person, after the posting of notice and after hearing, the authorization to transfer a portion of the ward's estate as necessary to qualify the ward for government benefits and only to the extent allowed by applicable state or federal laws, including rules, regarding those benefits, and makes conforming changes in that provision.

S.B. 1196 includes among the persons authorized to apply for the creation of a trust a person who has only a physical disability and removes a provision authorizing an attorney ad litem or

guardian ad litem appointed to represent an alleged incapacitated person's interests to apply for the creation of a trust. The bill removes a provision requiring an order for a trust created for an incapacitated person who does not have a guardian to direct a person holding property belonging to the incapacitated person or to which the incapacitated person is entitled to deliver all or part of the property to the corporate fiduciary or other person appointed as a trustee of the trust. The bill clarifies that the court is authorized, rather than required, to maintain the trust under the same cause number as the guardianship proceeding if the person for whom the trust is created is a ward or proposed ward. The bill clarifies that if the person for whom a trust is created under these provisions is not a minor, the trust terminates according to the terms of the trust.

S.B. 1196 requires a trustee to file with the court in which the guardianship proceeding is pending a report describing all property held in the trust on the date of the report and specifying the value of the property on that date not later than the 30th day after the date an applicable trustee receives property into the trust. The bill prohibits a court from requiring a trustee of a trust created for a person who has only a physical disability to prepare and file with the court an annual accounting of transactions. The bill prohibits a court from requiring such a trustee to prepare and file with the court a final account of the distribution of trust property. The bill requires the trustee to distribute the principal and any undistributed income of the trust on court approval for a trust the beneficiary of which is a ward or incapacitated person.

S.B. 1196 includes as persons who may be the recipient of a pooled trust subaccount an alleged incapacitated person, or a disabled person who is not an incapacitated person. The bill authorizes the following persons to apply to the court for the establishment of such a subaccount on behalf of a minor or incapacitated person: the guardian of the incapacitated person; a person who has filed an application for the appointment of a guardian for the alleged incapacitated person; an attorney ad litem or guardian ad litem appointed to represent the incapacitated person who is a ward or that person's interests or to represent the alleged incapacitated person who does not have a guardian; or the disabled person.

S.B. 1196 redefines "beneficiary" and redefines "guardianship proceeding" to remove from that definition the terms that are set out as synonymous to "guardianship proceeding." The bill makes conforming changes to replace references to the removed synonyms with references to "guardianship proceeding."

S.B. 1196 updates language to reflect certain drafting conventions and makes conforming and nonsubstantive changes.

S.B. 1196 amends the Government Code to make conforming changes.

S.B. 1196, notwithstanding the transfer of Sections 606 and 607, Texas Probate Code, to the Estates Code and redesignation as Sections 606 and 607 of that code effective January 1, 2014, by Section 5, Chapter 680 (H.B. 2502), Acts of the 81st Legislature, Regular Session, 2009, repeals the following provisions of the Texas Probate Code:

- Section 606
- Section 607

#### **EFFECTIVE DATE**

September 1, 2011.

#### **EXPLANATION OF AMENDMENTS**

##### **Committee Amendment No. 1**

Committee Amendment No. 1 authorizes a judge to hold a hearing on a guardianship matter

involving an adult ward or adult proposed ward at any suitable location in the county in which the guardianship matter is pending and provides that the hearing should be held in a physical setting that is not likely to have a harmful effect on the ward or proposed ward. The amendment prohibits the hearing from being held under the authority of the amendment at a place other than the courthouse on the request of the adult proposed ward, the adult ward, or the attorney of the proposed ward or ward. The amendment makes its provisions applicable to a guardianship matter that is pending or commenced on or after the effective date of the bill.