

By: Hartnett

H.B. No. 2900

A BILL TO BE ENTITLED

AN ACT

relating to guardianships.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 612, Texas Probate Code, is amended to read as follows:

Sec. 612. APPLICATION FOR TRANSFER OF GUARDIANSHIP TO ANOTHER COUNTY. When a guardian or any other person desires to transfer [~~remove~~] the transaction of the business of the guardianship from one county to another, the person shall file a written application in the court in which the guardianship is pending stating the reason for the transfer [~~moving the transaction of business~~].

SECTION 2. Section 613(a), Texas Probate Code, is amended to read as follows:

(a) On filing an application to transfer [~~remove~~] a guardianship to another county, the sureties on the bond of the guardian shall be cited by personal service to appear and show cause why the application should not be granted.

SECTION 3. Sections 614, 615, 616, 617, and 618, Texas Probate Code, are amended to read as follows:

Sec. 614. COURT ACTION. (a) On hearing an application under Section 612 of this code, if good cause is not shown to deny the application and it appears that transfer [~~removal~~] of the guardianship is in the best interests of the ward, the court shall

1 enter an order authorizing the transfer [~~removal~~] on payment on
2 behalf of the estate of all accrued costs.

3 (b) In an order entered under Subsection (a) of this
4 section, the court shall require the guardian, not later than the
5 20th day after the date the order is entered, to:

6 (1) give a new bond payable to the judge of the court
7 to which the guardianship is transferred; or

8 (2) file a rider to an existing bond noting the court
9 to which the guardianship is transferred.

10 Sec. 615. TRANSFER OF RECORD. When an order of transfer
11 [~~removal~~] is made under Section 614 of this code, the clerk shall
12 record any unrecorded papers of the guardianship required to be
13 recorded. On payment of the clerk's fee, the clerk shall transmit
14 to the county clerk of the county to which the guardianship was
15 ordered transferred [~~removed~~]:

16 (1) the case file of the guardianship proceedings; and

17 (2) a certified copy of the index of the guardianship
18 records.

19 Sec. 616. TRANSFER [~~REMOVAL~~] EFFECTIVE. The order
20 transferring [~~removing~~] a guardianship does not take effect until:

21 (1) the case file and a certified copy of the index
22 required by Section 615 of this code are filed in the office of the
23 county clerk of the county to which the guardianship was ordered
24 transferred [~~removed~~]; and

25 (2) a certificate under the clerk's official seal and
26 reporting the filing of the case file and a certified copy of the
27 index is filed in the court ordering the transfer [~~removal~~] by the

1 county clerk of the county to which the guardianship was ordered
2 transferred [~~removed~~].

3 Sec. 617. CONTINUATION OF GUARDIANSHIP. When a
4 guardianship is transferred [~~removed~~] from one county to another in
5 accordance with this subpart, the guardianship proceeds in the
6 court to which it was transferred [~~removed~~] as if it had been
7 originally commenced in that court. It is not necessary to record
8 in the receiving court any of the papers in the case that were
9 recorded in the court from which the case was transferred
10 [~~removed~~].

11 Sec. 618. NEW GUARDIAN APPOINTED ON TRANSFER [~~REMOVAL~~]. If
12 it appears to the court that transfer [~~removal~~] of the guardianship
13 is in the best interests of the ward, but that because of the
14 transfer [~~removal~~] it is not in the best interests of the ward [~~will~~
15 ~~be unduly expensive or unduly inconvenient to the estate~~] for the
16 guardian of the estate to continue to serve in that capacity, the
17 court may in its order of transfer [~~removal~~] revoke the letters of
18 guardianship and appoint a new guardian, and the former guardian
19 shall account for and deliver the estate as provided by this chapter
20 in a case in which a guardian resigns.

21 SECTION 4. Subpart B, Part 2, Chapter XIII, Texas Probate
22 Code, is amended by adding Section 619 to read as follows:

23 Sec. 619. REVIEW OF TRANSFERRED GUARDIANSHIP. Not later
24 than the 90th day after the date the transfer of the guardianship
25 takes effect under Section 616 of this code, the court to which the
26 guardianship was transferred shall hold a hearing to consider
27 modifying the rights, duties, and powers of the guardian or any

1 other provisions of the transferred guardianship.

2 SECTION 5. Subpart E, Part 2, Chapter XIII, Texas Probate
3 Code, is amended by adding Section 652 to read as follows:

4 Sec. 652. LOCATION OF HEARING. (a) Except as provided by
5 Subsection (b) of this section, the judge may hold a hearing on a
6 guardianship matter involving an adult ward or adult proposed ward
7 at any suitable location in the county in which the guardianship
8 matter is pending. The hearing should be held in a physical setting
9 that is not likely to have a harmful effect on the ward or proposed
10 ward.

11 (b) On the request of the adult proposed ward, the adult
12 ward, or the attorney of the proposed ward or ward, the hearing may
13 not be held under the authority of this section at a place other
14 than the courthouse.

15 SECTION 6. Section 892, Texas Probate Code, is amended by
16 amending Subsections (a) and (e) and adding Subsection (f-1) to
17 read as follows:

18 (a) A guardian appointed by a foreign court to represent an
19 incapacitated person who is residing in this state or intends to
20 move to this state may file an application with a court in which the
21 ward resides or intends to reside to have the guardianship
22 transferred to the court. The application must have attached a
23 certified copy of all papers of the guardianship filed and recorded
24 in the foreign court.

25 (e) The [~~On the court's own motion or on the motion of the~~
26 ~~ward or any interested person, the~~] court shall hold a hearing to:

27 (1) consider the application for receipt and

1 acceptance of a foreign guardianship; and

2 (2) consider modifying the administrative procedures
3 or requirements of the proposed transferred guardianship in
4 accordance with local and state law.

5 (f-1) At the time of granting an application for receipt and
6 acceptance of a foreign guardianship, the court may also modify the
7 administrative procedures or requirements of the transferred
8 guardianship in accordance with local and state law.

9 SECTION 7. Section 893, Texas Probate Code, is repealed.

10 SECTION 7. Section 893, Texas Probate Code, is repealed.

11 SECTION 8. Section 894, Texas Probate Code, is amended to
12 read as follows:

13 (a) A court in which a guardianship proceeding is filed and
14 in which venue of the proceeding is proper may delay further action
15 in the proceeding in that court if:

16 (1) another guardianship proceeding involving a
17 matter at issue in the proceeding filed in the court is subsequently
18 filed in a court in a foreign jurisdiction; and

19 (2) venue of the proceeding in the foreign court is
20 proper.

21 (b) A court that delays further action in a guardianship
22 proceeding under Subsection (a) of this section shall determine
23 whether venue of the proceeding is more suitable in that court or in
24 the foreign court. In making that determination, the court may
25 consider:

26 (1) any expressed preference of the proposed ward if
27 the proposed ward is 12 years of age or older;

- 1 (2) [~~1~~] the interests of justice;
2 (3) [~~2~~] the best interests of the ward or proposed
3 ward; and
4 (4) [~~3~~] the convenience of the parties.

5 (c) A court that delays further action under Subsection (a)
6 of this section may issue any order it considers necessary to
7 protect the proposed ward or the proposed ward's estate.

8 (d) The court shall resume the guardianship proceeding if
9 the court determines that venue is more suitable in that court. If
10 the court determines that venue is more suitable in the foreign
11 court, the court shall, with the consent of the foreign court,
12 transfer the proceeding to the foreign court.

13 (e) If at any time a court of this state determines the
14 guardianship proceeding that it acquired jurisdiction to appoint a
15 guardian of the person or estate, or both, of a ward because of
16 unjustifiable conduct, the court may:

- 17 (1) decline to exercise jurisdiction;
18 (2) exercise jurisdiction for the limited purpose of
19 fashioning an appropriate remedy to ensure the health, safety, and
20 welfare of the incapacitated person's property or prevent a
21 repetition of the unjustifiable conduct, including staying the
22 proceeding until a petition for the appointment of a guardian or
23 issuance of a protective order is filed in a court of another state
24 having jurisdiction; or

25 (3) continue to exercise jurisdiction after
26 considering:

- 27 (A) the extent to which the incapacitated person

1 and all persons required to be notified of the proceedings have
2 acquiesced in the exercise of the court's jurisdiction;

3 (B) whether the court of this state is a more
4 appropriate forum than the court of any other state under the factor
5 set forth in Subsection (b) or this section; and

6 (C) whether the court of any other state would
7 have jurisdiction under the factual circumstances of the matter.

8 (f) If a court of this state determines that it acquired
9 jurisdiction to appoint a guardian of the person or estate, or both,
10 of a ward because a party seeking to invoke the court's jurisdiction
11 engaged in unjustifiable conduct, the court may assess against that
12 party necessary and reasonable expenses, including attorney's
13 fees, investigative fees, court costs, communication expenses,
14 witness fees and expenses, and travel expenses. The court may not
15 assess fees, costs, or expenses of any kind against this state or a
16 governmental subdivision, agency, or instrumentality of this state
17 unless authorized by other law.

18 SECTION 9. The changes in law made by Sections 1 through 4
19 of this Act apply only to an application for the transfer of a
20 guardianship to another county filed on or after the effective date
21 of this Act. An application for the transfer of a guardianship to
22 another county filed before the effective date of this Act is
23 governed by the law in effect on the date the application was filed,
24 and the former law is continued in effect for that purpose.

25 SECTION 10. Section 652, Texas Probate Code, as added by
26 this Act, applies to a guardianship matter that is pending or
27 commenced on or after the effective date of this Act.

1 SECTION 11. The changes in law made by this Act to Sections
2 892 and 893, Texas Probate Code, apply only to an application for
3 receipt and acceptance of a foreign guardianship filed on or after
4 the effective date of this Act. An application for receipt and
5 acceptance of a foreign guardianship filed before the effective
6 date of this Act is governed by the law in effect on the date the
7 application was filed, and the former law is continued in effect for
8 that purpose.

9 SECTION 12. This Act takes effect September 1, 2011.