

1-1 By: Hartnett (Senate Sponsor - Harris) H.B. No. 2900
1-2 (In the Senate - Received from the House April 27, 2011;
1-3 May 3, 2011, read first time and referred to Committee on
1-4 Jurisprudence; May 19, 2011, reported favorably by the following
1-5 vote: Yeas 5, Nays 0; May 19, 2011, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to guardianship matters and proceedings.

1-9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-10 SECTION 1. Section 612, Texas Probate Code, is amended to
1-11 read as follows:

1-12 Sec. 612. APPLICATION FOR TRANSFER OF GUARDIANSHIP TO
1-13 ANOTHER COUNTY. When a guardian or any other person desires to
1-14 transfer [~~remove~~] the transaction of the business of the
1-15 guardianship from one county to another, the person shall file a
1-16 written application in the court in which the guardianship is
1-17 pending stating the reason for the transfer [~~moving the transaction~~
1-18 ~~of business~~].

1-19 SECTION 2. Section 613(a), Texas Probate Code, is amended
1-20 to read as follows:

1-21 (a) On filing an application to transfer [~~remove~~] a
1-22 guardianship to another county, the sureties on the bond of the
1-23 guardian shall be cited by personal service to appear and show cause
1-24 why the application should not be granted.

1-25 SECTION 3. Sections 614, 615, 616, 617, and 618, Texas
1-26 Probate Code, are amended to read as follows:

1-27 Sec. 614. COURT ACTION. (a) On hearing an application
1-28 under Section 612 of this code, if good cause is not shown to deny
1-29 the application and it appears that transfer [~~removal~~] of the
1-30 guardianship is in the best interests of the ward, the court shall
1-31 enter an order authorizing the transfer [~~removal~~] on payment on
1-32 behalf of the estate of all accrued costs.

1-33 (b) In an order entered under Subsection (a) of this
1-34 section, the court shall require the guardian, not later than the
1-35 20th day after the date the order is entered, to:

1-36 (1) give a new bond payable to the judge of the court
1-37 to which the guardianship is transferred; or

1-38 (2) file a rider to an existing bond noting the court
1-39 to which the guardianship is transferred.

1-40 Sec. 615. TRANSFER OF RECORD. When an order of transfer
1-41 [~~removal~~] is made under Section 614 of this code, the clerk shall
1-42 record any unrecorded papers of the guardianship required to be
1-43 recorded. On payment of the clerk's fee, the clerk shall transmit
1-44 to the county clerk of the county to which the guardianship was
1-45 ordered transferred [~~removed~~]:

1-46 (1) the case file of the guardianship proceedings; and

1-47 (2) a certified copy of the index of the guardianship
1-48 records.

1-49 Sec. 616. TRANSFER [~~REMOVAL~~] EFFECTIVE. The order
1-50 transferring [~~removing~~] a guardianship does not take effect until:

1-51 (1) the case file and a certified copy of the index
1-52 required by Section 615 of this code are filed in the office of the
1-53 county clerk of the county to which the guardianship was ordered
1-54 transferred [~~removed~~]; and

1-55 (2) a certificate under the clerk's official seal and
1-56 reporting the filing of the case file and a certified copy of the
1-57 index is filed in the court ordering the transfer [~~removal~~] by the
1-58 county clerk of the county to which the guardianship was ordered
1-59 transferred [~~removed~~].

1-60 Sec. 617. CONTINUATION OF GUARDIANSHIP. When a
1-61 guardianship is transferred [~~removed~~] from one county to another in
1-62 accordance with this subpart, the guardianship proceeds in the
1-63 court to which it was transferred [~~removed~~] as if it had been
1-64 originally commenced in that court. It is not necessary to record

2-1 in the receiving court any of the papers in the case that were
 2-2 recorded in the court from which the case was transferred
 2-3 ~~[removed]~~.

2-4 Sec. 618. NEW GUARDIAN APPOINTED ON TRANSFER ~~[REMOVAL]~~. If
 2-5 it appears to the court that transfer ~~[removal]~~ of the guardianship
 2-6 is in the best interests of the ward, but that because of the
 2-7 transfer ~~[removal]~~ it is not in the best interests of the ward ~~[will~~
 2-8 ~~be unduly expensive or unduly inconvenient to the estate]~~ for the
 2-9 guardian of the estate to continue to serve in that capacity, the
 2-10 court may in its order of transfer ~~[removal]~~ revoke the letters of
 2-11 guardianship and appoint a new guardian, and the former guardian
 2-12 shall account for and deliver the estate as provided by this chapter
 2-13 in a case in which a guardian resigns.

2-14 SECTION 4. Subpart B, Part 2, Chapter XIII, Texas Probate
 2-15 Code, is amended by adding Section 619 to read as follows:

2-16 Sec. 619. REVIEW OF TRANSFERRED GUARDIANSHIP. Not later
 2-17 than the 90th day after the date the transfer of the guardianship
 2-18 takes effect under Section 616 of this code, the court to which the
 2-19 guardianship was transferred shall hold a hearing to consider
 2-20 modifying the rights, duties, and powers of the guardian or any
 2-21 other provisions of the transferred guardianship.

2-22 SECTION 5. Subpart E, Part 2, Chapter XIII, Texas Probate
 2-23 Code, is amended by adding Section 652 to read as follows:

2-24 Sec. 652. LOCATION OF HEARING. (a) Except as provided by
 2-25 Subsection (b) of this section, the judge may hold a hearing on a
 2-26 guardianship matter involving an adult ward or adult proposed ward
 2-27 at any suitable location in the county in which the guardianship
 2-28 matter is pending. The hearing should be held in a physical setting
 2-29 that is not likely to have a harmful effect on the ward or proposed
 2-30 ward.

2-31 (b) On the request of the adult proposed ward, the adult
 2-32 ward, or the attorney of the proposed ward or ward, the hearing may
 2-33 not be held under the authority of this section at a place other
 2-34 than the courthouse.

2-35 SECTION 6. Section 892, Texas Probate Code, is amended by
 2-36 amending Subsections (a) and (e) and adding Subsection (f-1) to
 2-37 read as follows:

2-38 (a) A guardian appointed by a foreign court to represent an
 2-39 incapacitated person who is residing in this state or intends to
 2-40 move to this state may file an application with a court in which the
 2-41 ward resides or intends to reside to have the guardianship
 2-42 transferred to the court. The application must have attached a
 2-43 certified copy of all papers of the guardianship filed and recorded
 2-44 in the foreign court.

2-45 (e) ~~The [On the court's own motion or on the motion of the~~
 2-46 ~~ward or any interested person, the]~~ court shall hold a hearing to:

2-47 (1) consider the application for receipt and
 2-48 acceptance of a foreign guardianship; and

2-49 (2) consider modifying the administrative procedures
 2-50 or requirements of the proposed transferred guardianship in
 2-51 accordance with local and state law.

2-52 (f-1) At the time of granting an application for receipt and
 2-53 acceptance of a foreign guardianship, the court may also modify the
 2-54 administrative procedures or requirements of the transferred
 2-55 guardianship in accordance with local and state law.

2-56 SECTION 7. Section 894(b), Texas Probate Code, is amended
 2-57 to read as follows:

2-58 (b) A court that delays further action in a guardianship
 2-59 proceeding under Subsection (a) of this section shall determine
 2-60 whether venue of the proceeding is more suitable in that court or in
 2-61 the foreign court. In making that determination, the court may
 2-62 consider:

2-63 (1) the interests of justice;
 2-64 (2) the best interests of the ward or proposed ward;

2-65 ~~[and]~~ (3) the convenience of the parties; and

2-66 (4) the preference of the ward or proposed ward, if the
 2-67 ward or proposed ward is 12 years of age or older.

2-68 SECTION 8. Subpart G, Part 5, Chapter XIII, Texas Probate
 2-69

3-1 Code, is amended by adding Section 895 to read as follows:

3-2 Sec. 895. DETERMINATION OF MOST APPROPRIATE FORUM FOR
3-3 CERTAIN GUARDIANSHIP PROCEEDINGS. (a) If at any time a court of
3-4 this state determines that it acquired jurisdiction of a proceeding
3-5 for the appointment of a guardian of the person or estate, or both,
3-6 of a ward or proposed ward because of unjustifiable conduct, the
3-7 court may:

3-8 (1) decline to exercise jurisdiction;

3-9 (2) exercise jurisdiction for the limited purpose of
3-10 fashioning an appropriate remedy to ensure the health, safety, and
3-11 welfare of the ward or proposed ward or the protection of the ward's
3-12 or proposed ward's property or prevent a repetition of the
3-13 unjustifiable conduct, including staying the proceeding until a
3-14 petition for the appointment of a guardian or issuance of a
3-15 protective order is filed in a court of another state having
3-16 jurisdiction; or

3-17 (3) continue to exercise jurisdiction after
3-18 considering:

3-19 (A) the extent to which the ward or proposed ward
3-20 and all persons required to be notified of the proceedings have
3-21 acquiesced in the exercise of the court's jurisdiction;

3-22 (B) whether the court of this state is a more
3-23 appropriate forum than the court of any other state after
3-24 considering the factors described by Section 894(b) of this code;
3-25 and

3-26 (C) whether the court of any other state would
3-27 have jurisdiction under the factual circumstances of the matter.

3-28 (b) If a court of this state determines that it acquired
3-29 jurisdiction of a proceeding for the appointment of a guardian of
3-30 the person or estate, or both, of a ward or proposed ward because a
3-31 party seeking to invoke the court's jurisdiction engaged in
3-32 unjustifiable conduct, the court may assess against that party
3-33 necessary and reasonable expenses, including attorney's fees,
3-34 investigative fees, court costs, communication expenses, witness
3-35 fees and expenses, and travel expenses. The court may not assess
3-36 fees, costs, or expenses of any kind against this state or a
3-37 governmental subdivision, agency, or instrumentality of this state
3-38 unless authorized by other law.

3-39 SECTION 9. Section 893, Texas Probate Code, is repealed.

3-40 SECTION 10. Sections 612, 613, 614, 615, 616, 617, and 618,
3-41 Texas Probate Code, as amended by this Act, and Section 619, Texas
3-42 Probate Code, as added by this Act, apply only to an application for
3-43 the transfer of a guardianship to another county filed on or after
3-44 the effective date of this Act. An application for the transfer of
3-45 a guardianship to another county filed before the effective date of
3-46 this Act is governed by the law in effect on the date the
3-47 application was filed, and the former law is continued in effect for
3-48 that purpose.

3-49 SECTION 11. Section 652, Texas Probate Code, as added by
3-50 this Act, applies to a guardianship matter that is pending or
3-51 commenced on or after the effective date of this Act.

3-52 SECTION 12. The changes in law made by this Act to Sections
3-53 892 and 893, Texas Probate Code, apply only to an application for
3-54 receipt and acceptance of a foreign guardianship filed on or after
3-55 the effective date of this Act. An application for receipt and
3-56 acceptance of a foreign guardianship filed before the effective
3-57 date of this Act is governed by the law in effect on the date the
3-58 application was filed, and the former law is continued in effect for
3-59 that purpose.

3-60 SECTION 13. Section 894, Texas Probate Code, as amended by
3-61 this Act, and Section 895, Texas Probate Code, as added by this Act,
3-62 apply only to a guardianship proceeding filed on or after the
3-63 effective date of this Act. A guardianship proceeding filed before
3-64 the effective date of this Act is governed by the law in effect on
3-65 the date the proceeding was filed, and the former law is continued
3-66 in effect for that purpose.

3-67 SECTION 14. This Act takes effect September 1, 2011.

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