

**House Bill 2900**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

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

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

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

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

SENATE VERSION (IE)

SECTION 1. Same as House version.

SECTION 2. Same as House version.

SECTION 3. Same as House version.

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

- (1) the case file of the guardianship proceedings; and
- (2) a certified copy of the index of the guardianship records.

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

- (1) the case file and a certified copy of the index required by Section 615 of this code are filed in the office of the county clerk of the county to which the guardianship was ordered transferred ~~[removed]~~; and
- (2) a certificate under the clerk's official seal and reporting the filing of the case file and a certified copy of the index is filed in the court ordering the transfer ~~[removal]~~ by the county clerk of the county to which the guardianship was ordered transferred ~~[removed]~~.

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

Sec. 618. NEW GUARDIAN APPOINTED ON TRANSFER ~~[REMOVAL]~~. If it appears to the court that transfer ~~[removal]~~ of the guardianship is in the best interests of the ward, but that because of the transfer ~~[removal]~~ it is not in the

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~~best interests of the ward [will be unduly expensive or unduly inconvenient to the estate]~~ for the guardian of the estate to continue to serve in that capacity, the court may in its order of transfer ~~[removal]~~ revoke the letters of guardianship and appoint a new guardian, and the former guardian shall account for and deliver the estate as provided by this chapter in a case in which a guardian resigns.

SECTION 4. Subpart B, Part 2, Chapter XIII, Texas Probate Code, is amended by adding Section 619 to read as follows:  
Sec. 619. REVIEW OF TRANSFERRED GUARDIANSHIP.  
Not later than the 90th day after the date the transfer of the guardianship takes effect under Section 616 of this code, the court to which the guardianship was transferred shall hold a hearing to consider modifying the rights, duties, and powers of the guardian or any other provisions of the transferred guardianship.

**No equivalent provision.**

SENATE VERSION (IE)

SECTION 4. Same as House version.

SECTION \_\_. Section 642, Texas Probate Code, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:  
(a) Except as provided by Subsections (a-1) and [Subsection] (b) of this section, any person has the right to commence any guardianship proceeding, including a proceeding for complete restoration of a ward's capacity or modification of a ward's guardianship, or to appear and contest any guardianship proceeding or the appointment of a particular person as guardian.  
(a-1) A person who is not entitled to receive notice of the filing of an application for guardianship under Section 633(c) or (d) of this code must obtain leave of court to appear and contest a guardianship proceeding or the appointment of a

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particular person as guardian. The granting of leave by the court does not prevent any other party from subsequently challenging the person's standing to maintain the contest under Subsections (b) and (c) of this section. [FA1]

No equivalent provision.

SECTION \_\_. The changes in law made by this Act to Section 642, Texas Probate Code, apply to a guardianship proceeding that is pending or commenced on or after the effective date of this Act. [FA1]

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

Sec. 652. LOCATION OF HEARING. (a) Except as provided by Subsection (b) of this section, the judge may 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. The hearing should be held in a physical setting that is not likely to have a harmful effect on the ward or proposed ward.

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

No equivalent provision.

SECTION 5. Same as House version.

SECTION \_\_. Section 665A, Texas Probate Code, is amended to read as follows:

Sec. 665A. PAYMENT FOR PROFESSIONAL SERVICES. The court shall order the payment of a fee in an amount set by the court that is fair and just as compensation to the attorneys, mental health professionals, and interpreters appointed under this chapter, as applicable, to be taxed as costs in the case. The court may allocate attorney's fees taxed as costs under this

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section among the parties as the court finds is fair and just. If after examining the proposed ward's assets the court determines the proposed ward is unable to pay for costs allocated to the proposed ward for services provided by an attorney, a mental health professional, or an interpreter appointed under this chapter, as applicable, the county is responsible for those costs [~~the cost of those services~~]. [FA1]

No equivalent provision.

SECTION \_\_. Section 665B, Texas Probate Code, as amended by Chapters 314 (H.B. 587) and 930 (H.B. 3080), Acts of the 81st Legislature, Regular Session, 2009, is reenacted and amended to read as follows:

Sec. 665B. PAYMENT OF ATTORNEY'S FEES TO CERTAIN ATTORNEYS. (a) A court that creates a guardianship or creates a management trust under Section 867 of this code for a ward under this chapter, on request of a person who filed an application to be appointed guardian of the proposed ward, an application for the appointment of another suitable person as guardian of the proposed ward, or an application for the creation of the management trust, may authorize the payment of reasonable and necessary attorney's fees, as determined by the court, in amounts the court considers fair and just, to an attorney who represents the person who filed the application at the application hearing, regardless of whether the person is appointed the ward's guardian or whether a management trust is created, from:

(1) subject to Subsection (a-1) of this section, the parties to the guardianship proceeding, allocated as the court finds is fair and just; or

(2) subject to Subsection (a-1) of this section, available funds of the [ward's estate or] management trust, if created.

(a-1) The court may authorize amounts allocated to the ward's

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estate under Subsection (a)(1) of this section or amounts to be paid from available funds of the management trust as provided by Subsection (a)(2) of this section to instead be paid from the county treasury.~~;~~ ~~or~~

~~(2)~~ subject to Subsection (c) of this section, ~~[the county treasury]~~ if:

(1) ~~(A)~~ the ward's estate or ~~[, if created,]~~ management trust~~;~~ is insufficient to pay ~~[for]~~ the amounts ~~[services provided by the attorney]~~; and

(2) ~~(B)~~ funds in the county treasury are budgeted for that purpose.

(b) The court may not authorize attorney's fees under this section unless the court finds that the applicant acted in good faith and for just cause in the filing and prosecution of the application.

(c) The court may authorize the payment of attorney's fees from the county treasury under Subsection (a-1) ~~(a)~~ of this section only if the court is satisfied that the attorney to whom the fees will be paid has not received, and is not seeking, payment for the services described by that subsection from any other source. [FA1]

SECTION \_\_. Subsection (a), Section 669, Texas Probate Code, is amended to read as follows:

(a) Except as provided by Subsection (b) of this section or Section 665A or 665B(a) of this code, in a guardianship matter, the cost of the proceeding, including the cost of the guardian ad litem or court visitor, shall be set in an amount the court considers fair and just and shall be paid out of the guardianship estate, or, if the estate is insufficient to pay for the cost of the proceeding, the cost of the proceeding shall be paid out of the county treasury, and the judgment of the court

No equivalent provision.

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shall be issued accordingly. [FA1]

No equivalent provision.

SECTION \_\_. The changes in law made by this Act to Sections 665A, 665B, and 669, Texas Probate Code, apply to a guardianship created before, on, or after the effective date of this Act. [FA1]

No equivalent provision.

SECTION \_\_. Section 761, Texas Probate Code, is amended by adding Subsection (a-1) to read as follows:  
(a-1) The court clerk shall issue notice of an order rendered by the court removing a guardian under Subsection (a)(1), (2), (3), (4), (6), (7), or (8) of this section. The notice must:  
(1) state the names of the ward and the removed guardian;  
(2) state the date the court signed the order of removal;  
(3) contain the following statement printed in 12-point bold font:  
"If you have been removed from serving as guardian under Section 761(a)(6) or (7), Texas Probate Code, you have the right to contest the order of removal by filing an application with the court for a hearing under Section 762, Texas Probate Code, to determine whether you should be reinstated as guardian. The application must be filed not later than the 30th day after the date the court signed the order of removal.";  
(4) contain as an attachment a copy of the order of removal;  
and  
(5) be personally served on the removed guardian not later than the seventh day after the date the court signed the order of removal. [FA1]

No equivalent provision.

SECTION \_\_. Subsections (a), (c), and (d), Section 762, Texas Probate Code, are amended to read as follows:  
(a) Not later than the 30th [~~10th~~] day after the date the court

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signs the order of removal, a guardian [~~personal representative~~] who is removed under Section 761(a)(6) [~~Subsection (a)(6)~~] or (7)[~~, Section 761,~~] of this code may file an application with the court for a hearing to determine whether the guardian [~~personal representative~~] should be reinstated.

(c) The court shall hold a hearing on an application for reinstatement under this section as soon as practicable after the application is filed, but not later than the 60th day after the date the court signed the order of removal. If, at the conclusion of the [a] hearing [~~under this section~~], the court is satisfied by a preponderance of the evidence that the applicant did not engage in the conduct that directly led to the applicant's removal, the court shall set aside an order appointing a successor guardian [~~representative~~], if any, and shall enter an order reinstating the applicant as guardian [~~personal representative~~] of the ward or estate.

(d) If the court sets aside the appointment of a successor guardian [~~representative~~] under this section, the court may require the successor guardian [~~representative~~] to prepare and file, under oath, an accounting of the estate and to detail the disposition the successor has made of the property of the estate. [FA1]

SECTION \_\_. The changes in law made by this Act to Sections 761 and 762, Texas Probate Code, apply only to a removal of a guardian ordered by a court on or after the effective date of this Act. A removal of a guardian ordered by a court before the effective date of this Act is governed by the law in effect on the date the order was rendered, and the former law is continued in effect for that purpose. [FA1]

No equivalent provision.



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

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

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

(1) consider the application for receipt and acceptance of a foreign guardianship; and

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

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

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

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

(1) the interests of justice;

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SECTION 6. Same as House version.

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- (2) the best interests of the ward or proposed ward; ~~and~~
- (3) the convenience of the parties; ~~and~~
- (4) the preference of the ward or proposed ward, if the ward or proposed ward is 12 years of age or older.

SECTION 8. Subpart G, Part 5, Chapter XIII, Texas Probate Code, is amended by adding Section 895 to read as follows:

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

- (1) decline to exercise jurisdiction;
- (2) exercise jurisdiction for the limited purpose of fashioning an appropriate remedy to ensure the health, safety, and welfare of the ward or proposed ward or the protection of the ward's or proposed ward's property or prevent a repetition of the unjustifiable conduct, including staying the proceeding until a petition for the appointment of a guardian or issuance of a protective order is filed in a court of another state having jurisdiction; or
- (3) continue to exercise jurisdiction after considering:
  - (A) the extent to which the ward or proposed ward and all persons required to be notified of the proceedings have acquiesced in the exercise of the court's jurisdiction;
  - (B) whether the court of this state is a more appropriate forum than the court of any other state after considering the factors described by Section 894(b) of this code; and
  - (C) whether the court of any other state would have jurisdiction under the factual circumstances of the matter.

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SECTION 8. Same as House version.

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

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

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

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

SECTION 12. The changes in law made by this Act to Sections 892 and 893, Texas Probate Code, apply only to an application for receipt and acceptance of a foreign guardianship filed on or after the effective date of this Act.

SECTION 9. Same as House version.

SECTION 10. Same as House version.

SECTION 11. Same as House version.

SECTION 12. Same as House version.

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An application for receipt and acceptance of a foreign guardianship filed before the effective date of this Act is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose.

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

SECTION 14. This Act takes effect September 1, 2011.

SENATE VERSION (IE)

SECTION 13. Same as House version.

SECTION 14. Same as House version.

CONFERENCE