

## **BILL ANALYSIS**

C.S.H.B. 1438  
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Judiciary & Civil Jurisprudence  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

As part of its ongoing review of Texas probate, guardianship, and trust law, the Real Estate, Probate, and Trust Law Section of the State Bar of Texas has proposed several updates to the law regarding guardianships. Interested parties have also identified certain other probate issues, including guardianships and other matters related to incapacitated persons, requiring legislative attention. The parties also note that certain changes are needed that relate to the recusal or disqualification of a statutory probate judge or other judge authorized to hear probate, guardianship, or mental health matters and to the subsequent assignment of another judge. C.S.H.B. 1438 seeks to implement these proposed updates and to address these issues.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **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**

C.S.H.B. 1438 amends the Estates Code to require a court on hearing an application for transfer of guardianship to another county, if certain prerequisites are met, to enter an order requiring any existing bond of the guardian to remain in effect until a new bond has been given or a rider has been filed in accordance with statutory provisions and bill provisions regarding the review of a transfer of guardianship. The bill requires the court to which a guardianship was transferred, after holding a hearing to consider modifying provisions of the transferred guardianship, to enter an order requiring the guardian to give a new bond payable to the judge of the court to which the guardianship was transferred or file a rider to an existing bond noting the court to which the guardianship was transferred.

C.S.H.B. 1438 revises the provision requiring a person filing an application for guardianship to mail a copy of the application and a notice of the citation issued by the court clerk to, among other persons, each person named as another relative within the third degree by consanguinity in the application, as required by statute, if the proposed ward's spouse and each of the proposed ward's parents, adult siblings, and adult children are deceased or if there is no spouse, parent, adult sibling, or adult child, to instead specify that the copy and notice of the citation must be sent to each adult named in the application as an "other living relative" of the proposed ward within the third degree by consanguinity under those same conditions.

C.S.H.B. 1438 specifies, for purposes of the requirement that a county clerk record in a record book entitled "Judge's Guardianship Docket" a notation of each order, judgment, decree, and proceeding, that such a notation is for each guardianship rather than each estate.

C.S.H.B. 1438 expands the sources from which a person or entity is entitled to be reimbursed for a filing fee after the creation of a guardianship to include a management trust, if a management trust has been created for the benefit of the ward under the applicable statutory provisions and the court determines it is in the ward's best interest.

C.S.H.B. 1438, for purposes of the authorization for a county clerk to require a person who files an application, complaint, or opposition relating to a certain guardianship proceeding to provide security for the probable costs of the proceeding before filing the application, complaint, or opposition, to also authorize the clerk to obtain from the court an order requiring that action.

C.S.H.B. 1438 authorizes an interested person to intervene in a guardianship proceeding only by filing a timely motion to intervene that is served on the parties, notwithstanding the Texas Rules of Civil Procedure. The bill requires the motion to state the grounds for intervention in the proceeding and be accompanied by a pleading that sets out the purpose for which intervention is sought. The bill establishes that the court has the discretion to grant or deny the motion and requires the court, in exercising that discretion, to consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights.

C.S.H.B. 1438 establishes, for purposes of statutory provisions relating to the sworn application for appointment of a guardian containing a statement regarding the proposed ward and certain other related facts regarding the guardianship, that a proposed ward's relatives within the third degree by consanguinity include the proposed ward's grandparent or grandchild and great-grandparent, great-grandchild, aunt who is a sister of a parent of the proposed ward, uncle who is a brother of a parent of the proposed ward, nephew who is a child of a brother or sister of the proposed ward, or niece who is a child of a brother or sister of the proposed ward.

C.S.H.B. 1438 authorizes a court, before an order appointing a guardian is entered or in such an order, to require the deposit of cash, securities, or other assets of a proposed ward or ward in a financial institution, as described by applicable statutory provisions governing an agreement regarding the deposit of estate assets, for safekeeping. The bill requires the amount of the bond required to be given by the guardian under statutory provisions regarding the general requirements for a bond to be reduced in proportion to the amount of the cash or the value of the securities or other assets deposited.

C.S.H.B. 1438 expands the sources from which a court may compensate a guardian ad litem, regardless of whether a guardianship is created for the proposed ward, to include a management trust, if a management trust has been created for the benefit of the proposed ward under the applicable statutory provisions.

C.S.H.B. 1438 revises the declaration made in the forms to be used as alternatives to a self-proving affidavit regarding the declaration of appointment of a guardian for the declarant's children or the declaration of a guardian in the event of later incapacity or need of guardian to add the specification in those forms that the declaration of the appointment is made willingly.

C.S.H.B. 1438 revises the provision requiring the clerk of the county having venue of the proceeding for the appointment of a guardian to obtain criminal history record information relating to any person proposed to serve as a guardian except for the ward's or proposed ward's family member or an attorney to remove the exception for the ward's or proposed ward's family member and to make a conforming change regarding the applicable use of that information by a court.

C.S.H.B. 1438 expands the sources from which the court costs of a guardianship proceeding are paid to include a management trust, if a management trust has been created for the benefit of the ward and the court determines it is in the ward's best interest.

C.S.H.B. 1438 revises the provision authorizing a successor guardian to settle with the successor's predecessor and receive and give a receipt for any portion of the estate property that remains in the successor's possession to specify instead that the successor guardian may settle

with the predecessor and receive and give a receipt for such a portion that remains in the predecessor's possession.

C.S.H.B. 1438 revises the provision establishing the duration of certain temporary guardianships to specify that the term expires on the earliest of the conclusion of the hearing challenging or contesting the application, the date a permanent guardian appointed by the court for the proposed ward qualifies to serve as the ward's guardian, or the 12-month anniversary of the date the temporary guardian qualifies, unless the term is extended by court order issued after a motion to extend the term is filed and a hearing on the motion is held.

C.S.H.B. 1438 clarifies that a guardian appointed by a foreign court to represent an incapacitated person who is residing in Texas or intends to move to Texas may file an application with a court in the county in which the ward resides or in which it is intended that the ward will reside to have the guardianship transferred to that court.

C.S.H.B. 1438 extends the applicability of the requirement that an initial accounting of a management trust be filed by certain trustees in guardianship proceedings by a certain date to a trustee of a management trust created for a person who, on the date the trust is created, is a ward under an existing guardianship and requires the applicable trustee to file the applicable report with the court that created the guardianship.

C.S.H.B. 1438 authorizes the court, if a minor who is not a ward does not have a parent or managing conservator willing or able to file an application with a court for an order to sell an interest of the minor in property without being appointed guardian, to appoint an attorney ad litem or guardian ad litem to act on the minor's behalf for the limited purpose of applying for an order to sell the minor's interest in property. The bill makes applicable to the attorney ad litem and guardian ad litem so appointed the statutory provisions regarding the application for such a sale and the venue for such an application.

C.S.H.B. 1438 makes applicable to a guardian of the person or estate appointed by a foreign court the statutory provisions relating to the sale of a ward's property without guardianship of the estate and adds the specification, for purposes of the provision regarding the authority of a guardian to file an application with a court for an order to sell an interest of the ward's estate without being appointed guardian of the ward's estate, that the estate is in Texas.

C.S.H.B. 1438 amends the Finance Code to exclude from the application of statutory provisions providing the exclusive method for compelled discovery of a record of a financial institution a record request in connection with an investigation conducted under Estates Code provisions regarding an investigation of the circumstances alleged in a guardianship application to determine whether a less restrictive alternative to guardianship is appropriate, an investigation of a complaint received from any person about a guardianship, or a court-initiated investigation to determine whether a person domiciled or found in the county in which the court is located is an incapacitated person and whether a guardianship is necessary.

C.S.H.B. 1438 amends the Government Code to remove and repeal statutory provisions relating to the procedure for filing and hearing a motion to recuse or disqualify a statutory probate court judge. The bill instead establishes that Texas Rules of Civil Procedure governing the recusal and disqualification of district and county court judges, and the grounds for such recusal or disqualification, apply to the recusal and disqualification of a statutory probate court judge except as otherwise provided by the bill or another general statutory provision relating to statutory probate courts. The bill grants the presiding judge of the statutory probate courts the authority to perform, and requires the presiding judge to perform, the functions and duties of the presiding judge of the administrative judicial region under the rules, including the duty to hear or rule on a referred motion of recusal or disqualification or, subject to certain conditions, to assign a judge to hear and rule on such a motion. The bill authorizes the presiding judge of the statutory probate courts to assign a presiding judge of the administrative judicial region to hear and rule on a referred motion of recusal or disqualification only with the consent of the presiding judge of the administrative judicial region. The bill prohibits the presiding judge of the statutory probate

courts from assigning a judge of a statutory probate court located in the same county as the statutory probate court served by the judge who is the subject of the motion of recusal or disqualification.

C.S.H.B. 1438 authorizes the judge who hears a motion of recusal or disqualification of a statutory probate court judge, after notice and hearing, to order the party or attorney who filed the motion, or both, to pay the reasonable attorney's fees and expenses incurred by another party if the judge determines that the motion was groundless and filed in bad faith or for the purpose of harassment, or was clearly brought for unnecessary delay and without sufficient cause, and to enjoin the movant from filing other recusal motions in the case without the prior written consent of the presiding judge of the statutory probate courts.

C.S.H.B. 1438 specifies that a judge who recuses himself or herself and serves a statutory probate court located in a county with only one such court is required to request that the presiding judge of the statutory probate courts, instead of the presiding judge of the administrative judicial district, assign a judge to hear the case. The bill specifies, for a judge who recuses himself or herself and serves a statutory probate court located in a county with more than one such court, that the request for the clerk who serves the statutory probate courts in that county to randomly reassign the case to a judge of one of the other statutory probate courts located in the county is directed to the presiding judge of the statutory probate courts. The bill specifies that a judge who disqualifies himself or herself is required to request that the presiding judge of the statutory probate courts, instead of the presiding judge of the administrative judicial district, assign a judge to hear the case and limits that requirement to a judge who serves a statutory probate court located in a county with only one such court. The bill requires a judge who disqualifies himself or herself and serves a statutory probate court located in a county with more than one such court to request that the presiding judge of the statutory probate courts order the clerk who serves the statutory probate courts in that county to randomly reassign the case to a judge of one of the other statutory probate courts.

C.S.H.B. 1438 specifies that the presiding judge of the statutory probate courts, instead of the judge who heard the motion, is required to transfer the case to another court or to assign another judge to the case if a motion for recusal or disqualification is granted. The bill requires the presiding judge or the judge assigned to decide the motion to enter an order of recusal or disqualification, as appropriate, and request the reassignment of the case. The bill specifies that a clerk of a statutory probate court who is unable to reassign a case as requested because the other statutory probate court judges in the county have been recused or disqualified, or are otherwise unavailable to hear the case, is required to immediately notify the presiding judge of the statutory probate courts, instead of the presiding judge of the administrative judicial district, and is required to request that the presiding judge of the statutory probate courts, instead of the presiding judge of the administrative judicial district, assign a judge to hear the case.

C.S.H.B. 1438 specifies that the presiding judge of the statutory probate courts, instead of the presiding judge of the administrative judicial district, is required to assign a statutory probate court judge or a former or retired judge of a statutory probate court to hear a case not later than the 15th day after the date an order of recusal or disqualification of a statutory probate court judge is issued in the case under certain circumstances involving the recusal or disqualification of a judge that serves a statutory probate court located in a county with only one such court or if the presiding judge receives notice and a request for assignment from the clerk of the statutory probate court. The bill requires the chief justice of the supreme court, if the judge who is the subject of an order of recusal or disqualification is the presiding judge of the statutory probate courts, to assign a regional presiding judge, a statutory probate judge, or a former or retired judge of a statutory probate court to hear the case.

C.S.H.B. 1438 requires the presiding judge of the statutory probate courts to assign or order the clerk who serves the statutory probate courts to randomly assign a judge or former or retired judge of a statutory probate court to hear a case in which a statutory probate judge has been recused or disqualified, as applicable. The bill authorizes a judge or a former or retired judge of a statutory probate court to be assigned by the presiding judge of the statutory probate courts to

hold court in a statutory probate court, a county court, or any statutory court exercising probate jurisdiction when the statutory probate judge is recused or disqualified in certain matters. The bill adds the recusal of a county judge, in addition to the absence, incapacitation, or disqualification of a county judge, to the circumstances that require a visiting judge to be assigned by the presiding judge of the statutory probate courts for a case involving probate, guardianship, or mental health matters.

C.S.H.B. 1438 repeals Sections 25.002201(c) and 25.00255(b)–(f), (h), (i), (i-1), (i-4), and (j), Government Code.

### **EFFECTIVE DATE**

September 1, 2015.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 1438 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED	HOUSE COMMITTEE SUBSTITUTE
SECTION 1. Section 1023.005, Estates Code, is amended.	SECTION 1. Same as introduced version.
SECTION 2. Section 1023.010, Estates Code, is amended.	SECTION 2. Same as introduced version.
SECTION 3. Section 1051.104(a), Estates Code, is amended.	SECTION 3. Same as introduced version.
SECTION 4. Section 1052.001(a), Estates Code, is amended.	SECTION 4. Same as introduced version.
SECTION 5. Section 1052.051(f), Estates Code, is amended.	SECTION 5. Same as introduced version.
<b>No equivalent provision.</b>	SECTION 6. Section 1053.052(a), Estates Code, is amended to read as follows: (a) The clerk may require <u>or may obtain from the court an order requiring</u> a person who files an application, complaint, or opposition relating to a guardianship proceeding, other than a guardian, attorney ad litem, or guardian ad litem, to provide security for the probable costs of the proceeding before filing the application, complaint, or opposition.
<b>No equivalent provision.</b>	SECTION 7. Subchapter A, Chapter 1055, Estates Code, is amended by adding Section 1055.003 to read as follows: <u>Sec. 1055.003. INTERVENTION BY INTERESTED PERSON. (a) Notwithstanding the Texas Rules of Civil Procedure, an interested person may intervene in a guardianship proceeding only</u>

by filing a timely motion to intervene that is served on the parties.

(b) The motion must state the grounds for intervention in the proceeding and be accompanied by a pleading that sets out the purpose for which intervention is sought.

(c) The court has the discretion to grant or deny the motion and, in exercising that discretion, must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights.

SECTION 6. Section 1101.001, Estates Code, is amended.

SECTION 8. Same as introduced version.

SECTION 7. Subchapter D, Chapter 1101, Estates Code, is amended.

SECTION 9. Same as introduced version.

SECTION 8. Section 1102.005, Estates Code, is amended.

SECTION 10. Same as introduced version.

SECTION 9. Section 1104.154(a), Estates Code, is amended.

SECTION 11. Same as introduced version.

SECTION 10. Section 1104.205(a), Estates Code, is amended.

SECTION 12. Same as introduced version.

No equivalent provision.

SECTION 13. Section 1104.402(a), Estates Code, is amended to read as follows:

(a) Except as provided by Section 1104.403, 1104.404, or 1104.406(a), the clerk of the county having venue of the proceeding for the appointment of a guardian shall obtain criminal history record information that is maintained by the Department of Public Safety or the Federal Bureau of Investigation identification division relating to:

- (1) a private professional guardian;
- (2) each person who represents or plans to represent the interests of a ward as a guardian on behalf of the private professional guardian;
- (3) each person employed by a private professional guardian who will:
  - (A) have personal contact with a ward or proposed ward;
  - (B) exercise control over and manage a ward's estate; or
  - (C) perform any duties with respect to the management of a ward's estate;
- (4) each person employed by or volunteering or contracting with a guardianship program to provide guardianship services to a ward of the program on the program's behalf; or

(5) any other person proposed to serve as a guardian under this title, including a proposed temporary guardian and a proposed successor guardian, other than [~~the ward's or proposed ward's family member~~ or] an attorney.

No equivalent provision.

SECTION 14. Section 1104.409, Estates Code, is amended to read as follows:

Sec. 1104.409. USE OF INFORMATION BY COURT. The court shall use the information obtained under this subchapter only in determining whether to:

(1) appoint, remove, or continue the appointment of a private professional guardian, a guardianship program, or the department; or

(2) appoint any other person proposed to serve as a guardian under this title, including a proposed temporary guardian and a proposed successor guardian, other than [~~the ward's or proposed ward's family member~~ or] an attorney.

SECTION 11. Section 1155.151(a), Estates Code, is amended.

SECTION 15. Same as introduced version.

No equivalent provision.

SECTION 16. Section 1163.101(c), Estates Code, is amended to read as follows:

(c) The guardian of the person shall file a sworn affidavit that contains:

(1) the guardian's current name, address, and telephone number;

(2) the ward's date of birth and current name, address, telephone number, and age;

(3) a description of the type of home in which the ward resides, which shall be described as:

(A) the ward's own home;

(B) a nursing home;

(C) a guardian's home;

(D) a foster home;

(E) a boarding home;

(F) a relative's home, in which case the description must specify the relative's relationship to the ward;

(G) a hospital or medical facility; or

(H) another type of residence;

(4) statements indicating:

(A) the length of time the ward has resided in the present home;

(B) the reason for a change in the ward's residence, if a change in the ward's residence has occurred in the past year;

(C) the date the guardian most recently saw the ward;

(D) how frequently the guardian has seen

the ward in the past year;

(E) whether the guardian has possession or control of the ward's estate;

(F) whether the ward's mental health has improved, deteriorated, or remained unchanged during the past year, including a description of the change if a change has occurred;

(G) whether the ward's physical health has improved, deteriorated, or remained unchanged during the past year, including a description of the change if a change has occurred;

(H) whether the ward has regular medical care; and

(I) the ward's treatment or evaluation by any of the following persons during the past year, including the person's name and a description of the treatment:

- (i) a physician;
- (ii) a psychiatrist, psychologist, or other mental health care provider;
- (iii) a dentist;
- (iv) a social or other caseworker; or
- (v) any other individual who provided treatment;

(5) a description of the ward's activities during the past year, including recreational, educational, social, and occupational activities, or a statement that no activities were available or that the ward was unable or refused to participate in activities;

(6) the guardian's evaluation of:

- (A) the ward's living arrangements as excellent, average, or below average, including an explanation if the conditions are below average;
- (B) whether the ward is content or unhappy with the ward's living arrangements; and
- (C) unmet needs of the ward;

(7) a statement indicating whether the guardian's power should be increased, decreased, or unaltered, including an explanation if a change is recommended;

(8) a statement indicating that the guardian has paid the bond premium for the next reporting period;

(9) if the guardian is a private professional guardian, a guardianship program, or the Department of Aging and Disability Services, whether the guardian or an individual certified under Subchapter C, Chapter 155 [444], Government Code, who is providing guardianship services to the ward and who is filing [~~swearing to~~] the affidavit on the guardian's behalf, is or has been the subject of an investigation

conducted by the Guardianship Certification Board during the preceding year; and  
(10) any additional information the guardian desires to share with the court regarding the ward, including:  
(A) whether the guardian has filed for emergency detention of the ward under Subchapter A, Chapter 573, Health and Safety Code; and  
(B) if applicable, the number of times the guardian has filed for emergency detention and the dates of the applications for emergency detention.

No equivalent provision.

SECTION 17. The heading to Section 1163.1011, Estates Code, is amended to read as follows:

Sec. 1163.1011. USE OF UNSWORN DECLARATION IN LIEU OF SWORN DECLARATION OR AFFIDAVIT FOR [ELECTRONIC] FILING [OF] ANNUAL REPORT.

No equivalent provision.

SECTION 18. Section 1163.1011(a), Estates Code, is amended to read as follows:

(a) A guardian of the person who is required to file an [files the] annual report under [required by] Section 1163.101 [electronically] with the court, including a guardian filing the annual report electronically, may use an unsworn declaration made as provided by this section instead of the [a written] sworn declaration or affidavit required by Section 1163.101.

SECTION 12. Section 1203.202(c), Estates Code, is amended.

SECTION 19. Same as introduced version.

No equivalent provision.

SECTION 20. Section 1251.052(b), Estates Code, is amended to read as follows:

(b) The term of a temporary guardian appointed under Section 1251.051 expires on the earliest of the following:

- (1) ~~[at]~~ the conclusion of the hearing challenging or contesting the application; ~~[or]~~
- (2) ~~[on]~~ the date a permanent guardian appointed by the court for the proposed ward qualifies to serve as the ward's guardian; or
- (3) the 12-month anniversary of the date the temporary guardian qualifies, unless the term is extended by court order issued after a motion to extend the term is filed and a hearing on the motion is held.

SECTION 13. Section 1253.051, Estates

SECTION 21. Same as introduced version.

Code, is amended.

SECTION 14. Section 1301.1535, Estates Code, is amended.

SECTION 15. Section 1351.001, Estates Code, is amended.

SECTION 16. Sections 1351.002(a) and (b), Estates Code, are amended.

SECTION 17. Section 1351.051, Estates Code, is amended to read as follows:

Sec. 1351.051. **APPLICABILITY OF SUBCHAPTER.** This subchapter applies only to a ward who has:

- (1) a guardian of the person but does not have a guardian of the estate; or
- (2) a guardian of the estate appointed by a foreign court.

SECTION 18. Section 1351.052, Estates Code, is amended to read as follows:

Sec. 1351.052. **AUTHORITY TO SELL WARD'S INTEREST IN PROPERTY WITHOUT APPOINTMENT AS GUARDIAN OF THE ESTATE IN THIS STATE.** A guardian of the person of a ward or a guardian of the estate of a ward appointed by a foreign court may apply to the court under this subchapter for an order to sell an interest in property in the ward's estate without being appointed guardian of the ward's estate in this state if the net value of the interest does not exceed \$100,000.

SECTION 19. Section 1351.053(b), Estates Code, is amended.

SECTION 20. (a) Except as otherwise provided by this section, the changes in law made by this Act apply to:

- (1) a guardianship created before, on, or after the effective date of this Act; and
- (2) an application for a guardianship pending on, or filed on or after, the effective date of this Act.

(b) The changes in law made by this Act to Sections 1023.005 and 1023.010, Estates Code, 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

SECTION 22. Same as introduced version.

SECTION 23. Same as introduced version.

SECTION 24. Same as introduced version.

SECTION 25. Section 1351.051, Estates Code, is amended to read as follows:

Sec. 1351.051. **APPLICABILITY OF SUBCHAPTER.** This subchapter applies only to a ward who has:

- (1) a guardian of the person but does not have a guardian of the estate; or
- (2) a guardian of the **person or** estate appointed by a foreign court.

SECTION 26. Section 1351.052, Estates Code, is amended to read as follows:

Sec. 1351.052. **AUTHORITY TO SELL WARD'S INTEREST IN PROPERTY WITHOUT APPOINTMENT AS GUARDIAN OF THE ESTATE IN THIS STATE.** A guardian of the person of a ward or a guardian of the **person or** estate of a ward appointed by a foreign court may apply to the court under this subchapter for an order to sell an interest in property in the ward's estate without being appointed guardian of the ward's estate in this state if the net value of the interest does not exceed \$100,000.

SECTION 27. Same as introduced version.

SECTION 35. (a) Except as otherwise provided by this section, the changes in law made by this Act apply to:

- (1) a guardianship created before, on, or after the effective date of this Act; and
- (2) an application for a guardianship pending on, or filed on or after, the effective date of this Act.

(b) The changes in law made by this Act to Sections 1023.005 and 1023.010, Estates Code, 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.

(c) The changes in law made by this Act to Sections 1104.154 and 1104.205, Estates Code, apply only to a declaration executed on or after the effective date of this Act. A declaration executed before the effective date of this Act is governed by the law in effect on the date the declaration was executed, and the former law is continued in effect for that purpose.

(d) The changes in law made by this Act to Section 1301.1535, Estates Code, apply only to a management trust created on or after the effective date of this Act. A management trust created before the effective date of this Act is governed by the law in effect on the date the management trust was created, and the former law is continued in effect for that purpose.

(e) The changes in law made by this Act to Sections 1351.001 and 1351.002, Estates Code, apply only to an application for the sale of an interest in property of a minor filed on or after the effective date of this Act. An application for the sale of an interest in property of a minor that is 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.

(f) The changes in law made by this Act to Sections 1351.051, 1351.052, and 1351.053, Estates Code, apply only to an application for the sale of an interest in property of a ward filed on or after the effective date of this Act. An application for the sale of an interest in property of a ward that is 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.

was filed, and the former law is continued in effect for that purpose.

(c) The changes in law made by this Act to Sections 1104.154 and 1104.205, Estates Code, apply only to a declaration executed on or after the effective date of this Act. A declaration executed before the effective date of this Act is governed by the law in effect on the date the declaration was executed, and the former law is continued in effect for that purpose.

(d) The changes in law made by this Act to Section 1301.1535, Estates Code, apply only to a management trust created on or after the effective date of this Act. A management trust created before the effective date of this Act is governed by the law in effect on the date the management trust was created, and the former law is continued in effect for that purpose.

(e) The changes in law made by this Act to Sections 1351.001 and 1351.002, Estates Code, apply only to an application for the sale of an interest in property of a minor filed on or after the effective date of this Act. An application for the sale of an interest in property of a minor that is 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.

(f) The changes in law made by this Act to Sections 1351.051, 1351.052, and 1351.053, Estates Code, apply only to an application for the sale of an interest in property of a ward filed on or after the effective date of this Act. An application for the sale of an interest in property of a ward that is 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.

(g) Section 1055.003, Estates Code, as added by this Act, applies only to a guardianship proceeding commenced on or after the effective date of this Act. A guardianship proceeding commenced before the effective date of this Act is governed by the law as it existed immediately before that date, and that law is continued in effect for that purpose.

(h) The change in law made by this Act to Section 1251.052(b), Estates Code, applies only to a temporary guardian appointed on or after the effective date of this Act. A temporary guardian appointed before the effective date of this Act is governed by the

law in effect when the guardian was appointed, and the former law is continued in effect for that purpose.

(i) Sections 25.0022, 25.002201, 25.00255, and 26.012, Government Code, as amended by this Act, apply only to a motion for recusal or disqualification of a judge that is filed on or after the effective date of this Act. A motion for recusal or disqualification of a judge filed before the effective date of this Act is governed by the law in effect on the date the motion was filed, and the former law is continued in effect for that purpose.

No equivalent provision.

SECTION 28. Section 59.006(a), Finance Code, is amended to read as follows:

(a) This section provides the exclusive method for compelled discovery of a record of a financial institution relating to one or more customers but does not create a right of privacy in a record. This section does not apply to and does not require or authorize a financial institution to give a customer notice of:

(1) a demand or inquiry from a state or federal government agency authorized by law to conduct an examination of the financial institution;

(2) a record request from a state or federal government agency or instrumentality under statutory or administrative authority that provides for, or is accompanied by, a specific mechanism for discovery and protection of a customer record of a financial institution, including a record request from a federal agency subject to the Right to Financial Privacy Act of 1978 (12 U.S.C. Section 3401 et seq.), as amended, or from the Internal Revenue Service under Section 1205, Internal Revenue Code of 1986;

(3) a record request from or report to a government agency arising out of:

(A) the investigation or prosecution of a criminal offense;

(B) the investigation of alleged abuse, neglect, or exploitation of an elderly or disabled person in accordance with Chapter 48, Human Resources Code; or

(C) the assessment for or provision of guardianship services under Subchapter E, Chapter 161, Human Resources Code;

(4) a record request in connection with a garnishment proceeding in which the financial institution is garnishee and the customer is debtor;

- (5) a record request by a duly appointed receiver for the customer;
- (6) an investigative demand or inquiry from a state legislative investigating committee;
- (7) an investigative demand or inquiry from the attorney general of this state as authorized by law other than the procedural law governing discovery in civil cases; ~~[or]~~
- (8) the voluntary use or disclosure of a record by a financial institution subject to other applicable state or federal law; or
- (9) a record request in connection with an investigation conducted under Section 1054.151, 1054.152, or 1102.001, Estates Code.

No equivalent provision.

SECTION 29. Sections 25.0022(d) and (h), Government Code, are amended to read as follows:

(d) The presiding judge shall:

- (1) ensure the promulgation of local rules of administration in accordance with policies and guidelines set by the supreme court;
  - (2) advise local statutory probate court judges on case flow management practices and auxiliary court services;
  - (3) perform a duty of a local administrative statutory probate court judge if the local administrative judge does not perform that duty;
  - (4) appoint an assistant presiding judge of the statutory probate courts;
  - (5) call and preside over annual meetings of the judges of the statutory probate courts at a time and place in the state as designated by the presiding judge;
  - (6) call and convene other meetings of the judges of the statutory probate courts as considered necessary by the presiding judge to promote the orderly and efficient administration of justice in the statutory probate courts;
  - (7) study available statistics reflecting the condition of the dockets of the probate courts in the state to determine the need for the assignment of judges under this section;
  - (8) compare local rules of court to achieve uniformity of rules to the extent practical and consistent with local conditions; and
  - (9) assign or order the clerk who serves the statutory probate courts to randomly assign a judge or former or retired judge of a statutory probate court to hear a case under Section 25.002201(a) or 25.00255, as applicable ~~[the circumstances described by Section 25.002201(b)].~~
- (h) Subject to Section 25.002201, a judge or

a former or retired judge of a statutory probate court may be assigned by the presiding judge of the statutory probate courts to hold court in a statutory probate court, a county court, or any statutory court exercising probate jurisdiction when:

- (1) a statutory probate judge requests assignment of another judge to the judge's court;
- (2) a statutory probate judge is absent, disabled, or disqualified for any reason;
- (3) a statutory probate judge is present or is trying cases as authorized by the constitution and laws of this state and the condition of the court's docket makes it necessary to appoint an additional judge;
- (4) the office of a statutory probate judge is vacant;
- (5) the presiding judge of an administrative judicial district requests the assignment of a statutory probate judge to hear a probate matter in a county court or statutory county court;
- (6) the statutory probate ~~[presiding]~~ judge is ~~[of the administrative judicial district fails to timely assign a judge to replace a]~~ recused or disqualified ~~[statutory probate court judge]~~ as described by Section 25.002201(a) ~~[Section 25.002201(b)]~~;
- (7) a county court judge requests the assignment of a statutory probate judge to hear a probate matter in the county court; or
- (8) a local administrative statutory probate court judge requests the assignment of a statutory probate judge to hear a matter in a statutory probate court.

No equivalent provision.

SECTION 30. Sections 25.002201(a) and (b), Government Code, are amended to read as follows:

- (a) Except as provided by Subsection (b), not ~~[Not]~~ later than the 15th day after the date an order of recusal or disqualification of a statutory probate court judge is issued in a case, the presiding judge ~~[of the administrative judicial district]~~ shall assign a statutory probate court judge or a former or retired judge of a statutory probate court to hear the case if:
  - (1) the judge of the statutory probate court recused himself or herself under Section 25.00255(g)(1)(A);
  - (2) the judge of the statutory probate court disqualified himself or herself under Section 25.00255(g-1);
  - (3) the order was issued under Section 25.00255(i-3)(1); or

(4) the presiding judge [~~of the administrative judicial district~~] receives notice and a request for assignment from the clerk of the statutory probate court under Section 25.00255(l).

(b) If the [~~presiding~~] judge who is the subject of an order of recusal or disqualification is [~~of an administrative judicial district does not assign a judge under Subsection (a) within the time prescribed by that subsection,~~] the presiding judge of the statutory probate courts, the chief justice of the supreme court shall [may] assign a regional presiding judge, a statutory probate judge, or a former or retired judge of a statutory probate court to hear the case [instead of the presiding judge of the administrative judicial district making the assignment under that subsection].

No equivalent provision.

SECTION 31. Section 25.00255, Government Code, is amended by amending Subsections (a), (g), (g-1), (i-2), (i-3), (i-5), and (l) and adding Subsection (a-1) to read as follows:

(a) Notwithstanding any conflicting provision in the Texas Rules of Civil Procedure, Rules 18a and 18b, Texas Rules of Civil Procedure, apply to the recusal and disqualification of a statutory probate court judge except as otherwise provided by this section or another provision of this subchapter. The presiding judge:

(1) has the authority and shall perform the functions and duties of the presiding judge of the administrative judicial region under the rules, including the duty to hear or rule on a referred motion of recusal or disqualification or, subject to Subdivisions (2) and (3) and to Section 25.002201, assign a judge to hear and rule on a referred motion of recusal or disqualification;

(2) may assign a presiding judge of the administrative judicial region to hear and rule on a referred motion of recusal or disqualification only with the consent of the presiding judge of the administrative judicial region; and

(3) may not assign a judge of a statutory probate court located in the same county as the statutory probate court served by the judge who is the subject of the motion of recusal or disqualification [A party in a hearing or trial in a statutory probate court may file with the clerk of the court a motion stating grounds for the recusal or disqualification of the judge. The grounds

~~may include any disability of the judge to preside over the case].~~

(a-1) Notwithstanding Rule 18a(h), Texas Rules of Civil Procedure, or any other conflicting provision of the rules, the judge who hears a motion of recusal or disqualification, after notice and hearing, may:

(1) order the party or attorney who filed the motion, or both, to pay the reasonable attorney's fees and expenses incurred by another party if the judge determines that the motion was:

(A) groundless and filed in bad faith or for the purpose of harassment; or

(B) clearly brought for unnecessary delay and without sufficient cause; and

(2) enjoin the movant from filing other recusal motions in the case without the prior written consent of the presiding judge of the statutory probate courts.

(g) A judge who recuses himself or herself:

(1) shall enter an order of recusal and:

(A) if the judge serves a statutory probate court located in a county with only one statutory probate court, request that the presiding judge ~~[of the administrative judicial district]~~ assign a judge under Section 25.002201 to hear the case; or

(B) subject to Subsection (1), if the judge serves a statutory probate court located in a county with more than one statutory probate court, request that the presiding judge order ~~[request that]~~ the clerk who serves the statutory probate courts in that county to randomly reassign the case to a judge of one of the other statutory probate courts located in the county; and

(2) may not take other action in the case except for good cause stated in the order in which the action is taken.

(g-1) A judge who disqualifies himself or herself:

(1) shall enter an order of disqualification and:

(A) if the judge serves a statutory probate court located in a county with only one statutory probate court, request that the presiding judge ~~[of the administrative judicial district]~~ assign a judge under Section 25.002201 to hear the case; or

(B) subject to Subsection (1), if the judge serves a statutory probate court located in a county with more than one statutory probate court, request that the presiding judge order the clerk who serves the statutory probate courts in that county to randomly reassign

the case to a judge of one of the other statutory probate courts; and

(2) may not take other action in the case.

(i-2) A judge who hears a motion for recusal or disqualification [~~under Subsection (i) or (i-1)~~] may also hear any amended or supplemented motion for recusal or disqualification filed in the case.

(i-3) If a motion for recusal or disqualification is granted [~~after a hearing conducted as provided by Subsection (i) or (i-1)~~], the presiding judge [who heard the motion] shall transfer the case to another court or assign another judge to the case and:

(1) if the judge subject to recusal or disqualification serves a statutory probate court located in a county with only one statutory probate court, the presiding judge or judge assigned to decide the motion shall enter an order of recusal or disqualification, as appropriate, and request that the presiding judge [of the administrative judicial district] assign a judge under Section 25.002201 to hear the case; or

(2) subject to Subsection (1), if the judge subject to recusal or disqualification serves a statutory probate court located in a county with more than one statutory probate court, the presiding judge or judge assigned to decide the motion shall enter an order of recusal or disqualification, as appropriate, and request that the clerk who serves the statutory probate courts in that county randomly reassign the case to a judge of one of the other statutory probate courts located in the county.

(i-5) A judge assigned to hear a motion for recusal or disqualification [~~under Subsection (i)~~] is entitled to receive the same salary, compensation, and expenses, and to be paid in the same manner and from the same fund, as a judge otherwise assigned under Section 25.0022 [~~, except that a judge assigned under Subsection (i) shall provide the information required by Section 25.0022(1) to the presiding judge of the administrative judicial district, who shall immediately forward the information to the presiding judge of the statutory probate courts].~~

(l) If a clerk of a statutory probate court is unable to reassign a case as requested under Subsection (g)(1)(B), ~~(g-1)(1)(B)~~, or (i-3)(2) because the other statutory probate court judges in the county have been recused or disqualified or are otherwise unavailable to hear the case, the clerk shall immediately

notify the presiding judge [~~of the administrative judicial district~~] and request that the presiding judge [~~of the administrative judicial district~~] assign a judge under Section 25.002201 to hear the case.

No equivalent provision.

SECTION 32. Section 26.012, Government Code, is amended to read as follows:

Sec. 26.012. ASSIGNMENT OF VISITING JUDGE FOR PROBATE, GUARDIANSHIP, AND MENTAL HEALTH MATTERS. If the county judge is absent, incapacitated, recused, or disqualified to act in a probate, guardianship, or mental health matter, a visiting judge shall be assigned in accordance with Section 25.0022(h).

No equivalent provision.

SECTION 33. Sections 411.1386(a) and (e), Government Code, are amended to read as follows:

(a) Except as provided by Subsections (a-1), (a-5), and (a-6), the clerk of the county having venue over a proceeding for the appointment of a guardian under Title 3, Estates [~~Chapter XIII, Texas Probate~~] Code, shall obtain from the department criminal history record information maintained by the department that relates to:

- (1) a private professional guardian;
- (2) each person who represents or plans to represent the interests of a ward as a guardian on behalf of the private professional guardian;
- (3) each person employed by a private professional guardian who will:
  - (A) have personal contact with a ward or proposed ward;
  - (B) exercise control over and manage a ward's estate; or
  - (C) perform any duties with respect to the management of a ward's estate;
- (4) each person employed by or volunteering or contracting with a guardianship program to provide guardianship services to a ward of the program on the program's behalf; or
- (5) any other person proposed to serve as a guardian under Title 3, Estates [~~Chapter XIII, Texas Probate~~] Code, including a proposed temporary guardian and a proposed successor guardian, other than [~~the ward's or proposed ward's family member or~~] an attorney.

(e) The court, as that term is defined by Section 1002.008, Estates [~~601, Texas~~

~~Probate~~ Code, shall use the information obtained or provided under Subsection (a), (a-4)(1), (a-5), or (a-6) only in determining whether to:

(1) appoint, remove, or continue the appointment of a private professional guardian, a guardianship program, or the Department of Aging and Disability Services; or

(2) appoint any other person proposed to serve as a guardian under Title 3, Estates [~~Chapter XIII, Texas Probate~~] Code, including a proposed temporary guardian and a proposed successor guardian, other than ~~[the ward's or proposed ward's family member or]~~ an attorney.

No equivalent provision.

SECTION 34. The following are repealed:

(1) Sections 25.00255(b), (c), (d), (e), (f), (h), (i), (i-1), (i-4), and (j), Government Code; and

(2) Section 25.002201(c), Government Code.

SECTION 21. This Act takes effect September 1, 2015.

SECTION 36. Same as introduced version.