

House Bill 1438
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SECTION 1. Section 1023.005, Estates Code, is amended to read as follows:

Sec. 1023.005. COURT ACTION. ~~[(a)]~~ On hearing an application under Section 1023.003, if good cause is not shown to deny the application and it appears that transfer of the guardianship is in the best interests of the ward, the court shall enter an order:

(1) authorizing the transfer on payment on behalf of the estate of all accrued costs; and

(2) requiring that any existing bond of the guardian must remain in effect until a new bond has been given or a rider has been filed in accordance with Section 1023.010.

~~[(b) In an order entered under Subsection (a), 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.]~~

SECTION 2. Section 1023.010, Estates Code, is amended to read as follows:

Sec. 1023.010. REVIEW OF TRANSFERRED GUARDIANSHIP. (a) Not later than the 90th day after the date the transfer of the guardianship takes effect under Section 1023.007, 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.

(b) After the hearing described by Subsection (a), the court to which the guardianship was transferred shall enter an order requiring the guardian to:

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- (1) give a new bond payable to the judge of the court to which the guardianship was transferred; or
- (2) file a rider to an existing bond noting the court to which the guardianship was transferred.

SECTION 3. Section 1051.104(a), Estates Code, is amended to read as follows:

(a) The person filing an application for guardianship shall mail a copy of the application and a notice containing the information required in the citation issued under Section 1051.102 by registered or certified mail, return receipt requested, or by any other form of mail that provides proof of delivery, to the following persons, if their whereabouts are known or can be reasonably ascertained:

- (1) each adult child of the proposed ward;
- (2) each adult sibling of the proposed ward;
- (3) the administrator of a nursing home facility or similar facility in which the proposed ward resides;
- (4) the operator of a residential facility in which the proposed ward resides;
- (5) a person whom the applicant knows to hold a power of attorney signed by the proposed ward;
- (6) a person designated to serve as guardian of the proposed ward by a written declaration under Subchapter E, Chapter 1104, if the applicant knows of the existence of the declaration;
- (7) a person designated to serve as guardian of the proposed ward in the probated will of the last surviving parent of the proposed ward;
- (8) a person designated to serve as guardian of the proposed ward by a written declaration of the proposed ward's last surviving parent, if the declarant is deceased and the applicant

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knows of the existence of the declaration; and

(9) each adult [person] named [~~as another relative within the third degree by consanguinity~~] in the application as an "other living relative" of the proposed ward within the third degree by consanguinity, as required by Section 1101.001(b)(11) or (13), if the proposed ward's spouse and each of the proposed ward's parents, adult siblings, and adult children are deceased or there is no spouse, parent, adult sibling, or adult child.

SECTION 4. Section 1052.001(a), Estates Code, is amended to read as follows:

(a) The county clerk shall maintain a record book titled "Judge's Guardianship Docket" and shall record in the book:

(1) the name of each person with respect to whom, or with respect to whose estate, a proceeding is commenced or sought to be commenced;

(2) the name of the guardian of the estate or person or of the applicant for letters of guardianship;

(3) the date each original application for a guardianship proceeding is filed;

(4) a notation of each order, judgment, decree, and proceeding that occurs in each guardianship [estate], including the date it occurs; and

(5) the docket number of each guardianship as assigned under Subsection (b).

SECTION 5. Section 1052.051(f), Estates Code, is amended to read as follows:

(f) After the creation of a guardianship, a person or entity is entitled to be reimbursed for a filing fee described by Subsection (d), other than a deposit for payment to an attorney ad litem, from:

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No equivalent provision.

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(1) the guardianship estate;
(2) the management trust, if a management trust has been created for the benefit of the ward under Chapter 1301 and the court determines it is in the ward's best interest; or
(3) ~~(2)~~ the county treasury, if the assets of the guardianship estate or management trust, as appropriate, are ~~is~~ insufficient to pay the amount of the filing fee.

SECTION 6. Section 1053.052(a), Estates Code, is amended to read as follows:

(a) The clerk may require or may obtain from the court an order requiring 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.

No equivalent provision.

SECTION 7. Subchapter A, Chapter 1055, Estates Code, is amended by adding Section 1055.003 to read as follows:

Sec. 1055.003. INTERVENTION BY INTERESTED

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SECTION 5. Same as House version.

SECTION __. Subchapter D, Chapter 1054, Estates Code, is amended by adding Section 1054.155 to read as follows:

Sec. 1054.155. NOTICE REGARDING REQUEST TO FINANCIAL INSTITUTION FOR CUSTOMER RECORDS.

If a request is made to a financial institution for a customer record in connection with an investigation conducted under Section 1054.151 or 1054.152, the court shall provide written notice of that fact to the ward or proposed ward with respect to whom the investigation is conducted not later than the fifth day after the date the financial institution produces the customer record. [FA1(4)]

SECTION 6. Subchapter A, Chapter 1055, Estates Code, is amended by adding Section 1055.003 to read as follows:

Sec. 1055.003. INTERVENTION BY INTERESTED

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PERSON. (a) Notwithstanding the Texas Rules of Civil Procedure, an interested person may intervene in a guardianship proceeding only 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 8. Section 1101.001, Estates Code, is amended by adding Subsection (c) to read as follows:

(c) For purposes of this section, a proposed ward's relatives within the third degree by consanguinity include the proposed ward's:

(1) grandparent or grandchild; and

(2) 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.

SECTION 9. Subchapter D, Chapter 1101, Estates Code, is amended by adding Section 1101.156 to read as follows:

Sec. 1101.156. **REQUIRED DEPOSIT OF ESTATE ASSETS.** (a) Before an order appointing a guardian is

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PERSON. (a) Notwithstanding the Texas Rules of Civil Procedure, an interested person may intervene in a guardianship proceeding only 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:

(1) the intervention will unduly delay or prejudice the adjudication of the original parties' rights; or

(2) the proposed intervenor has such an adverse relationship with the ward or proposed ward that the intervention would unduly prejudice the adjudication of the original parties' rights. [FA1(1)]

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SECTION 8. Subchapter D, Chapter 1101, Estates Code, is amended by adding Section 1101.156 to read as follows:

Sec. 1101.156. **DEPOSIT OF ESTATE ASSETS.** (a) At the time or after an order appointing a guardian is signed by the

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entered, or in such an order, a court may require the deposit of cash, securities, or other assets of a proposed ward or ward in a financial institution described by Section 1105.155(b) for safekeeping.

(b) The amount of the bond required to be given by the guardian under Section 1105.101 shall be reduced in proportion to the amount of the cash or the value of the securities or other assets deposited under this section.

No equivalent provision.

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court but before letters of guardianship are issued, a court may, on the request of a party, require the deposit for safekeeping of cash, securities, or other assets of a ward or proposed ward in a financial institution described by Section 1105.155(b). [FA1(2)]

(b) The amount of the bond required to be given by the guardian under Section 1105.101 shall be reduced in proportion to the amount of the cash or the value of the securities or other assets deposited under this section.

SECTION 9. Section 1102.001, Estates Code, is amended to read as follows:

Sec. 1102.001. COURT-INITIATED INVESTIGATION. (a)

If a court has probable cause to believe that a person domiciled or found in the county in which the court is located is an incapacitated person, and the person does not have a guardian in this state, the court shall appoint a guardian ad litem or court investigator to investigate the person's conditions and circumstances to determine whether:

- (1) the person is an incapacitated person; and
- (2) a guardianship is necessary.

(b) If a court appoints a guardian ad litem or court investigator under Subsection (a):

(1) the court's order appointing a guardian ad litem or court investigator must include a statement that the person believed to be incapacitated has the right to petition the court to have the appointment set aside;

(2) at the initial meeting between the guardian ad litem or court investigator and the person believed to be incapacitated, the guardian ad litem or court investigator, as appropriate, shall provide a copy of the information letter under Section 1102.003 and the order to, and discuss the contents of the

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letter and order with, the person believed to be incapacitated;
and
(3) during the period beginning after the date of the initial meeting described by Subdivision (2) and ending on the date an application for the appointment of a guardian is filed, the person believed to be incapacitated may petition the court to have the appointment of the guardian ad litem or court investigator, as appropriate, set aside.

SECTION 10. Section 1102.003, Estates Code, is amended by adding Subsection (c) to read as follows:

(c) Any information provided by the Department of Family and Protective Services under this section that is confidential under Chapter 48, Human Resources Code, remains confidential and is not subject to disclosure under Chapter 552, Government Code.

SECTION 11. Section 1102.005, Estates Code, is amended to read as follows:

Sec. 1102.005. COMPENSATION OF GUARDIAN AD LITEM. (a) Regardless of whether a guardianship is created for a proposed ward and except as provided by Section 1155.151, a [A] court that appoints a guardian ad litem under Section 1102.001 may authorize compensation of the guardian ad litem from available funds of:

(1) the proposed ward's estate; or
(2) the management trust, if a management trust has been created for the benefit of the proposed ward under Chapter 1301[, regardless of whether a guardianship is created for the proposed ward].

(b) Except as provided by Section 1155.151, after [After] examining the proposed ward's assets or the assets of any

No equivalent provision.

SECTION 10. Section 1102.005, Estates Code, is amended to read as follows:

Sec. 1102.005. COMPENSATION OF GUARDIAN AD LITEM. (a) Regardless of whether a guardianship is created for a proposed ward, a [A] court that appoints a guardian ad litem under Section 1102.001 may authorize compensation of the guardian ad litem from available funds of:

(1) the proposed ward's estate; or
(2) the management trust, if a management trust has been created for the benefit of the proposed ward under Chapter 1301[, regardless of whether a guardianship is created for the proposed ward].

(b) After examining the proposed ward's assets or the assets of any management trust created for the proposed ward's

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benefit under Chapter 1301, and determining that the proposed ward or the management trust is unable to pay for services provided by the guardian ad litem, the court may authorize compensation from the county treasury.

No equivalent provision.

SECTION 11. Section 1104.154(a), Estates Code, is amended to read as follows:

(a) As an alternative to the self-proving affidavit authorized by Section 1104.153, a declaration of appointment of a guardian for the declarant's children in the event of the declarant's death or incapacity may be simultaneously executed, attested, and made self-proved by including the following in substantially the same form and with substantially the same contents:

I, _____, as declarant, after being duly sworn, declare to the undersigned witnesses and to the undersigned authority that this instrument is my Declaration of Appointment of Guardian for My Children in the Event of My Death or Incapacity, and that I willingly make ~~have~~

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management trust created for the proposed ward's benefit under Chapter 1301, and determining that the proposed ward or the management trust is unable to pay for services provided by the guardian ad litem, the court may authorize compensation from the county treasury.

SECTION __. Chapter 1102, Estates Code, is amended by adding Section 1102.006 to read as follows:

Sec. 1102.006. NOTICE REGARDING REQUEST TO FINANCIAL INSTITUTION FOR CUSTOMER RECORDS.

If a request is made to a financial institution for a customer record in connection with an investigation conducted under Section 1102.001, the court shall provide written notice of that fact to the proposed ward with respect to whom the investigation is conducted not later than the fifth day after the date the financial institution produces the customer record.

[FA1(4)]

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~~made~~] and execute [~~executed~~] it for the purposes expressed in the declaration. I now sign this declaration in the presence of the attesting witnesses and the undersigned authority on this ____ day of _____, 20__.

Declarant

The undersigned, _____ and _____, each being 14 years of age or older, after being duly sworn, declare to the declarant and to the undersigned authority that the declarant declared to us that this instrument is the declarant's Declaration of Appointment of Guardian for the Declarant's Children in the Event of Declarant's Death or Incapacity and that the declarant executed it for the purposes expressed in the declaration. The declarant then signed this declaration and we believe the declarant to be of sound mind. We now sign our names as attesting witnesses on this ____ day of _____, 20__.

Witness

Witness

Subscribed and sworn to before me by the above named declarant, and affiants, this ____ day of _____, 20__.

Notary Public in and for the
State of Texas
My Commission expires:

SECTION 12. Section 1104.205(a), Estates Code, is amended to read as follows:

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(a) As an alternative to the self-proving affidavit authorized by Section 1104.204, a declaration of guardian in the event of later incapacity or need of guardian may be simultaneously executed, attested, and made self-proved by including the following in substantially the same form and with substantially the same contents:

I, _____, as declarant, after being duly sworn, declare to the undersigned witnesses and to the undersigned authority that this instrument is my Declaration of Guardian in the Event of Later Incapacity or Need of Guardian, and that I willingly make [~~have made~~] and execute [~~executed~~] it for the purposes expressed in the declaration. I now sign this declaration in the presence of the attesting witnesses and the undersigned authority on this ____ day of _____, 20__.

Declarant

The undersigned, _____ and _____, each being 14 years of age or older, after being duly sworn, declare to the declarant and to the undersigned authority that the declarant declared to us that this instrument is the declarant's Declaration of Guardian in the Event of Later Incapacity or Need of Guardian and that the declarant executed it for the purposes expressed in the declaration. The declarant then signed this declaration and we believe the declarant to be of sound mind. We now sign our names as attesting witnesses on this ____ day of _____, 20__.

Witness

Witness

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Subscribed and sworn to before me by the above named declarant, and affiants, this ____ day of _____, 20__.

Notary Public in and for the
State of Texas
My Commission expires:

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

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proposed successor guardian, other than ~~[the ward's or proposed ward's family member or]~~ an attorney.

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 15. Section 1155.151(a), Estates Code, is amended to read as follows:

(a) In a guardianship proceeding, the court costs of the proceeding, including the cost of the guardians ad litem, attorneys ad litem, court visitor, mental health professionals, and interpreters appointed under this title, shall be set in an amount the court considers equitable and just and, except as provided by Subsection (c), shall be paid as follows, and the court shall issue the judgment accordingly:

- (1) out of the guardianship estate;
- (2) out of the management trust, if a management trust has been created for the benefit of the ward under Chapter 1301

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SECTION 16. Section 1155.151, Estates Code, is amended by amending Subsections (a) and (b) and adding Subsections (a-1), (a-2), (a-3), (a-4), (d), (e), and (f) to read as follows:

(a) In a guardianship proceeding, the court costs of the proceeding, including the costs described by Subsection (a-1) ~~[cost of the guardians ad litem, attorneys ad litem, court visitor, mental health professionals, and interpreters appointed under this title, shall be set in an amount the court considers equitable and just and, except as provided by Subsection (c)]~~, shall, except as provided by Subsection (c), be paid as follows ~~[out of the guardianship estate, or the county treasury if the estate is insufficient to pay the cost]~~, and the court shall issue the judgment accordingly:

- (1) out of the guardianship estate;
- (2) out of the management trust, if a management trust has been created for the benefit of the ward under Chapter 1301

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and the court determines it is in the ward's best interest; [;] or

(3) out of the county treasury if the assets of the guardianship estate or management trust, as appropriate, are [is] insufficient to pay the cost[, and the court shall issue the judgment accordingly].

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and the court determines it is in the ward's best interest;

(3) by the party to the proceeding who incurred the costs, unless that party filed, on the party's own behalf, an affidavit of inability to pay the costs under Rule 145, Texas Rules of Civil Procedure, that shows the party is unable to afford the costs, if:

(A) there is no guardianship estate or no management trust has been created for the ward's benefit; or

(B) the assets of the guardianship estate or management trust, as appropriate, are insufficient to pay the costs; or

(4) out of the county treasury if:

(A) there is no guardianship estate or management trust or the assets of the guardianship estate or management trust, as appropriate, are insufficient to pay the costs; and

(B) the party to the proceeding who incurred the costs filed, on the party's own behalf, an affidavit of inability to pay the costs under Rule 145, Texas Rules of Civil Procedure, that shows the party is unable to afford the costs.

(a-1) In a guardianship proceeding, the cost of any guardians ad litem, attorneys ad litem, court visitors, mental health professionals, and interpreters appointed under this title shall be set in an amount the court considers equitable and just.

(a-2) Notwithstanding any other law requiring the payment of court costs in a guardianship proceeding, the following are not required to pay court costs on the filing of or during a guardianship proceeding:

(1) an attorney ad litem;

(2) a guardian ad litem;

(3) a person or entity who files an affidavit of inability to pay the costs under Rule 145, Texas Rules of Civil Procedure, that shows the person or entity is unable to afford the costs;

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(4) a nonprofit guardianship program;
(5) a governmental entity; and
(6) a government agency or nonprofit agency providing guardianship services.
(a-3) For purposes of Subsections (a) and (a-2), a person or entity who files an affidavit of inability to pay the costs under Rule 145, Texas Rules of Civil Procedure, is unable to afford the costs if the affidavit shows that the person or entity:
(1) is currently receiving assistance or other benefits from a government program under which assistance or other benefits are provided to individuals on a means-tested basis;
(2) is eligible for and currently receiving free legal services in the guardianship proceeding through the following:
(A) a legal services provider funded partly by the Texas Access to Justice Foundation;
(B) a legal services provider funded partly by the Legal Services Corporation; or
(C) a nonprofit corporation formed under the laws of this state that provides legal services to low-income individuals whose household income is at or below 200 percent of the federal poverty guidelines as determined by the United States Department of Health and Human Services;
(3) applied and was eligible for free legal services through a person or entity listed in Subdivision (2) but was declined representation; or
(4) has a household income that is at or below 200 percent of the federal poverty guidelines as determined by the United States Department of Health and Human Services and has money or other available assets, excluding any homestead and exempt property under Chapter 42, Property Code, in an amount that does not exceed \$2,000.
(a-4) If an affidavit of inability to pay costs filed under Rule

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145, Texas Rules of Civil Procedure, is contested, the court, at a hearing, shall review the contents of and attachments to the affidavit and any other evidence offered at the hearing and make a determination as to whether the person or entity is unable to afford the costs. If the court finds that the person or entity is able to afford the costs, the person or entity must pay the court costs. Except with leave of court, no further action in the guardianship proceeding may be taken by a person or entity found able to afford costs until payment of those costs is made.

(b) The costs attributable to the services of a person described by Subsection (a-1) [~~(a)~~] shall be paid under this section at any time after the commencement of the proceeding as ordered by the court.

(d) If a guardianship of the estate or management trust under Chapter 1301 is created, a person or entity who paid any costs on the filing of or during the proceeding is entitled to be reimbursed out of assets of the guardianship estate or management trust, as appropriate, for the costs if:

(1) the assets of the estate or trust, as appropriate, are sufficient to cover the reimbursement of the costs; and

(2) the person or entity has not been ordered by the court to pay the costs as all or part of the payment of court costs under Subsection (c).

(e) If at any time after a guardianship of the estate or management trust under Chapter 1301 is created there are sufficient assets of the estate or trust, as appropriate, to pay the amount of any of the costs exempt from payment under Subsection (a-2), the court shall require the guardian to pay out of the guardianship estate or management trust, as appropriate, to the court clerk for deposit in the county treasury the amount of any of those costs.

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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;

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(f) To the extent that this section conflicts with the Texas Rules of Civil Procedure or other rules, this section controls.

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- (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;

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(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~~ [44], 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.

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.

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.

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SECTION 18. Same as House version.

SECTION 19. Same as House version.

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SECTION 19. Section 1203.202(c), Estates Code, is amended to read as follows:

(c) A successor guardian may:

- (1) make himself or herself, and be made, a party to a suit prosecuted by or against the successor's predecessor;
- (2) settle with the predecessor and receive and give a receipt for any portion of the estate property that remains in the predecessor's ~~successor's~~ possession; or
- (3) commence a suit on the bond or bonds of the predecessor, in the successor's own name and capacity, for all the estate property that:
 - (A) came into the predecessor's possession; and
 - (B) has not been accounted for by the predecessor.

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 21. Section 1253.051, Estates Code, is amended to read as follows:

Sec. 1253.051. APPLICATION FOR RECEIPT AND ACCEPTANCE OF FOREIGN GUARDIANSHIP. A

SENATE VERSION (IE)

SECTION 20. Same as House version.

SECTION 21. 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 nine-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. [FA1(3)]

SECTION 22. Same as House version.

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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 the county in which the ward resides or in which it is intended that the ward will ~~intends to~~ reside to have the guardianship transferred to that ~~the~~ court. The application must have attached a certified copy of all papers of the guardianship filed and recorded in the foreign court.

SECTION 22. Section 1301.1535, Estates Code, is amended to read as follows:

Sec. 1301.1535. INITIAL ACCOUNTING BY CERTAIN TRUSTEES REQUIRED. (a) This section applies only to a trustee of a management trust created for a person who ~~for whom a guardianship proceeding is pending~~ on the date the trust is created is:

(1) a ward under an existing guardianship; or

(2) a proposed ward with respect to whom an application for guardianship has been filed and is pending.

(b) Not later than the 30th day after the date a trustee to which this section applies receives property into the trust, the trustee shall file with the court that created the guardianship or the court in which the application for guardianship was filed ~~proceeding is pending~~ a report describing all property held in the trust on the date of the report and specifying the value of the property on that date.

SECTION 23. Section 1351.001, Estates Code, is amended to read as follows:

Sec. 1351.001. AUTHORITY TO SELL MINOR'S INTEREST IN PROPERTY WITHOUT GUARDIANSHIP.

(a) A parent or managing conservator of a minor who is not a

SENATE VERSION (IE)

SECTION 23. Same as House version.

SECTION 24. Same as House version.

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ward may apply to the court under this subchapter for an order to sell an interest of the minor in property without being appointed guardian if the net value of the interest does not exceed \$100,000.

(b) If a minor who is not a ward does not have a parent or managing conservator willing or able to file an application under Subsection (a), the court may 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 under this subchapter.

SECTION 24. Sections 1351.002(a) and (b), Estates Code, are amended to read as follows:

(a) A parent, ~~[or]~~ managing conservator, or attorney ad litem or guardian ad litem appointed under Section 1351.001(b) shall apply to the court under oath for the sale of property under this subchapter.

(b) An application must contain:

- (1) the minor's name;
- (2) a legal description of the real property or a description that identifies the personal property, as applicable;
- (3) the minor's interest in the property;
- (4) the purchaser's name;
- (5) a statement that the sale of the minor's interest in the property is for cash; and
- (6) a statement that all money received from the sale of the minor's interest in the property ~~[by the parent or managing conservator]~~ shall be used for the minor's use and benefit.

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

Sec. 1351.051. APPLICABILITY OF SUBCHAPTER. This

SENATE VERSION (IE)

SECTION 25. Same as House version.

SECTION 26. Same as House version.

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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. Section 1351.053(b), Estates Code, is amended to read as follows:

(b) For purposes of Subsection (a)(2), references in Section 1351.002(b) to[:

~~[(4)] "minor" are replaced with references to "ward."~~ ["ward"; and

~~[(2)] "parent or managing conservator" are replaced with references to "guardian of the person."]~~

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

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SECTION 27. Same as House version.

SECTION 28. Same as House version.

SECTION 29. Same as House version.

CONFERENCE

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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]~~

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(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.

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

SENATE VERSION (IE)

SECTION 30. Same as House version.

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(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

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matter in a statutory probate court.

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(1).

(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].~~

SECTION 31. Section 25.00255, Government Code, is amended by amending Subsections (a), (g), (g-1), (i-2), (i-3),

SECTION 31. Same as House version.

SECTION 32. Same as House version.

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(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

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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

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~~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~~

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~~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].~~

(1) 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.

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).

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:

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SECTION 34. Same as House version.

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- (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.

SECTION 34. The following are repealed:

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SECTION 35. The following are repealed:

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- (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 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

SENATE VERSION (IE)

- (1) Sections 1052.051(d), (e), and (f), Estates Code;
- (2) Sections 25.00255(b), (c), (d), (e), (f), (h), (i), (i-1), (i-4), and (j), Government Code; and
- (3) Section 25.002201(c), Government Code.

SECTION 36. (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

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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.

SENATE VERSION (IE)

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) The changes in law made by this Act to Sections 1052.051, 1102.001, and 1155.151, Estates Code, and Section 1055.003, Estates Code, as added by this Act, apply 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.

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(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.

SECTION 36. This Act takes effect September 1, 2015.

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(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.

SECTION 37. Same as House version.

CONFERENCE