

Amend SB 39 (house committee report) by adding the following appropriately numbered SECTION to the bill and renumbering subsequent SECTIONS of the bill as appropriate:

SECTION _____. (a) Section 361.052, Estates Code, is amended to read as follows:

Sec. 361.052. REMOVAL WITH NOTICE. (a) The court may remove a personal representative on the court's own motion, or on the complaint of any interested person, after the representative has been cited by personal service to answer at a time and place set ~~[fixed]~~ in the notice, if:

(1) sufficient grounds appear to support a belief that the representative has misapplied, embezzled, or removed from the state, or is about to misapply, embezzle, or remove from the state, all or part of the property entrusted to the representative's care;

(2) the representative fails to return any account required by law to be made;

(3) the representative fails to obey a proper order of the court that has jurisdiction with respect to the performance of the representative's duties;

(4) the representative is proved to have been guilty of gross misconduct, or mismanagement in the performance of the representative's duties;

(5) the representative:

(A) becomes incapacitated;

(B) is sentenced to the penitentiary; or

(C) from any other cause, becomes incapable of properly performing the duties of the representative's trust; or

(6) the representative, as executor or administrator, fails to~~+~~

~~[(A)]~~ make a final settlement by the third anniversary of the date letters testamentary or of administration are granted, unless that period is extended by the court on a showing of sufficient cause supported by oath~~[, or~~

~~[(B) timely file the affidavit or certificate required by Section 308.004]~~.

(b) If a personal representative, as executor or administrator, fails to timely file the affidavit or certificate

required by Section 308.004, the court, on the court's own motion, may remove the personal representative after providing 30 days' written notice to the personal representative to answer at a time and place set in the notice, by certified mail, return receipt requested, to:

- (1) the representative's last known address; and
- (2) the last known address of the representative's attorney of record.

(b) Section 404.0035, Estates Code, is amended to read as follows:

Sec. 404.0035. REMOVAL OF INDEPENDENT EXECUTOR WITH NOTICE.

(a) The probate court, on the court's own motion, may remove an independent executor appointed under this subtitle after providing 30 days' written notice of the court's intention to the independent executor, requiring answering at a time and place set in the notice ~~[of the court's intent to remove the independent executor]~~, by certified mail, return receipt requested, to the independent executor's last known address and to the last known address of the independent executor's attorney of record, if the independent executor:

(1) neglects to qualify in the manner and time required by law; ~~[or]~~

(2) fails to return, before the 91st day after the date the independent executor qualifies, either an inventory of the estate property and a list of claims that have come to the independent executor's knowledge or an affidavit in lieu of the inventory, appraisement, and list of claims, unless that deadline is extended by court order; or

(3) fails to timely file the affidavit or certificate required by Section 308.004.

(b) The probate court, on its own motion or on motion of any interested person, after the independent executor has been cited by personal service to answer at a time and place set ~~[fixed]~~ in the notice, may remove an independent executor when:

(1) the independent executor fails to make an accounting which is required by law to be made;

(2) ~~[the independent executor fails to timely file the~~

~~affidavit or certificate required by Section 308.004,~~

~~[(3)]~~ the independent executor is proved to have been guilty of gross misconduct or gross mismanagement in the performance of the independent executor's duties;

(3) ~~[(4)]~~ the independent executor becomes an incapacitated person, or is sentenced to the penitentiary, or from any other cause becomes legally incapacitated from properly performing the independent executor's fiduciary duties; or

(4) ~~[(5)]~~ the independent executor becomes incapable of properly performing the independent executor's fiduciary duties due to a material conflict of interest.

(c) Section 1023.003, Estates Code, is amended to read as follows:

Sec. 1023.003. ~~[APPLICATION FOR]~~ TRANSFER OF GUARDIANSHIP TO ANOTHER COUNTY. (a) When a guardian or any other person desires to transfer the transaction of the business of the guardianship from one county to another, the person shall file a written application in the court in which the guardianship is pending stating the reason for the transfer.

(b) With notice as provided by Section 1023.004, the court in which a guardianship is pending, on the court's own motion, may transfer the transaction of the business of the guardianship to another county if the ward resides in the county to which the guardianship is to be transferred.

(d) Section 1023.004, Estates Code, is amended to read as follows:

Sec. 1023.004. NOTICE. (a) On filing an application or on motion of a court to transfer a guardianship to another county under Section 1023.003, the sureties on the bond of the guardian shall be cited by personal service to appear and show cause why the guardianship ~~[application]~~ should not be transferred ~~[granted]~~.

(b) If an application is filed by a person other than the guardian or if a court made a motion to transfer a guardianship, the guardian shall be cited by personal service to appear and show cause why the guardianship ~~[application]~~ should not be transferred ~~[granted]~~.

(e) Section 1023.005, Estates Code, is amended to read as

follows:

Sec. 1023.005. COURT ACTION. On hearing an application or motion under Section 1023.003, if good cause is not shown to deny the transfer [~~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.

(f) Section 1203.052, Estates Code, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

(a) The court may remove a guardian as provided by Subsection (a-1) [~~on the court's own motion, or on the complaint of an interested person, after the guardian has been cited by personal service to answer at a time and place set in the notice,~~] if:

(1) sufficient grounds appear to support a belief that the guardian has misapplied, embezzled, or removed from the state, or is about to misapply, embezzle, or remove from the state, any of the property entrusted to the guardian's care;

(2) the guardian fails to return any account or report that is required by law to be made;

(3) the guardian fails to obey a proper order of the court that has jurisdiction with respect to the performance of the guardian's duties;

(4) the guardian is proved to have been guilty of gross misconduct or mismanagement in the performance of the guardian's duties;

(5) the guardian:

(A) becomes incapacitated;

(B) is sentenced to the penitentiary; or

(C) from any other cause, becomes incapable of properly performing the duties of the guardian's trust;

(6) the guardian has engaged in conduct with respect to the ward that would be considered to be abuse, neglect, or exploitation, as those terms are defined by Section 48.002, Human

Resources Code, if engaged in with respect to an elderly or disabled person, as defined by that section;

(7) the guardian neglects to educate or maintain the ward as liberally as the means of the ward's estate and the ward's ability or condition permit;

(8) the guardian interferes with the ward's progress or participation in programs in the community;

(9) the guardian fails to comply with the requirements of Subchapter G, Chapter 1104;

(10) the court determines that, because of the dissolution of the joint guardians' marriage, the termination of the guardians' joint appointment and the continuation of only one of the joint guardians as the sole guardian is in the best interest of the ward; or

(11) the guardian would be ineligible for appointment as a guardian under Subchapter H, Chapter 1104.

(a-1) The court may remove a guardian for a reason listed in Subsection (a) on the:

(1) court's own motion, after the guardian has been notified, by certified mail, return receipt requested, to answer at a time and place set in the notice; or

(2) complaint of an interested person, after the guardian has been cited by personal service to answer at a time and place set in the notice.

(g) Sections 361.052 and 404.0035, Estates Code, as amended by this SECTION, apply to the estate of a decedent who dies before, on, or after the effective date of this Act.

(h) Sections 1023.003, 1023.004, 1023.005, and 1203.052, Estates Code, as amended by this SECTION, apply to a guardianship created before, on, or after the effective date of this Act.