

By: Zaffirini

S.B. No. 38

A BILL TO BE ENTITLED

AN ACT

relating to guardianships.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections 404.0035(a) and (b), Estates Code, are amended to read as follows:

(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 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) the independent executor fails to timely file the affidavit or certificates 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

1 personal service to answer at a time and place fixed in the notice,  
2 may remove an independent executor when:

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

5 (2) ~~the independent executor fails to timely file the~~  
6 ~~affidavit or certificate required by Section 308.004;~~

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

10 (3) ~~(4)~~ the independent executor becomes an  
11 incapacitated person, or is sentenced to the penitentiary, or from  
12 any other cause becomes legally incapacitated from properly  
13 performing the independent executor's fiduciary duties; or

14 (4) ~~(5)~~ the independent executor becomes incapable  
15 of properly performing the independent executor's fiduciary duties  
16 due to a material conflict of interest.

17 SECTION 2. Section 1023.003, Estates Code, is amended to  
18 read as follows:

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

25 (b) The court in which a guardianship is pending may on its  
26 own motion and with notice transfer the transaction of the business  
27 of the guardianship from one county to another of the ward is

1 residing in the county to which the transfer is to be made.

2 SECTION 3. Sections 1032.004(a) and (b), Estates Code, are  
3 amended to read as follows:

4 (a) On filing an application to transfer a guardianship to  
5 another county or on notice by the court of intention to transfer a  
6 guardianship to another county, the sureties on the bond of the  
7 guardian shall be cited by personal service to appear and show cause  
8 why the guardianship should not be transferred [~~application should~~  
9 ~~not be granted~~].

10 (b) If an application is filed by a person other than the  
11 guardian or a notice is given by the court, the guardian shall be  
12 cited by personal service to appear and show cause why the  
13 application should not be granted.

14 SECTION 4. Sections 1203.052, Estates Code, is amended by  
15 amending Subsection (a) and adding Subsection (a-1) to read as  
16 follows:

17 (a) The court may remove a guardian:

18 (1) on the court's own motion after the guardian has  
19 been notified by certified mail, return receipt requested; [7] or

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

23 (a-1) The court may remove a guardian only [~~notice,~~] if:

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

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

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

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

9           (5) the guardian:

10                 (A) becomes incapacitated;

11                 (B) is sentenced to the penitentiary; or

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

14           (6) the guardian has engaged in conduct with respect  
15 to the ward that would be considered to be abuse, neglect, or  
16 exploitation, as those terms are defined by Section [48.002](#), Human  
17 Resources Code, if engaged in with respect to an elderly or disabled  
18 person, as defined by that section;

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

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

24           (9) the guardian fails to comply with the requirements  
25 of Subchapter G, Chapter [1104](#);

26           (10) the court determines that, because of the  
27 dissolution of the joint guardians' marriage, the termination of

1 the guardians' joint appointment and the continuation of only one  
2 of the joint guardians as the sole guardian is in the best interest  
3 of the ward; or

4 (11) the guardian would be ineligible for appointment  
5 as a guardian under Subchapter H, Chapter [1104](#).

6 SECTION 5. This Act takes effect September 1, 2017.