

1-1 By: Zaffirini S.B. No. 38  
1-2 (In the Senate - Filed November 14, 2016; January 24, 2017,  
1-3 read first time and referred to Committee on State Affairs;  
1-4 March 6, 2017, reported adversely, with favorable Committee  
1-5 Substitute by the following vote: Yeas 9, Nays 0; March 6, 2017,  
1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	Huffman	X		
1-10	Hughes	X		
1-11	Birdwell	X		
1-12	Creighton	X		
1-13	Estes	X		
1-14	Lucio	X		
1-15	Nelson	X		
1-16	Schwertner	X		
1-17	Zaffirini	X		

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 38 By: Zaffirini

1-19 A BILL TO BE ENTITLED  
1-20 AN ACT

1-21 relating to certain procedural matters in courts exercising probate  
1-22 jurisdiction.

1-23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-24 SECTION 1. Section 361.052, Estates Code, is amended to  
1-25 read as follows:

1-26 Sec. 361.052. REMOVAL WITH NOTICE. (a) The court may  
1-27 remove a personal representative on the court's own motion, or on  
1-28 the complaint of any interested person, after the representative  
1-29 has been cited by personal service to answer at a time and place set  
1-30 [~~fixed~~] in the notice, if:

1-31 (1) sufficient grounds appear to support a belief that  
1-32 the representative has misapplied, embezzled, or removed from the  
1-33 state, or is about to misapply, embezzle, or remove from the state,  
1-34 all or part of the property entrusted to the representative's care;

1-35 (2) the representative fails to return any account  
1-36 required by law to be made;

1-37 (3) the representative fails to obey a proper order of  
1-38 the court that has jurisdiction with respect to the performance of  
1-39 the representative's duties;

1-40 (4) the representative is proved to have been guilty  
1-41 of gross misconduct, or mismanagement in the performance of the  
1-42 representative's duties;

1-43 (5) the representative:

1-44 (A) becomes incapacitated;

1-45 (B) is sentenced to the penitentiary; or

1-46 (C) from any other cause, becomes incapable of  
1-47 properly performing the duties of the representative's trust; or

1-48 (6) the representative, as executor or administrator,  
1-49 fails to[+]

1-50 [~~(A)~~] make a final settlement by the third  
1-51 anniversary of the date letters testamentary or of administration  
1-52 are granted, unless that period is extended by the court on a  
1-53 showing of sufficient cause supported by oath[~~, or~~

1-54 [~~(B) timely file the affidavit or certificate~~  
1-55 ~~required by Section 308.004].~~

1-56 (b) If a personal representative, as executor or  
1-57 administrator, fails to timely file the affidavit or certificate  
1-58 required by Section 308.004, the court, on the court's own motion,  
1-59 may remove the personal representative after providing 30 days'  
1-60 written notice to the personal representative to answer at a time

2-1 and place set in the notice, by certified mail, return receipt  
2-2 requested, to:

- 2-3 (1) the representative's last known address; and
- 2-4 (2) the last known address of the representative's  
2-5 attorney of record.

2-6 SECTION 2. Section 404.0035, Estates Code, is amended to  
2-7 read as follows:

2-8 Sec. 404.0035. REMOVAL OF INDEPENDENT EXECUTOR WITH NOTICE.

2-9 (a) The probate court, on the court's own motion, may remove an  
2-10 independent executor appointed under this subtitle after providing  
2-11 30 days' written notice of the court's intention to the independent  
2-12 executor, requiring answering at a time and place set in the notice  
2-13 [of the court's intent to remove the independent executor], by  
2-14 certified mail, return receipt requested, to the independent  
2-15 executor's last known address and to the last known address of the  
2-16 independent executor's attorney of record, if the independent  
2-17 executor:

2-18 (1) neglects to qualify in the manner and time  
2-19 required by law; ~~or~~

2-20 (2) fails to return, before the 91st day after the date  
2-21 the independent executor qualifies, either an inventory of the  
2-22 estate property and a list of claims that have come to the  
2-23 independent executor's knowledge or an affidavit in lieu of the  
2-24 inventory, appraisal, and list of claims, unless that deadline  
2-25 is extended by court order; or

2-26 (3) fails to timely file the affidavit or certificate  
2-27 required by Section 308.004.

2-28 (b) The probate court, on its own motion or on motion of any  
2-29 interested person, after the independent executor has been cited by  
2-30 personal service to answer at a time and place set ~~fixed~~ in the  
2-31 notice, may remove an independent executor when:

2-32 (1) the independent executor fails to make an  
2-33 accounting which is required by law to be made;

2-34 (2) ~~[the independent executor fails to timely file the~~  
2-35 ~~affidavit or certificate required by Section 308.004;~~

2-36 ~~[(3)]~~ the independent executor is proved to have been  
2-37 guilty of gross misconduct or gross mismanagement in the  
2-38 performance of the independent executor's duties;

2-39 (3) ~~[(4)]~~ the independent executor becomes an  
2-40 incapacitated person, or is sentenced to the penitentiary, or from  
2-41 any other cause becomes legally incapacitated from properly  
2-42 performing the independent executor's fiduciary duties; or

2-43 (4) ~~[(5)]~~ the independent executor becomes incapable  
2-44 of properly performing the independent executor's fiduciary duties  
2-45 due to a material conflict of interest.

2-46 SECTION 3. Section 1023.003, Estates Code, is amended to  
2-47 read as follows:

2-48 Sec. 1023.003. ~~[APPLICATION FOR]~~ TRANSFER OF GUARDIANSHIP  
2-49 TO ANOTHER COUNTY. (a) When a guardian or any other person desires  
2-50 to transfer the transaction of the business of the guardianship  
2-51 from one county to another, the person shall file a written  
2-52 application in the court in which the guardianship is pending  
2-53 stating the reason for the transfer.

2-54 (b) With notice as provided by Section 1023.004, the court  
2-55 in which a guardianship is pending, on the court's own motion, may  
2-56 transfer the transaction of the business of the guardianship to  
2-57 another county if the ward resides in the county to which the  
2-58 guardianship is to be transferred.

2-59 SECTION 4. Section 1023.004, Estates Code, is amended to  
2-60 read as follows:

2-61 Sec. 1023.004. NOTICE. (a) On filing an application or on  
2-62 motion of a court to transfer a guardianship to another county under  
2-63 Section 1023.003, the sureties on the bond of the guardian shall be  
2-64 cited by personal service to appear and show cause why the  
2-65 guardianship ~~[application]~~ should not be transferred ~~[granted]~~.

2-66 (b) If an application is filed by a person other than the  
2-67 guardian or if a court made a motion to transfer a guardianship, the  
2-68 guardian shall be cited by personal service to appear and show cause  
2-69 why the guardianship ~~[application]~~ should not be transferred

3-1 [~~granted~~].

3-2 SECTION 5. Section 1023.005, Estates Code, is amended to  
3-3 read as follows:

3-4 Sec. 1023.005. COURT ACTION. On hearing an application or  
3-5 motion under Section 1023.003, if good cause is not shown to deny  
3-6 the transfer [~~application~~] and it appears that transfer of the  
3-7 guardianship is in the best interests of the ward, the court shall  
3-8 enter an order:

3-9 (1) authorizing the transfer on payment on behalf of  
3-10 the estate of all accrued costs; and

3-11 (2) requiring that any existing bond of the guardian  
3-12 must remain in effect until a new bond has been given or a rider has  
3-13 been filed in accordance with Section 1023.010.

3-14 SECTION 6. Section 1203.052, Estates Code, is amended by  
3-15 amending Subsection (a) and adding Subsection (a-1) to read as  
3-16 follows:

3-17 (a) The court may remove a guardian as provided by  
3-18 Subsection (a-1) [~~on the court's own motion, or on the complaint of~~  
3-19 ~~an interested person, after the guardian has been cited by personal~~  
3-20 ~~service to answer at a time and place set in the notice,~~] if:

3-21 (1) sufficient grounds appear to support a belief that  
3-22 the guardian has misapplied, embezzled, or removed from the state,  
3-23 or is about to misapply, embezzle, or remove from the state, any of  
3-24 the property entrusted to the guardian's care;

3-25 (2) the guardian fails to return any account or report  
3-26 that is required by law to be made;

3-27 (3) the guardian fails to obey a proper order of the  
3-28 court that has jurisdiction with respect to the performance of the  
3-29 guardian's duties;

3-30 (4) the guardian is proved to have been guilty of gross  
3-31 misconduct or mismanagement in the performance of the guardian's  
3-32 duties;

3-33 (5) the guardian:

3-34 (A) becomes incapacitated;

3-35 (B) is sentenced to the penitentiary; or

3-36 (C) from any other cause, becomes incapable of  
3-37 properly performing the duties of the guardian's trust;

3-38 (6) the guardian has engaged in conduct with respect  
3-39 to the ward that would be considered to be abuse, neglect, or  
3-40 exploitation, as those terms are defined by Section 48.002, Human  
3-41 Resources Code, if engaged in with respect to an elderly or disabled  
3-42 person, as defined by that section;

3-43 (7) the guardian neglects to educate or maintain the  
3-44 ward as liberally as the means of the ward's estate and the ward's  
3-45 ability or condition permit;

3-46 (8) the guardian interferes with the ward's progress  
3-47 or participation in programs in the community;

3-48 (9) the guardian fails to comply with the requirements  
3-49 of Subchapter G, Chapter 1104;

3-50 (10) the court determines that, because of the  
3-51 dissolution of the joint guardians' marriage, the termination of  
3-52 the guardians' joint appointment and the continuation of only one  
3-53 of the joint guardians as the sole guardian is in the best interest  
3-54 of the ward; or

3-55 (11) the guardian would be ineligible for appointment  
3-56 as a guardian under Subchapter H, Chapter 1104.

3-57 (a-1) The court may remove a guardian for a reason listed in  
3-58 Subsection (a) on the:

3-59 (1) court's own motion, after the guardian has been  
3-60 notified, by certified mail, return receipt requested, to answer at  
3-61 a time and place set in the notice; or

3-62 (2) complaint of an interested person, after the  
3-63 guardian has been cited by personal service to answer at a time and  
3-64 place set in the notice.

3-65 SECTION 7. Sections 361.052 and 404.0035, Estates Code, as  
3-66 amended by this Act, apply to the estate of a decedent who dies  
3-67 before, on, or after the effective date of this Act.

3-68 SECTION 8. Sections 1023.003, 1023.004, 1023.005, and  
3-69 1203.052, Estates Code, as amended by this Act, apply to a

4-1 guardianship created before, on, or after the effective date of  
4-2 this Act.

4-3 SECTION 9. This Act takes effect September 1, 2017.

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