

BILL ANALYSIS

Senate Research Center

S.B. 667
By: Zaffirini
State Affairs
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 667 is an omnibus guardianship bill prepared by the Real Estate Probate and Trust Law Section of the Texas Bar. To ensure the rights of all interested parties in a management trust are protected, S.B. 667 would require notice to the potential beneficiary, the beneficiary's guardian, and family member when an application for the creation of a management trust is filed. What's more, by allowing management trusts to last until the removal of an incapacity or until the beneficiary dies, S.B. 667 would ensure that a management trust benefitting a person with a disability is not terminated inadvertently when the person turns 25, which in turn would require reimbursement to Medicaid from the trust. S.B. 667 would also increase judicial efficiency by allowing county courts-at-law to hear trust cases when the person under guardianship is also a trust's beneficiary. Presently, some of these cases are forced to go to district court. S.B. 667 would also amend statutes relating to the sale of property by an out-of-state guardian to allow the guardian to use the sale proceeds for the benefit of the person under guardianship. S.B. 667 would also clarify that under the Guardianship Bill of Rights a court investigator or guardian ad litem is authorized to be appointed to investigate a complaint relating to modification or termination of a guardianship, which is consistent with current law. S.B. 667 would provide that the proper newspaper to be used for notice of a guardianship proceeding is a newspaper of general circulation in the county, rather than a newspaper printed in the county. This addresses the reality that newspapers are often printed in a county other than the county in which they are circulated. Lastly, S.B. 667 would require payment out of the guardianship estate to be under a best interest standard, consistent with the standard for payment out of a person with a disability's management trust. (Original Author's/Sponsor's Statement of Intent)

S.B. 667 amends current law relating to probate and guardianship matters and certain procedures for persons who are incapacitated or have a mental illness.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Supreme Court of Texas in SECTION 24 (Section 1104.338, Estates Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 30.014(a), Civil Practice and Remedies Code, to require each party or the party's attorney in a civil action, including a probate or guardianship proceeding, filed in a district court, county court, statutory county court, or statutory probate court, rather than in a civil action filed in a district court, county court, or statutory county court, to include certain information in its initial pleading.

SECTION 2. Amends Section 33.101, Estates Code, to require the court clerk in certain probate proceedings to take certain actions, including transmitting the original file in electronic or paper form, rather than transmitting the original file, to the court in the county in which venue is proper.

SECTION 3. Amends Section 33.102(a), Estates Code, to make a conforming change to this subsection.

SECTION 4. Amends Section 33.103, Estates Code, by adding Subsection (c) to provide that the transmittal under Subsection (b) (relating to requiring the clerk of a certain court to transmit certain documents to a certain other court) of the original file and the certified copy of the index is authorized to be in electronic or paper form, except that an original will filed in the probate proceeding, if any, is required to be delivered to the court to which the proceeding is transferred.

SECTION 5. Amends Section 51.003(b), Estates Code, to require a citation or notice issued by the county clerk to be styled "The State of Texas" and be signed by the clerk under the court's seal, rather than under the clerk's seal.

SECTION 6. Amends Section 202.054, Estates Code, as follows:

Sec. 202.054. PERSONAL SERVICE OF CITATION MAY BE REQUIRED. (a) Creates this subsection from existing text and makes no further changes to this subsection.

(b) Authorizes any disinterested person competent to make an oath that a certain citation was served, if a distributee to be cited under Subsection (a) (relating to authorizing a court to require that service of citation in a proceeding to declare heirship be made by personal service to certain parties) is absent from or is not a resident of this state, to serve the citation.

SECTION 7. Amends Section 351.351, Estates Code, to provide that this subchapter (Certain Administered Estates) does not apply to certain parties, including the appointment of a successor independent administrator under Section 404.005, rather than a successor independent executor under Section 404.005.

SECTION 8. Amends Section 404.0036(b), Estates Code, to make a conforming change to this subsection.

SECTION 9. Amends the heading to Section 404.005, Estates Code, to read as follows:

Sec. 404.005. COURT-APPOINTED SUCCESSOR INDEPENDENT ADMINISTRATOR.

SECTION 10. Amends Sections 404.005(a), (b), (c), (h), and (i), Estates Code, to make conforming changes to these subsections.

SECTION 11. Amends Section 452.006, Estates Code, by adding Subsection (c) to require a certain appointee to file with a certain court proof of service of the notice required under Subsection (a) (relating to requiring certain parties to provide certain notice by certain means on the date the court clerk issues letters of temporary administration) in the manner provided by Section 51.103(b)(3) (relating to providing certain criteria for proof of service by mail).

SECTION 12. Amends Section 503.002, Estates Code, as follows:

Sec. 503.002. New heading: RECORDING OF CERTAIN FOREIGN TESTAMENTARY INSTRUMENTS IN LANGUAGE OTHER THAN ENGLISH. (a) Deletes existing text prohibiting the original signatures required by Section 501.002(c) (relating to requiring a certain application for ancillary probate of foreign will to include for filing a copy of certain documents that meet certain criteria), notwithstanding that section, from being required for a recordation in the deed records in accordance with Section 503.001 (Authorization to Record Certain Foreign Testamentary Instruments in Deed Records) or for a purpose described by Section 503.051 (Recorded Foreign Testamentary Instrument as Conveyance) or 503.052 (Recorded Foreign Testamentary Instrument as Notice of Title). Authorizes an authenticated copy of a will or other testamentary instrument described by Section 503.001(a) (relating to authorizing certain documents to be filed and recorded in deed records in any county in this state in which certain land is located, subject to certain other provisions), along with a copy of the judgment, order, or decree by which the instrument was admitted to probate that has the

attestation and certificate required by Section 501.002(c), that is written in whole or in part in a language other than English to be filed for recording in the deed records in any county in this state in which the land conveyed or disposed of in the instrument is located if:

(1) a correct English translation is recorded with the authenticated copies of the will or other testamentary instrument and judgment, order, or decree by which the instrument was admitted to probate; and

(2) the accuracy of the translation is sworn to before an officer authorized to administer oaths.

(b) Provides that the recording of an authenticated copy of a will or other testamentary instrument and a copy of the judgment, order, or decree in the manner provided by Subsection (a) operates as constructive notice from the date of filing to all persons of the:

(1) existence of the instrument; and

(2) title or titles conferred by the instrument.

SECTION 13. Amends Chapter 1002, Estates Code, by adding Sections 1002.0215 and 1002.0265, as follows:

Sec. 1002.0215. OFFICE OF PUBLIC GUARDIAN. Defines "office of public guardian."

Sec. 1002.0265. PUBLIC GUARDIAN. Defines "public guardian."

SECTION 14. Amends Section 1021.001, Estates Code, as follows:

Sec. 1021.001. MATTERS RELATED TO GUARDIANSHIP PROCEEDING. (a) Provides that, for purposes of this code, in a county in which there is no statutory probate court or county court of law exercising original probate jurisdiction, rather than in a county in which there is no statutory probate court, a matter related to a guardianship proceeding includes certain matters and actions.

(a-1) Provides that, for purposes of this code, in a county in which there is no statutory probate court, but in which there is a county court at law exercising original probate jurisdiction, a matter related to a guardianship proceeding includes:

(1) all matters and actions described in Subsection (a);

(2) the interpretation and administration of a testamentary trust in which a ward is an income or remainder beneficiary; and

(3) the interpretation and administration of an inter vivos trust in which a ward is an income or remainder beneficiary.

(b) Provides that, for purposes of this code, in a county in which there is a statutory probate court, a matter related to a guardianship proceeding includes:

(1) all matters and actions described in Subsections (a) and (a-1), rather than in Subsection (a); and

(2) and (3) makes no changes to these subdivisions.

SECTION 15. Amends Section 1023.006, Estates Code, to make a conforming change to this section.

SECTION 16. Amends Section 1023.007, Estates Code, to make conforming changes to this section.

SECTION 17. Amends Section 1051.003(b), Estates Code, to make a conforming change to this subsection.

SECTION 18. Amends the heading to Chapter 1054, Estates Code, to read as follows:

CHAPTER 1054. COURT OFFICERS, COURT-APPOINTED PERSONS, AND
ATTORNEYS

SECTION 19. Amends the heading to Subchapter E, Chapter 1054, Estates Code, to read as follows:

SUBCHAPTER E. QUALIFICATIONS TO SERVE AS ATTORNEY

SECTION 20. Amends Section 1054.201, Estates Code, by amending Subsection (a) and adding Subsection (c), as follows:

(a) Requires an attorney representing any person's interests in a guardianship proceeding, including an attorney ad litem, except as provided by Subsection (c), rather than an attorney for an applicant for guardianship and a court-appointed attorney in a guardianship proceeding, including an attorney ad litem, to be certified by the State Bar of Texas (state bar), or a person or other entity designated by the state bar, as having successfully completed a course of study in guardianship law and procedure sponsored by the state bar or the state bar's designee.

(c) Authorizes an attorney to commence representation of a person's interests and file an appearance in a guardianship proceeding before completing the course required for certification under Subsection (a), but requires the attorney to complete the course not later than the 14th day after the date of filing the appearance and before filing any substantive motion in the guardianship proceeding.

SECTION 21. Amends Section 1101.001(b), Estates Code, as follows:

(b) Makes nonsubstantive changes to Subdivision (9). Requires the application for appointment of a guardian to be sworn to by the applicant and state:

(1) makes no changes to this subdivision;

(2) the name, former name, if any, relationship, and address, rather than the name, relationship, and address, of the person the applicant seeks to have appointed as guardian;

(3)–(8) makes no changes to these subdivisions;

(9) the approximate value and a detailed description, rather than the approximate value and description, of the proposed ward's property, including:

(A) liquid assets, including any compensation, pension, insurance, or allowance, rather than any compensation, pension, insurance, or allowance, to which the proposed ward may be entitled; and

(B) non-liquid assets, including real property; and

(10)–(15) makes no changes to these subdivisions.

SECTION 22. Amends Section 1101.153(a), Estates Code, to require a court order appointing a guardian to contain certain information, including, if the court waives the guardian's training requirement, a finding that the waiver is in accordance with rules adopted by the Supreme Court

of Texas (supreme court) under Section 155.203, Government Code, and to make nonsubstantive changes to this subsection.

SECTION 23. Amends Section 1104.251(a), Estates Code, as follows:

(a) Requires an individual to be certified under Subchapter C (Standards For and Certification of Certain Guardians), Chapter 155, Government Code, if the individual:

(1) and (2) makes no changes to these subdivisions;

(3) makes a nonsubstantive change to this subdivision;

(4) is an employee of the Health and Human Services Commission (HHSC) providing guardianship services to a ward of HHSC, rather than an employee of the Department of Aging and Disability Services (DADS) providing guardianship services to a ward of DADS;

(5) is a public guardian; or

(6) will represent the interests of a ward as a guardian on behalf of a public guardian.

SECTION 24. Amends Chapter 1104, Estates Code, by adding Subchapter G-1, as follows:

SUBCHAPTER G-1. PUBLIC GUARDIANS

Sec. 1104.326. DEFINITION. Defines "office" as an office of public guardian established under this subchapter (office), for purposes of this subchapter, unless the context otherwise requires.

Sec. 1104.327. ESTABLISHMENT OF OFFICES; PUBLIC GUARDIANS. (a) Authorizes the commissioners court of a county by order to:

(1) create an office to provide guardianship services described by Section 1104.334 to incapacitated persons; or

(2) enter into an agreement with a person operating a nonprofit guardianship program or private professional guardianship program located in the county or in an adjacent county to act as a public guardian by providing guardianship services described by Section 1104.334 to incapacitated persons.

(b) Requires the commissioners court of a county, subject to Subsection (c) and Section 1104.328, to appoint an individual as public guardian to administer the office established under Subsection (a)(1) and authorizes the court to employ or authorize the public guardian to employ personnel necessary to perform the duties of the office, including personnel who will represent the interests of a ward as a guardian on behalf of the office if approved by the court.

(c) Authorizes the commissioners court of a county to enter into an agreement with an individual to act as public guardian under Subsection (b) on a part-time basis with appropriate compensation if:

(1) the commissioners court determines a full-time appointment does not serve the needs of the county; and

(2) the individual who is appointed on a part-time basis is not employed in or does not hold another position that presents a conflict of interest.

(d) Authorizes the commissioners courts of two or more counties to collectively enter into an agreement:

(1) to create and fund an office for purposes of Subsection (a)(1) and to appoint the same individual as public guardian to that office under Subsection (b); or

(2) with a person operating a guardianship program described by Subsection (a)(2) to serve as a public guardian for purposes of that subdivision.

(e) Provides that an individual appointed as public guardian under Subsection (b) serves a term of five years.

Sec. 1104.328. QUALIFICATIONS OF PUBLIC GUARDIAN. Requires an individual, to be appointed as public guardian under Section 1104.327(b), to be a licensed attorney or be certified under Subchapter C, Chapter 155, Government Code, and have demonstrable guardianship experience.

Sec. 1104.329. CONFLICT OF INTEREST. (a) Requires an office or public guardian, except as provided by Subsection (b), to be independent from providers of services to wards and proposed wards and prohibits an office or public guardian from directly providing housing, medical, legal, or other direct, non-surrogate decision-making services to a ward or proposed ward, unless approved by the court.

(b) Authorizes an office or public guardian to provide money management services described by Section 531.125 (Grants), Government Code, or other representative payee services to a ward or proposed ward.

Sec. 1104.330. COMPENSATION. Requires a person appointed or acting as public guardian under Section 1104.327 to receive compensation as set by the commissioners court and provides that such person is not entitled to compensation under Subchapter A (Compensation of Guardians in General), Chapter 1155, unless approved by the court or the person is appointed as guardian of a ward in accordance with Section 1104.334(a)(2)(B).

Sec. 1104.331. BOND REQUIREMENT. (a) Requires a public guardian to file with the court clerk a general bond in an amount fixed by the commissioners court payable to the county and issued by a surety company approved by the county judge. Requires the bond to be conditioned on the faithful performance by the person of the person's duties and, if the public guardian administers an office, the office's duties.

(b) Provides that the bond required by this section satisfies any bond required under Chapter 1105 (Qualification of Guardians).

Sec. 1104.332. VACANCY. Requires the commissioners court, if an individual appointed as public guardian under Section 1104.327(b) vacates the position, to appoint, subject to Section 1104.328, an individual to serve as public guardian for the unexpired term.

Sec. 1104.333. POWERS AND DUTIES. (a) Requires an office or public guardian to:

(1) if applicable, evaluate the financial status of a proposed ward to determine whether the proposed ward is eligible to have the office or public guardian appointed guardian of the ward under Section 1104.334(a)(2)(A); and

(2) serve as guardian of the person or of the estate of a ward, or both, on appointment by a court in accordance with the requirements of this title.

(b) Authorizes a court with jurisdiction over the guardianship proceeding, in connection with a financial evaluation under Subsection (a)(1) and on the request of an office or public guardian, to order the release of public and private records, including otherwise confidential records, to the office or public guardian.

(c) Prohibits a state agency, notwithstanding Section 552.261 (Charge For Providing Copies of Public Information), Government Code, from charging an office or public guardian for providing the office or public guardian with a copy of public information requested from the agency by the office or public guardian.

Sec. 1104.334. APPOINTMENT OF OFFICE OR PUBLIC GUARDIAN AS GUARDIAN. (a) Authorizes a court, in accordance with applicable law, including Subchapter C (Determination of Necessity of Guardianship; Findings and Proof), Chapter 1101, to appoint an office or public guardian to serve as guardian of the person or of the estate of a ward, or both, if:

(1) on the date the guardianship application is filed, the ward resides in or is located in the county served by the office or public guardian; and

(2) the court finds that the ward:

(A) does not have sufficient assets or other resources to pay a private professional guardian to serve as the ward's guardian and the appointment is in the ward's best interest; or

(B) has sufficient assets or other resources to pay a private professional guardian to serve as the ward's guardian, the appointment is in the ward's best interest, and:

(i) the ward's family members who are eligible for appointment as the ward's guardian agree to the appointment of an office or public guardian to serve as the ward's guardian or are unable to agree on the person or persons that should be appointed as the ward's guardian; or

(ii) the ward does not have a family member, friend, or other suitable person willing and able to serve as the ward's guardian.

(b) Provides that, for purposes of Subsection (a)(2), the determination of a ward's ability to pay a private professional guardian is dependent on:

(1) the nature, extent, and liquidity of the ward's assets;

(2) the ward's disposable net income, including income of a recipient of medical assistance that is used to pay expenses under Section 1155.202(a) (relating to authorizing a certain court, notwithstanding certain other provisions and to the extent permitted by federal law, to order certain deductions from certain income);

(3) the nature of the guardianship;

(4) the type, duration, and complexity of services required by the ward; and

(5) additional, foreseeable expenses.

(c) Prohibits the number of appointments of an office under this section from exceeding 35 wards for each guardian representing the interests of wards on behalf of the office.

(d) Requires the office, if each guardian representing the interests of wards on behalf of an office reaches the limitation provided by Subsection (c), to immediately give notice to the courts.

Sec. 1104.335. CONFIDENTIALITY AND DISCLOSURE OF INFORMATION. (a) Provides that all files, reports, records, communications, or working papers used or developed by an office or public guardian in the performance of duties relating to a financial evaluation under Section 1104.333(a)(1) or the provision of guardianship services are confidential and not subject to disclosure under Chapter 552 (Public Information), Government Code.

(b) Authorizes confidential information to be disclosed only for a purpose consistent with this subchapter, as required by other state or federal law, or as necessary to enable an office or public guardian to exercise the powers and duties as guardian of the person or of the estate of a ward, or both.

(c) Authorizes a court on its own motion or on the motion of an interested person to order disclosure of confidential information only if:

(1) a hearing on the motion is conducted;

(2) notice of the hearing is served on the office or public guardian and each interested person; and

(3) the court determines after the hearing and an in camera review of the information that disclosure is essential to the administration of justice and will not endanger the life or safety of any individual who:

(A) is being assessed for guardianship services;

(B) is a ward of the office or public guardian; or

(C) provides services to a ward of the office or public guardian.

(d) Requires the Office of Court Administration of the Texas Judicial System (OCA) to establish policies and procedures for the exchange of information between offices, public guardians, and other appropriate governmental entities, as necessary for offices, public guardians, and governmental entities to properly execute their respective duties and responsibilities relating to guardianship services or other needed services for a ward. Provides that an exchange of information under this subsection does not constitute a release for purposes of waiving the confidentiality of the information exchanged.

(e) Authorizes the office or public guardian on request, to the extent consistent with policies and procedures adopted by an office or public guardian, to release confidential information in the record of an individual who is a former ward of the office or public guardian to:

(1) the individual;

(2) the individual's guardian; or

(3) an executor or administrator of the individual's estate.

(f) Requires an office or public guardian, before releasing confidential information under Subsection (e), to edit the information to protect the identity of any individual whose life or safety may be endangered by the release. Provides that a release of information under Subsection (e) does not constitute a release for purposes of waiving the confidentiality of the information released.

Sec. 1104.336. CERTAIN ADMINISTRATIVE COSTS. (a) Prohibits the administrative costs of the guardianship services provided to the ward, if an office or public guardian is appointed guardian of the person or of the estate of a ward, or both, from being charged to the ward's estate unless the court determines, subject to Subsection (b), that the ward is financially able to pay all or part of the costs.

(b) Requires a court to measure a ward's ability to pay for costs under Subsection (a) by whether the ward has sufficient assets or other resources to pay a private professional guardian to serve as the ward's guardian in accordance with Section 1104.334(b).

Sec. 1104.337. OFFICE OF COURT ADMINISTRATION OF THE TEXAS JUDICIAL SYSTEM; REPORT. (a) Requires OCA, not later than December 1 of each even-numbered year, to submit a report to the governor and the legislature that contains an evaluation of public guardians established under this subchapter, including the establishment and operation of offices of public guardians under this subchapter and the provision of guardianship services by the offices. Requires the report to include:

(1) an analysis of costs and offsetting savings or other benefits to the state as a result of the establishment and operation of offices and public guardians under this subchapter; and

(2) recommendations for legislation, if any.

(b) Authorizes OCA, if it is cost-effective and feasible, to contract with an appropriate research or public policy entity with expertise in gerontology, disabilities, and public administration to conduct the analysis described by Subsection (a)(1).

Sec. 1104.338. RULES. Requires the supreme court, in consultation with OCA and the presiding judge of the statutory probate courts elected under Section 25.0022 (Administration of Statutory Probate Courts), Government Code, to adopt rules necessary to implement this subchapter.

SECTION 25. Amends Section 1104.402, Estates Code, as follows:

Sec. 1104.402. New heading: COURT CLERK'S DUTY TO OBTAIN CRIMINAL HISTORY RECORD INFORMATION. Deletes the designation of Subsection (a) and creates this section from existing Subsection (a). Requires the clerk of the county having venue of the proceeding for the appointment of a guardian, except as provided by Section 1104.404 (Exception For Information Concerning Certain Persons) or 1104.406(a) (relating to requiring DADS to obtain criminal history record information from certain entities relating to each individual who is or will be providing guardianship services to a ward of or referred by DADS, including certain persons), rather than except as provided by Section 1104.403 (Submission of Criminal History Record Information by Proposed Guardian), 1104.404, or 1104.406(a), to obtain certain criminal history record information that is maintained by the Department of Public Safety of the State of Texas (DPS) or the Federal Bureau of Investigation identification division (FBI). Deletes Subsection (b) and existing text authorizing the clerk to charge a \$10 fee to recover the costs of obtaining certain information.

SECTION 26. Amends Section 1104.402(a), Estates Code, as follows:

(a) Requires the clerk of the county having venue of the proceeding for the appointment of a guardian, except as provided by Section 1104.403, 1104.404, or 1104.406(a), to obtain criminal history record information that is maintained by DPS or the FBI relating to:

(1)–(3) makes no changes to these subdivisions;

- (4) makes a nonsubstantive change to this subdivision;
- (5) a public guardian appointed under Section 1104.327(b);
- (6) each person who represents or plans to represent the interests of a ward as a guardian on behalf of an office;
- (7) each person employed by an office 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; or
- (8) creates this subdivision from existing text and makes no further changes to this subdivision.

SECTION 27. Amends Section 1104.405(a), Estates Code, to provide that criminal history record information obtained or provided under Section 1104.402 or 1104.404, rather than under Section 1104.402, 1104.403, or 1104.404, is privileged and confidential and is for the exclusive use of the court.

SECTION 28. Amends Section 1104.409, Estates Code, as follows:

Sec. 1104.409. **USE OF INFORMATION BY COURT.** Requires the court to 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, an office, or HHSC, rather than of a private professional guardian, a guardianship program, or DADS; or
- (2) makes no changes to this subdivision.

SECTION 29. Amends Subchapter A, Chapter 1151, Estates Code, by adding Section 1151.005, as follows:

Sec. 1151.005. **LEGAL PROCEEDINGS IN WHICH WARD IS PARTY OR WITNESS.** Prohibits the guardian of the person or of the estate of a ward from being excluded from attending a legal proceeding in which the ward is a party or participating as a witness.

SECTION 30. Amends Section 1151.351(b), Estates Code, to authorize a ward, unless limited by a court or otherwise restricted by law, to take certain actions, including having a court investigator or guardian ad litem, rather than having a court investigator, guardian ad litem, or attorney ad litem, appointed by the court to investigate a complaint received by the court from the ward or any person about the guardianship.

SECTION 31. Amends Sections 1153.001(a) and (c), Estates Code, as follows:

- (a) Requires the notice provided by a guardian of an estate within one month after receiving letters of guardianship to be:
 - (1) published in a newspaper of general circulation in the county in which the letters were issued, rather than printed in a newspaper printed in the county in which the letters were issued; and
 - (2) makes no change to this subdivision.

(c) Requires the notice to be posted and the return made and filed as otherwise required by this title if there is no newspaper of general circulation, rather than if a newspaper is not printed, in the county in which the letters of guardianship were issued.

SECTION 32. Amends Section 1155.054(d), Estates Code, to provide that, if the court finds that a party in a guardianship proceeding acted in bad faith or without just cause in prosecuting or objecting to an application in the proceeding, the court is authorized to order, rather than require, the party to reimburse the ward's estate for all or part of the attorney's fees awarded under this section and that the court is required to issue judgment against the party and in favor of the estate for the amount of attorney's fees ordered, rather than required, to be reimbursed to the estate.

SECTION 33. Amends Section 1155.151(a), Estates Code, as follows:

(a) Provides that, in a guardianship proceeding, the court costs of the proceeding, including the costs described by Subsection (a-1) (relating to requiring certain costs for a guardianship proceeding to be set in an amount the court considers equitable and just), are required to be paid as follows, except as provided by Subsection (c) (relating to authorizing the court to order a party in a guardianship proceeding who acted in bad faith or without just cause in prosecuting or objecting to an application in the proceeding to pay all or part of the costs of the proceeding), and requires the court to issue the judgment accordingly:

(1) out of the guardianship estate, if a guardianship of the estate has been created for the benefit of the ward and the court determines it is in the ward's best interest, rather than out of the guardianship estate;

(2) and (3) makes no changes to these subdivisions;

(4) out of the county treasury if:

(A) creates Subparagraphs (i)–(iii) from existing text;

(i) and (ii) makes nonsubstantive changes to these subparagraphs;
or

(iii) a guardianship of the estate has been created for the benefit of the ward and the court determines it is not in the ward's best interest to pay the costs; and

(B) makes no changes to this paragraph.

SECTION 34. Amends Section 1155.151(a-2), Estates Code, to provide that certain persons, including an office, notwithstanding any other law requiring the payment of court costs in a guardianship proceeding, are not required to pay court costs on the filing of or during a guardianship proceeding.

SECTION 35. Amends Section 1163.005(a), Estates Code, as follows:

(a) Requires the guardian of the estate to attach to an account the guardian's affidavit stating:

(1)–(4) makes no changes to these subdivisions; and

(5) if the guardian is a private professional guardian, a guardianship program, an office, or HHSC, whether the guardian or an individual certified under Subchapter C, Chapter 155, Government Code, who is providing guardianship services to the ward and who is swearing to the account on the guardian's behalf, is or has been the subject of an investigation conducted by the Judicial Branch Certification Commission (JBCC) during the accounting period, rather than if the guardian is a private professional guardian, a guardianship program, or DADS, whether the

guardian or an individual certified under Subchapter C, Chapter 111, Government Code, who is providing guardianship services to the ward and who is swearing to the account on the guardian's behalf, is or has been the subject of an investigation conducted by the Guardianship Certification Board during the accounting period.

SECTION 36. Amends Section 1163.101(c), Estates Code, to make conforming changes to this subsection.

SECTION 37. Amends Section 1253.001, Estates Code, to authorize a court that has jurisdiction over a guardianship, on application of the guardian or on the court's own motion, rather than authorizing a guardian of the person or estate to apply to the court that has jurisdiction over the guardianship, to transfer the guardianship to a court in a foreign jurisdiction to which the ward has permanently moved.

SECTION 38. Amends Subchapter B, Chapter 1301, Estates Code, by adding Section 1301.0511, as follows:

Sec. 1301.0511. NOTICE REQUIRED FOR APPLICATION FOR CREATION OF TRUST; CITATION OF APPLICANT NOT REQUIRED. (a) Requires, on the filing of an application for creation of a management trust and except as provided by Subsection (d), notice to be issued and served in the manner provided by Subchapter C (Notice and Citation Required For Application For Guardianship), Chapter 1051, for the issuance and service of notice on the filing of an application for guardianship.

(b) Provides that it is not necessary to serve a citation on a person who files an application for the creation of a management trust under this subchapter or for that person to waive the issuance and personal service of citation.

(c) Requires the sheriff or other officer to personally serve each guardian of the ward with citation to appear and answer the application in addition to serving the persons described by Section 1051.103 (Service of Citation For Application For Guardianship) if the person for whom an application for creation of a management trust is filed is a ward.

(d) Provides that notice under this section is not required if a proceeding for the appointment of a guardian is pending for the person for whom an application for creation of a management trust is filed.

SECTION 39. Amends Section 1301.101(a), Estates Code, as follows:

(a) Requires a management trust created for a ward or incapacitated person, except as provided by Subsection (c) (relating to authorizing the court creating or modifying a management trust to omit or modify certain required otherwise applicable terms if the court is creating the trust for a person who has only a physical disability or under certain other circumstances), to provide that:

(1)–(3) makes no changes to these subdivisions;

(4) and (5) makes nonsubstantive changes to these subdivisions; and

(6) the trust terminates:

(A) except as provided by Paragraph (B), if the person for whom the trust is created is a minor on the earlier of the person's death or the person's 18th birthday, or on the date provided by court order, which may not be later than the person's 25th birthday;

(B) if the person for whom the trust is created is a minor and is also incapacitated for a reason other than being a minor on the person's death or when the person regains capacity; or

(C) if the person for whom the trust is created is not a minor according to the terms of the trust, on the date the court determines that continuing the trust is no longer in the person's best interests, subject to Section 1301.202(c) (relating to a prohibition on the court allowing termination of the management trust from which property is transferred under this section until all property in the management trust has been transferred to the pooled trust subaccount), or on the person's death.

SECTION 40. Amends Section 1301.154(b), Estates Code, to require the trustee of a management trust created for a ward to provide a copy of the annual account to each guardian of the ward, rather than to the guardian of the ward's estate or person.

SECTION 41. Amends Section 1301.203, Estates Code, by amending Subsection (a) and adding Subsection (a-1), as follows:

(a) Creates an exception under Subsection (a-1) to the provision that the management trust, if the person for whom a management trust is created is a minor, terminates on a certain date.

(a-1) Provides that, if the person for whom a management trust is created is a minor and is also incapacitated for a reason other than being a minor, the trust terminates on the person's death or when the person regains capacity.

SECTION 42. Amends Sections 1355.002(b), (c), (d), (e), and (f), Estates Code, as follows:

(b) Provides that this section applies only to a nonresident creditor who is a nonresident minor and has a nonresident guardian of the estate appointed by a foreign court, a nonresident person who is adjudged by a foreign court to be incapacitated and has a nonresident guardian of the estate appointed by that court, or the nonresident former ward of a guardianship terminated under Chapter 1204 (Final Settlement, Accounting, and Discharge) who has no legal guardian qualified in this state, rather than applying only to a creditor who is a nonresident minor, a nonresident person who is adjudged by a court of competent jurisdiction to be incapacitated, or the former ward of a guardianship terminated under Chapter 1204 who has no legal guardian qualified in this state. Makes nonsubstantive changes to this subsection.

(c) Authorizes a debtor in this state who owes money to a nonresident creditor, rather than to a creditor, to whom this section (Payment of Claims to Nonresident Creditor) applies to pay the money:

(1) to the creditor's guardian of the estate, rather than the creditor's guardian, qualified in the domiciliary jurisdiction; or

(2) makes no changes to this subdivision.

(d) Provides that a payment made under this section is for the nonresident creditor's account and for the nonresident creditor's use and benefit, rather than for the creditor's account and for the creditor's use and benefit.

(e) Provides that a receipt for payment signed by the county clerk is binding on the nonresident creditor, rather than on the creditor, as of the date and to the extent of payment if the receipt states certain information.

(f) Requires a county clerk who receives a payment under Subsection (c) for a nonresident creditor, rather than who receives a payment under Subsection (c), to handle the money in the same manner as provided for a payment to the account of a resident creditor under certain sections. Provides that those sections apply to the handling and disposition of money or any increase, dividend, or income paid to the clerk for the use,

benefit, and account of the nonresident creditor, rather than of the creditor, to whom this section applies.

SECTION 43. Amends Section 1355.105, Estates Code, as follows:

Sec. 1355.105. New heading: WITHDRAWAL OF MONEY BY CREDITOR OR CREDITOR'S HEIR, REPRESENTATIVE, OR GUARDIAN. (a) Authorizes, on presentation to the court clerk of an order of a county or probate court of the county in which the money is held, money that is not withdrawn by an authorized person as provided by this chapter (Payment of Certain Claims Without Guardianship) to be withdrawn by:

(1) makes no changes to this subdivision;

(2) and (3) makes nonsubstantive changes to these subdivisions; or

(4) a nonresident guardian of the estate appointed by a foreign court for a creditor who is a nonresident minor or a nonresident person who is adjudged to be incapacitated.

(b) Creates an exception under Subsection (b-1) to the authorization for a withdrawal under Subsection (a) to be made at any time and without a special bond for that purpose.

(b-1) Authorizes a court to require a nonresident guardian of the estate of a creditor who is a nonresident minor or nonresident incapacitated person as described by Subsection (a)(4) to provide proof that the nonresident guardian of the estate gave an adequate bond in the foreign jurisdiction if the court determines that it is in the nonresident minor's or nonresident incapacitated person's best interest.

(c) Requires the order presented under Subsection (a) to direct the court clerk to deliver the money to:

(1)–(3) creates these subdivisions from existing text and makes nonsubstantive changes to these subdivisions; or

(4) if the creditor is a nonresident minor or nonresident person who is adjudged to be incapacitated, the creditor's nonresident guardian of the estate.

(d) Requires that, for purposes of this subsection, a nonresident guardian of the estate described by Subsection (c)(4) present to the court exemplified copies of the order of a foreign court appointing the guardian and current letters of guardianship issued in the foreign jurisdiction.

SECTION 44. Amends Section 25.0006, Government Code, by amending Subsection (a) and adding Subsection (a-5), as follows:

(a) Provides that Subsections (a-1), (a-2), (a-3) (relating to certain procedures governing execution of a bond by the judge of a statutory county court), and (a-5), rather than Subsections (a-1), (a-2), and (a-3), notwithstanding any other law except Subsection (a-4) (relating to certain persons to whom the bond requirements do not apply), control over a specific provision for a particular court or county that attempts to create a requirement for a bond or insurance that conflicts with those subsections.

(a-5) Requires a bond executed under Subsection (a-1) by the judge elected or appointed to a statutory county court or an insurance policy obtained under Subsection (a-3) to provide the same coverage to a visiting judge assigned to the court as the bond or insurance policy provides to the judge elected or appointed to the court.

SECTION 45. Amends Section 25.00231, Government Code, by adding Subsection (f) to require a certain bond executed by the judge elected or appointed to a statutory probate court or a certain insurance policy, notwithstanding Subsection (e) (relating to providing that this section (Bond; Insurance) does not apply to an assigned or visiting judge sitting by assignment in a statutory probate court), to provide the same coverage to a visiting judge assigned to the court as the bond or insurance policy provides to the judge elected or appointed to the court.

SECTION 46. Amends Section 26.001, Government Code, to require a certain bond executed by the judge elected or appointed to a county court or a certain insurance policy to provide the same coverage to a visiting judge assigned to the court as the bond or insurance policy provides to the judge elected or appointed to the court.

SECTION 47. Amends Section 81.114, Government Code, by amending Subsection (a) and adding Subsection (e), as follows:

(a) Requires the state bar to provide a course of instruction for attorneys who represent any person's interests, rather than who represent parties, in guardianship cases or who serve as court-appointed guardians.

(e) Requires the course of instruction described by this section (Attorney Instruction Related to Guardianship Issues) to be low-cost and available to persons throughout this state, including on the Internet provided through the state bar.

SECTION 48. Amends Section 101.0814, Government Code, to require the clerk of a statutory county court to collect certain fees and costs, including a supplemental public guardianship and related services fee, rather than a supplemental court-initiated guardianship fee, of \$20.

SECTION 49. Amends Section 101.1013, Government Code, to make a conforming change to this section.

SECTION 50. Amends Section 101.1214, Government Code, to make a conforming change to this section.

SECTION 51. Amends Section 155.001, Government Code, by amending Subdivisions (4), (6), and (6-a) and adding Subdivisions (5-a) and (6-b), as follows:

(4) Redefines "guardianship program" as a local, county, or regional program, other than an office of public guardian, rather than a local, county, or regional program, that provides certain services.

(5-a) Defines "office of public guardian."

(6) Redefines "private professional guardian" as a person, other than an attorney, a corporate fiduciary, or an office of public guardian, rather than a person, other than an attorney or a corporate fiduciary, who is engaged in a certain business.

(6-a) Defines "public guardian."

(6-b) Creates this subdivision from existing text and makes no further changes to this subdivision.

SECTION 52. Amends Subchapter B, Chapter 155, Government Code, by adding Section 155.053, as follows:

Sec. 155.053. MONITORING OF COUNTY PUBLIC GUARDIANSHIP AND RELATED SERVICES FUNDS. Requires OCA to monitor counties to ensure money is appropriately deposited into the public guardianship and related services funds established by counties under Section 118.067 (Supplemental Court-Initiated Guardianship Fee), Local Government Code, and being used in compliance with that

section. Requires OCA, not later than December 1 of each year, to submit a report to the legislature detailing how money in the funds is being used by counties across the state.

SECTION 53. Amends Section 155.101(a), Government Code, as follows:

(a) Requires JBCC to adopt minimum standards for:

- (1) makes a nonsubstantive change to this subdivision;
- (2) the provision of guardianship services by HHSC, rather than by DADS or its successor agency; and
- (3) the provision of guardianship services by offices.

SECTION 54. Amends Section 155.102(a), Government Code, as follows:

(a) Requires the following individuals, to provide guardianship services in this state, to hold a certificate issued under this section (Certification Required For Certain Guardians):

- (1) makes no changes to this subdivision;
- (2) makes a nonsubstantive change to this subdivision;
- (3) an individual, other than a volunteer, who will provide those services or other services under Section 161.114 (Use of Volunteers), Human Resources Code, to a ward of a guardianship program or HHSC on the program's or HHSC's behalf, rather than to a ward of a guardianship program or DADS on the program's or DADS' behalf;
- (4) an individual who is a public guardian; and
- (5) an individual who will provide those services to a ward of an office.

SECTION 55. Amends Section 155.105, Government Code, by adding Subsection (b-1), as follows:

(b-1) Requires each office, not later than January 31 of each year, to provide to JBCC a report containing for the preceding year:

- (1) the number of wards served by the office;
- (2) the total amount of any money received from this state for the provision of guardianship services; and
- (3) the amount of money received from any other public source, including a county or the federal government, for the provision of guardianship services, reported by source, and the total amount of money received from those public sources.

SECTION 56. Amends Section 155.205(b), Government Code, as follows:

(b) Requires JBCC to obtain:

- (1) fingerprint-based criminal history record information of a proposed guardian, rather than of an applicant, if:
 - (A) creates this paragraph from existing text and makes a nonsubstantive change to this paragraph; or

(B) the proposed guardian is not a resident of this state; or

(2) name-based criminal history record information of a proposed guardian, including any criminal history record information under the current name and all former names of the proposed guardian, rather than name-based criminal history record information of an applicant, if:

(A) creates this paragraph from existing text and makes a nonsubstantive change to this paragraph; and

(B) the proposed guardian is a resident of this state.

SECTION 57. Amends Section 411.1386(a), Government Code, as follows:

(a) Requires the clerk of the county having venue over a proceeding for the appointment of a guardian under Title 3 (Guardianship and Related Procedures), Estates Code, except for certain exceptions, to obtain from DPS criminal history record information maintained by DPS that relates to:

(1)–(3) makes no changes to these subdivisions;

(4) makes a nonsubstantive change to this subdivision;

(5) a public guardian, as defined by Section 1002.0265(1), Estates Code;

(6) each person who represents or plans to represent the interests of a ward as a guardian on behalf of an office;

(7) each person employed by an office, as defined by Section 1002.0215, Estates Code, 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;
or

(8) creates this subdivision from existing text and makes no further changes to this subdivision.

SECTION 58. Amends Section 571.013, Health and Safety Code, as follows:

Sec. 571.013. METHOD OF GIVING NOTICE. Creates Subdivisions (1) and (2) from existing text. Authorizes notice required under this subtitle (Texas Mental Health Code), except as otherwise provided by this subtitle, to be given by:

(1) personal delivery of a copy of the notice or document by a constable or sheriff of the county, rather than delivering a copy of the notice or document in person;
or

(2) makes a nonsubstantive change to this subdivision.

SECTION 59. Amends Section 571.014(c), Health and Safety Code, as follows:

(c) Authorizes a person to file a paper with the county clerk by the use of reproduced, photocopied, or electronically transmitted paper copies of the original signed copies of the paper, rather than to initially file a paper with the county clerk by the use of reproduced, photocopied, or electronically transmitted paper if the person files the original signed copies of the paper with the clerk not later than the 72nd hour after the

hour on which the initial filing is made. Requires a person who files a reproduced, photocopied, or electronically transmitted paper to maintain possession of the original signed copies of the paper and to make the original paper available for inspection on request by the parties or the court. Deletes existing text relating to certain deadlines and exceptions to those deadlines.

SECTION 60. Amends Section 161.103, Human Resources Code, as follows:

Sec. 161.103. CONTRACT FOR GUARDIANSHIP SERVICES. (a) Creates this subsection from existing text. Authorizes HHSC, rather than DADS, if appropriate, to contract with certain entities for the provision of guardianship services under this section.

(b) Authorizes a contract under Subsection (a) to allow for the provision of guardianship services by an office of public guardian, as defined by Section 1002.0215, Estates Code.

SECTION 61. Amends Section 118.052, Local Government Code, to make a conforming change.

SECTION 62. Amends Section 118.067, Local Government Code, as follows:

Sec. 118.067. New heading: SUPPLEMENTAL PUBLIC GUARDIANSHIP AND RELATED SERVICES FEE. (a) Provides that the "supplemental public guardianship and related services fee" under Section 118.052(2)(E) is for the support of guardianship services provided by public guardians, as defined by Section 1002.0265, Estates Code, or guardianship and other less restrictive alternative services provided to indigent incapacitated persons who do not have family members suitable and willing to serve as guardians or provide less restrictive alternative services, rather than providing that the "supplemental court-initiated guardianship fee" under Section 118.052(2)(E) is for the support of the judiciary in guardianships initiated under Chapter 1102 (Court-Initiated Procedure to Appoint Guardian), Estates Code. Requires fees collected under Section 118.052(2)(E) to be deposited in a public guardianship and related services fund in the county treasury and authorizes the fees to be used only to supplement, rather than supplant, other available county funds used to fund guardianship services or other less restrictive alternative services provided to individuals who are indigent, rather than requiring fees collected under Section 118.052(2)(E) to be deposited in a court-initiated guardianship fund in the county treasury and authorizing the fees to be used only to supplement, rather than supplant, other available county funds used to pay certain costs and fund certain programs.

(b)-(d) Makes conforming changes to these subsections.

SECTION 63. Repealer: Section 1104.403 (Submission of Criminal History Record Information by Proposed Guardian), Estates Code.

SECTION 64. Repealer: Section 571.014(d) (relating to providing that a judge, if a certain clerk does not receive the original signed copy of a paper within a certain period, is authorized to dismiss the proceeding on the court's own motion or on the motion of a party, and, if the proceeding is dismissed, is required to order the immediate release of a proposed patient who is not at liberty), Health and Safety Code.

SECTION 65. (a) Makes application of Section 202.054, Estates Code, as amended by this Act, prospective.

(b) Makes application of Section 452.006(c), Estates Code, as amended by this Act, prospective.

(c) Makes application of Section 503.002, Estates Code, as amended by this Act, prospective.

(d) Makes application of Sections 25.0006, 25.00231, and 26.001, Government Code, as amended by this Act, prospective to January 1, 2020.

SECTION 66. (a) Provides that, except as otherwise provided by this section, the changes in law made by this Act apply to a guardianship created before, on, or after the effective date of this Act and to an application for a guardianship pending on, or filed on or after, the effective date of this Act.

(b) Makes application of Section 1021.001, Estates Code, as amended by this Act, prospective.

(c) Makes application of Sections 1054.021, 1101.153, 1155.054(d) and 1155.151(a), Estates Code, and Section 155.205(b), Government Code, as amended by this Act, prospective.

(d) Makes application of Section 1301.0511, Estates Code, as added by this Act, prospective.

(e) Makes application of Sections 1301.101 and 1301.203, Estates Code, as amended by this Act, prospective.

(f) Makes application of Section 1355.105, Estates Code, as amended by this Act, prospective.

(g) Makes application of Section 1101.001, Estates Code, as amended by this Act, prospective.

(h) Makes application of the following provisions of this Act prospective to July 1, 2020:

(1) Sections 1002.0215 and 1002.0265 and Subchapter G-1, Chapter 1104, Estates Code, as added by this Act;

(2) Sections 1104.251(a), 1104.402(a), 1104.409, 1155.151(a-2), 1163.005(a), and 1163.101(c), Estates Code, as amended by this Act;

(3) Sections 101.0814, 101.1013, 101.1214, 155.001(4), (6), and (6-a), 155.101(a), 155.102(a), and 411.1386(a), Government Code, as amended by this Act;

(4) Sections 155.001(5-a) and (6-b), 155.053, and 155.105(b-1), Government Code, as added by this Act;

(5) Section 161.103, Human Resources Code, as amended by this Act; and

(6) Sections 118.052 and 118.067, Local Government Code, as amended by this Act.

(i) Authorizes a person who, immediately before July 1, 2020, is serving as guardian of the person or of the estate of a ward, or both, and who, under Section 1104.334, Estates Code, as added by this Act, would be eligible for appointment of an office of public guardian as the ward's guardian, notwithstanding any other law, to continue to serve as guardian of the person or of the estate of the ward, or both, unless otherwise removed as provided by law.

SECTION 67. Requires the supreme court, not later than January 1, 2020, to adopt rules necessary to implement Subchapter G-1, Chapter 1104, Estates Code, as added by this Act, including rules governing the transfer of a guardianship of the person or of the estate of a ward, or both, if appropriate, to an office of public guardian established under that subchapter or a public guardian contracted under that subchapter.

SECTION 68. Effective date: September 1, 2019.