By:  Zaffirini S.B. No. 1975

A BILL TO BE ENTITLED

AN ACT

relating to probate and guardianship matters and proceedings and other matters involving probate courts.

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

SECTION 1.  Section 30.014(a), Civil Practice and Remedies Code, is amended to read as follows:

(a)  In a civil action, including a probate or guardianship proceeding, filed in a district court, county court, [~~or~~] statutory county court, or statutory probate court, each party or the party's attorney shall include in its initial pleading:

(1)  the last three numbers of the party's driver's license number, if the party has been issued a driver's license; and

(2)  the last three numbers of the party's social security number, if the party has been issued a social security number.

SECTION 2.  Section 33.101, Estates Code, is amended to read as follows:

Sec. 33.101.  TRANSFER TO OTHER COUNTY IN WHICH VENUE IS PROPER. If probate proceedings involving the same estate are commenced in more than one county and the court making a determination of venue as provided by Section 33.053 determines that venue is proper in another county, the court clerk shall make and retain a copy of the entire file in the case and transmit the original file in electronic or paper form to the court in the county in which venue is proper. The court to which the file is transmitted shall conduct the proceeding in the same manner as if the proceeding had originally been commenced in that county.

SECTION 3.  Section 33.102(a), Estates Code, is amended to read as follows:

(a)  If it appears to the court at any time before the final order in a probate proceeding is rendered that the court does not have priority of venue over the proceeding, the court shall, on the application of an interested person, transfer the proceeding to the proper county by transmitting to the proper court in that county in electronic or paper form:

(1)  the original file in the case; and

(2)  certified copies of all entries that have been made in the judge's probate docket in the proceeding.

SECTION 4.  Section 33.103, Estates Code, is amended by adding Subsection (c) to read as follows:

(c)  The transmittal under Subsection (b) of the original file and the certified copy of the index may be in electronic or paper form, except that an original will filed in the probate proceeding, if any, must be delivered to the court to which the proceeding is transferred.

SECTION 5.  Section 503.002, Estates Code, is amended to read as follows:

Sec. 503.002.  RECORDING OF CERTAIN FOREIGN TESTAMENTARY INSTRUMENTS IN LANGUAGE OTHER THAN ENGLISH [~~ORIGINAL SIGNATURES NOT REQUIRED~~]. (a)  An authenticated copy of a will or other testamentary instrument described by Section 503.001(a), 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 may 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 [~~Notwithstanding Section 501.002(c), the original signatures required by that section may not be required for a recordation in the deed records in accordance with Section 503.001 or for a purpose described by Section 503.051 or 503.052~~].

(b)  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 6.  Section 1023.006, Estates Code, is amended to read as follows:

Sec. 1023.006.  TRANSFER OF RECORD. When an order of transfer is made under Section 1023.005, the clerk shall record any unrecorded papers of the guardianship required to be recorded. On payment of the clerk's fee, the clerk shall transmit in electronic or paper form to the county clerk of the county to which the guardianship was ordered transferred:

(1)  the case file of the guardianship proceedings; and

(2)  a certified copy of the index of the guardianship records.

SECTION 7.  Section 1023.007, Estates Code, is amended to read as follows:

Sec. 1023.007.  TRANSFER EFFECTIVE. The order transferring a guardianship does not take effect until:

(1)  the case file and a certified copy of the index required by Section 1023.006 are filed in electronic or paper form in the office of the county clerk of the county to which the guardianship was ordered transferred; and

(2)  a certificate under the clerk's official seal and reporting the filing of the case file and a certified copy of the index is filed in electronic or paper form in the court ordering the transfer by the county clerk of the county to which the guardianship was ordered transferred.

SECTION 8.  The heading to Chapter 1054, Estates Code, is amended to read as follows:

CHAPTER 1054. COURT OFFICERS, [~~AND~~] COURT-APPOINTED PERSONS, AND ATTORNEYS

SECTION 9.  The heading to Subchapter E, Chapter 1054, Estates Code, is amended to read as follows:

SUBCHAPTER E. QUALIFICATIONS TO SERVE AS [~~COURT-APPOINTED~~] ATTORNEY

SECTION 10.  Section 1054.201, Estates Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a)  Except as provided by Subsection (c), an [~~An~~] attorney representing any person's interests [~~for an applicant for guardianship and a court-appointed attorney~~] in a guardianship proceeding, including an attorney ad litem, must be certified by the State Bar of Texas, 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)  An attorney may 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 must 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 11.  Section 1101.001(b), Estates Code, is amended to read as follows:

(b)  The application must be sworn to by the applicant and state:

(1)  the proposed ward's name, sex, date of birth, and address;

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

(3)  whether guardianship of the person or estate, or both, is sought;

(3-a)  whether alternatives to guardianship and available supports and services to avoid guardianship were considered;

(3-b)  whether any alternatives to guardianship and supports and services available to the proposed ward considered are feasible and would avoid the need for a guardianship;

(4)  the nature and degree of the alleged incapacity, the specific areas of protection and assistance requested, and the limitation or termination of rights requested to be included in the court's order of appointment, including a termination of:

(A)  the right of a proposed ward who is 18 years of age or older to vote in a public election;

(B)  the proposed ward's eligibility to hold or obtain a license to operate a motor vehicle under Chapter 521, Transportation Code; and

(C)  the right of a proposed ward to make personal decisions regarding residence;

(5)  the facts requiring the appointment of a guardian;

(6)  the interest of the applicant in the appointment of a guardian;

(7)  the nature and description of any kind of guardianship existing for the proposed ward in any other state;

(8)  the name and address of any person or institution having the care and custody of the proposed ward;

(9)  the approximate value and description of the proposed ward's liquid assets [~~property~~], including any compensation, pension, insurance, or allowance to which the proposed ward may be entitled;

(10)  the name and address of any person whom the applicant knows to hold a power of attorney signed by the proposed ward and a description of the type of power of attorney;

(11)  for a proposed ward who is a minor, the following information if known by the applicant:

(A)  the name of each of the proposed ward's parents and either the parent's address or that the parent is deceased;

(B)  the name and age of each of the proposed ward's siblings, if any, and either the sibling's address or that the sibling is deceased; and

(C)  if each of the proposed ward's parents and adult siblings are deceased, the names and addresses of the proposed ward's other living relatives who are related to the proposed ward within the third degree by consanguinity and who are adults;

(12)  for a proposed ward who is a minor, whether the minor was the subject of a legal or conservatorship proceeding in the preceding two years and, if so:

(A)  the court involved;

(B)  the nature of the proceeding; and

(C)  any final disposition of the proceeding;

(13)  for a proposed ward who is an adult, the following information if known by the applicant:

(A)  the name of the proposed ward's spouse, if any, and either the spouse's address or that the spouse is deceased;

(B)  the name of each of the proposed ward's parents and either the parent's address or that the parent is deceased;

(C)  the name and age of each of the proposed ward's siblings, if any, and either the sibling's address or that the sibling is deceased;

(D)  the name and age of each of the proposed ward's children, if any, and either the child's address or that the child is deceased; and

(E)  if there is no living spouse, parent, adult sibling, or adult child of the proposed ward, the names and addresses of the proposed ward's other living relatives who are related to the proposed ward within the third degree by consanguinity and who are adults;

(14)  facts showing that the court has venue of the proceeding; and

(15)  if applicable, that the person whom the applicant seeks to have appointed as a guardian is a private professional guardian who is certified under Subchapter C, Chapter 155, Government Code, and has complied with the requirements of Subchapter G, Chapter 1104.

SECTION 12.  Section 1101.153(a), Estates Code, is amended to read as follows:

(a)  A court order appointing a guardian must:

(1)  specify:

(A) [~~(1)~~]  the name of the person appointed;

(B) [~~(2)~~]  the name of the ward;

(C) [~~(3)~~]  whether the guardian is of the person or estate of the ward, or both;

(D) [~~(4)~~]  the amount of any bond required;

(E) [~~(5)~~]  if it is a guardianship of the estate of the ward and the court considers an appraisal to be necessary, one, two, or three disinterested persons to appraise the estate and to return the appraisement to the court; and

(F) [~~(6)~~]  that the clerk will issue letters of guardianship to the person appointed when the person has qualified according to law; and

(2)  if the court waives the guardian's training requirement, contain a finding that the waiver is in accordance with rules adopted by the supreme court under Section 155.203, Government Code.

SECTION 13.  Section 1104.402, Estates Code, is amended to read as follows:

Sec. 1104.402.  COURT CLERK'S DUTY TO OBTAIN CRIMINAL HISTORY RECORD INFORMATION[~~; AUTHORITY TO CHARGE FEE~~]. [~~(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 proposed successor guardian, other than an attorney.

[~~(b)  The clerk may charge a $10 fee to recover the costs of obtaining criminal history record information under Subsection (a).~~]

SECTION 14.  Section 1104.405(a), Estates Code, is amended to read as follows:

(a)  Criminal history record information obtained or provided under Section 1104.402[~~, 1104.403,~~] or 1104.404 is privileged and confidential and is for the exclusive use of the court. The criminal history record information may not be released or otherwise disclosed to any person or agency except on court order or consent of the person being investigated.

SECTION 15.  Subchapter A, Chapter 1151, Estates Code, is amended by adding Section 1151.005 to read as follows:

Sec. 1151.005.  LEGAL PROCEEDINGS IN WHICH WARD IS PARTY OR WITNESS. The guardian of the person or of the estate of a ward may not be excluded from attending a legal proceeding in which the ward is:

(1)  a party; or

(2)  participating as a witness.

SECTION 16.  Section 1253.001, Estates Code, is amended to read as follows:

Sec. 1253.001.  APPLICATION TO TRANSFER GUARDIANSHIP TO FOREIGN JURISDICTION. On application of the guardian or on the court's own motion, a [~~A guardian of the person or estate may apply to the~~] court that has jurisdiction over the guardianship may [~~to~~] transfer the guardianship to a court in a foreign jurisdiction to which the ward has permanently moved.

SECTION 17.  Section 25.0006, Government Code, is amended by amending Subsection (a) and adding Subsection (a-5) to read as follows:

(a)  Notwithstanding any other law except Subsection (a-4), Subsections (a-1), (a-2), [~~and~~] (a-3), and (a-5) 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)  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) shall 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 18.  Section 25.00231, Government Code, is amended by adding Subsection (f) to read as follow:

(f)  A bond executed under Subsection (b) by the judge elected or appointed to a statutory probate court or an insurance policy obtained under Subsection (c) shall 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 19.  Section 26.001, Government Code, is amended by adding Subsection (d) to read as follows:

(d)  A bond executed under Subsection (a) by the judge elected or appointed to a county court or an insurance policy obtained under Subsection (c) shall 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 20.  Section 81.114, Government Code, is amended by amending Subsection (a) and adding Subsection (e) to read as follows:

(a)  The state bar shall provide a course of instruction for attorneys who represent any person's interests [~~parties~~] in guardianship cases or who serve as court-appointed guardians.

(e)  The provider of a course described by this section may not charge more than $150.

SECTION 21.  Section 1104.403, Estates Code, is repealed.

SECTION 22.  (a)  Section 503.002, Estates Code, as amended by this Act, applies only to a copy of a testamentary instrument or other document filed for recording on or after the effective date of this Act. A copy of a testamentary instrument or other document filed before the effective date of this Act is governed by the law in effect on the date the instrument or document was filed, and the former law is continued in effect for that purpose.

(b)  Section 1101.001, Estates Code, as amended by this Act, applies only to an application for the appointment of a guardian filed on or after the effective date of this Act. An application for the appointment of a guardian 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 the purpose.

(c)  Sections 1054.201 and 1101.153, Estates Code, as amended 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 applicable to the proceeding immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

(d)  Section 1253.001, Estates Code, as amended by this Act, applies to a guardianship created before, on, or after the effective date of this Act.

SECTION 23.  This Act takes effect September 1, 2019.