

By: Zaffirini

S.B. No. 1783

A BILL TO BE ENTITLED

AN ACT

relating to guardianships, alternatives to guardianship, and supports and services for incapacitated persons.

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

SECTION 1. Section 1023.001, Estates Code, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

(a) Except as otherwise authorized by this section, a proceeding for the appointment of a guardian for the person or estate, or both, of an incapacitated person shall be brought in the county in which the proposed ward resides or is located on the date the application is filed.

(a-1) A proceeding for the appointment of a guardian for the estate of an incapacitated person may be brought [ex] in the county in which the principal estate of the proposed ward is located.

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

Sec. 1023.005. COURT ACTION. (a) On hearing an application or motion under Section 1023.003, if ~~[good cause is not shown to deny the transfer and]~~ it appears that transfer of the guardianship is in the best interests of the ward and either the ward has resided in the county to which the guardianship is to be transferred for at least six months or good cause is not otherwise shown to deny the transfer, the court shall enter an order:

1 (1) authorizing the transfer on payment on behalf of
2 the estate of all accrued costs; and

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

6 (b) In making a determination that the transfer is in the
7 best interests of the ward under Subsection (a), the court may
8 consider:

9 (1) the interests of justice;

10 (2) the convenience of the parties; and

11 (3) the preference of the ward, if the ward is 12 years
12 of age or older.

13 (c) If the ward resides in the county to which a
14 guardianship is transferred under Subsection (a), the county shall
15 accept the transfer of the guardianship.

16 SECTION 3. Section 1023.008, Estates Code, is amended to
17 read as follows:

18 Sec. 1023.008. CONTINUATION OF GUARDIANSHIP. (a) When a
19 guardianship is transferred from one county to another in
20 accordance with this chapter:

21 (1) [7] the guardianship proceeds in the court to
22 which it was transferred as if it had been originally commenced in
23 that court;

24 (2) the court to which the guardianship is transferred
25 becomes the court of continuing, exclusive jurisdiction;

26 (3) a proceeding relating to the guardianship that is
27 commenced in the court ordering the transfer continues in the court

1 to which the guardianship is transferred as if the proceeding
2 commenced in the receiving court;

3 (4) a judgment or order entered in the guardianship
4 before the transfer has the same effect and must be enforced as a
5 judgment or order entered by the court to which the guardianship is
6 transferred; and

7 (5) the court ordering the transfer does not retain:

8 (A) jurisdiction of the ward who is the subject
9 of the guardianship; and

10 (B) the authority to enforce an order entered for
11 a violation of this title that occurred before or after the
12 transfer.

13 (b) It is not necessary to record in the receiving court any
14 of the papers in the case that were recorded in the court from which
15 the case was transferred.

16 SECTION 4. Chapter 1023, Estates Code, is amended by adding
17 Section 1023.011 to read as follows:

18 Sec. 1023.011. NO LIABILITY OF JUDGE. A judge who transfers
19 a guardianship to another county shall certify in the transfer
20 order that the guardianship is in compliance with the Texas Estates
21 Code at the time of transfer. When a guardianship is transferred
22 from one county to another in accordance with this chapter, a judge
23 of the court from which the guardianship is transferred may not be
24 held civilly liable for any injury, damage, or loss to the ward or
25 the ward's estate that occurs after the transfer. A judge of the
26 court to which the guardianship is transferred may not be held
27 civilly liable for any injury, damage, or loss to the ward or the

1 ward's estate that occurred prior to the transfer.

2 SECTION 5. Subchapter D, Chapter 1055, Estates Code, is
3 amended to read as follows:

4 SUBCHAPTER D. MEDIATION

5 Sec. 1055.151. MEDIATION OF [~~CONTESTED~~] GUARDIANSHIP
6 PROCEEDING. (a) [~~On the written agreement of the parties or on the~~
7 ~~court's own motion, the court may refer a contested guardianship~~
8 ~~proceeding to mediation.~~] A court upon its own motion may refer a
9 matter to mediation at any time after the filing of an application
10 for guardianship before a final hearing or jury trial. The court
11 shall refer the matter to mediation if such request is made by:

12 (1) the proposed ward;

13 (2) an attorney ad litem appointed for the proposed
14 ward under Section 1054.001;

15 (3) a guardian ad litem appointed for the proposed
16 ward under Section 1054.051;

17 (4) a family member of the proposed ward who has
18 entered an appearance in the matter or that family member's
19 attorney;

20 (5) a private professional guardian, friend of the
21 proposed ward, or other person who filed the application for
22 guardianship and who is not a family member of the proposed ward; or

23 (6) a guardianship program that filed the application
24 requesting to be appointed guardian.

25 A court may also require named individuals: ward, guardian,
26 attorney ad litem, guardian ad litem, family, and others to
27 participate in an annual mediation to assist the court in

1 determining the need for continuing a guardianship, or use of
2 lesser restrictive alternatives.

3 (b) Capacity of the proposed ward shall not be an issue to be
4 mediated and must still be proved to the Court in accordance with
5 Texas Estates Code Chapter 1101. Additionally, all parties shall
6 evaluate available alternatives to guardianship and supports and
7 services at the mediation in accordance with Texas Estates Code
8 Sections 1101.010(a)(1)(D) through (a)(1)(E) and whether the
9 supports and services and alternatives to guardianship would be
10 feasible to avoid the need for a guardianship.

11 (c) All mediations under this Section shall be conducted by
12 individuals who:

13 (1) have been approved by the Court and

14 (2) have completed a specialized 24 hour guardianship
15 mediation training course conducted by an alternative dispute
16 resolution system or an organization approved by the Office of
17 Court Administration, in addition to addition to satisfying the
18 requirements set forth in Chapter 154.052, Texas Civil Practice and
19 Remedies Code.

20 (d) The cost of mediation shall be paid by the parties
21 unless otherwise ordered by the Court. If the parties are unable to
22 pay the cost of mediation, the cost of mediation shall be borne by
23 the ADR fund established under 152.004 or Section 152.006 of the
24 Texas Civil Practice and Remedies Code.

25 Sec. 1055.152. MEDIATED SETTLEMENT AGREEMENTS. (a) A
26 mediated settlement agreement is binding on the parties if the
27 agreement:

1 (1) provides, in a prominently displayed statement
2 that is in boldfaced type, in capital letters, or underlined, that
3 the agreement is not subject to revocation by the parties and that
4 the parties agree the settlement agreement is in the best interest
5 of the Ward.

6 (2) is signed by each party to the agreement; and

7 (3) is signed by the party's attorney, if any, who is
8 present at the time the agreement is signed.

9 (b) [~~(c)~~] If a mediated settlement agreement meets the
10 requirements of this section, a party is entitled to judgment on the
11 mediated settlement agreement notwithstanding Rule 11, Texas Rules
12 of Civil Procedure, or another rule or law.

13 (c) [~~(d)~~] Notwithstanding Subsections (a) and (b) [~~and~~
14 (c)], a court may decline to enter a judgment on a mediated
15 settlement agreement if the court finds that the agreement is not in
16 the ward's or proposed ward's best interests.

17 Sec. 1055.153. MEDIATION PROJECT. (a) For the purposes of
18 this section, a probate court is considered a mental health court
19 under Chapter 125, Government Code.

20 (b) A probate court may:

21 (1) apply for a public or private grant to fund a
22 mediation project in connection with a guardianship proceeding; or

23 (2) participate in a national or state mediation
24 project to study the effects of mediation on promoting the least
25 restrictive alternatives to guardianship for incapacitated
26 persons.

27 (c) This section expires September 1, 2021.

1 SECTION 6. Section 1101.001(b), Estates Code, is amended to
2 read as follows:

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

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

7 (2) the name, relationship, and address of the person
8 the applicant seeks to have appointed as guardian;

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

11 (3-a) whether alternatives to guardianship and
12 available supports and services to avoid guardianship were
13 considered;

14 (3-b) whether any alternatives to guardianship and
15 supports and services available to the proposed ward considered are
16 feasible and would avoid the need for a guardianship;

17 (3-c) whether mediation was considered or encouraged
18 to avoid the need for guardianship;

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

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

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

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

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

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

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

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

10 (9) the approximate value and description of the
11 proposed ward's property, including any compensation, pension,
12 insurance, or allowance to which the proposed ward may be entitled;

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

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

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

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

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

1 adults;

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

5 (A) the court involved;

6 (B) the nature of the proceeding; and

7 (C) any final disposition of the proceeding;

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

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

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

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

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

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

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

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

6 SECTION 7. The heading to Subchapter B, Chapter 1101,
7 Estates Code, is amended to read as follows:

8 SUBCHAPTER B. HEARING; JURY TRIAL; MEDIATION

9 SECTION 8. Section 1101.052, Estates Code, is amended to
10 read as follows:

11 Sec. 1101.052. JURY TRIAL AND MEDIATION. A proposed ward is
12 entitled to a jury trial on request. At any time after the filing of
13 an application for guardianship but before the date of the final
14 hearing or jury trial for the appointment of a guardian, the court
15 may refer a matter to mediation in accordance with Section
16 1055.151.

17 SECTION 9. Section 1201.053, Estates Code, is amended by
18 adding Subsection (c) to read as follows:

19 (c) In reviewing a guardianship under Section 1201.052, a
20 court may require the following persons to participate in a
21 mediation in connection with the guardianship matter:

22 (1) the ward;

23 (2) the ward's guardian;

24 (3) an attorney ad litem appointed to represent the
25 ward or the ward's interests;

26 (4) a guardian ad litem appointed to represent the
27 ward or the ward's interests;

1 (5) a family member of the ward; or

2 (6) any other person interested in the ward's welfare.

3 SECTION 10. Section 1202.001, Estates Code, is amended by
4 adding Subsection (b-1) to read as follows:

5 (b-1) A guardianship of the person shall be settled and
6 closed when the court finds that the ward's incapacity needs can be
7 managed without the necessity for that continued guardianship by an
8 alternative to guardianship or with supports and services as
9 provided by Subchapter F.

10 SECTION 11. Chapter 1202, Estates Code, is amended by
11 adding Subchapter F to read as follows:

12 SUBCHAPTER F. TERMINATION OF GUARDIANSHIP OF THE PERSON ON FINDING
13 THAT INCAPACITY THE PERSON'S NEEDS CAN BE MANAGED WITHOUT
14 GUARDIANSHIP

15 Sec. 1202.231. TERMINATION OF GUARDIANSHIP OF THE PERSON ON
16 FINDING THAT WARD'S INCAPACITY NEEDS CAN BE MANAGED WITHOUT
17 GUARDIANSHIP. On application by the guardian of the person of a
18 ward or another person interested in the ward's welfare, or on the
19 court's own motion and subject to Section 1202.232, the court may
20 order that the guardianship of the person of the ward terminate and
21 be settled and closed if the court makes the findings required under
22 Section 1202.233.

23 Sec. 1202.232. PHYSICIAN'S LETTER OR CERTIFICATE REQUIRED.

24 (a) The court may not grant an order terminating a guardianship of
25 the person under Section 1202.231 unless the applicant presents to
26 the court or the court secures a written letter or certificate from
27 a physician licensed in this state that is dated:

1 (1) not earlier than the 120th day before the date the
2 application was filed or the date the court enters the court's
3 motion; or

4 (2) any time after the date the application was filed
5 or the date the court's motion was entered but before the date of
6 the hearing.

7 (b) A letter or certificate presented under Subsection (a)
8 must:

9 (1) describe the nature and degree of incapacity of
10 the ward, including the ward's medical history if reasonably
11 available;

12 (2) provide a medical prognosis for the ward
13 specifying the estimated severity of any incapacity;

14 (3) state how or in what manner the ward's ability to
15 make or communicate responsible decisions concerning the ward is
16 affected by the ward's physical or mental health;

17 (4) state whether any current medication affects the
18 ward's demeanor or the ward's ability to participate fully in a
19 court proceeding;

20 (5) describe the precise physical and mental
21 conditions underlying a diagnosis of senility, if applicable;

22 (6) describe feasible alternatives to guardianship
23 available to the ward that would avoid the need for the continued
24 appointment of a guardian of the person and state whether, in the
25 physician's opinion, those alternatives to guardianship meet the
26 following needs of the ward without the necessity for a continued
27 guardianship of the person:

1 (A) provision of food, clothing, and shelter for
2 the ward's own self;

3 (B) care for the ward's own physical health; and

4 (C) management of the ward's financial affairs;

5 (7) describe feasible supports and services available
6 to the ward that would avoid the need for the continued appointment
7 of a guardian of the person for the ward and state whether, in the
8 physician's opinion, the supports and services meet the following
9 needs of the ward without the necessity for a continued
10 guardianship of the person:

11 (A) provision of food, clothing, and shelter for
12 the ward's own self;

13 (B) care for the ward's own physical health; and

14 (C) management of the ward's financial affairs;

15 and

16 (8) include any other information required by the
17 court.

18 (c) If the court determines it is necessary, the court may
19 appoint the necessary physicians to examine the ward.

20 Sec. 1202.233. FINDINGS REQUIRED. Before ordering the
21 termination of a guardianship of the person under Section 1202.231,
22 the court must find by a preponderance of the evidence that:

23 (1) the ward remains a partially or completely
24 incapacitated person;

25 (2) the current nature and degree of the ward's
26 incapacity and the ward's needs can be managed without the
27 necessity of a continued guardianship of the person by:

1 (A) alternatives to guardianship that are
2 available to the ward and that are determined to be feasible; or

3 (B) supports and services that are available to
4 the ward and that are determined to be feasible; and

5 (3) termination of the guardianship of the person:

6 (A) is in the ward's best interest; and

7 (B) will encourage the development or
8 maintenance of maximum self-reliance and independence in the ward.

9 Sec. 1202.234. GENERAL REQUIREMENTS FOR ORDER. A court
10 order that terminates a guardianship of the person under this
11 subchapter must:

12 (1) contain the findings required under Section
13 1202.233;

14 (2) state the guardian's name;

15 (3) state the ward's name;

16 (4) specify:

17 (A) the supports and services that:

18 (i) will meet the ward's needs without the
19 continued necessity for guardianship of the person; and

20 (ii) justify the termination of that
21 guardianship; or

22 (B) the alternatives to guardianship that:

23 (i) will meet the ward's needs without the
24 continued necessity for guardianship of the person; and

25 (ii) justify the termination of that
26 guardianship;

27 (5) identify the persons or entities providing or that

1 will provide:

2 (A) the supports and services described by
3 Subdivision (4)(A); or

4 (B) alternatives to guardianship described by
5 Subdivision (4)(B);

6 (6) state that the guardian is required to:

7 (A) immediately settle the guardianship in
8 accordance with this title; and

9 (B) deliver all of the ward's remaining personal
10 effects and assets, if any, to the persons or entities identified
11 under Subdivision (5)(A) or (B), as applicable; and

12 (7) state that the clerk shall revoke letters of
13 guardianship of the person when the guardianship is finally settled
14 and closed.

15 Sec. 1202.235. NOTICE; APPOINTMENT OF ATTORNEY AD LITEM OR
16 GUARDIAN AD LITEM. A court may, in its discretion, enter additional
17 orders in the best interest of the ward, including but not limited
18 to:

19 (1) requiring notice to interested parties;;

20 (2) appoint an attorney ad litem and/or guardian ad
21 litem.

22 SECTION 12. Chapter 155, Government Code, is amended by
23 adding Subchapter G to read as follows:

24 SUBCHAPTER G. GUARDIANSHIP MEDIATION TRAINING

25 Sec. 155.301. TRAINING. The Office of Court Administration
26 by rule shall establish a 24 hour training course for use by
27 approved dispute resolution training providers for those persons

1 appointed to facilitate mediations under Title 3, Estates Code.
2 Providers of mediation training shall adhere to the approved
3 curriculum.

4 SECTION 13. (a) Except as otherwise provided by this
5 section, the changes in law made by this Act apply to a guardianship
6 created before, on, or after the effective date of this Act.

7 (b) Section 1023.001, Estates Code, as amended by this Act,
8 applies only to a proceeding commenced on or after the effective
9 date of this Act. A proceeding commenced before the effective date
10 of this Act is governed by the law applicable to the proceeding
11 immediately before the effective date of this Act, and that law is
12 continued in effect for that purpose.

13 (c) Section 1101.001(b), Estates Code, as amended by this
14 Act, applies only to an application for the appointment of a
15 guardian filed on or after the effective date of this Act. An
16 application for the appointment of a guardian filed before the
17 effective date of this Act is governed by the law in effect on the
18 date the application was filed, and the former law is continued in
19 effect for that purpose.

20 SECTION 14. This Act takes effect September 1, 2019.