

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

1 in which venue is proper. The court to which the file is
2 transmitted shall conduct the proceeding in the same manner as if
3 the proceeding had originally been commenced in that county.

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

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

- 12 (1) the original file in the case; and
13 (2) certified copies of all entries that have been
14 made in the judge's probate docket in the proceeding.

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

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

22 SECTION 5. Section 51.003(b), Estates Code, is amended to
23 read as follows:

24 (b) A citation or notice issued by the county clerk must be
25 styled "The State of Texas" and be signed by the clerk under the
26 court's ~~clerk's~~ seal.

27 SECTION 6. Section 202.054, Estates Code, is amended to

1 read as follows:

2 Sec. 202.054. PERSONAL SERVICE OF CITATION MAY BE REQUIRED.

3 (a) The court may require that service of citation in a proceeding
4 to declare heirship be made by personal service on some or all of
5 those named as distributees in the application filed under Section
6 202.005.

7 (b) If a distributee to be cited under Subsection (a) is
8 absent from or is not a resident of this state, any disinterested
9 person competent to make an oath that the citation was served may
10 serve the citation.

11 SECTION 7. Section 351.351, Estates Code, is amended to
12 read as follows:

13 Sec. 351.351. APPLICABILITY. This subchapter does not
14 apply to:

15 (1) the appointment of an independent executor or
16 administrator under Section 401.002 or 401.003(a); or

17 (2) the appointment of a successor independent
18 administrator [~~executor~~] under Section 404.005.

19 SECTION 8. Section 404.0036(b), Estates Code, is amended to
20 read as follows:

21 (b) If an independent executor is removed by the court under
22 Section 404.003 or 404.0035, the court may, on application, appoint
23 a successor independent administrator [~~executor~~] as provided by
24 Section 404.005.

25 SECTION 9. The heading to Section 404.005, Estates Code, is
26 amended to read as follows:

27 Sec. 404.005. COURT-APPOINTED SUCCESSOR INDEPENDENT

1 ADMINISTRATOR [~~EXECUTOR~~].

2 SECTION 10. Sections 404.005(a), (b), (c), (h), and (i),
3 Estates Code, are amended to read as follows:

4 (a) If the will of a person who dies testate names an
5 independent executor who, having qualified, fails for any reason to
6 continue to serve, or is removed for cause by the court, and the
7 will does not name a successor independent executor or if each
8 successor executor named in the will fails for any reason to qualify
9 as executor or indicates by affidavit filed with the application
10 for an order continuing independent administration the successor
11 executor's inability or unwillingness to serve as successor
12 independent executor, all of the distributees of the decedent as of
13 the filing of the application for an order continuing independent
14 administration may apply to the probate court for the appointment
15 of a qualified person, firm, or corporation to serve as successor
16 independent administrator [~~executor~~]. If the probate court finds
17 that continued administration of the estate is necessary, the court
18 shall enter an order continuing independent administration and
19 appointing the person, firm, or corporation designated in the
20 application as successor independent administrator [~~executor~~],
21 unless the probate court finds that it would not be in the best
22 interest of the estate to do so. The successor independent
23 administrator [~~executor~~] shall serve with all of the powers and
24 privileges granted to the successor's predecessor independent
25 executor.

26 (b) Except as otherwise provided by this subsection, if a
27 distributee described in this section is an incapacitated person,

1 the guardian of the person of the distributee may sign the
2 application on behalf of the distributee. If the probate court
3 finds that either the continuing of independent administration or
4 the appointment of the person, firm, or corporation designated in
5 the application as successor independent administrator [~~executor~~]
6 would not be in the best interest of the incapacitated person, then,
7 notwithstanding Subsection (a), the court may not enter an order
8 continuing independent administration of the estate. If the
9 distributee is an incapacitated person and has no guardian of the
10 person, the court may appoint a guardian ad litem to make
11 application on behalf of the incapacitated person if the probate
12 court considers such an appointment necessary to protect the
13 interest of that distributee. If a distributee described in this
14 section is a minor and has no guardian of the person, a natural
15 guardian of the minor may sign the application for the order
16 continuing independent administration on the minor's behalf unless
17 a conflict of interest exists between the minor and the natural
18 guardian.

19 (c) Except as otherwise provided by this subsection, if a
20 trust is created in the decedent's will or if the decedent's will
21 devises property to a trustee as described by Section 254.001, the
22 person or class of persons entitled to receive property outright
23 from the trust on the decedent's death and those first eligible to
24 receive the income from the trust, determined as if the trust were
25 to be in existence on the date of the filing of the application for
26 an order continuing independent administration, shall, for the
27 purposes of this section, be considered to be the distributee or

1 distributees on behalf of the trust, and any other trust or trusts
2 coming into existence on the termination of the trust, and are
3 authorized to apply for an order continuing independent
4 administration on behalf of the trust without the consent or
5 agreement of the trustee or any other beneficiary of the trust, or
6 the trustee or any beneficiary of any other trust which may come
7 into existence on the termination of the trust. If a person
8 considered to be a distributee under this subsection is an
9 incapacitated person, the trustee or cotrustee may apply for the
10 order continuing independent administration or sign the
11 application on the incapacitated person's behalf if the trustee or
12 cotrustee is not the person proposed to serve as the independent
13 administrator [~~executor~~].

14 (h) If a successor independent administrator [~~executor~~] is
15 appointed under this section, then, unless the probate court shall
16 waive bond on application for waiver, the successor independent
17 administrator [~~executor~~] shall be required to enter into bond
18 payable to and to be approved by the judge and the judge's
19 successors in a sum that is found by the judge to be adequate under
20 all circumstances, or a bond with one surety in an amount that is
21 found by the judge to be adequate under all circumstances, if the
22 surety is an authorized corporate surety.

23 (i) Absent proof of fraud or collusion on the part of a
24 judge, the judge may not be held civilly liable for the commission
25 of misdeeds or the omission of any required act of any person, firm,
26 or corporation designated as a successor independent administrator
27 [~~executor~~] under this section. Section 351.354 does not apply to an

1 appointment of a successor independent administrator [~~executor~~]
2 under this section.

3 SECTION 11. Section 452.006, Estates Code, is amended by
4 adding Subsection (c) to read as follows:

5 (c) The appointee shall file with the court proof of service
6 of the notice required under Subsection (a) in the manner provided
7 by Section 51.103(b)(3).

8 SECTION 12. Section 503.002, Estates Code, is amended to
9 read as follows:

10 Sec. 503.002. RECORDING OF CERTAIN FOREIGN TESTAMENTARY
11 INSTRUMENTS IN LANGUAGE OTHER THAN ENGLISH [~~ORIGINAL SIGNATURES NOT~~
12 ~~REQUIRED~~]. (a) An authenticated copy of a will or other
13 testamentary instrument described by Section 503.001(a), along
14 with a copy of the judgment, order, or decree by which the
15 instrument was admitted to probate that has the attestation and
16 certificate required by Section 501.002(c), that is written in
17 whole or in part in a language other than English may be filed for
18 recording in the deed records in any county in this state in which
19 the land conveyed or disposed of in the instrument is located if:

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

24 (2) the accuracy of the translation is sworn to before
25 an officer authorized to administer oaths [~~Notwithstanding Section~~
26 ~~501.002(c), the original signatures required by that section may~~
27 ~~not be required for a recordation in the deed records in accordance~~

1 ~~with Section 503.001 or for a purpose described by Section 503.051~~
2 ~~or 503.052]~~.

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

7 (1) existence of the instrument; and

8 (2) title or titles conferred by the instrument.

9 SECTION 13. Section 1023.006, Estates Code, is amended to
10 read as follows:

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

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

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

20 SECTION 14. Section 1023.007, Estates Code, is amended to
21 read as follows:

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

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

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

6 SECTION 15. Section 1051.003(b), Estates Code, is amended
7 to read as follows:

8 (b) A citation or notice issued by the county clerk must be
9 styled "The State of Texas" and be signed by the clerk under the
10 court's ~~clerk's~~ seal.

11 SECTION 16. The heading to Chapter 1054, Estates Code, is
12 amended to read as follows:

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

15 SECTION 17. The heading to Subchapter E, Chapter 1054,
16 Estates Code, is amended to read as follows:

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

19 SECTION 18. Section 1054.201, Estates Code, is amended by
20 amending Subsection (a) and adding Subsection (c) to read as
21 follows:

22 (a) Except as provided by Subsection (c), an ~~[An]~~ attorney
23 representing any person's interests ~~[for an applicant for~~
24 ~~guardianship and a court-appointed attorney]~~ in a guardianship
25 proceeding, including an attorney ad litem, must be certified by
26 the State Bar of Texas, or a person or other entity designated by
27 the state bar, as having successfully completed a course of study in

1 guardianship law and procedure sponsored by the state bar or the
2 state bar's designee.

3 (c) An attorney may commence representation of a person's
4 interests and file an appearance in a guardianship proceeding
5 before completing the course required for certification under
6 Subsection (a), but must complete the course not later than the 14th
7 day after the date of filing the appearance and before filing any
8 substantive motion in the guardianship proceeding.

9 SECTION 19. Section 1101.001(b), Estates Code, is amended
10 to read as follows:

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

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

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

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

20 (3-a) whether alternatives to guardianship and
21 available supports and services to avoid guardianship were
22 considered;

23 (3-b) whether any alternatives to guardianship and
24 supports and services available to the proposed ward considered are
25 feasible and would avoid the need for a guardianship;

26 (4) the nature and degree of the alleged incapacity,
27 the specific areas of protection and assistance requested, and the

1 limitation or termination of rights requested to be included in the
2 court's order of appointment, including a termination of:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 (A) the court involved;

16 (B) the nature of the proceeding; and

17 (C) any final disposition of the proceeding;

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

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

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

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

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

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

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

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

16 SECTION 20. Section 1101.153(a), Estates Code, is amended
17 to read as follows:

18 (a) A court order appointing a guardian must:

19 (1) specify:

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

21 (B) [~~(2)~~] the name of the ward;

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

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

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

1 to return the appraisal to the court; and

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

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

9 SECTION 21. Section 1104.402, Estates Code, is amended to
10 read as follows:

11 Sec. 1104.402. COURT CLERK'S DUTY TO OBTAIN CRIMINAL
12 HISTORY RECORD INFORMATION[~~, AUTHORITY TO CHARGE FEE~~]. [~~(a)~~]
13 Except as provided by Section [~~1104.403,~~] 1104.404[~~7~~] or
14 1104.406(a), the clerk of the county having venue of the proceeding
15 for the appointment of a guardian shall obtain criminal history
16 record information that is maintained by the Department of Public
17 Safety or the Federal Bureau of Investigation identification
18 division relating to:

- 19 (1) a private professional guardian;
- 20 (2) each person who represents or plans to represent
21 the interests of a ward as a guardian on behalf of the private
22 professional guardian;
- 23 (3) each person employed by a private professional
24 guardian who will:
- 25 (A) have personal contact with a ward or proposed
26 ward;
- 27 (B) exercise control over and manage a ward's

1 estate; or

2 (C) perform any duties with respect to the
3 management of a ward's estate;

4 (4) each person employed by or volunteering or
5 contracting with a guardianship program to provide guardianship
6 services to a ward of the program on the program's behalf; or

7 (5) any other person proposed to serve as a guardian
8 under this title, including a proposed temporary guardian and a
9 proposed successor guardian, other than an attorney.

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

13 SECTION 22. Section 1104.405(a), Estates Code, is amended
14 to read as follows:

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

21 SECTION 23. Subchapter A, Chapter 1151, Estates Code, is
22 amended by adding Section 1151.005 to read as follows:

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

27 (1) a party; or

1 (2) participating as a witness.

2 SECTION 24. Section 1253.001, Estates Code, is amended to
3 read as follows:

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

10 SECTION 25. Section 25.0006, Government Code, is amended by
11 amending Subsection (a) and adding Subsection (a-5) to read as
12 follows:

13 (a) Notwithstanding any other law except Subsection (a-4),
14 Subsections (a-1), (a-2), [~~and~~] (a-3), and (a-5) control over a
15 specific provision for a particular court or county that attempts
16 to create a requirement for a bond or insurance that conflicts with
17 those subsections.

18 (a-5) A bond executed under Subsection (a-1) by the judge
19 elected or appointed to a statutory county court or an insurance
20 policy obtained under Subsection (a-3) shall provide the same
21 coverage to a visiting judge assigned to the court as the bond or
22 insurance policy provides to the judge elected or appointed to the
23 court.

24 SECTION 26. Section 25.00231, Government Code, is amended
25 by adding Subsection (f) to read as follows:

26 (f) Notwithstanding Subsection (e), a bond executed under
27 Subsection (b) by the judge elected or appointed to a statutory

1 probate court or an insurance policy obtained under Subsection (c)
2 shall provide the same coverage to a visiting judge assigned to the
3 court as the bond or insurance policy provides to the judge elected
4 or appointed to the court.

5 SECTION 27. Section 26.001, Government Code, is amended by
6 adding Subsection (d) to read as follows:

7 (d) A bond executed under Subsection (a) by the judge
8 elected or appointed to a county court or an insurance policy
9 obtained under Subsection (c) shall provide the same coverage to a
10 visiting judge assigned to the court as the bond or insurance policy
11 provides to the judge elected or appointed to the court.

12 SECTION 28. Section 81.114, Government Code, is amended by
13 amending Subsection (a) and adding Subsection (e) to read as
14 follows:

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

18 (e) The provider of a course described by this section may
19 not charge more than the amount necessary to cover the costs of
20 providing the course.

21 SECTION 29. Section 1104.403, Estates Code, is repealed.

22 SECTION 30. (a) Section 202.054, Estates Code, as amended
23 by this Act, applies only to a proceeding to declare heirship
24 commenced on or after the effective date of this Act. A proceeding
25 to declare heirship commenced before that date is governed by the
26 law in effect on the date the proceeding was commenced, and the
27 former law is continued in effect for that purpose.

1 (b) Section 452.006(c), Estates Code, as added by this Act,
2 applies only to a temporary administrator appointed on or after the
3 effective date of this Act. A temporary administrator appointed
4 before the effective date of this Act is governed by the law in
5 effect on the date the administrator was appointed, and the former
6 law is continued in effect for that purpose.

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

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

21 (e) Sections 1054.201 and 1101.153, Estates Code, as
22 amended by this Act, apply only to a guardianship proceeding
23 commenced on or after the effective date of this Act. A
24 guardianship proceeding commenced before the effective date of this
25 Act is governed by the law applicable to the proceeding immediately
26 before the effective date of this Act, and the former law is
27 continued in effect for that purpose.

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

4 (g) The changes in law made by this Act to Sections 25.0006,
5 25.00231, and 26.001, Government Code, apply only to an insurance
6 policy delivered, issued for delivery, or renewed on or after
7 January 1, 2020. An insurance policy delivered, issued for
8 delivery, or renewed before January 1, 2020, is governed by the law
9 as it existed immediately before the effective date of this Act, and
10 that law is continued in effect for that purpose.

11 SECTION 31. This Act takes effect September 1, 2019.