

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 503.002, Estates Code, is amended to  
23 read as follows:

24 Sec. 503.002. RECORDING OF CERTAIN FOREIGN TESTAMENTARY  
25 INSTRUMENTS IN LANGUAGE OTHER THAN ENGLISH [~~ORIGINAL SIGNATURES NOT~~  
26 ~~REQUIRED~~]. (a) An authenticated copy of a will or other  
27 testamentary instrument described by Section 503.001(a), along

1 with a copy of the judgment, order, or decree by which the  
2 instrument was admitted to probate that has the attestation and  
3 certificate required by Section 501.002(c), that is written in  
4 whole or in part in a language other than English may be filed for  
5 recording in the deed records in any county in this state in which  
6 the land conveyed or disposed of in the instrument is located if:

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

11 (2) the accuracy of the translation is sworn to before  
12 an officer authorized to administer oaths [~~Notwithstanding Section~~  
13 ~~501.002(c), the original signatures required by that section may~~  
14 ~~not be required for a recordation in the deed records in accordance~~  
15 ~~with Section 503.001 or for a purpose described by Section 503.051~~  
16 ~~or 503.052].~~

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

21 (1) existence of the instrument; and

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

23 SECTION 6. Section 1023.006, Estates Code, is amended to  
24 read as follows:

25 Sec. 1023.006. TRANSFER OF RECORD. When an order of  
26 transfer is made under Section 1023.005, the clerk shall record any  
27 unrecorded papers of the guardianship required to be recorded. On

1 payment of the clerk's fee, the clerk shall transmit in electronic  
2 or paper form to the county clerk of the county to which the  
3 guardianship was ordered transferred:

- 4 (1) the case file of the guardianship proceedings; and  
5 (2) a certified copy of the index of the guardianship  
6 records.

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

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

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

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

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

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

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

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

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

4 (a) Except as provided by Subsection (c), an [An] attorney  
5 representing any person's interests [for an applicant for  
6 guardianship and a court-appointed attorney] in a guardianship  
7 proceeding, including an attorney ad litem, must be certified by  
8 the State Bar of Texas, or a person or other entity designated by  
9 the state bar, as having successfully completed a course of study in  
10 guardianship law and procedure sponsored by the state bar or the  
11 state bar's designee.

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

18 SECTION 11. Section 1101.001(b), Estates Code, is amended  
19 to read as follows:

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

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

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

27 (3) whether guardianship of the person or estate, or

1 both, is sought;

2 (3-a) whether alternatives to guardianship and  
3 available supports and services to avoid guardianship were  
4 considered;

5 (3-b) whether any alternatives to guardianship and  
6 supports and services available to the proposed ward considered are  
7 feasible and would avoid the need for a guardianship;

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

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

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

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

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

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

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

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

26 (9) the approximate value and description of the  
27 proposed ward's liquid assets [~~property~~], including any

1 compensation, pension, insurance, or allowance to which the  
2 proposed ward may be entitled;

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

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

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

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

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

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

22 (A) the court involved;

23 (B) the nature of the proceeding; and

24 (C) any final disposition of the proceeding;

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

27 (A) the name of the proposed ward's spouse, if

1 any, and either the spouse's address or that the spouse is deceased;

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

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

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

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

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

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

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

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

26 (1) specify:

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

- 1            (B) [~~(2)~~] the name of the ward;
- 2            (C) [~~(3)~~] whether the guardian is of the person
- 3 or estate of the ward, or both;
- 4            (D) [~~(4)~~] the amount of any bond required;
- 5            (E) [~~(5)~~] if it is a guardianship of the estate
- 6 of the ward and the court considers an appraisal to be necessary,
- 7 one, two, or three disinterested persons to appraise the estate and
- 8 to return the appraisement to the court; and
- 9            (F) [~~(6)~~] that the clerk will issue letters of
- 10 guardianship to the person appointed when the person has qualified
- 11 according to law; and
- 12            (2) if the court waives the guardian's training
- 13 requirement, contain a finding that the waiver is in accordance
- 14 with rules adopted by the supreme court under Section 155.203,
- 15 Government Code.

16            SECTION 13. Section 1104.402, Estates Code, is amended to

17 read as follows:

18            Sec. 1104.402. COURT CLERK'S DUTY TO OBTAIN CRIMINAL

19 HISTORY RECORD INFORMATION[~~, AUTHORITY TO CHARGE FEE~~].

20 [~~(a)~~] Except as provided by Section [~~1104.403~~] 1104.404[~~7~~] or

21 1104.406(a), the clerk of the county having venue of the proceeding

22 for the appointment of a guardian shall obtain criminal history

23 record information that is maintained by the Department of Public

24 Safety or the Federal Bureau of Investigation identification

25 division relating to:

- 26            (1) a private professional guardian;
- 27            (2) each person who represents or plans to represent

1 the interests of a ward as a guardian on behalf of the private  
2 professional guardian;

3 (3) each person employed by a private professional  
4 guardian who will:

5 (A) have personal contact with a ward or proposed  
6 ward;

7 (B) exercise control over and manage a ward's  
8 estate; or

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

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

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

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

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

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

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

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

7 (1) a party; or

8 (2) participating as a witness.

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

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

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

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

25 (a-5) A bond executed under Subsection (a-1) by the judge  
26 elected or appointed to a statutory county court or an insurance  
27 policy obtained under Subsection (a-3) shall provide the same

1 coverage to a visiting judge assigned to the court as the bond or  
2 insurance policy provides to the judge elected or appointed to the  
3 court.

4 SECTION 18. Section 25.00231, Government Code, is amended  
5 by adding Subsection (f) to read as follow:

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

12 SECTION 19. Section 26.001, Government Code, is amended by  
13 adding Subsection (d) to read as follows:

14 (d) A bond executed under Subsection (a) by the judge  
15 elected or appointed to a county court or an insurance policy  
16 obtained under Subsection (c) shall provide the same coverage to a  
17 visiting judge assigned to the court as the bond or insurance policy  
18 provides to the judge elected or appointed to the court.

19 SECTION 20. Section 81.114, Government Code, is amended by  
20 amending Subsection (a) and adding Subsection (e) to read as  
21 follows:

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

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

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

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

8           (b) Section 1101.001, Estates Code, as amended by this Act,  
9 applies only to an application for the appointment of a guardian  
10 filed on or after the effective date of this Act. An application  
11 for the appointment of a guardian filed before the effective date of  
12 this Act is governed by the law in effect on the date the  
13 application was filed, and the former law is continued in effect for  
14 the purpose.

15           (c) Sections 1054.201 and 1101.153, Estates Code, as  
16 amended by this Act, apply only to a guardianship proceeding  
17 commenced on or after the effective date of this Act. A  
18 guardianship proceeding commenced before the effective date of this  
19 Act is governed by the law applicable to the proceeding immediately  
20 before the effective date of this Act, and the former law is  
21 continued in effect for that purpose.

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

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