

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 87TH LEGISLATIVE REGULAR SESSION**

**May 20, 2021**

**TO:** Honorable Dan Patrick, Lieutenant Governor, Senate

**FROM:** Jerry McGinty, Director, Legislative Budget Board

**IN RE: SB626** by Zaffirini (Relating to guardianships, management trusts, and certain other procedures and proceedings for persons who are incapacitated.), **As Passed 2nd House**

<p><b>No significant fiscal implication to the State is anticipated.</b></p>
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The bill would amend the Estates Code to include, under certain circumstances, interpretation and administration of certain trusts within the jurisdiction of a county court at law exercising original probate jurisdiction.

The bill would allow guardians, including temporary guardians, to qualify for appointment by signing a written declaration, rather than by swearing an oath, as currently required. Under the bill's provisions, real estate of a guardianship of the estate would be sold at public auction in the county where the real estate is located, rather than the county where the guardianship is administered, as currently required.

The bill would make technical revisions regarding the advertising of the sale, the approval of the sale, and would adjust to the guardian's bond upon sale of the ward's real estate. The bill would amend provisions regarding the qualification and adequate bonding of nonresident guardians. The bill would also update obsolete references to predecessor agencies to the Judicial Branch Certification Commission and the Health and Human Services Commission and other clarifying amendments are made.

The bill would amend the Civil Practice and Remedies Code to allow for the electronic transfer of the file and index of probate and guardianship proceedings from one clerk to another when the case is transferred from the county where it was originally filed to another county.

The bill would require attorneys representing any party's interests in a guardianship proceeding to complete the course of instruction on guardianship offered by the State Bar of Texas. Current law requires only attorneys who represent parties in guardianship proceedings to complete the course. The State Bar of Texas would be required to make the course affordable and available on the Internet. The bill would authorize courts to waive the training required for proposed guardians only to the extent allowed by rules of the Supreme Court of Texas. The bill would allow authenticated wills and other testamentary instruments completely or partially written in a foreign language to be recorded in a county's deed records along with the order admitting them to probate and a sworn translation of the document to English.

The bill would provide that an interested person may file a request to receive notice of all matters in a probate proceeding.

The bill would require the attorney general to provide legal representation to visiting judges assigned to probate matters who are sued in their capacity as judge.

The bill would repeal a statute allowing for recording a deed without signature.

The bill would also amend the Estates Code to exempt an application for guardianship of a minor with a profound intellectual disability from the requirements of a hearing, the appointment of an attorney ad litem, and

a required investigation by a court appointed investigator, if the proposed guardian submits an affidavit which states the proposed guardian is the parent and primary caregiver of the minor.

The bill would require a court review of such a guardianship every 5 years, rather than annually as under current law, under certain circumstances. The bill would give authority for the court to conduct a review outside of the 5 year schedule upon receipt of a claim that the guardianship is no longer in the ward's best interest.

Based on the analysis of the Office of Court Administration, the Office of the Attorney General, and the Health and Human Services commission, it is assumed that duties and responsibilities associated with implementing the bill could be accomplished utilizing existing resources. In addition, no significant fiscal impact to the state court system is anticipated with the implementation of the bill.

### **Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 212 Office of Court Admin, 529 Hlth & Human Svcs Comm

**LBB Staff:** JMc, LBO, BH, SLE, MW