

BILL ANALYSIS

Senate Research Center

S.B. 2248
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Jurisprudence
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In recent years, there have been issues with transferring guardianships between courts throughout Texas. The process for clerks to transfer these cases remains unclear to many, and some clerks charge fees in excess of \$150 to refile cases in the county to which the case is being transferred. This process has led to much confusion and frustration for guardians.

What's more, applicants many times assume the role of guardian without first providing their criminal history record information or filing their bond with the clerk of the court. Similarly, some guardians may be relieved of their duties despite remaining guardianship matters left unresolved. To address these issues, S.B. 2248 would provide the clerks of the courts with clear procedures and responsibilities regarding transferring guardianship cases between different counties. This new procedure would help the new county obtain all relevant documentation while ensuring that persons under guardianship are not subject to exorbitant fees to refile their cases. What's more, S.B. 2248 would require guardians to meet the conditions of their guardianship before they can assume the role, expand protections for persons with a guardian, and introduce measures to ensure the guardianship is concluded fully before the guardian is dismissed.

S.B. 2248 amends current law relating to guardianships for persons who are incapacitated and charges a fee.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 1002, Estates Code, by adding Section 1002.0265, to define "qualified delivery method."

SECTION 2. Amends Section 1023.002(c), Estates Code, as follows:

(c) Requires a court, on the application of any interested person, if it appears to the court at any time before guardianship is closed that the proceeding was commenced in a court that did not have venue over the proceeding, to transfer the proceeding to the proper county in the manner prescribed by Section 1023.006.

SECTION 3. Amends Sections 1023.004(a) and (c), Estates Code, as follows:

(a) Requires that the sureties on the bond of the guardian, on filing an application or on motion of a court to transfer a guardianship to another county under Section 1023.002 (Concurrent Venue and Transfer for Want of Venue) or 1023.003 (Transfer of Guardianship to Another County), to be cited by a qualified delivery method, rather than by personal service, to appear and show cause why the guardianship should not be transferred.

(c) Requires the guardian to be given notice by a qualified delivery method, rather than by certified mail, to appear and show cause why guardianship should not be transferred if a court made a motion to transfer a guardianship.

SECTION 4. Amends Section 1023.005(c), Estates Code, as follows:

(c) Requires the clerk of the court to which the guardianship is transferred, rather than the county, to accept the transfer of the guardianship on receipt of an order described by Subsection (a) (relating to requiring a court to enter a certain order on hearing an application or motion if 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 guardianship is to be transferred for at least six months or good cause is not otherwise shown to deny the transfer).

SECTION 5. Amends Section 1023.006, Estates Code, as follows:

Sec. 1023.006. TRANSFER OF RECORD. (a) Requires the clerk of the court transferring a proceeding, when an order of transfer is made under Section 1023.002 or 1023.005 (Court Action), to send, using the electronic filing system established under Section 72.031 (Electronic Filing System), Government Code, to the proper court in the county to which the transfer is made:

- (1) a transfer certificate and certified index of transferred documents;
- (2) a copy of each order, including a copy of the order of transfer signed by the transferring court;
- (3) a copy of the original papers filed in the transferring court, including any papers previously received on transfer from a court in another county;
- (4) a copy of the transfer certificate and certified index of transferred documents from each previous transfer, if applicable; and
- (5) a bill of any costs that have accrued in the transferring court.

(b) Requires the clerk of the transferring court to use the standardized transfer certificate and index of transferred documents form created by the Office of Court Administration of the Texas Judicial System under Section 72.037 (Transfer Certificate and Index of Transferred Documents Form), Government Code, when transferring a proceeding under this section.

(c) Requires the clerk of the transferring court to keep a copy of transferred pleadings, orders, and all other papers filed into the case record.

(d) Requires the clerk of the transferee court, subject to Section 1023.005, to accept the documents transferred under Subsection (a) and docket the case.

(e) Provides that the clerk of the transferee court is required to physically or electronically mark or stamp the transfer certificate and index of transferred documents to evidence the date and time of acceptance under Subsection (c) but is prohibited from physically or electronically marking or stamping any other document transferred under Subsection (a).

(f) Provides that Sections 80.001 (Delivery of Notice or Document) and 80.002 (Authorized Delivery of Notice or Document), Government Code, do not apply to the transfer of documents under this section.

Deletes existing text requiring the clerk to record any unrecorded papers of the guardianship required to be recorded when an order of transfer is made under Section 1023.005. Deletes existing text requiring the clerk, on payment of the

clerk's fee, to transmit in electronic or paper form to the county clerk of the county to which the guardianship was ordered transferred the case file of the guardianship proceedings and a certified copy of the index of the guardianship records.

SECTION 6. Amends Section 1023.007, Estates Code, as follows:

Sec. 1023.007. TRANSFER EFFECTIVE. Provides that the order transferring a guardianship does not take effect until:

(1) makes no changes to this subdivision; and

(2) a certificate under the court's official seal, rather than the clerk's official seal, and reporting the filing of the case file and a certified copy of the index is filed using the electronic filing system established under Section 72.031, Government Code, rather than 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 7. Amends Chapter 1023, Estates Code, by adding Section 1023.0071, as follows:

Sec. 1023.0071. TRANSFER FEE. (a) Provides that the fee for filing a guardianship case transferred from another county under Chapter 1023 (Venue) in which the guardian has previously been appointed and qualified in accordance with Title 3 (Guardianship and Related Procedures) is \$45 payable to the clerk of the court to which the case is transferred. Prohibits any portion of this fee from being sent to the state.

(b) Prohibits a party from being assessed any other filing fee by the clerk of the court to which the guardianship is transferred in connection with the filing and docketing of the transferred case.

(c) Provides that this section prevails, to the extent that this section conflicts with another state statute, the Texas Rules of Civil Procedure, or other rules.

SECTION 8. Amends Section 1105.002(a), Estates Code, as follows:

(a) Provides that a guardian, except as provided by Subsection (b) (relating to providing that a guardian who is not required to give a bond is considered to have qualified when the guardian has taken and filed the oath, or made and filed the declaration), is considered to have qualified when the guardian has:

(1)-(2) makes no changes to these subdivisions; and

(3)-(4) redesignates existing Subdivision (3) as Subdivision (4) and makes nonsubstantive changes.

SECTION 9. Amends Section 1105.157, Estates Code, by amending Subsections (a) and (d) and adding Subsection (d-1), as follows:

(a) Authorizes the guardian of an estate, instead of giving a surety or sureties on a bond, or to reduce the amount of a bond, to deposit the guardian's own cash or securities acceptable to the court with:

(1) creates this subdivision from existing text; or

(2) the registry of the court, for which the clerk of the court is required to issue a receipt.

(d) Requires that a receipt issued by a depository under Subsection (c) (relating to requiring a depository that receives a deposit to issue a receipt for the deposit) or a record

of deposit to the registry of the court be attached to the guardian's bond and be in a certain form. Sets forth the language to be included in the receipt.

(d-1) Requires that the guardians bond and depository receipt, if applicable, be delivered to and filed by the county clerk after the bond, rather than receipt, is approved by the judge.

SECTION 10. Amends Section 1106.001(a), Estates Code, as follows:

(a) Requires the clerk, when a person who is appointed guardian has qualified under Section 1105.002 (Manner of Qualification of Guardian), to issue to the guardian a certificate under the court's seal stating certain information.

SECTION 11. Amends Section 1106.005, Estates Code, as follows:

Sec. 1106.005. New heading: EFFECT OF LETTERS. (a) Provides that letters of guardianship, rather than letters of guardianship or a certificate issued as prescribed by Section 1106.001 (Definitions), under the court's seal by the clerk of the court that granted the letters are sufficient evidence of certain information. Makes nonsubstantive changes.

(b) Provides that the court order that appoints the guardian is evidence of the authority granted to the guardian and of the scope of the powers and duties that the guardian is authorized to exercise only after the date letters of guardianship have been issued under Section 1106.001. Makes a conforming change.

SECTION 12. Amends Section 1151.051(c), Estates Code, as follows:

(c) Provides that a guardian of the person has:

(1)-(4) makes no changes to these subdivisions;

(5) makes a nonsubstantive change to this subdivision;

(6) the duty to notify the court, as soon as practicable, if the ward has died or is admitted to a medical facility for acute care for a period of three or more days;

(7) the duty to notify the court not later than the 30th day after the date the ward's residence or address has changed;

(8) the duty to notify the court not later than the 30th day after the date of a change in the guardian's residence, address, phone number, or any other information used by the court to contact the guardian; and

(9) redesignates existing Subdivision (6) as Subdivision (9).

SECTION 13. Amends Section 1155.151(a), Estates Code, as follows:

(a) Provides that the court costs of a proceeding in a guardianship proceeding, including the costs described by Subsection (a-1) (relating to requiring that the cost of guardians ad litem, attorneys ad litem, court visitors, mental health professionals, and interpreters appointed are required to be set in an amount the court considers equitable and just in a guardianship proceeding), to be paid as follows, except as provided by Subsection (c) (relating to authorizing the court to order the party in a guardianship proceeding to pay all or part of the costs of the proceeding if the court finds that a party acted in bad faith or without just cause), and the court is required to issue the judgment accordingly:

(1) out of the guardianship estate, if a guardian of the estate has been created for the benefit of the ward and the court determines it is in the ward's best interest; or

(2) makes no changes to this subdivision;

(3) by the party to the proceeding who incurred the costs, unless that party filed, on the party's own behalf, an affidavit of inability to pay the costs under Rule 145, Texas Rules of Civil Procedure, that shows the party is unable to afford the costs, if certain criteria are met, including if there has been no guardianship estate or management trust that has been created for the ward's benefit, rather than if there is no guardianship estate or no management trust has been created for the ward's benefit; or

(4) makes no changes to this subdivision.

SECTION 14. Amends Section 1156.052, Estates Code, as follows:

Sec. 1156.052. New heading: ALLOWANCE FOR WARD'S SPOUSE, MINOR CHILDREN, OR INCAPACITATED ADULT CHILDREN. (a) Authorizes the court to order the guardian of the estate of a ward, subject to Section 1156.051 (Certain Allowances Prohibited When Parent Is Guardian of Minor Ward) and on application to the court, to spend money from the ward's estate for the education and maintenance of the ward's spouse, minor children, or incapacitated adult children, rather than for the ward's spouse or dependent.

(b) Requires the court, in determining whether to order the expenditure of money from a ward's estate for the ward's spouse, minor children, or incapacitated adult children, as appropriate, to consider certain information. Makes conforming changes.

(c) Requires a person who makes an application to the court under this section to send, rather than mail, notice of the application by a qualified delivery method, rather than certified mail, to all interested persons.

(d) Requires that copies of the notices mailed under Subsection (c) be filed with the court with a copy of the certified mail return receipt for each notice sent.

SECTION 15. Amends Section 1203.006, Estates Code, as follows:

Sec. 1203.006. REQUIREMENTS FOR DISCHARGE. (a) Prohibits a guardian applying to resign from being discharged until:

(1)-(2) makes no changes to these subdivisions; and

(3) the guardian, rather than the applicant, has satisfied the court that the guardian, rather than the applicant, has:

(A)-(B) makes conforming changes to these paragraphs.

(b) Requires the court, when a guardian applying to resign has fully complied with the court orders, to enter an order:

(1) accepting the resignation;

(2) discharging the guardian;

(3) canceling the letters issued to the guardian; and

(4) if the guardian is under bond, discharging and releasing sureties on the guardian's bond.

Makes nonsubstantive and conforming changes.

SECTION 16. Amends Section 1204.105, Estates Code, by adding Subsection (h), as follows:

(h) Requires the guardian of the estate to file an affidavit sworn to by the guardian or a certificate signed by the guardian's attorney stating:

(1) the name of each person to whom citation was served under Section 1204.105 (Citation and Notice on Presentation of Account), indicating the method of service;

(2) the name of each person executing a waiver of citation under Subsection (d) (relating to authorizing the ward, in person or by attorney, to waive by writing filed with the county clerk the issuance and personal service of citation); and

(3) that each person whose whereabouts are known or can be reasonably ascertained who is entitled to citation under this section was provided a copy of the account for final settlement, indicating the method of delivery for each person to whom a copy was provided.

SECTION 17. Amends Section 1204.151, Estates Code, as follows:

Sec. 1204.151. DISCHARGE OF GUARDIAN WHEN NO ESTATE PROPERTY REMAINS. Requires the court to enter an order discharging a guardian from the guardian's trust, canceling the letters issued to the guardian of the estate, and closing the guardianship estate if, on final settlement of the estate, none of the estate remains in the guardian's possession.

SECTION 18. Amends Section 1204.152, Estates Code, as follows:

Sec. 1204.152. DISCHARGE OF GUARDIAN WHEN ESTATE FULLY ADMINISTERED. Requires the court to enter an order discharging a guardian of the estate from the guardian's trust, canceling the letters issued to the guardian of the estate, and declaring the estate closed when certain actions have been taken.

SECTION 19. Amends Section 1251.005(a), Estates Code, as follows:

(a) Requires the court clerk, on the filing of an application for temporary guardianship, to issue:

(1) citation to be personally served on certain persons; and

(2) notice to be served in the manner provided under Rule 21a, Texas Rules of Civil Procedure, on the proposed ward's appointed attorney.

SECTION 20. Repealer: Section 1023.008 (Continuation of Guardianship), Estates Code.

SECTION 21. (a) Provides that the changes in law made by this Act apply to a guardianship created before, on, or after the effective date of this Act except as otherwise provided by this section.

(b) Makes application of Sections 1023.002(c), 1023.004(a) and (c), 1023.005(c), 1023.006, and 1023.007, Estates Code, as amended by this Act, and Section 1023.0071, Estates Code, as added by this Act, prospective.

(c) Makes application of Sections 1023.006, 1156.052, and 1251.005(a), Estates Code, as amended by this Act, prospective.

SECTION 22. Effective date: September 1, 2023.