

BILL ANALYSIS

S.B. 2248
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Judiciary & Civil Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

In recent years, some courts have reported issues with transferring guardianships between courts throughout Texas. The process for court clerks to transfer these proceedings is 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. Furthermore, guardianship applicants frequently assume the role of guardian without first filing the required bond with the court clerk. And, some guardians may be relieved of their duties despite remaining guardianship matters left unresolved. S.B. 2248 seeks to address these issues by providing these clerks with clear procedures and responsibilities regarding transferring guardianship cases between different counties, requiring guardians to meet the conditions of their guardianship before they can assume the role, expanding protections for persons with a guardian, and introducing measures to ensure a guardianship is concluded fully before the guardian is dismissed.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

S.B. 2248 revises provisions relating to guardianship proceedings for persons who are incapacitated.

Transfer of Guardianship Proceedings

S.B. 2248 amends the Estates Code to replace the requirement for the clerk, on order of a transfer of a guardianship proceeding, to record any unrecorded papers of the guardianship required to be recorded with a requirement for the clerk of the court transferring the proceeding to send the following information to the proper court in the county to which the transfer is made using the electronic filing system:

- a transfer certificate and certified index of transferred documents;
- a copy of each order, including a copy of the order of transfer signed by the transferring court;
- a copy of the original papers filed in the transferring court, including any papers previously received on transfer from a court in another county;
- a copy of the transfer certificate and certified index of transferred documents from each previous transfer, if applicable; and

- a bill of any costs that have accrued in the transferring court.

The bill removes the requirement for 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.

S.B. 2248 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 when transferring the proceeding and to keep a copy of transferred pleadings, orders, and all other papers filed into the case record. The bill requires the clerk of the transferee court, subject to court authorization of the transfer, to accept the transferred documents and docket the case. The bill also requires the clerk of the transferee court to physically or electronically mark or stamp the transfer certificate and index of transferred documents to evidence the date and time of acceptance but prohibits the clerk from physically or electronically marking or stamping any other transferred document. Certain Government Code provisions relating to the delivery of a notice or document by a clerk, court, justice, judge, or magistrate do not apply to the transfer of such documents.

S.B. 2248 changes the manner in which the sureties on the bond of the guardian must be cited and in which the notice sent to the guardian must be given on the filing of a motion to transfer a guardianship proceeding from personal service or certified mail, as applicable, to a qualified delivery method. The bill defines a "qualified delivery method" as delivery by:

- hand delivery by courier, with courier's proof of delivery receipt;
- certified or registered mail, return receipt requested, with return receipt; or
- a private delivery service designated as a designated delivery service by the U.S. Secretary of the Treasury under the federal Internal Revenue Code of 1986, with proof of delivery receipt.

S.B. 2248 establishes that the fee for filing a guardianship case transferred from another county in which the guardian has previously been appointed and qualified is \$45 payable to the clerk of the court to which the case is transferred. No portion of this fee may be sent to the state. The bill 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. The bill establishes that the bill's provisions relating to the transfer fee prevail to the extent that they conflict with another state statute, the Texas Rules of Civil Procedure, or other rules. The bill revises the manner in which an order transferring a guardianship proceeding becomes effective by changing the designation of the certificate required to be filed for that purpose in the court ordering the transfer from under the clerk's official seal to under the court's official seal and the method of filing from electronic or paper form to electronic filing.

These provisions apply only to an application filed or motion made to transfer a guardianship on or after the bill's effective date. An application filed before the effective date of this Act is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose. The bill repeals certain provisions relating to the continuation of guardianship upon the transfer from one county to another.

Guardianship Bond

S.B. 2248 gives the guardian of an estate the option to deposit the guardian's own cash or securities acceptable to the court with the registry of the court, for which the clerk of the court must issue a receipt, as an alternative to depositing the cash or securities with a financial institution that has its main office or a branch office in Texas. The bill clarifies that a receipt issued by a depository or a record of deposit to the registry of the court for the deposit must be attached to the guardian's bond and must be in substantially the form specified by the bill, and if applicable, delivered to and filed by the county clerk after the bond is approved by the judge.

Guardians' Powers and Duties

S.B. 2248 establishes that a guardian of the person of a ward has the duty to notify the court, as follows:

- if the ward has died or is admitted to a medical facility for acute care for a period of three or more days, as soon as practicable;
- not later than the 30th day after the date the ward's residence or address has changed; and
- 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.

S.B. 2248 conditions the requirement for court costs of a guardianship proceeding to be paid and the court to issue the judgment accordingly out of the guardianship estate, on the guardian of the estate having been created for the benefit of the ward and the court's determination that it is in the ward's best interest.

S.B. 2248 changes references to a court ordered allowance for education and maintenance for a ward's dependent to such an allowance for a ward's minor children or incapacitated adult children and requires copies of the notices that must be filed with respect to an application for such an allowance to be filed with the court with a copy of the proof of delivery receipt for each notice sent. The bill changes the manner in which such notices must be sent to all interested persons from certified mail to a qualified delivery method.

Termination of Guardianship

S.B. 2248 requires the court to enter an order canceling the letters issued to an applicable guardian as follows:

- when a guardian applying to resign has fully complied with the court orders;
- when the court orders the closing of a guardianship and the discharge of a guardian if, on final settlement, none of the estate property remains in the guardian's possession; or
- if the court orders the closing of the guardianship and the discharge of the guardian when the estate is fully administered.

S.B. 2248 requires the guardian of an estate, when presenting an account for final settlement of the estate of a ward, to file an affidavit sworn to by the guardian or a certificate signed by the guardian's attorney stating the following:

- the name of each person to whom citation regarding the presentation was served, indicating the method of service;
- the name of each person executing a waiver of citation; and
- that each person whose whereabouts are known or can be reasonably ascertained who is entitled to citation was provided a copy of the account for final settlement, indicating the method of delivery for each person to whom a copy was provided.

Miscellaneous Provisions Relating to Guardianship

S.B. 2248 specifies that the citation issued by a court clerk on the filing of an application for temporary guardianship must be personally served on the proposed ward and the proposed temporary guardian named in the application, if applicable. The bill specifies that the notice served by the clerk on the proposed ward's appointed attorney on such a filing must be served in the manner provided under Rule 21a, Texas Rules of Civil Procedure.

Procedural Provisions

S.B. 2248 applies to a guardianship created before, on, or after the bill's effective date, except as otherwise provided by the bill. The bill's provisions relating to the transfer of record in a guardianship proceeding, to an allowance for the education and maintenance for a ward's spouse,

minor children, or incapacitated adult children, and to citation and notice of a temporary guardianship application apply only to an application filed on or after the bill's effective date. An application filed before that date is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose.

S.B. 2248 repeals Section 1023.008, Estates Code.

EFFECTIVE DATE

September 1, 2023.