

1-1 By: Swanson (Senate Sponsor - Zaffirini) H.B. No. 785  
1-2 (In the Senate - Received from the House April 17, 2023;  
1-3 April 19, 2023, read first time and referred to Committee on  
1-4 Jurisprudence; May 3, 2023, reported favorably by the following  
1-5 vote: Yeas 5, Nays 0; May 3, 2023, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	X			
1-9	X			
1-10	X			
1-11	X			
1-12	X			

1-13 A BILL TO BE ENTITLED  
1-14 AN ACT

1-15 relating to the delivery of certain notices or other communications  
1-16 in connection with guardianship proceedings.

1-17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-18 SECTION 1. Chapter 1002, Estates Code, is amended by adding  
1-19 Section 1002.0265 to read as follows:

1-20 Sec. 1002.0265. QUALIFIED DELIVERY METHOD. "Qualified  
1-21 delivery method" means delivery by:

1-22 (1) hand delivery by courier, with courier's proof of  
1-23 delivery receipt;

1-24 (2) certified or registered mail, return receipt  
1-25 requested, with return receipt; or

1-26 (3) a private delivery service designated as a  
1-27 designated delivery service by the United States Secretary of the  
1-28 Treasury under Section 7502(f)(2), Internal Revenue Code of 1986,  
1-29 with proof of delivery receipt.

1-30 SECTION 2. Section 1023.004(c), Estates Code, is amended to  
1-31 read as follows:

1-32 (c) If a court made a motion to transfer a guardianship, the  
1-33 guardian shall be given notice by a qualified delivery method  
1-34 [~~certified mail~~] to appear and show cause why the guardianship  
1-35 should not be transferred.

1-36 SECTION 3. The heading to Section 1051.052, Estates Code,  
1-37 is amended to read as follows:

1-38 Sec. 1051.052. SERVICE BY MAIL OR QUALIFIED DELIVERY  
1-39 METHOD.

1-40 SECTION 4. Section 1051.052, Estates Code, is amended by  
1-41 amending Subsections (b), (c), (d), (e), and (f) and adding  
1-42 Subsection (h) to read as follows:

1-43 (b) Except as provided by Subsection (c), the county clerk  
1-44 shall issue a citation or notice required or permitted to be served  
1-45 by a qualified delivery method [~~registered or certified mail~~] and  
1-46 shall serve the citation or notice by sending [~~mailing~~] the  
1-47 original citation or notice by a qualified delivery method  
1-48 [~~registered or certified mail~~].

1-49 (c) A guardian shall issue a notice required to be given by  
1-50 the guardian by a qualified delivery method [~~registered or~~  
1-51 ~~certified mail~~] and shall serve the notice by sending [~~mailing~~] the  
1-52 original notice by a qualified delivery method [~~registered or~~  
1-53 ~~certified mail~~].

1-54 (d) The county clerk or guardian, as applicable, shall send  
1-55 [~~mail~~] a citation or notice under Subsection (b) or (c) with an  
1-56 instruction to deliver the citation or notice to the addressee only  
1-57 and with return receipt or other proof of delivery requiring  
1-58 recipient signature requested. The clerk or guardian, as  
1-59 applicable, shall address the envelope containing the citation or  
1-60 notice to:

1-61 (1) the attorney of record in the proceeding for the

2-1 person to be cited or notified; or

2-2 (2) the person to be cited or notified, if the citation  
2-3 or notice to the attorney is returned undelivered or the person to  
2-4 be cited or notified has no attorney of record in the proceeding.

2-5 (e) Service by a qualified delivery method [mail] must be  
2-6 made at least 20 days before the return day of the citation or  
2-7 notice, excluding the date of service. The date of service [~~by~~  
2-8 ~~mail~~] is the date of mailing, the date of deposit with the private  
2-9 delivery service, or the date of delivery by courier, as  
2-10 applicable.

2-11 (f) A copy of a citation or notice served under Subsection  
2-12 (a), (b), or (c) and a certificate of the person serving the  
2-13 citation or notice showing that the citation or notice was sent  
2-14 [~~mailed~~] and the date of the mailing, the date of deposit with a  
2-15 private delivery service, or the date of delivery by courier, as  
2-16 applicable, shall be filed and recorded. A returned receipt or  
2-17 other proof of delivery receipt for a citation or notice served  
2-18 under Subsection (b) or (c) shall be attached to the certificate.

2-19 (h) The applicant or movant in a guardianship proceeding  
2-20 shall pay the cost of delivery of a citation or notice under this  
2-21 section, to be taxed as costs in the proceeding.

2-22 SECTION 5. Sections 1051.055(a) and (b), Estates Code, are  
2-23 amended to read as follows:

2-24 (a) If a party is represented by an attorney of record in a  
2-25 guardianship proceeding, including a proposed ward who has been  
2-26 personally served with notice of the proceeding and is represented  
2-27 by an attorney ad litem, a citation or notice required to be served  
2-28 on the party shall be served instead on that attorney.

2-29 (b) A notice served on an attorney under this section may be  
2-30 served by[+]

2-31 [~~(1)~~] delivery to the attorney in person or by a  
2-32 qualified delivery method [+]

2-33 [~~(2) registered or certified mail, return receipt~~  
2-34 ~~requested; or~~

2-35 [~~(3) any other form of mail that requires proof of~~  
2-36 ~~delivery~~].

2-37 SECTION 6. Section 1051.056, Estates Code, is amended to  
2-38 read as follows:

2-39 Sec. 1051.056. SERVICE ON GUARDIAN OR RECEIVER. Unless  
2-40 this title expressly provides for another method of service, the  
2-41 county clerk who issues a citation or notice required to be served  
2-42 on a guardian or receiver shall serve the citation or notice by  
2-43 sending [mailing] the original citation or notice by a qualified  
2-44 delivery method [~~registered or certified mail~~] to:

2-45 (1) the guardian's or receiver's attorney of record;  
2-46 or

2-47 (2) the guardian or receiver, if the guardian or  
2-48 receiver does not have an attorney of record.

2-49 SECTION 7. Sections 1051.104(a) and (b), Estates Code, are  
2-50 amended to read as follows:

2-51 (a) The person filing an application for guardianship shall  
2-52 send [mail] a copy of the application and a notice containing the  
2-53 information required in the citation issued under Section 1051.102  
2-54 by a qualified delivery method [~~registered or certified mail,~~  
2-55 ~~return receipt requested, or by any other form of mail that provides~~  
2-56 ~~proof of delivery,~~ to the following persons, if their whereabouts  
2-57 are known or can be reasonably ascertained:

2-58 (1) each adult child of the proposed ward;

2-59 (2) each adult sibling of the proposed ward;

2-60 (3) the administrator of a nursing home facility or  
2-61 similar facility in which the proposed ward resides;

2-62 (4) the operator of a residential facility in which  
2-63 the proposed ward resides;

2-64 (5) a person whom the applicant knows to hold a power  
2-65 of attorney signed by the proposed ward;

2-66 (6) a person designated to serve as guardian of the  
2-67 proposed ward by a written declaration under Subchapter E, Chapter  
2-68 1104, if the applicant knows of the existence of the declaration;

2-69 (7) a person designated to serve as guardian of the

3-1 proposed ward in the probated will of the last surviving parent of  
3-2 the proposed ward;

3-3 (8) a person designated to serve as guardian of the  
3-4 proposed ward by a written declaration of the proposed ward's last  
3-5 surviving parent, if the declarant is deceased and the applicant  
3-6 knows of the existence of the declaration; and

3-7 (9) each adult named in the application as an "other  
3-8 living relative" of the proposed ward within the third degree by  
3-9 consanguinity, as required by Section 1101.001(b)(11) or (13), if  
3-10 the proposed ward's spouse and each of the proposed ward's parents,  
3-11 adult siblings, and adult children are deceased or there is no  
3-12 spouse, parent, adult sibling, or adult child.

3-13 (b) The applicant shall file with the court:

3-14 (1) a copy of any notice required by Subsection (a) and  
3-15 the return receipts or other proofs of delivery of the notice; and

3-16 (2) an affidavit sworn to by the applicant or the  
3-17 applicant's attorney stating:

3-18 (A) that the notice was sent [~~mailed~~] as required  
3-19 by Subsection (a); and

3-20 (B) the name of each person to whom the notice was  
3-21 sent [~~mailed~~], if the person's name is not shown on the return  
3-22 receipt or other proof of delivery.

3-23 SECTION 8. Section 1051.153(b), Estates Code, is amended to  
3-24 read as follows:

3-25 (b) Proof of service consists of:

3-26 (1) if the service is made by a sheriff or constable,  
3-27 the return of service;

3-28 (2) if the service is made by a private person, the  
3-29 person's affidavit;

3-30 (3) if the service is made by mail or by a qualified  
3-31 delivery method:

3-32 (A) the certificate of the county clerk making  
3-33 the service, or the affidavit of the guardian or other person making  
3-34 the service that states that the citation or notice was mailed or  
3-35 sent by a qualified delivery method and the date of the mailing, the  
3-36 date of deposit with the private delivery service, or the date of  
3-37 delivery by courier, as applicable; and

3-38 (B) the return receipt or other proof of delivery  
3-39 receipt attached to the certificate or affidavit, as applicable, if  
3-40 the service [~~mailing~~] was made by a qualified delivery method  
3-41 [~~registered or certified mail and a receipt has been returned~~]; and

3-42 (4) if the service is made by publication:

3-43 (A) a statement that:

3-44 (i) is made by the Office of Court  
3-45 Administration of the Texas Judicial System or an employee of the  
3-46 office;

3-47 (ii) contains or to which is attached a copy  
3-48 of the published citation or notice; and

3-49 (iii) states the date of publication on the  
3-50 public information Internet website maintained as required by  
3-51 Section 72.034, Government Code [~~, as added by Chapter 606 (S.B.~~  
3-52 ~~891), Acts of the 86th Legislature, Regular Session, 2019~~]; and

3-53 (B) an affidavit that:

3-54 (i) is made by the publisher of the  
3-55 newspaper in which the citation or notice was published or an  
3-56 employee of the publisher;

3-57 (ii) contains or to which is attached a copy  
3-58 of the published citation or notice; and

3-59 (iii) states the date of publication  
3-60 printed on the newspaper in which the citation or notice was  
3-61 published.

3-62 SECTION 9. Section 1057.002(b), Estates Code, is amended to  
3-63 read as follows:

3-64 (b) The resident agent shall send, by a qualified delivery  
3-65 method [~~certified mail, return receipt requested~~], a copy of a  
3-66 resignation statement filed under Subsection (a) to:

3-67 (1) the guardian at the address most recently known by  
3-68 the resident agent; and

3-69 (2) each party in the case or the party's attorney or

4-1 other designated representative of record.

4-2 SECTION 10. Section 1153.001(a), Estates Code, is amended  
4-3 to read as follows:

4-4 (a) Within one month after receiving letters of  
4-5 guardianship, a guardian of an estate shall provide notice  
4-6 requiring each person who has a claim against the estate to present  
4-7 the claim within the period prescribed by law. The notice must be:

4-8 (1) published in a newspaper of general circulation in  
4-9 the county in which the letters were issued; and

4-10 (2) sent to the comptroller by a qualified delivery  
4-11 method [~~certified or registered mail~~], if the ward remitted or  
4-12 should have remitted taxes administered by the comptroller.

4-13 SECTION 11. Sections 1153.003(b) and (c), Estates Code, are  
4-14 amended to read as follows:

4-15 (b) Notice provided under this section must be:

4-16 (1) sent by a qualified delivery method [~~certified or~~  
4-17 ~~registered mail, return receipt requested~~]; and

4-18 (2) addressed to the record holder of the claim at the  
4-19 record holder's last known post office address.

4-20 (c) The following shall be filed in the court from which the  
4-21 letters of guardianship were issued:

4-22 (1) a copy of each notice required by Subsection  
4-23 (a)(1) with the return receipt or other proof of delivery, if  
4-24 available; and

4-25 (2) the guardian's affidavit stating:

4-26 (A) that the notice was sent [~~mailed~~] as required  
4-27 by law; and

4-28 (B) the name of the person to whom the notice was  
4-29 sent [~~mailed~~], if that name is not shown on the notice or receipt.

4-30 SECTION 12. Section 1156.052(c), Estates Code, is amended  
4-31 to read as follows:

4-32 (c) A person who makes an application to the court under  
4-33 this section shall send [~~mail~~] notice of the application by a  
4-34 qualified delivery method [~~certified mail~~] to all interested  
4-35 persons.

4-36 SECTION 13. Section 1162.003, Estates Code, is amended to  
4-37 read as follows:

4-38 Sec. 1162.003. NOTICE OF APPLICATION FOR ESTABLISHMENT OF  
4-39 ESTATE OR OTHER TRANSFER PLAN. A person who makes an application  
4-40 to the court under Section 1162.001 shall send [~~mail~~] notice of the  
4-41 application by a qualified delivery method [~~certified mail~~] to:

4-42 (1) all devisees under a will, trust, or other  
4-43 beneficial instrument relating to the ward's estate;

4-44 (2) the ward's spouse;

4-45 (3) the ward's dependents; and

4-46 (4) any other person as directed by the court.

4-47 SECTION 14. Section 1162.006(b), Estates Code, is amended  
4-48 to read as follows:

4-49 (b) Notice required by Subsection (a) must be sent  
4-50 [~~delivered~~] by a qualified delivery method [+

4-51 [~~(1) registered or certified mail to a person~~  
4-52 ~~described by Subsection (a)(1), and~~

4-53 [~~(2) certified mail to a person described by~~  
4-54 ~~Subsection (a)(2), (3), (4), or (5)]].~~

4-55 SECTION 15. Section 1202.054(b-2), Estates Code, is amended  
4-56 to read as follows:

4-57 (b-2) Not later than the 30th day after the date the court  
4-58 receives an informal letter from a ward under Subsection (a), the  
4-59 court shall send the ward a letter by a qualified delivery method  
4-60 [~~certified mail~~]:

4-61 (1) acknowledging receipt of the informal letter; and

4-62 (2) advising the ward of the date on which the court  
4-63 appointed the court investigator or guardian ad litem as required  
4-64 under Subsection (b) and the contact information for the court  
4-65 investigator or guardian ad litem.

4-66 SECTION 16. Sections 1203.052(a-1) and (b), Estates Code,  
4-67 are amended to read as follows:

4-68 (a-1) The court may remove a guardian for a reason listed in  
4-69 Subsection (a) on the:

5-1 (1) court's own motion, after the guardian has been  
5-2 notified~~[7]~~ by a qualified delivery method [~~certified mail, return~~  
5-3 ~~receipt requested,~~] to answer at a time and place set in the notice;  
5-4 or

5-5 (2) complaint of an interested person, after the  
5-6 guardian has been cited by personal service to answer at a time and  
5-7 place set in the notice.

5-8 (b) In addition to the authority granted to the court under  
5-9 Subsection (a), the court may, on the complaint of the guardianship  
5-10 certification program of the Judicial Branch Certification  
5-11 Commission, remove a guardian who would be ineligible for  
5-12 appointment under Subchapter H, Chapter 1104, because of the  
5-13 guardian's failure to maintain the certification required under  
5-14 Subchapter F, Chapter 1104. The guardian shall be given notice~~[7]~~  
5-15 by a qualified delivery method [~~certified mail, return receipt~~  
5-16 ~~requested,~~] to appear and contest the request for removal under  
5-17 this subsection at a time and place set in the notice.

5-18 SECTION 17. The changes in law made by this Act apply only  
5-19 to an action filed or a guardianship proceeding commenced on or  
5-20 after the effective date of this Act.

5-21 SECTION 18. This Act takes effect September 1, 2023.

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