

BILL ANALYSIS

S.B. 1760
By: Zaffirini
Judiciary & Civil Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

The bill sponsor has informed the committee that there have been issues with transferring guardianships between courts throughout Texas in recent years, that the process for court clerks to transfer these proceedings is unclear to many, and that some clerks charge fees in excess of \$150 to refile cases in the county to which the case is being transferred. The bill sponsor has also informed the committee that some guardians may be relieved of their duties despite remaining guardianship matters left unresolved. S.B. 1760 revises state law governing guardianships to address these issues.

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. 1760 amends the Estates Code to revise provisions relating to guardianship proceedings for persons who are incapacitated.

Transfer of Guardianship Proceedings

Transfer for Want of Venue

S.B. 1760 specifies that, for a transfer of a guardianship proceeding commenced in a court that did not have venue over the proceeding to the proper county on the application of any interested person, the transfer is in the manner prescribed by provisions relating to transfers of a guardianship record.

Citation of Sureties

S.B. 1760 changes the manner in which the sureties on the bond of the guardian must be cited to appear and show cause why the guardianship should not be transferred on the filing of an application or on motion of the court to transfer a guardianship proceeding to another county from personal service to a qualified delivery method, as defined for purposes of statutory provisions governing guardianship. The bill includes a transfer from a court that did not have venue over the proceeding among the transfers to which this citation requirement applies.

Court Action

S.B. 1760 changes the entity required to accept the transfer of a guardianship on receipt of an applicable court order from the county to the clerk of the court to which the guardianship is transferred.

Transfer of Record

S.B. 1760 revises statutory provisions relating to the transfer of a guardianship record as follows:

- with respect to references to an index of transferred documents, specifies that it is a certified index;
- regarding the documents that the clerk of the transferring court is required to send to the clerk of the receiving court:
 - removes the specification that the copy of each order that the clerk is required to send is a final order; and
 - specifies that the copy of the original papers filed in the transferring court that the clerk is required to send includes any papers previously received on transfer from a court in another county;
- regarding the requirement for the clerk of a transferring court to keep a copy of the applicable documents transferred, specifies that such documents include transferred pleadings, orders, and all other papers filed into the case record; and
- replaces references to docketing of the suit with references to docketing of the proceeding.

Transfer Fee

S.B. 1760 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 these bill 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.

Repeal of Continuation Provisions

S.B. 1760 repeals provisions relating to the continuation of guardianship on transfer from one county to another that establish the following:

- the guardianship proceeds in the court to which it was transferred as if it had been originally commenced in that court;
- the court to which the guardianship is transferred becomes the court of continuing, exclusive jurisdiction;
- a proceeding relating to the guardianship that is commenced in the court ordering the transfer continues in the court to which the guardianship is transferred as if the proceeding commenced in the receiving court;
- a judgment or order entered in the guardianship before the transfer has the same effect and must be enforced as a judgment or order entered by the court to which the guardianship is transferred;
- the court ordering the transfer does not retain jurisdiction of the ward who is the subject of the guardianship and does not retain the authority to enforce an order entered for a violation of statutory provisions regarding guardianship that occurred before or after the transfer; and
- it is not necessary to record in the receiving court any of the papers in the case that were recorded in the court from which the case was transferred.

Deposits of Guardian

S.B. 1760 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 accordingly makes the requirement for a receipt issued by a depository that receives such a deposit to be attached to the guardian's bond also applicable to a record of deposit to the registry of the court. The bill prescribes a standard form for such a receipt or record of deposit and requires those documents to be in substantially that form. The bill replaces the requirement for a receipt issued by a depository to be delivered to and filed by the county clerk after the receipt is approved by the judge with a requirement for the guardian's bond and depository receipt, if applicable, to be delivered to and filed by the county clerk after the bond is approved by the judge.

Powers and Duties of Guardians of the Person

S.B. 1760 establishes that a guardian of the person of a ward has the following duties:

- 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;
- the duty to notify the court not later than the 30th day after the date the ward's residence or address has changed; and
- 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.

Allowance for Ward's Minor Children and Incapacitated Adult Children

S.B. 1760 revises provisions relating to a court-ordered allowance paid from a ward's estate for the education and maintenance of the ward's spouse or dependents as follows:

- replaces references to the ward's dependents with references to the ward's minor children or incapacitated adult children; and
- requires copies of the notices sent to interested persons 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.

Termination of Guardianship

Requirements for Discharge

S.B. 1760 makes the following changes regarding the contents of the order that the court is required to enter when a guardian applying to resign has fully complied with the court orders:

- requires the order to cancel the letters issued to the guardian; and
- with respect to a guardian that is under bond, replaces the requirement that the order discharge the guardian's sureties with the requirement that the order discharge and release the sureties on the guardian's bond.

Citation and Notice on Presentation of Account

S.B. 1760 requires a guardian of the estate of a ward, on presenting an account for final settlement of the estate, 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.

Discharge of Guardian When No Estate Property Remains or When Estate Fully Administered

S.B. 1760 requires a court's order discharging a guardian of the estate and closing the estate when no estate property remains or when the estate is fully administered to also cancel the letters issued to the guardian.

Citation and Notice of Application for Temporary Guardianship

S.B. 1760 revises the requirement for a court clerk, on the filing of an application for temporary guardianship, to issue citation to be served on the proposed ward and the proposed temporary guardian named in the application, if that person is not the applicant, by specifying that citation must be personally served on those persons.

Applicability

S.B. 1760 applies to a guardianship created before, on, or after the bill's effective date, except as follows.

The provisions of S.B. 1760 regarding transfers of guardianship apply only to an application filed or motion made to transfer a guardianship on or after the bill's effective date. An application filed or motion made before the bill's effective date is governed by the law in effect on the date the application was filed or motion was made, and the former law is continued in effect for that purpose.

The provisions of S.B. 1760 relating 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.

Repealed Provision

S.B. 1760 repeals Section 1023.008, Estates Code.

EFFECTIVE DATE

September 1, 2025.