

## **BILL ANALYSIS**

Senate Research Center  
89R9882 EAS-F

S.B. 1760  
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Jurisprudence  
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### **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, some guardians may be relieved of their duties despite remaining guardianship matters left unresolved.

To address these issues, S.B. 1760 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. S.B. 1760 also would lower the refile fee to \$45 across the board. What's more, S.B. 1760 would introduce measures to ensure the guardianship is concluded fully before the guardian is dismissed.

As proposed, S.B. 1760 amends current law relating to guardianships for persons who are incapacitated and changes 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 Section 1023.002(c), Estates Code, to require the court, if it appears to the court at any time before the guardianship is closed that the proceeding was commenced in a court that did not have venue over the proceeding, on the application of any interested person, to transfer the proceeding to the proper county in the manner prescribed by Section 1023.006 (Transfer of Record).

SECTION 2. Amends Section 1023.004(a), Estates Code, to require 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 personal service, to appear and show cause why the guardianship should not be transferred.

SECTION 3. Amends Section 1023.005(c), Estates Code, to require the clerk of the court to which the guardianship is transferred, rather than the county, on receipt of an order described by Subsection (a) (relating to the criteria to be met before a court issues a transfer order), to accept the transfer of the guardianship.

SECTION 4. Amends Sections 1023.006(a), (b), (c), (d), (e), and (g), Estates Code, as follows:

- (a) Requires the clerk, not later than the 10th working day after the date an order of transfer is signed under Section 1023.002 or 1023.005 (Court Action), to record any unrecorded papers of the guardianship required to be recorded. Requires the clerk, on payment of the clerk's fee, to send, using the electronic filing system established under

Section 72.031 (Electronic Filing System), Government Code, to the county clerk of the county to which the guardianship was ordered transferred:

- (1) a transfer certificate and certified index of transferred documents;
  - (2) a copy of each order, rather than each final order;
  - (3) makes no changes to this subdivision;
  - (4) a copy of the original papers filed in the transferring court, including any papers previously received on transfer from a court in another county;
  - (5) a copy of the transfer certificate and certified index of transferred documents from each previous transfer, if applicable; and
  - (6) makes no changes to this subdivision.
- (b) Requires the clerk of the transferring court to use the standardized transfer certificate and certified index of transferred documents form developed 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 the documents transferred under Subsection (a), including transferred pleadings, orders, and all other papers filed into the case record.
- (d) Requires the clerk of the court to which the proceeding is transferred, subject to Section 1023.005:
- (1) makes no changes to this subdivision;
  - (2) docket the proceeding, rather than the suit; and
  - (3) makes a conforming change to this subdivision.
- (e) and (g) Makes conforming changes to these subsections.

SECTION 5. 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 this title is \$45 payable to the clerk of the court to which the case is transferred. Provides that no portion of this fee is authorized to be 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, to the extent that this section conflicts with another state statute, the Texas Rules of Civil Procedure, or other rules, this section prevails.

SECTION 6. 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 and makes a nonsubstantive change;  
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 the requirement to issue a receipt for a deposit that meets certain criteria) or a record of deposit to the registry of the court be attached to the guardian's bond and be in substantially a certain form. Sets forth the required form of the receipt or record of the deposit.

(d-1) Creates this subsection from existing text. Requires that the guardian's bond and depository receipt, if applicable, to be delivered to and filed by the county clerk after the bond, rather than the receipt, is approved by the judge. Makes a nonsubstantive change.

SECTION 7. 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) creates this subdivision from existing text and makes no further changes.

SECTION 8. Amends the heading to Section 1156.052, Estates Code, to read as follows:

Sec. 1156.052. ALLOWANCE FOR WARD'S SPOUSE, MINOR CHILDREN, OR INCAPACITATED ADULT CHILDREN.

SECTION 9. Amends Section 1156.052, Estates Code, by amending Subsections (a) and (b) and adding Subsection (d), as follows:

(a) Authorizes the court, subject to Section 1156.051 (Certain Allowances Prohibited When Parent is Guardian of Minor Ward) and on application to the court, to order the guardian of the estate of a ward 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 the ward's spouse or dependent.

(b) Makes conforming changes to this subsection.

(d) Requires that copies of the notices sent under Subsection (c) (relating to a requirement to send notice to all interested persons after filing an application) be filed with the court with a copy of the proof of delivery receipt for each notice sent.

SECTION 10. 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 applicant, has satisfied the court that the guardian has met certain criteria.

Makes conforming changes to this subsection.

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

(1) makes a nonsubstantive change to this subdivision;

(2) discharging the guardian;

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

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

Makes conforming and nonsubstantive changes to this subsection.

SECTION 11. 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 this section, indicating the method of service;

(2) the name of each person executing a waiver of citation under Subsection (d) (relating to a ward's authority to waive the issuance and personal service citation); and

(3) that each person whose whereabouts are known or can be reasonably ascertained who is entitled to citation under Section 1204.105 (Citation and Notice on Presentation of Account) 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 12. 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 13. 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 conditions are met.

SECTION 14. Amends Section 1251.005(a), Estates Code, to require the court clerk, on the filing of an application for temporary guardianship, to issue certain notices, including citation to be personally served on the proposed ward and the proposed temporary guardian named in the application, if that person is not the applicant.

SECTION 15. Repealer: Section 1023.008 (Continuation of Guardianship), Estates Code.

SECTION 16. Makes application of Sections 1023.002(c), 1023.004(a), 1023.005(c), and 1023.006(a), (b), (c), (d), (e) (relating to the requirement to mark the date and time of acceptance of certain documents), and (g) (relating to the requirement that the clerks of both transferee and transferring courts produce certain documents), 1156.052 (Allowance For Ward's Spouse or Dependent), and 1251.005(a), Estates Code, as amended by this Act, and Section 1023.0071, Estates Code, as added by this Act, prospective.

SECTION 17. Effective date: September 1, 2025.