

BILL ANALYSIS

Senate Research Center
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H.B. 2900
By: Hartnett (Harris)
Jurisprudence
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Practitioners of guardianship law, including members of the judiciary, occasionally encounter and identify situations that require legislative changes to more effectively and efficiently pursue the interest of the general public and their clients. The purpose of H.B. 2900 is to make changes to the Texas Probate Code that have been identified by such practitioners in order to achieve greater effectiveness and efficiency in guardianship proceedings.

H.B. 2900 amends current law relating to guardianship matters and proceedings.

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 612, Texas Probate Code, to require a person, when a guardian or any other person desires to transfer, rather than remove, the transaction of the business of the guardianship from one county to another, to file a written application in the court in which the guardianship is pending stating the reason for the transfer, rather than the reason for moving the transaction of business.

SECTION 2. Amends Section 613(a), Texas Probate Code, to make a conforming change.

SECTION 3. Amends Sections 614, 615, 616, 617, and 618, Texas Probate Code, as follows:

Sec. 614. COURT ACTION. (a) Creates this subsection from existing text. Makes conforming changes.

(b) Requires the court, in an order entered under Subsection (a) of this section, to require the guardian, not later than the 20th day after the date the order is entered, to give a new bond payable to the judge of the court to which the guardianship is transferred, or file a rider to an existing bond noting the court to which the guardianship is transferred.

Sec. 615. TRANSFER OF RECORD. Makes conforming changes.

Sec. 616. New heading: TRANSFER EFFECTIVE. Makes conforming changes.

Sec. 617. CONTINUATION OF GUARDIANSHIP. Makes conforming changes.

Sec. 618. New heading: NEW GUARDIAN APPOINTED ON TRANSFER. Authorizes the court, if it appears to the court that transfer of the guardianship is in the best interests of the ward, but that because of the transfer it is not in the best interests of the ward, rather than because of the removal it will be unduly expensive or unduly inconvenient to the estate, for the guardian of the estate to continue to serve in that capacity, to in its order of transfer revoke the letters of guardianship and appoint a new guardian, and the

former guardian is required to account for and deliver the estate as provided by this chapter in a case in which a guardian resigns. Makes conforming changes.

SECTION 4. Amends Subpart B, Part 2, Chapter XIII, Texas Probate Code, by adding Section 619, as follows:

Sec. 619. REVIEW OF TRANSFERRED GUARDIANSHIP. Requires the court to which the guardianship was transferred, not later than the 90th day after the date the transfer of the guardianship takes effect under Section 616 of this code, to hold a hearing to consider modifying the rights, duties, and powers of the guardian or any other provisions of the transferred guardianship.

SECTION 5. Amends Subpart E, Part 2, Chapter XIII, Texas Probate Code, by adding Section 652, as follows:

Sec. 652. LOCATION OF HEARING. (a) Authorizes the judge, except as provided by Subsection (b) of this section, to hold a hearing on a guardianship matter involving an adult ward or adult proposed ward at any suitable location in the county in which the guardianship matter is pending. Provides that the hearing should be held in a physical setting that is not likely to have a harmful effect on the ward or proposed ward.

(b) Prohibits the hearing, on the request of the adult proposed ward, the adult ward, or the attorney of the proposed ward or ward, from being held under the authority of this section at a place other than the courthouse.

SECTION 6. Amends Section 892, Texas Probate Code, by amending Subsections (a) and (e) and adding Subsection (f-1), as follows:

(a) Authorizes a guardian appointed by a foreign court to represent an incapacitated person who is residing in this state or intends to move to this state to file an application with a court in which the ward resides or intends to reside to have the guardianship transferred to the court. Requires that the application have attached a certified copy of all papers of the guardianship filed and recorded in the foreign court.

(e) Requires the court to hold a hearing to consider the application for receipt and acceptance of a foreign guardianship, and consider modifying the administrative procedures or requirements of the proposed transferred guardianship in accordance with local and state law. Deletes existing text requiring the court to hold a hearing on the court's own motion or on the motion of the ward or any interested person.

(f-1) Authorizes the court, at the time of granting an application for receipt and acceptance of a foreign guardianship, to also modify the administrative procedures or requirements of the transferred guardianship in accordance with local and state law.

SECTION 7. Amends Section 894(b), Texas Probate Code, as follows:

(b) Requires a court that delays further action in a guardianship proceeding under Subsection (a) of this section to determine whether venue of the proceeding is more suitable in that court or in the foreign court. Authorizes the court, in making that determination, to consider certain factors, including the preference of the ward or proposed ward, if the ward or proposed ward is 12 years of age or older. Makes a nonsubstantive change.

SECTION 8. Amends Subpart G, Part 5, Chapter XIII, Texas Probate Code, by adding Section 895, as follows:

Sec. 895. DETERMINATION OF MOST APPROPRIATE FORUM FOR CERTAIN GUARDIANSHIP PROCEEDINGS. (a) Authorizes the court, if at any time a court of this state determines that it acquired jurisdiction of a proceeding for the appointment of a

guardian of the person or estate, or both, of a ward or proposed ward because of unjustifiable conduct, to:

(1) decline to exercise jurisdiction;

(2) exercise jurisdiction for the limited purpose of fashioning an appropriate remedy to ensure the health, safety, and welfare of the ward or proposed ward or the protection of the ward's or proposed ward's property or prevent a repetition of the unjustifiable conduct, including staying the proceeding until a petition for the appointment of a guardian or issuance of a protective order is filed in a court of another state having jurisdiction; or

(3) continue to exercise jurisdiction after considering the extent to which the ward or proposed ward and all persons required to be notified of the proceedings have acquiesced in the exercise of the court's jurisdiction, whether the court of this state is a more appropriate forum than the court of any other state after considering the factors described by Section 894(b) of this code, and whether the court of any other state would have jurisdiction under the factual circumstances of the matter.

(b) Authorizes the court, if a court of this state determines that it acquired jurisdiction of a proceeding for the appointment of a guardian of the person or estate, or both, of a ward or proposed ward because a party seeking to invoke the court's jurisdiction engaged in unjustifiable conduct, to assess against that party necessary and reasonable expenses, including attorney's fees, investigative fees, court costs, communication expenses, witness fees and expenses, and travel expenses. Prohibits the court from assessing fees, costs, or expenses of any kind against this state or a governmental subdivision, agency, or instrumentality of this state unless authorized by other law.

SECTION 9. Repealer: Section 893 (Review of Transferred Guardianship), Texas Probate Code.

SECTION 10. Makes application of Sections 612, 613, 614, 615, 616, 617, and 618, Texas Probate Code, as amended by this Act, and Section 619, Texas Probate Code, as added by this Act, prospective.

SECTION 11. Provides that Section 652, Texas Probate Code, as added by this Act, applies to a guardianship matter that is pending or commenced on or after the effective date of this Act.

SECTION 12. Makes application of the changes in law made by this Act to Sections 892 and 893, Texas Probate Code, prospective.

SECTION 13. Makes application of Section 894, Texas Probate Code, as amended by this Act, and Section 895, Texas Probate Code, as added by this Act, prospective.

SECTION 14. Effective date: September 1, 2011.