

BILL ANALYSIS

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C.S.H.B. 1438
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State Affairs
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Real Estate, Probate, and Trust Law Section of the State Bar of Texas has proposed updates to the Estates Code reflected in C.S.H.B. 1438, which are the result extensive revisions to the Guardianship portion of the Texas Estates Code by subject matter experts.

The main purpose of C.S.H.B. 1438 is to clean up the current law. Generally, these changes include provisions to clarify or streamline the requirements for setting a guardian's bond, to allow for payment of fees and costs from any management trust for the person under guardianship, to facilitate the of the ability of persons without a guardian of the estate to sale of property, and to require criminal history record information concerning a family member being proposed to serve as a guardian of a person. These changes would enhance the financial and personal safeguards for persons under guardianship.

C.S.H.B. 1438 amends current law relating to probate matters, including guardianships and other matters related to incapacitated persons.

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 1023.005, Estates Code, as follows:

Sec. 1023.005. COURT ACTION. Deletes the designation of Subsection (a). Requires the court (relating to a county court exercising its probate jurisdiction, a court created by statute and authorized to exercise original probate jurisdiction, or a district court exercising original probate jurisdiction in a contest matter), on hearing an application under Section 1023.003 (Application for Transfer of Guardianship to Another County), if good cause is not shown to deny the application and it appears that transfer of the guardianship is in the best interests of the ward, to enter an order:

- (1) Creates this subdivision from existing text; and
- (2) requiring that any existing bond of the guardian must remain in effect until a new bond has been given or a rider has been filed in accordance with Section 1023.010.

Deletes existing Subsection (b) requiring the court, in an order entered under Subsection (a), 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.

SECTION 2. Amends Section 1023.010, Estates Code, as follows:

Sec. 1023.010. REVIEW OF TRANSFERRED GUARDIANSHIP. (a) Creates this subdivision from existing text and makes no further change.

(b) Requires the court to which the guardianship was transferred, after the hearing described by Subsection (a) (relating to certain guardianship hearings), to enter an order requiring the guardian to:

(1) give a new bond payable to the judge of the court to which the guardianship was transferred; or

(2) file a rider to an existing bond noting the court to which the guardianship was transferred.

SECTION 3. Amends Section 1051.104(a), Estates Code, as follows:

(a) Requires the person filing an application for guardianship to mail a copy of the application and a notice containing the information required in the citation issued under Section 1051.102 (Issuance of Citation for Application for Guardianship) by registered or certified mail, return receipt requested, or by any other form of mail that provides proof of delivery, to the following persons, if their whereabouts are known or can be reasonably ascertained:

(1)-(8) Makes no change to these subdivisions;

(9) each adult name in the application, rather than each person named as another relative within the third degree by consanguinity in the application, as an "other living relative" of the proposed ward within the third degree by consanguinity, as required by Section 1101.001(b)(11) (requiring that the application for appoint of guardianship be sworn to by the applicant and state for a proposed ward who is a minor, certain information set forth) or (13) (requiring that the application for appoint of guardianship be sworn to by the applicant and state for a proposed ward who is an adult, certain information set forth), if the proposed ward's spouse and each of the proposed ward's parents, adult siblings, and adult children are deceased or there is no spouse, parent, adult sibling, or adult child.

SECTION 4. Amends Section 1052.001(a), Estates Code, to change a reference to estate to guardianship.

SECTION 5. Amends Section 1053.052(a), Estates Code, to authorize the clerk to require or to obtain from the court an order requiring a person who files an application, complaint, or opposition relating to a guardianship proceeding, other than a guardian, attorney ad litem, or guardian ad litem, to provide security for the probable costs of the proceeding before filing the application, complaint, or opposition.

SECTION 6. Amends Subchapter A, Chapter 1055, Estates Code, by adding Section 1055.003, as follows:

Sec. 1055.003. INTERVENTION BY INTERESTED PERSON. (a) Authorizes an interested person, notwithstanding the Texas Rules of Civil Procedure, to intervene in a guardianship proceeding only by filing a timely motion to intervene that is served on the parties.

(b) Requires that the motion state the grounds for intervention in the proceeding and be accompanied by a pleading that sets out the purpose for which intervention is sought.

(c) Provides that the court has the discretion to grant or deny the motion and, in exercising that discretion, must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights.

SECTION 7. Amends Section 1101.001, Estates Code, by adding Subsection (c), as follows:

(c) Provides that, for purposes of this section, a proposed ward's relatives within the third degree by consanguinity include the proposed ward's:

(1) grandparent or grandchild; and

(2) great-grandparent, great-grandchild, aunt who is a sister of a parent of the proposed ward, uncle who is a brother of a parent of the proposed ward, nephew who is a child of a brother or sister of the proposed ward, or niece who is a child of a brother or sister of the proposed ward.

SECTION 8. Amends Subchapter D, Chapter 1101, Estates Code, by adding Section 1101.156, as follows:

Sec. 1101.156. DEPOSIT OF ESTATE ASSETS. (a) Authorizes the court, after an application for the appointment of a guardian for a proposed ward is filed but before letters of guardianship are issued, or in an order appointing a guardian for the ward, to permit the deposit of cash, securities, or other assets of the proposed ward or ward in a financial institution described by Section 1105.155(b) (requiring that cash and assets be deposited under this section in certain financial intuitions) for safekeeping at the request of a person appointed guardian or to be appointed guardian.

(b) Requires that the amount of the bond required to be given by the guardian under Section 1105.101 (Bond Generally Required; Exceptions) be reduced in proportion to the amount of the cash or the value of the securities or other assets deposited under this section.

SECTION 9. Amends Section 1102.001, Estates Code, as follows:

Sec. 1102.00. COURT-INITIATED INVESTIGATION. (a) Creates this subsection from existing text. Requires the court, if a court has probable cause to believe that a person domiciled or found in the county in which the court is located is an incapacitated person, and the person does not have a guardian in this state, to appoint a guardian ad litem or court investigator to investigate the person's conditions and circumstances to determine whether:

(1) and (2) Makes no change to these subdivisions.

(b) Provides that if a court appoints a guardian ad litem or court investigator under Subsection (a):

(1) the court's order appointing a guardian ad litem or court investigator must include a statement that the person believed to be incapacitated has the right to petition the court to have the appointment set aside;

(2) at the initial meeting between the guardian ad litem or court investigator and the person believed to be incapacitated, the guardian ad litem or court investigator, as appropriate, shall provide a copy of the information letter under Section 1102.003 and the order to, and discuss the contents of the letter and order with, the person believed to be incapacitated; and

(3) during the period beginning after the date of the initial meeting described by Subdivision (2) and ending on the date an application for the appointment of a guardian is filed, the person believed to be incapacitated may petition the court to have the appointment of the guardian ad litem or court investigator, as appropriate, set aside.

SECTION 10. Amends Section 1102.003, Estates Code, by adding Subsection (c), to provide that any information provided by the Department of Family and Protective Services under this section that is confidential under Chapter 48 (Investigations and Protective Services for Elderly and Disabled Persons), Human Resources Code, remains confidential and is not subject to disclosure under Chapter 552 (Public Information), Government Code.

SECTION 11. Amends Section 1102.005, Estates Code, as follows:

Sec. 1102.005. COMPENSATION OF GUARDIAN AD LITEM. (a) Authorizes a court that appoints a guardian ad litem under Section 1102.001, regardless of whether a guardianship is created for a proposed ward and except as provided by Section 1155.151, to authorize compensation of the guardian ad litem from available funds of:

(1) Creates this subdivision from existing text; or

(2) the management trust, if a management trust has been created for the benefit of the proposed ward under Chapter 1301 (Management Trusts), rather than regardless of whether a guardianship is created for the proposed ward.

(b) Authorizes the court, except as provided by Section 1155.151, after examining the proposed ward's assets or the assets of any management trust created for the proposed ward's benefit under Chapter 1301, and determining that the proposed ward or the management trust is unable to pay for services provided by the guardian ad litem, to authorize compensation from the county treasury. Makes a nonsubstantive change.

SECTION 12. Amends Section 1104.154(a), Estates Code, to authorize that a declaration of appointment of a guardian for the declarant's children in the event of the declarant's death or incapacity, as an alternative to the self-proving affidavit authorized by Section 1104.153 (Form and Content of Declaration and Self-Proving Affidavit), be simultaneously executed, attested, and made self-proved by including the following in substantially the same form and with substantially the same contents as set forth.

SECTION 13. Amends Section 1104.205(a), Estates Code, to authorize a declaration of guardian in the event of later incapacity or need of guardian, as an alternative to the self-proving affidavit authorized by Section 1104.204 (Form and Content of Declaration and Self-Proving Affidavit), be simultaneously executed, attested, and made self-proved by including the following in substantially the same form and with substantially the same contents as set forth.

SECTION 14. Amends Section 1104.402(a), Estates Code, as follows:

(a) Requires the clerk of the county having venue of the proceeding for the appointment of a guardian, except as provided by certain sections set forth, to obtain criminal history record information that is maintained by the Department of Public Safety of the State of Texas or the Federal Bureau of Investigation identification division relating to:

(1)-(4) Makes no change to these subdivisions; and

(5) any other person proposed to serve as a guardian under this title, including a proposed temporary guardian and a proposed successor guardian, other than an attorney, rather than other than the ward's or proposed ward's family member or an attorney.

SECTION 15. Amends Section 1104.409, Estates Code, as follows:

Sec. 1104.409. USE OF INFORMATION BY COURT. Requires the court to use the information obtained under this subchapter only in determining whether to:

(1) Makes no change to this subdivision; or

(2) appoint any other person proposed to serve as a guardian under this title, including a proposed temporary guardian and a proposed successor guardian, other than an attorney, rather than other than the ward's or proposed ward's family member or an attorney.

SECTION 16. Amends Section 1155.151, Estates Code, by amending Subsections (a) and (b) and adding Subsections (a-1), (a-2), (a-3), (a-4), (d), (e), and (f):

(a) Requires the court costs of the proceeding, including the costs described by Subsection (a-1), except as provided by Subsection (c) (authorizing the court, if the court finds that a party in a guardianship proceeding acted in bad faith or without just cause in prosecuting or objecting to an application in the proceeding, to order the party to pay all or part of the costs of the proceeding) to be paid as follows and requires the court to issue the judgment accordingly, in a guardianship proceeding:

(1) out of the guardianship estate;

(2) out of the management trust, if a management trust has been created for the benefit of the ward under Chapter 1301 and the court determines it is in the ward's best interest;

(3) by the party to the proceeding who incurred the costs, unless that party filed, on the party's own behalf, an affidavit of inability to pay the costs under Rule 145, Texas Rules of Civil Procedure, that shows the party is unable to afford the costs, if:

(A) there is no guardianship estate or no management trust has been created for the ward's benefit; or

(B) the assets of the guardianship estate or management trust, as appropriate, are insufficient to pay the costs; or

Deletes existing text requiring the court costs of the proceeding, including the cost of the guardians ad litem, attorneys ad litem, court visitor, mental health professionals, and interpreters appointed under this title, to be set in an amount the court considers equitable and just and, except as provided by Subsection (c) to be paid out of the guardianship estate, or the county treasury if the estate is insufficient to pay the cost, and the court shall issue the judgment accordingly.

(4) out of the county treasury if:

(A) there is no guardianship estate or management trust or the assets of the guardianship estate or management trust, as appropriate, are insufficient to pay the costs; and

(B) the party to the proceeding who incurred the costs filed, on the party's own behalf, an affidavit of inability to pay the costs under Rule 145, Texas Rules of Civil Procedure, that shows the party is unable to afford the costs.

(a-1) Requires the cost of any guardians ad litem, attorneys ad litem, court visitors, mental health professionals, and interpreters appointed under this title to be set in an amount the court considers equitable and just in a guardianship proceeding.

(a-2) Provides that, notwithstanding any other law requiring the payment of court costs in a guardianship proceeding, the following are not required to pay court costs on the filing of or during a guardianship proceeding:

- (1) an attorney ad litem;
- (2) a guardian ad litem;
- (3) a person or entity who files an affidavit of inability to pay the costs under Rule 145, Texas Rules of Civil Procedure, that shows the person or entity is unable to afford the costs;
- (4) a nonprofit guardianship program;
- (5) a governmental entity; and
- (6) a government agency or nonprofit agency providing guardianship services.

(a-3) Provides that, for purposes of Subsections (a) and (a-2), a person or entity who files an affidavit of inability to pay the costs under Rule 145, Texas Rules of Civil Procedure, is unable to afford the costs if the affidavit shows that the person or entity:

- (1) is currently receiving assistance or other benefits from a government program under which assistance or other benefits are provided to individuals on a means-tested basis;
- (2) is eligible for and currently receiving free legal services in the guardianship proceeding through the following:
 - (A) a legal services provider funded partly by the Texas Access to Justice Foundation;
 - (B) a legal services provider funded partly by the Legal Services Corporation; or
 - (C) a nonprofit corporation formed under the laws of this state that provides legal services to low-income individuals whose household income is at or below 200 percent of the federal poverty guidelines as determined by the United States Department of Health and Human Services;
- (3) applied and was eligible for free legal services through a person or entity listed in Subdivision (2) but was declined representation; or
- (4) has a household income that is at or below 200 percent of the federal poverty guidelines as determined by the United States Department of Health and Human Services and has money or other available assets, excluding any homestead and exempt property under Chapter 42 (Personal Property), Property Code, in an amount that does not exceed \$2,000.

(a-4) Requires the court, at a hearing, to review the contents of and attachments to the affidavit and any other evidence offered at the hearing and make a determination as to whether the person or entity is unable to afford the costs, if an affidavit of inability to pay costs filed under Rule 145, Texas Rules of Civil Procedure, is contested. Requires the person or entity to pay the court costs if the court finds that the person or entity is able to afford the costs. Provides that, except with leave of court, no further action in the guardianship proceeding may be taken by a person or entity found able to afford costs until payment of those costs is made.

(b) Requires the costs attributable to the services of a person described by Subsection (a-1), rather than Subsection (a), to be paid under this section at any time after the commencement of the proceeding as ordered by the court.

(d) Entitles a person or entity who paid any costs on the filing of or during the proceeding to be reimbursed out of assets of the guardianship estate or management trust, if a guardianship of the estate or management trust under Chapter 1301 is created, as appropriate, for the costs if:

(1) the assets of the estate or trust, as appropriate, are sufficient to cover the reimbursement of the costs; and

(2) the person or entity has not been ordered by the court to pay the costs as all or part of the payment of court costs under Subsection (c).

(e) Requires the court to require the guardian to pay out of the guardianship estate or management trust, as appropriate, to the court clerk for deposit in the county treasury the amount of any of those costs if at any time after a guardianship of the estate or management trust under Chapter 1301 is created there are sufficient assets of the estate or trust, as appropriate, to pay the amount of any of the costs exempt from payment under Subsection (a-2).

(f) Provides that to the extent that this section conflicts with the Texas Rules of Civil Procedure or other rules, this section controls.

SECTION 17. Amends Section 1163.101(c), Estates Code, as follows:

(c) Requires a guardian of the person to file a sworn affidavit that contains:

(1)-(8) Makes no change to these subdivisions;

(9) if the guardian is a private professional guardian, a guardianship program, or the Department of Aging and Disability Services, whether the guardian or an individual certified under Subchapter C (Regulation of Certain Guardians), Chapter 155, Government Code, rather than Subchapter C, Chapter 111, Government Code, who is providing guardianship services to the ward and who is filing the affidavit, rather than swearing to the affidavit, on the guardian's behalf, is or has been the subject of an investigation conducted by the Guardianship Certification Board during the preceding year; and

(10) Makes no change to this subdivision.

SECTION 18. Amends the heading to Section 1163.1011, Estates Code, to read as follows:

Sec. 1163.1011. USE OF UNSWORN DECLARATION IN LIEU OF SWORN DECLARATION OR AFFIDAVIT FOR FILING ANNUAL REPORT.

SECTION 19. Amends Section 1163.1011(a), Estates Code, as follows:

(a) Authorizes a guardian of the person who is required to file an annual report under Section 1163.101 (Annual Report Required) with the court, including a guardian filing the annual report electronically, to use an unsworn declaration made as provided by this section instead of the sworn declaration or affidavit required by Section 1163.101. Deletes existing text requiring a guardian of the person who files the annual report required by Section 1163.101 electronically with the court, to use an unsworn declaration made as provided by this section instead of a written sworn declaration or affidavit required by Section 1163.101.

SECTION 20. Amends Section 1203.202(c), Estates Code, as follows:

(c) Authorizes a successor guardian to:

(1) Makes no change to this subdivision;

(2) settle with the predecessor and receive and give a receipt for any portion of the estate property that remains in the predecessor's possession, rather than successor's possession; or

(3) Makes no change to this subdivision.

SECTION 21. Amends Section 1251.052(b), Estates Code, as follows:

(b) Provides that the term of a temporary guardian appointed under Section 1251.051 (Authority to Appoint Temporary Guardian or Grant Restraining Order) expires on the earliest of the following:

(1) the conclusion of the hearing challenging or contesting the application;

(2) the date a permanent guardian appointed by the court for the proposed ward qualifies to serve as the ward's guardian; or

(3) the 12-month anniversary of the date the temporary guardian qualifies, unless the term is extended by court order issued after a motion to extend the term is filed and a hearing on the motion is held/

Makes nonsubstantive changes.

SECTION 22. Amends Section 1253.051, Estates Code, as follows:

Sec. 1253.051. APPLICATION FOR RECEIPT AND ACCEPTANCE OF FOREIGN GUARDIANSHIP. 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 the county in which the ward resides or in which it is intended that the ward will reside to have the guardianship transferred to that court, rather than intents to reside to have the guardianship transferred to the court.

SECTION 23. Amends Section 1301.1535, Estates Code, as follows:

Sec. 1301.1535. INITIAL ACCOUNTING BY CERTAIN TRUSTEES REQUIRED. (a) Provides that this section applies only to a trustee of a management trust (trustee) created for a person who, rather than for a person for whom a guardianship proceeding is pending, on the date the trust is created is:

(1) a ward under an existing guardianship; or

(2) a proposed ward with respect to whom an application for guardianship has been filed and is pending.

(b) Requires the trustee, not later than the 30th day after the date a trustee to which this section applies receives property into the trust, to file with the court that created the guardianship or the court in which the application for guardianship was filed, rather than guardianship proceeding is pending, a report describing all property held in the trust on the date of the report and specifying the value of the property on that date.

SECTION 24. Amends Section 1351.001, Estates Code, as follows:

Sec. 1351.001. AUTHORITY TO SELL MINOR'S INTEREST IN PROPERTY WITHOUT GUARDIANSHIP. (a) Creates this subsection from existing text. Authorizes a parent or managing conservator of a minor who is not a ward to apply to the court under this subchapter for an order to sell an interest of the minor in property without being appointed guardian if the net value of the interest does not exceed \$100,000.

(b) Requires the court, if a minor who is not a ward does not have a parent or managing conservator willing or able to file an application under Subsection (a), to appoint an attorney ad litem or guardian ad litem to act on the minor's behalf for the limited purpose of applying for an order to sell the minor's interest in property under this subchapter.

SECTION 25. Amends Sections 1351.002(a) and (b), Estates Code, as follows:

(a) Requires a parent, managing conservator, or attorney ad litem or guardian ad litem appointed under Section 1351.001(b) to apply to the court under oath for the sale of property under this subchapter.

(b) Requires that an application contain:

(1)-(5) Makes no change to these subdivisions;

(6) a statement that all money received from the sale of the minor's interest in the property shall be used for the minor's use and benefit, rather than a statement that all money received by the parent or managing conservator shall be used for the minor's use and benefit.

SECTION 26. Amends Section 1351.051, Estates Code, as follows:

Sec. 1351.051. **APPLICABILITY OF SUBCHAPTER.** Provides that this subchapter applies only to a ward who has:

(1) Creates this subdivision from existing text; or

(2) a guardian of the person or estate appointed by a foreign court.

SECTION 27. Amends Section 1351.052, Estates Code, as follows:

Sec. 1351.052. New heading: **AUTHORITY TO SELL WARD'S INTEREST IN PROPERTY WITHOUT APPOINTMENT AS GUARDIAN OF THE ESTATE IN THIS STATE.** Authorizes a guardian of the person of a ward or a guardian of the person or estate of a ward appointed by a foreign court to apply to the court under this subchapter for an order to sell an interest in property in the ward's estate without being appointed guardian of the ward's estate in this state if the net value of the interest does not exceed \$100,000.

SECTION 28. Amends Section 1351.053(b), Estates Code, as follows:

(b) Provides that, for purposes of Subsection (a)(2) (requiring an application under this subchapter to contain certain information), references in Section 1351.002(b) to "minor" are replaced with references to "ward."

Makes nonsubstantive changes and deletes designation of Subdivision (1). Deletes Subdivision (2) providing that for purposes of Subsection (a)(2), references in Section 1351.002(b) to "parent or managing conservator" are replaced with references to "guardian of the person."

SECTION 29. Amends Section 59.006(a), Finance Code, to add a record request in connection with an investigation conducted under Section 1054.151 (Investigation of Guardianship Application), 1054.152 (General Duties), or 1102.001 (Court-Initiated Investigation), Estates Code to a list to which this section does not apply and does not require or authorize a financial institution to give a customer notice.

SECTION 30. Amends Sections 25.0022(d) and (h), Government Code, as follows:

(d) Requires that the presiding judge to:

(1)-(8) Makes no change to these subdivisions;

(9) assign or order the clerk who serves the statutory probate courts to randomly assign a judge or former or retired judge of a statutory probate court to hear a case under Section 25.002201(a) (relating to assignment of statutory probate court judge) or 25.00255 (Recusal or Disqualification of Judge), as applicable, rather than assign a judge or former or retired judge of a statutory probate court to hear a case under the circumstances described by Section 25.002201(b).

(h) Provides that, subject to Section 25.002201 (Assignment of Judge on Recusal or Disqualification), a judge or a former or retired judge of a statutory probate court may be assigned by the presiding judge of the statutory probate courts to hold court in a statutory probate court, a county court, or any statutory court exercising probate jurisdiction when:

(1)-(5) Makes no change to these subdivisions;

(6) the statutory probate judge is recused or disqualified as described by Section 25.002201(a), rather than the presiding judge of the administrative judicial district fails to timely assign a judge to replace a recused or disqualified statutory probate court judge as described by Section 25.002201(b);

(7) and (8) Makes no change to these subdivisions.

SECTION 31. Amends Sections 25.002201(a) and (b), Government Code, as follows:

(a) Require the presiding judge, rather than the presiding judge of the administrative judicial district, except as provided by Subsection (b), not later than the 15th day after the date an order of recusal or disqualification of a statutory probate court judge is issued in a case, to assign a statutory probate court judge or a former or retired judge of a statutory probate court to hear the case if:

(1)-(3) Makes no change to these subdivisions;

(4) Changes a reference to the presiding judge of the administrative judicial district to the presiding judge.

(b) Requires the presiding judge of the statutory probate courts, the chief justice of the supreme court, if the judge who is the subject of an order of recusal or disqualification is the presiding judge of the statutory probate courts, to assign a regional presiding judge, a statutory probate judge, or a former or retired judge of a statutory probate court to hear the case. Deletes existing text authorizing the presiding judge of the statutory probate court, if the presiding judge of an administrative judicial district does not assign a judge under Subsection (a) within the time prescribed by that subsection, to assign a judge to hear the case instead of the presiding judge of the administrative judicial district making the assignment under that subsection.

SECTION 32. Amends Section 25.00255, Government Code, by amending Subsections (a), (g), (g-1), (i-2), (i-3), (i-5), and (l) and adding Subsection (a-1), as follows:

(a) Provides that, notwithstanding any conflicting provision in the Texas Rules of Civil Procedure, Rules 18a (Recusal or Disqualification of Judges) and 18b (Grounds for Disqualification or Recusal of Judges), Texas Rules of Civil Procedure, apply to the recusal and disqualification of a statutory probate court judge except as otherwise provided by this section or another provision of this subchapter. Provides that the presiding judge:

(1) has the authority and shall perform the functions and duties of the presiding judge of the administrative judicial region under the rules, including the duty to hear or rule on a referred motion of recusal or disqualification or, subject to

Subdivisions (2) and (3) and to Section 25.002201, assign a judge to hear and rule on a referred motion of recusal or disqualification;

(2) may assign a presiding judge of the administrative judicial region to hear and rule on a referred motion of recusal or disqualification only with the consent of the presiding judge of the administrative judicial region; and

(3) may not assign a judge of a statutory probate court located in the same county as the statutory probate court served by the judge who is the subject of the motion of recusal or disqualification.

Deletes existing authorizing a party in a hearing or trial in a statutory probate court may file with the clerk of the court a motion stating grounds for the recusal or disqualification of the judge. Deletes existing text authorizing that the grounds include any disability of the judge to preside over the case.

(a-1) Authorizes the judge who hears a motion of recusal or disqualification, notwithstanding Rule 18a(h) (relating to certain motion fees), Texas Rules of Civil Procedure, or any other conflicting provision of the rules, after notice and hearing, to:

(1) order the party or attorney who filed the motion, or both, to pay the reasonable attorney's fees and expenses incurred by another party if the judge determines that the motion was:

- (A) groundless and filed in bad faith or for the purpose of harassment; or
 - (B) clearly brought for unnecessary delay and without sufficient cause;
- and

(2) enjoin the movant from filing other recusal motions in the case without the prior written consent of the presiding judge of the statutory probate courts.

(g) Provides that a judge who recuses himself or herself:

(1) shall enter an order of recusal and:

(A) if the judge serves a statutory probate court located in a county with only one statutory probate court, request that the presiding judge, rather than the presiding judge of the administrative judicial district, assign a judge under Section 25.002201 to hear the case; or

(B) subject to Subsection (1), if the judge serves a statutory probate court located in a county with more than one statutory probate court, request that the presiding judge order the clerk, rather than request that the clerk, who serves the statutory probate courts in that county to randomly reassign the case to a judge of one of the other statutory probate courts located in the county; and

(2) Makes no change to this subdivision.

Makes nonsubstantive changes.

(g-1) Provides that a judge who disqualifies himself or herself:

(1) shall enter an order of disqualification and:

(A) if the judge serves a statutory probate court located in a county with only one statutory probate court, request that the presiding judge, rather than the presiding judge of the administrative judicial district, assign a judge under Section 25.002201 to hear the case; or

(B) subject to Subsection (1), if the judge serves a statutory probate court located in a county with more than one statutory probate court, request that the presiding judge order the clerk who serves the statutory probate courts in that county to randomly reassign the case to a judge of one of the other statutory probate courts; and

(2) Makes no change to this subdivision.

(i-2) Deletes reference to a motion recusal or disqualification under Subsection (i) or (i-1).

(i-3) Requires the presiding judge, if a motion for recusal or disqualification is granted, rather than requires the judge who heard the motion, if a motion for recusal or disqualification is granted after a hearing conducted as provided by Subsection (i) or (i-1), to transfer the case to another court or assign another judge to the case and:

(1) if the judge subject to recusal or disqualification serves a statutory probate court located in a county with only one statutory probate court, the presiding judge or judge assigned to decide the motion shall enter an order of recusal or disqualification, as appropriate, and request that the presiding judge, rather than the presiding judge of the administrative judicial district, assign a judge under Section 25.002201 to hear the case; or

(2) subject to Subsection (1), if the judge subject to recusal or disqualification serves a statutory probate court located in a county with more than one statutory probate court, the presiding judge or judge assigned to decide the motion shall enter an order of recusal or disqualification, as appropriate, and request that the clerk who serves the statutory probate courts in that county randomly reassign the case to a judge of one of the other statutory probate courts located in the county.

(i-5) Entitles a judge assigned to hear a motion for recusal or disqualification to receive the same salary, compensation, and expenses, and to be paid in the same manner and from the same fund, as a judge otherwise assigned under Section 25.0022 (Administration of Statutory Probate Courts). Deletes existing text entitling a judge assigned to hear a motion for recusal or disqualification under Subsection (i) to receive the same salary, compensation, and expenses, and to be paid in the same manner and from the same fund, as a judge otherwise assigned under Section 25.0022, except that a judge assigned under Subsection (i) shall provide the information required by Section 25.0022(1) to the presiding judge of the administrative judicial district, who shall immediately forward the information to the presiding judge of the statutory probate courts.

(1) Requires the clerk, if a clerk of a statutory probate court is unable to reassign a case as requested under Subsection (g)(1)(B), (g-1)(1)(B), or (i-3)(2) because the other statutory probate court judges in the county have been recused or disqualified or are otherwise unavailable to hear the case, to immediately notify the presiding judge, rather than the presiding judge of the administrative judicial district, and request that the presiding judge, rather than the presiding judge of the administrative district, assign a judge under Section 25.002201 to hear the case.

SECTION 33. Amends Section 26.012, Government Code, as follows:

Sec. 26.012. ASSIGNMENT OF VISITING JUDGE FOR PROBATE, GUARDIANSHIP, AND MENTAL HEALTH MATTERS. Requires a visiting judge, if the county judge is absent, incapacitated, recused, or disqualified to act in a probate, guardianship, or mental health matter, to be assigned in accordance with Section 25.0022(h).

SECTION 34. Amends Sections 411.1386(a) and (e), Government Code, as follows:

(a) Requires the clerk of the county having venue over a proceeding for the appointment of a guardian under Title 3, Estates Code, rather than Chapter XIII, Texas Probate Code, except as provided by certain subsections, to obtain from the Department of Public Safety of the State of Texas (DPS) criminal history record information maintained by DPS that relates to:

(1)-(4) Makes no change to these subdivisions;

(5) any other person proposed to serve as a guardian under Title 3, Estates Code, rather than Chapter XIII, Texas Probate Code, including a proposed temporary guardian and a proposed successor guardian, other than an attorney, rather than other than the ward's or proposed ward's family member or an attorney.

(e) Requires the court, as that term is defined by Section 1002.008 (Court; Probate Court; Statutory Probate Court), Estates Code, rather than by Section 601, Texas Probate Code, to use the information obtained or provided under subsections set forth only in determining whether:

(1) Makes no change to these subdivisions;

(2) appoint any other person proposed to serve as a guardian under Title 3, Estates Code, rather than Chapter XIII, Texas Probate Code, including a proposed temporary guardian and a proposed successor guardian, other than an attorney, rather than other than the ward's or proposed ward's family member or an attorney.

SECTION 35. Repealers: Sections 1052. 051(d) (requires the court clerk to collect a filing fee, including a deposit for payment to an attorney ad litem, required by law to be paid on the filing of any document described by Subsection (a) from the person or entity filing the document), (e) (relating to those not required to pay a fee on the filing of a document described by Subsection (a)), and (f) (entitling a person or entity to be reimbursed for a filing fee described by Subsection (d) after the creation of a guardianship), Estates Code.

Repealers: Sections 25.00255(b) (relating to a motion for the recusal or disqualification of a judge) and (c) (authorizing a motion for recusal or disqualification to be filed at the earliest practicable time before the beginning of the trial or other hearing), Government Code.

Repealers: Sections 25.00255 (d) (requiring a party filing a motion for recusal or disqualification to serve on all other parties or their counsel) and (e) (authorizing a party to file with the clerk of the court a statement opposing or concurring with a motion for recusal or disqualification), Government Code.

Repealers: Sections 25.00255 (f) (requiring a judge to recuse or disqualify himself or herself or request the assignment of a judge under certain circumstances) and (h) (providing that a judge who does not recuse or disqualify himself or herself takes certain actions), Government Code.

Repealers: Sections 25.00255 (i) (requiring the presiding judge of the statutory probate courts to immediately forward a certain request to the presiding judge of the administrative judicial district) and (i-1) (authorizing the presiding judge of the statutory probate courts to assign a judge to hear the motion and take other action under that subsection), Government Code.

Repealers: Sections 25.00255 (i-4) (authorizing the presiding judge of an administrative judicial district to delegate the judge's authority to make orders of interim or ancillary relief) and (j) (authorizing a party to appeal an order that denies a motion for recusal or disqualification as an abuse of the court's discretion), Government Code.

Repealer: Section 25.002201(c) (providing that the provisions of Section 25.0022 applicable to a judge assigned under that section apply to the same extent to a judge assigned under the authority of this section), Government Code.

SECTION 36. (a) Provides that, except as otherwise provided by this section, the changes in law made by this Act apply to:

(1) a guardianship created before, on, or after the effective date of this Act; and

(2) an application for a guardianship pending on, or filed on or after, the effective date of this Act.

(b) Provides that the changes in law made by this Act to Sections 1023.005 (Court Action) and 1023.010 (Review of Transferred Guardianship), Estates Code, apply only to an application for the transfer of a guardianship to another county filed on or after the effective date of this Act. Makes application of this Act prospective.

(c) Provides that the changes in law made by this Act to Sections 1104.154 (Alternative to Self-Proving Affidavit) and 1104.205 (Alternative to Self-Proving Affidavit), Estates Code, apply only to a declaration executed on or after the effective date of this Act. Makes application of this Act prospective.

(d) Provides that the changes in law made by this Act to Section 1301.1535 (Initial Accounting by Certain Trustees Required), Estates Code, apply only to a management trust created on or after the effective date of this Act. Makes application of this Act prospective.

(e) Provides that the changes in law made by this Act to Sections 1351.001 (Authority to Sell Minor's Interest in Property Without Guardianship) and 1351.002 (Application; Venue), Estates Code, apply only to an application for the sale of an interest in property of a minor filed on or after the effective date of this Act. Makes application of this Act prospective.

(f) Provides that the changes in law made by this Act to Sections 1351.051 (Applicability of Subchapter), 1351.052 (Authority to Sell Ward's Interest in Property Without Appointment as Guardian of the Estate), and 1351.053 (Application; Venue), Estates Code, apply only to an application for the sale of an interest in property of a ward filed on or after the effective date of this Act. Makes application of this Act prospective.

(g) Provides that the changes in law made by this Act to Sections 1052.051, 1102.001, and 1155.151, Estates Code, and Section 1055.003, Estates Code, as added by this Act, apply only to a guardianship proceeding commenced on or after the effective date of this Act. Makes application of this Act prospective.

(h) Provides that the change in law made by this Act to Section 1251.052(b), Estates Code, applies only to a temporary guardian appointed on or after the effective date of this Act. Makes application of this Act prospective.

(i) Provides that Sections 25.0022, 25.002201, 25.00255, and 26.012 (Assignment of Visiting Judge for Probate, Guardianship, and Mental Health Matters), Government Code, as amended by this Act, apply only to a motion for recusal or disqualification of a judge that is filed on or after the effective date of this Act. Makes application of this Act prospective.

SECTION 37. Effective date: September 1, 2015.