

BILL ANALYSIS

Senate Research Center

S.B. 38
By: Zaffirini
State Affairs
2/23/2017
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Some courts have a difficult time convincing law enforcement to serve guardians personally when the court needs to hold a hearing for the guardian to explain his or her failure to comply with statutory requirements or to be removed. This delay in service not only is inefficient, but also particularly detrimental when the welfare or assets of the person with a guardian are at risk.

What's more, current law does not provide a judge with a mechanism to transfer guardianships to another county short of a guardian's application to do so. This means that when guardianships are opened in one county, and the guardian moves the person under guardianship across the state, the court cannot by itself transfer the guardianship to the county where the person with a guardian resides. Accordingly, the court is left with the responsibility, and liability, of monitoring a person with a guardian who could be hundreds of miles away. It is impossible for a court to monitor the welfare of the person with a guardian properly when it lacks the ability to check the circumstances that the person is in.

S.B. 38 would authorize courts to provide notice to appear to guardians via certified mail and to transfer, on their own motion, jurisdiction on a guardianship case to the county where a person with a guardian has been moved. These changes would streamline current processes and enhance judicial oversight of guardianships.

As proposed, S.B. 38 amends current law relating to guardianships.

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 Sections 404.0035(a) and (b), Estates Code, as follows:

(a) Authorizes the probate court to remove an independent executor after providing 30 days' written notice of the court's intent to remove the independent executor if the independent executor fails to timely file the affidavit or certificates required by Section 308.004 (Affidavit or Certificate). Makes nonsubstantive changes.

(b) Deletes text authorizing the probate court, after the independent executor has been cited by personal service to answer at a time and place fixed in the notice, to remove an independent executor when the independent executor fails to timely file the affidavit or certificate required by Section 308.004. Makes nonsubstantive changes.

SECTION 2. Amends Section 1023.003, Estates Code, as follows:

Sec. 1023.003. New heading: TRANSFER OF GUARDIANSHIP TO ANOTHER COUNTY. (a) Creates this subsection from existing text.

(b) Authorizes the court in which a guardianship is pending to, on its own motion and with notice, transfer the transaction of the business of the guardianship from

one county to another of the ward is residing in the county to which the transfer is to be made.

SECTION 3. Amends Sections 1032.004(a) and (b), Estates Code, as follows:

(a) Requires the sureties on the bond of the guardian, on filing an application to transfer guardianship to another county or on notice by the court of intention to transfer a guardianship to another county, to be cited by personal service to appear and show cause why the guardianship should not be transferred, rather than why the application should not be granted.

(b) Requires the guardian to be cited by personal service to appear and show cause why the application should not be granted if an application is filed by a person other than the guardian or a notice is given by the court.

SECTION 4. Amends Section 1203.052, Estates Code, by amending Subsection (a) and adding Subsection (a-1), as follows:

(a) Authorizes the court to remove a guardian:

(1) on the court's own motion after the guardian has been notified by certified mail, return receipt requested; or

(2) on the complaint of an interested person, after the guardian has been cited by personal service to answer at a time and place set in the citation, rather than notice.

(a-1) Creates this subsection from existing text. Authorizes the court to remove a guardian only in certain instances.

SECTION 5. Effective date: September 1, 2017.