

1-1 By: Zaffirini S.B. No. 1783  
 1-2 (In the Senate - Filed March 7, 2019; March 18, 2019, read  
 1-3 first time and referred to Committee on State Affairs;  
 1-4 April 29, 2019, reported adversely, with favorable Committee  
 1-5 Substitute by the following vote: Yeas 8, Nays 0; April 29, 2019,  
 1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15			X	
1-16	X			
1-17	X			

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 1783 By: Zaffirini

1-19 A BILL TO BE ENTITLED  
 1-20 AN ACT

1-21 relating to guardianships, alternatives to guardianship, and  
 1-22 supports and services for incapacitated persons.

1-23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-24 SECTION 1. Section 1023.005, Estates Code, is amended to  
 1-25 read as follows:

1-26 Sec. 1023.005. COURT ACTION. (a) On hearing an  
 1-27 application or motion under Section 1023.003, if ~~[good cause is not~~  
 1-28 ~~shown to deny the transfer and]~~ it appears that transfer of the  
 1-29 guardianship is in the best interests of the ward and either the  
 1-30 ward has resided in the county to which the guardianship is to be  
 1-31 transferred for at least six months or good cause is not otherwise  
 1-32 shown to deny the transfer, the court shall enter an order:

1-33 (1) authorizing the transfer on payment on behalf of  
 1-34 the estate of all accrued costs; ~~and]~~

1-35 (2) requiring that any existing bond of the guardian  
 1-36 must remain in effect until a new bond has been given or a rider has  
 1-37 been filed in accordance with Section 1023.010; and

1-38 (3) certifying that the guardianship is in compliance  
 1-39 with this code at the time of transfer.

1-40 (b) In making a determination that the transfer is in the  
 1-41 best interests of the ward under Subsection (a), the court may  
 1-42 consider:

1-43 (1) the interests of justice;

1-44 (2) the convenience of the parties; and

1-45 (3) the preference of the ward, if the ward is 12 years  
 1-46 of age or older.

1-47 (c) On receipt of an order described by Subsection (a), the  
 1-48 county shall accept the transfer of the guardianship.

1-49 SECTION 2. Section 1023.008, Estates Code, is amended to  
 1-50 read as follows:

1-51 Sec. 1023.008. CONTINUATION OF GUARDIANSHIP. (a) When a  
 1-52 guardianship is transferred from one county to another in  
 1-53 accordance with this chapter:

1-54 (1) ~~[r]~~ the guardianship proceeds in the court to  
 1-55 which it was transferred as if it had been originally commenced in  
 1-56 that court;

1-57 (2) the court to which the guardianship is transferred  
 1-58 becomes the court of continuing, exclusive jurisdiction;

1-59 (3) a proceeding relating to the guardianship that is  
 1-60 commenced in the court ordering the transfer continues in the court

2-1 to which the guardianship is transferred as if the proceeding  
2-2 commenced in the receiving court;

2-3 (4) a judgment or order entered in the guardianship  
2-4 before the transfer has the same effect and must be enforced as a  
2-5 judgment or order entered by the court to which the guardianship is  
2-6 transferred; and

2-7 (5) the court ordering the transfer does not retain:  
2-8 (A) jurisdiction of the ward who is the subject  
2-9 of the guardianship; and

2-10 (B) the authority to enforce an order entered for  
2-11 a violation of this title that occurred before or after the  
2-12 transfer.

2-13 (b) It is not necessary to record in the receiving court any  
2-14 of the papers in the case that were recorded in the court from which  
2-15 the case was transferred.

2-16 SECTION 3. Chapter 1023, Estates Code, is amended by adding  
2-17 Section 1023.011 to read as follows:

2-18 Sec. 1023.011. NO LIABILITY OF JUDGE. (a) When a  
2-19 guardianship is transferred from one county to another in  
2-20 accordance with this chapter, a judge of the court from which the  
2-21 guardianship is transferred may not be held civilly liable for any  
2-22 injury, damage, or loss to the ward or the ward's estate that occurs  
2-23 after the transfer.

2-24 (b) A judge of the court to which a guardianship is  
2-25 transferred as described by Subsection (a) may not be held civilly  
2-26 liable for any injury, damage, or loss to the ward or the ward's  
2-27 estate that occurred before the transfer.

2-28 SECTION 4. Subchapter D, Chapter 1055, Estates Code, is  
2-29 amended to read as follows:

2-30 SUBCHAPTER D. MEDIATION

2-31 Sec. 1055.151. MEDIATION OF CONTESTED GUARDIANSHIP  
2-32 PROCEEDING. (a) Subject to Subsection (b), on ~~On~~ the written  
2-33 agreement of the parties or on the court's own motion, the court may  
2-34 refer a contested guardianship proceeding to mediation.

2-35 (b) If the court refers to mediation a proceeding under  
2-36 Subsection (a) regarding the appointment of a guardian for a  
2-37 proposed ward:

2-38 (1) a determination of incapacity of the proposed ward  
2-39 may be an issue to be mediated, but the applicant for guardianship  
2-40 must still prove to the court that the proposed ward is an  
2-41 incapacitated person in accordance with the requirements of Chapter  
2-42 1101; and

2-43 (2) all parties to the proceeding shall evaluate  
2-44 during the mediation alternatives to guardianship and supports and  
2-45 services available to the proposed ward, including whether the  
2-46 supports and services and alternatives to guardianship would be  
2-47 feasible to avoid the need for appointment of a guardian.

2-48 (c) The cost of mediation shall be paid by the parties to the  
2-49 proceeding unless otherwise ordered by the court. If the parties  
2-50 are unable to pay the cost of mediation, the court may refer the  
2-51 parties to a local alternative dispute resolution center providing  
2-52 services as part of a system for resolution of disputes established  
2-53 under Section 152.002, Civil Practice and Remedies Code, if a  
2-54 system has been established in the county, and the local center may  
2-55 waive mediation costs as appropriate.

2-56 Sec. 1055.152. MEDIATED SETTLEMENT AGREEMENTS. (a) A  
2-57 mediated settlement agreement is binding on the parties if the  
2-58 agreement:

2-59 (1) provides, in a prominently displayed statement  
2-60 that is in boldfaced type, in capital letters, or underlined, that  
2-61 the agreement is not subject to revocation by the parties;

2-62 (2) is signed by each party to the agreement; and

2-63 (3) is signed by the party's attorney, if any, who is  
2-64 present at the time the agreement is signed.

2-65 (b) ~~(c)~~ If a mediated settlement agreement meets the  
2-66 requirements of this section, a party is entitled to judgment on the  
2-67 mediated settlement agreement notwithstanding Rule 11, Texas Rules  
2-68 of Civil Procedure, or another rule or law.

2-69 (c) ~~(d)~~ Notwithstanding Subsections (a) and (b) ~~and~~

3-1 ~~(e)]~~, a court may decline to enter a judgment on a mediated  
3-2 settlement agreement if the court finds that the agreement is not in  
3-3 the ward's or proposed ward's best interests.

3-4 SECTION 5. Section 1202.001, Estates Code, is amended by  
3-5 adding Subsection (b-1) to read as follows:

3-6 (b-1) A guardianship of the person shall be settled and  
3-7 closed when the court finds that the ward's incapacity needs can be  
3-8 managed without the necessity for that continued guardianship by an  
3-9 alternative to guardianship or with supports and services as  
3-10 provided by Subchapter F.

3-11 SECTION 6. Chapter 1202, Estates Code, is amended by adding  
3-12 Subchapter F to read as follows:

3-13 SUBCHAPTER F. TERMINATION OF GUARDIANSHIP OF THE PERSON ON FINDING  
3-14 THAT THE WARD'S INCAPACITY NEEDS CAN BE MANAGED WITHOUT  
3-15 GUARDIANSHIP

3-16 Sec. 1202.231. TERMINATION OF GUARDIANSHIP OF THE PERSON ON  
3-17 FINDING THAT WARD'S INCAPACITY NEEDS CAN BE MANAGED WITHOUT  
3-18 GUARDIANSHIP. On application by the guardian of the person of a  
3-19 ward, a court investigator or guardian ad litem appointed by the  
3-20 court, or another person interested in the ward's welfare who has  
3-21 been granted permission by the court to intervene under Section  
3-22 1055.003, or on the court's own motion, the court may order that the  
3-23 guardianship of the person of the ward terminate and be settled and  
3-24 closed if the court makes the findings required under Section  
3-25 1202.232.

3-26 Sec. 1202.232. FINDINGS REQUIRED. Before ordering the  
3-27 termination of a guardianship of the person under Section 1202.231,  
3-28 the court must find by a preponderance of the evidence that:

3-29 (1) the ward remains a partially or completely  
3-30 incapacitated person;

3-31 (2) the current nature and degree of the ward's  
3-32 incapacity and the ward's needs can be managed without the  
3-33 necessity of a continued guardianship of the person by:

3-34 (A) alternatives to guardianship that are  
3-35 available to the ward and that are determined to be feasible; or

3-36 (B) supports and services that are available to  
3-37 the ward and that are determined to be feasible; and

3-38 (3) termination of the guardianship of the person:

3-39 (A) is in the ward's best interest; and

3-40 (B) will encourage the development or  
3-41 maintenance of maximum self-reliance and independence in the ward.

3-42 Sec. 1202.233. GENERAL REQUIREMENTS FOR ORDER. A court  
3-43 order that terminates a guardianship of the person under this  
3-44 subchapter must:

3-45 (1) contain the findings required under Section  
3-46 1202.232;

3-47 (2) state the guardian's name;

3-48 (3) state the ward's name;

3-49 (4) specify:

3-50 (A) the supports and services that:

3-51 (i) will meet the ward's needs without the  
3-52 continued necessity for guardianship of the person; and

3-53 (ii) justify the termination of that  
3-54 guardianship; or

3-55 (B) the alternatives to guardianship that:

3-56 (i) will meet the ward's needs without the  
3-57 continued necessity for guardianship of the person; and

3-58 (ii) justify the termination of that  
3-59 guardianship;

3-60 (5) identify the persons or entities providing or that  
3-61 will provide:

3-62 (A) the supports and services described by  
3-63 Subdivision (4)(A); or

3-64 (B) alternatives to guardianship described by  
3-65 Subdivision (4)(B);

3-66 (6) state that the guardian is required to:

3-67 (A) immediately settle the guardianship in  
3-68 accordance with this title; and

3-69 (B) deliver all of the ward's remaining personal

4-1 effects and assets, if any, to the persons or entities identified  
4-2 under Subdivision (5)(A) or (B), as applicable; and  
4-3 (7) state that the clerk shall revoke letters of  
4-4 guardianship of the person when the guardianship is finally settled  
4-5 and closed.

4-6 Sec. 1202.234. NOTICE; APPOINTMENT OF ATTORNEY AD LITEM OR  
4-7 GUARDIAN AD LITEM. A court may enter additional orders in the best  
4-8 interest of the ward, including:

4-9 (1) requiring notice to interested persons; or  
4-10 (2) appointing an attorney ad litem or guardian ad  
4-11 litem, or both, for the ward.

4-12 SECTION 7. Chapter 155, Government Code, is amended by  
4-13 adding Subchapter G to read as follows:

4-14 SUBCHAPTER G. GUARDIANSHIP MEDIATION TRAINING

4-15 Sec. 155.301. TRAINING. (a) The office by rule shall  
4-16 establish a training course with at least 24 hours of training for  
4-17 persons facilitating mediations under Title 3, Estates Code, that  
4-18 may be provided by a mediation training provider approved by the  
4-19 office. A mediation training provider shall adhere to the  
4-20 established curriculum in providing the training course.

4-21 (b) This section does not require a mediator facilitating a  
4-22 mediation under Title 3, Estates Code, to attend or be certified  
4-23 under a training course established under Subsection (a).

4-24 SECTION 8. The changes in law made by this Act apply to a  
4-25 guardianship created before, on, or after the effective date of  
4-26 this Act.

4-27 SECTION 9. The Office of Court Administration of the Texas  
4-28 Judicial System is required to implement a provision of this Act  
4-29 only if the legislature appropriates money specifically for that  
4-30 purpose. If the legislature does not appropriate money  
4-31 specifically for that purpose, the office may, but is not required  
4-32 to, implement a provision of this Act using other appropriations  
4-33 available for that purpose.

4-34 SECTION 10. This Act takes effect September 1, 2019.

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