

1-1 By: Zaffirini S.B. No. 1129
1-2 (In the Senate - Filed March 5, 2021; March 18, 2021, read
1-3 first time and referred to Committee on Jurisprudence;
1-4 April 12, 2021, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 5, Nays 0; April 12, 2021,
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 COMMITTEE SUBSTITUTE FOR S.B. No. 1129 By: Huffman

1-15 A BILL TO BE ENTITLED
1-16 AN ACT

1-17 relating to guardianships, alternatives to guardianship, and
1-18 supports and services for incapacitated persons.

1-19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-20 SECTION 1. Section 1023.005, Estates Code, is amended to
1-21 read as follows:

1-22 Sec. 1023.005. COURT ACTION. (a) On hearing an application
1-23 or motion under Section 1023.003, if ~~good cause is not shown to~~
1-24 ~~deny the transfer and~~ it appears that transfer of the guardianship
1-25 is in the best interests of the ward and either the ward has resided
1-26 in the county to which the guardianship is to be transferred for at
1-27 least six months or good cause is not otherwise shown to deny the
1-28 transfer, the court shall enter an order:

1-29 (1) authorizing the transfer on payment on behalf of
1-30 the estate of all accrued costs; ~~and~~

1-31 (2) requiring that any existing bond of the guardian
1-32 must remain in effect until a new bond has been given or a rider has
1-33 been filed in accordance with Section 1023.010; and

1-34 (3) certifying that the guardianship is in compliance
1-35 with this code at the time of transfer.

1-36 (b) In making a determination that the transfer is in the
1-37 best interests of the ward under Subsection (a), the court may
1-38 consider:

1-39 (1) the interests of justice;

1-40 (2) the convenience of the parties; and

1-41 (3) the preference of the ward, if the ward is 12 years
1-42 of age or older.

1-43 (c) On receipt of an order described by Subsection (a), the
1-44 county shall accept the transfer of the guardianship.

1-45 SECTION 2. Section 1023.008, Estates Code, is amended to
1-46 read as follows:

1-47 Sec. 1023.008. CONTINUATION OF GUARDIANSHIP. (a) When a
1-48 guardianship is transferred from one county to another in
1-49 accordance with this chapter:

1-50 (1) [7] the guardianship proceeds in the court to
1-51 which it was transferred as if it had been originally commenced in
1-52 that court;

1-53 (2) the court to which the guardianship is transferred
1-54 becomes the court of continuing, exclusive jurisdiction;

1-55 (3) a proceeding relating to the guardianship that is
1-56 commenced in the court ordering the transfer continues in the court
1-57 to which the guardianship is transferred as if the proceeding
1-58 commenced in the receiving court;

1-59 (4) a judgment or order entered in the guardianship
1-60 before the transfer has the same effect and must be enforced as a

2-1 judgment or order entered by the court to which the guardianship is
2-2 transferred; and

2-3 (5) the court ordering the transfer does not retain:
2-4 (A) jurisdiction of the ward who is the subject
2-5 of the guardianship; and

2-6 (B) the authority to enforce an order entered for
2-7 a violation of this title that occurred before or after the
2-8 transfer.

2-9 (b) It is not necessary to record in the receiving court any
2-10 of the papers in the case that were recorded in the court from which
2-11 the case was transferred.

2-12 SECTION 3. Chapter 1023, Estates Code, is amended by adding
2-13 Section 1023.011 to read as follows:

2-14 Sec. 1023.011. NO LIABILITY OF JUDGE. (a) When a
2-15 guardianship is transferred from one county to another in
2-16 accordance with this chapter, a judge of the court from which the
2-17 guardianship is transferred may not be held civilly liable for any
2-18 injury, damage, or loss to the ward or the ward's estate that occurs
2-19 after the transfer.

2-20 (b) A judge of the court to which a guardianship is
2-21 transferred as described by Subsection (a) may not be held civilly
2-22 liable for any injury, damage, or loss to the ward or the ward's
2-23 estate that occurred before the transfer.

2-24 SECTION 4. Subchapter D, Chapter 1055, Estates Code, is
2-25 amended to read as follows:

2-26 SUBCHAPTER D. MEDIATION

2-27 Sec. 1055.151. MEDIATION OF CONTESTED GUARDIANSHIP
2-28 PROCEEDING. (a) Subject to Subsection (b), on ~~On~~ the written
2-29 agreement of the parties or on the court's own motion, the court may
2-30 refer a contested guardianship proceeding to mediation.

2-31 (b) If the court refers to mediation a proceeding under
2-32 Subsection (a) regarding the appointment of a guardian for a
2-33 proposed ward:

2-34 (1) a determination of incapacity of the proposed ward
2-35 may be an issue to be mediated, but the applicant for guardianship
2-36 must still prove to the court that the proposed ward is an
2-37 incapacitated person in accordance with the requirements of Chapter
2-38 1101; and

2-39 (2) all parties to the proceeding shall evaluate
2-40 during the mediation alternatives to guardianship and supports and
2-41 services available to the proposed ward, including whether the
2-42 supports and services and alternatives to guardianship would be
2-43 feasible to avoid the need for appointment of a guardian.

2-44 (c) The cost of mediation shall be paid by the parties to the
2-45 proceeding unless otherwise ordered by the court. If the parties
2-46 are unable to pay the cost of mediation, the court may refer the
2-47 parties to a local alternative dispute resolution center providing
2-48 services as part of a system for resolution of disputes established
2-49 under Section 152.002, Civil Practice and Remedies Code, if a
2-50 system has been established in the county, and the local center may
2-51 waive mediation costs as appropriate.

2-52 Sec. 1055.152. MEDIATED SETTLEMENT AGREEMENTS. (a) A
2-53 mediated settlement agreement is binding on the parties if the
2-54 agreement:

2-55 (1) provides, in a prominently displayed statement
2-56 that is in boldfaced type, in capital letters, or underlined, that
2-57 the agreement is not subject to revocation by the parties;

2-58 (2) is signed by each party to the agreement; and

2-59 (3) is signed by the party's attorney, if any, who is
2-60 present at the time the agreement is signed.

2-61 (b) ~~(c)~~ If a mediated settlement agreement meets the
2-62 requirements of this section, a party is entitled to judgment on the
2-63 mediated settlement agreement notwithstanding Rule 11, Texas Rules
2-64 of Civil Procedure, or another rule or law.

2-65 (c) ~~(d)~~ Notwithstanding Subsections (a) and (b) ~~and~~
2-66 ~~(c)~~, a court may decline to enter a judgment on a mediated
2-67 settlement agreement if the court finds that the agreement is not in
2-68 the ward's or proposed ward's best interests.

2-69 SECTION 5. Chapter 155, Government Code, is amended by

3-1 adding Subchapter G to read as follows:

3-2 SUBCHAPTER G. GUARDIANSHIP MEDIATION TRAINING

3-3 Sec. 155.301. TRAINING. (a) The office by rule shall
3-4 establish a training course with at least 24 hours of training for
3-5 persons facilitating mediations under Title 3, Estates Code, that
3-6 may be provided by a mediation training provider approved by the
3-7 office. A mediation training provider shall adhere to the
3-8 established curriculum in providing the training course.

3-9 (b) This section does not require a mediator facilitating a
3-10 mediation under Title 3, Estates Code, to attend or be certified
3-11 under a training course established under Subsection (a).

3-12 SECTION 6. The changes in law made by this Act apply to a
3-13 guardianship created before, on, or after the effective date of
3-14 this Act.

3-15 SECTION 7. The Office of Court Administration of the Texas
3-16 Judicial System is required to implement a provision of this Act
3-17 only if the legislature appropriates money specifically for that
3-18 purpose. If the legislature does not appropriate money
3-19 specifically for that purpose, the Office of Court Administration
3-20 of the Texas Judicial System may, but is not required to, implement
3-21 a provision of this Act using other appropriations available for
3-22 that purpose.

3-23 SECTION 8. This Act takes effect September 1, 2021.

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