

- SUBJECT:** Making various changes to the law of guardianships
- COMMITTEE:** Judiciary and Civil Jurisprudence — favorable, without amendment
- VOTE:** 9 ayes — Leach, Farrar, Y. Davis, Julie Johnson, Krause, Meyer, Neave, Smith, White
- 0 nays
- SENATE VOTE:** On final passage, March 26 — 31-0
- WITNESSES:** *On House companion bill, HB 3543:*
For — Craig Hopper, State Bar of Texas, Real Estate Probate and Trust Law Section; (*Registered, but did not testify:* Chris Masey, Coalition of Texans with Disabilities; Lauren Hunt, State Bar of Texas, Real Estate, Probate, and Trust Law Section, Council Member and Fiduciary Litigation Chair; Glenn Karisch and William Pargaman, State Bar of Texas, Real Estate, Probate, and Trust Law Section; Guy Herman, Travis County Probate Court and Presiding Statutory Probate Judge of Texas; Robert Norris)
- Against — None
- BACKGROUND:** Estates Code sec. 1101.101 allows a court to appoint a guardian for a proposed ward if the proposed ward is an incapacitated person and it is in the proposed ward's best interest to have the court appoint a person as a guardian.
- Sec. 1301.053 defines a management trust as a trust created by a court for the management of the funds of a person if the court finds that the creation of the trust is in the person's best interest.
- DIGEST:** SB 667 would make various changes to the law of guardianships, including revising the definition of matters related to a guardianship proceeding and rules relating to attorneys ad litem, notice, court costs, management trusts, nonresident creditors, and qualifying guardians.

Matters related to a guardianship proceeding. SB 667 would define a matter related to a guardianship proceeding in a county without a statutory probate court but with a county court at law exercising original probate jurisdiction as including:

- all matters and actions constituting a guardianship proceeding in a county without a statutory probate court or a county court at law exercising original probate jurisdiction; and
- the interpretation and administration of a testamentary or inter vivos trust in which a ward was an income or remainder beneficiary.

The bill would expand the definition of a matter related to a guardianship proceeding in a county with a statutory probate court to include matters and action constituting a guardianship proceeding in a county without a statutory probate court but with a county court at law exercising original probate jurisdiction.

This change to the law would apply to actions filed on or after the bill's effective date.

Attorney ad litem. The bill would eliminate the ability of a ward to request that the court appoint an attorney ad litem to investigate a complaint about the guardianship.

Notice. SB 667 would specify that the notice that a guardian was required to provide after receiving letters of guardianship would have to be published in a newspaper of general circulation in the county in which the letters were issued.

Court costs. The bill would specify that the court costs of a guardianship proceeding be paid out of the guardianship estate, if a guardianship of the estate had been created for the benefit of the ward and the court determined that it was in the ward's best interest. However, court costs would be paid out of the county treasury if the court determined that it

was not in the ward's best interest to pay the costs.

This change to the law would apply to a guardianship proceeding commenced on or after the bill's effective date.

Creation of management trusts. SB 667 would require notice to be given on the filing of an application for the creation of a management trust in the same manner as issuance and service of notice on the filing of an application for guardianship. It would not be necessary to serve a citation on a person who filed the application for creation of a management trust or for that person to waive the issuance and personal service of citation.

If the person for whom an application for creation of a management trust was filed was a ward, the sheriff or other officer would have to serve each guardian of the ward personally with citation to appear and answer the application. However, notice would not be required if a proceeding for the appointment of a guardian was pending for the person for whom an application for creation of a management trust was filed.

These changes to the law would apply to applications for creation of management trusts filed on or after the bill's effective date.

Termination of management trust. The bill would specify that a management trust created for a person who was a minor would terminate on the earlier of the person's death or 18th birthday or on the date provided by court order that was not later than the person's 25th birthday.

If created for a person who was a minor and also incapacitated, the management trust would terminate on the person's death or when the person regained capacity.

A management trust created for a person who was not a minor would have to provide that it terminated according to the terms of the trust, on the date the court determined that continuing the trust was no longer in the person's best interest, or on the person's death.

These changes to the law would apply to applications for the creation or modification of management trusts filed on or after the bill's effective date.

Nonresident creditors. SB 667 would specify that a nonresident creditor was a nonresident minor who had a nonresident guardian appointed by a foreign court, a nonresident incapacitated person who had a nonresident guardian, or the nonresident former ward of a terminated guardianship who had no legal guardian in this state.

The bill would allow money in the custody of a county or probate court to be withdrawn by a nonresident guardian appointed by a foreign court for a creditor who was a nonresident minor or nonresident incapacitated person. The nonresident guardian would have to provide the court with exemplified copies of the foreign court's order appointing the guardian and current letters of guardianship from the foreign jurisdiction.

The court also could require the nonresident guardian to provide proof of adequate bond in the foreign jurisdiction where the guardian was appointed if the court determined that was in the best interest of the nonresident minor or nonresident incapacitated person.

These changes to the law would apply to an application for an order for the delivery of money that was filed on or after the bill's effective date.

Qualifying guardians. SB 667 would require the Judicial Branch Certification Commission to obtain fingerprint-based criminal history record information of a person seeking appointment as a guardian who was not a resident of this state. Name-based criminal history record information of a proposed guardian would have to be obtained if the liquid assets of the estate of a ward were \$50,000 or less and the proposed guardian was a resident of the state.

This change to the law would apply to guardianship proceedings begun on or after the bill's effective date.

The bill would take effect September 1, 2019, and would apply a guardianship created before, on, or after that date and an application for guardianship pending on or filed on or after that date, except as otherwise provided.