

BILL ANALYSIS

Senate Research Center

S.B. 40
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Office of Court Administration (OCA) estimates that the assets of persons under guardianship in the state are worth approximately \$6 billion. To protect those assets, current law requires statutory probate judges to have a bond or insurance in the amount of \$500,000 to cover any potential losses caused by the judge's gross negligence in performing the duties of office. County court-at-law and county court judges who are less familiar with probate laws are required to post bonds only for an amount between \$1,000 and \$10,000. This is an inadequate amount of security considering that OCA estimates that county courts-at-law and county courts handle 40 percent of guardianship cases and that the average value of estates under guardianship is approximately \$187,498. Lack of expertise is also an issue in the probate of estates.

S.B. 40 would require counties to secure a bond for any statutory or constitutional county judge who handles a probate case. The bond would be for \$100,000, for counties with a population of 125,000 or less, or \$250,000 for counties with a population of more than 125,000. This would ensure that estates under guardianship and probate are insured adequately against potential gross negligence. (Original Author's / Sponsor's Statement of Intent)

S.B. 40 amends current law relating to the bond required and the bond insurance obtained for certain judges.

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 25.0006, Government Code, by amending Subsection (a) and adding Subsections (a-1), (a-2), (a-3), and (a-4), as follows:

(a) Provides that, notwithstanding any other law except Subsection (a-4), Subsections (a-1), (a-2), and (a-3) control over a specific provision for a particular court or county that attempts to create a requirement for a bond or insurance that conflicts with those subsections.

(a-1) Requires the judge of a statutory county court, before beginning the duties of the office, to execute a bond that is payable to the treasurer of the county, is in a certain amount set by the commissioners court, and is conditioned to the judge performing certain duties. Makes a nonsubstantive change.

(a-2) Requires that the executed bond be approved by the commissioners court.

(a-3) Authorizes a county to, in lieu of the required bond, elect to obtain insurance against losses caused by the gross negligence of a judge of a statutory county court in performing the duties of office. Requires the commissioners court of a county to pay the premium for the insurance out of the county's general funds.

(a-4) Provides that this section (Bond; Removal) does not apply to:

- (1) a judge of a statutory county court who does not preside over guardianship proceedings, as defined by Section 1002.015 (Guardianship Proceeding), Estates Code;
- (2) a judge of a statutory probate court who executes a bond, obtains insurance, or self-insures pursuant to Section 25.00231 (Bond; Insurance); or
- (3) a judge who presides over a county criminal court.

SECTION 2. Amends Section 26.001, Government Code, as follows:

Sec. 26.001. BOND. (a) Requires the county judge, before beginning the duties of the office, rather than before entering the duties of the office, to execute a bond that:

- (1) makes no changes to this subdivision;
 - (2) is in the amount set by the commissioners court of:
 - (A) subject to Paragraph (B), not less than \$1,000 nor more than \$10,000; or
 - (B) for a county judge presiding in the county court over guardianship proceedings, as defined by Section 1002.015, Estates Code, or over probate proceedings, as defined by Section 22.029 (Probate Matter; Probate Proceedings; Proceeding in Probate; Proceedings for Probate), Estates Code, not less than certain amounts depending on a county's population; and
 - (3) is conditioned that the judge will:
 - (A) faithfully perform all duties of office, rather than pay all money that comes into his hands as county judge to the person or officer entitled to it; and
 - (B) for a county judge presiding in the county court over guardianship or probate proceedings, perform the duties required by the Estates Code, rather than pay to the county all money illegally paid to the judge out of county funds.
- Deletes existing Paragraph (C) requiring the county judge to execute a bond that is conditioned that the judge will not vote or consent to pay out county funds for other than lawful purposes.

(b) Requires that the bond executed as required by Subsection (a) be approved by the commissioners court.

(c) Authorizes a county to, in lieu of the bond required by Subsection (a)(2)(B), elect to obtain insurance against losses caused by the gross negligence of a county judge in performing the duties of office. Requires the commissioners court of a county to pay the premium for the insurance out of the county's general funds.

SECTION 3. Requires a judge of a statutory county court, a statutory probate court, or a constitutional county court serving on the effective date of this Act to comply with this Act not later than November 1, 2017.

SECTION 4. Effective date: September 1, 2017.