

BILL ANALYSIS

Senate Research Center
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S.B. 40
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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. Judges who are less familiar with probate laws—statutory county court at law and constitutional court at law judges, who handle approximately 40 percent of cases in the state—are required to post bonds only for an amount between \$1,000 and \$10,000, which is an inadequate amount considering that OCA estimates that the average value of cases under guardianship is approximately \$187,498.

S.B. 40 would ensure that estates under guardianship are insured against potential gross negligence by requiring a statutory or constitutional county judge who handles a guardianship case to have a bond of at least \$100,000 for a court in a county with a population of 125,000 or less and \$250,000 for a court in counties with a larger population.

As proposed, 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), and (a-3), as follows:

(a) Provides that, notwithstanding any other law, 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 fulfilling certain criteria. Makes a nonsubstantive change.

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

(a-3) Authorizes a county to 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, in lieu of the required bond. Requires the commissioners court of a county to pay the premium for the insurance out of the county's general funds.

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

Sec. 26.001. BOND. (a) Requires the county judge, before entering the duties of the office, to execute a bond that is in the amount set by the commissioners court of not less than \$1,000 nor more than \$10,000, subject to Paragraph (B) or, for a county judge presiding in the county court over guardianship proceedings, as defined by Section 1002.015 (Guardianship Proceeding), Estates Code, not less than a certain amount based on the population of the county in which the court lies. Requires a county judge presiding in the county court over guardianship or probate proceedings to execute a bond to perform the duties required by the Estates Code. Makes nonsubstantive changes.

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

(c) Authorizes a county to elect to obtain insurance against losses caused by the county judge's gross negligence in performing the duties of office, in lieu of the required bond. 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.