

**SUBJECT:** Liability and bond requirements of guardians of wards

**COMMITTEE:** Judicial Affairs— favorable, without amendment

**VOTE:** 6 ayes — Thompson, Clark, Crabb, Luna, Shields, Zbranek  
0 nays  
1 present, not voting — Hartnett  
2 absent — Garcia, Solis

**SENATE VOTE:** On final passage, April 17, Local and Uncontested Calendar — 31-0

**WITNESSES:** No public hearing

**BACKGROUND :** A guardian of the person or of the estate of a ward is required to give a bond in an amount determined by the court after an examination of the evidence of the value of the estate and a determination of the best interests of the ward. A bond is not required if the guardian is a corporate fiduciary, such as a trust company, or is part of a guardianship program operated in Harris County.

**DIGEST:** SB 318 would establish the types of bonds that would be acceptable for a guardian of the person of a ward to post. The bonds allowed under SB 318 would include corporate surety or personal surety bonds, deposit of money in lieu of a surety bond, or personal bonds. The court would be required to consider when determining the amount of the bond the guardian's relationship to the ward, ties to the community, financial condition, and history of compliance, and the reason a guardian may have been denied a corporate surety bond.

SB 318 would also allow bonds to be avoided in any county-operated guardianship program. However, it would establish that the local government would be liable, without limit, for the actual damages caused by an employee who, in the course and scope of employment, was found liable for an act or omission related to the guardianship, if the local government did not post a bond.

SB 318 would take effect September 1, 1997, and apply only to proceedings for the appointment of a guardian commenced on or after that date.

**SUPPORTERS  
SAY:**

Appointment of persons to serve as personal guardians of wards is difficult because of the strict provisions governing the posting of bonds. In many counties, there are not enough persons willing to serve as guardians on a voluntary basis. SB 318 would allow more persons to serve as guardians and expand the use of guardianship programs while retaining adequate protection for the interests of the ward.

Bonding requirements for guardians apply to both guardians of the person of the ward and guardians of the estate of the ward. While bonding requirements should remain high for the guardian of the estate of the ward to ensure that such guardians will remain responsible for acting as a fiduciary of the estate, the bonding requirements for those serving as personal guardians should be relaxed to allow more people to serve in such a capacity. In many cases, a family member may wish to serve as a personal guardian but is unable to obtain a corporate surety bond. Rather than have another person serve as personal guardian, the court should be allowed to examine the circumstances of the guardianship, the relationship of the guardian, and the reasons why the guardian was denied a corporate surety bond, and the court should be allowed to lower the bond requirement to a personal bond. Such a low bond requirement would only be used when circumstances dictated. When there are any questions concerning the responsibility of the guardian, the court would most likely keep the requirement of a corporate surety bond.

For guardians of estates of wards, who should be held responsible for any financial misfeasance, it is still difficult to obtain willing persons to serve as guardians. In Harris County, a guardianship program was established to allow employees of the county to serve as guardians until a permanent guardian could be found. This program has been very successful in reducing the backlog of estates in need of guardians. A second program was established in Galveston County; however, guardians under that program are still required to post a performance bond.

SB 318 would allow other counties to use a similar program to deal with any need to appoint guardians of estates of wards. However, if an employees of the county were serving as guardians in the scope of their employment and committed fraud or misfeasance, the county could be held liable for the entire amount of actual damages suffered by the estate of the ward. Such provisions would only apply if the county chose not to post a bond on the performance of the guardian. This protection of the guardian's estate is needed to ensure that the lack of a bond posted by county employees would not allow the depletion of the estate of the ward without compensation for such damages. Such liability should not deter any counties that wished to start guardianship programs from developing such programs, but would ensure that the persons employed as guardians were responsible for the estate. If the county failed to employ a responsible guardian, the county should be liable for damages.

**OPPONENTS  
SAY:**

SB 318 would reduce the bond requirements for guardians of persons of wards in the name of trying to allow more people to serve as guardians. Relaxing these requirements could allow persons who are appointed to look after interests of children to be less responsible than if they had been required to execute a bond as required under current law. The personal bond that would be allowed by SB 318 would be nothing more than a person saying that they promise to fulfill their obligations. A personal surety bond at least requires two other persons to promise performance on behalf of the guardian. In situations where the guardians are the only persons responsible for the welfare of a ward, they should be required to offer more than just their word on faithful performance.

Guardianship programs operated by counties should not be extended to all counties in Texas. Such programs should only be undertaken in limited circumstances where there is a great need to provide guardians and traditional methods of recruiting persons to serve as guardians are not successful.

**OTHER  
OPPONENTS  
SAY:**

Removing any limitations on governmental liability when the employee of a county serves as a guardian could discourage many counties from operating guardianship programs.