

## **BILL ANALYSIS**

Senate Research Center  
87R3042 EAS-F

S.B. 626  
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### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

S.B. 626 is an omnibus guardianship bill prepared by the Real Estate Probate and Trust Law Section of the Texas Bar. To ensure the rights of all interested parties in a management trust are protected, S.B. 626 would require notice to the potential beneficiary, the beneficiary's guardian, and family members when an application for the creation of a management trust is filed. What's more, by allowing management trusts to last until the removal of an incapacity or until the beneficiary dies, this bill would ensure that a management trust benefitting a person with a disability is not terminated inadvertently when the person turns 25, which in turn would require reimbursement to Medicaid from the trust. S.B. 626 also would increase judicial efficiency by allowing county courts-at-law to hear trust cases when the person under guardianship also is a trust's beneficiary. Presently, some of these cases are forced to go to district court.

What's more, S.B. 626 would clean up statutes regarding guardianship sale and auction procedures, including by amending statutes relating to the sale of property by an out-of-state guardian to allow the guardian to use the sale proceeds for the benefit of the person under guardianship. To make the Guardianship Bill of Rights consistent with current law, S.B. 626 would clarify that a court investigator or guardian ad litem, not an attorney ad litem, may investigate a complaint relating to modification or termination of a guardianship. This bill also would provide that the proper newspaper to be used for notice of a guardianship proceeding is a newspaper of general circulation in the county, rather than a newspaper printed in the county. This addresses the reality that newspapers often are printed in a county other than the county in which they are circulated. Lastly, S.B. 626 would allow for guardianship applicants to submit a declaration under penalty of perjury, in lieu of a notarized oath, regarding their commitment to discharge their duties as a guardian faithfully. Because a statutory declaration is not notarized, this change would make the process more efficient and accessible for applicants.

As proposed, S.B. 626 amends current law relating to guardianships, management trusts, and certain other procedures and proceedings for persons who are incapacitated.

### **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 1021.001, Estates Code, as follows:

Sec. 1021.001. MATTERS RELATED TO GUARDIANSHIP PROCEEDING. (a) Provides that, for purposes of this code, in a county in which there is no statutory probate court or county court at law exercising original probate jurisdiction, rather than in a county in which there is no statutory probate court, a matter related to a guardianship proceeding includes certain elements.

(a-1) Provides that, for purposes of this code, in a county in which there is no statutory probate court, but in which there is a county court at law exercising original probate jurisdiction, a matter related to a guardianship proceeding includes all matters and actions described in Subsection (a); the interpretation and

administration of a testamentary trust in which a ward is an income or remainder beneficiary; and the interpretation and administration of an inter vivos trust in which a ward is an income or remainder beneficiary.

(b) Provides that, for purposes of this code, in a county in which there is a statutory probate court, a matter related to a guardianship proceeding includes, among other things, all matters and actions described in Subsections (a) and (a-1), rather than Subsection (a).

SECTION 2. Amends Section 1052.052(b), Estates Code, to require that each case file contain each order, judgment, and proceeding of the court and any other guardianship filing with the court, including, among other things, each bond and official oath or declaration, rather than only each bond or official oath.

SECTION 3. Amends Section 1103.003, Estates Code, as follows:

Sec. 1103.003. EFFECTIVE DATE OF GUARDIANSHIP. Provides that, if the application filed under Section 1103.001 (Application for Appointment of Guardian) is heard before the proposed ward's 18th birthday, a guardianship created under Chapter 1103 (Procedure to Appoint Guardian for Certain Minors Requiring Guardianships as Adults) is prohibited from taking effect and the person appointed guardian is prohibited from taking the oath or making the declaration, rather than prohibited from taking the oath, as required under Section 1105.051 or giving a bond as required under Section 1105.101 (Bond Generally Required; Exceptions) until the proposed ward's 18th birthday.

SECTION 4. Amends Section 1105.001, Estates Code, by adding Subdivision (1-a) and amending Subdivision (2), as follows:

(1-a) Defines "declaration" for Chapter 1105 (Qualification of Guardians).

(2) Redefines "oath" for this chapter.

SECTION 5. Amends Section 1105.002, Estates Code, to make conforming and nonsubstantive changes.

SECTION 6. Amends Section 1105.003, Estates Code, as follows:

Sec. 1105.003. New heading: PERIOD FOR TAKING OATH OR MAKING DECLARATION AND GIVING BOND. (a) Makes a conforming change.

(b) Makes no changes to this subsection.

SECTION 7. Amends the heading to Subchapter B, Chapter 1105, Estates Code, to read as follows:

#### SUBCHAPTER B. OATHS AND DECLARATIONS

SECTION 8. Amends Section 1105.051, Estates Code, as follows:

Sec. 1105.051. New heading: OATH OR DECLARATION OF GUARDIAN. (a) Requires a guardian to perform certain actions, including making a declaration as prescribed by Subsection (d). Makes nonsubstantive changes.

(b) Requires the Health and Human Services Commission (HHSC) representative, rather than the Department of Aging and Disability (DADS) representative, if HHSC, rather than DADS, is appointed guardian, to take the oath or make the declaration required by Subsection (a).

(c) Requires that the language included in an oath taken by a person named as guardian or temporary guardian, as applicable, be in substantially a certain form and sets forth the language of the oath.

(d) Sets forth the language required to be included in a declaration made by a person named as guardian or temporary guardian, as applicable.

SECTION 9. Amends Section 1105.052, Estates Code, as follows:

Sec. 1105.052. New heading: ADMINISTRATION OF OATH OR MAKING OF DECLARATION. Authorizes the oath prescribed by Section 1105.051 to be taken before any person authorized to administer oaths under the laws of this state. Requires that the declaration prescribed by Section 1105.051 be signed by the declarant.

SECTION 10. Amends Section 1105.103(f), Estates Code, to make a conforming change.

SECTION 11. Amends Section 1151.351(b), Estates Code, to delete existing text authorizing a ward, unless limited by a court or otherwise restricted by law, to, among other things, have an attorney ad litem appointed by the court to investigate a complaint received by the court from the ward or any person about the guardianship.

SECTION 12. Amends Sections 1153.001(a) and (c), Estates Code, as follows:

(a) Requires that the notice requiring each person who has a claim against the estate to present the claim within the period prescribed by law meet certain requirements, including being published in a newspaper of general circulation, rather than a newspaper printed, in the county in which the letters were issued.

(c) Makes conforming and nonsubstantive changes.

SECTION 13. Amends Section 1155.054(d), Estates Code, as follows:

(d) Provides that, if the court finds that a party in a guardianship proceeding acted in bad faith or without just cause in prosecuting or objecting to an application in the proceeding, the court is authorized to order, rather than require, the party to reimburse the ward's estate for all or part of the attorney's fees awarded under Section 1155.054 (Payment of Attorney's Fees to Certain Attorneys) and is required to issue judgment against the party and in favor of the estate for the amount of attorney's fees ordered to be reimbursed to the estate. Makes a conforming change.

SECTION 14. Amends Section 1158.105(a), Estates Code, as follows:

(a) Requires that a successful bid or contract for the sale of estate personal property, rather than a sale of estate personal property, be reported to the court. Provides that the laws regulating the approval, rather than confirmation, or disapproval of a sale of real estate apply to the sale, rather than to the sale of personal property, except that a conveyance is not required.

SECTION 15. Amends the heading to Subchapter I, Chapter 1158, Estates Code, to read as follows:

#### SUBCHAPTER I. SALE OF REAL ESTATE: PUBLIC AUCTION

SECTION 16. Amends Section 1158.401(a), Estates Code, as follows:

(a) Requires that a public sale of real estate of an estate be made at public auction. Requires the guardian of the estate to advertise a public auction, rather than a public sale, of real estate of the estate by a notice published in the county in which the estate is pending, as provided by this title for publication of notices or citations, except as

otherwise provided by Section 1158.403(c), rather than Title 3 (Guardianship and Related Procedures). Makes nonsubstantive changes.

SECTION 17. Amends Section 1158.402, Estates Code, as follows:

Sec. 1158.402. New heading: COMPLETION OF AUCTION. Requires that a public auction of real estate of an estate be completed on the bid of the highest bidder, rather than that a public sale of real estate of an estate be made at public auction to the highest bidder.

SECTION 18. Amends Section 1158.403, Estates Code, as follows:

Sec. 1158.403. New heading: TIME AND PLACE OF AUCTION. (a) Requires that a public auction, rather than a public sale, of real estate of an estate, except as provided by Subsection (c), be held, rather than made, at:

(1) the courthouse door in the county in which the real estate is located, or if the real estate is located in more than one county, the courthouse door in any county in which the real estate is located, rather than the county in which the guardianship proceedings are pending; or

(2) another place in a county described by Subdivision (1) at which auctions of real estate are specifically authorized to be held as designated by the commissioners court of the county under Section 51.002(a), Property Code, rather than at which sales of real estate are specifically authorized to be made.

(b) Creates an exception under this subsection. Requires that the auction, if the first Tuesday of the month occurs on January 1 or July 4, occur between 10 a.m. and 4 p.m. on the first Wednesday of the month. Makes a conforming change.

(c) Authorizes the court, if the court considers it advisable, to order the auction to be held in the county in which the proceedings are pending, rather than in which the real estate is located, in which event notice is required to be published both in that county and in the county in which the real estate is located, rather than in which the proceedings are pending. Makes a conforming and nonsubstantive change.

SECTION 19. Amends Section 1158.404, Estates Code, as follows:

Sec. 1158.404. New heading: CONTINUANCE OF AUCTION. (a) and (b) Makes conforming changes.

(c) Requires that the continuance of an auction under this section be shown in the report made to the court under Section 1158.551. Makes conforming changes.

SECTION 20. Amends Section 1158.405, Estates Code, as follows:

Sec. 1158.405. FAILURE OF BIDDER TO COMPLY. (a) Requires that the property be readvertised and auctioned without any further order if a person who successfully bids on real estate of the guardianship estate offered at public auction fails to comply with the terms of the bid. Deletes existing text requiring that the real estate be readvertised and sold without any further order if a person who bids on real estate of the guardianship estate offered for sale at public auction fails to comply with the terms of the sale.

(b) and (c) Makes conforming changes.

SECTION 21. Amends the heading to Subchapter J, Chapter 1158, Estates Code, to read as follows:

## SUBCHAPTER J. SALE OF REAL ESTATE: CONTRACT FOR PRIVATE SALE

SECTION 22. Amends Section 1158.451, Estates Code, as follows:

Sec. 1158.451. New heading: **TERMS OF SALE**. Authorizes the guardian of the estate to enter into a contract for the private sale of real estate of the estate made in the manner the court directs in the order of sale. Makes nonsubstantive changes.

SECTION 23. Amends Section 1158.502, Estates Code, to provide that the procedure for the sale of an easement or right-of-way authorized under Section 1158.501 (Authorization), Subchapter K (Sale of Easement or Right-of-Way) is the same as the procedure provided by law for a private sale of real property of a ward by contract, rather than at private sale.

SECTION 24. Amends the heading to Subchapter L, Chapter 1158, Estates Code, to read as follows:

### SUBCHAPTER L. APPROVAL OF SALE OF REAL PROPERTY AND TRANSFER OF TITLE

SECTION 25. Amends Section 1158.551, Estates Code, as follows:

Sec. 1158.551. **REPORT**. Requires that a successful bid or private contract for the sale of estate real property, rather than a sale of estate real property, be reported to the court ordering the sale not later than the 30th day after the date the bid is made or the property is placed under contract, rather than the date the sale is made. Requires that the report, among other things, include certain information pertaining to the auction.

SECTION 26. Amends Section 1158.552, Estates Code, as follows:

Sec. 1158.552. New heading: **ACTION OF COURT ON REPORT**. Requires the court, after the expiration of five days from the date a report, rather than a report of sale, is filed under Section 1158.551, to:

- (1) consider the manner in which the auction described in the report was held or the contract described in the report was entered into, rather than inquire into the manner in which the sale was made;
- (2) consider, rather than hear, evidence in support of or against the report; and
- (3) makes no changes to this subdivision.

SECTION 27. Amends Section 1158.553, Estates Code, as follows:

Sec. 1158.553. New heading: **APPROVAL OF SALE WHEN BOND NOT REQUIRED**. Authorizes the court, if the guardian of the estate of a ward is not required by Subtitle D (Creation of Guardianship) to give a general bond, to approve, rather than confirm, the sale of estate real property in the manner provided by Section 1158.556(a) if the court finds that the sale is satisfactory and made in accordance with law.

SECTION 28. Amends Sections 1158.554(a), (b), and (c), Estates Code, to make conforming changes.

SECTION 29. Amends Section 1158.556, Estates Code, as follows:

Sec. 1158.556. New heading: **APPROVAL OR DISAPPROVAL ORDER**. (a) Requires the court, if the court is satisfied that the proposed sale of real property, rather than if he court is satisfied that a sale, reported under Section 1158.551 is for a fair price, properly made, and in conformity with law, and the court has approved any increased or additional bond that the court found necessary to protect the estate, to enter an order that, among other things, shows conformity with Chapter 1158 (Sale or Partition of Ward's Property),

rather than with the provisions of Chapter 1158 relating to the sale. Makes conforming and nonsubstantive changes.

(b) Requires the court, if it is not satisfied that the proposed sale of real property is, rather than the sale was, for a fair price, properly made, and in conformity with law, to enter an order setting aside the bid or contract, rather than issue an order setting aside the sale, and ordering a new sale to be made, if necessary. Makes nonsubstantive changes.

(c) Makes conforming changes.

SECTION 30. Amends Section 1158.557, Estates Code, to make a conforming and a nonsubstantive change.

SECTION 31. Amends Section 1158.558(a), Estates Code, as follows:

(a) Requires the guardian of the estate, after the court has approved a sale and the purchaser, rather than one purchaser, has complied with the terms of the sale, to promptly execute and deliver to the purchaser a proper deed conveying the property. Makes a conforming change.

SECTION 32. Amends Section 1163.005(a), Estates Code, as follows:

(a) Requires the guardian of the estate to attach to an account the guardian's affidavit stating:

(1)-(4) makes no changes to these subdivisions; and

(5) if the guardian is a private professional guardian, a guardianship program, or HHSC, whether the guardian or an individual certified under Subchapter C (Standards for and Certification of Certain Guardians), Chapter 155 (Duties Respecting Guardianship), Government Code, rather than Subchapter C (Regulation of Certain Guardians), Chapter 111 (Guardianship Certification Board), Government Code, who is providing guardianship services to the ward and who is swearing to the account on the guardian's behalf, is or has been the subject of an investigation conducted by the Judicial Branch Certification Commission, rather than the Guardianship Certification Board, during the accounting period. Makes a conforming change.

SECTION 33. Amends Section 1163.101(c), Estates Code, to make conforming changes.

SECTION 34. Amends Sections 1251.101(a), (b), and (d), Estates Code, to make conforming changes.

SECTION 35. Amends Subchapter B, Chapter 1301, Estates Code, by adding Section 1301.0511, as follows:

Sec. 1301.0511. NOTICE REQUIRED FOR APPLICATION FOR CREATION OF TRUST; CITATION OF APPLICANT NOT REQUIRED. (a) Requires that notice, on the filing of an application for creation of a management trust and except as provided by Subsection (d), be issued and served in the manner provided by Subchapter C (Notice and Citation Required for Application for Guardianship), Chapter 1051 (Notices and Process in Guardianship Proceedings in General), for the issuance and service of notice on the filing of an application for guardianship.

(b) Provides that it is not necessary to serve a citation on a person who files an application for the creation of a management trust under Subchapter B (Creation of Management Trusts), Chapter 1301 (Management Trusts) or for that person to waive the issuance and personal service of citation.

(c) Requires the sheriff or other officer, in addition to serving the persons described by Section 1051.103 (Service of Citation for Application for Guardianship), to personally serve each guardian of the ward with citation to appear and answer the application if the person for whom an application for creation of a management trust is filed is a ward.

(d) Provides that notice under this section is not required if a proceeding for the appointment of a guardian is pending for the person for whom an application for creation of a management trust is filed.

SECTION 36. Amends Section 1301.101(a), Estates Code, as follows:

(a) Requires that a management trust created for a ward or incapacitated person, except as provided by Subsection (c) (relating to exceptions to the criteria required for creation of a management trust for a ward or incapacitated person), provide that:

(1)-(3) makes no changes to these subdivisions;

(4) and (5) makes nonsubstantive changes to these subdivisions; and

(6) the trust terminates:

(A) except as provided by Paragraph (B), if the person for whom the trust is created is a minor, on the earlier of the person's death or the person's 18th birthday, or on the date provided by court order, which may not be later than the person's 25th birthday;

(B) if the person for whom the trust is created is a minor and is also incapacitated for a reason other than being a minor, on the person's death, or when the person regains capacity; or

(C) if the person for whom the trust is created is not a minor, according to the terms of the trust, on the date the court determines that continuing the trust is no longer in the person's best interests, subject to Section 1301.202(c) (relating to court-authorized termination of the management trust under certain conditions), or on the person's death.

SECTION 37. Amends Section 1301.154(b), Estates Code, to require the trustee of a management trust created for a ward to provide a copy of the annual account to each guardian of the ward, rather than to the guardian of the ward's estate or person.

SECTION 38. Amends Section 1301.203, Estates Code, by amending Subsection (a) and adding Subsection (a-1), as follows:

(a) Creates an exception under Subsection (a-1) and makes a nonsubstantive change.

(a-1) Provides that if the person for whom a management trust is created is a minor and is also incapacitated for a reason other than being a minor, the trust terminates on the person's death or when the person regains capacity.

SECTION 39. Amends Sections 1355.002(b), (c), (d), (e), and (f), Estates Code, as follows:

(b) Provides that Section 1355.002 (Payment of Claims to Nonresident Creditor) applies only to a nonresident creditor, rather than only to a creditor, who is:

(1) a nonresident minor and has a nonresident guardian of the estate appointed by a foreign court;

(2) a nonresident person who is adjudged by a foreign court, rather than a court of competent jurisdiction, to be incapacitated and has a nonresident guardian of the estate appointed by that court; or

(3) the nonresident former ward, rather than the former ward, of a guardianship terminated under Chapter 1204 (Final Settlement, Accounting, and Discharge) who has no legal guardian qualified in Texas.

(c)-(f) Makes conforming changes.

SECTION 40. Amends Section 1355.105, Estates Code, as follows:

Sec. 1355.105. New heading: WITHDRAWAL OF MONEY BY CREDITOR OR CREDITOR'S HEIR, REPRESENTATIVE, OR GUARDIAN. (a) Provides that money that is not withdrawn by an authorized person as provided by Chapter 1355, on presentation to the court clerk of an order of a county or probate court of the county in which the money is held, may be withdrawn by:

(1) makes no changes to this subdivision;

(2)-(3) makes nonsubstantive changes to these subdivisions; or

(4) a nonresident guardian of the estate appointed by a foreign court for a creditor who is a nonresident minor, or a nonresident person who is adjudged to be incapacitated.

(b) Creates an exception under Subsection (b-1).

(b-1) Authorizes a court to require a nonresident guardian of the estate of a creditor who is a nonresident minor or nonresident incapacitated person as described by Subsection (a)(4) to provide proof that the nonresident guardian of the estate gave an adequate bond in the foreign jurisdiction if the court determines that it is in the nonresident minor's or nonresident incapacitated person's best interest.

(c) Requires that the order presented under Subsection (a) direct the court clerk to deliver the money to:

(1)-(3) creates these subdivisions from existing text and makes nonsubstantive changes; or

(4) if the creditor is a nonresident minor or nonresident person who is adjudged to be incapacitated, the creditor's nonresident guardian of the estate.

(d) Requires a nonresident guardian of the estate described by Subsection (c)(4), for purposes of this subsection, to present to the court exemplified copies of the order of a foreign court appointing the guardian and current letters of guardianship issued in the foreign jurisdiction.

SECTION 41. (a) Provides that, except as otherwise provided by this section, the changes in law made by this Act apply to a guardianship created before, on, or after the effective date of this Act, and to an application for a guardianship pending on, or filed on or after, the effective date of this Act.

(b) Makes application of Section 1021.001, Estates Code, as amended by this Act, prospective.

(c) Makes application of Section 1251.101, Estates Code, and Chapter 1105, Estates Code, as amended by this Act, prospective.

(d) Makes application of Section 1301.0511, Estates Code, as added by this Act, prospective.

(e) Makes application of Sections 1301.101 and 1301.203, Estates Code, as amended by this Act, prospective.

(f) Makes application of Section 1355.105, Estates Code, as amended by this Act, prospective.

SECTION 42. Effective date: September 1, 2021.