

By: Metcalf

H.B. No. 3394

A BILL TO BE ENTITLED

AN ACT

relating to determining the incapacity of a proposed guardian or guardian.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 1101.002, Estates Code, is amended to read as follows:

Sec. 1101.002. CONTENTS OF APPLICATION; CONFIDENTIALITY OF CERTAIN ADDRESSES. An application filed under Section 1101.001 or 1203.0521 may omit the address of a person named in the application if:

(1) the application states that the person is or was protected by a protective order issued under Chapter 85, Family Code;

(2) a copy of the protective order is attached to the application as an exhibit;

(3) the application states the county in which the person resides;

(4) the application indicates the place where notice to or the issuance and service of citation on the person may be made or sent; and

(5) the application is accompanied by a request for an order under Section 1051.201 specifying the manner of issuance, service, and return of citation or notice on the person.

SECTION 2. Subchapter B, Chapter 1203, Estates Code, is

1 amended by adding Section 1203.0521 to read as follows:

2 Sec. 1203.0521. DETERMINATION REGARDING PROPOSED
3 GUARDIAN'S OR GUARDIAN'S INCAPACITY. (a) The court on its own
4 motion may or on the written application of an interested person
5 shall order an investigation into whether a proposed guardian or
6 guardian appointed by the court under this title is an
7 incapacitated person for purposes of appointing a guardian or
8 Section 1203.052(a)(5)(A), as applicable.

9 (b) Subject to Section 1101.002, an application filed under
10 this section must be sworn to by the applicant and state:

11 (1) the proposed ward's or ward's name, sex, date of
12 birth, and address;

13 (2) the proposed guardian's or guardian's name, sex,
14 date of birth, and address;

15 (3) the nature and degree of the proposed guardian's or
16 guardian's alleged incapacity;

17 (4) the facts requiring an investigation into the
18 proposed guardian's or guardian's capacity; and

19 (5) the applicant's interest in the proposed ward or
20 ward.

21 (c) The court on its own motion may or on receipt of an
22 application under this section shall appoint a guardian ad litem or
23 court investigator to investigate the conditions and circumstances
24 of the proposed guardian or guardian, including any facts alleged
25 in the application that would give rise to a finding of incapacity,
26 to determine whether there is probable cause to believe the
27 proposed guardian or guardian is an incapacitated person. The

1 court's order appointing the guardian ad litem or court
2 investigator must include a statement that the proposed guardian or
3 guardian has the right to petition the court to have the appointment
4 set aside.

5 (d) The guardian ad litem or court investigator shall file
6 with the court a report of the findings and conclusions of the
7 investigation conducted under Subsection (c).

8 (e) If a guardian ad litem or court investigator, after an
9 investigation as prescribed by this section, determines that
10 probable cause exists to believe the proposed guardian or guardian
11 is an incapacitated person, the guardian ad litem or court
12 investigator, as applicable, shall file with the court an
13 application recommending an independent examination of the
14 proposed guardian's or guardian's capacity by a physician licensed
15 in this state.

16 (f) If the court determines it is necessary, the court may
17 appoint one or more physicians licensed in this state to examine the
18 proposed guardian or guardian. The court must make its
19 determination with respect to the necessity for a physician's
20 examination of the proposed guardian or guardian at a hearing held
21 for that purpose. Not later than the fourth day before the date of
22 the hearing, the court shall give to the proposed guardian or
23 guardian written notice specifying the purpose, date, and time of
24 the hearing.

25 (g) A physician who examines the proposed guardian or
26 guardian under this section shall return to the court a written
27 letter or certificate from the physician that describes the nature,

1 degree, and severity of the proposed guardian's or guardian's
2 incapacity, if any, including any functional deficits regarding the
3 proposed guardian's or guardian's ability to perform the duties a
4 guardian owes to a ward. A written letter or certificate by a
5 physician finding incapacity under this subsection may be relied on
6 by the court only for purposes of making a determination of
7 incapacity:

8 (1) under Section 1203.052(a)(5)(A);

9 (2) with regard to the appointment of a guardian for
10 the proposed ward; or

11 (3) for creating a guardianship over the proposed
12 guardian or guardian.

13 (h) Notwithstanding Section 1155.151 and except as provided
14 by Subsection (j), the court may order court costs associated with
15 making a determination relating to incapacity under this section to
16 be paid by the applicant who requested the investigation under this
17 section if the proposed guardian or guardian is determined not to be
18 an incapacitated person.

19 (i) Notwithstanding Section 1155.151 and except as provided
20 by Subsection (j), the court may order court costs associated with
21 making a determination relating to incapacity under this section to
22 be paid by the proposed guardian or guardian who is the subject of
23 an investigation conducted under Subsection (c) if the proposed
24 guardian or guardian is determined to be an incapacitated person.

25 (j) If the applicant, proposed guardian, or guardian
26 ordered to pay court costs under Subsection (h) or (i) files, on the
27 person's own behalf, an affidavit of inability to pay court costs

1 under Rule 145, Texas Rules of Civil Procedure, that shows the
2 person is unable to afford the costs, the court shall order costs be
3 paid out of the county treasury.

4 SECTION 3. The changes in law made by this Act apply to:

5 (1) a guardianship created before, on, or after the
6 effective date of this Act; and

7 (2) an application for a guardianship pending on, or
8 filed on or after, the effective date of this Act.

9 SECTION 4. This Act takes effect September 1, 2021.