

By: Hartnett

H.B. No. 1191

Substitute the following for H.B. No. 1191:

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C.S.H.B. No. 1191

A BILL TO BE ENTITLED

AN ACT

relating to guardianship matters and proceedings.

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

SECTION 1. Section 615, Texas Probate Code, is amended to read as follows:

Sec. 615. TRANSFER [~~TRANSCRIPT~~] OF RECORD. When an order of removal is made under Section 614 of this code, the clerk shall record any unrecorded papers of the guardianship required to be recorded [~~and make out a complete certified transcript of all the orders, decrees, judgments, and proceedings in the guardianship~~]. On payment of the clerk's fee [~~fees~~], the clerk shall transmit [~~the transcript, with the original papers in the case,~~] to the county clerk of the county to which the guardianship was ordered removed:

(1) the case file of the guardianship proceedings; and

(2) a certified copy of the index of the guardianship records.

SECTION 2. Section 616, Texas Probate Code, is amended to read as follows:

Sec. 616. REMOVAL EFFECTIVE. The order removing a guardianship does not take effect until:

(1) the case file and a certified copy of the index [~~transcript~~] required by Section 615 of this code are [~~is~~] filed in the office of the county clerk of the county to which the guardianship was ordered removed; and

1 (2) a certificate under the clerk's official seal and
2 reporting the filing of the case file and a certified copy of the
3 index [~~transcript~~] is filed in the court ordering the removal by the
4 county clerk of the county to which the guardianship was ordered
5 removed.

6 SECTION 3. Section 672(b), Texas Probate Code, is amended
7 to read as follows:

8 (b) In reviewing a guardianship as provided by Subsection
9 (a) of this section, a statutory probate court may:

10 (1) review any report prepared by a court investigator
11 under Section 648A or 694A(c) of this code;

12 (2) review any report prepared by a guardian ad litem
13 under Section 694A(c) of this code;

14 (3) review any report prepared by a court visitor
15 under Section 648 of this code;

16 (4) [~~3~~] conduct a hearing; or

17 (5) [~~4~~] review an annual account prepared under
18 Section 741 of this code or a report prepared under Section 743 of
19 this code.

20 SECTION 4. Section 694A(c), Texas Probate Code, is amended
21 to read as follows:

22 (c) On receipt of an informal letter under Subsection (b) of
23 this section, the court shall appoint the court investigator or a
24 guardian ad litem to investigate the circumstances of the ward,
25 including any circumstances alleged in the informal letter, to
26 determine whether the ward is no longer an incapacitated person or
27 whether a modification of the guardianship is necessary. The court

1 investigator or guardian ad litem shall file with the court a report
2 of the investigation's findings and conclusions and, if the court
3 investigator or the guardian ad litem determines that it is in the
4 best interest of the ward to terminate or modify the guardianship,
5 the court investigator or guardian ad litem, as appropriate, shall
6 file an application under Subsection (a) of this section on the
7 ward's behalf. A guardian ad litem appointed under this subsection
8 may also be appointed by the court to serve as attorney ad litem
9 under Section 694C of this code.

10 SECTION 5. Section 761(a), Texas Probate Code, is amended
11 to read as follows:

12 (a) The court, on its own motion or on motion of any
13 interested person, including the ward, and without notice, may
14 remove any guardian, appointed under this chapter, who:

15 (1) neglects to qualify in the manner and time
16 required by law;

17 (2) fails to return within 30 [~~90~~] days after
18 qualification, unless the time is extended by order of the court, an
19 inventory of the property of the guardianship estate and list of
20 claims that have come to the guardian's knowledge;

21 (3) having been required to give a new bond, fails to
22 do so within the time prescribed;

23 (4) absents himself from the state for a period of
24 three months at one time without permission of the court, or removes
25 from the state;

26 (5) cannot be served with notices or other processes
27 because of the fact that:

1 (A) the guardian's whereabouts are unknown;

2 (B) the guardian is eluding service; or

3 (C) the guardian is a nonresident of this state
4 who does not have a resident agent to accept service of process in
5 any guardianship proceeding or other matter relating to the
6 guardianship;

7 (6) has misapplied, embezzled, or removed from the
8 state, or is about to misapply, embezzle, or remove from the state,
9 all or any part of the property committed to the guardian's care;
10 or

11 (7) has cruelly treated a ward, or has neglected to
12 educate or maintain the ward as liberally as the means of the ward
13 and the condition of the ward's estate permit.

14 SECTION 6. Section 776(a-3), Texas Probate Code, is amended
15 to read as follows:

16 (a-3) When different persons have the guardianship of the
17 person and estate of a ward, the court's order setting a monthly
18 allowance must specify the amount, if any, set by the court for the
19 education and maintenance of the ward that the guardian of the
20 estate shall pay and the amount, if any, the guardian of the estate
21 shall pay to the guardian of the person [~~the monthly allowance set~~
22 by the court], at a time specified by the court, for the education
23 and maintenance of the ward. If the guardian of the estate fails to
24 pay to the guardian of the person the monthly allowance set by the
25 court, the guardian of the estate shall be compelled to make the
26 payment by court order after the guardian is duly cited to appear.

27 SECTION 7. Section 788, Texas Probate Code, is amended to

1 read as follows:

2 Sec. 788. CLAIMS MUST BE AUTHENTICATED. Except as provided
3 by Section 792 of this code [~~this section~~], with respect to the
4 payment of an unauthenticated claim by a guardian, a guardian of the
5 estate may not allow and the court may not approve a claim for money
6 against the estate, unless the claim is supported by an affidavit
7 that the claim is just and that all legal offsets, payments, and
8 credits known to the affiant have been allowed. If the claim is not
9 founded on a written instrument or account, the affidavit must also
10 state the facts on which the claim is founded. A photostatic copy
11 of an exhibit or voucher necessary to prove a claim under this
12 section may be offered with and attached to the claim instead of the
13 original.

14 SECTION 8. Section 831(c), Texas Probate Code, is amended
15 to read as follows:

16 (c) A [~~After issuing the notice required by this subsection,~~
17 a] guardian of an estate may purchase property from the estate on
18 the court's determination that the sale is in the best interest of
19 the estate. [~~The guardian shall give notice by certified mail,~~
20 ~~return receipt requested, unless the court requires another form of~~
21 ~~notice, to each distributee of a deceased person's estate and to~~
22 ~~each creditor whose claim remains unsettled after presenting a~~
23 ~~claim within six months of the original grant of letters.] In the
24 case of an application filed by the guardian of the estate of a
25 ward, the court shall appoint an attorney ad litem to represent the
26 ward with respect to the sale. The court may require [~~additional~~]
27 notice [~~or it may allow for the waiver of the notice required~~] for a~~

1 sale made under this subsection.

2 SECTION 9. Section 855B, Texas Probate Code, is amended by
3 amending Subsections (a) and (b) and adding Subsection (e) to read
4 as follows:

5 (a) Not later than the 180th day after the date on which the
6 guardian of the estate qualified as guardian or another date
7 specified by the court, the guardian shall file a written
8 application with the court for an order:

9 (1) authorizing the guardian to:

10 (A) develop and implement an investment plan for
11 estate assets;

12 (B) invest in or sell securities under an
13 investment plan developed under Paragraph (A) of this subdivision;

14 (C) declare that one or more estate assets must
15 be retained, despite being underproductive with respect to income
16 or overall return; or

17 (D) [~~(C)~~] loan estate funds, invest in real
18 estate or make other investments, or purchase a life, term, or
19 endowment insurance policy or an annuity contract; or

20 (2) modifying or eliminating the guardian's duty to
21 invest the estate.

22 (b) On hearing the application under this section and on a
23 finding by the preponderance of the evidence that the action
24 requested in the application is in the best interests of the ward
25 and the ward's estate, the court shall render an order granting the
26 authority requested in the application or an order modifying or
27 eliminating the guardian's duty to keep the estate invested. The

1 order must state in reasonably specific terms:

2 (1) the nature of the investment, investment plan, or
3 other action requested in the application and authorized by the
4 court, including, if applicable, the authority to invest in and
5 sell securities in accordance with the objectives of the investment
6 plan;

7 (2) when an investment must be reviewed and
8 reconsidered by the guardian; and

9 (3) whether the guardian must report the guardian's
10 review and recommendations to the court.

11 (e) A citation or notice is not necessary to invest in or
12 sell securities under an investment plan authorized by the court
13 under Subsection (b)(1) of this section.

14 SECTION 10. Subpart A, Part 5, Chapter XIII, Texas Probate
15 Code, is amended by adding Section 874 to read as follows:

16 Sec. 874. PRESUMPTION OF INCAPACITATION. The person for
17 whom a temporary guardian is appointed under Section 875 of this
18 code may not be presumed to be incapacitated.

19 SECTION 11. The changes in law made by this Act to Sections
20 615 and 616, Texas Probate Code, apply only to an application for
21 transfer of a guardianship filed on or after the effective date of
22 this Act. An application for transfer of a guardianship filed
23 before the effective date of this Act is governed by the law in
24 effect on the date the application was filed, and the former law is
25 continued in effect for that purpose.

26 SECTION 12. The change in law made by this Act to Section
27 694A, Texas Probate Code, applies only to the procedure for receipt

1 of an informal letter for which a court investigator or guardian ad
2 litem is appointed on or after the effective date of this Act. A
3 procedure for receipt of an informal letter for which a court
4 investigator or guardian ad litem is appointed before the effective
5 date of this Act is governed by the law in effect on the date the
6 court investigator or guardian ad litem was appointed, and the
7 former law is continued in effect for that purpose.

8 SECTION 13. The change in law made by this Act to Section
9 776, Texas Probate Code, applies only to an application for monthly
10 allowance filed on or after the effective date of this Act. An
11 application for monthly allowance filed before the effective date
12 of this Act is governed by the law in effect on the date the
13 application was filed, and the former law is continued in effect for
14 that purpose.

15 SECTION 14. The change in law made by this Act to Section
16 831(c), Texas Probate Code, applies only to an application by a
17 guardian of an estate for the purchase of estate property filed on
18 or after the effective date of this Act. An application by a
19 guardian of an estate for the purchase of estate property filed
20 before the effective date of this Act is governed by the law in
21 effect on the date the application was filed, and the former law is
22 continued in effect for that purpose.

23 SECTION 15. The change in law made by this Act to Section
24 855B, Texas Probate Code, applies only to an investment plan or a
25 modification of an investment plan approved by a court on or after
26 the effective date of this Act. An investment plan or a
27 modification of an investment plan approved by a court before the

1 effective date of this Act that is not modified on or after the
2 effective date of this Act is governed by the law in effect on the
3 date the investment plan was approved, and the former law is
4 continued in effect for that purpose.

5 SECTION 16. This Act takes effect September 1, 2005.