

By: Hartnett

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 Subsections (e) and (f)  
4 to read 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 Subdivision (1)(A) of this  
14 subsection;

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

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

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

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

1 eliminating the guardian's duty to keep the estate invested. The  
2 order must state in reasonably specific terms:

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

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

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

12 (e) An investment plan developed under Subsection (a)(1)(A)  
13 of this section must include an overall investment strategy for  
14 estate assets, including investment risk and return objectives.

15 (f) A citation or notice is not necessary under this section  
16 unless ordered by the court.

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

19 Sec. 874. PRESUMPTION OF INCAPACITATION. The person for  
20 whom a temporary guardian is appointed under Section 875 of this  
21 code may not be presumed to be incapacitated in other legal  
22 proceedings.

23 SECTION 11. The changes in law made by this Act to Sections  
24 615 and 616, Texas Probate Code, apply only to an application for  
25 transfer of a guardianship filed on or after the effective date of  
26 this Act. An application for transfer of a guardianship filed  
27 before the effective date of this Act is governed by the law in

1 effect on the date the application was filed, and the former law is  
2 continued in effect for that purpose.

3 SECTION 12. The change in law made by this Act to Section  
4 694A, Texas Probate Code, applies only to an application for the  
5 restoration of a ward's capacity or modification of a guardianship  
6 that is filed on or after the effective date of this Act. An  
7 application for the restoration of a ward's capacity or  
8 modification of a ward's guardianship that is filed before the  
9 effective date of this Act is governed by the law in effect on the  
10 date the application was filed, and the former law is continued in  
11 effect for that purpose.

12 SECTION 13. The changes in law made by this Act to Sections  
13 776 and 855B, Texas Probate Code, apply only to an application for  
14 the appointment of a guardian filed on or after the effective date  
15 of this Act. An application for the appointment of a guardian filed  
16 before the effective date of this Act is governed by the law in  
17 effect on the date the application was filed, and the former law is  
18 continued in effect for that purpose.

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

27 SECTION 15. This Act takes effect September 1, 2005.