

1-1 By: Hartnett (Senate Sponsor - Harris) H.B. No. 1191
1-2 (In the Senate - Received from the House April 25, 2005;
1-3 April 26, 2005, read first time and referred to Committee on
1-4 Jurisprudence; May 5, 2005, reported favorably by the following
1-5 vote: Yeas 7, Nays 0; May 5, 2005, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to guardianship matters and proceedings.

1-9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-10 SECTION 1. Section 615, Texas Probate Code, is amended to
1-11 read as follows:

1-12 Sec. 615. TRANSFER [TRANSCRIPT] OF RECORD. When an order of
1-13 removal is made under Section 614 of this code, the clerk shall
1-14 record any unrecorded papers of the guardianship required to be
1-15 recorded [~~and make out a complete certified transcript of all the~~
1-16 ~~orders, decrees, judgments, and proceedings in the guardianship~~].
1-17 On payment of the clerk's fee [fees], the clerk shall transmit [~~the~~
1-18 ~~transcript, with the original papers in the case,~~] to the county
1-19 clerk of the county to which the guardianship was ordered removed:

- 1-20 (1) the case file of the guardianship proceedings; and
1-21 (2) a certified copy of the index of the guardianship
1-22 records.

1-23 SECTION 2. Section 616, Texas Probate Code, is amended to
1-24 read as follows:

1-25 Sec. 616. REMOVAL EFFECTIVE. The order removing a
1-26 guardianship does not take effect until:

- 1-27 (1) the case file and a certified copy of the index
1-28 [~~transcript~~] required by Section 615 of this code are [is] filed in
1-29 the office of the county clerk of the county to which the
1-30 guardianship was ordered removed; and

- 1-31 (2) a certificate under the clerk's official seal and
1-32 reporting the filing of the case file and a certified copy of the
1-33 index [~~transcript~~] is filed in the court ordering the removal by the
1-34 county clerk of the county to which the guardianship was ordered
1-35 removed.

1-36 SECTION 3. Section 672(b), Texas Probate Code, is amended
1-37 to read as follows:

1-38 (b) In reviewing a guardianship as provided by Subsection
1-39 (a) of this section, a statutory probate court may:

- 1-40 (1) review any report prepared by a court investigator
1-41 under Section 648A or 694A(c) of this code;

- 1-42 (2) review any report prepared by a guardian ad litem
1-43 under Section 694A(c) of this code;

- 1-44 (3) review any report prepared by a court visitor
1-45 under Section 648 of this code;

- 1-46 (4) [~~3~~] conduct a hearing; or

- 1-47 (5) [~~4~~] review an annual account prepared under
1-48 Section 741 of this code or a report prepared under Section 743 of
1-49 this code.

1-50 SECTION 4. Section 694A(c), Texas Probate Code, is amended
1-51 to read as follows:

1-52 (c) On receipt of an informal letter under Subsection (b) of
1-53 this section, the court shall appoint the court investigator or a
1-54 guardian ad litem to investigate the circumstances of the ward,
1-55 including any circumstances alleged in the informal letter, to
1-56 determine whether the ward is no longer an incapacitated person or
1-57 whether a modification of the guardianship is necessary. The court
1-58 investigator or guardian ad litem shall file with the court a report
1-59 of the investigation's findings and conclusions and, if the court
1-60 investigator or the guardian ad litem determines that it is in the
1-61 best interest of the ward to terminate or modify the guardianship,
1-62 the court investigator or guardian ad litem, as appropriate, shall
1-63 file an application under Subsection (a) of this section on the
1-64 ward's behalf. A guardian ad litem appointed under this subsection

2-1 may also be appointed by the court to serve as attorney ad litem
2-2 under Section 694C of this code.

2-3 SECTION 5. Section 761(a), Texas Probate Code, is amended
2-4 to read as follows:

2-5 (a) The court, on its own motion or on motion of any
2-6 interested person, including the ward, and without notice, may
2-7 remove any guardian, appointed under this chapter, who:

2-8 (1) neglects to qualify in the manner and time
2-9 required by law;

2-10 (2) fails to return within 30 [~~90~~] days after
2-11 qualification, unless the time is extended by order of the court, an
2-12 inventory of the property of the guardianship estate and list of
2-13 claims that have come to the guardian's knowledge;

2-14 (3) having been required to give a new bond, fails to
2-15 do so within the time prescribed;

2-16 (4) absents himself from the state for a period of
2-17 three months at one time without permission of the court, or removes
2-18 from the state;

2-19 (5) cannot be served with notices or other processes
2-20 because of the fact that:

2-21 (A) the guardian's whereabouts are unknown;

2-22 (B) the guardian is eluding service; or

2-23 (C) the guardian is a nonresident of this state
2-24 who does not have a resident agent to accept service of process in
2-25 any guardianship proceeding or other matter relating to the
2-26 guardianship;

2-27 (6) has misapplied, embezzled, or removed from the
2-28 state, or is about to misapply, embezzle, or remove from the state,
2-29 all or any part of the property committed to the guardian's care; or

2-30 (7) has cruelly treated a ward, or has neglected to
2-31 educate or maintain the ward as liberally as the means of the ward
2-32 and the condition of the ward's estate permit.

2-33 SECTION 6. Section 776(a-3), Texas Probate Code, is amended
2-34 to read as follows:

2-35 (a-3) When different persons have the guardianship of the
2-36 person and estate of a ward, the court's order setting a monthly
2-37 allowance must specify the amount, if any, set by the court for the
2-38 education and maintenance of the ward that the guardian of the
2-39 estate shall pay and the amount, if any, the guardian of the estate
2-40 shall pay to the guardian of the person [~~the monthly allowance set~~
2-41 ~~by the court~~], at a time specified by the court, for the education
2-42 and maintenance of the ward. If the guardian of the estate fails to
2-43 pay to the guardian of the person the monthly allowance set by the
2-44 court, the guardian of the estate shall be compelled to make the
2-45 payment by court order after the guardian is duly cited to appear.

2-46 SECTION 7. Section 788, Texas Probate Code, is amended to
2-47 read as follows:

2-48 Sec. 788. CLAIMS MUST BE AUTHENTICATED. Except as provided
2-49 by Section 792 of this code [~~this section~~], with respect to the
2-50 payment of an unauthenticated claim by a guardian, a guardian of the
2-51 estate may not allow and the court may not approve a claim for money
2-52 against the estate, unless the claim is supported by an affidavit
2-53 that the claim is just and that all legal offsets, payments, and
2-54 credits known to the affiant have been allowed. If the claim is not
2-55 founded on a written instrument or account, the affidavit must also
2-56 state the facts on which the claim is founded. A photostatic copy
2-57 of an exhibit or voucher necessary to prove a claim under this
2-58 section may be offered with and attached to the claim instead of the
2-59 original.

2-60 SECTION 8. Section 831(c), Texas Probate Code, is amended
2-61 to read as follows:

2-62 (c) A [~~After issuing the notice required by this subsection,~~
2-63 ~~a]~~ guardian of an estate may purchase property from the estate on
2-64 the court's determination that the sale is in the best interest of
2-65 the estate. [~~The guardian shall give notice by certified mail,~~
2-66 ~~return receipt requested, unless the court requires another form of~~
2-67 ~~notice, to each distributee of a deceased person's estate and to~~
2-68 ~~each creditor whose claim remains unsettled after presenting a~~
2-69 ~~claim within six months of the original grant of letters.] In the~~

3-1 case of an application filed by the guardian of the estate of a
 3-2 ward, the court shall appoint an attorney ad litem to represent the
 3-3 ward with respect to the sale. The court may require ~~[additional]~~
 3-4 notice ~~[or it may allow for the waiver of the notice required]~~ for a
 3-5 sale made under this subsection.

3-6 SECTION 9. Section 855B, Texas Probate Code, is amended by
 3-7 amending Subsections (a) and (b) and adding Subsection (e) to read
 3-8 as follows:

3-9 (a) Not later than the 180th day after the date on which the
 3-10 guardian of the estate qualified as guardian or another date
 3-11 specified by the court, the guardian shall file a written
 3-12 application with the court for an order:

3-13 (1) authorizing the guardian to:

3-14 (A) develop and implement an investment plan for
 3-15 estate assets;

3-16 (B) invest in or sell securities under an
 3-17 investment plan developed under Paragraph (A) of this subdivision;

3-18 (C) declare that one or more estate assets must
 3-19 be retained, despite being underproductive with respect to income
 3-20 or overall return; or

3-21 (D) ~~[(C)]~~ loan estate funds, invest in real
 3-22 estate or make other investments, or purchase a life, term, or
 3-23 endowment insurance policy or an annuity contract; or

3-24 (2) modifying or eliminating the guardian's duty to
 3-25 invest the estate.

3-26 (b) On hearing the application under this section and on a
 3-27 finding by the preponderance of the evidence that the action
 3-28 requested in the application is in the best interests of the ward
 3-29 and the ward's estate, the court shall render an order granting the
 3-30 authority requested in the application or an order modifying or
 3-31 eliminating the guardian's duty to keep the estate invested. The
 3-32 order must state in reasonably specific terms:

3-33 (1) the nature of the investment, investment plan, or
 3-34 other action requested in the application and authorized by the
 3-35 court, including, if applicable, the authority to invest in and
 3-36 sell securities in accordance with the objectives of the investment
 3-37 plan;

3-38 (2) when an investment must be reviewed and
 3-39 reconsidered by the guardian; and

3-40 (3) whether the guardian must report the guardian's
 3-41 review and recommendations to the court.

3-42 (e) A citation or notice is not necessary to invest in or
 3-43 sell securities under an investment plan authorized by the court
 3-44 under Subsection (b)(1) of this section.

3-45 SECTION 10. Subpart A, Part 5, Chapter XIII, Texas Probate
 3-46 Code, is amended by adding Section 874 to read as follows:

3-47 Sec. 874. PRESUMPTION OF INCAPACITATION. The person for
 3-48 whom a temporary guardian is appointed under Section 875 of this
 3-49 code may not be presumed to be incapacitated.

3-50 SECTION 11. The changes in law made by this Act to Sections
 3-51 615 and 616, Texas Probate Code, apply only to an application for
 3-52 transfer of a guardianship filed on or after the effective date of
 3-53 this Act. An application for transfer of a guardianship filed
 3-54 before the effective date of this Act is governed by the law in
 3-55 effect on the date the application was filed, and the former law is
 3-56 continued in effect for that purpose.

3-57 SECTION 12. The change in law made by this Act to Section
 3-58 694A, Texas Probate Code, applies only to the procedure for receipt
 3-59 of an informal letter for which a court investigator or guardian ad
 3-60 litem is appointed on or after the effective date of this Act. A
 3-61 procedure for receipt of an informal letter for which a court
 3-62 investigator or guardian ad litem is appointed before the effective
 3-63 date of this Act is governed by the law in effect on the date the
 3-64 court investigator or guardian ad litem was appointed, and the
 3-65 former law is continued in effect for that purpose.

3-66 SECTION 13. The change in law made by this Act to Section
 3-67 776, Texas Probate Code, applies only to an application for monthly
 3-68 allowance filed on or after the effective date of this Act. An
 3-69 application for monthly allowance filed before the effective date

4-1 of this Act is governed by the law in effect on the date the
4-2 application was filed, and the former law is continued in effect for
4-3 that purpose.

4-4 SECTION 14. The change in law made by this Act to Section
4-5 831(c), Texas Probate Code, applies only to an application by a
4-6 guardian of an estate for the purchase of estate property filed on
4-7 or after the effective date of this Act. An application by a
4-8 guardian of an estate for the purchase of estate property filed
4-9 before the effective date of this Act is governed by the law in
4-10 effect on the date the application was filed, and the former law is
4-11 continued in effect for that purpose.

4-12 SECTION 15. The change in law made by this Act to Section
4-13 855B, Texas Probate Code, applies only to an investment plan or a
4-14 modification of an investment plan approved by a court on or after
4-15 the effective date of this Act. An investment plan or a
4-16 modification of an investment plan approved by a court before the
4-17 effective date of this Act that is not modified on or after the
4-18 effective date of this Act is governed by the law in effect on the
4-19 date the investment plan was approved, and the former law is
4-20 continued in effect for that purpose.

4-21 SECTION 16. This Act takes effect September 1, 2005.

4-22

* * * * *