

By: Garcia

H.B. No. 3866

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. Subpart A, Part 1, Chapter XIII, Texas Probate Code, is amended by adding Section 602A to read as follows:

Sec. 602A. POLICY; BEST INTEREST OF THE WARD. (a) The best interest of the ward shall always be the primary consideration of the court and the guardian of the person or estate, or both, of the ward.

(b) Any attorney or other professional hired by the ward or guardian owes all duties required by that person's employment to the ward.

SECTION 2. Sections 665(a), (b), (c), and (f), Texas Probate Code, are amended to read as follows:

(a) The court may authorize compensation for a guardian or a temporary guardian serving as a guardian of the person alone from available funds of the ward's estate or other funds available for that purpose. The court shall set the total compensation in an amount not exceeding five percent of the ward's gross income. In determining whether to authorize compensation for a guardian under this section, the court shall consider the ward's monthly income from all sources and whether the ward receives medical assistance under the state Medicaid program.

(b) The guardian or temporary guardian of an estate is

1 entitled to reasonable compensation on application to the court at
2 the time the court approves any annual accounting or final
3 accounting filed by the guardian or temporary guardian under this
4 chapter. A total fee of five percent of the gross income of the
5 ward's estate and five percent of all money paid out of the estate
6 is considered reasonable under this subsection if the court finds
7 that the guardian or temporary guardian has taken care of and
8 managed the estate in compliance with the standards of this
9 chapter.

10 (c) On application of an interested person or on its own
11 motion, the court may review and modify the amount of compensation
12 authorized under Subsection (b) of this section [~~if the court finds~~
13 ~~that the amount is unreasonably low when considering the services~~
14 ~~rendered as guardian or temporary guardian)].~~

15 (f) The [~~Except as provided by Subsection (c) of this~~
16 ~~section for a fee that is determined by the court to be unreasonably~~
17 ~~low, the]~~ aggregate fee of the guardian of the person and guardian
18 of the estate may not exceed an amount equal to five percent of the
19 gross income of the ward's estate plus five percent of all money
20 paid out of the estate.

21 SECTION 3. Section 666, Texas Probate Code, is amended to
22 read as follows:

23 Sec. 666. EXPENSES ALLOWED. A guardian is entitled to be
24 reimbursed from the guardianship estate for all necessary and
25 reasonable expenses incurred in performing any duty as a guardian,
26 including reimbursement for the payment of reasonable attorney's
27 fees necessarily incurred by the guardian in connection with the

1 management of the estate or any other guardianship matter. A
2 guardian is prohibited from serving in any other capacity other
3 than as guardian in a guardianship proceeding. A guardian who is an
4 attorney or the guardian's law firm or partner may not be hired to
5 represent the ward, guardian, or guardianship in a legal or other
6 capacity with respect to a matter relating to the guardianship.

7 SECTION 4. Section 677(a), Texas Probate Code, is amended
8 to read as follows:

9 (a) The court shall appoint a guardian for a person other
10 than a minor according to the circumstances and considering the
11 best interests of the ward. If the court finds that two or more
12 eligible persons are equally entitled to be appointed guardian, the
13 guardian shall be chosen in the following order of preference:

14 (1) the ward's spouse is entitled to the guardianship
15 in preference to any other person if the spouse is one of the
16 eligible persons;

17 (2) the eligible person nearest of kin to the ward is
18 entitled to the guardianship if the ward's spouse is not one of the
19 eligible persons; or

20 (3) a private professional guardian [~~the court shall~~
21 ~~appoint the eligible person who is best qualified to serve as~~
22 ~~guardian if:~~

23 [~~(A) the persons entitled to serve under~~
24 ~~Subdivisions (1) and (2) of this section refuse to serve,~~

25 [~~(B) two or more persons entitled to serve under~~
26 ~~Subdivision (2) of this section are related in the same degree of~~
27 ~~kinship to the ward, or~~

1 ~~[(C) neither the ward's spouse or any person~~
2 ~~related to the ward is an eligible person].~~

3 SECTION 5. Section 665(d), Texas Probate Code, is repealed.

4 SECTION 6. This Act takes effect September 1, 2007.