

1-1 By: Hartnett (Senate Sponsor - Watson) H.B. No. 3080
1-2 (In the Senate - Received from the House April 29, 2009;
1-3 May 4, 2009, read first time and referred to Committee on
1-4 Jurisprudence; May 21, 2009, reported favorably by the following
1-5 vote: Yeas 5, Nays 0; May 21, 2009, sent to printer.)

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

1-8 relating to guardianships and other matters relating to
1-9 incapacitated persons.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Section 665, Texas Probate Code, is amended by
1-12 amending Subsections (a), (b), (c), and (d) and adding Subsections
1-13 (a-1) and (d-1) to read as follows:

1-14 (a) The court may authorize compensation for a guardian or a
1-15 temporary guardian serving as a guardian of the person alone from
1-16 available funds of the ward's estate or other funds available for
1-17 that purpose. The court may [~~shall~~] set the compensation in an
1-18 amount not exceeding five percent of the ward's gross income.

1-19 (a-1) In determining whether to authorize compensation for
1-20 a guardian under this section, the court shall consider the ward's
1-21 monthly income from all sources and whether the ward receives
1-22 medical assistance under the state Medicaid program.

1-23 (b) The guardian or temporary guardian of an estate is
1-24 entitled to reasonable compensation on application to the court at
1-25 the time the court approves any annual accounting or final
1-26 accounting filed by the guardian or temporary guardian under this
1-27 chapter. A fee of five percent of the gross income of the ward's
1-28 estate and five percent of all money paid out of the estate, subject
1-29 to the award of an additional amount under Subsection (c) of this
1-30 section following a review under Subsection (c)(1) of this section,
1-31 is considered reasonable under this subsection if the court finds
1-32 that the guardian or temporary guardian has taken care of and
1-33 managed the estate in compliance with the standards of this
1-34 chapter.

1-35 (c) On application of an interested person or on its own
1-36 motion, the court may:

1-37 (1) review and modify the amount of compensation
1-38 authorized under Subsection (a) or [~~Subsection~~] (b) of this section
1-39 if the court finds that the amount is unreasonably low when
1-40 considering the services rendered as guardian or temporary
1-41 guardian; and

1-42 (2) authorize compensation for the guardian or
1-43 temporary guardian in an estimated amount the court finds
1-44 reasonable that is to be paid on a quarterly basis before the
1-45 guardian or temporary guardian files an annual or final accounting
1-46 if the court finds that delaying the payment of compensation until
1-47 the guardian or temporary guardian files an accounting would create
1-48 a hardship for the guardian or temporary guardian.

1-49 (d) A finding of unreasonably low compensation may not be
1-50 established under Subsection (c) of this section solely because the
1-51 amount of compensation is less than the usual and customary charges
1-52 of the person or entity serving as guardian or temporary guardian.
1-53 A court that authorizes payment of estimated quarterly compensation
1-54 under Subsection (c) of this section may later reduce or eliminate
1-55 the guardian's or temporary guardian's compensation if, on review
1-56 of an annual or final accounting or otherwise, the court finds that
1-57 the guardian or temporary guardian:

1-58 (1) received compensation in excess of the amount
1-59 permitted under this section;

1-60 (2) has not adequately performed the duties required
1-61 of a guardian or temporary guardian under this chapter; or

1-62 (3) has been removed for cause.

1-63 (d-1) If a court reduces or eliminates a guardian's or
1-64 temporary guardian's compensation as provided by Subsection (d) of

2-1 this section, the guardian or temporary guardian and the surety on
2-2 the guardian's or temporary guardian's bond are liable to the
2-3 guardianship estate for any excess compensation received.

2-4 SECTION 2. The heading to Section 665B, Texas Probate Code,
2-5 is amended to read as follows:

2-6 Sec. 665B. COMPENSATION OF ATTORNEY REPRESENTING APPLICANT
2-7 [~~CERTAIN ATTORNEYS~~].

2-8 SECTION 3. Section 665B(a), Texas Probate Code, is amended
2-9 to read as follows:

2-10 (a) A court that creates a guardianship or creates a
2-11 management trust under Section 867 of this code for a ward under
2-12 this chapter, on request of a person who filed an application to be
2-13 appointed guardian of the proposed ward, an application [~~or~~]
2-14 for the appointment of another suitable person as guardian of the
2-15 proposed ward, or an application for the creation of the management
2-16 trust, may authorize compensation of an attorney who represents the
2-17 person who filed the application at the application hearing,
2-18 regardless of whether the person is appointed the ward's guardian
2-19 or whether a management trust is created, from:

2-20 (1) available funds of the ward's estate or management
2-21 trust, if created; or

2-22 (2) the county treasury if:

2-23 (A) the ward's estate or, if created, management
2-24 trust, is insufficient to pay for the services provided by the
2-25 attorney; and

2-26 (B) funds in the county treasury are budgeted for
2-27 that purpose.

2-28 SECTION 4. Subpart H, Part 2, Chapter XIII, Texas Probate
2-29 Code, is amended by adding Section 665D to read as follows:

2-30 Sec. 665D. COMPENSATION AND PAYMENT OF ATTORNEY'S FEES OF
2-31 ATTORNEY SERVING AS GUARDIAN. (a) Notwithstanding any other
2-32 provision of this subpart, an attorney who serves as guardian and
2-33 who also provides legal services in connection with the
2-34 guardianship is not entitled to compensation for the guardianship
2-35 services or payment of attorney's fees for the legal services from
2-36 the ward's estate or other funds available for that purpose unless
2-37 the attorney files with the court a detailed description of the
2-38 services performed that identifies which of the services provided
2-39 were guardianship services and which were legal services.

2-40 (b) An attorney described by Subsection (a) of this section
2-41 is not entitled to payment of attorney's fees for guardianship
2-42 services that are not legal services.

2-43 (c) The court shall set the compensation of an attorney
2-44 described by Subsection (a) of this section for the performance of
2-45 guardianship services in accordance with Section 665 of this code.
2-46 The court shall set attorney's fees for an attorney described by
2-47 Subsection (a) of this section for legal services provided in
2-48 accordance with Sections 665A, 665B, and 666 of this code.

2-49 SECTION 5. Section 677A, Texas Probate Code, is amended by
2-50 amending Subsection (g) and adding Subsections (i) and (j) to read
2-51 as follows:

2-52 (g) A declaration and affidavit may be in any form adequate
2-53 to clearly indicate the declarant's intention to designate a
2-54 guardian for the declarant's child. The following form may, but
2-55 need not, be used:

2-56 DECLARATION OF APPOINTMENT OF GUARDIAN FOR MY CHILDREN IN THE EVENT
2-57 OF MY DEATH OR INCAPACITY

2-58 I, _____, make this Declaration to appoint as guardian
2-59 for my child or children, listed as follows, in the event of my
2-60 death or incapacity:

2-61 _____
2-62 _____
2-63 _____

2-64 (add blanks as appropriate)

2-65 I designate _____ to serve as guardian of the person of
2-66 my (child or children), _____ as first alternate guardian of
2-67 the person of my (child or children), _____ as second
2-68 alternate guardian of the person of my (child or children), and
2-69 _____ as third alternate guardian of the person of my (child or

3-1 children).

3-2 I direct that the guardian of the person of my (child or
3-3 children) serve (with or without) bond.

3-4 (If applicable) I designate _____ to serve as guardian
3-5 of the estate of my (child or children), _____ as first
3-6 alternate guardian of the estate of my (child or children),
3-7 _____ as second alternate guardian of the estate of my (child
3-8 or children), and _____ as third alternate guardian of the
3-9 estate of my (child or children).

3-10 If any guardian or alternate guardian dies, does not qualify,
3-11 or resigns, the next named alternate guardian becomes guardian of
3-12 my (child or children).

3-13 Signed this _____ day of _____, 20__.

3-14 _____
3-15
3-16 Declarant

3-17 _____
3-18 Witness Witness

3-19 SELF-PROVING AFFIDAVIT

3-20 Before me, the undersigned authority, on this date personally
3-21 appeared _____, the declarant, and _____ and _____
3-22 as witnesses, and all being duly sworn, the declarant said that the
3-23 above instrument was his or her Declaration of Appointment of
3-24 Guardian for the Declarant's Children in the Event of Declarant's
3-25 Death or Incapacity and that the declarant had made and executed it
3-26 for the purposes expressed in the declaration. The witnesses
3-27 declared to me that they are each 14 years of age or older, that they
3-28 saw the declarant sign the declaration, that they signed the
3-29 declaration as witnesses, and that the declarant appeared to them
3-30 to be of sound mind.

3-31 _____
3-32
3-33 Declarant

3-34 _____
3-35
3-36 Affiant Affiant

3-37 Subscribed and sworn to before me by _____, the above
3-38 named declarant, and _____ (names of affiants)
3-39 affiants, on this ___ day of _____, 20__.

3-40 _____
3-41 Notary Public in and for the
3-42 State of Texas
3-43 My Commission expires:
3-44 _____

3-45 (i) As an alternative to the self-proving affidavit
3-46 authorized by Subsection (g) of this section, a declaration of
3-47 appointment of a guardian for the declarant's children in the event
3-48 of the declarant's death or incapacity may be simultaneously
3-49 executed, attested, and made self-proved by including the following
3-50 in substantially the same form and with substantially the same
3-51 contents:

3-52 I, _____, as declarant, after being duly
3-53 sworn, declare to the undersigned witnesses and to the undersigned
3-54 authority that this instrument is my Declaration of Appointment of
3-55 Guardian for My Children in the Event of My Death or Incapacity, and
3-56 that I have made and executed it for the purposes expressed in the
3-57 declaration. I now sign this declaration in the presence of the
3-58 attesting witnesses and the undersigned authority on this ___ day
3-59 of _____, 20__.

3-60 _____
3-61 Declarant

3-62 The undersigned, _____ and
3-63 _____, each being 14 years of age or older, after
3-64 being duly sworn, declare to the declarant and to the undersigned
3-65 authority that the declarant declared to us that this instrument is
3-66 the declarant's Declaration of Appointment of Guardian for the
3-67 Declarant's Children in the Event of Declarant's Death or
3-68 Incapacity and that the declarant executed it for the purposes

4-1 expressed in the declaration. The declarant then signed this
4-2 declaration and we believe the declarant to be of sound mind. We now
4-3 sign our names as attesting witnesses on this _____ day of
4-4 _____, 20____.

4-5 _____
4-6 Witness
4-7 _____

4-8 Witness
4-9 _____

4-10 Subscribed and sworn to before me by the above named
4-11 declarant, and affiants, this _____ day of _____, 20____.

4-12 _____
4-13 Notary Public in and for the State of Texas
4-14 My Commission Expires: _____

4-15 (j) A declaration that is executed as provided by Subsection
4-16 (i) of this section is considered self-proved to the same extent a
4-17 declaration executed with a self-proving affidavit under
4-18 Subsection (g) of this section is considered self-proved.

4-19 SECTION 6. Section 679, Texas Probate Code, is amended by
4-20 amending Subsection (i) and adding Subsections (k) and (l) to read
4-21 as follows:

4-22 (i) A declaration and affidavit may be in any form adequate
4-23 to clearly indicate the declarant's intention to designate a
4-24 guardian. The following form may, but need not, be used:

4-25 DECLARATION OF GUARDIAN IN THE EVENT OF LATER INCAPACITY OR NEED OF
4-26 GUARDIAN

4-27 I, _____, make this Declaration of Guardian, to operate
4-28 if the need for a guardian for me later arises.

4-29 1. I designate _____ to serve as guardian of my person,
4-30 _____ as first alternate guardian of my person, _____ as
4-31 second alternate guardian of my person, and _____ as third
4-32 alternate guardian of my person.

4-33 2. I designate _____ to serve as guardian of my estate,
4-34 _____ as first alternate guardian of my estate, _____ as
4-35 second alternate guardian of my estate, and _____ as third
4-36 alternate guardian of my estate.

4-37 3. If any guardian or alternate guardian dies, does not
4-38 qualify, or resigns, the next named alternate guardian becomes my
4-39 guardian.

4-40 4. I expressly disqualify the following persons from serving
4-41 as guardian of my person: _____, _____, and _____.

4-42 5. I expressly disqualify the following persons from serving
4-43 as guardian of my estate: _____, _____, and _____.

4-44 Signed this ___ day of _____, 20____.

4-45 _____
4-46 Declarant

4-47 _____
4-48 Witness

4-49 _____
4-50 Witness

4-51 SELF-PROVING AFFIDAVIT

4-52 Before me, the undersigned authority, on this date personally
4-53 appeared _____, the declarant, and _____ and
4-54 _____ as witnesses, and all being duly sworn, the declarant
4-55 said that the above instrument was his or her Declaration of
4-56 Guardian and that the declarant had made and executed it for the
4-57 purposes expressed in the declaration. The witnesses declared to
4-58 me that they are each 14 years of age or older, that they saw the
4-59 declarant sign the declaration, that they signed the declaration as
4-60 witnesses, and that the declarant appeared to them to be of sound
4-61 mind.

4-62 _____
4-63 Declarant

4-64 _____
4-65 Affiant

4-66 _____
4-67 Affiant

4-68 Subscribed and sworn to before me by the above named
4-69 declarant and affiants on this _____ day of _____, 20____.

5-1
5-2
5-3
5-4
5-5 (k) As an alternative to the self-proving affidavit
5-6 authorized by Subsection (i) of this section, a Declaration of
5-7 Guardian in the Event of Later Incapacity or Need of Guardian may be
5-8 simultaneously executed, attested, and made self-proved by
5-9 including the following in substantially the same form and with
5-10 substantially the same contents:

5-11 I, _____, as declarant, after being duly
5-12 sworn, declare to the undersigned witnesses and to the undersigned
5-13 authority that this instrument is my Declaration of Guardian in the
5-14 Event of Later Incapacity or Need of Guardian, and that I have made
5-15 and executed it for the purposes expressed in the declaration. I now
5-16 sign this declaration in the presence of the attesting witnesses
5-17 and the undersigned authority on this ____ day of _____, 20__.

5-18
5-19
5-20 Declarant

5-21 The undersigned, _____ and
5-22 _____, each being 14 years of age or older, after
5-23 being duly sworn, declare to the declarant and to the undersigned
5-24 authority that the declarant declared to us that this instrument is
5-25 the declarant's Declaration of Guardian in the Event of Later
5-26 Incapacity or Need of Guardian and that the declarant executed it
5-27 for the purposes expressed in the declaration. The declarant then
5-28 signed this declaration and we believe the declarant to be of sound
5-29 mind. We now sign our names as attesting witnesses on this ____ day
5-30 of _____, 20__.

5-31 Witness

5-32
5-33 Witness

5-34 Subscribed and sworn to before me by the above named
5-35 declarant, and affiants, this ____ day of _____, 20__.

5-36
5-37 Notary Public in and for the State of Texas
5-38 My Commission Expires: _____

5-39 (l) A declaration that is executed as provided by Subsection
5-40 (k) of this section is considered self-proved to the same extent a
5-41 declaration executed with a self-proving affidavit under
5-42 Subsection (i) of this section is considered self-proved.

5-43 SECTION 7. Section 767(b), Texas Probate Code, is amended
5-44 to read as follows:

5-45 (b) Notwithstanding Subsection (a)(4) of this section, a
5-46 guardian of the person of a ward has the power to personally
5-47 transport the ward or to direct the ward's transport by emergency
5-48 medical services or other means to an inpatient mental health
5-49 facility for a preliminary examination in accordance with
5-50 Subchapters A and C, Chapter 573, Health and Safety Code.

5-51 SECTION 8. Sections 867(b-3), (c), (d), and (e), Texas
5-52 Probate Code, are amended to read as follows:

5-53 (b-3) The court shall conduct a hearing to determine
5-54 incapacity under Subsection (b-1) of this section using the same
5-55 procedures and evidentiary standards as required in a hearing for
5-56 the appointment of a guardian for a proposed ward. The court shall
5-57 appoint an attorney ad litem and, if necessary, may appoint a
5-58 guardian ad litem, to represent the interests of the alleged
5-59 incapacitated person in the proceeding.

5-60 (c) Subject to Subsection (d) of this section, [If the value
5-61 of the trust's principal is \$50,000 or less, the court may appoint a
5-62 person other than a financial institution to serve as trustee of the
5-63 trust only] if the court finds that it is [the appointment to be] in
5-64 the ward's or incapacitated person's best interests, the court may
5-65 appoint a person or entity that meets the requirements of
5-66 Subsection (e) of this section to serve as trustee of the trust
5-67 instead of appointing a financial institution to serve in that

6-1 capacity.

6-2 (d) If the value of the trust's principal is more than
6-3 \$150,000 [~~\$50,000~~], the court may appoint a person or entity other
6-4 than a financial institution in accordance with Subsection (c) of
6-5 this section to serve as trustee of the trust only if the court, in
6-6 addition to the finding required by that subsection, finds that the
6-7 applicant for the creation of the trust, after the exercise of due
6-8 diligence, has been unable to find a+

6-9 ~~[(1) no] financial institution in the geographic area~~
6-10 ~~[is] willing to serve as trustee[, and~~
6-11 ~~[(2) the appointment is in the ward's or incapacitated~~
6-12 ~~person's best interests].~~

6-13 (e) The following are eligible for appointment as trustee
6-14 under Subsection (c) or (d) of this section:

6-15 (1) an individual, including an individual who is
6-16 certified as a private professional guardian;

6-17 (2) a nonprofit corporation qualified to serve as a
6-18 guardian; and

6-19 (3) a guardianship program [~~Before making a finding~~
6-20 ~~that there is no financial institution willing to serve as trustee~~
6-21 ~~under Subsection (d)(1) of this section, the court must check any~~
6-22 ~~list of corporate fiduciaries located in this state that is~~
6-23 ~~maintained at the office of the presiding judge of the statutory~~
6-24 ~~probate courts or at the principal office of the Texas Bankers~~
6-25 ~~Association].~~

6-26 SECTION 9. Section 868(a), Texas Probate Code, is amended
6-27 to read as follows:

6-28 (a) Except as provided by Subsection (d) of this section, a
6-29 trust created under Section 867 of this code must provide that:

6-30 (1) the ward or incapacitated person is the sole
6-31 beneficiary of the trust;

6-32 (2) the trustee may disburse an amount of the trust's
6-33 principal or income as the trustee determines is necessary to
6-34 expend for the health, education, support, or maintenance of the
6-35 ward or incapacitated person;

6-36 (3) the income of the trust that the trustee does not
6-37 disburse under Subdivision (2) of this subsection must be added to
6-38 the principal of the trust;

6-39 (4) if the trustee is a corporate fiduciary, the
6-40 trustee serves without giving a bond; and

6-41 (5) the trustee, [~~on annual application to the court~~
6-42 ~~and] subject to the court's approval, is entitled to receive
6-43 reasonable compensation for services that the trustee provided to
6-44 the ward or incapacitated person as the ward's or incapacitated
6-45 person's trustee that is:~~

6-46 (A) to be paid from the trust's income,
6-47 principal, or both; and

6-48 (B) determined, paid, reduced, and eliminated in
6-49 the same manner as compensation of a guardian of an estate under
6-50 Section 665 of this code.

6-51 SECTION 10. Subpart N, Part 4, Chapter XIII, Texas Probate
6-52 Code, is amended by adding Section 868C to read as follows:

6-53 Sec. 868C. TRANSFER OF MANAGEMENT TRUST PROPERTY TO POOLED
6-54 TRUST.

6-55 (a) If the court determines that it is in the ward's or
6-56 incapacitated person's best interests, the court may order the
6-57 transfer of all property in a management trust created under
6-58 Section 867 of this code to a subaccount of a pooled trust
6-59 established in accordance with Subpart I, Part 5, of this chapter.
6-60 The transfer of property from the management trust to the
6-61 subaccount of the pooled trust shall be treated as a continuation of
6-62 the management trust and may not be treated as the establishment of
6-63 a new trust for purposes of 42 U.S.C. Section 1396p(d)(4)(A) or (C)
6-64 or otherwise for purposes of the ward's or incapacitated person's
6-65 eligibility for medical assistance under Chapter 32, Human
6-66 Resources Code.

6-67 (b) The court may not allow termination of the management
6-68 trust created under Section 867 of this code from which property is
6-69 transferred under this section until all of the property in the
6-70 management trust has been transferred to the subaccount of the

7-1 pooled trust.

7-2 SECTION 11. Section 870(b), Texas Probate Code, is amended
7-3 to read as follows:

7-4 (b) If the ward or incapacitated person is not a minor, the
7-5 trust terminates on the date the court determines that continuing
7-6 the trust is no longer in the ward's or incapacitated person's best
7-7 interests, subject to Section 868C(b) of this code, or on the death
7-8 of the ward or incapacitated person.

7-9 SECTION 12. Section 875(k), Texas Probate Code, is amended
7-10 to read as follows:

7-11 (k) If an application for a temporary guardianship, for the
7-12 conversion of a temporary guardianship to a permanent guardianship,
7-13 or for a permanent guardianship is challenged or contested, the
7-14 court, on the court's own motion or on the motion of any interested
7-15 party, may appoint a [new] temporary guardian or grant a temporary
7-16 restraining order under Rule 680, Texas Rules of Civil Procedure,
7-17 or both, without issuing additional citation if the court finds
7-18 that the appointment or the issuance of the order is necessary to
7-19 protect the proposed ward or the proposed ward's estate.

7-20 SECTION 13. Part 5, Chapter XIII, Texas Probate Code, is
7-21 amended by adding Subpart I to read as follows:

7-22 SUBPART I. ESTABLISHMENT OF POOLED TRUST SUBACCOUNTS; TRANSFERS

7-23 Sec. 910. DEFINITIONS. In this subpart:

7-24 (1) "Beneficiary" means a minor, a disabled person, or
7-25 any other incapacitated person for whom a subaccount is
7-26 established.

7-27 (2) "Medical assistance" means benefits and services
7-28 under the medical assistance program administered under Chapter 32,
7-29 Human Resources Code.

7-30 (3) "Pooled trust" means a trust that meets the
7-31 requirements of 42 U.S.C. Section 1396p(d)(4)(C) for purposes of
7-32 exempting the trust from the applicability of 42 U.S.C. Section
7-33 1396p(d) in determining the eligibility of a person who is disabled
7-34 for medical assistance.

7-35 (4) "Subaccount" means an account in a pooled trust
7-36 established solely for the benefit of a beneficiary.

7-37 Sec. 911. APPLICATION. A person interested in the welfare
7-38 of a minor, a disabled person, or any other incapacitated person may
7-39 apply to the court for the establishment of a subaccount for the
7-40 benefit of the minor, disabled person, or other incapacitated
7-41 person as the beneficiary.

7-42 Sec. 912. APPOINTMENT OF ATTORNEY AD LITEM. The court shall
7-43 appoint an attorney ad litem for a person who is a minor or has a
7-44 mental disability and who is the subject of an application under
7-45 Section 911 of this code. The attorney ad litem is entitled to a
7-46 reasonable fee and reimbursement of expenses to be paid from the
7-47 person's property.

7-48 Sec. 913. TRANSFER. If the court finds that it is in the
7-49 best interests of a person who is the subject of an application
7-50 under Section 911 of this code, the court may order:

7-51 (1) the establishment of a subaccount of which the
7-52 person is the beneficiary; and

7-53 (2) the transfer to the subaccount of any of the
7-54 person's property on hand or accruing to the person.

7-55 Sec. 914. TERMS OF SUBACCOUNT. Unless the court orders
7-56 otherwise, the terms governing the subaccount must provide that:

7-57 (1) the subaccount terminates on the earliest of the
7-58 date of:

7-59 (A) the beneficiary's 18th birthday, if the
7-60 beneficiary is not disabled on that date and was a minor at the time
7-61 the subaccount was established;

7-62 (B) the beneficiary's death; or

7-63 (C) an order of the court terminating the
7-64 subaccount; and

7-65 (2) on termination, any property remaining in the
7-66 beneficiary's subaccount after making any required payments to
7-67 satisfy the amounts of medical assistance reimbursement claims for
7-68 medical assistance provided to the beneficiary under this state's
7-69 medical assistance program and other states' medical assistance

8-1 programs shall be distributed to:

8-2 (A) the beneficiary, if on the date of
8-3 termination the beneficiary is living and is not incapacitated;

8-4 (B) the beneficiary's guardian, if on the date of
8-5 termination the beneficiary is living and is incapacitated; or

8-6 (C) the personal representative of the
8-7 beneficiary's estate, if the beneficiary is deceased on the date of
8-8 termination.

8-9 Sec. 915. JURISDICTION EXCLUSIVE. Notwithstanding any
8-10 other law, the court that orders the establishment of a subaccount
8-11 for a beneficiary has exclusive jurisdiction of a subsequent
8-12 proceeding or action that relates to both the beneficiary and the
8-13 subaccount, and the proceeding or action may only be brought in that
8-14 court.

8-15 Sec. 916. FEES AND ACCOUNTING. (a) The manager or trustee
8-16 of a pooled trust may:

8-17 (1) assess fees against a subaccount of that pooled
8-18 trust established under this subpart in accordance with the
8-19 manager's or trustee's standard fee structure; and

8-20 (2) pay those fees from the subaccount.

8-21 (b) If required by the court, the manager or trustee of the
8-22 pooled trust shall file a copy of the annual report of account with
8-23 the court clerk.

8-24 SECTION 14. (a) Except as otherwise provided by this
8-25 section, the changes in law made by this Act apply to:

8-26 (1) a guardianship created before, on, or after the
8-27 effective date of this Act; and

8-28 (2) an application for a guardianship pending on, or
8-29 filed on or after, the effective date of this Act.

8-30 (b) Sections 665, 665B, and 868, Texas Probate Code, as
8-31 amended by this Act, and Section 665D, Texas Probate Code, as added
8-32 by this Act, apply to the payment, reduction, or elimination of
8-33 compensation for services performed on or after the effective date
8-34 of this Act. Payment, reduction, or elimination of compensation for
8-35 services performed before the effective date of this Act is
8-36 governed by the law in effect on the date the services were
8-37 performed, and the former law is continued in effect for that
8-38 purpose.

8-39 (c) Sections 867 and 870, Texas Probate Code, as amended by
8-40 this Act, and Section 868C, Texas Probate Code, as added by this
8-41 Act, apply to an application for the creation, modification, or
8-42 termination of a management trust under Subpart N, Part 4, Chapter
8-43 XIII, Texas Probate Code, that is filed on or after the effective
8-44 date of this Act. An application for the creation, modification, or
8-45 termination of a management trust filed before the effective date
8-46 of this Act is governed by the law in effect on the date the
8-47 application was filed, and the former law is continued in effect for
8-48 that purpose.

8-49 (d) Subpart I, Part 5, Chapter XIII, Texas Probate Code, as
8-50 added by this Act, applies to an application for the establishment
8-51 of a subaccount of a pooled trust that is filed on or after the
8-52 effective date of this Act.

8-53 SECTION 15. This Act takes effect September 1, 2009.

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