

By: Hartnett

H.B. No. 1837

A BILL TO BE ENTITLED

AN ACT

relating to guardianships and alternatives to guardianship for persons who have physical disabilities or who are incapacitated.

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

SECTION 1. Section 601(25), Texas Probate Code, is amended to read as follows:

(25) The term [~~"Proceedings in guardianship," "guardianship matter," "guardianship matters,"~~] "guardianship proceeding" means [~~proceeding," and "proceedings for guardianship" are synonymous and include~~] a matter or proceeding related [~~relating~~] to a guardianship or any other matter covered [~~addressed~~] by this chapter, including:

(A) the appointment of a guardian of a minor or other incapacitated person, including an incapacitated adult for whom another court obtained continuing, exclusive jurisdiction in a suit affecting the parent-child relationship when the person was a child;

(B) an application, petition, or motion regarding guardianship or an alternative to guardianship under this chapter;

(C) a mental health action; and

(D) an application, petition, or motion regarding a trust created under Section 867 of this code.

SECTION 2. Section 605, Texas Probate Code, is amended to

1 read as follows:

2           Sec. 605. GENERAL PROBATE [COUNTY] COURT JURISDICTION IN  
3 GUARDIANSHIP PROCEEDINGS; APPEALS.    (a) All guardianship  
4 proceedings must be filed and heard in a court exercising original  
5 probate jurisdiction. The court exercising original probate  
6 jurisdiction also has jurisdiction of all matters related to the  
7 guardianship proceeding as specified in Section 606A of this code  
8 for that type of court.

9           (b) A probate court may exercise pendent and ancillary  
10 jurisdiction as necessary to promote judicial efficiency and  
11 economy.

12           (c) A final order issued by a probate court is appealable to  
13 the court of appeals.    ~~[The county court has the general~~  
14 ~~jurisdiction of a probate court. The county court shall appoint~~  
15 ~~guardians of minors and other incapacitated persons, grant letters~~  
16 ~~of guardianship, settle accounts of guardians, and transact all~~  
17 ~~business appertaining to estates subject to guardianship,~~  
18 ~~including the settlement, partition, and distribution of the~~  
19 ~~estates. The county court may also enter other orders as may be~~  
20 ~~authorized under this chapter.]~~

21           SECTION 3. Subpart A, Part 2, Chapter XIII, Texas Probate  
22 Code, is amended by adding Sections 606A, 607A, 607B, 607C, 607D,  
23 and 607E to read as follows:

24           Sec. 606A. MATTERS RELATED TO GUARDIANSHIP PROCEEDING.

25           (a) For purposes of this code, in a county in which there is no  
26 statutory probate court, a matter related to a guardianship  
27 proceeding includes:

- 1           (1) the granting of letters of guardianship;  
2           (2) the settling of an account of a guardian and all  
3 other matters relating to the settlement, partition, or  
4 distribution of a ward's estate;  
5           (3) a claim brought by or against a guardianship  
6 estate;  
7           (4) an action for trial of title to real property that  
8 is guardianship estate property, including the enforcement of a  
9 lien against the property;  
10          (5) an action for trial of the right of property that  
11 is guardianship estate property;  
12          (6) after a guardianship of the estate of a ward is  
13 required to be settled as provided by Section 745 of this code:  
14           (A) an action brought by or on behalf of the  
15 former ward against a former guardian of the ward for alleged  
16 misconduct arising from the performance of the person's duties as  
17 guardian;  
18           (B) an action calling on the surety of a guardian  
19 or former guardian to perform in place of the guardian or former  
20 guardian, which may include the award of a judgment against the  
21 guardian or former guardian in favor of the surety;  
22           (C) an action against a former guardian of the  
23 former ward that is brought by a surety that is called on to perform  
24 in place of the former guardian;  
25           (D) a claim for the payment of compensation,  
26 expenses, and court costs, and any other matter authorized under  
27 Subpart H, Part 2, of this chapter; and

1           (E) a matter related to an authorization made or  
2 duty performed by a guardian under Subpart C, Part 4, of this  
3 chapter; and

4           (7) the appointment of a trustee for a trust created  
5 under Section 867 of this code, the settling of an account of the  
6 trustee, and all other matters relating to the trust.

7           (b) For purposes of this code, in a county in which there is  
8 a statutory probate court, a matter related to a guardianship  
9 proceeding includes:

10           (1) all matters and actions described in Subsection  
11 (a) of this section;

12           (2) a suit, action, or application filed against or on  
13 behalf of a guardianship or a trustee of a trust created under  
14 Section 867 of this code; and

15           (3) a cause of action in which a guardian in a  
16 guardianship pending in the statutory probate court is a party.

17           Sec. 607A. ORIGINAL JURISDICTION FOR GUARDIANSHIP  
18 PROCEEDINGS. (a) In a county in which there is no statutory  
19 probate court or county court at law exercising original probate  
20 jurisdiction, the county court has original jurisdiction of  
21 guardianship proceedings.

22           (b) In a county in which there is no statutory probate  
23 court, but in which there is a county court at law exercising  
24 original probate jurisdiction, the county court at law exercising  
25 original probate jurisdiction and the county court have concurrent  
26 original jurisdiction of guardianship proceedings, unless  
27 otherwise provided by law. The judge of a county court may hear

1 guardianship proceedings while sitting for the judge of any other  
2 county court.

3 (c) In a county in which there is a statutory probate court,  
4 the statutory probate court has original jurisdiction of  
5 guardianship proceedings.

6 Sec. 607B. JURISDICTION OF CONTESTED GUARDIANSHIP  
7 PROCEEDING IN COUNTY WITH NO STATUTORY PROBATE COURT OR COUNTY  
8 COURT AT LAW. (a) In a county in which there is no statutory  
9 probate court or county court at law exercising original probate  
10 jurisdiction, when a matter in a guardianship proceeding is  
11 contested, the judge of the county court may, on the judge's own  
12 motion, or shall, on the motion of any party to the proceeding,  
13 according to the motion:

14 (1) request the assignment of a statutory probate  
15 court judge to hear the contested matter, as provided by Section  
16 25.0022, Government Code; or

17 (2) transfer the contested matter to the district  
18 court, which may then hear the contested matter as if originally  
19 filed in the district court.

20 (b) If a party to a guardianship proceeding files a motion  
21 for the assignment of a statutory probate court judge to hear a  
22 contested matter in the proceeding before the judge of the county  
23 court transfers the contested matter to a district court under this  
24 section, the county judge shall grant the motion for the assignment  
25 of a statutory probate court judge and may not transfer the matter  
26 to the district court unless the party withdraws the motion.

27 (c) If a judge of a county court requests the assignment of a

1 statutory probate court judge to hear a contested matter in a  
2 guardianship proceeding on the judge's own motion or on the motion  
3 of a party to the proceeding as provided by this section, the judge  
4 may request that the statutory probate court judge be assigned to  
5 the entire proceeding on the judge's own motion or on the motion of  
6 a party.

7 (d) If a judge of a county court transfers a contested  
8 matter in a guardianship proceeding to a district court on the  
9 judge's own motion or on the motion of a party to the proceeding as  
10 provided by this section, the judge may transfer the entire  
11 proceeding to that court on the judge's own motion or on the motion  
12 of a party. A district court to which an entire guardianship  
13 proceeding is transferred as provided by this subsection may hear  
14 the proceeding as if originally filed in that court.

15 (e) A party to a guardianship proceeding may file a motion  
16 for the assignment of a statutory probate court judge under this  
17 section before a matter in the proceeding becomes contested, and  
18 the motion is given effect as a motion for assignment of a statutory  
19 probate court judge under Subsection (a) of this section if the  
20 matter later becomes contested.

21 (f) Notwithstanding any other law, a transfer of a contested  
22 matter in a guardianship proceeding to a district court under any  
23 authority other than the authority provided by this section:

- 24 (1) is disregarded for purposes of this section; and  
25 (2) does not defeat the right of a party to the  
26 proceeding to have the matter assigned to a statutory probate court  
27 judge in accordance with this section.

1       (g) A statutory probate court judge assigned to a contested  
2 matter in a guardianship proceeding or to the entire proceeding  
3 under this section has the jurisdiction and authority granted to a  
4 statutory probate court by this code. A statutory probate court  
5 judge assigned to hear only the contested matter in a guardianship  
6 proceeding shall, on resolution of the matter, including an appeal  
7 of the matter, return the matter to the county court for further  
8 proceedings not inconsistent with the orders of the statutory  
9 probate court or court of appeals, as applicable. A statutory  
10 probate court judge assigned to the entire guardianship proceeding  
11 as provided by Subsection (c) of this section shall, on resolution  
12 of the contested matter in the proceeding, including an appeal of  
13 the matter, return the entire proceeding to the county court for  
14 further proceedings not inconsistent with the orders of the  
15 statutory probate court or court of appeals, as applicable.

16       (h) A district court to which a contested matter in a  
17 guardianship proceeding or the entire proceeding is transferred  
18 under this section has the jurisdiction and authority granted to a  
19 statutory probate court by this code. A district court to which  
20 only the contested matter is transferred shall, on resolution of  
21 the matter, including an appeal of the matter, return the matter to  
22 the county court for further proceedings not inconsistent with the  
23 orders of the district court or court of appeals, as applicable. A  
24 district court to which an entire guardianship proceeding is  
25 transferred as provided by Subsection (d) of this section shall, on  
26 resolution of the contested matter in the proceeding, including an  
27 appeal of the matter, return the entire proceeding to the county

1 court for further proceedings not inconsistent with the orders of  
2 the district court or court of appeals, as applicable.

3 (i) If only the contested matter in a guardianship  
4 proceeding is assigned to a statutory probate court judge or  
5 transferred to a district court under this section, the county  
6 court shall continue to exercise jurisdiction over the management  
7 of the guardianship, other than a contested matter, until final  
8 disposition of the contested matter is made in accordance with this  
9 section. Any matter related to a guardianship proceeding in which  
10 only a contested matter is transferred to a district court may be  
11 brought in the district court. The district court in which a  
12 matter related to the proceeding is filed may, on the court's own  
13 motion or on the motion of any party, find that the matter is not a  
14 contested matter and transfer the matter to the county court with  
15 jurisdiction of the management of the guardianship.

16 (j) If a contested matter in a guardianship proceeding is  
17 transferred to a district court under this section, the district  
18 court has jurisdiction of any contested matter in the proceeding  
19 that is subsequently filed, and the county court shall transfer  
20 those contested matters to the district court. If a statutory  
21 probate court judge is assigned under this section to hear a  
22 contested matter in a guardianship proceeding, the statutory  
23 probate court judge shall be assigned to hear any contested matter  
24 in the proceeding that is subsequently filed.

25 (k) The clerk of a district court to which a contested  
26 matter in a guardianship proceeding or the entire proceeding is  
27 transferred under this section may perform in relation to the

1 transferred matter or proceeding, as applicable, any function a  
2 county clerk may perform with respect to that type of matter or  
3 proceeding.

4 Sec. 607C. JURISDICTION OF CONTESTED GUARDIANSHIP  
5 PROCEEDING IN COUNTY WITH NO STATUTORY PROBATE COURT. (a) In a  
6 county in which there is no statutory probate court, but in which  
7 there is a county court at law exercising original probate  
8 jurisdiction, when a matter in a guardianship proceeding is  
9 contested, the judge of the county court may, on the judge's own  
10 motion, or shall, on the motion of any party to the proceeding,  
11 transfer the contested matter to the county court at law. In  
12 addition, the judge of the county court, on the judge's own motion  
13 or on the motion of a party to the proceeding, may transfer the  
14 entire proceeding to the county court at law.

15 (b) A county court at law to which a proceeding is  
16 transferred under this section may hear the proceeding as if  
17 originally filed in that court. If only a contested matter in the  
18 proceeding is transferred, on the resolution of the matter, the  
19 matter shall be returned to the county court for further  
20 proceedings not inconsistent with the orders of the county court at  
21 law.

22 Sec. 607D. EXCLUSIVE JURISDICTION OF GUARDIANSHIP  
23 PROCEEDING IN COUNTY WITH STATUTORY PROBATE COURT. (a) In a  
24 county in which there is a statutory probate court, the statutory  
25 probate court has exclusive jurisdiction of all guardianship  
26 proceedings, regardless of whether contested or uncontested.

27 (b) A cause of action related to a guardianship proceeding

1 of which the statutory probate court has exclusive jurisdiction as  
2 provided by Subsection (a) of this section must be brought in the  
3 statutory probate court unless the jurisdiction of the statutory  
4 probate court is concurrent with the jurisdiction of a district  
5 court as provided by Section 607E of this code or with the  
6 jurisdiction of any other court.

7 Sec. 607E. CONCURRENT JURISDICTION WITH DISTRICT COURT. A  
8 statutory probate court has concurrent jurisdiction with the  
9 district court in:

10 (1) a personal injury, survival, or wrongful death  
11 action by or against a person in the person's capacity as a  
12 guardian; and

13 (2) an action involving a guardian in which each other  
14 party aligned with the guardian is not an interested person in the  
15 guardianship.

16 SECTION 4. Section 608, Texas Probate Code, is amended to  
17 read as follows:

18 Sec. 608. TRANSFER OF [~~GUARDIANSHIP~~] PROCEEDING BY  
19 STATUTORY PROBATE COURT. (a) A judge of a statutory probate court,  
20 on the motion of a party to the action or of a person interested in  
21 the [a] guardianship, may:

22 (1) transfer to the judge's court from a district,  
23 county, or statutory court a cause of action that is a matter  
24 related [~~appertaining to or incident~~] to a guardianship proceeding  
25 [~~estate that is~~] pending in the statutory probate court, including  
26 [~~or~~] a cause of action that is a matter related [~~relating~~] to a  
27 guardianship proceeding pending in the statutory probate court and

1 in which the [~~a~~] guardian, ward, or proposed ward in the [~~a~~  
2 ~~guardianship~~] pending guardianship proceeding [~~in the statutory~~  
3 ~~probate court~~] is a party; and

4           (2) [~~may~~] consolidate the transferred cause of action  
5 with the guardianship proceeding to which it relates and any other  
6 proceedings in the statutory probate court that are related  
7 [~~relating~~] to the guardianship proceeding [~~estate~~].

8           (b) Notwithstanding any other provision of this chapter,  
9 the proper venue for an action by or against a guardian, ward, or  
10 proposed ward for personal injury, death, or property damages is  
11 determined under Section 15.007, Civil Practice and Remedies Code.

12           SECTION 5. The heading to Section 609, Texas Probate Code,  
13 is amended to read as follows:

14           Sec. 609. TRANSFER OF CONTESTED GUARDIANSHIP OF THE PERSON  
15 OF A MINOR.

16           SECTION 6. Section 609(a), Texas Probate Code, is amended  
17 to read as follows:

18           (a) If an interested person contests an application for the  
19 appointment of a guardian of the person of a minor or an interested  
20 person seeks the removal of a guardian of the person of a minor, the  
21 judge, on the judge's own motion, may transfer all matters related  
22 [~~relating~~] to the guardianship proceeding [~~of the person of the~~  
23 ~~minor~~] to a court of competent jurisdiction in which a suit  
24 affecting the parent-child relationship under the Family Code is  
25 pending.

26           SECTION 7. Section 611(a), Texas Probate Code, is amended  
27 to read as follows:

1           (a) If two or more courts have concurrent venue of a  
2 guardianship proceeding [~~matter~~], the court in which an application  
3 for a guardianship proceeding is initially filed has and retains  
4 jurisdiction of the proceeding [~~guardianship matter~~]. A proceeding  
5 is considered commenced by the filing of an application alleging  
6 facts sufficient to confer venue, and the proceeding initially  
7 legally commenced extends to all of the property of the  
8 guardianship estate.

9           SECTION 8. Section 621(a), Texas Probate Code, is amended  
10 to read as follows:

11           (a) An application for a guardianship proceeding or [~~r~~] a  
12 complaint, petition, or other paper permitted or required by law to  
13 be filed in the court in a guardianship proceeding [~~matters~~] shall  
14 be filed with the county clerk of the proper county.

15           SECTION 9. Sections 622(a) and (b), Texas Probate Code, are  
16 amended to read as follows:

17           (a) The laws regulating costs in ordinary civil cases apply  
18 to a guardianship proceeding [~~matter~~] unless otherwise expressly  
19 provided by this chapter.

20           (b) When a person other than the guardian, attorney ad  
21 litem, or guardian ad litem files an application, complaint, or  
22 opposition in relation to a guardianship proceeding [~~matter~~], the  
23 clerk may require the person to give security for the probable costs  
24 of the [~~guardianship~~] proceeding before filing. A person  
25 interested in the guardianship or in the welfare of the ward, or an  
26 officer of the court, at any time before the trial of an  
27 application, complaint, or opposition in relation to a guardianship

1 proceeding [~~matter~~], may obtain from the court, on written motion,  
2 an order requiring the person who filed the application, complaint,  
3 or opposition to give security for the probable costs of the  
4 proceeding. The rules governing civil suits in the county court  
5 relating to this subject control in these cases.

6 SECTION 10. Section 629, Texas Probate Code, is amended to  
7 read as follows:

8 Sec. 629. CALL OF THE DOCKETS. The judge of the court in  
9 which a guardianship proceeding is pending, as the judge  
10 determines, shall call guardianship proceedings [~~matters~~] in their  
11 regular order on both the guardianship and claim dockets and shall  
12 make necessary orders.

13 SECTION 11. Section 630, Texas Probate Code, is amended to  
14 read as follows:

15 Sec. 630. CLERK MAY SET HEARINGS. If the [~~county~~] judge is  
16 absent from the county seat or is on vacation, disqualified, ill, or  
17 deceased and is unable to designate the time and place for hearing a  
18 guardianship proceeding [~~matter~~] pending in the judge's court, the  
19 county clerk of the county in which the proceeding [~~matter~~] is  
20 pending may designate the time and place for hearing, entering the  
21 setting on the judge's docket and certifying on the docket the  
22 reason that the judge is not acting to set the hearing. If a  
23 qualified judge is not present for the hearing, after service of the  
24 notices and citations required by law with reference to the time and  
25 place of hearing has been perfected, the hearing is automatically  
26 continued from day to day until a qualified judge is present to hear  
27 and make a determination in the proceeding [~~determine the matter~~].

1 SECTION 12. The heading to Section 632, Texas Probate Code,  
2 is amended to read as follows:

3 Sec. 632. ISSUANCE, CONTENTS, SERVICE, AND RETURN OF  
4 CITATION, NOTICES, AND WRITS IN GUARDIANSHIP PROCEEDINGS  
5 [~~MATTERS~~].

6 SECTION 13. Sections 632(a), (b), and (h), Texas Probate  
7 Code, are amended to read as follows:

8 (a) A person does not need to be cited or otherwise given  
9 notice in a guardianship proceeding [~~matter~~] except in situations  
10 in which this chapter expressly provides for citation or the giving  
11 of notice. If this chapter does not expressly provide for citation  
12 or the issuance or return of notice in a guardianship proceeding  
13 [~~matter~~], the court may require that notice be given. If the court  
14 requires that notice be given, the court shall prescribe the form  
15 and manner of service and return of service.

16 (b) Unless a court order is required by a provision of this  
17 chapter, the county clerk shall issue without a court order  
18 necessary citations, writs, and process in guardianship  
19 proceedings [~~matters~~] and all notices not required to be issued by  
20 guardians.

21 (h) In a guardianship proceeding [~~matter~~] in which citation  
22 or notice is required to be served by posting and issued in  
23 conformity with the applicable provision of this code, the citation  
24 or notice and the service of and return of the citation or notice is  
25 sufficient and valid if a sheriff or constable posts a copy of the  
26 citation or notice at the place or places prescribed by this chapter  
27 on a day that is sufficiently before the return day contained in the

1 citation or notice for the period of time for which the citation or  
2 notice is required to be posted to elapse before the return day of  
3 the citation or notice. The sufficiency or validity of the citation  
4 or notice or the service of or return of the service of the citation  
5 or notice is not affected by the fact that the sheriff or constable  
6 makes the [~~his~~] return on the citation or notice and returns the  
7 citation or notice to the court before the period elapses for which  
8 the citation or notice is required to be posted, even though the  
9 return is made, and the citation or notice is returned to the court,  
10 on the same day it is issued.

11 SECTION 14. Section 641, Texas Probate Code, is amended to  
12 read as follows:

13 Sec. 641. DEFECTS IN PLEADING. A court may not invalidate a  
14 pleading in a guardianship proceeding [~~matter~~] or an order based on  
15 the pleading based on a defect of form or substance in the pleading,  
16 unless the defect has been timely objected to and called to the  
17 attention of the court in which the proceeding was or is pending.

18 SECTION 15. Section 646, Texas Probate Code, is amended by  
19 amending Subsection (e) and adding Subsection (f) to read as  
20 follows:

21 (e) The term of appointment of an attorney ad litem  
22 appointed under this section expires, without a court order, on the  
23 date the court [~~either~~] appoints a guardian in accordance with  
24 Section 693 of this code, appoints a successor guardian, or denies  
25 the application for appointment of a guardian, unless the court  
26 determines that the continued appointment of the attorney ad litem  
27 is in the ward's best interest.

1        (f) The term of appointment of an attorney ad litem  
2 appointed under this section continues after the court appoints a  
3 temporary guardian under Section 875 of this code unless a court  
4 order provides for the termination or expiration of the attorney ad  
5 litem's appointment.

6        SECTION 16. Section 650, Texas Probate Code, is amended to  
7 read as follows:

8        Sec. 650. DECREES. A decision, order, decree, or judgment  
9 of the court in a guardianship proceeding [~~matter~~] must be rendered  
10 in open court, except in a case in which it is otherwise expressly  
11 provided.

12        SECTION 17. Section 653, Texas Probate Code, is amended to  
13 read as follows:

14        Sec. 653. EXECUTION. An execution in a guardianship  
15 proceeding [~~matter~~] shall be directed "To any sheriff or any  
16 constable within the State of Texas," made returnable in 60 days,  
17 and attested and signed by the clerk officially under the seal of  
18 the court. A proceeding under an execution in a guardianship  
19 proceeding [~~matter~~] is governed so far as applicable by the laws  
20 regulating a proceeding under an execution issued from the district  
21 court. An execution directed to the sheriff or a constable of a  
22 specific county in this state may not be held defective if the  
23 execution was properly executed within the county by the officer to  
24 whom the direction for execution was given.

25        SECTION 18. Sections 665(a), (a-1), and (c), Texas Probate  
26 Code, are amended to read as follows:

27        (a) The guardian or temporary guardian is entitled to

1 reasonable compensation on application to the court if the court  
2 finds that the guardian or temporary guardian has taken care of the  
3 ward's person or managed the ward's estate in compliance with the  
4 standards of this chapter. The court may authorize the amount of  
5 this compensation and the payment [~~for a guardian or a temporary~~  
6 ~~guardian serving as a guardian of the person alone~~] from [~~available~~  
7 ~~funds of~~] the ward's estate or other funds available for that  
8 purpose. [~~The court may set the compensation in an amount not~~  
9 ~~exceeding five percent of the ward's gross income.~~]

10 (a-1) In determining whether to authorize compensation for  
11 a guardian under this section from the ward's estate, the court  
12 shall consider the ward's monthly income from all sources and  
13 whether the ward receives medical assistance under the state  
14 Medicaid program.

15 (c) On application of an interested person or on its own  
16 motion, the court may:

17 (1) review and modify at any time the amount of  
18 compensation authorized for a guardian or temporary guardian [~~under~~  
19 ~~subsection (a) or (b) of this section~~] if the court finds that the  
20 amount is unreasonably high or low when considering the services  
21 rendered as guardian or temporary guardian; and

22 (2) authorize compensation for the guardian or  
23 temporary guardian in an estimated amount the court finds  
24 reasonable that is to be paid on a quarterly basis before the  
25 guardian or temporary guardian files an annual or final accounting  
26 [~~if the court finds that delaying the payment of compensation until~~  
27 ~~the guardian or temporary guardian files an accounting would create~~

1 ~~a hardship for the guardian or temporary guardian].~~

2 SECTION 19. Section 666, Texas Probate Code, is amended to  
3 read as follows:

4 Sec. 666. EXPENSES ALLOWED. A guardian is entitled to be  
5 reimbursed from the guardianship estate for all necessary and  
6 reasonable expenses incurred in performing any duty as a guardian,  
7 including reimbursement for the payment of reasonable attorney's  
8 fees necessarily incurred by the guardian in connection with the  
9 management of the estate or any other [~~guardianship~~] matter in the  
10 guardianship.

11 SECTION 20. Section 669(a), Texas Probate Code, is amended  
12 to read as follows:

13 (a) Except as provided by Subsection (b) of this section, in  
14 a guardianship proceeding [~~matter~~], the cost of the proceeding,  
15 including the cost of the guardian ad litem or court visitor, shall  
16 be paid out of the guardianship estate, or, if the estate is  
17 insufficient to pay for the cost of the proceeding, the cost of the  
18 proceeding shall be paid out of the county treasury, and the  
19 judgment of the court shall be issued accordingly.

20 SECTION 21. Sections 682A(a-1) and (a-2), Texas Probate  
21 Code, are amended to read as follows:

22 (a-1) Notwithstanding any other law, if the applicant who  
23 files an application under Subsection (a) of this section or  
24 Section 682 of this code is a person who was appointed conservator  
25 of a disabled child and the proceeding is a guardianship proceeding  
26 described by Section 601(25)(A) of this code in which the proposed  
27 ward is the incapacitated adult with respect to whom another court

1 obtained continuing, exclusive jurisdiction in a suit affecting the  
2 parent-child relationship when the person was a child [~~for whom a~~  
3 ~~court obtains jurisdiction under Section 606(k) of this code~~], the  
4 applicant may present to the court a written letter or certificate  
5 that meets the requirements of Section 687(a) of this code.

6 (a-2) If, on receipt of the letter or certificate described  
7 by Subsection (a-1) of this section, the court is able to make the  
8 findings required by Section 684 of this code, the court,  
9 notwithstanding Section 677 of this code, shall appoint the  
10 conservator as guardian without conducting a hearing and shall, to  
11 the extent possible, preserve the terms of possession and access to  
12 the ward that applied before the court obtained jurisdiction of the  
13 guardianship proceeding [~~under Section 606(k) of this code~~].

14 SECTION 22. Section 687(c), Texas Probate Code, is amended  
15 to read as follows:

16 (c) If the basis of the proposed ward's alleged incapacity  
17 is mental retardation, the court may not grant an application to  
18 create a guardianship for the proposed ward unless the applicant  
19 presents to the court a written letter or certificate that:

20 (1) [~~a written letter or certificate that:~~

21 [~~(A)~~] complies with Subsection (a) of this  
22 section; [~~and~~

23 [~~(B)~~] ~~states that the physician has made a~~  
24 ~~determination of mental retardation in accordance with Section~~  
25 ~~593.005, Health and Safety Code,~~] or

26 (2) shows that [~~both~~]:

27 (A) [~~written documentation showing that,~~] not

1 earlier than 24 months before the date of the hearing, the proposed  
2 ward has been examined by a physician or psychologist licensed in  
3 this state or certified by the Department of Aging and Disability  
4 Services to perform the examination, in accordance with rules of  
5 the executive commissioner of the Health and Human Services  
6 Commission governing examinations of that kind; and

7 (B) the physician's or psychologist's written  
8 findings and recommendations to the court include [~~, including~~]  
9 statement as to whether the physician or psychologist has made a  
10 determination of mental retardation in accordance with Section  
11 593.005, Health and Safety Code.

12 SECTION 23. Section 729(c), Texas Probate Code, is amended  
13 to read as follows:

14 (c) An inventory made under this section must specify:

15 (1) what portion of the property is separate property  
16 and what portion is community property; and

17 (2) if [~~. If~~] any of the property is owned in common  
18 with other persons, the interest owned by the ward [~~shall be shown~~  
19 ~~in the inventory, together with the names and relationship, if~~  
20 ~~known, of co-owners~~].

21 SECTION 24. Section 730, Texas Probate Code, is amended to  
22 read as follows:

23 Sec. 730. LIST OF CLAIMS. The guardian shall make and  
24 attach to an inventory under Section 729 of this code a full and  
25 complete list of all claims due or owing to the ward that must  
26 state:

27 (1) the name of each person indebted to the ward and

1 the address of the person if known;

2 (2) the nature of the debt, whether it is a note, bill,  
3 bond, or other written obligation or whether it is an account or  
4 verbal contract;

5 (3) the date of the indebtedness and the date when the  
6 debt is or was due;

7 (4) the amount of each claim, the rate of interest on  
8 each claim, and time for which the claim bears interest; and

9 (5) what portion of the claim is held in common with  
10 others[, ~~including the names and the relationships of other part~~  
11 ~~owners~~] and the interest of the estate in the claim.

12 SECTION 25. Sections 745(a) and (d), Texas Probate Code,  
13 are amended to read as follows:

14 (a) A guardianship of the estate of a ward shall be settled  
15 when:

16 (1) a minor ward dies or becomes an adult by becoming  
17 18 years of age, or by removal of disabilities of minority according  
18 to the law of this state, or by marriage;

19 (2) an incapacitated ward dies, or is decreed as  
20 provided by law to have been restored to full legal capacity;

21 (3) the spouse of a married ward has qualified as  
22 survivor in community and the ward owns no separate property;

23 (4) the estate of a ward becomes exhausted;

24 (5) the foreseeable income accruing to a ward or to the  
25 ward's [~~his~~] estate is so negligible that maintaining the  
26 guardianship in force would be burdensome;

27 (6) all of the assets of the estate have been placed in

1 a management trust under Subpart N~~[, Part 4,]~~ of this part, or have  
2 been transferred to a pooled trust subaccount in accordance with a  
3 court order issued as provided by Subpart I, Part 5, of this  
4 chapter, [code] and the court determines that a guardianship of  
5 ~~[for]~~ the ward's estate ~~[ward]~~ is no longer necessary; or

6 (7) the court determines for any other reason that a  
7 guardianship for the ward is no longer necessary.

8 (d) In the settlement of a guardianship, the court may  
9 appoint an attorney ad litem to represent the interests of the ward,  
10 and may allow the attorney ad litem reasonable compensation to be  
11 taxed as costs ~~[for services provided by the attorney out of the~~  
12 ~~ward's estate]~~.

13 SECTION 26. Section 770(c), Texas Probate Code, is amended  
14 to read as follows:

15 (c) A guardian of a person younger than 18 ~~[16]~~ years of age  
16 may voluntarily admit the ward ~~[an incapacitated person]~~ to a  
17 public or private inpatient psychiatric facility for care and  
18 treatment.

19 SECTION 27. The heading to Subpart M, Part 4, Chapter XIII,  
20 Texas Probate Code, is amended to read as follows:

21 SUBPART M. TAX-MOTIVATED, ~~[TAX-MOTIVATED AND]~~ CHARITABLE, AND  
22 OTHER GIFTS

23 SECTION 28. The heading to Section 865, Texas Probate Code,  
24 is amended to read as follows:

25 Sec. 865. POWER TO MAKE CERTAIN ~~[TAX-MOTIVATED]~~ GIFTS AND  
26 TRANSFERS.

27 SECTION 29. Sections 865(a) and (b), Texas Probate Code,

1 are amended to read as follows:

2 (a) On application of the guardian of the estate or any  
3 interested person [~~party~~] and after the posting of notice, the  
4 court, after hearing, may enter an order that authorizes the  
5 guardian to apply the principal or income of the ward's estate that  
6 is not required for the support of the ward or the ward's family  
7 during the ward's lifetime toward the establishment of an estate  
8 plan for the purpose of minimizing income, estate, inheritance, or  
9 other taxes payable out of the ward's estate, or to transfer a  
10 portion of the ward's estate as necessary to qualify the ward for  
11 government benefits, on a showing that the ward will probably  
12 remain incapacitated during the ward's lifetime. On the ward's  
13 behalf, the court may authorize the guardian to make gifts or  
14 transfers described by this subsection, outright or in trust, of  
15 the ward's [~~personal~~] property [~~or real estate~~] to or for the  
16 benefit of:

17 (1) an organization to which charitable contributions  
18 may be made under the Internal Revenue Code and in which it is shown  
19 the ward would reasonably have an interest;

20 (2) the ward's spouse, descendant, or other person  
21 related to the ward by blood or marriage who are identifiable at the  
22 time of the order;

23 (3) a devisee under the ward's last validly executed  
24 will, trust, or other beneficial instrument if the instrument  
25 exists; and

26 (4) a person serving as guardian of the ward if the  
27 person is eligible under either Subdivision (2) or (3) of this

1 subsection.

2 (b) The person making an application to the court under this  
3 section shall outline the proposed estate or other transfer plan  
4 and set forth all the benefits that are to be derived from the  
5 [~~estate~~] plan. The application must indicate that the planned  
6 disposition is consistent with the ward's intentions if the ward's  
7 intentions can be ascertained. If the ward's intentions cannot be  
8 ascertained, the ward will be presumed to favor reduction in the  
9 incidence of the various forms of taxation, the qualification for  
10 government benefits, and the partial distribution of the ward's  
11 estate as provided by this section.

12 SECTION 30. Sections 867(a-1), (b), (c), and (f), Texas  
13 Probate Code, are amended to read as follows:

14 (a-1) The following persons may apply for the creation of a  
15 trust under this section:

16 (1) the guardian of the estate of a ward;

17 (2) the guardian of the person of a ward;

18 (3) the guardian of both the person of and estate of a  
19 ward;

20 (4) an attorney ad litem or guardian ad litem  
21 appointed to represent a ward or the ward's interests;

22 (5) a person interested in the welfare of an alleged  
23 incapacitated person who does not have a guardian [~~of the estate~~];  
24 [~~or~~]

25 (6) an attorney ad litem or guardian ad litem  
26 appointed to represent an alleged incapacitated person who does not  
27 have a guardian; or

1           (7) a person who has only a physical disability [~~that~~  
2 ~~person's interests~~].

3           (b) On application by an appropriate person as provided by  
4 Subsection (a-1) of this section and subject to Subsection (b-1) of  
5 this section, if applicable, the court with jurisdiction over the  
6 proceedings [~~guardianship~~] may enter an order that creates [~~for the~~  
7 ~~ward's benefit~~] a trust for the management of the [~~guardianship~~]  
8 funds of the person with respect to whom the application is filed if  
9 the court finds that the creation of the trust is in the person's  
10 [~~ward's~~] best interests.

11           (c) Subject to Subsection (d) of this section, if the court  
12 finds that it is in the [~~ward's or incapacitated person's~~] best  
13 interests of the person for whom a trust is created under this  
14 section, the court may appoint a person or entity that meets the  
15 requirements of Subsection (e) of this section to serve as trustee  
16 of the trust instead of appointing a financial institution to serve  
17 in that capacity.

18           (f) If a trust is created for a person [~~ward~~], the order  
19 shall direct any [~~a~~] person or entity holding property belonging to  
20 the person for whom the trust is created [~~ward~~] or to which that  
21 person [~~the ward~~] is entitled to deliver all or part of the property  
22 to a person or corporate fiduciary appointed by the court as trustee  
23 of the trust. [~~If a trust is created for an incapacitated person who~~  
24 ~~does not have a guardian, the order shall direct a person holding~~  
25 ~~property belonging to the incapacitated person or to which the~~  
26 ~~incapacitated person is entitled to deliver all or part of the~~  
27 ~~property to the corporate fiduciary or other person appointed as~~

1 ~~trustee of the trust.]~~ The order shall include terms, conditions,  
2 and limitations placed on the trust. The court shall maintain the  
3 trust under the same cause number as the guardianship proceeding,  
4 if the person for whom the trust is created is a ward or proposed  
5 ward ~~[applicable]~~.

6 SECTION 31. Sections 868(a), (b), and (d), Texas Probate  
7 Code, are amended to read as follows:

8 (a) Except as provided by Subsection (d) of this section, a  
9 trust created under Section 867 of this code must provide that:

10 (1) the ward, ~~[or]~~ incapacitated person, or person who  
11 has only a physical disability is the sole beneficiary of the trust;

12 (2) the trustee may disburse an amount of the trust's  
13 principal or income as the trustee determines is necessary to  
14 expend for the health, education, support, or maintenance of the  
15 ~~[ward or incapacitated]~~ person for whom the trust is created;

16 (3) the income of the trust that the trustee does not  
17 disburse under Subdivision (2) of this subsection must be added to  
18 the principal of the trust;

19 (4) if the trustee is a corporate fiduciary, the  
20 trustee serves without giving a bond; and

21 (5) the trustee, subject to the court's approval, is  
22 entitled to receive reasonable compensation for services that the  
23 trustee provided to the ~~[ward or incapacitated]~~ person for whom the  
24 trust is created as the ~~[ward's or incapacitated]~~ person's trustee  
25 that is:

26 (A) to be paid from the trust's income,  
27 principal, or both; and

1 (B) determined, paid, reduced, and eliminated in  
2 the same manner as compensation of a guardian [~~of an estate~~] under  
3 Section 665 of this code.

4 (b) The trust may provide that a trustee make a  
5 distribution, payment, use, or application of trust funds for the  
6 health, education, support, or maintenance of the [~~ward or~~  
7 ~~incapacitated~~] person for whom the trust is created or of another  
8 person whom the [~~ward or incapacitated~~] person for whom the trust is  
9 created is legally obligated to support, as necessary and without  
10 the intervention of a guardian or other representative of the ward  
11 or of a representative of the incapacitated person or person who has  
12 only a physical disability, to:

13 (1) the ward's guardian;

14 (2) a person who has physical custody of the [~~ward or~~  
15 ~~incapacitated~~] person for whom the trust is created or another  
16 person whom the [~~ward or incapacitated~~] person for whom the trust is  
17 created is legally obligated to support; or

18 (3) a person providing a good or service to the [~~ward~~  
19 ~~or incapacitated~~] person for whom the trust is created or another  
20 person whom the [~~ward or incapacitated~~] person for whom the trust is  
21 created is legally obligated to support.

22 (d) When creating or modifying a trust, the court may omit  
23 or modify terms required by Subsection (a)(1) or (2) of this section  
24 only if the court determines that the omission or modification:

25 (1) is necessary and appropriate for the [~~ward or~~  
26 ~~incapacitated~~] person for whom the trust is created to be eligible  
27 to receive public benefits or assistance under a state or federal

1 program that is not otherwise available to the [~~ward or~~  
2 ~~incapacitated~~] person; and

3 (2) is in the [~~ward's or incapacitated person's~~] best  
4 interests of the person for whom the trust is created.

5 SECTION 32. Section 868C(a), Texas Probate Code, is amended  
6 to read as follows:

7 (a) If the court determines that it is in the [~~ward's or~~  
8 ~~incapacitated person's~~] best interests of the person for whom a  
9 trust is created under Section 867 of this code, the court may order  
10 the transfer of all property in the [~~a management~~] trust [~~created~~  
11 ~~under Section 867 of this code~~] to a subaccount of a pooled trust  
12 established in accordance with Subpart I, Part 5, of this chapter.  
13 The transfer of property from the management trust to the  
14 subaccount of the pooled trust shall be treated as a continuation of  
15 the management trust and may not be treated as the establishment of  
16 a new trust for purposes of 42 U.S.C. Section 1396p(d)(4)(A) or (C)  
17 or otherwise for purposes of the management trust beneficiary's  
18 [~~ward's or incapacitated person's~~] eligibility for medical  
19 assistance under Chapter 32, Human Resources Code.

20 SECTION 33. Section 869(b), Texas Probate Code, is amended  
21 to read as follows:

22 (b) The following may not revoke the trust:

23 (1) the ward for whom the trust is created or the  
24 guardian of the ward's estate;

25 (2) [~~or~~] the incapacitated person for whom the trust  
26 is created; or

27 (3) the person who has only a physical disability for

1 whom the trust is created~~[, as applicable, may not revoke the~~  
2 ~~trust]~~.

3 SECTION 34. Section 870, Texas Probate Code, is amended to  
4 read as follows:

5 Sec. 870. TERMINATION OF TRUST. (a) If the ~~[ward or~~  
6 ~~incapacitated]~~ person for whom a trust is created under Section 867  
7 of this code is a minor, the trust terminates:

8 (1) on the person's death ~~[of the ward or incapacitated~~  
9 ~~person]~~ or the ~~[ward's or incapacitated]~~ person's 18th birthday,  
10 whichever is earlier; or

11 (2) on the date provided by court order, l which may not  
12 be later than the ~~[ward's or incapacitated]~~ person's 25th birthday.

13 (b) If the ~~[ward or incapacitated]~~ person for whom a trust  
14 is created under Section 867 of this code is not a minor, the trust  
15 terminates:

16 (1) according to the terms of the trust;

17 (2) on the date the court determines that continuing  
18 the trust is no longer in the ~~[ward's or incapacitated]~~ person's  
19 best interests, subject to Section 868C(b) of this code; l ~~[r]~~ or

20 (3) on the person's death ~~[of the ward or incapacitated~~  
21 ~~person]~~.

22 SECTION 35. Subpart N, Part 4, Chapter XIII, Texas Probate  
23 Code, is amended by adding Section 870A to read as follows:

24 Sec. 870A. INITIAL ACCOUNTING BY CERTAIN TRUSTEES REQUIRED.

25 (a) This section applies only to a trustee of a trust created under  
26 Section 867 of this code for a person for whom a guardianship  
27 proceeding is pending on the date the trust is created.

1        (b) Not later than the 30th day after the date a trustee to  
2 which this section applies receives property into the trust, the  
3 trustee shall file with the court in which the guardianship  
4 proceeding is pending a report describing all property held in the  
5 trust on the date of the report and specifying the value of the  
6 property on that date.

7        SECTION 36. Section 871, Texas Probate Code, is amended by  
8 amending Subsection (a) and adding Subsection (d) to read as  
9 follows:

10        (a) Except as provided by Subsection (d) of this section,  
11 the [~~The~~] trustee shall prepare and file with the court an annual  
12 accounting of transactions in the trust in the same manner and form  
13 that is required of a guardian under this chapter.

14        (d) The court may not require a trustee of a trust created  
15 for a person who has only a physical disability to prepare and file  
16 with the court the annual accounting as described by Subsection (a)  
17 of this section.

18        SECTION 37. Section 873, Texas Probate Code, is amended to  
19 read as follows:

20        Sec. 873. DISTRIBUTION OF TRUST PROPERTY.    (a) Unless  
21 otherwise provided by the court and except as provided by  
22 Subsection (b) of this section, the trustee shall:

23            (1) prepare a final account in the same form and manner  
24 that is required of a guardian under Section 749 of this code; and

25            (2) on court approval, distribute the principal or any  
26 undistributed income of the trust:

27                    (A) to the ward or incapacitated person when the

1 trust terminates on its own terms;

2 (B) to the successor trustee on appointment of a  
3 successor trustee; or

4 (C) to the representative of the deceased ward's  
5 or incapacitated person's estate on the ward's or incapacitated  
6 person's death.

7 (b) The court may not require a trustee of a trust created  
8 for a person who has only a physical disability to prepare and file  
9 with the court a final account as described by Subsection (a)(1) of  
10 this section. The trustee shall distribute the principal and any  
11 undistributed income of the trust in the manner provided by  
12 Subsection (a)(2) of this section for a trust the beneficiary of  
13 which is a ward or incapacitated person.

14 SECTION 38. Section 910(1), Texas Probate Code, is amended  
15 to read as follows:

16 (1) "Beneficiary" means a minor or other incapacitated  
17 person, an alleged incapacitated person, or a disabled person who  
18 is not an [~~or any other~~] incapacitated person for whom a  
19 subaccount is established.

20 SECTION 39. Section 911, Texas Probate Code, is amended to  
21 read as follows:

22 Sec. 911. APPLICATION. The following persons [~~A person~~  
23 ~~interested in the welfare of a minor, a disabled person, or any~~  
24 ~~other incapacitated person~~] may apply to the court for the  
25 establishment of a subaccount for the benefit of a [~~the~~] minor[ ~~or~~  
26 ~~disabled person~~] or other incapacitated person, an alleged  
27 incapacitated person, or a disabled person who is not an

1 incapacitated person:

2 (1) the guardian of the incapacitated person;

3 (2) a person who has filed an application for the  
4 appointment of a guardian for the alleged incapacitated person;

5 (3) an attorney ad litem or guardian ad litem  
6 appointed to represent:

7 (A) the incapacitated person who is a ward or  
8 that person's interests; or

9 (B) the alleged incapacitated person who does not  
10 have a guardian; or

11 (4) the disabled person [as the beneficiary].

12 SECTION 40. Section 25.0022(i), Government Code, is amended  
13 to read as follows:

14 (i) A judge assigned under this section has the  
15 jurisdiction, powers, and duties given by Sections 4A, 4C, 4F, 4G,  
16 4H, 5B, 605, 607A, 607B, 607D, 607E [~~606, 607~~], and 608, Texas  
17 Probate Code, to statutory probate court judges by general law.

18 SECTION 41. Section 25.1132(c), Government Code, is amended  
19 to read as follows:

20 (c) A county court at law in Hood County has concurrent  
21 jurisdiction with the district court in:

22 (1) civil cases in which the matter in controversy  
23 exceeds \$500 but does not exceed \$250,000, excluding interest;

24 (2) family law cases and related proceedings;

25 (3) contested probate matters under Section 4D(a),  
26 Texas Probate Code; and

27 (4) contested [~~guardianship~~] matters in guardianship

1 proceedings under Section 607B(a) [~~606(b)~~], Texas Probate Code.

2 SECTION 42. Notwithstanding the transfer of Sections 606,  
3 607, and 665(b), (f), and (h), Texas Probate Code, to the Estates  
4 Code and redesignation as Sections 606, 607, and 665(b), (f), and  
5 (h) of that code effective January 1, 2014, by Section 5, Chapter  
6 680 (H.B. 2502), Acts of the 81st Legislature, Regular Session,  
7 2009, Sections 606, 607, and 665(b), (f), and (h), Texas Probate  
8 Code, are repealed.

9 SECTION 43. (a) Except as otherwise provided by this  
10 section, the changes in law made by this Act apply to:

11 (1) a guardianship created before, on, or after the  
12 effective date of this Act; and

13 (2) an application for a guardianship pending on, or  
14 filed on or after, the effective date of this Act.

15 (b) Sections 605, 608, and 609, Texas Probate Code, as  
16 amended by this Act, and Sections 606A, 607A, 607B, 607C, 607D, and  
17 607E, Texas Probate Code, as added by this Act, apply only to an  
18 action filed or a proceeding commenced on or after the effective  
19 date of this Act. An action filed or proceeding commenced before  
20 the effective date of this Act is governed by the law in effect on  
21 the date the action was filed or the proceeding was commenced, and  
22 the former law is continued in effect for that purpose.

23 (c) Section 665, Texas Probate Code, as amended by this Act,  
24 applies to the payment, reduction, or elimination of compensation  
25 for services performed on or after the effective date of this Act.  
26 Payment, reduction, or elimination of compensation for services  
27 performed before the effective date of this Act is governed by the

1 law in effect on the date the services were performed, and the  
2 former law is continued in effect for that purpose.

3 (d) Sections 867, 868, 868C, 869, 870, 871, and 873, Texas  
4 Probate Code, as amended by this Act, and Section 870A, Texas  
5 Probate Code, as added by this Act, apply only to an application for  
6 the creation, modification, or termination of a management trust  
7 under Subpart N, Part 4, Chapter XIII, Texas Probate Code, that is  
8 filed on or after the effective date of this Act. An application  
9 described by this subsection that is filed before the effective  
10 date of this Act is governed by the law in effect on the date the  
11 application was filed, and the former law is continued in effect for  
12 that purpose.

13 (e) Sections 910 and 911, Texas Probate Code, as amended by  
14 this Act, apply only to an application for the creation of a pooled  
15 trust subaccount under Subpart I, Part 5, Chapter XIII, Texas  
16 Probate Code, that is filed on or after the effective date of this  
17 Act. An application described by this subsection that is filed  
18 before the effective date of this Act is governed by the law in  
19 effect on the date the application was filed, and the former law is  
20 continued in effect for that purpose.

21 SECTION 44. This Act takes effect September 1, 2011.