

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. Subdivision (25), Section 601, 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) A party to a guardianship proceeding may file a motion
8 for the assignment of a statutory probate court judge under this
9 section before a matter in the proceeding becomes contested, and
10 the motion is given effect as a motion for assignment of a statutory
11 probate court judge under Subsection (a) of this section if the
12 matter later becomes contested.

13 (e) Notwithstanding any other law, a transfer of a contested
14 matter in a guardianship proceeding to a district court under any
15 authority other than the authority provided by this section:

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

20 (f) A statutory probate court judge assigned to a contested
21 matter in a guardianship proceeding or to the entire proceeding
22 under this section has the jurisdiction and authority granted to a
23 statutory probate court by this code. A statutory probate court
24 judge assigned to hear only the contested matter in a guardianship
25 proceeding shall, on resolution of the matter, including any appeal
26 of the matter, return the matter to the county court for further
27 proceedings not inconsistent with the orders of the statutory

1 probate court or court of appeals, as applicable. A statutory
2 probate court judge assigned to the entire guardianship proceeding
3 as provided by Subsection (c) of this section shall, on resolution
4 of the contested matter in the proceeding, including any appeal of
5 the matter, return the entire proceeding to the county court for
6 further proceedings not inconsistent with the orders of the
7 statutory probate court or court of appeals, as applicable.

8 (g) A district court to which a contested matter in a
9 guardianship proceeding is transferred under this section has the
10 jurisdiction and authority granted to a statutory probate court by
11 this code. On resolution of a contested matter transferred to the
12 district court under this section, including any appeal of the
13 matter, the district court shall return the matter to the county
14 court for further proceedings not inconsistent with the orders of
15 the district court or court of appeals, as applicable.

16 (h) If only the contested matter in a guardianship
17 proceeding is assigned to a statutory probate court judge under
18 this section, or if the contested matter in a guardianship
19 proceeding is transferred to a district court under this section,
20 the county court shall continue to exercise jurisdiction over the
21 management of the guardianship, other than a contested matter,
22 until final disposition of the contested matter is made in
23 accordance with this section. Any matter related to a guardianship
24 proceeding in which a contested matter is transferred to a district
25 court may be brought in the district court. The district court in
26 which a matter related to the proceeding is filed may, on the
27 court's own motion or on the motion of any party, find that the

1 matter is not a contested matter and transfer the matter to the
2 county court with jurisdiction of the management of the
3 guardianship.

4 (i) If a contested matter in a guardianship proceeding is
5 transferred to a district court under this section, the district
6 court has jurisdiction of any contested matter in the proceeding
7 that is subsequently filed, and the county court shall transfer
8 those contested matters to the district court. If a statutory
9 probate court judge is assigned under this section to hear a
10 contested matter in a guardianship proceeding, the statutory
11 probate court judge shall be assigned to hear any contested matter
12 in the proceeding that is subsequently filed.

13 (j) The clerk of a district court to which a contested
14 matter in a guardianship proceeding is transferred under this
15 section may perform in relation to the transferred matter any
16 function a county clerk may perform with respect to that type of
17 matter.

18 Sec. 607C. JURISDICTION OF CONTESTED GUARDIANSHIP
19 PROCEEDING IN COUNTY WITH NO STATUTORY PROBATE COURT. (a) In a
20 county in which there is no statutory probate court, but in which
21 there is a county court at law exercising original probate
22 jurisdiction, when a matter in a guardianship proceeding is
23 contested, the judge of the county court may, on the judge's own
24 motion, or shall, on the motion of any party to the proceeding,
25 transfer the contested matter to the county court at law. In
26 addition, the judge of the county court, on the judge's own motion
27 or on the motion of a party to the proceeding, may transfer the

1 entire proceeding to the county court at law.

2 (b) A county court at law to which a proceeding is
3 transferred under this section may hear the proceeding as if
4 originally filed in that court. If only a contested matter in the
5 proceeding is transferred, on the resolution of the matter, the
6 matter shall be returned to the county court for further
7 proceedings not inconsistent with the orders of the county court at
8 law.

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

14 (b) A cause of action related to a guardianship proceeding
15 of which the statutory probate court has exclusive jurisdiction as
16 provided by Subsection (a) of this section must be brought in the
17 statutory probate court unless the jurisdiction of the statutory
18 probate court is concurrent with the jurisdiction of a district
19 court as provided by Section 607E of this code or with the
20 jurisdiction of any other court.

21 Sec. 607E. CONCURRENT JURISDICTION WITH DISTRICT COURT. A
22 statutory probate court has concurrent jurisdiction with the
23 district court in:

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

27 (2) an action involving a guardian in which each other

1 party aligned with the guardian is not an interested person in the
2 guardianship.

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

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

9 (1) transfer to the judge's court from a district,
10 county, or statutory court a cause of action that is a matter
11 related [~~appertaining to or incident~~] to a guardianship proceeding
12 [~~estate that is~~] pending in the statutory probate court, including
13 [~~or~~] a cause of action that is a matter related [~~relating~~] to a
14 guardianship proceeding pending in the statutory probate court and
15 in which the [~~a~~] guardian, ward, or proposed ward in the [~~a~~
16 ~~guardianship~~] pending guardianship proceeding [~~in the statutory~~
17 ~~probate court~~] is a party; and

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

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

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

1 Sec. 609. TRANSFER OF CONTESTED GUARDIANSHIP OF THE PERSON
2 OF A MINOR.

3 SECTION 6. Subsection (a), Section 609, Texas Probate Code,
4 is amended to read as follows:

5 (a) If an interested person contests an application for the
6 appointment of a guardian of the person of a minor or an interested
7 person seeks the removal of a guardian of the person of a minor, the
8 judge, on the judge's own motion, may transfer all matters related
9 [~~relating~~] to the guardianship proceeding [~~of the person of the~~
10 ~~minor~~] to a court of competent jurisdiction in which a suit
11 affecting the parent-child relationship under the Family Code is
12 pending.

13 SECTION 7. Subsection (a), Section 611, Texas Probate Code,
14 is amended to read as follows:

15 (a) If two or more courts have concurrent venue of a
16 guardianship proceeding [~~matter~~], the court in which an application
17 for a guardianship proceeding is initially filed has and retains
18 jurisdiction of the proceeding [~~guardianship matter~~]. A proceeding
19 is considered commenced by the filing of an application alleging
20 facts sufficient to confer venue, and the proceeding initially
21 legally commenced extends to all of the property of the
22 guardianship estate.

23 SECTION 8. Subsection (a), Section 621, Texas Probate Code,
24 is amended to read as follows:

25 (a) An application for a guardianship proceeding or[~~7~~] a
26 complaint, petition, or other paper permitted or required by law to
27 be filed in the court in a guardianship proceeding [~~matters~~] shall

1 be filed with the county clerk of the proper county.

2 SECTION 9. Subsections (a) and (b), Section 622, Texas
3 Probate Code, are amended to read as follows:

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

7 (b) When a person other than the guardian, attorney ad
8 litem, or guardian ad litem files an application, complaint, or
9 opposition in relation to a guardianship proceeding [~~matter~~], the
10 clerk may require the person to give security for the probable costs
11 of the [~~guardianship~~] proceeding before filing. A person
12 interested in the guardianship or in the welfare of the ward, or an
13 officer of the court, at any time before the trial of an
14 application, complaint, or opposition in relation to a guardianship
15 proceeding [~~matter~~], may obtain from the court, on written motion,
16 an order requiring the person who filed the application, complaint,
17 or opposition to give security for the probable costs of the
18 proceeding. The rules governing civil suits in the county court
19 relating to this subject control in these cases.

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

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

27 SECTION 11. Section 630, Texas Probate Code, is amended to

1 read as follows:

2 Sec. 630. CLERK MAY SET HEARINGS. If the [~~county~~] judge is
3 absent from the county seat or is on vacation, disqualified, ill, or
4 deceased and is unable to designate the time and place for hearing a
5 guardianship proceeding [~~matter~~] pending in the judge's court, the
6 county clerk of the county in which the proceeding [~~matter~~] is
7 pending may designate the time and place for hearing, entering the
8 setting on the judge's docket and certifying on the docket the
9 reason that the judge is not acting to set the hearing. If a
10 qualified judge is not present for the hearing, after service of the
11 notices and citations required by law with reference to the time and
12 place of hearing has been perfected, the hearing is automatically
13 continued from day to day until a qualified judge is present to hear
14 and make a determination in the proceeding [~~determine the matter~~].

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

17 Sec. 632. ISSUANCE, CONTENTS, SERVICE, AND RETURN OF
18 CITATION, NOTICES, AND WRITS IN GUARDIANSHIP PROCEEDINGS
19 [~~MATTERS~~].

20 SECTION 13. Subsections (a), (b), and (h), Section 632,
21 Texas Probate Code, are amended to read as follows:

22 (a) A person does not need to be cited or otherwise given
23 notice in a guardianship proceeding [~~matter~~] except in situations
24 in which this chapter expressly provides for citation or the giving
25 of notice. If this chapter does not expressly provide for citation
26 or the issuance or return of notice in a guardianship proceeding
27 [~~matter~~], the court may require that notice be given. If the court

1 requires that notice be given, the court shall prescribe the form
2 and manner of service and return of service.

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

8 (h) In a guardianship proceeding [~~matter~~] in which citation
9 or notice is required to be served by posting and issued in
10 conformity with the applicable provision of this code, the citation
11 or notice and the service of and return of the citation or notice is
12 sufficient and valid if a sheriff or constable posts a copy of the
13 citation or notice at the place or places prescribed by this chapter
14 on a day that is sufficiently before the return day contained in the
15 citation or notice for the period of time for which the citation or
16 notice is required to be posted to elapse before the return day of
17 the citation or notice. The sufficiency or validity of the citation
18 or notice or the service of or return of the service of the citation
19 or notice is not affected by the fact that the sheriff or constable
20 makes the [~~his~~] return on the citation or notice and returns the
21 citation or notice to the court before the period elapses for which
22 the citation or notice is required to be posted, even though the
23 return is made, and the citation or notice is returned to the court,
24 on the same day it is issued.

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

27 Sec. 641. DEFECTS IN PLEADING. A court may not invalidate a

1 pleading in a guardianship proceeding [~~matter~~] or an order based on
2 the pleading based on a defect of form or substance in the pleading,
3 unless the defect has been timely objected to and called to the
4 attention of the court in which the proceeding was or is pending.

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

8 (e) The term of appointment of an attorney ad litem
9 appointed under this section expires, without a court order, on the
10 date the court [~~either~~] appoints a guardian in accordance with
11 Section 693 of this code, appoints a successor guardian, or denies
12 the application for appointment of a guardian, unless the court
13 determines that the continued appointment of the attorney ad litem
14 is in the ward's best interest.

15 (f) The term of appointment of an attorney ad litem
16 appointed under this section continues after the court appoints a
17 temporary guardian under Section 875 of this code unless a court
18 order provides for the termination or expiration of the attorney ad
19 litem's appointment.

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

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

26 SECTION 17. Subpart E, Part 2, Chapter XIII, Texas Probate
27 Code, is amended by adding Section 652 to read as follows:

1 Sec. 652. LOCATION OF HEARING. (a) Except as provided by
2 Subsection (b) of this section, the judge may hold a hearing on a
3 guardianship matter involving an adult ward or adult proposed ward
4 at any suitable location in the county in which the guardianship
5 matter is pending. The hearing should be held in a physical setting
6 that is not likely to have a harmful effect on the ward or proposed
7 ward.

8 (b) On the request of the adult proposed ward, the adult
9 ward, or the attorney of the proposed ward or ward, the hearing may
10 not be held under the authority of this section at a place other
11 than the courthouse.

12 SECTION 18. 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 19. Section 666, Texas Probate Code, is amended to
26 read as follows:

27 Sec. 666. EXPENSES ALLOWED. A guardian is entitled to be

1 reimbursed from the guardianship estate for all necessary and
2 reasonable expenses incurred in performing any duty as a guardian,
3 including reimbursement for the payment of reasonable attorney's
4 fees necessarily incurred by the guardian in connection with the
5 management of the estate or any other [~~guardianship~~] matter in the
6 guardianship.

7 SECTION 20. Subsection (a), Section 669, Texas Probate
8 Code, is amended to read as follows:

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

16 SECTION 21. Subsections (a-1) and (a-2), Section 682A,
17 Texas Probate Code, are amended to read as follows:

18 (a-1) Notwithstanding any other law, if the applicant who
19 files an application under Subsection (a) of this section or
20 Section 682 of this code is a person who was appointed conservator
21 of a disabled child and the proceeding is a guardianship proceeding
22 described by Section 601(25)(A) of this code in which the proposed
23 ward is the incapacitated adult with respect to whom another court
24 obtained continuing, exclusive jurisdiction in a suit affecting the
25 parent-child relationship when the person was a child [~~for whom a~~
26 ~~court obtains jurisdiction under Section 606(k) of this code~~], the
27 applicant may present to the court a written letter or certificate

1 that meets the requirements of Section 687(a) of this code.

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

10 SECTION 22. Subsection (c), Section 687, Texas Probate
11 Code, is amended to read as follows:

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

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

17 [~~(A)~~] complies with Subsection (a) of this
18 section; [~~and~~

19 [~~(B) states that the physician has made a~~
20 ~~determination of mental retardation in accordance with Section~~
21 ~~593.005, Health and Safety Code,~~] or

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

23 (A) [~~written documentation showing that,~~] not
24 earlier than 24 months before the date of the hearing, the proposed
25 ward has been examined by a physician or psychologist licensed in
26 this state or certified by the Department of Aging and Disability
27 Services to perform the examination, in accordance with rules of

1 the executive commissioner of the Health and Human Services
2 Commission governing examinations of that kind; and

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

8 SECTION 23. Subsection (c), Section 729, Texas Probate
9 Code, is amended to read as follows:

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

11 (1) what portion of the property is separate property
12 and what portion is community property; and

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

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

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

23 (1) the name of each person indebted to the ward and
24 the address of the person if known;

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

1 (3) the date of the indebtedness and the date when the
2 debt is or was due;

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

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

8 SECTION 25. Subsections (a) and (d), Section 745, Texas
9 Probate Code, are amended to read as follows:

10 (a) A guardianship of the estate of a ward shall be settled
11 when:

12 (1) a minor ward dies or becomes an adult by becoming
13 18 years of age, or by removal of disabilities of minority according
14 to the law of this state, or by marriage;

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

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

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

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

23 (6) all of the assets of the estate have been placed in
24 a management trust under Subpart N [~~, Part 4,~~] of this part, or have
25 been transferred to a pooled trust subaccount in accordance with a
26 court order issued as provided by Subpart I, Part 5, of this
27 chapter, [code] and the court determines that a guardianship of

1 ~~[for]~~ the ward's estate ~~[ward]~~ is no longer necessary; or

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

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

9 SECTION 26. Subsection (c), Section 770, Texas Probate
10 Code, is amended to read as follows:

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

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

17 SUBPART M. TAX-MOTIVATED, ~~[TAX-MOTIVATED AND]~~ CHARITABLE, AND
18 OTHER GIFTS

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

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

23 SECTION 29. Subsections (a) and (b), Section 865, Texas
24 Probate Code, are amended to read as follows:

25 (a) On application of the guardian of the estate or any
26 interested person ~~[party]~~ and after the posting of notice, the
27 court, after hearing, may enter an order that authorizes the

1 guardian to apply the principal or income of the ward's estate that
2 is not required for the support of the ward or the ward's family
3 during the ward's lifetime toward the establishment of an estate
4 plan for the purpose of minimizing income, estate, inheritance, or
5 other taxes payable out of the ward's estate, or to transfer a
6 portion of the ward's estate as necessary to qualify the ward for
7 government benefits and only to the extent allowed by applicable
8 state or federal laws, including rules, regarding those benefits,
9 on a showing that the ward will probably remain incapacitated
10 during the ward's lifetime. On the ward's behalf, the court may
11 authorize the guardian to make gifts or transfers described by this
12 subsection, outright or in trust, of the ward's [~~personal~~] property
13 [~~or real estate~~] to or for the benefit of:

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

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

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

23 (4) a person serving as guardian of the ward if the
24 person is eligible under either Subdivision (2) or (3) of this
25 subsection.

26 (b) The person making an application to the court under this
27 section shall outline the proposed estate or other transfer plan

1 and set forth all the benefits that are to be derived from the
2 ~~[estate]~~ plan. The application must indicate that the planned
3 disposition is consistent with the ward's intentions if the ward's
4 intentions can be ascertained. If the ward's intentions cannot be
5 ascertained, the ward will be presumed to favor reduction in the
6 incidence of the various forms of taxation, the qualification for
7 government benefits, and the partial distribution of the ward's
8 estate as provided by this section.

9 SECTION 30. Subsections (a-1), (b), (c), and (f), Section
10 867, Texas Probate Code, are amended to read as follows:

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

- 13 (1) the guardian of the estate of a ward;
- 14 (2) the guardian of the person of a ward;
- 15 (3) the guardian of both the person of and estate of a
16 ward;
- 17 (4) an attorney ad litem or guardian ad litem
18 appointed to represent a ward or the ward's interests;
- 19 (5) a person interested in the welfare of an alleged
20 incapacitated person who does not have a guardian ~~[of the estate]~~;
21 ~~[or]~~
- 22 (6) an attorney ad litem or guardian ad litem
23 appointed to represent an alleged incapacitated person who does not
24 have a guardian; or
- 25 (7) a person who has only a physical disability ~~[that~~
26 ~~person's interests]~~.

27 (b) On application by an appropriate person as provided by

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

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

15 (f) If a trust is created for a person [~~ward~~], the order
16 shall direct any [~~a~~] person or entity holding property belonging to
17 the person for whom the trust is created [~~ward~~] or to which that
18 person [~~the ward~~] is entitled to deliver all or part of the property
19 to a person or corporate fiduciary appointed by the court as trustee
20 of the trust. [~~If a trust is created for an incapacitated person~~
21 ~~who does not have a guardian, the order shall direct a person~~
22 ~~holding property belonging to the incapacitated person or to which~~
23 ~~the incapacitated person is entitled to deliver all or part of the~~
24 ~~property to the corporate fiduciary or other person appointed as~~
25 ~~trustee of the trust.~~] The order shall include terms, conditions,
26 and limitations placed on the trust. The court may [~~shall~~] maintain
27 the trust under the same cause number as the guardianship

1 proceeding, if the person for whom the trust is created is a ward or
2 proposed ward [~~applicable~~].

3 SECTION 31. Subsections (a), (b), and (d), Section 868,
4 Texas Probate Code, are amended to read as follows:

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

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

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

13 (3) the income of the trust that the trustee does not
14 disburse under Subdivision (2) of this subsection must be added to
15 the principal of the trust;

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

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

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

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

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

10 (1) the ward's guardian;

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

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

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

22 (1) is necessary and appropriate for the [~~ward or~~
23 ~~incapacitated~~] person for whom the trust is created to be eligible
24 to receive public benefits or assistance under a state or federal
25 program that is not otherwise available to the [~~ward or~~
26 ~~incapacitated~~] person; and

27 (2) is in the [~~ward's or incapacitated person's~~] best

1 interests of the person for whom the trust is created.

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

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

17 SECTION 33. Subsection (b), Section 869, Texas Probate
18 Code, is amended to read as follows:

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

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

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

24 (3) the person who has only a physical disability for
25 whom the trust is created[~~, as applicable, may not revoke the~~
26 ~~trust~~].

27 SECTION 34. Section 870, Texas Probate Code, is amended to

1 read as follows:

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

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

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

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

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

14 (2) on the date the court determines that continuing
15 the trust is no longer in the [~~ward's or incapacitated~~] person's
16 best interests, subject to Section 868C(b) of this code; [7] or

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

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

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

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

25 (b) Not later than the 30th day after the date a trustee to
26 which this section applies receives property into the trust, the
27 trustee shall file with the court in which the guardianship

1 proceeding is pending a report describing all property held in the
2 trust on the date of the report and specifying the value of the
3 property on that date.

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

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

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

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

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

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

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

24 (A) to the ward or incapacitated person when the
25 trust terminates on its own terms;

26 (B) to the successor trustee on appointment of a
27 successor trustee; or

1 (C) to the representative of the deceased ward's
2 or incapacitated person's estate on the ward's or incapacitated
3 person's death.

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

11 SECTION 38. Subdivision (1), Section 910, Texas Probate
12 Code, is amended to read as follows:

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

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

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

26 (1) the guardian of the incapacitated person;

27 (2) a person who has filed an application for the

1 appointment of a guardian for the alleged incapacitated person;

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

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

6 (B) the alleged incapacitated person who does not
7 have a guardian; or

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

9 SECTION 40. Subsection (i), Section 25.0022, Government
10 Code, is amended to read as follows:

11 (i) A judge assigned under this section has the
12 jurisdiction, powers, and duties given by Sections 4A, 4C, 4F, 4G,
13 4H, 5B, 605, 607A, 607B, 607D, 607E [~~606, 607~~], and 608, Texas
14 Probate Code, to statutory probate court judges by general law.

15 SECTION 41. Subsection (c), Section 25.1132, Government
16 Code, is amended to read as follows:

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

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

21 (2) family law cases and related proceedings;

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

24 (4) contested [~~guardianship~~] matters in guardianship
25 proceedings under Section 607B(a) [~~606(b)~~], Texas Probate Code.

26 SECTION 42. Notwithstanding the transfer of Sections 606
27 and 607, Texas Probate Code, to the Estates Code and redesignation

1 as Sections 606 and 607 of that code effective January 1, 2014, by
2 Section 5, Chapter 680 (H.B. 2502), Acts of the 81st Legislature,
3 Regular Session, 2009, Sections 606 and 607, Texas Probate Code,
4 are repealed.

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

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

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

11 (b) Sections 605, 608, and 609, Texas Probate Code, as
12 amended by this Act, and Sections 606A, 607A, 607B, 607C, 607D, and
13 607E, Texas Probate Code, as added by this Act, apply only to an
14 action filed or a proceeding commenced on or after the effective
15 date of this Act. An action filed or proceeding commenced before
16 the effective date of this Act is governed by the law in effect on
17 the date the action was filed or the proceeding was commenced, and
18 the former law is continued in effect for that purpose.

19 (c) Section 652, Texas Probate Code, as added by this Act,
20 applies to a guardianship matter that is pending or commenced on or
21 after the effective date of this Act.

22 (d) Sections 867, 868, 868C, 869, 870, 871, and 873, Texas
23 Probate Code, as amended by this Act, and Section 870A, Texas
24 Probate Code, as added by this Act, apply only to an application for
25 the creation, modification, or termination of a management trust
26 under Subpart N, Part 4, Chapter XIII, Texas Probate Code, that is
27 filed on or after the effective date of this Act. An application

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

5 (e) Sections 910 and 911, Texas Probate Code, as amended by
6 this Act, apply only to an application for the creation of a pooled
7 trust subaccount under Subpart I, Part 5, Chapter XIII, Texas
8 Probate Code, that is filed on or after the effective date of this
9 Act. An application described by this subsection that is filed
10 before the effective date of this Act is governed by the law in
11 effect on the date the application was filed, and the former law is
12 continued in effect for that purpose.

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

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 1196 passed the Senate on May 3, 2011, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendment on May 27, 2011, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 1196 passed the House, with amendment, on May 23, 2011, by the following vote: Yeas 142, Nays 0, one present not voting.

Chief Clerk of the House

Approved:

Date

Governor