

By: Rodriguez  
(Hartnett)

S.B. No. 1196

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. 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. Section 653, Texas Probate Code, is amended to  
27 read as follows:

1           Sec. 653. EXECUTION.     An execution in a guardianship  
2 proceeding [~~matter~~] shall be directed "To any sheriff or any  
3 constable within the State of Texas," made returnable in 60 days,  
4 and attested and signed by the clerk officially under the seal of  
5 the court.   A proceeding under an execution in a guardianship  
6 proceeding [~~matter~~] is governed so far as applicable by the laws  
7 regulating a proceeding under an execution issued from the district  
8 court.   An execution directed to the sheriff or a constable of a  
9 specific county in this state may not be held defective if the  
10 execution was properly executed within the county by the officer to  
11 whom the direction for execution was given.

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

14           Sec. 666. EXPENSES ALLOWED.   A guardian is entitled to be  
15 reimbursed from the guardianship estate for all necessary and  
16 reasonable expenses incurred in performing any duty as a guardian,  
17 including reimbursement for the payment of reasonable attorney's  
18 fees necessarily incurred by the guardian in connection with the  
19 management of the estate or any other [~~guardianship~~] matter in the  
20 guardianship.

21           SECTION 19.   Subsection (a), Section 669, Texas Probate  
22 Code, is amended to read as follows:

23           (a)   Except as provided by Subsection (b) of this section, in  
24 a guardianship proceeding [~~matter~~], the cost of the proceeding,  
25 including the cost of the guardian ad litem or court visitor, shall  
26 be paid out of the guardianship estate, or, if the estate is  
27 insufficient to pay for the cost of the proceeding, the cost of the



1 proceeding shall be paid out of the county treasury, and the  
2 judgment of the court shall be issued accordingly.

3 SECTION 20. Subsections (a-1) and (a-2), Section 682A,  
4 Texas Probate Code, are amended to read as follows:

5 (a-1) Notwithstanding any other law, if the applicant who  
6 files an application under Subsection (a) of this section or  
7 Section 682 of this code is a person who was appointed conservator  
8 of a disabled child and the proceeding is a guardianship proceeding  
9 described by Section 601(25)(A) of this code in which the proposed  
10 ward is the incapacitated adult with respect to whom another court  
11 obtained continuing, exclusive jurisdiction in a suit affecting the  
12 parent-child relationship when the person was a child [~~for whom a~~  
13 ~~court obtains jurisdiction under Section 606(k) of this code~~], the  
14 applicant may present to the court a written letter or certificate  
15 that meets the requirements of Section 687(a) of this code.

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

24 SECTION 21. Subsection (c), Section 687, Texas Probate  
25 Code, is amended to read as follows:

26 (c) If the basis of the proposed ward's alleged incapacity  
27 is mental retardation, the court may not grant an application to

1 create a guardianship for the proposed ward unless the applicant  
2 presents to the court a written letter or certificate that:

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

4 [~~(A)~~] complies with Subsection (a) of this  
5 section; [~~and~~

6 [~~(B) states that the physician has made a~~  
7 ~~determination of mental retardation in accordance with Section~~  
8 ~~593.005, Health and Safety Code,~~] or

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

10 (A) [~~written documentation showing that,~~] not  
11 earlier than 24 months before the date of the hearing, the proposed  
12 ward has been examined by a physician or psychologist licensed in  
13 this state or certified by the Department of Aging and Disability  
14 Services to perform the examination, in accordance with rules of  
15 the executive commissioner of the Health and Human Services  
16 Commission governing examinations of that kind; and

17 (B) the physician's or psychologist's written  
18 findings and recommendations to the court include [~~, including~~] a  
19 statement as to whether the physician or psychologist has made a  
20 determination of mental retardation in accordance with Section  
21 593.005, Health and Safety Code.

22 SECTION 22. Subsection (c), Section 729, Texas Probate  
23 Code, is amended to read as follows:

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

25 (1) what portion of the property is separate property  
26 and what portion is community property; and

27 (2) if [~~, If~~] any of the property is owned in common

1 with other persons, the interest owned by the ward [~~shall be shown~~  
2 ~~in the inventory, together with the names and relationship, if~~  
3 ~~known, of co-owners~~].

4 SECTION 23. Section 730, Texas Probate Code, is amended to  
5 read as follows:

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

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

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

15 (3) the date of the indebtedness and the date when the  
16 debt is or was due;

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

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

22 SECTION 24. Subsections (a) and (d), Section 745, Texas  
23 Probate Code, are amended to read as follows:

24 (a) A guardianship of the estate of a ward shall be settled  
25 when:

26 (1) a minor ward dies or becomes an adult by becoming  
27 18 years of age, or by removal of disabilities of minority according

1 to the law of this state, or by marriage;

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

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

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

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

10 (6) all of the assets of the estate have been placed in  
11 a management trust under Subpart N[~~, Part 4,~~] of this part, or have  
12 been transferred to a pooled trust subaccount in accordance with a  
13 court order issued as provided by Subpart I, Part 5, of this  
14 chapter, [code] and the court determines that a guardianship of  
15 [~~for~~] the ward's estate [~~ward~~] is no longer necessary; or

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

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

23 SECTION 25. Subsection (c), Section 770, Texas Probate  
24 Code, is amended to read as follows:

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

1 treatment.

2 SECTION 26. The heading to Subpart M, Part 4, Chapter XIII,  
3 Texas Probate Code, is amended to read as follows:

4 SUBPART M. TAX-MOTIVATED, [~~TAX-MOTIVATED AND~~] CHARITABLE, AND  
5 OTHER GIFTS

6 SECTION 27. The heading to Section 865, Texas Probate Code,  
7 is amended to read as follows:

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

10 SECTION 28. Subsections (a) and (b), Section 865, Texas  
11 Probate Code, are amended to read as follows:

12 (a) On application of the guardian of the estate or any  
13 interested person [~~party~~] and after the posting of notice, the  
14 court, after hearing, may enter an order that authorizes the  
15 guardian to apply the principal or income of the ward's estate that  
16 is not required for the support of the ward or the ward's family  
17 during the ward's lifetime toward the establishment of an estate  
18 plan for the purpose of minimizing income, estate, inheritance, or  
19 other taxes payable out of the ward's estate, or to transfer a  
20 portion of the ward's estate as necessary to qualify the ward for  
21 government benefits and only to the extent allowed by applicable  
22 state or federal laws, including rules, regarding those benefits,  
23 on a showing that the ward will probably remain incapacitated  
24 during the ward's lifetime. On the ward's behalf, the court may  
25 authorize the guardian to make gifts or transfers described by this  
26 subsection, outright or in trust, of the ward's [~~personal~~] property  
27 [~~or real estate~~] to or for the benefit of:

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

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

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

10           (4) a person serving as guardian of the ward if the  
11 person is eligible under either Subdivision (2) or (3) of this  
12 subsection.

13           (b) The person making an application to the court under this  
14 section shall outline the proposed estate or other transfer plan  
15 and set forth all the benefits that are to be derived from the  
16 [~~estate~~] plan. The application must indicate that the planned  
17 disposition is consistent with the ward's intentions if the ward's  
18 intentions can be ascertained. If the ward's intentions cannot be  
19 ascertained, the ward will be presumed to favor reduction in the  
20 incidence of the various forms of taxation, the qualification for  
21 government benefits, and the partial distribution of the ward's  
22 estate as provided by this section.

23           SECTION 29. Subsections (a-1), (b), (c), and (f), Section  
24 867, Texas Probate Code, are amended to read as follows:

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

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

- 1           (2) the guardian of the person of a ward;
- 2           (3) the guardian of both the person of and estate of a  
3 ward;
- 4           (4) an attorney ad litem or guardian ad litem  
5 appointed to represent a ward or the ward's interests;
- 6           (5) a person interested in the welfare of an alleged  
7 incapacitated person who does not have a guardian [~~of the estate~~];  
8 [~~or~~]
- 9           (6) an attorney ad litem or guardian ad litem  
10 appointed to represent an alleged incapacitated person who does not  
11 have a guardian; or
- 12           (7) a person who has only a physical disability [~~that~~  
13 ~~person's interests~~].
- 14           (b) On application by an appropriate person as provided by  
15 Subsection (a-1) of this section and subject to Subsection (b-1) of  
16 this section, if applicable, the court with jurisdiction over the  
17 proceedings [~~guardianship~~] may enter an order that creates [~~for the~~  
18 ~~ward's benefit~~] a trust for the management of the [~~guardianship~~]  
19 funds of the person with respect to whom the application is filed if  
20 the court finds that the creation of the trust is in the person's  
21 [~~ward's~~] best interests.
- 22           (c) Subject to Subsection (d) of this section, if the court  
23 finds that it is in the [~~ward's or incapacitated person's~~] best  
24 interests of the person for whom a trust is created under this  
25 section, the court may appoint a person or entity that meets the  
26 requirements of Subsection (e) of this section to serve as trustee  
27 of the trust instead of appointing a financial institution to serve

1 in that capacity.

2 (f) If a trust is created for a person [~~ward~~], the order  
3 shall direct any [~~a~~] person or entity holding property belonging to  
4 the person for whom the trust is created [~~ward~~] or to which that  
5 person [~~the ward~~] is entitled to deliver all or part of the property  
6 to a person or corporate fiduciary appointed by the court as trustee  
7 of the trust. [~~If a trust is created for an incapacitated person~~  
8 ~~who does not have a guardian, the order shall direct a person~~  
9 ~~holding property belonging to the incapacitated person or to which~~  
10 ~~the incapacitated person is entitled to deliver all or part of the~~  
11 ~~property to the corporate fiduciary or other person appointed as~~  
12 ~~trustee of the trust.~~] The order shall include terms, conditions,  
13 and limitations placed on the trust. The court may [~~shall~~] maintain  
14 the trust under the same cause number as the guardianship  
15 proceeding, if the person for whom the trust is created is a ward or  
16 proposed ward [~~applicable~~].

17 SECTION 30. Subsections (a), (b), and (d), Section 868,  
18 Texas Probate Code, are amended to read as follows:

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

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

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

27 (3) the income of the trust that the trustee does not



1 disburse under Subdivision (2) of this subsection must be added to  
2 the principal of the trust;

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

5 (5) the trustee, subject to the court's approval, is  
6 entitled to receive reasonable compensation for services that the  
7 trustee provided to the ~~[ward or incapacitated]~~ person for whom the  
8 trust is created as the ~~[ward's or incapacitated]~~ person's trustee  
9 that is:

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

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

15 (b) The trust may provide that a trustee make a  
16 distribution, payment, use, or application of trust funds for the  
17 health, education, support, or maintenance of the ~~[ward or~~  
18 ~~incapacitated]~~ person for whom the trust is created or of another  
19 person whom the ~~[ward or incapacitated]~~ person for whom the trust is  
20 created is legally obligated to support, as necessary and without  
21 the intervention of a guardian or other representative of the ward  
22 or of a representative of the incapacitated person or person who has  
23 only a physical disability, to:

24 (1) the ward's guardian;

25 (2) a person who has physical custody of the ~~[ward or~~  
26 ~~incapacitated]~~ person for whom the trust is created or another  
27 person whom the ~~[ward or incapacitated]~~ person for whom the trust is

1 created is legally obligated to support; or

2 (3) a person providing a good or service to the [~~ward~~  
3 ~~or incapacitated~~] person for whom the trust is created or another  
4 person whom the [~~ward or incapacitated~~] person for whom the trust is  
5 created is legally obligated to support.

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

9 (1) is necessary and appropriate for the [~~ward or~~  
10 ~~incapacitated~~] person for whom the trust is created to be eligible  
11 to receive public benefits or assistance under a state or federal  
12 program that is not otherwise available to the [~~ward or~~  
13 ~~incapacitated~~] person; and

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

16 SECTION 31. Subsection (a), Section 868C, Texas Probate  
17 Code, is amended to read as follows:

18 (a) If the court determines that it is in the [~~ward's or~~  
19 ~~incapacitated person's~~] best interests of the person for whom a  
20 trust is created under Section 867 of this code, the court may order  
21 the transfer of all property in the [~~a management~~] trust [~~created~~  
22 ~~under Section 867 of this code~~] to a subaccount of a pooled trust  
23 established in accordance with Subpart I, Part 5, of this chapter.  
24 The transfer of property from the management trust to the  
25 subaccount of the pooled trust shall be treated as a continuation of  
26 the management trust and may not be treated as the establishment of  
27 a new trust for purposes of 42 U.S.C. Section 1396p(d)(4)(A) or (C)

1 or otherwise for purposes of the management trust beneficiary's  
2 ~~[ward's or incapacitated person's]~~ eligibility for medical  
3 assistance under Chapter 32, Human Resources Code.

4 SECTION 32. Subsection (b), Section 869, Texas Probate  
5 Code, is amended to read as follows:

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

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

9 (2) [or] the incapacitated person for whom the trust  
10 is created; or

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

14 SECTION 33. Section 870, Texas Probate Code, is amended to  
15 read as follows:

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

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

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

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

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

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

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

6           SECTION 34. Subpart N, Part 4, Chapter XIII, Texas Probate  
7 Code, is amended by adding Section 870A to read as follows:

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

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

12           (b) Not later than the 30th day after the date a trustee to  
13 which this section applies receives property into the trust, the  
14 trustee shall file with the court in which the guardianship  
15 proceeding is pending a report describing all property held in the  
16 trust on the date of the report and specifying the value of the  
17 property on that date.

18           SECTION 35. Section 871, Texas Probate Code, is amended by  
19 amending Subsection (a) and adding Subsection (d) to read as  
20 follows:

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

25           (d) The court may not require a trustee of a trust created  
26 for a person who has only a physical disability to prepare and file  
27 with the court the annual accounting as described by Subsection (a)

1 of this section.

2 SECTION 36. Section 873, Texas Probate Code, is amended to  
3 read as follows:

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

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

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

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

13 (B) to the successor trustee on appointment of a  
14 successor trustee; or

15 (C) to the representative of the deceased ward's  
16 or incapacitated person's estate on the ward's or incapacitated  
17 person's death.

18 (b) The court may not require a trustee of a trust created  
19 for a person who has only a physical disability to prepare and file  
20 with the court a final account as described by Subsection (a)(1) of  
21 this section. The trustee shall distribute the principal and any  
22 undistributed income of the trust in the manner provided by  
23 Subsection (a)(2) of this section for a trust the beneficiary of  
24 which is a ward or incapacitated person.

25 SECTION 37. Subdivision (1), Section 910, Texas Probate  
26 Code, is amended to read as follows:

27 (1) "Beneficiary" means a minor or other incapacitated

1 person, an alleged incapacitated person, or a disabled person who  
2 is not an~~[, or any other]~~ incapacitated person for whom a subaccount  
3 is established.

4 SECTION 38. Section 911, Texas Probate Code, is amended to  
5 read as follows:

6 Sec. 911. APPLICATION. The following persons ~~[A person~~  
7 ~~interested in the welfare of a minor, a disabled person, or any~~  
8 ~~other incapacitated person]~~ may apply to the court for the  
9 establishment of a subaccount for the benefit of a ~~[the]~~ minor~~[,~~  
10 ~~disabled person,~~] or other incapacitated person, an alleged  
11 incapacitated person, or a disabled person who is not an  
12 incapacitated person:

13 (1) the guardian of the incapacitated person;  
14 (2) a person who has filed an application for the  
15 appointment of a guardian for the alleged incapacitated person;  
16 (3) an attorney ad litem or guardian ad litem  
17 appointed to represent:

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

20 (B) the alleged incapacitated person who does not  
21 have a guardian; or

22 (4) the disabled person ~~[as the beneficiary].~~

23 SECTION 39. Subsection (i), Section 25.0022, Government  
24 Code, is amended to read as follows:

25 (i) A judge assigned under this section has the  
26 jurisdiction, powers, and duties given by Sections 4A, 4C, 4F, 4G,  
27 4H, 5B, 605, 607A, 607B, 607D, 607E ~~[606, 607]~~, and 608, Texas

1 Probate Code, to statutory probate court judges by general law.

2 SECTION 40. Subsection (c), Section 25.1132, Government  
3 Code, is amended to read as follows:

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

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

8 (2) family law cases and related proceedings;

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

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

13 SECTION 41. Notwithstanding the transfer of Sections 606  
14 and 607, Texas Probate Code, to the Estates Code and redesignation  
15 as Sections 606 and 607 of that code effective January 1, 2014, by  
16 Section 5, Chapter 680 (H.B. 2502), Acts of the 81st Legislature,  
17 Regular Session, 2009, Sections 606 and 607, Texas Probate Code,  
18 are repealed.

19 SECTION 42. (a) Except as otherwise provided by this  
20 section, the changes in law made by this Act apply to:

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

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

25 (b) Sections 605, 608, and 609, Texas Probate Code, as  
26 amended by this Act, and Sections 606A, 607A, 607B, 607C, 607D, and  
27 607E, Texas Probate Code, as added by this Act, apply only to an

1 action filed or a proceeding commenced on or after the effective  
2 date of this Act. An action filed or proceeding commenced before  
3 the effective date of this Act is governed by the law in effect on  
4 the date the action was filed or the proceeding was commenced, and  
5 the former law is continued in effect for that purpose.

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

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

24 SECTION 43. This Act takes effect September 1, 2011.



