

1-1 By: Rodriguez S.B. No. 1196
1-2 (In the Senate - Filed March 4, 2011; March 16, 2011, read
1-3 first time and referred to Committee on Jurisprudence;
1-4 April 28, 2011, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 5, Nays 0; April 28, 2011,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1196 By: Rodriguez

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to guardianships and alternatives to guardianship for
1-11 persons who have physical disabilities or who are incapacitated.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Subdivision (25), Section 601, Texas Probate
1-14 Code, is amended to read as follows:

1-15 (25) The term ["Proceedings in guardianship,"
1-16 "guardianship matter," "guardianship matters,"] "guardianship
1-17 proceeding" means [proceeding," and "proceedings for guardianship"
1-18 are synonymous and include] a matter or proceeding related
1-19 [relating] to a guardianship or any other matter covered
1-20 [addressed] by this chapter, including:

1-21 (A) the appointment of a guardian of a minor or
1-22 other incapacitated person, including an incapacitated adult for
1-23 whom another court obtained continuing, exclusive jurisdiction in a
1-24 suit affecting the parent-child relationship when the person was a
1-25 child;

1-26 (B) an application, petition, or motion
1-27 regarding guardianship or an alternative to guardianship under this
1-28 chapter;

1-29 (C) a mental health action; and

1-30 (D) an application, petition, or motion
1-31 regarding a trust created under Section 867 of this code.

1-32 SECTION 2. Section 605, Texas Probate Code, is amended to
1-33 read as follows:

1-34 Sec. 605. GENERAL PROBATE [COUNTY] COURT JURISDICTION IN
1-35 GUARDIANSHIP PROCEEDINGS; APPEALS. (a) All guardianship
1-36 proceedings must be filed and heard in a court exercising original
1-37 probate jurisdiction. The court exercising original probate
1-38 jurisdiction also has jurisdiction of all matters related to the
1-39 guardianship proceeding as specified in Section 606A of this code
1-40 for that type of court.

1-41 (b) A probate court may exercise pendent and ancillary
1-42 jurisdiction as necessary to promote judicial efficiency and
1-43 economy.

1-44 (c) A final order issued by a probate court is appealable to
1-45 the court of appeals. [The county court has the general
1-46 jurisdiction of a probate court. The county court shall appoint
1-47 guardians of minors and other incapacitated persons, grant letters
1-48 of guardianship, settle accounts of guardians, and transact all
1-49 business appertaining to estates subject to guardianship,
1-50 including the settlement, partition, and distribution of the
1-51 estates. The county court may also enter other orders as may be
1-52 authorized under this chapter.]

1-53 SECTION 3. Subpart A, Part 2, Chapter XIII, Texas Probate
1-54 Code, is amended by adding Sections 606A, 607A, 607B, 607C, 607D,
1-55 and 607E to read as follows:

1-56 Sec. 606A. MATTERS RELATED TO GUARDIANSHIP PROCEEDING.

1-57 (a) For purposes of this code, in a county in which there is no
1-58 statutory probate court, a matter related to a guardianship
1-59 proceeding includes:

1-60 (1) the granting of letters of guardianship;

1-61 (2) the settling of an account of a guardian and all
1-62 other matters relating to the settlement, partition, or
1-63 distribution of a ward's estate;

2-1 (3) a claim brought by or against a guardianship
2-2 estate;
2-3 (4) an action for trial of title to real property that
2-4 is guardianship estate property, including the enforcement of a
2-5 lien against the property;
2-6 (5) an action for trial of the right of property that
2-7 is guardianship estate property;
2-8 (6) after a guardianship of the estate of a ward is
2-9 required to be settled as provided by Section 745 of this code:
2-10 (A) an action brought by or on behalf of the
2-11 former ward against a former guardian of the ward for alleged
2-12 misconduct arising from the performance of the person's duties as
2-13 guardian;
2-14 (B) an action calling on the surety of a guardian
2-15 or former guardian to perform in place of the guardian or former
2-16 guardian, which may include the award of a judgment against the
2-17 guardian or former guardian in favor of the surety;
2-18 (C) an action against a former guardian of the
2-19 former ward that is brought by a surety that is called on to perform
2-20 in place of the former guardian;
2-21 (D) a claim for the payment of compensation,
2-22 expenses, and court costs, and any other matter authorized under
2-23 Subpart H, Part 2, of this chapter; and
2-24 (E) a matter related to an authorization made or
2-25 duty performed by a guardian under Subpart C, Part 4, of this
2-26 chapter; and
2-27 (7) the appointment of a trustee for a trust created
2-28 under Section 867 of this code, the settling of an account of the
2-29 trustee, and all other matters relating to the trust.
2-30 (b) For purposes of this code, in a county in which there is
2-31 a statutory probate court, a matter related to a guardianship
2-32 proceeding includes:
2-33 (1) all matters and actions described in Subsection
2-34 (a) of this section;
2-35 (2) a suit, action, or application filed against or on
2-36 behalf of a guardianship or a trustee of a trust created under
2-37 Section 867 of this code; and
2-38 (3) a cause of action in which a guardian in a
2-39 guardianship pending in the statutory probate court is a party.
2-40 Sec. 607A. ORIGINAL JURISDICTION FOR GUARDIANSHIP
2-41 PROCEEDINGS. (a) In a county in which there is no statutory
2-42 probate court or county court at law exercising original probate
2-43 jurisdiction, the county court has original jurisdiction of
2-44 guardianship proceedings.
2-45 (b) In a county in which there is no statutory probate
2-46 court, but in which there is a county court at law exercising
2-47 original probate jurisdiction, the county court at law exercising
2-48 original probate jurisdiction and the county court have concurrent
2-49 original jurisdiction of guardianship proceedings, unless
2-50 otherwise provided by law. The judge of a county court may hear
2-51 guardianship proceedings while sitting for the judge of any other
2-52 county court.
2-53 (c) In a county in which there is a statutory probate court,
2-54 the statutory probate court has original jurisdiction of
2-55 guardianship proceedings.
2-56 Sec. 607B. JURISDICTION OF CONTESTED GUARDIANSHIP
2-57 PROCEEDING IN COUNTY WITH NO STATUTORY PROBATE COURT OR COUNTY
2-58 COURT AT LAW. (a) In a county in which there is no statutory
2-59 probate court or county court at law exercising original probate
2-60 jurisdiction, when a matter in a guardianship proceeding is
2-61 contested, the judge of the county court may, on the judge's own
2-62 motion, or shall, on the motion of any party to the proceeding,
2-63 according to the motion:
2-64 (1) request the assignment of a statutory probate
2-65 court judge to hear the contested matter, as provided by Section
2-66 25.0022, Government Code; or
2-67 (2) transfer the contested matter to the district
2-68 court, which may then hear the contested matter as if originally
2-69 filed in the district court.

3-1 (b) If a party to a guardianship proceeding files a motion
3-2 for the assignment of a statutory probate court judge to hear a
3-3 contested matter in the proceeding before the judge of the county
3-4 court transfers the contested matter to a district court under this
3-5 section, the county judge shall grant the motion for the assignment
3-6 of a statutory probate court judge and may not transfer the matter
3-7 to the district court unless the party withdraws the motion.

3-8 (c) If a judge of a county court requests the assignment of a
3-9 statutory probate court judge to hear a contested matter in a
3-10 guardianship proceeding on the judge's own motion or on the motion
3-11 of a party to the proceeding as provided by this section, the judge
3-12 may request that the statutory probate court judge be assigned to
3-13 the entire proceeding on the judge's own motion or on the motion of
3-14 a party.

3-15 (d) A party to a guardianship proceeding may file a motion
3-16 for the assignment of a statutory probate court judge under this
3-17 section before a matter in the proceeding becomes contested, and
3-18 the motion is given effect as a motion for assignment of a statutory
3-19 probate court judge under Subsection (a) of this section if the
3-20 matter later becomes contested.

3-21 (e) Notwithstanding any other law, a transfer of a contested
3-22 matter in a guardianship proceeding to a district court under any
3-23 authority other than the authority provided by this section:

3-24 (1) is disregarded for purposes of this section; and

3-25 (2) does not defeat the right of a party to the
3-26 proceeding to have the matter assigned to a statutory probate court
3-27 judge in accordance with this section.

3-28 (f) A statutory probate court judge assigned to a contested
3-29 matter in a guardianship proceeding or to the entire proceeding
3-30 under this section has the jurisdiction and authority granted to a
3-31 statutory probate court by this code. A statutory probate court
3-32 judge assigned to hear only the contested matter in a guardianship
3-33 proceeding shall, on resolution of the matter, including any appeal
3-34 of the matter, return the matter to the county court for further
3-35 proceedings not inconsistent with the orders of the statutory
3-36 probate court or court of appeals, as applicable. A statutory
3-37 probate court judge assigned to the entire guardianship proceeding
3-38 as provided by Subsection (c) of this section shall, on resolution
3-39 of the contested matter in the proceeding, including any appeal of
3-40 the matter, return the entire proceeding to the county court for
3-41 further proceedings not inconsistent with the orders of the
3-42 statutory probate court or court of appeals, as applicable.

3-43 (g) A district court to which a contested matter in a
3-44 guardianship proceeding is transferred under this section has the
3-45 jurisdiction and authority granted to a statutory probate court by
3-46 this code. On resolution of a contested matter transferred to the
3-47 district court under this section, including any appeal of the
3-48 matter, the district court shall return the matter to the county
3-49 court for further proceedings not inconsistent with the orders of
3-50 the district court or court of appeals, as applicable.

3-51 (h) If only the contested matter in a guardianship
3-52 proceeding is assigned to a statutory probate court judge under
3-53 this section, or if the contested matter in a guardianship
3-54 proceeding is transferred to a district court under this section,
3-55 the county court shall continue to exercise jurisdiction over the
3-56 management of the guardianship, other than a contested matter,
3-57 until final disposition of the contested matter is made in
3-58 accordance with this section. Any matter related to a guardianship
3-59 proceeding in which a contested matter is transferred to a district
3-60 court may be brought in the district court. The district court in
3-61 which a matter related to the proceeding is filed may, on the
3-62 court's own motion or on the motion of any party, find that the
3-63 matter is not a contested matter and transfer the matter to the
3-64 county court with jurisdiction of the management of the
3-65 guardianship.

3-66 (i) If a contested matter in a guardianship proceeding is
3-67 transferred to a district court under this section, the district
3-68 court has jurisdiction of any contested matter in the proceeding
3-69 that is subsequently filed, and the county court shall transfer

4-1 those contested matters to the district court. If a statutory
 4-2 probate court judge is assigned under this section to hear a
 4-3 contested matter in a guardianship proceeding, the statutory
 4-4 probate court judge shall be assigned to hear any contested matter
 4-5 in the proceeding that is subsequently filed.

4-6 (j) The clerk of a district court to which a contested
 4-7 matter in a guardianship proceeding is transferred under this
 4-8 section may perform in relation to the transferred matter any
 4-9 function a county clerk may perform with respect to that type of
 4-10 matter.

4-11 Sec. 607C. JURISDICTION OF CONTESTED GUARDIANSHIP
 4-12 PROCEEDING IN COUNTY WITH NO STATUTORY PROBATE COURT. (a) In a
 4-13 county in which there is no statutory probate court, but in which
 4-14 there is a county court at law exercising original probate
 4-15 jurisdiction, when a matter in a guardianship proceeding is
 4-16 contested, the judge of the county court may, on the judge's own
 4-17 motion, or shall, on the motion of any party to the proceeding,
 4-18 transfer the contested matter to the county court at law. In
 4-19 addition, the judge of the county court, on the judge's own motion
 4-20 or on the motion of a party to the proceeding, may transfer the
 4-21 entire proceeding to the county court at law.

4-22 (b) A county court at law to which a proceeding is
 4-23 transferred under this section may hear the proceeding as if
 4-24 originally filed in that court. If only a contested matter in the
 4-25 proceeding is transferred, on the resolution of the matter, the
 4-26 matter shall be returned to the county court for further
 4-27 proceedings not inconsistent with the orders of the county court at
 4-28 law.

4-29 Sec. 607D. EXCLUSIVE JURISDICTION OF GUARDIANSHIP
 4-30 PROCEEDING IN COUNTY WITH STATUTORY PROBATE COURT. (a) In a
 4-31 county in which there is a statutory probate court, the statutory
 4-32 probate court has exclusive jurisdiction of all guardianship
 4-33 proceedings, regardless of whether contested or uncontested.

4-34 (b) A cause of action related to a guardianship proceeding
 4-35 of which the statutory probate court has exclusive jurisdiction as
 4-36 provided by Subsection (a) of this section must be brought in the
 4-37 statutory probate court unless the jurisdiction of the statutory
 4-38 probate court is concurrent with the jurisdiction of a district
 4-39 court as provided by Section 607E of this code or with the
 4-40 jurisdiction of any other court.

4-41 Sec. 607E. CONCURRENT JURISDICTION WITH DISTRICT COURT. A
 4-42 statutory probate court has concurrent jurisdiction with the
 4-43 district court in:

4-44 (1) a personal injury, survival, or wrongful death
 4-45 action by or against a person in the person's capacity as a
 4-46 guardian; and

4-47 (2) an action involving a guardian in which each other
 4-48 party aligned with the guardian is not an interested person in the
 4-49 guardianship.

4-50 SECTION 4. Section 608, Texas Probate Code, is amended to
 4-51 read as follows:

4-52 Sec. 608. TRANSFER OF [GUARDIANSHIP] PROCEEDING BY
 4-53 STATUTORY PROBATE COURT. (a) A judge of a statutory probate
 4-54 court, on the motion of a party to the action or of a person
 4-55 interested in the [a] guardianship, may:

4-56 (1) transfer to the judge's court from a district,
 4-57 county, or statutory court a cause of action that is a matter
 4-58 related [~~appertaining to or incident~~] to a guardianship proceeding
 4-59 [~~estate that is~~] pending in the statutory probate court, including
 4-60 [~~or~~] a cause of action that is a matter related [~~relating~~] to a
 4-61 guardianship proceeding pending in the statutory probate court and
 4-62 in which the [a] guardian, ward, or proposed ward in the [a
 4-63 guardianship] pending guardianship proceeding [~~in the statutory~~
 4-64 ~~probate court~~] is a party; and

4-65 (2) [~~may~~] consolidate the transferred cause of action
 4-66 with the guardianship proceeding to which it relates and any other
 4-67 proceedings in the statutory probate court that are related
 4-68 [~~relating~~] to the guardianship proceeding [~~estate~~].

4-69 (b) Notwithstanding any other provision of this chapter,

5-1 the proper venue for an action by or against a guardian, ward, or
5-2 proposed ward for personal injury, death, or property damages is
5-3 determined under Section 15.007, Civil Practice and Remedies Code.

5-4 SECTION 5. The heading to Section 609, Texas Probate Code,
5-5 is amended to read as follows:

5-6 Sec. 609. TRANSFER OF CONTESTED GUARDIANSHIP OF THE PERSON
5-7 OF A MINOR.

5-8 SECTION 6. Subsection (a), Section 609, Texas Probate Code,
5-9 is amended to read as follows:

5-10 (a) If an interested person contests an application for the
5-11 appointment of a guardian of the person of a minor or an interested
5-12 person seeks the removal of a guardian of the person of a minor, the
5-13 judge, on the judge's own motion, may transfer all matters related
5-14 [relating] to the guardianship proceeding [of the person of the
5-15 minor] to a court of competent jurisdiction in which a suit
5-16 affecting the parent-child relationship under the Family Code is
5-17 pending.

5-18 SECTION 7. Subsection (a), Section 611, Texas Probate Code,
5-19 is amended to read as follows:

5-20 (a) If two or more courts have concurrent venue of a
5-21 guardianship proceeding [matter], the court in which an application
5-22 for a guardianship proceeding is initially filed has and retains
5-23 jurisdiction of the proceeding [guardianship matter]. A proceeding
5-24 is considered commenced by the filing of an application alleging
5-25 facts sufficient to confer venue, and the proceeding initially
5-26 legally commenced extends to all of the property of the
5-27 guardianship estate.

5-28 SECTION 8. Subsection (a), Section 621, Texas Probate Code,
5-29 is amended to read as follows:

5-30 (a) An application for a guardianship proceeding or [r] a
5-31 complaint, petition, or other paper permitted or required by law to
5-32 be filed in the court in a guardianship proceeding [matters] shall
5-33 be filed with the county clerk of the proper county.

5-34 SECTION 9. Subsections (a) and (b), Section 622, Texas
5-35 Probate Code, are amended to read as follows:

5-36 (a) The laws regulating costs in ordinary civil cases apply
5-37 to a guardianship proceeding [matter] unless otherwise expressly
5-38 provided by this chapter.

5-39 (b) When a person other than the guardian, attorney ad
5-40 litem, or guardian ad litem files an application, complaint, or
5-41 opposition in relation to a guardianship proceeding [matter], the
5-42 clerk may require the person to give security for the probable costs
5-43 of the [guardianship] proceeding before filing. A person
5-44 interested in the guardianship or in the welfare of the ward, or an
5-45 officer of the court, at any time before the trial of an
5-46 application, complaint, or opposition in relation to a guardianship
5-47 proceeding [matter], may obtain from the court, on written motion,
5-48 an order requiring the person who filed the application, complaint,
5-49 or opposition to give security for the probable costs of the
5-50 proceeding. The rules governing civil suits in the county court
5-51 relating to this subject control in these cases.

5-52 SECTION 10. Section 629, Texas Probate Code, is amended to
5-53 read as follows:

5-54 Sec. 629. CALL OF THE DOCKETS. The judge of the court in
5-55 which a guardianship proceeding is pending, as the judge
5-56 determines, shall call guardianship proceedings [matters] in their
5-57 regular order on both the guardianship and claim dockets and shall
5-58 make necessary orders.

5-59 SECTION 11. Section 630, Texas Probate Code, is amended to
5-60 read as follows:

5-61 Sec. 630. CLERK MAY SET HEARINGS. If the [county] judge is
5-62 absent from the county seat or is on vacation, disqualified, ill, or
5-63 deceased and is unable to designate the time and place for hearing a
5-64 guardianship proceeding [matter] pending in the judge's court, the
5-65 county clerk of the county in which the proceeding [matter] is
5-66 pending may designate the time and place for hearing, entering the
5-67 setting on the judge's docket and certifying on the docket the
5-68 reason that the judge is not acting to set the hearing. If a
5-69 qualified judge is not present for the hearing, after service of the

6-1 notices and citations required by law with reference to the time and
6-2 place of hearing has been perfected, the hearing is automatically
6-3 continued from day to day until a qualified judge is present to hear
6-4 and make a determination in the proceeding [~~determine the matter~~].

6-5 SECTION 12. The heading to Section 632, Texas Probate Code,
6-6 is amended to read as follows:

6-7 Sec. 632. ISSUANCE, CONTENTS, SERVICE, AND RETURN OF
6-8 CITATION, NOTICES, AND WRITS IN GUARDIANSHIP PROCEEDINGS
6-9 [MATTERS].

6-10 SECTION 13. Subsections (a), (b), and (h), Section 632,
6-11 Texas Probate Code, are amended to read as follows:

6-12 (a) A person does not need to be cited or otherwise given
6-13 notice in a guardianship proceeding [~~matter~~] except in situations
6-14 in which this chapter expressly provides for citation or the giving
6-15 of notice. If this chapter does not expressly provide for citation
6-16 or the issuance or return of notice in a guardianship proceeding
6-17 [~~matter~~], the court may require that notice be given. If the court
6-18 requires that notice be given, the court shall prescribe the form
6-19 and manner of service and return of service.

6-20 (b) Unless a court order is required by a provision of this
6-21 chapter, the county clerk shall issue without a court order
6-22 necessary citations, writs, and process in guardianship
6-23 proceedings [~~matters~~] and all notices not required to be issued by
6-24 guardians.

6-25 (h) In a guardianship proceeding [~~matter~~] in which citation
6-26 or notice is required to be served by posting and issued in
6-27 conformity with the applicable provision of this code, the citation
6-28 or notice and the service of and return of the citation or notice is
6-29 sufficient and valid if a sheriff or constable posts a copy of the
6-30 citation or notice at the place or places prescribed by this chapter
6-31 on a day that is sufficiently before the return day contained in the
6-32 citation or notice for the period of time for which the citation or
6-33 notice is required to be posted to elapse before the return day of
6-34 the citation or notice. The sufficiency or validity of the citation
6-35 or notice or the service of or return of the service of the citation
6-36 or notice is not affected by the fact that the sheriff or constable
6-37 makes the [~~his~~] return on the citation or notice and returns the
6-38 citation or notice to the court before the period elapses for which
6-39 the citation or notice is required to be posted, even though the
6-40 return is made, and the citation or notice is returned to the court,
6-41 on the same day it is issued.

6-42 SECTION 14. Section 641, Texas Probate Code, is amended to
6-43 read as follows:

6-44 Sec. 641. DEFECTS IN PLEADING. A court may not invalidate a
6-45 pleading in a guardianship proceeding [~~matter~~] or an order based on
6-46 the pleading based on a defect of form or substance in the pleading,
6-47 unless the defect has been timely objected to and called to the
6-48 attention of the court in which the proceeding was or is pending.

6-49 SECTION 15. Section 646, Texas Probate Code, is amended by
6-50 amending Subsection (e) and adding Subsection (f) to read as
6-51 follows:

6-52 (e) The term of appointment of an attorney ad litem
6-53 appointed under this section expires, without a court order, on the
6-54 date the court [~~either~~] appoints a guardian in accordance with
6-55 Section 693 of this code, appoints a successor guardian, or denies
6-56 the application for appointment of a guardian, unless the court
6-57 determines that the continued appointment of the attorney ad litem
6-58 is in the ward's best interest.

6-59 (f) The term of appointment of an attorney ad litem
6-60 appointed under this section continues after the court appoints a
6-61 temporary guardian under Section 875 of this code unless a court
6-62 order provides for the termination or expiration of the attorney ad
6-63 litem's appointment.

6-64 SECTION 16. Section 650, Texas Probate Code, is amended to
6-65 read as follows:

6-66 Sec. 650. DECREES. A decision, order, decree, or judgment
6-67 of the court in a guardianship proceeding [~~matter~~] must be rendered
6-68 in open court, except in a case in which it is otherwise expressly
6-69 provided.

7-1 SECTION 17. Section 653, Texas Probate Code, is amended to
 7-2 read as follows:

7-3 Sec. 653. EXECUTION. An execution in a guardianship
 7-4 proceeding [matter] shall be directed "To any sheriff or any
 7-5 constable within the State of Texas," made returnable in 60 days,
 7-6 and attested and signed by the clerk officially under the seal of
 7-7 the court. A proceeding under an execution in a guardianship
 7-8 proceeding [matter] is governed so far as applicable by the laws
 7-9 regulating a proceeding under an execution issued from the district
 7-10 court. An execution directed to the sheriff or a constable of a
 7-11 specific county in this state may not be held defective if the
 7-12 execution was properly executed within the county by the officer to
 7-13 whom the direction for execution was given.

7-14 SECTION 18. Section 666, Texas Probate Code, is amended to
 7-15 read as follows:

7-16 Sec. 666. EXPENSES ALLOWED. A guardian is entitled to be
 7-17 reimbursed from the guardianship estate for all necessary and
 7-18 reasonable expenses incurred in performing any duty as a guardian,
 7-19 including reimbursement for the payment of reasonable attorney's
 7-20 fees necessarily incurred by the guardian in connection with the
 7-21 management of the estate or any other ~~[guardianship]~~ matter in the
 7-22 guardianship.

7-23 SECTION 19. Subsection (a), Section 669, Texas Probate
 7-24 Code, is amended to read as follows:

7-25 (a) Except as provided by Subsection (b) of this section, in
 7-26 a guardianship proceeding [matter], the cost of the proceeding,
 7-27 including the cost of the guardian ad litem or court visitor, shall
 7-28 be paid out of the guardianship estate, or, if the estate is
 7-29 insufficient to pay for the cost of the proceeding, the cost of the
 7-30 proceeding shall be paid out of the county treasury, and the
 7-31 judgment of the court shall be issued accordingly.

7-32 SECTION 20. Subsections (a-1) and (a-2), Section 682A,
 7-33 Texas Probate Code, are amended to read as follows:

7-34 (a-1) Notwithstanding any other law, if the applicant who
 7-35 files an application under Subsection (a) of this section or
 7-36 Section 682 of this code is a person who was appointed conservator
 7-37 of a disabled child and the proceeding is a guardianship proceeding
 7-38 described by Section 601(25)(A) of this code in which the proposed
 7-39 ward is the incapacitated adult with respect to whom another court
 7-40 obtained continuing, exclusive jurisdiction in a suit affecting the
 7-41 parent-child relationship when the person was a child [for whom a
 7-42 court obtains jurisdiction under Section 606(k) of this code], the
 7-43 applicant may present to the court a written letter or certificate
 7-44 that meets the requirements of Section 687(a) of this code.

7-45 (a-2) If, on receipt of the letter or certificate described
 7-46 by Subsection (a-1) of this section, the court is able to make the
 7-47 findings required by Section 684 of this code, the court,
 7-48 notwithstanding Section 677 of this code, shall appoint the
 7-49 conservator as guardian without conducting a hearing and shall, to
 7-50 the extent possible, preserve the terms of possession and access to
 7-51 the ward that applied before the court obtained jurisdiction of the
 7-52 guardianship proceeding [under Section 606(k) of this code].

7-53 SECTION 21. Subsection (c), Section 687, Texas Probate
 7-54 Code, is amended to read as follows:

7-55 (c) If the basis of the proposed ward's alleged incapacity
 7-56 is mental retardation, the court may not grant an application to
 7-57 create a guardianship for the proposed ward unless the applicant
 7-58 presents to the court a written letter or certificate that:

7-59 (1) ~~[a written letter or certificate that:~~
 7-60 ~~[(A)]~~ complies with Subsection (a) of this
 7-61 section; ~~and~~

7-62 ~~[(B)] states that the physician has made a~~
 7-63 ~~determination of mental retardation in accordance with Section~~
 7-64 ~~593.005, Health and Safety Code,] or~~

7-65 (2) shows that [both]:

7-66 (A) ~~[written documentation showing that,]~~ not
 7-67 earlier than 24 months before the date of the hearing, the proposed
 7-68 ward has been examined by a physician or psychologist licensed in
 7-69 this state or certified by the Department of Aging and Disability

8-1 Services to perform the examination, in accordance with rules of
8-2 the executive commissioner of the Health and Human Services
8-3 Commission governing examinations of that kind; and

8-4 (B) the physician's or psychologist's written
8-5 findings and recommendations to the court include [~~including~~] a
8-6 statement as to whether the physician or psychologist has made a
8-7 determination of mental retardation in accordance with Section
8-8 593.005, Health and Safety Code.

8-9 SECTION 22. Subsection (c), Section 729, Texas Probate
8-10 Code, is amended to read as follows:

8-11 (c) An inventory made under this section must specify:
8-12 (1) what portion of the property is separate property
8-13 and what portion is community property; and

8-14 (2) if [~~If~~] any of the property is owned in common
8-15 with other persons, the interest owned by the ward [~~shall be shown~~
8-16 ~~in the inventory, together with the names and relationship, if~~
8-17 ~~known, of co-owners~~].

8-18 SECTION 23. Section 730, Texas Probate Code, is amended to
8-19 read as follows:

8-20 Sec. 730. LIST OF CLAIMS. The guardian shall make and
8-21 attach to an inventory under Section 729 of this code a full and
8-22 complete list of all claims due or owing to the ward that must
8-23 state:

8-24 (1) the name of each person indebted to the ward and
8-25 the address of the person if known;

8-26 (2) the nature of the debt, whether it is a note, bill,
8-27 bond, or other written obligation or whether it is an account or
8-28 verbal contract;

8-29 (3) the date of the indebtedness and the date when the
8-30 debt is or was due;

8-31 (4) the amount of each claim, the rate of interest on
8-32 each claim, and time for which the claim bears interest; and

8-33 (5) what portion of the claim is held in common with
8-34 others [~~including the names and the relationships of other part~~
8-35 ~~owners~~] and the interest of the estate in the claim.

8-36 SECTION 24. Subsections (a) and (d), Section 745, Texas
8-37 Probate Code, are amended to read as follows:

8-38 (a) A guardianship of the estate of a ward shall be settled
8-39 when:

8-40 (1) a minor ward dies or becomes an adult by becoming
8-41 18 years of age, or by removal of disabilities of minority according
8-42 to the law of this state, or by marriage;

8-43 (2) an incapacitated ward dies, or is decreed as
8-44 provided by law to have been restored to full legal capacity;

8-45 (3) the spouse of a married ward has qualified as
8-46 survivor in community and the ward owns no separate property;

8-47 (4) the estate of a ward becomes exhausted;

8-48 (5) the foreseeable income accruing to a ward or to the
8-49 ward's [~~his~~] estate is so negligible that maintaining the
8-50 guardianship in force would be burdensome;

8-51 (6) all of the assets of the estate have been placed in
8-52 a management trust under Subpart N [~~Part 4,~~] of this part, or have
8-53 been transferred to a pooled trust subaccount in accordance with a
8-54 court order issued as provided by Subpart I, Part 5, of this
8-55 chapter, [code] and the court determines that a guardianship of
8-56 [for] the ward's estate [ward] is no longer necessary; or

8-57 (7) the court determines for any other reason that a
8-58 guardianship for the ward is no longer necessary.

8-59 (d) In the settlement of a guardianship, the court may
8-60 appoint an attorney ad litem to represent the interests of the ward,
8-61 and may allow the attorney ad litem reasonable compensation to be
8-62 taxed as costs [~~for services provided by the attorney out of the~~
8-63 ~~ward's estate~~].

8-64 SECTION 25. Subsection (c), Section 770, Texas Probate
8-65 Code, is amended to read as follows:

8-66 (c) A guardian of a person younger than 18 [~~16~~] years of age
8-67 may voluntarily admit the ward [~~an incapacitated person~~] to a
8-68 public or private inpatient psychiatric facility for care and
8-69 treatment.

9-1 SECTION 26. The heading to Subpart M, Part 4, Chapter XIII,
9-2 Texas Probate Code, is amended to read as follows:

9-3 SUBPART M. TAX-MOTIVATED, [TAX-MOTIVATED AND] CHARITABLE, AND
9-4 OTHER GIFTS

9-5 SECTION 27. The heading to Section 865, Texas Probate Code,
9-6 is amended to read as follows:

9-7 Sec. 865. POWER TO MAKE CERTAIN [TAX-MOTIVATED] GIFTS AND
9-8 TRANSFERS.

9-9 SECTION 28. Subsections (a) and (b), Section 865, Texas
9-10 Probate Code, are amended to read as follows:

9-11 (a) On application of the guardian of the estate or any
9-12 interested person [party] and after the posting of notice, the
9-13 court, after hearing, may enter an order that authorizes the
9-14 guardian to apply the principal or income of the ward's estate that
9-15 is not required for the support of the ward or the ward's family
9-16 during the ward's lifetime toward the establishment of an estate
9-17 plan for the purpose of minimizing income, estate, inheritance, or
9-18 other taxes payable out of the ward's estate, or to transfer a
9-19 portion of the ward's estate as necessary to qualify the ward for
9-20 government benefits and only to the extent allowed by applicable
9-21 state or federal laws, including rules, regarding those benefits,
9-22 on a showing that the ward will probably remain incapacitated
9-23 during the ward's lifetime. On the ward's behalf, the court may
9-24 authorize the guardian to make gifts or transfers described by this
9-25 subsection, outright or in trust, of the ward's [personal] property
9-26 [or real estate] to or for the benefit of:

9-27 (1) an organization to which charitable contributions
9-28 may be made under the Internal Revenue Code and in which it is shown
9-29 the ward would reasonably have an interest;

9-30 (2) the ward's spouse, descendant, or other person
9-31 related to the ward by blood or marriage who are identifiable at the
9-32 time of the order;

9-33 (3) a devisee under the ward's last validly executed
9-34 will, trust, or other beneficial instrument if the instrument
9-35 exists; and

9-36 (4) a person serving as guardian of the ward if the
9-37 person is eligible under either Subdivision (2) or (3) of this
9-38 subsection.

9-39 (b) The person making an application to the court under this
9-40 section shall outline the proposed estate or other transfer plan
9-41 and set forth all the benefits that are to be derived from the
9-42 [estate] plan. The application must indicate that the planned
9-43 disposition is consistent with the ward's intentions if the ward's
9-44 intentions can be ascertained. If the ward's intentions cannot be
9-45 ascertained, the ward will be presumed to favor reduction in the
9-46 incidence of the various forms of taxation, the qualification for
9-47 government benefits, and the partial distribution of the ward's
9-48 estate as provided by this section.

9-49 SECTION 29. Subsections (a-1), (b), (c), and (f), Section
9-50 867, Texas Probate Code, are amended to read as follows:

9-51 (a-1) The following persons may apply for the creation of a
9-52 trust under this section:

9-53 (1) the guardian of the estate of a ward;

9-54 (2) the guardian of the person of a ward;

9-55 (3) the guardian of both the person of and estate of a
9-56 ward;

9-57 (4) an attorney ad litem or guardian ad litem
9-58 appointed to represent a ward or the ward's interests;

9-59 (5) a person interested in the welfare of an alleged
9-60 incapacitated person who does not have a guardian [of the estate];
9-61 [or]

9-62 (6) an attorney ad litem or guardian ad litem
9-63 appointed to represent an alleged incapacitated person who does not
9-64 have a guardian; or

9-65 (7) a person who has only a physical disability [that
9-66 person's interests].

9-67 (b) On application by an appropriate person as provided by
9-68 Subsection (a-1) of this section and subject to Subsection (b-1) of
9-69 this section, if applicable, the court with jurisdiction over the

10-1 proceedings [guardianship] may enter an order that creates [for the
10-2 ward's benefit] a trust for the management of the [guardianship]
10-3 funds of the person with respect to whom the application is filed if
10-4 the court finds that the creation of the trust is in the person's
10-5 [ward's] best interests.

10-6 (c) Subject to Subsection (d) of this section, if the court
10-7 finds that it is in the [ward's or incapacitated person's] best
10-8 interests of the person for whom a trust is created under this
10-9 section, the court may appoint a person or entity that meets the
10-10 requirements of Subsection (e) of this section to serve as trustee
10-11 of the trust instead of appointing a financial institution to serve
10-12 in that capacity.

10-13 (f) If a trust is created for a person [ward], the order
10-14 shall direct any [a] person or entity holding property belonging to
10-15 the person for whom the trust is created [ward] or to which that
10-16 person [the ward] is entitled to deliver all or part of the property
10-17 to a person or corporate fiduciary appointed by the court as trustee
10-18 of the trust. [If a trust is created for an incapacitated person
10-19 who does not have a guardian, the order shall direct a person
10-20 holding property belonging to the incapacitated person or to which
10-21 the incapacitated person is entitled to deliver all or part of the
10-22 property to the corporate fiduciary or other person appointed as
10-23 trustee of the trust.] The order shall include terms, conditions,
10-24 and limitations placed on the trust. The court may [shall] maintain
10-25 the trust under the same cause number as the guardianship
10-26 proceeding, if the person for whom the trust is created is a ward or
10-27 proposed ward [applicable].

10-28 SECTION 30. Subsections (a), (b), and (d), Section 868,
10-29 Texas Probate Code, are amended to read as follows:

10-30 (a) Except as provided by Subsection (d) of this section, a
10-31 trust created under Section 867 of this code must provide that:

10-32 (1) the ward, [or] incapacitated person, or person who
10-33 has only a physical disability is the sole beneficiary of the trust;

10-34 (2) the trustee may disburse an amount of the trust's
10-35 principal or income as the trustee determines is necessary to
10-36 expend for the health, education, support, or maintenance of the
10-37 [ward or incapacitated] person for whom the trust is created;

10-38 (3) the income of the trust that the trustee does not
10-39 disburse under Subdivision (2) of this subsection must be added to
10-40 the principal of the trust;

10-41 (4) if the trustee is a corporate fiduciary, the
10-42 trustee serves without giving a bond; and

10-43 (5) the trustee, subject to the court's approval, is
10-44 entitled to receive reasonable compensation for services that the
10-45 trustee provided to the [ward or incapacitated] person for whom the
10-46 trust is created as the [ward's or incapacitated] person's trustee
10-47 that is:

10-48 (A) to be paid from the trust's income,
10-49 principal, or both; and

10-50 (B) determined, paid, reduced, and eliminated in
10-51 the same manner as compensation of a guardian [of an estate] under
10-52 Section 665 of this code.

10-53 (b) The trust may provide that a trustee make a
10-54 distribution, payment, use, or application of trust funds for the
10-55 health, education, support, or maintenance of the [ward or
10-56 incapacitated] person for whom the trust is created or of another
10-57 person whom the [ward or incapacitated] person for whom the trust is
10-58 created is legally obligated to support, as necessary and without
10-59 the intervention of a guardian or other representative of the ward
10-60 or of a representative of the incapacitated person or person who has
10-61 only a physical disability, to:

10-62 (1) the ward's guardian;

10-63 (2) a person who has physical custody of the [ward or
10-64 incapacitated] person for whom the trust is created or another
10-65 person whom the [ward or incapacitated] person for whom the trust is
10-66 created is legally obligated to support; or

10-67 (3) a person providing a good or service to the [ward
10-68 or incapacitated] person for whom the trust is created or another
10-69 person whom the [ward or incapacitated] person for whom the trust is

11-1 created is legally obligated to support.

11-2 (d) When creating or modifying a trust, the court may omit
11-3 or modify terms required by Subsection (a)(1) or (2) of this section
11-4 only if the court determines that the omission or modification:

11-5 (1) is necessary and appropriate for the [~~ward or~~
11-6 ~~incapacitated~~] person for whom the trust is created to be eligible
11-7 to receive public benefits or assistance under a state or federal
11-8 program that is not otherwise available to the [~~ward or~~
11-9 ~~incapacitated~~] person; and

11-10 (2) is in the [~~ward's or incapacitated person's~~] best
11-11 interests of the person for whom the trust is created.

11-12 SECTION 31. Subsection (a), Section 868C, Texas Probate
11-13 Code, is amended to read as follows:

11-14 (a) If the court determines that it is in the [~~ward's or~~
11-15 ~~incapacitated person's~~] best interests of the person for whom a
11-16 trust is created under Section 867 of this code, the court may order
11-17 the transfer of all property in the [a management] trust [created
11-18 under Section 867 of this code] to a subaccount of a pooled trust
11-19 established in accordance with Subpart I, Part 5, of this chapter.
11-20 The transfer of property from the management trust to the
11-21 subaccount of the pooled trust shall be treated as a continuation of
11-22 the management trust and may not be treated as the establishment of
11-23 a new trust for purposes of 42 U.S.C. Section 1396p(d)(4)(A) or (C)
11-24 or otherwise for purposes of the management trust beneficiary's
11-25 [ward's or incapacitated person's] eligibility for medical
11-26 assistance under Chapter 32, Human Resources Code.

11-27 SECTION 32. Subsection (b), Section 869, Texas Probate
11-28 Code, is amended to read as follows:

11-29 (b) The following may not revoke the trust:

11-30 (1) the ward for whom the trust is created or the
11-31 guardian of the ward's estate;

11-32 (2) [~~or~~] the incapacitated person for whom the trust
11-33 is created; or

11-34 (3) the person who has only a physical disability for
11-35 whom the trust is created [~~, as applicable, may not revoke the~~
11-36 ~~trust~~].

11-37 SECTION 33. Section 870, Texas Probate Code, is amended to
11-38 read as follows:

11-39 Sec. 870. TERMINATION OF TRUST. (a) If the [~~ward or~~
11-40 ~~incapacitated~~] person for whom a trust is created under Section 867
11-41 of this code is a minor, the trust terminates:

11-42 (1) on the person's death [of the ward or incapacitated
11-43 person] or the [ward's or incapacitated] person's 18th birthday,
11-44 whichever is earlier; or

11-45 (2) on the date provided by court order, which may not
11-46 be later than the [ward's or incapacitated] person's 25th birthday.

11-47 (b) If the [~~ward or incapacitated~~] person for whom a trust
11-48 is created under Section 867 of this code is not a minor, the trust
11-49 terminates:

11-50 (1) according to the terms of the trust;

11-51 (2) on the date the court determines that continuing
11-52 the trust is no longer in the [ward's or incapacitated] person's
11-53 best interests, subject to Section 868C(b) of this code; [7] or

11-54 (3) on the person's death [of the ward or incapacitated
11-55 person].

11-56 SECTION 34. Subpart N, Part 4, Chapter XIII, Texas Probate
11-57 Code, is amended by adding Section 870A to read as follows:

11-58 Sec. 870A. INITIAL ACCOUNTING BY CERTAIN TRUSTEES REQUIRED.

11-59 (a) This section applies only to a trustee of a trust created under
11-60 Section 867 of this code for a person for whom a guardianship
11-61 proceeding is pending on the date the trust is created.

11-62 (b) Not later than the 30th day after the date a trustee to
11-63 which this section applies receives property into the trust, the
11-64 trustee shall file with the court in which the guardianship
11-65 proceeding is pending a report describing all property held in the
11-66 trust on the date of the report and specifying the value of the
11-67 property on that date.

11-68 SECTION 35. Section 871, Texas Probate Code, is amended by
11-69 amending Subsection (a) and adding Subsection (d) to read as

12-1 follows:

12-2 (a) Except as provided by Subsection (d) of this section,
 12-3 the [The] trustee shall prepare and file with the court an annual
 12-4 accounting of transactions in the trust in the same manner and form
 12-5 that is required of a guardian under this chapter.

12-6 (d) The court may not require a trustee of a trust created
 12-7 for a person who has only a physical disability to prepare and file
 12-8 with the court the annual accounting as described by Subsection (a)
 12-9 of this section.

12-10 SECTION 36. Section 873, Texas Probate Code, is amended to
 12-11 read as follows:

12-12 Sec. 873. DISTRIBUTION OF TRUST PROPERTY. (a) Unless
 12-13 otherwise provided by the court and except as provided by
 12-14 Subsection (b) of this section, the trustee shall:

12-15 (1) prepare a final account in the same form and manner
 12-16 that is required of a guardian under Section 749 of this code; and

12-17 (2) on court approval, distribute the principal or any
 12-18 undistributed income of the trust:

12-19 (A) to the ward or incapacitated person when the
 12-20 trust terminates on its own terms;

12-21 (B) to the successor trustee on appointment of a
 12-22 successor trustee; or

12-23 (C) to the representative of the deceased ward's
 12-24 or incapacitated person's estate on the ward's or incapacitated
 12-25 person's death.

12-26 (b) The court may not require a trustee of a trust created
 12-27 for a person who has only a physical disability to prepare and file
 12-28 with the court a final account as described by Subsection (a)(1) of
 12-29 this section. The trustee shall distribute the principal and any
 12-30 undistributed income of the trust in the manner provided by
 12-31 Subsection (a)(2) of this section for a trust the beneficiary of
 12-32 which is a ward or incapacitated person.

12-33 SECTION 37. Subdivision (1), Section 910, Texas Probate
 12-34 Code, is amended to read as follows:

12-35 (1) "Beneficiary" means a minor or other incapacitated
 12-36 person, an alleged incapacitated person, or a disabled person who
 12-37 is not an [, or any other] incapacitated person for whom a
 12-38 subaccount is established.

12-39 SECTION 38. Section 911, Texas Probate Code, is amended to
 12-40 read as follows:

12-41 Sec. 911. APPLICATION. The following persons [A person
 12-42 interested in the welfare of a minor, a disabled person, or any
 12-43 other incapacitated person] may apply to the court for the
 12-44 establishment of a subaccount for the benefit of a [the] minor[,
 12-45 disabled person,] or other incapacitated person, an alleged
 12-46 incapacitated person, or a disabled person who is not an
 12-47 incapacitated person:

12-48 (1) the guardian of the incapacitated person;

12-49 (2) a person who has filed an application for the
 12-50 appointment of a guardian for the alleged incapacitated person;

12-51 (3) an attorney ad litem or guardian ad litem
 12-52 appointed to represent:

12-53 (A) the incapacitated person who is a ward or
 12-54 that person's interests; or

12-55 (B) the alleged incapacitated person who does not
 12-56 have a guardian; or

12-57 (4) the disabled person [as the beneficiary].

12-58 SECTION 39. Subsection (i), Section 25.0022, Government
 12-59 Code, is amended to read as follows:

12-60 (i) A judge assigned under this section has the
 12-61 jurisdiction, powers, and duties given by Sections 4A, 4C, 4F, 4G,
 12-62 4H, 5B, 605, 607A, 607B, 607D, 607E [606, 607], and 608, Texas
 12-63 Probate Code, to statutory probate court judges by general law.

12-64 SECTION 40. Subsection (c), Section 25.1132, Government
 12-65 Code, is amended to read as follows:

12-66 (c) A county court at law in Hood County has concurrent
 12-67 jurisdiction with the district court in:

12-68 (1) civil cases in which the matter in controversy
 12-69 exceeds \$500 but does not exceed \$250,000, excluding interest;

- 13-1 (2) family law cases and related proceedings;
- 13-2 (3) contested probate matters under Section 4D(a),
- 13-3 Texas Probate Code; and
- 13-4 (4) contested [~~guardianship~~] matters in guardianship
- 13-5 proceedings under Section 607B(a) [~~606(b)~~], Texas Probate Code.

13-6 SECTION 41. Notwithstanding the transfer of Sections 606
 13-7 and 607, Texas Probate Code, to the Estates Code and redesignation
 13-8 as Sections 606 and 607 of that code effective January 1, 2014, by
 13-9 Section 5, Chapter 680 (H.B. 2502), Acts of the 81st Legislature,
 13-10 Regular Session, 2009, Sections 606 and 607, Texas Probate Code,
 13-11 are repealed.

13-12 SECTION 42. (a) Except as otherwise provided by this
 13-13 section, the changes in law made by this Act apply to:

13-14 (1) a guardianship created before, on, or after the
 13-15 effective date of this Act; and

13-16 (2) an application for a guardianship pending on, or
 13-17 filed on or after, the effective date of this Act.

13-18 (b) Sections 605, 608, and 609, Texas Probate Code, as
 13-19 amended by this Act, and Sections 606A, 607A, 607B, 607C, 607D, and
 13-20 607E, Texas Probate Code, as added by this Act, apply only to an
 13-21 action filed or a proceeding commenced on or after the effective
 13-22 date of this Act. An action filed or proceeding commenced before
 13-23 the effective date of this Act is governed by the law in effect on
 13-24 the date the action was filed or the proceeding was commenced, and
 13-25 the former law is continued in effect for that purpose.

13-26 (c) Sections 867, 868, 868C, 869, 870, 871, and 873, Texas
 13-27 Probate Code, as amended by this Act, and Section 870A, Texas
 13-28 Probate Code, as added by this Act, apply only to an application for
 13-29 the creation, modification, or termination of a management trust
 13-30 under Subpart N, Part 4, Chapter XIII, Texas Probate Code, that is
 13-31 filed on or after the effective date of this Act. An application
 13-32 described by this subsection that is filed before the effective
 13-33 date of this Act is governed by the law in effect on the date the
 13-34 application was filed, and the former law is continued in effect for
 13-35 that purpose.

13-36 (d) Sections 910 and 911, Texas Probate Code, as amended by
 13-37 this Act, apply only to an application for the creation of a pooled
 13-38 trust subaccount under Subpart I, Part 5, Chapter XIII, Texas
 13-39 Probate Code, that is filed on or after the effective date of this
 13-40 Act. An application described by this subsection that is filed
 13-41 before the effective date of this Act is governed by the law in
 13-42 effect on the date the application was filed, and the former law is
 13-43 continued in effect for that purpose.

13-44 SECTION 43. This Act takes effect September 1, 2011.

13-45 * * * * *