

BILL ANALYSIS

C.S.H.B. 2080
By: Thompson, Senfronia
Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

As part of its ongoing revision of Texas probate, guardianship, and trust law, the Real Estate, Probate, and Trust Law Section of the State Bar of Texas has proposed several changes affecting guardianships. C.S.H.B. 2080 seeks to enact those changes.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 2080 amends the Estates Code, as effective January 1, 2014, to specify that, at the expiration of the 10-day period prescribed for serving notice of intention to take depositions in certain probate matters, the depositions for which the notice was posted may be taken, rather than specifying that commission may issue for taking the depositions at the expiration of that period.

C.S.H.B. 2080 requires a court clerk to collect a filing fee, including a deposit for payment to an attorney ad litem, required by law to be paid on the filing of certain documents in a guardianship matter from the person or entity filing the documents. The bill exempts a guardian, an attorney ad litem, a guardian ad litem, a person or entity who files an affidavit of inability to pay, a guardianship program, a governmental entity, and a government agency or nonprofit agency providing guardianship services from a requirement to pay a fee on the filing of such documents. The bill entitles a person or entity, after the creation of a guardianship, to be reimbursed for such a filing fee, except for a deposit for payment to an attorney ad litem, from the guardianship estate or, if the guardianship estate is insufficient to pay the amount of the filing fee, the county treasury.

C.S.H.B. 2080 authorizes a court, on request by a person protected by a protective order or a guardian, attorney ad litem, or member of the family or household of a person protected by an order, to exclude certain specified information relating to the protected person from any document filed in a guardianship proceeding. The bill requires the court, on granting such a request for confidentiality, to order the clerk to strike the information from the public records of the court and to maintain a confidential record of the information for use only by the court. The bill exempts a guardianship proceeding from certain rules of civil procedure relating to claims for relief and expedited actions.

C.S.H.B. 2080 authorizes a court to appoint an attorney ad litem in any guardianship proceeding to represent the interests of an incapacitated person or another person who has a legal disability, a proposed ward, a nonresident, an unborn or unascertained person, or an unknown or missing potential heir, except in a situation in which the appointment is required. The bill entitles an attorney ad litem appointed under this provision to reasonable compensation for services provided in the amount set by the court, to be taxed as costs in the proceeding.

C.S.H.B. 2080 authorizes a court to refer a contested guardianship proceeding to mediation on the written agreement of the parties or on the court's own motion. The bill establishes that a mediated settlement agreement is binding on the parties if the agreement provides in a specified manner that the agreement is not subject to revocation by the parties, if the agreement is signed by each party to the agreement, and if the agreement is signed by the party's attorney, if any, who is present at the time the agreement is signed. The bill entitles a party to judgment on a mediated settlement agreement that meets such requirements. The bill creates an exception to that entitlement by authorizing a court to decline to enter a judgment on a mediated settlement agreement if the court finds that the agreement is not in the ward's or proposed ward's best interests.

C.S.H.B. 2080 authorizes an application for appointment of a guardian to omit the address of a person named in the application if the application states that the person is protected by a protective order; if a copy of the protective order is attached to the application as an exhibit; if the application states the county in which the person resides; if the application indicates the place where notice to or the issuance and service of citation on the person may be made or sent; and if the application is accompanied by a request for a court order specifying the manner of issuance, service, and return of citation or notice on the person.

C.S.H.B. 2080 requires an order appointing a guardian with full authority over a ward's person or over both a ward's person and estate to specify the right of the guardian to have physical possession of the ward and to establish the ward's legal domicile. The bill requires such an order, or an order appointing a guardian with limited authority that includes the right of the guardian to have physical possession of the ward or to establish the ward's legal domicile, to also contain a prominently displayed statement relating to a peace officer's enforcement of that right. The bill prescribes the form and content of the required statement.

C.S.H.B. 2080 sets the nonrefundable fee accompanying an application for a certificate of registration as a private professional guardian at \$40, rather than at an amount set by the clerk of the county having venue over the proceeding for the appointment of a guardian. The bill exempts the change in the amount of the fee from Government Code provisions relating to the implementation of new or amended court costs and fees.

C.S.H.B. 2080 expands the presumption that it is not in the best interests of a ward or incapacitated person to appoint as guardian of the ward or incapacitated person a person who has been finally convicted of certain offenses by adding terroristic threat or continuous violence against the family of the ward or incapacitated person to those offenses to which the presumption applies. The bill prohibits the appointment of a person found to have committed family violence who is subject to a protective order as guardian of a proposed ward or ward who is protected by the protective order.

C.S.H.B. 2080 grants a guardian of the person of a ward the power to sign documents necessary or appropriate to facilitate employment of the ward if the guardian was appointed with full authority over the ward's person or if the power is specified in the court order appointing the guardian with limited powers over the ward's person.

C.S.H.B. 2080 adds as a condition on the authority of a court that creates a guardianship or management trust to authorize the payment of certain reasonable and necessary attorney's fees the condition that the fees be in amounts the court considers equitable and just. The bill authorizes a court, if the court finds that a party in a guardianship proceeding acted in bad faith or without just cause in prosecuting or objecting to an application in the proceeding, to require the party to reimburse the ward's estate for all or part of the attorney's fees awarded by the court. The bill requires the court to issue judgment against the party and in favor of the estate for the amount of attorney's fees required to be reimbursed to the estate.

C.S.H.B. 2080 revises a provision relating to the costs of a proceeding generally to specify that the court costs of a guardianship proceeding that are paid out of the guardianship estate, or out of the county treasury if the estate is insufficient to pay the cost, include the cost of the attorneys ad litem, mental health professionals, and interpreters appointed in the proceeding, in addition to the cost of guardians ad litem or a court visitor. The bill requires the costs attributable to the services of such persons to be paid at any time after the commencement of the guardianship proceeding as ordered by the court and requires the court costs of a guardianship proceeding to be set in an amount the court considers equitable and just. The bill repeals provisions governing compensation for attorneys, mental health professionals, and interpreters appointed in a guardianship proceeding.

C.S.H.B. 2080 authorizes a court, if the court finds that a party in a guardianship proceeding acted in bad faith or without just cause in prosecuting or objecting to an application in the proceeding, to order the party to pay all or part of the costs of the proceeding. The bill requires the court, if the party found to be acting in bad faith or without just cause was required to provide security for the probable costs of the proceeding, to first apply the amount provided as security as payment for costs ordered by the court. The bill requires the court, if the amount provided as security is insufficient to pay the entire amount ordered by the court, to render judgment in favor of the estate against the party for the remaining amount. The bill removes a provision requiring an applicant for the appointment of a guardian to pay the cost of the proceeding if the court denies the application based on the recommendation of a court investigator.

C.S.H.B. 2080 expands the contents of the affidavit required to be attached by the guardian of a ward's estate to an annual account regarding changes in the estate assets and the contents of the sworn affidavit required to be filed annually by the guardian of a ward's person to include, if the guardian is a private professional guardian, a guardianship program, or the Department of Aging and Disability Services, a statement indicating whether the guardian or an individual certified by the Guardianship Certification Board, who is providing guardianship services to the ward and who is swearing to the account or affidavit on the guardian's behalf, is or has been the subject of an investigation conducted by the Guardianship Certification Board during the accounting period or preceding year, as applicable.

C.S.H.B. 2080 authorizes a guardian of the person of a ward who files the guardian's annual report electronically with the court to use an unsworn declaration instead of a written sworn declaration or affidavit required under statutory provisions relating to that report. The bill requires the unsworn declaration to be in writing and subscribed by the person making the declaration as true under penalty of perjury. The bill sets out the form of such an unsworn declaration and prohibits the use of an unsworn declaration in the form prescribed under the Civil Practice and Remedies Code instead of a written sworn declaration or affidavit for such purposes.

C.S.H.B. 2080 creates an exception to the requirement that a court appoint an attorney ad litem to represent the interests of an alleged incapacitated person in a hearing to determine incapacity with respect to the creation of a management trust by establishing that, if an application for the creation of a trust is filed by a person who has only a physical disability, the court is authorized, but not required, to appoint an attorney ad litem to represent the interests of the person in the hearing to determine incapacity. The bill creates an exception to the requirement that a court appoint a financial institution to serve as trustee of a management trust if the management trust is created for a person who has only a physical disability.

C.S.H.B. 2080 establishes that a trustee of a management trust created for a person who has only a physical disability serves without giving a bond. The bill requires a management trust created for a person who has only a physical disability to provide for that fact and to provide that the trustee of the trust serves without giving a bond and is entitled to receive, without the court's approval, reasonable compensation for services the trustee provides to the person as the person's

trustee. The bill requires the compensation of a trustee of a management trust created for a ward or incapacitated person to be determined, paid, reduced, and eliminated in the same manner as compensation of a guardian, rather than in the same manner as compensation of a guardian of an estate.

C.S.H.B. 2080 authorizes a court creating or modifying a management trust to omit or modify any of the required terms applicable to the trust if the court determines that the omission or modification is necessary and appropriate for the person for whom the trust is created to be eligible to receive certain public benefits or assistance or is in the person's best interests, rather than authorizing the court to omit or modify only certain specified terms if the court determines that both of those circumstances exist. The bill authorizes such a court to omit or modify any of the required terms applicable to the trust if the court is creating the trust for a person who has only a physical disability and authorizes such omission or modification if the court determines that such action is necessary and appropriate for the person for whom the trust is created to be eligible to receive certain public benefits or assistance or is in the person's best interests.

C.S.H.B. 2080 limits the requirement that the trustee of a management trust prepare and file with the court an annual accounting of transactions in the trust to the trustee of a management trust created for a ward and clarifies that the trustee is required to prepare and file the accounting in the same manner and form that is required of a guardian of the estate, rather than that required of a guardian.

C.S.H.B. 2080 authorizes a court, for the purposes of a proceeding to determine whether to transfer property from a management trust to a pooled trust subaccount, to appoint an attorney ad litem or guardian ad litem to represent the interests of a person who has only a physical disability for whom the management trust was created.

C.S.H.B. 2080 repeals a statutory provision relating to the transmission of files by a clerk with respect to a guardianship proceeding for which the proper venue is finally determined to be in another county, notwithstanding the provision's transfer and reenactment by previously enacted legislation.

C.S.H.B. 2080 repeals Section 1155.051, Estates Code, as effective January 1, 2014, and Section 631, Texas Probate Code.

EFFECTIVE DATE

Except as otherwise provided, January 1, 2014.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2080 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

No equivalent provision.

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 1002.002, Estates Code, as effective January 1, 2014, is amended to read as follows:

Sec. 1002.002. ATTORNEY AD LITEM. "Attorney ad litem" means an attorney appointed by a court to represent and advocate on behalf of a proposed ward, an incapacitated person, [øø] an unborn person,

or another person described by Section 1054.007 in a guardianship proceeding.

No equivalent provision.

SECTION 2. (a) Notwithstanding the transfer of Section 604, Texas Probate Code, to the Estates Code and redesignation as Section 604 of that code effective January 1, 2014, by Section 3.01(a), Chapter 823 (H.B. 2759), Acts of the 82nd Legislature, Regular Session, 2011, Section 604, Texas Probate Code, is transferred to Chapter 1022, Estates Code, as added by H.B. 3862 or S.B. 1093, 83rd Legislature, Regular Session, 2013, and redesignated as Subsection (d), Section 1022.002, Estates Code, to read as follows:

(d) [Sec. 604. PROCEEDING IN REM.] From the filing of the application for the appointment of a guardian of the estate or person, or both, until the guardianship is settled and closed under this chapter, the administration of the estate of a minor or other incapacitated person is one proceeding for purposes of jurisdiction and is a proceeding in rem.

(b) This section takes effect only if H.B. 3862 or S.B. 1093, 83rd Legislature, Regular Session, 2013, is enacted and becomes law and adds Section 1022.002, Estates Code. If that legislation does not become law, or becomes law but does not add that section, this section has no effect.

SECTION 1. Section 1051.253(c), Estates Code, as effective January 1, 2014, is amended.

SECTION 3. Same as introduced version.

No equivalent provision.

SECTION 4. Section 1052.051, Estates Code, as effective January 1, 2014, is amended by adding Subsections (d), (e), and (f) to read as follows:

(d) Except as provided by Subsection (e), the court clerk shall collect a filing fee, including a deposit for payment to an attorney ad litem, required by law to be paid on the filing of any document described by Subsection (a) from the person or entity filing the document.

(e) Notwithstanding any other law requiring the payment of a filing fee for the document, the following are not required to pay a fee on the filing of a document described by Subsection (a):

- (1) a guardian;
- (2) an attorney ad litem;
- (3) a guardian ad litem;

- (4) a person or entity who files an affidavit of inability to pay under Rule 145, Texas Rules of Civil Procedure;
- (5) a guardianship program;
- (6) a governmental entity; and
- (7) a government agency or nonprofit agency providing guardianship services.
- (f) After the creation of a guardianship, a person or entity is entitled to be reimbursed for a filing fee described by Subsection (d), other than a deposit for payment to an attorney ad litem, from:
 - (1) the guardianship estate; or
 - (2) the county treasury, if the guardianship estate is insufficient to pay the amount of the filing fee.

No equivalent provision.

SECTION 5. Subchapter C, Chapter 1053, Estates Code, as effective January 1, 2014, is amended by adding Sections 1053.104 and 1053.105 to read as follows:

Sec. 1053.104. CONFIDENTIALITY OF CERTAIN INFORMATION. (a) On request by a person protected by a protective order issued under Chapter 85, Family Code, or a guardian, attorney ad litem, or member of the family or household of a person protected by an order, the court may exclude from any document filed in a guardianship proceeding:

- (1) the address and phone number of the person protected by the protective order;
- (2) the place of employment or business of the person protected by the protective order;
- (3) the school attended by the person protected by the protective order or the day-care center or other child-care facility the person attends or in which the person resides; and
- (4) the place at which service of process on the person protected by the protective order was effectuated.

(b) On granting a request for confidentiality under this section, the court shall order the clerk to:

- (1) strike the information described by Subsection (a) from the public records of the court; and
- (2) maintain a confidential record of the information for use only by the court.

Sec. 1053.105. INAPPLICABILITY OF CERTAIN RULES OF CIVIL PROCEDURE. The following do not apply to guardianship proceedings:

- (1) Rules 47(c) and 169, Texas Rules of

No equivalent provision.

SECTION 2. Chapter 1055, Estates Code, as effective January 1, 2014, is amended.

No equivalent provision.

Civil Procedure; and

(2) the portions of Rule 190.2, Texas Rules of Civil Procedure, concerning expedited actions under Rule 169, Texas Rules of Civil Procedure.

SECTION 6. Subchapter A, Chapter 1054, Estates Code, as effective January 1, 2014, is amended by adding Section 1054.007 to read as follows:

Sec. 1054.007. ATTORNEYS AD LITEM.

(a) Except in a situation in which this title requires the appointment to represent the interests of the person, a court may appoint an attorney ad litem in any guardianship proceeding to represent the interests of:

(1) an incapacitated person or another person who has a legal disability;

(2) a proposed ward;

(3) a nonresident;

(4) an unborn or unascertained person; or

(5) an unknown or missing potential heir.

(b) An attorney ad litem appointed under this section is entitled to reasonable compensation for services provided in the amount set by the court, to be taxed as costs in the proceeding.

SECTION 7. Same as introduced version.

SECTION 8. Subchapter A, Chapter 1101, Estates Code, as effective January 1, 2014, is amended by adding Section 1101.002 to read as follows:

Sec. 1101.002. CONTENTS OF APPLICATION; CONFIDENTIALITY OF CERTAIN ADDRESSES. An application filed under Section 1101.001 may omit the address of a person named in the application if:

(1) the application states that the person is protected by a protective order issued under Chapter 85, Family Code;

(2) a copy of the protective order is attached to the application as an exhibit;

(3) the application states the county in which the person resides;

(4) the application indicates the place where notice to or the issuance and service of citation on the person may be made or sent; and

(5) the application is accompanied by a request for an order under Section 1051.201 specifying the manner of issuance, service,

No equivalent provision.

and return of citation or notice on the person.

SECTION 9. Section 1101.151, Estates Code, as effective January 1, 2014, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) An order appointing a guardian under this section must contain findings of fact and specify:

(1) the information required by Section 1101.153(a);

(2) that the guardian has full authority over the incapacitated person;

(3) if necessary, the amount of funds from the corpus of the person's estate the court will allow the guardian to spend for the education and maintenance of the person under Subchapter A, Chapter 1156;

(4) whether the person is totally incapacitated because of a mental condition; ~~[and]~~

(5) that the person does not have the capacity to operate a motor vehicle and to vote in a public election; and

(6) if it is a guardianship of the person of the ward or of both the person and the estate of the ward, the rights of the guardian with respect to the person as specified in Section 1151.051(c)(1).

(c) An order appointing a guardian under this section that includes the rights of the guardian with respect to the person as specified in Section 1151.051(c)(1) must also contain the following prominently displayed statement in boldfaced type, in capital letters, or underlined:

"NOTICE TO ANY PEACE OFFICER OF THE STATE OF TEXAS: YOU MAY USE REASONABLE EFFORTS TO ENFORCE THE RIGHT OF A GUARDIAN OF THE PERSON OF A WARD TO HAVE PHYSICAL POSSESSION OF THE WARD OR TO ESTABLISH THE WARD'S LEGAL DOMICILE AS SPECIFIED IN THIS ORDER. A PEACE OFFICER WHO RELIES ON THE TERMS OF A COURT ORDER AND THE OFFICER'S AGENCY ARE ENTITLED TO THE APPLICABLE IMMUNITY AGAINST ANY CIVIL OR OTHER CLAIM REGARDING THE OFFICER'S GOOD FAITH ACTS PERFORMED IN THE SCOPE OF THE OFFICER'S DUTIES IN ENFORCING THE TERMS OF THIS ORDER THAT RELATE TO THE ABOVE-MENTIONED RIGHTS

OF THE COURT-APPOINTED
GUARDIAN OF THE PERSON OF THE
WARD. ANY PERSON WHO
KNOWINGLY PRESENTS FOR
ENFORCEMENT AN ORDER THAT IS
INVALID OR NO LONGER IN EFFECT
COMMITTS AN OFFENSE THAT MAY BE
PUNISHABLE BY CONFINEMENT IN
JAIL FOR AS LONG AS TWO YEARS
AND A FINE OF AS MUCH AS \$10,000."

No equivalent provision.

SECTION 10. Section 1101.152, Estates Code, as effective January 1, 2014, is amended by adding Subsection (c) to read as follows:

(c) An order appointing a guardian under this section that includes the right of the guardian to have physical possession of the ward or to establish the ward's legal domicile as specified in Section 1151.051(c)(1) must also contain the following prominently displayed statement in boldfaced type, in capital letters, or underlined:

"NOTICE TO ANY PEACE OFFICER OF THE STATE OF TEXAS: YOU MAY USE REASONABLE EFFORTS TO ENFORCE THE RIGHT OF A GUARDIAN OF THE PERSON OF A WARD TO HAVE PHYSICAL POSSESSION OF THE WARD OR TO ESTABLISH THE WARD'S LEGAL DOMICILE AS SPECIFIED IN THIS ORDER. A PEACE OFFICER WHO RELIES ON THE TERMS OF A COURT ORDER AND THE OFFICER'S AGENCY ARE ENTITLED TO THE APPLICABLE IMMUNITY AGAINST ANY CIVIL OR OTHER CLAIM REGARDING THE OFFICER'S GOOD FAITH ACTS PERFORMED IN THE SCOPE OF THE OFFICER'S DUTIES IN ENFORCING THE TERMS OF THIS ORDER THAT RELATE TO THE ABOVE-MENTIONED RIGHTS OF THE COURT-APPOINTED GUARDIAN OF THE PERSON OF THE WARD. ANY PERSON WHO KNOWINGLY PRESENTS FOR ENFORCEMENT AN ORDER THAT IS INVALID OR NO LONGER IN EFFECT COMMITTS AN OFFENSE THAT MAY BE PUNISHABLE BY CONFINEMENT IN JAIL FOR AS LONG AS TWO YEARS AND A FINE OF AS MUCH AS \$10,000."

SECTION 3. Section 1102.005(b), Estates Code, as effective January 1, 2014, is

SECTION 11. Same as introduced version.

amended.

No equivalent provision.

SECTION 12. Section 1104.303(b), Estates Code, as effective January 1, 2014, is amended to read as follows:

(b) The application must be:

- (1) made to the clerk of the county having venue of the proceeding for the appointment of a guardian; and
- (2) accompanied by a nonrefundable fee of \$40 ~~[set by the clerk in an amount necessary]~~ to cover the cost of administering this subchapter.

No equivalent provision.

SECTION 13. Section 1104.353(b), Estates Code, as effective January 1, 2014, is amended to read as follows:

(b) It is presumed to be not in the best interests of a ward or incapacitated person to appoint as guardian of the ward or incapacitated person a person who has been finally convicted of:

- (1) any sexual offense, including sexual assault, aggravated sexual assault, and prohibited sexual conduct;
- (2) aggravated assault;
- (3) injury to a child, elderly individual, or disabled individual; ~~[or]~~
- (4) abandoning or endangering a child;
- (5) terroristic threat; or
- (6) continuous violence against the family of the ward or incapacitated person.

No equivalent provision.

SECTION 14. Subchapter H, Chapter 1104, Estates Code, as effective January 1, 2014, is amended by adding Section 1104.358 to read as follows:

Sec. 1104.358. SUBJECT TO PROTECTIVE ORDER FOR FAMILY VIOLENCE. A person found to have committed family violence who is subject to a protective order issued under Chapter 85, Family Code, may not be appointed guardian of a proposed ward or ward who is protected by the protective order.

No equivalent provision.

SECTION 15. Section 1151.051(c), Estates Code, as effective January 1, 2014, is amended to read as follows:

(c) A guardian of the person has:

- (1) the right to have physical possession of the ward and to establish the ward's legal domicile;
- (2) the duty to provide care, supervision,

and protection for the ward;
(3) the duty to provide the ward with clothing, food, medical care, and shelter;
(4) the power to consent to medical, psychiatric, and surgical treatment other than the inpatient psychiatric commitment of the ward; ~~and~~
(5) on application to and order of the court, the power to establish a trust in accordance with 42 U.S.C. Section 1396p(d)(4)(B) and direct that the income of the ward as defined by that section be paid directly to the trust, solely for the purpose of the ward's eligibility for medical assistance under Chapter 32, Human Resources Code; and
(6) the power to sign documents necessary or appropriate to facilitate employment of the ward if:
(A) the guardian was appointed with full authority over the person of the ward under Section 1101.151; or
(B) the power is specified in the court order appointing the guardian with limited powers over the person of the ward under Section 1101.152.

SECTION 4. Sections 1155.052(a) and (c), Estates Code, as effective January 1, 2014, are amended.

SECTION 5. Notwithstanding the transfer of Section 665B, Texas Probate Code, as amended by Chapters 314 (H.B. 587) and 930 (H.B. 3080), Acts of the 81st Legislature, Regular Session, 2009, to the Estates Code and redesignation as Section 665B of that code effective January 1, 2014, by Section 3.01(e), Chapter 823 (H.B. 2759), Acts of the 82nd Legislature, Regular Session, 2011, Section 665B, Texas Probate Code, is transferred to Subchapter B, Chapter 1155, Estates Code, redesignated as Section 1155.054, Estates Code, and reenacted and amended.

SECTION 6. Section 1155.151, Estates Code, as effective January 1, 2014, is amended.

No equivalent provision.

SECTION 16. Same as introduced version.

SECTION 17. Same as introduced version.

SECTION 18. Same as introduced version.

SECTION 19. The heading to Section 1163.005, Estates Code, as effective January 1, 2014, is amended to read as follows:
Sec. 1163.005. VERIFICATION OF ACCOUNT AND STATEMENT

REGARDING TAXES AND STATUS AS GUARDIAN.

No equivalent provision.

SECTION 20. Section 1163.005(a), Estates Code, as effective January 1, 2014, is amended to read as follows:

(a) The guardian of the estate shall attach to an account the guardian's affidavit stating:

(1) that the account contains a correct and complete statement of the matters to which the account relates;

(2) that the guardian has paid the bond premium for the next accounting period;

(3) that the guardian has filed all tax returns of the ward due during the accounting period; ~~and~~

(4) that the guardian has paid all taxes the ward owed during the accounting period, the amount of the taxes, the date the guardian paid the taxes, and the name of the governmental entity to which the guardian paid the taxes; and

(5) if the guardian is a private professional guardian, a guardianship program, or the Department of Aging and Disability Services, whether the guardian or an individual certified under Subchapter C, Chapter 111, Government Code, who is providing guardianship services to the ward and who is swearing to the account on the guardian's behalf, is or has been the subject of an investigation conducted by the Guardianship Certification Board during the accounting period.

No equivalent provision.

SECTION 21. Section 1163.101(c), Estates Code, as effective January 1, 2014, is amended to read as follows:

(c) The guardian of the person shall file a sworn affidavit that contains:

(1) the guardian's current name, address, and telephone number;

(2) the ward's date of birth and current name, address, telephone number, and age;

(3) a description of the type of home in which the ward resides, which shall be described as:

(A) the ward's own home;

(B) a nursing home;

(C) a guardian's home;

(D) a foster home;

(E) a boarding home;

(F) a relative's home, in which case the description must specify the relative's relationship to the ward;

(G) a hospital or medical facility; or
(H) another type of residence;
(4) statements indicating:
(A) the length of time the ward has resided in the present home;
(B) the reason for a change in the ward's residence, if a change in the ward's residence has occurred in the past year;
(C) the date the guardian most recently saw the ward;
(D) how frequently the guardian has seen the ward in the past year;
(E) whether the guardian has possession or control of the ward's estate;
(F) whether the ward's mental health has improved, deteriorated, or remained unchanged during the past year, including a description of the change if a change has occurred;
(G) whether the ward's physical health has improved, deteriorated, or remained unchanged during the past year, including a description of the change if a change has occurred;
(H) whether the ward has regular medical care; and
(I) the ward's treatment or evaluation by any of the following persons during the past year, including the person's name and a description of the treatment:
(i) a physician;
(ii) a psychiatrist, psychologist, or other mental health care provider;
(iii) a dentist;
(iv) a social or other caseworker; or
(v) any other individual who provided treatment;
(5) a description of the ward's activities during the past year, including recreational, educational, social, and occupational activities, or a statement that no activities were available or that the ward was unable or refused to participate in activities;
(6) the guardian's evaluation of:
(A) the ward's living arrangements as excellent, average, or below average, including an explanation if the conditions are below average;
(B) whether the ward is content or unhappy with the ward's living arrangements; and
(C) unmet needs of the ward;
(7) a statement indicating whether the guardian's power should be increased, decreased, or unaltered, including an explanation if a change is recommended;

- (8) a statement indicating that the guardian has paid the bond premium for the next reporting period; ~~and~~
- (9) if the guardian is a private professional guardian, a guardianship program, or the Department of Aging and Disability Services, whether the guardian or an individual certified under Subchapter C, Chapter 111, Government Code, who is providing guardianship services to the ward and who is swearing to the affidavit on the guardian's behalf, is or has been the subject of an investigation conducted by the Guardianship Certification Board during the preceding year; and
- (10) any additional information the guardian desires to share with the court regarding the ward, including:
 - (A) whether the guardian has filed for emergency detention of the ward under Subchapter A, Chapter 573, Health and Safety Code; and
 - (B) if applicable, the number of times the guardian has filed for emergency detention and the dates of the applications for emergency detention.

SECTION 7. Subchapter C, Chapter 1163, Estates Code, as effective January 1, 2014, is amended.

SECTION 22. Same as introduced version.

SECTION 8. Section 1251.013, Estates Code, as effective January 1, 2014, is amended.

SECTION 23. Same as introduced version.

SECTION 9. The heading to Section 1301.052, Estates Code, as effective January 1, 2014, is amended.

SECTION 24. Same as introduced version.

SECTION 10. Section 1301.054, Estates Code, as effective January 1, 2014, is amended.

SECTION 25. Same as introduced version.

SECTION 11. Section 1301.055, Estates Code, as effective January 1, 2014, is amended.

SECTION 26. Same as introduced version.

SECTION 12. Sections 1301.057(b), (c), and (d), Estates Code, as effective January 1, 2014, are amended.

SECTION 27. Same as introduced version.

SECTION 13. Section 1301.058, Estates Code, as effective January 1, 2014, is amended.

SECTION 28. Same as introduced version.

SECTION 14. Section 1301.101, Estates Code, as effective January 1, 2014, is amended to conform to Section 31, Chapter 1085 (S.B. 1196), Acts of the 82nd Legislature, Regular Session, 2011, and is further amended.

SECTION 15. Section 1301.102(a), Estates Code, as effective January 1, 2014, is amended to conform to Section 31, Chapter 1085 (S.B. 1196), Acts of the 82nd Legislature, Regular Session, 2011, and is further amended.

SECTION 16. Section 1301.103, Estates Code, as effective January 1, 2014, is amended.

SECTION 17. Section 1301.154(a), Estates Code, as effective January 1, 2014, is amended.

SECTION 18. Section 1301.202, Estates Code, as effective January 1, 2014, is amended.

SECTION 19. Section 1155.051, Estates Code, as effective January 1, 2014, is repealed.

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

- (1) a guardianship created before, on, or after the effective date of this Act; and
- (2) an application for a guardianship pending on, or filed on or after, the effective date of this Act.

(b) The changes in law made by this Act to Sections 1301.054, 1301.055, 1301.057(b), (c), and (d), 1301.058, 1301.101, and 1301.102(a), Estates Code, apply only to an application for the creation, modification, or termination of a management trust that is filed on or after the effective date of this Act. An application described by this subsection that is filed before the effective

SECTION 29. Same as introduced version.

SECTION 30. Same as introduced version.

SECTION 31. Same as introduced version.

SECTION 32. Same as introduced version.

SECTION 33. Same as introduced version.

SECTION 34. (a) Section 1155.051, Estates Code, as effective January 1, 2014, is repealed.

(b) Notwithstanding the transfer of Section 631, Texas Probate Code, to the Estates Code and redesignation as Section 631 of that code effective January 1, 2014, by Section 3.01(d), Chapter 823 (H.B. 2759), Acts of the 82nd Legislature, Regular Session, 2011, Section 631, Texas Probate Code, is repealed.

SECTION 35. Same as introduced version.

date of this Act is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose.

(c) The changes in law made by this Act to Sections 1301.103 and 1301.154(a), Estates Code, and by Section 1301.202(a-1), Estates Code, as added by this Act, apply to a management trust created before, on, or after the effective date of this Act.

No equivalent provision.

SECTION 21. To the extent of any conflict, this Act prevails over another Act of the 83rd Legislature, Regular Session, 2013, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 22. This Act takes effect January 1, 2014.

SECTION 36. Section 51.607, Government Code, does not apply to the change in the amount of a fee made by Section 1104.303(b), Estates Code, as amended by this Act.

SECTION 37. Same as introduced version.

SECTION 38. **Except as otherwise provided by this Act,** this Act takes effect January 1, 2014.