

AN ACT

relating to guardianships, including the assessment and payment of attorney's fees and other court costs in guardianships, and to court-created management trusts for persons who have physical disabilities or who are incapacitated; changing the amount of a fee and requiring the collection of a fee.

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

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, ~~or~~ an unborn person, or another person described by Section 1054.007 in a guardianship proceeding.

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

1 application for the appointment of a guardian of the estate or
2 person, or both, until the guardianship is settled and closed under
3 this chapter, the administration of the estate of a minor or other
4 incapacitated person is one proceeding for purposes of jurisdiction
5 and is a proceeding in rem.

6 (b) This section takes effect only if H.B. 3862 or S.B.
7 1093, 83rd Legislature, Regular Session, 2013, is enacted and
8 becomes law and adds Section 1022.002, Estates Code. If that
9 legislation does not become law, or becomes law but does not add
10 that section, this section has no effect.

11 SECTION 3. Section 1051.253(c), Estates Code, as effective
12 January 1, 2014, is amended to read as follows:

13 (c) At the expiration of the 10-day period prescribed by
14 Subsection (a):

15 (1) [~~commission may issue for taking~~] the depositions
16 for which the notice was posted may be taken; and

17 (2) the judge may file cross-interrogatories if no
18 person appears.

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

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

27 (e) Notwithstanding any other law requiring the payment of a

1 filing fee for the document, the following are not required to pay a
2 fee on the filing of a document described by Subsection (a):

3 (1) a guardian;

4 (2) an attorney ad litem;

5 (3) a guardian ad litem;

6 (4) a person or entity who files an affidavit of
7 inability to pay under Rule 145, Texas Rules of Civil Procedure;

8 (5) a guardianship program;

9 (6) a governmental entity; and

10 (7) a government agency or nonprofit agency providing
11 guardianship services.

12 (f) After the creation of a guardianship, a person or entity
13 is entitled to be reimbursed for a filing fee described by
14 Subsection (d), other than a deposit for payment to an attorney ad
15 litem, from:

16 (1) the guardianship estate; or

17 (2) the county treasury, if the guardianship estate is
18 insufficient to pay the amount of the filing fee.

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

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

1 (1) the address and phone number of the person
2 protected by the protective order;

3 (2) the place of employment or business of the person
4 protected by the protective order;

5 (3) the school attended by the person protected by the
6 protective order or the day-care center or other child-care
7 facility the person attends or in which the person resides; and

8 (4) the place at which service of process on the person
9 protected by the protective order was effectuated.

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

12 (1) strike the information described by Subsection (a)
13 from the public records of the court; and

14 (2) maintain a confidential record of the information
15 for use only by the court.

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

18 (1) Rules 47(c) and 169, Texas Rules of Civil
19 Procedure; and

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

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

26 Sec. 1054.007. ATTORNEYS AD LITEM. (a) Except in a
27 situation in which this title requires the appointment to represent

1 the interests of the person, a court may appoint an attorney ad
2 litem in any guardianship proceeding to represent the interests of:

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

5 (2) a proposed ward;

6 (3) a nonresident;

7 (4) an unborn or unascertained person; or

8 (5) an unknown or missing potential heir.

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

12 SECTION 7. Chapter 1055, Estates Code, as effective January
13 1, 2014, is amended by adding Subchapter D to read as follows:

14 SUBCHAPTER D. MEDIATION

15 Sec. 1055.151. MEDIATION OF CONTESTED GUARDIANSHIP
16 PROCEEDING. (a) On the written agreement of the parties or on the
17 court's own motion, the court may refer a contested guardianship
18 proceeding to mediation.

19 (b) A mediated settlement agreement is binding on the
20 parties if the agreement:

21 (1) provides, in a prominently displayed statement
22 that is in boldfaced type, in capital letters, or underlined, that
23 the agreement is not subject to revocation by the parties;

24 (2) is signed by each party to the agreement; and

25 (3) is signed by the party's attorney, if any, who is
26 present at the time the agreement is signed.

27 (c) If a mediated settlement agreement meets the

1 requirements of this section, a party is entitled to judgment on the
2 mediated settlement agreement notwithstanding Rule 11, Texas Rules
3 of Civil Procedure, or another rule or law.

4 (d) Notwithstanding Subsections (b) and (c), a court may
5 decline to enter a judgment on a mediated settlement agreement if
6 the court finds that the agreement is not in the ward's or proposed
7 ward's best interests.

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

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

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

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

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

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

24 (5) the application is accompanied by a request for an
25 order under Section 1051.201 specifying the manner of issuance,
26 service, and return of citation or notice on the person.

27 SECTION 9. Section 1101.151, Estates Code, as effective

1 January 1, 2014, is amended by amending Subsection (b) and adding
2 Subsection (c) to read as follows:

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

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

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

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

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

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

16 (6) if it is a guardianship of the person of the ward
17 or of both the person and the estate of the ward, the rights of the
18 guardian with respect to the person as specified in Section
19 1151.051(c)(1).

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

25 "NOTICE TO ANY PEACE OFFICER OF THE STATE OF TEXAS: YOU MAY
26 USE REASONABLE EFFORTS TO ENFORCE THE RIGHT OF A GUARDIAN OF THE
27 PERSON OF A WARD TO HAVE PHYSICAL POSSESSION OF THE WARD OR TO

1 ESTABLISH THE WARD'S LEGAL DOMICILE AS SPECIFIED IN THIS ORDER. A
2 PEACE OFFICER WHO RELIES ON THE TERMS OF A COURT ORDER AND THE
3 OFFICER'S AGENCY ARE ENTITLED TO THE APPLICABLE IMMUNITY AGAINST
4 ANY CIVIL OR OTHER CLAIM REGARDING THE OFFICER'S GOOD FAITH ACTS
5 PERFORMED IN THE SCOPE OF THE OFFICER'S DUTIES IN ENFORCING THE
6 TERMS OF THIS ORDER THAT RELATE TO THE ABOVE-MENTIONED RIGHTS OF THE
7 COURT-APPOINTED GUARDIAN OF THE PERSON OF THE WARD. ANY PERSON WHO
8 KNOWINGLY PRESENTS FOR ENFORCEMENT AN ORDER THAT IS INVALID OR NO
9 LONGER IN EFFECT COMMITS AN OFFENSE THAT MAY BE PUNISHABLE BY
10 CONFINEMENT IN JAIL FOR AS LONG AS TWO YEARS AND A FINE OF AS MUCH AS
11 \$10,000."

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

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

21 "NOTICE TO ANY PEACE OFFICER OF THE STATE OF TEXAS: YOU MAY
22 USE REASONABLE EFFORTS TO ENFORCE THE RIGHT OF A GUARDIAN OF THE
23 PERSON OF A WARD TO HAVE PHYSICAL POSSESSION OF THE WARD OR TO
24 ESTABLISH THE WARD'S LEGAL DOMICILE AS SPECIFIED IN THIS ORDER. A
25 PEACE OFFICER WHO RELIES ON THE TERMS OF A COURT ORDER AND THE
26 OFFICER'S AGENCY ARE ENTITLED TO THE APPLICABLE IMMUNITY AGAINST
27 ANY CIVIL OR OTHER CLAIM REGARDING THE OFFICER'S GOOD FAITH ACTS

1 PERFORMED IN THE SCOPE OF THE OFFICER'S DUTIES IN ENFORCING THE
2 TERMS OF THIS ORDER THAT RELATE TO THE ABOVE-MENTIONED RIGHTS OF THE
3 COURT-APPOINTED GUARDIAN OF THE PERSON OF THE WARD. ANY PERSON WHO
4 KNOWINGLY PRESENTS FOR ENFORCEMENT AN ORDER THAT IS INVALID OR NO
5 LONGER IN EFFECT COMMITS AN OFFENSE THAT MAY BE PUNISHABLE BY
6 CONFINEMENT IN JAIL FOR AS LONG AS TWO YEARS AND A FINE OF AS MUCH AS
7 \$10,000."

8 SECTION 11. Section 1102.003, Estates Code, as effective
9 January 1, 2014, is amended to read as follows:

10 Sec. 1102.003. INFORMATION LETTER. (a) An interested
11 person who submits an information letter under Section 1102.002(1)
12 about a person believed to be incapacitated must, to the best of the
13 interested person's knowledge [~~may~~]:

14 (1) state [~~include~~] the person's name, address,
15 telephone number, county of residence, and date of birth;

16 (2) state whether the person's residence is a private
17 residence, health care facility, or other type of residence;

18 (3) describe the relationship between the person and
19 the interested person submitting the letter;

20 (4) state [~~contain~~] the names and telephone numbers of
21 any known friends and relatives of the person;

22 (5) state whether a guardian of the person or estate
23 has been appointed in this state for the person;

24 (6) state whether the person has executed a power of
25 attorney and, if so, the designee's name, address, and telephone
26 number;

27 (7) describe any property of the person, including the

1 estimated value of that property;

2 (8) list the amount and source of any monthly income of
3 the person;

4 (9) describe the nature and degree of the person's
5 alleged incapacity; and

6 (10) state whether the person is in imminent danger of
7 serious impairment to the person's physical health, safety, or
8 estate.

9 (b) In addition to the requirements of Subsection (a), if an
10 information letter under that subsection is submitted by an
11 interested person who is a family member of the person believed to
12 be incapacitated, the information letter must:

13 (1) be signed and sworn to before a notary public by
14 the interested person; or

15 (2) include a written declaration signed by the
16 interested person under penalty of perjury that the information
17 contained in the information letter is true to the best of the
18 person's knowledge.

19 SECTION 12. Section 1102.005(b), Estates Code, as effective
20 January 1, 2014, is amended to read as follows:

21 (b) After examining the [~~ward's or~~] proposed ward's assets
22 and determining that the [~~ward or~~] proposed ward is unable to pay
23 for services provided by the guardian ad litem, the court may
24 authorize compensation from the county treasury.

25 SECTION 13. Section 1104.303(b), Estates Code, as effective
26 January 1, 2014, is amended to read as follows:

27 (b) The application must be:

1 (1) made to the clerk of the county having venue of the
2 proceeding for the appointment of a guardian; and

3 (2) accompanied by a nonrefundable fee of \$40 [~~set by~~
4 ~~the clerk in an amount necessary~~] to cover the cost of administering
5 this subchapter.

6 SECTION 14. Section 1104.353(b), Estates Code, as effective
7 January 1, 2014, is amended to read as follows:

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

11 (1) any sexual offense, including sexual assault,
12 aggravated sexual assault, and prohibited sexual conduct;

13 (2) aggravated assault;

14 (3) injury to a child, elderly individual, or disabled
15 individual; [~~or~~]

16 (4) abandoning or endangering a child;

17 (5) terroristic threat; or

18 (6) continuous violence against the family of the ward
19 or incapacitated person.

20 SECTION 15. Subchapter H, Chapter 1104, Estates Code, as
21 effective January 1, 2014, is amended by adding Section 1104.358 to
22 read as follows:

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

1 SECTION 16. Section 1151.051(c), Estates Code, as effective
2 January 1, 2014, is amended to read as follows:

3 (c) A guardian of the person has:

4 (1) the right to have physical possession of the ward
5 and to establish the ward's legal domicile;

6 (2) the duty to provide care, supervision, and
7 protection for the ward;

8 (3) the duty to provide the ward with clothing, food,
9 medical care, and shelter;

10 (4) the power to consent to medical, psychiatric, and
11 surgical treatment other than the inpatient psychiatric commitment
12 of the ward; ~~and~~

13 (5) on application to and order of the court, the power
14 to establish a trust in accordance with 42 U.S.C. Section
15 1396p(d)(4)(B) and direct that the income of the ward as defined by
16 that section be paid directly to the trust, solely for the purpose
17 of the ward's eligibility for medical assistance under Chapter 32,
18 Human Resources Code; and

19 (6) the power to sign documents necessary or
20 appropriate to facilitate employment of the ward if:

21 (A) the guardian was appointed with full
22 authority over the person of the ward under Section 1101.151; or

23 (B) the power is specified in the court order
24 appointing the guardian with limited powers over the person of the
25 ward under Section 1101.152.

26 SECTION 17. Sections 1155.052(a) and (c), Estates Code, as
27 effective January 1, 2014, are amended to read as follows:

1 (a) Notwithstanding any other provision of this chapter [~~or~~
2 ~~Section 665B~~], an attorney who serves as guardian and who also
3 provides legal services in connection with the guardianship is not
4 entitled to compensation for the guardianship services or payment
5 of attorney's fees for the legal services from the ward's estate or
6 other funds available for that purpose unless the attorney files
7 with the court a detailed description of the services performed
8 that identifies which of the services provided were guardianship
9 services and which were legal services.

10 (c) The court shall set the compensation of an attorney
11 described by Subsection (a) for the performance of guardianship
12 services in accordance with Subchapter A. The court shall set
13 attorney's fees for an attorney described by Subsection (a) for
14 legal services provided in accordance with Sections 1155.054
15 [~~1155.051~~], 1155.101, and 1155.151 [~~665B~~].

16 SECTION 18. Notwithstanding the transfer of Section 665B,
17 Texas Probate Code, as amended by Chapters 314 (H.B. 587) and 930
18 (H.B. 3080), Acts of the 81st Legislature, Regular Session, 2009,
19 to the Estates Code and redesignation as Section 665B of that code
20 effective January 1, 2014, by Section 3.01(e), Chapter 823 (H.B.
21 2759), Acts of the 82nd Legislature, Regular Session, 2011, Section
22 665B, Texas Probate Code, is transferred to Subchapter B, Chapter
23 1155, Estates Code, redesignated as Section 1155.054, Estates Code,
24 and reenacted and amended to read as follows:

25 Sec. 1155.054 [~~665B~~]. PAYMENT OF ATTORNEY'S FEES TO
26 CERTAIN ATTORNEYS. (a) A court that creates a guardianship or
27 creates a management trust under Chapter 1301 [~~Section 867 of this~~

1 ~~code~~] for a ward [~~under this chapter~~], on request of a person who
2 filed an application to be appointed guardian of the proposed ward,
3 an application for the appointment of another suitable person as
4 guardian of the proposed ward, or an application for the creation of
5 the management trust, may authorize the payment of reasonable and
6 necessary attorney's fees, as determined by the court, in amounts
7 the court considers equitable and just, to an attorney who
8 represents the person who filed the application at the application
9 hearing, regardless of whether the person is appointed the ward's
10 guardian or whether a management trust is created, from[+]

11 [~~(1)~~] available funds of the ward's estate or
12 management trust, if created, subject to Subsections (b) and (d).

13 (b) The court may authorize amounts that otherwise would be
14 paid from the ward's estate or the management trust as provided by
15 Subsection (a) to instead be paid from the county treasury, [+ or

16 [~~(2)~~] subject to Subsection (e), [~~(c) of this section,~~
17 ~~the county treasury~~] if:

18 (1) [(A)] the ward's estate or[, ~~if created,~~
19 management trust[~~7~~] is insufficient to pay [~~for~~] the amounts
20 [~~services provided by the attorney~~]; and

21 (2) [(B)] funds in the county treasury are budgeted
22 for that purpose.

23 (c) [(b)] The court may not authorize attorney's fees under
24 this section unless the court finds that the applicant acted in good
25 faith and for just cause in the filing and prosecution of the
26 application.

27 (d) If the court finds that a party in a guardianship

1 proceeding acted in bad faith or without just cause in prosecuting
2 or objecting to an application in the proceeding, the court may
3 require the party to reimburse the ward's estate for all or part of
4 the attorney's fees awarded under this section and shall issue
5 judgment against the party and in favor of the estate for the amount
6 of attorney's fees required to be reimbursed to the estate.

7 (e) [(e)] The court may authorize the payment of attorney's
8 fees from the county treasury under Subsection (b) [(a) of this
9 section] only if the court is satisfied that the attorney to whom
10 the fees will be paid has not received, and is not seeking, payment
11 for the services described by that subsection from any other
12 source.

13 SECTION 19. Section 1155.151, Estates Code, as effective
14 January 1, 2014, is amended to read as follows:

15 Sec. 1155.151. COSTS IN GUARDIANSHIP [~~COST OF~~] PROCEEDING
16 GENERALLY [~~IN GUARDIANSHIP MATTER~~]. (a) In a guardianship
17 proceeding [~~Except as provided by Subsection (b)~~], the court costs
18 [~~cost~~] of the proceeding [~~in a guardianship matter~~], including the
19 cost of the guardians [~~guardian~~] ad litem, attorneys ad litem, [~~or~~]
20 court visitor, mental health professionals, and interpreters
21 appointed under this title, shall be set in an amount the court
22 considers equitable and just and, except as provided by Subsection
23 (c), shall be paid out of the guardianship estate, or [~~the cost of~~
24 ~~the proceeding shall be paid out of~~] the county treasury if the
25 estate is insufficient to pay the cost, and the court shall issue
26 the judgment accordingly.

27 (b) The costs attributable to the services of a person

1 described by Subsection (a) shall be paid under this section at any
2 time after the commencement of the proceeding as ordered by the
3 court.

4 (c) If the court finds that a party in a guardianship
5 proceeding acted in bad faith or without just cause in prosecuting
6 or objecting to an application in the proceeding, the court may
7 order the party to pay all or part of the costs of the proceeding.
8 If the party found to be acting in bad faith or without just cause
9 was required to provide security for the probable costs of the
10 proceeding under Section 1053.052, the court shall first apply the
11 amount provided as security as payment for costs ordered by the
12 court under this subsection. If the amount provided as security is
13 insufficient to pay the entire amount ordered by the court, the
14 court shall render judgment in favor of the estate against the party
15 for the remaining amount. [An applicant for the appointment of a
16 guardian under this title shall pay the cost of the proceeding if
17 the court denies the application based on the recommendation of a
18 court investigator.]

19 SECTION 20. The heading to Section 1163.005, Estates Code,
20 as effective January 1, 2014, is amended to read as follows:

21 Sec. 1163.005. VERIFICATION OF ACCOUNT AND STATEMENT
22 REGARDING TAXES AND STATUS AS GUARDIAN.

23 SECTION 21. Section 1163.005(a), Estates Code, as effective
24 January 1, 2014, is amended to read as follows:

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

27 (1) that the account contains a correct and complete

1 statement of the matters to which the account relates;

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

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

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

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

18 SECTION 22. Section 1163.101(c), Estates Code, as effective
19 January 1, 2014, is amended to read as follows:

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

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

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

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

- 1 (A) the ward's own home;
- 2 (B) a nursing home;
- 3 (C) a guardian's home;
- 4 (D) a foster home;
- 5 (E) a boarding home;
- 6 (F) a relative's home, in which case the
- 7 description must specify the relative's relationship to the ward;
- 8 (G) a hospital or medical facility; or
- 9 (H) another type of residence;
- 10 (4) statements indicating:
 - 11 (A) the length of time the ward has resided in the
 - 12 present home;
 - 13 (B) the reason for a change in the ward's
 - 14 residence, if a change in the ward's residence has occurred in the
 - 15 past year;
 - 16 (C) the date the guardian most recently saw the
 - 17 ward;
 - 18 (D) how frequently the guardian has seen the ward
 - 19 in the past year;
 - 20 (E) whether the guardian has possession or
 - 21 control of the ward's estate;
 - 22 (F) whether the ward's mental health has
 - 23 improved, deteriorated, or remained unchanged during the past year,
 - 24 including a description of the change if a change has occurred;
 - 25 (G) whether the ward's physical health has
 - 26 improved, deteriorated, or remained unchanged during the past year,
 - 27 including a description of the change if a change has occurred;

1 (H) whether the ward has regular medical care;
2 and

3 (I) the ward's treatment or evaluation by any of
4 the following persons during the past year, including the person's
5 name and a description of the treatment:

6 (i) a physician;

7 (ii) a psychiatrist, psychologist, or other
8 mental health care provider;

9 (iii) a dentist;

10 (iv) a social or other caseworker; or

11 (v) any other individual who provided
12 treatment;

13 (5) a description of the ward's activities during the
14 past year, including recreational, educational, social, and
15 occupational activities, or a statement that no activities were
16 available or that the ward was unable or refused to participate in
17 activities;

18 (6) the guardian's evaluation of:

19 (A) the ward's living arrangements as excellent,
20 average, or below average, including an explanation if the
21 conditions are below average;

22 (B) whether the ward is content or unhappy with
23 the ward's living arrangements; and

24 (C) unmet needs of the ward;

25 (7) a statement indicating whether the guardian's
26 power should be increased, decreased, or unaltered, including an
27 explanation if a change is recommended;

1 (8) a statement indicating that the guardian has paid
2 the bond premium for the next reporting period; ~~and~~

3 (9) if the guardian is a private professional
4 guardian, a guardianship program, or the Department of Aging and
5 Disability Services, whether the guardian or an individual
6 certified under Subchapter C, Chapter 111, Government Code, who is
7 providing guardianship services to the ward and who is swearing to
8 the affidavit on the guardian's behalf, is or has been the subject
9 of an investigation conducted by the Guardianship Certification
10 Board during the preceding year; and

11 (10) any additional information the guardian desires
12 to share with the court regarding the ward, including:

13 (A) whether the guardian has filed for emergency
14 detention of the ward under Subchapter A, Chapter 573, Health and
15 Safety Code; and

16 (B) if applicable, the number of times the
17 guardian has filed for emergency detention and the dates of the
18 applications for emergency detention.

19 SECTION 23. Subchapter C, Chapter 1163, Estates Code, as
20 effective January 1, 2014, is amended by adding Section 1163.1011
21 to read as follows:

22 Sec. 1163.1011. USE OF UNSWORN DECLARATION FOR ELECTRONIC
23 FILING OF ANNUAL REPORT. (a) A guardian of the person who files the
24 annual report required by Section 1163.101 electronically with the
25 court may use an unsworn declaration made as provided by this
26 section instead of a written sworn declaration or affidavit
27 required by Section 1163.101.

1 (b) An unsworn declaration authorized by this section must
2 be:

- 3 (1) in writing; and
4 (2) subscribed by the person making the declaration as
5 true under penalty of perjury.

6 (c) The form of an unsworn declaration authorized by this
7 section must be substantially as follows:

8 I, (insert name of guardian of the person), the guardian of
9 the person for (insert name of ward) in _____ County, Texas,
10 declare under penalty of perjury that the foregoing is true and
11 correct.

12 Executed on (insert date)

13 _____

14 (signature)

15 (d) An unsworn declaration authorized by Section 132.001,
16 Civil Practice and Remedies Code, may not be used instead of a
17 written sworn declaration or affidavit required by Section
18 1163.101.

19 SECTION 24. Section 1251.013, Estates Code, as effective
20 January 1, 2014, is amended to read as follows:

21 Sec. 1251.013. COURT COSTS. If the court appoints a
22 temporary guardian after the hearing required by Section
23 1251.006(b), all court costs, including attorney's fees, may be
24 assessed as provided by Sections 1155.054 and [~~1155.051,~~
25 ~~1155.151[7, and 665B].~~

26 SECTION 25. The heading to Section 1301.052, Estates Code,
27 as effective January 1, 2014, is amended to read as follows:

1 Sec. 1301.052. VENUE FOR PROCEEDING INVOLVING TRUST FOR AN
2 ALLEGED INCAPACITATED PERSON.

3 SECTION 26. Section 1301.054, Estates Code, as effective
4 January 1, 2014, is amended by amending Subsection (c) and adding
5 Subsection (c-1) to read as follows:

6 (c) Except as provided by Subsection (c-1), the ~~[The]~~ court
7 shall appoint an attorney ad litem and, if necessary, may appoint a
8 guardian ad litem, to represent the interests of the alleged
9 incapacitated person in the hearing to determine incapacity under
10 Subsection (a).

11 (c-1) If the application for the creation of the trust is
12 filed by a person who has only a physical disability, the court may,
13 but is not required to, appoint an attorney ad litem or guardian ad
14 litem to represent the interests of the person in the hearing to
15 determine incapacity under Subsection (a).

16 SECTION 27. Section 1301.055, Estates Code, as effective
17 January 1, 2014, is amended to read as follows:

18 Sec. 1301.055. AUTHORITY OF COURT TO APPOINT GUARDIAN
19 INSTEAD OF CREATING TRUST. If, after a hearing under Section
20 1301.054, the court finds that the person for whom the application
21 was filed is an incapacitated person but that it is not in the
22 incapacitated person's best interests for the court to create a
23 trust under this subchapter for the incapacitated person's estate,
24 the court may appoint a guardian of the person or estate, or both,
25 for the incapacitated person without commencing a separate
26 proceeding for that purpose.

27 SECTION 28. Sections 1301.057(b), (c), and (d), Estates

1 Code, as effective January 1, 2014, are amended to read as follows:

2 (b) Except as provided by Subsection (c), the court shall
3 appoint a financial institution to serve as trustee of a management
4 trust, other than a management trust created for a person who has
5 only a physical disability.

6 (c) The court may appoint a person or entity described by
7 Subsection (d) to serve as trustee of a management trust created for
8 a ward or incapacitated person instead of appointing a financial
9 institution to serve in that capacity if the court finds:

10 (1) that the appointment is in the best interests of
11 the ward or incapacitated person for whom the trust is created; and

12 (2) if the value of the trust's principal is more than
13 \$150,000, that the applicant for the creation of the trust, after
14 the exercise of due diligence, has been unable to find a financial
15 institution in the geographic area willing to serve as trustee.

16 (d) The following are eligible for appointment as trustee of
17 a management trust created for a ward or incapacitated person under
18 Subsection (c):

19 (1) an individual, including an individual who is
20 certified as a private professional guardian;

21 (2) a nonprofit corporation qualified to serve as a
22 guardian; and

23 (3) a guardianship program.

24 SECTION 29. Section 1301.058, Estates Code, as effective
25 January 1, 2014, is amended to read as follows:

26 Sec. 1301.058. BOND REQUIREMENTS FOR TRUSTEES. (a) The
27 following serve [~~A trustee of a management trust that is a corporate~~

1 ~~fiduciary serves]~~ without giving a bond in accordance with the
2 trust terms required by Sections [~~Section~~] 1301.101(a)(4) and
3 (a-1):

4 (1) a trustee of a management trust that is a corporate
5 fiduciary; and

6 (2) any other trustee of a management trust created
7 for a person who has only a physical disability.

8 (b) Except as provided by Subsection (a), the [~~The~~] court
9 shall require a person[~~, other than a corporate fiduciary,~~] serving
10 as trustee of a management trust to file with the county clerk a
11 bond that:

12 (1) is in an amount equal to the value of the trust's
13 principal and projected annual income; and

14 (2) meets the conditions the court determines are
15 necessary.

16 SECTION 30. Section 1301.101, Estates Code, as effective
17 January 1, 2014, is amended to conform to Section 31, Chapter 1085
18 (S.B. 1196), Acts of the 82nd Legislature, Regular Session, 2011,
19 and is further amended to read as follows:

20 Sec. 1301.101. REQUIRED TERMS. (a) Except as provided by
21 Subsection (c), a management trust created for a ward or
22 incapacitated person must provide that:

23 (1) the ward or incapacitated person [~~for whom the~~
24 ~~trust is created~~] is the sole beneficiary of the trust;

25 (2) the trustee may disburse an amount of the trust's
26 principal or income as the trustee determines is necessary to spend
27 for the health, education, maintenance, or support of the [~~ward or~~

1 ~~incapacitated]~~ person for whom the trust is created;

2 (3) the trust income that the trustee does not
3 disburse under Subdivision (2) must be added to the trust
4 principal;

5 (4) a trustee that is a corporate fiduciary serves
6 without giving a bond; and

7 (5) subject to the court's approval and Subsection
8 (b), a [the] trustee is entitled to receive reasonable compensation
9 for services the trustee provides to the [ward or incapacitated]
10 person for whom the trust is created as the person's trustee.

11 (a-1) A management trust created for a person who has only a
12 physical disability must provide that the trustee of the trust:

13 (1) serves without giving a bond; and

14 (2) is entitled to receive, without the court's
15 approval, reasonable compensation for services the trustee
16 provides to the person as the person's trustee.

17 (b) A trustee's compensation under Subsection (a)(5) must
18 be:

19 (1) paid from the management trust's income,
20 principal, or both; and

21 (2) determined, paid, reduced, and eliminated in the
22 same manner as compensation of a guardian ~~[of an estate]~~ under
23 Subchapter A, Chapter 1155.

24 (c) The court creating or modifying a management trust may
25 omit or modify otherwise applicable terms required by Subsection
26 (a), (a-1), or (b) [(a)(1) or (2) only] if the court is creating the
27 trust for a person who has only a physical disability, or if the

1 court determines that the omission or modification:

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

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

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

13 (a) A management trust created for a ward or incapacitated
14 person may provide that the trustee make a distribution, payment,
15 use, or application of trust funds for the health, education,
16 maintenance, or support of the [~~ward or incapacitated~~] person for
17 whom the trust is created or of another person whom the [~~ward or~~
18 ~~incapacitated~~] person for whom the trust is created is legally
19 obligated to support:

20 (1) as necessary and without the intervention of:

21 (A) a guardian or other representative of the
22 ward; or

23 (B) a representative of the incapacitated
24 person; and

25 (2) to:

26 (A) the ward's guardian;

27 (B) a person who has physical custody of the

1 ~~[ward or incapacitated]~~ person for whom the trust is created or of
2 another person whom the ~~[ward or incapacitated]~~ person for whom the
3 trust is created is legally obligated to support; or

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

8 SECTION 32. Section 1301.103, Estates Code, as effective
9 January 1, 2014, is amended to read as follows:

10 Sec. 1301.103. ENFORCEABILITY OF CERTAIN TERMS. A
11 provision in a management trust created for a ward or incapacitated
12 person that relieves a trustee from a duty or liability imposed by
13 this chapter or Subtitle B, Title 9, Property Code, is enforceable
14 only if:

15 (1) the provision is limited to specific facts and
16 circumstances unique to the property of that trust and is not
17 applicable generally to the trust; and

18 (2) the court creating or modifying the trust makes a
19 specific finding that there is clear and convincing evidence that
20 the inclusion of the provision is in the best interests of the trust
21 beneficiary.

22 SECTION 33. Section 1301.154(a), Estates Code, as effective
23 January 1, 2014, is amended to read as follows:

24 (a) The trustee of a management trust created for a ward
25 shall prepare and file with the court an annual accounting of
26 transactions in the trust in the same manner and form that is
27 required of a guardian of the estate under this title.

1 SECTION 34. Section 1301.202, Estates Code, as effective
2 January 1, 2014, is amended by adding Subsection (a-1) to read as
3 follows:

4 (a-1) For purposes of a proceeding to determine whether to
5 transfer property from a management trust to a pooled trust
6 subaccount, the court may, but is not required to, appoint an
7 attorney ad litem or guardian ad litem to represent the interests of
8 a person who has only a physical disability for whom the management
9 trust was created.

10 SECTION 35. (a) Section 1155.051, Estates Code, as
11 effective January 1, 2014, is repealed.

12 (b) Notwithstanding the transfer of Section 631, Texas
13 Probate Code, to the Estates Code and redesignation as Section 631
14 of that code effective January 1, 2014, by Section 3.01(d), Chapter
15 823 (H.B. 2759), Acts of the 82nd Legislature, Regular Session,
16 2011, Section 631, Texas Probate Code, is repealed.

17 SECTION 36. (a) Except as otherwise provided by this
18 section, the changes in law made by this Act apply to:

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

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

23 (b) The changes in law made by this Act to Sections
24 1301.054, 1301.055, 1301.057(b), (c), and (d), 1301.058, 1301.101,
25 and 1301.102(a), Estates Code, apply only to an application for the
26 creation, modification, or termination of a management trust that
27 is filed on or after the effective date of this Act. An application

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

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

9 (d) The changes in law made by this Act to Section 1102.003,
10 Estates Code, apply to a guardianship proceeding that is commenced
11 on or after the effective date of this Act. A guardianship
12 proceeding commenced before that date is governed by the law in
13 effect on the date the proceeding was commenced, and the former law
14 is continued in effect for that purpose.

15 SECTION 37. Section 51.607, Government Code, does not apply
16 to the change in the amount of a fee made by Section 1104.303(b),
17 Estates Code, as amended by this Act.

18 SECTION 38. To the extent of any conflict, this Act prevails
19 over another Act of the 83rd Legislature, Regular Session, 2013,
20 relating to nonsubstantive additions to and corrections in enacted
21 codes.

22 SECTION 39. Except as otherwise provided by this Act, this
23 Act takes effect January 1, 2014.

President of the Senate

Speaker of the House

I certify that H.B. No. 2080 was passed by the House on May 8, 2013, by the following vote: Yeas 146, Nays 1, 2 present, not voting; and that the House concurred in Senate amendments to H.B. No. 2080 on May 24, 2013, by the following vote: Yeas 142, Nays 1, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 2080 was passed by the Senate, with amendments, on May 22, 2013, by the following vote: Yeas 30, Nays 1.

Secretary of the Senate

APPROVED: _____

Date

Governor