

By: Thompson of Harris

H.B. No. 1438

A BILL TO BE ENTITLED

AN ACT

relating to guardianships and other matters related to incapacitated persons.

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

SECTION 1. Section 1023.005, Estates Code, is amended to read as follows:

Sec. 1023.005. COURT ACTION. ~~[(a)]~~ On hearing an application under Section 1023.003, if good cause is not shown to deny the application and it appears that transfer of the guardianship is in the best interests of the ward, the court shall enter an order:

(1) authorizing the transfer on payment on behalf of the estate of all accrued costs; and

(2) requiring that any existing bond of the guardian must remain in effect until a new bond has been given or a rider has been filed in accordance with Section 1023.010.

~~[(b) In an order entered under Subsection (a), the court shall require the guardian, not later than the 20th day after the date the order is entered, to:~~

~~[(1) give a new bond payable to the judge of the court to which the guardianship is transferred; or~~

~~[(2) file a rider to an existing bond noting the court to which the guardianship is transferred.]~~

SECTION 2. Section 1023.010, Estates Code, is amended to

1 read as follows:

2 Sec. 1023.010. REVIEW OF TRANSFERRED GUARDIANSHIP. (a)
3 Not later than the 90th day after the date the transfer of the
4 guardianship takes effect under Section 1023.007, the court to
5 which the guardianship was transferred shall hold a hearing to
6 consider modifying the rights, duties, and powers of the guardian
7 or any other provisions of the transferred guardianship.

8 (b) After the hearing described by Subsection (a), the court
9 to which the guardianship was transferred shall enter an order
10 requiring the guardian to:

11 (1) give a new bond payable to the judge of the court
12 to which the guardianship was transferred; or

13 (2) file a rider to an existing bond noting the court
14 to which the guardianship was transferred.

15 SECTION 3. Section 1051.104(a), Estates Code, is amended to
16 read as follows:

17 (a) The person filing an application for guardianship shall
18 mail a copy of the application and a notice containing the
19 information required in the citation issued under Section 1051.102
20 by registered or certified mail, return receipt requested, or by
21 any other form of mail that provides proof of delivery, to the
22 following persons, if their whereabouts are known or can be
23 reasonably ascertained:

24 (1) each adult child of the proposed ward;

25 (2) each adult sibling of the proposed ward;

26 (3) the administrator of a nursing home facility or
27 similar facility in which the proposed ward resides;

1 (4) the operator of a residential facility in which
2 the proposed ward resides;

3 (5) a person whom the applicant knows to hold a power
4 of attorney signed by the proposed ward;

5 (6) a person designated to serve as guardian of the
6 proposed ward by a written declaration under Subchapter E, Chapter
7 1104, if the applicant knows of the existence of the declaration;

8 (7) a person designated to serve as guardian of the
9 proposed ward in the probated will of the last surviving parent of
10 the proposed ward;

11 (8) a person designated to serve as guardian of the
12 proposed ward by a written declaration of the proposed ward's last
13 surviving parent, if the declarant is deceased and the applicant
14 knows of the existence of the declaration; and

15 (9) each adult ~~[person]~~ named ~~[as another relative~~
16 ~~within the third degree by consanguinity]~~ in the application as an
17 "other living relative" of the proposed ward within the third
18 degree by consanguinity, as required by Section [1101.001](#)(b)(11) or
19 (13), if the proposed ward's spouse and each of the proposed ward's
20 parents, adult siblings, and adult children are deceased or there
21 is no spouse, parent, adult sibling, or adult child.

22 SECTION 4. Section [1052.001](#)(a), Estates Code, is amended to
23 read as follows:

24 (a) The county clerk shall maintain a record book titled
25 "Judge's Guardianship Docket" and shall record in the book:

26 (1) the name of each person with respect to whom, or
27 with respect to whose estate, a proceeding is commenced or sought to

1 be commenced;

2 (2) the name of the guardian of the estate or person or
3 of the applicant for letters of guardianship;

4 (3) the date each original application for a
5 guardianship proceeding is filed;

6 (4) a notation of each order, judgment, decree, and
7 proceeding that occurs in each guardianship [~~estate~~], including the
8 date it occurs; and

9 (5) the docket number of each guardianship as assigned
10 under Subsection (b).

11 SECTION 5. Section 1052.051(f), Estates Code, is amended to
12 read as follows:

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

17 (1) the guardianship estate;

18 (2) the management trust, if a management trust has
19 been created for the benefit of the ward under Chapter 1301 and the
20 court determines it is in the ward's best interest; or

21 (3) [~~(2)~~] the county treasury, if the assets of the
22 guardianship estate or management trust, as appropriate, are [~~is~~]
23 insufficient to pay the amount of the filing fee.

24 SECTION 6. Section 1101.001, Estates Code, is amended by
25 adding Subsection (c) to read as follows:

26 (c) For purposes of this section, a proposed ward's
27 relatives within the third degree by consanguinity include the

1 proposed ward's:

2 (1) grandparent or grandchild; and

3 (2) great-grandparent, great-grandchild, aunt who is
4 a sister of a parent of the proposed ward, uncle who is a brother of
5 a parent of the proposed ward, nephew who is a child of a brother or
6 sister of the proposed ward, or niece who is a child of a brother or
7 sister of the proposed ward.

8 SECTION 7. Subchapter D, Chapter 1101, Estates Code, is
9 amended by adding Section 1101.156 to read as follows:

10 Sec. 1101.156. REQUIRED DEPOSIT OF ESTATE ASSETS. (a)
11 Before an order appointing a guardian is entered, or in such an
12 order, a court may require the deposit of cash, securities, or other
13 assets of a proposed ward or ward in a financial institution
14 described by Section 1105.155(b) for safekeeping.

15 (b) The amount of the bond required to be given by the
16 guardian under Section 1105.101 shall be reduced in proportion to
17 the amount of the cash or the value of the securities or other
18 assets deposited under this section.

19 SECTION 8. Section 1102.005, Estates Code, is amended to
20 read as follows:

21 Sec. 1102.005. COMPENSATION OF GUARDIAN AD LITEM. (a)
22 Regardless of whether a guardianship is created for a proposed
23 ward, a [A] court that appoints a guardian ad litem under Section
24 1102.001 may authorize compensation of the guardian ad litem from
25 available funds of:

26 (1) the proposed ward's estate; or

27 (2) the management trust, if a management trust has

1 been created for the benefit of the proposed ward under Chapter
2 1301~~[, regardless of whether a guardianship is created for the~~
3 ~~proposed ward]~~.

4 (b) After examining the proposed ward's assets or the assets
5 of any management trust created for the proposed ward's benefit
6 under Chapter 1301, and determining that the proposed ward or the
7 management trust is unable to pay for services provided by the
8 guardian ad litem, the court may authorize compensation from the
9 county treasury.

10 SECTION 9. Section 1104.154(a), Estates Code, is amended to
11 read as follows:

12 (a) As an alternative to the self-proving affidavit
13 authorized by Section 1104.153, a declaration of appointment of a
14 guardian for the declarant's children in the event of the
15 declarant's death or incapacity may be simultaneously executed,
16 attested, and made self-proved by including the following in
17 substantially the same form and with substantially the same
18 contents:

19 I, _____, as declarant, after being duly
20 sworn, declare to the undersigned witnesses and to the undersigned
21 authority that this instrument is my Declaration of Appointment of
22 Guardian for My Children in the Event of My Death or Incapacity, and
23 that I willingly make ~~[have made]~~ and execute ~~[executed]~~ it for the
24 purposes expressed in the declaration. I now sign this declaration
25 in the presence of the attesting witnesses and the undersigned
26 authority on this ____ day of _____, 20__.

1 _____

2 Declarant

3 The undersigned, _____ and

4 _____, each being 14 years of age or older, after

5 being duly sworn, declare to the declarant and to the undersigned

6 authority that the declarant declared to us that this instrument is

7 the declarant's Declaration of Appointment of Guardian for the

8 Declarant's Children in the Event of Declarant's Death or

9 Incapacity and that the declarant executed it for the purposes

10 expressed in the declaration. The declarant then signed this

11 declaration and we believe the declarant to be of sound mind. We now

12 sign our names as attesting witnesses on this _____ day of

13 _____, 20____.

14 _____

15 Witness

16 _____

17 Witness

18 Subscribed and sworn to before me by the above named

19 declarant, and affiants, this _____ day of _____, 20__.

20 _____

21 Notary Public in and for the

22 State of Texas

23 My Commission expires:

24 _____

25 SECTION 10. Section 1104.205(a), Estates Code, is amended
26 to read as follows:

27 (a) As an alternative to the self-proving affidavit

1 authorized by Section 1104.204, a declaration of guardian in the
2 event of later incapacity or need of guardian may be simultaneously
3 executed, attested, and made self-proved by including the following
4 in substantially the same form and with substantially the same
5 contents:

6 I, _____, as declarant, after being duly
7 sworn, declare to the undersigned witnesses and to the undersigned
8 authority that this instrument is my Declaration of Guardian in the
9 Event of Later Incapacity or Need of Guardian, and that I willingly
10 make [~~have made~~] and execute [~~executed~~] it for the purposes
11 expressed in the declaration. I now sign this declaration in the
12 presence of the attesting witnesses and the undersigned authority
13 on this ____ day of _____, 20__.

14 _____
15 Declarant

16 The undersigned, _____ and
17 _____, each being 14 years of age or older, after
18 being duly sworn, declare to the declarant and to the undersigned
19 authority that the declarant declared to us that this instrument is
20 the declarant's Declaration of Guardian in the Event of Later
21 Incapacity or Need of Guardian and that the declarant executed it
22 for the purposes expressed in the declaration. The declarant then
23 signed this declaration and we believe the declarant to be of sound
24 mind. We now sign our names as attesting witnesses on this ____ day
25 of _____, 20__.

26 _____
27 Witness

1 _____

2 Witness

3 Subscribed and sworn to before me by the above named
4 declarant, and affiants, this ____ day of _____, 20__.

5 _____

6 Notary Public in and for the
7 State of Texas

8 My Commission expires:

9 _____

10 SECTION 11. Section 1155.151(a), Estates Code, is amended
11 to read as follows:

12 (a) In a guardianship proceeding, the court costs of the
13 proceeding, including the cost of the guardians ad litem, attorneys
14 ad litem, court visitor, mental health professionals, and
15 interpreters appointed under this title, shall be set in an amount
16 the court considers equitable and just and, except as provided by
17 Subsection (c), shall be paid as follows, and the court shall issue
18 the judgment accordingly:

19 (1) out of the guardianship estate;

20 (2) out of the management trust, if a management trust
21 has been created for the benefit of the ward under Chapter 1301 and
22 the court determines it is in the ward's best interest; [7] or

23 (3) out of the county treasury if the assets of the
24 guardianship estate or management trust, as appropriate, are [is]
25 insufficient to pay the cost[7, and the court shall issue the
26 judgment accordingly].

27 SECTION 12. Section 1203.202(c), Estates Code, is amended

1 to read as follows:

2 (c) A successor guardian may:

3 (1) make himself or herself, and be made, a party to a
4 suit prosecuted by or against the successor's predecessor;

5 (2) settle with the predecessor and receive and give a
6 receipt for any portion of the estate property that remains in the
7 predecessor's [~~successor's~~] possession; or

8 (3) commence a suit on the bond or bonds of the
9 predecessor, in the successor's own name and capacity, for all the
10 estate property that:

11 (A) came into the predecessor's possession; and

12 (B) has not been accounted for by the
13 predecessor.

14 SECTION 13. Section [1253.051](#), Estates Code, is amended to
15 read as follows:

16 Sec. 1253.051. APPLICATION FOR RECEIPT AND ACCEPTANCE OF
17 FOREIGN GUARDIANSHIP. A guardian appointed by a foreign court to
18 represent an incapacitated person who is residing in this state or
19 intends to move to this state may file an application with a court
20 in the county in which the ward resides or in which it is intended
21 that the ward will [~~intends to~~] reside to have the guardianship
22 transferred to that [~~the~~] court. The application must have
23 attached a certified copy of all papers of the guardianship filed
24 and recorded in the foreign court.

25 SECTION 14. Section [1301.1535](#), Estates Code, is amended to
26 read as follows:

27 Sec. 1301.1535. INITIAL ACCOUNTING BY CERTAIN TRUSTEES

1 REQUIRED. (a) This section applies only to a trustee of a
2 management trust created for a person who [~~for whom a guardianship~~
3 ~~proceeding is pending~~] on the date the trust is created is:

- 4 (1) a ward under an existing guardianship; or
5 (2) a proposed ward with respect to whom an
6 application for guardianship has been filed and is pending.

7 (b) Not later than the 30th day after the date a trustee to
8 which this section applies receives property into the trust, the
9 trustee shall file with the court that created the guardianship or
10 the court in which the application for guardianship was filed
11 [~~proceeding is pending~~] a report describing all property held in
12 the trust on the date of the report and specifying the value of the
13 property on that date.

14 SECTION 15. Section [1351.001](#), Estates Code, is amended to
15 read as follows:

16 Sec. 1351.001. AUTHORITY TO SELL MINOR'S INTEREST IN
17 PROPERTY WITHOUT GUARDIANSHIP. (a) A parent or managing
18 conservator of a minor who is not a ward may apply to the court under
19 this subchapter for an order to sell an interest of the minor in
20 property without being appointed guardian if the net value of the
21 interest does not exceed \$100,000.

22 (b) If a minor who is not a ward does not have a parent or
23 managing conservator willing or able to file an application under
24 Subsection (a), the court may appoint an attorney ad litem or
25 guardian ad litem to act on the minor's behalf for the limited
26 purpose of applying for an order to sell the minor's interest in
27 property under this subchapter.

1 SECTION 16. Sections 1351.002(a) and (b), Estates Code, are
2 amended to read as follows:

3 (a) A parent, ~~[or]~~ managing conservator, or attorney ad
4 litem or guardian ad litem appointed under Section 1351.001(b)
5 shall apply to the court under oath for the sale of property under
6 this subchapter.

7 (b) An application must contain:

8 (1) the minor's name;

9 (2) a legal description of the real property or a
10 description that identifies the personal property, as applicable;

11 (3) the minor's interest in the property;

12 (4) the purchaser's name;

13 (5) a statement that the sale of the minor's interest
14 in the property is for cash; and

15 (6) a statement that all money received from the sale
16 of the minor's interest in the property [~~by the parent or managing~~
17 ~~conservator~~] shall be used for the minor's use and benefit.

18 SECTION 17. Section 1351.051, Estates Code, is amended to
19 read as follows:

20 Sec. 1351.051. APPLICABILITY OF SUBCHAPTER. This
21 subchapter applies only to a ward who has:

22 (1) a guardian of the person but does not have a
23 guardian of the estate; or

24 (2) a guardian of the estate appointed by a foreign
25 court.

26 SECTION 18. Section 1351.052, Estates Code, is amended to
27 read as follows:

1 Sec. 1351.052. AUTHORITY TO SELL WARD'S INTEREST IN
2 PROPERTY WITHOUT APPOINTMENT AS GUARDIAN OF THE ESTATE IN THIS
3 STATE. A guardian of the person of a ward or a guardian of the
4 estate of a ward appointed by a foreign court may apply to the court
5 under this subchapter for an order to sell an interest in property
6 in the ward's estate without being appointed guardian of the ward's
7 estate in this state if the net value of the interest does not
8 exceed \$100,000.

9 SECTION 19. Section 1351.053(b), Estates Code, is amended
10 to read as follows:

11 (b) For purposes of Subsection (a)(2), references in
12 Section 1351.002(b) to[+

13 ~~(1)~~ "minor" are replaced with references to "ward."
14 [~~"ward"; and~~

15 ~~(2) "parent or managing conservator" are replaced~~
16 ~~with references to "guardian of the person."]~~

17 SECTION 20. (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 1023.005
24 and 1023.010, Estates Code, apply only to an application for the
25 transfer of a guardianship to another county filed on or after the
26 effective date of this Act. An application for the transfer of a
27 guardianship to another county filed before the effective date of

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

4 (c) The changes in law made by this Act to Sections [1104.154](#)
5 and [1104.205](#), Estates Code, apply only to a declaration executed on
6 or after the effective date of this Act. A declaration executed
7 before the effective date of this Act is governed by the law in
8 effect on the date the declaration was executed, and the former law
9 is continued in effect for that purpose.

10 (d) The changes in law made by this Act to Section
11 [1301.1535](#), Estates Code, apply only to a management trust created
12 on or after the effective date of this Act. A management trust
13 created before the effective date of this Act is governed by the law
14 in effect on the date the management trust was created, and the
15 former law is continued in effect for that purpose.

16 (e) The changes in law made by this Act to Sections [1351.001](#)
17 and [1351.002](#), Estates Code, apply only to an application for the
18 sale of an interest in property of a minor filed on or after the
19 effective date of this Act. An application for the sale of an
20 interest in property of a minor that is filed before the effective
21 date of this Act is governed by the law in effect on the date the
22 application was filed, and the former law is continued in effect for
23 that purpose.

24 (f) The changes in law made by this Act to Sections
25 [1351.051](#), [1351.052](#), and [1351.053](#), Estates Code, apply only to an
26 application for the sale of an interest in property of a ward filed
27 on or after the effective date of this Act. An application for the

1 sale of an interest in property of a ward that is filed before the
2 effective date of this Act is governed by the law in effect on the
3 date the application was filed, and the former law is continued in
4 effect for that purpose.

5 SECTION 21. This Act takes effect September 1, 2015.