86R25211 CLG-F

By:  Thompson of Harris H.B. No. 3543

Substitute the following for H.B. No. 3543:

By:  J. Johnson of Dallas C.S.H.B. No. 3543

A BILL TO BE ENTITLED

AN ACT

relating to guardianships, management trusts, and certain other procedures and proceedings for persons who are incapacitated.

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

SECTION 1.  Section 1021.001, Estates Code, is amended to read as follows:

Sec. 1021.001.  MATTERS RELATED TO GUARDIANSHIP PROCEEDING. (a) For purposes of this code, in a county in which there is no statutory probate court or county court of law exercising original probate jurisdiction, a matter related to a guardianship proceeding includes:

(1)  the granting of letters of guardianship;

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

(3)  a claim brought by or against a guardianship estate;

(4)  an action for trial of title to real property that is guardianship estate property, including the enforcement of a lien against the property;

(5)  an action for trial of the right of property that is guardianship estate property;

(6)  after a guardianship of the estate of a ward is required to be settled as provided by Section 1204.001:

(A)  an action brought by or on behalf of the former ward against a former guardian of the ward for alleged misconduct arising from the performance of the person's duties as guardian;

(B)  an action calling on the surety of a guardian or former guardian to perform in place of the guardian or former guardian, which may include the award of a judgment against the guardian or former guardian in favor of the surety;

(C)  an action against a former guardian of the former ward that is brought by a surety that is called on to perform in place of the former guardian;

(D)  a claim for the payment of compensation, expenses, and court costs, and any other matter authorized under Chapter 1155; and

(E)  a matter related to an authorization made or duty performed by a guardian under Chapter 1204; and

(7)  the appointment of a trustee for a trust created under Section 1301.053 or 1301.054, the settling of an account of the trustee, and all other matters relating to the trust.

(a-1)  For purposes of this code, in a county in which there is no statutory probate court, but in which there is a county court at law exercising original probate jurisdiction, a matter related to a guardianship proceeding includes:

(1)  all matters and actions described in Subsection (a);

(2)  the interpretation and administration of a testamentary trust in which a ward is an income or remainder beneficiary; and

(3)  the interpretation and administration of an inter vivos trust in which a ward is an income or remainder beneficiary.

(b)  For purposes of this code, in a county in which there is a statutory probate court, a matter related to a guardianship proceeding includes:

(1)  all matters and actions described in Subsections [~~Subsection~~] (a) and (a-1);

(2)  a suit, action, or application filed against or on behalf of a guardianship or a trustee of a trust created under Section 1301.053 or 1301.054; and

(3)  a cause of action in which a guardian in a guardianship pending in the statutory probate court is a party.

SECTION 2.  Section 1151.351(b), Estates Code, is amended to read as follows:

(b)  Unless limited by a court or otherwise restricted by law, a ward is authorized to the following:

(1)  to have a copy of the guardianship order and letters of guardianship and contact information for the probate court that issued the order and letters;

(2)  to have a guardianship that encourages the development or maintenance of maximum self-reliance and independence in the ward with the eventual goal, if possible, of self-sufficiency;

(3)  to be treated with respect, consideration, and recognition of the ward's dignity and individuality;

(4)  to reside and receive support services in the most integrated setting, including home-based or other community-based settings, as required by Title II of the Americans with Disabilities Act (42 U.S.C. Section 12131 et seq.);

(5)  to consideration of the ward's current and previously stated personal preferences, desires, medical and psychiatric treatment preferences, religious beliefs, living arrangements, and other preferences and opinions;

(6)  to financial self-determination for all public benefits after essential living expenses and health needs are met and to have access to a monthly personal allowance;

(7)  to receive timely and appropriate health care and medical treatment that does not violate the ward's rights granted by the constitution and laws of this state and the United States;

(8)  to exercise full control of all aspects of life not specifically granted by the court to the guardian;

(9)  to control the ward's personal environment based on the ward's preferences;

(10)  to complain or raise concerns regarding the guardian or guardianship to the court, including living arrangements, retaliation by the guardian, conflicts of interest between the guardian and service providers, or a violation of any rights under this section;

(11)  to receive notice in the ward's native language, or preferred mode of communication, and in a manner accessible to the ward, of a court proceeding to continue, modify, or terminate the guardianship and the opportunity to appear before the court to express the ward's preferences and concerns regarding whether the guardianship should be continued, modified, or terminated;

(12)  to have a court investigator or[~~,~~] guardian ad litem[~~, or attorney ad litem~~] appointed by the court to investigate a complaint received by the court from the ward or any person about the guardianship;

(13)  to participate in social, religious, and recreational activities, training, employment, education, habilitation, and rehabilitation of the ward's choice in the most integrated setting;

(14)  to self-determination in the substantial maintenance, disposition, and management of real and personal property after essential living expenses and health needs are met, including the right to receive notice and object about the substantial maintenance, disposition, or management of clothing, furniture, vehicles, and other personal effects;

(15)  to personal privacy and confidentiality in personal matters, subject to state and federal law;

(16)  to unimpeded, private, and uncensored communication and visitation with persons of the ward's choice, except that if the guardian determines that certain communication or visitation causes substantial harm to the ward:

(A)  the guardian may limit, supervise, or restrict communication or visitation, but only to the extent necessary to protect the ward from substantial harm; and

(B)  the ward may request a hearing to remove any restrictions on communication or visitation imposed by the guardian under Paragraph (A);

(17)  to petition the court and retain counsel of the ward's choice who holds a certificate required by Subchapter E, Chapter 1054, to represent the ward's interest for capacity restoration, modification of the guardianship, the appointment of a different guardian, or for other appropriate relief under this subchapter, including a transition to a supported decision-making agreement, except as limited by Section 1054.006;

(18)  to vote in a public election, marry, and retain a license to operate a motor vehicle, unless restricted by the court;

(19)  to personal visits from the guardian or the guardian's designee at least once every three months, but more often, if necessary, unless the court orders otherwise;

(20)  to be informed of the name, address, phone number, and purpose of Disability Rights Texas, an organization whose mission is to protect the rights of, and advocate for, persons with disabilities, and to communicate and meet with representatives of that organization;

(21)  to be informed of the name, address, phone number, and purpose of an independent living center, an area agency on aging, an aging and disability resource center, and the local mental health and intellectual and developmental disability center, and to communicate and meet with representatives from these agencies and organizations;

(22)  to be informed of the name, address, phone number, and purpose of the Judicial Branch Certification Commission and the procedure for filing a complaint against a certified guardian;

(23)  to contact the Department of Family and Protective Services to report abuse, neglect, exploitation, or violation of personal rights without fear of punishment, interference, coercion, or retaliation; and

(24)  to have the guardian, on appointment and on annual renewal of the guardianship, explain the rights delineated in this subsection in the ward's native language, or preferred mode of communication, and in a manner accessible to the ward.

SECTION 3.  Sections 1153.001(a) and (c), Estates Code, are amended to read as follows:

(a)  Within one month after receiving letters of guardianship, a guardian of an estate shall provide notice requiring each person who has a claim against the estate to present the claim within the period prescribed by law. The notice must be:

(1)  published in a newspaper of general circulation [~~printed~~] in the county in which the letters were issued; and

(2)  sent to the comptroller by certified or registered mail, if the ward remitted or should have remitted taxes administered by the comptroller.

(c)  If there is no [~~a~~] newspaper of general circulation [~~is not printed~~] in the county in which the letters of guardianship were issued, the notice must be posted and the return made and filed as otherwise required by this title.

SECTION 4.  Section 1155.054(d), Estates Code, is amended to read as follows:

(d)  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, the court may order [~~require~~] the party to reimburse the ward's estate for all or part of the attorney's fees awarded under this section and shall issue judgment against the party and in favor of the estate for the amount of attorney's fees ordered [~~required~~] to be reimbursed to the estate.

SECTION 5.  Section 1163.005(a), Estates Code, 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;

(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 Health and Human Services Commission [~~Department of Aging and Disability Services~~], whether the guardian or an individual certified under Subchapter C, Chapter 155 [~~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 Judicial Branch [~~Guardianship~~] Certification Commission [~~Board~~] during the accounting period.

SECTION 6.  Section 1163.101(c), Estates Code, 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;

(9)  if the guardian is a private professional guardian, a guardianship program, or the Health and Human Services Commission [~~Department of Aging and Disability Services~~], whether the guardian or an individual certified under Subchapter C, Chapter 155, Government Code, who is providing guardianship services to the ward and who is filing the affidavit on the guardian's behalf, is or has been the subject of an investigation conducted by the Judicial Branch [~~Guardianship~~] Certification Commission [~~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 B, Chapter 1301, Estates Code, is amended by adding Section 1301.0511 to read as follows:

Sec. 1301.0511.  NOTICE REQUIRED FOR APPLICATION FOR CREATION OF TRUST; CITATION OF APPLICANT NOT REQUIRED. (a) On the filing of an application for creation of a management trust and except as provided by Subsection (d), notice shall be issued and served in the manner provided by Subchapter C, Chapter 1051, for the issuance and service of notice on the filing of an application for guardianship.

(b)  It is not necessary to serve a citation on a person who files an application for the creation of a management trust under this subchapter or for that person to waive the issuance and personal service of citation.

(c)  If the person for whom an application for creation of a management trust is filed is a ward, the sheriff or other officer, in addition to serving the persons described by Section 1051.103, shall personally serve each guardian of the ward with citation to appear and answer the application.

(d)  Notice under this section is not required if a proceeding for the appointment of a guardian is pending for the person for whom an application for creation of a management trust is filed.

SECTION 8.  Section 1301.101(a), Estates Code, is amended to read as follows:

(a)  Except as provided by Subsection (c), a management trust created for a ward or incapacitated person must provide that:

(1)  the ward or incapacitated person is the sole beneficiary of the trust;

(2)  the trustee may disburse an amount of the trust's principal or income as the trustee determines is necessary to spend for the health, education, maintenance, or support of the person for whom the trust is created;

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

(4)  a trustee that is a corporate fiduciary serves without giving a bond; [~~and~~]

(5)  subject to the court's approval and Subsection (b), a trustee is entitled to receive reasonable compensation for services the trustee provides to the person for whom the trust is created as the person's trustee; and

(6)  the trust terminates:

(A)  except as provided by Paragraph (B), if the person for whom the trust is created is a minor:

(i)  on the earlier of:

(a)  the person's death; or

(b)  the person's 18th birthday; or

(ii)  on the date provided by court order, which may not be later than the person's 25th birthday;

(B)  if the person for whom the trust is created is a minor and is also incapacitated for a reason other than being a minor:

(i)  on the person's death; or

(ii)  when the person regains capacity; or

(C)  if the person for whom the trust is created is not a minor:

(i)  according to the terms of the trust;

(ii)  on the date the court determines that continuing the trust is no longer in the person's best interests, subject to Section 1301.202(c); or

(iii)  on the person's death.

SECTION 9.  Section 1301.154(b), Estates Code, is amended to read as follows:

(b)  The trustee of a management trust created for a ward shall provide a copy of the annual account to each [~~the~~] guardian of the ward [~~ward's estate or person~~].

SECTION 10.  Section 1301.203, Estates Code, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

(a)  Except as provided by Subsection (a-1), if [~~If~~] the person for whom a management trust is created is a minor, the trust terminates on:

(1)  the earlier of:

(A)  the person's death; or

(B)  the person's 18th birthday; or

(2)  the date provided by court order, which may not be later than the person's 25th birthday.

(a-1)  If the person for whom a management trust is created is a minor and is also incapacitated for a reason other than being a minor, the trust terminates:

(1)  on the person's death; or

(2)  when the person regains capacity.

SECTION 11.  Sections 1355.002(b), (c), (d), (e), and (f), Estates Code, are amended to read as follows:

(b)  This section applies only to a nonresident creditor who is:

(1)  a nonresident minor and has a nonresident guardian of the estate appointed by a foreign court;

(2)  [~~,~~] a nonresident person who is adjudged by a foreign court [~~of competent jurisdiction~~] to be incapacitated and has a nonresident guardian of the estate appointed by that court;[~~,~~] or

(3)  the nonresident former ward of a guardianship terminated under Chapter 1204 who has no legal guardian qualified in this state.

(c)  A debtor in this state who owes money to a nonresident creditor to whom this section applies may pay the money:

(1)  to the creditor's guardian of the estate qualified in the domiciliary jurisdiction; or

(2)  to the county clerk of:

(A)  any county in this state in which real property owned by the creditor is located; or

(B)  if the creditor is not known to own real property in this state, the county in which the debtor resides.

(d)  A payment made under this section is for the nonresident creditor's account and for the nonresident creditor's use and benefit.

(e)  A receipt for payment signed by the county clerk is binding on the nonresident creditor as of the date and to the extent of payment if the receipt states:

(1)  the creditor's name; and

(2)  the creditor's post office address, if the address is known.

(f)  A county clerk who receives a payment under Subsection (c) for a nonresident creditor shall handle the money in the same manner as provided for a payment to the account of a resident creditor under Sections 1355.001, 1355.051, 1355.052, 1355.102, 1355.103, and 1355.104. Those sections apply to the handling and disposition of money or any increase, dividend, or income paid to the clerk for the use, benefit, and account of the nonresident creditor to whom this section applies.

SECTION 12.  Section 1355.105, Estates Code, is amended to read as follows:

Sec. 1355.105.  WITHDRAWAL OF MONEY BY CREDITOR OR CREDITOR'S HEIR, [~~OR~~] REPRESENTATIVE, OR GUARDIAN. (a) On presentation to the court clerk of an order of a county or probate court of the county in which the money is held, money that is not withdrawn by an authorized person as provided by this chapter may be withdrawn by:

(1)  the creditor, after termination of the creditor's disability;

(2)  a subsequent personal representative of the creditor; [~~or~~]

(3)  the creditor's heirs; or

(4)  a nonresident guardian of the estate appointed by a foreign court for a creditor who is:

(A)  a nonresident minor; or

(B)  a nonresident person who is adjudged to be incapacitated.

(b)  Except as provided by Subsection (b-1), a [~~A~~] withdrawal under Subsection (a) may be made at any time and without a special bond for that purpose.

(b-1)  A court may require a nonresident guardian of the estate of a creditor who is a nonresident minor or nonresident incapacitated person as described by Subsection (a)(4) to provide proof that the nonresident guardian of the estate gave an adequate bond in the foreign jurisdiction if the court determines that it is in the nonresident minor's or nonresident incapacitated person's best interest.

(c)  The order presented under Subsection (a) must direct the court clerk to deliver the money to:

(1)  the creditor;

(2)  [~~,~~] the creditor's personal representative;

(3)  [~~, or~~] the creditor's heirs named in the order; or

(4)  if the creditor is a nonresident minor or nonresident person who is adjudged to be incapacitated, the creditor's nonresident guardian of the estate.

(d)  Before the court may issue an order under this section, the person's identity and credentials must be proved to the court's satisfaction. For purposes of this subsection, a nonresident guardian of the estate described by Subsection (c)(4) must present to the court exemplified copies of the order of a foreign court appointing the guardian and current letters of guardianship issued in the foreign jurisdiction.

SECTION 13.  (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 Section 1021.001, Estates Code, apply only to an action filed on or after the effective date of this Act. An action filed before the effective date of this Act is governed by the law in effect on the date the action was filed, and the former law is continued in effect for that purpose.

(c)  The changes in law made by this Act to Section 1155.054(d), Estates Code, apply only to a guardianship proceeding commenced on or after the effective date of this Act. A guardianship proceeding commenced before the effective date of this Act is governed by the law in effect on the date the proceeding was commenced, and the former law is continued in effect for that purpose.

(d)  Section 1301.0511, Estates Code, as added by this Act, applies only to an application for creation of a management trust filed on or after the effective date of this Act. An application for creation of a management trust filed before the effective 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.

(e)  The changes in law made by this Act to Sections 1301.101 and 1301.203, Estates Code, apply only to an application for the creation or modification of a management trust filed on or after the effective date of this Act. An application for the creation or modification of a management trust filed before the effective 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.

(f)  The changes in law made by this Act to Section 1355.105, Estates Code, apply only to an application for an order for the delivery of money that is filed on or after the effective date of this Act. An application for an order for the delivery of money that is filed before the effective 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.

SECTION 14.  This Act takes effect September 1, 2019.