

By: Thompson of Harris

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:

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

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

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

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

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

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

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

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

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

1 beneficiary; and

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

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

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

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

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

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

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

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

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

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

27 (4) to reside and receive support services in the most

1 integrated setting, including home-based or other community-based
2 settings, as required by Title II of the Americans with
3 Disabilities Act (42 U.S.C. Section 12131 et seq.);

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

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

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

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

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

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

23 (11) to receive notice in the ward's native language,
24 or preferred mode of communication, and in a manner accessible to
25 the ward, of a court proceeding to continue, modify, or terminate
26 the guardianship and the opportunity to appear before the court to
27 express the ward's preferences and concerns regarding whether the

1 guardianship should be continued, modified, or terminated;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (d) If the court finds that a party in a guardianship
27 proceeding acted in bad faith or without just cause in prosecuting

1 or objecting to an application in the proceeding, the court may
2 order [~~require~~] the party to reimburse the ward's estate for all or
3 part of the attorney's fees awarded under this section and shall
4 issue judgment against the party and in favor of the estate for the
5 amount of attorney's fees ordered [~~required~~] to be reimbursed to
6 the estate.

7 SECTION 5. Section [1155.151\(a\)](#), Estates Code, is amended to
8 read as follows:

9 (a) In a guardianship proceeding, the court costs of the
10 proceeding, including the costs described by Subsection (a-1),
11 shall, except as provided by Subsection (c), be paid as follows, and
12 the court shall issue the judgment accordingly:

13 (1) out of the guardianship estate, if a guardianship
14 of the estate has been created for the benefit of the ward and the
15 court determines it is in the ward's best interest;

16 (2) out of the management trust, if a management trust
17 has been created for the benefit of the ward under Chapter [1301](#) and
18 the court determines it is in the ward's best interest;

19 (3) by the party to the proceeding who incurred the
20 costs, unless that party filed, on the party's own behalf, an
21 affidavit of inability to pay the costs under Rule 145, Texas Rules
22 of Civil Procedure, that shows the party is unable to afford the
23 costs, if:

24 (A) there is no guardianship estate or no
25 management trust has been created for the ward's benefit; or

26 (B) the assets of the guardianship estate or
27 management trust, as appropriate, are insufficient to pay the

1 costs; or

2 (4) out of the county treasury if:

3 (A)(i) there is no guardianship estate or
4 management trust;

5 (ii) [~~or~~] the assets of the guardianship
6 estate or management trust, as appropriate, are insufficient to pay
7 the costs; or

8 (iii) a guardianship of the estate has been
9 created for the benefit of the ward and the court determines it is
10 not in the ward's best interest to pay the costs; and

11 (B) the party to the proceeding who incurred the
12 costs filed, on the party's own behalf, an affidavit of inability to
13 pay the costs under Rule 145, Texas Rules of Civil Procedure, that
14 shows the party is unable to afford the costs.

15 SECTION 6. Section 1163.005(a), Estates Code, is amended to
16 read as follows:

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

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

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

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

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

1 which the guardian paid the taxes; and

2 (5) if the guardian is a private professional
3 guardian, a guardianship program, or the Health and Human Services
4 Commission [~~Department of Aging and Disability Services~~], whether
5 the guardian or an individual certified under Subchapter C, Chapter
6 155 [~~111~~], Government Code, who is providing guardianship services
7 to the ward and who is swearing to the account on the guardian's
8 behalf, is or has been the subject of an investigation conducted by
9 the Judicial Branch [~~Guardianship~~] Certification Commission
10 [~~Board~~] during the accounting period.

11 SECTION 7. Section 1163.101(c), Estates Code, is amended to
12 read as follows:

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

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

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

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

21 (A) the ward's own home;

22 (B) a nursing home;

23 (C) a guardian's home;

24 (D) a foster home;

25 (E) a boarding home;

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

1 (G) a hospital or medical facility; or

2 (H) another type of residence;

3 (4) statements indicating:

4 (A) the length of time the ward has resided in the
5 present home;

6 (B) the reason for a change in the ward's
7 residence, if a change in the ward's residence has occurred in the
8 past year;

9 (C) the date the guardian most recently saw the
10 ward;

11 (D) how frequently the guardian has seen the ward
12 in the past year;

13 (E) whether the guardian has possession or
14 control of the ward's estate;

15 (F) whether the ward's mental health has
16 improved, deteriorated, or remained unchanged during the past year,
17 including a description of the change if a change has occurred;

18 (G) whether the ward's physical health has
19 improved, deteriorated, or remained unchanged during the past year,
20 including a description of the change if a change has occurred;

21 (H) whether the ward has regular medical care;
22 and

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

26 (i) a physician;

27 (ii) a psychiatrist, psychologist, or other

1 mental health care provider;

2 (iii) a dentist;

3 (iv) a social or other caseworker; or

4 (v) any other individual who provided
5 treatment;

6 (5) a description of the ward's activities during the
7 past year, including recreational, educational, social, and
8 occupational activities, or a statement that no activities were
9 available or that the ward was unable or refused to participate in
10 activities;

11 (6) the guardian's evaluation of:

12 (A) the ward's living arrangements as excellent,
13 average, or below average, including an explanation if the
14 conditions are below average;

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

17 (C) unmet needs of the ward;

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

21 (8) a statement indicating that the guardian has paid
22 the bond premium for the next reporting period;

23 (9) if the guardian is a private professional
24 guardian, a guardianship program, or the Health and Human Services
25 Commission [~~Department of Aging and Disability Services~~], whether
26 the guardian or an individual certified under Subchapter C, Chapter
27 155, Government Code, who is providing guardianship services to the

1 ward and who is filing the affidavit on the guardian's behalf, is or
2 has been the subject of an investigation conducted by the Judicial
3 Branch [~~Guardianship~~] Certification Commission [~~Board~~] during the
4 preceding year; and

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

7 (A) whether the guardian has filed for emergency
8 detention of the ward under Subchapter A, Chapter 573, Health and
9 Safety Code; and

10 (B) if applicable, the number of times the
11 guardian has filed for emergency detention and the dates of the
12 applications for emergency detention.

13 SECTION 8. Subchapter B, Chapter 1301, Estates Code, is
14 amended by adding Section 1301.0511 to read as follows:

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

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

26 (c) If the person for whom an application for creation of a
27 management trust is filed is a ward, the sheriff or other officer,

1 in addition to serving the persons described by Section 1051.103,
2 shall personally serve each guardian of the ward with citation to
3 appear and answer the application.

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

8 SECTION 9. Section 1301.101(a), Estates Code, is amended to
9 read as follows:

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

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

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

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

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

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

27 (6) the trust terminates:

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

3 (i) on the earlier of:

4 (a) the person's death; or

5 (b) the person's 18th birthday; or

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

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

11 (i) on the person's death; or

12 (ii) when the person regains capacity; or

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

15 (i) according to the terms of the trust;

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

19 (iii) on the person's death.

20 SECTION 10. Section 1301.154(b), Estates Code, is amended
21 to read as follows:

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

25 SECTION 11. Section 1301.203, Estates Code, is amended by
26 amending Subsection (a) and adding Subsection (a-1) to read as
27 follows:

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

4 (1) the earlier of:

5 (A) the person's death; or

6 (B) the person's 18th birthday; or

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

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

12 (1) on the person's death; or

13 (2) when the person regains capacity.

14 SECTION 12. Sections 1355.002(b), (c), (d), (e), and (f),
15 Estates Code, are amended to read as follows:

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

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

20 (2) [7] a nonresident person who is adjudged by a
21 foreign court [of competent jurisdiction] to be incapacitated and
22 has a nonresident guardian of the estate appointed by that
23 court; [7] or

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

27 (c) A debtor in this state who owes money to a nonresident

1 creditor to whom this section applies may pay the money:

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

4 (2) to the county clerk of:

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

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

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

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

15 (1) the creditor's name; and

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

18 (f) A county clerk who receives a payment under Subsection
19 (c) for a nonresident creditor shall handle the money in the same
20 manner as provided for a payment to the account of a resident
21 creditor under Sections [1355.001](#), [1355.051](#), [1355.052](#), [1355.102](#),
22 [1355.103](#), and [1355.104](#). Those sections apply to the handling and
23 disposition of money or any increase, dividend, or income paid to
24 the clerk for the use, benefit, and account of the nonresident
25 creditor to whom this section applies.

26 SECTION 13. Section [1355.105](#), Estates Code, is amended to
27 read as follows:

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

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

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

11 (3) the creditor's heirs; or

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

14 (A) a nonresident minor; or

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

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

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

27 (c) The order presented under Subsection (a) must direct the

1 court clerk to deliver the money to:

2 (1) the creditor;

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

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

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

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

15 SECTION 14. (a) Except as otherwise provided by this
16 section, the changes in law made by this Act apply to:

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

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

21 (b) The changes in law made by this Act to Section 1021.001,
22 Estates Code, apply only to an action filed on or after the
23 effective date of this Act. An action filed before the effective
24 date of this Act is governed by the law in effect on the date the
25 action was filed, and the former law is continued in effect for that
26 purpose.

27 (c) The changes in law made by this Act to Sections

1 1155.054(d) and 1155.151(a), Estates Code, apply only to a
2 guardianship proceeding commenced on or after the effective date of
3 this Act. A guardianship proceeding commenced before the effective
4 date of this Act is governed by the law in effect on the date the
5 proceeding was commenced, and the former law is continued in effect
6 for that purpose.

7 (d) Section 1301.0511, Estates Code, as added by this Act,
8 applies only to an application for creation of a management trust
9 filed on or after the effective date of this Act. An application
10 for creation of a management trust filed before the effective date
11 of this Act is governed by the law in effect on the date the
12 application was filed, and the former law is continued in effect for
13 that purpose.

14 (e) The changes in law made by this Act to Sections 1301.101
15 and 1301.203, Estates Code, apply only to an application for the
16 creation or modification of a management trust filed on or after the
17 effective date of this Act. An application for the creation or
18 modification of a management trust filed before the effective date
19 of this Act is governed by the law in effect on the date the
20 application was filed, and the former law is continued in effect for
21 that purpose.

22 (f) The changes in law made by this Act to Section 1355.105,
23 Estates Code, apply only to an application for an order for the
24 delivery of money that is filed on or after the effective date of
25 this Act. An application for an order for the delivery of money
26 that is filed before the effective date of this Act is governed by
27 the law in effect on the date the application was filed, and the

1 former law is continued in effect for that purpose.

2 SECTION 15. This Act takes effect September 1, 2019.