87R5295 KFF-D

By:  White H.B. No. 2439

A BILL TO BE ENTITLED

AN ACT

relating to the appointment of a temporary guardian to receive certain social security benefits.

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

SECTION 1.  Subtitle G, Title 3, Estates Code, is amended by adding Chapter 1251A to read as follows:

CHAPTER 1251A. TEMPORARY GUARDIANSHIP TO RECEIVE CERTAIN SOCIAL SECURITY BENEFITS

SUBCHAPTER A. APPOINTMENT OF TEMPORARY GUARDIAN TO RECEIVE CERTAIN SOCIAL SECURITY BENEFITS GENERALLY

Sec. 1251A.001.  APPOINTMENT OF TEMPORARY GUARDIAN TO RECEIVE CERTAIN SOCIAL SECURITY BENEFITS. (a) A court shall appoint a temporary guardian with the limited power to receive funds under the federal Social Security Act (42 U.S.C. Section 301 et seq.), including funds in the form of Supplemental Security Income (SSI) benefits under 42 U.S.C. Section 1381 et seq. or funds in the form of Social Security Disability Insurance (SSDI) benefits under 42 U.S.C. Section 401 et seq., if the court:

(1)  is presented with substantial evidence that a person may be an incapacitated person; and

(2)  has probable cause to believe that the immediate appointment of a guardian is required.

(b)  The person for whom a temporary guardian is appointed under this chapter retains all rights and powers that are not specifically granted to the person's temporary guardian by court order.

Sec. 1251A.002.  NO PRESUMPTION OF INCAPACITY. A person for whom a temporary guardian is appointed under this chapter may not be presumed to be incapacitated.

Sec. 1251A.003.  PERSONS ELIGIBLE FOR APPOINTMENT AS TEMPORARY GUARDIAN TO RECEIVE CERTAIN SOCIAL SECURITY BENEFITS. The following persons are eligible for appointment as temporary guardian under this chapter:

(1)  the person's spouse;

(2)  the person's reasonably available adult children;

(3)  the person's parents; or

(4)  the person's nearest living relative.

Sec. 1251A.004.  APPLICATION. (a) A sworn, written application for the appointment of a temporary guardian shall be filed before the court appoints a temporary guardian under this chapter.

(b)  The application must state:

(1)  the name and address of the person who is the subject of the guardianship proceeding;

(2)  the appointment is requested for the limited purpose of receiving funds under the federal Social Security Act, including a description of the specific benefits sought;

(3)  the facts and reasons supporting the allegations and requests;

(4)  the proposed temporary guardian's name, address, and qualification; and

(5)  the applicant's name, address, and interest.

Sec. 1251A.005.  NOTICE OF APPLICATION. (a) On the filing of an application for temporary guardianship under this chapter, the clerk shall issue notice to be served on:

(1)  the proposed ward; and

(2)  the proposed temporary guardian named in the application, if that person is not the applicant.

(b)  The notice must describe:

(1)  the rights of the parties; and

(2)  the date, time, place, purpose, and possible consequences of a hearing on the application.

(c)  A copy of the application must be attached to the notice.

Sec. 1251A.006.  SCHEDULING OF EXPEDITED HEARING. (a) Immediately after an application for a temporary guardianship is filed under this chapter, the court shall issue an order setting a certain date for the hearing on the application.

(b)  Unless postponed as provided by Subsection (c), a hearing shall be held not later than 48 hours after the time the application for temporary guardianship is filed.

(c)  The proposed ward may consent to postpone the hearing on the application for temporary guardianship for a period not to exceed seven days after the date the application is filed.

(d)  An application for temporary guardianship takes precedence over all matters except older matters of the same character.

Sec. 1251A.007.  MOTION FOR DISMISSAL OF APPLICATION. (a) Subject to Subsection (b), the proposed ward may appear and move for the dismissal of the application for temporary guardianship filed under this chapter.

(b)  At least one day before making a motion under Subsection (a), the proposed ward shall provide notice to the party who filed the application for temporary guardianship.

(c)  If a motion is made for dismissal of the application for temporary guardianship, the court shall hear and determine the motion as expeditiously as justice requires.

Sec. 1251A.008.  RIGHTS OF PROPOSED WARD AT HEARING. At a hearing under this subchapter, the proposed ward has the right to:

(1)  receive prior notice;

(2)  be represented by counsel;

(3)  be present;

(4)  present evidence;

(5)  confront and cross-examine witnesses; and

(6)  a closed hearing if requested by the proposed ward.

Sec. 1251A.009.  APPEARANCE BY PROPOSED TEMPORARY GUARDIAN TO RECEIVE CERTAIN SOCIAL SECURITY BENEFITS IN CERTAIN CIRCUMSTANCES. If the applicant for a temporary guardianship under this chapter is not the proposed temporary guardian, a temporary guardianship may not be granted before a hearing on the application required by Section 1251A.006(b) unless the proposed temporary guardian appears in court.

Sec. 1251A.010.  EXPEDITED ORDER APPOINTING TEMPORARY GUARDIAN TO RECEIVE CERTAIN SOCIAL SECURITY BENEFITS. (a) Not later than 24 hours after the time the hearing required by Section 1251A.006(b) concludes, the court shall appoint a temporary guardian by written order if the court determines that the applicant has established that there is substantial evidence that the proposed ward is an incapacitated person and that the immediate appointment of a guardian is required for the purposes described by Section 1251A.001(a).

(b)  The court shall assign to the temporary guardian only those powers and duties that are necessary to receive the funds specified in the application under Section 1251A.004(b)(2).

(c)  The order appointing the temporary guardian must describe:

(1)  the reasons for the temporary guardianship; and

(2)  the powers and duties of the temporary guardian.

Sec. 1251A.011.  BOND NOT REQUIRED. Notwithstanding Chapter 1105 or any other law, a person appointed to serve as temporary guardian under this chapter is not required to give a bond.

Sec. 1251A.012.  COURT COSTS. If the court appoints a temporary guardian after the hearing required by Section 1251A.006(b), all court costs, including attorney's fees, may be assessed as provided by Sections 1155.054 and 1155.151.

SUBCHAPTER B. POWERS AND DUTIES OF TEMPORARY GUARDIAN TO RECEIVE CERTAIN SOCIAL SECURITY BENEFITS

Sec. 1251A.051.  AUTHORITY OF TEMPORARY GUARDIAN TO RECEIVE CERTAIN SOCIAL SECURITY BENEFITS. (a) When the temporary guardian appointed under this chapter takes the oath required under this title, the court order appointing the temporary guardian takes effect without the necessity for issuance of letters of guardianship.

(b)  The clerk shall note compliance with the oath requirement by the appointed temporary guardian on a certificate attached to the order.

(c)  The order appointing the temporary guardian is evidence of the temporary guardian's authority to act within the scope of the powers and duties stated in the order.

(d)  The clerk may not issue certified copies of the order until the oath requirement is satisfied.

Sec. 1251A.052.  APPLICABILITY OF GUARDIANSHIP PROVISIONS. The provisions of this title relating to the guardianship of the estates of incapacitated persons apply to a temporary guardianship created under this chapter, to the extent the provisions may be made applicable.

SUBCHAPTER C. EXPIRATION AND CLOSING OF TEMPORARY GUARDIANSHIP TO RECEIVE CERTAIN SOCIAL SECURITY BENEFITS

Sec. 1251A.101.  EXPIRATION OF TEMPORARY GUARDIANSHIP TO RECEIVE CERTAIN SOCIAL SECURITY BENEFITS. The term of a temporary guardian appointed under this chapter expires on the earliest of:

(1)  the 30th day after the date the court order appointing the temporary guardian takes effect, except that the court may grant one extension of that time for not longer than 30 days; or

(2)  the date a permanent guardian appointed by the court for the proposed ward qualifies to serve as the ward's guardian.

Sec. 1251A.102.  ACCOUNTING. (a) At the expiration of a temporary guardianship under Section 1251A.101, the temporary guardian shall file with the court clerk:

(1)  a sworn list of all estate property that has come into the temporary guardian's possession; and

(2)  a full exhibit and account of all the temporary guardian's acts as temporary guardian.

(b)  The court shall act on the list, exhibit, and account filed under Subsection (a).

Sec. 1251A.103.  DELIVERY OF ESTATE; DISCHARGE OF TEMPORARY GUARDIAN TO RECEIVE CERTAIN SOCIAL SECURITY BENEFITS. (a) When the court order appointing a temporary guardian under this chapter expires or ceases to be effective for any reason, the court immediately shall enter an order requiring the temporary guardian to deliver the estate remaining in the temporary guardian's possession to the person legally entitled to possession of the estate.

(b)  On proof of delivery under Subsection (a), the temporary guardian shall be discharged.

SECTION 2.  This Act takes effect September 1, 2021.