

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

1 specifically granted to the person's temporary guardian by court
2 order.

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

6 Sec. 1251A.003. PERSONS ELIGIBLE FOR APPOINTMENT AS
7 TEMPORARY GUARDIAN TO RECEIVE CERTAIN SOCIAL SECURITY BENEFITS.

8 The following persons are eligible for appointment as temporary
9 guardian under this chapter:

- 10 (1) the person's spouse;
- 11 (2) the person's reasonably available adult children;
- 12 (3) the person's parents; or
- 13 (4) the person's nearest living relative.

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

18 (b) The application must state:

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

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

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

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

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

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

5 (1) the proposed ward; and

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

8 (b) The notice must describe:

9 (1) the rights of the parties; and

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

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

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

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

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

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

27 Sec. 1251A.007. MOTION FOR DISMISSAL OF APPLICATION. (a)

1 Subject to Subsection (b), the proposed ward may appear and move for
2 the dismissal of the application for temporary guardianship filed
3 under this chapter.

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

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

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

- 12 (1) receive prior notice;
- 13 (2) be represented by counsel;
- 14 (3) be present;
- 15 (4) present evidence;
- 16 (5) confront and cross-examine witnesses; and
- 17 (6) a closed hearing if requested by the proposed

18 ward.

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

26 Sec. 1251A.010. EXPEDITED ORDER APPOINTING TEMPORARY
27 GUARDIAN TO RECEIVE CERTAIN SOCIAL SECURITY BENEFITS. (a) Not

1 later than 24 hours after the time the hearing required by Section
2 1251A.006(b) concludes, the court shall appoint a temporary
3 guardian by written order if the court determines that the
4 applicant has established that there is substantial evidence that
5 the proposed ward is an incapacitated person and that the immediate
6 appointment of a guardian is required for the purposes described by
7 Section 1251A.001(a).

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

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

13 (1) the reasons for the temporary guardianship; and

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

15 Sec. 1251A.011. BOND NOT REQUIRED. Notwithstanding Chapter
16 1105 or any other law, a person appointed to serve as temporary
17 guardian under this chapter is not required to give a bond.

18 Sec. 1251A.012. COURT COSTS. If the court appoints a
19 temporary guardian after the hearing required by Section
20 1251A.006(b), all court costs, including attorney's fees, may be
21 assessed as provided by Sections 1155.054 and 1155.151.

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

24 Sec. 1251A.051. AUTHORITY OF TEMPORARY GUARDIAN TO RECEIVE
25 CERTAIN SOCIAL SECURITY BENEFITS. (a) When the temporary guardian
26 appointed under this chapter takes the oath required under this
27 title, the court order appointing the temporary guardian takes

1 effect without the necessity for issuance of letters of
2 guardianship.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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