

By: Neave

H.B. No. 3318

A BILL TO BE ENTITLED

AN ACT

relating to guardianships, alternatives to guardianship, and supports and services for 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 or motion under Section 1023.003, if ~~[good cause is not shown to deny the transfer and]~~ it appears that transfer of the guardianship is in the best interests of the ward and either the ward has resided in the county to which the guardianship is to be transferred for at least six months or good cause is not otherwise shown to deny the transfer, 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; and

(3) certifying that the guardianship is in compliance with this code at the time of transfer.

(b) In making a determination that the transfer is in the best interests of the ward under Subsection (a), the court may consider:

(1) the interests of justice;

1           (2) the convenience of the parties; and

2           (3) the preference of the ward, if the ward is 12 years  
3 of age or older.

4           (c) On receipt of an order described by Subsection (a), the  
5 county shall accept the transfer of the guardianship.

6           SECTION 2. Section 1023.008, Estates Code, is amended to  
7 read as follows:

8           Sec. 1023.008. CONTINUATION OF GUARDIANSHIP. (a) When a  
9 guardianship is transferred from one county to another in  
10 accordance with this chapter:

11           (1) [r] the guardianship proceeds in the court to  
12 which it was transferred as if it had been originally commenced in  
13 that court;

14           (2) the court to which the guardianship is transferred  
15 becomes the court of continuing, exclusive jurisdiction;

16           (3) a proceeding relating to the guardianship that is  
17 commenced in the court ordering the transfer continues in the court  
18 to which the guardianship is transferred as if the proceeding  
19 commenced in the receiving court;

20           (4) a judgment or order entered in the guardianship  
21 before the transfer has the same effect and must be enforced as a  
22 judgment or order entered by the court to which the guardianship is  
23 transferred; and

24           (5) the court ordering the transfer does not retain:

25                   (A) jurisdiction of the ward who is the subject  
26 of the guardianship; and

27                   (B) the authority to enforce an order entered for

1 a violation of this title that occurred before or after the  
2 transfer.

3 (b) It is not necessary to record in the receiving court any  
4 of the papers in the case that were recorded in the court from which  
5 the case was transferred.

6 SECTION 3. Chapter 1023, Estates Code, is amended by adding  
7 Section 1023.011 to read as follows:

8 Sec. 1023.011. NO LIABILITY OF JUDGE. (a) When a  
9 guardianship is transferred from one county to another in  
10 accordance with this chapter, a judge of the court from which the  
11 guardianship is transferred may not be held civilly liable for any  
12 injury, damage, or loss to the ward or the ward's estate that occurs  
13 after the transfer.

14 (b) A judge of the court to which a guardianship is  
15 transferred as described by Subsection (a) may not be held civilly  
16 liable for any injury, damage, or loss to the ward or the ward's  
17 estate that occurred before the transfer.

18 SECTION 4. Subchapter D, Chapter 1055, Estates Code, is  
19 amended to read as follows:

20 SUBCHAPTER D. MEDIATION

21 Sec. 1055.151. MEDIATION OF CONTESTED GUARDIANSHIP  
22 PROCEEDING. (a) Subject to Subsection (b), on ~~on~~ the written  
23 agreement of the parties or on the court's own motion, the court may  
24 refer a contested guardianship proceeding to mediation.

25 (b) If the court refers to mediation a proceeding under  
26 Subsection (a) regarding the appointment of a guardian for a  
27 proposed ward:

1           (1) a determination of incapacity of the proposed ward  
2 may be an issue to be mediated, but the applicant for guardianship  
3 must still prove to the court that the proposed ward is an  
4 incapacitated person in accordance with the requirements of Chapter  
5 1101; and

6           (2) all parties to the proceeding shall evaluate  
7 during the mediation alternatives to guardianship and supports and  
8 services available to the proposed ward, including whether the  
9 supports and services and alternatives to guardianship would be  
10 feasible to avoid the need for appointment of a guardian.

11           (c) The cost of mediation shall be paid by the parties to the  
12 proceeding unless otherwise ordered by the court. If the parties  
13 are unable to pay the cost of mediation, the court may refer the  
14 parties to a local alternative dispute resolution center providing  
15 services as part of a system for resolution of disputes established  
16 under Section 152.002, Civil Practice and Remedies Code, if a  
17 system has been established in the county, and the local center may  
18 waive mediation costs as appropriate.

19           Sec. 1055.152. MEDIATED SETTLEMENT AGREEMENTS. (a) A  
20 mediated settlement agreement is binding on the parties if the  
21 agreement:

22           (1) provides, in a prominently displayed statement  
23 that is in boldfaced type, in capital letters, or underlined, that  
24 the agreement is not subject to revocation by the parties;

25           (2) is signed by each party to the agreement; and

26           (3) is signed by the party's attorney, if any, who is  
27 present at the time the agreement is signed.

1        (b) [~~(c)~~] If a mediated settlement agreement meets the  
2 requirements of this section, a party is entitled to judgment on the  
3 mediated settlement agreement notwithstanding Rule 11, Texas Rules  
4 of Civil Procedure, or another rule or law.

5        (c) [~~(d)~~] Notwithstanding Subsections (a) and (b) [~~and~~  
6 ~~(c)~~], a court may decline to enter a judgment on a mediated  
7 settlement agreement if the court finds that the agreement is not in  
8 the ward's or proposed ward's best interests.

9        SECTION 5. Section 1202.001, Estates Code, is amended by  
10 adding Subsection (b-1) to read as follows:

11        (b-1) A guardianship of the person shall be settled and  
12 closed when the court finds that the ward's incapacity needs can be  
13 managed without the necessity for that continued guardianship by an  
14 alternative to guardianship or with supports and services as  
15 provided by Subchapter F.

16        SECTION 6. Chapter 1202, Estates Code, is amended by adding  
17 Subchapter F to read as follows:

18        SUBCHAPTER F. TERMINATION OF GUARDIANSHIP OF THE PERSON ON FINDING  
19        THAT THE WARD'S INCAPACITY NEEDS CAN BE MANAGED WITHOUT  
20        GUARDIANSHIP

21        Sec. 1202.231. TERMINATION OF GUARDIANSHIP OF THE PERSON ON  
22 FINDING THAT WARD'S INCAPACITY NEEDS CAN BE MANAGED WITHOUT  
23 GUARDIANSHIP. (a) In addition to a court's possible termination of  
24 a guardianship under Section 1202.001(b), on application by the  
25 guardian of the person of a ward, a court investigator or guardian  
26 ad litem appointed by the court, or another person interested in the  
27 ward's welfare who has been granted permission by the court to

1 intervene under Section 1055.003, or on the court's own motion and  
2 subject to Section 1202.232, the court may order that the  
3 guardianship of the person of the ward terminate and be settled and  
4 closed if the court makes the findings required under Section  
5 1202.233.

6 Sec. 1202.232. PHYSICIAN'S LETTER OR CERTIFICATE REQUIRED.

7 (a) The court may not grant an order terminating a guardianship of  
8 the person under Section 1202.231 unless the applicant presents to  
9 the court or the court secures a written letter or certificate from  
10 a physician licensed in this state that is dated:

11 (1) not earlier than the 120th day before the date the  
12 application was filed or the date the court enters the court's  
13 motion; or

14 (2) any time after the date the application was filed  
15 or the date the court's motion was entered but before the date of  
16 the hearing.

17 (b) A letter or certificate presented under Subsection (a)  
18 must:

19 (1) describe the nature and degree of incapacity of  
20 the ward, including the ward's medical history if reasonably  
21 available;

22 (2) provide a medical prognosis for the ward  
23 specifying the estimated severity of any incapacity;

24 (3) state how or in what manner the ward's ability to  
25 make or communicate responsible decisions concerning the ward is  
26 affected by the ward's physical or mental health;

27 (4) state whether any current medication affects the

1 ward's demeanor or the ward's ability to participate fully in a  
2 court proceeding;

3 (5) describe the precise physical and mental  
4 conditions underlying a diagnosis of senility, if applicable;

5 (6) describe feasible alternatives to guardianship  
6 available to the ward that would avoid the need for the continued  
7 appointment of a guardian of the person and state whether, in the  
8 physician's opinion, those alternatives to guardianship meet the  
9 following needs of the ward without the necessity for a continued  
10 guardianship of the person:

11 (A) provision of food, clothing, and shelter for  
12 the ward's own self;

13 (B) care for the ward's own physical health; and

14 (C) management of the ward's financial affairs;

15 (7) describe feasible supports and services available  
16 to the ward that would avoid the need for the continued appointment  
17 of a guardian of the person for the ward and state whether, in the  
18 physician's opinion, the supports and services meet the following  
19 needs of the ward without the necessity for a continued  
20 guardianship of the person:

21 (A) provision of food, clothing, and shelter for  
22 the ward's own self;

23 (B) care for the ward's own physical health; and

24 (C) management of the ward's financial affairs;

25 and

26 (8) include any other information required by the  
27 court.

1        (c) If the court determines it is necessary, the court may  
2 appoint the necessary physicians to examine the ward.

3        Sec. 1202.233. FINDINGS REQUIRED. Before ordering the  
4 termination of a guardianship of the person under Section 1202.231,  
5 the court must find by a preponderance of the evidence that:

6            (1) the ward remains a partially or completely  
7 incapacitated person;

8            (2) the current nature and degree of the ward's  
9 incapacity and the ward's needs can be managed without the  
10 necessity of a continued guardianship of the person by:

11                  (A) alternatives to guardianship that are  
12 available to the ward and that are determined to be feasible; or

13                  (B) supports and services that are available to  
14 the ward and that are determined to be feasible; and

15            (3) termination of the guardianship of the person:

16                  (A) is in the ward's best interest; and

17                  (B) will encourage the development or  
18 maintenance of maximum self-reliance and independence in the ward.

19        Sec. 1202.234. GENERAL REQUIREMENTS FOR ORDER. A court  
20 order that terminates a guardianship of the person under this  
21 subchapter must:

22            (1) contain the findings required under Section  
23 1202.232;

24            (2) state the guardian's name;

25            (3) state the ward's name;

26            (4) specify:

27                  (A) the supports and services that:



1                   (i) will meet the ward's needs without the  
2 continued necessity for guardianship of the person; and

3                   (ii) justify the termination of that  
4 guardianship; or

5                   (B) the alternatives to guardianship that:

6                   (i) will meet the ward's needs without the  
7 continued necessity for guardianship of the person; and

8                   (ii) justify the termination of that  
9 guardianship;

10                  (5) identify the persons or entities providing or that  
11 will provide:

12                  (A) the supports and services described by  
13 Subdivision (4)(A); or

14                  (B) alternatives to guardianship described by  
15 Subdivision (4)(B);

16                  (6) state that the guardian is required to:

17                  (A) immediately settle the guardianship in  
18 accordance with this title; and

19                  (B) deliver all of the ward's remaining personal  
20 effects and assets, if any, to the persons or entities identified  
21 under Subdivision (5)(A) or (B), as applicable; and

22                  (7) state that the clerk shall revoke letters of  
23 guardianship of the person when the guardianship is finally settled  
24 and closed.

25                  Sec. 1202.235. APPOINTMENT OF ATTORNEY AD LITEM OR GUARDIAN  
26 AD LITEM. A court may enter additional orders in the best interest  
27 of the ward, including:

- 1           (1) requiring notice to interested persons;  
2           (2) appointing a court investigator; or  
3           (3) appointing an attorney ad litem or guardian ad  
4 litem, or both, for the ward.

5           SECTION 7. Chapter 155, Government Code, is amended by  
6 adding Subchapter G to read as follows:

7           SUBCHAPTER G. GUARDIANSHIP MEDIATION TRAINING

8           Sec. 155.301. TRAINING. (a) The office by rule shall  
9 establish a training course with at least 24 hours of training for  
10 persons facilitating mediations under Title 3, Estates Code, that  
11 may be provided by a mediation training provider approved by the  
12 office. A mediation training provider shall adhere to the  
13 established curriculum in providing the training course.

14           (b) This section does not require a mediator facilitating a  
15 mediation under Title 3, Estates Code, to attend or be certified  
16 under a training course established under Subsection (a).

17           SECTION 8. The changes in law made by this Act apply to a  
18 guardianship created before, on, or after the effective date of  
19 this Act.

20           SECTION 9. The Office of Court Administration of the Texas  
21 Judicial System is required to implement a provision of this Act  
22 only if the legislature appropriates money specifically for that  
23 purpose. If the legislature does not appropriate money specifically  
24 for that purpose, the office may, but is not required to, implement  
25 a provision of this Act using other appropriations available for  
26 that purpose.

27           SECTION 10. This Act takes effect September 1, 2021.