

AN ACT

relating to probate matters, including guardianships and other matters related to 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 under Section 1023.003, if good cause is not shown to deny the application and it appears that transfer of the guardianship is in the best interests of the ward, 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.

~~[(b) In an order entered under Subsection (a), the court shall require the guardian, not later than the 20th day after the date the order is entered, to:~~

~~[(1) give a new bond payable to the judge of the court to which the guardianship is transferred; or~~

~~[(2) file a rider to an existing bond noting the court to which the guardianship is transferred.]~~

SECTION 2. Section 1023.010, Estates Code, is amended to

1 read as follows:

2 Sec. 1023.010. REVIEW OF TRANSFERRED GUARDIANSHIP. (a)
3 Not later than the 90th day after the date the transfer of the
4 guardianship takes effect under Section 1023.007, the court to
5 which the guardianship was transferred shall hold a hearing to
6 consider modifying the rights, duties, and powers of the guardian
7 or any other provisions of the transferred guardianship.

8 (b) After the hearing described by Subsection (a), the court
9 to which the guardianship was transferred shall enter an order
10 requiring the guardian to:

11 (1) give a new bond payable to the judge of the court
12 to which the guardianship was transferred; or

13 (2) file a rider to an existing bond noting the court
14 to which the guardianship was transferred.

15 SECTION 3. Section 1051.104(a), Estates Code, is amended to
16 read as follows:

17 (a) The person filing an application for guardianship shall
18 mail a copy of the application and a notice containing the
19 information required in the citation issued under Section 1051.102
20 by registered or certified mail, return receipt requested, or by
21 any other form of mail that provides proof of delivery, to the
22 following persons, if their whereabouts are known or can be
23 reasonably ascertained:

24 (1) each adult child of the proposed ward;

25 (2) each adult sibling of the proposed ward;

26 (3) the administrator of a nursing home facility or
27 similar facility in which the proposed ward resides;

1 (4) the operator of a residential facility in which
2 the proposed ward resides;

3 (5) a person whom the applicant knows to hold a power
4 of attorney signed by the proposed ward;

5 (6) a person designated to serve as guardian of the
6 proposed ward by a written declaration under Subchapter E, Chapter
7 1104, if the applicant knows of the existence of the declaration;

8 (7) a person designated to serve as guardian of the
9 proposed ward in the probated will of the last surviving parent of
10 the proposed ward;

11 (8) a person designated to serve as guardian of the
12 proposed ward by a written declaration of the proposed ward's last
13 surviving parent, if the declarant is deceased and the applicant
14 knows of the existence of the declaration; and

15 (9) each adult ~~[person]~~ named ~~[as another relative~~
16 ~~within the third degree by consanguinity]~~ in the application as an
17 "other living relative" of the proposed ward within the third
18 degree by consanguinity, as required by Section [1101.001](#)(b)(11) or
19 (13), if the proposed ward's spouse and each of the proposed ward's
20 parents, adult siblings, and adult children are deceased or there
21 is no spouse, parent, adult sibling, or adult child.

22 SECTION 4. Section [1052.001](#)(a), Estates Code, is amended to
23 read as follows:

24 (a) The county clerk shall maintain a record book titled
25 "Judge's Guardianship Docket" and shall record in the book:

26 (1) the name of each person with respect to whom, or
27 with respect to whose estate, a proceeding is commenced or sought to

1 be commenced;

2 (2) the name of the guardian of the estate or person or
3 of the applicant for letters of guardianship;

4 (3) the date each original application for a
5 guardianship proceeding is filed;

6 (4) a notation of each order, judgment, decree, and
7 proceeding that occurs in each guardianship [~~estate~~], including the
8 date it occurs; and

9 (5) the docket number of each guardianship as assigned
10 under Subsection (b).

11 SECTION 5. Section 1053.052(a), Estates Code, is amended to
12 read as follows:

13 (a) The clerk may require or may obtain from the court an
14 order requiring a person who files an application, complaint, or
15 opposition relating to a guardianship proceeding, other than a
16 guardian, attorney ad litem, or guardian ad litem, to provide
17 security for the probable costs of the proceeding before filing the
18 application, complaint, or opposition.

19 SECTION 6. Subchapter D, Chapter 1054, Estates Code, is
20 amended by adding Section 1054.155 to read as follows:

21 Sec. 1054.155. NOTICE REGARDING REQUEST TO FINANCIAL
22 INSTITUTION FOR CUSTOMER RECORDS. If a request is made to a
23 financial institution for a customer record in connection with an
24 investigation conducted under Section 1054.151 or 1054.152, the
25 court shall provide written notice of that fact to the ward or
26 proposed ward with respect to whom the investigation is conducted
27 not later than the fifth day after the date the financial

1 institution produces the customer record.

2 SECTION 7. Subchapter A, Chapter 1055, Estates Code, is
3 amended by adding Section 1055.003 to read as follows:

4 Sec. 1055.003. INTERVENTION BY INTERESTED PERSON. (a)
5 Notwithstanding the Texas Rules of Civil Procedure, an interested
6 person may intervene in a guardianship proceeding only by filing a
7 timely motion to intervene that is served on the parties.

8 (b) The motion must state the grounds for intervention in
9 the proceeding and be accompanied by a pleading that sets out the
10 purpose for which intervention is sought.

11 (c) The court has the discretion to grant or deny the motion
12 and, in exercising that discretion, must consider whether:

13 (1) the intervention will unduly delay or prejudice
14 the adjudication of the original parties' rights; or

15 (2) the proposed intervenor has such an adverse
16 relationship with the ward or proposed ward that the intervention
17 would unduly prejudice the adjudication of the original parties'
18 rights.

19 SECTION 8. Section 1101.001, Estates Code, is amended by
20 adding Subsection (c) to read as follows:

21 (c) For purposes of this section, a proposed ward's
22 relatives within the third degree by consanguinity include the
23 proposed ward's:

24 (1) grandparent or grandchild; and

25 (2) great-grandparent, great-grandchild, aunt who is
26 a sister of a parent of the proposed ward, uncle who is a brother of
27 a parent of the proposed ward, nephew who is a child of a brother or

1 sister of the proposed ward, or niece who is a child of a brother or
2 sister of the proposed ward.

3 SECTION 9. Subchapter D, Chapter 1101, Estates Code, is
4 amended by adding Section 1101.156 to read as follows:

5 Sec. 1101.156. DEPOSIT OF ESTATE ASSETS. (a) At the time
6 or after an order appointing a guardian is signed by the court but
7 before letters of guardianship are issued, a court may, on the
8 request of a party, require the deposit for safekeeping of cash,
9 securities, or other assets of a ward or proposed ward in a
10 financial institution described by Section 1105.155(b).

11 (b) The amount of the bond required to be given by the
12 guardian under Section 1105.101 shall be reduced in proportion to
13 the amount of the cash or the value of the securities or other
14 assets deposited under this section.

15 SECTION 10. Section 1102.001, Estates Code, is amended to
16 read as follows:

17 Sec. 1102.001. COURT-INITIATED INVESTIGATION. (a) If a
18 court has probable cause to believe that a person domiciled or found
19 in the county in which the court is located is an incapacitated
20 person, and the person does not have a guardian in this state, the
21 court shall appoint a guardian ad litem or court investigator to
22 investigate the person's conditions and circumstances to determine
23 whether:

- 24 (1) the person is an incapacitated person; and
25 (2) a guardianship is necessary.

26 (b) If a court appoints a guardian ad litem or court
27 investigator under Subsection (a):

1 (1) the court's order appointing a guardian ad litem or
2 court investigator must include a statement that the person
3 believed to be incapacitated has the right to petition the court to
4 have the appointment set aside;

5 (2) at the initial meeting between the guardian ad
6 litem or court investigator and the person believed to be
7 incapacitated, the guardian ad litem or court investigator, as
8 appropriate, shall provide a copy of the information letter under
9 Section 1102.003 and the order to, and discuss the contents of the
10 letter and order with, the person believed to be incapacitated; and

11 (3) during the period beginning after the date of the
12 initial meeting described by Subdivision (2) and ending on the date
13 an application for the appointment of a guardian is filed, the
14 person believed to be incapacitated may petition the court to have
15 the appointment of the guardian ad litem or court investigator, as
16 appropriate, set aside.

17 SECTION 11. Section 1102.003, Estates Code, is amended by
18 adding Subsection (c) to read as follows:

19 (c) Any information provided by the Department of Family and
20 Protective Services under this section that is confidential under
21 Chapter 48, Human Resources Code, remains confidential and is not
22 subject to disclosure under Chapter 552, Government Code.

23 SECTION 12. Section 1102.005, Estates Code, is amended to
24 read as follows:

25 Sec. 1102.005. COMPENSATION OF GUARDIAN AD LITEM. (a)
26 Regardless of whether a guardianship is created for a proposed ward
27 and except as provided by Section 1155.151, a [A] court that

1 appoints a guardian ad litem under Section 1102.001 may authorize
2 compensation of the guardian ad litem from available funds of:

- 3 (1) the proposed ward's estate; or
4 (2) the management trust, if a management trust has
5 been created for the benefit of the proposed ward under Chapter
6 1301[, regardless of whether a guardianship is created for the
7 proposed ward].

8 (b) Except as provided by Section 1155.151, after [After]
9 examining the proposed ward's assets or the assets of any
10 management trust created for the proposed ward's benefit under
11 Chapter 1301, and determining that the proposed ward or the
12 management trust is unable to pay for services provided by the
13 guardian ad litem, the court may authorize compensation from the
14 county treasury.

15 SECTION 13. Chapter 1102, Estates Code, is amended by
16 adding Section 1102.006 to read as follows:

17 Sec. 1102.006. NOTICE REGARDING REQUEST TO FINANCIAL
18 INSTITUTION FOR CUSTOMER RECORDS. If a request is made to a
19 financial institution for a customer record in connection with an
20 investigation conducted under Section 1102.001, the court shall
21 provide written notice of that fact to the proposed ward with
22 respect to whom the investigation is conducted not later than the
23 fifth day after the date the financial institution produces the
24 customer record.

25 SECTION 14. Section 1104.154(a), Estates Code, is amended
26 to read as follows:

27 (a) As an alternative to the self-proving affidavit

1 authorized by Section 1104.153, a declaration of appointment of a
2 guardian for the declarant's children in the event of the
3 declarant's death or incapacity may be simultaneously executed,
4 attested, and made self-proved by including the following in
5 substantially the same form and with substantially the same
6 contents:

7 I, _____, as declarant, after being duly
8 sworn, declare to the undersigned witnesses and to the undersigned
9 authority that this instrument is my Declaration of Appointment of
10 Guardian for My Children in the Event of My Death or Incapacity, and
11 that I willingly make [~~have made~~] and execute [~~executed~~] it for the
12 purposes expressed in the declaration. I now sign this declaration
13 in the presence of the attesting witnesses and the undersigned
14 authority on this ____ day of _____, 20__.

15 _____
16 Declarant

17 The undersigned, _____ and
18 _____, each being 14 years of age or older, after
19 being duly sworn, declare to the declarant and to the undersigned
20 authority that the declarant declared to us that this instrument is
21 the declarant's Declaration of Appointment of Guardian for the
22 Declarant's Children in the Event of Declarant's Death or
23 Incapacity and that the declarant executed it for the purposes
24 expressed in the declaration. The declarant then signed this
25 declaration and we believe the declarant to be of sound mind. We now
26 sign our names as attesting witnesses on this ____ day of
27 _____, 20__.

1 _____

2 Witness

3 _____

4 Witness

5 Subscribed and sworn to before me by the above named
6 declarant, and affiants, this ____ day of _____, 20__.

7 _____

8 Notary Public in and for the

9 State of Texas

10 My Commission expires:

11 _____

12 SECTION 15. Section 1104.205(a), Estates Code, is amended
13 to read as follows:

14 (a) As an alternative to the self-proving affidavit
15 authorized by Section 1104.204, a declaration of guardian in the
16 event of later incapacity or need of guardian may be simultaneously
17 executed, attested, and made self-proved by including the following
18 in substantially the same form and with substantially the same
19 contents:

20 I, _____, as declarant, after being duly
21 sworn, declare to the undersigned witnesses and to the undersigned
22 authority that this instrument is my Declaration of Guardian in the
23 Event of Later Incapacity or Need of Guardian, and that I willingly
24 make [~~have made~~] and execute [~~executed~~] it for the purposes
25 expressed in the declaration. I now sign this declaration in the
26 presence of the attesting witnesses and the undersigned authority
27 on this ____ day of _____, 20__.

1 _____
2 Declarant

3 The undersigned, _____ and
4 _____, each being 14 years of age or older, after
5 being duly sworn, declare to the declarant and to the undersigned
6 authority that the declarant declared to us that this instrument is
7 the declarant's Declaration of Guardian in the Event of Later
8 Incapacity or Need of Guardian and that the declarant executed it
9 for the purposes expressed in the declaration. The declarant then
10 signed this declaration and we believe the declarant to be of sound
11 mind. We now sign our names as attesting witnesses on this ____ day
12 of _____, 20__.

13 _____
14 Witness

15 _____
16 Witness

17 Subscribed and sworn to before me by the above named
18 declarant, and affiants, this ____ day of _____, 20__.

19 _____
20 Notary Public in and for the
21 State of Texas
22 My Commission expires:
23 _____

24 SECTION 16. Section [1104.402\(a\)](#), Estates Code, is amended
25 to read as follows:

26 (a) Except as provided by Section [1104.403](#), [1104.404](#), or
27 [1104.406\(a\)](#), the clerk of the county having venue of the proceeding

1 for the appointment of a guardian shall obtain criminal history
2 record information that is maintained by the Department of Public
3 Safety or the Federal Bureau of Investigation identification
4 division relating to:

5 (1) a private professional guardian;

6 (2) each person who represents or plans to represent
7 the interests of a ward as a guardian on behalf of the private
8 professional guardian;

9 (3) each person employed by a private professional
10 guardian who will:

11 (A) have personal contact with a ward or proposed
12 ward;

13 (B) exercise control over and manage a ward's
14 estate; or

15 (C) perform any duties with respect to the
16 management of a ward's estate;

17 (4) each person employed by or volunteering or
18 contracting with a guardianship program to provide guardianship
19 services to a ward of the program on the program's behalf; or

20 (5) any other person proposed to serve as a guardian
21 under this title, including a proposed temporary guardian and a
22 proposed successor guardian, other than ~~[the ward's or proposed~~
23 ~~ward's family member or]~~ an attorney.

24 SECTION 17. Section 1104.409, Estates Code, is amended to
25 read as follows:

26 Sec. 1104.409. USE OF INFORMATION BY COURT. The court
27 shall use the information obtained under this subchapter only in

1 determining whether to:

2 (1) appoint, remove, or continue the appointment of a
3 private professional guardian, a guardianship program, or the
4 department; or

5 (2) appoint any other person proposed to serve as a
6 guardian under this title, including a proposed temporary guardian
7 and a proposed successor guardian, other than [~~the ward's or~~
8 ~~proposed ward's family member or~~] an attorney.

9 SECTION 18. Section 1155.151, Estates Code, is amended by
10 amending Subsections (a) and (b) and adding Subsections (a-1),
11 (a-2), (a-3), (a-4), (d), (e), and (f) to read as follows:

12 (a) In a guardianship proceeding, the court costs of the
13 proceeding, including the costs described by Subsection (a-1) [~~cost~~
14 ~~of the guardians ad litem, attorneys ad litem, court visitor,~~
15 ~~mental health professionals, and interpreters appointed under this~~
16 ~~title, shall be set in an amount the court considers equitable and~~
17 ~~just and, except as provided by Subsection (c)], shall, except as
18 provided by Subsection (c), be paid as follows [~~out of the~~
19 ~~guardianship estate, or the county treasury if the estate is~~
20 ~~insufficient to pay the cost], and the court shall issue the
21 judgment accordingly:~~~~

22 (1) out of the guardianship estate;

23 (2) out of the management trust, if a management trust
24 has been created for the benefit of the ward under Chapter 1301 and
25 the court determines it is in the ward's best interest;

26 (3) by the party to the proceeding who incurred the
27 costs, unless that party filed, on the party's own behalf, an

1 affidavit of inability to pay the costs under Rule 145, Texas Rules
2 of Civil Procedure, that shows the party is unable to afford the
3 costs, if:

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

6 (B) the assets of the guardianship estate or
7 management trust, as appropriate, are insufficient to pay the
8 costs; or

9 (4) out of the county treasury if:

10 (A) there is no guardianship estate or management
11 trust or the assets of the guardianship estate or management trust,
12 as appropriate, are insufficient to pay the costs; and

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

17 (a-1) In a guardianship proceeding, the cost of any
18 guardians ad litem, attorneys ad litem, court visitors, mental
19 health professionals, and interpreters appointed under this title
20 shall be set in an amount the court considers equitable and just.

21 (a-2) Notwithstanding any other law requiring the payment
22 of court costs in a guardianship proceeding, the following are not
23 required to pay court costs on the filing of or during a
24 guardianship proceeding:

25 (1) an attorney ad litem;

26 (2) a guardian ad litem;

27 (3) a person or entity who files an affidavit of

1 inability to pay the costs under Rule 145, Texas Rules of Civil
2 Procedure, that shows the person or entity is unable to afford the
3 costs;

4 (4) a nonprofit guardianship program;

5 (5) a governmental entity; and

6 (6) a government agency or nonprofit agency providing
7 guardianship services.

8 (a-3) For purposes of Subsections (a) and (a-2), a person or
9 entity who files an affidavit of inability to pay the costs under
10 Rule 145, Texas Rules of Civil Procedure, is unable to afford the
11 costs if the affidavit shows that the person or entity:

12 (1) is currently receiving assistance or other
13 benefits from a government program under which assistance or other
14 benefits are provided to individuals on a means-tested basis;

15 (2) is eligible for and currently receiving free legal
16 services in the guardianship proceeding through the following:

17 (A) a legal services provider funded partly by
18 the Texas Access to Justice Foundation;

19 (B) a legal services provider funded partly by
20 the Legal Services Corporation; or

21 (C) a nonprofit corporation formed under the laws
22 of this state that provides legal services to low-income
23 individuals whose household income is at or below 200 percent of the
24 federal poverty guidelines as determined by the United States
25 Department of Health and Human Services;

26 (3) applied and was eligible for free legal services
27 through a person or entity listed in Subdivision (2) but was

1 declined representation; or

2 (4) has a household income that is at or below 200
3 percent of the federal poverty guidelines as determined by the
4 United States Department of Health and Human Services and has money
5 or other available assets, excluding any homestead and exempt
6 property under Chapter 42, Property Code, in an amount that does not
7 exceed \$2,000.

8 (a-4) If an affidavit of inability to pay costs filed under
9 Rule 145, Texas Rules of Civil Procedure, is contested, the court,
10 at a hearing, shall review the contents of and attachments to the
11 affidavit and any other evidence offered at the hearing and make a
12 determination as to whether the person or entity is unable to
13 afford the costs. If the court finds that the person or entity is
14 able to afford the costs, the person or entity must pay the court
15 costs. Except with leave of court, no further action in the
16 guardianship proceeding may be taken by a person or entity found
17 able to afford costs until payment of those costs is made.

18 (b) The costs attributable to the services of a person
19 described by Subsection (a-1) [~~(a)~~] shall be paid under this
20 section at any time after the commencement of the proceeding as
21 ordered by the court.

22 (d) If a guardianship of the estate or management trust
23 under Chapter 1301 is created, a person or entity who paid any costs
24 on the filing of or during the proceeding is entitled to be
25 reimbursed out of assets of the guardianship estate or management
26 trust, as appropriate, for the costs if:

27 (1) the assets of the estate or trust, as appropriate,

1 are sufficient to cover the reimbursement of the costs; and

2 (2) the person or entity has not been ordered by the
3 court to pay the costs as all or part of the payment of court costs
4 under Subsection (c).

5 (e) If at any time after a guardianship of the estate or
6 management trust under Chapter 1301 is created there are sufficient
7 assets of the estate or trust, as appropriate, to pay the amount of
8 any of the costs exempt from payment under Subsection (a-2), the
9 court shall require the guardian to pay out of the guardianship
10 estate or management trust, as appropriate, to the court clerk for
11 deposit in the county treasury the amount of any of those costs.

12 (f) To the extent that this section conflicts with the Texas
13 Rules of Civil Procedure or other rules, this section controls.

14 SECTION 19. Section 1163.101(c), Estates Code, is amended
15 to read as follows:

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

18 (1) the guardian's current name, address, and
19 telephone number;

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

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

24 (A) the ward's own home;

25 (B) a nursing home;

26 (C) a guardian's home;

27 (D) a foster home;

- 1 (E) a boarding home;
- 2 (F) a relative's home, in which case the
3 description must specify the relative's relationship to the ward;
- 4 (G) a hospital or medical facility; or
- 5 (H) another type of residence;
- 6 (4) statements indicating:
- 7 (A) the length of time the ward has resided in the
8 present home;
- 9 (B) the reason for a change in the ward's
10 residence, if a change in the ward's residence has occurred in the
11 past year;
- 12 (C) the date the guardian most recently saw the
13 ward;
- 14 (D) how frequently the guardian has seen the ward
15 in the past year;
- 16 (E) whether the guardian has possession or
17 control of the ward's estate;
- 18 (F) whether the ward's mental 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 (G) whether the ward's physical health has
22 improved, deteriorated, or remained unchanged during the past year,
23 including a description of the change if a change has occurred;
- 24 (H) whether the ward has regular medical care;
- 25 and
- 26 (I) the ward's treatment or evaluation by any of
27 the following persons during the past year, including the person's

1 name and a description of the treatment:

2 (i) a physician;

3 (ii) a psychiatrist, psychologist, or other
4 mental health care provider;

5 (iii) a dentist;

6 (iv) a social or other caseworker; or

7 (v) any other individual who provided
8 treatment;

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

14 (6) the guardian's evaluation of:

15 (A) the ward's living arrangements as excellent,
16 average, or below average, including an explanation if the
17 conditions are below average;

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

20 (C) unmet needs of the ward;

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

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

26 (9) if the guardian is a private professional
27 guardian, a guardianship program, or the Department of Aging and

1 Disability Services, whether the guardian or an individual
2 certified under Subchapter C, Chapter 155 [~~111~~], Government Code,
3 who is providing guardianship services to the ward and who is filing
4 [~~swearing to~~] the affidavit on the guardian's behalf, is or has been
5 the subject of an investigation conducted by the Guardianship
6 Certification Board during the preceding year; and

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

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

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

15 SECTION 20. The heading to Section 1163.1011, Estates Code,
16 is amended to read as follows:

17 Sec. 1163.1011. USE OF UNSWORN DECLARATION IN LIEU OF SWORN
18 DECLARATION OR AFFIDAVIT FOR [ELECTRONIC] FILING [OF] ANNUAL
19 REPORT.

20 SECTION 21. Section 1163.1011(a), Estates Code, is amended
21 to read as follows:

22 (a) A guardian of the person who is required to file an
23 [~~files the~~] annual report under [~~required by~~] Section 1163.101
24 [~~electronically~~] with the court, including a guardian filing the
25 annual report electronically, may use an unsworn declaration made
26 as provided by this section instead of the [~~a written~~] sworn
27 declaration or affidavit required by Section 1163.101.

1 SECTION 22. Section 1203.202(c), Estates Code, is amended
2 to read as follows:

3 (c) A successor guardian may:

4 (1) make himself or herself, and be made, a party to a
5 suit prosecuted by or against the successor's predecessor;

6 (2) settle with the predecessor and receive and give a
7 receipt for any portion of the estate property that remains in the
8 predecessor's [~~successor's~~] possession; or

9 (3) commence a suit on the bond or bonds of the
10 predecessor, in the successor's own name and capacity, for all the
11 estate property that:

12 (A) came into the predecessor's possession; and

13 (B) has not been accounted for by the
14 predecessor.

15 SECTION 23. Section 1251.052(b), Estates Code, is amended
16 to read as follows:

17 (b) The term of a temporary guardian appointed under Section
18 1251.051 expires on the earliest of the following:

19 (1) [~~at~~] the conclusion of the hearing challenging or
20 contesting the application; [~~or~~]

21 (2) [~~on~~] the date a permanent guardian appointed by
22 the court for the proposed ward qualifies to serve as the ward's
23 guardian; or

24 (3) the nine-month anniversary of the date the
25 temporary guardian qualifies, unless the term is extended by court
26 order issued after a motion to extend the term is filed and a
27 hearing on the motion is held.

1 SECTION 24. Section 1253.051, Estates Code, is amended to
2 read as follows:

3 Sec. 1253.051. APPLICATION FOR RECEIPT AND ACCEPTANCE OF
4 FOREIGN GUARDIANSHIP. A guardian appointed by a foreign court to
5 represent an incapacitated person who is residing in this state or
6 intends to move to this state may file an application with a court
7 in the county in which the ward resides or in which it is intended
8 that the ward will [~~intends to~~] reside to have the guardianship
9 transferred to that [~~the~~] court. The application must have
10 attached a certified copy of all papers of the guardianship filed
11 and recorded in the foreign court.

12 SECTION 25. Section 1301.1535, Estates Code, is amended to
13 read as follows:

14 Sec. 1301.1535. INITIAL ACCOUNTING BY CERTAIN TRUSTEES
15 REQUIRED. (a) This section applies only to a trustee of a
16 management trust created for a person who [~~for whom a guardianship~~
17 ~~proceeding is pending~~] on the date the trust is created is:

18 (1) a ward under an existing guardianship; or
19 (2) a proposed ward with respect to whom an
20 application for guardianship has been filed and is pending.

21 (b) Not later than the 30th day after the date a trustee to
22 which this section applies receives property into the trust, the
23 trustee shall file with the court that created the guardianship or
24 the court in which the application for guardianship was filed
25 [~~proceeding is pending~~] a report describing all property held in
26 the trust on the date of the report and specifying the value of the
27 property on that date.

1 SECTION 26. Section 1351.001, Estates Code, is amended to
2 read as follows:

3 Sec. 1351.001. AUTHORITY TO SELL MINOR'S INTEREST IN
4 PROPERTY WITHOUT GUARDIANSHIP. (a) A parent or managing
5 conservator of a minor who is not a ward may apply to the court under
6 this subchapter for an order to sell an interest of the minor in
7 property without being appointed guardian if the net value of the
8 interest does not exceed \$100,000.

9 (b) If a minor who is not a ward does not have a parent or
10 managing conservator willing or able to file an application under
11 Subsection (a), the court may appoint an attorney ad litem or
12 guardian ad litem to act on the minor's behalf for the limited
13 purpose of applying for an order to sell the minor's interest in
14 property under this subchapter.

15 SECTION 27. Sections 1351.002(a) and (b), Estates Code, are
16 amended to read as follows:

17 (a) A parent, ~~or~~ managing conservator, or attorney ad
18 litem or guardian ad litem appointed under Section 1351.001(b)
19 shall apply to the court under oath for the sale of property under
20 this subchapter.

21 (b) An application must contain:

- 22 (1) the minor's name;
- 23 (2) a legal description of the real property or a
24 description that identifies the personal property, as applicable;
- 25 (3) the minor's interest in the property;
- 26 (4) the purchaser's name;
- 27 (5) a statement that the sale of the minor's interest

1 in the property is for cash; and

2 (6) a statement that all money received from the sale
3 of the minor's interest in the property [~~by the parent or managing~~
4 ~~conservator~~] shall be used for the minor's use and benefit.

5 SECTION 28. Section 1351.051, Estates Code, is amended to
6 read as follows:

7 Sec. 1351.051. APPLICABILITY OF SUBCHAPTER. This
8 subchapter applies only to a ward who has:

9 (1) a guardian of the person but does not have a
10 guardian of the estate; or

11 (2) a guardian of the person or estate appointed by a
12 foreign court.

13 SECTION 29. Section 1351.052, Estates Code, is amended to
14 read as follows:

15 Sec. 1351.052. AUTHORITY TO SELL WARD'S INTEREST IN
16 PROPERTY WITHOUT APPOINTMENT AS GUARDIAN OF THE ESTATE IN THIS
17 STATE. A guardian of the person of a ward or a guardian of the
18 person or estate of a ward appointed by a foreign court may apply to
19 the court under this subchapter for an order to sell an interest in
20 property in the ward's estate without being appointed guardian of
21 the ward's estate in this state if the net value of the interest
22 does not exceed \$100,000.

23 SECTION 30. Section 1351.053(b), Estates Code, is amended
24 to read as follows:

25 (b) For purposes of Subsection (a)(2), references in
26 Section 1351.002(b) to [+

27 [~~1~~] "minor" are replaced with references to "ward."

1 ~~["ward"; and~~
2 ~~(2) "parent or managing conservator" are replaced~~
3 ~~with references to "guardian of the person."]~~

4 SECTION 31. Section 59.006(a), Finance Code, is amended to
5 read as follows:

6 (a) This section provides the exclusive method for
7 compelled discovery of a record of a financial institution relating
8 to one or more customers but does not create a right of privacy in a
9 record. This section does not apply to and does not require or
10 authorize a financial institution to give a customer notice of:

11 (1) a demand or inquiry from a state or federal
12 government agency authorized by law to conduct an examination of
13 the financial institution;

14 (2) a record request from a state or federal
15 government agency or instrumentality under statutory or
16 administrative authority that provides for, or is accompanied by, a
17 specific mechanism for discovery and protection of a customer
18 record of a financial institution, including a record request from
19 a federal agency subject to the Right to Financial Privacy Act of
20 1978 (12 U.S.C. Section 3401 et seq.), as amended, or from the
21 Internal Revenue Service under Section 1205, Internal Revenue Code
22 of 1986;

23 (3) a record request from or report to a government
24 agency arising out of:

25 (A) the investigation or prosecution of a
26 criminal offense;

27 (B) the investigation of alleged abuse, neglect,

1 or exploitation of an elderly or disabled person in accordance with
2 Chapter 48, Human Resources Code; or

3 (C) the assessment for or provision of
4 guardianship services under Subchapter E, Chapter 161, Human
5 Resources Code;

6 (4) a record request in connection with a garnishment
7 proceeding in which the financial institution is garnishee and the
8 customer is debtor;

9 (5) a record request by a duly appointed receiver for
10 the customer;

11 (6) an investigative demand or inquiry from a state
12 legislative investigating committee;

13 (7) an investigative demand or inquiry from the
14 attorney general of this state as authorized by law other than the
15 procedural law governing discovery in civil cases; ~~or~~

16 (8) the voluntary use or disclosure of a record by a
17 financial institution subject to other applicable state or federal
18 law; or

19 (9) a record request in connection with an
20 investigation conducted under Section 1054.151, 1054.152, or
21 1102.001, Estates Code.

22 SECTION 32. Sections 25.0022(d) and (h), Government Code,
23 are amended to read as follows:

24 (d) The presiding judge shall:

25 (1) ensure the promulgation of local rules of
26 administration in accordance with policies and guidelines set by
27 the supreme court;

1 (2) advise local statutory probate court judges on
2 case flow management practices and auxiliary court services;

3 (3) perform a duty of a local administrative statutory
4 probate court judge if the local administrative judge does not
5 perform that duty;

6 (4) appoint an assistant presiding judge of the
7 statutory probate courts;

8 (5) call and preside over annual meetings of the
9 judges of the statutory probate courts at a time and place in the
10 state as designated by the presiding judge;

11 (6) call and convene other meetings of the judges of
12 the statutory probate courts as considered necessary by the
13 presiding judge to promote the orderly and efficient administration
14 of justice in the statutory probate courts;

15 (7) study available statistics reflecting the
16 condition of the dockets of the probate courts in the state to
17 determine the need for the assignment of judges under this section;

18 (8) compare local rules of court to achieve uniformity
19 of rules to the extent practical and consistent with local
20 conditions; and

21 (9) assign or order the clerk who serves the statutory
22 probate courts to randomly assign a judge or former or retired judge
23 of a statutory probate court to hear a case under Section
24 25.002201(a) or 25.00255, as applicable [~~the circumstances~~
25 ~~described by Section 25.002201(b)~~].

26 (h) Subject to Section 25.002201, a judge or a former or
27 retired judge of a statutory probate court may be assigned by the

1 presiding judge of the statutory probate courts to hold court in a
2 statutory probate court, a county court, or any statutory court
3 exercising probate jurisdiction when:

4 (1) a statutory probate judge requests assignment of
5 another judge to the judge's court;

6 (2) a statutory probate judge is absent, disabled, or
7 disqualified for any reason;

8 (3) a statutory probate judge is present or is trying
9 cases as authorized by the constitution and laws of this state and
10 the condition of the court's docket makes it necessary to appoint an
11 additional judge;

12 (4) the office of a statutory probate judge is vacant;

13 (5) the presiding judge of an administrative judicial
14 district requests the assignment of a statutory probate judge to
15 hear a probate matter in a county court or statutory county court;

16 (6) the statutory probate [~~presiding~~] judge is [~~of the~~
17 ~~administrative judicial district fails to timely assign a judge to~~
18 ~~replace a~~] recused or disqualified [~~statutory probate court judge~~]
19 as described by Section 25.002201(a) [~~Section 25.002201(b)~~];

20 (7) a county court judge requests the assignment of a
21 statutory probate judge to hear a probate matter in the county
22 court; or

23 (8) a local administrative statutory probate court
24 judge requests the assignment of a statutory probate judge to hear a
25 matter in a statutory probate court.

26 SECTION 33. Sections 25.002201(a) and (b), Government Code,
27 are amended to read as follows:

1 (a) Except as provided by Subsection (b), not ~~[Not]~~ later
2 than the 15th day after the date an order of recusal or
3 disqualification of a statutory probate court judge is issued in a
4 case, the presiding judge ~~[of the administrative judicial district]~~
5 shall assign a statutory probate court judge or a former or retired
6 judge of a statutory probate court to hear the case if:

7 (1) the judge of the statutory probate court recused
8 himself or herself under Section 25.00255(g)(1)(A);

9 (2) the judge of the statutory probate court
10 disqualified himself or herself under Section 25.00255(g-1);

11 (3) the order was issued under Section
12 25.00255(i-3)(1); or

13 (4) the presiding judge ~~[of the administrative~~
14 ~~judicial district]~~ receives notice and a request for assignment
15 from the clerk of the statutory probate court under Section
16 25.00255(1).

17 (b) If the ~~[presiding]~~ judge who is the subject of an order
18 of recusal or disqualification is ~~[of an administrative judicial~~
19 ~~district does not assign a judge under Subsection (a) within the~~
20 ~~time prescribed by that subsection,]~~ the presiding judge of the
21 statutory probate courts, the chief justice of the supreme court
22 shall ~~[may]~~ assign a regional presiding judge, a statutory probate
23 judge, or a former or retired judge of a statutory probate court to
24 hear the case ~~[instead of the presiding judge of the administrative~~
25 ~~judicial district making the assignment under that subsection].~~

26 SECTION 34. Section 25.00255, Government Code, is amended
27 by amending Subsections (a), (g), (g-1), (i-2), (i-3), (i-5), and

1 (1) and adding Subsection (a-1) to read as follows:

2 (a) Notwithstanding any conflicting provision in the Texas
3 Rules of Civil Procedure, Rules 18a and 18b, Texas Rules of Civil
4 Procedure, apply to the recusal and disqualification of a statutory
5 probate court judge except as otherwise provided by this section or
6 another provision of this subchapter. The presiding judge:

7 (1) has the authority and shall perform the functions
8 and duties of the presiding judge of the administrative judicial
9 region under the rules, including the duty to hear or rule on a
10 referred motion of recusal or disqualification or, subject to
11 Subdivisions (2) and (3) and to Section 25.002201, assign a judge to
12 hear and rule on a referred motion of recusal or disqualification;

13 (2) may assign a presiding judge of the administrative
14 judicial region to hear and rule on a referred motion of recusal or
15 disqualification only with the consent of the presiding judge of
16 the administrative judicial region; and

17 (3) may not assign a judge of a statutory probate court
18 located in the same county as the statutory probate court served by
19 the judge who is the subject of the motion of recusal or
20 disqualification [~~A party in a hearing or trial in a statutory~~
21 ~~probate court may file with the clerk of the court a motion stating~~
22 ~~grounds for the recusal or disqualification of the judge. The~~
23 ~~grounds may include any disability of the judge to preside over the~~
24 ~~case].~~

25 (a-1) Notwithstanding Rule 18a(h), Texas Rules of Civil
26 Procedure, or any other conflicting provision of the rules, the
27 judge who hears a motion of recusal or disqualification, after

1 notice and hearing, may:

2 (1) order the party or attorney who filed the motion,
3 or both, to pay the reasonable attorney's fees and expenses
4 incurred by another party if the judge determines that the motion
5 was:

6 (A) groundless and filed in bad faith or for the
7 purpose of harassment; or

8 (B) clearly brought for unnecessary delay and
9 without sufficient cause; and

10 (2) enjoin the movant from filing other recusal
11 motions in the case without the prior written consent of the
12 presiding judge of the statutory probate courts.

13 (g) A judge who recuses himself or herself:

14 (1) shall enter an order of recusal and:

15 (A) if the judge serves a statutory probate court
16 located in a county with only one statutory probate court, request
17 that the presiding judge [~~of the administrative judicial district~~]
18 assign a judge under Section 25.002201 to hear the case; or

19 (B) subject to Subsection (1), if the judge
20 serves a statutory probate court located in a county with more than
21 one statutory probate court, request that the presiding judge order
22 [~~request that~~] the clerk who serves the statutory probate courts in
23 that county to randomly reassign the case to a judge of one of the
24 other statutory probate courts located in the county; and

25 (2) may not take other action in the case except for
26 good cause stated in the order in which the action is taken.

27 (g-1) A judge who disqualifies himself or herself:

1 (1) shall enter an order of disqualification and:

2 (A) if the judge serves a statutory probate court
3 located in a county with only one statutory probate court, request
4 that the presiding judge [~~of the administrative judicial district~~]
5 assign a judge under Section 25.002201 to hear the case; or

6 (B) subject to Subsection (1), if the judge
7 serves a statutory probate court located in a county with more than
8 one statutory probate court, request that the presiding judge order
9 the clerk who serves the statutory probate courts in that county to
10 randomly reassign the case to a judge of one of the other statutory
11 probate courts; and

12 (2) may not take other action in the case.

13 (i-2) A judge who hears a motion for recusal or
14 disqualification [~~under Subsection (i) or (i-1)~~] may also hear any
15 amended or supplemented motion for recusal or disqualification
16 filed in the case.

17 (i-3) If a motion for recusal or disqualification is granted
18 [~~after a hearing conducted as provided by Subsection (i) or (i-1)~~],
19 the presiding judge [~~who heard the motion~~] shall transfer the case
20 to another court or assign another judge to the case and:

21 (1) if the judge subject to recusal or
22 disqualification serves a statutory probate court located in a
23 county with only one statutory probate court, the presiding judge
24 or judge assigned to decide the motion shall enter an order of
25 recusal or disqualification, as appropriate, and request that the
26 presiding judge [~~of the administrative judicial district~~] assign a
27 judge under Section 25.002201 to hear the case; or

1 (2) subject to Subsection (1), if the judge subject to
2 recusal or disqualification serves a statutory probate court
3 located in a county with more than one statutory probate court, the
4 presiding judge or judge assigned to decide the motion shall enter
5 an order of recusal or disqualification, as appropriate, and
6 request that the clerk who serves the statutory probate courts in
7 that county randomly reassign the case to a judge of one of the
8 other statutory probate courts located in the county.

9 (i-5) A judge assigned to hear a motion for recusal or
10 disqualification [~~under Subsection (i)~~] is entitled to receive the
11 same salary, compensation, and expenses, and to be paid in the same
12 manner and from the same fund, as a judge otherwise assigned under
13 Section 25.0022 [~~, except that a judge assigned under Subsection (i)~~
14 ~~shall provide the information required by Section 25.0022(1) to the~~
15 ~~presiding judge of the administrative judicial district, who shall~~
16 ~~immediately forward the information to the presiding judge of the~~
17 ~~statutory probate courts]~~.

18 (1) If a clerk of a statutory probate court is unable to
19 reassign a case as requested under Subsection (g)(1)(B),
20 (g-1)(1)(B), or (i-3)(2) because the other statutory probate court
21 judges in the county have been recused or disqualified or are
22 otherwise unavailable to hear the case, the clerk shall immediately
23 notify the presiding judge [~~of the administrative judicial~~
24 ~~district]~~ and request that the presiding judge [~~of the~~
25 ~~administrative judicial district]~~ assign a judge under Section
26 25.002201 to hear the case.

27 SECTION 35. Section 26.012, Government Code, is amended to

1 read as follows:

2 Sec. 26.012. ASSIGNMENT OF VISITING JUDGE FOR PROBATE,
3 GUARDIANSHIP, AND MENTAL HEALTH MATTERS. If the county judge is
4 absent, incapacitated, recused, or disqualified to act in a
5 probate, guardianship, or mental health matter, a visiting judge
6 shall be assigned in accordance with Section 25.0022(h).

7 SECTION 36. Sections 411.1386(a) and (e), Government Code,
8 are amended to read as follows:

9 (a) Except as provided by Subsections (a-1), (a-5), and
10 (a-6), the clerk of the county having venue over a proceeding for
11 the appointment of a guardian under Title 3, Estates [~~Chapter XIII,~~
12 ~~Texas Probate~~] Code, shall obtain from the department criminal
13 history record information maintained by the department that
14 relates to:

15 (1) a private professional guardian;

16 (2) each person who represents or plans to represent
17 the interests of a ward as a guardian on behalf of the private
18 professional guardian;

19 (3) each person employed by a private professional
20 guardian who will:

21 (A) have personal contact with a ward or proposed
22 ward;

23 (B) exercise control over and manage a ward's
24 estate; or

25 (C) perform any duties with respect to the
26 management of a ward's estate;

27 (4) each person employed by or volunteering or

1 contracting with a guardianship program to provide guardianship
2 services to a ward of the program on the program's behalf; or

3 (5) any other person proposed to serve as a guardian
4 under Title 3, Estates [~~Chapter XIII, Texas Probate~~] Code,
5 including a proposed temporary guardian and a proposed successor
6 guardian, other than [~~the ward's or proposed ward's family member~~
7 ~~or~~] an attorney.

8 (e) The court, as that term is defined by Section 1002.008,
9 Estates [~~601, Texas Probate~~] Code, shall use the information
10 obtained or provided under Subsection (a), (a-4)(1), (a-5), or
11 (a-6) only in determining whether to:

12 (1) appoint, remove, or continue the appointment of a
13 private professional guardian, a guardianship program, or the
14 Department of Aging and Disability Services; or

15 (2) appoint any other person proposed to serve as a
16 guardian under Title 3, Estates [~~Chapter XIII, Texas Probate~~] Code,
17 including a proposed temporary guardian and a proposed successor
18 guardian, other than [~~the ward's or proposed ward's family member~~
19 ~~or~~] an attorney.

20 SECTION 37. The following are repealed:

21 (1) Sections [1052.051](#)(d), (e), and (f), Estates Code;

22 (2) Sections [25.00255](#)(b), (c), (d), (e), (f), (h),
23 (i), (i-1), (i-4), and (j), Government Code; and

24 (3) Section [25.002201](#)(c), Government Code.

25 SECTION 38. (a) Except as otherwise provided by this
26 section, the changes in law made by this Act apply to:

27 (1) a guardianship created before, on, or after the

1 effective date of this Act; and

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

4 (b) The changes in law made by this Act to Sections 1023.005
5 and 1023.010, Estates Code, apply only to an application for the
6 transfer of a guardianship to another county filed on or after the
7 effective date of this Act. An application for the transfer of a
8 guardianship to another county filed before the effective date of
9 this Act is governed by the law in effect on the date the
10 application was filed, and the former law is continued in effect for
11 that purpose.

12 (c) The changes in law made by this Act to Sections 1104.154
13 and 1104.205, Estates Code, apply only to a declaration executed on
14 or after the effective date of this Act. A declaration executed
15 before the effective date of this Act is governed by the law in
16 effect on the date the declaration was executed, and the former law
17 is continued in effect for that purpose.

18 (d) The changes in law made by this Act to Section
19 1301.1535, Estates Code, apply only to a management trust created
20 on or after the effective date of this Act. A management trust
21 created before the effective date of this Act is governed by the law
22 in effect on the date the management trust was created, and the
23 former law is continued in effect for that purpose.

24 (e) The changes in law made by this Act to Sections 1351.001
25 and 1351.002, Estates Code, apply only to an application for the
26 sale of an interest in property of a minor filed on or after the
27 effective date of this Act. An application for the sale of an

1 interest in property of a minor that is filed before the effective
2 date of this Act is governed by the law in effect on the date the
3 application was filed, and the former law is continued in effect for
4 that purpose.

5 (f) The changes in law made by this Act to Sections
6 1351.051, 1351.052, and 1351.053, Estates Code, apply only to an
7 application for the sale of an interest in property of a ward filed
8 on or after the effective date of this Act. An application for the
9 sale of an interest in property of a ward that is filed before the
10 effective date of this Act is governed by the law in effect on the
11 date the application was filed, and the former law is continued in
12 effect for that purpose.

13 (g) The changes in law made by this Act to Sections
14 1052.051, 1102.001, and 1155.151, Estates Code, and Section
15 1055.003, Estates Code, as added by this Act, apply only to a
16 guardianship proceeding commenced on or after the effective date of
17 this Act. A guardianship proceeding commenced before the effective
18 date of this Act is governed by the law as it existed immediately
19 before that date, and that law is continued in effect for that
20 purpose.

21 (h) The change in law made by this Act to Section
22 1251.052(b), Estates Code, applies only to a temporary guardian
23 appointed on or after the effective date of this Act. A temporary
24 guardian appointed before the effective date of this Act is
25 governed by the law in effect when the guardian was appointed, and
26 the former law is continued in effect for that purpose.

27 (i) Sections 25.0022, 25.002201, 25.00255, and 26.012,

1 Government Code, as amended by this Act, apply only to a motion for
2 recusal or disqualification of a judge that is filed on or after the
3 effective date of this Act. A motion for recusal or
4 disqualification of a judge filed before the effective date of this
5 Act is governed by the law in effect on the date the motion was
6 filed, and the former law is continued in effect for that purpose.

7 SECTION 39. This Act takes effect September 1, 2015.

President of the Senate

Speaker of the House

I certify that H.B. No. 1438 was passed by the House on May 15, 2015, by the following vote: Yeas 129, Nays 10, 2 present, not voting; and that the House concurred in Senate amendments to H.B. No. 1438 on May 28, 2015, by the following vote: Yeas 132, Nays 9, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 1438 was passed by the Senate, with amendments, on May 26, 2015, by the following vote: Yeas 30, Nays 1.

Secretary of the Senate

APPROVED: _____

Date

Governor