

## BILL ANALYSIS

Senate Research Center  
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S.B. 1196  
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### AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 1196 deals with a variety of issues in the Texas Probate Code, relating to guardianship and alternatives to guardianship for persons who have physical disabilities or who are incapacitated. The bill is endorsed by the Real Estate, Probate and Trust Law Section of the State Bar of Texas, acting with approval of the Board of Directors of the State Bar.

The bill creates several revisions to the language of Sections 601(25), 621(a), 622(a) and (b), 629, 630, 632, 641, 650, 653, 666, and 669(a), which are proposed by the Texas Legislative Council to provide uniformity to the terms used in the code with regard to guardianship proceedings in the probate courts and to identify which proceedings in the courts are included within the reference to guardianship proceedings. Specifically, the bill clarifies the definition of "guardianship proceeding" and matters covered therein; the bill then replaces older language with the term "guardianship proceeding" throughout the subsequent affected sections.

The bill amends Section 605 of the Texas Probate Code to clarify courts' original probate jurisdiction over matters relating to guardianship proceedings. Section 605 as amended also clarifies courts' ability to exercise pendent and ancillary jurisdiction as necessary to promote judicial efficiency and economy, and provides that orders of a probate court may be appealed to the court of appeals.

The bill amends the Texas Probate Code by adding Sections 606A, 607A, 607B, 607C, 607D, and 607E. The additions relate to the jurisdiction of county courts, statutory probate courts, and district courts, hearing probate proceedings with regard to guardianship matters. The proposed revisions make the guardianship jurisdiction provisions consistent with jurisdiction changes with respect to decedent's estates that took place in the 81st Legislature.

Sections 606A sets forth which matters relate to a guardianship proceeding in both counties that do and counties that do not have a statutory probate court. Section 607A sets forth when either a statutory probate court or a county court have original jurisdiction of guardianship proceedings. Section 607B sets forth when, in the case of a contested guardianship proceeding in a county with no statutory probate court or county court at law exercising original probate jurisdiction, a county court may either request the assignment of a statutory probate judge to hear the matter or transfer the contested matter to a district court. The sections then set forth each possible court's jurisdiction and authority over either just the contested matter or the entire proceeding.

Section 607C sets forth how a contested guardianship proceeding may be transferred in a county in which there is no statutory probate court, but in which there is a county court at law exercising original probate jurisdiction. Section 607D provides that when a county has a statutory probate court, that court has exclusive jurisdiction over guardianship matters except where that court has concurrent jurisdiction with a district court as the bill sets forth in 607E.

The bill amends language in Sections 608, 609, 611, and 682A(a-1) and (a-2) of the Texas Probate Code to make them consistent with changes made by the bill as described in the proceedings paragraphs.

The bill would amend Sections 646, 693, and 875 of the Texas Probate Code as they relate to the appointment and discharge of attorneys ad litem in guardianship proceedings. Current law provides that the appointment of an attorney ad litem in response to the filing of an application

for the appointment of a guardian expires upon the appointment of a guardian, even if the court only appoints a temporary guardian (under Section 875). The proposed change provides that the attorney ad litem's appointment (under Section 646) does not expire upon appointment of temporary guardian, but only upon the appointment of permanent guardian (under Section 693).

The bill amends Sections 665(a), (a-1), and (c) of the Texas Probate Code by replacing a guardian and trustee compensation formula with a "reasonable compensation" standard as determined by the court. Currently under the affected sections, compensation for temporary and permanent guardians of the person, estate, and trustee of a guardianship management trust is determined by a formula relating to receipts of income into and disbursements made from the ward's estate (the formula stated simply is five percent of income plus five percent of disbursements). Current law also already gives courts discretion to approve an amount of compensation that is more than the formula amount if the court finds that the formula amount is unreasonably low. Because the court already has the discretion to determine a reasonable amount of compensation, stating the formula amount only leads to confusion and complications in requesting and awarding compensation for guardians and trustees. Removing the stated formula thus satisfies two goals: First it clarifies the court's discretion to determine the amount of reasonable compensation to be paid to guardians and trustees given all the circumstances of the ward's needs and the size of the ward's estate. Second, the change would lead to uniformity by courts in such awards.

The bill amends Section 687(c) of the Texas Probate Code, to further clarify contents of the required written certificate which needs to be completed by a physician or other certified professional that is used to provide evidence of a person's incapacities in a guardianship proceeding. These requirements were previously modified in the 81st Legislature.

The bill amends Sections 729(c) and 730, Texas Probate Code, to delete a requirement that a list of co-owners of property on an inventory be submitted to courts. Currently, in addition to requiring one to provide information in the inventory and list of claims of the guardianship estate regarding the ward's interest in property that is shared with other persons, the affected section also requires reporting interest of the other persons. The bill would simplify reporting by limiting reporting information to only that of the ward's interest in the shared property.

The bill amends Sections 745(a) and (d) of the Texas Probate Code by allowing for the complete termination of a guardianship proceeding if all of the assets of the guardianship estate have been transferred to a pooled interest trust sub-account for the ward.

The bill amends Section 770(c) of the Texas Probate Code by increasing the age of wards whom a guardian may voluntarily admit to an inpatient to psychiatric facility from 16 to 18 years of age or younger.

The bill amends Section 865 of the Texas Probate Code, which relates to the guardian's ability to seek court approval for the purpose of making tax-motivated gifts from the ward's estate. The bill adds the ability to seek such approval of making gifts from the ward's estate to qualify the ward for other government benefits.

The bill amends Sections 867(a-1), (b), (c), and (f), 868(a), (b), and (d), 868C(a), 869(b), 870, 873, 910(1), and 911 of the Texas Probate Code, which relates to persons who may request that the court establish a management trust or pooled interest trust sub-account, by adding to that list persons who are physically disabled and clarifies the language of the related sections of the code to include specific provisions for trusts created for the benefit of a person with a physical disability only.

The bill adds Section 870A to Texas Probate Code to require that trustees of guardianship management trusts file initial inventory reports with the court of the properties collected by the trustees in the trust when there is a guardianship pending in the court when the trust is created. Specifically, the inventory report must show the current value and descriptions of trust assets within 30 days of trust funding.

Finally, the bill amends Sections 871 and 873 of the Texas Probate Code, which relate to the duties of a trustee of a guardianship management trust to file annual and final accountings with the court. The bill stipulates that such accountings are not required when the court creates a trust for the benefit of a person who is physically disabled only.

As proposed, S.B. 1196 amends current law relating to guardianships and alternatives to guardianship for persons who have physical disabilities or who are incapacitated.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 601(25), Texas Probate Code, to redefine "guardianship proceeding," in this section, and to delete definitions for "proceedings in guardianship," "guardianship matter," "guardianship matters," and "proceeding for guardianship."

SECTION 2. Amends Section 605, Texas Probate Code, as follows:

Sec. 605. New heading: GENERAL PROBATE COURT JURISDICTION IN GUARDIANSHIP PROCEEDINGS; APPEALS. (a) Requires that all guardianship proceedings be filed and heard in a court exercising original probate jurisdiction. Provides that the court exercising original probate jurisdiction also has jurisdiction of all matters related to the guardianship proceeding as specified in Section 606A of this code for that type of court.

(b) Authorizes a probate court to exercise pendent and ancillary jurisdiction as necessary to promote judicial efficiency and economy.

(c) Provides that a final order issued by a probate court is appealable to the court of appeals. Deletes existing text providing that the county court has the general jurisdiction of a probate court. Deletes existing text requiring the county court to appoint guardians of minors and other incapacitated persons, grant letters of guardianship, settle accounts of guardians, and transact all business appertaining to estates subject to guardianship, including the settlement, partition, and distribution of the estates. Deletes existing text authorizing the county court to also enter other orders as may be authorized under this chapter.

SECTION 3. Amends Subpart A, Part 2, Chapter XIII, Texas Probate Code, by adding Sections 606A, 607A, 607B, 607C, 607D, and 607E, as follows:

Sec. 606A. MATTERS RELATED TO GUARDIANSHIP PROCEEDING. (a) Provides that for purposes of this code, in a county in which there is no statutory probate court, a matter related to a guardianship proceeding includes:

- (1) the granting of letters of guardianship;
- (2) the settling of an account of 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 745 of this code, an action brought by or on behalf of the former ward against a former guardian of the ward for alleged misconduct arising from the performance of the person's duties as guardian; an action calling on the surety of a guardian or former guardian to perform in place of the guardian or former guardian, which may include the award of a judgment against the guardian or former guardian in favor of the surety; an action against a former guardian of the former ward that is brought by a surety that is called on to perform in place of the former guardian; a claim for the payment of compensation, expenses, and court costs, and any other matter authorized under Subpart H, Part 2, of this chapter; and a matter related to an authorization made or duty performed by a guardian under Subpart C, Part 4, of this chapter; and

(7) the appointment of a trustee for a trust created under Section 867 of this code, the settling of an account of the trustee, and all other matters relating to the trust.

(b) Provides that for purposes of this code, in a county in which there is a statutory probate court, a matter related to a guardianship proceeding includes all matters and actions described in Subsection (a) of this section; a suit, action or application filed against or on behalf of a guardianship or a trustee of a trust created under Section 867 of this code; and a cause of action in which a guardian in a guardianship pending in the statutory probate court is a party.

**Sec. 607A. ORIGINAL JURISDICTION FOR GUARDIANSHIP PROCEEDINGS.** (a) Provides that in a county in which there is no statutory probate court or county court at law exercising original probate jurisdiction, the county court has original jurisdiction of guardianship proceedings.

(b) Provides that in a county in which there is no statutory probate court, but in which there is a county court at law exercising original probate jurisdiction, the county court at law exercising original probate jurisdiction and the county court have concurrent original jurisdiction of guardianship proceedings, unless otherwise provided by law. Authorizes the judge of a county court to hear guardianship proceeding while sitting for the judge of any other county court.

(c) Provides that in a county in which there is a statutory probate court, the statutory probate court has original jurisdiction of guardianship proceedings.

**Sec. 607B. JURISDICTION OF CONTESTED GUARDIANSHIP PROCEEDING IN COUNTY WITH NO STATUTORY PROBATE COURT OR COUNTY COURT AT LAW.** (a) Provides that in a county in which there is no statutory probate court or county court at law exercising original probate jurisdiction, when a matter in a guardianship proceeding is contested, the judge of the county court is authorized, on the judge's own motion, or is required, on the motion of any party to the proceeding according to the motion, to:

(1) request the assignment of a statutory probate court judge to hear the contested matter, as provided by Section 25.0022 (Administration of Statutory Probate Courts), Government Code; or

(2) transfer the contested matter to the district court, which may then hear the contested matter as if originally filed in the district court.

(b) Provides that the county judge, if a party to a guardianship proceeding files a motion for the assignment of statutory probate court judge to hear a contested matter in the proceeding before the judge of the county court transfers the contested matter to a district court under this section, is required to grant the motion for the assignment of a statutory probate court judge and is prohibited

from transferring the matter to the district court unless the party withdraws the motion.

(c) Authorizes a judge, if the judge of a county court requests the assignment of a statutory probate court judge to hear a contested matter in a guardianship proceeding on the judge's own motion or on the motion of a party to the proceeding as provided by this section, to request that the statutory probate court judge be assigned to the entire proceeding on the judge's own motion or on the motion of a party.

(d) Authorizes a judge, if the judge of a county court transfers a contested matter in a guardianship proceeding to a district court on the judge's own motion or on the motion of a party to the proceeding as provided by this section, to transfer the entire proceeding to that court on the judge's own motion or on the motion of a party. Authorizes a district court to which an entire guardianship proceeding is transferred as provided by this subsection to hear the proceedings as if originally filed in that court.

(e) Authorizes a party to a guardianship proceeding to file a motion for the assignment of a statutory probate court judge under this section before a matter in the proceeding becomes contested, and the motion is given effect as a motion for assignment of a statutory probate court judge under Subsection (a) of this section if the matter later becomes contested.

(f) Provides that, notwithstanding any other law, a transfer of a contested matter in a guardianship proceeding to a district court under any authority other than the authority provided by this section is disregarded for purposes of this section, and does not defeat the right of a party to the proceeding to have the matter assigned to a statutory probate court judge in accordance with this section.

(g) Provides that a statutory probate court judge assigned to a contested matter in a guardianship proceeding or to the entire proceeding under this section has the jurisdiction and authority granted to a statutory probate court by this code. Requires a statutory probate court judge assigned to hear only the contested matter in a guardianship proceeding, on resolution of the matter, including an appeal of the matter, to return the matter to the county court for further proceedings not inconsistent with the orders of the statutory probate court or court of appeals, as applicable. Requires a statutory probate court judge assigned to the entire guardianship proceeding as provided by Subsection (c) of this section, on resolution of the contested matter in the proceeding, including an appeal of the matter, to return the entire proceeding to the county court for further proceedings not inconsistent with the orders of the statutory probate court or court of appeals, as applicable.

(h) Provides that a district court to which a contested matter in a guardianship proceeding or the entire proceeding is transferred under this section has the jurisdiction and authority granted to a statutory probate court by this code. Requires a district court to which only the contested matter is transferred, on resolution of the matter, including an appeal of the matter, to return the matter to the county court for further proceedings not inconsistent with the orders of the district court or court of appeals, as applicable. Requires a district court to which an entire guardianship proceeding is transferred as provided by Subsection (d) of this section, on resolution of the contested matter in the proceeding, including an appeal of the matter, to return the entire proceeding to the county court for further proceedings not inconsistent with the orders of the district court or court of appeals, as applicable.

(i) Requires the county court, if only the contested matter in a guardianship proceeding is assigned to a statutory probate court judge or transferred to a district court under this section, to continue to exercise jurisdiction over the management

of the guardianship, other than a contested matter, until final disposition of the contested matter is made in accordance with this section. Authorizes any matter related to a guardianship proceeding in which only a contested matter is transferred to a district court to be brought in the district court. Authorizes the district court in which a matter related to the proceeding is filed, on the court's own motion or on the motion of any party, to find that the matter is not a contested matter and transfer the matter to the county court with jurisdiction of the management of the guardianship.

(j) Provides that, if a contested matter in a guardianship proceeding is transferred to a district court under this section, the district court has jurisdiction of any contested matter in the proceeding that is subsequently filed, and the county court is required to transfer those contested matters to the district court. Requires the statutory probate court judge, if a statutory probate court judge is assigned under this section to hear a contested matter in a guardianship proceeding, to be assigned to hear any contested matter in the proceeding that is subsequently filed.

(k) Authorizes the clerk of a district court to which a contested matter in a guardianship proceeding or the entire proceeding is transferred under this section to perform in relation to the transferred matter or proceeding, as applicable, any function a county clerk may perform with respect to that type of matter or proceeding.

**Sec. 607C. JURISDICTION OF CONTESTED GUARDIANSHIP PROCEEDING IN COUNTY WITH NO STATUTORY PROBATE COURT.** (a) Provides that in a county court in which there is no statutory probate court, but in which there is a county court at law exercising original probate jurisdiction, when a matter in a guardianship proceeding is contested, the judge of the county court is authorized, on the judge's own motion, or is required, on the motion of any party proceeding, to transfer the contested matter to the county court at law. Authorizes the judge of the county court, in addition, on the judge's own motion or on the motion of a party to the proceeding, to transfer the entire proceeding to the county court at law.

(b) Authorizes a county court at law to which a proceeding is transferred under this section to hear the proceeding as if originally filed in that court. Requires that the matter, if only a contested matter in the proceeding is transferred, on the resolution of the matter, be returned to the county court for further proceedings not inconsistent with the orders of the county court at law.

**Sec. 607D. EXCLUSIVE JURISDICTION OF GUARDIANSHIP PROCEEDING IN COUNTY WITH STATUTORY PROBATE COURT.** (a) Provides that in a county in which there is a statutory probate court, the statutory probate court has exclusive jurisdiction of all guardianship proceedings, regardless of whether contested or uncontested.

(b) Requires that a cause of action related to a guardianship proceeding of which the statutory probate court has exclusive jurisdiction as provided by Subsection (a) of this section be brought in the statutory probate court unless the jurisdiction of the statutory probate court is concurrent with the jurisdiction of a district court as provided by Section 607E of this code or with the jurisdiction of any other court.

**Sec. 607E. CONCURRENT JURISDICTION WITH DISTRICT COURT.** Provides that a statutory probate court has concurrent jurisdiction with the district court in a personal injury, survival, or wrongful death action by or against a person in the person's capacity as a guardian; and an action involving a guardian in which each other party aligned with the guardian is not an interested person in the guardianship.

**SECTION 4.** Amends Section 608, Texas Probate Code, as follows:

Sec. 608. New heading: TRANSFER OF PROCEEDING BY STATUTORY PROBATE COURT. (a) Creates this subsection from existing text. Authorizes a judge of a statutory probate court, on the motion of a party to the action or of a person interested in the guardianship to:

(1) transfer to the judge's court from a district, county, or statutory court a cause of action that is a matter related to a guardianship proceeding pending in the statutory probate court, including a cause of action that is a matter related to a guardianship proceeding pending in the statutory probate court and in which the guardian, ward, or proposed ward, in the pending guardianship proceeding is a party; and

(2) consolidate the transferred cause of action with the guardianship proceeding to which it relates and any other proceedings in the statutory probate court that are related to the guardianship proceeding.

Deletes existing text authorizing a judge of a statutory probate court, on the motion of a party to the action or of a person interested in a guardianship to transfer to the judge's court from a district, county, or statutory court of action appertaining to or incident to a guardianship estate that is pending in the statutory probate court, or a cause of action relating to a guardianship in which a guardian, ward, or proposed ward in a guardianship pending in the statutory probate court is a party and may consolidate the transferred cause of action with the other proceedings in the statutory probate court relating to the guardianship estate.

(b) Provides that notwithstanding any other provision of this chapter, the proper venue for an action by or against a guardian, ward, or proposed ward for personal injury, death, or property damages is determined under Section 15.007 (Conflict with Certain Provisions).

SECTION 5. Amends the heading to Section 609, Texas Probate Code, to read as follows:

Sec. 609. TRANSFER OF CONTESTED GUARDIANSHIP OF THE PERSON OF A MINOR.

SECTION 6. Amends Section 609(a), Texas Probate Code, as follows:

(a) Authorizes the judge, on the judge's own motion, if an interested person contests an application for the appointment of a guardian of the person of a minor or an interested person seeks the removal of a guardian of the person of a minor, to transfer all matters related to the guardianship proceeding, rather than to the guardianship of the person of the minor, to a court of competent jurisdiction in which a suit affecting the parent-child relationship under the Family Code is pending. Makes a nonsubstantive change.

SECTION 7. Amends Section 611(a), Texas Probate Code, to make conforming changes.

SECTION 8. Amends Section 621(a), Texas Probate Code, to make conforming changes.

SECTION 9. Amends Sections 622(a) and (b), Texas Probate Code, to make conforming and nonsubstantive changes.

SECTION 10. Amends Section 629, Texas Probate Code, to make a conforming change.

SECTION 11. Amends Section 630, Texas Probate Code, as follows:

Sec. 630. CLERK MAY SET HEARINGS. Authorizes the county clerk in which the proceeding is pending, if the judge, rather than county judge, is absent from the county seat or is on vacation, disqualified, ill, or deceased and is unable to designate the time and place for hearing a guardianship proceeding pending in the judge's court, to designate the

time and place for hearing, entering the setting on the judge's docket and certifying on the docket the reason that the judge is not acting to set the hearing. Provides that if a qualified judge is not present for the hearing, after service of the notices and citations required by law with reference to the time and place of hearing has been perfected, the hearing is automatically continued from day to day until a qualified judge is present to hear and make a determination in the proceeding. Makes conforming changes.

SECTION 12. Amends the heading to Section 632, Texas Probate Code, to read as follows:

Sec. 632. ISSUANCE, CONTENTS, SERVICE, AND RETURN OF CITATION, NOTICES, AND WRITS IN GUARDIANSHIP PROCEEDINGS.

SECTION 13. Amends Sections 632(a), (b), and (h), Texas Probate Code, to make conforming and nonsubstantive changes.

SECTION 14. Amends Section 641, Texas Probate Code, to make a conforming change.

SECTION 15. Amends Section 646, Texas Probate Code, by amending Subsection (e) and adding Subsection (f), as follows:

(e) Provides that the term of appointment of an attorney ad litem appointed under this section expires, without a court order, on the date the court appoints, rather than either appoints, a guardian in accordance with Section 693 of this code, appoints a successor guardian, or denies the application for appointment for a guardian, unless the court determines that the continued appointment of the attorney ad litem is in the ward's best interest.

(f) Provides that the term of appointment of an attorney ad litem appointed under this section continues after the court appoints a temporary guardian under Section 875 of this code unless a court order provides for the termination or expiration of the attorney ad litem's appointment.

SECTION 16. Amends Section 650, Texas Probate Code, to make a conforming change.

SECTION 17. Amends Section 653, Texas Probate Code, to make conforming change.

SECTION 18. Amends Sections 665(a), (a-1), and (c), Texas Probate Code, as follows:

(a) Entitles the guardian or temporary guardian to reasonable compensation on application to the court if the court finds that the guardian or temporary guardian has taken care of the ward's person or managed the ward's estate in compliance with the standards of this chapter. Authorizes the court to authorize the amount of this compensation and the payment from the ward's estate or other funds available for that purpose, rather than authorizing the court to authorize compensation for a guardian or a temporary guardian serving as a guardian of the person alone from available funds of the ward's estate or other funds available for the that purpose. Deletes existing text authorizing the court to set the compensation in an amount not exceeding five percent of the ward's gross income.

(a-1) Requires the court in determining whether to authorize compensation for a guardian under this section from the ward's estate, to consider the ward's monthly income from all sources and whether the ward receives medical assistance under the state Medicaid program.

(c) Authorizes the court, on application of an interested person or on its own motion to:

(1) review and modify at any time the amount of compensation authorized for a guardian or temporary guardian if the court finds that the amount is unreasonable high or low when considering the services rendered as guardian or temporary guardian; and

(2) authorize compensation for the guardian or temporary guardian in an estimated amount the court finds reasonable that is to be paid on a quarterly basis before the guardian or temporary guardian files an annual or final accounting.

Deletes existing text authorizing the court on application of an interested person or on its own motion to review and modify the amount of compensation authorized under Subsection (a) or (b) (relating to the provision that entitles the guardian or temporary guardian of an estate to reasonable compensation on application to the court) of this section if the court finds that the amounts is unreasonably low when considering the services rendered as guardian or temporary guardian; and authorizes compensation for the guardian or temporary guardian in an estimated amount the court finds reasonable that is to be paid on a quarterly basis before the guardian or temporary guardian files an annual or final accounting if the court finds that delaying the payment of compensation until the guardian or temporary guardian files an accounting would create a hardship for the guardian or temporary guardian.

SECTION 19. Amends Section 666, Texas Probate Code, to make a conforming change.

SECTION 20. Amends Section 669(a), Texas Probate Code, to require, except as provided by Subsection (b) (relating to cost against guardianship) of this section, in a guardianship proceeding, rather than guardianship matter, the cost of the proceeding, including the cost of the guardian ad litem or court visitor, to be paid out of the guardianship estate, or, if the estate is insufficient to pay for the cost of the proceeding, the cost of the proceeding is required to be paid out of the county treasury, and the judgment of the court is required to be issued accordingly.

SECTION 21. Amends Sections 682A(a-1) and (a-2), Texas Probate Code, as follows:

(a-1) Authorizes an applicant, notwithstanding any other law, if the applicant who files an application under Subsection (a) (relating to the application for appointment of guardian for certain persons) of this section or Section 682 of this code is a person who was appointed conservator of a disabled child rather than a disabled child for whom a court obtains a jurisdiction under Section 606(k) (relating to jurisdiction with respect to guardianship proceedings) and the proceeding is a guardianship proceeding described by Section 601(25)(A) (relating to the appointment of a guardian of a minor or other incapacitated person) of this code in which the proposed ward is the incapacitated adult with respect to whom another court obtained continuing, exclusive jurisdiction in a suit affecting the parent-child relationship when the person was a child, of this code, to present to the court a written letter or certificate that meets the requirements of Section 687(a) of this code.

(a-2) Requires the court, notwithstanding Section 677 of this code, if, on receipt of the letter or certificate described by Subsection (a-1) of this section, the court is able to make the findings required by Section 684 of this code, to appoint the conservator as guardian without conducting a hearing and, to the extent possible, to preserve the terms of possession and access to the ward that applied before the court obtained jurisdiction of the guardianship proceeding, rather than before the court obtained jurisdiction under Section 606(k) of this code.

SECTION 22. Amends Section 687(c), Texas Probate Code, as follows:

(c) Prohibits the court, if the basis of the proposed ward's alleged incapacity is mental retardation, to grant an application to create guardianship for the proposed ward unless the applicant presents to the court a written letter or certificate that:

(1) complies with Subsection (a) of this section or;

(2) shows that earlier than 24 months before the date of the hearing, the proposed ward has been examined by a physician or psychologist licensed in this state or

certified by the Department of Aging and Disability Services (DADS) to perform the examination, in accordance with rules of the executive commissioner of the Health and Human Services Commission (executive commissioner; HHSC) governing examinations of that kind; and the physician's or psychologist's written findings and recommendations to the court include a statement as to whether the physician or psychologist has made a determination of mental retardation in accordance with Section 593.005 (Determination of Mental Retardation), Health and Safety Code.

Deletes existing text prohibiting the court, if the basis of the proposed ward's alleged incapacity is mental retardation, to grant an application to create a guardianship for the proposed ward unless the applicant presents to the court a written letter or certificate that complies with Subsection (a) of this section; and states that the physician has made a determination of mental retardation in accordance with Section 593.005, Health and Safety Code; or both written documentation showing that not earlier than 24 months before the date of the hearing, the proposed ward has been examined by a physician or psychologist licensed in this state or certified by DADS to perform the examination, in accordance with rules of the executive commissioner governing examinations of that kind.

SECTION 23. Amends Section 729(c), Texas Probate Code, as follows:

(c) Requires that an inventory made under this section specify what portion of the property is separate property and what portion is community property; and if any of the property is owned in common with other persons, the interest owned by the ward. Deletes existing text requiring that the interest owned by the ward be shown in the inventory, together with the names and relationships, if known, of co-owners.

SECTION 24. Amends Section 730, Texas Probate Code, to delete existing text requiring the guardian to make and attach to an inventory under Section 729 of this code a full and complete list of all claims due or owing to the ward that is required to state certain information, including what portion of the claim is held in common with others, including the names and the relationship of other part owners and the interest of the estate in the claim, rather than what portion of the claim is held in common with others, including the names and the relationships of other part owners and the interest of the estate in the claim.

SECTION 25. Amends Section 745(a) and (d), Texas Probate Code, as follows:

(a) Requires a guardianship of the estate of a ward to be settled when:

(1)-(4) Makes no changes to these subdivisions;

(5) the foreseeable income accruing to a ward or to the ward's, rather than his, estate is so negligible that maintaining the guardianship in force would be burdensome;

(6) all of the assets of the estate have been placed in a management trust under Subpart N, of this part, or have been transferred to a pooled trust subaccount in accordance with a court order issued as provided by Subpart I, Part 5, of this chapter, rather than code Part 4 of this code and the court determines that a guardianship of the ward's estate, rather than for the ward, is no longer necessary; or

(7) the court determines for any other reason that a guardianship for the ward is no longer necessary.

(d) Authorizes the court, in the settlement of a guardianship, to appoint an attorney ad litem to represent the interests of the ward, and allow the attorney ad litem reasonable

compensation to be taxed as costs, rather than allow the attorney ad litem reasonable compensation for services provided by the attorney out of the ward's estate.

SECTION 26. Amends Section 770(c), Texas Probate Code, to authorize a guardian of a person younger than 18 years of age, rather than 16 years of age, to voluntarily admit the ward, rather than voluntarily admit an incapacitated person, to a public or private inpatient psychiatric facility for care and treatment.

SECTION 27. Amends the heading to Subpart M, Part 4, Chapter XIII, Texas Probate Code, to read as follows:

SUBPART M. TAX-MOTIVATED, CHARITABLE, AND OTHER GIFTS

SECTION 28. Amends the heading to Section 865, Texas Probate Code, to read as follows:

Sec. 865. POWER TO MAKE CERTAIN GIFTS AND TRANSFERS.

SECTION 29. Amends Sections 865(a) and (b), Texas Probate Code, as follows:

(a) Requires the court, after hearing, on application of the guardian of the estate or any interested person, rather than party, and after the posting of notice, to enter an order that authorizes the guardian to apply the principal or income of the ward's estate that is not required for the support of the ward or the ward's family during the ward's lifetime toward the establishment of an estate plan for the purpose of minimizing income, estate, inheritance, or other taxes payable out of the ward's estate, or to transfer a portion of the ward's estate as necessary to qualify the ward for government benefits, on a showing that the ward will probably remain incapacitated during the ward's lifetime. Authorizes the court, on the ward's behalf, to authorize the guardian to make gifts or transfers described by this subsection, outright or in trust, of the ward's property to or for the benefit of, rather of the ward's person property or real estate to or for the benefit of certain entities, persons, or instruments.

(b) Requires the person making an application to the court under this section to outline the proposed estate or other transfer plan and set forth all the benefits that are to be derived from the plan, rather than estate plan. Requires that the application indicate that the planned disposition is consistent with the ward's intentions if the ward's intentions can be ascertained. Provides that if the ward's intentions cannot be ascertained, the ward will be presumed to favor reduction in the incidence of the various forms of taxation, the qualification for government benefits, and the partial distribution of the ward's estate as provided by this section.

SECTION 30. Amends Sections 867(a-1), (b), (c), and (f), Texas Probate Code, as follows:

(a-1) Authorizes the following persons to apply for the creation of a trust under this section:

(1)-(4) Makes no changes to these subdivisions;

(5) a person interested in the welfare of an alleged incapacitated person who does not have a guardian, rather than a guardian of the estate;

(6) an attorney ad litem or guardian ad litem appointed to represent an alleged incapacitated person who does not have a guardian, rather than an attorney ad litem or guardian ad litem appointed to represent an alleged incapacitated person who does not have a guardian or that person's interests; or

(7) a person who has only a physical disability, rather than that person's interests.

(b) Authorizes the court with jurisdiction over the proceedings, on application by an appropriate person as provided by Subsection (a-1) of this section and subject to

Subsection (b-1) (relating to the creation of trust management) of this section, if applicable, to enter an order that creates a trust for the management of the funds of the person with respect to whom the application is filed if the court finds that the creation of the trust is in the person's best interests, rather than authorizing a court with jurisdiction over the guardianship, on application by an appropriate person as provided by Subsection (a-1) of this section, to enter an order that creates for the ward's benefit a trust for the management of guardianship funds if the court finds that the creation of the trust is in the ward's best interests.

(c) Authorizes the court, subject to Subsection (d) of this section, if the court finds that it is in the best interests of the person for whom a trust is created under this section, rather than in the ward's or incapacitated person's best interest, to appoint a person or entity that meets the requirements of Subsection (e) (relating to the eligibility for appointment) of this section to serve as trustee of the trust instead of appointing a financial institution to serve in that capacity.

(f) Requires that the order, if a trust is created for a person, rather than a ward, direct any person or entity holding property belonging to the person for whom the trust is created person or to which that is entitled to deliver all or part of the property to a person or corporate fiduciary appointed by the court as a trustee. Requires the court to maintain the trust under the same cause number as the guardianship proceeding, if the person for whom the trust is created is a ward or proposed ward, rather than if applicable. Deletes existing text requiring that the order, if a trust is created for an incapacitated person who does not have a guardian, to direct a person holding property belong to the incapacitated person or to which the incapacitated person is entitled to deliver all or part of the property to the corporate fiduciary or other person appointed as trustee of the trust. Makes conforming and nonsubstantive changes.

SECTION 31. Amends Sections 868(a), (b), and (d), Texas Probate Code, as follows:

(a) Requires that, except as provided by Subsection (d) of this section, a trust created under Section 867 of this code must provide that:

(1) the ward, incapacitated person or person, who has only a physical disability is the sole beneficiary of the trust, rather than the ward or incapacitated person is the sole beneficiary of the trust;

(2) the trustee is authorized to disburse an amount of the trust's principal or income as the trustee determines is necessary to expend for the health, education, support, or maintenance of the person, rather than ward or incapacitated person, for whom the trust is created;

(3)-(4) Makes no changes to these subdivisions; and

(5) trustee, subject to the court's approval, is entitled to receive reasonable compensation for services that the trustee provided to the person for whom the trust is created as the person's trustee that is to be paid from the trust's income, principal, or both; and determined, paid, reduced, and eliminated in the same manner as compensation of a guardian, rather than a guardian an estate, under Section 665 of this code. Makes conforming changes.

(b) and (d) Makes conforming changes.

SECTION 32. Amends 868C(a), Texas Probate Code, as follows:

(a) Authorizes the court, if the court determines that it is in the best interests, rather than in the ward's or incapacitated persons best interest, of the person for whom a trust is created under Section 867 of this code, to order the transfer of all property in the trust, rather than a management trust created under Section 867 of this code, to a subaccount of a pooled trust established in accordance with Subpart I, Part 5, of this chapter. Requires

that the transfer of property from the management trust to the subaccount of the pooled trust be treated as a continuation of the management trust and may not be treated as the establishment of a new trust for purposes 42 U.S.C. Section 1396p(d)(4)(A) or (c) or otherwise for purposes of of the management trust beneficiary's eligibility for medical assistance under Chapter 32 (Medical Assistance Program), Human Resources Code. Makes conforming changes.

SECTION 33. Amends Section 869(b), Texas Probate Code, as follows:

(b) Prohibits the following from revoking the trust:

- (1) the ward for whom the trust is created or the guardian of the ward's estate;
- (2) the incapacitated person for whom the trust is created; or
- (3) the person who has only a physical disability for whom the trust is created.

Makes nonsubstantive changes.

SECTION 34. Amends Section 870, Texas Probate Code, as follows:

Sec. 870. TERMINATION OF TRUST. (a) Provides that if the person for whom a trust is created under Section 867 of this code is a minor, the trust terminates:

- (1) on the person's death or the person's 18th birthday, or whichever is earlier; or
- (2) on the date provided by court order, which may not be later than the person's 25th birthday.

Makes conforming changes.

(b) Provides that if the person for whom a trust is created under Section 867 of this code is not a minor, the trust terminates:

- (1) according to the terms of the trust;
- (2) on the date the court determines that continuing the trust is no longer in the person's best interests, subject to Section 868C(b) of this code; or
- (3) on the person's death.

Makes conforming changes.

SECTION 35. Amends Subpart N, Part 4, Chapter XIII, Texas Probate Code, by adding Section 870A, as follows:

Sec. 870A. INITIAL ACCOUNTING BY CERTAIN TRUSTEES REQUIRED. (a) Provides that this section applies only to a trustee of a trust create under Section 867 of this code for a person for whom a guardianship proceeding is pending on the date the trust is created.

(b) Requires the trustee, not later than the 30th day after the date a trustee to which this section applies receives property into the trust, to file with the court in which the guardianship proceeding is pending a report describing all property held in the trust on the date of the report and specifying the value of the property on that date.

SECTION 36. Amends Section 871, Texas Probate Code, by amending Subsection (a) and adding Subsection (d), as follows:

(a) Requires the trustee, except as provided by Subsection (d) of this section, to prepare and file with the court an annual accounting of transactions in the trust in the same manner and form that is required of a guardian under this chapter.

(d) Prohibits the court from requiring a trustee of a trust created for a person who has only a physical disability to prepare and file with the court the annual accounting as described by Subsection (a) of this section.

SECTION 37. Amends Section 873, Texas Probate Code, as follows:

Sec. 873. DISTRIBUTION OF TRUST PROPERTY. (a) Creates this subsection from existing text. Requires that the trustee, unless otherwise provided by the court and except as provided by Subsection (b) of this section, to:

(1) prepare a final account in the same form and manner that is required of a guardian under Section 749 (Account for Final Settlement of Estates of Wards) of this code; and

(2) on court approval, distribute the principal or any undistributed income of the trust to the ward or incapacitated person when the trust terminates on its own terms, to the successor trustee on appointment of a successor trustee, or to the representative of the deceased ward's or incapacitated person's estate on the ward's or incapacitated person's death.

(b) Prohibits the court from requiring a trustee to a trust created for a person who has only a physical disability to prepare and file with the court a final account as described by Subsection (a)(1) of this section. Requires the trustee to distribute the principal and any undistributed income of the trust in the manner provided by Subsection (a)(2) of this section for a trust the beneficiary of which is a ward or incapacitated person.

SECTION 38. Amends Section 910(1), Texas Probate Code, to redefine "beneficiary."

SECTION 39. Amends Section 911, Texas Probate Code, as follows:

Sec. 911. APPLICATION. Authorizes the following persons interested to apply to the court for the establishment of a subaccount for the benefit of a minor, or other incapacitated person, an alleged incapacitated person, or a disabled person who is not an incapacitated person:

(1) the guardian of the incapacitated person;

(2) a person who has filed an application for the appointment of a guardian for the alleged incapacitated person;

(3) an attorney ad litem or guardian ad litem appointed to represent the incapacitated person who is a ward or that person's interests, or the alleged incapacitated person who does not have a guardian; or

(4) the disabled person, rather than as the beneficiary.

Deletes existing text authorizing a person interested in the welfare of a minor, a disabled person, or any other incapacitated person to apply to the court for the establishment of a subaccount for the benefit of the minor, disabled person or other incapacitated person as the beneficiary.

SECTION 40. Amends Section 25.0022(i), Government Code, as follows:

(i) Provides that a judge assigned under this section has the jurisdiction, powers, and duties given by Sections 4A, 4C, 4F, 4G, 4H, 5B, 605, 607A, 607B, 607D, 607E, and 608, Texas Probate Code, to statutory probate court judges by general law. Deletes Sections 606 and 607 from those sections authorizing a judge certain jurisdiction, powers, and duties.

SECTION 41. Amends Section 25.1132(c), Government Code, to provide that a county court at law in Hood County has concurrent jurisdiction with the district court in certain cases and contested matters, including contested matters in guardianship proceedings under Section 607B(a), Texas Probate Code, rather than contested guardianship matters under Section 606(b), Texas Probate Code.

SECTION 42. Repeals Sections 606 (Jurisdiction With Respect to Guardianship Proceedings), 607 (Matters Appertaining and Incident to an Estate), 665(b) (relating to entitling the guardian or temporary guardian of an estate to reasonable compensation on an application to the court), (f) (relating to prohibiting an aggregate fee from exceeding an amount equal to five percent of the gross income of the ward's estate plus five percent of all money paid out of the estate) and (h) (defining "gross income" and "money paid out," Probate Code, notwithstanding the transfer of Sections 606, 607, and 665(b), (f), and (h), Texas Probate Code, to the Estates Code and redesignation as Sections 606, 607, and 665(b), (f), and (h) of that code effective January 1, 2014, by Section 5, Chapter 680 (H.B. 2502), Acts of the 81st Legislature, Regular Session, 2009.

SECTION 43. (a) Provides that except as otherwise provided by this section, the changes in law made by this Act apply to a guardianship created before, on, or after the effective date of this Act; and an application for a guardianship pending on, or filed on or after, the effective date of this Act.

(b) Makes application of Sections 605, 608, and 609, Texas Probate Code, as amended by this Act, and Sections 606A, 607A, 607B, 607C, 607D, and 607E, Texas Probate Code, as added by this Act, prospective.

(c) Makes application of Section 665, Texas Probate Code, as amended by this Act, applies to the payment, reduction, or elimination of compensation for services performed prospective.

(d) Makes application of Sections 867, 868, 868C, 869, 870, 871, and 873, Texas Probate Code, as amended by this Act, and Section 870A, Texas Probate Code, as added by this Act, only to an application for the creation, modification, or termination of a management trust under Subpart N, Part 4, Chapter XIII, Texas Probate Code, prospective.

(e) Make application of Sections 910 and 911, Texas Probate Code, as amended by this Act, apply only to an application for the creation of a pooled trust subaccount under Subpart I, Part 5, Chapter XIII, Texas Probate Code, prospective.

SECTION 44. Effective date: September 1, 2011.