

## **BILL ANALYSIS**

Senate Research Center  
83R24875 CLG-F

H.B. 2080  
By: Thompson, Senfronia et al. (Rodriguez)  
Jurisprudence  
5/15/2013  
Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

H.B. 2080 amends current law relating to guardianships, including the assessment and payment of attorney's fees and other court costs in guardianships, and to court-created management trusts for persons who have physical disabilities or who are incapacitated, and changes the amount of a fee and requires the collection of a fee.

### **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 1002.002, Estates Code, as effective January 1, 2014, to redefine "attorney ad litem."

SECTION 2. (a) Transfers Section 604, Texas Probate Code, notwithstanding the transfer of Section 604, Texas Probate Code, to the Estates Code and redesignation as Section 604 of that code effective January 1, 2014, by Section 3.01(a), Chapter 823 (H.B. 2759), Acts of the 82nd Legislature, Regular Session, 2011, to Chapter 1022, Estates Code, as added by H.B. 3862 or S.B. 1093, 83rd Legislature, Regular Session, 2013, redesignates it as Section 1022.002(d), Estates Code, and makes no further change.

(b) Provides that this section takes effect only if H.B. 3862 or S.B. 1093, 83rd Legislature, Regular Session, 2013, is enacted and becomes law and adds Section 1022.002, Estates Code. Provides that, if that legislation does not become law, or becomes law but does not add that section, this section has no effect.

SECTION 3. Amends Section 1051.253(c), Estates Code, as effective January 1, 2014, as follows:

(c) Provides that at the expiration of the 10-day period prescribed by Subsection (a):

(1) the depositions for which the notice was posted are authorized to be taken, rather than commission is authorized to issue for taking the depositions for which the notice was posted; and

(2) the judge is authorized to file cross-interrogatories if no person appears.

SECTION 4. Amends Section 1052.051, Estates Code, as effective January 1, 2014, by adding Subsections (d), (e), and (f), as follows:

(d) Requires the court clerk, except as provided by Subsection (e), to collect a filing fee, including a deposit for payment to an attorney ad litem, required by law to be paid on the filing of any document described by Subsection (a) from the person or entity filing the document.

(e) Provides that, notwithstanding any other law requiring the payment of a filing fee for the document, the following are not required to pay a fee on the filing of a document described by Subsection (a) (relating to requiring that an application for a guardianship proceeding, complaint, petition, or other paper permitted or required by law to be filed with a court in a guardianship matter be filed with the county clerk of the appropriate county):

- (1) a guardian;
- (2) an attorney ad litem;
- (3) a guardian ad litem;
- (4) a person or entity who files an affidavit of inability to pay under Rule 145, Texas Rules of Civil Procedure;
- (5) a guardianship program;
- (6) a governmental entity; and
- (7) a government agency or nonprofit agency providing guardianship services.

(f) Entitles a person or entity, after the creation of a guardianship, to be reimbursed for a filing fee described by Subsection (d), other than a deposit for payment to an attorney ad litem, from the guardianship estate; or the county treasury, if the guardianship estate is insufficient to pay the amount of the filing fee.

SECTION 5. Amends Subchapter C, Chapter 1053, Estates Code, as effective January 1, 2014, by adding Sections 1053.104 and 1053.105, as follows:

Sec. 1053.104. CONFIDENTIALITY OF CERTAIN INFORMATION. (a) Authorizes the court, on request by a person protected by a protective order issued under Chapter 85 (Issuance of Protective Order), Family Code, or a guardian, attorney ad litem, or member of the family or household of a person protected by an order, to exclude from any document filed in a guardianship proceeding:

- (1) the address and phone number of the person protected by the protective order;
- (2) the place of employment or business of the person protected by the protective order;
- (3) the school attended by the person protected by the protective order or the day-care center or other child-care facility the person attends or in which the person resides; and
- (4) the place at which service of process on the person protected by the protective order was effectuated.

(b) Requires the court, on granting a request for confidentiality under this section, to order the clerk to strike the information described by Subsection (a) from the public records of the court and maintain a confidential record of the information for use only by the court.

Sec. 1053.105. INAPPLICABILITY OF CERTAIN RULES OF CIVIL PROCEDURE. Provides that the following do not apply to guardianship proceedings:

- (1) Rules 47(c) and 169, Texas Rules of Civil Procedure; and

(2) the portions of Rule 190.2, Texas Rules of Civil Procedure, concerning expedited actions under Rule 169, Texas Rules of Civil Procedure.

SECTION 6. Amends Subchapter A, Chapter 1054, Estates Code, as effective January 1, 2014, by adding Section 1054.007, as follows:

Sec. 1054.007. ATTORNEYS AD LITEM. (a) Authorizes a court, except in a situation in which this title (Guardianship and Related Procedures) requires the appointment to represent the interests of the person, to appoint an attorney ad litem in any guardianship proceeding to represent the interests of:

- (1) an incapacitated person or another person who has a legal disability;
- (2) a proposed ward;
- (3) a nonresident;
- (4) an unborn or unascertained person; or
- (5) an unknown or missing potential heir.

(b) Entitles an attorney ad litem appointed under this section to reasonable compensation for services provided in the amount set by the court, to be taxed as costs in the proceeding.

SECTION 7. Amends Chapter 1055, Estates Code, as effective January 1, 2014, by adding Subchapter D, as follows:

#### SUBCHAPTER D. MEDIATION

Sec. 1055.151. MEDIATION OF CONTESTED GUARDIANSHIP PROCEEDING. (a) Authorizes the court, on the written agreement of the parties or on the court's own motion, to refer a contested guardianship proceeding to mediation.

(b) Provides that a mediated settlement agreement is binding on the parties if the agreement:

- (1) provides, in a prominently displayed statement that is in boldfaced type, in capital letters, or underlined, that the agreement is not subject to revocation by the parties;
- (2) is signed by each party to the agreement; and
- (3) is signed by the party's attorney, if any, who is present at the time the agreement is signed.

(c) Entitles a party, if a mediated settlement agreement meets the requirements of this section, to judgment on the mediated settlement agreement notwithstanding Rule 11, Texas Rules of Civil Procedure, or another rule or law.

(d) Authorizes a court, notwithstanding Subsections (b) and (c), to decline to enter a judgment on a mediated settlement agreement if the court finds that the agreement is not in the ward's or proposed ward's best interests.

SECTION 8. Amends Subchapter A, Chapter 1101, Estates Code, as effective January 1, 2014, by adding Section 1101.002, as follows:

Sec. 1101.002. CONTENTS OF APPLICATION; CONFIDENTIALITY OF CERTAIN ADDRESSES. Authorizes an application filed under Section 1101.001 (Application for

Appointment of Guardian; Contents) to omit the address of a person named in the application if:

- (1) the application states that the person is protected by a protective order issued under Chapter 85, Family Code;
- (2) a copy of the protective order is attached to the application as an exhibit;
- (3) the application states the county in which the person resides;
- (4) the application indicates the place where notice to or the issuance and service of citation on the person may be made or sent; and
- (5) the application is accompanied by a request for an order under Section 1051.201 (Court-Ordered Issuance, Service, and Return Under Certain Circumstances) specifying the manner of issuance, service, and return of citation or notice on the person.

SECTION 9. Amends Section 1101.151, Estates Code, as effective January 1, 2014, by amending Subsection (b) and adding Subsection (c), as follows:

(b) Requires that an order appointing a guardian under this section (Order Appointing Guardian With Full Authority) contain findings of fact and specify certain information, including, if it is a guardianship of the person of the ward or of both the person and the estate of the ward, the rights of the guardian with respect to the person as specified in Section 1151.051(c)(1) (relating to providing that a guardian of the person has the right to have physical possession of the ward and to establish the ward's legal domicile). Makes nonsubstantive changes.

(c) Sets forth the language required to be contained in an order appointing a guardian under this section that includes the rights of the guardian with respect to the person as specified in Section 1151.051(c)(1).

SECTION 10. Amends Section 1101.152, Estates Code, as effective January 1, 2014, by adding Subsection (c), to set forth the language required to be contained in an order appointing a guardian under this section (Order Appointing Guardian with Limited Authority) that includes the right of the guardian to have physical possession of the ward or to establish the ward's legal domicile as specified in Section 1151.051(c)(1).

SECTION 11. Amends Section 1102.005(b), Estates Code, as effective January 1, 2014, to authorize the court, after examining the proposed ward's assets and determining that the proposed ward is unable to pay for services provided by the guardian ad litem, rather than after examining the ward's or proposed ward's assets and determining that the ward or proposed ward is unable to pay for services provided by the guardian ad litem, to authorize compensation from the county treasury.

SECTION 12. Amends Section 1104.303(b), Estates Code, as effective January 1, 2014, to require that an application for a certificate of registration be made to the clerk of the county having venue of the proceeding for the appointment of a guardian; and accompanied by a nonrefundable fee of \$40, rather than a nonrefundable fee set by the clerk in an amount necessary, to cover the cost of administering this subchapter (Private Professional Guardians).

SECTION 13. Amends Section 1104.353(b), Estates Code, as effective January 1, 2014, to provide that it is presumed to be not in the best interests of a ward or incapacitated person to appoint as guardian of the ward or incapacitated person a person who has been finally convicted of certain offenses, including terroristic threat or continuous violence against the family of the ward or incapacitated person, and to make nonsubstantive changes.

SECTION 14. Amends Subchapter H, Chapter 1104, Estates Code, as effective January 1, 2014, by adding Section 1104.358, as follows:

Sec. 1104.358. SUBJECT TO PROTECTIVE ORDER FOR FAMILY VIOLENCE. Prohibits a person found to have committed family violence who is subject to a protective order issued under Chapter 85, Family Code, from being appointed guardian of a proposed ward or ward who is protected by the protective order.

SECTION 15. Amends Section 1151.051(c), Estates Code, as effective January 1, 2014, to provide that a guardian of the person has certain rights, duties, and powers, including the power to sign documents necessary or appropriate to facilitate employment of the ward if the guardian was appointed with full authority over the person of the ward under Section 1101.151 or the power is specified in the court order appointing the guardian with limited powers over the person of the ward under Section 1101.152, and to make nonsubstantive changes.

SECTION 16. Amends Sections 1155.052(a) and (c), Estates Code, as effective January 1, 2014, as follows:

(a) Provides that, notwithstanding any other provision of this chapter (Compensation, Expenses, and Court Costs), rather than any other provision of this chapter or Section 665B (Compensation of Attorney Representing Applicant), an attorney who serves as guardian and who also provides legal services in connection with the guardianship is not entitled to compensation for the guardianship services or payment of attorney's fees for the legal services from the ward's estate or other funds available for that purpose unless the attorney files with the court a detailed description of the services performed that identifies which of the services provided were guardianship services and which were legal services.

(c) Requires the court to set attorney's fees for an attorney described by Subsection (a) for legal services provided in accordance with Sections 1155.054, 1155.101 (Reimbursement of Expenses in General), and 1155.151 (Cost of Proceeding in Guardianship Matter), rather than in accordance with Sections 1155.051 (Compensation for Professional Services in General), 1155.101, and 665B.

SECTION 17. Transfers Section 665B, Texas Probate Code, notwithstanding the transfer of Section 665B, Texas Probate Code, as amended by Chapters 314 (H.B. 587) and 930 (H.B. 3080), Acts of the 81st Legislature, Regular Session, 2009, to the Estates Code and redesignation as Section 665B of that code effective January 1, 2014, by Section 3.01(e), Chapter 823 (H.B. 2759), Acts of the 82nd Legislature, Regular Session, 2011, to Subchapter B, Chapter 1155, Estates Code, redesignates it as Section 1155.054, Estates Code, and reenacts it and amends it as follows:

Sec. 1155.054. PAYMENT OF ATTORNEY'S FEES TO CERTAIN ATTORNEYS. Redesignates existing Section 665B as Section 1155.054. (a) Authorizes a court that creates a guardianship or creates a management trust under Chapter 1301 (Management Trusts) for a ward, on request of a person who filed an application to be appointed guardian of the proposed ward, an application for the appointment of another suitable person as guardian of the proposed ward, or an application for the creation of the management trust, to authorize the payment of reasonable and necessary attorney's fees, as determined by the court, in amounts the court considers equitable and just, to an attorney who represents the person who filed the application at the application hearing, regardless of whether the person is appointed the ward's guardian or whether a management trust is created, from available funds of the ward's estate or management trust, if created, subject to Subsections (b) and (d).

Deletes existing text of Subsection (a) authorizing a court that creates a guardianship or creates a management trust under Section 867 (Creation of Management Trust) of this code for a ward under this chapter, on request of a person who filed an application to be appointed guardian of the proposed ward, an application for the appointment of another suitable person as guardian of the proposed ward, or an application for the creation of the management trust, to authorize the payment of reasonable and necessary attorney's fees, as determined by the court, to an attorney who represents the person who filed the

application at the application hearing, regardless of whether the person is appointed the ward's guardian or whether a management trust is created, from available funds of the ward's estate or management trust, if created; or subject to Subsection (c) of this section, the county treasury if the ward's estate or, if created, management trust, is insufficient to pay for the services provided by the attorney, and funds in the county treasury are budgeted for that purpose. Makes nonsubstantive changes.

(b) Authorizes the court to authorize amounts that otherwise would be paid from the ward's estate or the management trust as provided by Subsection (a) to instead be paid from the county treasury, subject to Subsection (e), if:

(1) the ward's estate or management trust is insufficient to pay the amounts; and

(2) funds in the county treasury are budgeted for that purpose.

(c) Redesignates existing Subsection (b) as Subsection (c). Makes no further change to this subsection.

(d) Authorizes the court, if the court finds that a party in a guardianship proceeding acted in bad faith or without just cause in prosecuting or objecting to an application in the proceeding, to require the party to reimburse the ward's estate for all or part of the attorney's fees awarded under this section, and requires the court to issue judgment against the party and in favor of the estate for the amount of attorney's fees required to be reimbursed to the estate.

(e) Redesignates existing Subsection (c) as Subsection (e). Authorizes the court to authorize the payment of attorney's fees from the county treasury under Subsection (b), rather than under Subsection (a) of this section, only if the court is satisfied that the attorney to whom the fees will be paid has not received, and is not seeking, payment for the services described by that subsection from any other source.

SECTION 18. Amends Section 1155.151, Estates Code, as effective January 1, 2014, as follows:

Sec. 1155.151. New heading: COSTS IN GUARDIANSHIP PROCEEDING GENERALLY. (a) Requires that the court costs of the proceeding, in a guardianship proceeding, including the cost of the guardians ad litem, attorneys ad litem, court visitor, mental health professionals, and interpreters appointed under this title (Guardianship and Related Procedures), be set in an amount the court considers equitable and just and, except as provided by Subsection (c), be paid out of the guardianship estate, or the county treasury if the estate is insufficient to pay the cost, and requires the court to issue the judgment accordingly. Deletes existing text requiring that the cost of the proceeding in a guardianship matter, except as provided by Subsection (b), including the cost of the guardian ad litem or court visitor, be paid out of the guardianship estate, or requires that the cost of the proceeding be paid out of the county treasury if the estate is insufficient to pay the cost, and requires the court to issue the judgment accordingly.

(b) Requires that the costs attributable to the services of a person described by Subsection (a) be paid under this section at any time after the commencement of the proceeding as ordered by the court.

(c) Authorizes the court, if the court finds that a party in a guardianship proceeding acted in bad faith or without just cause in prosecuting or objecting to an application in the proceeding, to order the party to pay all or part of the costs of the proceeding. Requires the court, if the party found to be acting in bad faith or without just cause was required to provide security for the probable costs of the proceeding under Section 1053.052 (Security for Certain Costs), to first apply the amount provided as security as payment for costs ordered by the court under this

subsection. Requires the court, if the amount provided as security is insufficient to pay the entire amount ordered by the court, to render judgment in favor of the estate against the party for the remaining amount. Deletes existing text requiring an applicant for the appointment of a guardian under this title to pay the cost of the proceeding if the court denies the application based on the recommendation of a court investigator.

SECTION 19. Amends the heading to Section 1163.005, Estates Code, as effective January 1, 2014, to read as follows:

**Sec. 1163.005. VERIFICATION OF ACCOUNT AND STATEMENT REGARDING TAXES AND STATUS AS GUARDIAN.**

SECTION 20. Amends Section 1163.005(a), Estates Code, as effective January 1, 2014, to require the guardian of the estate to attach to an account the guardian's affidavit stating certain information, including, if the guardian is a private professional guardian, a guardianship program, or the Department of Aging and Disability Services, whether the guardian or an individual certified under Subchapter C (Regulation of Certain Guardians), Chapter 111, Government Code, who is providing guardianship services to the ward and who is swearing to the account on the guardian's behalf, is or has been the subject of an investigation conducted by the Guardianship Certification Board during the accounting period, and to make nonsubstantive changes.

SECTION 21. Amends Section 1163.101(c), Estates Code, as effective January 1, 2014, to require the guardian of the person to file a sworn affidavit that contains certain information, including, if the guardian is a private professional guardian, a guardianship program, or the Department of Aging and Disability Services, whether the guardian or an individual certified under Subchapter C, Chapter 111, Government Code, who is providing guardianship services to the ward and who is swearing to the affidavit on the guardian's behalf, is or has been the subject of an investigation conducted by the Guardianship Certification Board during the preceding year, and to make nonsubstantive changes.

SECTION 22. Amends Subchapter C, Chapter 1163, Estates Code, as effective January 1, 2014, by adding Section 1163.1011, as follows:

**Sec. 1163.1011. USE OF UNSWORN DECLARATION FOR ELECTRONIC FILING OF ANNUAL REPORT.** (a) Authorizes a guardian of the person who files the annual report required by Section 1163.101 (Annual Report Required) electronically with the court to use an unsworn declaration made as provided by this section instead of a written sworn declaration or affidavit required by Section 1163.101.

(b) Requires that an unsworn declaration authorized by this section be in writing and subscribed by the person making the declaration as true under penalty of perjury.

(c) Sets forth the language required to be included in the form of an unsworn declaration authorized by this section.

(d) Prohibits an unsworn declaration authorized by Section 132.001 (Unsworn Declaration), Civil Practice and Remedies Code, from being used instead of a written sworn declaration or affidavit required by Section 1163.101.

SECTION 23. Amends Section 1251.013, Estates Code, as effective January 1, 2014, as follows:

**Sec. 1251.013. COURT COSTS.** Authorizes all court costs, including attorney's fees, if the court appoints a temporary guardian after the hearing required by Section 1251.006(b) (relating to requiring that a hearing, unless postponed as provided by Subsection (c) (relating to authorizing the proposed ward or the proposed ward's attorney to consent to postpone the hearing on the application for temporary guardianship for a

period not to exceed 30 days after the date the application is filed), be held not later than the 10th day after the date the application for temporary guardianship is filed), to be assessed as provided by Sections 1155.054 and 1155.151, rather than by Sections 1155.051, 1155.151, and 665B.

SECTION 24. Amends the heading to Section 1301.052, Estates Code, as effective January 1, 2014, to read as follows:

Sec. 1301.052. VENUE FOR PROCEEDING INVOLVING TRUST FOR AN ALLEGED INCAPACITATED PERSON.

SECTION 25. Amends Section 1301.054, Estates Code, as effective January 1, 2014, by amending Subsection (c) and adding Subsection (c-1), as follows:

(c) Requires the court, except as provided by Subsection (c-1), to appoint an attorney ad litem and, if necessary, to appoint a guardian ad litem, to represent the interests of the alleged incapacitated person in the hearing to determine incapacity under Subsection (a) (relating to authorizing a proper court exercising probate jurisdiction, on application by an appropriate person as provided by Section 1301.051 (Eligibility to Apply for Creation of Trust) and regardless of whether an application for guardianship has been filed on the alleged incapacitated person's behalf, to enter an order that creates a trust for the management of the estate of an alleged incapacitated person who does not have a guardian if the court, after a hearing, finds that the person is an incapacitated person and the creation of the trust is in the incapacitated person's best interests).

(c-1) Authorizes the court, if the application for the creation of the trust is filed by a person who has only a physical disability, to, but is not required to, appoint an attorney ad litem or guardian ad litem to represent the interests of the person in the hearing to determine incapacity under Subsection (a).

SECTION 26. Amends Section 1301.055, Estates Code, as effective January 1, 2014, as follows:

Sec. 1301.055. AUTHORITY OF COURT TO APPOINT GUARDIAN INSTEAD OF CREATING TRUST. Authorizes the court, if, after a hearing under Section 1301.054 (Creation of Trust for Incapacitated Person Without Guardian), the court finds that the person for whom the application was filed is an incapacitated person but that it is not in the incapacitated person's best interests for the court to create a trust under this subchapter for the incapacitated person's estate, to appoint a guardian of the person or estate, or both, for the incapacitated person without commencing a separate proceeding for that purpose.

SECTION 27. Amends Sections 1301.057(b), (c), and (d), Estates Code, as effective January 1, 2014, as follows:

(b) Requires the court, except as provided by Subsection (c), to appoint a financial institution to serve as trustee of a management trust, other than a management trust created for a person who has only a physical disability.

(c) Authorizes the court to appoint a person or entity described by Subsection (d) to serve as trustee of a management trust created for a ward or incapacitated person instead of appointing a financial institution to serve in that capacity if the court finds that the appointment is in the best interests of the ward or incapacitated person for whom the trust is created, and if the value of the trust's principal is more than \$150,000, that the applicant for the creation of the trust, after the exercise of due diligence, has been unable to find a financial institution in the geographic area willing to serve as trustee.

(d) Provides that the following are eligible for appointment as trustee of a management trust created for a ward or incapacitated person under Subsection (c): an individual,



including an individual who is certified as a private professional guardian; a nonprofit corporation qualified to serve as a guardian; and a guardianship program.

SECTION 28. Amends Section 1301.058, Estates Code, as effective January 1, 2014, as follows:

Sec. 1301.058. BOND REQUIREMENTS FOR TRUSTEES. (a) Provides that the following serve without giving a bond in accordance with the trust terms required by Sections 1301.101(a)(4) (relating to requiring that a management trust, except as provided by Subsection (c), provide that a trustee that is a corporate fiduciary serves without giving a bond) and (a-1):

- (1) a trustee of a management trust that is a corporate fiduciary; and
- (2) any other trustee of a management trust created for a person who has only a physical disability.

Deletes existing text providing that a trustee of a management trust that is a corporate fiduciary serves without giving a bond in accordance with the trust terms required by Section 1301.101(a)(4).

(b) Requires the court, except as provided by Subsection (a), to require a person, rather than to require a person other than a corporate fiduciary, serving as trustee of a management trust to file with the county clerk a bond that is in an amount equal to the value of the trust's principal and projected annual income, and meets the conditions the court determines are necessary.

SECTION 29. Amends Section 1301.101, Estates Code, as effective January 1, 2014, to conform to Section 31, Chapter 1085 (S.B. 1196), Acts of the 82nd Legislature, Regular Session, 2011, and further amends it as follows:

Sec. 1301.101. REQUIRED TERMS. (a) Requires that a management trust created for a ward or incapacitated person, except as provided by Subsection (c), provide that:

- (1) the ward or incapacitated person is the sole beneficiary of the trust, rather than the ward or incapacitated person for whom the trust is created 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 spend for the health, education, maintenance, or support of the person for whom the trust is created, rather than to spend for the health, education, maintenance, or support of the ward or incapacitated person;
- (3)-(4) Makes no change to these subdivisions; and
- (5) subject to the court's approval and Subsection (b), a trustee is entitled to receive reasonable compensation for services the trustee provides to the person for whom the trust is created as the person's trustee, rather than subject to the court's approval and Subsection (b), the trustee is entitled to receive reasonable compensation for services the trustee provides to the ward or incapacitated person as trustee.

(a-1) Requires that a management trust created for a person who has only a physical disability provide that the trustee of the trust:

- (1) serves without giving a bond; and

(2) is entitled to receive, without the court's approval, reasonable compensation for services the trustee provides to the person as the person's trustee.

(b) Requires that a trustee's compensation under Subsection (a)(5) be:

(1) Makes no change to this subdivision; and

(2) determined, paid, reduced, and eliminated in the same manner as compensation of a guardian, rather than a guardian of an estate, under Subchapter A (Compensation of Guardians in General), Chapter 1155.

(c) Authorizes the court creating or modifying a management trust to omit or modify otherwise applicable terms required by Subsection (a), (a-1), or (b) if the court is creating the trust for a person who has only a physical disability, or if the court determines that the omission or modification, rather than to omit or modify terms required by Subsection (a)(1) or (2) only if the court determines that the omission or modification:

(1) is necessary and appropriate for the person for whom the trust is created to be eligible to receive public benefits or assistance under a state or federal program that is not otherwise available to the person, rather than is necessary and appropriate for the ward or incapacitated person to be eligible to receive public benefits or assistance under a state or federal program that is not otherwise available to the ward or incapacitated person; or, rather than and,

(2) is in the best interests of the person for whom the trust is created, rather than is in the ward's or incapacitated person's best interests.

SECTION 30. Amends Section 1301.102(a), Estates Code, as effective January 1, 2014, to conform to Section 31, Chapter 1085 (S.B. 1196), Acts of the 82nd Legislature, Regular Session, 2011, and further amends it as follows:

(a) Authorizes a management trust created for a ward or incapacitated person to provide that the trustee make a distribution, payment, use, or application of trust funds for the health, education, maintenance, or support of the person for whom the trust is created or of another person whom the person for whom the trust is created is legally obligated to support, rather than authorizing a management trust to provide that the trustee make a distribution, payment, use, or application of trust funds for the health, education, maintenance, or support of the ward or incapacitated person for whom the trust is created or of another person whom the ward or incapacitated person is legally obligated to support:

(1) Makes no change to this subdivision; and

(2) Makes conforming and nonsubstantive changes.

SECTION 31. Amends Section 1301.103, Estates Code, as effective January 1, 2014, to provide that a provision in a management trust created for a ward or incapacitated person that relieves a trustee from a duty or liability imposed by this chapter or Subtitle B (Texas Trust Code: Creation, Operation, and Termination of Trusts), Title 9 (Trusts), Property Code, is enforceable only under certain circumstances.

SECTION 32. Amends Section 1301.154(a), Estates Code, as effective January 1, 2014, to require the trustee of a management trust created for a ward 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 of the estate under this title (Guardianship and Related Procedures).

SECTION 33. Amends Section 1301.202, Estates Code, as effective January 1, 2014, by adding Subsection (a-1) to authorize but not require the court to, for purposes of a proceeding to determine whether to transfer property from a management trust to a pooled trust subaccount, appoint an attorney ad litem or guardian ad litem to represent the interests of a person who has only a physical disability for whom the management trust was created.

SECTION 34. (a) Repealer, effective January 1, 2014: Section 1155.051 (General Powers and Duties of Guardians of the Person), Estates Code.

(b) Repealer, notwithstanding the transfer of Section 631, Texas Probate Code, to the Estates Code and redesignation as Section 631 of that code effective January 1, 2014, by Section 3.01(d), Chapter 823 (H.B. 2759), Acts of the 82nd Legislature, Regular Session, 2011: Section 631 (Clerk's Duties), Texas Probate Code.

SECTION 35. (a) Provides that, except as otherwise provided by this section, the changes in law made by this Act apply to:

- (1) a guardianship created before, on, or after the effective date of this Act; and
- (2) an application for a guardianship pending on, or filed on or after, the effective date of this Act.

(b) Provides that the changes in law made by this Act to Sections 1301.054, 1301.055, 1301.057(b), (c), and (d), 1301.058, 1301.101, and 1301.102(a), Estates Code, apply only to an application for the creation, modification, or termination of a management trust that is filed on or after the effective date of this Act. Provides that an application described by this subsection that is filed before the effective date of this Act is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose.

(c) Provides that the changes in law made by this Act to Sections 1301.103 and 1301.154(a), Estates Code, and by Section 1301.202(a-1), Estates Code, as added by this Act, apply to a management trust created before, on, or after the effective date of this Act.

SECTION 36. Provides that Section 51.607 (Implementation of New or Amended Court Costs and Fees), Government Code, does not apply to the change in the amount of a fee made by Section 1104.303(b), Estates Code, as amended by this Act.

SECTION 37. Provides that, to the extent of any conflict, this Act prevails over another Act of the 83rd Legislature, Regular Session, 2013, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 38. Effective date: January 1, 2014.