

By: Schwertner

S.B. No. 1224

A BILL TO BE ENTITLED

AN ACT

relating to guardianships for incapacitated persons.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 1001.001(b), Estates Code, is amended to read as follows:

(b) In creating a guardianship that gives a guardian limited authority over an incapacitated person, the court shall design the guardianship to encourage the development or maintenance of maximum self-reliance and independence in the incapacitated person, including allowing the incapacitated person to make personal decisions regarding the person's residence.

SECTION 2. Chapter 1002, Estates Code, is amended by adding Sections 1002.0015 and 1002.031 to read as follows:

Sec. 1002.0015. ALTERNATIVES TO GUARDIANSHIP.  
"Alternatives to guardianship" includes the:

(1) execution of a medical power of attorney under Chapter 166, Health and Safety Code;

(2) appointment of an attorney in fact or agent under a durable power of attorney as provided by Subtitle P, Title 2;

(3) execution of a declaration for mental health treatment under Chapter 137, Civil Practices and Remedies Code;

(4) appointment of a representative payee to manage public benefits;

(5) establishment of a joint bank account;

1           (6) creation of a management trust under Chapter 1301;  
2           (7) creation of a special needs trust;  
3           (8) designation of a guardian before the need arises  
4 under Subchapter E, Chapter 1104; and  
5           (9) establishment of alternate forms of  
6 decision-making based on person-centered planning.

7       Sec. 1002.031. SUPPORTS AND SERVICES. "Supports and  
8 services" means available formal and informal resources and  
9 assistance that enable an individual to:

10           (1) meet the individual's needs for food, clothing, or  
11 shelter;  
12           (2) care for the individual's physical or mental  
13 health;  
14           (3) manage the individual's financial affairs; or  
15           (4) make personal decisions regarding residence,  
16 voting, operating a motor vehicle, and marriage.

17       SECTION 3. Section [1002.015](#), Estates Code, is amended to  
18 read as follows:

19       Sec. 1002.015. GUARDIANSHIP PROCEEDING. The term  
20 "guardianship proceeding" means a matter or proceeding related to a  
21 guardianship or any other matter covered by this title, including:

22           (1) the appointment of a guardian of a minor or other  
23 incapacitated person, including an incapacitated adult for whom  
24 another court obtained continuing, exclusive jurisdiction in a suit  
25 affecting the parent-child relationship when the person was a  
26 child;

27           (2) an application, petition, or motion regarding

guardianship or a substitute for [~~an alternative to~~] guardianship under this title;

(3) a mental health action; and

(4) an application, petition, or motion regarding a trust created under Chapter 1301.

SECTION 4. Section 1054.004, Estates Code, is amended by amending Subsection (a) and adding Subsections (c) and (d) to read as follows:

(a) An attorney ad litem appointed under Section 1054.001 shall interview the proposed ward within a reasonable time before the hearing in the proceeding for the appointment of a guardian. To the greatest extent possible, the attorney shall discuss with the proposed ward:

(1) the law and facts of the case;

(2) the proposed ward's legal options regarding disposition of the case; [~~and~~]

(3) the grounds on which guardianship is sought; and

(4) whether alternatives to guardianship would meet the needs of the proposed ward and avoid the need for the appointment of a guardian.

(c) Before the hearing, the attorney ad litem shall investigate whether:

(1) a guardianship is necessary for the proposed ward; and

(2) if the attorney ad litem determines that a guardianship is necessary, specific powers or duties of the guardian should be limited if the proposed ward receives supports

1 and services.

2 (d) If the attorney ad litem determines that a guardianship  
3 is necessary, the attorney must certify to the court that the  
4 guardianship is necessary and reasonable efforts have been made to  
5 explore alternatives to guardianship and supports and services  
6 available to the proposed ward that would avoid the need for the  
7 appointment of a guardian.

8 SECTION 5. Section 1054.054, Estates Code, is amended by  
9 adding Subsections (c) and (d) to read as follows:

10 (c) The guardian ad litem shall:

11 (1) investigate whether a guardianship is necessary  
12 for the proposed ward; and

13 (2) evaluate alternatives to guardianship and  
14 supports and services available to the proposed ward that would  
15 avoid the need for appointment of a guardian.

16 (d) The information gathered by the guardian ad litem under  
17 Subsection (c) is subject to examination by the court.

18 SECTION 6. Sections 1054.201(a) and (b), Estates Code, are  
19 amended to read as follows:

20 (a) An attorney for an applicant for guardianship and a [A]  
21 court-appointed attorney in a guardianship proceeding, including  
22 an attorney ad litem, must be certified by the State Bar of Texas,  
23 or a person or other entity designated by the state bar, as having  
24 successfully completed a course of study in guardianship law and  
25 procedure sponsored by the state bar or the state bar's designee.

26 (b) The State Bar of Texas shall require four ~~[three]~~ hours  
27 of credit for certification under this subchapter, including one

hour on alternatives to guardianship and supports and services available to proposed wards.

SECTION 7. Section 1101.001(b), Estates Code, is amended to read as follows:

(b) The application must be sworn to by the applicant and state:

(1) the proposed ward's name, sex, date of birth, and address;

(2) the name, relationship, and address of the person the applicant seeks to have appointed as guardian;

(3) whether guardianship of the person or estate, or both, is sought;

(3-a) whether alternatives to guardianship and available supports and services to avoid guardianship were considered;

(3-b) whether any alternatives to guardianship and supports and services available to the proposed ward considered are feasible and would avoid the need for a guardianship;

(4) the nature and degree of the alleged incapacity, the specific areas of protection and assistance requested, and the limitation or termination of rights requested to be included in the court's order of appointment, including a termination of:

(A) the right of a proposed ward who is 18 years of age or older to vote in a public election; ~~and~~

(B) the proposed ward's eligibility to hold or obtain a license to operate a motor vehicle under Chapter 521, Transportation Code; and

1                    (C) the right of a proposed ward to make personal  
2 decisions regarding residence;

3                    (5) the facts requiring the appointment of a guardian;

4                    (6) the interest of the applicant in the appointment  
5 of a guardian;

6                    (7) the nature and description of any kind of  
7 guardianship existing for the proposed ward in any other state;

8                    (8) the name and address of any person or institution  
9 having the care and custody of the proposed ward;

10                    (9) the approximate value and description of the  
11 proposed ward's property, including any compensation, pension,  
12 insurance, or allowance to which the proposed ward may be entitled;

13                    (10) the name and address of any person whom the  
14 applicant knows to hold a power of attorney signed by the proposed  
15 ward and a description of the type of power of attorney;

16                    (11) for a proposed ward who is a minor, the following  
17 information if known by the applicant:

18                    (A) the name of each of the proposed ward's  
19 parents and either the parent's address or that the parent is  
20 deceased;

21                    (B) the name and age of each of the proposed  
22 ward's siblings, if any, and either the sibling's address or that  
23 the sibling is deceased; and

24                    (C) if each of the proposed ward's parents and  
25 adult siblings are deceased, the names and addresses of the  
26 proposed ward's other living relatives who are related to the  
27 proposed ward within the third degree by consanguinity and who are

1 adults;

2 (12) for a proposed ward who is a minor, whether the  
3 minor was the subject of a legal or conservatorship proceeding in  
4 the preceding two years and, if so:

5 (A) the court involved;

6 (B) the nature of the proceeding; and

7 (C) any final disposition of the proceeding;

8 (13) for a proposed ward who is an adult, the following  
9 information if known by the applicant:

10 (A) the name of the proposed ward's spouse, if  
11 any, and either the spouse's address or that the spouse is deceased;

12 (B) the name of each of the proposed ward's  
13 parents and either the parent's address or that the parent is  
14 deceased;

15 (C) the name and age of each of the proposed  
16 ward's siblings, if any, and either the sibling's address or that  
17 the sibling is deceased;

18 (D) the name and age of each of the proposed  
19 ward's children, if any, and either the child's address or that the  
20 child is deceased; and

21 (E) if there is no living spouse, parent, adult  
22 sibling, or adult child of the proposed ward, the names and  
23 addresses of the proposed ward's other living relatives who are  
24 related to the proposed ward within the third degree by  
25 consanguinity and who are adults;

26 (14) facts showing that the court has venue of the  
27 proceeding; and

(15) if applicable, that the person whom the applicant seeks to have appointed as a guardian is a private professional guardian who is certified under Subchapter C, Chapter 155, Government Code, and has complied with the requirements of Subchapter G, Chapter 1104.

SECTION 8. Section 1101.101, Estates Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) Before appointing a guardian for a proposed ward, the court must:

(1) find by clear and convincing evidence that:

(A) the proposed ward is an incapacitated person;

(B) it is in the proposed ward's best interest to have the court appoint a person as the proposed ward's guardian; ~~and~~

(C) the proposed ward's rights or property will be protected by the appointment of a guardian;

(D) alternatives to guardianship that would avoid the need for the appointment of a guardian have been considered and determined not to be feasible; and

(E) supports and services available to the proposed ward that would avoid the need for the appointment of a guardian have been considered and determined not to be feasible;  
and

(2) find by a preponderance of the evidence that:

(A) the court has venue of the case;

(B) the person to be appointed guardian is



1 eligible to act as guardian and is entitled to appointment, or, if  
2 no eligible person entitled to appointment applies, the person  
3 appointed is a proper person to act as guardian;

4 (C) if a guardian is appointed for a minor, the  
5 guardianship is not created for the primary purpose of enabling the  
6 minor to establish residency for enrollment in a school or school  
7 district for which the minor is not otherwise eligible for  
8 enrollment; and

9 (D) the proposed ward:

10 (i) is totally without capacity as provided  
11 by this title to care for himself or herself and to manage his or her  
12 property; or

13 (ii) lacks the capacity to do some, but not  
14 all, of the tasks necessary to care for himself or herself or to  
15 manage his or her property.

16 (c) A finding under Subsection (a)(2)(D)(ii) must  
17 specifically state whether the proposed ward lacks the capacity,  
18 with or without supports and services, to make personal decisions  
19 regarding residence, voting, operating a motor vehicle, and  
20 marriage.

21 SECTION 9. Section [1101.103\(b\)](#), Estates Code, is amended to  
22 read as follows:

23 (b) The letter or certificate must:

24 (1) describe the nature, degree, and severity of the  
25 proposed ward's incapacity, including any functional deficits  
26 regarding the proposed ward's ability to:

27 (A) handle business and managerial matters;

(B) manage financial matters;

(C) operate a motor vehicle;

(D) make personal decisions regarding residence, voting, and marriage; and

(E) consent to medical, dental, psychological, or psychiatric treatment;

(2) in providing a description under Subdivision (1) regarding the proposed ward's ability to operate a motor vehicle and make personal decisions regarding voting, state whether in the physician's opinion the proposed ward:

(A) has the mental capacity to vote in a public election; and

(B) has the ability to safely operate a motor vehicle;

(3) provide an evaluation of the proposed ward's physical condition and mental functioning [~~function~~] and summarize the proposed ward's medical history if reasonably available;

(3-a) in providing an evaluation under Subdivision (3), state whether improvement in the proposed ward's physical condition and mental functioning is possible and, if so, state the period after which the proposed ward should be reevaluated to determine whether a guardianship continues to be necessary;

(4) state how or in what manner the proposed ward's ability to make or communicate responsible decisions concerning himself or herself is affected by the proposed ward's physical or mental health, including the proposed ward's ability to:

(A) understand or communicate;

- 1 (B) recognize familiar objects and individuals;
- 2 (C) solve problems [~~perform simple~~
- 3 ~~calculations~~];
- 4 (D) reason logically; and
- 5 (E) administer to daily life activities with and
- 6 without supports and services;
- 7 (5) state whether any current medication affects the
- 8 proposed ward's demeanor or the proposed ward's ability to
- 9 participate fully in a court proceeding;
- 10 (6) describe the precise physical and mental
- 11 conditions underlying a diagnosis of a mental disability, and state
- 12 whether the proposed ward would benefit from supports and services
- 13 that would allow the individual to live in the least restrictive
- 14 setting;
- 15 (6-a) state whether a guardianship is necessary for
- 16 the proposed ward and, if so, whether specific powers or duties of
- 17 the guardian should be limited if the proposed ward receives
- 18 supports and services; and
- 19 (7) include any other information required by the
- 20 court.

21 SECTION 10. Sections 1101.151(a) and (b), Estates Code, are

22 amended to read as follows:

23 (a) If it is found that the proposed ward is totally without

24 capacity to care for himself or herself, manage his or her property,

25 operate a motor vehicle, make personal decisions regarding

26 residence, and vote in a public election, the court may appoint a

27 guardian of the proposed ward's person or estate, or both, with full

1 authority over the incapacitated person except as provided by law.

2 (b) An order appointing a guardian under this section must  
3 contain findings of fact and specify:

4 (1) the information required by Section 1101.153(a);

5 (2) that the guardian has full authority over the  
6 incapacitated person;

7 (3) if necessary, the amount of funds from the corpus  
8 of the person's estate the court will allow the guardian to spend  
9 for the education and maintenance of the person under Subchapter A,  
10 Chapter 1156;

11 (4) whether the person is totally incapacitated  
12 because of a mental condition;

13 (5) that the person does not have the capacity to  
14 operate a motor vehicle, make personal decisions regarding  
15 residence, and ~~to~~ vote in a public election; and

16 (6) if it is a guardianship of the person of the ward  
17 or of both the person and the estate of the ward, the rights of the  
18 guardian with respect to the person as specified in Section  
19 1151.051(c)(1).

20 SECTION 11. Sections 1101.152(a) and (b), Estates Code, are  
21 amended to read as follows:

22 (a) If it is found that the proposed ward lacks the capacity  
23 to do some, but not all, of the tasks necessary to care for himself  
24 or herself or to manage his or her property with or without supports  
25 and services, the court may appoint a guardian with limited powers  
26 and permit the proposed ward to care for himself or herself,  
27 including making personal decisions regarding residence, or to

1 manage his or her property commensurate with the proposed ward's  
2 ability.

3 (b) An order appointing a guardian under this section must  
4 contain findings of fact and specify:

5 (1) the information required by Section 1101.153(a);

6 (2) the specific powers, limitations, or duties of the  
7 guardian with respect to the person's care or the management of the  
8 person's property by the guardian;

9 (2-a) the specific rights and powers retained by the  
10 person:

11 (A) with the necessity for supports and services;

12 and

13 (B) without the necessity for supports and  
14 services;

15 (3) if necessary, the amount of funds from the corpus  
16 of the person's estate the court will allow the guardian to spend  
17 for the education and maintenance of the person under Subchapter A,  
18 Chapter 1156; and

19 (4) whether the person is incapacitated because of a  
20 mental condition and, if so, whether the person:

21 (A) retains the right to make personal decisions  
22 regarding residence or vote in a public election; or

23 (B) maintains eligibility to hold or obtain a  
24 license to operate a motor vehicle under Chapter 521,  
25 Transportation Code.

26 SECTION 12. Section 1101.153, Estates Code, is amended by  
27 adding Subsection (a-1) to read as follows:

1        (a-1) If the letter or certificate under Section  
2 1101.103(b)(3-a) stated that improvement in the ward's physical  
3 condition or mental functioning is possible and specified a period  
4 of less than a year after which the ward should be reevaluated to  
5 determine continued necessity for the guardianship, an order  
6 appointing a guardian must include the date by which the guardian  
7 must submit to the court an updated letter or certificate  
8 containing the requirements of Section 1101.103(b).

9        SECTION 13. Section 1104.002, Estates Code, is amended to  
10 read as follows:

11        Sec. 1104.002. PREFERENCE OF INCAPACITATED PERSON. Before  
12 appointing a guardian, the court shall make a reasonable effort to  
13 consider the incapacitated person's preference of the person to be  
14 appointed guardian and, to the extent consistent with other  
15 provisions of this title, shall give due consideration to the  
16 preference indicated by the incapacitated person, regardless of  
17 whether the person has designated by declaration a guardian before  
18 the need arises under Subchapter E.

19        SECTION 14. Section 1151.051, Estates Code, is amended by  
20 adding Subsection (e) to read as follows:

21        (e) Notwithstanding Subsection (c)(1) and except in cases  
22 of emergency, a guardian of the person of a ward may only place the  
23 ward in a more restrictive care facility if:

- 24                (1) the guardian files an application with the court;  
25                (2) the guardian provides notice to any persons who  
26 have requested notice; and  
27                (3) the placement is authorized by court order.

SECTION 15. Sections 1202.001(b) and (c), Estates Code, are amended to read as follows:

(b) A guardianship shall be settled and closed when the ward:

(1) dies and, if the ward was married, the ward's spouse qualifies as survivor in community;

(2) is found by the court to have full capacity, with or without supports and services, to care for himself or herself and to manage the ward's property;

(3) is no longer a minor; or

(4) no longer must have a guardian appointed to receive funds due the ward from any governmental source.

(c) Except for an order issued under Section 1101.153(a-1), an [An] order appointing a guardian or a successor guardian may specify a period of not more than one year during which a petition for adjudication that the ward no longer requires the guardianship may not be filed without special leave.

SECTION 16. Section 1202.051, Estates Code, is amended to read as follows:

Sec. 1202.051. APPLICATION AUTHORIZED. A ward or any person interested in the ward's welfare may file a written application with the court for an order:

(1) finding that the ward is no longer an incapacitated person and ordering the settlement and closing of the guardianship;

(2) finding that the ward lacks the capacity, with or without supports and services, to do some or all of the tasks

1 necessary to provide food, clothing, or shelter for himself or  
2 herself, to care for the ward's own physical health, or to manage  
3 the ward's own financial affairs and granting additional powers or  
4 duties to the guardian; or

5 (3) finding that the ward has the capacity, with or  
6 without supports and services, to do some, but not all, of the tasks  
7 necessary to provide food, clothing, or shelter for himself or  
8 herself, to care for the ward's own physical health, or to manage  
9 the ward's own financial affairs and:

10 (A) limiting the guardian's powers or duties; and

11 (B) permitting the ward to care for himself or  
12 herself, make personal decisions regarding residence, or ~~[to]~~  
13 manage the ward's own financial affairs commensurate with the  
14 ward's ability, with or without supports and services.

15 SECTION 17. Section 1202.151(a), Estates Code, is amended  
16 to read as follows:

17 (a) Except as provided by Section 1202.201, at a hearing on  
18 an application filed under Section 1202.051, the court shall  
19 consider only evidence regarding the ward's mental or physical  
20 capacity at the time of the hearing that is relevant to the complete  
21 restoration of the ward's capacity or modification of the ward's  
22 guardianship, including whether:

23 (1) the guardianship is necessary; and

24 (2) specific powers or duties of the guardian should  
25 be limited if the ward receives supports and services.

26 SECTION 18. Section 1202.152(b), Estates Code, is amended  
27 to read as follows:



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

(1) describe the nature and degree of incapacity, including the medical history if reasonably available, or state that, in the physician's opinion, the ward has the capacity, with or without supports and services, to:

(A) provide food, clothing, and shelter for himself or herself;

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

(C) manage the ward's financial affairs;

(2) provide a medical prognosis specifying the estimated severity of any incapacity;

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

(4) state whether any current medication affects the ward's demeanor or the ward's ability to participate fully in a court proceeding;

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

(6) include any other information required by the court.

SECTION 19. Section 1202.153(c), Estates Code, is amended to read as follows:

(c) Before limiting the powers granted to or duties required to be performed by the guardian under an application filed under Section 1202.051, the court must find by a preponderance of the

1 evidence that the current nature and degree of the ward's  
2 incapacity, with or without supports and services, warrants a  
3 modification of the guardianship and that some of the ward's rights  
4 need to be restored, with or without supports and services.

5 SECTION 20. Section 1202.154(a), Estates Code, is amended  
6 to read as follows:

7 (a) A court order entered with respect to an application  
8 filed under Section 1202.051 to completely restore a ward's  
9 capacity or modify a ward's guardianship must state:

10 (1) the guardian's name;  
11 (2) the ward's name; ~~and~~  
12 (3) whether the type of guardianship being addressed  
13 at the proceeding is a:

14 (A) guardianship of the person;  
15 (B) guardianship of the estate; or  
16 (C) guardianship of both the person and the  
17 estate; and

18 (4) if applicable, any necessary supports and services  
19 for the restoration of the ward's capacity or modification of the  
20 guardianship.

21 SECTION 21. Section 1202.156, Estates Code, is amended to  
22 read as follows:

23 Sec. 1202.156. ADDITIONAL REQUIREMENTS FOR ORDER MODIFYING  
24 GUARDIANSHIP. If the court finds that a guardian's powers or  
25 duties should be expanded or limited, the order modifying the  
26 guardianship must contain findings of fact and specify, in addition  
27 to the information required by Section 1202.154:

4                   (2) the specific areas of protection and assistance to  
5 be provided to the ward;

7           (4) if the ward's incapacity resulted from a mental  
8 condition, whether the ward retains the right to vote and make  
9 personal decisions regarding residence; and

12           SECTION 22. The heading to Subtitle I, Title 3, Estates  
13 Code, is amended to read as follows:

15 ~~[ALTERNATIVES TO]~~ GUARDIANSHIP

18           (1) a guardianship created before, on, or after the  
19 effective date of this Act; and

(b) Sections 1054.004 and 1054.054, Estates Code, as amended by this Act, apply only to a guardianship proceeding for which a court has appointed a guardian ad litem or attorney ad litem to represent the interests of a proposed ward on or after the effective date of this Act.

1 [1101.152](#), and [1101.153](#), Estates Code, as amended by this Act, apply  
 2 only to a guardianship proceeding filed on or after the effective  
 3 date of this Act. A guardianship proceeding filed before the  
 4 effective date of this Act is governed by the law in effect on the  
 5 date the proceeding was filed, and the former law is continued in  
 6 effect for that purpose.

7 (d) Section [1101.001](#), Estates Code, as amended by this Act,  
 8 applies only to an application for the appointment of a guardian  
 9 filed on or after the effective date of this Act. An application  
 10 for the appointment of a guardian filed before the effective date of  
 11 this Act is governed by the law in effect on the date the  
 12 application was filed, and the former law is continued in effect for  
 13 that purpose.

14 (e) Section [1202.051](#), Estates Code, as amended by this Act,  
 15 applies only to an application for the restoration of a ward's  
 16 capacity or the modification of a ward's guardianship that is filed  
 17 on or after the effective date of this Act. An application for the  
 18 restoration of a ward's capacity or the modification of a ward's  
 19 guardianship that is filed before the effective date of this Act is  
 20 governed by the law in effect on the date the application was filed,  
 21 and the former law is continued in effect for that purpose.

22 (f) Sections [1202.151](#), [1202.152](#), [1202.153](#), [1202.154](#), and  
 23 [1202.156](#), Estates Code, as amended by this Act, apply only to a  
 24 proceeding for the restoration of a ward's capacity or the  
 25 modification of a ward's guardianship that is filed on or after the  
 26 effective date of this Act. An application for the restoration of a  
 27 ward's capacity or the modification of a ward's guardianship that is

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

4       SECTION 24. This Act takes effect September 1, 2015.