

By: Thompson of Harris

H.B. No. 1438

Substitute the following for H.B. No. 1438:

By: Thompson of Harris

C.S.H.B. No. 1438

A BILL TO BE ENTITLED

AN ACT

relating to probate matters, including guardianships and other matters related to incapacitated persons.

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

SECTION 1. Section 1023.005, Estates Code, is amended to read as follows:

Sec. 1023.005. COURT ACTION. ~~[(a)]~~ On hearing an application under Section 1023.003, if good cause is not shown to deny the application and it appears that transfer of the guardianship is in the best interests of the ward, the court shall enter an order:

(1) authorizing the transfer on payment on behalf of the estate of all accrued costs; and

(2) requiring that any existing bond of the guardian must remain in effect until a new bond has been given or a rider has been filed in accordance with Section 1023.010.

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

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

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

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

1 read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 be commenced;

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

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

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

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

11 SECTION 5. Section 1052.051(f), Estates Code, is amended to
12 read as follows:

13 (f) After the creation of a guardianship, a person or entity
14 is entitled to be reimbursed for a filing fee described by
15 Subsection (d), other than a deposit for payment to an attorney ad
16 litem, from:

17 (1) the guardianship estate;

18 (2) the management trust, if a management trust has
19 been created for the benefit of the ward under Chapter 1301 and the
20 court determines it is in the ward's best interest; or

21 (3) ~~(2)~~ the county treasury, if the assets of the
22 guardianship estate or management trust, as appropriate, are ~~is~~
23 insufficient to pay the amount of the filing fee.

24 SECTION 6. Section 1053.052(a), Estates Code, is amended to
25 read as follows:

26 (a) The clerk may require or may obtain from the court an
27 order requiring a person who files an application, complaint, or

1 opposition relating to a guardianship proceeding, other than a
2 guardian, attorney ad litem, or guardian ad litem, to provide
3 security for the probable costs of the proceeding before filing the
4 application, complaint, or opposition.

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

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

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

14 (c) The court has the discretion to grant or deny the motion
15 and, in exercising that discretion, must consider whether the
16 intervention will unduly delay or prejudice the adjudication of the
17 original parties' rights.

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

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

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

1 sister of the proposed ward.

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

4 Sec. 1101.156. REQUIRED DEPOSIT OF ESTATE ASSETS. (a)
5 Before an order appointing a guardian is entered, or in such an
6 order, a court may require the deposit of cash, securities, or other
7 assets of a proposed ward or ward in a financial institution
8 described by Section 1105.155(b) for safekeeping.

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

13 SECTION 10. Section 1102.005, Estates Code, is amended to
14 read as follows:

15 Sec. 1102.005. COMPENSATION OF GUARDIAN AD LITEM. (a)
16 Regardless of whether a guardianship is created for a proposed
17 ward, a [A] court that appoints a guardian ad litem under Section
18 1102.001 may authorize compensation of the guardian ad litem from
19 available funds of:

20 (1) the proposed ward's estate; or
21 (2) the management trust, if a management trust has
22 been created for the benefit of the proposed ward under Chapter
23 1301[, regardless of whether a guardianship is created for the
24 proposed ward].

25 (b) After examining the proposed ward's assets or the assets
26 of any management trust created for the proposed ward's benefit
27 under Chapter 1301, and determining that the proposed ward or the

management trust is unable to pay for services provided by the guardian ad litem, the court may authorize compensation from the county treasury.

SECTION 11. Section 1104.154(a), Estates Code, is amended to read as follows:

(a) As an alternative to the self-proving affidavit authorized by Section 1104.153, a declaration of appointment of a guardian for the declarant's children in the event of the declarant's death or incapacity may be simultaneously executed, attested, and made self-proved by including the following in substantially the same form and with substantially the same contents:

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

Declarant

The undersigned, _____ and _____, each being 14 years of age or older, after being duly sworn, declare to the declarant and to the undersigned authority that the declarant declared to us that this instrument is the declarant's Declaration of Appointment of Guardian for the

1 Declarant's Children in the Event of Declarant's Death or
2 Incapacity and that the declarant executed it for the purposes
3 expressed in the declaration. The declarant then signed this
4 declaration and we believe the declarant to be of sound mind. We now
5 sign our names as attesting witnesses on this _____ day of
6 _____, 20____.

7 _____
8 Witness

9 _____
10 Witness

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

13 _____
14 Notary Public in and for the
15 State of Texas
16 My Commission expires:
17 _____

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

20 (a) As an alternative to the self-proving affidavit
21 authorized by Section 1104.204, a declaration of guardian in the
22 event of later incapacity or need of guardian may be simultaneously
23 executed, attested, and made self-proved by including the following
24 in substantially the same form and with substantially the same
25 contents:

26 I, _____, as declarant, after being duly
27 sworn, declare to the undersigned witnesses and to the undersigned

1 authority that this instrument is my Declaration of Guardian in the
2 Event of Later Incapacity or Need of Guardian, and that I willingly
3 make [~~have made~~] and execute [~~executed~~] it for the purposes
4 expressed in the declaration. I now sign this declaration in the
5 presence of the attesting witnesses and the undersigned authority
6 on this ____ day of _____, 20__.

7 _____
8 Declarant

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

19 _____
20 Witness

21 _____
22 Witness

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

25 _____
26 Notary Public in and for the
27 State of Texas

My Commission expires:

SECTION 13. Section 1104.402(a), Estates Code, is amended to read as follows:

(a) Except as provided by Section 1104.403, 1104.404, or 1104.406(a), the clerk of the county having venue of the proceeding for the appointment of a guardian shall obtain criminal history record information that is maintained by the Department of Public Safety or the Federal Bureau of Investigation identification division relating to:

(1) a private professional guardian;

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

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

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

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

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

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

(5) any other person proposed to serve as a guardian under this title, including a proposed temporary guardian and a

1 proposed successor guardian, other than ~~[the ward's or proposed~~
2 ~~ward's family member or]~~ an attorney.

3 SECTION 14. Section 1104.409, Estates Code, is amended to
4 read as follows:

5 Sec. 1104.409. USE OF INFORMATION BY COURT. The court
6 shall use the information obtained under this subchapter only in
7 determining whether to:

8 (1) appoint, remove, or continue the appointment of a
9 private professional guardian, a guardianship program, or the
10 department; or

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

15 SECTION 15. Section 1155.151(a), Estates Code, is amended
16 to read as follows:

17 (a) In a guardianship proceeding, the court costs of the
18 proceeding, including the cost of the guardians ad litem, attorneys
19 ad litem, court visitor, mental health professionals, and
20 interpreters appointed under this title, shall be set in an amount
21 the court considers equitable and just and, except as provided by
22 Subsection (c), shall be paid as follows, and the court shall issue
23 the judgment accordingly:

24 (1) out of the guardianship estate;

25 (2) out of the management trust, if a management trust
26 has been created for the benefit of the ward under Chapter 1301 and
27 the court determines it is in the ward's best interest; [7] or

1 (3) out of the county treasury if the assets of the
2 guardianship estate or management trust, as appropriate, are [is]
3 insufficient to pay the cost~~[, and the court shall issue the~~
4 ~~judgment accordingly]~~.

5 SECTION 16. Section 1163.101(c), Estates Code, is amended
6 to read as follows:

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

9 (1) the guardian's current name, address, and
10 telephone number;

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

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

15 (A) the ward's own home;

16 (B) a nursing home;

17 (C) a guardian's home;

18 (D) a foster home;

19 (E) a boarding home;

20 (F) a relative's home, in which case the
21 description must specify the relative's relationship to the ward;

22 (G) a hospital or medical facility; or

23 (H) another type of residence;

24 (4) statements indicating:

25 (A) the length of time the ward has resided in the
26 present home;

27 (B) the reason for a change in the ward's

1 residence, if a change in the ward's residence has occurred in the
2 past year;

3 (C) the date the guardian most recently saw the
4 ward;

5 (D) how frequently the guardian has seen the ward
6 in the past year;

7 (E) whether the guardian has possession or
8 control of the ward's estate;

9 (F) whether the ward's mental health has
10 improved, deteriorated, or remained unchanged during the past year,
11 including a description of the change if a change has occurred;

12 (G) whether the ward's physical health has
13 improved, deteriorated, or remained unchanged during the past year,
14 including a description of the change if a change has occurred;

15 (H) whether the ward has regular medical care;
16 and

17 (I) the ward's treatment or evaluation by any of
18 the following persons during the past year, including the person's
19 name and a description of the treatment:

20 (i) a physician;

21 (ii) a psychiatrist, psychologist, or other
22 mental health care provider;

23 (iii) a dentist;

24 (iv) a social or other caseworker; or

25 (v) any other individual who provided
26 treatment;

27 (5) a description of the ward's activities during the

1 past year, including recreational, educational, social, and
2 occupational activities, or a statement that no activities were
3 available or that the ward was unable or refused to participate in
4 activities;

5 (6) the guardian's evaluation of:

6 (A) the ward's living arrangements as excellent,
7 average, or below average, including an explanation if the
8 conditions are below average;

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

11 (C) unmet needs of the ward;

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

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

17 (9) if the guardian is a private professional
18 guardian, a guardianship program, or the Department of Aging and
19 Disability Services, whether the guardian or an individual
20 certified under Subchapter C, Chapter 155 ~~[111]~~, Government Code,
21 who is providing guardianship services to the ward and who is filing
22 ~~[swearing to]~~ the affidavit on the guardian's behalf, is or has been
23 the subject of an investigation conducted by the Guardianship
24 Certification Board during the preceding year; and

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

27 (A) whether the guardian has filed for emergency

detention of the ward under Subchapter A, Chapter 573, Health and Safety Code; and

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

SECTION 17. The heading to Section 1163.1011, Estates Code, is amended to read as follows:

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

SECTION 18. Section 1163.1011(a), Estates Code, is amended to read as follows:

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

SECTION 19. Section 1203.202(c), Estates Code, is amended to read as follows:

(c) A successor guardian may:

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

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

(3) commence a suit on the bond or bonds of the

predecessor, in the successor's own name and capacity, for all the estate property that:

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

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

SECTION 20. Section 1251.052(b), Estates Code, is amended to read as follows:

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

(1) ~~at~~ the conclusion of the hearing challenging or contesting the application; ~~or~~

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

(3) the 12-month anniversary of the date the temporary guardian qualifies, unless the term is extended by court order issued after a motion to extend the term is filed and a hearing on the motion is held.

SECTION 21. Section 1253.051, Estates Code, is amended to read as follows:

Sec. 1253.051. APPLICATION FOR RECEIPT AND ACCEPTANCE OF FOREIGN GUARDIANSHIP. A guardian appointed by a foreign court to represent an incapacitated person who is residing in this state or intends to move to this state may file an application with a court in the county in which the ward resides or in which it is intended that the ward will ~~[intends to]~~ reside to have the guardianship transferred to that ~~[the]~~ court. The application must have

1 attached a certified copy of all papers of the guardianship filed
2 and recorded in the foreign court.

3 SECTION 22. Section 1301.1535, Estates Code, is amended to
4 read as follows:

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

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

12 (b) Not later than the 30th day after the date a trustee to
13 which this section applies receives property into the trust, the
14 trustee shall file with the court that created the guardianship or
15 the court in which the application for guardianship was filed
16 ~~[proceeding is pending]~~ a report describing all property held in
17 the trust on the date of the report and specifying the value of the
18 property on that date.

19 SECTION 23. Section 1351.001, Estates Code, is amended to
20 read as follows:

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

27 (b) If a minor who is not a ward does not have a parent or

1 managing conservator willing or able to file an application under
2 Subsection (a), the court may appoint an attorney ad litem or
3 guardian ad litem to act on the minor's behalf for the limited
4 purpose of applying for an order to sell the minor's interest in
5 property under this subchapter.

6 SECTION 24. Sections 1351.002(a) and (b), Estates Code, are
7 amended to read as follows:

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

12 (b) An application must contain:

- 13 (1) the minor's name;
14 (2) a legal description of the real property or a
15 description that identifies the personal property, as applicable;
16 (3) the minor's interest in the property;
17 (4) the purchaser's name;
18 (5) a statement that the sale of the minor's interest
19 in the property is for cash; and
20 (6) a statement that all money received from the sale
21 of the minor's interest in the property ~~[by the parent or managing~~
22 ~~conservator]~~ shall be used for the minor's use and benefit.

23 SECTION 25. Section 1351.051, Estates Code, is amended to
24 read as follows:

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

- 27 (1) a guardian of the person but does not have a

guardian of the estate; or

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

SECTION 26. Section 1351.052, Estates Code, is amended to read as follows:

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

SECTION 27. Section 1351.053(b), Estates Code, is amended to read as follows:

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

~~[(1)]~~ "minor" are replaced with references to "ward."
~~["ward", and~~

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

SECTION 28. Section 59.006(a), Finance Code, is amended to read as follows:

(a) This section provides the exclusive method for compelled discovery of a record of a financial institution relating to one or more customers but does not create a right of privacy in a record. This section does not apply to and does not require or

1 authorize a financial institution to give a customer notice of:

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

5 (2) a record request from a state or federal
6 government agency or instrumentality under statutory or
7 administrative authority that provides for, or is accompanied by, a
8 specific mechanism for discovery and protection of a customer
9 record of a financial institution, including a record request from
10 a federal agency subject to the Right to Financial Privacy Act of
11 1978 (12 U.S.C. Section 3401 et seq.), as amended, or from the
12 Internal Revenue Service under Section 1205, Internal Revenue Code
13 of 1986;

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

16 (A) the investigation or prosecution of a
17 criminal offense;

18 (B) the investigation of alleged abuse, neglect,
19 or exploitation of an elderly or disabled person in accordance with
20 Chapter 48, Human Resources Code; or

21 (C) the assessment for or provision of
22 guardianship services under Subchapter E, Chapter 161, Human
23 Resources Code;

24 (4) a record request in connection with a garnishment
25 proceeding in which the financial institution is garnishee and the
26 customer is debtor;

27 (5) a record request by a duly appointed receiver for

1 the customer;

2 (6) an investigative demand or inquiry from a state
3 legislative investigating committee;

4 (7) an investigative demand or inquiry from the
5 attorney general of this state as authorized by law other than the
6 procedural law governing discovery in civil cases; ~~[or]~~

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

10 (9) a record request in connection with an
11 investigation conducted under Section [1054.151](#), [1054.152](#), or
12 [1102.001](#), Estates Code.

13 SECTION 29. Sections [25.0022](#)(d) and (h), Government Code,
14 are amended to read as follows:

15 (d) The presiding judge shall:

16 (1) ensure the promulgation of local rules of
17 administration in accordance with policies and guidelines set by
18 the supreme court;

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

21 (3) perform a duty of a local administrative statutory
22 probate court judge if the local administrative judge does not
23 perform that duty;

24 (4) appoint an assistant presiding judge of the
25 statutory probate courts;

26 (5) call and preside over annual meetings of the
27 judges of the statutory probate courts at a time and place in the

1 state as designated by the presiding judge;

2 (6) call and convene other meetings of the judges of
3 the statutory probate courts as considered necessary by the
4 presiding judge to promote the orderly and efficient administration
5 of justice in the statutory probate courts;

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

9 (8) compare local rules of court to achieve uniformity
10 of rules to the extent practical and consistent with local
11 conditions; and

12 (9) assign or order the clerk who serves the statutory
13 probate courts to randomly assign a judge or former or retired judge
14 of a statutory probate court to hear a case under Section
15 25.002201(a) or 25.00255, as applicable ~~[the circumstances~~
16 ~~described by Section 25.002201(b)]~~.

17 (h) Subject to Section 25.002201, a judge or a former or
18 retired judge of a statutory probate court may be assigned by the
19 presiding judge of the statutory probate courts to hold court in a
20 statutory probate court, a county court, or any statutory court
21 exercising probate jurisdiction when:

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

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

26 (3) a statutory probate judge is present or is trying
27 cases as authorized by the constitution and laws of this state and

1 the condition of the court's docket makes it necessary to appoint an
2 additional judge;

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

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

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

11 (7) a county court judge requests the assignment of a
12 statutory probate judge to hear a probate matter in the county
13 court; or

14 (8) a local administrative statutory probate court
15 judge requests the assignment of a statutory probate judge to hear a
16 matter in a statutory probate court.

17 SECTION 30. Sections 25.002201(a) and (b), Government Code,
18 are amended to read as follows:

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

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

27 (2) the judge of the statutory probate court

1 disqualified himself or herself under Section 25.00255(g-1);

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

4 (4) the presiding judge ~~[of the administrative~~
5 ~~judicial district]~~ receives notice and a request for assignment
6 from the clerk of the statutory probate court under Section
7 25.00255(1).

8 (b) If the ~~[presiding]~~ judge who is the subject of an order
9 of recusal or disqualification is ~~[of an administrative judicial~~
10 ~~district does not assign a judge under Subsection (a) within the~~
11 ~~time prescribed by that subsection,]~~ the presiding judge of the
12 statutory probate courts, the chief justice of the supreme court
13 shall ~~[may]~~ assign a regional presiding judge, a statutory probate
14 judge, or a former or retired judge of a statutory probate court to
15 hear the case ~~[instead of the presiding judge of the administrative~~
16 ~~judicial district making the assignment under that subsection]~~.

17 SECTION 31. Section 25.00255, Government Code, is amended
18 by amending Subsections (a), (g), (g-1), (i-2), (i-3), (i-5), and
19 (1) and adding Subsection (a-1) to read as follows:

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

25 (1) has the authority and shall perform the functions
26 and duties of the presiding judge of the administrative judicial
27 region under the rules, including the duty to hear or rule on a

1 referred motion of recusal or disqualification or, subject to
2 Subdivisions (2) and (3) and to Section 25.002201, assign a judge to
3 hear and rule on a referred motion of recusal or disqualification;

4 (2) may assign a presiding judge of the administrative
5 judicial region to hear and rule on a referred motion of recusal or
6 disqualification only with the consent of the presiding judge of
7 the administrative judicial region; and

8 (3) may not assign a judge of a statutory probate court
9 located in the same county as the statutory probate court served by
10 the judge who is the subject of the motion of recusal or
11 disqualification ~~[A party in a hearing or trial in a statutory~~
12 ~~probate court may file with the clerk of the court a motion stating~~
13 ~~grounds for the recusal or disqualification of the judge. The~~
14 ~~grounds may include any disability of the judge to preside over the~~
15 ~~case].~~

16 (a-1) Notwithstanding Rule 18a(h), Texas Rules of Civil
17 Procedure, or any other conflicting provision of the rules, the
18 judge who hears a motion of recusal or disqualification, after
19 notice and hearing, may:

20 (1) order the party or attorney who filed the motion,
21 or both, to pay the reasonable attorney's fees and expenses
22 incurred by another party if the judge determines that the motion
23 was:

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

26 (B) clearly brought for unnecessary delay and
27 without sufficient cause; and

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

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

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

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

10 (B) subject to Subsection (1), if the judge
11 serves a statutory probate court located in a county with more than
12 one statutory probate court, request that the presiding judge order
13 [request that] the clerk who serves the statutory probate courts in
14 that county to randomly reassign the case to a judge of one of the
15 other statutory probate courts located in the county; and

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

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

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

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

24 (B) subject to Subsection (1), if the judge
25 serves a statutory probate court located in a county with more than
26 one statutory probate court, request that the presiding judge order
27 the clerk who serves the statutory probate courts in that county to

1 randomly reassign the case to a judge of one of the other statutory
2 probate courts; and

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

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

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

12 (1) if the judge subject to recusal or
13 disqualification serves a statutory probate court located in a
14 county with only one statutory probate court, the presiding judge
15 or judge assigned to decide the motion shall enter an order of
16 recusal or disqualification, as appropriate, and request that the
17 presiding judge [~~of the administrative judicial district~~] assign a
18 judge under Section 25.002201 to hear the case; or

19 (2) subject to Subsection (1), if the judge subject to
20 recusal or disqualification serves a statutory probate court
21 located in a county with more than one statutory probate court, the
22 presiding judge or judge assigned to decide the motion shall enter
23 an order of recusal or disqualification, as appropriate, and
24 request that the clerk who serves the statutory probate courts in
25 that county randomly reassign the case to a judge of one of the
26 other statutory probate courts located in the county.

27 (i-5) A judge assigned to hear a motion for recusal or

1 disqualification [~~under Subsection (i)~~] is entitled to receive the
2 same salary, compensation, and expenses, and to be paid in the same
3 manner and from the same fund, as a judge otherwise assigned under
4 Section 25.0022 [~~, except that a judge assigned under Subsection (i)~~
5 ~~shall provide the information required by Section 25.0022(1) to the~~
6 ~~presiding judge of the administrative judicial district, who shall~~
7 ~~immediately forward the information to the presiding judge of the~~
8 ~~statutory probate courts~~].

9 (1) If a clerk of a statutory probate court is unable to
10 reassign a case as requested under Subsection (g)(1)(B),
11 (g-1)(1)(B), or (i-3)(2) because the other statutory probate court
12 judges in the county have been recused or disqualified or are
13 otherwise unavailable to hear the case, the clerk shall immediately
14 notify the presiding judge [~~of the administrative judicial~~
15 ~~district~~] and request that the presiding judge [~~of the~~
16 ~~administrative judicial district~~] assign a judge under Section
17 25.002201 to hear the case.

18 SECTION 32. Section 26.012, Government Code, is amended to
19 read as follows:

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

25 SECTION 33. Sections 411.1386(a) and (e), Government Code,
26 are amended to read as follows:

27 (a) Except as provided by Subsections (a-1), (a-5), and

(a-6), the clerk of the county having venue over a proceeding for the appointment of a guardian under Title 3, Estates [~~Chapter XIII, Texas Probate~~] Code, shall obtain from the department criminal history record information maintained by the department that relates to:

(1) a private professional guardian;

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

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

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

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

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

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

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

(e) The court, as that term is defined by Section 1002.008, Estates [~~601, Texas Probate~~] Code, shall use the information

1 obtained or provided under Subsection (a), (a-4)(1), (a-5), or
2 (a-6) only in determining whether to:

3 (1) appoint, remove, or continue the appointment of a
4 private professional guardian, a guardianship program, or the
5 Department of Aging and Disability Services; or

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

11 SECTION 34. The following are repealed:

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

14 (2) Section [25.002201](#)(c), Government Code.

15 SECTION 35. (a) Except as otherwise provided by this
16 section, the changes in law made by this Act apply to:

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

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

21 (b) The changes in law made by this Act to Sections [1023.005](#)
22 and [1023.010](#), Estates Code, apply only to an application for the
23 transfer of a guardianship to another county filed on or after the
24 effective date of this Act. An application for the transfer of a
25 guardianship to another county filed before the effective date of
26 this Act is governed by the law in effect on the date the
27 application was filed, and the former law is continued in effect for

1 that purpose.

2 (c) The changes in law made by this Act to Sections 1104.154
3 and 1104.205, Estates Code, apply only to a declaration executed on
4 or after the effective date of this Act. A declaration executed
5 before the effective date of this Act is governed by the law in
6 effect on the date the declaration was executed, and the former law
7 is continued in effect for that purpose.

8 (d) The changes in law made by this Act to Section
9 1301.1535, Estates Code, apply only to a management trust created
10 on or after the effective date of this Act. A management trust
11 created before the effective date of this Act is governed by the law
12 in effect on the date the management trust was created, and the
13 former law is continued in effect for that purpose.

14 (e) The changes in law made by this Act to Sections 1351.001
15 and 1351.002, Estates Code, apply only to an application for the
16 sale of an interest in property of a minor filed on or after the
17 effective date of this Act. An application for the sale of an
18 interest in property of a minor that is filed before the effective
19 date of this Act is governed by the law in effect on the date the
20 application was filed, and the former law is continued in effect for
21 that purpose.

22 (f) The changes in law made by this Act to Sections
23 1351.051, 1351.052, and 1351.053, Estates Code, apply only to an
24 application for the sale of an interest in property of a ward filed
25 on or after the effective date of this Act. An application for the
26 sale of an interest in property of a ward that is filed before the
27 effective date of this Act is governed by the law in effect on the

1 date the application was filed, and the former law is continued in
2 effect for that purpose.

3 (g) Section 1055.003, Estates Code, as added by this Act,
4 applies only to a guardianship proceeding commenced on or after the
5 effective date of this Act. A guardianship proceeding commenced
6 before the effective date of this Act is governed by the law as it
7 existed immediately before that date, and that law is continued in
8 effect for that purpose.

9 (h) The change in law made by this Act to Section
10 1251.052(b), Estates Code, applies only to a temporary guardian
11 appointed on or after the effective date of this Act. A temporary
12 guardian appointed before the effective date of this Act is
13 governed by the law in effect when the guardian was appointed, and
14 the former law is continued in effect for that purpose.

15 (i) Sections 25.0022, 25.002201, 25.00255, and 26.012,
16 Government Code, as amended by this Act, apply only to a motion for
17 recusal or disqualification of a judge that is filed on or after the
18 effective date of this Act. A motion for recusal or
19 disqualification of a judge filed before the effective date of this
20 Act is governed by the law in effect on the date the motion was
21 filed, and the former law is continued in effect for that purpose.

22 SECTION 36. This Act takes effect September 1, 2015.