

1 AN ACT

2 relating to guardianships and the jurisdiction of certain courts;
3 providing a criminal penalty.

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

5 SECTION 1. The heading to Section 606, Texas Probate Code,
6 is amended to read as follows:

7 Sec. 606. [~~DISTRICT COURT AND OTHER COURT OF RECORD~~]
8 JURISDICTION WITH RESPECT TO GUARDIANSHIP PROCEEDINGS.

9 SECTION 2. Section 606, Texas Probate Code, is amended by
10 amending Subsections (b), (c), and (d) and adding Subsections
11 (b-1), (b-2), (b-3), (b-4), and (b-5) to read as follows:

12 (b) In those counties in which there is no statutory probate
13 court, county court at law, or other statutory court exercising the
14 jurisdiction of a probate court, all applications, petitions, and
15 motions regarding guardianships, mental health matters, and other
16 matters covered by this chapter shall be filed and heard in the
17 county court. In [~~except that in~~] contested guardianship
18 matters, the judge of the county court may on the judge's own
19 motion, or shall on the motion of any party to the proceeding,
20 according to the motion:

21 (1) [~~7~~] request [~~as provided by Section 25.0022,~~
22 ~~Government Code,~~] the assignment of a statutory probate court judge
23 to hear the contested portion of the proceeding, as provided by
24 Section 25.0022, Government Code; or

1 (2) transfer the contested portion of the proceeding
2 to the district court, which may hear the transferred contested
3 matter [~~matters~~] as if originally filed in the district court.

4 (b-1) If the judge of the county court has not transferred a
5 contested guardianship matter to the district court at the time a
6 party files a motion for assignment of a statutory probate court
7 judge, the county judge shall grant the motion and may not transfer
8 the matter to the district court unless the party withdraws the
9 motion.

10 (b-2) A statutory probate court judge assigned to a
11 contested guardianship [~~probate~~] matter as provided by Subsection
12 (b) of this section [~~subsection~~] has [~~for that matter~~] the
13 jurisdiction and authority granted to a statutory probate court by
14 Sections 607 and 608 of this code. On resolution of a contested
15 matter, including an appeal of a matter, to which a statutory
16 probate court judge has been assigned, the statutory probate court
17 judge shall transfer the resolved portion of the case to the county
18 court for further proceedings not inconsistent with the orders of
19 the statutory probate court judge [~~The county court continues to~~
20 ~~exercise jurisdiction over the management of the guardianship with~~
21 ~~the exception of the contested matter until final disposition of~~
22 ~~the contested matter is made by the assigned judge or the district~~
23 ~~court~~].

24 (b-3) In contested matters transferred to the district
25 court [~~as provided by this subsection~~], the district court[~~7~~
26 ~~concurrently with the county court,~~] has the general jurisdiction
27 of a probate court. On resolution of a [~~all pending~~] contested

1 matter, including an appeal of a matter [~~matters~~], the district
2 court shall transfer the resolved [~~contested~~] portion of the case
3 [~~guardianship proceeding~~] to the county court for further
4 proceedings not inconsistent with the orders of the district court.

5 (b-4) The county court shall continue to exercise
6 jurisdiction over the management of the guardianship with the
7 exception of the contested matter until final disposition of the
8 contested matter is made by the assigned judge or the district
9 court.

10 (b-5) If a contested portion of the proceeding is
11 transferred to a district court under Subsection (b-3) of this
12 section [~~subsection~~], the clerk of the district court may perform
13 in relation to the transferred portion of the proceeding any
14 function a county clerk may perform in that type of contested
15 proceeding.

16 (c) In those counties in which there is no statutory probate
17 court, but in which there is a county court at law or other
18 statutory court exercising the jurisdiction of a probate court, all
19 applications, petitions, and motions regarding guardianships,
20 mental health matters, or other matters addressed by this chapter
21 shall be filed and heard in those courts and the constitutional
22 county court, [~~rather than in the district courts,~~] unless
23 otherwise provided by law. The judge of a county court may hear any
24 of those matters sitting for the judge of any other county court.
25 Except as provided by Section 608 of this code, in contested
26 guardianship matters, the judge of the constitutional county court
27 may on the judge's own motion, and shall on the motion of a party to

1 the proceeding, transfer the proceeding to the county court at law
2 or a statutory court exercising the jurisdiction of a probate court
3 other than a statutory probate court. The court to which the
4 proceeding is transferred may hear the proceeding as if originally
5 filed in the court.

6 (d) In those counties in which there is a statutory probate
7 court, all applications, petitions, and motions regarding
8 guardianships, mental health [~~illness~~] matters, or other matters
9 addressed by this chapter shall be filed and heard in the statutory
10 probate court [~~, unless otherwise provided by law~~].

11 SECTION 3. Section 606(e), Texas Probate Code, as amended
12 by Chapters 63 and 484, Acts of the 77th Legislature, Regular
13 Session, 2001, is reenacted and amended to read as follows:

14 (e) [~~A statutory probate court has concurrent jurisdiction~~
15 ~~with the district court in all actions by or against a person in the~~
16 ~~person's capacity as guardian.~~] A court that exercises original
17 probate jurisdiction has the power to hear all matters incident to
18 an estate. After a guardianship of the estate of a ward is required
19 to be settled as provided by Section 745 of this chapter, the court
20 exercising original probate jurisdiction over the settling of the
21 former ward's estate has the jurisdiction to hear:

22 (1) an action brought by or on behalf of the former
23 ward against a former guardian of the ward for alleged misconduct
24 arising from the performance of the person's duties as guardian;

25 (2) an action against a former guardian of the former
26 ward that is brought by a surety that is called on to perform in
27 place of the former guardian;

1 (3) a claim for the payment of compensation, expenses,
2 and court costs and any other matter authorized under Subpart H,
3 Part 2, of this chapter;

4 (4) a matter related to an authorization made or duty
5 performed by a guardian under Subpart C, Part 4, of this chapter;
6 and

7 (5) any other matter related or appertaining to a
8 guardianship estate that a court exercising original probate
9 jurisdiction is specifically authorized to hear under this chapter.

10 SECTION 4. Section 606(f), Texas Probate Code, as amended
11 by Chapters 63 and 484, Acts of the 77th Legislature, Regular
12 Session, 2001, is reenacted and amended to read as follows:

13 (f) ~~[A court that exercises original probate jurisdiction~~
14 ~~has the power to hear all matters incident to an estate.]~~ When a
15 surety is called on to perform in place of a guardian or former
16 guardian, a court exercising original probate jurisdiction,
17 including jurisdiction exercised under Subsection (e)(2) of this
18 section, may award judgment against the guardian or former guardian
19 in favor of the surety of the guardian or former guardian in the
20 same suit~~[, even if the ward has died, regained capacity, or the~~
21 ~~ward's disabilities of minority have been removed]~~.

22 SECTION 5. Section 606, Texas Probate Code, is amended by
23 adding Subsections (h), (i), and (j) to read as follows:

24 (h) A statutory probate court has concurrent jurisdiction
25 with the district court in all personal injury, survival, or
26 wrongful death actions by or against a person in the person's
27 capacity as a guardian and in all actions involving a guardian in

1 which each other party aligned with the guardian is not an
2 interested person in the guardianship.

3 (i) A statutory probate court has jurisdiction over any
4 matter appertaining to an estate or incident to an estate and has
5 jurisdiction over any cause of action in which a guardian in a
6 guardianship proceeding pending in the statutory probate court is a
7 party.

8 (j) A statutory probate court may exercise the pendent and
9 ancillary jurisdiction necessary to promote judicial efficiency
10 and economy.

11 SECTION 6. Section 607(b), Texas Probate Code, is amended
12 to read as follows:

13 (b) In a proceeding in a statutory probate court [~~ex~~
14 ~~district court~~], the phrases "appertaining to estates" and
15 "incident to an estate" in this chapter include the appointment of
16 guardians, the issuance of letters of guardianship, all claims by
17 or against a guardianship estate, all actions for trial of title to
18 land and for the enforcement of liens on the land, all actions for
19 trial of the right of property, and generally all matters relating
20 to the collection, settlement, partition, and distribution of a
21 guardianship estate. A statutory probate court, in the exercise of
22 its jurisdiction and notwithstanding any other provision of this
23 chapter, may hear all suits, actions, and applications filed
24 against or on behalf of any guardianship; all such suits, actions,
25 and applications are appertaining to and incident to an estate.
26 Except for situations [~~In a situation~~] in which the jurisdiction of
27 a statutory probate court is concurrent with that of a district

1 court or any other court, any~~[, a]~~ cause of action appertaining to
2 or incident to a guardianship estate shall be brought in a statutory
3 probate court ~~[rather than in the district court]~~.

4 SECTION 7. Section 608, Texas Probate Code, is amended to
5 read as follows:

6 Sec. 608. TRANSFER OF GUARDIANSHIP PROCEEDING. A judge of a
7 statutory probate court, on the motion of a party to the action or
8 of a person interested in a guardianship, may transfer to the
9 judge's court from a district, county, or statutory court a cause of
10 action appertaining to or incident to a guardianship estate that is
11 pending in the statutory probate court or a cause of action relating
12 to a guardianship in which a guardian, ward, or proposed ward in a
13 guardianship ~~[personal representative of an estate]~~ pending in the
14 statutory probate court is a party and may consolidate the
15 transferred cause of action with the other proceedings in the
16 statutory probate court relating to the guardianship estate.

17 SECTION 8. Section 633, Texas Probate Code, is amended by
18 amending Subsections (d) and (f) and adding Subsection (d-1) to
19 read as follows:

20 (d) The ~~[court clerk, at the applicant's request, or the]~~
21 applicant shall mail a copy of the application for guardianship and
22 a notice containing the information required in the citation issued
23 under Subsection (b) of this section by registered or certified
24 mail, return receipt requested, or by any other form of mail that
25 provides proof of delivery, to the following persons, if their
26 whereabouts are known or can be reasonably ascertained:

27 (1) all adult children of a proposed ward;

1 (2) all adult siblings of a proposed ward;

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

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

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

8 (6) a person designated to serve as guardian of the
9 proposed ward by a written declaration under Section 679 of this
10 code, if the applicant knows of the existence of the declaration;

11 (7) a person designated to serve as guardian of the
12 proposed ward in the probated will of the last surviving parent of
13 the ward; ~~and~~

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

18 (9) each person named as next of kin in the application
19 for guardianship as required by Section 682(10) or (12) of this
20 code.

21 (d-1) The applicant shall file with the court:

22 (1) a copy of any notice required by Subsection (d) of
23 this section and the proofs of delivery of the notice; and

24 (2) an affidavit sworn to by the applicant or the
25 applicant's attorney stating:

26 (A) that the notice was mailed as required by
27 Subsection (d) of this section; and

1 (B) the name of each person to whom the notice was
2 mailed, if the person's name is not shown on the proof of delivery.

3 (f) The court may not act on an application for the creation
4 of a guardianship until the Monday following the expiration of the
5 10-day period beginning the date service of notice and citation has
6 been made as provided by Subsections (b), (c), and (d)(1) of this
7 section and the applicant has complied with Subsection (d-1) of
8 this section. The validity of a guardianship created under this
9 chapter is not affected by the failure of the [~~clerk or~~] applicant
10 to comply with the requirements of Subsections (d)(2)-(9)
11 [~~(d)(2)-(8)~~] of this section.

12 SECTION 9. Section 634, Texas Probate Code, is amended to
13 read as follows:

14 Sec. 634. SERVICE ON ATTORNEY. (a) If an attorney has
15 entered an appearance on record for a party in a guardianship
16 proceeding, a citation or notice required to be served on the party
17 shall be served on the attorney. Service on the attorney of record
18 is in lieu of service on the party for whom the attorney appears.
19 Except as provided by Section 633(e) [~~633(f)~~] of this code, an
20 attorney ad litem may not waive personal service of citation.

21 (b) A notice served on an attorney under this section may be
22 served by registered or certified mail, return receipt requested,
23 by any other form of mail requiring proof of delivery, or by
24 delivery to the attorney in person. A party to the proceeding or
25 the party's attorney of record, an appropriate sheriff or
26 constable, or another person who is competent to testify may serve
27 notice or citation to an attorney under this section.

1 (c) A written statement by an attorney of record, the return
2 of the officer, or the affidavit of a person that shows service is
3 prima facie evidence of the fact of service.

4 SECTION 10. Section 665B(a), Texas Probate Code, is amended
5 to read as follows:

6 (a) A court that creates a guardianship for a ward under
7 this chapter, on request of a person who filed an application to be
8 appointed guardian of the proposed ward or for the appointment of
9 another suitable person as guardian of the proposed ward, may
10 authorize compensation of an attorney who represents the person who
11 filed the application at the application hearing, regardless of
12 whether the person is appointed the ward's guardian, from:

13 (1) available funds of the ward's estate; or

14 (2) the county treasury if:

15 (A) the ward's estate is insufficient to pay for
16 the services provided by the attorney; and

17 (B) funds in the county treasury are budgeted for
18 that purpose.

19 SECTION 11. Section 682, Texas Probate Code, is amended to
20 read as follows:

21 Sec. 682. APPLICATION; CONTENTS. Any person may commence a
22 proceeding for the appointment of a guardian by filing a written
23 application in a court having jurisdiction and venue. The
24 application must be sworn to by the applicant and state:

25 (1) the name, sex, date of birth, and address of the
26 proposed ward;

27 (2) the name, relationship, and address of the person

1 the applicant desires to have appointed as guardian;

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

4 (4) the nature and degree of the alleged incapacity,
5 the specific areas of protection and assistance requested, and the
6 limitation of rights requested to be included in the court's order
7 of appointment;

8 (5) the facts requiring that a guardian be appointed
9 and the interest of the applicant in the appointment;

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

12 (7) the name and address of any person or institution
13 having the care and custody of the proposed ward;

14 (8) the approximate value and description of the
15 proposed ward's property, including any compensation, pension,
16 insurance, or allowance to which the proposed ward may be entitled;

17 (9) the name and address of any person whom the
18 applicant knows to hold a power of attorney signed by the proposed
19 ward and a description of the type of power of attorney;

20 (10) if the proposed ward is a minor and if known by
21 the applicant:

22 (A) the name of each parent of the proposed ward
23 and state the parent's address or that the parent is [~~the names of~~
24 ~~the parents and next of kin of the proposed ward and whether either~~
25 ~~or both of the parents are] deceased;~~

26 (B) the name and age of each sibling, if any, of
27 the proposed ward and state the sibling's address or that the

1 sibling is deceased; and

2 (C) if each of the proposed ward's parents and
3 siblings are deceased, the names and addresses of the proposed
4 ward's next of kin who are adults;

5 (11) if the proposed ward is a minor, whether the minor
6 was the subject of a legal or conservatorship proceeding within the
7 preceding two-year period and, if so, the court involved, the
8 nature of the proceeding, and the final disposition, if any, of the
9 proceeding;

10 (12) if the proposed ward is an adult and if known by
11 the applicant:

12 (A) the name [60 years of age or older, the names
13 and addresses, to the best of the applicant's knowledge,] of the
14 proposed ward's spouse, if any, and state the spouse's address or
15 that the spouse is deceased;

16 (B) the name of each of the proposed ward's
17 parents and state the parent's address or that the parent is
18 deceased;

19 (C) the name and age of each of the proposed
20 ward's siblings, if any, and state the sibling's address or that the
21 sibling is deceased;

22 (D) the name and age of each of the proposed
23 ward's children, if any, and state the child's address or that the
24 child is deceased; and

25 (E) if the proposed ward's spouse and each of the
26 proposed ward's parents, siblings, and children are deceased, or,
27 if there is no spouse, parent, adult sibling, or adult child, the

1 names and addresses of the proposed ward's next of kin who are
2 adults;

3 (13) facts showing that the court has venue over the
4 proceeding; and

5 (14) if applicable, that the person whom the applicant
6 desires to have appointed as a guardian is a private professional
7 guardian who has complied with the requirements of Section 697 of
8 this code.

9 SECTION 12. Section 687(c), Texas Probate Code, is amended
10 to read as follows:

11 (c) If the basis of the proposed ward's alleged incapacity
12 is mental retardation, the proposed ward shall be examined by a
13 physician or psychologist licensed in this state or certified by
14 the Texas Department of Mental Health and Mental Retardation to
15 perform the examination, unless there is written documentation
16 filed with the court that shows that the proposed ward has been
17 examined according to the rules adopted by the Texas Department of
18 Mental Health and Mental Retardation not earlier than 24 [~~six~~]
19 months before the date of a hearing to appoint a guardian for the
20 proposed ward. The physician or psychologist shall conduct the
21 examination according to the rules adopted by the Texas Department
22 of Mental Health and Mental Retardation and shall submit written
23 findings and recommendations to the court.

24 SECTION 13. Sections 729(a) and (e), Texas Probate Code,
25 are amended to read as follows:

26 (a) Not later than the 30th [~~90th~~] day after the date the
27 guardian of the estate qualifies as guardian, unless a longer time

1 is granted by the court, the guardian of the estate shall file with
2 the clerk of the court a verified, full, and detailed inventory, in
3 one written instrument, of all the property of the ward that has
4 come into the guardian's possession or knowledge. The inventory
5 filed by the guardian under this section must include:

6 (1) all real property of the ward that is located in
7 this state; and

8 (2) all personal property of the ward wherever
9 located.

10 (e) The court for good cause shown may require the filing of
11 the inventory and appraisal at a time not later than the 30th
12 [~~90th~~] day after the date of qualification of the guardian.

13 SECTION 14. Section 745(c), Texas Probate Code, as amended
14 by Chapters 127, 217, and 1174, Acts of the 77th Legislature,
15 Regular Session, 2001, is reenacted to read as follows:

16 (c) When the estate of a minor ward consists only of cash or
17 cash equivalents in an amount of \$100,000 or less, the guardianship
18 of the estate may be terminated and the assets paid to the county
19 clerk of the county in which the guardianship proceeding is
20 pending, and the clerk shall manage the funds as provided by Section
21 887 of this code.

22 SECTION 15. Section 762(b), Texas Probate Code, is amended
23 to read as follows:

24 (b) On the filing of an application for a hearing under this
25 section, the court clerk shall issue a notice stating that the
26 application for reinstatement was filed, the name of the ward [~~ex~~
27 ~~decident~~], and the name of the applicant. The clerk shall issue the

1 notice to the applicant, the ward, a person interested in the
2 welfare of the ward [~~the decedent's estate,~~] or the ward's estate,
3 and, if applicable, [~~to~~] a person who has control of the care and
4 custody of the ward. The notice must cite all persons interested in
5 the estate or welfare of the ward to appear at the time and place
6 stated in the notice if they wish to contest the application.

7 SECTION 16. Section 765, Texas Probate Code, is amended to
8 read as follows:

9 Sec. 765. SUCCESSORS' RETURN OF INVENTORY, APPRAISEMENT,
10 AND LIST OF CLAIMS. A successor guardian who has qualified to
11 succeed a prior guardian shall make and return to the court an
12 inventory, appraisal, and list of claims of the estate, not
13 later than the 30th day [~~90 days~~] after the date the successor
14 guardian qualifies as guardian [~~of qualification~~], in the same
15 manner as is required of an original appointee. The successor
16 guardian shall in like manner as is required of an original
17 appointee return additional inventories, appraisements, and lists
18 of claims. In all orders appointing a successor guardian, the court
19 shall appoint an appraiser as in original appointments on the
20 application of any person interested in the estate.

21 SECTION 17. Section 767, Texas Probate Code, is amended to
22 read as follows:

23 Sec. 767. POWERS AND DUTIES OF GUARDIANS OF THE PERSON. The
24 guardian of the person is entitled to the charge and control of the
25 person of the ward, and the duties of the guardian correspond with
26 the rights of the guardian. A guardian of the person has:

27 (1) the right to have physical possession of the ward

1 and to establish the ward's legal domicile;

2 (2) the duty of care, control, and protection of the
3 ward;

4 (3) the duty to provide the ward with clothing, food,
5 medical care, and shelter; [~~and~~]

6 (4) the power to consent to medical, psychiatric, and
7 surgical treatment other than the in-patient psychiatric
8 commitment of the ward; and

9 (5) on application to and order of the court, the power
10 to establish a trust in accordance with 42 U.S.C. Section
11 1396p(d)(4)(B), as amended, and direct that the income of the ward
12 as defined by that section be paid directly to the trust, solely for
13 the purpose of the ward's eligibility for medical assistance under
14 Chapter 32, Human Resources Code.

15 SECTION 18. Section 768, Texas Probate Code, is amended to
16 read as follows:

17 Sec. 768. GENERAL POWERS AND DUTIES OF GUARDIAN OF THE
18 ESTATE. The guardian of the estate of a ward is entitled to the
19 possession and management of all property belonging to the ward, to
20 collect all debts, rentals, or claims that are due to the ward, to
21 enforce all obligations in favor of the ward, and to bring and
22 defend suits by or against the ward; but, in the management of the
23 estate, the guardian is governed by the provisions of this chapter.
24 It is the duty of the guardian of the estate to take care of and
25 manage the estate as a prudent person would manage the person's own
26 property, except as otherwise provided by this chapter. The
27 guardian of the estate shall account for all rents, profits, and

1 revenues that the estate would have produced by such prudent
2 management.

3 SECTION 19. Section 774(a), Texas Probate Code, is amended
4 to read as follows:

5 (a) On application, and if authorized by an order, the
6 guardian of the estate may renew or extend any obligation owed by or
7 to the ward. On written application to the court and when a
8 guardian of the estate deems it is in the best interest of the
9 estate, the guardian may, if authorized by an order of the court:

- 10 (1) purchase or exchange property;
- 11 (2) take a claim or property for the use and benefit of
12 the estate in payment of a debt due or owing to the estate;
- 13 (3) compound a bad or doubtful debt due or owing to the
14 estate;
- 15 (4) make a compromise or a settlement in relation to
16 property or a claim in dispute or litigation;
- 17 (5) compromise or pay in full any secured claim that
18 has been allowed and approved as required by law against the estate
19 by conveying to the holder of the secured claim the real estate or
20 personalty securing the claim, in full payment, liquidation, and
21 satisfaction of the claim, and in consideration of cancellation of
22 a note, deed of trust, mortgage, chattel mortgage, or other
23 evidence of a lien that secures the payment of the claim;
- 24 (6) abandon worthless or burdensome property and the
25 administration of that property. Abandoned real or personal
26 property may be foreclosed on by a secured party, trustee, or
27 mortgagee without further order of the court; [~~and~~]

1 (7) purchase a prepaid funeral benefits contract; and
2 (8) establish a trust in accordance with 42 U.S.C.
3 Section 1396p(d)(4)(B), as amended, and direct that the income of
4 the ward as defined by that section be paid directly to the trust,
5 solely for the purpose of the ward's eligibility for medical
6 assistance under Chapter 32, Human Resources Code.

7 SECTION 20. Section 776, Texas Probate Code, is amended to
8 read as follows:

9 Sec. 776. AMOUNTS [SUMS] ALLOWABLE FOR EDUCATION AND
10 MAINTENANCE OF WARD. (a) Subject to Section 777 of this code, if a
11 monthly allowance for the ward was not ordered in the court's order
12 appointing a guardian, the guardian of the estate shall file an
13 application with the court requesting a monthly allowance to be
14 expended from the income and corpus of the ward's estate [the court
15 may direct the guardian of the person to expend,] for the education
16 and maintenance of the [guardian's] ward and the maintenance of the
17 ward's property.

18 (a-1) The guardian must file the application requesting the
19 monthly allowance not later than the 30th day after the date on
20 which the guardian qualifies as guardian or the date specified by
21 the court, whichever is later. The application must clearly
22 separate amounts requested for education and maintenance of the
23 ward from amounts requested for maintenance of the ward's property.

24 (a-2) In determining the amount of the monthly allowance for
25 the ward and the ward's property, the court shall consider the
26 condition of the estate and the income and corpus of the estate
27 necessary to pay the reasonably anticipated regular education and

1 maintenance expenses of the ward and maintenance expenses of the
2 ward's property. The court's order setting a monthly allowance must
3 specify the types of expenditures the guardian may make on a monthly
4 basis for the ward or the ward's property. An order setting a
5 monthly allowance does not affect the guardian's duty to account
6 for expenditures of the allowance in the annual account required by
7 Section 741 of this code~~[, a sum in excess of the income of the~~
8 ~~ward's estate. Otherwise, the guardian may not be allowed, for the~~
9 ~~education and maintenance of the ward, more than the net income of~~
10 ~~the estate].~~

11 (a-3) When different persons have the guardianship of the
12 person and estate of a ward, the guardian of the estate shall pay to
13 the guardian of the person the monthly allowance ~~[a sum that is]~~ set
14 by the court, at a time specified by the court, for the education
15 and maintenance of the ward. If the guardian of the estate fails to
16 pay to the guardian of the person the monthly allowance ~~[sum]~~ set by
17 the court, the guardian of the estate shall be compelled to make the
18 payment by court order after the guardian is duly cited to appear.

19 (b) When a guardian has in good faith expended funds from
20 the income and corpus of the estate of the ward ~~[of the guardian]~~
21 for support and maintenance of ~~[for]~~ the ward ~~[under this section or~~
22 ~~Section 777 of this code,]~~ and the expenditures exceed the monthly
23 allowance authorized by the court, the guardian shall file a motion
24 with the court requesting approval of the expenditures. The court
25 may approve the excess expenditures if:

26 (1) the expenditures were made when it was ~~[is]~~ not
27 convenient or possible for the guardian to first secure court

1 approval;

2 (2) [~~if~~] the proof is clear and convincing that the
3 expenditures were reasonable and proper;

4 (3) [~~and are expenditures that~~] the court would have
5 granted authority in advance to make the expenditures; and

6 (4) [~~out of the corpus, and~~] the ward received the
7 benefits of the expenditures [~~the court may approve the
8 expenditures in the same manner as if the expenditures were made by
9 the guardian out of the income from the ward's estate. An
10 expenditure under this subsection may not exceed \$5,000 per ward
11 during an annual accounting period, unless the expenditure is made
12 to a nursing home in which case the court may ratify any amount].~~

13 SECTION 21. Section 814, Texas Probate Code, is amended to
14 read as follows:

15 Sec. 814. SPECIAL PROVISIONS PERTAINING TO LIVESTOCK. (a)
16 When the guardian of an estate has in the guardian's possession any
17 livestock that the guardian deems necessary or to the advantage of
18 the estate to sell, the guardian may, in addition to any other
19 method provided by law for the sale of personal property, obtain
20 authority from the court in which the estate is pending to sell the
21 livestock through a bonded livestock commission merchant or a
22 bonded livestock auction commission merchant.

23 (b) On written and sworn application by the guardian or by
24 any person interested in the estate that describes the livestock
25 sought to be sold and that sets out the reasons why it is deemed
26 necessary or to the advantage of the estate that the application be
27 granted, the court may authorize the sale. The court shall consider

1 the application and may hear evidence for or against the
2 application, with or without notice, as the facts warrant.

3 (c) If the application is granted, the court shall enter its
4 order to that effect and shall authorize delivery of the livestock
5 to any bonded livestock commission merchant or bonded livestock
6 auction commission merchant for sale in the regular course of
7 business. The commission merchant shall be paid the merchant's
8 ~~[his]~~ usual and customary charges, not to exceed five ~~[three]~~
9 percent of the sale price, for the sale of the livestock. A report
10 of the sale, supported by a verified copy of the merchant's account
11 of sale, shall be made promptly by the guardian to the court, but no
12 order of confirmation by the court is required to pass title to the
13 purchaser of the livestock.

14 SECTION 22. Subpart L, Part 4, Chapter XIII, Texas Probate
15 Code, is amended by adding Section 854 to read as follows:

16 Sec. 854. GUARDIAN REQUIRED TO KEEP ESTATE INVESTED UNDER
17 CERTAIN CIRCUMSTANCES. (a) The guardian of the estate is not
18 required to invest funds that are immediately necessary for the
19 education, support, and maintenance of the ward or others the ward
20 supports, if any, as provided by this chapter. The guardian of the
21 estate shall invest any other funds and assets available for
22 investment unless the court orders otherwise under this subpart.

23 (b) The court may, on its own motion or on written request of
24 a person interested in the guardianship, cite the guardian to
25 appear and show cause why the estate is not invested or not properly
26 invested. At any time after giving notice to all parties, the court
27 may conduct a hearing to protect the estate, except that the court

1 may not hold a final hearing on whether the estate is properly
2 invested until the 31st day after the date the guardian was
3 originally cited to appear under this subsection. On the hearing of
4 the court's motion or a request made under this section, the court
5 shall render an order the court considers to be in the best
6 interests of the ward.

7 (c) The court may appoint a guardian ad litem for the
8 limited purpose of representing the ward's best interests with
9 respect to the investment of the ward's property at a hearing under
10 this section.

11 SECTION 23. The heading to Section 855, Texas Probate Code,
12 is amended to read as follows:

13 Sec. 855. STANDARD FOR MANAGEMENT AND INVESTMENTS [~~WITHOUT~~
14 ~~COURT ORDER~~].

15 SECTION 24. Section 855, Texas Probate Code, is amended by
16 amending Subsections (a) and (b) and adding Subsections (a-1) and
17 (g) to read as follows:

18 (a) In acquiring, investing, reinvesting, exchanging,
19 retaining, selling, supervising, and managing a ward's estate, a
20 guardian of the estate shall exercise the judgment and care under
21 the circumstances then prevailing that persons of ordinary
22 prudence, discretion, and intelligence exercise in the management
23 of their own affairs, considering the probable income from as well
24 as the probable increase in value and the safety of their capital.
25 The guardian shall also consider all other relevant factors,
26 including:

27 (1) the anticipated costs of supporting the ward;

1 (2) the ward's age, education, current income, ability
2 to earn additional income, net worth, and liabilities;

3 (3) the nature of the ward's estate; and

4 (4) any other resources reasonably available to the
5 ward [~~The guardian of the estate may retain, without regard to~~
6 ~~diversification of investments and without liability for any~~
7 ~~depreciation or loss resulting from the retention, any property~~
8 ~~received into a guardianship estate at its inception or added to the~~
9 ~~estate by gift, devise, or inheritance or by mutation or increase.~~
10 ~~A guardian of the estate is not relieved from the duty to take care~~
11 ~~of and manage the estate as a person of ordinary prudence,~~
12 ~~discretion, and intelligence would exercise in the management of~~
13 ~~the person's own affairs].~~

14 (a-1) In determining whether a guardian has exercised the
15 standard of investment required by this section with respect to an
16 investment decision, the court shall, absent fraud or gross
17 negligence, take into consideration the investment of all the
18 assets of the estate over which the guardian has management or
19 control, rather than taking into consideration the prudence of only
20 a single investment made by the guardian.

21 (b) A guardian of the estate is considered to have exercised
22 the standard required by this section with respect to investing the
23 ward's estate if the guardian invests in the following [~~If the~~
24 ~~guardian of the estate has on hand money that belongs to the ward~~
25 ~~that exceeds that amount of money that may be necessary for the~~
26 ~~education and maintenance of the ward, the guardian shall invest~~
27 ~~the money as follows]:~~

1 (1) [~~in~~] bonds or other obligations of the United
2 States;

3 (2) [~~in~~] tax-supported bonds of this state;

4 (3) except as limited by Subsections (c) and (d) of
5 this section, [~~in~~] tax-supported bonds of a county, district,
6 political subdivision, or incorporated city or town in this state;

7 (4) [~~in~~] shares or share accounts of a state savings
8 and loan association or savings bank with its main office or a
9 branch office in this state if the payment of the shares or share
10 accounts is insured by the Federal Deposit Insurance Corporation;

11 (5) [~~in~~] the shares or share accounts of a federal
12 savings and loan association or savings bank with its main office or
13 a branch office in this state if the payment of the shares or share
14 accounts is insured by the Federal Deposit Insurance Corporation;

15 (6) [~~in~~] collateral bonds of companies incorporated
16 under the laws of this state, having a paid-in capital of \$1,000,000
17 or more, when the bonds are a direct obligation of the company that
18 issues the bonds and are specifically secured by first mortgage
19 real estate notes or other securities pledged with a trustee; or

20 (7) [~~in~~] interest-bearing time deposits that may be
21 withdrawn on or before one year after demand in a bank that does
22 business in this state where the payment of the time deposits is
23 insured by the Federal Deposit Insurance Corporation.

24 (g) The court may modify or eliminate the guardian's duty to
25 keep the estate invested or the standard required by this section
26 with regard to investments of estate assets on a showing by clear
27 and convincing evidence that the modification or elimination is in

1 the best interests of the ward and the ward's estate.

2 SECTION 25. Subpart L, Part 4, Chapter XIII, Texas Probate
3 Code, is amended by adding Sections 855A and 855B to read as
4 follows:

5 Sec. 855A. RETENTION OF ASSETS. (a) A guardian of the
6 estate may retain without court approval until the first
7 anniversary of the date of receipt any property received into the
8 guardianship estate at its inception or added to the estate by gift,
9 devise, inheritance, mutation, or increase, without regard to
10 diversification of investments and without liability for any
11 depreciation or loss resulting from the retention. The guardian
12 shall care for and manage the retained assets as a person of
13 ordinary prudence, discretion, and intelligence would in caring for
14 and managing the person's own affairs.

15 (b) On application and a hearing, the court may render an
16 order authorizing the guardian to continue retaining the property
17 after the period prescribed by Subsection (a) of this section if the
18 retention is an element of the guardian's investment plan as
19 provided by this subpart.

20 Sec. 855B. PROCEDURE FOR MAKING INVESTMENTS OR RETAINING
21 ESTATE ASSETS. (a) Not later than the 180th day after the date on
22 which the guardian of the estate qualified as guardian or another
23 date specified by the court, the guardian shall file a written
24 application with the court for an order:

25 (1) authorizing the guardian to:

26 (A) develop and implement an investment plan for
27 estate assets;

1 (B) declare that one or more estate assets must
2 be retained, despite being underproductive with respect to income
3 or overall return; or

4 (C) loan estate funds, invest in real estate or
5 make other investments, or purchase a life, term, or endowment
6 insurance policy or an annuity contract; or

7 (2) modifying or eliminating the guardian's duty to
8 invest the estate.

9 (b) On hearing the application under this section and on a
10 finding by the preponderance of the evidence that the action
11 requested in the application is in the best interests of the ward
12 and the ward's estate, the court shall render an order granting the
13 authority requested in the application or an order modifying or
14 eliminating the guardian's duty to keep the estate invested. The
15 order must state in reasonably specific terms:

16 (1) the nature of the investment, investment plan, or
17 other action requested in the application and authorized by the
18 court;

19 (2) when an investment must be reviewed and
20 reconsidered by the guardian; and

21 (3) whether the guardian must report the guardian's
22 review and recommendations to the court.

23 (c) The fact that an account or other asset is the subject of
24 a specific or general gift under a ward's will, if any, or that a
25 ward has funds, securities, or other property held with a right of
26 survivorship does not prevent:

27 (1) a guardian of the estate from taking possession

1 and control of the asset or closing the account; or

2 (2) the court from authorizing an action or modifying
3 or eliminating a duty with respect to the possession, control, or
4 investment of the account or other asset.

5 (d) The procedure prescribed by this section does not apply
6 if a different procedure is prescribed for an investment or sale by
7 a guardian. A guardian is not required to follow the procedure
8 prescribed by this section with respect to an investment or sale
9 that is specifically authorized by other law.

10 SECTION 26. The heading to Section 857, Texas Probate Code,
11 is amended to read as follows:

12 Sec. 857. INVESTMENT IN, OR CONTINUED INVESTMENT IN, LIFE
13 INSURANCE OR ANNUITIES.

14 SECTION 27. Section 858, Texas Probate Code, is amended to
15 read as follows:

16 Sec. 858. LOANS AND SECURITY FOR LOANS. (a) If, at any
17 time, the guardian of the estate has on hand money belonging to the
18 ward in an amount that provides a return that is more than is
19 [~~beyond what may be~~] necessary for the education, support, and
20 maintenance of the ward and others the ward supports, if
21 applicable, the guardian may lend the money for a reasonable [~~the~~
22 ~~highest~~] rate of interest [~~that can be obtained for the money~~]. The
23 guardian shall take the note of the borrower for the money that is
24 loaned, secured by a mortgage with a power of sale on unencumbered
25 real estate located in this state worth at least twice the amount of
26 the note, or by collateral notes secured by vendor's lien notes, as
27 collateral, or the guardian may purchase vendor's lien notes if at

1 least one-half has been paid in cash or its equivalent on the land
2 for which the notes were given.

3 (b) A guardian of the estate is considered to have obtained
4 a reasonable rate of interest for a loan for purposes of Subsection
5 (a) of this section if the rate of interest is at least equal to 120
6 percent of the applicable short-term, midterm, or long-term
7 interest rate under Section 7520, Internal Revenue Code of 1986, as
8 amended, for the month during which the loan was made.

9 (c) Except as provided by this subsection, a guardian of the
10 estate who loans estate money with the court's approval on security
11 approved by the court is not personally liable if the borrower is
12 unable to repay the money and the security fails. If the guardian
13 committed fraud or was negligent in making or managing the loan,
14 including in collecting on the loan, the guardian and the
15 guardian's surety are liable for the loss sustained by the
16 guardianship estate as a result of the fraud or negligence.

17 (d) Except as provided by Subsection (e) of this section, a
18 guardian of the estate who lends estate money may not pay or
19 transfer any money to consummate the loan until the guardian:

20 (1) submits to an attorney for examination all bonds,
21 notes, mortgages, abstracts, and other documents relating to the
22 loan; and

23 (2) receives a written opinion from the attorney
24 stating that the documents under Subdivision (1) of this subsection
25 are regular and that the title to relevant bonds, notes, or real
26 estate is clear.

27 (e) A guardian of the estate may obtain a mortgagee's title

1 insurance policy on any real estate loan in lieu of an abstract and
 2 attorney's opinion under Subsection (d) of this section.

3 (f) The borrower shall pay attorney's fees for any legal
 4 services required by this section.

5 (g) Not later than the 30th day after the date the guardian
 6 of the estate loans money from the estate, the guardian shall file
 7 with the court a written report, accompanied by an affidavit,
 8 stating fully the facts related to the loan. This subsection does
 9 not apply to a loan made in accordance with a court order.

10 (h) This section does not apply to an investment in a
 11 debenture, bond, or other publicly traded debt security.

12 SECTION 28. Section 860(a), Texas Probate Code, is amended
 13 to read as follows:

14 (a) The [When the] guardian of the estate may invest estate
 15 assets in real estate if:

16 (1) the guardian believes that the investment is in
 17 the best interests of the ward;

18 (2) there are on hand sufficient additional assets to
 19 provide a return sufficient to provide for:

20 (A) the education, support, and maintenance of
 21 the ward and others the ward supports, if applicable; and

22 (B) the maintenance, insurance, and taxes on the
 23 real estate in which the guardian wishes to invest;

24 (3) the guardian files [of a ward thinks it is best for
 25 the ward who has a surplus of money on hand to invest the money in
 26 real estate, the guardian shall file] a written application with
 27 [in] the court [in which the guardianship is pending] requesting a

1 court order authorizing the guardian to make the desired investment
 2 and stating the reasons why the guardian is of the opinion that the
 3 investment would be for the benefit of the ward; and

4 (4) the court renders an order authorizing the
 5 investment as provided by this section.

6 SECTION 29. Section 863, Texas Probate Code, is amended to
 7 read as follows:

8 Sec. 863. LIABILITY OF GUARDIAN AND GUARDIAN'S SURETY [~~FOR~~
 9 ~~FAILURE TO LEND OR INVEST FUNDS~~]. (a) In addition to any other
 10 remedy authorized by law, if [~~If~~] the guardian of the estate fails
 11 [neglects] to invest or lend estate assets in the manner provided by
 12 this subpart, the guardian and the guardian's surety are [~~surplus~~
 13 ~~money on hand at interest when the guardian can do so by using~~
 14 ~~reasonable diligence, the guardian shall be~~] liable for the
 15 principal and the greater of:

16 (1) [for] the highest legal rate of interest on the
 17 principal during the period the guardian failed to invest or lend
 18 the assets; or

19 (2) the overall return that would have been made on the
 20 principal if the principal were invested in the manner provided by
 21 this subpart.

22 (b) In addition to the liability under Subsection (a) of
 23 this section, the guardian and the guardian's surety are liable for
 24 attorney's fees, litigation expenses, and costs related to a
 25 proceeding brought to enforce this section [~~for the time the~~
 26 ~~guardian neglects to invest or lend the surplus money. The amount~~
 27 ~~of principal and interest on the principal may be recovered in a~~

1 ~~court of competent jurisdiction]~~.

2 SECTION 30. Section 868A, Texas Probate Code, is amended to
3 read as follows:

4 Sec. 868A. DISCHARGE OF GUARDIAN OF ESTATE AND CONTINUATION
5 OF TRUST. On or at any time after the creation of a trust under this
6 subpart, the court may discharge the guardian of the ward's estate
7 ~~[only] if [a guardian of the ward's person remains and]~~ the court
8 determines that the discharge is in the ward's best interests.

9 SECTION 31. Section 883, Texas Probate Code, is amended by
10 adding Subsections (f), (g), and (h) to read as follows:

11 (f) This section does not partition community property
12 between an incapacitated spouse and a spouse who is not
13 incapacitated.

14 (g) If the court renders an order directing the guardian of
15 the estate of the incapacitated spouse to administer certain
16 community property as provided by Subsection (c) of this section,
17 the community property administered by the guardian is considered
18 the incapacitated spouse's community property, subject to the
19 incapacitated spouse's sole management, control, and disposition
20 under Section 3.102, Family Code. If the court renders an order
21 directing the spouse who is not incapacitated to administer certain
22 community property as provided by Subsection (d) of this section,
23 the community property administered by the spouse who is not
24 incapacitated is considered that spouse's community property,
25 subject to that spouse's sole management, control, and disposition
26 under Section 3.102, Family Code.

27 (h) An order described by Subsection (g) of this section

1 does not affect the enforceability of a creditor's claim existing
2 on the date the court renders the order.

3 SECTION 32. Chapter 25, Penal Code, is amended by adding
4 Section 25.10 to read as follows:

5 Sec. 25.10. INTERFERENCE WITH RIGHTS OF GUARDIAN OF THE
6 PERSON. (a) In this section:

7 (1) "Possessory right" means the right of a guardian
8 of the person to have physical possession of a ward and to establish
9 the ward's legal domicile, as provided by Section 767(1), Texas
10 Probate Code.

11 (2) "Ward" has the meaning assigned by Section 601,
12 Texas Probate Code.

13 (b) A person commits an offense if the person takes,
14 retains, or conceals a ward when the person knows that the person's
15 taking, retention, or concealment interferes with a possessory
16 right with respect to the ward.

17 (c) An offense under this section is a state jail felony.

18 (d) This section does not apply to a governmental entity
19 where the taking, retention, or concealment of the ward was
20 authorized by Subtitle E, Title 5, Family Code, or Chapter 48, Human
21 Resources Code.

22 SECTION 33. Sections 606(a) and 607(c), (d), and (e), Texas
23 Probate Code, are repealed.

24 SECTION 34. (a) The changes in law made by Sections 1-6 and
25 33 of this Act apply only to a guardianship proceeding or other
26 action commenced on or after the effective date of this Act without
27 regard to whether a guardian of the person or estate, or both, was

1 appointed for the ward before, on, or after that date.

2 (b) A guardianship proceeding or other action commenced
3 before the effective date of this Act is governed by the law
4 applicable to the proceeding or action immediately before the
5 effective date of this Act, and that law is continued in effect for
6 that purpose.

7 SECTION 35. Sections 389, 856, 859, and 864, Texas Probate
8 Code, are repealed.

9 SECTION 36. The change in law made by Section 7 of this Act
10 applies only to a motion to transfer or a cause of action filed on or
11 after the effective date of this Act.

12 SECTION 37. The changes in law made by Sections 8-12 of this
13 Act apply only to an application for the appointment of a guardian
14 filed on or after the effective date of this Act. An application
15 for the appointment of a guardian filed before the effective date of
16 this Act is governed by the law in effect on the date the
17 application was filed, and the former law is continued in effect for
18 that purpose.

19 SECTION 38. The changes in law made by Sections 13 and 16 of
20 this Act apply only to a person appointed by a court to serve as
21 guardian of the person or estate of a ward on or after the effective
22 date of this Act. A person appointed by a court to serve as guardian
23 of the person or estate of a ward before the effective date of this
24 Act is governed by the law in effect immediately before the
25 effective date of this Act, and the former law is continued in
26 effect for that purpose.

27 SECTION 39. (a) The changes in law made by Sections 17-29

1 of this Act apply only to an application for the appointment of a
2 guardian that is filed on or after September 1, 2003.

3 (b) The following may be modified to conform to the changes
4 in law made by Sections 17-29 of this Act:

5 (1) an application for the appointment of a guardian
6 that is filed before September 1, 2003, in which a guardianship has
7 not been created; and

8 (2) a guardianship existing on September 1, 2003.

9 SECTION 40. This Act takes effect September 1, 2003.

David Dewhurst

President of the Senate

Jim Cuddihy

Speaker of the House

I certify that H.B. No. 1470 was passed by the House on May 10, 2003, by a non-record vote; and that the House concurred in Senate amendments to H.B. No. 1470 on May 30, 2003, by a non-record vote.

Robert Haney
Chief Clerk of the House

I certify that H.B. No. 1470 was passed by the Senate, with amendments, on May 28, 2003, by the following vote: Yeas 31, Nays 0.

Ratay Daw
Secretary of the Senate

APPROVED: 20 JUN 103

Date

Rick Perry

Governor

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
10:30 PM O'CLOCK

Jeann Shea
JUN 20 2003
Secretary of State