

By: Rodriguez

H.B. No. 2189

A BILL TO BE ENTITLED

AN ACT

relating to temporary guardianship procedures.

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

SECTION 1. Section 875, Texas Probate Code, is amended by amending Subsections (c), (d), (e), (f), (g), and (k) and adding Subsection (l) to read as follows:

(c) A sworn, written application for the appointment of a temporary guardian shall ~~may~~ be filed before the court appoints a temporary guardian. ~~[The application must be filed not later than the end of the next business day of the court after the date of appointment of the temporary guardian.]~~ The application must state:

(1) the name and address of the person who is the subject of the guardianship proceeding;

(2) the danger to the person or property alleged to be imminent;

(3) the type of appointment and the particular protection and assistance being requested;

(4) the facts and reasons supporting the allegations and requests;

(5) the name, address, and qualification of the proposed temporary guardian;

(6) the name, address, and interest of the applicant;
and

1 (7) if applicable, that the proposed temporary
2 guardian is a private professional guardian who has complied with
3 the requirements of Section 697 of this code.

4 (d) On [~~At the earliest of~~] the filing of an application for
5 temporary guardianship [~~or the appointment of a temporary~~
6 ~~guardian~~], the court shall appoint an attorney to represent the
7 proposed ward in all guardianship proceedings in which independent
8 counsel has not been retained by or on behalf of the proposed ward.

9 (e) On the filing of an application for temporary
10 guardianship, the clerk shall issue notice that shall be served on
11 the respondent, the respondent's appointed attorney, and the
12 proposed temporary guardian named in the application, if that
13 person is not the applicant. The notice must describe the rights of
14 the parties and the date, time, place, purpose, and possible
15 consequences of a hearing on the application. A copy of the
16 application [~~and, if applicable, a copy of the order appointing the~~
17 ~~temporary guardian~~] must be attached to the notice.

18 (f)(1) A hearing shall be held not later than the 10th day
19 after the date of the filing of the application for temporary
20 guardianship unless the hearing date is postponed [~~extended~~] as
21 provided by Subdivision (2) of this subsection. At a hearing under
22 this section, the respondent has the right to:

- 23 (A) receive prior notice;
- 24 (B) have representation by counsel;
- 25 (C) be present;
- 26 (D) present evidence and confront and
27 cross-examine witnesses; and

1 (E) a closed hearing if requested by the
2 respondent or the respondent's attorney.

3 (2) The ~~[Every temporary guardianship granted before a~~
4 ~~hearing on the application required by Subdivision (1) of this~~
5 ~~subsection expires on its own terms at the conclusion of the hearing~~
6 ~~unless the]~~ respondent or the respondent's attorney may consent to
7 postpone the hearing on the application for temporary guardianship
8 for a period ~~[consents that the order appointing the temporary~~
9 ~~guardian may be extended for a longer period]~~ not to exceed 30 ~~[60]~~
10 days after the date of the filing of the application ~~[for temporary~~
11 ~~guardianship]~~.

12 (3) Every application for temporary guardianship
13 ~~[granted before a hearing on the application required by~~
14 ~~Subdivision (1) of this subsection shall be set for hearing at the~~
15 ~~earliest possible date and]~~ takes precedence over all matters
16 except older matters of the same character.

17 (4) Immediately after an application for ~~[Every]~~
18 temporary guardianship is filed, the court shall issue ~~[granted~~
19 ~~before a hearing on the application required by Subdivision (1) of~~
20 ~~this subsection must include]~~ an order that sets a certain date for
21 hearing on the application for temporary guardianship.

22 (5) On one day's notice to the party who filed the
23 application for ~~[obtained a]~~ temporary guardianship ~~[before a~~
24 ~~hearing on the application required by Subdivision (1) of this~~
25 ~~subsection]~~, the respondent or the respondent's attorney may appear
26 and move for the dismissal ~~[dissolution or modification]~~ of the
27 application for temporary guardianship. If a motion is made for

1 dismissal [~~dissolution or modification~~] of the application for
2 temporary guardianship, the court shall hear and determine the
3 motion as expeditiously as the ends of justice require.

4 (6) If the applicant is not the proposed temporary
5 guardian, a temporary guardianship may not be granted before a
6 hearing on the application required by Subdivision (1) of this
7 subsection unless the proposed temporary guardian appears in court.

8 (g) If at the conclusion of the hearing required by
9 Subsection (f)(1) of this section the court determines that the
10 applicant has established that there is substantial evidence that
11 the person is a minor or other incapacitated person, that there is
12 imminent danger that the physical health or safety of the
13 respondent will be seriously impaired, or that the respondent's
14 estate will be seriously damaged or dissipated unless immediate
15 action is taken, the court shall appoint a temporary guardian by
16 written order. The court shall assign to the temporary guardian
17 only those powers and duties that are necessary to protect the
18 respondent against the imminent danger shown. The court shall set
19 bond according to Subpart B, Part 3, of this chapter. The reasons
20 for the temporary guardianship and the powers and duties of the
21 temporary guardian must be described in the order of appointment.

22 (k) If an application for a temporary guardianship, for the
23 conversion of a temporary guardianship to a permanent guardianship,
24 or for a permanent guardianship is challenged or contested, the
25 court, on the court's own motion or on the motion of any interested
26 party, may appoint a new temporary guardian or grant a temporary
27 restraining order under Rule 680, Texas Rules of Civil Procedure,

1 or both, without issuing additional citation if the court finds
2 that the appointment or the issuance of the order is necessary to
3 protect the proposed ward or the proposed ward's estate.

4 (1) A temporary guardian appointed under Subsection (k) of
5 this section [~~this subsection~~] must qualify in the same form and
6 manner required of a guardian under this code. The term of the
7 temporary guardian expires at the conclusion of the hearing
8 challenging or contesting the application or on the date a
9 permanent guardian the court appoints for the proposed ward
10 qualifies to serve as the ward's guardian.

11 SECTION 2. The changes in law made by this Act to Section
12 875, Texas Probate Code, apply only to an application for the
13 appointment of a temporary guardian filed on or after the effective
14 date of this Act. An application for the appointment of a temporary
15 guardian filed before the effective date of this Act is governed by
16 the law in effect on the date on which the application was filed,
17 and the former law is continued in effect for that purpose.

18 SECTION 3. This Act takes effect September 1, 2003.