

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 (b), (c), (d), (e), (f), (g), and (k) and by adding Subsection (l) to read as follows:

(b) ~~[A person for whom a temporary guardian has been appointed may not be presumed to be incapacitated.]~~ The person retains all rights and powers that are not specifically granted to the person's temporary guardian by court order.

(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;

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

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

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

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

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

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

27               (A) receive prior notice;

(B) have representation by counsel;

(C) be present;

(D) present evidence and confront and cross-examine witnesses; and

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

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

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

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

(5) On one day's notice to the party who filed the application for ~~[obtained a]~~ temporary guardianship ~~[before a]~~

1 ~~hearing on the application required by Subdivision (1) of this~~  
 2 ~~subsection]~~, the respondent or the respondent's attorney may appear  
 3 and move for the dismissal [~~dissolution or modification~~] of the  
 4 application for temporary guardianship. If a motion is made for  
 5 dismissal [~~dissolution or modification~~] of the application for  
 6 temporary guardianship, the court shall hear and determine the  
 7 motion as expeditiously as the ends of justice require.

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

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

26 (k) If an application for a temporary guardianship, for the  
 27 conversion of a temporary guardianship to a permanent guardianship,

1 or for a permanent guardianship is challenged or contested, the  
2 court, on the court's own motion or on the motion of any interested  
3 party, may appoint a new temporary guardian or grant a temporary  
4 restraining order under Rule 680, Texas Rules of Civil Procedure,  
5 or both, without issuing additional citation if the court finds  
6 that the appointment or the issuance of the order is necessary to  
7 protect the proposed ward or the proposed ward's estate.

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

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

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