

1-1 By: Rodriguez (Senate Sponsor - Wentworth) H.B. No. 2189  
1-2 (In the Senate - Received from the House April 28, 2003;  
1-3 May 1, 2003, read first time and referred to Committee on  
1-4 Jurisprudence; May 20, 2003, reported favorably, as amended, by  
1-5 the following vote: Yeas 6, Nays 0; May 20, 2003, sent to printer.)

1-6 COMMITTEE AMENDMENT NO. 1 By: Harris

1-7 Amend H.B. No. 2189 as follows:

1-8 (1) In SECTION 1 of the bill (Committee printing, page 1,  
1-9 line 22), between "Subsections" and "(c)", insert "(b)".

1-10 (2) In SECTION 1 of the bill, in Section 875, Texas Probate  
1-11 Code (Committee printing, Page 1, between lines 23 and 24), insert  
1-12 the following:

1-13 (b) ~~[A person for whom a temporary guardian has been~~  
1-14 ~~appointed may not be presumed to be incapacitated.]~~ The person  
1-15 retains all rights and powers that are not specifically granted to  
1-16 the person's temporary guardian by court order.

1-17 A BILL TO BE ENTITLED  
1-18 AN ACT

1-19 relating to temporary guardianship procedures.

1-20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-21 SECTION 1. Section 875, Texas Probate Code, is amended by  
1-22 amending Subsections (c), (d), (e), (f), (g), and (k) and adding  
1-23 Subsection (l) to read as follows:

1-24 (c) A sworn, written application for the appointment of a  
1-25 temporary guardian shall ~~[may]~~ be filed before the court appoints a  
1-26 temporary guardian. ~~[The application must be filed not later than~~  
1-27 ~~the end of the next business day of the court after the date of~~  
1-28 ~~appointment of the temporary guardian.]~~ The application must  
1-29 state:

1-30 (1) the name and address of the person who is the  
1-31 subject of the guardianship proceeding;

1-32 (2) the danger to the person or property alleged to be  
1-33 imminent;

1-34 (3) the type of appointment and the particular  
1-35 protection and assistance being requested;

1-36 (4) the facts and reasons supporting the allegations  
1-37 and requests;

1-38 (5) the name, address, and qualification of the  
1-39 proposed temporary guardian;

1-40 (6) the name, address, and interest of the applicant;  
1-41 and

1-42 (7) if applicable, that the proposed temporary  
1-43 guardian is a private professional guardian who has complied with  
1-44 the requirements of Section 697 of this code.

1-45 (d) On ~~[At the earliest of]~~ the filing of an application for  
1-46 temporary guardianship ~~[or the appointment of a temporary~~  
1-47 ~~guardian]~~, the court shall appoint an attorney to represent the  
1-48 proposed ward in all guardianship proceedings in which independent  
1-49 counsel has not been retained by or on behalf of the proposed ward.

1-50 (e) On the filing of an application for temporary  
1-51 guardianship, the clerk shall issue notice that shall be served on  
1-52 the respondent, the respondent's appointed attorney, and the  
1-53 proposed temporary guardian named in the application, if that  
1-54 person is not the applicant. The notice must describe the rights of  
1-55 the parties and the date, time, place, purpose, and possible  
1-56 consequences of a hearing on the application. A copy of the  
1-57 application ~~[and, if applicable, a copy of the order appointing the~~  
1-58 ~~temporary guardian]~~ must be attached to the notice.

1-59 (f)(1) A hearing shall be held not later than the 10th day  
1-60 after the date of the filing of the application for temporary  
1-61 guardianship unless the hearing date is postponed ~~[extended]~~ as  
1-62 provided by Subdivision (2) of this subsection. At a hearing under

2-1 this section, the respondent has the right to:

- 2-2 (A) receive prior notice;  
 2-3 (B) have representation by counsel;  
 2-4 (C) be present;  
 2-5 (D) present evidence and confront and  
 2-6 cross-examine witnesses; and  
 2-7 (E) a closed hearing if requested by the  
 2-8 respondent or the respondent's attorney.

2-9 (2) ~~The [Every temporary guardianship granted before a~~  
 2-10 ~~hearing on the application required by Subdivision (1) of this~~  
 2-11 ~~subsection expires on its own terms at the conclusion of the hearing~~  
 2-12 ~~unless the] respondent or the respondent's attorney may consent to~~  
 2-13 ~~postpone the hearing on the application for temporary guardianship~~  
 2-14 ~~for a period [consents that the order appointing the temporary~~  
 2-15 ~~guardian may be extended for a longer period] not to exceed 30 [60]~~  
 2-16 ~~days after the date of the filing of the application [for temporary~~  
 2-17 ~~guardianship].~~

2-18 (3) Every application for temporary guardianship  
 2-19 ~~[granted before a hearing on the application required by~~  
 2-20 ~~Subdivision (1) of this subsection shall be set for hearing at the~~  
 2-21 ~~earliest possible date and] takes precedence over all matters~~  
 2-22 ~~except older matters of the same character.~~

2-23 (4) Immediately after an application for [Every]  
 2-24 temporary guardianship is filed, the court shall issue [granted  
 2-25 before a hearing on the application required by Subdivision (1) of  
 2-26 this subsection must include] an order that sets a certain date for  
 2-27 hearing on the application for temporary guardianship.

2-28 (5) On one day's notice to the party who filed the  
 2-29 application for [obtained a] temporary guardianship [before a  
 2-30 hearing on the application required by Subdivision (1) of this  
 2-31 subsection], the respondent or the respondent's attorney may appear  
 2-32 and move for the dismissal [dissolution or modification] of the  
 2-33 application for temporary guardianship. If a motion is made for  
 2-34 dismissal [dissolution or modification] of the application for  
 2-35 temporary guardianship, the court shall hear and determine the  
 2-36 motion as expeditiously as the ends of justice require.

2-37 (6) If the applicant is not the proposed temporary  
 2-38 guardian, a temporary guardianship may not be granted before a  
 2-39 hearing on the application required by Subdivision (1) of this  
 2-40 subsection unless the proposed temporary guardian appears in court.

2-41 (g) If at the conclusion of the hearing required by  
 2-42 Subsection (f)(1) of this section the court determines that the  
 2-43 applicant has established that there is substantial evidence that  
 2-44 the person is a minor or other incapacitated person, that there is  
 2-45 imminent danger that the physical health or safety of the  
 2-46 respondent will be seriously impaired, or that the respondent's  
 2-47 estate will be seriously damaged or dissipated unless immediate  
 2-48 action is taken, the court shall appoint a temporary guardian by  
 2-49 written order. The court shall assign to the temporary guardian  
 2-50 only those powers and duties that are necessary to protect the  
 2-51 respondent against the imminent danger shown. The court shall set  
 2-52 bond according to Subpart B, Part 3, of this chapter. The reasons  
 2-53 for the temporary guardianship and the powers and duties of the  
 2-54 temporary guardian must be described in the order of appointment.

2-55 (k) If an application for a temporary guardianship, for the  
 2-56 conversion of a temporary guardianship to a permanent guardianship,  
 2-57 or for a permanent guardianship is challenged or contested, the  
 2-58 court, on the court's own motion or on the motion of any interested  
 2-59 party, may appoint a new temporary guardian or grant a temporary  
 2-60 restraining order under Rule 680, Texas Rules of Civil Procedure,  
 2-61 or both, without issuing additional citation if the court finds  
 2-62 that the appointment or the issuance of the order is necessary to  
 2-63 protect the proposed ward or the proposed ward's estate.

2-64 (l) A temporary guardian appointed under Subsection (k) of  
 2-65 this section [this subsection] must qualify in the same form and  
 2-66 manner required of a guardian under this code. The term of the  
 2-67 temporary guardian expires at the conclusion of the hearing  
 2-68 challenging or contesting the application or on the date a  
 2-69 permanent guardian the court appoints for the proposed ward

3-1 qualifies to serve as the ward's guardian.

3-2 SECTION 2. The changes in law made by this Act to Section  
3-3 875, Texas Probate Code, apply only to an application for the  
3-4 appointment of a temporary guardian filed on or after the effective  
3-5 date of this Act. An application for the appointment of a temporary  
3-6 guardian filed before the effective date of this Act is governed by  
3-7 the law in effect on the date on which the application was filed,  
3-8 and the former law is continued in effect for that purpose.

3-9 SECTION 3. This Act takes effect September 1, 2003.

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