

By: Casteel

H.B. No. 2387

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the appointment of an attorney to represent the  
3 interests of a proposed ward in certain guardianship proceedings.

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

5 SECTION 1. Section 646, Texas Probate Code, is amended by  
6 amending Subsection (a) and adding Subsections (e), (f), and (g) to  
7 read as follows:

8 (a) Except as provided by Subsection (e) of this section, in  
9 ~~[In]~~ a proceeding under this chapter for the appointment of a  
10 guardian, the court shall appoint an attorney ad litem to represent  
11 the interests of the proposed ward. The attorney shall be supplied  
12 with copies of all of the current records in the case and may have  
13 access to all of the proposed ward's relevant medical,  
14 psychological, and intellectual testing records.

15 (e) In lieu of appointing an attorney ad litem under  
16 Subsection (a) of this section, the court may appoint an attorney  
17 retained by a proposed ward to represent the interests of the  
18 proposed ward at the proceeding. To be eligible for appointment  
19 under this subsection, an attorney must have the certification  
20 required by Section 647A of this code.

21 (f) If, after the court appoints an attorney ad litem under  
22 Subsection (a) of this section, the proposed ward retains an  
23 attorney who is eligible for appointment under Subsection (e) of  
24 this section, the court may discharge the attorney ad litem and

1 appoint the attorney retained by the proposed ward to represent the  
2 proposed ward's interests in the guardianship proceeding.

3 (g) An attorney appointed under Subsection (e) or (f) of  
4 this section is entitled to receive the same information otherwise  
5 provided to an attorney ad litem under Subsection (a) of this  
6 section and has the duties imposed on and powers granted to an  
7 attorney ad litem under this code.

8 SECTION 2. Section 665A, Texas Probate Code, is amended to  
9 read as follows:

10 Sec. 665A. PAYMENT FOR PROFESSIONAL SERVICES. (a) Except  
11 as provided by Subsection (b) of this section, the [The] court shall  
12 order the payment of a fee set by the court as compensation to the  
13 attorneys, mental health professionals, and interpreters appointed  
14 under Section 646 or 687 of this code, as applicable, to be taxed as  
15 costs in the case. If after examining the proposed ward's assets  
16 the court determines the proposed ward is unable to pay for services  
17 provided by an attorney, a mental health professional, or an  
18 interpreter appointed under Section 646 or 687 of this code, as  
19 applicable, the county is responsible for the cost of those  
20 services.

21 (b) A proposed ward who retains an attorney who is  
22 subsequently appointed by the court under Section 646(e) or (f) of  
23 this code shall pay for the attorney's services out of the proposed  
24 ward's estate.

25 SECTION 3. The changes in law made by this Act to Section  
26 646, Texas Probate Code, apply only to an application for the  
27 appointment of a guardian filed on or after the effective date of

1 this Act. An application filed before the effective date of this  
2 Act is governed by the law in effect on the date the application was  
3 filed, and the former law is continued in effect for that purpose.

4 SECTION 4. This Act takes effect September 1, 2003.