

By: Wohlgemuth

H.B. No. 2852

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the appointment of the Department of Protective and
3 Regulatory Services to serve as a temporary or permanent guardian
4 for a ward.

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

6 SECTION 1. Section 48.209, Human Resources Code, is amended
7 by amending Subsection (b) and adding Subsection (g) to read as
8 follows:

9 (b) As a last resort, the department may apply to be
10 appointed guardian of the person or estate of an elderly or disabled
11 person who is found by the department to be in a state of abuse,
12 neglect, or exploitation, and who, because of a physical or mental
13 condition, will be substantially unable to provide food, clothing,
14 or shelter for himself or herself, to care for the individual's own
15 physical health, or to manage the individual's own financial
16 affairs. A representative of the department shall take the oath
17 required by the Texas Probate Code on behalf of the department when
18 ~~[if]~~ the department begins to serve as ~~[is appointed]~~ guardian. If
19 the department knows that an individual is willing and able to serve
20 as the guardian, the department may inform the court of that
21 individual's willingness and ability.

22 (g) A court may not appoint the department as a guardian
23 under Section 682 or 875, Texas Probate Code, unless:

24 (1) the department files an application for

1 appointment under Section 682 or 875, Texas Probate Code, as
2 appropriate;

3 (2) the proposed ward is an individual described by
4 Subsection (a) or (b); and

5 (3) the proposed ward has sufficient resources or
6 eligibility for appropriate care.

7 SECTION 2. Section 701, Texas Probate Code, is amended to
8 read as follows:

9 Sec. 701. TIME FOR TAKING OATH AND GIVING BOND. Except as
10 provided by Section 48.209(b), Human Resources Code, or Section
11 682A(a) of this code, the oath of a guardian may be taken and
12 subscribed, or the bond of a guardian may be given and approved, at
13 any time before the expiration of the 20th day after the date of the
14 order granting letters of guardianship, or before the letters have
15 been revoked for a failure to qualify within the time allowed. An
16 oath may be taken before any person authorized to administer oaths
17 under the laws of this state.

18 SECTION 3. Section 875(j), Texas Probate Code, is amended
19 to read as follows:

20 (j) The court may not [~~customarily or ordinarily~~] appoint
21 the Department of Protective and Regulatory Services as a temporary
22 guardian under this section unless:

23 (1) the department files an application for
24 appointment as guardian under this section;

25 (2) the proposed ward is an individual described by
26 Section 48.209(a) or (b), Human Resources Code; and

27 (3) the proposed ward has sufficient resources or

1 eligibility for appropriate care. [~~The appointment of the~~
2 ~~department as a temporary guardian under this section should be~~
3 ~~made only as a last resort.~~]

4 SECTION 4. The changes in law made by this Act to Section
5 875, Texas Probate Code, and Section 48.209, Human Resources Code,
6 apply only to an application for the appointment of a guardian or
7 temporary guardian filed:

8 (1) on or after the effective date of this Act; or

9 (2) before the effective date of this Act if the
10 proceeding is pending on the effective date of this Act.

11 SECTION 5. This Act takes effect September 1, 2003.