

By: Deuell

S.B. No. 1410

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 Subsections (g) and (h) to  
8 read as 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 for  
6 appropriate care or is eligible for Medicaid or another form of  
7 public assistance for that care.

8 (h) Notwithstanding Subsection (g), a court, after serious  
9 consideration and review, may appoint the department as a guardian  
10 under Section 682 or 875, Texas Probate Code, as a last resort only  
11 if:

12 (1) the proposed ward is an individual described by  
13 Subsection (a) or (b); and

14 (2) there is no individual willing and able to serve as  
15 the proposed ward's guardian.

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

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24 been revoked for a failure to qualify within the time allowed.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

27 SECTION 3. Section 875, Texas Probate Code, is amended by

1 amending Subsection (j) and adding Subsection (l) to read as  
2 follows:

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

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

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

10 (3) the proposed ward has sufficient resources for  
11 appropriate care or is eligible for Medicaid or another form of  
12 public assistance for that care. [~~The appointment of the~~  
13 ~~department as a temporary guardian under this section should be~~  
14 ~~made only as a last resort.]~~

15 (l) Notwithstanding Subsection (j) of this section, a  
16 court, after serious consideration and review, may appoint the  
17 Department of Protective and Regulatory Services as a guardian  
18 under this section as a last resort only if:

19 (1) the proposed ward is an individual described by  
20 Section 48.209(a) or (b), Human Resources Code; and

21 (2) there is no individual willing and able to serve as  
22 the proposed ward's guardian.

23 SECTION 4. The changes in law made by this Act to Section  
24 875, Texas Probate Code, and Section 48.209, Human Resources Code,  
25 apply only to an application for the appointment of a guardian or  
26 temporary guardian filed:

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

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

3           SECTION 5. (a) The Department of Protective and Regulatory  
4 Services shall conduct a study to identify distinct populations for  
5 whom the department may appropriately provide guardianship  
6 services.

7           (b) Not later than September 1, 2004, the Department of  
8 Protective and Regulatory Services shall submit a report of the  
9 study's findings to the legislature. The report must make a  
10 recommendation regarding expansion of the department's  
11 guardianship services based on the study's findings.

12           SECTION 6. This Act takes effect September 1, 2003.