

By: Hartnett

H.B. No. 230

A BILL TO BE ENTITLED

AN ACT

relating to grounds for removal of a guardian.

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

SECTION 1. Sections 761(a) and (c), Texas Probate Code, are amended to read as follows:

(a) The court, on its own motion or on motion of any interested person, including the ward, and without notice, may remove any guardian, appointed under this chapter, who:

(1) neglects to qualify in the manner and time required by law;

(2) fails to return within 90 days after qualification, unless the time is extended by order of the court, an inventory of the property of the guardianship estate and list of claims that have come to the guardian's knowledge;

(3) having been required to give a new bond, fails to do so within the time prescribed;

(4) absents himself from the state for a period of three months at one time without permission of the court, or removes from the state;

(5) cannot be served with notices or other processes because of the fact that:

(A) the guardian's whereabouts are unknown;

(B) the guardian is eluding service; or

(C) the guardian is a nonresident of this state

1 who does not have a resident agent to accept service of process in
2 any guardianship proceeding or other matter relating to the
3 guardianship;

4 (6) has misapplied, embezzled, or removed from the
5 state, or is about to misapply, embezzle, or remove from the state,
6 all or any part of the property committed to the guardian's care; or

7 (7) has cruelly treated or neglected a ward, or has
8 neglected to educate or maintain the ward as liberally as the means
9 of the ward and the condition of the ward's estate permit.

10 (c) The court may remove a guardian on its own motion, or on
11 the complaint of an interested person, after the guardian has been
12 cited by personal service to answer at a time and place set in the
13 notice, when:

14 (1) sufficient grounds appear to support belief that
15 the guardian has misapplied, embezzled, or removed from the state,
16 or that the guardian is about to misapply, embezzle, or remove from
17 the state, all or any part of the property committed to the care of
18 the guardian;

19 (2) the guardian fails to return any account or report
20 that is required by law to be made;

21 (3) the guardian fails to obey any proper order of the
22 court having jurisdiction with respect to the performance of the
23 guardian's duties;

24 (4) the guardian is proved to have been guilty of gross
25 misconduct or mismanagement in the performance of the duties of the
26 guardian;

27 (5) the guardian becomes incapacitated, or is

1 sentenced to the penitentiary, or from any other cause becomes
2 incapable of properly performing the duties of the guardian's
3 trust;

4 (6) as guardian of the person, the guardian cruelly
5 treats or neglects the ward, or neglects to educate or maintain the
6 ward as liberally as the means of the ward's estate and the ward's
7 ability or condition permit;

8 (7) the guardian interferes with the ward's progress
9 or participation in programs in the community;

10 (8) the guardian fails to comply with the requirements
11 of Section 697 of this code; or

12 (9) the court determines that, because of the
13 dissolution of the joint guardians' marriage, the termination of
14 the guardians' joint appointment and the continuation of only one
15 of the joint guardians as the sole guardian is in the best interest
16 of the ward.

17 SECTION 2. The changes in law made by this Act to Sections
18 761(a) and (c), Texas Probate Code, apply only to a motion for the
19 removal of a guardian made or filed on or after the effective date
20 of this Act. A motion for the removal of a guardian made or filed
21 before the effective date of this Act is governed by the law in
22 effect on the date the motion was made or filed, and the former law
23 is continued in effect for that purpose.

24 SECTION 3. This Act takes effect September 1, 2005.