

1-1 By: Hartnett (Senate Sponsor - Wentworth) H.B. No. 417
1-2 (In the Senate - Received from the House March 19, 2007;
1-3 March 29, 2007, read first time and referred to Committee on
1-4 Jurisprudence; May 7, 2007, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 4, Nays 0;
1-6 May 7, 2007, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 417 By: Wentworth

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to guardianship matters and proceedings.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. Section 645, Texas Probate Code, is amended by
1-13 adding Subsection (f) to read as follows:

1-14 (f) The term of appointment of a guardian ad litem made in a
1-15 proceeding for the appointment of a guardian expires, without a
1-16 court order, on the date the court either appoints a guardian or
1-17 denies the application for appointment of a guardian, unless the
1-18 court determines that the continued appointment of the guardian ad
1-19 litem is in the ward's best interest.

1-20 SECTION 2. Section 646, Texas Probate Code, is amended by
1-21 adding Subsection (e) to read as follows:

1-22 (e) The term of appointment of an attorney ad litem
1-23 appointed under this section expires, without a court order, on the
1-24 date the court either appoints a guardian or denies the application
1-25 for appointment of a guardian, unless the court determines that the
1-26 continued appointment of the attorney ad litem is in the ward's best
1-27 interest.

1-28 SECTION 3. Section 665A, Texas Probate Code, is amended to
1-29 read as follows:

1-30 Sec. 665A. PAYMENT FOR PROFESSIONAL SERVICES. The court
1-31 shall order the payment of a fee set by the court as compensation to
1-32 the attorneys, mental health professionals, and interpreters
1-33 appointed under [~~Section 646 or 687 of~~] this chapter [~~code~~], as
1-34 applicable, to be taxed as costs in the case. If after examining
1-35 the proposed ward's assets the court determines the proposed ward
1-36 is unable to pay for services provided by an attorney, a mental
1-37 health professional, or an interpreter appointed under [~~Section 646~~
1-38 ~~or 687 of~~] this chapter [~~code~~], as applicable, the county is
1-39 responsible for the cost of those services.

1-40 SECTION 4. Section 682, Texas Probate Code, is amended to
1-41 read as follows:

1-42 Sec. 682. APPLICATION; CONTENTS. Any person may commence
1-43 a proceeding for the appointment of a guardian by filing a written
1-44 application in a court having jurisdiction and venue. The
1-45 application must be sworn to by the applicant and state:

1-46 (1) the name, sex, date of birth, and address of the
1-47 proposed ward;

1-48 (2) the name, relationship, and address of the person
1-49 the applicant desires to have appointed as guardian;

1-50 (3) whether guardianship of the person or estate, or
1-51 both, is sought;

1-52 (4) the nature and degree of the alleged incapacity,
1-53 the specific areas of protection and assistance requested, and the
1-54 limitation or termination of rights requested to be included in the
1-55 court's order of appointment, including a termination of:

1-56 (A) the right of a proposed ward who is 18 years
1-57 of age or older to vote in a public election; and

1-58 (B) the proposed ward's eligibility to hold or
1-59 obtain a license to operate a motor vehicle under Chapter 521,
1-60 Transportation Code;

1-61 (5) the facts requiring that a guardian be appointed
1-62 and the interest of the applicant in the appointment;

1-63 (6) the nature and description of any guardianship of

2-1 any kind existing for the proposed ward in any other state;

2-2 (7) the name and address of any person or institution
2-3 having the care and custody of the proposed ward;

2-4 (8) the approximate value and description of the
2-5 proposed ward's property, including any compensation, pension,
2-6 insurance, or allowance to which the proposed ward may be entitled;

2-7 (9) the name and address of any person whom the
2-8 applicant knows to hold a power of attorney signed by the proposed
2-9 ward and a description of the type of power of attorney;

2-10 (10) if the proposed ward is a minor and if known by
2-11 the applicant:

2-12 (A) the name of each parent of the proposed ward
2-13 and state the parent's address or that the parent is deceased;

2-14 (B) the name and age of each sibling, if any, of
2-15 the proposed ward and state the sibling's address or that the
2-16 sibling is deceased; and

2-17 (C) if each of the proposed ward's parents and
2-18 siblings are deceased, the names and addresses of the proposed
2-19 ward's next of kin who are adults;

2-20 (11) if the proposed ward is a minor, whether the minor
2-21 was the subject of a legal or conservatorship proceeding within the
2-22 preceding two-year period and, if so, the court involved, the
2-23 nature of the proceeding, and the final disposition, if any, of the
2-24 proceeding;

2-25 (12) if the proposed ward is an adult and if known by
2-26 the applicant:

2-27 (A) the name of the proposed ward's spouse, if
2-28 any, and state the spouse's address or that the spouse is deceased;

2-29 (B) the name of each of the proposed ward's
2-30 parents and state the parent's address or that the parent is
2-31 deceased;

2-32 (C) the name and age of each of the proposed
2-33 ward's siblings, if any, and state the sibling's address or that the
2-34 sibling is deceased;

2-35 (D) the name and age of each of the proposed
2-36 ward's children, if any, and state the child's address or that the
2-37 child is deceased; and

2-38 (E) if the proposed ward's spouse and each of the
2-39 proposed ward's parents, siblings, and children are deceased, or,
2-40 if there is no spouse, parent, adult sibling, or adult child, the
2-41 names and addresses of the proposed ward's next of kin who are
2-42 adults;

2-43 (13) facts showing that the court has venue over the
2-44 proceeding; and

2-45 (14) if applicable, that the person whom the applicant
2-46 desires to have appointed as a guardian is a private professional
2-47 guardian who is certified under Subchapter C, Chapter 111,
2-48 Government Code, and has complied with the requirements of Section
2-49 697 of this code.

2-50 SECTION 5. Section 683, Texas Probate Code, is amended to
2-51 read as follows:

2-52 Sec. 683. COURT'S INITIATION OF GUARDIANSHIP PROCEEDINGS.

2-53 (a) If a court has probable cause to believe that a person
2-54 domiciled or found in the county in which the court is located is an
2-55 incapacitated person, and the person does not have a guardian in
2-56 this state, the court shall appoint a guardian ad litem or court
2-57 investigator to investigate the person's conditions and
2-58 circumstances to determine whether the person is an incapacitated
2-59 person and whether a guardianship is necessary. If after the
2-60 investigation the guardian ad litem or court investigator believes
2-61 that the person is an incapacitated person and that a guardianship
2-62 is necessary, the guardian ad litem or court investigator shall
2-63 [and] file an application for the appointment of a guardian of the
2-64 person or estate, or both, for [of] the person [believed to be
2-65 incapacitated].

2-66 (b) To establish probable cause under this section, the
2-67 court may require:

2-68 (1) an information letter about the person believed to
2-69 be incapacitated that is submitted by an interested person and

3-1 satisfies the requirements of Section 683A of this code; or
 3-2 (2) a written letter or certificate from a physician
 3-3 who has examined the person believed to be incapacitated that
 3-4 satisfies the requirements of Section 687(a) of this code, except
 3-5 that the letter must be dated not earlier than the 120th day before
 3-6 the date of the appointment of a guardian ad litem or court
 3-7 investigator [~~filing of an application~~] under Subsection (a) of
 3-8 this section and be based on an examination the physician performed
 3-9 not earlier than the 120th day before that date.

3-10 (c) A court that appoints a guardian ad litem under
 3-11 Subsection (a) of this section [~~creates a guardianship for a ward~~
 3-12 ~~under this chapter~~] may authorize compensation of the [a] guardian
 3-13 ad litem [~~who files an application under Subsection (a) of this~~
 3-14 ~~section~~] from available funds of the proposed ward's estate,
 3-15 regardless of whether a guardianship is created for the proposed
 3-16 ward. If after examining the ward's or proposed ward's assets the
 3-17 court determines the ward or proposed ward is unable to pay for
 3-18 services provided by the guardian ad litem, the court may authorize
 3-19 compensation from the county treasury.

3-20 SECTION 6. Section 687(a), Texas Probate Code, is amended
 3-21 to read as follows:

3-22 (a) The court may not grant an application to create a
 3-23 guardianship for an incapacitated person, other than a minor,
 3-24 person whose alleged incapacity is mental retardation, or person
 3-25 for whom it is necessary to have a guardian appointed only to
 3-26 receive funds from a governmental source, unless the applicant
 3-27 presents to the court a written letter or certificate from a
 3-28 physician licensed in this state that is dated not earlier than the
 3-29 120th day before the date of the filing of the application and based
 3-30 on an examination the physician performed not earlier than the
 3-31 120th day before the date of the filing of the application. The
 3-32 letter or certificate must:

3-33 (1) describe the nature and degree of incapacity,
 3-34 including the medical history if reasonably available;

3-35 (2) provide a medical prognosis specifying the
 3-36 estimated severity of the incapacity;

3-37 (3) state how or in what manner the proposed ward's
 3-38 ability to make or communicate responsible decisions concerning
 3-39 himself or herself is affected by the person's physical or mental
 3-40 health;

3-41 (4) state whether any current medication affects the
 3-42 demeanor of the proposed ward or the proposed ward's ability to
 3-43 participate fully in a court proceeding;

3-44 (5) describe the precise physical and mental
 3-45 conditions underlying a diagnosis of senility, if applicable; [~~and~~]

3-46 (6) state whether in the physician's opinion the
 3-47 proposed ward:

3-48 (A) has the mental capacity to vote in a public
 3-49 election; and

3-50 (B) has the ability to safely operate a motor
 3-51 vehicle; and

3-52 (7) include any other information required by the
 3-53 court.

3-54 SECTION 7. Section 690, Texas Probate Code, is amended to
 3-55 read as follows:

3-56 Sec. 690. PERSONS APPOINTED GUARDIAN. Only one person may
 3-57 be appointed as guardian of the person or estate, but one person may
 3-58 be appointed guardian of the person and another of the estate, if it
 3-59 is in the best interest of the ward. Nothing in this section
 3-60 prohibits the joint appointment, if the court finds it to be in the
 3-61 best interest of the ward, of:

3-62 (1) a husband and wife;

3-63 (2) [~~of~~] joint managing conservators;

3-64 (3) [~~or of~~] coguardians appointed under the laws of a
 3-65 jurisdiction other than this state; or

3-66 (4) both parents of an adult who is incapacitated if
 3-67 the incapacitated person:

3-68 (A) has not been the subject of a suit affecting
 3-69 the parent-child relationship; or

4-1 (B) has been the subject of a suit affecting the
 4-2 parent-child relationship and both of the incapacitated person's
 4-3 parents were named as joint managing conservators in the suit but
 4-4 are no longer serving in that capacity.

4-5 SECTION 8. Sections 693(a) and (b), Texas Probate Code, are
 4-6 amended to read as follows:

4-7 (a) If it is found that the proposed ward is totally without
 4-8 capacity [~~as provided by this code~~] to care for himself or herself,
 4-9 [~~and~~] to manage the individual's property, to operate a motor
 4-10 vehicle, and to vote in a public election, the court may appoint a
 4-11 guardian of the individual's person or estate, or both, with full
 4-12 authority over the incapacitated person except as provided by law.
 4-13 An order appointing a guardian under this subsection must contain
 4-14 findings of fact and specify:

4-15 (1) the information required by Subsection (c) of this
 4-16 section;

4-17 (2) that the guardian has full authority over the
 4-18 incapacitated person; [~~and~~]

4-19 (3) if necessary, the amount of funds from the corpus
 4-20 of the person's estate the court will allow the guardian to expend
 4-21 for the education and maintenance of the person under Section 776 of
 4-22 this code;

4-23 (4) whether the person is totally incapacitated
 4-24 because of a mental condition; and

4-25 (5) that the person does not have the capacity to
 4-26 operate a motor vehicle and to vote in a public election.

4-27 (b) If it is found that the person lacks the capacity to do
 4-28 some, but not all, of the tasks necessary to care for himself or
 4-29 herself or to manage the individual's property, the court may
 4-30 appoint a guardian with limited powers and permit the individual to
 4-31 care for himself or herself or to manage the individual's property
 4-32 commensurate with the individual's ability. An order appointing a
 4-33 guardian under this subsection must contain findings of fact and
 4-34 specify:

4-35 (1) the information required by Subsection (c) of this
 4-36 section;

4-37 (2) the specific powers, limitations, or duties of the
 4-38 guardian with respect to the care of the person or the management of
 4-39 the person's property by the guardian; [~~and~~]

4-40 (3) if necessary, the amount of funds from the corpus
 4-41 of the person's estate the court will allow the guardian to expend
 4-42 for the education and maintenance of the person under Section 776 of
 4-43 this code; and

4-44 (4) whether the person is incapacitated because of a
 4-45 mental condition and, if so, whether the person retains the right to
 4-46 vote in a public election or maintains eligibility to hold or obtain
 4-47 a license to operate a motor vehicle under Chapter 521,
 4-48 Transportation Code.

4-49 SECTION 9. Section 694C, Texas Probate Code, is amended by
 4-50 adding Subsection (c) to read as follows:

4-51 (c) An attorney ad litem appointed under this section is
 4-52 entitled to reasonable compensation for services in the amount set
 4-53 by the court to be taxed as costs in the proceeding, regardless of
 4-54 whether the proceeding results in the restoration of the ward's
 4-55 capacity or a modification of the ward's guardianship.

4-56 SECTION 10. Sections 694G and 694H, Texas Probate Code, are
 4-57 amended to read as follows:

4-58 Sec. 694G. ORDER OF COMPLETE RESTORATION OF WARD'S
 4-59 CAPACITY. If the court finds that a ward is no longer an
 4-60 incapacitated person, the order completely restoring the ward's
 4-61 capacity must contain findings of fact and specify:

4-62 (1) the information required by Section 694J of this
 4-63 code;

4-64 (2) that the ward is no longer an incapacitated
 4-65 person;

4-66 (3) that there is no further need for a guardianship of
 4-67 the person or estate of the ward;

4-68 (3-a) if the ward's incapacity resulted from a mental
 4-69 condition, that the ward's mental capacity is completely restored;

(4) that the guardian is required to:
 (A) immediately settle the guardianship in accordance with this chapter; and
 (B) deliver all of the remaining guardianship estate to the ward; and
 (5) that the clerk shall revoke letters of guardianship when the guardianship is finally settled and closed.

Sec. 694H. MODIFICATION OF GUARDIANSHIP. If the court finds that a guardian's powers or duties should be expanded or limited, the order modifying the guardianship must contain findings of fact and specify:

(1) the information required by Section 694J of this code;

(2) the specific powers, limitations, or duties of the guardian with respect to the care of the ward or the management of the property of the ward, as appropriate;

(3) the specific areas of protection and assistance to be provided to the ward;

(4) any limitation of the ward's rights; ~~and~~

(5) if the ward's incapacity resulted from a mental condition, whether the ward retains the right to vote; and

(6) that the clerk shall modify the letters of guardianship to the extent applicable to conform to the order.

SECTION 11. Subpart A, Part 3, Chapter XIII, Texas Probate Code, is amended by adding Section 694L to read as follows:

Sec. 694L. PAYMENT FOR GUARDIANS AD LITEM. As provided by Section 645(b) of this code, a guardian ad litem appointed in a proceeding involving the complete restoration of a ward's capacity or modification of a ward's guardianship is entitled to reasonable compensation for services in the amount set by the court to be taxed as costs in the proceeding, regardless of whether the proceeding results in the restoration of the ward's capacity or modification of the ward's guardianship.

SECTION 12. Section 695(a), Texas Probate Code, is amended to read as follows:

(a) If a guardian dies, resigns, or is removed, the court may, on application and on service of notice as directed by the court, appoint a successor guardian. On a finding that a necessity for the immediate appointment of a successor guardian exists, the court may appoint a successor guardian without citation or notice.

SECTION 13. Sections 759(a) and (f), Texas Probate Code, are amended to read as follows:

(a) In case of the death of the guardian of the person or of the estate of a ward, a personal representative of the deceased guardian shall account for, pay, and deliver to a person legally entitled to receive the property, all the property belonging to the guardianship that is entrusted to the care of the representative, at the time and in the manner as the court orders. ~~[On a finding that a necessity for the immediate appointment of a successor guardian exists, the court may appoint a successor guardian without citation or notice.]~~

(f) Except when otherwise expressly provided in this chapter, letters may not be revoked ~~[and other letters granted]~~ except on application, and after personal service of citation on the person~~[, if living,]~~ whose letters are sought to be revoked, that the person appear and show cause why the application should not be granted.

SECTION 14. Section 760(b), Texas Probate Code, is amended to read as follows:

(b) If the necessity exists, the court may immediately accept a resignation and appoint a successor without citation or notice but may not discharge the person resigning as guardian of the estate or release the person or the sureties on the person's bond until final order or judgment is rendered on the final account of the guardian.

SECTION 15. Sections 761(c) and (f), Texas Probate Code, are amended to read as follows:

(c) The court may remove a guardian on its own motion, or on the complaint of an interested person, after the guardian has been

6-1 cited by personal service to answer at a time and place set in the
6-2 notice, when:

6-3 (1) sufficient grounds appear to support belief that
6-4 the guardian has misapplied, embezzled, or removed from the state,
6-5 or that the guardian is about to misapply, embezzle, or remove from
6-6 the state, all or any part of the property committed to the care of
6-7 the guardian;

6-8 (2) the guardian fails to return any account or report
6-9 that is required by law to be made;

6-10 (3) the guardian fails to obey any proper order of the
6-11 court having jurisdiction with respect to the performance of the
6-12 guardian's duties;

6-13 (4) the guardian is proved to have been guilty of gross
6-14 misconduct or mismanagement in the performance of the duties of the
6-15 guardian;

6-16 (5) the guardian becomes incapacitated, or is
6-17 sentenced to the penitentiary, or from any other cause becomes
6-18 incapable of properly performing the duties of the guardian's
6-19 trust;

6-20 (6) the guardian neglects or cruelly treats the ward;

6-21 (6-a) the guardian neglects to educate or maintain the
6-22 ward as liberally as the means of the ward's estate and the ward's
6-23 ability or condition permit;

6-24 (7) the guardian interferes with the ward's progress
6-25 or participation in programs in the community;

6-26 (8) the guardian fails to comply with the requirements
6-27 of Section 697 of this code; ~~or~~

6-28 (9) the court determines that, because of the
6-29 dissolution of the joint guardians' marriage, the termination of
6-30 the guardians' joint appointment and the continuation of only one
6-31 of the joint guardians as the sole guardian is in the best interest
6-32 of the ward; or

6-33 (10) the guardian would be ineligible for appointment
6-34 as a guardian under Section 681 of this code.

6-35 (f) If the necessity exists, the court may immediately
6-36 appoint a successor without citation or notice but may not
6-37 discharge the person removed as guardian of the estate or release
6-38 the person or the sureties on the person's bond until final order or
6-39 judgment is rendered on the final account of the guardian.

6-40 SECTION 16. Section 823, Texas Probate Code, is amended to
6-41 read as follows:

6-42 Sec. 823. CITATION [~~AND RETURN~~] ON APPLICATION. On the
6-43 filing of an application for the sale of real estate under Section
6-44 820 of this code and exhibit, the clerk shall issue a citation to
6-45 all persons interested in the guardianship that describes the land
6-46 or interest or part of the land or interest sought to be sold and
6-47 that informs [~~requires~~] the persons of the right under Section 824
6-48 of this code to file an opposition to the sale during the period
6-49 prescribed by the court [~~to appear at the time set by the court~~] as
6-50 shown in the citation [~~and show cause why the sale should not be~~
6-51 ~~made~~], if they so elect. Service of citation shall be by posting.

6-52 SECTION 17. Section 824, Texas Probate Code, is amended to
6-53 read as follows:

6-54 Sec. 824. OPPOSITION TO APPLICATION. When an application
6-55 for an order of sale is made, a person interested in the
6-56 guardianship [~~, before an order of sale is made by the court,~~] may,
6-57 during the period provided in the citation issued under Section 823
6-58 of this code, file the person's opposition to the sale, in writing,
6-59 or may make application for the sale of other property of the
6-60 estate.

6-61 SECTION 18. Subpart H, Part 4, Chapter XIII, Texas Probate
6-62 Code, is amended by adding Section 824A to read as follows:

6-63 Sec. 824A. HEARING ON APPLICATION AND ANY OPPOSITION. (a)
6-64 The clerk of a court in which an application for an order of sale is
6-65 filed shall immediately call to the attention of the judge any
6-66 opposition to the sale that is filed during the period provided in
6-67 the citation issued under Section 823 of this code. The court shall
6-68 hold a hearing on an application if an opposition to the sale is
6-69 filed during the period provided in the citation.

7-1 (b) A hearing on an application for an order of sale is not
 7-2 required under this section if no opposition to the application is
 7-3 filed during the period provided in the citation. The court, in its
 7-4 discretion, may determine that a hearing is necessary on the
 7-5 application even if no opposition was filed during that period.

7-6 (c) If the court orders a hearing under Subsection (a) or
 7-7 (b) of this section, the court shall designate in writing a date and
 7-8 time for hearing the application and any opposition, together with
 7-9 the evidence pertaining to the application and opposition. The
 7-10 clerk shall issue a notice to the applicant and to each person who
 7-11 files an opposition to the sale, if applicable, of the date and time
 7-12 of the hearing.

7-13 (d) The judge may, by entries on the docket, continue a
 7-14 hearing held under this section from time to time until the judge is
 7-15 satisfied concerning the application.

7-16 SECTION 19. Section 825, Texas Probate Code, is amended to
 7-17 read as follows:

7-18 Sec. 825. ORDER OF SALE. If satisfied [~~on hearing~~] that the
 7-19 sale of the property of the guardianship described in the
 7-20 application made under Section 820 of this code is necessary or
 7-21 advisable, the court shall order the sale to be made. Otherwise,
 7-22 the court may deny the application and, if the court deems best, may
 7-23 order the sale of other property the sale of which would be more
 7-24 advantageous to the estate. An order for the sale of real estate
 7-25 must specify:

7-26 (1) the property to be sold, giving a description that
 7-27 will identify the property;

7-28 (2) whether the property is to be sold at public
 7-29 auction or at private sale, and, if at public auction, the time and
 7-30 place of the sale;

7-31 (3) the necessity or advisability of the sale and its
 7-32 purpose;

7-33 (4) except in cases in which no general bond is
 7-34 required, that, having examined the general bond of the
 7-35 representative of the estate, the court finds it to be sufficient as
 7-36 required by law, or finds the bond to be insufficient and specifies
 7-37 the necessary or increased bond;

7-38 (5) that the sale shall be made and the report returned
 7-39 in accordance with law; and

7-40 (6) the terms of the sale.

7-41 SECTION 20. Section 855B, Texas Probate Code, is amended by
 7-42 amending Subsections (a) and (b) and adding Subsection (a-1) to
 7-43 read as follows:

7-44 (a) Not later than the 180th day after the date on which the
 7-45 guardian of the estate qualified as guardian or another date
 7-46 specified by the court, the guardian shall:

7-47 (1) have estate assets invested according to Section
 7-48 855(b) of this code; or

7-49 (2) file a written application with the court for an
 7-50 order:

7-51 (A) [~~(1)~~] authorizing the guardian to:
 7-52 (i) [~~(A)~~] develop and implement an
 7-53 investment plan for estate assets;

7-54 (ii) [~~(B)~~] invest in or sell securities under
 7-55 an investment plan developed under Subparagraph (i) [Paragraph (A)]
 7-56 of this paragraph [subdivision];

7-57 (iii) [~~(C)~~] declare that one or more estate
 7-58 assets must be retained, despite being underproductive with respect
 7-59 to income or overall return; or

7-60 (iv) [~~(D)~~] loan estate funds, invest in real
 7-61 estate or make other investments, or purchase a life, term, or
 7-62 endowment insurance policy or an annuity contract; or

7-63 (B) [~~(2)~~] modifying or eliminating the guardian's
 7-64 duty to invest the estate.

7-65 (a-1) The court may approve an investment plan under
 7-66 Subsection (a)(2) of this section without a hearing.

7-67 (b) If the court determines [On hearing the application
 7-68 under this section and on a finding by the preponderance of the
 7-69 evidence] that the action requested in the application is in the

8-1 best interests of the ward and the ward's estate, the court shall
8-2 render an order granting the authority requested in the application
8-3 or an order modifying or eliminating the guardian's duty to keep the
8-4 estate invested. An [The] order under this subsection must state in
8-5 reasonably specific terms:

8-6 (1) the nature of the investment, investment plan, or
8-7 other action requested in the application and authorized by the
8-8 court, including, if applicable, the authority to invest in and
8-9 sell securities in accordance with the objectives of the investment
8-10 plan;

8-11 (2) when an investment must be reviewed and
8-12 reconsidered by the guardian; and

8-13 (3) whether the guardian must report the guardian's
8-14 review and recommendations to the court.

8-15 SECTION 21. Chapter 1, Election Code, is amended by adding
8-16 Section 1.020 to read as follows:

8-17 Sec. 1.020. VOTING DISABILITY OR CANDIDACY
8-18 DISQUALIFICATION: DETERMINATION OF MENTAL INCAPACITY. (a) A
8-19 person determined to be totally mentally incapacitated by a court
8-20 exercising probate jurisdiction is not subject to a voting
8-21 disability or candidacy disqualification under this code if,
8-22 subsequent to that determination, the person's mental capacity has
8-23 been completely restored by a final judgment of a court exercising
8-24 probate jurisdiction.

8-25 (b) A person determined to be partially mentally
8-26 incapacitated without the right to vote by a court exercising
8-27 probate jurisdiction is not subject to a voting disability or
8-28 candidacy disqualification under this code if, subsequent to that
8-29 determination, the person's guardianship has been modified to
8-30 include the right to vote or the person's mental capacity has been
8-31 completely restored by a final judgment of a court exercising
8-32 probate jurisdiction.

8-33 SECTION 22. Section 11.002, Election Code, is amended to
8-34 read as follows:

8-35 Sec. 11.002. QUALIFIED VOTER. In this code, "qualified
8-36 voter" means a person who:

8-37 (1) is 18 years of age or older;
8-38 (2) is a United States citizen;
8-39 (3) has not been determined [~~mentally incompetent~~] by
8-40 a final judgment of a court exercising probate jurisdiction to be:

8-41 (A) totally mentally incapacitated; or
8-42 (B) partially mentally incapacitated without the
8-43 right to vote;

8-44 (4) has not been finally convicted of a felony or, if
8-45 so convicted, has:

8-46 (A) fully discharged the person's sentence,
8-47 including any term of incarceration, parole, or supervision, or
8-48 completed a period of probation ordered by any court; or

8-49 (B) been pardoned or otherwise released from the
8-50 resulting disability to vote;

8-51 (5) is a resident of this state; and

8-52 (6) is a registered voter.

8-53 SECTION 23. Section 13.001(a), Election Code, is amended to
8-54 read as follows:

8-55 (a) To be eligible for registration as a voter in this
8-56 state, a person must:

8-57 (1) be 18 years of age or older;

8-58 (2) be a United States citizen;

8-59 (3) not have been determined [~~mentally incompetent~~] by
8-60 a final judgment of a court exercising probate jurisdiction to be:

8-61 (A) totally mentally incapacitated; or

8-62 (B) partially mentally incapacitated without the
8-63 right to vote;

8-64 (4) not have been finally convicted of a felony or, if
8-65 so convicted, must have:

8-66 (A) fully discharged the person's sentence,
8-67 including any term of incarceration, parole, or supervision, or
8-68 completed a period of probation ordered by any court; or

8-69 (B) been pardoned or otherwise released from the

9-1 resulting disability to vote; and

9-2 (5) be a resident of the county in which application
9-3 for registration is made.

9-4 SECTION 24. Section 13.002, Election Code, is amended by
9-5 amending Subsection (c) and adding Subsections (e) and (f) to read
9-6 as follows:

9-7 (c) A registration application must include:

9-8 (1) the applicant's first name, middle name, if any,
9-9 last name, and former name, if any;

9-10 (2) the month, day, and year of the applicant's birth;

9-11 (3) a statement that the applicant is a United States
9-12 citizen;

9-13 (4) a statement that the applicant is a resident of the
9-14 county;

9-15 (5) a statement that the applicant has not been
9-16 determined [~~mentally incompetent~~] by a final judgment of a court
9-17 exercising probate jurisdiction to be:

9-18 (A) totally mentally incapacitated; or

9-19 (B) partially mentally incapacitated without the
9-20 right to vote;

9-21 (6) a statement that the applicant has not been
9-22 finally convicted of a felony or that the applicant is a felon
9-23 eligible for registration under Section 13.001;

9-24 (7) the applicant's residence address or, if the
9-25 residence has no address, the address at which the applicant
9-26 receives mail and a concise description of the location of the
9-27 applicant's residence;

9-28 (8) the following information:

9-29 (A) the applicant's Texas driver's license number
9-30 or the number of a personal identification card issued by the
9-31 Department of Public Safety or a statement by the applicant that the
9-32 applicant has not been issued a driver's license or personal
9-33 identification card; or

9-34 (B) if the applicant has not been issued a number
9-35 described by Paragraph (A), the last four digits of the applicant's
9-36 social security number or a statement by the applicant that the
9-37 applicant has not been issued a social security number;

9-38 (9) if the application is made by an agent, a statement
9-39 of the agent's relationship to the applicant; and

9-40 (10) the city and county in which the applicant
9-41 formerly resided.

9-42 (e) Instead of the statement required by Subsection (c)(5),
9-43 an applicant who has been determined to be totally mentally
9-44 incapacitated by a court and who is eligible to register because of
9-45 Section 1.020(a) shall include in the application a statement that
9-46 the person's mental capacity has been completely restored by a
9-47 final judgment of a court.

9-48 (f) Instead of the statement required by Subsection (c)(5),
9-49 an applicant who has been determined to be partially mentally
9-50 incapacitated without the right to vote by a court and who is
9-51 eligible to register because of Section 1.020(b) shall include in
9-52 the application a statement that the person's guardianship has been
9-53 modified to include the right to vote or the person's mental
9-54 capacity has been completely restored, as applicable, by a final
9-55 judgment of a court.

9-56 SECTION 25. The heading to Section 16.002, Election Code,
9-57 is amended to read as follows:

9-58 Sec. 16.002. MENTAL INCAPACITY [~~INCOMPETENCE~~].

9-59 SECTION 26. Section 16.002(a), Election Code, is amended to
9-60 read as follows:

9-61 (a) Each month the clerk of each court having proper
9-62 jurisdiction to adjudge a person mentally incapacitated
9-63 [~~incompetent~~] shall prepare an abstract of each final judgment of a
9-64 court served by the clerk, occurring in the month:

9-65 (1) [7] adjudging a person 18 years of age or older who
9-66 is a resident of the state to be:

9-67 (A) totally mentally incapacitated; or

9-68 (B) partially mentally incapacitated without the
9-69 right to vote;

10-1 (2) adjudging the mental capacity of a person 18 years
 10-2 of age or older who is a resident of this state to be completely
 10-3 restored; or

10-4 (3) modifying the guardianship of a person 18 years of
 10-5 age or older to include the right to vote [~~incompetent~~].

10-6 SECTION 27. Section 16.031(a), Election Code, is amended to
 10-7 read as follows:

10-8 (a) The registrar shall cancel a voter's registration
 10-9 immediately on receipt of:

10-10 (1) notice under Section 13.072(b) or 15.021 or a
 10-11 response under Section 15.053 that the voter's residence is outside
 10-12 the county;

10-13 (2) an abstract of the voter's death certificate under
 10-14 Section 16.001(a) or an abstract of an application indicating that
 10-15 the voter is deceased under Section 16.001(b);

10-16 (3) an abstract of a final judgment of the voter's
 10-17 total mental incapacity, partial mental incapacity without the
 10-18 right to vote [~~incompetence~~], conviction of a felony, or
 10-19 disqualification under Section 16.002, 16.003, or 16.004;

10-20 (4) notice under Section 112.012 that the voter has
 10-21 applied for a limited ballot in another county;

10-22 (5) notice from a voter registration official in
 10-23 another state that the voter has registered to vote outside this
 10-24 state; or

10-25 (6) notice from the secretary of state that the voter
 10-26 has registered to vote in another county, as determined by the
 10-27 voter's driver's license number or personal identification card
 10-28 number issued by the Department of Public Safety or social security
 10-29 number.

10-30 SECTION 28. Section 141.001(a), Election Code, is amended
 10-31 to read as follows:

10-32 (a) To be eligible to be a candidate for, or elected or
 10-33 appointed to, a public elective office in this state, a person must:

10-34 (1) be a United States citizen;

10-35 (2) be 18 years of age or older on the first day of the
 10-36 term to be filled at the election or on the date of appointment, as
 10-37 applicable;

10-38 (3) have not been determined [~~mentally incompetent~~] by
 10-39 a final judgment of a court exercising probate jurisdiction to be:

10-40 (A) totally mentally incapacitated; or

10-41 (B) partially mentally incapacitated without the
 10-42 right to vote;

10-43 (4) have not been finally convicted of a felony from
 10-44 which the person has not been pardoned or otherwise released from
 10-45 the resulting disabilities;

10-46 (5) have resided continuously in the state for 12
 10-47 months and in the territory from which the office is elected for six
 10-48 months immediately preceding the following date:

10-49 (A) for a candidate whose name is to appear on a
 10-50 general primary election ballot, the date of the regular filing
 10-51 deadline for a candidate's application for a place on the ballot;

10-52 (B) for an independent candidate, the date of the
 10-53 regular filing deadline for a candidate's application for a place
 10-54 on the ballot;

10-55 (C) for a write-in candidate, the date of the
 10-56 election at which the candidate's name is written in;

10-57 (D) for a party nominee who is nominated by any
 10-58 method other than by primary election, the date the nomination is
 10-59 made; and

10-60 (E) for an appointee to an office, the date the
 10-61 appointment is made; and

10-62 (6) satisfy any other eligibility requirements
 10-63 prescribed by law for the office.

10-64 SECTION 29. Section 141.031, Election Code, is amended to
 10-65 read as follows:

10-66 Sec. 141.031. GENERAL REQUIREMENTS FOR APPLICATION. (a) A
 10-67 candidate's application for a place on the ballot that is required
 10-68 by this code must:

10-69 (1) be in writing;

11-1 (2) be signed and sworn to by the candidate and
11-2 indicate the date that the candidate swears to the application;

11-3 (3) be timely filed with the appropriate authority;
11-4 and

11-5 (4) include:
11-6 (A) the candidate's name;
11-7 (B) the candidate's occupation;
11-8 (C) the office sought, including any place number
11-9 or other distinguishing number;

11-10 (D) an indication of whether the office sought is
11-11 to be filled for a full or unexpired term if the office sought and
11-12 another office to be voted on have the same title but do not have
11-13 place numbers or other distinguishing numbers;

11-14 (E) a statement that the candidate is a United
11-15 States citizen;

11-16 (F) a statement that the candidate has not been
11-17 determined [~~mentally incompetent~~] by a final judgment of a court
11-18 exercising probate jurisdiction to be:

11-19 (i) totally mentally incapacitated; or
11-20 (ii) partially mentally incapacitated
11-21 without the right to vote;

11-22 (G) a statement that the candidate has not been
11-23 finally convicted of a felony from which the candidate has not been
11-24 pardoned or otherwise released from the resulting disabilities;

11-25 (H) the candidate's date of birth;

11-26 (I) the candidate's residence address or, if the
11-27 residence has no address, the address at which the candidate
11-28 receives mail and a concise description of the location of the
11-29 candidate's residence;

11-30 (J) the candidate's length of continuous
11-31 residence in the state and in the territory from which the office
11-32 sought is elected as of the date the candidate swears to the
11-33 application;

11-34 (K) the statement: "I, _____, of _____
11-35 County, Texas, being a candidate for the office of _____,
11-36 swear that I will support and defend the constitution and laws of
11-37 the United States and of the State of Texas"; and

11-38 (L) a statement that the candidate is aware of
11-39 the nepotism law, Chapter 573, Government Code.

11-40 (b) Instead of the statement required by Subsection
11-41 (a)(4)(F), a candidate eligible for office because of Section
11-42 1.020(a) shall include in the application a statement that the
11-43 person's mental capacity has been completely restored by a final
11-44 judgment of a court.

11-45 (c) Instead of the statement required by Subsection
11-46 (a)(4)(F), a candidate eligible for office because of Section
11-47 1.020(b) shall include in the application a statement that the
11-48 person's guardianship has been modified to include the right to
11-49 vote or the person's mental capacity has been completely restored,
11-50 as applicable, by a final judgment of a court.

11-51 SECTION 30. Section 143.005(b), Election Code, is amended
11-52 to read as follows:

11-53 (b) If a city charter prescribes the requirements that a
11-54 candidate's application must satisfy for the candidate's name to be
11-55 placed on the ballot, Section 141.031(a)(4)(L) [~~141.031(4)(L)~~]
11-56 also applies to the application. The other provisions of Section
11-57 141.031 do not apply.

11-58 SECTION 31. Section 144.003(b), Election Code, is amended
11-59 to read as follows:

11-60 (b) If a law outside this code purports to prescribe the
11-61 exclusive requirements that a candidate's application must satisfy
11-62 for the candidate's name to be placed on the ballot, Section
11-63 141.031(a)(4)(L) [~~141.031(4)(L)~~] also applies to the application.
11-64 The other provisions of Section 141.031 do not apply.

11-65 SECTION 32. Section 192.032(b), Election Code, is amended
11-66 to read as follows:

11-67 (b) An application must:
11-68 (1) comply with Section 141.031, except that:
11-69 (A) the application is not required to include a

12-1 candidate's occupation, length of residence, or statement that the
 12-2 candidate is aware of the nepotism law; and

12-3 (B) the application must contain the applicable
 12-4 information required by Section 141.031(a)(4) [~~141.031(4)~~] with
 12-5 respect to both the presidential candidate and the running mate;

12-6 (2) state the names and residence addresses of
 12-7 presidential elector candidates in a number equal to the number of
 12-8 presidential electors that federal law allocates to the state; and

12-9 (3) be accompanied by:

12-10 (A) a petition that satisfies the requirements
 12-11 prescribed by Section 141.062; and

12-12 (B) written statements signed by the
 12-13 vice-presidential candidate and each of the presidential elector
 12-14 candidates indicating that each of them consents to be a candidate.

12-15 SECTION 33. Section 822, Texas Probate Code, is repealed.

12-16 SECTION 34. (a) Sections 645(f) and 646(e), Texas Probate
 12-17 Code, as added by this Act, apply only to a guardianship proceeding
 12-18 for which a court has appointed a guardian ad litem or attorney ad
 12-19 litem to represent the interests of a person on or after the
 12-20 effective date of this Act.

12-21 (b) The changes in law made by this Act to Section 665A,
 12-22 Texas Probate Code, apply only to a guardianship proceeding for
 12-23 which a court has appointed an attorney, mental health
 12-24 professional, or interpreter to represent the interests of a
 12-25 person:

12-26 (1) on or after the effective date of this Act; or

12-27 (2) before the effective date of this Act if the
 12-28 proceeding is pending on the effective date of this Act.

12-29 (c) The changes in law made by this Act to Section 683, Texas
 12-30 Probate Code, apply only to the appointment of a guardian ad litem
 12-31 or court investigator made on or after the effective date of this
 12-32 Act. The appointment of a guardian ad litem or court investigator
 12-33 made before the effective date of this Act is governed by the law in
 12-34 effect on the date of appointment, and the former law is continued
 12-35 in effect for that purpose.

12-36 (d) The changes in law made by this Act to Sections 694C,
 12-37 694G, and 694H, Texas Probate Code, and Section 694L, Texas Probate
 12-38 Code, as added by this Act, apply only to an application for the
 12-39 restoration of a ward's capacity or the modification of a ward's
 12-40 guardianship that is filed on or after the effective date of this
 12-41 Act. An application for the restoration of a ward's capacity or the
 12-42 modification of a ward's guardianship that is filed before the
 12-43 effective date of this Act is governed by the law in effect on the
 12-44 date the application was filed, and the former law is continued in
 12-45 effect for that purpose.

12-46 (e) The changes in law made by this Act to Sections 682,
 12-47 687(a), 690, 693, and 855B, Texas Probate Code, apply only to an
 12-48 application for the appointment of a guardian filed on or after the
 12-49 effective date of this Act. An application for the appointment of a
 12-50 guardian filed before the effective date of this Act is governed by
 12-51 the law in effect on the date the application was filed, and the
 12-52 former law is continued in effect for that purpose.

12-53 (f) The changes in law made by this Act to Sections 695(a)
 12-54 and 759(f), Texas Probate Code, apply only to an application for the
 12-55 appointment of a successor guardian filed on or after the effective
 12-56 date of this Act. An application for the appointment of a successor
 12-57 guardian filed before the effective date of this Act is governed by
 12-58 the law in effect on the date the application was filed, and the
 12-59 former law is continued in effect for that purpose.

12-60 (g) The changes in law made by this Act to Section 760, Texas
 12-61 Probate Code, apply only to an application for resignation filed on
 12-62 or after the effective date of this Act. An application for
 12-63 resignation filed before the effective date of this Act is governed
 12-64 by the law in effect on the date the application was filed, and the
 12-65 former law is continued in effect for that purpose.

12-66 (h) The changes in law made by this Act to Section 761(f),
 12-67 Texas Probate Code, apply only to a motion for the removal of a
 12-68 guardian made or filed on or after the effective date of this Act. A
 12-69 motion for the removal of a guardian made or filed before the

13-1 effective date of this Act is governed by the law in effect on the
13-2 date the motion was made or filed, and the former law is continued
13-3 in effect for that purpose.

13-4 (i) The changes in law made by this Act to Sections 823, 824,
13-5 and 825, Texas Probate Code, apply only to an application for the
13-6 sale of real property filed on or after the effective date of this
13-7 Act. An application for the sale of real property filed before the
13-8 effective date of this Act is governed by the law in effect on the
13-9 date the application was filed, and the former law is continued in
13-10 effect for that purpose.

13-11 (j) The changes in law made by this Act to the Election Code
13-12 apply only to an order issued or judgment entered by a court on or
13-13 after the effective date of this Act. An order issued or judgment
13-14 entered by a court before the effective date of this Act is governed
13-15 by the law as it existed immediately before the effective date of
13-16 this Act, and the former law is continued in effect for that
13-17 purpose.

13-18 SECTION 35. This Act takes effect September 1, 2007.

13-19 * * * * *