

By: Uresti, Zaffirini

S.B. No. 1392

A BILL TO BE ENTITLED

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AN ACT

relating to the rights of certain incapacitated persons that may be terminated by a court in a guardianship proceeding and to the restoration of certain rights.

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

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

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

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

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

(3) whether guardianship of the person or estate, or both, is sought;

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

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

(B) the proposed ward's eligibility to hold or

1 obtain a license to operate a motor vehicle under Chapter 521,
2 Transportation Code;

3 (5) the facts requiring that a guardian be appointed
4 and the interest of the applicant in the appointment;

5 (6) the nature and description of any guardianship of
6 any kind existing for the proposed ward in any other state;

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

9 (8) the approximate value and description of the
10 proposed ward's property, including any compensation, pension,
11 insurance, or allowance to which the proposed ward may be entitled;

12 (9) the name and address of any person whom the
13 applicant knows to hold a power of attorney signed by the proposed
14 ward and a description of the type of power of attorney;

15 (10) if the proposed ward is a minor and if known by
16 the applicant:

17 (A) the name of each parent of the proposed ward
18 and state the parent's address or that the parent is deceased;

19 (B) the name and age of each sibling, if any, of
20 the proposed ward and state the sibling's address or that the
21 sibling is deceased; and

22 (C) if each of the proposed ward's parents and
23 siblings are deceased, the names and addresses of the proposed
24 ward's next of kin who are adults;

25 (11) if the proposed ward is a minor, whether the minor
26 was the subject of a legal or conservatorship proceeding within the
27 preceding two-year period and, if so, the court involved, the

1 nature of the proceeding, and the final disposition, if any, of the
2 proceeding;

3 (12) if the proposed ward is an adult and if known by
4 the applicant:

5 (A) the name of the proposed ward's spouse, if
6 any, and state the spouse's address or that the spouse is deceased;

7 (B) the name of each of the proposed ward's
8 parents and state the parent's address or that the parent is
9 deceased;

10 (C) the name and age of each of the proposed
11 ward's siblings, if any, and state the sibling's address or that the
12 sibling is deceased;

13 (D) the name and age of each of the proposed
14 ward's children, if any, and state the child's address or that the
15 child is deceased; and

16 (E) if the proposed ward's spouse and each of the
17 proposed ward's parents, siblings, and children are deceased, or,
18 if there is no spouse, parent, adult sibling, or adult child, the
19 names and addresses of the proposed ward's next of kin who are
20 adults;

21 (13) facts showing that the court has venue over the
22 proceeding; and

23 (14) if applicable, that the person whom the applicant
24 desires to have appointed as a guardian is a private professional
25 guardian who is certified under Subchapter C, Chapter 111,
26 Government Code, and has complied with the requirements of Section
27 697 of this code.

1 SECTION 2. Subsection (a), Section 687, Texas Probate Code,
2 is amended to read as follows:

3 (a) The court may not grant an application to create a
4 guardianship for an incapacitated person, other than a minor,
5 person whose alleged incapacity is mental retardation, or person
6 for whom it is necessary to have a guardian appointed only to
7 receive funds from a governmental source, unless the applicant
8 presents to the court a written letter or certificate from a
9 physician licensed in this state that is dated not earlier than the
10 120th day before the date of the filing of the application and based
11 on an examination the physician performed not earlier than the
12 120th day before the date of the filing of the application. The
13 letter or certificate must:

14 (1) describe the nature and degree of incapacity,
15 including the medical history if reasonably available;

16 (2) provide a medical prognosis specifying the
17 estimated severity of the incapacity;

18 (3) state how or in what manner the proposed ward's
19 ability to make or communicate responsible decisions concerning
20 himself or herself is affected by the person's physical or mental
21 health;

22 (4) state whether any current medication affects the
23 demeanor of the proposed ward or the proposed ward's ability to
24 participate fully in a court proceeding;

25 (5) describe the precise physical and mental
26 conditions underlying a diagnosis of senility, if applicable; ~~and~~

27 (6) state whether in the physician's opinion the

1 proposed ward:

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

4 (B) has the ability to safely operate a motor
5 vehicle; and

6 (7) include any other information required by the
7 court.

8 SECTION 3. Section 693, Texas Probate Code, is amended by
9 amending Subsections (a) and (b) and adding Subsection (a-1) to
10 read as follows:

11 (a) If it is found that the proposed ward is totally without
12 capacity as provided by this code to care for himself or herself and
13 to manage the individual's property, the court may appoint a
14 guardian of the individual's person or estate, or both, with full
15 authority over the incapacitated person except as provided by law.
16 An order appointing a guardian under this subsection must contain
17 findings of fact and specify:

18 (1) the information required by Subsection (c) of this
19 section;

20 (2) that the guardian has full authority over the
21 incapacitated person; ~~and~~

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

26 (4) whether the person is totally incapacitated
27 because of a mental condition.

1 (a-1) If the court finds that a person is totally
2 incapacitated because of a mental condition, the order under
3 Subsection (a) of this section must also state that, because of the
4 person's total mental incapacity, the person is ineligible to:

5 (1) vote in a public election as provided by the
6 Election Code; and

7 (2) hold or obtain a license to operate a motor vehicle
8 under Chapter 521, Transportation Code.

9 (b) If it is found that the person lacks the capacity to do
10 some, but not all, of the tasks necessary to care for himself or
11 herself or to manage the individual's property, the court may
12 appoint a guardian with limited powers and permit the individual to
13 care for himself or herself or to manage the individual's property
14 commensurate with the individual's ability. An order appointing a
15 guardian under this subsection must contain findings of fact and
16 specify:

17 (1) the information required by Subsection (c) of this
18 section;

19 (2) the specific powers, limitations, or duties of the
20 guardian with respect to the care of the person or the management of
21 the person's property by the guardian; ~~and~~

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

26 (4) whether the person is incapacitated because of a
27 mental condition and, if so, whether the person retains the right to

1 vote in a public election or maintains eligibility to hold or obtain
2 a license to operate a motor vehicle under Chapter 521,
3 Transportation Code.

4 SECTION 4. Sections 694G and 694H, Texas Probate Code, are
5 amended to read as follows:

6 Sec. 694G. ORDER OF COMPLETE RESTORATION OF WARD'S
7 CAPACITY. If the court finds that a ward is no longer an
8 incapacitated person, the order completely restoring the ward's
9 capacity must contain findings of fact and specify:

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

12 (2) that the ward is no longer an incapacitated
13 person;

14 (3) that there is no further need for a guardianship of
15 the person or estate of the ward;

16 (3-a) if the ward's incapacity resulted from a mental
17 condition, that the ward's mental capacity is completely restored;

18 (4) that the guardian is required to:

19 (A) immediately settle the guardianship in
20 accordance with this chapter; and

21 (B) deliver all of the remaining guardianship
22 estate to the ward; and

23 (5) that the clerk shall revoke letters of
24 guardianship when the guardianship is finally settled and closed.

25 Sec. 694H. MODIFICATION OF GUARDIANSHIP. If the court
26 finds that a guardian's powers or duties should be expanded or
27 limited, the order modifying the guardianship must contain findings

1 of fact and specify:

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

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

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

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

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

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

14 SECTION 5. Chapter 1, Election Code, is amended by adding
15 Section 1.020 to read as follows:

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

24 (b) A person determined to be partially mentally
25 incapacitated without the right to vote by a court exercising
26 probate jurisdiction is not subject to a voting disability or
27 candidacy disqualification under this code if, subsequent to that

1 determination, the person's guardianship has been modified to
2 include the right to vote or the person's mental capacity has been
3 completely restored by a final judgment of a court exercising
4 probate jurisdiction.

5 SECTION 6. Section 11.002, Election Code, is amended to
6 read as follows:

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

9 (1) is 18 years of age or older;

10 (2) is a United States citizen;

11 (3) has not been determined [~~mentally incompetent~~] by
12 a final judgment of a court exercising probate jurisdiction to be:

13 (A) totally mentally incapacitated; or

14 (B) partially mentally incapacitated without the
15 right to vote;

16 (4) has not been finally convicted of a felony or, if
17 so convicted, has:

18 (A) fully discharged the person's sentence,
19 including any term of incarceration, parole, or supervision, or
20 completed a period of probation ordered by any court; or

21 (B) been pardoned or otherwise released from the
22 resulting disability to vote;

23 (5) is a resident of this state; and

24 (6) is a registered voter.

25 SECTION 7. Subsection (a), Section 13.001, Election Code,
26 is amended to read as follows:

27 (a) To be eligible for registration as a voter in this

1 state, a person must:

- 2 (1) be 18 years of age or older;
- 3 (2) be a United States citizen;
- 4 (3) not have been determined [~~mentally incompetent~~] by
- 5 a final judgment of a court exercising probate jurisdiction to be:

- 6 (A) totally mentally incapacitated; or
- 7 (B) partially mentally incapacitated without the
- 8 right to vote;

9 (4) not have been finally convicted of a felony or, if

10 so convicted, must have:

11 (A) fully discharged the person's sentence,

12 including any term of incarceration, parole, or supervision, or

13 completed a period of probation ordered by any court; or

14 (B) been pardoned or otherwise released from the

15 resulting disability to vote; and

16 (5) be a resident of the county in which application

17 for registration is made.

18 SECTION 8. Section 13.002, Election Code, is amended by

19 amending Subsection (c) and adding Subsections (e) and (f) to read

20 as follows:

21 (c) A registration application must include:

22 (1) the applicant's first name, middle name, if any,

23 last name, and former name, if any;

24 (2) the month, day, and year of the applicant's birth;

25 (3) a statement that the applicant is a United States

26 citizen;

27 (4) a statement that the applicant is a resident of the

1 county;

2 (5) a statement that the applicant has not been
3 determined [~~mentally incompetent~~] by a final judgment of a court
4 exercising probate jurisdiction to be:

5 (A) totally mentally incapacitated; or

6 (B) partially mentally incapacitated without the
7 right to vote;

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

11 (7) the applicant's residence address or, if the
12 residence has no address, the address at which the applicant
13 receives mail and a concise description of the location of the
14 applicant's residence;

15 (8) the following information:

16 (A) the applicant's Texas driver's license number
17 or the number of a personal identification card issued by the
18 Department of Public Safety or a statement by the applicant that the
19 applicant has not been issued a driver's license or personal
20 identification card; or

21 (B) if the applicant has not been issued a number
22 described by Paragraph (A), the last four digits of the applicant's
23 social security number or a statement by the applicant that the
24 applicant has not been issued a social security number;

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

27 (10) the city and county in which the applicant

1 formerly resided.

2 (e) Instead of the statement required by Subsection (c)(5),
3 an applicant who has been determined to be totally mentally
4 incapacitated by a court and who is eligible to register because of
5 Section 1.020(a) shall include in the application a statement that
6 the person's mental capacity has been completely restored by a
7 final judgment of a court.

8 (f) Instead of the statement required by Subsection (c)(5),
9 an applicant who has been determined to be partially mentally
10 incapacitated without the right to vote by a court and who is
11 eligible to register because of Section 1.020(b) shall include in
12 the application a statement that the person's guardianship has been
13 modified to include the right to vote or the person's mental
14 capacity has been completely restored, as applicable, by a final
15 judgment of a court.

16 SECTION 9. The heading to Section 16.002, Election Code, is
17 amended to read as follows:

18 Sec. 16.002. MENTAL INCAPACITY [~~INCOMPETENCE~~].

19 SECTION 10 Subsection (a), Section 16.002, Election Code,
20 is amended to read as follows:

21 (a) Each month the clerk of each court having proper
22 jurisdiction to adjudge a person mentally incapacitated
23 [~~incompetent~~] shall prepare an abstract of each final judgment of a
24 court served by the clerk, occurring in the month:

25 (1) [7] adjudging a person 18 years of age or older who
26 is a resident of the state to be:

27 (A) totally mentally incapacitated; or

1 (B) partially mentally incapacitated without the
2 right to vote;

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

6 (3) modifying the guardianship of a person 18 years of
7 age or older to include the right to vote [~~incompetent~~].

8 SECTION 11. Subsection (a), Section 16.031, Election Code,
9 is amended to read as follows:

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

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

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

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

22 (4) notice under Section 112.012 that the voter has
23 applied for a limited ballot in another county;

24 (5) notice from a voter registration official in
25 another state that the voter has registered to vote outside this
26 state; or

27 (6) notice from the secretary of state that the voter

1 has registered to vote in another county, as determined by the
2 voter's driver's license number or personal identification card
3 number issued by the Department of Public Safety or social security
4 number.

5 SECTION 12. Subsection (a), Section 141.001, Election Code,
6 is amended to read as follows:

7 (a) To be eligible to be a candidate for, or elected or
8 appointed to, a public elective office in this state, a person must:

9 (1) be a United States citizen;

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

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

15 (A) totally mentally incapacitated; or

16 (B) partially mentally incapacitated without the
17 right to vote;

18 (4) have not been finally convicted of a felony from
19 which the person has not been pardoned or otherwise released from
20 the resulting disabilities;

21 (5) have resided continuously in the state for 12
22 months and in the territory from which the office is elected for six
23 months immediately preceding the following date:

24 (A) for a candidate whose name is to appear on a
25 general primary election ballot, the date of the regular filing
26 deadline for a candidate's application for a place on the ballot;

27 (B) for an independent candidate, the date of the

1 regular filing deadline for a candidate's application for a place
2 on the ballot;

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

5 (D) for a party nominee who is nominated by any
6 method other than by primary election, the date the nomination is
7 made; and

8 (E) for an appointee to an office, the date the
9 appointment is made; and

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

12 SECTION 13. Section 141.031, Election Code, is amended to
13 read as follows:

14 Sec. 141.031. GENERAL REQUIREMENTS FOR APPLICATION. (a) A
15 candidate's application for a place on the ballot that is required
16 by this code must:

17 (1) be in writing;

18 (2) be signed and sworn to by the candidate and
19 indicate the date that the candidate swears to the application;

20 (3) be timely filed with the appropriate authority;

21 and

22 (4) include:

23 (A) the candidate's name;

24 (B) the candidate's occupation;

25 (C) the office sought, including any place number
26 or other distinguishing number;

27 (D) an indication of whether the office sought is

1 to be filled for a full or unexpired term if the office sought and
2 another office to be voted on have the same title but do not have
3 place numbers or other distinguishing numbers;

4 (E) a statement that the candidate is a United
5 States citizen;

6 (F) a statement that the candidate has not been
7 determined [~~mentally incompetent~~] by a final judgment of a court
8 exercising probate jurisdiction to be:

9 (i) totally mentally incapacitated; or

10 (ii) partially mentally incapacitated
11 without the right to vote;

12 (G) a statement that the candidate has not been
13 finally convicted of a felony from which the candidate has not been
14 pardoned or otherwise released from the resulting disabilities;

15 (H) the candidate's date of birth;

16 (I) the candidate's residence address or, if the
17 residence has no address, the address at which the candidate
18 receives mail and a concise description of the location of the
19 candidate's residence;

20 (J) the candidate's length of continuous
21 residence in the state and in the territory from which the office
22 sought is elected as of the date the candidate swears to the
23 application;

24 (K) the statement: "I, _____, of _____
25 County, Texas, being a candidate for the office of _____,
26 swear that I will support and defend the constitution and laws of
27 the United States and of the State of Texas"; and

1 (L) a statement that the candidate is aware of
2 the nepotism law, Chapter 573, Government Code.

3 (b) Instead of the statement required by Subsection
4 (a)(4)(F), a candidate eligible for office because of Section
5 1.020(a) shall include in the application a statement that the
6 person's mental capacity has been completely restored by a final
7 judgment of a court.

8 (c) Instead of the statement required by Subsection
9 (a)(4)(F), a candidate eligible for office because of Section
10 1.020(b) shall include in the application a statement that the
11 person's guardianship has been modified to include the right to
12 vote or the person's mental capacity has been completely restored,
13 as applicable, by a final judgment of a court.

14 SECTION 14. Subsection (b), Section 143.005, Election Code,
15 is amended to read as follows:

16 (b) If a city charter prescribes the requirements that a
17 candidate's application must satisfy for the candidate's name to be
18 placed on the ballot, Section 141.031(a)(4)(L) [~~141.031(4)(L)~~]
19 also applies to the application. The other provisions of Section
20 141.031 do not apply.

21 SECTION 15. Subsection (b), Section 144.003, Election Code,
22 is amended to read as follows:

23 (b) If a law outside this code purports to prescribe the
24 exclusive requirements that a candidate's application must satisfy
25 for the candidate's name to be placed on the ballot, Section
26 141.031(a)(4)(L) [~~141.031(4)(L)~~] also applies to the application.
27 The other provisions of Section 141.031 do not apply.

1 SECTION 16. Subsection (b), Section 192.032, Election Code,
2 is amended to read as follows:

3 (b) An application must:

4 (1) comply with Section 141.031, except that:

5 (A) the application is not required to include a
6 candidate's occupation, length of residence, or statement that the
7 candidate is aware of the nepotism law; and

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

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

14 (3) be accompanied by:

15 (A) a petition that satisfies the requirements
16 prescribed by Section 141.062; and

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

20 SECTION 17. (a) The changes in law made by this Act to
21 Sections 682, 687, and 693, Texas Probate Code, apply only to an
22 application for the appointment of a guardian that is filed on or
23 after the effective date of this Act. An application for the
24 appointment of a guardian that is filed before the effective date of
25 this Act is governed by the law in effect on the date the
26 application was filed, and the former law is continued in effect for
27 that purpose.

1 (b) The changes in law made by this Act to Sections 694G and
2 694H, Texas Probate Code, apply only to an application for the
3 restoration of a ward's capacity or the modification of a ward's
4 guardianship that is filed on or after the effective date of this
5 Act. An application for the restoration of a ward's capacity or the
6 modification of a ward's guardianship that is filed before the
7 effective date of this Act is governed by the law in effect on the
8 date the application was filed, and the former law is continued in
9 effect for that purpose.

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

17 SECTION 18. This Act takes effect September 1, 2007.