

By: Uresti

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.

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) a termination of the right of a proposed ward 18 years of age or older to cast a vote in a public election; and

(B) a termination of the proposed ward's right to operate a motor vehicle;

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

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

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

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

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

13          (10) if the proposed ward is a minor and if known by  
14 the applicant:

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

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

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

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

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

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

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

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

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

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

19           (13) facts showing that the court has venue over the  
20 proceeding; and

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

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

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

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

14                   (2) provide a medical prognosis specifying the  
15 estimated severity of the incapacity;

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

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

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

25                   (6) state whether in the physician's opinion the  
26 proposed ward:

27                               (A) has the capacity to cast a vote in a public

1 election; and

2 (B) has the ability to safely operate a motor  
3 vehicle; and

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

6 SECTION 3. Sections 693(a) and (b), Texas Probate Code, are  
7 amended to read as follows:

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

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

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

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

23 (4) that the person does not have the right to operate  
24 a motor vehicle; and

25 (5) that the person, if 18 years of age or older and  
26 totally incapacitated because of a mental condition, does not have  
27 the right to cast a vote in a public election.

1 (b) If it is found that the person lacks the capacity to do  
2 some, but not all, of the tasks necessary to care for himself or  
3 herself or to manage the individual's property, the court may  
4 appoint a guardian with limited powers and permit the individual to  
5 care for himself or herself or to manage the individual's property  
6 commensurate with the individual's ability. An order appointing a  
7 guardian under this subsection must contain findings of fact and  
8 specify:

9 (1) the information required by Subsection (c) of this  
10 section;

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

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

18 (4) whether the person has the right to operate a motor  
19 vehicle; and

20 (5) whether the person, if 18 years of age or older and  
21 incapacitated because of a mental condition, retains the right to  
22 cast a vote in a public election.

23 SECTION 4. The changes in law made by this Act apply only to  
24 an application for the appointment of a guardian that is filed on or  
25 after the effective date of this Act. An application for the  
26 appointment of a guardian that is filed before the effective date of  
27 this Act is governed by the law in effect on the date the

1 application was filed, and the former law is continued in effect for  
2 that purpose.

3 SECTION 5. This Act takes effect September 1, 2007.