

1-1 By: Uresti S.B. No. 1392
1-2 (In the Senate - Filed March 7, 2007; March 20, 2007, read
1-3 first time and referred to Committee on Jurisprudence;
1-4 April 19, 2007, reported favorably by the following vote: Yeas 6,
1-5 Nays 0; April 19, 2007, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to the rights of certain incapacitated persons that may be
1-9 terminated by a court in a guardianship proceeding.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Section 682, Texas Probate Code, is amended to
1-12 read as follows:

1-13 Sec. 682. APPLICATION; CONTENTS. Any person may commence a
1-14 proceeding for the appointment of a guardian by filing a written
1-15 application in a court having jurisdiction and venue. The
1-16 application must be sworn to by the applicant and state:

1-17 (1) the name, sex, date of birth, and address of the
1-18 proposed ward;

1-19 (2) the name, relationship, and address of the person
1-20 the applicant desires to have appointed as guardian;

1-21 (3) whether guardianship of the person or estate, or
1-22 both, is sought;

1-23 (4) the nature and degree of the alleged incapacity,
1-24 the specific areas of protection and assistance requested, and the
1-25 limitation or termination of rights requested to be included in the
1-26 court's order of appointment, including:

1-27 (A) a termination of the right of a proposed ward
1-28 18 years of age or older to cast a vote in a public election; and

1-29 (B) a termination of the proposed ward's right to
1-30 operate a motor vehicle;

1-31 (5) the facts requiring that a guardian be appointed
1-32 and the interest of the applicant in the appointment;

1-33 (6) the nature and description of any guardianship of
1-34 any kind existing for the proposed ward in any other state;

1-35 (7) the name and address of any person or institution
1-36 having the care and custody of the proposed ward;

1-37 (8) the approximate value and description of the
1-38 proposed ward's property, including any compensation, pension,
1-39 insurance, or allowance to which the proposed ward may be entitled;

1-40 (9) the name and address of any person whom the
1-41 applicant knows to hold a power of attorney signed by the proposed
1-42 ward and a description of the type of power of attorney;

1-43 (10) if the proposed ward is a minor and if known by
1-44 the applicant:

1-45 (A) the name of each parent of the proposed ward
1-46 and state the parent's address or that the parent is deceased;

1-47 (B) the name and age of each sibling, if any, of
1-48 the proposed ward and state the sibling's address or that the
1-49 sibling is deceased; and

1-50 (C) if each of the proposed ward's parents and
1-51 siblings are deceased, the names and addresses of the proposed
1-52 ward's next of kin who are adults;

1-53 (11) if the proposed ward is a minor, whether the minor
1-54 was the subject of a legal or conservatorship proceeding within the
1-55 preceding two-year period and, if so, the court involved, the
1-56 nature of the proceeding, and the final disposition, if any, of the
1-57 proceeding;

1-58 (12) if the proposed ward is an adult and if known by
1-59 the applicant:

1-60 (A) the name of the proposed ward's spouse, if
1-61 any, and state the spouse's address or that the spouse is deceased;

1-62 (B) the name of each of the proposed ward's
1-63 parents and state the parent's address or that the parent is
1-64 deceased;

2-1 (C) the name and age of each of the proposed
2-2 ward's siblings, if any, and state the sibling's address or that the
2-3 sibling is deceased;

2-4 (D) the name and age of each of the proposed
2-5 ward's children, if any, and state the child's address or that the
2-6 child is deceased; and

2-7 (E) if the proposed ward's spouse and each of the
2-8 proposed ward's parents, siblings, and children are deceased, or,
2-9 if there is no spouse, parent, adult sibling, or adult child, the
2-10 names and addresses of the proposed ward's next of kin who are
2-11 adults;

2-12 (13) facts showing that the court has venue over the
2-13 proceeding; and

2-14 (14) if applicable, that the person whom the applicant
2-15 desires to have appointed as a guardian is a private professional
2-16 guardian who is certified under Subchapter C, Chapter 111,
2-17 Government Code, and has complied with the requirements of Section
2-18 697 of this code.

2-19 SECTION 2. Subsection (a), Section 687, Texas Probate Code,
2-20 is amended to read as follows:

2-21 (a) The court may not grant an application to create a
2-22 guardianship for an incapacitated person, other than a minor,
2-23 person whose alleged incapacity is mental retardation, or person
2-24 for whom it is necessary to have a guardian appointed only to
2-25 receive funds from a governmental source, unless the applicant
2-26 presents to the court a written letter or certificate from a
2-27 physician licensed in this state that is dated not earlier than the
2-28 120th day before the date of the filing of the application and based
2-29 on an examination the physician performed not earlier than the
2-30 120th day before the date of the filing of the application. The
2-31 letter or certificate must:

2-32 (1) describe the nature and degree of incapacity,
2-33 including the medical history if reasonably available;

2-34 (2) provide a medical prognosis specifying the
2-35 estimated severity of the incapacity;

2-36 (3) state how or in what manner the proposed ward's
2-37 ability to make or communicate responsible decisions concerning
2-38 himself or herself is affected by the person's physical or mental
2-39 health;

2-40 (4) state whether any current medication affects the
2-41 demeanor of the proposed ward or the proposed ward's ability to
2-42 participate fully in a court proceeding;

2-43 (5) describe the precise physical and mental
2-44 conditions underlying a diagnosis of senility, if applicable; ~~and~~

2-45 (6) state whether in the physician's opinion the
2-46 proposed ward:

2-47 (A) has the capacity to cast a vote in a public
2-48 election; and

2-49 (B) has the ability to safely operate a motor
2-50 vehicle; and

2-51 (7) include any other information required by the
2-52 court.

2-53 SECTION 3. Subsections (a) and (b), Section 693, Texas
2-54 Probate Code, are amended to read as follows:

2-55 (a) If it is found that the proposed ward is totally without
2-56 capacity as provided by this code to care for himself or herself and
2-57 to manage the individual's property, the court may appoint a
2-58 guardian of the individual's person or estate, or both, with full
2-59 authority over the incapacitated person except as provided by law.
2-60 An order appointing a guardian under this subsection must contain
2-61 findings of fact and specify:

2-62 (1) the information required by Subsection (c) of this
2-63 section;

2-64 (2) that the guardian has full authority over the
2-65 incapacitated person; ~~and~~

2-66 (3) if necessary, the amount of funds from the corpus
2-67 of the person's estate the court will allow the guardian to expend
2-68 for the education and maintenance of the person under Section 776 of
2-69 this code;

3-1 (4) that the person does not have the right to operate
3-2 a motor vehicle; and

3-3 (5) that the person, if 18 years of age or older and
3-4 totally incapacitated because of a mental condition, does not have
3-5 the right to cast a vote in a public election.

3-6 (b) If it is found that the person lacks the capacity to do
3-7 some, but not all, of the tasks necessary to care for himself or
3-8 herself or to manage the individual's property, the court may
3-9 appoint a guardian with limited powers and permit the individual to
3-10 care for himself or herself or to manage the individual's property
3-11 commensurate with the individual's ability. An order appointing a
3-12 guardian under this subsection must contain findings of fact and
3-13 specify:

3-14 (1) the information required by Subsection (c) of this
3-15 section;

3-16 (2) the specific powers, limitations, or duties of the
3-17 guardian with respect to the care of the person or the management of
3-18 the person's property by the guardian; [~~and~~]

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

3-23 (4) whether the person has the right to operate a motor
3-24 vehicle; and

3-25 (5) whether the person, if 18 years of age or older and
3-26 incapacitated because of a mental condition, retains the right to
3-27 cast a vote in a public election.

3-28 SECTION 4. The changes in law made by this Act apply only to
3-29 an application for the appointment of a guardian that is filed on or
3-30 after the effective date of this Act. An application for the
3-31 appointment of a guardian that is filed before the effective date of
3-32 this Act is governed by the law in effect on the date the
3-33 application was filed, and the former law is continued in effect for
3-34 that purpose.

3-35 SECTION 5. This Act takes effect September 1, 2007.

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