

By: Naishtat

H.B. No. 2048

A BILL TO BE ENTITLED

AN ACT

relating to the appointment or removal of guardians of incapacitated persons.

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

SECTION 1. Section 681, Texas Probate Code, is amended to read as follows:

Sec. 681. PERSONS DISQUALIFIED TO SERVE AS GUARDIANS. A person may not be appointed guardian if the person is:

(1) a minor;

(2) a person whose conduct is notoriously bad;

(3) an incapacitated person;

(4) a person who is a party or whose parent is a party to a lawsuit concerning or affecting the welfare of the proposed ward, unless the court:

(A) determines that the lawsuit claim of the person who has applied to be appointed guardian is not in conflict with the lawsuit claim of the proposed ward; or

(B) appoints a guardian ad litem to represent the interests of the proposed ward throughout the litigation of the ward's lawsuit claim;

(5) a person indebted to the proposed ward unless the person pays the debt before appointment;

(6) a person asserting a claim adverse to the proposed ward or the proposed ward's property, real or personal;

1 (7) a person who, because of inexperience, lack of
2 education, or other good reason, is incapable of properly and
3 prudently managing and controlling the ward or the ward's estate;

4 (8) a person, institution, or corporation found
5 unsuitable by the court;

6 (9) a person disqualified in a declaration made under
7 Section 679 of this code; ~~[or]~~

8 (10) a nonresident person who has not filed with the
9 court the name of a resident agent to accept service of process in
10 all actions or proceedings relating to the guardianship; or

11 (11) a person who does not have the certification to
12 serve as guardian that is required by Section 697B of this code.

13 SECTION 2. Section 761, Texas Probate Code, is amended by
14 adding Subsection (c-1) to read as follows:

15 (c-1) In addition to the authority granted to the court
16 under Subsection (c) of this section, the court may, on the
17 complaint of the Guardianship Certification Board, remove a
18 guardian who would be ineligible for appointment under Section 681
19 of this code because of the guardian's failure to maintain the
20 certification required under Section 697B of this code. The
21 guardian shall be cited to appear and contest the request for
22 removal under this subsection in the manner provided by Subsection
23 (c) of this section.

24 SECTION 3. This Act takes effect September 1, 2009.