

1-1 By: Hartnett (Senate Sponsor - Nelson) H.B. No. 3112
1-2 (In the Senate - Received from the House May 18, 2009;
1-3 May 19, 2009, read first time and referred to Committee on Health
1-4 and Human Services; May 21, 2009, reported favorably by the
1-5 following vote: Yeas 9, Nays 0; May 21, 2009, sent to printer.)

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

1-8 relating to the referral of an elderly or disabled person to the
1-9 Department of Aging and Disability Services and the determination
1-10 by that agency of the need for a guardianship for that person.

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

1-12 SECTION 1. Section 161.101, Human Resources Code, is
1-13 amended by amending Subsections (b) and (c) and adding Subsections
1-14 (c-1) and (c-2) to read as follows:

1-15 (b) The department shall conduct a thorough assessment of
1-16 the conditions and circumstances of an elderly or disabled person
1-17 referred to the department under Section 48.209(a)(2) for
1-18 guardianship services to determine whether a guardianship is
1-19 appropriate for the individual or whether a less restrictive
1-20 alternative is available for the individual. In determining
1-21 whether a guardianship is appropriate, the department may consider
1-22 the resources and funds available to meet the needs of the elderly
1-23 or disabled person. The executive commissioner shall adopt rules
1-24 for the administration of this subsection.

1-25 (c) Subject to Subsection (c-1), if [~~if~~] after conducting an
1-26 assessment of an elderly or disabled person under Subsection (b)
1-27 the department determines that:

1-28 (1) [~~a~~] guardianship is appropriate for the elderly or
1-29 disabled person, the department shall:

1-30 (A) file an application under Section 682 or 875,
1-31 Texas Probate Code, to be appointed guardian of the person or
1-32 estate, or both, of the individual; or

1-33 (B) if the department determines that an
1-34 alternative person or program described by Section 161.102 is
1-35 available to serve as guardian, refer the individual to that person
1-36 or program as provided by that section; or

1-37 (2) [~~. If after conducting the assessment the~~
1-38 ~~department determines that~~] a less restrictive alternative to
1-39 guardianship is available for the elderly or disabled person, the
1-40 department shall pursue the less restrictive alternative instead of
1-41 taking an action described by Subdivision (1) [applying for
1-42 appointment as the person's guardian].

1-43 (c-1) Not later than the 70th day after the date the
1-44 department receives a referral under Section 48.209(a)(2) for
1-45 guardianship services, the department shall make the determination
1-46 required by Subsection (c) and, if the department determines that
1-47 guardianship is appropriate and that the department should serve as
1-48 guardian, file the application to be appointed guardian under
1-49 Section 682 or 875, Texas Probate Code. If the department
1-50 determines that an alternative person or program described by
1-51 Section 161.102 is available to serve as guardian, the department
1-52 shall refer the elderly or disabled person to that person or program
1-53 in a manner that would allow the person or program sufficient time
1-54 to file, not later than the 70th day after the date the department
1-55 received the referral, an application to be appointed guardian.

1-56 (c-2) With the approval of the Department of Family and
1-57 Protective Services, the department may extend, by not more than 30
1-58 days, a period prescribed by Subsection (c-1) if the extension is:

1-59 (1) made in good faith, including any extension for a
1-60 person or program described by Section 161.102 that intends to file
1-61 an application to be appointed guardian; and

1-62 (2) in the best interest of the elderly or disabled
1-63 person.

1-64 SECTION 2. The changes in law made by this Act apply to a

2-1 referral of a person by the Department of Family and Protective
2-2 Services to the Department of Aging and Disability Services for a
2-3 determination of the need for a guardianship that is made on or
2-4 after the effective date of this Act.

2-5 SECTION 3. This Act takes effect September 1, 2009.

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