

1-1 By: Uresti S.B. No. 2344
1-2 (In the Senate - Filed March 13, 2009; March 31, 2009, read
1-3 first time and referred to Committee on Jurisprudence;
1-4 April 24, 2009, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 4, Nays 0; April 24, 2009,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 2344 By: Duncan

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to examination requirements in certain guardianship
1-11 matters concerning persons with mental retardation.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Section 687, Texas Probate Code, is amended to
1-14 read as follows:

1-15 Sec. 687. EXAMINATIONS AND REPORTS. (a) Except as
1-16 provided by Subsection (c) of this section, the [The] court may not
1-17 grant an application to create a guardianship for an incapacitated
1-18 person, other than a minor~~[, person whose alleged incapacity is~~
1-19 ~~mental retardation,~~ or person for whom it is necessary to have a
1-20 guardian appointed only to receive funds from a governmental
1-21 source, unless the applicant presents to the court a written letter
1-22 or certificate from a physician licensed in this state that is dated
1-23 not earlier than the 120th day before the date of the filing of the
1-24 application and based on an examination the physician performed not
1-25 earlier than the 120th day before the date of the filing of the
1-26 application. The letter or certificate must:

1-27 (1) describe the nature, [and] degree, and severity of
1-28 incapacity, including functional deficits, if any, regarding the
1-29 proposed ward's ability to:

1-30 (A) handle business and managerial matters;

1-31 (B) manage financial matters;

1-32 (C) operate a motor vehicle;

1-33 (D) make personal decisions regarding residence,
1-34 voting, and marriage; and

1-35 (E) consent to medical, dental, psychological,
1-36 or psychiatric treatment [the medical history if reasonably
1-37 available];

1-38 (2) provide an evaluation of the proposed ward's
1-39 physical condition and mental function and summarize the proposed
1-40 ward's medical history if reasonably available [a medical prognosis
1-41 specifying the estimated severity of the incapacity];

1-42 (3) state how or in what manner the proposed ward's
1-43 ability to make or communicate responsible decisions concerning
1-44 himself or herself is affected by the person's physical or mental
1-45 health, including the proposed ward's ability to:

1-46 (A) understand or communicate;

1-47 (B) recognize familiar objects and individuals;

1-48 (C) perform simple calculations;

1-49 (D) reason logically; and

1-50 (E) administer to daily life activities;

1-51 (4) state whether any current medication affects the
1-52 demeanor of the proposed ward or the proposed ward's ability to
1-53 participate fully in a court proceeding;

1-54 (5) describe the precise physical and mental
1-55 conditions underlying a diagnosis of a mental disability, and state
1-56 whether the proposed ward would benefit from supports and services
1-57 that would allow the individual to live in the least restrictive
1-58 setting [senility, if applicable];

1-59 (6) in providing a description under Subdivision (1)
1-60 of this subsection regarding the proposed ward's ability to operate
1-61 a motor vehicle and make personal decisions regarding voting, state
1-62 whether in the physician's opinion the proposed ward:

1-63 (A) has the mental capacity to vote in a public

2-1 election; and
2-2 (B) has the ability to safely operate a motor
2-3 vehicle; and
2-4 (7) include any other information required by the
2-5 court.

2-6 (b) If [~~Except as provided by Subsection (c) of this~~
2-7 ~~section, if~~] the court determines it is necessary, the court may
2-8 appoint the necessary physicians to examine the proposed ward. The
2-9 court must make its determination with respect to the necessity for
2-10 a physician's examination of the proposed ward at a hearing held for
2-11 that purpose. Not later than the fourth day before the date of the
2-12 hearing, the applicant shall give to the proposed ward and the
2-13 proposed ward's attorney ad litem written notice specifying the
2-14 purpose and the date and time of the hearing. A physician who
2-15 examines the proposed ward, other than a physician or psychologist
2-16 who examines the proposed ward under Subsection (c)(2) [~~(c)~~] of
2-17 this section, shall make available to an attorney ad litem
2-18 appointed to represent the proposed ward, for inspection, a written
2-19 letter or certificate from the physician that complies with the
2-20 requirements of Subsection (a) of this section.

2-21 (c) If the basis of the proposed ward's alleged incapacity
2-22 is mental retardation, the court may not grant an application to
2-23 create a guardianship for the proposed ward unless the applicant
2-24 presents to the court:

2-25 (1) a written letter or certificate that:
2-26 (A) complies with Subsection (a) of this section;
2-27 and

2-28 (B) states that the physician has made a
2-29 determination of mental retardation in accordance with Section
2-30 593.005, Health and Safety Code; or

2-31 (2) both:
2-32 (A) [~~shall be examined by a physician or~~
2-33 ~~psychologist licensed in this state or certified by the Texas~~
2-34 ~~Department of Mental Health and Mental Retardation to perform the~~
2-35 ~~examination, unless there is~~] written documentation showing [~~filed~~
2-36 ~~with the court that shows~~] that, not earlier than 24 months before
2-37 the date of the hearing, the proposed ward has been examined by a
2-38 physician or psychologist licensed in this state or certified by
2-39 the Department of Aging and Disability Services to perform the
2-40 examination, in accordance with rules of the executive commissioner
2-41 of the Health and Human Services Commission governing examinations
2-42 of that kind; and

2-43 (B) the physician's or psychologist's [~~according~~
2-44 ~~to the rules adopted by the Texas Department of Mental Health and~~
2-45 ~~Mental Retardation not earlier than 24 months before the date of a~~
2-46 ~~hearing to appoint a guardian for the proposed ward. The physician~~
2-47 ~~or psychologist shall conduct the examination according to the~~
2-48 ~~rules adopted by the Texas Department of Mental Health and Mental~~
2-49 ~~Retardation and shall submit~~] written findings and
2-50 recommendations, including a statement as to whether the physician
2-51 or psychologist has made a determination of mental retardation in
2-52 accordance with Section 593.005, Health and Safety Code [~~to the~~
2-53 ~~court~~].

2-54 SECTION 2. The changes in law made by this Act to Section
2-55 687, Texas Probate Code, apply only to an application for the
2-56 creation of a guardianship filed on or after the effective date of
2-57 this Act. An application for the creation of a guardianship filed
2-58 before the effective date of this Act is governed by the law in
2-59 effect on the date the application was filed, and the former law is
2-60 continued in effect for that purpose.

2-61 SECTION 3. This Act takes effect September 1, 2009.

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