

By: Lucio III

H.B. No. 2744

A BILL TO BE ENTITLED

AN ACT

relating to guardianships, including the functions of the  
Guardianship Certification Board.

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

SECTION 1. Section 648A, Texas Probate Code, is amended by  
adding Subsection (a-1) to read as follows:

(a-1) In investigating the circumstances alleged in the  
application under Subsection (a) of this section, a court  
investigator shall meet in person with:

(1) the proposed ward's spouse, if any, each of the  
proposed ward's parents, if living, and each of the proposed  
ward's adult siblings and adult children, if any; or

(2) each other relative who is related to the proposed  
ward within the third degree by consanguinity and who is an adult if  
the proposed ward's spouse and each of the proposed ward's parents,  
adult siblings, and adult children are deceased or there is no  
spouse, parent, adult sibling, or adult child.

SECTION 2. Section 683, Texas Probate Code, is amended by  
adding Subsection (d) to read as follows:

(d) In investigating a person's conditions and  
circumstances under Subsection (a) of this section, the appointed  
guardian ad litem or court investigator shall meet in person with:

(1) the person's spouse, if any, each of the person's  
parents, if living, and each of the person's adult siblings and

1 adult children, if any; or

2 (2) each other relative who is related to the person  
3 within the third degree by consanguinity and who is an adult if the  
4 person's spouse and each of the person's parents, adult siblings,  
5 and adult children are deceased or there is no spouse, parent, adult  
6 sibling, or adult child.

7 SECTION 3. Section 685, Texas Probate Code, is amended by  
8 adding Subsection (d) to read as follows:

9 (d) If the proposed ward has a primary caretaker or mental  
10 or physical therapist, the proposed ward's attorney must call those  
11 persons to testify at the hearing to assist the court in making the  
12 findings required by Section 684 of this code.

13 SECTION 4. Section 695, Texas Probate Code, is amended by  
14 adding Subsection (a-1) to read as follows:

15 (a-1) The court shall appoint a successor guardian under  
16 this section in accordance with the order of precedence established  
17 under Section 677 of this code.

18 SECTION 5. Subpart A, Part 3, Chapter XIII, Texas Probate  
19 Code, is amended by adding Section 697C to read as follows:

20 Sec. 697C. POSTING OF GUARDIANSHIP CERTIFICATION BOARD'S  
21 CONTACT INFORMATION FOR COMPLAINTS. (a) A private professional  
22 guardian for which two or more individuals provide guardianship  
23 services on the guardian's behalf shall post the Guardianship  
24 Certification Board's contact information for the filing of  
25 complaints with the board:

26 (1) on or near the entrance of the guardian's principal  
27 place of business; and

1           (2) on the guardian's Internet website, if any.

2           (b) A guardianship program shall post the Guardianship  
3 Certification Board's contact information for the filing of  
4 complaints with the board:

5           (1) on or near the entrance of the program's principal  
6 office; and

7           (2) on the guardianship program's Internet website, if  
8 any.

9           (c) The Department of Aging and Disability Services shall  
10 post the Guardianship Certification Board's contact information  
11 for the filing of complaints with the board:

12           (1) near the entrance of all department office  
13 buildings from which department employees or volunteers provide  
14 guardianship services on the department's behalf; and

15           (2) on the department's Internet website.

16           SECTION 6. Section 761, Texas Probate Code, is amended by  
17 amending Subsections (a), (c), and (f) and adding Subsections  
18 (a-1), (b-1), (c-2), and (h) to read as follows:

19           (a) The court, on its own motion or on motion of any  
20 interested person, including the ward, and without notice, may  
21 remove any guardian[7] appointed under this chapter[7] who:

22           (1) neglects to qualify in the manner and time  
23 required by law;

24           (2) fails to return within 30 days after  
25 qualification, unless the time is extended by order of the court, an  
26 inventory of the property of the guardianship estate and list of  
27 claims that have come to the guardian's knowledge;

1           (3) having been required to give a new bond, fails to  
2 do so within the time prescribed;

3           (4) absents himself or herself from the state for a  
4 period of three months at one time without permission of the court,  
5 or removes from the state;

6           (5) cannot be served with notices or other processes  
7 because of the fact that:

8                   (A) the guardian's whereabouts are unknown;

9                   (B) the guardian is eluding service; or

10           (C) the guardian is a nonresident of this state  
11 who does not have a resident agent to accept service of process in  
12 any guardianship proceeding or other matter relating to the  
13 guardianship;

14           (6) has misapplied, embezzled, or removed from the  
15 state, or is about to misapply, embezzle, or remove from the state,  
16 all or any part of the property committed to the guardian's care;

17           (7) has engaged in conduct with respect to the ward  
18 that would be considered to be abuse, neglect, or exploitation, as  
19 those terms are defined by Section 48.002, Human Resources Code, if  
20 engaged in with respect to an elderly or disabled person, as defined  
21 by that section [~~neglected or cruelly treated a ward~~]; or

22           (8) has neglected to educate or maintain the ward as  
23 liberally as the means of the ward and the condition of the ward's  
24 estate permit.

25           (a-1) In a proceeding to remove a guardian under Subsection  
26 (a)(6), (7), or (8) of this section, the court shall appoint a  
27 guardian ad litem as provided by Section 645 of this code and an

1 attorney ad litem. The attorney ad litem has the duties prescribed  
2 by Section 647 of this code. In the interest of judicial economy,  
3 the court may appoint the same person as guardian ad litem and  
4 attorney ad litem unless a conflict exists between the interests to  
5 be represented by the guardian ad litem and attorney ad litem.

6 (b-1) The court clerk shall issue notice of an order  
7 rendered by the court removing a guardian under Subsection (a)(1),  
8 (2), (3), (4), (6), (7), or (8) of this section. The notice must:

9 (1) state the names of the ward and the removed  
10 guardian;

11 (2) state the date the court signed the order of  
12 removal; and

13 (3) be personally served on the removed guardian.

14 (c) The court may remove a guardian on its own motion, or on  
15 the complaint of an interested person, after the guardian has been  
16 cited by personal service to answer at a time and place set in the  
17 notice, when:

18 (1) sufficient grounds appear to support belief that  
19 the guardian has misapplied, embezzled, or removed from the state,  
20 or that the guardian is about to misapply, embezzle, or remove from  
21 the state, all or any part of the property committed to the care of  
22 the guardian;

23 (2) the guardian fails to return any account or report  
24 that is required by law to be made;

25 (3) the guardian fails to obey any proper order of the  
26 court having jurisdiction with respect to the performance of the  
27 guardian's duties;

1           (4) the guardian is proved to have been guilty of gross  
2 misconduct or mismanagement in the performance of the duties of the  
3 guardian;

4           (5) the guardian becomes incapacitated, or is  
5 sentenced to the penitentiary, or from any other cause becomes  
6 incapable of properly performing the duties of the guardian's  
7 trust;

8           (6) the guardian has engaged in conduct with respect  
9 to the ward that would be considered to be abuse, neglect, or  
10 exploitation, as those terms are defined by Section 48.002, Human  
11 Resources Code, if engaged in with respect to an elderly or disabled  
12 person, as defined by that section [~~neglects or cruelly treats the~~  
13 ~~ward~~];

14           (6-a) the guardian neglects to educate or maintain the  
15 ward as liberally as the means of the ward's estate and the ward's  
16 ability or condition permit;

17           (7) the guardian interferes with the ward's progress  
18 or participation in programs in the community;

19           (8) the guardian fails to comply with the requirements  
20 of Section 697 of this code;

21           (9) the court determines that, because of the  
22 dissolution of the joint guardians' marriage, the termination of  
23 the guardians' joint appointment and the continuation of only one  
24 of the joint guardians as the sole guardian is in the best interest  
25 of the ward; or

26           (10) the guardian would be ineligible for appointment  
27 as a guardian under Section 681 of this code.

(c-2) In addition to citing the guardian to appear as required by Subsection (c) or (c-1) of this section, the court clerk shall issue a notice stating the names of the ward and the guardian proposed to be removed and the date and location of the hearing on the proposed removal. The sheriff or other officer shall personally serve the notice on the ward's spouse, if any, and each of the ward's parents, if living. The clerk shall mail a copy of the notice by registered or certified mail, return receipt requested, to:

(1) each of the ward's adult siblings and adult children, if any; or

(2) each other relative who is related to the ward within the third degree by consanguinity and who is an adult if the ward's spouse and each of the ward's parents, adult siblings, and adult children are deceased or there is no spouse, parent, adult sibling, or adult child.

(f) If the necessity exists, the court may immediately appoint a successor guardian without citation or notice but may not discharge the person removed as guardian of the estate or release the person or the sureties on the person's bond until final order or judgment is rendered on the final account of the guardian. Subject to an order of the court, a successor guardian has the rights and powers of the removed guardian, except that a successor guardianship created under this subsection following the removal of a guardian under Subsection (a) of this section is considered temporary and remains in effect only for the period until the court renders an order under Section 762A of this code, which may not

1 exceed the period prescribed for a temporary guardianship under  
2 Section 875(h) of this code.

3 (h) An appointment of a successor guardian under Subsection  
4 (f) of this section must be made in accordance with the order of  
5 precedence established under Section 677 of this code.

6 SECTION 7. Section 762, Texas Probate Code, is amended to  
7 read as follows:

8 Sec. 762. REINSTATEMENT OF CERTAIN GUARDIANS AFTER REMOVAL  
9 UNDER CERTAIN CIRCUMSTANCES. (a) Not later than the 30th ~~[10th]~~ day  
10 after the date the court signs the order of removal, a guardian  
11 ~~[personal representative]~~ who is removed under Section 761(a)(6)  
12 ~~[Subsection (a)(6)]~~ or (7) ~~[, Section 761,]~~ of this code may file an  
13 application with the court for a hearing to determine whether the  
14 guardian ~~[personal representative]~~ should be reinstated.

15 (b) On the filing of an application for a hearing under this  
16 section, the court clerk shall issue a notice stating that the  
17 application for reinstatement was filed, the name of the ward, and  
18 the name of the applicant. ~~[The clerk shall issue the notice to the~~  
19 ~~applicant, the ward, a person interested in the welfare of the ward~~  
20 ~~or the ward's estate, and, if applicable, a person who has control~~  
21 ~~of the care and custody of the ward.]~~ The notice must cite all  
22 persons interested in the estate or welfare of the ward to appear at  
23 the time and place stated in the notice if they wish to contest the  
24 application.

25 (b-1) The sheriff or other officer shall personally serve  
26 the citation issued under Subsection (b) of this section on the  
27 ward's spouse, if any, and each of the ward's parents, if living.



1 The court clerk shall mail a copy of the citation by registered or  
2 certified mail, return receipt requested, to:

3 (1) each of the ward's adult siblings and adult  
4 children, if any; or

5 (2) each other relative who is related to the ward  
6 within the third degree by consanguinity and who is an adult if the  
7 ward's spouse and each of the ward's parents, adult siblings, and  
8 adult children are deceased or there is no spouse, parent, adult  
9 sibling, or adult child.

10 (c) The court shall hold a hearing on an application for  
11 reinstatement under this section as soon as practicable after the  
12 application is filed, but not later than the 60th day after the date  
13 the court signed the order of removal. If, at the conclusion of the  
14 [a] hearing [under this section], the court is satisfied by a  
15 preponderance of the evidence that the applicant did not engage in  
16 the conduct that directly led to the applicant's removal, the court  
17 shall set aside an order appointing a successor guardian  
18 [representative], if any, and shall enter an order reinstating the  
19 applicant as guardian [personal representative] of the ward or  
20 estate.

21 (d) If the court sets aside the appointment of a successor  
22 guardian [representative] under this section, the court may require  
23 the successor guardian [representative] to prepare and file, under  
24 oath, an accounting of the estate and to detail the disposition the  
25 successor has made of the property of the estate.

26 SECTION 8. Subpart D, Part 4, Chapter XIII, Texas Probate  
27 Code, is amended by adding Sections 762A and 762B to read as

1 follows:

2 Sec. 762A. PERMANENT SUCCESSOR GUARDIAN FOLLOWING REMOVAL.

3 (a) The court shall set a date and location for a hearing regarding  
4 the temporary successor guardian appointed under Section 761(f) of  
5 this code. The hearing must be set for a date that is on or before  
6 the expiration of the period prescribed for a temporary  
7 guardianship under Section 875(h) of this code. If the guardian who  
8 was removed under Section 761 of this code files an application for  
9 reinstatement under Section 762 of this code, the hearings required  
10 by this section and Section 762 must be conducted jointly.

11 (b) The court clerk shall issue a citation stating the date  
12 and location of the hearing set under Subsection (a) of this  
13 section. The sheriff or other officer shall personally serve the  
14 citation on the ward's spouse, if any, and each of the ward's  
15 parents, if living. The clerk shall mail a copy of the citation by  
16 registered or certified mail, return receipt requested, to:

17 (1) each of the ward's adult siblings and adult  
18 children, if any; or

19 (2) each other relative who is related to the ward  
20 within the third degree by consanguinity and who is an adult if the  
21 ward's spouse and each of the ward's parents, adult siblings, and  
22 adult children are deceased or there is no spouse, parent, adult  
23 sibling, or adult child.

24 (c) At the hearing, the court that removed the guardian and  
25 appointed a temporary successor guardian shall:

26 (1) if the hearing is conducted jointly with the  
27 hearing under Section 762 of this code, render an order under

1 Section 762(c) of this code reinstating the removed guardian and  
2 setting aside the order appointing the successor guardian if the  
3 court makes the findings required by that section;

4 (2) convert the temporary successor guardianship to a  
5 permanent successor guardianship; or

6 (3) appoint another person as the permanent successor  
7 guardian for the ward.

8 Sec. 762B. REINSTATEMENT OF CERTAIN FAMILIAL GUARDIANS  
9 FOLLOWING APPOINTMENT OF PERMANENT SUCCESSOR GUARDIAN. (a) This  
10 section does not apply to reinstatement of a ward's family member or  
11 friend who was removed as the ward's guardian under Section  
12 761(a)(6) or (7) or 761(c)(1), (4), (5), (6), or (10) of this code.

13 (b) At any time after a person required to be certified  
14 under Subchapter C, Chapter 111, Government Code, is appointed as a  
15 ward's permanent successor guardian under Section 762A of this  
16 code, a family member or friend of the ward who was removed as the  
17 ward's guardian may file an application with the court to be  
18 reinstated as guardian.

19 (c) On the filing of an application for a hearing under this  
20 section, the court clerk shall issue a notice of the filing of the  
21 application to the permanent successor guardian and to the persons  
22 described by Section 762(b) of this code. The notice must cite all  
23 persons interested in the estate or welfare of the ward to appear at  
24 the time and place stated in the notice if they wish to contest the  
25 application. The hearing must be held as soon as practicable but  
26 not later than the 30th day after the date the application is filed.

27 (d) If, at the conclusion of a hearing under this section,

1 the court is satisfied by a preponderance of the evidence that the  
2 former guardian is not disqualified from serving as guardian under  
3 Section 681 of this code and the reappointment of the former  
4 guardian is in the best interests of the ward, the court may set  
5 aside an order appointing the permanent successor guardian and  
6 enter an order reinstating the former guardian as the ward's  
7 guardian.

8       SECTION 9. Subchapter C, Chapter 111, Government Code, is  
9 amended by adding Sections 111.045 and 111.046 to read as follows:

10       Sec. 111.045. BOARD'S CONTACT INFORMATION FOR COMPLAINTS.

11 (a) The supreme court shall adopt rules requiring guardians  
12 certified under this subchapter to provide the board's contact  
13 information for the filing of complaints to any person who requests  
14 the information.

15 (b) The board shall post the board's contact information for  
16 the filing of complaints on the first page of the board's Internet  
17 website.

18       Sec. 111.046. DISCIPLINARY HEARING. In a hearing for the  
19 suspension or revocation of a certificate or provisional  
20 certificate or to impose other disciplinary action under this  
21 chapter, the board shall allow the person who filed the complaint  
22 that is the basis for the hearing to testify.

23       SECTION 10. (a) Sections 648A(a-1) and 685(d), Texas  
24 Probate Code, as added by this Act, apply only to an application for  
25 a guardianship filed on or after the effective date of this Act. An  
26 application for a guardianship 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 (b) Section 683(d), Texas Probate Code, as added by this  
4 Act, applies only to the appointment of a guardian ad litem or court  
5 investigator made on or after the effective date of this Act. The  
6 appointment of a guardian ad litem or court investigator made  
7 before the effective date of this Act is governed by the law in  
8 effect on the date of appointment, and the former law is continued  
9 in effect for that purpose.

10 (c) Section 695(a-1), Texas Probate Code, as added by this  
11 Act, applies only to an application for the appointment of a  
12 successor guardian filed on or after the effective date of this Act.  
13 An application for the appointment of a successor guardian filed  
14 before the effective date of this Act is governed by the law in  
15 effect on the date the application was filed, and the former law is  
16 continued in effect for that purpose.

17 (d) Sections 761 and 762, Texas Probate Code, as amended by  
18 this Act, and Sections 762A and 762B, Texas Probate Code, as added  
19 by this Act, apply only to a removal of a guardian ordered by a court  
20 on or after the effective date of this Act. A removal of a guardian  
21 ordered by a court before the effective date of this Act is governed  
22 by the law in effect on the date the order was rendered, and the  
23 former law is continued in effect for that purpose.

24 (e) Section 111.046, Government Code, as added by this Act,  
25 applies only to a complaint filed on or after the effective date of  
26 this Act. A complaint filed before that date is governed by the law  
27 in effect at the time the complaint was filed, and the former law is

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1 continued in effect for that purpose.

2 SECTION 11. This Act takes effect September 1, 2011.