

By: Nelson

S.B. No. 220

A BILL TO BE ENTITLED

AN ACT

relating to guardianships, including the assessment of prospective wards for, and the provision of, guardianship services by the Department of Aging and Disability Services.

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

SECTION 1. Subsection (a), Section 111.042, Government Code, is amended to read as follows:

(a) To provide guardianship services in this state, the following individuals must hold a certificate issued under this section:

(1) an individual who is a private professional guardian;

(2) an individual who will provide those services to a ward of a private professional guardian ~~[or the Department of Aging and Disability Services]~~ on the guardian's ~~[or department's]~~ behalf; and

(3) an individual, other than a volunteer, who will provide those services or other services under Section 161.114, Human Resources Code, to a ward of a guardianship program or the Department of Aging and Disability Services on the program's or department's behalf.

SECTION 2. Subsections (a) and (b), Section 161.109, Human Resources Code, are amended to read as follows:

(a) The department shall have access to all of the records

1 and documents concerning an individual who is referred for  
2 guardianship services or to whom guardianship services are provided  
3 under this subchapter that are necessary to the performance of the  
4 department's duties under this subchapter, including:

- 5           (1) client-identifying information; and  
6           (2) medical, psychological, educational, financial,  
7 and ~~or~~ residential information.

8           (b) The department is exempt from the payment of a fee  
9 otherwise required or authorized by law to obtain a financial or  
10 medical record, including a mental health record, from any source  
11 [a hospital or health care provider] if the request for a record is  
12 related to [made in the course of] an assessment for guardianship  
13 services conducted by the department or the provision of  
14 guardianship services by the department.

15           SECTION 3. Section 161.111, Human Resources Code, is  
16 amended by adding Subsections (e) and (f) to read as follows:

17           (e) To the extent consistent with department policies and  
18 procedures, the department on request may release confidential  
19 information in the record of an individual who is assessed by the  
20 department or is a former ward of the department to:

- 21                   (1) the individual;  
22                   (2) the individual's guardian; or  
23                   (3) an executor or administrator of the individual's  
24 estate.

25           (f) Before releasing confidential information under  
26 Subsection (e), the department shall edit the information to  
27 protect the identity of the reporter to the Department of Family and

1 Protective Services and to protect any other individual whose life  
2 or safety may be endangered by the release. A release of  
3 information under Subsection (e) does not constitute a release for  
4 purposes of waiving the confidentiality of the information  
5 released.

6 SECTION 4. Subchapter E, Chapter 161, Human Resources Code,  
7 is amended by adding Section 161.114 to read as follows:

8 Sec. 161.114. USE OF VOLUNTEERS. (a) In this section,  
9 "volunteer" has the meaning assigned by Section 161.113.

10 (b) The department shall encourage the involvement of  
11 volunteers in guardianships in which the department serves as  
12 guardian of the person or estate, or both. To encourage that  
13 involvement, the department shall identify issues and tasks with  
14 which a volunteer could assist the department in a guardianship,  
15 subject to Subsection (c).

16 (c) A volunteer may provide life enrichment activities,  
17 companionship, transportation services, and other services to or  
18 for the ward in a guardianship, except the volunteer may not provide  
19 services that would require the volunteer to be certified under  
20 Section 111.042, Government Code.

21 SECTION 5. Section 633, Texas Probate Code, is amended by  
22 amending Subsections (b) and (d) and adding Subsection (c-1) to  
23 read as follows:

24 (b) The court clerk shall issue a citation stating that the  
25 application for guardianship was filed, the name of the proposed  
26 ward, the name of the applicant, and the name of the person to be  
27 appointed guardian as provided in the application, if that person

1 is not the applicant. The citation must cite all persons interested  
2 in the welfare of the proposed ward to appear at the time and place  
3 stated in the notice if they wish to contest the application and  
4 must contain a clear and conspicuous statement informing those  
5 interested persons of the right provided under Section 632(j) of  
6 this code to be notified of any or all motions, applications, or  
7 pleadings relating to the application for the guardianship or any  
8 subsequent guardianship proceeding involving the ward after the  
9 guardianship is created, if any. The citation shall be posted.

10 (c-1) The citation served as provided by Subsection (c) of  
11 this section must contain the statement regarding the right  
12 provided under Section 632(j) of this code that is required in the  
13 citation issued under Subsection (b) of this section.

14 (d) The applicant shall mail a copy of the application for  
15 guardianship and a notice containing the information required in  
16 the citation issued under Subsection (b) of this section by  
17 registered or certified mail, return receipt requested, or by any  
18 other form of mail that provides proof of delivery, to the following  
19 persons, if their whereabouts are known or can be reasonably  
20 ascertained:

- 21 (1) all adult children of a proposed ward;
- 22 (2) all adult siblings of a proposed ward;
- 23 (3) the administrator of a nursing home facility or  
24 similar facility in which the proposed ward resides;
- 25 (4) the operator of a residential facility in which  
26 the proposed ward resides;
- 27 (5) a person whom the applicant knows to hold a power

1 of attorney signed by the proposed ward;

2 (6) a person designated to serve as guardian of the  
3 proposed ward by a written declaration under Section 679 of this  
4 code, if the applicant knows of the existence of the declaration;

5 (7) a person designated to serve as guardian of the  
6 proposed ward in the probated will of the last surviving parent of  
7 the ward;

8 (8) a person designated to serve as guardian of the  
9 proposed ward by a written declaration of the proposed ward's last  
10 surviving parent, if the declarant is deceased and the applicant  
11 knows of the existence of the declaration; and

12 (9) each person named as another relative within the  
13 third degree by consanguinity [~~next of kin~~] in the application for  
14 guardianship as required by Section 682(10) or (12) of this code if  
15 the proposed ward's spouse and each of the proposed ward's parents,  
16 adult siblings, and adult children are deceased or there is no  
17 spouse, parent, adult sibling, or adult child.

18 SECTION 6. Subpart E, Part 2, Chapter XIII, Texas Probate  
19 Code, is amended by adding Section 646A to read as follows:

20 Sec. 646A. REPRESENTATION OF WARD OR PROPOSED WARD BY  
21 ATTORNEY. (a) The following persons may retain an attorney at any  
22 time to represent the person's interests in a guardianship matter  
23 instead of having those interests represented by an attorney ad  
24 litem appointed under Section 646 of this code or another provision  
25 of this chapter:

26 (1) a ward who retains the power to enter into a  
27 contract under the terms of the guardianship, subject to Section

1 694K of this code; and

2 (2) a proposed ward for purposes of a proceeding for  
3 the appointment of a guardian as long as the proposed ward has  
4 capacity to contract.

5 (b) If the court finds that the ward or the proposed ward has  
6 capacity to contract, the court may remove an attorney ad litem  
7 appointed under Section 646 of this code or any other provision of  
8 this chapter that requires the court to appoint an attorney ad litem  
9 to represent the interests of a ward or proposed ward and appoint a  
10 ward or a proposed ward's retained counsel.

11 SECTION 7. Section 682, Texas Probate Code, is amended to  
12 read as follows:

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

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

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

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

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

27 (A) the right of a proposed ward who is 18 years

1 of age or older to vote in a public election; and

2 (B) the proposed ward's eligibility to hold or  
3 obtain a license to operate a motor vehicle under Chapter 521,  
4 Transportation Code;

5 (5) the facts requiring that a guardian be appointed  
6 and the interest of the applicant in the appointment;

7 (6) the nature and description of any guardianship of  
8 any kind existing for the proposed ward in any other state;

9 (7) the name and address of any person or institution  
10 having the care and custody of the proposed ward;

11 (8) the approximate value and description of the  
12 proposed ward's property, including any compensation, pension,  
13 insurance, or allowance to which the proposed ward may be entitled;

14 (9) the name and address of any person whom the  
15 applicant knows to hold a power of attorney signed by the proposed  
16 ward and a description of the type of power of attorney;

17 (10) if the proposed ward is a minor and if known by  
18 the applicant:

19 (A) the name of each parent of the proposed ward  
20 and state the parent's address or that the parent is deceased;

21 (B) the name and age of each sibling, if any, of  
22 the proposed ward and state the sibling's address or that the  
23 sibling is deceased; and

24 (C) if each of the proposed ward's parents and  
25 adult siblings are deceased, the names and addresses of the  
26 proposed ward's other living relatives who are related to the  
27 proposed ward within the third degree by consanguinity and [~~next of~~

1 ~~kin~~] who are adults;

2           (11) if the proposed ward is a minor, whether the minor  
3 was the subject of a legal or conservatorship proceeding within the  
4 preceding two-year period and, if so, the court involved, the  
5 nature of the proceeding, and the final disposition, if any, of the  
6 proceeding;

7           (12) if the proposed ward is an adult and if known by  
8 the applicant:

9           (A) the name of the proposed ward's spouse, if  
10 any, and state the spouse's address or that the spouse is deceased;

11           (B) the name of each of the proposed ward's  
12 parents and state the parent's address or that the parent is  
13 deceased;

14           (C) the name and age of each of the proposed  
15 ward's siblings, if any, and state the sibling's address or that the  
16 sibling is deceased;

17           (D) the name and age of each of the proposed  
18 ward's children, if any, and state the child's address or that the  
19 child is deceased; and

20           (E) if the proposed ward's spouse and each of the  
21 proposed ward's parents, adult siblings, and adult children are  
22 deceased, or, if there is no spouse, parent, adult sibling, or adult  
23 child, the names and addresses of the proposed ward's other living  
24 relatives who are related to the proposed ward within the third  
25 degree by consanguinity and [~~next of kin~~] who are adults;

26           (13) facts showing that the court has venue over the  
27 proceeding; and



1           (14) if applicable, that the person whom the applicant  
2 desires to have appointed as a guardian is a private professional  
3 guardian who is certified under Subchapter C, Chapter 111,  
4 Government Code, and has complied with the requirements of Section  
5 697 of this code.

6           SECTION 8. Subsection (d), Section 697B, Texas Probate  
7 Code, is amended to read as follows:

8           (d) An individual volunteering with a guardianship program  
9 or with the Department of Aging and Disability Services is not  
10 required to be certified as provided by this section to provide  
11 guardianship services or other services under Section 161.114,  
12 Human Resources Code, on the program's or the department's behalf.

13           SECTION 9. Section 761, Texas Probate Code, is amended by  
14 amending Subsections (a), (c), and (f) and adding Subsections  
15 (a-1), (h), and (i) to read as follows:

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

19                   (1) neglects to qualify in the manner and time  
20 required by law;

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

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

27                   (4) absents himself or herself from the state for a

1 period of three months at one time without permission of the court,  
2 or removes from the state;

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

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

6 (B) the guardian is eluding service; or

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

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

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

19 (8) has neglected to educate or maintain the ward as  
20 liberally as the means of the ward and the condition of the ward's  
21 estate permit.

22 (a-1) In a proceeding to remove a guardian under Subsection  
23 (a)(6), (7), or (8) of this section, the court shall appoint a  
24 guardian ad litem as provided by Section 645 of this code and an  
25 attorney ad litem. The attorney ad litem has the duties prescribed  
26 by Section 647 of this code. In the interest of judicial economy,  
27 the court may appoint the same person as guardian ad litem and

1 attorney ad litem unless a conflict exists between the interests to  
2 be represented by the guardian ad litem and attorney ad litem.

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

7 (1) sufficient grounds appear to support belief that  
8 the guardian has misapplied, embezzled, or removed from the state,  
9 or that the guardian is about to misapply, embezzle, or remove from  
10 the state, all or any part of the property committed to the care of  
11 the guardian;

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

14 (3) the guardian fails to obey any proper order of the  
15 court having jurisdiction with respect to the performance of the  
16 guardian's duties;

17 (4) the guardian is proved to have been guilty of gross  
18 misconduct or mismanagement in the performance of the duties of the  
19 guardian;

20 (5) the guardian becomes incapacitated, or is  
21 sentenced to the penitentiary, or from any other cause becomes  
22 incapable of properly performing the duties of the guardian's  
23 trust;

24 (6) the guardian has engaged in conduct with respect  
25 to the ward that would be considered to be abuse, neglect, or  
26 exploitation, as those terms are defined by Section 48.002, Human  
27 Resources Code, if engaged in with respect to an elderly or disabled

1 person, as defined by that section [~~neglects or cruelly treats the~~  
2 ~~ward~~];

3 (6-a) the guardian neglects to educate or maintain the  
4 ward as liberally as the means of the ward's estate and the ward's  
5 ability or condition permit;

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

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

10 (9) the court determines that, because of the  
11 dissolution of the joint guardians' marriage, the termination of  
12 the guardians' joint appointment and the continuation of only one  
13 of the joint guardians as the sole guardian is in the best interest  
14 of the ward; or

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

17 (f) If the necessity exists, the court may immediately  
18 appoint a successor guardian without citation or notice but may not  
19 discharge the person removed as guardian of the estate or release  
20 the person or the sureties on the person's bond until final order or  
21 judgment is rendered on the final account of the guardian. Subject  
22 to an order of the court, a successor guardian has the rights and  
23 powers of the removed guardian.

24 (h) The appointment of a successor guardian under  
25 Subsection (f) of this section does not preclude an interested  
26 person from filing an application to be appointed guardian of the  
27 ward for whom the successor guardian was appointed. The court shall

1 hold a hearing on an application filed under the circumstances  
2 described by this subsection. At the conclusion of the hearing, the  
3 court may set aside the appointment of the successor guardian and  
4 appoint the applicant as the ward's guardian if the applicant is not  
5 disqualified and after considering the requirements of Section 676  
6 or 677 of this code, as applicable.

7 (i) If the court sets aside the appointment of the successor  
8 guardian under this section, the court may require the successor  
9 guardian to prepare and file, under oath, an accounting of the  
10 estate and to detail the disposition the successor has made of the  
11 estate property.

12 SECTION 10. The Department of Aging and Disability Services  
13 and the adult protective services division of the Department of  
14 Family and Protective Services shall identify and implement  
15 modifications to investigations of abuse, neglect, and  
16 exploitation conducted under Chapter 48, Human Resources Code, and  
17 the provision of protective and guardianship services under  
18 Chapters 48 and 161, Human Resources Code, to ensure that the  
19 agencies prevent any unnecessary duplication of efforts in  
20 performing their respective responsibilities under those chapters.

21 SECTION 11. (a) Except as otherwise provided by this  
22 section, the changes in law made by this Act apply to a guardianship  
23 created before, on, or after the effective date of this Act.

24 (b) Sections 633 and 682, Texas Probate Code, as amended by  
25 this Act, apply only to an application for a guardianship filed on  
26 or after the effective date of this Act. An application for a  
27 guardianship filed before the effective date of this Act is

1 governed by the law in effect on the date the application was filed,  
2 and the former law is continued in effect for that purpose.

3 (c) Section 761, Texas Probate Code, as amended by this Act,  
4 applies only to a proceeding to remove a guardian commenced on or  
5 after the effective date of this Act. A proceeding to remove a  
6 guardian commenced before the effective date of this Act is  
7 governed by the law in effect on the date the proceeding was  
8 commenced, and the former law is continued in effect for that  
9 purpose.

10 SECTION 12. This Act takes effect September 1, 2011.