

1-1 By: Nelson S.B. No. 220
1-2 (In the Senate - Filed November 18, 2010; January 31, 2011,
1-3 read first time and referred to Committee on Jurisprudence;
1-4 April 18, 2011, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 7, Nays 0; April 18, 2011,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 220 By: Harris

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

1-10 relating to guardianships, including the assessment of prospective
1-11 wards for, and the provision of, guardianship services by the
1-12 Department of Aging and Disability Services.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Subsection (a), Section 111.042, Government
1-15 Code, is amended to read as follows:

1-16 (a) To provide guardianship services in this state, the
1-17 following individuals must hold a certificate issued under this
1-18 section:

1-19 (1) an individual who is a private professional
1-20 guardian;

1-21 (2) an individual who will provide those services to a
1-22 ward of a private professional guardian [~~or the Department of Aging~~
1-23 ~~and Disability Services~~] on the guardian's [~~or department's~~]
1-24 behalf; and

1-25 (3) an individual, other than a volunteer, who will
1-26 provide those services or other services under Section 161.114,
1-27 Human Resources Code, to a ward of a guardianship program or the
1-28 Department of Aging and Disability Services on the program's or
1-29 department's behalf.

1-30 SECTION 2. Subsections (a) and (b), Section 161.109, Human
1-31 Resources Code, are amended to read as follows:

1-32 (a) The department shall have access to all of the records
1-33 and documents concerning an individual who is referred for
1-34 guardianship services or to whom guardianship services are provided
1-35 under this subchapter that are necessary to the performance of the
1-36 department's duties under this subchapter, including:

1-37 (1) client-identifying information; and
1-38 (2) medical, psychological, educational, financial,
1-39 and [~~or~~] residential information.

1-40 (b) The department is exempt from the payment of a fee
1-41 otherwise required or authorized by law to obtain a financial or
1-42 medical record, including a mental health record, from any source
1-43 [~~a hospital or health care provider~~] if the request for a record is
1-44 related to [~~made in the course of~~] an assessment for guardianship
1-45 services conducted by the department or the provision of
1-46 guardianship services by the department.

1-47 SECTION 3. Section 161.111, Human Resources Code, is
1-48 amended by adding Subsections (e) and (f) to read as follows:

1-49 (e) To the extent consistent with department policies and
1-50 procedures, the department on request may release confidential
1-51 information in the record of an individual who is assessed by the
1-52 department or is a former ward of the department to:

1-53 (1) the individual;
1-54 (2) the individual's guardian; or
1-55 (3) an executor or administrator of the individual's
1-56 estate.

1-57 (f) Before releasing confidential information under
1-58 Subsection (e), the department shall edit the information to
1-59 protect the identity of the reporter to the Department of Family and
1-60 Protective Services and to protect any other individual whose life
1-61 or safety may be endangered by the release. A release of
1-62 information under Subsection (e) does not constitute a release for
1-63 purposes of waiving the confidentiality of the information

2-1 released.

2-2 SECTION 4. Subchapter E, Chapter 161, Human Resources Code,
2-3 is amended by adding Section 161.114 to read as follows:

2-4 Sec. 161.114. USE OF VOLUNTEERS. (a) In this section,
2-5 "volunteer" has the meaning assigned by Section 161.113.

2-6 (b) The department shall encourage the involvement of
2-7 volunteers in guardianships in which the department serves as
2-8 guardian of the person or estate, or both. To encourage that
2-9 involvement, the department shall identify issues and tasks with
2-10 which a volunteer could assist the department in a guardianship,
2-11 subject to Subsection (c).

2-12 (c) A volunteer may provide life enrichment activities,
2-13 companionship, transportation services, and other services to or
2-14 for the ward in a guardianship, except the volunteer may not provide
2-15 services that would require the volunteer to be certified under
2-16 Section 111.042, Government Code.

2-17 SECTION 5. Section 633, Texas Probate Code, is amended by
2-18 amending Subsections (b) and (d) and adding Subsection (c-1) to
2-19 read as follows:

2-20 (b) The court clerk shall issue a citation stating that the
2-21 application for guardianship was filed, the name of the proposed
2-22 ward, the name of the applicant, and the name of the person to be
2-23 appointed guardian as provided in the application, if that person
2-24 is not the applicant. The citation must cite all persons interested
2-25 in the welfare of the proposed ward to appear at the time and place
2-26 stated in the notice if they wish to contest the application and
2-27 must contain a clear and conspicuous statement informing those
2-28 interested persons of the right provided under Section 632(j) of
2-29 this code to be notified of any or all motions, applications, or
2-30 pleadings relating to the application for the guardianship or any
2-31 subsequent guardianship proceeding involving the ward after the
2-32 guardianship is created, if any. The citation shall be posted.

2-33 (c-1) The citation served as provided by Subsection (c) of
2-34 this section must contain the statement regarding the right
2-35 provided under Section 632(j) of this code that is required in the
2-36 citation issued under Subsection (b) of this section.

2-37 (d) The applicant shall mail a copy of the application for
2-38 guardianship and a notice containing the information required in
2-39 the citation issued under Subsection (b) of this section by
2-40 registered or certified mail, return receipt requested, or by any
2-41 other form of mail that provides proof of delivery, to the following
2-42 persons, if their whereabouts are known or can be reasonably
2-43 ascertained:

- 2-44 (1) all adult children of a proposed ward;
2-45 (2) all adult siblings of a proposed ward;
2-46 (3) the administrator of a nursing home facility or
2-47 similar facility in which the proposed ward resides;
2-48 (4) the operator of a residential facility in which
2-49 the proposed ward resides;
2-50 (5) a person whom the applicant knows to hold a power
2-51 of attorney signed by the proposed ward;
2-52 (6) a person designated to serve as guardian of the
2-53 proposed ward by a written declaration under Section 679 of this
2-54 code, if the applicant knows of the existence of the declaration;
2-55 (7) a person designated to serve as guardian of the
2-56 proposed ward in the probated will of the last surviving parent of
2-57 the ward;

2-58 (8) a person designated to serve as guardian of the
2-59 proposed ward by a written declaration of the proposed ward's last
2-60 surviving parent, if the declarant is deceased and the applicant
2-61 knows of the existence of the declaration; and

2-62 (9) each person named as another relative within the
2-63 third degree by consanguinity [~~next of kin~~] in the application for
2-64 guardianship as required by Section 682(10) or (12) of this code if
2-65 the proposed ward's spouse and each of the proposed ward's parents,
2-66 adult siblings, and adult children are deceased or there is no
2-67 spouse, parent, adult sibling, or adult child.

2-68 SECTION 6. Subpart E, Part 2, Chapter XIII, Texas Probate
2-69 Code, is amended by adding Section 646A to read as follows:

3-1 Sec. 646A. REPRESENTATION OF WARD OR PROPOSED WARD BY
3-2 ATTORNEY. (a) The following persons may retain an attorney at any
3-3 time to represent the person's interests in a guardianship matter
3-4 instead of having those interests represented by an attorney ad
3-5 litem appointed under Section 646 of this code or another provision
3-6 of this chapter:

3-7 (1) a ward who retains the power to enter into a
3-8 contract under the terms of the guardianship, subject to Section
3-9 694K of this code; and

3-10 (2) a proposed ward for purposes of a proceeding for
3-11 the appointment of a guardian as long as the proposed ward has
3-12 capacity to contract.

3-13 (b) If the court finds that the ward or the proposed ward has
3-14 capacity to contract, the court may remove an attorney ad litem
3-15 appointed under Section 646 of this code or any other provision of
3-16 this chapter that requires the court to appoint an attorney ad litem
3-17 to represent the interests of a ward or proposed ward and appoint a
3-18 ward or a proposed ward's retained counsel.

3-19 SECTION 7. Section 682, Texas Probate Code, is amended to
3-20 read as follows:

3-21 Sec. 682. APPLICATION; CONTENTS. Any person may commence a
3-22 proceeding for the appointment of a guardian by filing a written
3-23 application in a court having jurisdiction and venue. The
3-24 application must be sworn to by the applicant and state:

3-25 (1) the name, sex, date of birth, and address of the
3-26 proposed ward;

3-27 (2) the name, relationship, and address of the person
3-28 the applicant desires to have appointed as guardian;

3-29 (3) whether guardianship of the person or estate, or
3-30 both, is sought;

3-31 (4) the nature and degree of the alleged incapacity,
3-32 the specific areas of protection and assistance requested, and the
3-33 limitation or termination of rights requested to be included in the
3-34 court's order of appointment, including a termination of:

3-35 (A) the right of a proposed ward who is 18 years
3-36 of age or older to vote in a public election; and

3-37 (B) the proposed ward's eligibility to hold or
3-38 obtain a license to operate a motor vehicle under Chapter 521,
3-39 Transportation Code;

3-40 (5) the facts requiring that a guardian be appointed
3-41 and the interest of the applicant in the appointment;

3-42 (6) the nature and description of any guardianship of
3-43 any kind existing for the proposed ward in any other state;

3-44 (7) the name and address of any person or institution
3-45 having the care and custody of the proposed ward;

3-46 (8) the approximate value and description of the
3-47 proposed ward's property, including any compensation, pension,
3-48 insurance, or allowance to which the proposed ward may be entitled;

3-49 (9) the name and address of any person whom the
3-50 applicant knows to hold a power of attorney signed by the proposed
3-51 ward and a description of the type of power of attorney;

3-52 (10) if the proposed ward is a minor and if known by
3-53 the applicant:

3-54 (A) the name of each parent of the proposed ward
3-55 and state the parent's address or that the parent is deceased;

3-56 (B) the name and age of each sibling, if any, of
3-57 the proposed ward and state the sibling's address or that the
3-58 sibling is deceased; and

3-59 (C) if each of the proposed ward's parents and
3-60 adult siblings are deceased, the names and addresses of the
3-61 proposed ward's other living relatives who are related to the
3-62 proposed ward within the third degree by consanguinity and [next of
3-63 kin] who are adults;

3-64 (11) if the proposed ward is a minor, whether the minor
3-65 was the subject of a legal or conservatorship proceeding within the
3-66 preceding two-year period and, if so, the court involved, the
3-67 nature of the proceeding, and the final disposition, if any, of the
3-68 proceeding;

3-69 (12) if the proposed ward is an adult and if known by

4-1 the applicant:

4-2 (A) the name of the proposed ward's spouse, if

4-3 any, and state the spouse's address or that the spouse is deceased;

4-4 (B) the name of each of the proposed ward's

4-5 parents and state the parent's address or that the parent is

4-6 deceased;

4-7 (C) the name and age of each of the proposed

4-8 ward's siblings, if any, and state the sibling's address or that the

4-9 sibling is deceased;

4-10 (D) the name and age of each of the proposed

4-11 ward's children, if any, and state the child's address or that the

4-12 child is deceased; and

4-13 (E) if the proposed ward's spouse and each of the

4-14 proposed ward's parents, adult siblings, and adult children are

4-15 deceased, or, if there is no spouse, parent, adult sibling, or adult

4-16 child, the names and addresses of the proposed ward's other living

4-17 relatives who are related to the proposed ward within the third

4-18 degree by consanguinity and ~~[next of kin]~~ who are adults;

4-19 (13) facts showing that the court has venue over the

4-20 proceeding; and

4-21 (14) if applicable, that the person whom the applicant

4-22 desires to have appointed as a guardian is a private professional

4-23 guardian who is certified under Subchapter C, Chapter 111,

4-24 Government Code, and has complied with the requirements of Section

4-25 697 of this code.

4-26 SECTION 8. Subsection (d), Section 697B, Texas Probate

4-27 Code, is amended to read as follows:

4-28 (d) An individual volunteering with a guardianship program

4-29 or with the Department of Aging and Disability Services is not

4-30 required to be certified as provided by this section to provide

4-31 guardianship services or other services under Section 161.114,

4-32 Human Resources Code, on the program's or the department's behalf.

4-33 SECTION 9. Section 761, Texas Probate Code, is amended by

4-34 amending Subsections (a), (c), and (f) and adding Subsections

4-35 (a-1), (h), and (i) to read as follows:

4-36 (a) The court, on its own motion or on motion of any

4-37 interested person, including the ward, and without notice, may

4-38 remove any guardian~~[7]~~ appointed under this chapter~~[7]~~ who:

4-39 (1) neglects to qualify in the manner and time

4-40 required by law;

4-41 (2) fails to return within 30 days after

4-42 qualification, unless the time is extended by order of the court, an

4-43 inventory of the property of the guardianship estate and list of

4-44 claims that have come to the guardian's knowledge;

4-45 (3) having been required to give a new bond, fails to

4-46 do so within the time prescribed;

4-47 (4) absents himself or herself from the state for a

4-48 period of three months at one time without permission of the court,

4-49 or removes from the state;

4-50 (5) cannot be served with notices or other processes

4-51 because of the fact that:

4-52 (A) the guardian's whereabouts are unknown;

4-53 (B) the guardian is eluding service; or

4-54 (C) the guardian is a nonresident of this state

4-55 who does not have a resident agent to accept service of process in

4-56 any guardianship proceeding or other matter relating to the

4-57 guardianship;

4-58 (6) has misapplied, embezzled, or removed from the

4-59 state, or is about to misapply, embezzle, or remove from the state,

4-60 all or any part of the property committed to the guardian's care;

4-61 (7) has engaged in conduct with respect to the ward

4-62 that would be considered to be abuse, neglect, or exploitation, as

4-63 those terms are defined by Section 48.002, Human Resources Code, if

4-64 engaged in with respect to an elderly or disabled person, as defined

4-65 by that section ~~[neglected or cruelly treated a ward]~~; or

4-66 (8) has neglected to educate or maintain the ward as

4-67 liberally as the means of the ward and the condition of the ward's

4-68 estate permit.

4-69 (a-1) In a proceeding to remove a guardian under Subsection

5-1 (a)(6), (7), or (8) of this section, the court shall appoint a
 5-2 guardian ad litem as provided by Section 645 of this code and an
 5-3 attorney ad litem. The attorney ad litem has the duties prescribed
 5-4 by Section 647 of this code. In the interest of judicial economy,
 5-5 the court may appoint the same person as guardian ad litem and
 5-6 attorney ad litem unless a conflict exists between the interests to
 5-7 be represented by the guardian ad litem and attorney ad litem.

5-8 (c) The court may remove a guardian on its own motion, or on
 5-9 the complaint of an interested person, after the guardian has been
 5-10 cited by personal service to answer at a time and place set in the
 5-11 notice, when:

5-12 (1) sufficient grounds appear to support belief that
 5-13 the guardian has misapplied, embezzled, or removed from the state,
 5-14 or that the guardian is about to misapply, embezzle, or remove from
 5-15 the state, all or any part of the property committed to the care of
 5-16 the guardian;

5-17 (2) the guardian fails to return any account or report
 5-18 that is required by law to be made;

5-19 (3) the guardian fails to obey any proper order of the
 5-20 court having jurisdiction with respect to the performance of the
 5-21 guardian's duties;

5-22 (4) the guardian is proved to have been guilty of gross
 5-23 misconduct or mismanagement in the performance of the duties of the
 5-24 guardian;

5-25 (5) the guardian becomes incapacitated, or is
 5-26 sentenced to the penitentiary, or from any other cause becomes
 5-27 incapable of properly performing the duties of the guardian's
 5-28 trust;

5-29 (6) the guardian has engaged in conduct with respect
 5-30 to the ward that would be considered to be abuse, neglect, or
 5-31 exploitation, as those terms are defined by Section 48.002, Human
 5-32 Resources Code, if engaged in with respect to an elderly or disabled
 5-33 person, as defined by that section [~~neglects or cruelly treats the~~
 5-34 ward];

5-35 (6-a) the guardian neglects to educate or maintain the
 5-36 ward as liberally as the means of the ward's estate and the ward's
 5-37 ability or condition permit;

5-38 (7) the guardian interferes with the ward's progress
 5-39 or participation in programs in the community;

5-40 (8) the guardian fails to comply with the requirements
 5-41 of Section 697 of this code;

5-42 (9) the court determines that, because of the
 5-43 dissolution of the joint guardians' marriage, the termination of
 5-44 the guardians' joint appointment and the continuation of only one
 5-45 of the joint guardians as the sole guardian is in the best interest
 5-46 of the ward; or

5-47 (10) the guardian would be ineligible for appointment
 5-48 as a guardian under Section 681 of this code.

5-49 (f) If the necessity exists, the court may immediately
 5-50 appoint a successor guardian without citation or notice but may not
 5-51 discharge the person removed as guardian of the estate or release
 5-52 the person or the sureties on the person's bond until final order or
 5-53 judgment is rendered on the final account of the guardian. Subject
 5-54 to an order of the court, a successor guardian has the rights and
 5-55 powers of the removed guardian.

5-56 (h) The appointment of a successor guardian under
 5-57 Subsection (f) of this section does not preclude an interested
 5-58 person from filing an application to be appointed guardian of the
 5-59 ward for whom the successor guardian was appointed. The court shall
 5-60 hold a hearing on an application filed under the circumstances
 5-61 described by this subsection. At the conclusion of the hearing, the
 5-62 court may set aside the appointment of the successor guardian and
 5-63 appoint the applicant as the ward's guardian if the applicant is not
 5-64 disqualified and after considering the requirements of Section 676
 5-65 or 677 of this code, as applicable.

5-66 (i) If the court sets aside the appointment of the successor
 5-67 guardian under this section, the court may require the successor
 5-68 guardian to prepare and file, under oath, an accounting of the
 5-69 estate and to detail the disposition the successor has made of the

6-1 estate property.

6-2 SECTION 10. The Department of Aging and Disability Services
6-3 and the adult protective services division of the Department of
6-4 Family and Protective Services shall identify and implement
6-5 modifications to investigations of abuse, neglect, and
6-6 exploitation conducted under Chapter 48, Human Resources Code, and
6-7 the provision of protective and guardianship services under
6-8 Chapters 48 and 161, Human Resources Code, to ensure that the
6-9 agencies prevent any unnecessary duplication of efforts in
6-10 performing their respective responsibilities under those chapters.

6-11 SECTION 11. (a) Except as otherwise provided by this
6-12 section, the changes in law made by this Act apply to a guardianship
6-13 created before, on, or after the effective date of this Act.

6-14 (b) Sections 633 and 682, Texas Probate Code, as amended by
6-15 this Act, apply only to an application for a guardianship filed on
6-16 or after the effective date of this Act. An application for a
6-17 guardianship filed before the effective date of this Act is
6-18 governed by the law in effect on the date the application was filed,
6-19 and the former law is continued in effect for that purpose.

6-20 (c) Section 761, Texas Probate Code, as amended by this Act,
6-21 applies only to a proceeding to remove a guardian commenced on or
6-22 after the effective date of this Act. A proceeding to remove a
6-23 guardian commenced before the effective date of this Act is
6-24 governed by the law in effect on the date the proceeding was
6-25 commenced, and the former law is continued in effect for that
6-26 purpose.

6-27 SECTION 12. This Act takes effect September 1, 2011.

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