

BILL ANALYSIS

Senate Research Center

H.B. 2189
By: Rodriguez (Wentworth)
Jurisprudence
5/19/2003
Committee Report (Amended)

DIGEST AND PURPOSE

Temporary guardianships were originally established to offer immediate relief in emergency situations involving a minor or incapacitated adult. The legislature has adopted other statutes to deal with common emergency situations.

Some parties believe that the current law governing temporary guardianships is overly broad and may lead to abuses of the ward by the temporary guardian, since current law allows probate courts to create temporary guardianships on an ex parte basis without notice or hearing. H.B. 2189 requires a person seeking a temporary guardianship to first file a sworn written application. This bill requires the court to appoint an attorney ad litem for the proposed ward and set a hearing date, with notice provided to both the proposed ward and the attorney ad litem.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 875, Texas Probate Code, by amending Subsections (c), (d), (e), (f), (g), and (k) and adding Subsection (l), as follows:

(c) Requires, rather than authorizes, a sworn, written application for the appointment of a temporary guardian to be filed before the court appoints a temporary guardian. Requires the application to state certain information. Deletes language relating to application filing deadlines.

(d) Requires the court to appoint an attorney to represent the proposed ward in all guardianship proceedings in which independent counsel has not been retained by or on behalf of the proposed ward, on, rather than at the earliest of, the filing of an application for temporary guardianship.

(e) Deletes language relating to attaching a copy of the order appointing the temporary guardian to a copy of the application.

(f)(1) Requires a hearing to be held not later than the 10th day after the date of the filing of the application for temporary guardianship unless the hearing date is postponed, rather than extended, as provided by Subdivision (2) of this subsection. Provides the rights of a respondent at a hearing under this section.

(2) Authorizes the respondent or the respondent's attorney to consent to postpone the hearing on the application for temporary guardianship for a period not to exceed 30 days, rather than 60 days, after the date of the filing of the application.

(3) Provides that every application for temporary guardianship takes precedence over all matters except older matters of the same character.

(4) Requires the court to issue an order that sets a certain date for hearing on

application for temporary guardianship immediately after an application is filed.

(5) Authorizes the respondent or the respondent's attorney to appear and move for the dismissal, rather than the dissolution or modification, of the application for temporary guardianship on one day's notice to the party who filed for temporary guardianship. Makes conforming changes.

(g) Requires the court to set bond according to Subpart B, Part 3, of this chapter. Requires the reasons for the temporary guardianship and the powers and duties of the temporary guardian to be described in the order of appointment.

(k) Authorizes upon the application for a temporary guardianship, for the conversion of a temporary guardianship to a permanent guardianship, or for a permanent guardianship that is challenged or contested, the court, on the court's own motion or on the motion of any interested party, to appoint a new temporary guardian or grant a temporary restraining order under Rule 680, Texas Rules of Civil Procedure, or both, without issuing additional citation if the court finds that the appointment or the issuance of the order is necessary to protect the proposed ward or the proposed ward's estate.

(l) Changes "this subsection" to "Subsection (k) of this section."

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: September 1, 2003.

LIST OF COMMITTEE AMENDMENTS

Committee Amendment No. 1:

In SECTION 1 of the bill (engrossed version, page 1, line 5), between "Subsections" and "(c)", insert "(b),".

Committee Amendment No. 2:

In SECTION 1 of the bill, in Section 875, Texas Probate Code (engrossed version, Page 1, between lines 6 and 7), insert the following:

(b) [~~A person for whom a temporary guardian has been appointed may not be presumed to be incapacitated.~~] The person retains all rights and powers that are not specifically granted to the person's temporary guardian by court order.