

AN ACT

1
2 relating to the appointment or removal of guardians of
3 incapacitated persons.

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

5 SECTION 1. Section 681, Texas Probate Code, is amended to
6 read as follows:

7 Sec. 681. PERSONS DISQUALIFIED TO SERVE AS GUARDIANS. A
8 person may not be appointed guardian if the person is:

- 9 (1) a minor;
- 10 (2) a person whose conduct is notoriously bad;
- 11 (3) an incapacitated person;
- 12 (4) a person who is a party or whose parent is a party
13 to a lawsuit concerning or affecting the welfare of the proposed
14 ward, unless the court:

15 (A) determines that the lawsuit claim of the
16 person who has applied to be appointed guardian is not in conflict
17 with the lawsuit claim of the proposed ward; or

18 (B) appoints a guardian ad litem to represent the
19 interests of the proposed ward throughout the litigation of the
20 ward's lawsuit claim;

21 (5) a person indebted to the proposed ward unless the
22 person pays the debt before appointment;

23 (6) a person asserting a claim adverse to the proposed
24 ward or the proposed ward's property, real or personal;

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1 (7) a person who, because of inexperience, lack of
2 education, or other good reason, is incapable of properly and
3 prudently managing and controlling the ward or the ward's estate;

4 (8) a person, institution, or corporation found
5 unsuitable by the court;

6 (9) a person disqualified in a declaration made under
7 Section 679 of this code; [~~or~~]

8 (10) a nonresident person who has not filed with the
9 court the name of a resident agent to accept service of process in
10 all actions or proceedings relating to the guardianship; or

11 (11) a person who does not have the certification to
12 serve as guardian that is required by Section 697B of this code.

13 SECTION 2. Section 761, Texas Probate Code, is amended by
14 adding Subsection (c-1) to read as follows:

15 (c-1) In addition to the authority granted to the court
16 under Subsection (c) of this section, the court may, on the
17 complaint of the Guardianship Certification Board, remove a
18 guardian who would be ineligible for appointment under Section 681
19 of this code because of the guardian's failure to maintain the
20 certification required under Section 697B of this code. The
21 guardian shall be cited to appear and contest the request for
22 removal under this subsection in the manner provided by Subsection
23 (c) of this section.

24 SECTION 3. This Act takes effect September 1, 2009.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

March 21, 2009

TO: Honorable Jeff Wentworth, Chair, Senate Committee on Jurisprudence

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: SB1053 by Uresti (Relating to the appointment or removal of guardians of incapacitated persons.), **As Introduced**

No significant fiscal implication to the State is anticipated.

The bill disqualifies a person from serving as a guardian if they do not have the certification required by Section 697B, Texas Probate Code and allows the court, on the complaint of the Guardianship Certification Board, to remove a guardian for failure to maintain the required certification. It is assumed any cost to implement provisions of the bill would be minimal and can be absorbed within available resources.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 530 Family and Protective Services, Department of, 539 Aging and Disability Services, Department of

LBB Staff: JOB, TP, ML, LR

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David Newkumst

President of the Senate

Jim Strawn

Speaker of the House

I hereby certify that S.B. No. 1053 passed the Senate on April 16, 2009, by the following vote: Yeas 31, Nays 0.

Atsey Spaul

Secretary of the Senate

I hereby certify that S.B. No. 1053 passed the House on May 26, 2009, by the following vote: Yeas 144, Nays 0, two present not voting.

Robert Hamey

Chief Clerk of the House

Approved:

19 JUN '09

Date

Rick Perry

Governor

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
2 PM O'CLOCK

JUN 19 2009

Coly Hunter III