

CHAPTER 460

H.B. No. 361

AN ACT

relating to the appointment of temporary administrators, representatives, and guardians for certain persons and estates.

*Be it enacted by the Legislature of the State of Texas:*

SECTION 1. Sections 131(a), (b), (d), and (f), Texas Probate Code, are amended to read as follows:

(a) *Necessity of Appointment.* Whenever it appears to the county judge that the interest of [~~a decedent's estate, or the interest of~~] any minor, incapacitated person as defined in Section 130A of this code, or common or habitual drunkard, and his or her estate, or either of them, requires immediate appointment of a personal representative, he shall, by written order, appoint a suitable temporary representative, with such limited powers as the circumstances of the case require, and such appointment may be made permanent, as herein provided.

(b) A written application for the appointment of a temporary guardian may be filed prior to the court's appointment of such guardian but in no case shall such application be filed later than the end of the next business day of the court after appointment of such temporary guardian. The application shall state:

- (i) the name and address of the subject of the guardianship proceeding;
- (ii) the danger *to the person or property* alleged to be imminent;
- (iii) the type of appointment and the particular protection and assistance being requested;

- (iv) the facts and reasons supporting the allegations and requests;
- (v) the name, address, and qualification of the proposed temporary guardian;
- (vi) the name, address, and interest of the applicant; *and*
- (vii) *the social security numbers of the applicant and respondent.*

(d) Upon the filing of an application for temporary guardianship the clerk shall issue notice which shall be served upon the respondent~~[, the guardian,]~~ and the respondent's appointed attorney. The notice must describe the rights of the parties, and the date, time, place, purpose, and possible consequences of a hearing on the application. A copy of the application and, if applicable, a copy of the order appointing temporary guardian, must be attached to the notice.

(f) If at the conclusion of the hearing required by Subsection (e)(1) above the court determines that the applicant has established that there is imminent danger that the physical health or safety of the respondent will be seriously impaired and/or the respondent's estate will be seriously damaged or dissipated unless immediate action is taken, it shall appoint a temporary guardian by written order. The court shall assign to the temporary guardian only those duties and powers necessary to protect against the imminent danger shown. *The duties and powers must be described in the order of appointment. The clerk of the court shall issue a letter in accordance with the order of appointment.*

SECTION 2. Chapter VI, Texas Probate Code, is amended by adding Section 131A to read as follows:

*Sec. 131A. APPOINTMENT OF TEMPORARY ADMINISTRATORS. (a) If a county judge determines that the interest of a decedent's estate requires the immediate appointment of a personal representative, he shall, by written order, appoint a temporary administrator with limited powers as the circumstances of the case require. The duration of the appointment must be specified in the court's order and may not exceed 180 days unless the appointment is made permanent as provided by Subsection (j) of this section.*

*(b) Any person may file with the clerk of the court a written application for the appointment of a temporary administrator of a decedent's estate under this section. The application must be verified and must include the information required by Section 82 of this code and an affidavit that sets out:*

- (1) the name, address, and interest of the applicant;*
- (2) the facts showing an immediate necessity for the appointment of a temporary administrator;*
- (3) the requested powers and duties of the temporary administrator;*
- (4) a statement that the applicant is entitled to letters of temporary administration and is not disqualified by law from serving as a temporary administrator; and*
- (5) a description of the real and personal property that the applicant believes to be in the decedent's estate.*

*(c) An order of appointment must:*

- (1) designate the appointee as "temporary administrator" of the decedent's estate for the specified period;*
- (2) define the powers conferred on the appointee; and*
- (3) set the amount of bond to be given by the appointee.*

*(d) On the date of the order, the appointee shall file with the county clerk a bond in the amount ordered by the court.*

*(e) Not later than the third day after the date on which an appointee files a bond with the county clerk, the county clerk shall issue to the appointee letters of appointment that set forth the powers to be exercised by the appointee as ordered by the court.*

(f) *On the date that the county clerk issues letters of appointment, the county clerk shall post a notice of the appointment to all interested persons on the courthouse door.*

(g) *On the date the county clerk issues letters of appointment, the appointee shall notify the known heirs of the decedent of his appointment by certified mail, return receipt requested.*

(h) *A notice required by Subsection (f) or (g) of this section must state that:*

(1) *an interested person or an heir may request a hearing to contest the appointment not later than the 15th day after the date that the letters of appointment are issued;*

(2) *if no contest is made within the period specified by the notice, the appointment will continue for the time specified in the order of appointment; and*

(3) *the court may make the appointment permanent.*

(i) *If an interested person or an heir requests a hearing to contest the appointment of a temporary administrator, a hearing shall be held and a determination made not later than the 10th day after the date the request was made. If a request is not made on or before the 15th day after the date that the letters of appointment are issued, the appointment of a temporary administrator continues for the period specified in the order, unless made permanent under Subsection (j) of this section. During the pendency of a contest of the appointment of a temporary administrator, the temporary appointee shall continue to act as administrator of the estate to the extent of the powers conferred by his appointment. If the court sets aside the appointment, the court may require the temporary administrator to prepare and file, under oath, a complete exhibit of the condition of the estate and detail the disposition the temporary administrator has made of the property of the estate.*

(j) *At the conclusion of the term of appointment of a temporary administrator, the court may, by written order, make the appointment permanent if the permanent appointment is in the interest of the estate.*

SECTION 3. Section 132(a), Texas Probate Code, is amended to read as follows:

(a) *Appointment of Temporary Administrator. Pending a contest relative to the probate of a will or the granting of letters of administration, the court may appoint a temporary administrator, with such limited powers as the circumstances of the case require; and such appointment may continue in force until the termination of the contest and the appointment of an executor or administrator with full powers. The power of appointment in this Subsection is in addition to the court's power of appointment under Section 131A of this Code.*

SECTION 4. (a) This Act takes effect September 1, 1987.

(b) Section 131, Texas Probate Code, as amended by this Act, applies only to applications for appointment of temporary guardianship made and orders for temporary guardianship issued without application on or after the effective date of this Act.

SECTION 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on April 23, 1987, by a non-record vote. Passed by the Senate on May 23, 1987, by the following vote: Yeas 30, Nays 0.

Approved June 17, 1987.

Effective Sept. 1, 1987.