

BILL ANALYSIS

Senate Research Center

C.S.S.B. 586
By: Moncrief
State Affairs
3-23-97
Committee Report (Substituted)

DIGEST

Currently, local guardianship programs in certain areas of the state have successfully recruited volunteers to become guardians and protect the interest of mentally incapacitated adults in Texas. Many mentally incapacitated adults in Texas have no one to serve as their guardian and take responsibility for important life decisions since certain areas of the state are without such programs. This bill would create and establish guidelines for the Guardianship Advisory Board to advise the Health and Human Services Commission in adopting minimum standards for the provision of guardianship and related services and in the development and implementation of a plan to ensure that each incapacitated individual in this state who needs a guardianship or another less restrictive type of assistance receives that assistance. C.S.S.B. 586 also sets forth the certification guidelines a person who is licensed to practice law in this state is required to obtain from the State Bar of Texas in order to represent a proposed ward or guardian or other interested person at a hearing to appoint a guardian.

PURPOSE

As proposed, C.S.S.B. 586 sets forth the creation and guidelines of the Guardianship Advisory Board and the certification of attorneys representing certain parties in guardianship proceedings.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the presiding judge of the statutory probate courts in SECTION 1 (Section 531.122(e), Government Code) and to the Health & Human Services Commission in SECTION 1 (Section 531.124(a)(1), Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 531, Government Code, by adding Subchapter D, as follows:

SUBCHAPTER D. GUARDIANSHIP ADVISORY BOARD

Sec. 531.121. DEFINITIONS. Defines "advisory board," "guardian," "guardianship program," "incapacitated individual," "private professional guardian," and "statutory probate court."

Sec. 531.122. ADVISORY BOARD; MEMBERSHIP AND DUTIES. Requires the Guardianship Advisory Board (board) to advise the Health & Human Services Commission (commission) in adopting standards under Section 531.124 and in administering the commission's duties under this subchapter. Provides that the advisory board is composed of one representative from each of the health and human services regions, as defined by the commission, appointed by a majority vote of the judges of the statutory probate courts in each region. Requires the representative to be appointed by a majority vote of the judges of the statutory probate courts in the state if a health and human services region does not contain a statutory probate court. Requires an individual to have demonstrated experience working with a guardianship program; an organization that advocates on behalf of or in the interest of elderly individuals with mental illness or mental retardation; or incapacitated individuals. Provides that a member of the advisory board serves at the pleasure of the judges of the statutory probate courts. Authorizes the presiding judge of the statutory probate courts to

adopt rules as necessary for operation of the advisory board. Provides that Articles 6252-33(2) and (8), V.T.C.S., do not apply to the advisory board.

Sec. 531.123. **ADVISORY BOARD; OFFICERS AND MEETINGS.** Requires the board to elect from its members a presiding officer and other officers considered necessary. Requires the advisory board to meet at the call of the presiding officer. Requires the board to develop and implement policies to provide the public with a reasonable opportunity to appear before the member and to speak on any issue under the jurisdiction of the board.

Sec. 531.124. **DUTIES.** Requires the commission, with the advice of the advisory board, to adopt minimum standards of the provision of guardianship and related services by a guardianship program; a person who provides guardianship and related services on behalf of a guardianship program or local guardianship center; and a person who serves as a private professional guardian; and to develop and implement a plan to ensure that each incapacitated individual in this state who needs a guardianship or another less restrictive type of assistance to make decisions concerning the incapacitated individual's own welfare and financial affairs receives that assistance. Requires the plan to include a means to foster the establishment and growth of local guardianship programs. Requires the commission to design the standards under this section to protect the interests of an incapacitated individual or other individual who needs assistance in making the decisions concerning the individual's own welfare or financial affairs.

SECTION 2. Amends Section 646, Probate Code, to provide that to be eligible for appointment as an attorney ad litem, a person must have the certification required by Section 647A, Texas Probate Code. Makes conforming changes.

SECTION 3. Amends Part 2E, Chapter XIII, Probate Code, by adding Section 647A, as follows:

Sec. 647A. **CERTIFICATION REQUIREMENT FOR CERTAIN ATTORNEYS.** Sets forth the certification guidelines a person who is licensed to practice law in this state is required to obtain from the State Bar of Texas in order to represent a proposed ward or guardian or other interested person at a hearing to appoint a guardian.

SECTION 4. Makes application of Sections 646 and 647A, Probate Code, of this Act prospective.

SECTION 5. Requires the statutory probate judges to appoint the initial members of the board by December 1, 1997.

SECTION 6. Requires the commission to report to the governor and the legislature on the plan required under Section 531.124, Government Code, as added by this Act, by December 1, 1998.

SECTION 7. Effective date: September 1, 1997.

SECTION 8. Emergency clause.

SUMMARY OF COMMITTEE CHANGES

Relating Clause.

Amends the proposed relating clause to provide that this Act relates to the creation of the Guardianship Advisory Board and the certification of attorneys representing certain parties in guardianship proceedings, rather than the establishment of local guardianship centers.

SECTION 1.

Amends the title to proposed Subchapter D, Government Code, by deleting "local guardianship centers." Amends Section 531.121, Government Code, by deleting proposed definitions of "council" and "local guardianship center." Revises proposed definition for "incapacitated individual" to mean an incapacitated person as defined by Section 601, Texas

Probate Code. Amends Section 531.122, Government Code, to delete reference to Sections 531.126(a) and (b), Government Code. Revises the proposed composition of the advisory board. Amends Section 531.123, Government Code, to revise the proposed meeting time of the advisory board. Amends Section 531.124, Government Code, to delete the proposed heading of "adoption of standards" and replace it with "duties." Revises the duties of the commission. Deletes proposed law relating to the regulation of local guardianship centers. Deletes proposed Section 531.125, Government Code, relating to the guardianship network council. Deletes proposed Section 531.126, Government Code, relating to the establishment of local guardianship centers. Deletes proposed Section 531.127, Government Code, relating to the duties of local guardianship centers.

SECTION 5.

Makes conforming changes to the session law.

SECTION 6.

Adds proposed session law relating to the plan required under Section 531.124, Government Code. Redesignates SECTIONS 6 and 7 as SECTIONS 7 and 8, respectively.