

BILL ANALYSIS

Senate Research Center

H.B. 2665
By: Moody (Zaffirini)
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

A guardian has broad authority that can be used to prevent family members, including children, from visiting or communicating with the person under guardianship. What's more, a guardian is not required legally to notify the family of major changes in the person's health, location, or even of the person's death. Accordingly, the guardian can interfere with the person's desire to see his or her children, and a child of the person under guardianship can be unjustly denied visitation to the parent and not provided timely with notifications of serious changes in the parent's health or even of the parent's death.

H.B. 2665 provides a framework for a child to file an application for access to a parent, including an opportunity to establish visitation or communication, under guardianship over the objections of the guardian. Specifically, H.B. 2665 would authorize a court to order access and prohibit guardian interference on a showing that the guardian has prevented access improperly and the ward desires contact. To encourage meritorious claims, the court may also limit, suspend, or deny access and order the loser to pay court costs and attorney's fees. H.B. 2665 also requires a guardian to inform an adult ward's immediate family as soon as possible of significant health changes, a new residence, or a stay for over a week outside the residence. Finally, if the person under guardianship dies, the bill would require notice of the death, including information on funeral arrangements and the person's final resting place. These changes would ensure that guardians do not interfere improperly with the familial relationships of those under their care.

H.B. 2665 amends current law relating to access to and receipt of certain information regarding a ward by certain relatives of the ward.

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 Subchapter B, Chapter 1151, Estates Code, by adding Sections 1151.055 and 1151.056, as follows:

Sec. 1151.055. APPLICATION BY CHILDREN FOR ACCESS TO WARD; HEARING AND COURT ORDER. (a) Authorizes a child of a ward to file an application with the court requesting access to the ward, including the opportunity to establish visitation or communication with the ward.

(b) Requires the court, except as provided by Subsection (c), to schedule a hearing on the application not later than the 60th day after the date an application is filed under Subsection (a). Authorizes the court to grant a continuance of a hearing under this section for good cause.

(c) Requires the court, if an application under Subsection (a) states that the ward's health is in significant decline or that the ward's death may be imminent, to conduct an emergency hearing as soon as practicable, but not later than the 10th day after the date the application is filed under Subsection (a).

(d) Requires the guardian of a ward with respect to whom an application is filed under Subsection (a) to be personally served with a copy of the application and cited to appear at a hearing under:

(1) Subsection (b) at least 21 days before the date of the hearing; and

(2) Subsection (c) as soon as practicable.

(e) Requires the court to issue an order after notice and a hearing under this section. Provides that an order issued under this section may:

(1) prohibit the guardian of a ward from preventing the applicant access to the ward if the applicant shows by a preponderance of the evidence that:

(A) the guardian's past act or acts prevented access to the ward; and

(B) the ward desires contact with the applicant; and

(2) specify the frequency, time, place, location, and any other terms of access.

(f) Provides that, in deciding whether to issue or modify an order issued under this section, the court:

(1) shall consider:

(A) whether any protective orders have been issued against the applicant to protect the ward;

(B) whether a court or other state agency has found that the applicant abused, neglected, or exploited the ward; and

(C) the best interest of the ward; and

(2) may consider whether:

(A) visitation by the applicant should be limited to situations in which a third person, specified by the court, is present; or

(B) visitation should be suspended or denied.

(g) Authorizes the court to, in its discretion, award the prevailing party in any action brought under this section court costs and attorney's fees, if any.

Sec. 1151.056. GUARDIAN'S DUTY TO INFORM CERTAIN RELATIVES ABOUT WARD'S HEALTH AND RESIDENCE. (a) Provides that this section applies with respect to relatives described under Sections 1101.001(b)(13)(A)-(D) (requiring that the application for appointment of guardian be sworn to by the applicant and state, for a proposed ward who is an adult, certain information if known by the applicant, including the name and address of the proposed ward's spouse, parents, siblings, and children).

(b) Requires the guardian of an adult ward, except as provided by Subsection (e), to as soon as practicable inform relatives if:

(1) the ward dies;

(2) the ward is admitted to a medical facility for acute care for a period of three days or more;

(3) the ward's residence has changed; or

(4) the ward is staying at a location other than the ward's residence for a period that exceeds one calendar week.

(c) Requires the guardian, in the case of the ward's death, to inform relatives of any funeral arrangements and the location of the ward's final resting place.

(d) Provides that a relative entitled to notice about a ward under this section may elect to not receive the notice by providing a written request to that effect to the guardian. Requires a guardian to file any written request received by the guardian under this subsection with the court.

(e) Authorizes the court, on motion filed with the court showing good cause and after a relative is provided an opportunity to present evidence to the court under Subsection (f), to relieve the guardian of the duty to provide notice about a ward to a relative under this section, subject to Subsection (g).

(f) Requires that a copy of the motion required under Subsection (e) be provided to the relative specifically named in the motion unless the guardian was unable to locate the relative after making reasonable efforts to discover and locate the relative. Authorizes the relative provided notice under this subsection to file evidence with the court in response to the motion, and requires the court to consider that evidence before making a decision on the motion.

(g) Requires the court, in considering a motion under Subsection (e), to relieve the guardian of the duty to provide notice about a ward to a relative under this section if the court finds that:

(1) the motion includes a written request from a relative electing to not receive the notice;

(2) the guardian was unable to locate the relative after making reasonable efforts to discover and locate the relative;

(3) the guardian was able to locate the relative, but was unable to establish communication with the relative after making reasonable efforts to establish communication;

(4) a protective order was issued against the relative to protect the ward;

(5) a court or other state agency has found that the relative abused, neglected, or exploited the ward; or

(6) notice is not in the best interest of the ward.

SECTION 2. Provides that the changes in law made by this Act apply to a guardianship created before, on, or after the effective date of this Act.

SECTION 3. Effective date: upon passage or September 1, 2015.