

BILL ANALYSIS

Senate Research Center

S.B. 1709
By: Zaffirini
State Affairs
5/30/2017
Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In 2015 the legislature passed H.B. 2665, which, among other things, requires notice to a person with a guardian's (PWG) spouse, parents, siblings, and children regarding significant changes about the person's health and residence. When giving notice to a relative is not in the best interest of the PWG, H.B. 2665 requires a notification waiver from the court.

This notice provision has inadvertently resulted in significant time and costs spent by guardianship programs to locate family members who have not shown interest in the PWG for years. The programs also spend a significant amount in attorneys' fees to get courts to waive the notification requirements. In some cases, programs have to contact as many as 10-12 persons, who all declined the opportunity to serve as guardian or were not appropriate to serve at the time of appointment. When a program serves dozens of persons, these costs unnecessarily increase. The funds would be better spent by the program in providing better care for the PWG.

S.B. 1709 requires the guardian to notify only those family members that express in writing interest in receiving these notices and who have not been found by a court or state agency to have abused the PWG. Such provisions would reduce the burden that current law places on guardianship programs. (Original Author's / Sponsor's Statement of Intent)

S.B. 1709 amends current law relating to the requirement of a guardian to provide information regarding a ward's health and residence to 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 Section 1051.103, Estates Code, by adding Subsection (c), as follows:

(c) Requires that a citation served as provided by Subsection (a) (relating to requiring a certain officer to serve citation to appear and answer an application for guardianship on certain persons) to a relative of the proposed ward described by Subsection (a)(2) (relating to requiring a certain officer to serve citation to appear and answer an application for guardianship on the proposed ward's parents, if whereabouts are known) or (4) (relating to requiring a certain officer to personally serve citation to appear and answer an application for guardianship on the proposed ward's spouse) contain a statement notifying the relative that, if a guardianship is created for the proposed ward, the relative is required to elect in writing in order to receive notice about the ward under Section 1151.056 (Guardian's Duty to Inform Certain Relatives About Ward's Health and Residence).

SECTION 2. Amends Section 1051.104, Estates Code, by adding Subsection (d), as follows:

(d) Requires that notice required by Subsection (a) (relating to requiring a person filing an application for guardianship to provide notice to certain persons) to a relative of the proposed ward described by Subsection (a)(1) (relating to requiring a person filing

application for guardianship to provide notice to each adult child of the proposed ward) or (2) (relating to requiring a person filing application for guardianship to provide notice to each adult sibling of the proposed ward) contain a statement notifying the relative that, if a guardianship is created for the proposed ward, the relative is required to elect in writing in order to receive notice about the ward under Section 1151.056.

SECTION 3. Amends Section 1151.056, Estates Code, by amending Subsections (a) and (g) and adding Subsections (h) and (i), as follows:

(a) Provides that this section applies only with respect to a relative, rather than applies with respect to relatives, described under Sections 1101.001(b)(13) (A) through (D) (relating to requiring an application for appointment of a guardian to contain certain information relating to a proposed ward):

(1) against whom a protective order has not been issued to protect the ward;

(2) who has not been found by a court or other state agency to have abused, neglected, or exploited the ward; and

(3) who has elected in writing to receive the notice about a ward under this section.

(g) Requires the court, in considering a motion under Subsection (e) (relating to relieving a guardian of the duty to provide certain notice about a ward), 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) and (2) makes no changes to these subdivisions;

(3) makes a nonsubstantive change; or

(4) notice is not in the best interest of the ward. Creates this subsection from existing text.

Deletes existing Subdivisions (4) and (5) relating to requiring the court to relieve the guardian of the duty to provide notice if a protective order was issued against the relative to protect the ward or a court or other state agency has found that the relative abused, neglected, or exploited the ward.

(h) Requires a guardian, as soon as possible but not later than September 1, 2019, to provide notice to a relative of the ward described under Sections 1101.001(b)(13)(A) through (D) whose whereabouts are known or can reasonably be ascertained that the relative is required to elect in writing in order to receive notice about the ward under this section. Provides that this subsection applies only to a guardianship created under certain circumstances.

(i) Provides that this subsection and Subsection (h) expire January 1, 2020.

SECTION 4. 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 5. Effective date: upon passage or September 1, 2017.