

By: Smithee

H.B. No. 3063

Substitute the following for H.B. No. 3063:

By: Krause

C.S.H.B. No. 3063

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the duties of a private professional guardian regarding
3 critical care and end-of-life decisions concerning a ward.

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

5 SECTION 1. This Act shall be cited as the Michael Hickson
6 Act.

7 SECTION 2. Sections [1151.051](#)(a) and (c), Estates Code, are
8 amended to read as follows:

9 (a) Except as provided by Section 1151.057, the ~~[The]~~
10 guardian of the person of a ward is entitled to take charge of the
11 person of the ward.

12 (c) A guardian of the person has:

13 (1) the right to have physical possession of the ward
14 and to establish the ward's legal domicile;

15 (2) the duty to provide care, supervision, and
16 protection for the ward;

17 (3) the duty to provide the ward with clothing, food,
18 medical care, and shelter;

19 (4) except as provided by Section 1151.057, the power
20 to consent to medical, psychiatric, and surgical treatment other
21 than the inpatient psychiatric commitment of the ward;

22 (5) on application to and order of the court, the power
23 to establish a trust in accordance with 42 U.S.C. Section
24 1396p(d)(4)(B) and direct that the income of the ward as defined by

1 that section be paid directly to the trust, solely for the purpose
2 of the ward's eligibility for medical assistance under Chapter 32,
3 Human Resources Code; and

4 (6) the power to sign documents necessary or
5 appropriate to facilitate employment of the ward if:

6 (A) the guardian was appointed with full
7 authority over the person of the ward under Section 1101.151; or

8 (B) the power is specified in the court order
9 appointing the guardian with limited powers over the person of the
10 ward under Section 1101.152.

11 SECTION 3. Subchapter B, Chapter 1151, Estates Code, is
12 amended by adding Section 1151.057 to read as follows:

13 Sec. 1151.057. PRIVATE PROFESSIONAL GUARDIAN DUTIES
14 REGARDING CRITICAL CARE AND END-OF-LIFE DECISIONS. (a) In this
15 section:

16 (1) "Closest living next of kin" of an individual who
17 is a patient means, except as provided by Subsection (b), the living
18 relative of the patient from one of the following categories in the
19 following order of priority:

20 (A) the patient's spouse;

21 (B) the patient's reasonably available adult
22 children;

23 (C) the patient's parents; or

24 (D) the patient's next closest relative not
25 listed in Paragraph (A), (B), or (C).

26 (2) "Critical care" means medical care for an
27 individual who has a life-threatening injury or illness. The term

1 includes:

2 (A) placement of the individual in an intensive
3 care unit with a team of specially trained health care providers who
4 provide care 24 hours a day, seven days a week; or

5 (B) if required by the individual's injury or
6 illness, the use of a machine to monitor the individual's vital
7 signs.

8 (3) "End-of-life" means the period during which it is
9 medically obvious that an individual's death is imminent or a
10 terminal moribund state cannot be prevented due to the individual's
11 health condition.

12 (b) For purposes of this section, an individual described by
13 Subsection (a)(1) is not considered to be a patient's closest
14 living next of kin if the individual:

15 (1) is younger than 18 years of age;

16 (2) has been judicially declared incompetent;

17 (3) owes money or another thing of value to the
18 patient;

19 (4) is involved in a property or contract dispute
20 against the patient; and

21 (5) has pending criminal charges against the
22 individual involving an offense in which the patient is the alleged
23 victim.

24 (c) Except as provided by Subsection (f), a private
25 professional guardian appointed as guardian of the person of a ward
26 is not authorized to make a critical care or end-of-life decision
27 regarding the ward.

1 (d) Immediately after discovering that a critical care or
2 end-of-life decision regarding a ward is necessary, the private
3 professional guardian appointed as guardian of the person of the
4 ward must contact the ward's closest living next of kin. The
5 private professional guardian shall contact the court to obtain the
6 name and contact information of the ward's closest living next of
7 kin if the private professional guardian does not have that
8 information. If the private professional guardian has incorrect
9 contact information for the ward's closest living next of kin, the
10 private professional guardian shall attempt to obtain correct
11 information as soon as practicable.

12 (e) The private professional guardian shall attempt to
13 contact the ward's closest living next of kin at least three times
14 each day for a period of at least 72 hours by a combination of
15 telephone and e-mail. Each attempt to contact the next of kin must:

16 (1) be at a different time of day;

17 (2) for all attempts by telephone, include a voice
18 mail message identifying the caller, the reason for the call, and a
19 telephone number at which the caller may be reached; and

20 (3) for all attempts by e-mail, identify the sender,
21 the reason for the e-mail, and a telephone number and e-mail address
22 at which the sender may be reached.

23 (f) After the private professional guardian has attempted
24 to contact the ward's closest living next of kin in accordance with
25 Subsection (e), the private professional guardian shall wait for a
26 period of an additional 48 hours for a response from that next of
27 kin. If the private professional guardian does not receive a

1 response from that next of kin before the expiration of that period,
2 the next of kin is considered unreachable. After that next of kin
3 is considered unreachable, the private professional guardian:

4 (1) shall submit documentation to the court regarding
5 each attempt to contact the next of kin; and

6 (2) is authorized to make a critical care or
7 end-of-life decision regarding the ward.

8 (g) If the private professional guardian is able to contact
9 the ward's closest living next of kin within the periods described
10 by Subsections (e) and (f), that next of kin is entitled to:

11 (1) communicate directly with the health care
12 professional with primary responsibility for providing the ward's
13 care; and

14 (2) make the critical care or end-of-life decision,
15 unless the next of kin desires for the private professional
16 guardian to proceed with making the decision and authorizes in
17 writing the private professional guardian to make the decision.

18 (h) The health care professional with primary
19 responsibility for providing the ward's care shall continue to
20 provide care to the ward that is reasonable and prudent while the
21 private professional guardian complies with the requirements of
22 this section.

23 (i) At least once every six months, a private professional
24 guardian appointed as the guardian of the person of a ward shall
25 obtain and verify the contact information for each of the ward's
26 next of kin.

27 (j) Immediately after a private professional guardian is

1 appointed as the guardian of the person of a ward, providing that
2 the order appointing the private professional guardian states that
3 the ward is competent to express the ward's opinion regarding
4 critical care or end-of-life decisions, the private professional
5 guardian shall obtain the ward's preferences regarding critical
6 care or end-of-life decisions. If the order does not state that the
7 ward is competent to express those preferences, the private
8 professional guardian shall obtain those preferences from the
9 ward's closest living next of kin, if known.

10 SECTION 4. This Act takes effect immediately if it receives
11 a vote of two-thirds of all the members elected to each house, as
12 provided by Section 39, Article III, Texas Constitution. If this
13 Act does not receive the vote necessary for immediate effect, this
14 Act takes effect September 1, 2021.