

BILL ANALYSIS

C.S.H.B. 2189
By: Rodriguez
Judicial Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Temporary guardianships were originally established to offer immediate relief in emergency situations involving a minor or incapacitated adult. In practice today, however, temporary guardianships are often impractical and overly burdensome. Meanwhile, the legislature has adopted other statutes to deal with common emergency situations. For example, a family member deciding whether to terminate a person's life support does not need a temporary guardianship since the Health and Safety Code authorizes this action.

Some parties believe that the current law governing temporary guardianships is overly broad and may lead to abuses of the ward by the temporary guardian, since current law allows probate courts to create temporary guardianships on an ex parte basis without notice or hearing. C.S.H.B. 2189 mandates that a person seeking a temporary guardianship must first file a sworn written application. Once filed, the court must appoint an attorney ad litem for the proposed ward and set a hearing date, with notice provided to both the proposed ward and the attorney ad litem. The court can create a temporary guardianship only after the hearing.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 2189 amends the Probate Code to provide that a sworn, written application for the appointment of a temporary guardian shall be filed before the court appoints a temporary guardian. On the filing of the application, the court shall appoint an attorney to represent the proposed ward, shall issue notice to the proposed ward and the attorney ad litem, and attach a copy of the application to the notice. The bill mandates that a hearing be held within 10 days of the filing of the application for temporary guardianship, although the respondent may consent to postpone the hearing for a period not to exceed 30 days.

The bill also mandates that the court set bond for the temporary guardian, and that the court describe the reasons for the temporary guardianship and the powers and duties of the temporary guardian in the order of appointment. The bill also provides that if an application for a temporary guardianship, for the conversion of a temporary guardianship to a permanent guardianship, or for a permanent guardianship is challenged or contested in court, the court may appoint a new temporary guardian or grant a temporary restraining order under Rule 680 of the Texas Rules of Civil Procedure, or both.

EFFECTIVE DATE

September 1, 2003.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute changes a certain reference from “Subpart B” to “Subpart B, Part 3” to clarify the section of the code to which the bill is referring.

The substitute reinstates language providing that a person for whom a temporary guardian has been appointed may not be presumed to be incapacitated. This language is found in the current statute but was deleted in the original.