

BILL ANALYSIS

C.S.H.B. 417
By: Hartnett
Judiciary
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Practitioners in the area of guardianship law have determined that certain changes to Texas law relating to guardianship matters would be beneficial to practice in this area. This bill contains a number of such suggested changes.

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

Sections 1 and 2 of the bill add new subsections to Probate Code Sections 645 and 646 to provide that the term of a guardian ad litem or an attorney ad litem, appointed in each case in a proceeding for the appointment of a guardian, automatically expires upon the appointment of a guardian or the denial of the application for appointment of a guardian unless the court determines that retention of the guardian ad litem or the attorney ad litem is in the best interest of the ward.

Section 3 changes the reference from code to chapter in Section 665A of the Probate Code and deletes references to two sections, making the section applicable to persons appointed under any provision of the guardianship chapter.

Section 4 of the bill amends Section 683 of the Probate Code, which allows a court to appoint a guardian ad litem or court investigator to investigate the need for a guardianship even when no application for guardianship has been filed. The changes provided for in the bill specify that the purpose of the investigation is to determine legal capacity and that a guardian ad litem may be compensated out of the proposed ward's estate or county funds even if no guardianship is created.

Section 5 of the bill would amend the Probate Code to permit both parents of an incapacitated adult to be appointed as joint guardians, even if they are not married to each other. However, if the ward had been the subject of a suit affecting the parent child relationship which did not result in both parents being named joint managing conservators, the non-prohibition will not apply.

Section 6 amends the Probate Code to require that an order appointing a guardian for an incapacitated person contain a finding of fact specifying whether the person is totally incapacitated because of a mental condition, and that an order appointing a guardian with limited powers for a ward who is partially incapacitated contain a finding of fact specifying whether the person is incapacitated because of a mental condition and whether the person retains the right to vote.

Sections 7 and 9 of the bill amend an existing provision of and add a new section to the Probate Code which make clear that a guardian ad litem or attorney ad litem appointed in a proceeding to restore a ward's rights or to modify a guardianship is entitled to be paid and to have its fees taxed as costs even if no change in the guardianship occurs.

Section 8 of the bill amends sections of the Probate Code pertaining to orders restoring the capacity and modifying the guardianship of wards to require the court to include findings of fact

relating to the ward's mental condition, if applicable, and, in the case of a partially incapacitated ward, whether the ward retains the right to vote.

Sections 10, 11 and 12 amend sections of the Probate Code having to do with citation and notice requirements for the appointment of a successor guardian. The changes made by the bill permit the immediate appointment of a successor guardian without citation or notice if a necessity exists.

Section 13 amends the list of grounds for removal as a guardian to include being ineligible to be appointed as a guardian in the first instance.

Sections 14, 15, 16 and 17 amend the procedure under the Probate Code pertaining to an application for an order of sale real estate. The citation to be sent to persons interested in the guardianship is amended to inform such persons of their right under Section 824 of the Probate Code to oppose the sale during the period prescribed by the court. That section is amended to refer to this citation. A new Section 824A is added to provide for a hearing on any timely opposition to the sale and to permit the court to order a hearing on its own motion even if no opposition is filed. Section 825 is amended to remove a limitation that a hearing be held for the section to apply to permit the court to order a sale.

Section 18 amends the Probate code to eliminate the requirement for a guardian to file an investment plan if it invests estate assets in statutorily permitted investments. The guardian would continue to be required to apply for court approval of other investments. The bill eliminates the requirement of a hearing to approve such application

Section 19 adds a new section to the Election Code regarding voter and candidate disqualification being removed upon a final judgment completely restoring a person's capacity or right to vote. .

Sections 20, 21 22, 23 24, 25, 26 , 27, 28, 29 and 30 amend the Election Code by changing wording referring to a voter disqualification from mental incompetence to mental incapacitation, with the proviso that the disqualification will not apply if the court has allowed the person to retain or subsequently restored the person's right to vote. The amendments also remove the public office candidacy qualifications of a person who is judged partially mentally capacitated, but only if the court has also taken away, and not restored, that person's right to vote.

Section 31 repeals Section 822 of the Probate Code.

Section 32 contains provisions regarding the prospective application of the act.

EFFECTIVE DATE

September 1, 2007.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute adds the limitation in Section 5 of the bill removing express permission for both parents of an adult incapacitated person to be appointed as co-guardians where a prior suit affecting the parent child relationship had not appointed them joint managing conservators, with the intent of avoiding re-litigation of issued decided in the original suit.

The substitute adds the requirement of a finding of fact in a guardianship appointment order with regard to whether a partially incapacitated ward is incapacitated because of a mental condition and whether the person retains the right to vote.

The substitute also adds the proviso in amendments to the Election Code with regard to voter and candidate qualifications and to voting rights restored by a court and provisions regarding a person judged to be partially mentally incapacitated.