

BILL ANALYSIS

C.S.H.B. 2260
By: Truitt
Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Under current law, Texas operates under a system of dual jurisdiction, which leads to problems in elderly related guardianship cases because the United States has many guardianship systems. Inconsistencies and questions about which state has jurisdiction to appoint a guardian or conservator can arise because an individual has contact with more than one state or another country. There is a need for an effective mechanism for resolving multi-jurisdictional adult guardianship disputes.

C.S.H.B. 2260 adds provisions to the Texas Probate Code to establish procedures for the determination of the most appropriate forum for guardianship proceedings for adults.

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. 2260 amends the Texas Probate Code to require a Texas court having jurisdiction over a guardianship proceeding in which an order for the appointment of a guardian for an adult is sought or has been issued or over a determination of venue in such a proceeding to decline to exercise its jurisdiction if the court determines at any time that a court of another state is a more appropriate forum. The bill requires a court that declines to exercise its jurisdiction to either dismiss or stay the guardianship proceeding. The bill authorizes the court to impose any condition the court considers just and proper, including the condition that a petition for the appointment of a guardian or issuance of a protective order be filed promptly in another state.

C.S.H.B. 2260 requires a Texas court, in determining whether it is an appropriate forum, to consider all relevant factors, including any expressed preference of the incapacitated adult; whether abuse, neglect, or exploitation of the incapacitated adult has occurred or is likely to occur and which state could best protect the adult from the abuse, neglect, or exploitation; the length of time the incapacitated adult was physically present in or was a legal resident of Texas or another state; the distance of the incapacitated adult from the court in each state; the financial circumstances of the incapacitated adult's estate; the nature and location of the evidence; the ability of the court in each state to decide the issue expeditiously and the procedures necessary to present evidence; the familiarity of the court in each state with the facts and issues in the proceeding; and if an appointment were made, the court's ability to monitor the conduct of the guardian of the person or estate, or both.

C.S.H.B. 2260 authorizes a Texas court, that determines at any time that the court has acquired jurisdiction to appoint a guardian of the person or estate, or both, of an adult ward because of unjustifiable conduct, to decline to exercise jurisdiction; exercise jurisdiction for the limited purpose of fashioning an appropriate remedy to ensure the health, safety, and welfare of the incapacitated adult or the protection of the incapacitated adult's property or prevent a repetition of the unjustifiable conduct; or continue to exercise jurisdiction after considering the extent to which the incapacitated adult and all persons required to be notified of the proceedings have

acquiesced in the exercise of the court's jurisdiction, whether the court is a more appropriate forum than the court of any other state, and whether the court of any other state would have jurisdiction under the factual circumstances of the matter.

C.S.H.B. 2260 authorizes a Texas court that determines that it acquired jurisdiction to appoint a guardian of the person or estate, or both, of an adult ward because a party seeking to invoke its jurisdiction engaged in unjustifiable conduct to assess against that party necessary and reasonable expenses, including attorney's fees, investigative fees, court costs, communication expenses, witness fees and expenses, and travel expenses. The bill prohibits the court from assessing fees, costs, or expenses of any kind against the state or a governmental subdivision, agency, or instrumentality of the state unless authorized by other law.

C.S.H.B. 2260 makes conforming changes to clarify that certain provisions relating to a guardianship proceeding apply to a proceeding filed for a minor. The bill defines "incapacitated adult."

EFFECTIVE DATE

September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 2260 omits provisions included in the original enacting the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, including provisions relating to international application of the act, communication and cooperation between courts, the taking of testimony in another state, and the jurisdiction, exclusive jurisdiction, special jurisdiction, and exclusive and continuing jurisdiction of a court to appoint a guardian or issue a protective order. The bill omits definitions included in the original.

C.S.H.B. 2260 adds provisions not included in the original limiting the application of its provisions to a guardianship proceeding in which an order for the appointment of guardian for an adult is sought or has been issued. The substitute differs from the original by defining "incapacitated adult" to mean an adult ward or an adult for whom the appointment of a guardian for an adult is sought or has been issued. The substitute differs from the original by requiring a court to decline to exercise jurisdiction for a guardianship proceeding if the court determines at any time that another state is a more appropriate forum, whereas the original authorizes a court to decline to exercise such jurisdiction. The substitute differs from the original by referring to an adult ward or an adult for whom the appointment of a guardian is sought as an "incapacitated adult," whereas the original refers to such a person as a "respondent." The bill differs from the original by specifying that the guardian being appointed by a court is a guardian of the person or estate, or both, whereas the original contains no such provision. The substitute makes conforming changes to omit provisions included in the original relating to a court's jurisdiction to issue a protective order.

C.S.H.B. 2260 omits provisions of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act included in the original relating to notice of a petition for the appointment of a guardian or issuance of a protective order, proceedings on petitions filed in more than one state, the transfer of guardianship or conservatorship to another state, accepting guardianship or conservatorship transferred from another state, registration of guardianship orders from another state, registration of protective orders from another state, the effect of registration, the uniformity of applying and construction of the act, and the act's relation to the federal Electronic Signatures in Global and National Commerce Act. The substitute makes conforming changes not included in the original.