

By: Zaffirini

S.B. No. 1882

A BILL TO BE ENTITLED

AN ACT

relating to a bill of rights for wards under guardianship.

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

SECTION 1. Chapter 1151, Estates Code, is amended by adding Subchapter H to read as follows:

SUBCHAPTER H. RIGHTS OF WARDS

Sec. 1151.351. BILL OF RIGHTS FOR WARDS. (a) A ward has all the rights, benefits, responsibilities, and privileges granted by the constitution and laws of this state and the United States, except where specifically limited by a court-ordered guardianship or where otherwise lawfully restricted.

(b) A ward has the right:

(1) to have a copy of the guardianship order and letters of guardianship and contact information for the probate court that issued the order and letters;

(2) to have a guardianship that encourages the development or maintenance of maximum self-reliance and independence in the ward with the eventual goal, if possible, of self-sufficiency;

(3) to be treated with respect, consideration, and recognition of the ward's dignity and individuality;

(4) to reside and receive support services in the most integrated setting, including home-based or other community-based settings, as required by Title II of the Americans with

1 Disabilities Act (42 U.S.C. Section 12131 et seq.);

2 (5) to consideration of current and previously stated  
3 personal preferences, desires, medical and psychiatric treatment  
4 preferences, religious beliefs, living arrangements, and other  
5 preferences and opinions in guiding substituted judgment decisions  
6 made by the guardian to promote the ward's self-determination and  
7 well-being;

8 (6) to financial self-determination for all public  
9 benefits and access to a monthly personal allowance;

10 (7) to receive timely and appropriate health care and  
11 medical treatment that does not violate the ward's rights granted  
12 by the constitution and laws of this state and the United States;

13 (8) not to be involuntarily admitted for care or  
14 treatment to a public or private inpatient facility, a public or  
15 private psychiatric facility, a residential care facility operated  
16 by the Health and Human Services Commission, or a nursing facility;

17 (9) to exercise full control of all aspects of life not  
18 specifically granted by the court to the guardian;

19 (10) to control the ward's environment based on the  
20 ward's personal preferences;

21 (11) to complain or raise concerns regarding the  
22 guardian or guardianship to the court, including living  
23 arrangements retaliation by the guardian, conflicts of interest  
24 between the guardian and service providers, or a violation of any  
25 rights under this section;

26 (12) to appear before the court and express the ward's  
27 preferences and concerns when the court considers the renewal of

1 letters of guardianship or is making a determination concerning  
2 whether the guardianship should be continued, modified, or  
3 terminated;

4 (13) to have a court investigator, guardian ad litem,  
5 or attorney ad litem appointed by the court to investigate a  
6 complaint received from the ward or any person about the  
7 guardianship;

8 (14) to participate in social, religious, and  
9 recreational activities, training, employment, education,  
10 habilitation, and rehabilitation of the ward's choice in the most  
11 integrated setting;

12 (15) to self-determination in the maintenance,  
13 disposition, and management of real and personal property,  
14 including the right to receive notice and object about the  
15 maintenance, disposition, or management of clothing, furniture,  
16 vehicles, and other personal effects;

17 (16) to personal privacy and confidentiality in  
18 personal matters, subject to state and federal law;

19 (17) to unimpeded, private, and uncensored  
20 communication and visitation with persons of the ward's choice,  
21 except that if the court determines that certain communication or  
22 visitation causes substantial harm to the ward, the court may  
23 limit, supervise, or restrict communication or visitation, but only  
24 to the extent necessary to protect the ward from substantial harm;

25 (18) to petition the court and retain counsel of the  
26 ward's choice for capacity restoration, modification of the  
27 guardianship, the appointment of a different guardian or for other

1 appropriate relief under this subchapter, including a transition to  
2 a supported decision-making agreement;

3 (19) to vote in a public election, marry, and retain a  
4 license to operate a motor vehicle, unless restricted by the court;

5 (20) to personal visits from the guardian at least  
6 once a month, but more often, if necessary;

7 (21) to be informed of the name, address, phone  
8 number, and purpose of Disability Rights Texas, an organization  
9 whose mission is to protect the rights of, and advocate for, persons  
10 with disabilities, and to communicate and meet privately with  
11 representatives of that organization;

12 (22) to be informed of the name, address, phone  
13 number, and purpose of an independent living center, an area agency  
14 on aging, an aging and disability resource center, and the local  
15 mental health and intellectual and developmental disability  
16 center, and to communicate and meet privately with representatives  
17 from these agencies and organizations;

18 (23) to be informed of the name, address, phone  
19 number, and purpose of the Judicial Branch Certification Commission  
20 and the procedure for filing a complaint against a certified  
21 guardian;

22 (24) to contact the Department of Family and  
23 Protective Services to report abuse, neglect, exploitation, or  
24 violation of personal rights without fear of punishment,  
25 interference, coercion, or retaliation; and

26 (25) to have the guardian, on appointment and on  
27 annual renewal of the guardianship, explain the rights delineated

1 in this subsection in the ward's native language, or preferred mode  
2 of communication, and in a manner accessible to the ward.

3 (c) A ward under guardianship may seek injunctive or  
4 declaratory relief to enforce the ward's rights under this section  
5 in the court having jurisdiction over the ward's guardianship.

6 (d) The court may award attorney's fees to an attorney  
7 appointed or retained to represent a ward in a proceeding to enforce  
8 the ward's rights under this section.

9 (e) In enacting or revising statutes or resolutions, the  
10 legislature and the Texas Legislative Council are directed to  
11 replace, as appropriate, the term "ward" with the preferred phrase  
12 or appropriate variations of the phrase "person under  
13 guardianship."

14 (f) This section does not supersede or abrogate other  
15 remedies existing in law.

16 SECTION 2. This Act takes effect immediately if it receives  
17 a vote of two-thirds of all the members elected to each house, as  
18 provided by Section 39, Article III, Texas Constitution. If this  
19 Act does not receive the vote necessary for immediate effect, this  
20 Act takes effect September 1, 2015.