

SENATE AMENDMENTS

2nd Printing

By: Smithee

H.B. No. 39

A BILL TO BE ENTITLED

AN ACT

relating to guardianships for incapacitated persons.

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

SECTION 1. Section 1001.001(b), Estates Code, is amended to read as follows:

(b) In creating a guardianship that gives a guardian limited authority over an incapacitated person, the court shall design the guardianship to encourage the development or maintenance of maximum self-reliance and independence in the incapacitated person, including by presuming that the incapacitated person retains capacity to make personal decisions regarding the person's residence.

SECTION 2. Chapter 1002, Estates Code, is amended by adding Sections 1002.0015 and 1002.031 to read as follows:

Sec. 1002.0015. ALTERNATIVES TO GUARDIANSHIP.

"Alternatives to guardianship" includes the:

(1) execution of a medical power of attorney under Chapter 166, Health and Safety Code;

(2) appointment of an attorney in fact or agent under a durable power of attorney as provided by Subtitle P, Title 2;

(3) execution of a declaration for mental health treatment under Chapter 137, Civil Practices and Remedies Code;

(4) appointment of a representative payee to manage public benefits;

- 1 (5) establishment of a joint bank account;
- 2 (6) creation of a management trust under Chapter 1301;
- 3 (7) creation of a special needs trust;
- 4 (8) designation of a guardian before the need arises
5 under Subchapter E, Chapter 1104; and
- 6 (9) establishment of alternate forms of
7 decision-making based on person-centered planning.

8 Sec. 1002.031. SUPPORTS AND SERVICES. "Supports and
9 services" means available formal and informal resources and
10 assistance that enable an individual to:

- 11 (1) meet the individual's needs for food, clothing, or
12 shelter;
- 13 (2) care for the individual's physical or mental
14 health;
- 15 (3) manage the individual's financial affairs; or
- 16 (4) make personal decisions regarding residence,
17 voting, operating a motor vehicle, and marriage.

18 SECTION 3. Section 1002.015, Estates Code, is amended to
19 read as follows:

20 Sec. 1002.015. GUARDIANSHIP PROCEEDING. The term
21 "guardianship proceeding" means a matter or proceeding related to a
22 guardianship or any other matter covered by this title, including:

- 23 (1) the appointment of a guardian of a minor or other
24 incapacitated person, including an incapacitated adult for whom
25 another court obtained continuing, exclusive jurisdiction in a suit
26 affecting the parent-child relationship when the person was a
27 child;

1 (2) an application, petition, or motion regarding
2 guardianship or a substitute for [~~an alternative to~~] guardianship
3 under this title;

4 (3) a mental health action; and

5 (4) an application, petition, or motion regarding a
6 trust created under Chapter 1301.

7 SECTION 4. Section 1054.004, Estates Code, is amended by
8 amending Subsection (a) and adding Subsection (c) to read as
9 follows:

10 (a) An attorney ad litem appointed under Section 1054.001
11 shall interview the proposed ward within a reasonable time before
12 the hearing in the proceeding for the appointment of a
13 guardian. To the greatest extent possible, the attorney shall
14 discuss with the proposed ward:

15 (1) the law and facts of the case;

16 (2) the proposed ward's legal options regarding
17 disposition of the case; [~~and~~]

18 (3) the grounds on which guardianship is sought; and

19 (4) whether alternatives to guardianship would meet
20 the needs of the proposed ward and avoid the need for the
21 appointment of a guardian.

22 (c) Before the hearing, the attorney ad litem shall discuss
23 with the proposed ward the attorney ad litem's opinion regarding:

24 (1) whether a guardianship is necessary for the
25 proposed ward; and

26 (2) if a guardianship is necessary, the specific
27 powers or duties of the guardian that should be limited if the

1 proposed ward receives supports and services.

2 SECTION 5. Section 1054.054, Estates Code, is amended by
3 adding Subsections (c) and (d) to read as follows:

4 (c) The guardian ad litem shall:

5 (1) investigate whether a guardianship is necessary
6 for the proposed ward; and

7 (2) evaluate alternatives to guardianship and
8 supports and services available to the proposed ward that would
9 avoid the need for appointment of a guardian.

10 (d) The information gathered by the guardian ad litem under
11 Subsection (c) is subject to examination by the court.

12 SECTION 6. Sections 1054.201(a) and (b), Estates Code, are
13 amended to read as follows:

14 (a) An attorney for an applicant for guardianship and a [A]
15 court-appointed attorney in a guardianship proceeding, including
16 an attorney ad litem, must be certified by the State Bar of Texas,
17 or a person or other entity designated by the state bar, as having
18 successfully completed a course of study in guardianship law and
19 procedure sponsored by the state bar or the state bar's designee.

20 (b) The State Bar of Texas shall require four [~~three~~] hours
21 of credit for certification under this subchapter, including one
22 hour on alternatives to guardianship and supports and services
23 available to proposed wards.

24 SECTION 7. Section 1101.001(b), Estates Code, is amended to
25 read as follows:

26 (b) The application must be sworn to by the applicant and
27 state:

1 (1) the proposed ward's name, sex, date of birth, and
2 address;

3 (2) the name, relationship, and address of the person
4 the applicant seeks to have appointed as guardian;

5 (3) whether guardianship of the person or estate, or
6 both, is sought;

7 (3-a) whether alternatives to guardianship and
8 available supports and services to avoid guardianship were
9 considered;

10 (3-b) whether any alternatives to guardianship and
11 supports and services available to the proposed ward considered are
12 feasible and would avoid the need for a guardianship;

13 (4) the nature and degree of the alleged incapacity,
14 the specific areas of protection and assistance requested, and the
15 limitation or termination of rights requested to be included in the
16 court's order of appointment, including a termination of:

17 (A) the right of a proposed ward who is 18 years
18 of age or older to vote in a public election; ~~and~~

19 (B) the proposed ward's eligibility to hold or
20 obtain a license to operate a motor vehicle under Chapter 521,
21 Transportation Code; and

22 (C) the right of a proposed ward to make personal
23 decisions regarding residence;

24 (5) the facts requiring the appointment of a guardian;

25 (6) the interest of the applicant in the appointment
26 of a guardian;

27 (7) the nature and description of any kind of

1 guardianship existing for the proposed ward in any other state;

2 (8) the name and address of any person or institution
3 having the care and custody of the proposed ward;

4 (9) the approximate value and description of the
5 proposed ward's property, including any compensation, pension,
6 insurance, or allowance to which the proposed ward may be entitled;

7 (10) the name and address of any person whom the
8 applicant knows to hold a power of attorney signed by the proposed
9 ward and a description of the type of power of attorney;

10 (11) for a proposed ward who is a minor, the following
11 information if known by the applicant:

12 (A) the name of each of the proposed ward's
13 parents and either the parent's address or that the parent is
14 deceased;

15 (B) the name and age of each of the proposed
16 ward's siblings, if any, and either the sibling's address or that
17 the sibling is deceased; and

18 (C) if each of the proposed ward's parents and
19 adult siblings are deceased, the names and addresses of the
20 proposed ward's other living relatives who are related to the
21 proposed ward within the third degree by consanguinity and who are
22 adults;

23 (12) for a proposed ward who is a minor, whether the
24 minor was the subject of a legal or conservatorship proceeding in
25 the preceding two years and, if so:

26 (A) the court involved;

27 (B) the nature of the proceeding; and

1 (C) any final disposition of the proceeding;

2 (13) for a proposed ward who is an adult, the following
3 information if known by the applicant:

4 (A) the name of the proposed ward's spouse, if
5 any, and either the spouse's address or that the spouse is deceased;

6 (B) the name of each of the proposed ward's
7 parents and either the parent's address or that the parent is
8 deceased;

9 (C) the name and age of each of the proposed
10 ward's siblings, if any, and either the sibling's address or that
11 the sibling is deceased;

12 (D) the name and age of each of the proposed
13 ward's children, if any, and either the child's address or that the
14 child is deceased; and

15 (E) if there is no living spouse, parent, adult
16 sibling, or adult child of the proposed ward, the names and
17 addresses of the proposed ward's other living relatives who are
18 related to the proposed ward within the third degree by
19 consanguinity and who are adults;

20 (14) facts showing that the court has venue of the
21 proceeding; and

22 (15) if applicable, that the person whom the applicant
23 seeks to have appointed as a guardian is a private professional
24 guardian who is certified under Subchapter C, Chapter 155,
25 Government Code, and has complied with the requirements of
26 Subchapter G, Chapter 1104.

27 SECTION 8. Section 1101.101, Estates Code, is amended by

1 amending Subsection (a) and adding Subsection (c) to read as
2 follows:

3 (a) Before appointing a guardian for a proposed ward, the
4 court must:

5 (1) find by clear and convincing evidence that:

6 (A) the proposed ward is an incapacitated person;

7 (B) it is in the proposed ward's best interest to
8 have the court appoint a person as the proposed ward's guardian;

9 ~~and~~

10 (C) the proposed ward's rights or property will
11 be protected by the appointment of a guardian;

12 (D) alternatives to guardianship that would
13 avoid the need for the appointment of a guardian have been
14 considered and determined not to be feasible; and

15 (E) supports and services available to the
16 proposed ward that would avoid the need for the appointment of a
17 guardian have been considered and determined not to be feasible;

18 and

19 (2) find by a preponderance of the evidence that:

20 (A) the court has venue of the case;

21 (B) the person to be appointed guardian is
22 eligible to act as guardian and is entitled to appointment, or, if
23 no eligible person entitled to appointment applies, the person
24 appointed is a proper person to act as guardian;

25 (C) if a guardian is appointed for a minor, the
26 guardianship is not created for the primary purpose of enabling the
27 minor to establish residency for enrollment in a school or school

1 district for which the minor is not otherwise eligible for
2 enrollment; and

3 (D) the proposed ward:

4 (i) is totally without capacity as provided
5 by this title to care for himself or herself and to manage his or her
6 property; or

7 (ii) lacks the capacity to do some, but not
8 all, of the tasks necessary to care for himself or herself or to
9 manage his or her property.

10 (c) A finding under Subsection (a)(2)(D)(ii) must
11 specifically state whether the proposed ward lacks the capacity, or
12 lacks sufficient capacity with supports and services, to make
13 personal decisions regarding residence, voting, operating a motor
14 vehicle, and marriage.

15 SECTION 9. Section 1101.103(b), Estates Code, is amended to
16 read as follows:

17 (b) The letter or certificate must:

18 (1) describe the nature, degree, and severity of the
19 proposed ward's incapacity, including any functional deficits
20 regarding the proposed ward's ability to:

21 (A) handle business and managerial matters;

22 (B) manage financial matters;

23 (C) operate a motor vehicle;

24 (D) make personal decisions regarding residence,
25 voting, and marriage; and

26 (E) consent to medical, dental, psychological,
27 or psychiatric treatment;

1 (2) in providing a description under Subdivision (1)
2 regarding the proposed ward's ability to operate a motor vehicle
3 and make personal decisions regarding voting, state whether in the
4 physician's opinion the proposed ward:

5 (A) has the mental capacity to vote in a public
6 election; and

7 (B) has the ability to safely operate a motor
8 vehicle;

9 (3) provide an evaluation of the proposed ward's
10 physical condition and mental functioning [~~function~~] and summarize
11 the proposed ward's medical history if reasonably available;

12 (3-a) in providing an evaluation under Subdivision
13 (3), state whether improvement in the proposed ward's physical
14 condition and mental functioning is possible and, if so, state the
15 period after which the proposed ward should be reevaluated to
16 determine whether a guardianship continues to be necessary;

17 (4) state how or in what manner the proposed ward's
18 ability to make or communicate responsible decisions concerning
19 himself or herself is affected by the proposed ward's physical or
20 mental health, including the proposed ward's ability to:

21 (A) understand or communicate;

22 (B) recognize familiar objects and individuals;

23 (C) solve problems [~~perform simple~~
24 ~~calculations~~];

25 (D) reason logically; and

26 (E) administer to daily life activities with and
27 without supports and services;

1 (5) state whether any current medication affects the
2 proposed ward's demeanor or the proposed ward's ability to
3 participate fully in a court proceeding;

4 (6) describe the precise physical and mental
5 conditions underlying a diagnosis of a mental disability, and state
6 whether the proposed ward would benefit from supports and services
7 that would allow the individual to live in the least restrictive
8 setting;

9 (6-a) state whether a guardianship is necessary for
10 the proposed ward and, if so, whether specific powers or duties of
11 the guardian should be limited if the proposed ward receives
12 supports and services; and

13 (7) include any other information required by the
14 court.

15 SECTION 10. Sections 1101.151(a) and (b), Estates Code, are
16 amended to read as follows:

17 (a) If it is found that the proposed ward is totally without
18 capacity to care for himself or herself, manage his or her property,
19 operate a motor vehicle, make personal decisions regarding
20 residence, and vote in a public election, the court may appoint a
21 guardian of the proposed ward's person or estate, or both, with full
22 authority over the incapacitated person except as provided by law.

23 (b) An order appointing a guardian under this section must
24 contain findings of fact and specify:

- 25 (1) the information required by Section 1101.153(a);
26 (2) that the guardian has full authority over the
27 incapacitated person;

1 (3) if necessary, the amount of funds from the corpus
2 of the person's estate the court will allow the guardian to spend
3 for the education and maintenance of the person under Subchapter A,
4 Chapter 1156;

5 (4) whether the person is totally incapacitated
6 because of a mental condition;

7 (5) that the person does not have the capacity to
8 operate a motor vehicle, make personal decisions regarding
9 residence, and ~~to~~ vote in a public election; and

10 (6) if it is a guardianship of the person of the ward
11 or of both the person and the estate of the ward, the rights of the
12 guardian with respect to the person as specified in Section
13 1151.051(c)(1).

14 SECTION 11. Sections 1101.152(a) and (b), Estates Code, are
15 amended to read as follows:

16 (a) If it is found that the proposed ward lacks the capacity
17 to do some, but not all, of the tasks necessary to care for himself
18 or herself or to manage his or her property with or without supports
19 and services, the court may appoint a guardian with limited powers
20 and permit the proposed ward to care for himself or herself,
21 including making personal decisions regarding residence, or to
22 manage his or her property commensurate with the proposed ward's
23 ability.

24 (b) An order appointing a guardian under this section must
25 contain findings of fact and specify:

26 (1) the information required by Section 1101.153(a);

27 (2) the specific powers, limitations, or duties of the

1 guardian with respect to the person's care or the management of the
2 person's property by the guardian;

3 (2-a) the specific rights and powers retained by the
4 person:

5 (A) with the necessity for supports and services;
6 and

7 (B) without the necessity for supports and
8 services;

9 (3) if necessary, the amount of funds from the corpus
10 of the person's estate the court will allow the guardian to spend
11 for the education and maintenance of the person under Subchapter A,
12 Chapter 1156; and

13 (4) whether the person is incapacitated because of a
14 mental condition and, if so, whether the person:

15 (A) retains the right to make personal decisions
16 regarding residence or vote in a public election; or

17 (B) maintains eligibility to hold or obtain a
18 license to operate a motor vehicle under Chapter 521,
19 Transportation Code.

20 SECTION 12. Section 1101.153, Estates Code, is amended by
21 adding Subsection (a-1) to read as follows:

22 (a-1) If the letter or certificate under Section
23 1101.103(b)(3-a) stated that improvement in the ward's physical
24 condition or mental functioning is possible and specified a period
25 of less than a year after which the ward should be reevaluated to
26 determine continued necessity for the guardianship, an order
27 appointing a guardian must include the date by which the guardian

1 must submit to the court an updated letter or certificate
2 containing the requirements of Section 1101.103(b).

3 SECTION 13. Section 1104.002, Estates Code, is amended to
4 read as follows:

5 Sec. 1104.002. PREFERENCE OF INCAPACITATED PERSON. Before
6 appointing a guardian, the court shall make a reasonable effort to
7 consider the incapacitated person's preference of the person to be
8 appointed guardian and, to the extent consistent with other
9 provisions of this title, shall give due consideration to the
10 preference indicated by the incapacitated person, regardless of
11 whether the person has designated by declaration a guardian before
12 the need arises under Subchapter E.

13 SECTION 14. Section 1151.051, Estates Code, is amended by
14 adding Subsection (e) to read as follows:

15 (e) Notwithstanding Subsection (c)(1) and except in cases
16 of emergency, a guardian of the person of a ward may only place the
17 ward in a more restrictive care facility if the guardian provides
18 notice of the proposed placement to the court and any person who has
19 requested notice and after:

20 (1) the court orders the placement at a hearing on the
21 matter, if a person objects to the proposed placement before the
22 eighth business day after the person's receipt of the notice; or

23 (2) the seventh business day after the court's receipt
24 of the notice, if the court does not schedule a hearing, on its own
25 motion, on the proposed placement before that day.

26 SECTION 15. Sections 1202.001(b) and (c), Estates Code, are
27 amended to read as follows:

1 (b) A guardianship shall be settled and closed when the
2 ward:

3 (1) dies and, if the ward was married, the ward's
4 spouse qualifies as survivor in community;

5 (2) is found by the court to have full capacity, or
6 sufficient capacity with supports and services, to care for himself
7 or herself and to manage the ward's property;

8 (3) is no longer a minor; or

9 (4) no longer must have a guardian appointed to
10 receive funds due the ward from any governmental source.

11 (c) Except for an order issued under Section 1101.153(a-1),
12 an ~~An~~ order appointing a guardian or a successor guardian may
13 specify a period of not more than one year during which a petition
14 for adjudication that the ward no longer requires the guardianship
15 may not be filed without special leave.

16 SECTION 16. Section 1202.051, Estates Code, is amended to
17 read as follows:

18 Sec. 1202.051. APPLICATION AUTHORIZED. A ward or any
19 person interested in the ward's welfare may file a written
20 application with the court for an order:

21 (1) finding that the ward is no longer an
22 incapacitated person and ordering the settlement and closing of the
23 guardianship;

24 (2) finding that the ward lacks the capacity, or lacks
25 sufficient capacity with supports and services, to do some or all of
26 the tasks necessary to provide food, clothing, or shelter for
27 himself or herself, to care for the ward's own physical health, or

1 to manage the ward's own financial affairs and granting additional
2 powers or duties to the guardian; or

3 (3) finding that the ward has the capacity, or
4 sufficient capacity with supports and services, to do some, but not
5 all, of the tasks necessary to provide food, clothing, or shelter
6 for himself or herself, to care for the ward's own physical health,
7 or to manage the ward's own financial affairs and:

8 (A) limiting the guardian's powers or duties; and

9 (B) permitting the ward to care for himself or
10 herself, make personal decisions regarding residence, or ~~to~~
11 manage the ward's own financial affairs commensurate with the
12 ward's ability, with or without supports and services.

13 SECTION 17. Section 1202.151(a), Estates Code, is amended
14 to read as follows:

15 (a) Except as provided by Section 1202.201, at a hearing on
16 an application filed under Section 1202.051, the court shall
17 consider only evidence regarding the ward's mental or physical
18 capacity at the time of the hearing that is relevant to the complete
19 restoration of the ward's capacity or modification of the ward's
20 guardianship, including whether:

21 (1) the guardianship is necessary; and

22 (2) specific powers or duties of the guardian should
23 be limited if the ward receives supports and services.

24 SECTION 18. Section 1202.152(b), Estates Code, is amended
25 to read as follows:

26 (b) A letter or certificate presented under Subsection (a)
27 must:

1 (1) describe the nature and degree of incapacity,
2 including the medical history if reasonably available, or state
3 that, in the physician's opinion, the ward has the capacity, or
4 sufficient capacity with supports and services, to:

5 (A) provide food, clothing, and shelter for
6 himself or herself;

7 (B) care for the ward's own physical health; and

8 (C) manage the ward's financial affairs;

9 (2) provide a medical prognosis specifying the
10 estimated severity of any incapacity;

11 (3) state how or in what manner the ward's ability to
12 make or communicate responsible decisions concerning himself or
13 herself is affected by the ward's physical or mental health;

14 (4) state whether any current medication affects the
15 ward's demeanor or the ward's ability to participate fully in a
16 court proceeding;

17 (5) describe the precise physical and mental
18 conditions underlying a diagnosis of senility, if applicable; and

19 (6) include any other information required by the
20 court.

21 SECTION 19. Section 1202.153(c), Estates Code, is amended
22 to read as follows:

23 (c) Before limiting the powers granted to or duties required
24 to be performed by the guardian under an application filed under
25 Section 1202.051, the court must find by a preponderance of the
26 evidence that the current nature and degree of the ward's
27 incapacity, with or without supports and services, warrants a

1 modification of the guardianship and that some of the ward's rights
2 need to be restored, with or without supports and services.

3 SECTION 20. Section 1202.154(a), Estates Code, is amended
4 to read as follows:

5 (a) A court order entered with respect to an application
6 filed under Section 1202.051 to completely restore a ward's
7 capacity or modify a ward's guardianship must state:

8 (1) the guardian's name;

9 (2) the ward's name; [~~and~~]

10 (3) whether the type of guardianship being addressed
11 at the proceeding is a:

12 (A) guardianship of the person;

13 (B) guardianship of the estate; or

14 (C) guardianship of both the person and the
15 estate; and

16 (4) if applicable, any necessary supports and services
17 for the restoration of the ward's capacity or modification of the
18 guardianship.

19 SECTION 21. Section 1202.156, Estates Code, is amended to
20 read as follows:

21 Sec. 1202.156. ADDITIONAL REQUIREMENTS FOR ORDER MODIFYING
22 GUARDIANSHIP. If the court finds that a guardian's powers or
23 duties should be expanded or limited, the order modifying the
24 guardianship must contain findings of fact and specify, in addition
25 to the information required by Section 1202.154:

26 (1) the specific powers, limitations, or duties of the
27 guardian with respect to the care of the ward or the management of

1 the ward's property, as appropriate;

2 (2) the specific areas of protection and assistance to
3 be provided to the ward;

4 (3) any limitation of the ward's rights;

5 (4) if the ward's incapacity resulted from a mental
6 condition, whether the ward retains the right to vote and make
7 personal decisions regarding residence; and

8 (5) that the clerk shall modify the letters of
9 guardianship to the extent applicable to conform to the order.

10 SECTION 22. The heading to Subtitle I, Title 3, Estates
11 Code, is amended to read as follows:

12 SUBTITLE I. OTHER SPECIAL PROCEEDINGS AND SUBSTITUTES FOR
13 [~~ALTERNATIVES TO~~] GUARDIANSHIP

14 SECTION 23. (a) Except as otherwise provided by this
15 section, the changes in law made by this Act apply to:

16 (1) a guardianship created before, on, or after the
17 effective date of this Act; and

18 (2) an application for a guardianship pending on, or
19 filed on or after, the effective date of this Act.

20 (b) Sections 1054.004 and 1054.054, Estates Code, as
21 amended by this Act, apply only to a guardianship proceeding for
22 which a court has appointed a guardian ad litem or attorney ad litem
23 to represent the interests of a proposed ward on or after the
24 effective date of this Act.

25 (c) Sections 1054.201, 1101.101, 1101.103, 1101.151,
26 1101.152, and 1101.153, Estates Code, as amended by this Act, apply
27 only to a guardianship proceeding filed on or after the effective

1 date of this Act. A guardianship proceeding filed before the
2 effective date of this Act is governed by the law in effect on the
3 date the proceeding was filed, and the former law is continued in
4 effect for that purpose.

5 (d) Section 1101.001, Estates Code, as amended by this Act,
6 applies only to an application for the appointment of a guardian
7 filed on or after the effective date of this Act. An application
8 for the appointment of a guardian filed before the effective date of
9 this Act is governed by the law in effect on the date the
10 application was filed, and the former law is continued in effect for
11 that purpose.

12 (e) Section 1202.051, Estates Code, as amended by this Act,
13 applies only to an application for the restoration of a ward's
14 capacity or the modification of a ward's guardianship that is filed
15 on or after the effective date of this Act. An application for the
16 restoration of a ward's capacity or the modification of a ward's
17 guardianship that is filed before the effective date of this Act is
18 governed by the law in effect on the date the application was filed,
19 and the former law is continued in effect for that purpose.

20 (f) Sections 1202.151, 1202.152, 1202.153, 1202.154, and
21 1202.156, Estates Code, as amended by this Act, apply only to a
22 proceeding for the restoration of a ward's capacity or the
23 modification of a ward's guardianship that is filed on or after the
24 effective date of this Act. An application for the restoration of a
25 ward's capacity or the modification of a ward's guardianship that is
26 filed before the effective date of this Act is governed by the law
27 in effect on the date the application was filed, and the former law

1 is continued in effect for that purpose.

2 SECTION 24. This Act takes effect September 1, 2015.

ADOPTED

MAY 11 2015

Atty. Gen. Saw
Secretary of the Senate

By: ZAFFIRINI

H.B. No. 39

Substitute the following for H.B. No. 39:

By: Zaffirini

C.S. H.B. No. 39

A BILL TO BE ENTITLED

1 AN ACT

2 relating to guardianships for incapacitated persons and to
3 substitutes for guardianships for certain adults with
4 disabilities.

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

6 SECTION 1. Section 1001.001(b), Estates Code, is amended to
7 read as follows:

8 (b) In creating a guardianship that gives a guardian limited
9 authority over an incapacitated person, the court shall design the
10 guardianship to encourage the development or maintenance of maximum
11 self-reliance and independence in the incapacitated person,
12 including by presuming that the incapacitated person retains
13 capacity to make personal decisions regarding the person's
14 residence.

15 SECTION 2. Chapter 1002, Estates Code, is amended by adding
16 Sections 1002.0015 and 1002.031 to read as follows:

17 Sec. 1002.0015. ALTERNATIVES TO GUARDIANSHIP.

18 "Alternatives to guardianship" includes the:

19 (1) execution of a medical power of attorney under
20 Chapter 166, Health and Safety Code;

21 (2) appointment of an attorney in fact or agent under a
22 durable power of attorney as provided by Subtitle P, Title 2;

23 (3) execution of a declaration for mental health
24 treatment under Chapter 137, Civil Practice and Remedies Code;

- 1 (4) appointment of a representative payee to manage
2 public benefits;
3 (5) establishment of a joint bank account;
4 (6) creation of a management trust under Chapter 1301;
5 (7) creation of a special needs trust;
6 (8) designation of a guardian before the need arises
7 under Subchapter E, Chapter 1104; and
8 (9) establishment of alternate forms of
9 decision-making based on person-centered planning.

10 Sec. 1002.031. SUPPORTS AND SERVICES. "Supports and
11 services" means available formal and informal resources and
12 assistance that enable an individual to:

- 13 (1) meet the individual's needs for food, clothing, or
14 shelter;
15 (2) care for the individual's physical or mental
16 health;
17 (3) manage the individual's financial affairs; or
18 (4) make personal decisions regarding residence,
19 voting, operating a motor vehicle, and marriage.

20 SECTION 3. Section 1002.015, Estates Code, is amended to
21 read as follows:

22 Sec. 1002.015. GUARDIANSHIP PROCEEDING. The term
23 "guardianship proceeding" means a matter or proceeding related to a
24 guardianship or any other matter covered by this title, including:

- 25 (1) the appointment of a guardian of a minor or other
26 incapacitated person, including an incapacitated adult for whom
27 another court obtained continuing, exclusive jurisdiction in a suit

1 affecting the parent-child relationship when the person was a
2 child;

3 (2) an application, petition, or motion regarding
4 guardianship or a substitute for [~~an alternative to~~] guardianship
5 under this title;

6 (3) a mental health action; and

7 (4) an application, petition, or motion regarding a
8 trust created under Chapter 1301.

9 SECTION 4. Section 1054.004, Estates Code, is amended by
10 amending Subsection (a) and adding Subsection (c) to read as
11 follows:

12 (a) An attorney ad litem appointed under Section 1054.001
13 shall interview the proposed ward within a reasonable time before
14 the hearing in the proceeding for the appointment of a
15 guardian. To the greatest extent possible, the attorney shall
16 discuss with the proposed ward:

17 (1) the law and facts of the case;

18 (2) the proposed ward's legal options regarding
19 disposition of the case; [~~and~~]

20 (3) the grounds on which guardianship is sought; and

21 (4) whether alternatives to guardianship would meet
22 the needs of the proposed ward and avoid the need for the
23 appointment of a guardian.

24 (c) Before the hearing, the attorney ad litem shall discuss
25 with the proposed ward the attorney ad litem's opinion regarding:

26 (1) whether a guardianship is necessary for the
27 proposed ward; and

1 (2) if a guardianship is necessary, the specific
2 powers or duties of the guardian that should be limited if the
3 proposed ward receives supports and services.

4 SECTION 5. Section 1054.054, Estates Code, is amended by
5 adding Subsections (c) and (d) to read as follows:

6 (c) The guardian ad litem shall:

7 (1) investigate whether a guardianship is necessary
8 for the proposed ward; and

9 (2) evaluate alternatives to guardianship and
10 supports and services available to the proposed ward that would
11 avoid the need for appointment of a guardian.

12 (d) The information gathered by the guardian ad litem under
13 Subsection (c) is subject to examination by the court.

14 SECTION 6. Sections 1054.201(a) and (b), Estates Code, are
15 amended to read as follows:

16 (a) An attorney for an applicant for guardianship and a [A]
17 court-appointed attorney in a guardianship proceeding, including
18 an attorney ad litem, must be certified by the State Bar of Texas,
19 or a person or other entity designated by the state bar, as having
20 successfully completed a course of study in guardianship law and
21 procedure sponsored by the state bar or the state bar's designee.

22 (b) The State Bar of Texas shall require four [~~three~~] hours
23 of credit for certification under this subchapter, including one
24 hour on alternatives to guardianship and supports and services
25 available to proposed wards.

26 SECTION 7. Section 1101.001(b), Estates Code, is amended to
27 read as follows:

1 (b) The application must be sworn to by the applicant and
2 state:

3 (1) the proposed ward's name, sex, date of birth, and
4 address;

5 (2) the name, relationship, and address of the person
6 the applicant seeks to have appointed as guardian;

7 (3) whether guardianship of the person or estate, or
8 both, is sought;

9 (3-a) whether alternatives to guardianship and
10 available supports and services to avoid guardianship were
11 considered;

12 (3-b) whether any alternatives to guardianship and
13 supports and services available to the proposed ward considered are
14 feasible and would avoid the need for a guardianship;

15 (4) the nature and degree of the alleged incapacity,
16 the specific areas of protection and assistance requested, and the
17 limitation or termination of rights requested to be included in the
18 court's order of appointment, including a termination of:

19 (A) the right of a proposed ward who is 18 years
20 of age or older to vote in a public election; ~~and~~

21 (B) the proposed ward's eligibility to hold or
22 obtain a license to operate a motor vehicle under Chapter 521,
23 Transportation Code; and

24 (C) the right of a proposed ward to make personal
25 decisions regarding residence;

26 (5) the facts requiring the appointment of a guardian;

27 (6) the interest of the applicant in the appointment

1 of a guardian;

2 (7) the nature and description of any kind of
3 guardianship existing for the proposed ward in any other state;

4 (8) the name and address of any person or institution
5 having the care and custody of the proposed ward;

6 (9) the approximate value and description of the
7 proposed ward's property, including any compensation, pension,
8 insurance, or allowance to which the proposed ward may be entitled;

9 (10) the name and address of any person whom the
10 applicant knows to hold a power of attorney signed by the proposed
11 ward and a description of the type of power of attorney;

12 (11) for a proposed ward who is a minor, the following
13 information if known by the applicant:

14 (A) the name of each of the proposed ward's
15 parents and either the parent's address or that the parent is
16 deceased;

17 (B) the name and age of each of the proposed
18 ward's siblings, if any, and either the sibling's address or that
19 the sibling is deceased; and

20 (C) if each of the proposed ward's parents and
21 adult siblings are deceased, the names and addresses of the
22 proposed ward's other living relatives who are related to the
23 proposed ward within the third degree by consanguinity and who are
24 adults;

25 (12) for a proposed ward who is a minor, whether the
26 minor was the subject of a legal or conservatorship proceeding in
27 the preceding two years and, if so:

- 1 (A) the court involved;
- 2 (B) the nature of the proceeding; and
- 3 (C) any final disposition of the proceeding;
- 4 (13) for a proposed ward who is an adult, the following
- 5 information if known by the applicant:
- 6 (A) the name of the proposed ward's spouse, if
- 7 any, and either the spouse's address or that the spouse is deceased;
- 8 (B) the name of each of the proposed ward's
- 9 parents and either the parent's address or that the parent is
- 10 deceased;
- 11 (C) the name and age of each of the proposed
- 12 ward's siblings, if any, and either the sibling's address or that
- 13 the sibling is deceased;
- 14 (D) the name and age of each of the proposed
- 15 ward's children, if any, and either the child's address or that the
- 16 child is deceased; and
- 17 (E) if there is no living spouse, parent, adult
- 18 sibling, or adult child of the proposed ward, the names and
- 19 addresses of the proposed ward's other living relatives who are
- 20 related to the proposed ward within the third degree by
- 21 consanguinity and who are adults;
- 22 (14) facts showing that the court has venue of the
- 23 proceeding; and
- 24 (15) if applicable, that the person whom the applicant
- 25 seeks to have appointed as a guardian is a private professional
- 26 guardian who is certified under Subchapter C, Chapter 155,
- 27 Government Code, and has complied with the requirements of

1 Subchapter G, Chapter 1104.

2 SECTION 8. Section 1101.101, Estates Code, is amended by
3 amending Subsection (a) and adding Subsection (c) to read as
4 follows:

5 (a) Before appointing a guardian for a proposed ward, the
6 court must:

7 (1) find by clear and convincing evidence that:

8 (A) the proposed ward is an incapacitated person;

9 (B) it is in the proposed ward's best interest to
10 have the court appoint a person as the proposed ward's guardian;
11 ~~and~~

12 (C) the proposed ward's rights or property will
13 be protected by the appointment of a guardian;

14 (D) alternatives to guardianship that would
15 avoid the need for the appointment of a guardian have been
16 considered and determined not to be feasible; and

17 (E) supports and services available to the
18 proposed ward that would avoid the need for the appointment of a
19 guardian have been considered and determined not to be feasible;
20 and

21 (2) find by a preponderance of the evidence that:

22 (A) the court has venue of the case;

23 (B) the person to be appointed guardian is
24 eligible to act as guardian and is entitled to appointment, or, if
25 no eligible person entitled to appointment applies, the person
26 appointed is a proper person to act as guardian;

27 (C) if a guardian is appointed for a minor, the

1 guardianship is not created for the primary purpose of enabling the
2 minor to establish residency for enrollment in a school or school
3 district for which the minor is not otherwise eligible for
4 enrollment; and

5 (D) the proposed ward:

6 (i) is totally without capacity as provided
7 by this title to care for himself or herself and to manage his or her
8 property; or

9 (ii) lacks the capacity to do some, but not
10 all, of the tasks necessary to care for himself or herself or to
11 manage his or her property.

12 (c) A finding under Subsection (a)(2)(D)(ii) must
13 specifically state whether the proposed ward lacks the capacity, or
14 lacks sufficient capacity with supports and services, to make
15 personal decisions regarding residence, voting, operating a motor
16 vehicle, and marriage.

17 SECTION 9. Section 1101.103(b), Estates Code, is amended to
18 read as follows:

19 (b) The letter or certificate must:

20 (1) describe the nature, degree, and severity of the
21 proposed ward's incapacity, including any functional deficits
22 regarding the proposed ward's ability to:

23 (A) handle business and managerial matters;

24 (B) manage financial matters;

25 (C) operate a motor vehicle;

26 (D) make personal decisions regarding residence,
27 voting, and marriage; and

1 (E) consent to medical, dental, psychological,
2 or psychiatric treatment;

3 (2) in providing a description under Subdivision (1)
4 regarding the proposed ward's ability to operate a motor vehicle
5 and make personal decisions regarding voting, state whether in the
6 physician's opinion the proposed ward:

7 (A) has the mental capacity to vote in a public
8 election; and

9 (B) has the ability to safely operate a motor
10 vehicle;

11 (3) provide an evaluation of the proposed ward's
12 physical condition and mental functioning [~~function~~] and summarize
13 the proposed ward's medical history if reasonably available;

14 (3-a) in providing an evaluation under Subdivision
15 (3), state whether improvement in the proposed ward's physical
16 condition and mental functioning is possible and, if so, state the
17 period after which the proposed ward should be reevaluated to
18 determine whether a guardianship continues to be necessary;

19 (4) state how or in what manner the proposed ward's
20 ability to make or communicate responsible decisions concerning
21 himself or herself is affected by the proposed ward's physical or
22 mental health, including the proposed ward's ability to:

23 (A) understand or communicate;

24 (B) recognize familiar objects and individuals;

25 (C) solve problems [~~perform simple~~
26 ~~calculations~~];

27 (D) reason logically; and

1 (E) administer to daily life activities with and
2 without supports and services;

3 (5) state whether any current medication affects the
4 proposed ward's demeanor or the proposed ward's ability to
5 participate fully in a court proceeding;

6 (6) describe the precise physical and mental
7 conditions underlying a diagnosis of a mental disability, and state
8 whether the proposed ward would benefit from supports and services
9 that would allow the individual to live in the least restrictive
10 setting;

11 (6-a) state whether a guardianship is necessary for
12 the proposed ward and, if so, whether specific powers or duties of
13 the guardian should be limited if the proposed ward receives
14 supports and services; and

15 (7) include any other information required by the
16 court.

17 SECTION 10. Sections 1101.151(a) and (b), Estates Code, are
18 amended to read as follows:

19 (a) If it is found that the proposed ward is totally without
20 capacity to care for himself or herself, manage his or her property,
21 operate a motor vehicle, make personal decisions regarding
22 residence, and vote in a public election, the court may appoint a
23 guardian of the proposed ward's person or estate, or both, with full
24 authority over the incapacitated person except as provided by law.

25 (b) An order appointing a guardian under this section must
26 contain findings of fact and specify:

27 (1) the information required by Section 1101.153(a);

1 (2) that the guardian has full authority over the
2 incapacitated person;

3 (3) if necessary, the amount of funds from the corpus
4 of the person's estate the court will allow the guardian to spend
5 for the education and maintenance of the person under Subchapter A,
6 Chapter 1156;

7 (4) whether the person is totally incapacitated
8 because of a mental condition;

9 (5) that the person does not have the capacity to
10 operate a motor vehicle, make personal decisions regarding
11 residence, and ~~to~~ vote in a public election; and

12 (6) if it is a guardianship of the person of the ward
13 or of both the person and the estate of the ward, the rights of the
14 guardian with respect to the person as specified in Section
15 1151.051(c)(1).

16 SECTION 11. Sections 1101.152(a) and (b), Estates Code, are
17 amended to read as follows:

18 (a) If it is found that the proposed ward lacks the capacity
19 to do some, but not all, of the tasks necessary to care for himself
20 or herself or to manage his or her property with or without supports
21 and services, the court may appoint a guardian with limited powers
22 and permit the proposed ward to care for himself or herself,
23 including making personal decisions regarding residence, or to
24 manage his or her property commensurate with the proposed ward's
25 ability.

26 (b) An order appointing a guardian under this section must
27 contain findings of fact and specify:

1 (1) the information required by Section 1101.153(a);
2 (2) the specific powers, limitations, or duties of the
3 guardian with respect to the person's care or the management of the
4 person's property by the guardian;

5 (2-a) the specific rights and powers retained by the
6 person:

7 (A) with the necessity for supports and services;
8 and

9 (B) without the necessity for supports and
10 services;

11 (3) if necessary, the amount of funds from the corpus
12 of the person's estate the court will allow the guardian to spend
13 for the education and maintenance of the person under Subchapter A,
14 Chapter 1156; and

15 (4) whether the person is incapacitated because of a
16 mental condition and, if so, whether the person:

17 (A) retains the right to make personal decisions
18 regarding residence or vote in a public election; or

19 (B) maintains eligibility to hold or obtain a
20 license to operate a motor vehicle under Chapter 521,
21 Transportation Code.

22 SECTION 12. Section 1101.153, Estates Code, is amended by
23 adding Subsection (a-1) to read as follows:

24 (a-1) If the letter or certificate under Section
25 1101.103(b)(3-a) stated that improvement in the ward's physical
26 condition or mental functioning is possible and specified a period
27 of less than a year after which the ward should be reevaluated to

1 determine continued necessity for the guardianship, an order
2 appointing a guardian must include the date by which the guardian
3 must submit to the court an updated letter or certificate
4 containing the requirements of Section 1101.103(b).

5 SECTION 13. Section 1104.002, Estates Code, is amended to
6 read as follows:

7 Sec. 1104.002. PREFERENCE OF INCAPACITATED PERSON. Before
8 appointing a guardian, the court shall make a reasonable effort to
9 consider the incapacitated person's preference of the person to be
10 appointed guardian and, to the extent consistent with other
11 provisions of this title, shall give due consideration to the
12 preference indicated by the incapacitated person, regardless of
13 whether the person has designated by declaration a guardian before
14 the need arises under Subchapter E.

15 SECTION 14. Section 1151.051, Estates Code, is amended by
16 adding Subsection (e) to read as follows:

17 (e) Notwithstanding Subsection (c)(1) and except in cases
18 of emergency, a guardian of the person of a ward may only place the
19 ward in a more restrictive care facility if the guardian provides
20 notice of the proposed placement to the court, the ward, and any
21 person who has requested notice and after:

22 (1) the court orders the placement at a hearing on the
23 matter, if the ward or another person objects to the proposed
24 placement before the eighth business day after the person's receipt
25 of the notice; or

26 (2) the seventh business day after the court's receipt
27 of the notice, if the court does not schedule a hearing, on its own

1 motion, on the proposed placement before that day.

2 SECTION 15. Sections 1202.001(b) and (c), Estates Code, are
3 amended to read as follows:

4 (b) A guardianship shall be settled and closed when the
5 ward:

6 (1) dies and, if the ward was married, the ward's
7 spouse qualifies as survivor in community;

8 (2) is found by the court to have full capacity, or
9 sufficient capacity with supports and services, to care for himself
10 or herself and to manage the ward's property;

11 (3) is no longer a minor; or

12 (4) no longer must have a guardian appointed to
13 receive funds due the ward from any governmental source.

14 (c) Except for an order issued under Section 1101.153(a-1),
15 an [~~An~~] order appointing a guardian or a successor guardian may
16 specify a period of not more than one year during which a petition
17 for adjudication that the ward no longer requires the guardianship
18 may not be filed without special leave.

19 SECTION 16. Section 1202.051, Estates Code, is amended to
20 read as follows:

21 Sec. 1202.051. APPLICATION AUTHORIZED. A ward or any
22 person interested in the ward's welfare may file a written
23 application with the court for an order:

24 (1) finding that the ward is no longer an
25 incapacitated person and ordering the settlement and closing of the
26 guardianship;

27 (2) finding that the ward lacks the capacity, or lacks

1 sufficient capacity with supports and services, to do some or all of
2 the tasks necessary to provide food, clothing, or shelter for
3 himself or herself, to care for the ward's own physical health, or
4 to manage the ward's own financial affairs and granting additional
5 powers or duties to the guardian; or

6 (3) finding that the ward has the capacity, or
7 sufficient capacity with supports and services, to do some, but not
8 all, of the tasks necessary to provide food, clothing, or shelter
9 for himself or herself, to care for the ward's own physical health,
10 or to manage the ward's own financial affairs and:

11 (A) limiting the guardian's powers or duties; and

12 (B) permitting the ward to care for himself or
13 herself, make personal decisions regarding residence, or ~~to~~
14 manage the ward's own financial affairs commensurate with the
15 ward's ability, with or without supports and services.

16 SECTION 17. Section 1202.151(a), Estates Code, is amended
17 to read as follows:

18 (a) Except as provided by Section 1202.201, at a hearing on
19 an application filed under Section 1202.051, the court shall
20 consider only evidence regarding the ward's mental or physical
21 capacity at the time of the hearing that is relevant to the complete
22 restoration of the ward's capacity or modification of the ward's
23 guardianship, including whether:

24 (1) the guardianship is necessary; and

25 (2) specific powers or duties of the guardian should
26 be limited if the ward receives supports and services.

27 SECTION 18. Section 1202.152(b), Estates Code, is amended

1 to read as follows:

2 (b) A letter or certificate presented under Subsection (a)
3 must:

4 (1) describe the nature and degree of incapacity,
5 including the medical history if reasonably available, or state
6 that, in the physician's opinion, the ward has the capacity, or
7 sufficient capacity with supports and services, to:

8 (A) provide food, clothing, and shelter for
9 himself or herself;

10 (B) care for the ward's own physical health; and

11 (C) manage the ward's financial affairs;

12 (2) provide a medical prognosis specifying the
13 estimated severity of any incapacity;

14 (3) state how or in what manner the ward's ability to
15 make or communicate responsible decisions concerning himself or
16 herself is affected by the ward's physical or mental health;

17 (4) state whether any current medication affects the
18 ward's demeanor or the ward's ability to participate fully in a
19 court proceeding;

20 (5) describe the precise physical and mental
21 conditions underlying a diagnosis of senility, if applicable; and

22 (6) include any other information required by the
23 court.

24 SECTION 19. Section 1202.153(c), Estates Code, is amended
25 to read as follows:

26 (c) Before limiting the powers granted to or duties required
27 to be performed by the guardian under an application filed under

1 Section 1202.051, the court must find by a preponderance of the
2 evidence that the current nature and degree of the ward's
3 incapacity, with or without supports and services, warrants a
4 modification of the guardianship and that some of the ward's rights
5 need to be restored, with or without supports and services.

6 SECTION 20. Section 1202.154(a), Estates Code, is amended
7 to read as follows:

8 (a) A court order entered with respect to an application
9 filed under Section 1202.051 to completely restore a ward's
10 capacity or modify a ward's guardianship must state:

- 11 (1) the guardian's name;
- 12 (2) the ward's name; ~~and~~
- 13 (3) whether the type of guardianship being addressed
14 at the proceeding is a:
 - 15 (A) guardianship of the person;
 - 16 (B) guardianship of the estate; or
 - 17 (C) guardianship of both the person and the
18 estate; and
- 19 (4) if applicable, any necessary supports and services
20 for the restoration of the ward's capacity or modification of the
21 guardianship.

22 SECTION 21. Section 1202.156, Estates Code, is amended to
23 read as follows:

24 Sec. 1202.156. ADDITIONAL REQUIREMENTS FOR ORDER MODIFYING
25 GUARDIANSHIP. If the court finds that a guardian's powers or
26 duties should be expanded or limited, the order modifying the
27 guardianship must contain findings of fact and specify, in addition

1 to the information required by Section 1202.154:

2 (1) the specific powers, limitations, or duties of the
3 guardian with respect to the care of the ward or the management of
4 the ward's property, as appropriate;

5 (2) the specific areas of protection and assistance to
6 be provided to the ward;

7 (3) any limitation of the ward's rights;

8 (4) if the ward's incapacity resulted from a mental
9 condition, whether the ward retains the right to vote and make
10 personal decisions regarding residence; and

11 (5) that the clerk shall modify the letters of
12 guardianship to the extent applicable to conform to the order.

13 SECTION 22. The heading to Subtitle I, Title 3, Estates
14 Code, is amended to read as follows:

15 SUBTITLE I. OTHER SPECIAL PROCEEDINGS AND SUBSTITUTES FOR
16 [ALTERNATIVES TO] GUARDIANSHIP

17 SECTION 23. Subtitle I, Title 3, Estates Code, is amended by
18 adding Chapter 1357 to read as follows:

19 CHAPTER 1357. SUPPORTED DECISION-MAKING AGREEMENT ACT

20 SUBCHAPTER A. GENERAL PROVISIONS

21 Sec. 1357.001. SHORT TITLE. This chapter may be cited as
22 the Supported Decision-Making Agreement Act.

23 Sec. 1357.002. DEFINITIONS. In this chapter:

24 (1) "Adult" means an individual 18 years of age or
25 older or an individual under 18 years of age who has had the
26 disabilities of minority removed.

27 (2) "Disability" means, with respect to an individual,

1 a physical or mental impairment that substantially limits one or
2 more major life activities.

3 (3) "Supported decision-making" means a process of
4 supporting and accommodating an adult with a disability to enable
5 the adult to make life decisions, including decisions related to
6 where the adult wants to live, the services, supports, and medical
7 care the adult wants to receive, whom the adult wants to live with,
8 and where the adult wants to work, without impeding the
9 self-determination of the adult.

10 (4) "Supported decision-making agreement" is an
11 agreement between an adult with a disability and a supporter
12 entered into under this chapter.

13 (5) "Supporter" means an adult who has entered into a
14 supported decision-making agreement with an adult with a
15 disability.

16 Sec. 1357.003. PURPOSE. The purpose of this chapter is to
17 recognize a less restrictive substitute for guardianship for adults
18 with disabilities who need assistance with decisions regarding
19 daily living but who are not considered incapacitated persons for
20 purposes of establishing a guardianship under this title.

21 SUBCHAPTER B. SCOPE OF AGREEMENT AND AGREEMENT REQUIREMENTS

22 Sec. 1357.051. SCOPE OF SUPPORTED DECISION-MAKING
23 AGREEMENT. An adult with a disability may voluntarily, without
24 undue influence or coercion, enter into a supported decision-making
25 agreement with a supporter under which the adult with a disability
26 authorizes the supporter to do any or all of the following:

27 (1) provide supported decision-making, including

1 assistance in understanding the options, responsibilities, and
2 consequences of the adult's life decisions, without making those
3 decisions on behalf of the adult with a disability;

4 (2) subject to Section 1357.054, assist the adult in
5 accessing, collecting, and obtaining information that is relevant
6 to a given life decision, including medical, psychological,
7 financial, educational, or treatment records, from any person;

8 (3) assist the adult with a disability in
9 understanding the information described by Subdivision (2); and

10 (4) assist the adult in communicating the adult's
11 decisions to appropriate persons.

12 Sec. 1357.052. AUTHORITY OF SUPPORTER. A supporter may
13 exercise the authority granted to the supporter in the supported
14 decision-making agreement.

15 Sec. 1357.053. TERM OF AGREEMENT. (a) Except as provided
16 by Subsection (b), the supported decision-making agreement extends
17 until terminated by either party or by the terms of the agreement.

18 (b) The supported decision-making agreement is terminated
19 if:

20 (1) the Department of Family and Protective Services
21 finds that the adult with a disability has been abused, neglected,
22 or exploited by the supporter; or

23 (2) the supporter is found criminally liable for
24 conduct described by Subdivision (1).

25 Sec. 1357.054. ACCESS TO PERSONAL INFORMATION. (a) A
26 supporter is only authorized to assist the adult with a disability
27 in accessing, collecting, or obtaining information that is relevant

1 to a decision authorized under the supported decision-making
2 agreement.

3 (b) If a supporter assists an adult with a disability in
4 accessing, collecting, or obtaining personal information,
5 including protected health information under the Health Insurance
6 Portability and Accountability Act of 1996 (Pub. L. No. 104-191) or
7 educational records under the Family Educational Rights and Privacy
8 Act of 1974 (20 U.S.C. Section 1232g), the supporter shall ensure
9 the information is kept privileged and confidential, as applicable,
10 and is not subject to unauthorized access, use, or disclosure.

11 (c) The existence of a supported decision-making agreement
12 does not preclude an adult with a disability from seeking personal
13 information without the assistance of a supporter.

14 Sec. 1357.055. AUTHORIZING AND WITNESSING OF SUPPORTED
15 DECISION-MAKING AGREEMENT. (a) A supported decision-making
16 agreement must be signed voluntarily, without coercion or undue
17 influence, by the adult with a disability and the supporter in the
18 presence of two or more subscribing witnesses or a notary public.

19 (b) If signed before two witnesses, the attesting witnesses
20 must be at least 14 years of age.

21 Sec. 1357.056. FORM OF SUPPORTED DECISION-MAKING
22 AGREEMENT. (a) Subject to Subsection (b), a supported
23 decision-making agreement is valid only if it is in substantially
24 the following form:

25 SUPPORTED DECISION-MAKING AGREEMENT

26 Appointment of Supporter

27 I, (insert your name), make this agreement of my own free

1 will.

2 I agree and designate that: _____

3 Name: _____

4 Address: _____

5 Phone Number: _____

6 E-mail Address: _____

7 is my supporter. My supporter may help me with making everyday life
8 decisions relating to the following:

9 Y/N obtaining food, clothing, and shelter

10 Y/N taking care of my physical health

11 Y/N managing my financial affairs.

12 My supporter is not allowed to make decisions for me. To help
13 me with my decisions, my supporter may:

14 1. Help me access, collect, or obtain information that is
15 relevant to a decision, including medical, psychological,
16 financial, educational, or treatment records;

17 2. Help me understand my options so I can make an informed
18 decision; or

19 3. Help me communicate my decision to appropriate persons.

20 Y/N A release allowing my supporter to see protected
21 health information under the Health Insurance Portability and
22 Accountability Act of 1996 (Pub. L. No. 104-191) is attached.

23 Y/N A release allowing my supporter to see educational
24 records under the Family Educational Rights and Privacy Act of 1974
25 (20 U.S.C. Section 1232g) is attached.

26 Effective Date of Supported Decision-Making Agreement

27 This supported decision-making agreement is effective

1 immediately and will continue until (insert date) or until the
2 agreement is terminated by my supporter or me or by operation of
3 law.

4 Signed this _____ day of _____, 20____

5 Consent of Supporter

6 I, (name of supporter), consent to act as a supporter under
7 this agreement.

8 _____
9 (signature of supporter) (printed name of supporter)

10 Signature

11 _____
12 (my signature) (my printed name)

13 _____
14 (witness 1 signature) (printed name of witness 1)

15 _____
16 (witness 2 signature) (printed name of witness 2)

17 State of _____

18 County of _____

19 This document was acknowledged before me
20 on _____ (date)

21 by _____ and _____
22 (name of adult with a disability) (name of supporter)

23 _____
24 (signature of notarial officer)

25 (Seal, if any, of notary) _____
26 (printed name)

27 My commission expires: _____

1 WARNING: PROTECTION FOR THE ADULT WITH A DISABILITY

2 IF A PERSON WHO RECEIVES A COPY OF THIS AGREEMENT OR IS AWARE
3 OF THE EXISTENCE OF THIS AGREEMENT HAS CAUSE TO BELIEVE THAT THE
4 ADULT WITH A DISABILITY IS BEING ABUSED, NEGLECTED, OR EXPLOITED BY
5 THE SUPPORTER, THE PERSON SHALL REPORT THE ALLEGED ABUSE, NEGLECT,
6 OR EXPLOITATION TO THE DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES
7 BY CALLING THE ABUSE HOTLINE AT 1-800-252-5400 OR ONLINE AT
8 WWW.TXABUSEHOTLINE.ORG.

9 (b) A supported decision-making agreement may be in any form
10 not inconsistent with Subsection (a) and the other requirements of
11 this chapter.

12 SUBCHAPTER C. DUTY OF CERTAIN PERSONS WITH RESPECT TO AGREEMENT

13 Sec. 1357.101. RELIANCE ON AGREEMENT; LIMITATION OF
14 LIABILITY. (a) A person who receives the original or a copy of a
15 supported decision-making agreement shall rely on the agreement.

16 (b) A person is not subject to criminal or civil liability
17 and has not engaged in professional misconduct for an act or
18 omission if the act or omission is done in good faith and in
19 reliance on a supported decision-making agreement.

20 Sec. 1357.102. REPORTING OF SUSPECTED ABUSE, NEGLECT, OR
21 EXPLOITATION. If a person who receives a copy of a supported
22 decision-making agreement or is aware of the existence of a
23 supported decision-making agreement has cause to believe that the
24 adult with a disability is being abused, neglected, or exploited by
25 the supporter, the person shall report the alleged abuse, neglect,
26 or exploitation to the Department of Family and Protective Services
27 in accordance with Section 48.051, Human Resources Code.

1 SECTION 24. (a) Except as otherwise provided by this
2 section, the changes in law made by this Act apply to:

3 (1) a guardianship created before, on, or after the
4 effective date of this Act; and

5 (2) an application for a guardianship pending on, or
6 filed on or after, the effective date of this Act.

7 (b) Sections 1054.004 and 1054.054, Estates Code, as
8 amended by this Act, apply only to a guardianship proceeding for
9 which a court has appointed a guardian ad litem or attorney ad litem
10 to represent the interests of a proposed ward on or after the
11 effective date of this Act.

12 (c) Sections 1054.201, 1101.101, 1101.103, 1101.151,
13 1101.152, and 1101.153, Estates Code, as amended by this Act, apply
14 only to a guardianship proceeding filed on or after the effective
15 date of this Act. A guardianship proceeding filed before the
16 effective date of this Act is governed by the law in effect on the
17 date the proceeding was filed, and the former law is continued in
18 effect for that purpose.

19 (d) Section 1101.001, Estates Code, as amended by this Act,
20 applies only to an application for the appointment of a guardian
21 filed on or after the effective date of this Act. An application
22 for the appointment of a guardian filed before the effective date of
23 this Act is governed by the law in effect on the date the
24 application was filed, and the former law is continued in effect for
25 that purpose.

26 (e) Section 1202.051, Estates Code, as amended by this Act,
27 applies only to an application for the restoration of a ward's

1 capacity or the modification of a ward's guardianship that is filed
2 on or after the effective date of this Act. An application for the
3 restoration of a ward's capacity or the modification of a ward's
4 guardianship that is filed before the effective date of this Act is
5 governed by the law in effect on the date the application was filed,
6 and the former law is continued in effect for that purpose.

7 (f) Sections 1202.151, 1202.152, 1202.153, 1202.154, and
8 1202.156, Estates Code, as amended by this Act, apply only to a
9 proceeding for the restoration of a ward's capacity or the
10 modification of a ward's guardianship that is filed on or after the
11 effective date of this Act. An application for the restoration of a
12 ward's capacity or the modification of a ward's guardianship that is
13 filed before the effective date of this Act is governed by the law
14 in effect on the date the application was filed, and the former law
15 is continued in effect for that purpose.

16 SECTION 25. This Act takes effect September 1, 2015.

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION

May 11, 2015

TO: Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB39 by Smithee (Relating to guardianships for incapacitated persons and to substitutes for guardianships for certain adults with disabilities.), **As Passed 2nd House**

No significant fiscal implication to the State is anticipated.

The bill would amend the Estates Code to provide alternatives to guardianship for incapacitated persons that would meet the needs of a proposed ward and avoid the need for the appointment of a guardian. The bill would require a physician's certificate of medical examination accompanying a guardianship application to include additional information and would require judges and attorneys to consider if a ward could retain the right to make decisions for themselves about their personal residence. In addition, the bill would require a guardian to obtain a court's permission and for the guardian to notify the ward prior to moving a ward into a more restrictive environment, with the ward able to object to such a move. The bill would require an attorney filing an application for guardianship to obtain continuing legal education in guardianship prior to filing. In addition, the bill defines a Supported Decision-Making Agreement (SDMA) as a new alternative to guardianship and outlines the scope and terms of this agreement. The agreement would extend until terminated by either party, the terms of the SDMA, or if the Department of Family and Protective Services finds that the adult with disability has been abused, neglected, or exploited by the supporter or if the supporter is found criminally liable for abuse, neglect, or exploitation conduct.

Based on the analysis of the Office of Court Administration and the Department of Family and Protective Services, duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing resources.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 530 Family and Protective Services, Department of

LBB Staff: UP, SD, AG, GDz, FR

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION

May 6, 2015

TO: Honorable Joan Huffman, Chair, Senate Committee on State Affairs

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB39 by Smithee (Relating to guardianships for incapacitated persons and to substitutes for guardianships for certain adults with disabilities.), **Committee Report 2nd House, Substituted**

No significant fiscal implication to the State is anticipated.

The bill would amend the Estates Code to provide alternatives to guardianship for incapacitated persons that would meet the needs of a proposed ward and avoid the need for the appointment of a guardian. The bill would require a physician's certificate of medical examination accompanying a guardianship application to include additional information and would require judges and attorneys to consider if a ward could retain the right to make decisions for themselves about their personal residence. In addition, the bill would require a guardian to obtain a court's permission and for the guardian to notify the ward prior to moving a ward into a more restrictive environment, with the ward able to object to such a move. The bill would require an attorney filing an application for guardianship to obtain continuing legal education in guardianship prior to filing. In addition, the bill defines a Supported Decision-Making Agreement (SDMA) as a new alternative to guardianship and outlines the scope and terms of this agreement. The agreement would extend until terminated by either party, the terms of the SDMA, or if the Department of Family and Protective Services finds that the adult with disability has been abused, neglected, or exploited by the supporter or if the supporter is found criminally liable for abuse, neglect, or exploitation conduct.

Based on the analysis of the Office of Court Administration and the Department of Family and Protective Services, duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing resources.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 530 Family and Protective Services, Department of

LBB Staff: UP, AG, GDz, FR

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION

April 29, 2015

TO: Honorable Joan Huffman, Chair, Senate Committee on State Affairs

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB39 by Smithee (Relating to guardianships for incapacitated persons.), **As Engrossed**

No significant fiscal implication to the State is anticipated.

The bill would amend the Estates Code to provide alternatives to guardianship for incapacitated persons that would meet the needs of a proposed ward and avoid the need for the appointment of a guardian. The bill would require a physician's certificate of medical examination accompanying a guardianship application to include additional information and would require judges and attorneys to consider if a ward could retain the right to make decisions for themselves about their personal residence. In addition, the bill would require a guardian to obtain a court's permission prior to moving a ward into a more restrictive environment and would require an attorney filing an application for guardianship to obtain continuing legal education in guardianship prior to filing. Based on the analysis of the Office of Court Administration, duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing resources.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council

LBB Staff: UP, AG, GDz, FR

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION

April 6, 2015

TO: Honorable John T. Smithee, Chair, House Committee on Judiciary & Civil Jurisprudence

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB39 by Smithee (Relating to guardianships for incapacitated persons.), **As Introduced**

No significant fiscal implication to the State is anticipated.

The bill would amend the Estates Code to provide alternatives to guardianship for incapacitated persons that would meet the needs of a proposed ward and avoid the need for the appointment of a guardian. The bill would require a physician's certificate of medical examination accompanying a guardianship application to include additional information and would require judges and attorneys to consider if a ward could retain the right to make decisions for themselves about their personal residence. In addition, the bill would require a guardian to obtain a court's permission prior to moving a ward into a more restrictive environment and would require an attorney filing an application for guardianship to obtain continuing legal education in guardianship prior to filing. Based on the analysis of the Office of Court Administration, duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing resources.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council

LBB Staff: UP, FR, GDz