

House Bill 2665
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SECTION 1. Subchapter B, Chapter 1151, Estates Code, is amended by adding Sections 1151.055 and 1151.056 to read as follows:

Sec. 1151.055. APPLICATION BY CHILDREN FOR ACCESS TO WARD; HEARING AND COURT ORDER.

(a) A child of a ward may file an application with the court requesting access to the ward, including the opportunity to establish visitation or communication with the ward.

(b) Except as provided by Subsection (c), the court shall schedule a hearing on the application not later than the 60th day after the date an application is filed under Subsection (a). The court may grant a continuance of a hearing under this section for good cause.

(c) If an application under Subsection (a) states that the ward's health is in significant decline or that the ward's death may be imminent, the court shall conduct an emergency hearing as soon as practicable, but not later than the 10th day after the date the application is filed under Subsection (a).

(d) The guardian of a ward with respect to whom an application is filed under Subsection (a) shall be personally served with a copy of the application and cited to appear at a hearing under:

(1) Subsection (b) at least 21 days before the date of the hearing; and

(2) Subsection (c) as soon as practicable.

(e) The court shall issue an order after notice and a hearing under this section. An order issued under this section may:

(1) prohibit the guardian of a ward from preventing the applicant access to the ward if the applicant shows by a

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SECTION 1. Subchapter B, Chapter 1151, Estates Code, is amended by adding Sections 1151.055 and 1151.056 to read as follows:

Sec. 1151.055. APPLICATION BY CERTAIN RELATIVES FOR ACCESS TO WARD; HEARING AND COURT ORDER.

(a) A relative of a ward may file an application with the court requesting access to the ward, including the opportunity to establish visitation or communication with the ward. [FA1(1)-(2)]

(a) This section applies to a relative described under Sections 1101.001(b)(13)(A)-(D). [FA1(3)]

(b) Except as provided by Subsection (c), the court shall schedule a hearing on the application not later than the 60th day after the date an application is filed under Subsection (a). The court may grant a continuance of a hearing under this section for good cause.

(c) If an application under Subsection (a) states that the ward's health is in significant decline or that the ward's death may be imminent, the court shall conduct an emergency hearing as soon as practicable, but not later than the 10th day after the date the application is filed under Subsection (a).

(d) The guardian of a ward with respect to whom an application is filed under Subsection (a) shall be personally served with a copy of the application and cited to appear at a hearing under:

(1) Subsection (b) at least 21 days before the date of the hearing; and

(2) Subsection (c) as soon as practicable.

(e) The court shall issue an order after notice and a hearing under this section. An order issued under this section may:

(1) prohibit the guardian of a ward from preventing the applicant access to the ward if the applicant shows by a

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preponderance of the evidence that:

(A) the guardian's past act or acts prevented access to the ward; and

(B) the ward desires contact with the applicant; and

(2) specify the frequency, time, place, location, and any other terms of access.

(f) In deciding whether to issue or modify an order issued under this section, the court:

(1) shall consider:

(A) whether any protective orders have been issued against the applicant to protect the ward;

(B) whether a court or other state agency has found that the applicant abused, neglected, or exploited the ward; and

(C) the best interest of the ward; and

(2) may consider whether:

(A) visitation by the applicant should be limited to situations in which a third person, specified by the court, is present; or

(B) visitation should be suspended or denied.

(g) The court may, in its discretion, award the prevailing party in any action brought under this section court costs and attorney's fees, if any.

Sec. 1151.056. GUARDIAN'S DUTY TO INFORM CERTAIN RELATIVES ABOUT WARD'S HEALTH AND RESIDENCE. (a) This section applies with respect to relatives described under Sections 1101.001(b)(13)(A)-(D).

(b) Except as provided by Subsection (e), the guardian of an adult ward shall as soon as practicable inform relatives if:

(1) the ward dies;

(2) the ward is admitted to a medical facility for acute care for a period of three days or more;

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preponderance of the evidence that:

(A) the guardian's past act or acts prevented access to the ward; and

(B) the ward desires contact with the applicant; and

(2) specify the frequency, time, place, location, and any other terms of access.

(f) In deciding whether to issue or modify an order issued under this section, the court:

(1) shall consider:

(A) whether any protective orders have been issued against the applicant to protect the ward;

(B) whether a court or other state agency has found that the applicant abused, neglected, or exploited the ward; and

(C) the best interest of the ward; and

(2) may consider whether:

(A) visitation by the applicant should be limited to situations in which a third person, specified by the court, is present; or

(B) visitation should be suspended or denied.

(g) The court may, in its discretion, award the prevailing party in any action brought under this section court costs and attorney's fees, if any. ~~Court costs or attorney's fees awarded under this subsection may not be paid from the ward's estate.~~

[FA1(4)]

Sec. 1151.056. GUARDIAN'S DUTY TO INFORM CERTAIN RELATIVES ABOUT WARD'S HEALTH AND RESIDENCE. (a) This section applies with respect to relatives described under Sections 1101.001(b)(13)(A)-(D).

(b) Except as provided by Subsection (e), the guardian of an adult ward shall as soon as practicable inform relatives if:

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- (3) the ward's residence has changed; or
(4) the ward is staying at a location other than the ward's residence for a period that exceeds one calendar week.
(c) In the case of the ward's death, the guardian shall inform relatives of any funeral arrangements and the location of the ward's final resting place.
(d) A relative entitled to notice about a ward under this section may elect to not receive the notice by providing a written request to that effect to the guardian. A guardian shall file any written request received by the guardian under this subsection with the court.
(e) On motion filed with the court showing good cause and after a relative is provided an opportunity to present evidence to the court under Subsection (f), the court, subject to Subsection (g), may relieve the guardian of the duty to provide notice about a ward to a relative under this section.
(f) A copy of the motion required under Subsection (e) shall be provided to the relative specifically named in the motion unless the guardian was unable to locate the relative after making reasonable efforts to discover and locate the relative. The relative provided notice under this subsection may file evidence with the court in response to the motion, and the court shall consider that evidence before making a decision on the motion.
(g) In considering a motion under Subsection (e), the court shall relieve the guardian of the duty to provide notice about a ward to a relative under this section if the court finds that:
(1) the motion includes a written request from a relative electing to not receive the notice;
(2) the guardian was unable to locate the relative after making reasonable efforts to discover and locate the relative;
(3) the guardian was able to locate the relative, but was

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(4) the ward is staying at a location other than the ward's residence for a period that exceeds one calendar week.
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(f) A copy of the motion required under Subsection (e) shall be provided to the relative specifically named in the motion unless the guardian was unable to locate the relative after making reasonable efforts to discover and locate the relative. The relative provided notice under this subsection may file evidence with the court in response to the motion, and the court shall consider that evidence before making a decision on the motion.
(g) In considering a motion under Subsection (e), the court shall relieve the guardian of the duty to provide notice about a ward to a relative under this section if the court finds that:
(1) the motion includes a written request from a relative electing to not receive the notice;
(2) the guardian was unable to locate the relative after making reasonable efforts to discover and locate the relative;
(3) the guardian was able to locate the relative, but was

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unable to establish communication with the relative after making reasonable efforts to establish communication;

(4) a protective order was issued against the relative to protect the ward;

(5) a court or other state agency has found that the relative abused, neglected, or exploited the ward; or

(6) notice is not in the best interest of the ward.

SECTION 2. The changes in law made by this Act apply to a guardianship created before, on, or after the effective date of this Act.

SECTION 3. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2015.

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unable to establish communication with the relative after making reasonable efforts to establish communication;

(4) a protective order was issued against the relative to protect the ward;

(5) a court or other state agency has found that the relative abused, neglected, or exploited the ward; or

(6) notice is not in the best interest of the ward.

SECTION 2. Same as House version.

SECTION 3. Same as House version.

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