

BILL ANALYSIS

Senate Research Center
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S.B. 1710
By: Zaffirini
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Recently, a Texas Supreme Court opinion indicated that when a guardian dies, resigns, or becomes unable to serve, the person under guardianship cannot request restoration of rights until a new guardian has been appointed. The court rationale is that without an appointed guardian, the courts could not address the question as to what degree to restrict the guardian's power, if at all, in proportion to the person's regained capacity. Conceptually, however, it is possible for a court to evaluate a person's capacity first and then appoint a guardian with limited or absolute powers. This is how the initial decision to appoint a guardian is made, and a restoration petition should be no different. In more practical terms, precedent would create serious financial and procedural barriers for persons with disabilities who had a working relationship with their original guardian (e.g., a parent), but who do not want to be placed under the guardianship of a stranger or other family member.

Another issue regarding restoration is the lack of information available regarding how many restoration petitions are made. Specifically, courts were not keeping track of this information. Some courts may be ignoring persons' under guardianship requests for restoration without conducting the statutorily required investigation. What's more, some court personnel misunderstand the law as requiring a new medical evaluation before a person can make a restoration request and deny requests on this ground, while, in fact, current law requires that the court investigate the conditions of the person without requesting a medical evaluation first.

S.B. 1710 provides that if a guardian dies, is removed, or becomes unable to serve, the court is not required to appoint a new guardian before the court can consider an application for restoration of rights. This would make it easier for persons to be restored without having to go through the expense of getting a new guardian appointed when it not may be needed.

What's more, S.B. 1710 requires the court to provide acknowledgment in writing of a person under guardianship's request to have his or her rights restored. This should leave a paper trail regarding these requests that can be used to evaluate this process. S.B. 1710 also clarifies that no new medical examination is required before a person can request restoration. This would remove an excuse that court personnel have used not to investigate the condition of a person when the person requests restoration of rights.

As proposed, S.B. 1710 amends current law relating to applications for the complete restoration of a ward's capacity or modification of a guardianship.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 1202.051, Estates Code, as follows:

Sec. 1202.051. APPLICATION AUTHORIZED. (a) Creates this subsection from existing text. Authorizes a ward or any person interested in the ward's welfare,

notwithstanding Section 1055.003 (Intervention by Interested Person), to file a written application with the court for a certain order.

(b) Prohibits the court, if the guardian of a ward who is the subject of an application filed under Subsection (a) has resigned, was removed, or has died, from requiring the appointment of a successor guardian before considering the application.

SECTION 2. Amends Section 1202.054, Estates Code, by adding Subsections (b-1) and (b-2) and amending Subsection (c), as follows:

(b-1) Provides that a written letter or certificate from a physician as described by Section 1202.152 (Physician's Letter or Certificate Required) is not required before the appointment of the court investigator or a guardian ad litem under Subsection (b).

(b-2) Requires the court to, not later than the 30th day after the date the court receives an informal letter from a ward under Subsection (a), send the ward a letter by certified mail acknowledging receipt of the informal letter and advising the ward of the date on which the court appointed the court investigator or guardian ad litem.

(c) Requires the court investigator or guardian ad litem to file with the court and provide to the ward, rather than file with the court, a report of the investigation's findings and conclusions.

SECTION 3. (a) Provides that the changes in law made by this Act to Section 1202.051, Estates Code, apply to an application for the complete restoration of a ward's capacity or modification of a guardianship filed before, on, or after the effective date of this Act.

(b) Makes application of Section 1202.054, Estates Code, as added by this Act, prospective.

SECTION 4. Effective date: September 1, 2017.