

BILL ANALYSIS

C.S.H.B. 1675
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Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

State law requires that parental rights be transferred to a child when the child turns 18 years of age unless the parent or other person has been granted a guardianship, which can be a difficult and challenging process that requires costly legal advice and other out-of-pocket expense. There are concerns that the guardianship process is based on the presumption that the parents are no longer fit to raise their child and, consequently, places the burden on parents to prove that they are fit, even if their parenting has met a reasonable standard or even exceptional standard of care. Furthermore, the process requires an attorney ad litem to come into the home, investigate the personal lives of all involved, and file a report with the court. C.S.H.B. 1675 seeks to make the guardianship process less invasive and burdensome for parents of children who require guardianship after turning 18 by setting out an alternative application process that does not require an initial hearing or an attorney or court investigators.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 1675 amends the Estates Code to set out procedures for the appointment of an independent guardian of the person for certain minors. The bill applies to a parent and primary caregiver of a minor ward who, as follows:

- has a profound intellectual disability, as diagnosed by a licensed physician or as determined following an examination by a licensed or certified psychologist; and
- because of such incapacity, will require a guardianship as an adult.

An applicant for the appointment of a guardian for a minor ward or a minor ward requiring guardianship as an adult may present to the court the following documents:

- a sworn affidavit stating certain applicable information;
- a written letter or certificate that meets statutory requirements relating to a determination of incapacity or intellectual disability; and
- a written request:
 - that the court make the requisite findings and appoint the guardian without a hearing, the appointment of an attorney ad litem, or an investigation by a court investigator; and
 - that no action will be had in the probate court other than a review regarding the continuation, modification, or termination of the guardianship at the court's discretion but not more frequently than once every five years, unless the

guardian of the person of the ward is also the guardian of the estate of the ward, as required by the bill.

If the court is able to make the requisite findings to determine a guardianship of the person is necessary following the receipt of these documents, the court must appoint the applicant as guardian of the person of the proposed ward and fulfill the written request, unless certain conditions are met. The bill provides the following:

- a guardianship created under the bill's provisions is considered an independent guardianship of the person of a ward; and
- a guardian appointed under the bill's provisions is considered an independent guardian of the person of a ward.

C.S.H.B. 1675 provides for the sealing of certain records and establishes that sealed records are not open for inspection by any person except on further order of the court after notice to the guardian and a finding of good cause or in connection with a criminal or civil proceeding.

C.S.H.B. 1675 exempts a guardian who is not also appointed as guardian of the estate of the ward from the bond generally required for the issuance of letters of guardianship and establishes that such letters of guardianship do not expire unless the guardian is removed or would otherwise be ineligible to serve as guardian.

C.S.H.B. 1675 exempts a guardian of a ward appointed as an independent guardian under the bill's provisions from filing an annual report regarding the maintenance of the ward unless the court finds that it is in the best interest of the ward to do so.

C.S.H.B. 1675 requires the court in which an applicable guardianship proceeding is pending to review the guardianship at the court's discretion but not more frequently than once every five years to determine whether the guardianship should be continued, modified, or terminated unless the guardian of the person of the ward is also the guardian of the estate of the ward.

C.S.H.B. 1675 authorizes the guardian for a minor ward or minor ward requiring guardianship as an adult whose guardianship was created before the bill's effective date to petition the applicable court to authorize that the guardianship be treated on a prospective basis as if the guardianship was created and, if applicable, the guardian appointed, under the bill's provisions.

EFFECTIVE DATE

September 1, 2021.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1675 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute does not include an exception to the requirement that the guardian appointed under the bill's provisions file an annual account.

The substitute includes an exception in the bill provision requiring a court to periodically review a guardianship created under the bill's provision to determine whether the guardianship should be continued, modified, or terminated specifying that the review requirement applies unless the guardian of the person is also the guardian of the estate of the ward.

The substitute includes the following specifications:

- that the type of guardianship to which the bill applies is a guardianship of the person; and

- that a parent who is appointed as an independent guardian under the bill's provisions is not subject to the bond requirement for the issuance of letters of guardianship unless the parent is also appointed as guardian of the estate of the ward.