

BILL ANALYSIS

H.B. 2439
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Judiciary & Civil Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Establishing a guardianship is difficult when a person is incapacitated because of a catastrophic medical event, such as a massive heart attack or stroke, that leaves the person unconscious with no prognosis of regaining consciousness. Such incapacitated persons are unable to consent to any type of representation that may be needed in the pursuit of disability benefits and it is noted that the Social Security Administration does not recognize a medical or durable power of attorney in these situations. This leaves families with incapacitated loved ones facing a difficult and lengthy path in the pursuit of disability claims that is particularly burdensome when the time to act on behalf of the incapacitated individual may be limited. H.B. 2439 seeks to establish a temporary guardianship with the limited power to receive funds under the federal Social Security Act for an incapacitated person.

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

H.B. 2439 amends the Estates Code to require a court to appoint a temporary guardian with the limited power to receive funds under the federal Social Security Act, including funds in the form of Supplemental Security Income (SSI) benefits or funds in the form of Social Security Disability Insurance (SSDI) benefits if the court is presented with substantial evidence that a person may be an incapacitated person and has probable cause to believe that the immediate appointment of a guardian is required. The person for whom a temporary guardian is appointed retains all rights and powers that are not specifically granted to the person's temporary guardian by court order and may not be presumed to be incapacitated. The following persons are eligible for appointment as temporary guardian:

- the person's spouse;
- the person's reasonably available adult children;
- the person's parents; or
- the person's nearest living relative.

H.B. 2439 requires a sworn, written application for the appointment of a temporary guardian to be filed before the court appoints the temporary guardian and requires the application to state the following:

- the name and address of the person who is the subject of the guardianship proceeding;

- the appointment is requested for the limited purpose of receiving funds under the federal Social Security Act, including a description of the specific benefits sought;
- the facts and reasons supporting the allegations and requests;
- the proposed temporary guardian's name, address, and qualification; and
- the applicant's name, address, and interest.

The bill requires the clerk, on the filing of the application, to issue notice to be served on the proposed ward and the proposed temporary guardian named in the application, if that person is not the applicant. The bill requires the notice to describe the rights of the parties and the date, time, place, purpose, and possible consequences of a hearing on the application. A copy of the application must be attached to the notice.

H.B. 2439 requires the court, immediately after the application is filed, to issue an order setting a certain date for the hearing on the application. The bill requires the hearing to be held not later than 48 hours after the time the application is filed but authorizes the proposed ward to consent to postpone the hearing for a period not to exceed seven days after the date the application is filed. An application for temporary guardianship takes precedence over all matters except older matters of the same character.

H.B. 2439 authorizes the proposed ward to appear and move for the dismissal of the application. The bill requires the proposed ward, at least one day before making the motion, to provide notice to the party who filed the application and requires the court to hear and determine the motion as expeditiously as justice requires. The bill establishes that, at a hearing relating to the appointment of the temporary guardianship, the proposed ward has the right to:

- receive prior notice;
- be represented by counsel;
- be present;
- present evidence;
- confront and cross-examine witnesses; and
- a closed hearing if requested by the proposed ward.

If the applicant for the guardianship is not the proposed temporary guardian, a temporary guardianship may not be granted before a hearing on the application unless the proposed temporary guardian appears in court.

H.B. 2439 requires the court, not later than 24 hours after the time the hearing concludes, to appoint a temporary guardian by written order if the court determines that the applicant has established that there is substantial evidence that the proposed ward is an incapacitated person and that the immediate appointment of a guardian is required for the purposes described by the bill's provisions. The bill requires the court to assign to the temporary guardian only those powers and duties that are necessary to receive the funds specified in the application. The order appointing the temporary guardian must describe the reasons for the temporary guardianship and the powers and duties of the temporary guardian.

H.B. 2439 provides that a person appointed to serve as temporary guardian is not required to give a bond. If the court appoints a temporary guardian after the hearing, all court costs, including attorney's fees, may be assessed as provided by applicable state law.

H.B. 2439 establishes that the court order appointing the temporary guardian takes effect without the necessity for issuance of letters of guardianship when the temporary guardian takes the applicable required oath. The bill requires the clerk to note compliance with the oath requirement by the appointed temporary guardian on a certificate attached to the order. The order appointing the temporary guardian is evidence of the temporary guardian's authority to act within the scope of the powers and duties stated in the order. The bill prohibits the clerk from issuing certified copies of the order until the oath requirement is satisfied.

H.B. 2439 establishes that provisions of the Estates Code relating to the guardianship of the estates of incapacitated persons apply to the temporary guardianship to the extent the provisions may be made applicable.

H.B. 2439 provides the following:

- the term of a temporary guardian expires on the earliest of:
 - the 30th day after the date the court order appointing the temporary guardian takes effect, except that the court may grant one extension of that time for not longer than 30 days; or
 - the date a permanent guardian appointed by the court for the proposed ward qualifies to serve as the ward's guardian;
- the temporary guardian, at the expiration of the guardianship, must file with the court clerk a sworn list of all estate property that has come into the temporary guardian's possession and a full exhibit and account of all the temporary guardian's acts as temporary guardian and the court must act on the list, exhibit, and account;
- the court, when the court order appointing the temporary guardian expires or ceases to be effective for any reason, must immediately enter an order requiring the temporary guardian to deliver the estate remaining in the temporary guardian's possession to the person legally entitled to possession of the estate; and
- the temporary guardian must be discharged on proof of the delivery of the estate.

EFFECTIVE DATE

September 1, 2021.