

BILL ANALYSIS

C.S.H.B. 653
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Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Guardianship proceedings are typically initiated to ensure that a ward's best interests are protected and that their needs are met. However, guardianship proceedings can be complicated and time-consuming, particularly in cases involving minors or individuals with profound intellectual disabilities. The current legal framework for guardianship proceedings does not adequately protect the identity and security of these wards as they are submitted to constant evaluations by the state court system. C.S.H.B. 653 seeks to ensure that the rights and interests of these vulnerable individuals are adequately protected through appropriate guardianship arrangements by implementing a comprehensive framework for guardianships of such wards who are minors or were minors when their guardianship proceedings commenced.

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. 653 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:

- 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.

C.S.H.B. 653 authorizes the applicant for the appointment of a guardian for a minor ward or a minor ward requiring guardianship as an adult, if the applicant is the parent and primary caregiver of the proposed ward, to present to the court the following documents:

- a sworn affidavit that states that the applicant is a parent of the proposed ward and, as follows:
 - is and has been the primary caregiver of the proposed ward throughout all or most of the proposed ward's childhood;
 - has never been the subject of a substantiated allegation, complaint, or investigation concerning the abuse, neglect, or exploitation of the proposed ward;
 - seeks to be appointed guardian of the person of the proposed ward; and
 - is not disqualified from serving as guardian under applicable statutory provisions;

- a written letter or certificate that meets certain statutory requirements relating to a determination of incapacity or intellectual disability; and
- a written request:
 - that the court make the requisite findings under applicable state law and appoint the guardian without 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 ward's person is also the guardian of the ward's estate, 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 parent as guardian of the proposed ward's person without appointing a court investigator or the continued appointment of an attorney ad litem, unless the parent is disqualified from serving as guardian or the court has any reason to believe that an assertion in the affidavit is untrue or finds that the appointment is not in the proposed ward's best interest. 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. 653 provides for the sealing of certain court records relating to the guardian appointment 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. 653 exempts a guardian who is not also appointed as guardian of the ward's estate from the bond generally required for the issuance of letters of guardianship and establishes that, unless the court finds that it is not in the ward's best interest, such letters of guardianship issued to a guardian appointed under the bill's provisions do not expire unless the guardian is removed or would otherwise be ineligible to serve as guardian.

C.S.H.B. 653 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 ward's best interest to do so.

C.S.H.B. 653 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 created under the bill's provisions should be continued, modified, or terminated unless the guardian of the ward's person is also the guardian of the ward's estate. The bill authorizes the court that receives a claim the guardianship is no longer in the ward's best interest to review the matter and take any action the court determines necessary.

C.S.H.B. 653 applies to a guardianship that is pending or commenced on or after the bill's effective date.

C.S.H.B. 653 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

On passage, or, if the bill does not receive the necessary vote, September 1, 2023.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 653 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute includes a specification absent from the introduced that the applicable allegation, complaint, or investigation included in the sworn affidavit presented to the court is a substantiated allegation, complaint, or investigation.