

CONFERENCE COMMITTEE REPORT FORM

Austin, Texas

May 29, 2015

Date

Honorable Dan Patrick
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on Senate Bill 1882 have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Zaffirini
Senator Judith Zaffirini, Chair

Senfonia Thompson
Rep. Senfonia Thompson - Chair

Craig Estes
Senator Craig Estes

Rep. Ana Hernandez

Joan Huffman
Senator Joan Huffman

Andrew Murr
Rep. Andrew Murr

Jane Nelson
Senator Jane Nelson

Rep. Richard Raymond

Schwertner
On the part of the Senate
Senator Charles Schwertner

John Wray
On the part of the House
Rep. John Wray

Note to Conference Committee Clerk:

Please type the names of the members of the Conference Committee under the lines provided for signature. Those members desiring to sign the report should sign each of the six copies. Attach a copy of the Conference Committee Report and a Section by Section side by side comparison to each of the six reporting forms. The original and two copies are filed in house of origin of the bill, and three copies in the other house.

CONFERENCE COMMITTEE REPORT

3rd Printing

S.B. No. 1882

A BILL TO BE ENTITLED

1 AN ACT

2 relating to a bill of rights for wards under guardianship.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

4 SECTION 1. Chapter 1151, Estates Code, is amended by adding
5 Subchapter H to read as follows:

6 SUBCHAPTER H. RIGHTS OF WARDS

7 Sec. 1151.351. BILL OF RIGHTS FOR WARDS. (a) A ward has
8 all the rights, benefits, responsibilities, and privileges granted
9 by the constitution and laws of this state and the United States,
10 except where specifically limited by a court-ordered guardianship
11 or where otherwise lawfully restricted.

12 (b) Unless limited by a court or otherwise restricted by
13 law, a ward is authorized to the following:

14 (1) to have a copy of the guardianship order and
15 letters of guardianship and contact information for the probate
16 court that issued the order and letters;

17 (2) to have a guardianship that encourages the
18 development or maintenance of maximum self-reliance and
19 independence in the ward with the eventual goal, if possible, of
20 self-sufficiency;

21 (3) to be treated with respect, consideration, and
22 recognition of the ward's dignity and individuality;

23 (4) to reside and receive support services in the most
24 integrated setting, including home-based or other community-based

1 settings, as required by Title II of the Americans with
2 Disabilities Act (42 U.S.C. Section 12131 et seq.);

3 (5) to consideration of the ward's current and
4 previously stated personal preferences, desires, medical and
5 psychiatric treatment preferences, religious beliefs, living
6 arrangements, and other preferences and opinions;

7 (6) to financial self-determination for all public
8 benefits after essential living expenses and health needs are met
9 and to have access to a monthly personal allowance;

10 (7) to receive timely and appropriate health care and
11 medical treatment that does not violate the ward's rights granted
12 by the constitution and laws of this state and the United States;

13 (8) to exercise full control of all aspects of life not
14 specifically granted by the court to the guardian;

15 (9) to control the ward's personal environment based
16 on the ward's preferences;

17 (10) to complain or raise concerns regarding the
18 guardian or guardianship to the court, including living
19 arrangements, retaliation by the guardian, conflicts of interest
20 between the guardian and service providers, or a violation of any
21 rights under this section;

22 (11) to receive notice in the ward's native language,
23 or preferred mode of communication, and in a manner accessible to
24 the ward, of a court proceeding to continue, modify, or terminate
25 the guardianship and the opportunity to appear before the court to
26 express the ward's preferences and concerns regarding whether the
27 guardianship should be continued, modified, or terminated;

1 (12) to have a court investigator, guardian ad litem,
2 or attorney ad litem appointed by the court to investigate a
3 complaint received by the court from the ward or any person about
4 the guardianship;

5 (13) to participate in social, religious, and
6 recreational activities, training, employment, education,
7 habilitation, and rehabilitation of the ward's choice in the most
8 integrated setting;

9 (14) to self-determination in the substantial
10 maintenance, disposition, and management of real and personal
11 property after essential living expenses and health needs are met,
12 including the right to receive notice and object about the
13 substantial maintenance, disposition, or management of clothing,
14 furniture, vehicles, and other personal effects;

15 (15) to personal privacy and confidentiality in
16 personal matters, subject to state and federal law;

17 (16) to unimpeded, private, and uncensored
18 communication and visitation with persons of the ward's choice,
19 except that if the guardian determines that certain communication
20 or visitation causes substantial harm to the ward:

21 (A) the guardian may limit, supervise, or
22 restrict communication or visitation, but only to the extent
23 necessary to protect the ward from substantial harm; and

24 (B) the ward may request a hearing to remove any
25 restrictions on communication or visitation imposed by the guardian
26 under Paragraph (A);

27 (17) to petition the court and retain counsel of the

1 ward's choice who holds a certificate required by Subchapter E,
2 Chapter 1054, to represent the ward's interest for capacity
3 restoration, modification of the guardianship, the appointment of a
4 different guardian, or for other appropriate relief under this
5 subchapter, including a transition to a supported decision-making
6 agreement, except as limited by Section 1054.006;

7 (18) to vote in a public election, marry, and retain a
8 license to operate a motor vehicle, unless restricted by the court;

9 (19) to personal visits from the guardian or the
10 guardian's designee at least once every three months, but more
11 often, if necessary, unless the court orders otherwise;

12 (20) to be informed of the name, address, phone
13 number, and purpose of Disability Rights Texas, an organization
14 whose mission is to protect the rights of, and advocate for, persons
15 with disabilities, and to communicate and meet with representatives
16 of that organization;

17 (21) to be informed of the name, address, phone
18 number, and purpose of an independent living center, an area agency
19 on aging, an aging and disability resource center, and the local
20 mental health and intellectual and developmental disability
21 center, and to communicate and meet with representatives from these
22 agencies and organizations;

23 (22) to be informed of the name, address, phone
24 number, and purpose of the Judicial Branch Certification Commission
25 and the procedure for filing a complaint against a certified
26 guardian;

27 (23) to contact the Department of Family and

1 Protective Services to report abuse, neglect, exploitation, or
2 violation of personal rights without fear of punishment,
3 interference, coercion, or retaliation; and

4 (24) to have the guardian, on appointment and on
5 annual renewal of the guardianship, explain the rights delineated
6 in this subsection in the ward's native language, or preferred mode
7 of communication, and in a manner accessible to the ward.

8 (c) This section does not supersede or abrogate other
9 remedies existing in law.

10 SECTION 2. This Act takes effect immediately if it receives
11 a vote of two-thirds of all the members elected to each house, as
12 provided by Section 39, Article III, Texas Constitution. If this
13 Act does not receive the vote necessary for immediate effect, this
14 Act takes effect September 1, 2015.

Senate Bill 1882
Conference Committee Report
Section-by-Section Analysis

SENATE VERSION

SECTION 1. Chapter 1151, Estates Code, is amended by adding Subchapter H to read as follows:

SUBCHAPTER H. RIGHTS OF WARDS

Sec. 1151.351. BILL OF RIGHTS FOR WARDS. (a) A ward has all the rights, benefits, responsibilities, and privileges granted by the constitution and laws of this state and the United States, except where specifically limited by a court-ordered guardianship or where otherwise lawfully restricted.

(b) Unless **a right is** limited by a court or otherwise restricted by law, a ward has **the right**:

(1) to have a copy of the guardianship order and letters of guardianship and contact information for the probate court that issued the order and letters;

(2) to have a guardianship that encourages the development or maintenance of maximum self-reliance and independence in the ward with the eventual goal, if possible, of self-sufficiency;

(3) to be treated with respect, consideration, and recognition of the ward's dignity and individuality;

(4) to reside and receive support services in the most integrated setting, including home-based or other community-based settings, as required by Title II of the Americans with Disabilities Act (42 U.S.C. Section 12131 et seq.);

(5) to consideration of the ward's current and previously stated personal preferences, desires, medical and psychiatric treatment preferences, religious beliefs, living arrangements, and other preferences and opinions;

(6) to financial self-determination for all public benefits after essential living expenses and health needs are met and to have access to a monthly personal allowance;

(7) to receive timely and appropriate health care and medical

HOUSE VERSION (IE)

SECTION 1. Same as Senate version except in Subsection (b) **entitles** a ward to the specified items unless limited by a court or otherwise restricted by law. [FA1(1)-(2)]

CONFERENCE

SECTION 1. Same as House version except in Subsection (b) **authorizes** a ward to the specified items unless limited by a court or otherwise restricted by law.

[The conference committee may have exceeded the limitations imposed on its jurisdiction, but only the presiding officer can make the final determination on this issue.]

Senate Bill 1882
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treatment that does not violate the ward's rights granted by the constitution and laws of this state and the United States;

(8) to exercise full control of all aspects of life not specifically granted by the court to the guardian;

(9) to control the ward's personal environment based on the ward's preferences;

(10) to complain or raise concerns regarding the guardian or guardianship to the court, including living arrangements, retaliation by the guardian, conflicts of interest between the guardian and service providers, or a violation of any rights under this section;

(11) to receive notice in the ward's native language, or preferred mode of communication, and in a manner accessible to the ward, of a court proceeding to continue, modify, or terminate the guardianship and the opportunity to appear before the court to express the ward's preferences and concerns regarding whether the guardianship should be continued, modified, or terminated;

(12) to have a court investigator, guardian ad litem, or attorney ad litem appointed by the court to investigate a complaint received by the court from the ward or any person about the guardianship;

(13) to participate in social, religious, and recreational activities, training, employment, education, habilitation, and rehabilitation of the ward's choice in the most integrated setting;

(14) to self-determination in the substantial maintenance, disposition, and management of real and personal property after essential living expenses and health needs are met, including the right to receive notice and object about the substantial maintenance, disposition, or management of clothing, furniture, vehicles, and other personal effects;

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(15) to personal privacy and confidentiality in personal matters, subject to state and federal law;

(16) to unimpeded, private, and uncensored communication and visitation with persons of the ward's choice, except that if the guardian determines that certain communication or visitation causes substantial harm to the ward;

(A) the guardian may limit, supervise, or restrict communication or visitation, but only to the extent necessary to protect the ward from substantial harm; and

(B) the ward may request a hearing to remove any restrictions on communication or visitation imposed by the guardian under Paragraph (A);

(17) to petition the court and retain counsel of the ward's choice who holds a certificate required by Subchapter E, Chapter 1054, to represent the ward's interest for capacity restoration, modification of the guardianship, the appointment of a different guardian, or for other appropriate relief under this subchapter, including a transition to a supported decision-making agreement, except as limited by Section 1054.006;

(18) to vote in a public election, marry, and retain a license to operate a motor vehicle, unless restricted by the court;

(19) to personal visits from the guardian or the guardian's designee at least once every three months, but more often, if necessary, unless the court orders otherwise;

(20) to be informed of the name, address, phone number, and purpose of Disability Rights Texas, an organization whose mission is to protect the rights of, and advocate for, persons with disabilities, and to communicate and meet with representatives of that organization;

(21) to be informed of the name, address, phone number, and purpose of an independent living center, an area agency on aging, an aging and disability resource center, and the local

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mental health and intellectual and developmental disability center, and to communicate and meet with representatives from these agencies and organizations;

(22) to be informed of the name, address, phone number, and purpose of the Judicial Branch Certification Commission and the procedure for filing a complaint against a certified guardian;

(23) to contact the Department of Family and Protective Services to report abuse, neglect, exploitation, or violation of personal rights without fear of punishment, interference, coercion, or retaliation; and

(24) to have the guardian, on appointment and on annual renewal of the guardianship, explain the rights delineated in this subsection in the ward's native language, or preferred mode of communication, and in a manner accessible to the ward.

(c) This section does not supersede or abrogate other remedies existing in law.

SECTION 2. Effective date.

SECTION 2. Same as Senate version.

SECTION 2. Same as Senate version.

**LEGISLATIVE BUDGET BOARD
Austin, Texas**

FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION

May 30, 2015

TO: Honorable Dan Patrick, Lieutenant Governor, Senate
Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: SB1882 by Zaffirini (Relating to a bill of rights for wards under guardianship.),
Conference Committee Report

No significant fiscal implication to the State is anticipated.

The bill would amend the Estates Code to create a bill of rights for wards under guardianship. Specific rights are set out in the bill, as described. The Office of Court Administration indicates implementing the provisions of the bill is not anticipated to have a significant fiscal implication for the court system.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 103 Legislative Council, 212 Office of Court Administration, Texas
Judicial Council

LBB Staff: UP, TB, FR, NB, KVe

**Certification of Compliance with
Rule 13, Section 6(b), House Rules of Procedure**

Rule 13, Section 6(b), House Rules of Procedure, requires a copy of a conference committee report signed by a majority of each committee of the conference to be furnished to each member of the committee in person or, if unable to deliver in person, by placing a copy in the member's newspaper mailbox at least one hour before the report is furnished to each member of the house under Rule 13, Section 10(a). The paper copies of the report submitted to the chief clerk under Rule 13, Section 10(b), must contain a certificate that the requirement of Rule 13, Section 6(b), has been satisfied, and that certificate must be attached to the copy of the report furnished to each member under Rule 13, Section 10(d). Failure to comply with this requirement is not a sustainable point of order under Rule 13.

I certify that a copy of the conference committee report on SB 1882 was furnished to each member of the conference committee in compliance with Rule 13, Section 6(b), House Rules of Procedure, before submission of the paper copies of the report to the chief clerk under Rule 13, Section 10(b), House Rules of Procedure.

Jefferson Thompson
(name)

May 30, 2015
(date)