

BILL ANALYSIS

H.B. 2998
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Judiciary & Civil Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Interested parties note that Texas is one of the handful of states that has not yet enacted the Uniform Adult Guardianship Protective Proceedings Jurisdiction Act. Interested parties assert that adopting this uniform law would simplify the process in multi-jurisdictional cases as well as create a framework that allows state court judges in different states to communicate with each other about appropriate jurisdictional boundaries. H.B. 2998 seeks to address this issue.

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. 2998 amends the Estates Code to establish the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

Communication and Cooperation Between Courts

H.B. 2998 authorizes a Texas court to communicate with a court in another state concerning an adult guardianship or protective proceeding arising under the bill's provisions and authorizes the court to allow the parties to participate in the communication. The bill requires the court to make a record of the communication, which may be limited to the fact that the communication occurred, but authorizes courts to communicate concerning schedules, calendars, court records, and other administrative matters without making a record. The bill authorizes a Texas court, in a guardianship proceeding in Texas, to request the appropriate court of another state to provide certain specified assistance in connection with the proceeding. The bill establishes that if a court of another state in which a guardianship or protective proceeding is pending requests such assistance, a Texas court has jurisdiction for the limited purpose of granting the request or making reasonable efforts to comply with the request.

Taking Testimony in Another State

H.B. 2998 authorizes testimony of a witness who is located in another state to be offered in a guardianship proceeding by deposition or other means allowable in Texas for testimony taken in another state, in addition to other procedures that may be available. The bill authorizes the court, on its own motion, to order that the testimony of a witness be taken in another state and to prescribe the manner in which and the terms on which the testimony is to be taken. The bill authorizes a Texas court, in a guardianship proceeding, to permit a witness located in another state to be deposed or to testify by telephone or audiovisual or other electronic means and

requires a Texas court to cooperate with the court of the other state in designating an appropriate location for the deposition or testimony. The bill prohibits documentary evidence transmitted from another state to a Texas court by technological means that do not produce an original writing from being excluded from evidence on an objection based on the best evidence rule.

Jurisdiction

H.B. 2998 provides the exclusive jurisdictional basis for a Texas court to appoint a guardian of the person or estate, or both, for an adult. The bill establishes that a Texas court has jurisdiction to appoint a guardian of the person or estate, or both, for a respondent if Texas is the respondent's home state, sets out conditions under which a Texas court has jurisdiction to make such an appointment if Texas is not the respondent's home state but is a significant-connection state, and sets out conditions under which a Texas court has jurisdiction to make such an appointment if Texas is neither the respondent's home state nor a significant-connection state but is the more appropriate forum. The bill defines, among other terms, "home state" and "significant-connection state" and sets out certain factors a court is required to consider in determining whether a respondent has a significant connection with a particular state for certain matters relating to jurisdiction or the transfer of guardianship to another state.

H.B. 2998 establishes that a Texas court lacking jurisdiction on such grounds has special jurisdiction to appoint a guardian under specified circumstances, including in an emergency. The bill requires a court, if an application for the appointment of a guardian of the person in an emergency is brought in Texas and Texas was not the respondent's home state on the date the application was filed, to dismiss the proceeding at the request of the court of the home state, if any, whether dismissal is requested before or after the emergency appointment. The bill grants a court that has appointed a guardian of the person or estate, or both, consistent with the bill's provisions exclusive and continuing jurisdiction over the proceeding until it is terminated by the court or the appointment expires by its own terms, except as provided by the bill's provisions regarding special jurisdiction.

H.B. 2998 authorizes a Texas court having jurisdiction to appoint a guardian of the person or estate, or both, to decline to exercise its jurisdiction if it determines at any time that a court of another state is a more appropriate forum. The bill requires a Texas court that declines to exercise its jurisdiction to either dismiss or stay the proceeding and authorizes the court to impose any condition the court considers just and proper, including the condition that a petition for the appointment of a guardian or issuance of a protective order be filed promptly in another state. The bill requires the court, in determining whether it is an appropriate forum, to consider all relevant factors.

H.B. 2998 authorizes a Texas court, if at any time it determines that it acquired jurisdiction to appoint a guardian of the person or estate, or both, for an adult because of unjustifiable conduct, to decline to exercise jurisdiction, to exercise jurisdiction for certain limited purposes, or to continue to exercise jurisdiction after considering certain factors. The bill authorizes a Texas court, if it determines that it acquired jurisdiction to appoint a guardian of the person or estate, or both, for an adult because a party seeking to invoke its jurisdiction engaged in unjustifiable conduct, to assess against that party necessary and reasonable expenses. The bill prohibits the court from assessing fees, costs, or expenses of any kind against this state or a governmental subdivision, agency, or instrumentality of this state unless authorized by law other than the bill's provisions.

H.B. 2998 sets out requirements for providing notice of an application for the appointment of a guardian of the person or estate, or both, for an adult if the application is brought in Texas and Texas was not the respondent's home state on the date the application was filed. The bill sets out certain rules that apply if an application for the appointment of a guardian, except for an application for the appointment of a guardian of the person in an emergency or the appointment of a guardian of the estate limited to property located in Texas, is filed in Texas and a petition for the appointment of a guardian or issuance of a protective order is filed in another state and neither the application nor petition has been dismissed or withdrawn.

Transfer of Guardianship to Another State

H.B. 2998 authorizes a guardian of the person or estate, or both, of an adult ward appointed in Texas to petition the court to transfer the guardianship to another state. The bill requires notice of such a petition to be given to the persons that would be entitled to notice of an application in Texas for the appointment of a guardian for an adult ward and requires the court to hold a hearing on the petition on the court's own motion or on request of the guardian or another person required to be notified of the petition.

H.B. 2998 requires the court to issue a provisional order granting a petition to transfer a guardianship of the person and to direct the guardian of the person to petition for guardianship in the other state if the court is satisfied that the guardianship of the person will be accepted by the court in the other state and the court makes specified findings relating to the transfer and the adult ward's situation. The bill requires the court to issue a provisional order granting a petition to transfer a guardianship of the estate and to direct the guardian of the estate to petition for conservatorship in the other state if the court is satisfied that the guardianship of the estate will be accepted by the court of the other state and the court makes specified findings regarding the transfer and the adult ward's situation. The bill requires the court to issue a final order confirming the transfer and terminating the guardianship of the person or estate, or both, of the adult ward, as applicable, on its receipt of a provisional order accepting the proceeding from the court to which the proceeding is to be transferred which is issued under provisions similar to provisions of the bill that govern the acceptance of a guardianship or conservatorship transferred to Texas from another state and the documents required to terminate in Texas a guardianship of the person or estate, or both, of an adult ward, as applicable.

Accepting Guardianship or Conservatorship Transferred from Another State

H.B. 2998 requires a guardian or conservator, in order to confirm the transfer of a guardianship or conservatorship transferred to Texas, to petition the Texas court to accept the guardianship or conservatorship and requires the petition to include a certified copy of the other state's provisional order of transfer. The bill requires notice of such a petition to be given, in the same manner as notice is required to be given in Texas, to those persons that would be entitled to notice if the petition were a petition or application for the appointment of a guardian or issuance of a protective order in both the transferring state and Texas. The bill requires the court to hold a hearing on the petition on the court's own motion or on request of the guardian or conservator, the incapacitated adult or protected person, or another person required to be notified of the proceeding. The bill requires the court to issue a provisional order granting the petition unless an objection is made and the objector establishes that transfer of the proceeding would be contrary to the interests of the incapacitated adult or protected person or unless the guardian or conservator is ineligible for appointment in Texas. The bill requires the court to issue a final order accepting the proceeding and appointing the guardian or conservator as guardian of the person or estate, or both, as applicable, in Texas on its receipt from the court from which the proceeding is being transferred of a final order issued under provisions similar to the bill's provisions regarding transfer of guardianship to another state transferring the proceeding to Texas.

H.B. 2998 requires the court, not later than 90 days after issuance of a final order accepting transfer of a guardianship or conservatorship, to determine whether the guardianship or conservatorship needs to be modified to conform to Texas law. The bill requires the court, in granting a petition to accept a transfer of guardianship or conservatorship from another state, to recognize a guardianship or conservatorship order from the other state, including the determination of the incapacitated adult's or protected person's incapacity and the appointment of the guardian or conservator. The bill establishes that the denial by a Texas court of a petition to accept a guardianship or conservatorship transferred from another state does not affect the ability of the guardian or conservator to seek appointment in Texas as guardian of the person or estate, or both, of the adult if the court has jurisdiction to make an appointment other than by reason of the provisional order of transfer.

Registration and Recognition of Orders from Other States

H.B. 2998 authorizes a guardian that has been appointed in another state, if an application for the appointment of a guardian of the person or guardian of both the person and estate of the adult is not pending in Texas, to register the guardianship order in Texas, after giving notice to the appointing court of an intent to register, by filing as a foreign judgment in a court, in any appropriate county of Texas, certified copies of the order and letters of office.

H.B. 2998 authorizes a conservator that has been appointed in another state, if an application for the appointment of a guardian of the estate or guardian of both the person and estate of the adult is not pending in Texas, to register the protective order in Texas, after giving notice to the appointing court of an intent to register, by filing as a foreign judgment in a Texas court, in any county in which property belonging to the protected person is located, certified copies of the order and letters of office and of any bond.

H.B. 2998 authorizes a guardian or conservator, on registration of a guardianship or protective order from another state, to exercise in Texas all powers authorized in the order of appointment except as prohibited under Texas law, including maintaining actions and proceedings in Texas and, if the guardian or conservator is not a Texas resident, subject to any conditions imposed on nonresident parties. The bill authorizes a Texas court to grant any relief available under the bill and other Texas law to enforce a registered order.

Miscellaneous Provisions

H.B. 2998 restricts the applicability of existing statutory provisions relating to interstate guardianships to guardianships involving a minor ward. The bill authorizes a Texas court to treat a foreign country as if it were a state for the purpose of applying the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, other than provisions relating to registration and recognition of orders from other states, and establishes that the act prevails to the extent of any conflict between the act and other statutory provisions governing guardianship proceedings. The bill establishes that certain definitions set out in statutory provisions governing guardianship proceedings do not apply to the act. The bill requires consideration to be given, in applying and construing the act's provisions, to the need to promote uniformity of the law with respect to the act's subject matter among states that enact a law substantially similar to the act. The bill modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, except for certain specified provisions of that federal act, and establishes that the bill's provisions do not authorize electronic delivery of certain notices described in that act.

H.B. 2998 establishes that the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act applies to proceedings for guardianship instituted on or after the bill's effective date and that the act's general and miscellaneous provisions, provisions relating to the transfer of guardianship or conservatorship registration, and provisions relating to recognition of orders from other states apply to proceedings for guardianship instituted before the bill's effective date, regardless of whether a guardianship of the person or estate, or both, for an adult ward has been created by a court.

EFFECTIVE DATE

September 1, 2015.