

SUBJECT: Applying for restoration of capacity or modification of a guardianship

COMMITTEE: Judiciary and Civil Jurisprudence — favorable, without amendment

VOTE: 9 ayes — Smithee, Farrar, Gutierrez, Hernandez, Laubenberg, Murr, Neave, Rinaldi, Schofield

0 nays

SENATE VOTE: On final passage, April 19 — 30-1 (Bettencourt)

WITNESSES: No public hearing

BACKGROUND: Estates Code, sec. 1202.054 allows a ward to request an order by informal letter to the court stating that a guardianship needs to be modified or is no longer necessary. After receiving the informal request, the court is required to appoint a court investigator or guardian ad litem to investigate the ward's circumstances and determine if the guardianship is necessary or if it needs to be modified.

Sec. 1202.051 allows a ward or interested person to file an application with a court for an order finding that the ward was no longer incapacitated or that the ward's level of capacity had changed sufficiently to warrant a modification in the guardian's powers or duties.

Sec. 1202.152 would not allow a court to grant an order completely restoring a ward's capacity or modifying a ward's guardianship under an application filed under sec. 1202.051 unless the applicant presents a letter from a physician to the court containing certain information regarding the ward's capacity.

Some interested parties have suggested that existing law could be modified to better respect the rights and wishes of wards seeking to restore legal capacity or modify a guardianship.

DIGEST: SB 1710 would prohibit a court from requiring the appointment of a successor guardian before considering an application to modify or remove the guardianship if the guardian of a ward who was the subject of an application for an order of restoration had resigned, was removed, or had died. This change would apply to an application for modification of a guardianship or a restoration of capacity filed before, on, or after the bill's effective date.

If a ward sent an informal letter to a court to request an order revising the guardianship, a written letter from a physician would not be required before the appointment of a court investigator or guardian ad litem. The court would be required to acknowledge receipt of the informal letter within 30 days and advise the ward of the date the investigator or guardian ad litem was appointed and the contact information of the court investigator or guardian ad litem. The court investigator or guardian ad litem would be required to provide the ward with a report of the investigation's findings.

The bill would take effect September 1, 2017, and except as otherwise specified would apply only to a request by informal letter for an order delivered on or after the effective date.