

BILL ANALYSIS

Senate Research Center
76R10750 CLG-D

H.B. 1663
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Jurisprudence
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Engrossed

DIGEST

Provisions relating to guardianships were separated from provisions relating to the administration of an estate in 1993, by the 73rd Legislature. Currently, the procedure for commencing and terminating a guardianship is similar to the procedure of a trial. For example, an interested party, including the proposed ward, may contest an application for guardianship either in a trial to the bench or to a jury and the rules of evidence used in a trial under this code are the rules of evidence which apply to a trial in a district court. There are significant variances from a trial, such as a requirement that a court investigator file a report to be used as evidence regarding the capacity of the proposed ward, a requirement that the court keep a separate guardianship record book and claim docket book, and the appointment of an attorney ad litem to protect the interests of a proposed ward.

H.B. 1663 would provide rules of procedure specific to the restoration of a ward's capacity or the modification of a guardianship. This bill would also subject a court investigator to the duties required by this code. Finally, this bill would authorize a ward to retain an attorney and the attorney to be compensated from the ward's estate, if appropriate.

PURPOSE

As proposed, H.B. 1663 amends regulations regarding the creation, modification, or closing of a guardianship of an incapacitated person.

RULEMAKING AUTHORITY

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 23.102, Government Code, to provide that a trial court should give precedence in setting matters before the court to matters involving the complete restoration of a ward's capacity or modification of a ward's guardianship.

SECTION 2. Amends Sections 642(a) and (b), Texas Probate Code, to provide that a person has the right to commence a proceeding for complete restoration of a ward's capacity or modification of a ward's guardianship. Prohibits a person who has an interest that is adverse to a proposed ward or incapacitated person from contesting an application for complete restoration of a ward's capacity or modification of a ward's guardianship.

SECTION 3. Amends Section 648A(b), Texas Probate Code, to require a court investigator to perform other duties as assigned by the judge or required by this code.

SECTION 4. Amends Section 682, Texas Probate Code, to delete language requiring the application to state the requested terms of the guardianship. Makes conforming changes.

SECTION 5. Amends Section 694A, Texas Probate Code, as follows:

Sec. 694A. New heading: COMPLETE RESTORATION OF WARD'S CAPACITY OR MODIFICATION OF GUARDIANSHIP. Authorizes a ward to file a written application with the court for an order finding that the ward is no longer an incapacitated person; that the ward lacks the capacity to do some or all the tasks necessary to provide food, clothing, or shelter, that the ward can care for their own physical health or to manage their own financial affairs, rather than

property; or that the ward may do some of the preceding tasks. Authorizes a ward to make a request for certain orders. Requires the court to appoint the court investigator or a guardian ad litem to file an application under Subsection (a) of this section on the ward's behalf. Provides that the guardian may also be appointed by the court to serve as attorney ad litem under Section 694C, Texas Probate Code. Requires citation to be served on the ward's guardian and on the ward if the ward is not the applicant, when an application is filed under this section. Prohibits a person from reapplying for complete restoration of a ward's capacity or modification of a ward's guardianship before a certain date, except by good cause as otherwise provided by the court. Makes conforming changes.

SECTION 6. Amends Part3A, Chapter XIII, Texas Probate Code, by adding Sections 694B through 694K, as follows:

Sec. 694B. CONTENTS OF APPLICATION. Sets forth conditions for an application filed under Section 694A of this code and that the application must be sworn to by the applicant.

Sec. 694C. APPOINTMENT OF ATTORNEY AD LITEM. Requires the court to appoint an attorney ad litem to represent a ward in a proceeding for the complete restoration of the ward's capacity or for the modification of the ward's guardianship. Requires the attorney ad litem to represent the ward only for purposes of the restoration or modification proceeding.

Sec. 694D. HEARING. Requires the court to consider only certain relevant evidence regarding the ward's mental or physical capacity at the time of a hearing that is on an application of a ward's guardianship. Confers the burden of proof on the party who filed the application.

Sec. 694E. FINDINGS REQUIRED. Requires a court to find by a preponderance of the evidence whether a ward is no longer partially or fully incapacitated. Requires the court to find that the current nature and degree of the ward's incapacity warrants a modification of the guardianship and that some or all of the ward's rights need to be further restricted. Requires the court to find that the current nature and degree of the ward's incapacity warrants a modification of the guardianship and that some of the ward's rights need to be restored, before limiting the powers granted to or duties required to be performed by the guardian.

Sec. 694F. EXAMINATIONS AND REPORTS RELATING TO COMPLETE RESTORATION OF WARD'S CAPACITY OR MODIFICATION OF GUARDIANSHIP. Prohibits the court from granting an order completely restoring a ward's capacity or modifying a ward's guardianship under an application filed under Section 694A unless the applicant presents to the court a written letter or certificate from a physician licensed in this state by a certain date which the application was filed. Sets forth information that must be provided in the letter of certificate. Authorizes the court to appoint the necessary physicians to examine the ward by a certain manner.

Sec. 694G. ORDER OF COMPLETE RESTORATION OF WARD'S CAPACITY. Sets forth the specifications that an order of the court must establish if the court finds through a finding of fact that a ward is no longer an incapacitated person.

Sec. 694H. MODIFICATION OF GUARDIANSHIP. Sets forth the specifications that an order of the court must establish if the court finds on a finding of fact that a guardian's powers or duties should be expanded or limited.

Sec. 694I. DISMISSAL OF APPLICATION. Sets forth the specifications that an order of the court must establish if the court finds that a modification of the ward's guardianship is not necessary and to dismiss the application.

Sec. 694J. CONTENTS OF ORDER. Sets forth information that must be contained in a court order that completely restores a ward's capacity or modifies a ward's guardianship. Prohibits a court from granting a power to a guardian or requiring the guardian to perform a duty that is a power granted to or a duty required to be performed by another guardian.

Sec. 694K. ATTORNEY RETAINED ON WARD'S BEHALF. Authorizes a ward to retain an attorney for a proceeding involving the complete restoration of the ward's capacity or

modification of the ward's guardianship. Authorizes the court to order the expenses incurred by the attorney to be paid from the ward's estate only if the court finds that the attorney had a good-faith belief that the ward had the capacity necessary to retain the attorney's services.

SECTION 7. Makes application of this Act prospective.

SECTION 8 Effective date: September 1, 1999.

SECTION 9. Emergency clause.