

## **BILL ANALYSIS**

C.S.H.B. 2665  
By: Moody  
Judiciary & Civil Jurisprudence  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Interested parties point out that when an adult becomes incapacitated, the person's spouse is generally considered the preferred individual to assume custody and control of the adult through a formal guardianship. The parties report that ambiguity in the law, coupled with the broad powers a guardian exercises with respect to a ward, has created a situation in which the child of a ward can be unjustly denied visitation to the parent and not provided with timely notification of serious changes in the parent's health or even of the parent's death. C.S.H.B. 2665 seeks to address these concerns.

### **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. 2665 amends the Estates Code to authorize the child of a ward to file an application with a court requesting access to the ward, including the opportunity to establish visitation or communication with the ward. The bill requires the court to schedule a hearing on the application not later than the 60th day after the date such an application is filed, unless the application states that the ward's health is in significant decline or that the ward's death may be imminent, in which case the court is required to conduct an emergency hearing as soon as practicable but not later than the 10th day after the date the application is filed. The bill authorizes a court to grant a continuance of a hearing under the bill's provisions for good cause. The bill requires the guardian of a ward with respect to whom such an application is filed to be personally served with a copy of the application and cited to appear at least 21 days before the date of the hearing in the case of a standard hearing and as soon as practicable in the case of an emergency hearing.

C.S.H.B. 2665 requires the court to issue an order after notice and a hearing under the bill's provisions. The bill authorizes such an order to prohibit the guardian of a ward from preventing the applicant access to the ward if the applicant shows by a preponderance of the evidence that the guardian's past act or acts prevented access to the ward and the ward desires contact with the applicant and to specify the frequency, time, place, location, and any other terms of access. The bill requires the court to consider any prior protective orders issued against the applicant to protect the ward in deciding whether to issue or modify such an order and authorizes the court, in making such a decision, to consider whether visitation by the applicant should be limited to situations in which a third person, specified by the court, is present or whether visitation should

be suspended or denied. The bill authorizes the court, in its discretion, to award the prevailing party in any action brought under the bill's provisions any court costs and attorney's fees.

C.S.H.B. 2665 requires the guardian of an adult ward to inform as soon as practicable the ward's spouse, the ward's parents, the ward's siblings, and the ward's children if the ward dies, if the ward is admitted to a medical facility for acute care for a period of three days or more, if the ward's residence has changed, or if the ward is staying at a location other than the ward's residence for a period that exceeds one calendar week. The bill requires the guardian, in the case of the ward's death, to inform such relatives of any funeral arrangements and the location of the ward's final resting place. The bill authorizes a relative entitled to notice about a ward's health and residence to elect to not receive the notice by providing a written request to that effect to the guardian and requires a guardian to file any such written request received by the guardian with the court. The bill exempts a guardian from the notification requirement if the guardian receives and files with the court a written request from the relative electing to not receive the notice or documents and files with the court evidence that the guardian was unable to locate the relative after making reasonable efforts to discover and locate each relative entitled to notice.

C.S.H.B. 2665 applies to a guardianship created before, on, or after the bill's effective date.

### **EFFECTIVE DATE**

On passage, or, if the bill does not receive the necessary vote, September 1, 2015.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 2665 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

#### INTRODUCED

SECTION 1. Subchapter B, Chapter 1151, Estates Code, is amended by adding Sections 1151.055 and 1151.056 to read as follows:

Sec. 1151.055. APPLICATION BY CHILDREN FOR ACCESS TO WARD; HEARING AND COURT ORDER.

Sec. 1151.056. GUARDIAN'S DUTY TO INFORM CERTAIN RELATIVES ABOUT WARD'S HEALTH AND RESIDENCE. (a) This section applies with respect to relatives described under Sections 1101.001(b)(13)(A)-(D).

(b) The guardian of an adult ward shall as soon as practicable inform relatives if:

- (1) the ward dies;
- (2) the ward is admitted to a medical facility for acute care for a period of three days or more;
- (3) the ward's residence has changed; or
- (4) the ward is staying at a location other

#### HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Subchapter B, Chapter 1151, Estates Code, is amended by adding Sections 1151.055 and 1151.056 to read as follows:

Sec. 1151.055. APPLICATION BY CHILDREN FOR ACCESS TO WARD; HEARING AND COURT ORDER.

Sec. 1151.056. GUARDIAN'S DUTY TO INFORM CERTAIN RELATIVES ABOUT WARD'S HEALTH AND RESIDENCE. (a) This section applies with respect to relatives described under Sections 1101.001(b)(13)(A)-(D).

(b) Except as provided by Subsection (e), the guardian of an adult ward shall as soon as practicable inform relatives if:

- (1) the ward dies;
- (2) the ward is admitted to a medical facility for acute care for a period of three days or more;
- (3) the ward's residence has changed; or
- (4) the ward is staying at a location other

than the ward's residence for a period that exceeds one calendar week.

(c) In the case of the ward's death, the guardian shall inform relatives of any funeral arrangements and the location of the ward's final resting place.

SECTION 2. The changes in law made by this Act apply to a guardianship created before, on, or after the effective date of this Act.

SECTION 3. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2015.

than the ward's residence for a period that exceeds one calendar week.

(c) In the case of the ward's death, the guardian shall inform relatives of any funeral arrangements and the location of the ward's final resting place.

(d) A relative entitled to notice about a ward under this section may elect to not receive the notice by providing a written request to that effect to the guardian. A guardian shall file any written request received by the guardian under this subsection with the court.

(e) A guardian is not required to provide notice about a ward to a relative under this section if the guardian:

(1) receives and files with the court a written request from the relative electing to not receive the notice in accordance with Subsection (d); or

(2) documents and files with the court evidence that the guardian was unable to locate the relative after making reasonable efforts to discover and locate each relative entitled to notice under this section.

SECTION 2. Same as introduced version.

SECTION 3. Same as introduced version.