

SUBJECT: Compensation and payment of attorneys serving as guardians of a ward

COMMITTEE: Judiciary — favorable, without amendment

VOTE: 8 ayes — Hartnett, Homer, Hopson, Alonzo, R. Cook, Gonzales, Goolsby, Hughes
0 nays
1 absent — Krusee

SENATE VOTE: On final passage, April 19 — 31-0, on Local and Uncontested Calendar

WITNESSES: No public hearing

BACKGROUND: Probate Code, sec. 665 allows a court to authorize compensation for a guardian from the available funds of the ward's estate or other designated funds for this purpose. The guardian of an estate is entitled to reasonable compensation on application to the court at the time the court approves annual accounting of the ward's estate. For professional services, a court must order the payment of a set fee to attorneys, mental health professionals, and interpreters, as applicable, to be taxed as costs in the case.

Probate Code, sec. 666 permits a guardian to be reimbursed from the ward's estate for all necessary and reasonable expenses incurred in performing any duty as a guardian, including reimbursement for the payment of reasonable attorney's fees.

Based on an interim study following the 79th regular legislative session, the Senate Committee on Jurisprudence concluded that legislation should be enacted to amend the Probate Code to clearly prohibit attorney's fees from being charged for fiduciary services that are not legal in nature.

DIGEST: SB 1555 would require attorneys serving as guardians to submit a detailed description of the services performed to distinguish which services were performed as guardianship services and which were legal services. An

attorney would not be entitled to attorney's fees for services as a guardian that were not considered legal services.

Compensation for attorneys providing guardianship services would be determined by Probate Code, sec. 665, and the payment of attorney's fees for legal services would be determined by sec. 666.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2007, and would apply only to fees for services performed on or after that date.