

**BILL ANALYSIS**

Senate Research Center

S.B. 1882

By: Zaffirini

Health & Human Services

7/6/2015

Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The purpose of this legislation is to ensure that persons under guardianship understand their rights. Persons under guardianship often retain many legal and civil rights, depending on the court order. Unfortunately, often times they are not informed of the rights they get to keep and presume they have no rights whatsoever. Incidentally, some guardians are under the same assumption. There are few legal processes more restrictive of citizens in a free society than guardianship. It is important that the persons under guardianship know the rights that they get to keep, unless the court has determined otherwise.

S.B. 1882 codifies in the Estates Code the 24 rights that already are granted for persons under guardianship. The rights include: to participate in social, religious, and recreational activities, training, employment, education, habilitation, and rehabilitation of the person who is under guardianship in the most integrated setting of his or her choice; to visit with people of his or her choice; to contact the Department of Family and Protective Services he or she feels abused or neglected; and the right to vote.

What's more, the bill will allow a person under guardianship to request a hearing to remove restrictions imposed by a guardian regarding communication and visitation; require attorneys representing a person in guardianship matters to be certified in guardianship law; require a guardian or his or her designee to visit the person under guardianship every three months; provide a person under guardianship the right to receive notice regarding court proceedings to continue, change, or terminate the guardianship, as well as matters that involve the real and personal property of a person under guardianship; and clarify that a person under guardianship is allowed to petition the court to enforce the rights under this subsection.

S.B. 1882 amends current law relating to a bill of rights for wards under guardianship.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 1151, Estates Code, by adding Subchapter H, as follows:

SUBCHAPTER H. RIGHTS OF WARDS

Sec. 1151.351. BILL OF RIGHTS FOR WARDS. (a) Provides that a ward has all the rights, benefits, responsibilities, and privileges granted by the constitution and laws of this state and the

(12) to have a court investigator, guardian ad litem, or attorney ad litem appointed by the court to investigate a complaint received from the ward or any person about the guardianship;

(13) to participate in social, religious, and recreational activities, training, employment, education, habilitation, and rehabilitation of the ward's choice in the most integrated setting;

(14) to self-determination in the substantial maintenance, disposition, and management of real and personal property after essential living expenses and health needs are met, including the right to receive notice and object about the substantial maintenance, disposition, or management of clothing, furniture, vehicles, and other personal effects;

(15) to personal privacy and confidentiality in personal matters, subject to state and federal law;

(16) to unimpeded, private, and uncensored communication and visitation with persons of the ward's choice, except that if the guardian determines that certain communication or visitation causes substantial harm to the ward:

(A) the guardian may limit, supervise, or restrict communication or visitation, but only to the extent necessary to protect the ward from substantial harm; and

(B) the ward may request a hearing to remove any restrictions on communication or visitation imposed by the guardian under Paragraph (A);

(17) to petition the court and retain counsel of the ward's choice who holds a certificate required by Subchapter E (Qualifications to Serve as Court-Appointed Attorney), Chapter 1054, to represent the ward's interest for capacity restoration, modification of the guardianship, the appointment of a different guardian, or for other appropriate relief under this subchapter, including a transition to a supported decision-making agreement, except as limited by Section 1054.006 (Representation of Ward or Proposed Ward by Attorney);

(18) to vote in a public election, marry, and retain a license to operate a motor vehicle, unless restricted by the court;

(19) to personal visits from the guardian or the guardian's designee at least once every three months, but more often, if necessary, unless the court orders otherwise;

(20) to be informed of the name, address, phone number, and purpose of Disability Rights Texas, an organization whose mission is to protect the rights of, and advocate for, persons with disabilities, and to communicate and meet privately with representatives of that organization;

BILL ANALYSIS

Senate Research Center

S.B. 1881

By: Zaffirini et al.

Health & Human Services

6/29/2015

Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The purpose of this legislation is to support and respect the independence of Texans who are elderly and persons with disabilities. Persons with disabilities are being placed into guardianship before they have the opportunity to exercise their civil rights and liberties and time to learn decision-making.

State law directs courts to encourage the development or maintenance of maximum self-reliance and independence but unfortunately it is not uncommon for courts to create full guardianships that deprive persons with disabilities and seniors of the right to make fundamental decisions about their lives. An alternative option to guardianships are supported decision-making agreements which support protections of civil rights and well-being of people to make important decisions. Similar to executing a power of attorney, a supported decision-making agreement is an informal agreement that does not require court involvement or the associated costs, is voluntary and may be terminated by either party at any time. These types of agreements could delay or negate the need for guardianship as a legal tool used to allow a person to make decisions for another person.

S.B. 1881 adds supported decision-making agreements to the Estate Code as an informal alternative to guardianship to maximize the autonomy and rights by people with a disability.

The committee substitute would strike unnecessary and confusing language; provide a technical clarification; and align language with other code.

S.B. 1881 amends current law relating to authorizing supported decision-making agreements for certain adults with disabilities.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle I, Title 3, Estates Code, by adding Chapter 1357, as follows:

CHAPTER 1357. SUPPORTED DECISION-MAKING AGREEMENT ACT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1357.001. SHORT TITLE. Authorizes this chapter to be cited as the Supported Decision-Making Agreement Act.

as applicable, and is not subject to unauthorized access, use, or disclosure, if a supporter assists an adult with a disability in accessing, collecting, or obtaining personal information, including protected health information under the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) or educational records under the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g).

(c) Provides that the existence of a supported decision-making agreement does not preclude an adult with a disability from seeking personal information without the assistance of a supporter.

Sec. 1357.055. AUTHORIZING AND WITNESSING OF SUPPORTED DECISION-MAKING AGREEMENT. (a) Requires a supported decision-making agreement to be signed voluntarily, without coercion or undue influence, by the adult with a disability and the supporter in the presence of two or more subscribing witnesses or a notary public.

(b) Requires the attesting witnesses to be at least 14 years of age if signed before two witnesses.

Sec. 1357.056. FORM OF SUPPORTED DECISION-MAKING AGREEMENT. (a) Provides that a supported decision-making agreement, subject to Subsection (b), is only valid if it is in substantially a certain form as set forth.

(b) Authorizes a supported decision-making agreement to be in any form not inconsistent with Subsection (a) and the other requirements of this chapter.

SUBCHAPTER C. DUTY OF CERTAIN PERSONS WITH RESPECT TO AGREEMENT

Sec. 1357.101. RELIANCE ON AGREEMENT; LIMITATION OF LIABILITY. (a) Requires a person who receives the original or a copy of a supported decision-making agreement to rely on the agreement.

(b) Provides that a person is not subject to criminal or civil liability and has not engaged in professional misconduct for an act or omission if the act or omission is done in good faith and in reliance on a supported decision-making agreement.

Sec. 1357.102. REPORTING OF SUSPECTED ABUSE, NEGLECT, OR EXPLOITATION. Requires a person, if a person who receives a copy of a supported decision-making agreement or is aware of the existence of a supported decision-making agreement has cause to believe that the adult with a disability is being abused, neglected, or exploited by the supporter, to report the alleged abuse, neglect, or exploitation to DFPS in accordance with Section 48.051 (Report), Human Resources Code.

SECTION 2. Effective date: upon passage or September 1, 2015.