

By: Zaffirini

S.B. No. 1882

A BILL TO BE ENTITLED

AN ACT

relating to a bill of rights for wards under guardianship.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 1151, Estates Code, is amended by adding Subchapter H to read as follows:

SUBCHAPTER H. RIGHTS OF WARDS

Sec. 1151.351. BILL OF RIGHTS FOR WARDS. (a) A ward has all the rights, benefits, responsibilities, and privileges granted by the constitution and laws of this state and the United States, except where specifically limited by a court-ordered guardianship or where otherwise lawfully restricted.

(b) Unless a right is limited by a court or otherwise restricted by law, a ward has the right:

(1) to have a copy of the guardianship order and letters of guardianship and contact information for the probate court that issued the order and letters;

(2) to have a guardianship that encourages the development or maintenance of maximum self-reliance and independence in the ward with the eventual goal, if possible, of self-sufficiency;

(3) to be treated with respect, consideration, and recognition of the ward's dignity and individuality;

(4) to reside and receive support services in the most integrated setting, including home-based or other community-based

1 settings, as required by Title II of the Americans with
2 Disabilities Act (42 U.S.C. Section 12131 et seq.);

3 (5) to consideration of the ward's current and
4 previously stated personal preferences, desires, medical and
5 psychiatric treatment preferences, religious beliefs, living
6 arrangements, and other preferences and opinions;

7 (6) to financial self-determination for all public
8 benefits after essential living expenses and health needs are met
9 and to have access to a monthly personal allowance;

10 (7) to receive timely and appropriate health care and
11 medical treatment that does not violate the ward's rights granted
12 by the constitution and laws of this state and the United States;

13 (8) to exercise full control of all aspects of life not
14 specifically granted by the court to the guardian;

15 (9) to control the ward's personal environment based
16 on the ward's preferences;

17 (10) to complain or raise concerns regarding the
18 guardian or guardianship to the court, including living
19 arrangements, retaliation by the guardian, conflicts of interest
20 between the guardian and service providers, or a violation of any
21 rights under this section;

22 (11) to receive notice in the ward's native language,
23 or preferred mode of communication, and in a manner accessible to
24 the ward, of a court proceeding to continue, modify, or terminate
25 the guardianship and the opportunity to appear before the court to
26 express the ward's preferences and concerns regarding whether the
27 guardianship should be continued, modified, or terminated;

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

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

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

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

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

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

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

27 (17) to petition the court and retain counsel of the

1 ward's choice who holds a certificate required by Subchapter E,
2 Chapter 1054, to represent the ward's interest for capacity
3 restoration, modification of the guardianship, the appointment of a
4 different guardian, or for other appropriate relief under this
5 subchapter, including a transition to a supported decision-making
6 agreement, except as limited by Section 1054.006;

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

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

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

17 (21) to be informed of the name, address, phone
18 number, and purpose of an independent living center, an area agency
19 on aging, an aging and disability resource center, and the local
20 mental health and intellectual and developmental disability
21 center, and to communicate and meet with representatives from these
22 agencies and organizations;

23 (22) to be informed of the name, address, phone
24 number, and purpose of the Judicial Branch Certification Commission
25 and the procedure for filing a complaint against a certified
26 guardian;

27 (23) to contact the Department of Family and

1 Protective Services to report abuse, neglect, exploitation, or
2 violation of personal rights without fear of punishment,
3 interference, coercion, or retaliation; and

4 (24) to have the guardian, on appointment and on
5 annual renewal of the guardianship, explain the rights delineated
6 in this subsection in the ward's native language, or preferred mode
7 of communication, and in a manner accessible to the ward.

8 (c) This section does not supersede or abrogate other
9 remedies existing in law.

10 SECTION 2. This Act takes effect immediately if it receives
11 a vote of two-thirds of all the members elected to each house, as
12 provided by Section 39, Article III, Texas Constitution. If this
13 Act does not receive the vote necessary for immediate effect, this
14 Act takes effect September 1, 2015.