

## Chapter 214

H.B. No. 39

### AN ACT

relating to guardianships for incapacitated persons and to substitutes for guardianships for certain adults with disabilities.

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

SECTION 1. Section 1001.001(b), Estates Code, is amended to read as follows:

(b) In creating a guardianship that gives a guardian limited authority over an incapacitated person, the court shall design the guardianship to encourage the development or maintenance of maximum self-reliance and independence in the incapacitated person, including by presuming that the incapacitated person retains capacity to make personal decisions regarding the person's residence.

SECTION 2. Chapter 1002, Estates Code, is amended by adding Sections 1002.0015 and 1002.031 to read as follows:

Sec. 1002.0015. ALTERNATIVES TO GUARDIANSHIP.

"Alternatives to guardianship" includes the:

(1) execution of a medical power of attorney under Chapter 166, Health and Safety Code;

(2) appointment of an attorney in fact or agent under a durable power of attorney as provided by Subtitle P, Title 2;

(3) execution of a declaration for mental health treatment under Chapter 137, Civil Practice and Remedies Code;

1           (4) appointment of a representative payee to manage  
2 public benefits;

3           (5) establishment of a joint bank account;

4           (6) creation of a management trust under Chapter 1301;

5           (7) creation of a special needs trust;

6           (8) designation of a guardian before the need arises  
7 under Subchapter E, Chapter 1104; and

8           (9) establishment of alternate forms of  
9 decision-making based on person-centered planning.

10       Sec. 1002.031. SUPPORTS AND SERVICES. "Supports and  
11 services" means available formal and informal resources and  
12 assistance that enable an individual to:

13           (1) meet the individual's needs for food, clothing, or  
14 shelter;

15           (2) care for the individual's physical or mental  
16 health;

17           (3) manage the individual's financial affairs; or

18           (4) make personal decisions regarding residence,  
19 voting, operating a motor vehicle, and marriage.

20       SECTION 3. Section 1002.015, Estates Code, is amended to  
21 read as follows:

22       Sec. 1002.015. GUARDIANSHIP PROCEEDING. The term  
23 "guardianship proceeding" means a matter or proceeding related to a  
24 guardianship or any other matter covered by this title, including:

25           (1) the appointment of a guardian of a minor or other  
26 incapacitated person, including an incapacitated adult for whom  
27 another court obtained continuing, exclusive jurisdiction in a suit

1 affecting the parent-child relationship when the person was a  
2 child;

3 (2) an application, petition, or motion regarding  
4 guardianship or a substitute for [~~an alternative to~~] guardianship  
5 under this title;

6 (3) a mental health action; and

7 (4) an application, petition, or motion regarding a  
8 trust created under Chapter 1301.

9 SECTION 4. Section 1054.004, Estates Code, is amended by  
10 amending Subsection (a) and adding Subsection (c) to read as  
11 follows:

12 (a) An attorney ad litem appointed under Section 1054.001  
13 shall interview the proposed ward within a reasonable time before  
14 the hearing in the proceeding for the appointment of a  
15 guardian. To the greatest extent possible, the attorney shall  
16 discuss with the proposed ward:

17 (1) the law and facts of the case;

18 (2) the proposed ward's legal options regarding  
19 disposition of the case; [~~and~~]

20 (3) the grounds on which guardianship is sought; and

21 (4) whether alternatives to guardianship would meet  
22 the needs of the proposed ward and avoid the need for the  
23 appointment of a guardian.

24 (c) Before the hearing, the attorney ad litem shall discuss  
25 with the proposed ward the attorney ad litem's opinion regarding:

26 (1) whether a guardianship is necessary for the  
27 proposed ward; and

1           (2) if a guardianship is necessary, the specific  
2 powers or duties of the guardian that should be limited if the  
3 proposed ward receives supports and services.

4           SECTION 5. Section 1054.054, Estates Code, is amended by  
5 adding Subsections (c) and (d) to read as follows:

6           (c) The guardian ad litem shall:

7                   (1) investigate whether a guardianship is necessary  
8 for the proposed ward; and

9                   (2) evaluate alternatives to guardianship and  
10 supports and services available to the proposed ward that would  
11 avoid the need for appointment of a guardian.

12           (d) The information gathered by the guardian ad litem under  
13 Subsection (c) is subject to examination by the court.

14           SECTION 6. Sections 1054.201(a) and (b), Estates Code, are  
15 amended to read as follows:

16           (a) An attorney for an applicant for guardianship and a [A]  
17 court-appointed attorney in a guardianship proceeding, including  
18 an attorney ad litem, must be certified by the State Bar of Texas,  
19 or a person or other entity designated by the state bar, as having  
20 successfully completed a course of study in guardianship law and  
21 procedure sponsored by the state bar or the state bar's designee.

22           (b) The State Bar of Texas shall require four ~~[three]~~ hours  
23 of credit for certification under this subchapter, including one  
24 hour on alternatives to guardianship and supports and services  
25 available to proposed wards.

26           SECTION 7. Section 1101.001(b), Estates Code, is amended to  
27 read as follows:

(b) The application must be sworn to by the applicant and state:

(1) the proposed ward's name, sex, date of birth, and address;

(2) the name, relationship, and address of the person the applicant seeks to have appointed as guardian;

(3) whether guardianship of the person or estate, or both, is sought;

(3-a) whether alternatives to guardianship and available supports and services to avoid guardianship were considered;

(3-b) whether any alternatives to guardianship and supports and services available to the proposed ward considered are feasible and would avoid the need for a guardianship;

(4) the nature and degree of the alleged incapacity, the specific areas of protection and assistance requested, and the limitation or termination of rights requested to be included in the court's order of appointment, including a termination of:

(A) the right of a proposed ward who is 18 years of age or older to vote in a public election; ~~and~~

(B) the proposed ward's eligibility to hold or obtain a license to operate a motor vehicle under Chapter 521, Transportation Code; and

(C) the right of a proposed ward to make personal decisions regarding residence;

(5) the facts requiring the appointment of a guardian;

(6) the interest of the applicant in the appointment

1 of a guardian;

2 (7) the nature and description of any kind of  
3 guardianship existing for the proposed ward in any other state;

4 (8) the name and address of any person or institution  
5 having the care and custody of the proposed ward;

6 (9) the approximate value and description of the  
7 proposed ward's property, including any compensation, pension,  
8 insurance, or allowance to which the proposed ward may be entitled;

9 (10) the name and address of any person whom the  
10 applicant knows to hold a power of attorney signed by the proposed  
11 ward and a description of the type of power of attorney;

12 (11) for a proposed ward who is a minor, the following  
13 information if known by the applicant:

14 (A) the name of each of the proposed ward's  
15 parents and either the parent's address or that the parent is  
16 deceased;

17 (B) the name and age of each of the proposed  
18 ward's siblings, if any, and either the sibling's address or that  
19 the sibling is deceased; and

20 (C) if each of the proposed ward's parents and  
21 adult siblings are deceased, the names and addresses of the  
22 proposed ward's other living relatives who are related to the  
23 proposed ward within the third degree by consanguinity and who are  
24 adults;

25 (12) for a proposed ward who is a minor, whether the  
26 minor was the subject of a legal or conservatorship proceeding in  
27 the preceding two years and, if so:

1 (A) the court involved;

2 (B) the nature of the proceeding; and

3 (C) any final disposition of the proceeding;

4 (13) for a proposed ward who is an adult, the following  
5 information if known by the applicant:

6 (A) the name of the proposed ward's spouse, if  
7 any, and either the spouse's address or that the spouse is deceased;

8 (B) the name of each of the proposed ward's  
9 parents and either the parent's address or that the parent is,  
10 deceased;

11 (C) the name and age of each of the proposed  
12 ward's siblings, if any, and either the sibling's address or that  
13 the sibling is deceased;

14 (D) the name and age of each of the proposed  
15 ward's children, if any, and either the child's address or that the  
16 child is deceased; and

17 (E) if there is no living spouse, parent, adult  
18 sibling, or adult child of the proposed ward, the names and  
19 addresses of the proposed ward's other living relatives who are  
20 related to the proposed ward within the third degree by  
21 consanguinity and who are adults;

22 (14) facts showing that the court has venue of the  
23 proceeding; and

24 (15) if applicable, that the person whom the applicant  
25 seeks to have appointed as a guardian is a private professional  
26 guardian who is certified under Subchapter C, Chapter 155,  
27 Government Code, and has complied with the requirements of

1 Subchapter G, Chapter 1104.

2 SECTION 8. Section 1101.101, Estates Code, is amended by  
3 amending Subsection (a) and adding Subsection (c) to read as  
4 follows:

5 (a) Before appointing a guardian for a proposed ward, the  
6 court must:

7 (1) find by clear and convincing evidence that:

8 (A) the proposed ward is an incapacitated person;

9 (B) it is in the proposed ward's best interest to  
10 have the court appoint a person as the proposed ward's guardian;  
11 ~~and~~

12 (C) the proposed ward's rights or property will  
13 be protected by the appointment of a guardian;

14 (D) alternatives to guardianship that would  
15 avoid the need for the appointment of a guardian have been  
16 considered and determined not to be feasible; and

17 (E) supports and services available to the  
18 proposed ward that would avoid the need for the appointment of a  
19 guardian have been considered and determined not to be feasible;  
20 and

21 (2) find by a preponderance of the evidence that:

22 (A) the court has venue of the case;

23 (B) the person to be appointed guardian is  
24 eligible to act as guardian and is entitled to appointment, or, if  
25 no eligible person entitled to appointment applies, the person  
26 appointed is a proper person to act as guardian;

27 (C) if a guardian is appointed for a minor, the



1 guardianship is not created for the primary purpose of enabling the  
2 minor to establish residency for enrollment in a school or school  
3 district for which the minor is not otherwise eligible for  
4 enrollment; and

5 (D) the proposed ward:

6 (i) is totally without capacity as provided  
7 by this title to care for himself or herself and to manage his or her  
8 property; or

9 (ii) lacks the capacity to do some, but not  
10 all, of the tasks necessary to care for himself or herself or to  
11 manage his or her property.

12 (c) A finding under Subsection (a)(2)(D)(ii) must  
13 specifically state whether the proposed ward lacks the capacity, or  
14 lacks sufficient capacity with supports and services, to make  
15 personal decisions regarding residence, voting, operating a motor  
16 vehicle, and marriage.

17 SECTION 9. Section 1101.103(b), Estates Code, is amended to  
18 read as follows:

19 (b) The letter or certificate must:

20 (1) describe the nature, degree, and severity of the  
21 proposed ward's incapacity, including any functional deficits  
22 regarding the proposed ward's ability to:

23 (A) handle business and managerial matters;

24 (B) manage financial matters;

25 (C) operate a motor vehicle;

26 (D) make personal decisions regarding residence,  
27 voting, and marriage; and

(E) consent to medical, dental, psychological, or psychiatric treatment;

(2) in providing a description under Subdivision (1) regarding the proposed ward's ability to operate a motor vehicle and make personal decisions regarding voting, state whether in the physician's opinion the proposed ward:

(A) has the mental capacity to vote in a public election; and

(B) has the ability to safely operate a motor vehicle;

(3) provide an evaluation of the proposed ward's physical condition and mental functioning [~~function~~] and summarize the proposed ward's medical history if reasonably available;

(3-a) in providing an evaluation under Subdivision (3), state whether improvement in the proposed ward's physical condition and mental functioning is possible and, if so, state the period after which the proposed ward should be reevaluated to determine whether a guardianship continues to be necessary;

(4) state how or in what manner the proposed ward's ability to make or communicate responsible decisions concerning himself or herself is affected by the proposed ward's physical or mental health, including the proposed ward's ability to:

(A) understand or communicate;

(B) recognize familiar objects and individuals;

(C) solve problems [~~perform simple calculations~~];

(D) reason logically; and

(E) administer to daily life activities with and without supports and services;

(5) state whether any current medication affects the proposed ward's demeanor or the proposed ward's ability to participate fully in a court proceeding;

(6) describe the precise physical and mental conditions underlying a diagnosis of a mental disability, and state whether the proposed ward would benefit from supports and services that would allow the individual to live in the least restrictive setting;

(6-a) state whether a guardianship is necessary for the proposed ward and, if so, whether specific powers or duties of the guardian should be limited if the proposed ward receives supports and services; and

(7) include any other information required by the court.

SECTION 10. Sections 1101.151(a) and (b), Estates Code, are amended to read as follows:

(a) If it is found that the proposed ward is totally without capacity to care for himself or herself, manage his or her property, operate a motor vehicle, make personal decisions regarding residence, and vote in a public election, the court may appoint a guardian of the proposed ward's person or estate, or both, with full authority over the incapacitated person except as provided by law.

(b) An order appointing a guardian under this section must contain findings of fact and specify:

(1) the information required by Section 1101.153(a);

(2) that the guardian has full authority over the incapacitated person;

(3) if necessary, the amount of funds from the corpus of the person's estate the court will allow the guardian to spend for the education and maintenance of the person under Subchapter A, Chapter 1156;

(4) whether the person is totally incapacitated because of a mental condition;

(5) that the person does not have the capacity to operate a motor vehicle, make personal decisions regarding residence, and ~~to~~ vote in a public election; and

(6) if it is a guardianship of the person of the ward or of both the person and the estate of the ward, the rights of the guardian with respect to the person as specified in Section 1151.051(c)(1).

SECTION 11. Sections 1101.152(a) and (b), Estates Code, are amended to read as follows:

(a) If it is found that the proposed ward lacks the capacity to do some, but not all, of the tasks necessary to care for himself or herself or to manage his or her property with or without supports and services, the court may appoint a guardian with limited powers and permit the proposed ward to care for himself or herself, including making personal decisions regarding residence, or to manage his or her property commensurate with the proposed ward's ability.

(b) An order appointing a guardian under this section must contain findings of fact and specify:

(1) the information required by Section 1101.153(a);

(2) the specific powers, limitations, or duties of the guardian with respect to the person's care or the management of the person's property by the guardian;

(2-a) the specific rights and powers retained by the person:

(A) with the necessity for supports and services;  
and

(B) without the necessity for supports and services;

(3) if necessary, the amount of funds from the corpus of the person's estate the court will allow the guardian to spend for the education and maintenance of the person under Subchapter A, Chapter 1156; and

(4) whether the person is incapacitated because of a mental condition and, if so, whether the person:

(A) retains the right to make personal decisions regarding residence or vote in a public election; or

(B) maintains eligibility to hold or obtain a license to operate a motor vehicle under Chapter 521, Transportation Code.

SECTION 12. Section 1101.153, Estates Code, is amended by adding Subsection (a-1) to read as follows:

(a-1) If the letter or certificate under Section 1101.103(b)(3-a) stated that improvement in the ward's physical condition or mental functioning is possible and specified a period of less than a year after which the ward should be reevaluated to

1 determine continued necessity for the guardianship, an order  
2 appointing a guardian must include the date by which the guardian  
3 must submit to the court an updated letter or certificate  
4 containing the requirements of Section 1101.103(b).

5 SECTION 13. Section 1104.002, Estates Code, is amended to  
6 read as follows:

7 Sec. 1104.002. PREFERENCE OF INCAPACITATED PERSON. Before  
8 appointing a guardian, the court shall make a reasonable effort to  
9 consider the incapacitated person's preference of the person to be  
10 appointed guardian and, to the extent consistent with other  
11 provisions of this title, shall give due consideration to the  
12 preference indicated by the incapacitated person, regardless of  
13 whether the person has designated by declaration a guardian before  
14 the need arises under Subchapter E.

15 SECTION 14. Section 1151.051, Estates Code, is amended by  
16 adding Subsection (e) to read as follows:

17 (e) . Notwithstanding Subsection (c)(1) and except in cases  
18 of emergency, a guardian of the person of a ward may only place the  
19 ward in a more restrictive care facility if the guardian provides  
20 notice of the proposed placement to the court, the ward, and any  
21 person who has requested notice and after:

22 (1) the court orders the placement at a hearing on the  
23 matter, if the ward or another person objects to the proposed  
24 placement before the eighth business day after the person's receipt  
25 of the notice; or

26 (2) the seventh business day after the court's receipt  
27 of the notice, if the court does not schedule a hearing, on its own

1 motion, on the proposed placement before that day.

2 SECTION 15. Sections 1202.001(b) and (c), Estates Code, are  
3 amended to read as follows:

4 (b) A guardianship shall be settled and closed when the  
5 ward:

6 (1) dies and, if the ward was married, the ward's  
7 spouse qualifies as survivor in community;

8 (2) is found by the court to have full capacity, or  
9 sufficient capacity with supports and services, to care for himself  
10 or herself and to manage the ward's property;

11 (3) is no longer a minor; or

12 (4) no longer must have a guardian appointed to  
13 receive funds due the ward from any governmental source.

14 (c) Except for an order issued under Section 1101.153(a-1),  
15 an ~~[An]~~ order appointing a guardian or a successor guardian may  
16 specify a period of not more than one year during which a petition  
17 for adjudication that the ward no longer requires the guardianship  
18 may not be filed without special leave.

19 SECTION 16. Section 1202.051, Estates Code, is amended to  
20 read as follows:

21 Sec. 1202.051. APPLICATION AUTHORIZED. A ward or any  
22 person interested in the ward's welfare may file a written  
23 application with the court for an order:

24 (1) finding that the ward is no longer an  
25 incapacitated person and ordering the settlement and closing of the  
26 guardianship;

27 (2) finding that the ward lacks the capacity, or lacks

1 sufficient capacity with supports and services, to do some or all of  
2 the tasks necessary to provide food, clothing, or shelter for  
3 himself or herself, to care for the ward's own physical health, or  
4 to manage the ward's own financial affairs and granting additional  
5 powers or duties to the guardian; or

6 (3) finding that the ward has the capacity, or  
7 sufficient capacity with supports and services, to do some, but not  
8 all, of the tasks necessary to provide food, clothing, or shelter  
9 for himself or herself, to care for the ward's own physical health,  
10 or to manage the ward's own financial affairs and:

11 (A) limiting the guardian's powers or duties; and

12 (B) permitting the ward to care for himself or  
13 herself, make personal decisions regarding residence, or ~~[to]~~  
14 manage the ward's own financial affairs commensurate with the  
15 ward's ability, with or without supports and services.

16 SECTION 17. Section 1202.151(a), Estates Code, is amended  
17 to read as follows:

18 (a) Except as provided by Section 1202.201, at a hearing on  
19 an application filed under Section 1202.051, the court shall  
20 consider only evidence regarding the ward's mental or physical  
21 capacity at the time of the hearing that is relevant to the complete  
22 restoration of the ward's capacity or modification of the ward's  
23 guardianship, including whether:

24 (1) the guardianship is necessary; and

25 (2) specific powers or duties of the guardian should  
26 be limited if the ward receives supports and services.

27 SECTION 18. Section 1202.152(b), Estates Code, is amended



1 to read as follows:

2 (b) A letter or certificate presented under Subsection (a)  
3 must:

4 (1) describe the nature and degree of incapacity,  
5 including the medical history if reasonably available, or state  
6 that, in the physician's opinion, the ward has the capacity, or  
7 sufficient capacity with supports and services, to:

8 (A) provide food, clothing, and shelter for  
9 himself or herself;

10 (B) care for the ward's own physical health; and

11 (C) manage the ward's financial affairs;

12 (2) provide a medical prognosis specifying the  
13 estimated severity of any incapacity;

14 (3) state how or in what manner the ward's ability to  
15 make or communicate responsible decisions concerning himself or  
16 herself is affected by the ward's physical or mental health;

17 (4) state whether any current medication affects the  
18 ward's demeanor or the ward's ability to participate fully in a  
19 court proceeding;

20 (5) describe the precise physical and mental  
21 conditions underlying a diagnosis of senility, if applicable; and

22 (6) include any other information required by the  
23 court.

24 SECTION 19. Section 1202.153(c), Estates Code, is amended  
25 to read as follows:

26 (c) Before limiting the powers granted to or duties required  
27 to be performed by the guardian under an application filed under

1 Section 1202.051, the court must find by a preponderance of the  
2 evidence that the current nature and degree of the ward's  
3 incapacity, with or without supports and services, warrants a  
4 modification of the guardianship and that some of the ward's rights  
5 need to be restored, with or without supports and services.

6 SECTION 20. Section 1202.154(a), Estates Code, is amended  
7 to read as follows:

8 (a) A court order entered with respect to an application  
9 filed under Section 1202.051 to completely restore a ward's  
10 capacity or modify a ward's guardianship must state:

11 (1) the guardian's name;

12 (2) the ward's name; ~~and~~

13 (3) whether the type of guardianship being addressed  
14 at the proceeding is a:

15 (A) guardianship of the person;

16 (B) guardianship of the estate; or

17 (C) guardianship of both the person and the  
18 estate; and

19 (4) if applicable, any necessary supports and services  
20 for the restoration of the ward's capacity or modification of the  
21 guardianship.

22 SECTION 21. Section 1202.156, Estates Code, is amended to  
23 read as follows:

24 Sec. 1202.156. ADDITIONAL REQUIREMENTS FOR ORDER MODIFYING  
25 GUARDIANSHIP. If the court finds that a guardian's powers or  
26 duties should be expanded or limited, the order modifying the  
27 guardianship must contain findings of fact and specify, in addition

1 to the information required by Section 1202.154:

2 (1) the specific powers, limitations, or duties of the  
3 guardian with respect to the care of the ward or the management of  
4 the ward's property, as appropriate;

5 (2) the specific areas of protection and assistance to  
6 be provided to the ward;

7 (3) any limitation of the ward's rights;

8 (4) if the ward's incapacity resulted from a mental  
9 condition, whether the ward retains the right to vote and make  
10 personal decisions regarding residence; and

11 (5) that the clerk shall modify the letters of  
12 guardianship to the extent applicable to conform to the order.

13 SECTION 22. The heading to Subtitle I, Title 3, Estates  
14 Code, is amended to read as follows:

15 SUBTITLE I. OTHER SPECIAL PROCEEDINGS AND SUBSTITUTES FOR

16 [~~ALTERNATIVES TO~~] GUARDIANSHIP

17 SECTION 23. Subtitle I, Title 3, Estates Code, is amended by  
18 adding Chapter 1357 to read as follows:

19 CHAPTER 1357. SUPPORTED DECISION-MAKING AGREEMENT ACT

20 SUBCHAPTER A. GENERAL PROVISIONS

21 Sec. 1357.001. SHORT TITLE. This chapter may be cited as  
22 the Supported Decision-Making Agreement Act.

23 Sec. 1357.002. DEFINITIONS. In this chapter:

24 (1) "Adult" means an individual 18 years of age or  
25 older or an individual under 18 years of age who has had the  
26 disabilities of minority removed.

27 (2) "Disability" means, with respect to an individual,

1 a physical or mental impairment that substantially limits one or  
2 more major life activities.

3 (3) "Supported decision-making" means a process of  
4 supporting and accommodating an adult with a disability to enable  
5 the adult to make life decisions, including decisions related to  
6 where the adult wants to live, the services, supports, and medical  
7 care the adult wants to receive, whom the adult wants to live with,  
8 and where the adult wants to work, without impeding the  
9 self-determination of the adult.

10 (4) "Supported decision-making agreement" is an  
11 agreement between an adult with a disability and a supporter  
12 entered into under this chapter.

13 (5) "Supporter" means an adult who has entered into a  
14 supported decision-making agreement with an adult with a  
15 disability.

16 Sec. 1357.003. PURPOSE. The purpose of this chapter is to  
17 recognize a less restrictive substitute for guardianship for adults  
18 with disabilities who need assistance with decisions regarding  
19 daily living but who are not considered incapacitated persons for  
20 purposes of establishing a guardianship under this title.

21 SUBCHAPTER B. SCOPE OF AGREEMENT AND AGREEMENT REQUIREMENTS

22 Sec. 1357.051. SCOPE OF SUPPORTED DECISION-MAKING  
23 AGREEMENT. An adult with a disability may voluntarily, without  
24 undue influence or coercion, enter into a supported decision-making  
25 agreement with a supporter under which the adult with a disability  
26 authorizes the supporter to do any or all of the following:

27 (1) provide supported decision-making, including

1 assistance in understanding the options, responsibilities, and  
2 consequences of the adult's life decisions, without making those  
3 decisions on behalf of the adult with a disability;

4 (2) subject to Section 1357.054, assist the adult in  
5 accessing, collecting, and obtaining information that is relevant  
6 to a given life decision, including medical, psychological,  
7 financial, educational, or treatment records, from any person;

8 (3) assist the adult with a disability in  
9 understanding the information described by Subdivision (2); and

10 (4) assist the adult in communicating the adult's  
11 decisions to appropriate persons.

12 Sec. 1357.052. AUTHORITY OF SUPPORTER. A supporter may  
13 exercise the authority granted to the supporter in the supported  
14 decision-making agreement.

15 Sec. 1357.053. TERM OF AGREEMENT. (a) Except as provided  
16 by Subsection (b), the supported decision-making agreement extends  
17 until terminated by either party or by the terms of the agreement.

18 (b) The supported decision-making agreement is terminated  
19 if:

20 (1) the Department of Family and Protective Services  
21 finds that the adult with a disability has been abused, neglected,  
22 or exploited by the supporter; or

23 (2) the supporter is found criminally liable for  
24 conduct described by Subdivision (1).

25 Sec. 1357.054. ACCESS TO PERSONAL INFORMATION. (a) A  
26 supporter is only authorized to assist the adult with a disability  
27 in accessing, collecting, or obtaining information that is relevant

1 to a decision authorized under the supported decision-making  
2 agreement.

3 (b) If a supporter assists an adult with a disability in  
4 accessing, collecting, or obtaining personal information,  
5 including protected health information under the Health Insurance  
6 Portability and Accountability Act of 1996 (Pub. L. No. 104-191) or  
7 educational records under the Family Educational Rights and Privacy  
8 Act of 1974 (20 U.S.C. Section 1232g), the supporter shall ensure  
9 the information is kept privileged and confidential, as applicable,  
10 and is not subject to unauthorized access, use, or disclosure.

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

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

19 (b) If signed before two witnesses, the attesting witnesses  
20 must be at least 14 years of age.

21 Sec. 1357.056. FORM OF SUPPORTED DECISION-MAKING  
22 AGREEMENT. (a) Subject to Subsection (b), a supported  
23 decision-making agreement is valid only if it is in substantially  
24 the following form:

25 SUPPORTED DECISION-MAKING AGREEMENT

26 Appointment of Supporter

27 I, (insert your name), make this agreement of my own free

1 will.

2 I agree and designate that:\_\_\_\_\_

3 Name: \_\_\_\_\_

4 Address: \_\_\_\_\_

5 Phone Number: \_\_\_\_\_

6 E-mail Address: \_\_\_\_\_

7 is my supporter. My supporter may help me with making everyday life  
8 decisions relating to the following:

9 Y/N obtaining food, clothing, and shelter

10 Y/N taking care of my physical health

11 Y/N managing my financial affairs.

12 My supporter is not allowed to make decisions for me. To help  
13 me with my decisions, my supporter may:

14 1. Help me access, collect, or obtain information that is  
15 relevant to a decision, including medical, psychological,  
16 financial, educational, or treatment records;

17 2. Help me understand my options so I can make an informed  
18 decision; or

19 3. Help me communicate my decision to appropriate persons.

20 Y/N A release allowing my supporter to see protected  
21 health information under the Health Insurance Portability and  
22 Accountability Act of 1996 (Pub. L. No. 104-191) is attached.

23 Y/N A release allowing my supporter to see educational  
24 records under the Family Educational Rights and Privacy Act of 1974  
25 (20 U.S.C. Section 1232g) is attached.

26 Effective Date of Supported Decision-Making Agreement

27 This supported decision-making agreement is effective

1 immediately and will continue until (insert date) or until the  
2 agreement is terminated by my supporter or me or by operation of  
3 law.

4 Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

5 Consent of Supporter

6 I, (name of supporter), consent to act as a supporter under  
7 this agreement.

8 \_\_\_\_\_  
9 (signature of supporter) (printed name of supporter)

10 Signature

11 \_\_\_\_\_  
12 (my signature) (my printed name)

13 \_\_\_\_\_  
14 (witness 1 signature) (printed name of witness 1)

15 \_\_\_\_\_  
16 (witness 2 signature) (printed name of witness 2)

17 State of \_\_\_\_\_

18 County of \_\_\_\_\_

19 This document was acknowledged before me  
20 on \_\_\_\_\_ (date)

21 by \_\_\_\_\_ and \_\_\_\_\_  
22 (name of adult with a disability) (name of supporter)

23 \_\_\_\_\_  
24 (signature of notarial officer)

25 (Seal, if any, of notary) \_\_\_\_\_

26 (printed name)

27 My commission expires: \_\_\_\_\_



1           WARNING: PROTECTION FOR THE ADULT WITH A DISABILITY

2           IF A PERSON WHO RECEIVES A COPY OF THIS AGREEMENT OR IS AWARE  
3 OF THE EXISTENCE OF THIS AGREEMENT HAS CAUSE TO BELIEVE THAT THE  
4 ADULT WITH A DISABILITY IS BEING ABUSED, NEGLECTED, OR EXPLOITED BY  
5 THE SUPPORTER, THE PERSON SHALL REPORT THE ALLEGED ABUSE, NEGLECT,  
6 OR EXPLOITATION TO THE DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES  
7 BY CALLING THE ABUSE HOTLINE AT 1-800-252-5400 OR ONLINE AT  
8 WWW.TXABUSEHOTLINE.ORG.

9           (b) A supported decision-making agreement may be in any form  
10 not inconsistent with Subsection (a) and the other requirements of  
11 this chapter.

12       SUBCHAPTER C. DUTY OF CERTAIN PERSONS WITH RESPECT TO AGREEMENT

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

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

20       Sec. 1357.102. REPORTING OF SUSPECTED ABUSE, NEGLECT, OR  
21 EXPLOITATION. If a person who receives a copy of a supported  
22 decision-making agreement or is aware of the existence of a  
23 supported decision-making agreement has cause to believe that the  
24 adult with a disability is being abused, neglected, or exploited by  
25 the supporter, the person shall report the alleged abuse, neglect,  
26 or exploitation to the Department of Family and Protective Services  
27 in accordance with Section 48.051, Human Resources Code.

1           SECTION 24. (a) Except as otherwise provided by this  
2 section, the changes in law made by this Act apply to:

3                   (1) a guardianship created before, on, or after the  
4 effective date of this Act; and

5                   (2) an application for a guardianship pending on, or  
6 filed on or after, the effective date of this Act.

7           (b) Sections 1054.004 and 1054.054, Estates Code, as  
8 amended by this Act, apply only to a guardianship proceeding for  
9 which a court has appointed a guardian ad litem or attorney ad litem  
10 to represent the interests of a proposed ward on or after the  
11 effective date of this Act.

12           (c) Sections 1054.201, 1101.101, 1101.103, 1101.151,  
13 1101.152, and 1101.153, Estates Code, as amended by this Act, apply  
14 only to a guardianship proceeding filed on or after the effective  
15 date of this Act. A guardianship proceeding filed before the  
16 effective date of this Act is governed by the law in effect on the  
17 date the proceeding was filed, and the former law is continued in  
18 effect for that purpose.

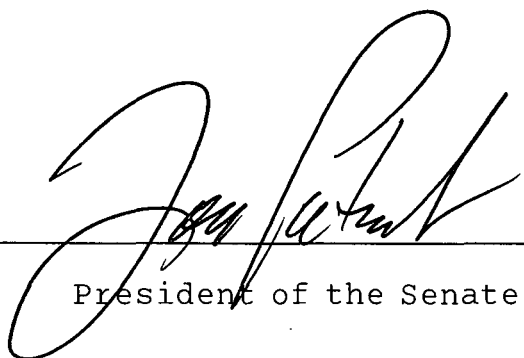
19           (d) Section 1101.001, Estates Code, as amended by this Act,  
20 applies only to an application for the appointment of a guardian  
21 filed on or after the effective date of this Act. An application  
22 for the appointment of a guardian filed before the effective date of  
23 this Act is governed by the law in effect on the date the  
24 application was filed, and the former law is continued in effect for  
25 that purpose.

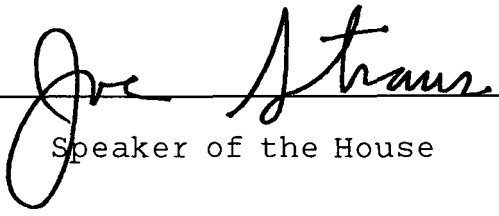
26           (e) Section 1202.051, Estates Code, as amended by this Act,  
27 applies only to an application for the restoration of a ward's

1 capacity or the modification of a ward's guardianship that is filed  
2 on or after the effective date of this Act. An application for the  
3 restoration of a ward's capacity or the modification of a ward's  
4 guardianship that is filed before the effective date of this Act is  
5 governed by the law in effect on the date the application was filed,  
6 and the former law is continued in effect for that purpose.


7 (f) Sections 1202.151, 1202.152, 1202.153, 1202.154, and  
8 1202.156, Estates Code, as amended by this Act, apply only to a  
9 proceeding for the restoration of a ward's capacity or the  
10 modification of a ward's guardianship that is filed on or after the  
11 effective date of this Act. An application for the restoration of a  
12 ward's capacity or the modification of a ward's guardianship that is  
13 filed before the effective date of this Act is governed by the law  
14 in effect on the date the application was filed, and the former law  
15 is continued in effect for that purpose.

16 SECTION 25. This Act takes effect September 1, 2015.

  
\_\_\_\_\_  
President of the Senate

H.B. No. 39  
  
\_\_\_\_\_  
Speaker of the House

I certify that H.B. No. 39 was passed by the House on April 21, 2015, by the following vote: Yeas 145, Nays 0, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 39 on May 18, 2015, by the following vote: Yeas 129, Nays 0, 2 present, not voting.

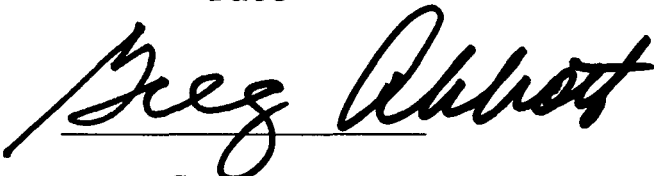
  
\_\_\_\_\_  
Chief Clerk of the House

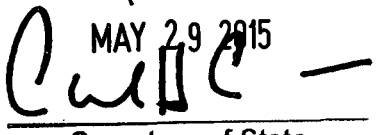
I certify that H.B. No. 39 was passed by the Senate, with amendments, on May 11, 2015, by the following vote: Yeas 31, Nays 0.

  
\_\_\_\_\_  
Secretary of the Senate

APPROVED: 5-28-2015

Date

  
\_\_\_\_\_  
Governor

FILED IN THE OFFICE OF THE  
SECRETARY OF STATE  
1:00 O'CLOCK  
MAY 29 2015  
  
\_\_\_\_\_  
Secretary of State

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION**

**May 11, 2015**

**TO:** Honorable Joe Straus, Speaker of the House, House of Representatives

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB39** by Smithee (Relating to guardianships for incapacitated persons and to substitutes for guardianships for certain adults with disabilities.), **As Passed 2nd House**

<b>No significant fiscal implication to the State is anticipated.</b>
---

The bill would amend the Estates Code to provide alternatives to guardianship for incapacitated persons that would meet the needs of a proposed ward and avoid the need for the appointment of a guardian. The bill would require a physician's certificate of medical examination accompanying a guardianship application to include additional information and would require judges and attorneys to consider if a ward could retain the right to make decisions for themselves about their personal residence. In addition, the bill would require a guardian to obtain a court's permission and for the guardian to notify the ward prior to moving a ward into a more restrictive environment, with the ward able to object to such a move. The bill would require an attorney filing an application for guardianship to obtain continuing legal education in guardianship prior to filing. In addition, the bill defines a Supported Decision-Making Agreement (SDMA) as a new alternative to guardianship and outlines the scope and terms of this agreement. The agreement would extend until terminated by either party, the terms of the SDMA, or if the Department of Family and Protective Services finds that the adult with disability has been abused, neglected, or exploited by the supporter or if the supporter is found criminally liable for abuse, neglect, or exploitation conduct.

Based on the analysis of the Office of Court Administration and the Department of Family and Protective Services, duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing resources.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 212 Office of Court Administration, Texas Judicial Council, 530 Family and Protective Services, Department of

**LBB Staff:** UP, SD, AG, GDz, FR

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION**

**May 6, 2015**

**TO:** Honorable Joan Huffman, Chair, Senate Committee on State Affairs

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB39** by Smithee (Relating to guardianships for incapacitated persons and to substitutes for guardianships for certain adults with disabilities.), **Committee Report 2nd House, Substituted**

<b>No significant fiscal implication to the State is anticipated.</b>
---

The bill would amend the Estates Code to provide alternatives to guardianship for incapacitated persons that would meet the needs of a proposed ward and avoid the need for the appointment of a guardian. The bill would require a physician's certificate of medical examination accompanying a guardianship application to include additional information and would require judges and attorneys to consider if a ward could retain the right to make decisions for themselves about their personal residence. In addition, the bill would require a guardian to obtain a court's permission and for the guardian to notify the ward prior to moving a ward into a more restrictive environment, with the ward able to object to such a move. The bill would require an attorney filing an application for guardianship to obtain continuing legal education in guardianship prior to filing. In addition, the bill defines a Supported Decision-Making Agreement (SDMA) as a new alternative to guardianship and outlines the scope and terms of this agreement. The agreement would extend until terminated by either party, the terms of the SDMA, or if the Department of Family and Protective Services finds that the adult with disability has been abused, neglected, or exploited by the supporter or if the supporter is found criminally liable for abuse, neglect, or exploitation conduct.

Based on the analysis of the Office of Court Administration and the Department of Family and Protective Services, duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing resources.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 212 Office of Court Administration, Texas Judicial Council, 530 Family and Protective Services, Department of

**LBB Staff:** UP, AG, GDz, FR

**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION**

**April 29, 2015**

**TO:** Honorable Joan Huffman, Chair, Senate Committee on State Affairs

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB39** by Smithee (Relating to guardianships for incapacitated persons.), **As Engrossed**

<b>No significant fiscal implication to the State is anticipated.</b>
---

The bill would amend the Estates Code to provide alternatives to guardianship for incapacitated persons that would meet the needs of a proposed ward and avoid the need for the appointment of a guardian. The bill would require a physician's certificate of medical examination accompanying a guardianship application to include additional information and would require judges and attorneys to consider if a ward could retain the right to make decisions for themselves about their personal residence. In addition, the bill would require a guardian to obtain a court's permission prior to moving a ward into a more restrictive environment and would require an attorney filing an application for guardianship to obtain continuing legal education in guardianship prior to filing. Based on the analysis of the Office of Court Administration, duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing resources.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 212 Office of Court Administration, Texas Judicial Council

**LBB Staff:** UP, AG, GDz, FR

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION**

**April 6, 2015**

**TO:** Honorable John T. Smithee, Chair, House Committee on Judiciary & Civil Jurisprudence

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB39** by Smithee (Relating to guardianships for incapacitated persons.), **As Introduced**

<b>No significant fiscal implication to the State is anticipated.</b>
---

The bill would amend the Estates Code to provide alternatives to guardianship for incapacitated persons that would meet the needs of a proposed ward and avoid the need for the appointment of a guardian. The bill would require a physician's certificate of medical examination accompanying a guardianship application to include additional information and would require judges and attorneys to consider if a ward could retain the right to make decisions for themselves about their personal residence. In addition, the bill would require a guardian to obtain a court's permission prior to moving a ward into a more restrictive environment and would require an attorney filing an application for guardianship to obtain continuing legal education in guardianship prior to filing. Based on the analysis of the Office of Court Administration, duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing resources.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 212 Office of Court Administration, Texas Judicial Council

**LBB Staff:** UP, FR, GDz