

HB 2217 STAFF MEASURE SUMMARY

House Committee On Judiciary

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Meeting Dates: 2/28, 4/13

WHAT THE MEASURE DOES:

Creates Falk-Alfano Act. Prohibits guardian from restricting right of communication of protected person without court order. Allows guardian to determine communication desires of protected person, when protected person is unable to express consent due to incapacity, based on proof of nature of relationship. Prohibits guardian from isolating protected person, subject to removal. Creates process for obtaining court order to limit communication by showing good cause for restriction. Specifies "good cause" includes protective or restraining orders, charge of abuse, neglect, or financial exploitation, desire of protected person, desire of protected person expressed in planning documents, and other factors deemed relevant by court. Requires court consider alternatives to complete restriction on communication. Allows protected person or any person who reasonably believes guardian has restricted communication of protected person to petition court for order or restrict communication, or to modify duties of guardian or remove guardian. Specifies process for court proceedings on communication matters, including appointment of counsel for protected person. Allows award of attorney fees to prevailing party; prohibits fees paid from protected person's estate. Allows court to order monetary sanctions against guardian. Requires guardian give notice to specified parties when protected person has change of address, change of residence greater than 7 days, admission to medical facility, death, or funeral or memorial service. Specifies notice must include location of protected person. Declares emergency; effective on passage.

No revenue impact

Minimal fiscal impact

ISSUES DISCUSSED:

EFFECT OF AMENDMENT:

No amendment.

BACKGROUND:

Guardianship is a protective proceeding created by state law in which a court gives a person or entity the duty and power to make decisions for another. Conservatorship is a similar relationship, but is limited to financial oversight. The appointment of a guardian or conservator occurs after a petition is filed and a court finds that the person who is the subject of the proceedings lacks capacity to make decisions on his or her own behalf. Guardians are often family or friends, but may also be professionals. Appointment of a guardian may be appropriate or necessary in circumstances where an adult has significant developmental delays or illness, including dementia. Guardianship may be limited, but frequently removes significant decision making authority from the person and gives it to the guardian. The guardian may be making determinations on housing, daily activity, health care treatment, finances, and communication.

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House Bill 2217 restricts a guardian's ability to limit the communication rights of a protected person. The measure allows the guardian to obtain a court order to prevent communication, with good cause shown for the restriction, such as a restraining order, charges of abuse, or an expression of desire by the protected person not to communicate with an individual. HB 2217 allows any person who reasonably believes the guardian has restricted the right of communication or violated a court order to require or restrict, as appropriate, further communication, and to remove the guardianship or modify the powers and duties of the guardian. In such motions, the court may order the prevailing party to pay the attorney fees of the other, except for those coming from the protected person's estate. The court is also given authority to impose a monetary sanction on the guardian and to appoint counsel for the protected person. HB 2217 also requires notice of a change in residence or address of a protected person, admission to the hospital or death of the protected person be sent to the spouse, parents, adult children, other person closely related to the protected person, and anyone designated by the protected person to receive such notice.