

BILL ANALYSIS

Senate Research Center
79R11047 MTB-D

H.B. 1191
By: Hartnett (Harris)
Jurisprudence
4/29/2005
Engrossed

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Practitioners in the area of guardianship have noticed provisions in the law which would benefit from additional clarification or other improvement. H.B. 1191 amends sections of the Probate Code that governs guardianships based on recommendations by the Real Estate, Probate and Trust Law Section of the State Bar of Texas.

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 Section 615, Texas Probate Code, as follows:

Sec. 615. New heading: TRANSFER OF RECORD. Requires the clerk, on payment of the clerk's fee, rather than fees, to transmit certain documents to the county clerk of the county to which the guardianship was ordered removed. Deletes existing text relating to a complete certified transcript of certain documents regarding guardianship and information regarding the original papers of the case.

SECTION 2. Amends 616, Texas Probate Code, as follows:

Sec. 616. REMOVAL EFFECTIVE. Provides that the order removing a guardianship does not take effect until certain documents are received by the county clerk of the county to which the guardianship was ordered removed. Makes a conforming change.

SECTION 3. Amends Section 672(b), Texas Probate Code, to authorize a statutory probate court, in reviewing a guardianship as provided by Subsection (a) of this section, to conduct a hearing, to review a certain account, and to review certain reports.

SECTION 4. Amends Section 694A(c), Texas Probate Code, to require the court, on receipt of an informal letter under Subsection (b) of this section, to appoint the court investigator or a guardian ad litem to investigate the circumstances of the ward, including any circumstances alleged in the informal letter to determine whether the ward is no longer an incapacitated person or whether a modification of the guardianship is necessary. Requires the court investigator or guardian ad litem to file with the court a report of the investigation's findings and conclusions and, if the court investigator or the guardian ad litem determines that it is in the best interest of the ward to terminate or modify the guardianship, requires the court investigator or guardian ad litem, as appropriate, to file an application under Subsection (a) of this section on the ward's behalf.

SECTION 5. Amends Section 761(a), Texas Probate Code, to authorize the court, on its own motion or on motion of any interested person, including the ward, and without notice, to remove any guardian, appointed under this chapter, who fails to return within 30, rather than 90, days after qualification, unless the time is extended by order of the court, an inventory of the property of the guardianship estate and list of claims that have come to the guardian's knowledge.

SECTION 6. Amends Section 776(a-3), Texas Probate Code, to require the court's order setting a monthly allowance, when different persons have the guardianship of the person and estate of a

ward, to specify the amount, if any, set by the court for the education and maintenance of the ward that the guardian of the estate is required to pay and the amount, if any, the guardian of the estate is required to pay to the guardian of the person, at a time specified by the court, for the education and maintenance of the ward. Deletes existing text relating to a monthly allowance set by the court.

SECTION 7. Amends Section 788, Texas Probate Code, as follows:

Sec. 788. CLAIMS MUST BE AUTHENTICATED. Prohibits a guardian of the estate, except as provided by Section 792 (Guardian's Payment of Unauthenticated Claims) of this code, rather than as provided by this section, with respect to the payment of an unauthenticated claim by a guardian, from allowing and the court from approving a claim for money against the estate, unless the claim is supported by an affidavit that the claim is just and that all legal offsets, payments, and credits known to the affiant have been allowed.

SECTION 8. Amends Section 831(c), Texas Probate Code, to delete existing text relating to issuing the notice of a deceased person's estate, the certain methods by which the guardian is required to give notice, and the court's authority to allow of additional notice or waiver of the notice.

SECTION 9. Amends Section 855B, Texas Probate Code, by amending Subsections (a) and (b) and adding Subsection (e), as follows:

(a) Requires the guardian to file a written application with the court for an order authorizing the guardian to invest in or sell securities under an investment plan developed under Paragraph (A) of this subdivision. Redesignates (B) and (C) as (C) and (D).

(b) Requires the order to state in reasonably specific terms the nature of the investment, investment plan, or other action requested in the application and authorized by the court, including, if applicable, the authority to invest in and sell securities in accordance with the objectives of the investment plan.

(e) Provides that a citation or notice is not necessary to invest in or sell securities under an investment plan authorized by the court under Subsection (b)(1) of this section.

SECTION 10. Amends Subpart A, Part 5, Chapter XIII, Texas Probate Code, by adding Section 874, as follows:

Sec. 874. PRESUMPTION OF INCAPACITATION. Prohibits the person for whom a temporary guardian is appointed under Section 875 (Temporary Guardian--Procedure) of this code from being presumed to be incapacitated.

SECTION 11. Makes application of Sections 615 and 616, Texas Probate Code, as amended by this Act, prospective.

SECTION 12. Makes application of Section 694A, Texas Probate Code, as amended by this Act, prospective.

SECTION 13. Makes application of Section 776, Texas Probate Code, as amended by this Act, prospective.

SECTION 14. Makes application of Section 831(c), Texas Probate Code, as amended by this Act, prospective.

SECTION 15. Makes application of Section 855B, Texas Probate Code, as amended by this Act, prospective.

SECTION 16. Effective date: September 1, 2005.