

## **BILL ANALYSIS**

C.S.H.B. 1472  
By: Casteel  
Judiciary  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

The purpose of Section 867 of the Texas Probate Code is to avoid having to file an application for guardianship to create an 867 Trust, which creates a management trust for the ward or incapacitated person. As the code is currently written, only the guardian of a ward or the ward's attorney ad litem may apply for this trust to be created.

CSHB 1472 authorizes an applicant, who is a person interested in the welfare of the ward, to directly file and request the appointment of a corporate trustee without the necessity of requesting the appointment of a guardian.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

CSHB 1472 amends Section 867 of the Texas Probate Code by defining those persons who may apply for the creation of a trust under Section 867. When the appropriate person files for application to the proper court, that court may enter an order that creates a trust for the management of guardianship funds, as long as the person is found to be incapacitated and the creation of the trust is in the incapacitated person's best interests. Additionally, procedural requirements are included. It also creates Section 867A which defines venue for the application proceeding. Additionally, it makes conforming changes by adding "incapacitated person."

### **EFFECTIVE DATE**

September 1, 2005

### **COMPARISON OF ORIGINAL TO SUBSTITUTE**

The substitute specifically lists who may apply for the creation of the 867 trust and that the trust can be applied to an incapacitated person as well as a ward of an existing guardianship. The list changes the meaning of the original by providing that a person interested in the welfare of an alleged incapacitated person may apply for a management trust only when such person does not already have a guardian of his estate. The substitute also adds Section 867A, which was not contained in the original.