

BILL ANALYSIS

C.S.H.B. 342
By: Naishtat
Judiciary
Committee Report (Substituted)

BACKGROUND AND PURPOSE

In December 2005, a Bexar County probate court granted a temporary guardianship request concerning 85 year-old Lillian Glasser, a New Jersey resident who vacationed yearly in Florida and Texas. Later, as the Texas guardianship proceeding over Mrs. Glasser progressed, a New Jersey court began guardianship proceedings. However, under current law there is no statutory mechanism for a Texas court to suspend proceedings to determine which court would be the most proper forum. Because New Jersey and other states have different requirements, such as residency, the proper venue for these proceedings is often unclear. As a result, millions of dollars in litigation costs occurred during the fight over which state was the most proper forum for the guardianship case.

C.S.H.B. 342 would clarify Texas probate law by allowing a Texas court to delay further action in the guardianship proceeding before it when a foreign jurisdiction has begun a proceeding dealing with the same matter and venue in that foreign court is proper. The Texas court would then determine whether venue of the proceeding was more proper in Texas or the foreign jurisdiction, and resume or transfer the proceeding accordingly. In addition, C.S.H.B 342 would allow the court to issue any necessary orders during the delay to protect the proposed ward.

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

The bill would add a new section to the Probate Code which would permit a court hearing a guardianship proceeding to delay further action in the proceeding when a second guardianship proceeding with proper venue involving a matter at issue in the original proceeding is filed. At such time, the court would be required to determine which court is more suitable for the hearing of the proceeding and either retain or transfer the proceeding accordingly. The court delaying a proceeding under this section would be authorized to issue any orders it considers necessary to protect the ward and the ward's estate.

EFFECTIVE DATE

Immediately on receipt of required vote; otherwise September 1, 2007.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The original bill required a court to "abate" a guardianship proceeding when another guardianship proceeding involving the same matter is filed in a foreign jurisdiction. Abating a proceeding, however, could be interpreted as ending the proceeding in that court without the possibility of restarting it. The committee substitute changes the language of the bill to allow a court to "delay further action" in the proceedings, allowing it to resume the proceeding if it finds venue is more suitable in the Texas court. The committee substitute also added language that would allow the court to issue any orders during the delay that were necessary to protect the proposed ward.