

BILL ANALYSIS

Senate Research Center
86R3313 CLG-F

S.B. 667
By: Zaffirini
State Affairs
3/12/2019
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 667 is an omnibus guardianship bill prepared by the Real Estate Probate and Trust Law Section of the Texas Bar. To ensure the rights of all interested parties in a management trust are protected, S.B. 667 would require notice to the potential beneficiary, the beneficiary's guardian, and family member when an application for the creation of a management trust is filed. What's more, by allowing management trusts to last until the removal of an incapacity or until the beneficiary dies, S.B. 667 would ensure that a management trust benefitting a person with a disability is not terminated inadvertently when the person turns 25, which in turn would require reimbursement to Medicaid from the trust. S.B. 667 also would increase judicial efficiency by allowing county courts-at-law to hear trust cases when the person under guardianship is also a trust's beneficiary. Presently, some of these cases are forced to go to district court. S.B. 667 would also amend statutes relating to the sale of property by an out-of-state guardian to allow the guardian to use the sale proceeds for the benefit of the person under guardianship. S.B. 667 would also clarify that under the Guardianship Bill of Rights a court investigator or guardian ad litem is authorized to be appointed to investigate a complaint relating to modification or termination of a guardianship, which is consistent with current law. S.B. 667 would provide that the proper newspaper to be used for notice of a guardianship proceeding is a newspaper of general circulation in the county, rather than a newspaper printed in the county. This addresses the reality that newspapers are often printed in a county other than the county in which they are circulated. Lastly, S.B. 667 would require payment out of the guardianship estate to be under a best interest standard, consistent with the standard for payment out of a person with a disability's management trust.

As proposed, S.B. 667 amends current law relating to guardianships, management trusts, and certain other procedures and proceedings for persons who are incapacitated.

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 1021.001, Estates Code, as follows:

Sec. 1021.001. MATTERS RELATED TO GUARDIANSHIP PROCEEDING. (a) Provides that, for purposes of this code, in a county in which there is no statutory probate court or county court of law exercising original probate jurisdiction, rather than in a county in which there is no statutory probate court, a matter related to a guardianship proceeding includes certain matters and actions.

(a-1) Provides that, for purposes of this code, in a county in which there is no statutory probate court, but in which there is a county court at law exercising original probate jurisdiction, a matter related to a guardianship proceeding includes:

(1) all matters and actions described in Subsection (a);

(2) the interpretation and administration of a testamentary trust in which a ward is an income or remainder beneficiary; and

(3) the interpretation and administration of an inter vivos trust in which a ward is an income or remainder beneficiary.

(b) Provides that, for purposes of this code, in a county in which there is a statutory probate court, a matter related to a guardianship proceeding includes:

(1) all matters and actions described in Subsections (a) and (a-1), rather than in Subsection (a); and

(2)–(3) makes no changes to these subdivisions.

SECTION 2. Amends Section 1151.351(b), Estates Code, as follows:

(b) Authorizes a ward, unless limited by a court or otherwise restricted by law:

(1)–(11) makes no changes to these subdivisions;

(12) to have a court investigator or guardian ad litem, rather than to have a court investigator, guardian ad litem, or attorney ad litem, appointed by the court to investigate a complaint received by the court from the ward or any person about the guardianship; and

(13)–(24) makes no changes to these subdivisions.

SECTION 3. Amends Sections 1153.001(a) and (c), Estates Code, as follows:

(a) Requires the notice provided by a guardian of an estate within one month after receiving letters of guardianship to be:

(1) published in a newspaper of general circulation in the county in which the letters were issued, rather than printed in a newspaper printed in the county in which the letters were issued; and

(2) makes no change to this subdivision.

(c) Requires the notice to be posted and the return made and filed as otherwise required by this title if there is no newspaper of general circulation, rather than if a newspaper is not printed, in the county in which the letters of guardianship were issued.

SECTION 4. Amends Section 1155.054(d), Estates Code, as follows:

(d) Provides that if the court finds that a party in a guardianship proceeding acted in bad faith or without just cause in prosecuting or objecting to an application in the proceeding, the court is authorized to order, rather than require, the party to reimburse the ward's estate for all or part of the attorney's fees awarded under this section and that the court is required to issue judgment against the party and in favor of the estate for the amount of attorney's fees ordered, rather than required, to be reimbursed to the estate.

SECTION 5. Amends Section 1155.151(a), Estates Code, as follows:

(a) Provides that, in a guardianship proceeding, the court costs of the proceeding, including the costs described by Subsection (a-1), are required to be paid as follows, except as provided by Subsection (c), and the court is required to issue the judgment accordingly:

(1) out of the guardianship estate, if a guardianship of the estate has been created for the benefit of the ward and the court determines it is in the ward's best interest, rather than out of the guardianship estate;

(2)–(3) makes no changes to these subdivisions;

(4) out of the county treasury if:

(A) creates Subparagraphs (i–iii) from existing text;

(i)–(ii) makes nonsubstantive changes; or

(iii) a guardianship of the estate has been created for the benefit of the ward and the court determines it is not in the ward's best interest to pay the costs; and

(B) makes no changes to this paragraph.

SECTION 6. Amends Section 1163.005(a), Estates Code, as follows:

(a) Requires the guardian of the estate to attach to an account the guardian's affidavit stating:

(1)–(4) makes no changes to these subdivisions; and

(5) if the guardian is a private professional guardian, a guardianship program, or the Health and Human Services Commission, whether the guardian or an individual certified under Subchapter C (Standards for and Certification of Certain Guardians), Chapter 155, Government Code, who is providing guardianship services to the ward and who is swearing to the account on the guardian's behalf, is or has been the subject of an investigation conducted by the Judicial Branch Certification Commission during the accounting period, rather than if the guardian is a private professional guardian, a guardianship program, or the Department of Aging and Disability Services, whether the guardian or an individual certified under Subchapter C, Chapter 111, Government Code, who is providing guardianship services to the ward and who is swearing to the account on the guardian's behalf, is or has been the subject of an investigation conducted by the Guardianship Certification Board during the accounting period.

SECTION 7. Amends Section 1163.101(c), Estates Code, as follows:

(c) Requires the guardian of the person to file a sworn affidavit that contains:

(1)–(8) makes no changes to these subdivisions;

(9) makes conforming changes; and

(10) makes no changes to this subdivision.

SECTION 8. Amends Subchapter B, Chapter 1301, Estates Code, by adding Section 1301.0511, as follows:

Sec. 1301.0511. NOTICE REQUIRED FOR APPLICATION FOR CREATION OF TRUST; CITATION OF APPLICANT NOT REQUIRED. (a) Requires, on the filing of an application for creation of a management trust and except as provided by Subsection (d), notice to be issued and served in the manner provided by Subchapter C (Notice and Citation Required for Application for Guardianship), Chapter 1051, for the issuance and service of notice on the filing of an application for guardianship.

(b) Provides that it is not necessary to serve a citation on a person who files an application for the creation of a management trust under this subchapter or for that person to waive the issuance and personal service of citation.

(c) Requires the sheriff or other officer to personally serve each guardian of the ward with citation to appear and answer the application in addition to serving the persons described by Section 1051.103 (Service of Citation for Application for Guardianship) if the person for whom an application for creation of a management trust is filed is a ward.

(d) Provides that notice under this section is not required if a proceeding for the appointment of a guardian is pending for the person for whom an application for creation of a management trust is filed.

SECTION 9. Amends Section 1301.101(a), Estates Code, as follows:

(a) Requires a management trust created for a ward or incapacitated person, except as provided by Subsection (c), to provide that:

(1)–(3) makes no changes to these subdivisions;

(4)–(5) makes nonsubstantive changes;

(6) the trust terminates:

(A) except as provided by Paragraph (B), if the person for whom the trust is created is a minor on the earlier of the person's death or the person's 18th birthday, or on the date provided by court order, which may not be later than the person's 25th birthday;

(B) if the person for whom the trust is created is a minor and is also incapacitated for a reason other than being a minor on the person's death or when the person regains capacity; or

(C) if the person for whom the trust is created is not a minor according to the terms of the trust, on the date the court determines that continuing the trust is no longer in the person's best interests, subject to Section 1301.202(c) (relating to a prohibition of the court allowing termination of the management trust from which property is transferred under this section until all property in the management trust has been transferred to the pooled trust subaccount), or on the person's death.

SECTION 10. Amends Section 1301.154(b), Estates Code, to require the trustee of a management trust created for a ward to provide a copy of the annual account to each guardian of the ward, rather than to the guardian of the ward's estate or person.

SECTION 11. Amends Section 1301.203, Estates Code, by amending Subsection (a) and adding Subsection (a-1), as follows:

(a) Creates an exception under Subsection (a-1) to the provision that the management trust, if the person for whom a management trust is created is a minor, terminates on a certain date.

(a-1) Provides that if the person for whom a management trust is created is a minor and is also incapacitated for a reason other than being a minor, the trust terminates on the person's death or when the person regains capacity.

SECTION 12. Amends Sections 1355.002(b), (c), (d), (e), and (f), Estates Code, as follows:

(b) Provides that this section applies only to a nonresident creditor who is a nonresident minor and has a nonresident guardian of the estate appointed by a foreign court, a nonresident person who is adjudged by a foreign court to be incapacitated and has a nonresident guardian of the estate appointed by that court, or the nonresident former ward of a guardianship terminated under Chapter 1204 (Final Settlement, Accounting, and Discharge) who has no legal guardian qualified in this state, rather than applying only to a creditor who is a nonresident minor, a nonresident person who is adjudged by a court of competent jurisdiction to be incapacitated, or the former ward of a guardianship terminated under Chapter 1204 who has no legal guardian qualified in this state. Makes nonsubstantive changes.

(c) Authorizes a debtor in this state who owes money to a nonresident creditor, rather than to a creditor, to whom this section applies to pay the money:

(1) to the creditor's guardian of the estate, rather than the creditor's guardian, qualified in the domiciliary jurisdiction; or

(2) makes no changes to this subdivision.

(d) Provides that a payment made under this section is for the nonresident creditor's account and for the nonresident creditor's use and benefit, rather than for the creditor's account and for the creditor's use and benefit.

(e) Provides that a receipt for payment signed by the county clerk is binding on the nonresident creditor, rather than on the creditor, as of the date and to the extent of payment if the receipt states certain information.

(f) Requires a county clerk who receives a payment under Subsection (c) for a nonresident creditor, rather than who receives a payment under Subsection (c), to handle the money in the same manner as provided for a payment to the account of a resident creditor under certain sections. Provides that those sections apply to the handling and disposition of money or any increase, dividend, or income paid to the clerk for the use, benefit, and account of the nonresident creditor, rather than of the creditor, to whom this section applies.

SECTION 13. Amends Section 1355.105, Estates Code, as follows:

Sec. 1355.105. New heading: WITHDRAWAL OF MONEY BY CREDITOR OR CREDITOR'S HEIR, REPRESENTATIVE, OR GUARDIAN. (a) Authorizes, on presentation to the court clerk of an order of a county or probate court of the county in which the money is held, money that is not withdrawn by an authorized person as provided by this chapter to be withdrawn by:

(1) makes no changes to this subdivision;

(2)–(3) makes nonsubstantive changes; or

(4) a nonresident guardian of the estate appointed by a foreign court for a creditor who is a nonresident minor or a nonresident person who is adjudged to be incapacitated.

(b) Creates an exception under Subsection (b-1) to the authorization for a withdrawal under Subsection (a) to be made at any time and without a special bond for that purpose.

(b-1) Authorizes a court to require a nonresident guardian of the estate of a creditor who is a nonresident minor or nonresident incapacitated person as described by Subsection (a)(4) to provide proof that the nonresident guardian of the estate gave an adequate bond in the foreign jurisdiction if the court determines

that it is in the nonresident minor's or nonresident incapacitated person's best interest.

(c) Requires the order presented under Subsection (a) to direct the court clerk to deliver the money to:

(1)–(3) creates these subdivisions from existing text and makes nonsubstantive changes; or

(4) if the creditor is a nonresident minor or nonresident person who is adjudged to be incapacitated, the creditor's nonresident guardian of the estate.

(d) Provides that for purposes of this subsection, a nonresident guardian of the estate described by Subsection (c)(4) is required to present to the court exemplified copies of the order of a foreign court appointing the guardian and current letters of guardianship issued in the foreign jurisdiction.

SECTION 14. (a) Provides that, except as otherwise provided by this section, the changes in law made by this Act apply to a guardianship created before, on, or after the effective date of this Act and to an application for a guardianship pending on, or filed on or after, the effective date of this Act.

(b) Makes application of Section 1021.001, Estates Code, as amended by this Act, prospective.

(c) Makes application of Sections 1155.054(d) and 1155.151(a), Estates Code, as amended by this Act, prospective.

(d) Makes application of Section 1301.0511, Estates Code, as added by this Act, prospective.

(e) Makes application of Sections 1301.101 and 1301.203, Estates Code, as amended by this Act, prospective.

(f) Makes application of Section 1355.105, Estates Code, as amended by this Act, prospective.

SECTION 15. Effective date: September 1, 2019.