

SUBJECT: Changing the order of priority of payment of claims of a ward's estate

COMMITTEE: Judicial Affairs — favorable, without amendment

VOTE: 5 ayes — Thompson, Hartnett, Crabb, Luna, Zbranek

0 nays

1 present, not voting — Shields

3 absent — Clark, Garcia, Solis

WITNESSES: None

BACKGROUND : The estates of wards are administered by appointed guardians. The priority of payments for claims against the estate of a ward is set out in statute in the following order:

- 1) expenses for care, maintenance and education of the ward's dependents;
- 2) funeral expenses and expenses of the ward's last illness;
- 3) expenses of administering the estate; and
- 4) all other claims.

DIGEST: HB 3432 would change the order of priority of payments if the estate of the ward was insolvent. In such cases, administration expenses would be given first priority.

HB 3432 would take effect September 1, 1997, and apply only to guardians appointed on or after that date.

SUPPORTERS SAY: In cases where the estate of a ward is insolvent, without enough money to pay all claims, it can be very difficult to find someone willing to serve as the guardian of that estate because that person will be forced to cover the administration expenses themselves. In most cases, there is money to cover some expenses, but not all. The administration of those claims can often involve significant expenses but such expenses still remain a third priority. By allowing administration expenses to be covered as a first priority, more

people would be willing to serve as guardians of such estates, and the claims against such estates could be resolved more quickly.

The purpose of this legislation is not to allow attorneys who serve as guardians to get paid no matter how poor the estate but to ensure that there is someone willing to administer the estate. Without a guardian, probate courts must administer such estates themselves, wasting judicial resources. Appointing guardians streamlines the process, but guardians will only serve if they are able to get paid for such service.

OPPONENTS
SAY:

This legislation would place the payment of the guardian ahead of payments for the welfare of the dependents of the estate, which may not be the best approach to enticing more people to serve as guardians of such estates.