

BILL ANALYSIS

Senate Research Center

H.B. 1314
By: Naishtat (Wentworth)
Jurisprudence
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Engrossed

DIGEST

The Texas Probate Code was amended in 1993 to allow probate courts to create management trusts in limited circumstances. The limits are that there must be a guardianship of a ward's estate in existence, the ward must be the sole beneficiary of the trust, and distributions must be only used for the ward's (or his dependents') health, education, support or maintenance to the extent allowed by law. (The law requires a parent of a minor, and in some instances of a disabled adult, to support the minor disabled adult and to invest in the best interest of the minor/incapacitated adult.)

These corporate fiduciary managed trusts were most appropriate for certain limited circumstances, such as when there were large sums of money that would normally be turned over to the person reaching the age of 18 or when an incapacitated person other than a minor has such a large sum of money that a corporate fiduciary's investment expertise would be needed to manage these large estates.

Recent federal legislation has allowed assets of certain mentally disabled persons, primarily those under age 65, to shelter assets in a trust from Medicaid eligibility disqualification rules, when the trust instrument provided (1) that the sheltered assets were only to be used to supplement the needs of the disabled person beyond that provided by the Medicaid program and (2) that any trust funds remaining upon the death of the beneficiary be used to repay the Medicaid fund for any payments made on behalf of the beneficiary during the time of "special need." If there were no funds remaining at the time of death, or there were insufficient funds to repay Medicaid, then any Medicaid claim would cease to exist. Although all agree that "special needs trusts" are beneficial to the disabled (and that failure to avail ourselves of this federal law results in Texans getting less federal aid than the law allows), there has been disagreement among probate practitioners whether the current management trust language in Probate Code, Section 867 allows such "special needs trusts" to be created in Texas. Amending the current law would recognize the authority of our probate courts to create these types of trusts. H.B. 1314 would allow probate courts the right to create special needs trusts.

PURPOSE

As proposed, H.B. 1314 allows probate courts the right to create special needs trusts.

RULEMAKING AUTHORITY

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 867, Probate Code, to authorize the court, upon application by the guardian of a ward or by a ward's attorney ad litem at any time after the date of the attorney's appointment under Section 646 of this code, in which the guardianship proceeding is pending, to enter an order that creates for the ward's benefit a trust for the management of guardianship funds if the court finds that the creation of the trust is in the ward's best interests. Requires the order to direct the guardian or another person to take certain action.

SECTION 2. Amends Section 868, Probate Code, by amending Subsections (a) and (b) and adding Subsections (d) and (e), to authorize the trust to provide that a trustee make a distribution, payment, use, or application of trust funds for the health, education, support, or maintenance of the ward or

of another person whom the ward is legally obligated to support, as necessary and without the intervention of a guardian or other representative of the ward, to certain persons. Authorizes the court, when creating or modifying a trust, to omit or modify terms required by Subsection (a)(1) or (2) of this section only if the court makes certain determinations regarding the omission or modification. Authorizes the court to include additional provisions in a trust created or modified under this section if the court determines an addition does not conflict with Subsection (a), and if appropriate, Subsection (d) of this section.

SECTION 3. Amends Chapter XIII(4)(N), Probate Code, by adding Sections 868A, 869B, and 869C, as follows:

Sec. 868A. DISCHARGE OF GUARDIAN OF ESTATE AND CONTINUATION OF TRUST. Authorizes the court, on or at any time after the creation of a trust under this subpart, to discharge the guardian of the ward's estate only if a guardian of the ward's person remains and the court determines that the discharge is in the ward's best interests.

Sec. 869B. APPLICABILITY OF TEXAS TRUST CODE. Provides that a trust created under Section 867 of this code is subject to Title 9B, Property Code. Provides that to the extent of a conflict between Title 9B, Property Code, and a provision of this subpart or of the trust, the provision of the subpart or trust controls.

Sec. 869C. JURISDICTION OVER TRUST MATTERS. Provides that a court that creates a trust under Section 867 of this code has the same jurisdiction to hear matters relating to the trust as the court has with respect to the guardianship and other matters covered by this chapter.

SECTION 4. Amends Section 870(b), Probate Code, to provide that if the ward is an incapacitated person other than a minor, the trust terminates on the date the court determines that continuing the trust, rather than a guardianship, is no longer in the ward's best interests, rather than necessary for the ward, or on the death of the ward.

SECTION 5. Amends Section 115.001(d), Property Code, to provide that the jurisdiction of the district court over proceedings concerning trusts is exclusive except for jurisdiction conferred by law on a statutory probate court or a court that creates a trust under Section 867, Probate Code.

SECTION 6. Repealer: Section 868(c), Probate Code (Powers of Trustee--Terms of Management Trust).

SECTION 7. Authorizes a trust to be created under Section 867, Probate Code, as amended by this Act, regardless of the date on which the guardianship was created. Provides that a trust otherwise valid under Section 867, Probate Code, is not invalid solely because it was created for a guardianship that was in existence before September 1, 1993, and those trusts are validated as of the date of the creation of the trust.

SECTION 8. Effective date: September 1, 1997.

Provides that all trusts created under Section 867, Probate Code, are retroactive.

SECTION 9. Emergency clause.