

BILL ANALYSIS

Senate Research Center

C.S.S.B. 997
By: Harris
Jurisprudence
3-25-97
Committee Report (Substituted)

DIGEST

Currently, the Probate Code requires that a social security number be provided when applying for the appointment of a guardian, does not grant guardians the authority to abandon worthless holdings or property, is unclear on who is eligible to apply for the creation of a management trust, and recently there was a change in the procedure for the designation of a guardian. C.S.S.B. 997 removes the requirement for the provision of social security numbers in certain proceedings, clarifies the authority of guardians to conduct certain transactions, clarifies who may apply for the creation of a guardian trust, and restores the procedure for designation of a guardian to that which was in effect prior to 1995.

PURPOSE

As proposed, C.S.S.B. 997 removes the requirement for the provision of social security numbers in certain proceedings, clarifies the authority of guardians to conduct certain transactions, clarifies who may apply for the creation of a guardian trust, and restores the procedure for designation of a guardian to that which was in effect prior to 1995.

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 609(c), Probate Code, to require the court to which a transfer is made under this section to apply Sections 155.005 and 155.205, Family Code, rather than Section 11.05(h), Family Code, and its subsequent amendments.

SECTION 2. Amends Sections 633(d) and (f), Probate Code, to require the clerk of the court to mail notice to certain persons designated as guardian of a proposed ward. Makes conforming changes.

SECTION 3. Amends Section 671, Probate Code, by adding Subsection (e), to authorize the court to request a certain applicant or court-appointed fiduciary. Requires the court to maintain certain information and the information may not be filed with the clerk.

SECTION 4. Amends Section 677A(a), Probate Code, to require a declaration appointing a guardian under Section 677(b), rather than Section 676(d) or 677(b), to be attested.

SECTION 5. Amends Section 682, Probate Code, to delete a provision requiring an application to include the social security number of the proposed ward and of the person the applicant desires to have appointed as guardian. Makes conforming changes.

SECTION 6. Amends Section 774(a), Probate Code, to authorize the guardian to take certain action in the best interest of the estate. including abandoning worthless or burdensome property.

SECTION 7. Amends Part 4F, Chapter XIII, Probate Code, by adding Section 776A, as follows:

Sec. 776A. SUMS ALLOWABLE FOR EDUCATION AND MAINTENANCE OF WARD'S SPOUSE OR DEPENDENT. Sets forth allowable sums for education and

maintenance of a ward's spouse or dependent.

SECTION 8. Amends Section 783(a), Probate Code, to require representatives of the estate to send to the comptroller if the ward, rather than decedent, remitted or should have remitted taxes administered by the comptroller.

SECTION 9. Amends Section 865, Probate Code, by amending Subsection (a) and adding Subsection (e), to provide that on application of the guardian of the estate or any interested party and after the posting of notice, rather than notice to all interested persons and to other persons as directed by the court, the court is authorized to take certain actions. Authorizes the court to authorize guardians to make gifts of the ward's property to or for the benefit of the ward's spouse, descendant, or other person related to the ward by blood or marriage, rather than the ward's heirs at law, or a devisee under the ward's last validly executed will, trust, or other beneficial instrument if the instrument exists. Requires a person who makes an application to the court to mail notice of the application to certain persons. Makes a conforming change.

SECTION 10. Authorizes a court to modify a guardianship in effect on September 1, 1997, to conform to this Act.

SECTION 11. Makes application of this Act prospective.

SECTION 12. Effective date: September 1, 1997.

SECTION 13. Emergency clause.

SUMMARY OF COMMITTEE CHANGES

SECTION 3.

Amends SECTION 3, Section 671, Probate Code, to authorize the court to request an applicant or court-appointed fiduciary to produce certain information. Requires the court to maintain the information and the information may not be filed with the clerk.

SECTION 5.

Proposed SECTION 4 is now SECTION 5.

SECTION 6.

Proposed SECTION 5 is now SECTION 6. Deletes proposed SECTION 6.

SECTION 7.

Amends SECTION 7, Chapter XIII(4F), Probate Code, to provide for sums allowable for education and maintenance of a ward's spouse or dependent. Proposed SECTION 7 is now SECTION 8.

SECTION 9.

Amends SECTION 9, Section 865, Probate Code, to authorize the court to authorize guardians to make gifts of the ward's property to or for the benefit of a devisee under the ward's last validly executed will, trust, or other beneficial instrument if the instrument exists. Requires a person who makes an application to the court to mail notice of the application to certain persons. Deletes proposed SECTION 9.