

BILL ANALYSIS

Senate Research Center
76R15244 CLG-D

C.S.H.B. 1851
By: Thompson (Harris)
Jurisprudence
5/11/1999
Committee Report (Substituted)

DIGEST

Historically, periodic updates are needed in the Probate Code to conform to new revisions. C.S.H.B. 1851 would codify and update a certain number of suggested revisions to guardianships and other related matters regarding incapacitated persons.

PURPOSE

As proposed, C.S.H.B. 1851 makes periodic updates needed in the Probate Code regarding guardianships and related matters concerning incapacitated persons.

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 665(a), Probate Code, to authorize the court to authorize compensation for a guardian or a temporary guardian serving as a guardian of the person alone from available funds of the ward's estate or other funds available for that purpose.

SECTION 2. Amends Section 687(b), Probate Code, to require the court to make its determination with respect to the necessity for a physician's examination of the proposed ward at a hearing held for that purpose, unless the court determines that an emergency examination is necessary. Requires the applicant to give to the proposed ward and the proposed ward's attorney ad litem written notice specifying the purpose and the date and time of the hearing, no later than the fourth day before the date of the hearing.

SECTION 3. Amends Section 745(c), Probate Code, to authorize the guardianship of an estate to be terminated and the assets paid to the county clerk of the county in which the guardianship proceeding is pending, when the estate of a minor ward consists only of cash or cash equivalents in an amount of \$50,000, rather than \$25,000.

SECTION 4. Amends Chapter XIID(4), Probate Code, by adding Sections 760A and 760B, as follows:

Sec. 760A. CHANGE OF RESIDENT AGENT. Authorizes a guardian to change its resident agent to accept service of process in a guardianship proceeding or other matter relating to the guardianship by filing a statement of the change entitled "Designation of Successor Resident Agent" with the court in which the guardianship proceeding is pending. Requires the statement to contain the names of addresses of the guardian, resident agent, and successor resident agent. Provides that the designation of a successor resident agent made in a statement filed under this section takes effect on the date on which the statement is filed with the court.

Sec. 760B. RESIGNATION OF RESIDENT AGENT. Authorizes a resident agent of a guardian to resign as the resident agent by giving notice to the guardian and filing with the court in which the guardianship proceeding is pending a statement entitled "Resignation of Resident Agent" that contains certain information. Requires the resident agent to send, by certified mail, return receipt requested, a copy of a resignation statement filed under Subsection (a) of this section to the guardian at the address most recently known by the agent, and each party in the case or the party's attorney or other designated representative of record. Provides that the resignation of a resident agent takes effect on the date on which the court enters an order accepting the agent's resignation.

Prohibits a court from entering an order accepting the agent's resignation unless the agent complies with the requirements of this section.

SECTION 5. Amends Section 761, Probate Code, to authorize the court, on its own motion or on motion of any interested person, to remove any guardian, appointed under this chapter who cannot be served with notices or other processes because of the fact that the guardian is a nonresident of this state who does not have a resident agent to accept services of process in any guardianship proceeding or other matter relating to the guardianship, and other conditions. Authorizes the court to remove a guardian on its own motion, or on the complaint of an interested person, after the guardian has been cited by personal service to answer at a time and place set in the notice, when the court determines that there has been a dissolution of the joint guardians' marriage and the joint guardians were not named as joint managing conservators by a court with jurisdiction to decide child custody matters. Entitles the other joint guardian to continue to serve as the sole guardian unless removed for a reason other than the dissolution of the joint guardians' marriage, if a joint guardian is removed under Subsection (c)(9) of this section. Makes conforming changes.

SECTION 6. Amends Section 784, Probate Code, by adding Subsection (e), to require the guardian of the estate to expressly state in the notice that the unsecured creditor must present a claim no later than the 120th day after the date on which the unsecured creditor receives the notice or the claim is barred, if the claim is not barred by the general statutes of limitation, in the notice required by Subsection (b) of this section. Requires the notice under this subsection to include the address to which claims may be presented, and an instruction that the claim be filed with the clerk of the court issuing the letters of guardianship.

SECTION 7. Amends Section 786(a), Probate Code, to provide that the claim is barred, if a claim of an unsecured creditor for money is not presented within the time prescribed by the notice permitted by Section 784(e) of this code.

SECTION 8. Amends Chapter XIIIIM(4), Probate Code, by adding Section 865A, as follows:

Sec. 865A. INSPECTION OF CERTAIN INSTRUMENT FOR ESTATE PLANNING PURPOSES. (a) Authorizes the guardian of the ward's estate to apply to the court for an order to seek an in camera inspection of a true copy of a will, codicil, trust, or other estate planning instrument of the ward as a means of obtaining access to the instrument for purposes of establishing an estate plan under Section 865 of this code.

(b) Requires that an application filed under this section to be sworn to by the guardian, list all of the instruments requested for inspection, and state one or more reasons supporting the necessity to inspect each requested instrument for the purpose described by Subsection (a) of this section.

(c) Requires a person who files an application under this section to send a copy of the application to certain persons.

(d) Requires notice required by Subsection (c) of this section to be delivered by certified mail to a person described by Subsections (c)(2), (3), (4), or (5) of this section and by registered or certified mail to a person described by Subsection (c)(1) of this section. Authorizes the applicant to request that a hearing be held on the application, after the 10th day after the date on which the applicant complies with the notice requirement. Requires notice of the date, time, and place of the hearing to be given by the applicant to each person described by Subsection (c)(1) of this section when court sets a date for a hearing on the application.

(e) Requires the court to direct the person that has custody of the requested will, codicil, trust, or other estate planning instrument, to deliver a true copy of the instrument to the court for in camera inspection only, after the conclusion of a hearing on the application and on a finding that there is good cause for an in camera inspection of a requested instrument. Requires the court, if good cause exists, to release all or part of the instrument to the applicant only for the purpose described by Subsection (a) of this section, after conducting an in camera review of the instrument.

(f) Authorizes the court to appoint a guardian ad litem for the ward or an interested party at any stage of the proceedings if it is considered advisable for the protection of the ward or the interested party.

(g) Provides that an attorney does not violate the attorney-client privilege solely by complying with

a court order to release an instrument subject to this section. Prohibits the supreme court from amending or adopting rules in conflict with this subsection, notwithstanding Section 22.004, Government Code.

SECTION 9. Amends Section 867, Probate Code, to authorize the court in which the guardianship proceeding is pending to enter an order that creates for the ward's or incapacitated person's benefit a trust for the management of guardianship funds or funds of the incapacitated person's estate if the court finds that the creation of the trust is in the ward's or incapacitated person's best interests, on application by the guardian of a ward or by a ward's attorney ad litem or an incapacitated person's guardian ad litem at any time after the date of the ad litem's, rather than attorney's, appointment under Section 646 or another provision of this code. Requires the order to direct the guardian or another person to deliver all or part of the assets of the guardianship or estate to a trust company or a state or national bank that has trust powers in this state.

SECTION 10. Amends Section 885(a), Probate Code, to require the county judge of the county in which the minor or other incapacitated person resides or in which the endangered estate is located to enter an order, appointing a suitable person as receiver to take charge of the estate, when the estate or any portion of the estate of a minor or other incapacitated person appears in danger of injury, loss, or waste and in need of a representative, but there is no guardian of the estate who is qualified in this state and the appointment of a guardian for the estate is not necessary to protect the estate. Deletes text regarding any portion of the estate of the minor or other incapacitated person and guardianship. Makes a conforming change.

SECTION 11. Amends Chapter XIII(5), Probate Code, by adding Subparts G and H, as follows:

SUBPART G. INTERSTATE GUARDIANSHIPS

Sec. 891. TRANSFER OF GUARDIANSHIP TO FOREIGN JURISDICTION. (a) Authorizes a guardian of the person or estate of a ward to apply with the court that has jurisdiction over the guardianship to transfer the guardianship to a court in a foreign jurisdiction if the ward has moved permanently to the foreign jurisdiction.

(b) Requires notice of the application to transfer a guardianship under this section to be served personally on the ward and to be given to the foreign court to which the guardianship is to be transferred.

(c) Requires the court to hold a hearing to consider the application to transfer the guardianship, on the court's own motion or on the motion of the ward or any interested person.

(d) Requires the court to transfer a guardianship to a foreign court if the court determines the transfer is in the best interests of the ward. Requires the transfer of the guardianship to be made contingent on the acceptance of the guardianship in the foreign jurisdiction. Requires the court to coordinate efforts with the appropriate foreign court, to facilitate the orderly transfer of the guardianship.

Sec. 892. RECEIPT AND ACCEPTANCE OF FOREIGN GUARDIANSHIP. (a) Authorizes a guardian appointed by a foreign court to represent an incapacitated person who is residing in this state or intends to move to this state to file an application with a court in which the ward resides or intends to reside to have the guardianship transferred to the court.

(b) Requires the notice of the application for receipt and acceptance of a foreign guardianship under this section to be served personally on the ward and to be given to the foreign court from which the guardianship is to be transferred.

(c) Requires the proceeding to be heard in the court with jurisdiction over the application filed on the earliest date if venue is otherwise proper in that court, if an application for receipt and acceptance of a foreign guardianship is filed in two or more courts with jurisdiction. Requires a court that does not have venue to hear the application to transfer the proceeding to the proper court.

(d) Requires the court to determine certain conditions, in reviewing an application for receipt and

acceptance of a foreign guardianship.

(e) Requires the court to hold a hearing to consider the application for receipt and acceptance of a foreign guardianship, on the court's own motion or on the motion of the ward or any interested person.

(f) Requires the court to grant an application for receipt and acceptance of a foreign guardianship if the transfer of the guardianship from the foreign jurisdiction is in the best interests of the ward. Requires the court to give full faith and credit to the provisions of the foreign guardianship order concerning the determination of the ward's incapacity and the rights, powers, and duties of the guardian, in granting an application under this subsection.

(g) Requires the court to coordinate efforts with the appropriate foreign court to facilitate the orderly transfer of the guardianship.

(h) Provides that the denial of an application for receipt and acceptance of a guardianship under this section does not affect the right of a guardian appointed by a foreign court to file an application to be appointed guardian of the incapacitated person under Section 682 of this code.

Sec. 893. REVIEW OF TRANSFERRED GUARDIANSHIP. Requires the court to hold a hearing to consider modifying the administrative procedures or requirements of the transferred guardianship in accordance with local and state law, no later than the 90th day after the date a court grants an application for receipt and acceptance of a foreign guardianship under Section 892 of this code.

SUBPART H. CONTRACTS IN ARTS, ENTERTAINMENT, ADVERTISEMENT, AND SPORTS

Sec. 901. DEFINITIONS. Defines "advertise," "advertisement contract," "artist," "arts and entertainment contract," "consumer goods," and "sports contract."

Sec. 902. APPROVAL OF CERTAIN CONTRACTS OF MINORS; NOT VOIDABLE. (a) Authorizes a court to enter an order approving for purposes of this subpart an arts and entertainment contract, advertisement contract, or sports contract that is entered into by a minor, on petition of a party to the contract. Authorizes the court to approve the contract only after the party requesting the petition provides to the other party to the contract notice of the petition and an opportunity to request a hearing in the manner provided by the court.

(b) Authorizes a proceeding under this section to be brought in the county in which the minor resides, the minor is employed, or a party to the contract has its principal office in this state for the transaction of business if the minor does not reside and is not employed in this state.

(c) Provides that the approval of a contract under this section extends to the contract as a whole and any of the terms and provisions of the contract.

(d) Authorizes a court to withhold approval of a contract under which part of the minor's net earnings under the contract will be set aside as provided by Section 903 of this code until the guardian of the minor executes and files with the court written consent to the making of the order.

(e) Prohibits an otherwise valid contract approved under this section from being voidable solely on the ground that it was entered into by a person during the age of minority.

Sec. 903. NET EARNINGS OF MINOR; SET ASIDE AND PRESERVATION. Defines "net earnings." Authorizes the court to require in an order approving a contract under Section 902 of this code that a portion of the net earnings of the minor under the contract, not to exceed one-half of the minor's net earnings, be set aside and preserved for the benefit of the minor in a trust created under Section 867 of this code or a similar trust created under the laws of another state, notwithstanding any other law. Requires the amount to be set aside under this subsection to be a reasonable amount as determined by the court.

Sec. 904. GUARDIAN AD LITEM. Authorizes the court to appoint a guardian ad litem for a

minor who has entered into an arts and entertainment contract, advertisement contract, or sports contract, if the court finds that appointment of the ad litem would be in the best interest of the minor.

SECTION 12. Makes application of this Act prospective regarding Section 745(c), Probate Code.

SECTION 13. Makes application of this Act prospective regarding Sections 760A and 760B, Probate Code.

SECTION 14. Makes application of this Act prospective regarding Sections 687(b), 786(a) and 784(e), Probate Code.

SECTION 15. Makes application of this Act prospective regarding Section 761, Probate Code.

SECTION 16. Effective date: September 1, 1999.

SECTION 17. Emergency clause.

SUMMARY OF COMMITTEE CHANGES

Relating clause.

Amends the relating clause to relating to guardianships and other related matters concerning incapacitated persons.

SECTION 1.

Adds Section 665(a), Probate Code, to authorize the court to authorize compensation for a guardian or a temporary guardian serving as a guardian of the person alone from available funds of the ward's estate or other funds available for that purpose. Redesignates proposed SECTION 1 as SECTION 3.

SECTION 2.

Adds Section 687(b), Probate Code, to require the court to make its determination with respect to the necessity for a physician's examination of the proposed ward at a hearing held for that purpose, unless the court determines that an emergency examination is necessary. Requires the applicant to give to the proposed ward and the proposed ward's attorney ad litem written notice specifying the purpose and the date and time of the hearing, no later than the fourth day before the date of the hearing. Redesignates proposed SECTION 2 as SECTION 4.

SECTION 3.

Adds Section 761(c), Probate Code, to authorize the court to remove a guardian on its own motion, or on the complaint of an interested person, after the guardian has been cited by personal service to answer at a time and place set in the notice, when the court determines that there has been a dissolution of the joint guardians' marriage and the joint guardians were not named as joint managing conservators by a court with jurisdiction to decide child custody matters. Makes conforming changes. Redesignates proposed SECTION 3 as SECTION 5.

Adds Section 761(e), Probate Code, to entitle the other joint guardian to continue to serve as the sole guardian unless removed for a reason other than the dissolution of the joint guardians' marriage, if a joint guardian is removed under Subsection (c)(9) of this section. Makes conforming changes.

SECTION 4.

Redesignates proposed SECTION 4 as SECTION 8.

SECTION 5.

Redesignates proposed SECTION 5 as SECTION 12.

SECTION 6.

Adds Section 784(e), Probate Code, to require the guardian of the estate to expressly state in the notice that the unsecured creditor must present a claim no later than the 120th day after the date on which the unsecured creditor receives the notice or the claim is barred, if the claim is not barred by the general statutes of limitation, in the notice required by Subsection (b) of this section. Requires the notice under this subsection to include the address to which claims may be presented, and an instruction that the claim be filed with the clerk of the court issuing the letters of guardianship. Redesignates proposed SECTION 6 as proposed SECTION 13.

SECTION 7.

Adds Section 786(a), Probate Code, to provide that the claim is barred, if a claim of an unsecured creditor for money is not presented within the time prescribed by the notice permitted by Section 784(e) of this code. Redesignates proposed SECTION 7 as SECTION 15.

SECTION 8.

Redesignates proposed SECTION 8 as SECTION 16.

SECTION 9.

Adds Section 867, Probate Code, to authorize the court in which the guardianship proceeding is pending to enter an order that creates for the ward's or incapacitated person's benefit a trust for the management of guardianship funds or funds of the incapacitated person's estate if the court finds that the creation of the trust is in the ward's or incapacitated person's best interests, on application by the guardian of a ward or by a ward's attorney ad litem or an incapacitated person's guardian ad litem at any time after the date of the ad litem's appointment under Section 646 or another provision of this code. Requires the order to direct the guardian or another person to deliver all or part of the assets of the guardianship or estate to a trust company or a state or national bank that has trust powers in this state. Redesignates proposed SECTION 9 as SECTION 17.

SECTION 10.

Adds Section 885(a), Probate Code, to require the county judge of the county in which the minor or other incapacitated person resides or in which the endangered estate is located to enter an order, appointing a suitable person as receiver to take charge of the estate, when the estate or any portion of the estate of a minor or other incapacitated person appears in danger of injury, loss, or waste and in need of a representative, but there is no guardian of the estate who is qualified in this state and the appointment of a guardian for the estate is not necessary to protect the estate.

SECTION 11.

Adds Chapters XIII5(G) and (H), Probate Code, regarding Interstate Guardianships and Contracts in Arts, Entertainment, Advertisement, and Sports.

SECTION 14.

Makes application of this Act prospective for Sections 687(b), 786(a), 784(e), Probate Code.

