

BILL ANALYSIS

Senate Research Center
76R8292 KLA-D

H.B. 3343
By: Naishtat (West)
Jurisprudence
5/11/1999
Engrossed

DIGEST

In 1997, the 75th Texas Legislature, transferred missing person guardianship from the Probate Code to the Code of Criminal Procedure, to group it with other statutes addressing receivership, but failed to change references in the Family Code and the Civil Practices and Remedies Code to reflect the transfer. Additionally, the transfer moved receiverships provision to the Code of Criminal Procedure when only a transfer of the definition was needed, and did not repeal some provisions regarding prisoners of war and persons missing in action although they were moved to the Probate Code. H.B. 3343 would amend regulations relating to the receivership of missing persons.

PURPOSE

As proposed, H.B. 3343 amends regulations regarding the receivership of missing 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 64.001(a), Civil Practice and Remedies Code, to delete a provision that authorizes a court to appoint a receivership for a missing person as prescribed by Chapter 79, Human Resources Code.

SECTION 2. Amends Section 64.001, Civil Practice and Remedies Code, to authorize certain courts to appoint a receiver for a missing person under certain circumstances regarding the estate of the missing person.

SECTION 3. Amends Section 64.001, Civil Practice and Remedies Code, by adding Subsection (d), to authorize certain courts to appoint a receiver for a missing person if it appears that the estate is in danger of injury, loss, or waste, and is in need of a representative.

SECTION 4. Amends Section 64.034, Civil Practice and Remedies Code, as follows:

Sec. 64.034. New heading: INVESTMENTS, LOANS, AND CONTRIBUTIONS OF FUNDS. Authorizes a receiver to invest certain funds, except as provided by Subsection (b). Authorizes a receiver appointed for the missing person to invest, lend, or contribute all or part of any money in excess of the amount needed for current necessities and expenses as provided under certain statutes of the Probate Code. Requires the receiver to report the transaction to the court in the manner required of guardians.

SECTION 5. Amends Chapter 64, Civil Practice and Remedies Code, by adding Subchapter G, as follows:

SUBCHAPTER G. RECEIVER FOR CERTAIN MISSING PERSONS

Sec. 64.101. NOTICE AND CITATION FOR RECEIVERSHIP FOR CERTAIN MISSING PERSONS. Requires a court clerk to issue a citation that states that the application for receivership was filed and include the name of the missing person and the name of the applicant. Requires the citation to cite all persons interested in the welfare of the missing person to appear at the time and place states in the notice for purposes of contesting the application. Requires the

citation to be posted. Requires the citation to be published in certain newspapers.

Sec. 64.102. PROCEEDING TO APPOINT RECEIVER. Requires the court to appoint an attorney ad litem to represent the interests of a missing person at a proceeding to appoint a receiver for the missing person. Requires the person appointed to be certified as a person who is appointed as an attorney ad litem for a proposed ward under Section 646, Probate Code. Authorizes the court to appoint a guardian ad litem for a missing person if the court determines that the appointment would be in the best interest of the missing person. Provides that the guardian is an officer of the court. Requires the guardian to protect the missing person in a manner that will enable the court to determine the appropriate action to take in relation to the best interest of the missing person. Provides that the attorney or the guardian is entitled to reasonable compensation for services in an amount set by the court and to be charged as costs. Requires the costs of the proceeding to be paid from the receivership or by the applicant if the court denies the application for appointment of a receiver. Prohibits the terms of a receivership from exceeding six months unless the court extends it for good cause.

Sec. 64.103. BOND. Requires the bond to be executed by a receiver to be set in an amount the court considers necessary to protect the estate of the missing person.

Sec. 64.104. EXPENDITURES BY RECEIVER. Authorizes the court to appropriate an amount of the income or corpus of the estate if, during the receivership, the needs of the spouse or dependent children of the person require its use for education, clothing, or subsistence. Requires the receiver to use the income or corpus to pay claims that are presented to the court and approved and order to be paid.

Sec. 64.105. RECEIVER'S EXPENSES, ACCOUNT, AND COMPENSATION. Requires all necessary expenses incurred by a receiver to be reported to the court by a sworn statement at certain intervals. Sets forth requirements for the report. Requires the court to promptly by order approve the report and authorize the reimbursement of the receiver from the funds under the receiver's control, if the court is satisfied with the statements. Provides that the receiver is entitled to be compensated in the same manner as provided by certain statutes of the Probate Code.

Sec. 64.106. CLOSING RECEIVERSHIP. Sets forth requirements for the receiver, when the danger has abated and the estate is no longer liable for lack of certain representation.

Sec. 64.107. ACTION OF COURT. Requires the court to render an order finding that the danger has abated and that the report and account are correct and to direct the receiver to deliver the property to certain persons. Requires the person to execute and file with the clerk an appropriate receipt for the property. Requires the court order to discharge the receiver and the receiver's sureties. Require the court to render an order continuing the receivership, if the court is not satisfied certain conditions have not been met.

Sec. 64.108. RECORDATION OF PROCEEDINGS. Requires certain proceedings regarding the receivership to be recorded in the minutes of the court.

SECTION 6. Amends Section 6.501(b), Family Code, to make conforming changes.

SECTION 7. Repealers: Sections 886, 886A-886F, Texas Probate Code (Appointment of Receiver; Expenditures by Receiver; Investments, Loans, and Contributions by Receiver; Receiver's Expenses, Account, and Compensation; Closing Receivership; Action of Judge; Recordation of Proceedings).

SECTION 8. Repealer: Sections 79.017 and 79.018, Human Resources Code, editorially redesignated as Articles 62.023 and 62.024, Code of Criminal Procedure (Receivership for Certain Missing Persons; Notice and Citation for Receivership for Certain Missing Persons).

SECTION 9. (a) Effective date: September 1, 1999.

(b) Provides that SECTION 2 takes effect only if the 76th Legislature does not pass the Act relating to nonsubstantive additions to and corrections in enacted codes.

(c) Provides that SECTION 3 takes effect only if the 76th Legislature passes the Act relating to

nonsubstantive additions to and corrections in enacted codes

SECTION 10. Emergency clause.