

BILL ANALYSIS

Senate Research Center
79R14446 MTB-F

H.B. 1472
By: Casteel (Wentworth)
Jurisprudence
5/18/2005
Engrossed

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Under current law, only a guardian of a ward, a ward's attorney ad litem, or an incapacitated person's guardian ad litem may apply for the creation of an 867 trust. An 867 trust is a guardian management trust.

H.B. 1472 authorizes an applicant, who may be a person interested in the welfare of the ward, to directly file an request the appointment of a corporate trustee without the necessity of requesting the appointment of a guardian of the person or estate if it is unnecessary.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 867, Texas Probate Code, by amending Subsections (b), (c), (d), and (f) and adding Subsections (a-1) and (b-1)-(b-5), as follows:

(a-1) Sets forth the persons who are authorized to apply for the creation of a trust under this section.

(b) Authorizes the court with jurisdiction over the guardianship, on application by an appropriate person as provided by Subsection (a-1), to enter an order that creates for the ward's benefit a trust for the management of the guardianship funds if the court finds that the creation of the trust is in the ward's best interests. Deletes existing text authorizing the court in which the guardianship proceeding is pending, on application by certain specified persons, to enter an order that creates for the ward's or incapacitated person's benefit a trust. Deletes existing text requiring the court to appoint a financial institution to serve as trustee, with certain exceptions. Makes conforming change s.

(b-1) Authorizes a proper court, on application by an appropriate person and regardless of whether an application for guardianship has been filed on the alleged incapacitated person's behalf, to enter an order that creates a trust for management of the estate of an alleged incapacitated person who does not have a guardian if the court makes certain findings.

(b-2) Requires an application for the creation of a trust for the alleged incapacitated person, if the proceeding for the appointment of a guardian is pending, to be filed in the same court in which the guardianship proceeding is pending.

(b-3) Requires the court to conduct a hearing to determine incapacity using certain procedures and evidentiary standards.

(b-4) Authorizes the court, if the court finds after a hearing that the person for whom an application is filed is an incapacitated person but it is not in the person's best interest to have the court create a management trust for the person's estate, to appoint a guardian of the person or estate, or both, for the incapacitated person without the necessity of instituting a separate proceeding for that purpose.

(b-5) Requires the court, except as provided by Subsections (c) and (d) of this section, to appoint a financial institution to serve as trustee of a trust created under this section.

(c) Authorizes the court to appoint a person other than a financial institution to serve as the trustee of the trust under certain circumstances if the court finds that the appointment is in the ward's or incapacitated person's, rather than just the ward's, best interests.

(d) Makes a conforming change.

(f) Requires the order, if a trust is created for a ward, to direct a person holding property belonging to the ward or to which the ward is entitled, rather than the guardian or another person, to deliver all or part of the property, rather than all or part of the assets of the guardianship, to the person or corporate fiduciary appointed by the court as trustee of the trust. Requires the order, if the trust is created for an incapacitated person who does not have a guardian, to direct a person holding property belonging to the incapacitated person or to which the incapacitated person is entitled to deliver all or part of the property to the corporate fiduciary or other person appointed as trustee of the trust. Makes nonsubstantive changes.

SECTION 2. Amends Subpart N, Part 4, Chapter XIII, Texas Probate Code, by adding Section 867A, as follows:

Sec. 867A. VENUE. Requires venue for a proceeding to create a trust for an alleged incapacitated person to be determined in a certain manner, if a proceeding for the appointment of a guardian for the alleged incapacitated person is not pending on the date the application is filed.

SECTION 3. Amends Sections 868(a), (b), (d), and (f), Texas Probate Code, to make conforming changes.

SECTION 4. Amends Section 869(b), Texas Probate Code, to make a conforming change.

SECTION 5. Amends Section 869C, Texas Probate Code, to make a nonsubstantive change.

SECTION 6. Amends Section 870, Texas Probate Code, to make conforming changes.

SECTION 7. Amends Section 871(b), Texas Probate Code, to require a trustee to provide a copy of the annual account to the guardian of the ward's estate or person, if a trust has been created under this section for a ward.

SECTION 8. Amends Section 873, Texas Probate Code, to make conforming changes.

SECTION 9. Makes application of this Act prospective.

SECTION 10. Effective date: September 1, 2005.