

BILL ANALYSIS

C.S.H.B. 3543
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Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

There have been calls to provide updates to the law regarding guardianships, management trusts, and other procedures for persons who are incapacitated. C.S.H.B. 3543 seeks to make the law more consistent and clear by providing those updates.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 3543 amends the Estates Code to establish that, for the purposes of the code, in a county in which there is no statutory probate court but in which there is a county court at law exercising original probate jurisdiction, a matter related to a guardianship proceeding includes:

- all matters and actions included in a matter related to a guardianship proceeding in a county in which there is no statutory probate court or county court of law exercising original probate jurisdiction;
- the interpretation and administration of a testamentary trust in which a ward is an income or remainder beneficiary; and
- the interpretation and administration of an inter vivos trust in which a ward is an income or remainder beneficiary.

C.S.H.B. 3543 includes those matters, actions, interpretations, and administrations among the matters related to a guardianship proceeding in a county in which there is a statutory probate court.

C.S.H.B. 3543 removes an attorney ad litem as one of the persons a ward may have appointed by a court to investigate a complaint received by the court from the ward or any person about the ward's guardianship. The bill, with respect to a guardian's duty to provide applicable newspaper notice requiring each person who has a claim against the estate to present the claim within a certain period, removes the specification that the newspaper is a newspaper printed in the county and specifies that the newspaper instead is a newspaper of general circulation in that county.

C.S.H.B. 3543 requires notice to be issued and served, on the filing of an application for creation of a management trust, in the manner provided by applicable statutory provisions for the issuance and service of notice with regard to an application filed for guardianship. The bill establishes that it is not necessary to serve a citation on a person who files an application for the

creation of a management trust or for that person to waive the issuance and personal service of citation. The bill requires a sheriff or other officer, if the person for whom an application for the creation of a management trust is filed is a ward, to personally serve each guardian of the ward with citation to appear and answer the application, in addition to serving the persons described in the applicable statutory provisions regarding service of citation for an application for guardianship. The bill establishes that notice under these provisions is not required if a proceeding for the appointment of a guardian is pending for the person for whom an application for creation of a management trust is filed.

C.S.H.B. 3543 establishes that, if a management trust is created for a person who is a minor and is also incapacitated for a reason other than being a minor, the trust terminates on the person's death or when the person regains capacity. The bill requires a management trust for a ward or incapacitated person to provide that the trust terminates on the following dates:

- if the person is a minor, either on the date provided by court order, which may not be later than the person's 25th birthday, or on the earlier of the person's death or the person's 18th birthday;
- if the person is a minor and is also incapacitated for a reason other than being a minor, on the person's death or when the person regains capacity; or
- if the person is not a minor:
 - according to the terms of the trust;
 - on the date the court determines that continuing the trust is no longer in the person's best interests, subject to the requirement for all property in the management trust to be transferred to the pooled trust subaccount; or
 - on the person's death.

C.S.H.B. 3543 clarifies that the trustee of a management trust created for a ward must provide a copy of the annual accounting of transactions in the trust to each guardian of the ward.

C.S.H.B. 3543 clarifies that Estates Code provisions relating to the payment of claims to a nonresident creditor apply only to a nonresident minor who has a nonresident guardian of the estate appointed by a foreign court, a nonresident person who is adjudged by a foreign court to be incapacitated and has a nonresident guardian of the estate appointed by that court, or a nonresident former ward of a terminated guardianship who has no legal guardian qualified in Texas.

C.S.H.B. 3543 authorizes a nonresident guardian of an estate appointed by a foreign court for a creditor who is a nonresident minor or a nonresident person who is adjudged to be incapacitated, on presentation to the court clerk of an applicable order of a county or probate court of the county in which money is held on behalf of the creditor, to withdraw money that is not withdrawn by an authorized person. The bill authorizes the court to require a nonresident guardian of the estate of such a creditor to provide proof that the nonresident guardian of the estate gave an adequate bond in the foreign jurisdiction if the court determines that it is in the creditor's best interest. The bill requires a nonresident guardian to present to the court exemplified copies of the order of a foreign court appointing the guardian and current letters of guardianship issued in the foreign jurisdiction for purposes of proving the identity and credentials of the guardian to the court's satisfaction before the court may issue an order for money to be withdrawn and delivered to the nonresident guardian.

C.S.H.B. 3543 provides for the applicability of certain of its provisions with respect to a guardianship created before, on, or after the bill's effective date or an application for a guardianship pending on or filed on or after that date.

EFFECTIVE DATE

September 1, 2019.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3543 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute does not include provisions conditioning the requirement for a court to order the costs of a guardianship proceeding to be paid out of the guardianship estate or out of the county treasury on a certain determination by the court regarding whether it is in the ward's best interest to pay the costs, provided a guardianship of the estate has been created for the ward's benefit.