

BILL ANALYSIS

Senate Research Center

H.B. 1317
By: Naishtat (Wentworth)
Jurisprudence
5-14-97
Engrossed

DIGEST

In 1995, the temporary guardianship for persons missing as a result of violence was moved to the guardianship provisions of the Probate Code. The new provisions left out the language concerning "violence" as the reason for the person to be missing. The new provisions mandate service of process on the "missing person" to be made before such a guardianship could be created. The temporary nature of such guardianships was deleted from the new provisions. In addition, the new provisions conflict with the mandatory attorney ad litem requirement of the guardianship code and with provisions regarding findings by a probate court. This bill would revise the approach to guardianships for persons missing, whether by violence or other means.

PURPOSE

As proposed, H.B. 1317 revises the approach to guardianships for persons missing, whether by violence or other means.

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 601(17), Probate Code, to redefine "missing person."

SECTION 2. Amends Section 682, Probate Code, to delete existing Subsection (15). Makes conforming changes.

SECTION 3. Amends Section 684(b), Probate Code, to delete existing Subdivision (b)(4). Makes conforming changes.

SECTION 4. Amends Section 64.001(a), Civil Practice and Remedies Code, to authorize a court of competent jurisdiction to appoint a receiver for a missing person as prescribed by Chapter 79, Human Resources Code, among other actions or cases. Makes conforming changes.

SECTION 5. Amends Chapter 79, Human Resources Code, by adding Sections 79.017 and 79.018, as follows:

Sec. 79.017. RECEIVERSHIP FOR CERTAIN MISSING PERSONS. (a) Authorizes a court of competent jurisdiction, pursuant to Chapter 64, Civil Practice and Remedies Code, and on application filed with the court, to appoint a receiver for a missing person if the court determines the missing person's estate is in danger of being lost, removed, or materially harmed.

(b) Requires a proceeding instituted under this section to be brought in the county in which the missing person resides, or if the missing person is not a resident of this state, the county in which the majority of the property of the missing person's estate is located.

(c) Requires notice of a proceeding to be issued and served as provided by Section 79.018.

(d) Requires the court to appoint an attorney ad litem to represent the interests of the missing person. Requires a person, to be eligible for appointment as an attorney ad litem under this section, to be certified in the same manner and to the same extent as a person who is appointed as an attorney ad litem for a proposed ward under Section 646, Probate Code.

(e) Authorizes the court to appoint a guardian ad litem for the missing person if the court determines that the appointment would be in the best interests of the missing person. Provides that a guardian ad litem appointed under this section is an officer of the court. Requires the guardian ad litem 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 interests of the missing person.

(f) Provides that an attorney ad litem or a guardian ad litem appointed under this section is entitled to reasonable compensation for services in an amount set by the court to be charged as costs in the proceeding.

(g) Requires the cost of a proceeding instituted under this section to be paid from the receivership, if a receivership is created. Requires the applicant to pay the costs of the proceedings if the court denies an application for appointment of a receiver.

(h) Prohibits the term of a receivership granted under this section from exceeding six months, unless, before the expiration of the term and for good cause shown, the court extends the receivership for another term not to exceed six months.

Sec. 79.018. NOTICE AND CITATION FOR RECEIVERSHIP FOR CERTAIN MISSING PERSONS. (a) Requires the court clerk, on the filing of an application under Section 79.017, to issue a citation that states that the application for receivership was filed and includes certain information.

(b) Requires the citation to cite all persons interested in the welfare of the missing person to appear at the time and place stated in the notice for purposes of contesting the application.

(c) Requires the citation to be published in a newspaper of general circulation in certain counties.

SECTION 6. Effective date: September 1, 1997.

Makes application of this Act prospective.

SECTION 7. Emergency clause.