

## **BILL ANALYSIS**

Senate Research Center

C.S.H.B. 2189  
By: Naishtat (Wentworth)  
Jurisprudence  
5-18-97  
Committee Report (Substituted)

### **DIGEST**

In 1993, the legislature passed legislation that reorganized and reformed the Texas Guardianship statutes. Independent of the 1993 reformation bill, there were several decedents' administration and guardianship statutes that were not addressed by such legislation. The 1995 technical corrections bill attempted to address most of the technical issues caused by the passage of the 1993 legislation, but some were overlooked. Beginning in 1993, guardianships were required to state in their accountings and reports whether or not any required bond premiums were paid and whether all outstanding taxes were paid. This requirement was an additional safeguard to ensure the administrator was fulfilling his or her court-ordered duties, to the benefit of the ward. Similar requirements for accountings in a decedent's administration, although intended, were not added. This bill would add requirements of statements concerning bonds and taxes by a personal representative in a decedent's estates to conform with similar requirements for a guardian in a guardianship. Additionally, this bill would require a guardian of an estate, if the estate is insolvent, to give first priority to the payment of a claim relating to the administration of the guardianship.

### **PURPOSE**

As proposed, C.S.H.B. 2189 adds requirements of statements concerning bonds and taxes by a personal representative in a decedent's estate to conform with similar requirements for a guardian in a guardianship. Additionally, this bill requires a guardian of an estate, if the estate is insolvent, to give priority to the payment of a claim relating to the administration of the guardianship.

### **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 399(a), Probate Code, to require the personal representative of the estate of a decedent being administered under order of court, upon the expiration of 12 months from the date of qualification and receipt of letters, to return to the court an exhibit in writing under oath setting forth a list of all claims against the estate that were presented within the period covered by the account, specifying which have been allowed, which have been paid, which have been rejected and the date when rejected, which have been sued upon, and the condition of the suit, and show, among other items, a statement that the personal representative has paid all the required bond premiums for the accounting period.

SECTION 2. Amends Section 405, Probate Code, as follows:

Sec. 405. New heading: ACCOUNT FOR FINAL SETTLEMENT OF ESTATES OF DECEDENTS. Deletes text in reference to administration of the estate of a guardianship of person or estate, or of the person and estate of a ward. Requires each final account to be accompanied by proper vouchers in support of each item thereof not already accounted for and to show, among other items, that the personal representative has paid all required bond premiums. Deletes existing Subsection (b).

SECTION 3. Amends Section 743(b), Probate Code, to require the guardian of the person, whether or not there is a separate guardian of the estate, to submit to the court an annual report by sworn

affidavit that contains, among other information, a statement that the guardian has paid the bond premium for the next reporting period. Makes conforming changes.

SECTION 4. Amends Section 749, Probate Code, to require for each final account for final settlement of estates of wards to be accompanied by proper vouchers in support of each item not already accounted for and to show, among other items, that the guardian has paid all required bond premiums; the tax returns the guardian has filed during the guardianship; the amount of taxes the ward owed during the guardianship that the guardian has paid; a complete account of the taxes the guardian has paid during the guardianship; and a description of all current delinquencies in the filing of tax returns and the payment of taxes and a reason for each delinquency.

SECTION 5. Amends Section 805, Probate Code, to require the guardian, if the estate is insolvent, to give first priority to the payment of a claim relating to the administration of the guardianship. Requires the guardian to pay other claims against the ward's estate in the order prescribed by Subsection (a) of this section. Makes conforming changes.

SECTION 6. Authorizes a court to modify any guardianship in effect on September 1, 1997, to conform with the requirements of Section 805, Probate Code, as amended by this Act, on the court's own motion or on application by the ward, guardian, or any other interested person or entity.

SECTION 7. Makes application of Sections 399(a), 405, 743(b) and 749, Probate Code, as amended by this Act, prospective.

SECTION 8. Makes application of Section 805, Probate Code, as amended by this Act, prospective, except as provided by SECTION 6 of this Act.

SECTION 9. Effective date: September 1, 1997.

SECTION 10. Emergency clause.

#### **SUMMARY OF COMMITTEE CHANGES**

Revises proposed relating clause.

SECTION 5.

Amends Section 805, Probate Code, to add Subsection (b) and to redesignate existing Subsection (b) as Subsection (c).

SECTION 6.

Sets forth session law relating to Section 805, Probate Code, as amended by this Act.

SECTION 7.

Makes application of SECTIONS 1-4 prospective.

SECTION 8.

Makes application of Section 805, Probate Code, as amended by this Act, prospective, except as provided by SECTION 6.

SECTION 9.

Sets forth the effective date. Originally set forth in SECTION 5. Omits text making application of this Act prospective. Originally set forth in SECTION 5.

SECTION 10.

Emergency clause. Originally set forth in SECTION 6.