

BILL ANALYSIS

Senate Research Center

S.B. 318
By: Ellis
Jurisprudence
3-10-97
As Filed

DIGEST

Currently, Texas law requires the guardian of a person to post a bond with the probate court and to file an annual report on the status of the ward with the court. In many instances, the ward is permanently mentally incapacitated and experiences very little change in condition over the course of a year or several years, and there is no new information to report to the court. For many guardians, who are often the close relatives of the ward, meeting these requirements is often an expensive and burdensome process. This bill will exempt certain guardians from the requirement of posting a performance bond, if the best interest of the ward does not require the bond, and will require certain guardians, at the discretion of the court, to report to the court every three years, rather than annually, on the status of the ward.

PURPOSE

As proposed, S.B. 318 exempts certain guardians from the requirement of posting a performance bond, if the best interest of the ward does not require the bond, and requires certain guardians, at the discretion of the court, to report to the court every three years, rather than annually, on the status of the ward.

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 702, Texas Probate Code, by amending Subsection (a) and adding Subsection (d), to provide that a bond is not required to be given by a guardian of the person of a ward who, because of a mental condition, is substantially without capacity to care for himself or herself and to manage the ward's property if the guardian is the ward's spouse, parent, sibling, or child, and the court makes certain determinations. Makes a conforming change.

SECTION 2. Amends Section 743, Texas Probate Code, by amending the section heading and adding Subsection (j), as follows:

Sec. 743. New heading: REPORTS OF GUARDIANS OF THE PERSON OF CERTAIN WARDS.

(j) Provides that this section does not apply to the guardian of a ward who, because of a permanent mental condition, is substantially without capacity to care for himself or herself and to manage the ward's property.

SECTION 3. Amends Chapter XIII(4)(B), Texas Probate Code, by adding Section 743A, as follows:

Sec. 743A. REPORTS OF GUARDIANS OF THE PERSON OF WARDS WITH MENTAL INCAPACITIES. Requires a guardian of the person of certain wards to file a report that contains the information required by Sections 743(a) and (b) of this code. Requires the guardian, if the ward is deceased, to provide the court with the date and place of death, if known, in lieu of the information about the ward otherwise required to be

provided in the report. Requires the initial report to cover a 12-month period that begins on the date the guardian qualifies to serve. Authorizes the court to change a reporting period for purposes of this subsection. Prohibits the court from extending a reporting period so that it covers more than 12 months. Requires the court to approve the report if the court is satisfied that the facts stated in the report are true. Requires the court to issue orders as necessary for the best interests of the ward unless the court is satisfied that the facts stated in the report are true. Requires the guardian, except as provided by Subsection (f) of this section, to continue to file the report once each year for the duration of the guardianship to the extent and in the same manner provided for by Sections 743(g)-(i) of this code. Requires the guardian to continue to file the report once every three years for the duration of the guardianship if certain conditions apply. Requires the report required by Subsection (f) of this section to cover a 12-month reporting period that begins on the second anniversary of the date on which the preceding reporting period ended. Provides that each report is due not later than the 60th day after the date on which the reporting period ends.

SECTION 4. (a) Provides that this Act applies to certain applications for the appointment of a guardian.

(b) Requires an application described by Subsection (a)(2) of this section to be modified to conform to the changes in law made by this Act.

(c) Requires a guardianship existing on September 1, 1997 to be modified to conform to the changes in law made by this Act.

SECTION 5. Effective date: September 1, 1997.

SECTION 6. Emergency clause.