

## **BILL ANALYSIS**

Senate Research Center

S.B. 912  
By: Cain  
Jurisprudence  
3-12-97  
As Filed

### **DIGEST**

Currently, if a minor or incapacitated person is supported by a trust funded by a personal injury damage award the minor or person may be deemed to be ineligible for Medicaid benefits. In 1993, the federal government enacted provisions of 42 U.S.C. 1396p(d)(4)(A), which authorizes the court to create what is referred to as a "special needs trust." Such a trust allows a beneficiary to continue to receive Medicaid and SSI benefits provided the trustee is restricted to using the trust fund to provide benefits that are not covered under Medicaid. Texas statutes do not expressly authorize the creation of special needs trusts and there is no Texas case law directly on the point. This bill will authorize the courts to create special needs trusts for certain minors or incapacitated persons.

### **PURPOSE**

As proposed, S.B. 912 authorizes the courts to create special needs trusts for certain minors or incapacitated persons.

### **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 142.005, Property Code, by adding Subsection (g), to authorize a trust to contain provisions determined by the court to be necessary to establish a special needs trust as specified under 42 U.S.C. Section 1396p(d)(4)(A), if the court finds that it would be in the best interests of the minor or incapacitated person for whom the trust is created, notwithstanding any other provision of this chapter.

SECTION 2. Emergency clause.  
Effective date: upon passage.