

BILL ANALYSIS

Senate Research Center

H.B. 1851
By: Thompson (Harris)
Jurisprudence
5/6/1999
Engrossed

DIGEST

Historically, periodic updates are needed in the Probate Code to conform to new revisions. H.B. 1851 would codify a certain number of suggested revisions the Real Estate, Probate and Trust Law section of the State Bar of Texas has identified that are in need of revision.

PURPOSE

As proposed, H.B. 1851 makes periodic updates needed in the Probate Code.

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 745(c), Probate Code, to authorize that the guardianship of an estate to be terminated and the assets paid to the county clerk of the county in which the guardianship proceeding is pending, when the estate of a minor ward consists only of cash or cash equivalents in an amount of \$50,000, rather than \$25,000.

SECTION 2. Amends Chapter XIID(4), Probate Code, by adding Sections 760A and 760B, as follows:

Sec. 760A. CHANGE OF RESIDENT AGENT. Authorizes a guardian to change its resident agent to accept service of process in a guardianship proceeding or other matter relating to the guardianship by filing a statement of the change entitled "Designation of Successor Resident Agent" with the court in which the guardianship proceeding is pending. Requires the statement to contain the names of addresses of the guardian, resident agent, and successor resident agent. Provides that the designation of a successor resident agent made in a statement filed under this section takes effect on the date on which the statement is filed with the court.

Sec. 760B. RESIGNATION OF RESIDENT AGENT. Authorizes a resident agent of a guardian to resign as the resident agent by giving notice to the guardian and filing with the court in which the guardianship proceeding is pending a statement entitled "Resignation of Resident Agent" that contains certain information. Requires the resident agent to send, by certified mail, return receipt requested, a copy of a resignation statement filed under Subsection (a) of this section to the guardian at the address most recently known by the agent, and each party in the case or the party's attorney or other designated representative of record. Provides that the resignation of a resident agent takes effect on the date on which the court enters an order accepting the agent's resignation. Prohibits a court from entering an order accepting the agent's resignation unless the agent complies with the requirements of this section.

SECTION 3. Amends Section 761(a), Probate Code, to authorize the court, on its own motion or on motion of any interested person, to remove any guardian, appointed under this chapter who cannot be served with notices or other processes because of the fact that the guardian is a nonresident of this state who does not have a resident agent to accept services of process in any guardianship proceeding or other matter relating to the guardianship, and other conditions. Makes conforming change.

SECTION 4. Amends Chapter XIIM(4), Probate Code, by adding Section 865A, as follows:

Sec. 865A. INSPECTION OF CERTAIN INSTRUMENT FOR ESTATE PLANNING

PURPOSES. (a) Authorizes the guardian of the ward's estate to apply to the court for an order to seek an in camera inspection of a true copy of a will, codicil, trust, or other estate planning instrument of the ward as a means of obtaining access to the instrument for purposes of establishing an estate plan under Section 865 of this code.

(b) Requires that an application filed under this section to be sworn to by the guardian, list all of the instruments requested for inspection, and state one or more reasons supporting the necessity to inspect each requested instrument for the purpose described by Subsection (a) of this section.

(c) Requires a person who files an application under this section to send a copy of the application to certain persons.

(d) Requires notice required by Subsection (c) of this section to be delivered by certified mail to a person described by Subsections (c)(2), (3), (4), or (5) of this section and by registered or certified mail to a person described by Subsection (c)(1) of this section. Authorizes the applicant to request that a hearing be held on the application, after the 10th day after the date on which the applicant complies with the notice requirement. Requires notice of the date, time, and place of the hearing to be given by the applicant to each person described by Subsection (c)(1) of this section when court sets a date for a hearing on the application.

(e) Requires the court to direct the person that has custody of the requested will, codicil, trust, or other estate planning instrument, to deliver a true copy of the instrument to the court for in camera inspection only, after the conclusion of a hearing on the application and on a finding that there is good cause for an in camera inspection of a requested instrument. Requires the court, if good cause exists, to release all or part of the instrument to the applicant only for the purpose described by Subsection (a) of this section, after conducting an in camera review of the instrument.

(f) Authorizes the court to appoint a guardian ad litem for the ward or an interested party at any stage of the proceedings if it is considered advisable for the protection of the ward or the interested party.

(g) Provides that an attorney does not violate the attorney-client privilege solely by complying with a court order to release an instrument subject to this section. Prohibits the supreme court from amending or adopting rules in conflict with this subsection, notwithstanding Section 22.004, Government Code.

SECTION 5. Makes application of this Act prospective regarding Section 745(c), Probate Code.

SECTION 6. Makes application of this Act prospective regarding Sections 760A and 760B, Probate Code.

SECTION 7. Makes application of this Act prospective regarding Section 761, Probate Code.

SECTION 8. Effective date: September 1, 1999.

SECTION 9. Emergency clause.