

BILL ANALYSIS

Senate Research Center
77R1303 MTB-F

H.B. 2731
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Jurisprudence
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Engrossed

DIGEST AND PURPOSE

In a proceeding to determine the heirs of a person dying intestate, a citation for determining heirship by publication is required. Although the Texas Probate Code does not explicitly require a probate judge to appoint an attorney ad litem to represent the interest of unknown heirs in an heirship proceeding, the Texas Rules of Civil Procedure require the appointment of an attorney ad litem when service has been made by publication. There is some concern that since this requirement is not explicitly found in the Texas Probate Code, a probate judge may not automatically appoint an attorney ad litem. In addition, current law does not prohibit a parent, managing conservator, guardian, attorney ad litem, or guardian ad litem of a distributee who is at least 12 years of age but younger than 19 years of age from waiving citation required to be served on the distributee. H.B. 2731 places in the Texas Probate Code the current requirement that a court appoint an attorney ad litem to represent the interest of unknown heirs, and prohibits a guardian of a minor from waiving citation for determining heirship required to be served on the minor.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 34A, Texas Probate Code, to provide an exception to this section.

SECTION 2. Amends Section 50, Texas Probate Code, by amending Subsection (b) and adding Subsection (e), to require citation, to determine whether there are any other heirs, to also be served on unknown heirs by publication in the manner provided by this subsection. Prohibits a parent, managing conservator, guardian, attorney ad litem, or guardian ad litem of a distributee who is at least 12 years of age but younger than 19 years of age from waiving citation required to be served on the distributee under this section.

SECTION 3. Amends the heading of Section 53, Texas Probate Code, to read as follows:

Sec. 53. EVIDENCE; UNKNOWN PARTIES AND INCAPACITATED PERSONS

SECTION 4. Amends Section 53, Texas Probate Code, by adding Subsection (c), to require the court to appoint an attorney ad litem to represent the interests of unknown heirs.

SECTION 5. Makes application of this Act prospective.

SECTION 6. Effective date: September 1, 2001.