

## **BILL ANALYSIS**

Senate Research Center  
77R11115 CLG-D

H.B. 3144  
By: Hartnett (Bernsen)  
Jurisprudence  
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Engrossed

### **DIGEST AND PURPOSE**

Under current Texas law, a probate court is prohibited from acting on an application for guardianship until all adult siblings and all adult children of the proposed ward are served with notice. This process may take any number of months, but the validity of the guardianship may be affected if all such persons are not served with notice. A court is authorized to appoint a physician to examine the proposed ward if the court determines that this is necessary, but the court is not required to have a hearing for this purpose. Current law does not place a time constraint on a claim made on a ward's estate by an unsecured creditor, though similar provisions exist regarding a decedent's estate. There are caps on the amount of money of an estate under which the guardianship of the estate may be terminated, creditors paid, or an interest of the estate may be sold. H.B. 3144 modifies provisions relating to guardianship of incapacitated persons, wards, or former wards to address certain concerns raised by these issues.

### **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 606(c), Texas Probate Code, to require all applications, petitions and motions regarding guardianships, mental health matters, rather than mental illness matters, or other matters addressed by this chapter, in those counties in which there is a statutory probate court, county court at law, or other statutory court exercising the jurisdiction of a probate court, to be filed and heard in those courts and the constitutional county court, rather than in the district courts, unless otherwise provided by the legislature, and the judge of a county court is authorized to hear any of those matters sitting for the judge of any other county court.

SECTION 2. Amends Sections 633(c), (d), and (f), Texas Probate Code, to require the sheriff or other officer to personally serve citation to appear and answer the application for guardianship on certain persons under certain conditions. Requires the court clerk, at the applicant's request, or the applicant to mail a copy of the notice by registered or certified mail, return receipt requested, to certain persons under certain conditions. Makes a conforming change.

SECTION 3. Amends Section 687(b), Texas Probate Code, to require the court to make its determination with respect to the necessity for a physician's examination of the proposed ward at a hearing held for that purpose. Requires the applicant, not later than the fourth day before the date of the hearing, to give to the proposed ward and the proposed ward's attorney ad litem written notice specifying the purpose and the date and time of the hearing.

SECTION 4. Amends Section 694G, Texas Probate Code, to require the order completely restoring the ward's capacity, if the court finds that a ward is no longer an incapacitated person, to contain findings of fact and specify certain information, including that the guardian is required to immediately settle and close the guardianship in accordance with this chapter, rather than Section 745 of this code and deliver all of the remaining guardianship estate to the ward.

SECTION 5. Amends Section 745(c), Texas Probate Code, to authorize the guardian of the estate, when the estate of a minor ward consists only of cash or cash equivalents in an amount of \$100,000, rather than \$25,000, or less, to be terminated and the assets paid to the county clerk of the county in which the guardianship proceeding is pending.

SECTION 6. Amends Section 784, Texas Probate Code, by adding Subsection (e), to authorize the guardian of the estate, in the notice required by Subsection (b) of this section, to expressly state in the notice that the unsecured creditor must present a claim not later than the 120th day after the date on which the unsecured creditor receives the notice or the claim is barred, if the claim is not barred by the general statutes of limitation. Requires the notice under this subsection to include certain information.

SECTION 7. Amends Section 786(a), Texas Probate Code, to provide that a claim of an unsecured creditor for money that is not presented within the time prescribed by the notice of presentment permitted by Section 784(e) is barred.

SECTION 8. Amends Sections 887(a) and (e), Texas Probate Code, to authorize the debtor, when a resident person who is a minor or other incapacitated person, or the former ward of a guardianship terminated under Part 4C who are referred to in this section as “creditor,” are without a legal guardian of the person’s estate, and the person is entitled to money in an amount that is \$100,000, rather than \$50,000, or less, the right to which is liquidated and is uncontested in any pending lawsuit, to pay the money to the county clerk of the county in which the creditor resides to the account of the creditor, giving the creditor’s name, the creditor’s social security identification number, the nature of the creditor’s disability, and, if the creditor is a minor, the minor’s age, and the creditor’s post-office address. Makes a conforming change.

SECTION 9. Amends Section 889(a), Texas Probate Code, to authorize a natural or adoptive parent, or the managing conservator, of a minor who is not a ward, when a minor has an interest in real or personal property and the net value of the interest does not exceed \$100,000, rather than \$50,000, to apply to the court for an order to sell the minor's interest in the property, rather than the real or personal property, without being appointed guardian.

SECTION 10. Amends Section 890(b), Texas Probate Code, to make a conforming change.

SECTION 11. Makes application of the changes in law made by Sections 2, 3, 5, 6, 7, and 10 of this Act prospective.

SECTION 12. Makes application of the change in law made by Section 4 of this Act prospective.

SECTION 13. Makes application of the change in law made by Section 9 of this Act prospective.

SECTION 14. Effective date: September 1, 2001.