

BILL ANALYSIS

Senate Research Center
77R7365 CLG-D

H.B. 628
By: Naishtat (Moncrief)
Jurisprudence
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Engrossed

DIGEST AND PURPOSE

Under current law, a corporate fiduciary (trust company, state bank, national bank) must serve as the trustee for a management trust set up for a ward. However, the small size of these trusts often makes it difficult to find a corporate fiduciary who is willing to serve as trustee. Without provisions allowing the court to appoint a noncorporate trustee when no corporate trustee is willing to serve, creating such trusts may be difficult. H.B. 628 authorizes a court to appoint a person other than a financial institution as a trustee under certain conditions and requires a noncorporate trustee to file a bond in the amount of the principal of the trust with the county clerk's office.

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 867, Texas Probate Code, to define "financial institution." Authorizes the court in which a guardianship proceeding is pending to enter an order that creates for a ward's or incapacitated person's benefit a trust for the management of guardianship funds or funds of the incapacitated person's estate if the court finds that the creation of the trust is in the ward's or incapacitated person's best interests, on application by the guardian of a ward or by ward's attorney ad litem or an incapacitated person's guardian ad litem at any time after the date of the ad litem's, rather than attorney's, appointment under Section 646 or another provision of this code. Authorizes the court, if the value of the trust's principal is \$50,000 or less, to appoint a person other than a financial institution to serve as trustee of the trust only if the court finds the appointment to be in the ward's best interest. Authorizes the court, if the value of the trust's principal is more than \$50,000, to appoint a person other than a financial institution to serve as trustee of the trust only if the court finds that no financial institution is willing to serve as trustee and the appointment is in the ward's best interests. Requires the court to check any list of corporate fiduciaries located in this state that is maintained at the office of the presiding judge of the statutory probate courts or at the principal office of the Texas Bankers Association. Requires the order to direct the guardian or another person to deliver all or part of the assets of the guardianship to a person or corporate fiduciary appointed by the court as trustee of the trust. Deletes text that required the assets to be delivered to trust company or a state or national bank that has trust powers.

SECTION 2. Amends Section 868(a), Texas Probate Code, to require a trust created under Section 867 of this code, except as provided by Subsection (d), to provide that if the trustee is a corporate fiduciary, the trustee serves without giving a bond.

SECTION 3. Amends Chapter XIII Part 4N, Texas Probate Code, by adding Section 868B, as follows:

Sec. 868B. BOND REQUIREMENT FOR CERTAIN TRUSTEES. Requires the court to require a person, other than a corporate fiduciary, serving as trustee to file with the county clerk

a bond in an amount equal to the value of the trust's principal and projected annual income and with the conditions the court determines are necessary.

SECTION 4. Amends Section 869A, Texas Probate Code, to delete text that authorized the court to appoint a corporate fiduciary as successor trustee if the trustee resigns, becomes ineligible, or is removed.

SECTION 5. Effective date: September 1, 2001.
Makes application of this Act prospective.