

BILL ANALYSIS

Senate Research Center
77R257 CLG-F

H.B. 952
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Jurisprudence
5/3/2001
Engrossed

DIGEST AND PURPOSE

Currently, Texas law does not provide an effective system to recognize the transfer of a guardianship when a ward or the ward's assets move to another jurisdiction. Guardianships established in one jurisdiction are generally not transferrable to another jurisdiction thus requiring the persons seeking guardianship having relocated into a new jurisdiction to commence new guardianship proceedings. H.B. 952 provides requirements for the transfer of a guardianship to a foreign jurisdiction, the receipt and acceptance of transferred guardianships, and the review of transferred guardianships.

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 Chapter XIII5, Texas Probate Code, by adding Subpart G, as follows:

SUBPART G. INTERSTATE GUARDIANSHIPS

Sec. 891. TRANSFER OF GUARDIANSHIP TO FOREIGN JURISDICTION. (a) Authorizes a guardian of the person or estate of a ward to apply with the court that has jurisdiction over the guardianship to transfer the guardianship to a court in a foreign jurisdiction if the ward has moved permanently to the foreign jurisdiction.

(b) Requires notice of the application to transfer a guardianship under this section to be served personally on the ward and to be given to the foreign court to which the guardianship is to be transferred.

(c) Requires the court, on the court's own motion or on the motion of the ward or any interested person, to hold a hearing to consider the application to transfer the guardianship.

(d) Requires the court to transfer a guardianship to a foreign court if the court determines the transfer is in the best interests of the ward. Requires the transfer of the guardianship to be made contingent on the acceptance of the guardianship in the foreign jurisdiction. Requires the court, to facilitate the orderly transfer of the guardianship, to coordinate efforts with the appropriate foreign court.

Sec. 892. RECEIPT AND ACCEPTANCE OF FOREIGN GUARDIANSHIP. (a) Authorizes a guardian appointed by a foreign court to represent an incapacitated person who is residing in this state or intends to move to this state to file an application with a court in which the ward resides or intends to reside to have the guardianship transferred to the court.

(b) Requires notice of the application for receipt and acceptance of a foreign

guardianship under this section to be served personally on the ward and to be given to the foreign court from which the guardianship is to be transferred.

(c) Requires the proceeding, if an application for receipt and acceptance of a foreign guardianship is filed in two or more courts with jurisdiction, to be heard in the court with jurisdiction over the application filed on the earliest date if venue is otherwise proper in that court. Requires a court that does not have venue to hear the application to transfer the proceeding to the proper court.

(d) Provides that in reviewing an application for receipt and acceptance of a foreign guardianship, the court should determine certain information.

(e) Requires the court, on the court's own motion or on the motion of the ward or any interested person, to hold a hearing to consider the application for receipt and acceptance of a foreign guardianship.

(f) Requires the court to grant an application for receipt and acceptance of a foreign guardianship if the transfer of the guardianship from the foreign jurisdiction is in the best interests of the ward. Requires the court, in granting an application under this subsection, to give full faith and credit to the provisions of the foreign guardianship order concerning the determination of the ward's incapacity and the rights, powers, and duties of the guardian.

(g) Requires the court to coordinate efforts with the appropriate foreign court to facilitate the orderly transfer of the guardianship.

(h) Provides that the denial of an application for receipt and acceptance of a guardianship under this section does not affect the right of a guardian appointed by a foreign court to file an application to be appointed guardian of the incapacitated person under Section 682 of this code.

Sec. 893. REVIEW OF TRANSFERRED GUARDIANSHIP. Requires the court, not later than the 90th day after the date a court grants an application for receipt and acceptance of a foreign guardianship under Section 892 of this code, to hold a hearing to consider modifying the administrative procedures or requirements of the transferred guardianship in accordance with local and state law.

SECTION 2. Effective date: September 1, 2001.