

By: Nelson

S.B. No. 291

A BILL TO BE ENTITLED

AN ACT

relating to criminal history record information for certain guardianship services and to lists of certain public guardians.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The heading to Section 697A, Texas Probate Code, is amended to read as follows:

Sec. 697A. LIST OF CERTAIN PUBLIC GUARDIANS MAINTAINED BY COUNTY CLERKS OR GUARDIANSHIP CERTIFICATION BOARD.

SECTION 2. Sections 697A(b) and (c), Texas Probate Code, are amended to read as follows:

(b) Not later than February 1 of each year, the [The] Department of Aging and Disability Services [~~, if the department files an application for and is appointed to serve as guardian for one or more incapacitated persons residing in the county as provided by Subchapter E, Chapter 161, Human Resources Code,~~] shall submit [annually] to the Guardianship Certification Board a statement containing:

(1) the name, address, and telephone number of each department employee who is or will be providing guardianship services to a ward or proposed ward on behalf of the department; and

(2) the name of the county or counties in which each employee named in Subdivision (1) of this subsection is providing or is authorized to provide those services [~~county clerk the information required under Subsection (a) of this section for each~~]

1 ~~department employee who is or will be providing guardianship~~  
2 ~~services in the county on the department's behalf].~~

3 (c) Not later than February 1 of each year, the county clerk  
4 shall submit to the Guardianship Certification Board the  
5 information received under Subsection (a) of this section during  
6 the preceding year.

7 SECTION 3. Section 698, Texas Probate Code, is amended by  
8 amending Subsections (a), (b), and (d) and adding Subsections  
9 (a-1), (b-1), (c-1), and (f) to read as follows:

10 (a) The clerk of the county having venue over the proceeding  
11 for the appointment of a guardian shall obtain criminal history  
12 record information that is maintained by the Department of Public  
13 Safety or the Federal Bureau of Investigation identification  
14 division relating to:

15 (1) a private professional guardian;

16 (2) each person who represents or plans to represent  
17 the interests of a ward as a guardian on behalf of the private  
18 professional guardian;

19 (3) each person employed by a private professional  
20 guardian who will:

21 (A) have personal contact with a ward or proposed  
22 ward;

23 (B) exercise control over and manage a ward's  
24 estate; or

25 (C) perform any duties with respect to the  
26 management of a ward's estate; or

27 (4) each person employed by or volunteering or

1 contracting with a guardianship program to provide guardianship  
2 services to a ward of the program on the program's behalf [~~or~~

3  ~~(5) an employee of the Department of Aging and~~  
4  ~~Disability Services who is or will be providing guardianship~~  
5  ~~services to a ward of the department].~~

6 (a-1) The Department of Aging and Disability Services shall  
7 obtain criminal history record information that is maintained by  
8 the Department of Public Safety or the Federal Bureau of  
9 Investigation identification division relating to each person  
10 employed by or applying for employment with the Department of Aging  
11 and Disability Services who is or will be providing guardianship  
12 services to a ward of the department. The information regarding  
13 applicants must be obtained before employment, and the information  
14 regarding employees providing those services must be obtained  
15 annually. The Department of Aging and Disability Services shall  
16 provide the information to:

17 (1) the clerk of the county having venue over the  
18 guardianship proceeding at the request of the court; or

19 (2) the Guardianship Certification Board at the  
20 request of the board.

21 (b) The criminal history record information obtained under  
22 Subsection (a) of this section is for the exclusive use of the court  
23 and is privileged and confidential. The criminal history record  
24 information may not be released or otherwise disclosed to any  
25 person or agency except on court order or consent of the person  
26 being investigated. The county clerk may destroy the criminal  
27 history information records after the records are used for the

1 purposes authorized by this section.

2 (b-1) The criminal history record information obtained under  
3 Subsection (a-1) of this section is for the exclusive use of the  
4 court or Guardianship Certification Board, as appropriate, and is  
5 privileged and confidential. The information may not be released  
6 or otherwise disclosed to any person or agency except on court order  
7 or consent of the person being investigated. The county clerk or  
8 Guardianship Certification Board may destroy the criminal history  
9 record information after the information is used for the purposes  
10 authorized by this section.

11 (c-1) Criminal history record information obtained by the  
12 Guardianship Certification Board under Subsection (a-1)(2) of this  
13 section may be used for any purpose related to the issuance, denial,  
14 renewal, suspension, or revocation of a certificate issued by the  
15 board.

16 (d) A person commits an offense if the person releases or  
17 discloses any information received under this section without the  
18 authorization prescribed by Subsection (b) or (b-1) of this  
19 section. An offense under this subsection is a Class A misdemeanor.

20 (f) This section does not prohibit the Department of Aging  
21 and Disability Services from obtaining and using criminal history  
22 record information as provided by other law.

23 SECTION 4. Section 411.1386, Government Code, is amended to  
24 read as follows:

25 Sec. 411.1386. ACCESS TO CRIMINAL HISTORY RECORD  
26 INFORMATION: COURT CLERK; DEPARTMENT OF AGING AND DISABILITY  
27 SERVICES; GUARDIANSHIPS. (a) The clerk of the county having venue

1 over a proceeding for the appointment of a guardian under Chapter  
2 XIII [~~13~~], Texas Probate Code, shall [~~is entitled to~~] obtain from  
3 the department criminal history record information maintained by  
4 the department that relates to:

5 (1) a private professional guardian;

6 (2) each person who represents or plans to represent  
7 the interests of a ward as a guardian on behalf of the private  
8 professional guardian; [~~or~~]

9 (3) each person employed by a private professional  
10 guardian who will:

11 (A) have personal contact with a ward or proposed  
12 ward;

13 (B) exercise control over and manage a ward's  
14 estate; or

15 (C) perform any duties with respect to the  
16 management of a ward's estate; or

17 (4) each person employed by or volunteering or  
18 contracting with a guardianship program to provide guardianship  
19 services to a ward of the program on the program's behalf.

20 (a-1) The Department of Aging and Disability Services shall  
21 obtain from the Department of Public Safety criminal history record  
22 information maintained by the Department of Public Safety that  
23 relates to each person employed by or applying for employment with  
24 the Department of Aging and Disability Services who is or will be  
25 providing guardianship services to a ward of the department. The  
26 information regarding applicants must be obtained before  
27 employment, and the information regarding employees providing

1 those services must be obtained annually. The Department of Aging  
2 and Disability Services shall provide the information to:

3 (1) the clerk of the county having venue over the  
4 guardianship proceeding at the request of the court; or

5 (2) the Guardianship Certification Board at the  
6 request of the board.

7 (b) Criminal history record information obtained by a clerk  
8 under Subsection (a) is for the exclusive use of the court and is  
9 privileged and confidential [~~may be used only in determining~~  
10 ~~whether to appoint, remove, or continue the appointment of a~~  
11 ~~private professional guardian~~].

12 (c) Criminal history record information obtained by a clerk  
13 under Subsection (a) may not be released or disclosed to any person  
14 or agency except on court order or with the consent of the person  
15 who is the subject of the information. The clerk may destroy the  
16 criminal history record information after the information is used  
17 for the purposes authorized by this section.

18 (d) The criminal history record information obtained under  
19 Subsection (a-1) is for the exclusive use of the court or  
20 Guardianship Certification Board, as appropriate, and is  
21 privileged and confidential. The information may not be released  
22 or otherwise disclosed to any person or agency except on court order  
23 or consent of the person being investigated. The county clerk or  
24 Guardianship Certification Board may destroy the criminal history  
25 record information after the information is used for the purposes  
26 authorized by this section.

27 (e) The court, as that term is defined by Section 601, Texas

1 Probate Code, shall use the information obtained under Subsection  
2 (a) or (a-1)(1) only in determining whether to appoint, remove, or  
3 continue the appointment of a private professional guardian, a  
4 guardianship program, or the Department of Aging and Disability  
5 Services.

6 (f) Criminal history record information obtained by the  
7 Guardianship Certification Board under Subsection (a-1)(2) may be  
8 used for any purpose related to the issuance, denial, renewal,  
9 suspension, or revocation of a certificate issued by the board.

10 (g) A person commits an offense if the person releases or  
11 discloses any information received under this section without the  
12 authorization prescribed by Subsection (c) or (d). An offense  
13 under this subsection is a Class A misdemeanor.

14 (h) The county clerk may charge a reasonable fee sufficient  
15 to recover the costs of obtaining criminal history information  
16 records authorized by Subsection (a).

17 (i) This section does not prohibit the Department of Aging  
18 and Disability Services from obtaining and using criminal history  
19 record information as provided by other law.

20 SECTION 5. The change in law made by this Act:

21 (1) by the amendment of Section 411.1386(a),  
22 Government Code, is made to conform to Section 698(a), Texas  
23 Probate Code, as that subsection existed immediately before the  
24 effective date of this Act;

25 (2) by the amendment of Section 411.1386(b),  
26 Government Code, and the addition of Section 411.1386(e),  
27 Government Code, other than the addition of the reference to

1 Subsection (a-1)(1), Section 411.1386, Government Code, is made to  
2 conform to Sections 698(b) and (c), Texas Probate Code, as those  
3 subsections existed immediately before the effective date of this  
4 Act;

5 (3) by the addition of Section 411.1386(g), Government  
6 Code, other than the addition of the reference to Subsection (d),  
7 Section 411.1386, Government Code, is made to conform to Section  
8 698(d), Texas Probate Code, as that subsection existed immediately  
9 before the effective date of this Act; and

10 (4) by the addition of Section 411.1386(h), Government  
11 Code, is made to conform to Section 698(e), Texas Probate Code, as  
12 that subsection existed immediately before the effective date of  
13 this Act.

14 SECTION 6. This Act takes effect September 1, 2007.