

By: Uresti, Zaffirini

S.B. No. 1057

A BILL TO BE ENTITLED

AN ACT

relating to criminal history record information relating to persons who are certified to provide guardianship services.

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

SECTION 1. Section 411.1386, Government Code, is amended by amending Subsections (a), (b), (c), (d), and (e) and adding Subsection (a-6) to read as follows:

(a) Except as provided by Subsections (a-1), ~~[and]~~ (a-5), and (a-6), the clerk of the county having venue over a proceeding for the appointment of a guardian under Chapter XIII, Texas Probate Code, shall obtain from the department criminal history record information maintained by the department that relates to:

(1) a private professional guardian;

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

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

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

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

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

1 (4) each person employed by or volunteering or
2 contracting with a guardianship program to provide guardianship
3 services to a ward of the program on the program's behalf; or

4 (5) any other person proposed to serve as a guardian
5 under Chapter XIII, Texas Probate Code, including a proposed
6 temporary guardian and a proposed successor guardian, other than
7 the ward's or proposed ward's family member or an attorney.

8 (a-6) The clerk described by Subsection (a) is not required
9 to obtain criminal history record information for a person who
10 holds a certificate issued under Section 111.042 or a provisional
11 certificate issued under Section 111.0421 if the Guardianship
12 Certification Board conducted a criminal history check on the
13 person before issuing or renewing the certificate. The board shall
14 provide to the clerk at the court's request the criminal history
15 record information that was obtained from the department or the
16 Federal Bureau of Investigation.

17 (b) Criminal history record information obtained by or
18 provided to a clerk under Subsection (a), ~~or~~ (a-5), or (a-6) is
19 for the exclusive use of the court and is privileged and
20 confidential.

21 (c) Criminal history record information obtained by or
22 provided to a clerk under Subsection (a), ~~or~~ (a-5), or (a-6) may
23 not be released or disclosed to any person or agency except on court
24 order or with the consent of the person who is the subject of the
25 information. The clerk may destroy the criminal history record
26 information after the information is used for the purposes
27 authorized by this section.

1 (d) The criminal history record information obtained under
2 Subsection (a-4) is for the exclusive use of the court or
3 Guardianship Certification Board, as appropriate, and is
4 privileged and confidential. The information may not be released
5 or otherwise disclosed to any person or agency except on court
6 order, with the ~~[or]~~ consent of the person being investigated, or as
7 authorized by Subsection (a-6) or Section 698(a-6), Texas Probate
8 Code. The county clerk or Guardianship Certification Board may
9 destroy the criminal history record information after the
10 information is used for the purposes authorized by this section.

11 (e) The court, as that term is defined by Section 601, Texas
12 Probate Code, shall use the information obtained or provided under
13 Subsection (a), (a-4)(1), ~~[or]~~ (a-5), or (a-6) only in determining
14 whether to:

15 (1) appoint, remove, or continue the appointment of a
16 private professional guardian, a guardianship program, or the
17 Department of Aging and Disability Services; or

18 (2) appoint any other person proposed to serve as a
19 guardian under Chapter XIII, Texas Probate Code, including a
20 proposed temporary guardian and a proposed successor guardian,
21 other than the ward's or proposed ward's family member or an
22 attorney.

23 SECTION 2. Subsection (c), Section 411.1406, Government
24 Code, as added by Chapter 15 (S.B. 505), Acts of the 80th
25 Legislature, Regular Session, 2007, is amended to read as follows:

26 (c) Criminal history record information obtained by the
27 board under Subsection (b):

1 (1) may be used by the board for any purpose related to
2 the issuance, denial, suspension, revocation, or renewal of a
3 certificate issued by the board;

4 (2) may not be released or disclosed to any person
5 except:

6 (A) on court order;

7 (B) [~~or~~] with the consent of the person who is the
8 subject of the information; or

9 (C) as authorized by Section 411.1386(a-6) of
10 this code or Section 698(a-6), Texas Probate Code; and

11 (3) shall be destroyed by the board after the
12 information is used for the authorized purposes.

13 SECTION 3. Section 698, Texas Probate Code, is amended by
14 amending Subsections (a), (b), and (b-1) and adding Subsection
15 (a-6) to read as follows:

16 (a) Except as provided by Subsections (a-1), [~~and~~] (a-5),
17 and (a-6) of this section, the clerk of the county having venue over
18 the proceeding for the appointment of a guardian shall obtain
19 criminal history record information that is maintained by the
20 Department of Public Safety or the Federal Bureau of Investigation
21 identification division relating to:

22 (1) a private professional guardian;

23 (2) each person who represents or plans to represent
24 the interests of a ward as a guardian on behalf of the private
25 professional guardian;

26 (3) each person employed by a private professional
27 guardian who will:

1 (A) have personal contact with a ward or proposed
2 ward;

3 (B) exercise control over and manage a ward's
4 estate; or

5 (C) perform any duties with respect to the
6 management of a ward's estate;

7 (4) each person employed by or volunteering or
8 contracting with a guardianship program to provide guardianship
9 services to a ward of the program on the program's behalf; or

10 (5) any other person proposed to serve as a guardian
11 under this chapter, including a proposed temporary guardian and a
12 proposed successor guardian, other than the ward's or proposed
13 ward's family member or an attorney.

14 (a-6) The clerk described by Subsection (a) of this section
15 is not required to obtain criminal history record information for a
16 person who holds a certificate issued under Section 111.042,
17 Government Code, or a provisional certificate issued under Section
18 111.0421, Government Code, if the Guardianship Certification Board
19 conducted a criminal history check on the person before issuing or
20 renewing the certificate. The board shall provide to the clerk at
21 the court's request the criminal history record information that
22 was obtained from the Department of Public Safety or the Federal
23 Bureau of Investigation.

24 (b) The criminal history record information obtained or
25 provided under Subsection (a), ~~(a-5)~~, or (a-6) of this section
26 is for the exclusive use of the court and is privileged and
27 confidential. The criminal history record information may not be

1 released or otherwise disclosed to any person or agency except on
2 court order or consent of the person being investigated. The
3 county clerk may destroy the criminal history information records
4 after the records are used for the purposes authorized by this
5 section.

6 (b-1) The criminal history record information obtained
7 under Subsection (a-4) of this section is for the exclusive use of
8 the court or Guardianship Certification Board, as appropriate, and
9 is privileged and confidential. The information may not be
10 released or otherwise disclosed to any person or agency except on
11 court order, with the ~~or~~ consent of the person being
12 investigated, or as authorized by Subsection (a-6) of this section
13 or Section 411.1386(a-6), Government Code. The county clerk or
14 Guardianship Certification Board may destroy the criminal history
15 record information after the information is used for the purposes
16 authorized by this section.

17 SECTION 4. The changes in law made by this Act apply to a
18 proceeding for the appointment of a guardian that is pending or
19 filed on or after the effective date of this Act.

20 SECTION 5. Notwithstanding Section 4 of this Act, the
21 requirement that the Guardianship Certification Board provide
22 criminal history record information to a county clerk on request
23 that is imposed by Subsection (a-6), Section 411.1386, Government
24 Code, as added by this Act, and Subsection (a-6), Section 698, Texas
25 Probate Code, as added by this Act, applies only with respect to
26 criminal history record information obtained by the board on or
27 after January 1, 2009.

1 SECTION 6. This Act takes effect immediately if it receives
2 a vote of two-thirds of all the members elected to each house, as
3 provided by Section 39, Article III, Texas Constitution. If this
4 Act does not receive the vote necessary for immediate effect, this
5 Act takes effect September 1, 2009.