

BILL ANALYSIS

S.B. 1235
By: West
Human Services
Committee Report (Unamended)

BACKGROUND AND PURPOSE

The Department of Aging and Disability Services (DADS) currently has the authority to obtain financial records of wards or proposed wards from financial institutions for purposes of guardianship services. Interested parties assert, however, that it is sometimes difficult for DADS to gather the records without a specific exemption from the application of certain Finance Code provisions relating to discovery of customer records in the custody of a financial institution.

In addition, an application for guardianship involving a person alleged to have an intellectual disability requires a determination of mental retardation occurring within the preceding 24 months. The parties contend that, in practice, courts typically accept updates or endorsements to older determinations if the update or endorsement took place in the previous 24 months. S.B. 1235 seeks to clarify these issues by amending guardianship laws relating to assessments for and provision of guardianship services by DADS.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

S.B. 1235 amends the Finance Code, effective September 1, 2013, to exempt a record request from or report to a government agency arising out the assessment for or provision of guardianship services under provisions of the Human Resources Code from the application of statutory provisions providing the exclusive method for compelled discovery of a financial institution's customer records.

S.B. 1235 amends the Estates Code to replace references to mental retardation in statutory provisions relating to examinations for and documentation of such condition for purposes of determining the necessity of guardianship with references to an intellectual disability. The bill, in a provision specifying the information to be presented to the court with an application for guardianship on the basis of the proposed ward's alleged incapacity, removes the requirement that a written letter or certificate from a licensed physician documenting a determination of incapacity for guardianship purposes also state that the physician has made a determination of mental retardation in accordance with Health and Safety Code provisions relating to such a determination as required for admission and commitment to mental retardation services. The bill authorizes such applicant, as an alternative to presenting either such a written letter or certificate documenting a determination or a written letter or certificate showing that not earlier than 24 months before the hearing date the proposed ward has been examined by a properly licensed or certified physician or psychologist and the physician's or psychologist's written findings and recommendations include a determination of an intellectual disability, to present a written letter or certificate showing that not earlier than 24 months before the hearing date a properly licensed or certified physician or psychologist updated or endorsed in writing a prior determination of an intellectual disability for the proposed ward made by a properly licensed or certified physician or

psychologist.

S.B. 1235 specifies that its provisions prevail to the extent of any conflict over another Act of the 83rd Legislature, Regular Session, 2013, relating to nonsubstantive additions to and corrections in enacted codes.

EFFECTIVE DATE

Except as otherwise provided, January 1, 2014.