

By: West

S.B. No. 1235

A BILL TO BE ENTITLED

AN ACT

1
2 relating to guardianships, including assessments for and provision
3 of guardianship services by the Department of Aging and Disability
4 Services.

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

6 SECTION 1. Subsection (a), Section 59.006, Finance Code, is
7 amended to read as follows:

8 (a) This section provides the exclusive method for
9 compelled discovery of a record of a financial institution relating
10 to one or more customers but does not create a right of privacy in a
11 record. This section does not apply to and does not require or
12 authorize a financial institution to give a customer notice of:

13 (1) a demand or inquiry from a state or federal
14 government agency authorized by law to conduct an examination of
15 the financial institution;

16 (2) a record request from a state or federal
17 government agency or instrumentality under statutory or
18 administrative authority that provides for, or is accompanied by, a
19 specific mechanism for discovery and protection of a customer
20 record of a financial institution, including a record request from
21 a federal agency subject to the Right to Financial Privacy Act of
22 1978 (12 U.S.C. Section 3401 et seq.), as amended, or from the
23 Internal Revenue Service under Section 1205, Internal Revenue Code
24 of 1986;

1 (3) a record request from or report to a government
2 agency arising out of:

3 (A) the investigation or prosecution of a
4 criminal offense;

5 (B) [~~or~~] the investigation of alleged abuse,
6 neglect, or exploitation of an elderly or disabled person in
7 accordance with Chapter 48, Human Resources Code; or

8 (C) the assessment for or provision of
9 guardianship services under Subchapter E, Chapter 161, Human
10 Resources Code;

11 (4) a record request in connection with a garnishment
12 proceeding in which the financial institution is garnishee and the
13 customer is debtor;

14 (5) a record request by a duly appointed receiver for
15 the customer;

16 (6) an investigative demand or inquiry from a state
17 legislative investigating committee;

18 (7) an investigative demand or inquiry from the
19 attorney general of this state as authorized by law other than the
20 procedural law governing discovery in civil cases; or

21 (8) the voluntary use or disclosure of a record by a
22 financial institution subject to other applicable state or federal
23 law.

24 SECTION 2. Section 1101.104, Estates Code, as effective
25 January 1, 2014, is amended to read as follows:

26 Sec. 1101.104. EXAMINATIONS AND DOCUMENTATION REGARDING
27 INTELLECTUAL DISABILITY [~~MENTAL RETARDATION~~]. If an intellectual

1 disability [~~mental retardation~~] is the basis of the proposed ward's
2 alleged incapacity, the court may not grant an application to
3 create a guardianship for the proposed ward unless the applicant
4 presents to the court a written letter or certificate that:

5 (1) [~~a written letter or certificate that:~~
6 [~~(A)~~] complies with Sections 1101.103(a) and
7 (b) [~~, and~~
8 [~~(B)~~] ~~states that the physician has made a~~
9 ~~determination of mental retardation in accordance with Section~~
10 ~~593.005, Health and Safety Code~~]; or

11 (2) shows that not earlier than 24 months before the
12 hearing date [~~both~~]:

13 (A) [~~written documentation showing that, not~~
14 ~~earlier than 24 months before the hearing date,~~] the proposed ward
15 has been examined by a physician or psychologist licensed in this
16 state or certified by the Department of Aging and Disability
17 Services to perform the examination, in accordance with rules of
18 the executive commissioner of the Health and Human Services
19 Commission governing examinations of that kind, [~~, and~~

20 [~~(B)~~] the physician's or psychologist's written
21 findings and recommendations include [~~, including a statement as to~~
22 ~~whether the physician or psychologist has made~~] a determination of
23 an intellectual disability; or

24 (B) a physician or psychologist licensed in this
25 state or certified by the Department of Aging and Disability
26 Services to perform examinations described by Paragraph (A) updated
27 or endorsed in writing a prior determination of an intellectual

1 disability for the proposed ward made by a physician or
2 psychologist licensed in this state or certified by the department
3 ~~[mental retardation in accordance with Section 593.005, Health and~~
4 ~~Safety Code].~~

5 SECTION 3. The changes in law made by this Act to Section
6 1101.104, Estates Code, as effective January 1, 2014, apply only to
7 an application to create a guardianship filed on or after the
8 effective date of this Act. An application to create a guardianship
9 filed before the effective date of this Act is governed by the law
10 in effect on the date the application was filed, and the former law
11 is continued in effect for that purpose.

12 SECTION 4. To the extent of any conflict, this Act prevails
13 over another Act of the 83rd Legislature, Regular Session, 2013,
14 relating to nonsubstantive additions to and corrections in enacted
15 codes.

16 SECTION 5. (a) Except as provided by Subsection (b) of
17 this section, this Act takes effect January 1, 2014.

18 (b) Subsection (a), Section 59.006, Finance Code, as
19 amended by this Act, takes effect September 1, 2013.