

By: Smithee

H.B. No. 2892

A BILL TO BE ENTITLED

AN ACT

relating to guardianships; authorizing a fee.

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

SECTION 1. Chapter 14, Code of Criminal Procedure, is amended by adding Article 14.055 to read as follows:

Art. 14.055. DUTY OF OFFICER TO NOTIFY PROBATE COURT. (a)

In this article, "ward" has the meaning assigned by Section 22.033, Estates Code.

(b) As soon as practicable, but not later than the first working day after the date a peace officer detains or arrests a person who is a ward, the peace officer or the person having custody of the ward shall notify the court having jurisdiction over the ward's guardianship of the ward's detention or arrest.

SECTION 2. Chapter 15, Code of Criminal Procedure, is amended by adding Article 15.171 to read as follows:

Art. 15.171. DUTY OF OFFICER TO NOTIFY PROBATE COURT. (a)

In this article, "ward" has the meaning assigned by Section 22.033, Estates Code.

(b) As soon as practicable, but not later than the first working day after the date a peace officer arrests a person who is a ward, the peace officer or the person having custody of the ward shall notify the court having jurisdiction over the ward's guardianship of the ward's arrest.

SECTION 3. Subchapter A, Chapter 1104, Estates Code, is

1 amended by adding Section 1104.003 to read as follows:

2 Sec. 1104.003. TRAINING REQUIRED. A court may not appoint  
3 an individual to serve as guardian under this title if the  
4 individual has not received the training required under Section  
5 155.204, Government Code.

6 SECTION 4. The heading to Section 1104.404, Estates Code,  
7 is amended to read as follows:

8 Sec. 1104.404. EXCEPTION FOR INFORMATION CONCERNING  
9 CERTAIN PERSONS [~~HOLDING A CERTIFICATE~~].

10 SECTION 5. Section 1104.404(a), Estates Code, is amended to  
11 read as follows:

12 (a) The clerk described by Section 1104.402 is not required  
13 to obtain criminal history record information for a person [~~who~~  
14 ~~holds a certificate issued under Section 155.102, Government Code,~~  
15 ~~or a provisional certificate issued under Section 155.103,~~  
16 ~~Government Code,~~] if the [~~guardianship certification program of~~  
17 ~~the~~] Judicial Branch Certification Commission conducted a criminal  
18 history check on the person under Chapter 155, Government Code  
19 [~~before issuing or renewing the certificate~~].

20 SECTION 6. Subchapter B, Chapter 1253, Estates Code, is  
21 amended by adding Section 1253.0515 to read as follows:

22 Sec. 1253.0515. CERTIFICATION OR TRAINING OF GUARDIAN. (a)  
23 A guardian filing an application under this subchapter must comply  
24 with Subchapter C or D, Chapter 155, Government Code, as  
25 applicable.

26 (b) A court may not grant an application filed under this  
27 subchapter unless the guardian complies with Subsection (a).

1 SECTION 7. Chapter 52, Family Code, is amended by adding  
2 Section 52.011 to read as follows:

3 Sec. 52.011. DUTY OF LAW ENFORCEMENT OFFICER TO NOTIFY  
4 PROBATE COURT. (a) In this section, "ward" has the meaning  
5 assigned by Section 22.033, Estates Code.

6 (b) As soon as practicable, but not later than the first  
7 working day after the date a law enforcement officer takes a child  
8 who is a ward into custody under Section 52.01(a)(2) or (3), the law  
9 enforcement officer or other person having custody of the child  
10 shall notify the court with jurisdiction over the child's  
11 guardianship of the child's detention or arrest.

12 SECTION 8. The heading to Chapter 155, Government Code, is  
13 amended to read as follows:

14 CHAPTER 155. DUTIES RESPECTING GUARDIANSHIP [~~CERTIFICATION~~]

15 SECTION 9. Section 155.001, Government Code, is amended by  
16 adding Subdivision (6-a) to read as follows:

17 (6-a) Notwithstanding Section 151.001, "registration"  
18 means registration of a guardianship under this chapter.

19 SECTION 10. The heading to Subchapter C, Chapter 155,  
20 Government Code, is amended to read as follows:

21 SUBCHAPTER C. STANDARDS FOR AND CERTIFICATION [~~REGULATION~~] OF  
22 CERTAIN GUARDIANS

23 SECTION 11. Chapter 155, Government Code, is amended by  
24 adding Subchapters D and E to read as follows:

25 SUBCHAPTER D. GUARDIANSHIP REGISTRATION AND DATABASE

26 Sec. 155.151. REGISTRATION OF GUARDIANSHIPS. (a) The  
27 supreme court, after consulting with the office and the commission,

1 shall by rule establish a mandatory registration program for  
2 guardianships under which all guardianships in this state shall be  
3 required to register with the commission.

4 (b) In establishing rules under this section, the supreme  
5 court shall ensure courts with jurisdiction over a guardianship  
6 immediately notify the commission of the removal of a guardian.

7 Sec. 155.152. GUARDIANSHIP DATABASE. In cooperation with  
8 the commission and courts with jurisdiction over guardianship  
9 proceedings and by using the information obtained by the commission  
10 under this subchapter, the office shall establish and maintain a  
11 central database of all guardianships subject to the jurisdiction  
12 of this state.

13 Sec. 155.153. ACCESS TO DATABASE. (a) The office shall  
14 ensure the database is accessible to the Department of Public  
15 Safety for law enforcement purposes.

16 (b) Subject to Subsection (c), the Department of Public  
17 Safety shall make information from the database available to law  
18 enforcement personnel through the Texas Law Enforcement  
19 Telecommunications System or a successor system of  
20 telecommunication used by law enforcement agencies and operated by  
21 the department.

22 (c) The only information that may be disclosed from the  
23 database to a law enforcement official inquiring into a  
24 guardianship is:

- 25 (1) the name, sex, and date of birth of a ward;  
26 (2) the name, telephone number, and address of the  
27 guardian of a ward; and

1           (3) the name of the court with jurisdiction over the  
2 guardianship.

3           (d) The office shall limit access to the database to  
4 properly trained staff.

5           Sec. 155.154. DATABASE DISCLAIMER. To the extent feasible,  
6 the following disclaimer shall be displayed when the database is  
7 accessed: "This database is for the limited purpose of determining  
8 whether an individual has a guardian and obtaining a guardian's  
9 contact information. The scope of a guardian's authority is  
10 determined by court order, and a guardian should not be presumed to  
11 have the authority to act for or on behalf of a ward until the extent  
12 of the guardian's authority is verified by the court with  
13 jurisdiction over the guardianship."

14           Sec. 155.155. CONFIDENTIALITY OF INFORMATION IN DATABASE.

15           (a) Information that is contained in the database required under  
16 Section 155.152, including personally identifying information of a  
17 guardian or a ward, is confidential and not subject to disclosure  
18 under Chapter 552 or any other law.

19           (b) A law enforcement agency or officer that receives the  
20 information must maintain the confidentiality of the information,  
21 may not disclose the information under Chapter 552 or any other law,  
22 and may not use the information for a purpose that does not directly  
23 relate to the purpose for which it was obtained.

24           SUBCHAPTER E. DUTY TO ASSIST IN QUALIFYING CERTAIN GUARDIANS

25           Sec. 155.201. DEFINITION. In this subchapter, "probate  
26 court" has the meaning assigned by Section 1002.008, Estates Code.

27           Sec. 155.202. APPLICABILITY. This subchapter does not

1 apply with respect to the following persons who are or will be  
2 providing guardianship services to a proposed ward:

- 3 (1) an attorney or corporate fiduciary; or  
4 (2) an individual subject to certification under  
5 Subchapter C.

6 Sec. 155.203. DUTY TO PROVIDE ASSISTANCE IN QUALIFYING  
7 GUARDIANS. (a) The supreme court, after consulting with the  
8 commission, shall by rule establish a process by which the  
9 commission performs training and criminal history background  
10 checks for individuals seeking appointment as guardian.

11 (b) In adopting rules under this section, the supreme court  
12 shall ensure that the commission is required to provide  
13 confirmation of a person's completion of training and a copy of the  
14 person's criminal history background check to the probate court not  
15 later than the 10th day before the date of the hearing to appoint a  
16 guardian.

17 Sec. 155.204. TRAINING REQUIRED. (a) In adopting rules  
18 under Section 155.203, the supreme court shall ensure that before a  
19 person is appointed guardian, the person completes a training  
20 course:

21 (1) designed by the commission to educate proposed  
22 guardians about their responsibilities as guardians, alternatives  
23 to guardianships, supports and services available to the proposed  
24 ward, and a ward's bill of rights under Section [1151.351](#), Estates  
25 Code; and

26 (2) made available for free to proposed guardians by  
27 the commission online via the commission's Internet website and, on

1 request, in a written format.

2 (b) Notwithstanding Section 155.203(b) or Section 1251.052,  
3 Estates Code, the training required under Subsection (a):

4 (1) does not apply to the initial appointment of a  
5 temporary guardian under Chapter 1251, Estates Code; and

6 (2) applies only if there is a motion to extend the  
7 term of a temporary guardian.

8 (c) The commission may make the training required under this  
9 section available to court investigators and guardians ad litem. A  
10 court investigator or guardian ad litem is not required to receive  
11 training unless required to do so by a court.

12 Sec. 155.205. DUTY TO OBTAIN CRIMINAL HISTORY RECORD  
13 INFORMATION. (a) In accordance with the rules adopted by the  
14 supreme court under Section 155.203, the commission shall obtain  
15 criminal history record information that is maintained by the  
16 Department of Public Safety or the Federal Bureau of Investigation  
17 identification division relating to an individual seeking  
18 appointment as a guardian or temporary guardian.

19 (b) The commission shall obtain:

20 (1) fingerprint-based criminal history record  
21 information of an applicant if the liquid assets of the estate of a  
22 ward exceed \$50,000; or

23 (2) name-based criminal history record information of  
24 an applicant if the liquid assets of the estate of a ward are  
25 \$50,000 or less.

26 Sec. 155.206. INFORMATION FOR EXCLUSIVE USE OF COMMISSION  
27 AND COURT. (a) Criminal history record information obtained under

1 this subchapter is privileged and confidential and is for the  
2 exclusive use of the commission and the court with jurisdiction  
3 over the guardianship. The criminal history record information may  
4 not be released or otherwise disclosed to any person or agency  
5 except on court order or consent of the individual being  
6 investigated.

7 (b) The commission may destroy the criminal history record  
8 information after the information is used for the purposes  
9 authorized by this subchapter.

10 Sec. 155.207. USE OF CRIMINAL HISTORY RECORD INFORMATION.

11 (a) The commission shall use the criminal history record  
12 information obtained under this subchapter only for a purpose  
13 authorized by this subchapter or to maintain the registration of a  
14 guardianship under Subchapter D.

15 (b) A court may use the criminal history record information  
16 obtained under this subchapter only in the same manner and only to  
17 the same extent a court is authorized to use the information under  
18 Section 1104.409, Estates Code.

19 Sec. 155.208. CLARIFICATION OF AUTHORITY GRANTED. (a)  
20 This subchapter does not grant to the commission the authority to:

21 (1) establish additional qualifications or a code of  
22 ethics for individuals subject to training or a background check  
23 under this subchapter, require those individuals to pass  
24 examinations or take continuing education courses, or otherwise  
25 regulate those individuals; or

26 (2) interfere with a court's authority to ensure a  
27 guardian is performing all of the duties required of the guardian



1 respecting a ward.

2 (b) Individuals subject to training or a background check  
3 under this subchapter are not subject to enforcement action under  
4 Chapter 153.

5 Sec. 155.209. FEE FOR OBTAINING CRIMINAL HISTORY RECORD  
6 INFORMATION. (a) Except as provided by Subsection (b), the  
7 commission may charge a fee to obtain criminal history record  
8 information under this subchapter, in an amount approved by the  
9 supreme court.

10 (b) The supreme court may adopt rules excluding individuals  
11 who are indigent from having to pay the fee authorized by this  
12 section.

13 (c) A guardian is entitled to reimbursement from the  
14 guardianship estate as provided by Subchapter C, Chapter 1155,  
15 Estates Code, for the fee authorized by this section.

16 SECTION 12. Section 411.1386(a-6), Government Code, is  
17 amended to read as follows:

18 (a-6) The clerk described by Subsection (a) is not required  
19 to obtain criminal history record information for a person [~~who~~  
20 ~~holds a certificate issued under Section 155.102 or a provisional~~  
21 ~~certificate issued under Section 155.103]~~ if the [~~guardianship~~  
22 ~~certification program of the]~~ Judicial Branch Certification  
23 Commission conducted a criminal history check on the person under  
24 Chapter 155 [~~before issuing or renewing the certificate~~]. The  
25 commission shall provide to the clerk at the court's request the  
26 criminal history record information that was obtained from the  
27 department or the Federal Bureau of Investigation.

1 SECTION 13. Subchapter A, Chapter 573, Health and Safety  
2 Code, is amended by adding Section 573.0021 to read as follows:

3 Sec. 573.0021. DUTY OF PEACE OFFICER TO NOTIFY PROBATE  
4 COURTS. As soon as practicable, but not later than the first  
5 working day after the date a peace officer takes a person who is a  
6 ward into custody, the peace officer shall notify the court having  
7 jurisdiction over the ward's guardianship of the ward's detention  
8 or transportation to a facility in accordance with Section 573.001.

9 SECTION 14. (a) Not later than June 1, 2018, the Office of  
10 Court Administration of the Texas Judicial System shall establish  
11 the guardianship database required under Section 155.152,  
12 Government Code, as added by this Act, and provide access to the  
13 database to the Department of Public Safety in accordance with  
14 Section 155.153, Government Code, as added by this Act.

15 (b) A law enforcement officer or other person with custody  
16 of a ward is not required to comply with Articles 14.055 and 15.171,  
17 Code of Criminal Procedure, Section 52.011, Family Code, or  
18 Section 573.0021, Health and Safety Code, as added by this Act, as  
19 applicable, until July 1, 2018.

20 SECTION 15. (a) As soon as practicable after the effective  
21 date of this Act, the Supreme Court of Texas, after consulting with  
22 the Judicial Branch Certification Commission, shall adopt rules  
23 necessary to implement Subchapter E, Chapter 155, Government Code,  
24 as added by this Act.

25 (b) A proposed guardian is not required to comply with  
26 Section 155.204, Government Code, as added by this Act, until June  
27 1, 2018.

1 SECTION 16. This Act takes effect September 1, 2017.