

By: Zaffirini
(Smithee)

S.B. No. 1096

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, unless waived by the court in accordance
6 with rules adopted by the supreme court under Section 155.203,
7 Government Code.

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

10 Sec. 1104.404. EXCEPTION FOR INFORMATION CONCERNING
11 CERTAIN PERSONS [~~HOLDING A CERTIFICATE~~].

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

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

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

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

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

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

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

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

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

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

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

19 (6-a) Notwithstanding Section 151.001, "registration"
20 means registration of a guardianship under this chapter.

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

23 SUBCHAPTER C. STANDARDS FOR AND CERTIFICATION [~~REGULATION~~] OF
24 CERTAIN GUARDIANS

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

1 SUBCHAPTER D. GUARDIANSHIP REGISTRATION AND DATABASE

2 Sec. 155.151. REGISTRATION OF GUARDIANSHIPS. (a) The
3 supreme court, after consulting with the office and the commission,
4 shall by rule establish a mandatory registration program for
5 guardianships under which all guardianships in this state shall be
6 required to register with the commission.

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

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

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

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

25 (c) The only information that may be disclosed from the
26 database to a law enforcement official inquiring into a
27 guardianship is:

1 (1) the name, sex, and date of birth of a ward;

2 (2) the name, telephone number, and address of the
3 guardian of a ward; and

4 (3) the name of the court with jurisdiction over the
5 guardianship.

6 (d) The office shall limit access to the database to
7 properly trained staff.

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

17 Sec. 155.155. CONFIDENTIALITY OF INFORMATION IN DATABASE.

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

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

1 SUBCHAPTER E. DUTY TO ASSIST IN QUALIFYING CERTAIN GUARDIANS

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

4 Sec. 155.202. APPLICABILITY. This subchapter does not
5 apply with respect to the following persons who are or will be
6 providing guardianship services to a proposed ward:

7 (1) an attorney or corporate fiduciary; or

8 (2) an individual subject to certification under
9 Subchapter C.

10 Sec. 155.203. DUTY TO PROVIDE ASSISTANCE IN QUALIFYING
11 GUARDIANS; SUPREME COURT RULEMAKING. (a) The supreme court, after
12 consulting with the commission, shall by rule establish a process
13 by which the commission performs training and criminal history
14 background checks for individuals seeking appointment as guardian.

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

21 Sec. 155.204. TRAINING REQUIRED. (a) In adopting rules
22 under Section 155.203, the supreme court shall:

23 (1) subject to Subdivision (2), ensure that before a
24 person is appointed guardian, the person completes a training
25 course:

26 (A) designed by the commission to educate
27 proposed guardians about their responsibilities as guardians,

1 alternatives to guardianships, supports and services available to
2 the proposed ward, and a ward's bill of rights under Section
3 1151.351, Estates Code; and

4 (B) made available for free to proposed guardians
5 by the commission online via the commission's Internet website and,
6 on request, in a written format; and

7 (2) identify the circumstances under which a court may
8 waive the training required under this section.

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

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

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

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

19 Sec. 155.205. DUTY TO OBTAIN CRIMINAL HISTORY RECORD
20 INFORMATION. (a) In accordance with the rules adopted by the
21 supreme court under Section 155.203, the commission shall obtain
22 criminal history record information that is maintained by the
23 Department of Public Safety or the Federal Bureau of Investigation
24 identification division relating to an individual seeking
25 appointment as a guardian or temporary guardian.

26 (b) The commission shall obtain:

27 (1) fingerprint-based criminal history record

1 information of an applicant if the liquid assets of the estate of a
2 ward exceed \$50,000; or

3 (2) name-based criminal history record information of
4 an applicant if the liquid assets of the estate of a ward are
5 \$50,000 or less.

6 Sec. 155.206. INFORMATION FOR EXCLUSIVE USE OF COMMISSION
7 AND COURT. (a) Criminal history record information obtained under
8 this subchapter is privileged and confidential and is for the
9 exclusive use of the commission and the court with jurisdiction
10 over the guardianship. The criminal history record information may
11 not be released or otherwise disclosed to any person or agency
12 except on court order or consent of the individual being
13 investigated.

14 (b) The commission may destroy the criminal history record
15 information after the information is used for the purposes
16 authorized by this subchapter.

17 Sec. 155.207. USE OF CRIMINAL HISTORY RECORD INFORMATION.
18 (a) The commission shall use the criminal history record
19 information obtained under this subchapter only for a purpose
20 authorized by this subchapter or to maintain the registration of a
21 guardianship under Subchapter D.

22 (b) A court may use the criminal history record information
23 obtained under this subchapter only in the same manner and only to
24 the same extent a court is authorized to use the information under
25 Section [1104.409](#), Estates Code.

26 Sec. 155.208. CLARIFICATION OF AUTHORITY GRANTED.
27 (a) This subchapter does not grant to the commission the authority

1 to:

2 (1) establish additional qualifications or a code of
3 ethics for individuals subject to training or a background check
4 under this subchapter, require those individuals to pass
5 examinations or take continuing education courses, or otherwise
6 regulate those individuals; or

7 (2) interfere with a court's authority to ensure a
8 guardian is performing all of the duties required of the guardian
9 respecting a ward.

10 (b) Individuals subject to training or a background check
11 under this subchapter are not subject to enforcement action under
12 Chapter 153.

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

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

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

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

26 (a-6) The clerk described by Subsection (a) is not required
27 to obtain criminal history record information for a person [who

~~holds a certificate issued under Section 155.102 or a provisional~~
~~certificate issued under Section 155.103]~~ if the [guardianship
~~certification program of the]~~ Judicial Branch Certification
 Commission conducted a criminal history check on the person under
Chapter 155 ~~[before issuing or renewing the certificate]~~. The
 commission shall provide to the clerk at the court's request the
 criminal history record information that was obtained from the
 department or the Federal Bureau of Investigation.

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

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

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

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

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

6 (b) A proposed guardian is not required to comply with
7 Section 155.204, Government Code, as added by this Act, until June
8 1, 2018.

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