By:  Zaffirini S.B. No. 1411

A BILL TO BE ENTITLED

AN ACT

relating to acquisition, dissemination, and use of criminal history record information for certain judicial purposes, including for certification, registration, and licensing, of certain court professions and for appointing, removing, or continuing the appointment of a guardian.

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

SECTION 1.  Section 152.203, Government Code, is amended to read as follows:

Sec. 152.203.  RULES ON INELIGIBILITY. The supreme court shall adopt rules on applicants' ineligibility for certification, registration, or licensing under this subtitle based on the applicant's [~~person's~~] criminal history or other information that indicates the applicant [~~person~~] lacks the honesty, trustworthiness, or integrity to hold the certification, registration, or license.

SECTION 2.  Subchapter E, Chapter 152, Government Code, is amended by adding Section 152.2035 to read as follows:

Sec. 152.2035.  CRIMINAL HISTORY RECORD INFORMATION FOR USE IN DETERMINING INELIGIBILITY. (a) The commission shall, in accordance with this section and rules adopted by the supreme court under Section 152.203, obtain criminal history record information that is maintained by the Department of Public Safety or the Federal Bureau of Investigation identification division on each applicant for certification, registration, or licensing under this subtitle to be used solely for the determination of each applicant's ineligibility for certification, registration, or licensing under Section 152.203. The commission may not use criminal history record information obtained from the Federal Bureau of Investigation identification division under this section for any other purpose.

(b)  The commission may not transfer criminal history record information obtained from the Federal Bureau of Investigation identification division under this section to any other state agency, entity, or person.

(c)  The commission shall destroy criminal history record information immediately after the information is used to make a determination of ineligibility under Section 152.203.

SECTION 3.  Section 155.206(a), Government Code, is amended to read as follows:

(a)  Criminal history record information obtained under this subchapter is privileged and confidential and is for the exclusive use of the commission and the court with jurisdiction over the guardianship. The criminal history record information may not be released or otherwise disclosed to any person or agency except on court order [~~or consent of the individual being investigated~~].

SECTION 4.  Section 155.207(a), Government Code, is amended to read as follows:

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

SECTION 5.  Section 411.114(a)(8), Government Code, is amended to read as follows:

(8)  The Department of Family and Protective Services or the Health and Human Services Commission may only release with the consent described by Subdivision (6)(B) or to a person described by Subdivisions (7)(B), (7)(C), or (7)(D) [~~Subdivision (7)(B), (C), or (D)~~] criminal history record information that that department or commission obtains from the Department of Public Safety's computerized criminal history system.

SECTION 6.  Sections 411.1386(a), (a-1), (a-6), (b), (c), (e), and (g), Government Code, are amended to read as follows:

(a)  Except as provided by Subsections (a-1)[~~, (a-5),~~] and (a-6), the clerk of the county having venue over a proceeding for the appointment of a guardian under Title 3, Estates 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;

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

(5)  any other person proposed to serve as a guardian under Title 3, Estates Code, including a proposed temporary guardian and a proposed successor guardian, other than an attorney.

(a-1)  The Health and Human Services Commission shall obtain from the Department of Public Safety criminal history record information maintained by the Department of Public Safety that relates to each individual who is or will be providing guardianship services to a ward of or referred by the Health and Human Services Commission, including:

(1)  an employee of or an applicant selected for an employment position with the Health and Human Services Commission;

(2)  a volunteer or an applicant selected to volunteer with the Health and Human Services Commission;

(3)  an employee of or an applicant selected for an employment position with a business entity or other person that contracts with the Health and Human Services Commission to provide guardianship services to a ward referred by that commission; and

(4)  a volunteer or an applicant selected to volunteer with a business entity or person described by Subdivision (3)[~~; and~~

~~(5)  a contractor or an employee of a contractor who provides services to a ward of the Health and Human Services Commission under a contract with the estate of the ward~~].

(a-6)  The clerk described by Subsection (a) is not required to obtain criminal history record information for a person if the Judicial Branch Certification Commission conducted a criminal history check on the person under Sections 155.203 and 155.207 [~~Chapter 155~~]. 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 only for the purposes specified under Subsection (e).

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

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

(e)  The court, as that term is defined by Section 1002.008, Estates Code, shall use the information obtained or provided under Subsection (a)[~~, (a-4)(1), (a-5),~~] or (a-6) only in determining whether to:

(1)  appoint, remove, or continue the appointment of a private professional guardian, a guardianship program, or the Health and Human Services Commission; or

(2)  appoint any other person proposed to serve as a guardian under Title 3, Estates Code, including a proposed temporary guardian and a proposed successor guardian, other than an attorney.

(g)  A person commits an offense if the person releases or discloses any information received under this section without the authorization prescribed by Subsection (c) [~~or (d)~~]. An offense under this subsection is a Class A misdemeanor.

SECTION 7.  Section 411.13861(a), Government Code, is amended to read as follows:

Sec. 411.13861.  ACCESS TO CRIMINAL HISTORY RECORD INFORMATION:  HEALTH AND HUMAN SERVICES COMMISSION. (a)  The Health and Human Services Commission is entitled to obtain from the Department of Public Safety criminal history record information maintained by the Department of Public Safety that relates to a person:

(1)  required to undergo a background and criminal history check under Chapter 248A, Health and Safety Code;

(2)  who seeks unsupervised visits with a ward of the Health and Human Services Commission, including a relative of the ward, but only criminal history record information from the Department of Public Safety's computerized criminal history system;

(3)  who is an applicant for employment with the Health and Human Services Commission for a position in which the person, as an employee, would have direct access to residents or clients of a facility regulated by the Health and Human Services Commission, as determined by the executive commissioner of that commission; or

(4)  who is an employee of the Health and Human Services Commission and who has direct access to residents or clients of a facility regulated by that commission, as determined by the executive commissioner of that commission.

SECTION 8.  Section 411.1408(c), Government Code, is amended to read as follows:

(c)  Criminal history record information obtained by the commission under Subsection (b):

(1)  may be used by the commission for any purpose related to the issuance, denial, suspension, revocation, or renewal of a certificate, registration, or license issued by the commission or otherwise under Subtitle L, Title 2;

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

(A)  on court order; or

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

[~~(C)~~] as authorized by Section 411.1386(a-6) of this code or Section 1104.404, Estates Code, if applicable; and

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

SECTION 9.  Section 411.1409(d), Government Code, is amended to read as follows:

(d)  The court may not release or disclose information obtained under Subsection (b) except on order of a district court [~~or with the consent of the person who is the subject of the criminal history record information~~].

SECTION 10.  Section 1104.401, Estates Code, is amended to read as follows:

Sec. 1104.401.  DEFINITION. In this subchapter, "Commission [~~department~~]" means the Health and Human Services Commission [~~Department of Aging and Disability Services~~].

SECTION 11.  Section 1104.402(a), Estates Code, is amended to read as follows:

(a)  Except as provided by Section [~~1104.403,~~] 1104.404[~~,~~] or 1104.406(a), the clerk of the county having venue of the proceeding for the appointment of a guardian shall obtain criminal history record information that is maintained by the Department of Public Safety or the Federal Bureau of Investigation identification division relating 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;

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

(5)  any other person proposed to serve as a guardian under this title, including a proposed temporary guardian and a proposed successor guardian, other than an attorney.

SECTION 12.  Section 1104.404, Estates Code, is amended to read as follows:

Sec. 1104.404.  EXCEPTION FOR INFORMATION CONCERNING CERTAIN PERSONS. (a) The clerk described by Section 1104.402 is not required to obtain criminal history record information for a person if the Judicial Branch Certification Commission conducted a criminal history check on the person under Sections 155.203 and 155.207 [~~Chapter 155~~], Government Code.

(b)  Except as provided by Subsection (c), the Judicial Branch Certification Commission [~~The board~~] shall provide to the clerk [~~at the court's request~~] the criminal history record information that was obtained from the Department of Public Safety or the Federal Bureau of Investigation under Sections 155.203 and 155.205, Government Code.

(c)  The Judicial Branch Certification Commission may not provide the clerk criminal history record information under this section that the commission obtained from the Federal Bureau of Investigation under Section 152.2035, Government Code.

SECTION 13.  Section 1104.405(a), Estates Code, is amended to read as follows:

(a)  Criminal history record information obtained or provided under Section 1104.402[~~, 1104.403,~~] or 1104.404 is privileged and confidential and is for the exclusive use of the court in accordance with Section 1104.409. The criminal history record information may not be released or otherwise disclosed to any person or agency except on court order [~~or consent of the person being investigated~~].

SECTION 14.  Section 1104.406, Estates Code, is amended to read as follows:

Sec. 1104.406.  COMMISSION'S [~~DEPARTMENT'S~~] DUTY TO OBTAIN CRIMINAL HISTORY RECORD INFORMATION. (a) The Commission [~~department~~] shall obtain criminal history record information that is maintained by the Department of Public Safety or the Federal Bureau of Investigation identification division relating to each individual who is or will be providing guardianship services to a ward of or referred by the Commission [~~department~~], including:

(1)  an employee of or an applicant selected for an employment position with the Commission [~~department~~];

(2)  a volunteer or an applicant selected to volunteer with the Commission [~~department~~];

(3)  an employee of or an applicant selected for an employment position with a business entity or other person who contracts with the Commission [~~department~~] to provide guardianship services to a ward referred by the Commission [~~department~~]; and

(4)  a volunteer or an applicant selected to volunteer with a business entity or other person described by Subdivision (3)[~~; and~~

~~(5)  a contractor or an employee of a contractor who provides services to a ward of the Department of Aging and Disability Services under a contract with the estate of the ward~~].

(b)  The Commission [~~department~~] must obtain the information in Subsection (a) before:

(1)  making an offer of employment to an applicant for an employment position; or

(2)  a volunteer contacts a ward of or referred by the Commission [~~department~~].

(c)  The Commission [~~department~~] must annually obtain the information in Subsection (a) regarding employees, contractors, or volunteers providing guardianship services.

SECTION 15.  Section 1104.409, Estates Code, is amended to read as follows:

Sec. 1104.409.  USE OF INFORMATION BY COURT. The court shall use the information obtained under this subchapter only in determining whether to:

(1)  appoint, remove, or continue the appointment of a private professional guardian, a guardianship program, or the Commission [~~department~~]; or

(2)  appoint any other person proposed to serve as a guardian under this title, including a proposed temporary guardian and a proposed successor guardian, other than an attorney.

SECTION 16.  Section 1104.411(a), Estates Code, is amended to read as follows:

(a)  A person commits an offense if the person releases or discloses any information received under this subchapter without the authorization prescribed by Section 1104.405 [~~or 1104.408~~].

SECTION 17.  The following provisions are repealed:

(1)  Sections 411.1386(a-4), (a-5), (d), and (f), Government Code; and

(2)  Sections 1104.403, 1104.407, 1104.408, and 1104.410, Estates Code.

SECTION 18.  Section 1104.411(a), Estates Code, and Section 411.1386(g), Government Code, as amended by this Act, apply only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 19.  This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2021.