

By: Zaffirini

S.B. No. 1411

A BILL TO BE ENTITLED

AN ACT

1
2 relating to acquisition, dissemination, and use of criminal history
3 record information for certain judicial purposes, including for
4 certification, registration, and licensing, of certain court
5 professions and for appointing, removing, or continuing the
6 appointment of a guardian.

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

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

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

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

19 Sec. 152.2035. CRIMINAL HISTORY RECORD INFORMATION FOR USE
20 IN DETERMINING INELIGIBILITY. (a) The commission shall, in
21 accordance with this section and rules adopted by the supreme court
22 under Section 152.203, obtain criminal history record information
23 that is maintained by the Department of Public Safety or the Federal
24 Bureau of Investigation identification division on each applicant

1 for certification, registration, or licensing under this subtitle
2 to be used solely for the determination of each applicant's
3 ineligibility for certification, registration, or licensing under
4 Section 152.203. The commission may not use criminal history
5 record information obtained from the Federal Bureau of
6 Investigation identification division under this section for any
7 other purpose.

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

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

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

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

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

25 (a) The commission shall use the criminal history record
26 information obtained under this subchapter only for a purpose
27 authorized by this subchapter [~~or to maintain the registration of a~~

1 ~~guardianship under Subchapter D].~~

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

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

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

13 (a) Except as provided by Subsections (a-1) [~~, (a-5),~~] and
14 (a-6), the clerk of the county having venue over a proceeding for
15 the appointment of a guardian under Title 3, Estates Code, shall
16 obtain from the department criminal history record information
17 maintained by the department that relates to:

- 18 (1) a private professional guardian;
- 19 (2) each person who represents or plans to represent
20 the interests of a ward as a guardian on behalf of the private
21 professional guardian;
- 22 (3) each person employed by a private professional
23 guardian who will:
- 24 (A) have personal contact with a ward or proposed
25 ward;
- 26 (B) exercise control over and manage a ward's
27 estate; or

1 (C) perform any duties with respect to the
2 management of a ward's estate;

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

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

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

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

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

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

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

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

1 (a-6) The clerk described by Subsection (a) is not required
2 to obtain criminal history record information for a person if the
3 Judicial Branch Certification Commission conducted a criminal
4 history check on the person under Sections 155.203 and 155.207
5 [~~Chapter 155~~]. The commission shall provide to the clerk [~~at the~~
6 ~~court's request~~] the criminal history record information that was
7 obtained from the department or the Federal Bureau of Investigation
8 only for the purposes specified under Subsection (e).

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

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

20 (e) The court, as that term is defined by Section 1002.008,
21 Estates Code, shall use the information obtained or provided under
22 Subsection (a) [~~7 (a-4)(1), (a-5), 7~~] or (a-6) only in determining
23 whether to:

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

27 (2) appoint any other person proposed to serve as a

1 guardian under Title 3, Estates Code, including a proposed
2 temporary guardian and a proposed successor guardian, other than an
3 attorney.

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

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

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

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

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

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

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

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

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

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

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

15 (A) on court order; or

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

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

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

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

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

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

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

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

8 (a) Except as provided by Section [~~1104.403~~], 1104.404[~~7~~]
9 or 1104.406(a), the clerk of the county having venue of the
10 proceeding for the appointment of a guardian shall obtain criminal
11 history record information that is maintained by the Department of
12 Public Safety or the Federal Bureau of Investigation identification
13 division relating to:

14 (1) a private professional guardian;

15 (2) each person who represents or plans to represent
16 the interests of a ward as a guardian on behalf of the private
17 professional guardian;

18 (3) each person employed by a private professional
19 guardian who will:

20 (A) have personal contact with a ward or proposed
21 ward;

22 (B) exercise control over and manage a ward's
23 estate; or

24 (C) perform any duties with respect to the
25 management of a ward's estate;

26 (4) each person employed by or volunteering or
27 contracting with a guardianship program to provide guardianship

1 services to a ward of the program on the program's behalf; or

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

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

7 Sec. 1104.404. EXCEPTION FOR INFORMATION CONCERNING
8 CERTAIN PERSONS. (a) The clerk described by Section 1104.402 is
9 not required to obtain criminal history record information for a
10 person if the Judicial Branch Certification Commission conducted a
11 criminal history check on the person under Sections 155.203 and
12 155.207 [~~Chapter 155~~], Government Code.

13 (b) Except as provided by Subsection (c), the Judicial
14 Branch Certification Commission [~~The board~~] shall provide to the
15 clerk [~~at the court's request~~] the criminal history record
16 information that was obtained from the Department of Public Safety
17 or the Federal Bureau of Investigation under Sections 155.203 and
18 155.205, Government Code.

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

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

25 (a) Criminal history record information obtained or
26 provided under Section 1104.402 [~~1104.403~~] or 1104.404 is
27 privileged and confidential and is for the exclusive use of the

1 court in accordance with Section 1104.409. The criminal history
2 record information may not be released or otherwise disclosed to
3 any person or agency except on court order [~~or consent of the person~~
4 ~~being investigated~~].

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 SECTION 17. The following provisions are repealed:

27 (1) Sections 411.1386(a-4), (a-5), (d), and (f),

1 Government Code; and

2 (2) Sections 1104.403, 1104.407, 1104.408, and
3 1104.410, Estates Code.

4 SECTION 18. Section 1104.411(a), Estates Code, and Section
5 411.1386(g), Government Code, as amended by this Act, apply only to
6 an offense committed on or after the effective date of this Act. An
7 offense committed before the effective date of this Act is governed
8 by the law in effect on the date the offense was committed, and the
9 former law is continued in effect for that purpose. For purposes of
10 this section, an offense was committed before the effective date of
11 this Act if any element of the offense occurred before that date.

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