

By: Zaffirini
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S.B. No. 2342

A BILL TO BE ENTITLED

AN ACT

relating to the application for appointment of a guardian and to requiring criminal history record information and other information in connection with the guardianship of a ward or the ward's estate.

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

SECTION 1. Section 1101.001(b), Estates Code, is amended to read as follows:

(b) The application must be sworn to by the applicant and state:

(1) the proposed ward's name, sex, date of birth, and address;

(2) the name, former name, if any, relationship, and address of the person the applicant seeks to have appointed as guardian;

(3) whether guardianship of the person or estate, or both, is sought;

(3-a) whether alternatives to guardianship and available supports and services to avoid guardianship were considered;

(3-b) whether any alternatives to guardianship and supports and services available to the proposed ward considered are feasible and would avoid the need for a guardianship;

(4) the nature and degree of the alleged incapacity,

1 the specific areas of protection and assistance requested, and the
2 limitation or termination of rights requested to be included in the
3 court's order of appointment, including a termination of:

4 (A) the right of a proposed ward who is 18 years
5 of age or older to vote in a public election;

6 (B) the proposed ward's eligibility to hold or
7 obtain a license to operate a motor vehicle under Chapter 521,
8 Transportation Code; and

9 (C) the right of a proposed ward to make personal
10 decisions regarding residence;

11 (5) the facts requiring the appointment of a guardian;

12 (6) the interest of the applicant in the appointment
13 of a guardian;

14 (7) the nature and description of any kind of
15 guardianship existing for the proposed ward in any other state;

16 (8) the name, ~~and~~ address, phone number, and date of
17 birth, if applicable, of any person or institution having the care
18 and custody of the proposed ward or the proposed ward's estate;

19 (9) the approximate value and a detailed description
20 of the proposed ward's property, including:

21 (A) liquid assets, including any compensation,
22 pension, insurance, or allowance to which the proposed ward may be
23 entitled; and

24 (B) non-liquid assets, including real property;

25 (10) the name and address of any person whom the
26 applicant knows to hold a power of attorney signed by the proposed
27 ward and a description of the type of power of attorney;

1 (11) for a proposed ward who is a minor, the following
2 information if known by the applicant:

3 (A) the name of each of the proposed ward's
4 parents and either the parent's address or that the parent is
5 deceased;

6 (B) the name and age of each of the proposed
7 ward's siblings, if any, and either the sibling's address or that
8 the sibling is deceased; and

9 (C) if each of the proposed ward's parents and
10 adult siblings are deceased, the names and addresses of the
11 proposed ward's other living relatives who are related to the
12 proposed ward within the third degree by consanguinity and who are
13 adults;

14 (12) for a proposed ward who is a minor, whether the
15 minor was the subject of a legal or conservatorship proceeding in
16 the preceding two years and, if so:

17 (A) the court involved;

18 (B) the nature of the proceeding; and

19 (C) any final disposition of the proceeding;

20 (13) for a proposed ward who is an adult, the following
21 information if known by the applicant:

22 (A) the name of the proposed ward's spouse, if
23 any, and either the spouse's address or that the spouse is deceased;

24 (B) the name of each of the proposed ward's
25 parents and either the parent's address or that the parent is
26 deceased;

27 (C) the name and age of each of the proposed

ward's siblings, if any, and either the sibling's address or that the sibling is deceased;

(D) the name and age of each of the proposed ward's children, if any, and either the child's address or that the child is deceased; and

(E) if there is no living spouse, parent, adult sibling, or adult child of the proposed ward, the names and addresses of the proposed ward's other living relatives who are related to the proposed ward within the third degree by consanguinity and who are adults;

(14) facts showing that the court has venue of the proceeding; and

(15) if applicable, that the person whom the applicant seeks to have appointed as a guardian is a private professional guardian who is certified under Subchapter C, Chapter 155, Government Code, and has complied with the requirements of Subchapter G, Chapter 1104.

SECTION 2. The heading to Section 1104.402, Estates Code, is amended to read as follows:

Sec. 1104.402. [~~COURT CLERK'S~~] DUTY TO OBTAIN CRIMINAL HISTORY RECORD INFORMATION; AUTHORITY TO CHARGE FEE.

SECTION 3. Section 1104.402, Estates Code, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

(a) Except as provided by Section 1104.404 or 1104.406(a), the clerk of the county having venue of the proceeding for the appointment of a guardian shall, based on information provided in

1 an application filed under Section 1101.001, obtain criminal
2 history record information that is maintained by the Department of
3 Public Safety or the Federal Bureau of Investigation identification
4 division relating to any person, other than an attorney or a person
5 who is a certified guardian, proposed to serve as a guardian under
6 this title, including:

- 7 (1) a proposed temporary guardian;
8 (2) ~~[7]~~ a proposed successor guardian; or
9 (3) ~~[7, or]~~ any person who will have care and custody of
10 ~~[contact with]~~ the proposed ward or the proposed ward's estate on
11 behalf of the proposed guardian and who is not otherwise required to
12 submit to a criminal background check under this section~~[, other~~
13 ~~than an attorney or a person who is a certified guardian]~~.

14 (a-1) A proposed guardian who is an attorney or a certified
15 guardian shall provide to the court the name, address, phone
16 number, and date of birth of any person who will have care and
17 custody of the proposed ward or the proposed ward's estate on the
18 proposed guardian's behalf. If the person having care and custody
19 of the proposed ward or the proposed ward's estate on the proposed
20 guardian's behalf is not also a certified guardian, the clerk shall
21 obtain criminal history record information for that person as
22 specified by Subsection (a).

23 SECTION 4. Section 1104.405(a), Estates Code, is amended to
24 read as follows:

25 (a) Criminal history record information obtained or
26 provided under Section 1104.402 or 1104.404 is privileged and
27 confidential and is for the exclusive use of the court. The

1 criminal history record information may not be released or
2 otherwise disclosed to any person or agency except on court order.
3 The court may use the criminal history record information only to
4 determine whether to:

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

8 (2) appoint any person proposed to serve as a guardian
9 under this title, including a proposed temporary guardian, a
10 proposed successor guardian, or any person who will have care or
11 custody of ~~[contact with]~~ the proposed ward or the proposed ward's
12 estate on behalf of the proposed guardian, other than an attorney or
13 a certified guardian.

14 SECTION 5. Subchapter A, Chapter 1151, Estates Code, is
15 amended by adding Section 1151.006 to read as follows:

16 Sec. 1151.006. GUARDIAN'S DUTY TO NOTIFY COURT OF CHANGES
17 CONCERNING CARE AND CUSTODY OF WARD; CLERK'S DUTY TO OBTAIN
18 CRIMINAL HISTORY RECORD INFORMATION. (a) This section applies
19 only to a guardian who is a certified guardian or attorney and who
20 has designated a person to have care and custody of the ward or the
21 ward's estate on the guardian's behalf as provided by Section
22 1104.402(a-1).

23 (b) A guardian shall notify the court of any change
24 concerning the designation or contact information of a person
25 having care and custody of a ward or the ward's estate on the
26 guardian's behalf not later than the 30th day after the date the
27 change occurs. If, as a result of a change in designation, the

1 guardian wants to designate another person who will have care and
2 custody of the ward or the ward's estate on the guardian's behalf,
3 the notification must also include the name, address, phone number,
4 and date of birth of that other person.

5 (c) On receipt of notification of a change under Subsection
6 (b) that includes the name of a person who will have care and
7 custody of the ward or the ward's estate on behalf of the guardian,
8 the clerk of the court having jurisdiction over the proceeding
9 shall obtain criminal history record information that is maintained
10 by the Department of Public Safety or the Federal Bureau of
11 Investigation identification division relating to that person.

12 SECTION 6. Section 155.205(a), Government Code, is amended
13 to read as follows:

14 (a) In accordance with Subsection (c) and the rules adopted
15 by the supreme court under Section 155.203, the commission shall
16 obtain criminal history record information that is maintained by
17 the Department of Public Safety. The clerk shall obtain in
18 accordance with Subsection (b) criminal history record information
19 from the Federal Bureau of Investigation identification division
20 relating to an individual seeking appointment as a guardian or
21 temporary guardian, and any individual who will have care and
22 custody of a proposed ward or the proposed ward's estate on behalf
23 of a certified guardian or attorney who has been appointed guardian
24 as required by Section 1104.402(a-1), Estates Code.

25 SECTION 7. Section 411.1386(a), Government Code, is amended
26 to read as follows:

27 (a) Except as provided by Subsections (a-1) and (a-6), the

1 clerk of the county having venue over a proceeding for the
2 appointment of a guardian under Title 3, Estates Code, shall, based
3 on information provided in an application filed under Section
4 1101.001, Estates Code, obtain criminal history record information
5 as provided by Subsection (a-7) that relates to any person, other
6 than an attorney or a person who is a certified guardian, proposed
7 to serve as a guardian under Title 3, Estates Code, including:

- 8 (1) a proposed temporary guardian;
- 9 (2) [~~r~~] a proposed successor guardian; or
- 10 (3) [~~r, or~~] any person who will have care and custody of
11 [~~contact with~~] the proposed ward or the proposed ward's estate on
12 behalf of the proposed guardian and who is not otherwise required to
13 submit to a criminal background check under this section[~~, other~~
14 ~~than an attorney or a certified guardian~~].

15 SECTION 8. This Act takes effect September 1, 2025.