

BILL ANALYSIS

Senate Research Center
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S.B. 291
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Jurisprudence
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Current law requires the Department of Aging and Disability Services (DADS) to report to each county a list of those who are employed by DADS to provide guardianship services in that particular county. County clerks are currently required to obtain criminal history record information for guardians or potential guardians.

As proposed, S.B. 291 requires DADS to perform all criminal background checks for those it employs as guardians and to submit said background checks to the Guardianship Certification Board (board) and the county clerk, upon request from the court retaining jurisdiction. S.B. 291 also requires DADS to submit to the board a list of names, along with identifiable information and the county of employment or prospective employment, of all persons employed or seeking employment, as a guardian by DADS.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends the heading to Section 697A, Texas Probate Code, to read as follows:

Sec. 697A. LIST OF CERTAIN PUBLIC GUARDIANS MAINTAINED BY COUNTY CLERKS OR GUARDIANSHIP CERTIFICATION BOARD.

SECTION 2. Amends Sections 697A(b) and (c), Texas Probate Code, as follows:

(b) Requires the Department of Aging and Disability Services (DADS) to submit to the Guardianship Certification Board (board) a statement containing information relating to guardianship services by February 1 of each year. Sets forth the content requirements of the statement. Deletes existing text requiring that DADS submit annually to the county clerk the information required under Subsection (a) for each DADS employee who is or will be providing guardianship services in the county on DADS' behalf, if DADS files an application for and is appointed to serve as guardian for one or more incapacitated persons residing in the county.

(c) Requires the county clerk to submit to the board the information received under Subsection (a) by February 1 of each year.

SECTION 3. Amends Section 698, Texas Probate Code, by amending Subsections (a), (b), and (d) and adding Subsections (a-1), (b-1), (c-1), and (f), as follows:

(a) Makes a conforming change.

(a-1) Requires DADS to obtain certain criminal history record information (information) relating to each person applying for employment with or who is with DADS who provides or will be providing guardianship services to a ward of DADS. Requires that such information be obtained before employment and on an annual basis. Sets forth to whom the aforementioned information is to be provided and from what entities the information is to be obtained.

(b) Makes conforming and nonsubstantive changes.

(b-1) Provides that the information obtained under Subsection (a-1) is privileged and confidential and is for the exclusive use of the court or board, and cannot be disclosed to any person or agency without a court order or consent from the investigated person. Authorizes the county clerk or board to destroy the information after it has been used for the purposes authorized by this section.

(c-1) Authorizes the criminal history information to be used for any purpose relating to the issuance, denial, renewal, suspension, or revocation of a board issued certificate.

(d) Provides that a person commits an offense for releasing or disclosing the abovementioned information without authorization described under Subsections (b) or (b-1).

(f) Provides that DADS is not prohibited from obtaining and using information obtained under this section as provided by other law.

SECTION 4. Amends Section 411.1386, Government Code, as follows:

Sec. 411.1386. New heading: ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: COURT CLERK; DEPARTMENT OF AGING AND DISABILITY SERVICES; GUARDIANSHIPS. (a) Makes nonsubstantive changes. Requires the clerk of the county having venue over a proceeding for the appointment of a guardian to obtain from DADS certain information that relates to each person employed by, volunteering, or contracting with a guardianship program to provide certain guardianship services.

(a-1) Makes conforming changes.

(b) Provides that information obtained by a clerk under this section is for the exclusive use of the court and is privileged and confidential. Deletes existing text relating to using said information only in determining whether to appoint, remove, or continue the appointment of a private professional guardian.

(c) Makes no changes to this subsection.

(d) Makes conforming changes.

(e) Requires the court to use the information obtain under this section only in determining whether to appoint, remove, or continue the appointment of a private professional guardian, a guardianship program, or DADS.

(f) Makes conforming changes.

(g) Provides that a person commits an offense for releasing or disclosing the abovementioned information without authorization prescribed under Subsections (c) or (d). Provides that an offense under this subsection is a Class A misdemeanor.

(h) Authorizes the county clerk to charge a reasonable fee for the collection of information authorized under this section.

(i) Makes conforming changes.

SECTION 5. Provides that the changes in law made by this Act are made to conform to the amended sections to specific sections of the Texas Probate Code, as those sections existed immediately before the effective date of this Act.

SECTION 6. Effective date: September 1, 2007.