

BILL ANALYSIS

Senate Research Center
83R6235 CLG-F

S.B. 1235
By: West
Jurisprudence
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As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, the Department of Aging and Disability Services (DADS) has the authority under the Human Resources Code to obtain financial records of wards or proposed wards from financial institutions. However, at times, DADS runs into difficulty gathering the records because they are not listed in the Finance Code exemptions alongside the Department of Family and Protective Services. This bill adds DADS to that list.

Currently, for persons alleged to have an intellectual disability, an application for guardianship requires a determination of mental retardation (DMR) from the preceding 24 months. In practice, courts typically accept updates or endorsements to older DMRs if the update or endorsement took place in the previous 24 months. This bill codifies that practice.

As proposed, S.B. 1235 amends current law relating to guardianships, including assessments for and provision of guardianship services by the Department of Aging and Disability Services.

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 Section 59.006(a), Finance Code, to provide that this section does not apply to and does not require or authorize a financial institution to give a customer notice of certain information, including notice of a record request from or request to a government agency arising out of certain situations, including the assessment for or provision of guardianship services under Subchapter E (Guardianship Services), Chapter 161, Human Resources Code.

SECTION 2. Amends Section 1101.104, Estates Code, as effective January 1, 2014, as follows:

Sec. 1101.104. EXAMINATIONS AND DOCUMENTATION REGARDING MENTAL RETARDATION. Prohibits the court, if mental retardation is the basis of the proposed ward's alleged incapacity, from granting an application to create a guardianship for the proposed ward unless the applicant presents to the court a written letter or certificate that:

(1) complies with Sections 1101.103(a) (relating to requiring guardianship applicants to present a certain written letter or certificate under certain circumstances) and (b); or

(2) shows that :

(A) not earlier than 24 months before the hearing date, the proposed ward has been examined by a physician or psychologist licensed in this state or certified by the Department of Aging and Disability Services (DADS) to perform the examination, in accordance with rules of the executive commissioner of the Health and Human Services Commission (executive commissioner) governing examinations of that kind, and the physician's or

psychologist's written findings and recommendations include a determination of mental retardation; or

(B) a physician or psychologist licensed in this state or certified by DADS to perform examinations described by Paragraph (A) updated or endorsed in writing a prior determination of mental retardation for the proposed ward made by a physician or psychologist licensed in this state or certified by DADS.

Makes nonsubstantive changes.

Deletes existing text prohibiting the court, if mental retardation is the basis of the proposed ward's alleged incapacity, from granting an application to create a guardianship for the proposed ward unless the applicant presents to the court a written letter or certificate that complies with Sections 1101.103(a) and (b) and states that the physician has made a determination of mental retardation in accordance with Section 593.005 (Determination of Mental Retardation), Health and Safety Code; or both written documentation showing that, not earlier than 24 months before the hearing date, the proposed ward has been examined by a physician or psychologist licensed in this state or certified by DADS to perform the examination, in accordance with rules of the executive commissioner governing examinations of that kind, and the physician's or psychologist's written findings and recommendations, including a statement as to whether the physician or psychologist has made a determination of mental retardation, or in accordance with Section 593.005, Health and Safety Code.

SECTION 3. Provides that the changes in law made by this Act to Section 1101.104, Estates Code, as effective January 1, 2014, apply only to an application to create a guardianship filed on or after the effective date of this Act. Provides that an application to create a guardianship filed before the effective date of this Act is governed by the law in effect on the date the application was filed, and the former law is continued in effect for that purpose.

SECTION 4. Provides that this Act, to the extent of any conflict, prevails over another Act of the 83rd Legislature, Regular Session, 2013, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 5. (a) Effective date, except as provided by Subsection (b) of this section: January 1, 2014.

(b) Effective date, Section 59.006(a), Finance Code, as amended by this Act: September 1, 2013.