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AN ACT

relating to criminal history record information for guardianship proceedings and to lists of certain public guardians; providing a criminal penalty.

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

SECTION 1. The heading to Section 697A, Texas Probate Code, is amended to read as follows:

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

SECTION 2. Subsections (b) and (c), Section 697A, Texas Probate Code, are amended to read as follows:

(b) Not later than February 1 of each year, the [The] Department of Aging and Disability Services [~~, if the department files an application for and is appointed to serve as guardian for one or more incapacitated persons residing in the county as provided by Subchapter E, Chapter 161, Human Resources Code,~~] shall submit [~~annually~~] to the Guardianship Certification Board a statement containing:

(1) the name, address, and telephone number of each department employee who is or will be providing guardianship services to a ward or proposed ward on behalf of the department; and

(2) the name of the county or counties in which each employee named in Subdivision (1) of this subsection is providing or is authorized to provide those services [~~county clerk the~~]

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1 ~~information required under Subsection (a) of this section for each~~
2 ~~department employee who is or will be providing guardianship~~
3 ~~services in the county on the department's behalf].~~

4 (c) Not later than February 1 of each year, the county clerk
5 shall submit to the Guardianship Certification Board the
6 information received under Subsection (a) of this section during
7 the preceding year.

8 SECTION 3. Section 698, Texas Probate Code, is amended to
9 read as follows:

10 Sec. 698. ACCESS TO CRIMINAL HISTORY RECORDS. (a) Except
11 as provided by Subsections (a-1) and (a-5) of this section, the
12 ~~The~~ clerk of the county having venue over the proceeding for the
13 appointment of a guardian shall obtain criminal history record
14 information that is maintained by the Department of Public Safety
15 or the Federal Bureau of Investigation identification division
16 relating to:

- 17 (1) a private professional guardian;
- 18 (2) each person who represents or plans to represent
19 the interests of a ward as a guardian on behalf of the private
20 professional guardian;

21 (3) each person employed by a private professional
22 guardian who will:

23 (A) have personal contact with a ward or proposed
24 ward;

25 (B) exercise control over and manage a ward's
26 estate; or

27 (C) perform any duties with respect to the

1 management of a ward's estate;

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

5 (5) any other person proposed to serve as a guardian
6 under this chapter, including a proposed temporary guardian and a
7 proposed successor guardian, other than the ward's or proposed
8 ward's family member or an attorney [~~an employee of the Department~~
9 ~~of Aging and Disability Services who is or will be providing~~
10 ~~guardianship services to a ward of the department~~].

11 (a-1) The Department of Aging and Disability Services shall
12 obtain criminal history record information that is maintained by
13 the Department of Public Safety or the Federal Bureau of
14 Investigation identification division relating to each individual
15 who is or will be providing guardianship services to a ward of or
16 referred by the department, including:

17 (1) an employee of or an applicant selected for an
18 employment position with the Department of Aging and Disability
19 Services;

20 (2) a volunteer or an applicant selected to volunteer
21 with the Department of Aging and Disability Services;

22 (3) an employee of or an applicant selected for an
23 employment position with a business entity or other person that
24 contracts with the Department of Aging and Disability Services to
25 provide guardianship services to a ward referred by the department;
26 and

27 (4) a volunteer or an applicant selected to volunteer

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1 with a business entity or other person described by Subdivision (3)
2 of this subsection.

3 (a-2) The information in Subsection (a-1) of this section
4 regarding applicants for employment positions must be obtained
5 before an offer of employment, and the information regarding
6 applicant volunteers must be obtained before the person's contact
7 with a ward of or referred by the Department of Aging and Disability
8 Services.

9 (a-3) The information in Subsection (a-1) of this section
10 regarding employees or volunteers providing guardianship services
11 must be obtained annually.

12 (a-4) The Department of Aging and Disability Services shall
13 provide the information obtained under Subsection (a-1) of this
14 section to:

15 (1) the clerk of the county having venue over the
16 guardianship proceeding at the request of the court; and

17 (2) the Guardianship Certification Board at the
18 request of the board.

19 (a-5) Not later than the 10th day before the date of the
20 hearing to appoint a guardian, a person may submit to the clerk a
21 copy of the person's criminal history record information required
22 under Subsection (a)(5) of this section that the person obtains
23 from the Department of Public Safety or the Federal Bureau of
24 Investigation not earlier than the 30th day before the date of the
25 hearing.

26 (b) The criminal history record information obtained under
27 Subsection (a) or (a-5) of this section is for the exclusive use of

1 the court and is privileged and confidential. 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. The county clerk may destroy the criminal
5 history information records after the records are used for the
6 purposes authorized by this section.

7 (b-1) The criminal history record information obtained
8 under Subsection (a-4) of this section is for the exclusive use of
9 the court or Guardianship Certification Board, as appropriate, and
10 is privileged and confidential. The information may not be
11 released or otherwise disclosed to any person or agency except on
12 court order or consent of the person being investigated. The county
13 clerk or Guardianship Certification Board may destroy the criminal
14 history record information after the information is used for the
15 purposes authorized by this section.

16 (c) The court shall use the information obtained under this
17 section only in determining whether to:

18 (1) appoint, remove, or continue the appointment of a
19 private professional guardian, a guardianship program, or the
20 Department of Aging and Disability Services; or

21 (2) appoint any other person proposed to serve as a
22 guardian under this chapter, including a proposed temporary
23 guardian and a proposed successor guardian, other than the ward's
24 or proposed ward's family member or an attorney.

25 (c-1) Criminal history record information obtained by the
26 Guardianship Certification Board under Subsection (a-4)(2) of this
27 section may be used for any purpose related to the issuance, denial,

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1 renewal, suspension, or revocation of a certificate issued by the
2 board.

3 (d) A person commits an offense if the person releases or
4 discloses any information received under this section without the
5 authorization prescribed by Subsection (b) or (b-1) of this
6 section. An offense under this subsection is a Class A misdemeanor.

7 (e) The clerk may charge a \$10 [~~reasonable~~] fee [~~sufficient~~]
8 to recover the costs of obtaining criminal history information
9 records authorized by Subsection (a) of this section.

10 (f) This section does not prohibit the Department of Aging
11 and Disability Services from obtaining and using criminal history
12 record information as provided by other law.

13 SECTION 4. Section 411.1386, Government Code, is amended to
14 read as follows:

15 Sec. 411.1386. ACCESS TO CRIMINAL HISTORY RECORD
16 INFORMATION: COURT CLERK; DEPARTMENT OF AGING AND DISABILITY
17 SERVICES; GUARDIANSHIPS. (a) Except as provided by Subsections
18 (a-1) and (a-5), the [~~The~~] clerk of the county having venue over a
19 proceeding for the appointment of a guardian under Chapter XIII
20 [~~13~~], Texas Probate Code, shall [~~is entitled to~~] obtain from the
21 department criminal history record information maintained by the
22 department that relates to:

- 23 (1) a private professional guardian;
24 (2) each person who represents or plans to represent
25 the interests of a ward as a guardian on behalf of the private
26 professional guardian; [~~or~~]
27 (3) each person employed by a private professional

1 guardian who will:

2 (A) have personal contact with a ward or proposed
3 ward;

4 (B) exercise control over and manage a ward's
5 estate; or

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

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

11 (5) any other person proposed to serve as a guardian
12 under Chapter XIII, Texas Probate Code, including a proposed
13 temporary guardian and a proposed successor guardian, other than
14 the ward's or proposed ward's family member or an attorney.

15 (a-1) The Department of Aging and Disability Services shall
16 obtain from the Department of Public Safety criminal history record
17 information maintained by the Department of Public Safety that
18 relates to each individual who is or will be providing guardianship
19 services to a ward of or referred by the Department of Aging and
20 Disability Services, including:

21 (1) an employee of or an applicant selected for an
22 employment position with the Department of Aging and Disability
23 Services;

24 (2) a volunteer or an applicant selected to volunteer
25 with the Department of Aging and Disability Services;

26 (3) an employee of or an applicant selected for an
27 employment position with a business entity or other person that

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1 contracts with the Department of Aging and Disability Services to
2 provide guardianship services to a ward referred by the department;
3 and

4 (4) a volunteer or an applicant selected to volunteer
5 with a business entity or person described by Subdivision (3).

6 (a-2) The information in Subsection (a-1) regarding
7 applicants for employment positions must be obtained before an
8 offer of employment, and the information regarding applicant
9 volunteers must be obtained before the person's contact with a ward
10 of or referred by the Department of Aging and Disability Services.

11 (a-3) The information in Subsection (a-1) regarding
12 employees or volunteers providing guardianship services must be
13 obtained annually.

14 (a-4) The Department of Aging and Disability Services shall
15 provide the information obtained under Subsection (a-1) to:

16 (1) the clerk of the county having venue over the
17 guardianship proceeding at the request of the court; and

18 (2) the Guardianship Certification Board at the
19 request of the board.

20 (a-5) Not later than the 10th day before the date of the
21 hearing to appoint a guardian, a person may submit to the clerk a
22 copy of the person's criminal history record information required
23 under Subsection (a)(5) that the person obtains from the department
24 not earlier than the 30th day before the date of the hearing.

25 (b) Criminal history record information obtained by a clerk
26 under Subsection (a) or (a-5) is for the exclusive use of the court
27 and is privileged and confidential [~~may be used only in determining~~

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1 ~~whether to appoint, remove, or continue the appointment of a~~
2 ~~private professional guardian].~~

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

9 (d) The criminal history record information obtained under
10 Subsection (a-4) is for the exclusive use of the court or
11 Guardianship Certification Board, as appropriate, and is
12 privileged and confidential. The information may not be released
13 or otherwise disclosed to any person or agency except on court order
14 or consent of the person being investigated. The county clerk or
15 Guardianship Certification Board may destroy the criminal history
16 record information after the information is used for the purposes
17 authorized by this section.

18 (e) The court, as that term is defined by Section 601, Texas
19 Probate Code, shall use the information obtained under Subsection
20 (a), (a-4)(1), or (a-5) only in determining whether to:

21 (1) appoint, remove, or continue the appointment of a
22 private professional guardian, a guardianship program, or the
23 Department of Aging and Disability Services; or

24 (2) appoint any other person proposed to serve as a
25 guardian under Chapter XIII, Texas Probate Code, including a
26 proposed temporary guardian and a proposed successor guardian,
27 other than the ward's or proposed ward's family member or an

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1 attorney.

2 (f) Criminal history record information obtained by the
3 Guardianship Certification Board under Subsection (a-4)(2) may be
4 used for any purpose related to the issuance, denial, renewal,
5 suspension, or revocation of a certificate issued by the board.

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

10 (h) The county clerk may charge a \$10 fee to recover the
11 costs of obtaining criminal history information records authorized
12 by Subsection (a).

13 (i) This section does not prohibit the Department of Aging
14 and Disability Services from obtaining and using criminal history
15 record information as provided by other law.

16 SECTION 5. The change in law made by this Act:

17 (1) by the amendment of Subsection (a), Section
18 411.1386, Government Code, other than the addition of Subdivision
19 (5) to that subsection, is made to conform to Subsection (a),
20 Section 698, Texas Probate Code, as that section existed
21 immediately before the effective date of this Act;

22 (2) by the amendment of Subsections (b) and (c),
23 Section 411.1386, Government Code, and the addition of Subsection
24 (e), Section 411.1386, Government Code, other than the addition of
25 Subdivision (2) and the reference to Subdivision (1), Subsection
26 (a-4), and Subsection (a-5), Section 411.1386, Government Code, is
27 made to conform to Subsections (b) and (c), Section 698, Texas

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1 Probate Code, as those subsections existed immediately before the
2 effective date of this Act; and

3 (3) by the addition of Subsection (g), Section
4 411.1386, Government Code, other than the addition of the reference
5 to Subsection (d), Section 411.1386, Government Code, is made to
6 conform to Subsection (d), Section 698, Texas Probate Code, as that
7 subsection existed immediately before the effective date of this
8 Act.

9 SECTION 6. This Act takes effect September 1, 2007.

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David Newkirk
President of the Senate

Jim Caddick
Speaker of the House

I hereby certify that S.B. No. 291 passed the Senate on March 28, 2007, by the following vote: Yeas 30, Nays 0; and that the Senate concurred in House amendments on May 15, 2007, by the following vote: Yeas 31, Nays 0.

Datsy Graw
Secretary of the Senate

I hereby certify that S.B. No. 291 passed the House, with amendments, on May 11, 2007, by the following vote: Yeas 144, Nays 0, two present not voting.

Robert Haney
Chief Clerk of the House

Approved:

15 JUN 07
Date

Rick Perry
Governor

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
3 PM O'CLOCK
JUN 15 2007
Roger Williams
Secretary of State