

## **BILL ANALYSIS**

Senate Research Center  
80R6823 CLG-F

C.S.S.B. 291  
By: Nelson  
Jurisprudence  
3/9/2007  
Committee Report (Substituted)

### **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.

C.S.S.B. 291 requires DADS to perform all criminal background checks for those persons 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) not later than 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), (a-2), (a-3), (a-4), (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 individual who provides or will be providing guardianship services to a ward of DADS, including certain persons.

(a-2) Requires that the information regarding applicants for employment positions to be obtained prior to an offer of employment, and the information regarding an applicant volunteer to be obtained before the person's contact with a ward of DADS.

(a-3) Requires the information in Subsection (a-1) of this section regarding employees or volunteers to be obtained annually.

(a-4) Sets forth to whom the aforementioned information is to be provided.

(b) Makes conforming and nonsubstantive changes.

(b-1) Provides that the information obtained under Subsection (a-4) is privileged and confidential and is for the exclusive use of the court or board. Prohibits the release or disclosure of said information to any person or agency except on court order or consent from the person being investigated. 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 information obtained under Subsection (a-4)(2) to be used for any purpose relating to the issuance, denial, renewal, suspension, or revocation of a certificate issued by the board.

(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 under this section from obtaining and using information 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, rather than entitles, 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) Requires DADS to obtain certain criminal history record information (information) relating to each individual who provides or will be providing guardianship services to a ward of DADS, including certain persons.

(a-2) Requires that certain information regarding applicants for employment positions be obtained prior to an offer of employment, and that the information regarding an applicant volunteer be obtained before the person's contact with a ward of DADS.

(a-3) Requires that the information in Subsection (a-1) of this section regarding employees or volunteers be obtained annually.

(a-4) Sets forth to whom the aforementioned information is to be provided.

(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) Provides that the information obtained under Subsection (a-4) is privileged and confidential and is for the exclusive use of the court or board. Prohibits the

release and disclosure of said information to any person or agency except on court order or consent from the person being investigated. Authorizes the county clerk or board to destroy the information after it has been used for the purposes authorized by this section.

(e) Requires the court, as defined by Section 601(Definitions), Probate Code, to use the information obtained 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 sufficient to cover the cost of obtaining 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 certain 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.