

1-1 By: Zaffirini S.B. No. 1096
 1-2 (In the Senate - Filed February 27, 2017; March 7, 2017,
 1-3 read first time and referred to Committee on State Affairs;
 1-4 March 28, 2017, reported favorably by the following vote: Yeas 8,
 1-5 Nays 0; March 28, 2017, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	X			
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15			X	
1-16	X			

1-17 A BILL TO BE ENTITLED
 1-18 AN ACT

1-19 relating to guardianships; authorizing a fee.
 1-20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
 1-21 SECTION 1. Chapter 14, Code of Criminal Procedure, is
 1-22 amended by adding Article 14.055 to read as follows:
 1-23 Art. 14.055. DUTY OF OFFICER TO NOTIFY PROBATE COURT.
 1-24 (a) In this article, "ward" has the meaning assigned by Section
 1-25 22.033, Estates Code.
 1-26 (b) As soon as practicable, but not later than the first
 1-27 working day after the date a peace officer detains or arrests a
 1-28 person who is a ward, the peace officer or the person having custody
 1-29 of the ward shall notify the court having jurisdiction over the
 1-30 ward's guardianship of the ward's detention or arrest.
 1-31 SECTION 2. Chapter 15, Code of Criminal Procedure, is
 1-32 amended by adding Article 15.171 to read as follows:
 1-33 Art. 15.171. DUTY OF OFFICER TO NOTIFY PROBATE COURT.
 1-34 (a) In this article, "ward" has the meaning assigned by Section
 1-35 22.033, Estates Code.
 1-36 (b) As soon as practicable, but not later than the first
 1-37 working day after the date a peace officer arrests a person who is a
 1-38 ward, the peace officer or the person having custody of the ward
 1-39 shall notify the court having jurisdiction over the ward's
 1-40 guardianship of the ward's arrest.
 1-41 SECTION 3. Subchapter A, Chapter 1104, Estates Code, is
 1-42 amended by adding Section 1104.003 to read as follows:
 1-43 Sec. 1104.003. TRAINING REQUIRED. A court may not appoint
 1-44 an individual to serve as guardian under this title if the
 1-45 individual has not received the training required under Section
 1-46 155.204, Government Code.
 1-47 SECTION 4. The heading to Section 1104.404, Estates Code,
 1-48 is amended to read as follows:
 1-49 Sec. 1104.404. EXCEPTION FOR INFORMATION CONCERNING
 1-50 CERTAIN PERSONS [~~HOLDING A CERTIFICATE~~].
 1-51 SECTION 5. Section 1104.404(a), Estates Code, is amended to
 1-52 read as follows:
 1-53 (a) The clerk described by Section 1104.402 is not required
 1-54 to obtain criminal history record information for a person [~~who~~
 1-55 ~~holds a certificate issued under Section 155.102, Government Code,~~
 1-56 ~~or a provisional certificate issued under Section 155.103,~~
 1-57 ~~Government Code,~~] if the [~~guardianship certification program of~~
 1-58 ~~the~~] Judicial Branch Certification Commission conducted a criminal
 1-59 history check on the person under Chapter 155, Government Code
 1-60 [~~before issuing or renewing the certificate~~].
 1-61 SECTION 6. Subchapter B, Chapter 1253, Estates Code, is

2-1 amended by adding Section 1253.0515 to read as follows:
2-2 Sec. 1253.0515. CERTIFICATION OR TRAINING OF GUARDIAN.
2-3 (a) A guardian filing an application under this subchapter must
2-4 comply with Subchapter C or D, Chapter 155, Government Code, as
2-5 applicable.
2-6 (b) A court may not grant an application filed under this
2-7 subchapter unless the guardian complies with Subsection (a).
2-8 SECTION 7. Chapter 52, Family Code, is amended by adding
2-9 Section 52.011 to read as follows:
2-10 Sec. 52.011. DUTY OF LAW ENFORCEMENT OFFICER TO NOTIFY
2-11 PROBATE COURT. (a) In this section, "ward" has the meaning
2-12 assigned by Section 22.033, Estates Code.
2-13 (b) As soon as practicable, but not later than the first
2-14 working day after the date a law enforcement officer takes a child
2-15 who is a ward into custody under Section 52.01(a)(2) or (3), the law
2-16 enforcement officer or other person having custody of the child
2-17 shall notify the court with jurisdiction over the child's
2-18 guardianship of the child's detention or arrest.
2-19 SECTION 8. The heading to Chapter 155, Government Code, is
2-20 amended to read as follows:
2-21 CHAPTER 155. DUTIES RESPECTING GUARDIANSHIP [~~CERTIFICATION~~]
2-22 SECTION 9. Section 155.001, Government Code, is amended by
2-23 adding Subdivision (6-a) to read as follows:
2-24 (6-a) Notwithstanding Section 151.001, "registration"
2-25 means registration of a guardianship under this chapter.
2-26 SECTION 10. The heading to Subchapter C, Chapter 155,
2-27 Government Code, is amended to read as follows:
2-28 SUBCHAPTER C. STANDARDS FOR AND CERTIFICATION [~~REGULATION~~] OF
2-29 CERTAIN GUARDIANS
2-30 SECTION 11. Chapter 155, Government Code, is amended by
2-31 adding Subchapters D and E to read as follows:
2-32 SUBCHAPTER D. GUARDIANSHIP REGISTRATION AND DATABASE
2-33 Sec. 155.151. REGISTRATION OF GUARDIANSHIPS. (a) The
2-34 supreme court, after consulting with the office and the commission,
2-35 shall by rule establish a mandatory registration program for
2-36 guardianships under which all guardianships in this state shall be
2-37 required to register with the commission.
2-38 (b) In establishing rules under this section, the supreme
2-39 court shall ensure courts with jurisdiction over a guardianship
2-40 immediately notify the commission of the removal of a guardian.
2-41 Sec. 155.152. GUARDIANSHIP DATABASE. In cooperation with
2-42 the commission and courts with jurisdiction over guardianship
2-43 proceedings and by using the information obtained by the commission
2-44 under this subchapter, the office shall establish and maintain a
2-45 central database of all guardianships subject to the jurisdiction
2-46 of this state.
2-47 Sec. 155.153. ACCESS TO DATABASE. (a) The office shall
2-48 ensure the database is accessible to the Department of Public
2-49 Safety for law enforcement purposes.
2-50 (b) Subject to Subsection (c), the Department of Public
2-51 Safety shall make information from the database available to law
2-52 enforcement personnel through the Texas Law Enforcement
2-53 Telecommunications System or a successor system of
2-54 telecommunication used by law enforcement agencies and operated by
2-55 the department.
2-56 (c) The only information that may be disclosed from the
2-57 database to a law enforcement official inquiring into a
2-58 guardianship is:
2-59 (1) the name, sex, and date of birth of a ward;
2-60 (2) the name, telephone number, and address of the
2-61 guardian of a ward; and
2-62 (3) the name of the court with jurisdiction over the
2-63 guardianship.
2-64 (d) The office shall limit access to the database to
2-65 properly trained staff.
2-66 Sec. 155.154. DATABASE DISCLAIMER. To the extent feasible,
2-67 the following disclaimer shall be displayed when the database is
2-68 accessed: "This database is for the limited purpose of determining
2-69 whether an individual has a guardian and obtaining a guardian's

3-1 contact information. The scope of a guardian's authority is
 3-2 determined by court order, and a guardian should not be presumed to
 3-3 have the authority to act for or on behalf of a ward until the extent
 3-4 of the guardian's authority is verified by the court with
 3-5 jurisdiction over the guardianship."

3-6 Sec. 155.155. CONFIDENTIALITY OF INFORMATION IN DATABASE.

3-7 (a) Information that is contained in the database required under
 3-8 Section 155.152, including personally identifying information of a
 3-9 guardian or a ward, is confidential and not subject to disclosure
 3-10 under Chapter 552 or any other law.

3-11 (b) A law enforcement agency or officer that receives the
 3-12 information must maintain the confidentiality of the information,
 3-13 may not disclose the information under Chapter 552 or any other law,
 3-14 and may not use the information for a purpose that does not directly
 3-15 relate to the purpose for which it was obtained.

3-16 SUBCHAPTER E. DUTY TO ASSIST IN QUALIFYING CERTAIN GUARDIANS

3-17 Sec. 155.201. DEFINITION. In this subchapter, "probate
 3-18 court" has the meaning assigned by Section 1002.008, Estates Code.

3-19 Sec. 155.202. APPLICABILITY. This subchapter does not
 3-20 apply with respect to the following persons who are or will be
 3-21 providing guardianship services to a proposed ward:

- 3-22 (1) an attorney or corporate fiduciary; or
- 3-23 (2) an individual subject to certification under
 3-24 Subchapter C.

3-25 Sec. 155.203. DUTY TO PROVIDE ASSISTANCE IN QUALIFYING
 3-26 GUARDIANS. (a) The supreme court, after consulting with the
 3-27 commission, shall by rule establish a process by which the
 3-28 commission performs training and criminal history background
 3-29 checks for individuals seeking appointment as guardian.

3-30 (b) In adopting rules under this section, the supreme court
 3-31 shall ensure that the commission is required to provide
 3-32 confirmation of a person's completion of training and a copy of the
 3-33 person's criminal history background check to the probate court not
 3-34 later than the 10th day before the date of the hearing to appoint a
 3-35 guardian.

3-36 Sec. 155.204. TRAINING REQUIRED. (a) In adopting rules
 3-37 under Section 155.203, the supreme court shall ensure that before a
 3-38 person is appointed guardian, the person completes a training
 3-39 course:

3-40 (1) designed by the commission to educate proposed
 3-41 guardians about their responsibilities as guardians, alternatives
 3-42 to guardianships, supports and services available to the proposed
 3-43 ward, and a ward's bill of rights under Section 1151.351, Estates
 3-44 Code; and

3-45 (2) made available for free to proposed guardians by
 3-46 the commission online via the commission's Internet website and, on
 3-47 request, in a written format.

3-48 (b) Notwithstanding Section 155.203(b) or Section 1251.052,
 3-49 Estates Code, the training required under Subsection (a):

3-50 (1) does not apply to the initial appointment of a
 3-51 temporary guardian under Chapter 1251, Estates Code; and

3-52 (2) applies only if there is a motion to extend the
 3-53 term of a temporary guardian.

3-54 (c) The commission may make the training required under this
 3-55 section available to court investigators and guardians ad litem. A
 3-56 court investigator or guardian ad litem is not required to receive
 3-57 training unless required to do so by a court.

3-58 Sec. 155.205. DUTY TO OBTAIN CRIMINAL HISTORY RECORD
 3-59 INFORMATION. (a) In accordance with the rules adopted by the
 3-60 supreme court under Section 155.203, the commission shall obtain
 3-61 criminal history record information that is maintained by the
 3-62 Department of Public Safety or the Federal Bureau of Investigation
 3-63 identification division relating to an individual seeking
 3-64 appointment as a guardian or temporary guardian.

3-65 (b) The commission shall obtain:

3-66 (1) fingerprint-based criminal history record
 3-67 information of an applicant if the liquid assets of the estate of a
 3-68 ward exceed \$50,000; or

3-69 (2) name-based criminal history record information of

4-1 an applicant if the liquid assets of the estate of a ward are
 4-2 \$50,000 or less.

4-3 Sec. 155.206. INFORMATION FOR EXCLUSIVE USE OF COMMISSION
 4-4 AND COURT. (a) Criminal history record information obtained under
 4-5 this subchapter is privileged and confidential and is for the
 4-6 exclusive use of the commission and the court with jurisdiction
 4-7 over the guardianship. The criminal history record information may
 4-8 not be released or otherwise disclosed to any person or agency
 4-9 except on court order or consent of the individual being
 4-10 investigated.

4-11 (b) The commission may destroy the criminal history record
 4-12 information after the information is used for the purposes
 4-13 authorized by this subchapter.

4-14 Sec. 155.207. USE OF CRIMINAL HISTORY RECORD INFORMATION.
 4-15 (a) The commission shall use the criminal history record
 4-16 information obtained under this subchapter only for a purpose
 4-17 authorized by this subchapter or to maintain the registration of a
 4-18 guardianship under Subchapter D.

4-19 (b) A court may use the criminal history record information
 4-20 obtained under this subchapter only in the same manner and only to
 4-21 the same extent a court is authorized to use the information under
 4-22 Section 1104.409, Estates Code.

4-23 Sec. 155.208. CLARIFICATION OF AUTHORITY GRANTED.

4-24 (a) This subchapter does not grant to the commission the authority
 4-25 to:

4-26 (1) establish additional qualifications or a code of
 4-27 ethics for individuals subject to training or a background check
 4-28 under this subchapter, require those individuals to pass
 4-29 examinations or take continuing education courses, or otherwise
 4-30 regulate those individuals; or

4-31 (2) interfere with a court's authority to ensure a
 4-32 guardian is performing all of the duties required of the guardian
 4-33 respecting a ward.

4-34 (b) Individuals subject to training or a background check
 4-35 under this subchapter are not subject to enforcement action under
 4-36 Chapter 153.

4-37 Sec. 155.209. FEE FOR OBTAINING CRIMINAL HISTORY RECORD
 4-38 INFORMATION. (a) Except as provided by Subsection (b), the
 4-39 commission may charge a fee to obtain criminal history record
 4-40 information under this subchapter, in an amount approved by the
 4-41 supreme court.

4-42 (b) The supreme court may adopt rules excluding individuals
 4-43 who are indigent from having to pay the fee authorized by this
 4-44 section.

4-45 (c) A guardian is entitled to reimbursement from the
 4-46 guardianship estate as provided by Subchapter C, Chapter 1155,
 4-47 Estates Code, for the fee authorized by this section.

4-48 SECTION 12. Section 411.1386(a-6), Government Code, is
 4-49 amended to read as follows:

4-50 (a-6) The clerk described by Subsection (a) is not required
 4-51 to obtain criminal history record information for a person [who
 4-52 holds a certificate issued under Section 155.102 or a provisional
 4-53 certificate issued under Section 155.103] if the [guardianship
 4-54 certification program of the] Judicial Branch Certification
 4-55 Commission conducted a criminal history check on the person under
 4-56 Chapter 155 [before issuing or renewing the certificate]. The
 4-57 commission shall provide to the clerk at the court's request the
 4-58 criminal history record information that was obtained from the
 4-59 department or the Federal Bureau of Investigation.

4-60 SECTION 13. Subchapter A, Chapter 573, Health and Safety
 4-61 Code, is amended by adding Section 573.0021 to read as follows:

4-62 Sec. 573.0021. DUTY OF PEACE OFFICER TO NOTIFY PROBATE
 4-63 COURTS. As soon as practicable, but not later than the first
 4-64 working day after the date a peace officer takes a person who is a
 4-65 ward into custody, the peace officer shall notify the court having
 4-66 jurisdiction over the ward's guardianship of the ward's detention
 4-67 or transportation to a facility in accordance with Section 573.001.

4-68 SECTION 14. (a) Not later than June 1, 2018, the Office of
 4-69 Court Administration of the Texas Judicial System shall establish

5-1 the guardianship database required under Section 155.152,
5-2 Government Code, as added by this Act, and provide access to the
5-3 database to the Department of Public Safety in accordance with
5-4 Section 155.153, Government Code, as added by this Act.

5-5 (b) A law enforcement officer or other person with custody
5-6 of a ward is not required to comply with Articles 14.055 and 15.171,
5-7 Code of Criminal Procedure, Section 52.011, Family Code, or Section
5-8 573.0021, Health and Safety Code, as added by this Act, as
5-9 applicable, until July 1, 2018.

5-10 SECTION 15. (a) As soon as practicable after the effective
5-11 date of this Act, the Supreme Court of Texas, after consulting with
5-12 the Judicial Branch Certification Commission, shall adopt rules
5-13 necessary to implement Subchapter E, Chapter 155, Government Code,
5-14 as added by this Act.

5-15 (b) A proposed guardian is not required to comply with
5-16 Section 155.204, Government Code, as added by this Act, until June
5-17 1, 2018.

5-18 SECTION 16. This Act takes effect September 1, 2017.

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