



FLOOR AMENDMENT NO. _____

BY: HAYES

1 Amend S.B. No. 2587 (house committee report) as follows:

2 (1) On page 19, between lines 20 and 21, insert the following:

3 SECTION _____. Section 411.1386(a), Government Code, is
4 amended to read as follows:

5 (a) Except as provided by Subsections (a-1) and (a-6), the
6 clerk of the county having venue over a proceeding for the
7 appointment of a guardian under Title 3, Estates Code, shall, based
8 on information provided in an application filed under Section
9 1101.001, Estates Code, obtain criminal history record information
10 as provided by Subsection (a-7) that relates to any person, other
11 than an attorney or a person who is a certified guardian, proposed
12 to serve as a guardian under Title 3, Estates Code, including:

13 (1) a proposed temporary guardian;

14 (2) [7] a proposed successor guardian; or

15 (3) [7-07] any person who will have care and custody of
16 [~~contact with~~] the proposed ward or the proposed ward's estate on
17 behalf of the proposed guardian and who is not otherwise required
18 to submit to a criminal background check under this section [7
19 ~~other than an attorney or a certified guardian~~].

20 (2) Add the following appropriately numbered SECTIONS to the
21 bill:

22 SECTION _____. Section 1101.001(b), Estates Code, is amended
23 to read as follows:

24 (b) The application must be sworn to by the applicant and
25 state:

1 (1) the proposed ward's name, sex, date of birth, and
2 address;

3 (2) the name, former name, if any, relationship, and
4 address of the person the applicant seeks to have appointed as
5 guardian;

6 (3) whether guardianship of the person or estate, or
7 both, is sought;

8 (3-a) whether alternatives to guardianship and
9 available supports and services to avoid guardianship were
10 considered;

11 (3-b) whether any alternatives to guardianship and
12 supports and services available to the proposed ward considered
13 are feasible and would avoid the need for a guardianship;

14 (4) the nature and degree of the alleged incapacity,
15 the specific areas of protection and assistance requested, and the
16 limitation or termination of rights requested to be included in
17 the court's order of appointment, including a termination of:

18 (A) the right of a proposed ward who is 18 years
19 of age or older to vote in a public election;

20 (B) the proposed ward's eligibility to hold or
21 obtain a license to operate a motor vehicle under Chapter 521,
22 Transportation Code; and

23 (C) the right of a proposed ward to make personal
24 decisions regarding residence;

25 (5) the facts requiring the appointment of a guardian;

26 (6) the interest of the applicant in the appointment of
27 a guardian;

1 (7) the nature and description of any kind of
2 guardianship existing for the proposed ward in any other state;

3 (8) to enable a criminal history record information
4 background check to be obtained on the person, the name, [and]
5 address, phone number, and date of birth, if applicable, of any
6 person [or institution] having the care and custody of the proposed
7 ward or the proposed ward's estate;

8 (9) the approximate value and a detailed description of
9 the proposed ward's property, including:

10 (A) liquid assets, including any compensation,
11 pension, insurance, or allowance to which the proposed ward may be
12 entitled; and

13 (B) non-liquid assets, including real property;

14 (10) the name and address of any person whom the
15 applicant knows to hold a power of attorney signed by the proposed
16 ward and a description of the type of power of attorney;

17 (11) for a proposed ward who is a minor, the following
18 information if known by the applicant:

19 (A) the name of each of the proposed ward's
20 parents and either the parent's address or that the parent is
21 deceased;

22 (B) the name and age of each of the proposed ward's
23 siblings, if any, and either the sibling's address or that the
24 sibling is deceased; and

25 (C) if each of the proposed ward's parents and
26 adult siblings are deceased, the names and addresses of the
27 proposed ward's other living relatives who are related to the

1 proposed ward within the third degree by consanguinity and who are
2 adults;

3 (12) for a proposed ward who is a minor, whether the
4 minor was the subject of a legal or conservatorship proceeding in
5 the preceding two years and, if so:

6 (A) the court involved;

7 (B) the nature of the proceeding; and

8 (C) any final disposition of the proceeding;

9 (13) for a proposed ward who is an adult, the following
10 information if known by the applicant:

11 (A) the name of the proposed ward's spouse, if
12 any, and either the spouse's address or that the spouse is
13 deceased;

14 (B) the name of each of the proposed ward's
15 parents and either the parent's address or that the parent is
16 deceased;

17 (C) the name and age of each of the proposed ward's
18 siblings, if any, and either the sibling's address or that the
19 sibling is deceased;

20 (D) the name and age of each of the proposed ward's
21 children, if any, and either the child's address or that the child
22 is deceased; and

23 (E) if there is no living spouse, parent, adult
24 sibling, or adult child of the proposed ward, the names and
25 addresses of the proposed ward's other living relatives who are
26 related to the proposed ward within the third degree by
27 consanguinity and who are adults;

1 (14) facts showing that the court has venue of the
2 proceeding; and

3 (15) if applicable, that the person whom the applicant
4 seeks to have appointed as a guardian is a private professional
5 guardian who is certified under Subchapter C, Chapter 155,
6 Government Code, and has complied with the requirements of
7 Subchapter G, Chapter 1104.

8 SECTION _____. The heading to Section 1104.402, Estates Code,
9 is amended to read as follows:

10 Sec. 1104.402. [~~COURT CLERK'S~~] DUTY TO OBTAIN CRIMINAL
11 HISTORY RECORD INFORMATION; AUTHORITY TO CHARGE FEE.

12 SECTION _____. Section 1104.402, Estates Code, is amended by
13 amending Subsection (a) and adding Subsection (a-1) to read as
14 follows:

15 (a) Except as provided by Section 1104.404 or 1104.406(a),
16 the clerk of the county having venue of the proceeding for the
17 appointment of a guardian shall, based on information provided in
18 an application filed under Section 1101.001, obtain criminal
19 history record information that is maintained by the Department of
20 Public Safety or the Federal Bureau of Investigation
21 identification division relating to any person, other than an
22 attorney or a person who is a certified guardian, proposed to serve
23 as a guardian under this title, including:

24 (1) a proposed temporary guardian;

25 (2) [~~7~~] a proposed successor guardian; or

26 (3) [~~7-01~~] any person who will have care and custody of
27 [contact with] the proposed ward or the proposed ward's estate on

1 behalf of the proposed guardian and who is not otherwise required
2 to submit to a criminal background check under this section [7
3 ~~other than an attorney or a person who is a certified guardian~~].

4 (a-1) A proposed guardian who is an attorney or a certified
5 guardian shall provide to the court the name, address, phone
6 number, and date of birth of any person who will have care and
7 custody of the proposed ward or the proposed ward's estate on the
8 proposed guardian's behalf. If the person having care and custody
9 of the proposed ward or the proposed ward's estate on the proposed
10 guardian's behalf is not also a certified guardian, the clerk shall
11 obtain criminal history record information for that person as
12 specified by Subsection (a).

13 SECTION _____. Section 1104.405(a), Estates Code, is amended
14 to read as follows:

15 (a) Criminal history record information obtained or provided
16 under Section 1104.402 or 1104.404 is privileged and confidential
17 and is for the exclusive use of the court. The criminal history
18 record information may not be released or otherwise disclosed to
19 any person or agency except on court order. The court may use the
20 criminal history record information only to determine whether to:

21 (1) appoint, remove, or continue the appointment of a
22 private professional guardian, a guardianship program, or the
23 Health and Human Services Commission; or

24 (2) appoint any person proposed to serve as a guardian
25 under this title, including a proposed temporary guardian, a
26 proposed successor guardian, or any person who will have care or
27 custody of [~~contact with~~] the proposed ward or the proposed ward's

1 estate on behalf of the proposed guardian, other than an attorney
2 or a certified guardian.

3 SECTION _____. Subchapter A, Chapter 1151, Estates Code, is
4 amended by adding Section 1151.006 to read as follows:

5 Sec. 1151.006. GUARDIAN'S DUTY TO NOTIFY COURT OF CHANGES
6 CONCERNING CARE AND CUSTODY OF WARD; CLERK'S DUTY TO OBTAIN
7 CRIMINAL HISTORY RECORD INFORMATION. (a) This section applies
8 only to a guardian who is a certified guardian or attorney and who
9 has designated a person to have care and custody of the ward or
10 the ward's estate on the guardian's behalf as provided by Section
11 1104.402(a-1).

12 (b) A guardian shall notify the court of any change
13 concerning the designation or contact information of a person
14 having care and custody of a ward or the ward's estate on the
15 guardian's behalf not later than the 30th day after the date the
16 change occurs. If, as a result of a change in designation, the
17 guardian wants to designate another person who will have care and
18 custody of the ward or the ward's estate on the guardian's behalf,
19 the notification must also include the name, address, phone number,
20 and date of birth of that other person.

21 (c) On receipt of notification of a change under Subsection
22 (b) that includes the name of a person who will have care and
23 custody of the ward or the ward's estate on behalf of the guardian,
24 the clerk of the court having jurisdiction over the proceeding
25 shall obtain criminal history record information that is
26 maintained by the Department of Public Safety or the Federal Bureau
27 of Investigation identification division relating to that person.

1 SECTION _____. Section 155.205(a), Government Code, is amended
2 to read as follows:

3 (a) In accordance with Subsection (c) and the rules adopted
4 by the supreme court under Section 155.203, the commission shall
5 obtain criminal history record information that is maintained by
6 the Department of Public Safety. The clerk shall obtain in
7 accordance with Subsection (b) criminal history record information
8 from the Federal Bureau of Investigation identification division
9 relating to an individual seeking appointment as a guardian or
10 temporary guardian, and any individual who will have care
11 and custody of a proposed ward or the proposed ward's estate on
12 behalf of a certified guardian or attorney who has been appointed
13 guardian as required by Section 1104.402(a-1), Estates Code.

14 (3) Renumber SECTIONS of the bill appropriately.