

AMENDED IN ASSEMBLY MARCH 30, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 541

Introduced by Assembly Member Harman

February 16, 2005

An act to amend Section 3041.5 of the Family Code, and to amend Sections 2341 and 2854 of the Probate Code, relating to guardians.

LEGISLATIVE COUNSEL'S DIGEST

AB 541, as amended, Harman. Guardians.

(1) Existing law, until January 1, 2008, authorizes a court to require any parent who is seeking custody of, or visitation with, a child who is the subject of a custody proceeding, to undergo testing for the illegal use of controlled substances and the use of alcohol under specified circumstances. Existing law requires the court to order the least intrusive method of testing. Existing law requires that testing be in conformity with certain federal procedures, provides that the results of this testing shall be confidential and maintained as a sealed record, and permits a parent or legal custodian who is tested to contest the test results at a hearing.

This bill would also authorize a court to require any person who is seeking custody of, or visitation with, a child who is the subject of a guardianship proceeding, to undergo drug testing pursuant to the above-described procedures.

(2) Existing law requires the Department of Justice to maintain a Statewide Registry of conservators and guardians, and requires all persons who wish to serve as a conservator or guardian, or who are currently serving as a conservator or guardian, to register and reregister with the Statewide Registry. Existing law excepts certain nonrelated guardians of the person of a minor, appointed under

specified circumstances by the juvenile court or the probate court, from those registration and filing requirements.

This bill would delete the exception applicable to nonrelated guardians.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 3041.5 of the Family Code is amended
2 to read:
3 3041.5. (a) In any custody or visitation proceeding brought
4 under this part, as described in Section 3021, or any guardianship
5 proceeding brought under the Probate Code, the court may order
6 any person who is seeking custody of, or visitation with, a child
7 who is the subject of the proceeding to undergo testing for the
8 illegal use of controlled substances and the use of alcohol if there
9 is a judicial determination based upon a preponderance of
10 evidence that there is the habitual, frequent, or continual illegal
11 use of controlled substances or the habitual or continual abuse of
12 alcohol by the parent, legal custodian, or person seeking
13 guardianship. This evidence may include, but may not be limited
14 to, a conviction within the last five years for the illegal use or
15 possession of a controlled substance. The court shall order the
16 least intrusive method of testing for the illegal use of controlled
17 substances or the habitual or continual abuse of alcohol by either
18 or both parents, the legal custodian, or person seeking
19 guardianship. If substance abuse testing is ordered by the court,
20 the testing shall be performed in conformance with procedures
21 and standards established by the United States Department of
22 Health and Human Services for drug testing of federal
23 employees. The parent, legal custodian, or person seeking
24 guardianship who has undergone drug testing shall have the right
25 to a hearing, if requested, to challenge a positive test result. A
26 positive test result, even if challenged and upheld, shall not, by
27 itself, constitute grounds for an adverse custody decision.
28 Determining the best interests of the child requires weighing all
29 relevant factors. The results of this testing shall be confidential,
30 shall be maintained as a sealed record in the court file, and may
31 not be released to any person except the court, the parties, their

1 attorneys, the Judicial Council (until completion of its authorized
2 study of the testing process) and any person to whom the court
3 expressly grants access by written order made with prior notice
4 to all parties. Any person who has access to the test results may
5 not disseminate copies or disclose information about the test
6 results to any person other than a person who is authorized to
7 receive the test results pursuant to this section. Any breach of the
8 confidentiality of the test results shall be punishable by civil
9 sanctions not to exceed two thousand five hundred dollars
10 (\$2,500). The results of the testing may not be used for any
11 purpose, including any criminal, civil, or administrative
12 proceeding, except to assist the court in determining, for
13 purposes of the proceeding, the best interest of the child pursuant
14 to Section 3011, and the content of the order or judgment
15 determining custody or visitation. The court may order either
16 party, or both parties, to pay the costs of the drug or alcohol
17 testing ordered pursuant to this section. As used in this section,
18 “controlled substances” has the same meaning as defined in the
19 California Uniform Controlled Substances Act, Division 10
20 (commencing with Section 11000) of the Health and Safety
21 Code.

22 (b) This section shall remain in effect only until January 1,
23 2008, and as of that date is repealed, unless a later enacted
24 statute, that is enacted before January 1, 2008, deletes or extends
25 that date.

26 SEC. 2. Section 2341 of the Probate Code is amended to read:

27 2341. (a) As used in this article, “private professional
28 conservator” means a person or entity appointed as conservator
29 of the person or estate, or both, of two or more conservatees at
30 the same time who are not related to the conservator by blood or
31 marriage, except a bank or other entity authorized to conduct the
32 business of a trust company, or any public officer or public
33 agency including the public guardian, public conservator, or
34 other agency of the State of California. In the case of an entity,
35 all natural persons who are authorized by the entity to perform
36 the functions of a conservator shall comply with this article. The
37 court may, at its discretion, require any person who is the
38 conservator for only one conservatee not related to the
39 conservator by blood or marriage to comply with this article, and

1 in that case, references in this article to a “private professional
2 conservator” includes those persons.

3 (b) As used in this article, “private professional guardian”
4 means a person or entity appointed as guardian of *the estate of*
5 two or more wards at the same time who are not related to the
6 guardian by blood or marriage, except a bank or other entity
7 authorized to conduct the business of a trust company, or any
8 public officer or public agency including the public guardian,
9 public conservator, or other agency of the State of California. In
10 the case of an entity, all natural persons who are authorized by
11 the entity to perform the functions of a guardian shall comply
12 with this article. The court may, at its discretion, require any
13 person who is the guardian for only one ward not related to the
14 guardian by blood or marriage to comply with this article, and in
15 that case, references in this article to a “private professional
16 guardian” includes those persons.

17 (c) As used in this article, “private professional trustee” means
18 a nonprofit charitable corporation appointed as trustee pursuant
19 to Section 15604.

20 SEC. 3. Section 2854 of the Probate Code is amended to read:

21 2854. (a) This chapter does not apply to any public
22 conservator or public guardian with regard to his or her official
23 acts in that capacity.

24 (b) This chapter does not apply to any conservator, guardian,
25 or trustee when the person is related to the conservatee, ward, or
26 trustor by blood, marriage, adoption, registered domestic
27 partnership, or a relationship that satisfies the requirements of
28 subdivision (a) and paragraphs (1) to (4), inclusive, and
29 paragraph (6) of subdivision (b) of Section 297 of the Family
30 Code.

31 (c) This chapter does not apply to any trustee who is serving
32 for the benefit of not more than three people or not more than
33 three families, or a combination of people or families that does
34 not total more than three. The number of trust beneficiaries does
35 not count for the purposes of calculating if a trustee falls within
36 this exclusion. A trust excluded under subdivision (a) or (b) does
37 not count for the purpose of calculating if a trustee falls within
38 this exclusion. For the purposes of this subdivision, family means
39 people who are related by blood, marriage, adoption, registered
40 domestic partnership, or a relationship that satisfies the

1 requirements of subdivision (a) and paragraphs (1) to (4),
2 inclusive, and paragraph (6) of subdivision (b) of Section 297 of
3 the Family Code.

4 (d) This chapter does not apply to any conservator or guardian
5 who is not required to file information with the clerk of the court
6 pursuant to Section 2340, to any person or entity subject to the
7 oversight of a local government, including an employee of a city,
8 county, or city and county, or to any person or entity subject to
9 the oversight of the state or federal government, including an
10 attorney licensed to practice law in the State of California who
11 acts as trustee of only attorney client trust accounts, as defined in
12 Section 6211 of the Business and Professions Code.

13 (e) This chapter does not apply to any conservator who resided
14 in the same home with the conservatee immediately prior to the
15 condition or event that gave rise to the necessity of a
16 conservatorship. This subdivision does not create any order or
17 preference of appointment, but simply exempts a conservator
18 described by this subdivision from registration.

19 (f)

20 This chapter does not apply to a trustee who is any of the
21 following:

22 (1) Trust companies, as defined in Section 83.

23 (2) FDIC insured institutions, their holding companies,
24 subsidiaries or affiliates. For the purposes of this paragraph,
25 “affiliate” means any entity that shares an ownership interest
26 with or that is under the common control of, the FDIC insured
27 institution.

28 (3) Employees of any entity listed in paragraph (1) or (2)
29 while serving as trustees in the scope of their duties.