

AMENDED IN SENATE JULY 7, 2005

AMENDED IN SENATE JUNE 6, 2005

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~~ *authorizes the court to require any person who is the guardian for only one ward unrelated to the guardian by blood or marriage to comply with those provisions.*

~~This bill would delete the exception applicable to nonrelated guardians~~ *further authorize the court to require any person who is the guardian of the person, unrelated to the ward, and who receives compensation for acting as guardian of the person to comply with those provisions.*

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, person seeking
13 guardianship, or person seeking visitation in a guardianship. This
14 evidence may include, but may not be limited to, a conviction
15 within the last five years for the illegal use or possession of a
16 controlled substance. The court shall order the least intrusive
17 method of testing for the illegal use of controlled substances or
18 the habitual or continual abuse of alcohol by either or both
19 parents, the legal custodian, person seeking guardianship, or
20 person seeking visitation in a guardianship. If substance abuse
21 testing is ordered by the court, the testing shall be performed in
22 conformance with procedures and standards established by the

1 United States Department of Health and Human Services for
2 drug testing of federal employees. The parent, legal custodian,
3 person seeking guardianship, or person seeking visitation in a
4 guardianship who has undergone drug testing shall have the right
5 to a hearing, if requested, to challenge a positive test result. A
6 positive test result, even if challenged and upheld, shall not, by
7 itself, constitute grounds for an adverse custody or guardianship
8 decision. Determining the best interests of the child requires
9 weighing all relevant factors. The court shall also consider any
10 reports provided to the court pursuant to the Probate Code. The
11 results of this testing shall be confidential, shall be maintained as
12 a sealed record in the court file, and may not be released to any
13 person except the court, the parties, their attorneys, the Judicial
14 Council (until completion of its authorized study of the testing
15 process) and any person to whom the court expressly grants
16 access by written order made with prior notice to all parties. Any
17 person who has access to the test results may not disseminate
18 copies or disclose information about the test results to any person
19 other than a person who is authorized to receive the test results
20 pursuant to this section. Any breach of the confidentiality of the
21 test results shall be punishable by civil sanctions not to exceed
22 two thousand five hundred dollars (\$2,500). The results of the
23 testing may not be used for any purpose, including any criminal,
24 civil, or administrative proceeding, except to assist the court in
25 determining, for purposes of the proceeding, the best interest of
26 the child pursuant to Section 3011, and the content of the order or
27 judgment determining custody or visitation. The court may order
28 either party, or both parties, to pay the costs of the drug or
29 alcohol testing ordered pursuant to this section. As used in this
30 section, “controlled substances” has the same meaning as defined
31 in the California Uniform Controlled Substances Act, Division
32 10 (commencing with Section 11000) of the Health and Safety
33 Code.

34 (b) This section shall remain in effect only until January 1,
35 2008, and as of that date is repealed, unless a later enacted
36 statute, that is enacted before January 1, 2008, deletes or extends
37 that date.

38 SEC. 2. Section 2341 of the Probate Code is amended to read:
39 2341. (a) As used in this article, “private professional
40 conservator” means a person or entity appointed as conservator

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

14 (b) As used in this article, “private professional guardian”
15 means a person or entity appointed as guardian of the estate of
16 two or more wards at the same time who are not related to the
17 guardian by blood or marriage, except a bank or other entity
18 authorized to conduct the business of a trust company, or any
19 public officer or public agency including the public guardian,
20 public conservator, or other agency of the State of California. In
21 the case of an entity, all natural persons who are authorized by
22 the entity to perform the functions of a guardian shall comply
23 with this article. The court may, at its discretion, require any
24 person who is the guardian for only one ward not related to the
25 guardian by blood or marriage to comply with this article, and in
26 that case, references in this article to a “private professional
27 guardian” ~~includes~~ *include* those persons. *The court may also, at*
28 *its discretion, require any person who is a guardian of the person*
29 *not related to the ward by blood or marriage and who receives*
30 *compensation for acting as guardian of the person to comply*
31 *with this article, and in that case, references in this article to a*
32 *“private professional guardian” include those persons.*
33 *However, as used in this article, “private professional guardian”*
34 *does not include an unrelated guardian of the person of a minor*
35 *appointed by the court, if the appointment results from the*
36 *selection of a permanency plan for a dependent child or ward*
37 *pursuant to Section 366.26 of the Welfare and Institutions Code.*
38 *It also does not include an unrelated guardian of the person of a*
39 *minor appointed by the court pursuant to Section 1514 if that*
40 *child is in receipt of AFDC-FC payments and case management*

1 *services from the county welfare department, as evidenced by a*
2 *Notice of Action of AFDC-FC eligibility.*

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

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

7 2854. (a) This chapter does not apply to any public
8 conservator or public guardian with regard to his or her official
9 acts in that capacity.

10 (b) This chapter does not apply to any conservator, guardian,
11 or trustee when the person is related to the conservatee, ward, or
12 trustor by blood, marriage, adoption, registered domestic
13 partnership, or a relationship that satisfies the requirements of
14 subdivision (a) and paragraphs (1) to (4), inclusive, and
15 paragraph (6) of subdivision (b) of Section 297 of the Family
16 Code.

17 (c) This chapter does not apply to any trustee who is serving
18 for the benefit of not more than three people or not more than
19 three families, or a combination of people or families that does
20 not total more than three. The number of trust beneficiaries does
21 not count for the purposes of calculating if a trustee falls within
22 this exclusion. A trust excluded under subdivision (a) or (b) does
23 not count for the purpose of calculating if a trustee falls within
24 this exclusion. For the purposes of this subdivision, family means
25 people who are related by blood, marriage, adoption, registered
26 domestic partnership, or a relationship that satisfies the
27 requirements of subdivision (a) and paragraphs (1) to (4),
28 inclusive, and paragraph (6) of subdivision (b) of Section 297 of
29 the Family Code.

30 (d) This chapter does not apply to any conservator or guardian
31 who is not required to file information with the clerk of the court
32 pursuant to Section 2340, to any person or entity subject to the
33 oversight of a local government, including an employee of a city,
34 county, or city and county, or to any person or entity subject to
35 the oversight of the state or federal government, including an
36 attorney licensed to practice law in the State of California who
37 acts as trustee of only attorney client trust accounts, as defined in
38 Section 6211 of the Business and Professions Code.

39 (e) This chapter does not apply to any conservator who resided
40 in the same home with the conservatee immediately prior to the

1 condition or event that gave rise to the necessity of a
2 conservatorship. This subdivision does not create any order or
3 preference of appointment, but simply exempts a conservator
4 described by this subdivision from registration.

5 (f) This chapter does not apply to a trustee who is any of the
6 following:

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

8 (2) FDIC-insured institutions, their holding companies,
9 subsidiaries, or affiliates. For the purposes of this paragraph,
10 “affiliate” means any entity that shares an ownership interest
11 with or that is under the common control of, the FDIC-insured
12 institution.

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