
Judiciary Committee

HB 1053

Title: An act relating to the implementation of recommendations from the Washington state bar association elder law section's executive committee report of the guardianship task force.

Brief Description: Implementing recommendations from the Washington state bar association elder law section's executive committee report of the guardianship task force.

Sponsors: Representatives Moeller, Kenney, Ladenburg, Appleton, Roberts, Darneille and Uptegrove; by request of Washington State Bar Association.

Brief Summary of Bill

- Allows the courts to require guardians to receive training before being appointed.
- Requires guardians to obtain letters of guardianship from the court before acting on behalf of an incapacitated person. Letters of guardianship expire and must be renewed on an annual basis.
- Amends current deadlines and creates new deadlines for guardianship proceedings, including the notification of interested parties, filing of annual reports and accounts, and the scheduling of review by the court.

Hearing Date: 1/17/11

Staff: Kelly Pfundheller (786-7289).

Background:

Appointment of a Guardian.

Guardianship is a legal process through which a guardian is given the power to make decisions for a person who is determined to be "incapacitated" and therefore unable to take care of himself or herself. A person may be incapacitated if the individual is at a significant risk of financial harm because of an inability to manage his or her property or financial affairs or has a significant

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risk of personal harm because of an inability to provide for nutrition, health, housing, or physical safety.

The court may establish a guardianship over the person, the person's estate, or both. The court may also establish a limited guardianship for persons who need protection or assistance because of an incapacity, but who are capable of managing some of their affairs. A guardian of an incapacitated person's estate is responsible for managing the person's property and finances. Such person is responsible for assessing and meeting of the incapacitated person's physical, mental and emotional needs. Any adult person residing in Washington may serve as a guardian unless the person is of unsound mind, has been convicted of a crime of moral turpitude, or is found unsuitable by the court. Professional guardians must be certified by the Certified Professional Guardian Board (Board) and must meet certain education, experience, and training requirements established by the Board.

Letters of Guardianship.

When a court appoints a standby guardian (who serves if the original guardian cannot), the court must issue letters of guardianship authorizing the standby guardian to act on behalf of the incapacitated person. There is no explicit statutory requirement to issue letters of guardianship to guardians or limited guardians.

Initial Requirements of Appointment.

Guardians and limited guardians must file a personal care plan within three months of being appointed, which includes an assessment of the incapacitated person's physical, mental, and emotional needs, and the guardian's specific plan for meeting the identified and emerging personal care needs of the incapacitated person. Guardians or limited guardians must inform the court of a designated standby guardian to serve the incapacitated individual if he or she dies or becomes incapacitated.

The court must notify the guardian or limited guardian of the persons who should receive copies of the pleadings filed in all proceedings after an individual is found to lack capacity. There is no deadline by which the guardian or limited guardian must notify those persons of their right to receive notice of the proceedings.

Intermediate and Final Reports.

Guardians and limited guardians must file annual reports regarding the status of an incapacitated person's well-being. Courts can schedule the filing requirements for accounts of estates at intervals up to 36 months.

Upon the termination of a guardianship, guardians and limited guardians must:

- file a final report and/or account within 30 days of the termination of the guardianship; and
- petition the court for an order settling an account within 90 days of the termination.

Recommendations of the Washington State Bar Association.

In 2007, the Elder Law Section of the Washington State Bar Association formed a task force to examine the performance of the guardianship system in Washington. HB 1053 is comprised of the task force's recommendations.

Summary of Bill:

Guardianship Appointments.

The superior court may require a potential guardian or limited guardian to receive training before being appointed.

Letters of Guardianship.

When a court issues an order appointing a guardian or limited guardian, the clerk must issue letters of guardianship authorizing the guardian or limited guardian to act on behalf of the incapacitated person. A pattern form for the letters of guardianship is set forth in the act. The letters expire 30 days after the court is scheduled to review the guardian's annual report and/or account, but are renewed upon a court approval.

Deadlines for Guardianship Filings and Proceedings.

Within 90 days of a guardian's appointment:

- the superior court may set a hearing reviewing the initial personal care plan;
- guardians and limited guardians must designate a standby guardian; and
- guardians and limited guardians are required to notify interested persons of their right to request special notice on the guardianship's proceedings.

The deadline for the annual account or report must be set within 90 days of the anniversary date of appointment, and the court must review it within 120 days of the anniversary date. All court orders approving accounts and reports must contain a guardianship summary, which is set forth in the act.

If a guardian or limited guardian fails to file an intermediate account and/or report or fails to appear at a hearing, the superior court has the authority to schedule a contempt hearing, appoint a guardian ad litem, require training, remove the guardian or limited guardian or take other acts as the court deems just and equitable.

Upon the termination of a guardianship, the guardian or limited guardian is required to file the final report and/or account and the petition for settling the account within 90 days. The deadline for the petition can be extended for good cause.

Appropriation: None.

Fiscal Note: Requested on 1/13/11.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.