
Judiciary Committee

ESSB 5607

Title: An act relating to complaint procedure for the modification or termination of guardianship.

Brief Description: Concerning the complaint procedure for the modification or termination of guardianship.

Sponsors: Senate Committee on Human Services, Mental Health & Housing (originally sponsored by Senators Conway, Dammeier, Darneille, O'Ban and Padden).

<p style="text-align: center;">Brief Summary of Engrossed Substitute Bill</p> <ul style="list-style-type: none">• Creates a complaint process for the modification or termination of a guardianship.

Hearing Date: 3/24/15

Staff: Brent Campbell (786-7152).

Background:

Guardianship.

A guardianship is a legal relationship in which a guardian is appointed and empowered by the court to make decisions for an incapacitated person. This process removes decision-making authority from the incapacitated person and gives that authority to the guardian.

Modification or Termination of a Guardianship.

A court may modify or terminate the guardianship at any time after establishment of a guardianship or appointment of a guardian. Any person, including an incapacitated person, may apply to the court for an order to modify or terminate a guardianship or to replace a guardian.

Within 30 days of receiving an application to modify or terminate a guardianship, the court may: (1) schedule a hearing; (2) appoint a guardian ad litem to investigate the issues raised by the application or to take any emergency action the court deems necessary to protect the

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incapacitated person until a hearing can be held; or (3) deny the application without scheduling a hearing if it appears that the application is frivolous. Any denial of an application without a hearing must be in writing with the reasons for the denial explained.

In a hearing on an application to modify or terminate a guardianship, the court may grant such relief as it deems just and in the best interest of the incapacitated person.

The Certified Professional Guardianship Board.

The Certified Professional Guardianship Board (Board) is the regulatory authority for the practice of professional guardianship in Washington. The Board is charged with establishing the standards and criteria for the certification of professional guardians. A "professional guardian" means a guardian who is not a member of the incapacitated person's family and who charges fees for carrying out guardianship duties for three or more incapacitated persons. The Board is authorized to investigate professional guardians in order to determine whether a professional guardian has violated any statute, duty, or other requirement governing the conduct of professional guardians. The Board may also take disciplinary action and impose disciplinary sanctions based on its findings.

Summary of Bill:

The application process to modify or terminate a guardianship is removed. Instead, the court may take action to modify or terminate a guardianship based on: the court's own motion; a motion by an attorney for a person or entity; a motion of a person or entity representing themselves; or a written complaint. The court may grant relief as it deems just and in the best interest of the incapacitated person in any action to modify or terminate a guardianship.

A complaint may be submitted to the court by any unrepresented person or entity. The complaint must be properly addressed and must identify the complainant and the incapacitated person who is the subject of the guardianship. The complaint must also state facts to support the claim. The administrative office of the courts must develop a model form for the complaint.

Within 14 days of being presented with a complaint, the court must enter an order to do one or more of the following actions:

- direct the guardian to appear at a hearing in order to respond to the complaint;
- appoint a guardian ad litem to investigate the issues raised by the complaint or to take any emergency action the court deems necessary;
- dismiss the complaint without scheduling a hearing;
- direct the guardian to provide a written report to the court;
- defer consideration until the next regularly scheduled hearing; or
- order other action, in the court's discretion, in addition to doing one or more of the previously listed actions.

If, after considering the complaint, the court believes that the complaint is made without justification or in bad faith, the court may levy necessary sanctions, including reasonable attorney fees, costs, fees, striking of pleadings, or other appropriate relief.

The Board may send a grievance it has received regarding an active guardian case to the court with a request that the court review the grievance and take any action the court deems necessary.

This request must be treated as a complaint and the person who sent the complaint must be treated as the complainant. A copy of any order the court enters must be transmitted to the Board, and any further action taken by the Board must be consistent with the order.

The court must direct the clerk of the court to send a copy of the order entered to the Board for any action that involves a professional guardian.

Appropriation: None.

Fiscal Note: Available on SB 5607.

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