

FINAL BILL REPORT

SHB 1053

PARTIAL VETO C 329 L 11 Synopsis as Enacted

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

Sponsors: House Committee on Judiciary (originally sponsored by Representatives Moeller, Kenney, Ladenburg, Appleton, Roberts, Darneille and Upthegrove; by request of Washington State Bar Association).

House Committee on Judiciary
House Committee on General Government Appropriations & Oversight
Senate Committee on Judiciary

Background:

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

Appointment of a Guardian.

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. 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.

Guardians or limited guardians must inform the court of a designated standby guardian to serve the incapacitated individual if the original guardian dies or becomes incapacitated. When a court appoints a standby guardian, the court must issue letters of guardianship authorizing the standby guardian to act on behalf of the incapacitated person. There is no

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explicit statutory requirement to issue letters of guardianship to guardians or limited guardians.

Intermediate and Final Reports.

Guardians and limited guardians must file annual reports regarding the status of an incapacitated person's well-being. While guardians and limited guardians of estates typically must file accounts annually, the courts may schedule the filing requirement at intervals of up to 36 months if the value of the estate does not exceed more than twice the homestead exemption. Guardians of estates belonging to minors need not file accounts unless the guardian has withdrawal powers.

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. The task force issued a final report containing recommendations for legislation.

Summary:

The guardianship laws are amended in several areas, including requiring guardians and limited guardians to complete training, requiring courts to issue letters of guardianship and review accounts and reports filed by guardians and limited guardians, and creating deadlines for certain guardianship proceedings. A filing fee is created for accounts of certain guardianship estates.

Guardianship Appointments.

Guardians or lay guardians who are not certified professional guardians or financial institutions must complete any training made available by the Administrative Office of the Courts or the superior courts in the form of a video or webcast at no cost to guardians or limited guardians. An extension for or a good cause waiver of the completion of the training requirement may be granted to guardians who were appointed prior to the act's effective date and who already possess the requisite knowledge to serve as a guardian without completing training. A list of factors is provided for the court to consider when determining whether good cause exists to grant a waiver.

A guardian or limited guardian may not act on behalf of an incapacitated person without valid letters of guardianship. The court may issue letters of guardianship that are valid for a period of up to 5 years from the anniversary date of the appointment. A list of factors is provided for the court to consider when determining the time period for which the letters will be valid.

Within 90 days of a guardian's appointment:

- the superior court may set a hearing for review of 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.

Immediate Final Reports.

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. The court may review and approve an account or report without conducting a hearing. All court orders approving accounts and reports must contain a guardianship summary, in the form set forth in the act.

If a guardian or limited guardian fails to file an account and/or report or fails to appear at a hearing, the court must enter an order for one or more of the following actions:

- entering an order to show cause and requiring the guardian to appear at a hearing. At the hearing the court may remove the guardian and appoint a successor guardian;
- directing the clerk to extend the letters of guardianship for good cause shown for an additional 90 days in order to permit the guardian to file his or her account or report;
- requiring the completion of training;
- appointing a guardian ad litem; or
- providing other relief 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 or account and the petition for settling the account within 90 days. The deadline for the petition may be extended for good cause.

Filing Fee.

A filing fee must be charged to an incapacitated person's estate when the guardian or limited guardian files a required account with the court. The amount of the fee is determined by a sliding scale based on the total net fair market value of the estate. There is no fee if the total net fair market value of the incapacitated person's estate is equal to or less than \$100,000. The court may waive the fee or reduce the fee amount if payment of the filing fee would result in substantial hardship.

Votes on Final Passage:

House	56	40	
Senate	49	0	(Senate amended)
House			(House refused to concur)
Senate	46	0	(Senate amended)
House	57	40	(House concurred)

Effective: July 22, 2011

Partial Veto Summary: The Governor vetoed the section creating the new filing fee for accounts of guardianship estates.