

SENATE BILL REPORT

SHB 1053

As of March 31, 2011

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

Brief History: Passed House: 3/07/11, 56-40.

Committee Activity: Judiciary: 3/23/11.

SENATE COMMITTEE ON JUDICIARY

Staff: Kim Johnson (786-7472)

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. The court may establish a guardianship over the person, the person's estate, or both. 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 (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.

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 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.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

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.

In 2007 the Elder Law Section of the Washington State Bar Association (WSBA) formed a task force to examine the performance of the guardianship system in Washington, and issued a final report containing recommendations.

Summary of Bill: 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 court overseeing the appointment. In some circumstances a court may extend the deadline for training or waive the requirement.

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 court approval.

The deadline for the annual account or report must be set within 90 days of the anniversary of the 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, the content and form of which are specified in the act.

The following deadlines are changed to 90 days:

- 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 are required to notify interested persons of their right to request special notice on the guardianship's proceedings.
- Within 90 days after termination of the appointment, a guardian or limited guardian must file a written verified account of the administration for court approval.

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.

The incapacitated person's estate is charged a fee when the guardian files an account with the court. The amount of the fee is determined by a sliding scale based on the net fair market value of the estate and ranges from \$20-\$250. There is no fee if the net fair market value of the incapacitated person's estate is less than \$3,000. If the court finds that payment of the filing fee would result in substantial hardship, the court may waive the fee or reduce the fee amount.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This bill deals with issues that have gone on way too long; the guardianship process needs some side bars. This bill contains great policy; we don't want to put any undue hardships on local governments who are in the same financial shape that the state finds itself.

There is some really strong evidence that guardians are not being properly monitored by the courts. The WSBA taskforce was formed as a result of some concerns that were actually brought to the Legislature. What we found was that there was a lot that we don't know about guardians in this state. There is no statewide tracking system. Some counties do a much better job than others in monitoring guardians. Regarding your question about the reasons for training, many people cite that they were not told that they had a duty to report or provide an accounting to the court on a regular basis. This results in unnecessary litigation, and it is often impossible to reconstruct what has happened with a person's estate over the years without the regular reports to the court.

This bill brings some much needed accountability to the system. We used expiring letters of guardianship and the automatic annual review hearing to keep guardians filing reports and accounts. This bill is not about the many guardians that are doing a good job, but rather is trying to provide some system to begin bringing those guardians that are not doing what they are supposed to be doing into compliance. This will also help courts that may not be doing a good job monitoring guardians. When we go out to randomly visit guardians and incapacitated persons, what we find is that some guardians are not doing their job. We need to remember that guardianships are about incapacitated persons, and the state needs to make sure that guardians are doing their job. Lay guardians serve a critical function, and many of these people are doing a great job. However, we need to make sure that all lay guardians get some very basic training and information which will help to prevent some of the problems that we've encountered.

CON: The reporting requirements, including the due date, was clearly stated in the letters of guardianship that we received at appointment. We have always complied and the current system works just fine. What this bill does is make guardians that are doing a good job pay the price of the court and the lawyers not doing their job. The care of an incapacitated person is overwhelming and the burdens that this bill puts on family guardians is not necessary. This will discourage families to be guardians.

There is no need to spend money on developing training; the book we were given by King County is more than adequate if you can read. Instead of a standby guardian you ought to use a co-guardian like my family uses to care for my son. Lots of families in Yakima county are financially strapped and the court system has recently had to lay off court employees. This bill will add financial burdens to some families, and the county court which may be too much during this economy. I think the bill is probably well intentioned, but my lawyer says that it ought to better reflect the different circumstances a guardian who cares for a developmentally disabled adult child has from a guardian who cares for an elderly adult. My daughter is on Medicaid, and she can't have an estate worth more than \$2,000. The court I

work with is very specific about when I have to file my reports and I don't have a problem. Lay guardians are mostly family members, and this bill paints with too broad a brush.

OTHER: The training the bill requires consists of a short video, which already exists on the AOC Office of Public Guardian's website; so, there is no additional cost to develop the training.

Persons Testifying: PRO: Representative Moeller, prime sponsor; Robert Nettleton, WSBA; David Lord, Disability Rights Washington; Louise Ryan, State Long Term Care Ombudsman Program.

CON: Bob Gee, Rob Kuebler, Susan Kuebler, John Mahaney, Tom Dean, parent guardians.

OTHER: Mellani McAleenan, Board of Judicial Administration.