

SENATE BILL REPORT

ESSB 5740

As Amended by House, April 5, 2011

Title: An act relating to preventing predatory guardianships of incapacitated adults.

Brief Description: Preventing predatory guardianships of incapacitated adults.

Sponsors: Senate Committee on Human Services & Corrections (originally sponsored by Senators Kastama, Chase and Roach).

Brief History:

Committee Activity: Human Services & Corrections: 2/17/11 [DPS].

Passed Senate: 3/05/11, 48-0.

Passed House: 4/05/11, 96-0.

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: That Substitute Senate Bill No. 5740 be substituted therefor, and the substitute bill do pass.

Signed by Senators Hargrove, Chair; Regala, Vice Chair; Stevens, Ranking Minority Member; Baxter, Carrell, Harper and McAuliffe.

Staff: Kevin Black (786-7747)

Background: Any person or entity may petition the court for the appointment of a guardian or limited guardian for an incapacitated person. The court must appoint a guardian ad litem to represent the allegedly incapacitated person in the guardianship proceeding.

Summary of Engrossed Substitute Bill: The court must provide information to a petitioner in a guardianship proceeding. The minimum time for service by registered or certified mail before a guardianship hearing is increased from ten to 15 days. A written request to modify or terminate a guardianship by an unrepresented party must be deemed by the court as a motion for an order to show cause why the motion should not be granted. The court must schedule a hearing on such a request unless the request appears to be frivolous. If there is a prima facie showing that a professional guardian has breached a guardianship duty, a burden of proof is placed on the professional guardian to establish that the guardian's conduct is appropriate. The court must grant a motion by the petitioner for the guardianship to dismiss a professional guardian within one year unless the motion appears to be frivolous, based on an improper motive, or discharging the guardian would create a detriment to the

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incapacitated person. When recommending a guardian, a guardian ad litem must disclose in writing any relationship or circumstance that would cause the appearance of a conflict of interest to the court, family members of the incapacitated person, and anyone else who has requested notice. The Administrative Office of the Courts and the Long-Term Care Ombudsman must publish information about guardianships on a website.

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 on Original Bill: PRO: This bill allows adequate and effective information to be given to the families of an incapacitated person before a guardian is appointed. We seldom hear from citizens who have to deal with the guardianship system. Our family was exploited by a guardian, who did not protect the family's interests. It is very hard to get rid of a guardian. Court proceedings over guardianships are expensive. Guardians who engage in wrongdoing should be removed. Our seniors need your help. The courts should take a more active role in monitoring guardians.

CON: The system is set up to allow for any interested person to come to the court and correct a problem. These provisions allow for people with bad motives to cause cost, damage, and emotional tribulation. This bill should not apply to lay guardians, who are the vast majority of all guardians, mostly on a volunteer basis. When professional guardians are often brought in, it is often because there is conflict within the family. In these situations, family members remain in conflict and frequently have financial motives to undermine the guardian and disrupt the process.

OTHER: These issues were examined thoroughly by the Elder Law Task Force. There is merit to expanding consumer education about guardianships. There is potential hazard in allowing a petitioner to fire a guardian without cause, because the petitioner may have financial interests that conflict with the best interests of the incapacitated person. Entities such as nursing homes frequently petition for guardianship. We need to explore how we can be more responsive to complaints about guardians.

Persons Testifying: PRO: Senator Kastama, prime sponsor; Steven Bradley, Claudia Donnelly, citizen.

CON: Karen Treiger, Elder Law Section, Washington State Bar Association.

OTHER: David Lord, Disability Rights Washington; Louise Ryan, Long-Term Care Ombudsman.

House Amendment(s):

- Removes provisions requiring the court to deem a written request to remove a guardian as an order to show cause, requiring the court to schedule a hearing to modify or terminate the guardianship, and providing for the burden of proof to shift onto a professional guardian if a prima facie case is established that the guardian has breached a duty.
- Removes the requirement that the court provide information to the petitioner for a guardianship.
- The obligation of a guardian ad litem to disclose relationships or circumstances that could give rise to an apparent conflict of interest is limited to the previous ten years.
- Specifies what information about guardianships must be provided by the Administrative Office of the Courts and the Long-Term Care Ombudsman.
- Requires a guardian of a person's estate with a fair market value greater than \$200,000 to file quarterly accounts of the administration of the estate unless waived by the court or the recipients of the accounts.
- Requires a court to remove a guardian or limited guardian and appoint a successor if the court finds that the guardian has intentionally falsified a document or account.