

HB 3170 (veto)

FILED

2009 MAY 11 PM 5: 25

OFFICE WEST VIRGINIA
SECRETARY OF STATE

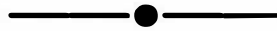
WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2009



ENROLLED

House Bill No. 3170

(By Delegates Webster, Wooten, Shook, Fleischauer,
Miley, Manchin, Ellem, Frazier, Lane and Shott)



Passed April 11, 2009

In Effect Ninety Days from Passage

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H. B. 3170

OFFICE WEST VIRGINIA
SECRETARY OF STATE

(BY DELEGATES WEBSTER, WOOTON, SHOOK, FLEISCHAUER,
MILEY, MANCHIN, ELLEM, FRAZIER, LANE AND SHOTT)

[Passed April 11, 2009; in effect ninety days from passage.]

AN ACT to amend and reenact §44A-1-7, §44A-1-9, §44A-1-10 and §44A-1-14 of the Code of West Virginia, 1931, as amended; to amend and reenact §44A-2-1, §44A-2-5, §44A-2-6, §44A-2-7, §44A-2-12, §44A-2-13, §44A-2-13a, §44A-2-14 and §44A-2-15 of said code; to amend and reenact §44A-3-11 of said code; and to amend and reenact §44A-4-1 and §44A-4-5 of said code, all relating to the West Virginia Guardianship and Conservatorship Act; clarifying the filing and review of the periodic accounting of conservators of incapacitated persons generally; clarifying transfer of venue; clarifying the posting of bond by conservators; authorizing the West Virginia Supreme Court of Appeals to coordinate education program and update materials and forms; expanding temporary protective orders to include freezing accounts and producing records; increasing filing fee for guardianship and conservatorship; transferring certain funds to the Supreme Court of Appeals; using additional fee for review of reports and accountings by fiduciary commissioner or other person; clarifying who can access case files; clarifying who is responsible for proper service; clarifying duties and fees of

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appointed counsel; clarifying when limited conservatorship is needed; clarifying orders of the court and time of entry; authorizing appointment of fiduciary commissioner or other person to review reports; creating a notice of appointment to be filed with the clerk of the county commission; increasing temporary guardianships and conservatorships to six months; clarifying procedure for subsequent petitions; clarifying time frame for reports and accountings; increasing penalties for failure to file reports and accountings; reporting elder abuse; clarifying when appointments terminate; clarifying duties of guardian and conservator subsequent to death of protected person; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

That §44A-1-7, §44A-1-9, §44A-1-10 and §44A-1-14 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §44A-2-1, §44A-2-5, §44A-2-6, §44A-2-7, §44A-2-12, §44A-2-13, §44A-2-13a, §44A-2-14 and §44A-2-15 of said code be amended and reenacted; that §44A-3-11 of said code be amended and reenacted; and that §44A-4-1 and §44A-4-5 of said code be amended and reenacted, all to read as follows:

CHAPTER 44A. WEST VIRGINIA GUARDIANSHIP AND CONSERVATORSHIP ACT.

ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS.

§44A-1-7. Transfer of venue following appointment.

1 (a) Following the appointment of a full or limited
2 guardian or conservator or committee, the court with
3 jurisdiction over the proceeding may order the transfer of
4 jurisdiction to another circuit court in this state or to an
5 appropriate tribunal in another state if it appears to the court
6 that the interests of the protected person will be best served

7 by such transfer. Transfer of jurisdiction to another state
8 shall be in accordance with the provisions of chapter forty-
9 four-c of this code.

10 (b) Upon the transfer, the previously appointed guardian
11 or conservator shall report to the county of transfer that is
12 assuming jurisdiction Any changes to the appointments shall
13 be made by the court assuming jurisdiction.

§44A-1-9. Posting of bonds; actions on bond.

1 (a) The court has the discretion to determine whether the
2 posting of a bond by a guardian, once appointed, is
3 necessary. No bond is required of any sheriff or
4 representative of the Department of Health and Human
5 Resources appointed as conservator or guardian, respectively.

6 (b) The court shall order the posting of a bond by a
7 conservator prior to appointment except where the
8 conservator is excused from posting bond under the
9 provisions of section eighteen, article four, chapter
10 thirty-one-a of this code. In determining the amount or type
11 of a conservator's bond, the court or mental hygiene
12 commissioner shall consider:

13 (1) The value of the personal estate and annual gross
14 income and other receipts within the conservator's control;

15 (2) The extent to which the estate has been deposited
16 under an arrangement requiring an order of court for its
17 removal;

18 (3) Whether an order has been entered waiving the
19 requirement that accountings be filed and presented or
20 permitting accountings to be presented less frequently than
21 annually;

22 (4) The extent to which the income and receipts are
23 payable directly to a facility responsible for or which has
24 assumed responsibility for the care or custody of the
25 protected person;

26 (5) The extent to which the income and receipts are
27 derived from state or federal programs that require periodic
28 accountings;

29 (6) Whether a guardian has been appointed, and if so,
30 whether the guardian has presented reports as required; and

31 (7) Whether the conservator was appointed pursuant to a
32 nomination which requested that bond be waived.

33 (c) Any required bond may be with a surety and in an
34 amount and form as the court may order and the court may
35 order additional bond or reduce the bond whenever the court
36 finds that a modification is in the best interests of the
37 protected person or of the estate. The court may allow a
38 property bond in lieu of a cash bond. Proof of bonding must
39 be submitted to the court within thirty days of entry of the
40 order regarding bond.

41 (d) In case of a breach of any condition placed on the
42 bond of any guardian or conservator, an action may be
43 instituted by any interested person for the use and benefit of
44 the protected person, for the estate of the protected person or
45 for the beneficiaries of the estate.

46 (e) The following requirements and provisions apply to
47 any bond which the court may require under this section:

48 (1) Sureties are jointly and severally liable with the
49 guardian or conservator and with each other;

50 (2) By executing an approved bond of a guardian or
51 conservator, the surety consents to the jurisdiction of the
52 court in any proceeding pertaining to the fiduciary duties of
53 the conservator and naming the surety as a party respondent.
54 Notice of any proceeding must be delivered to the surety or
55 mailed by registered or certified mail to the address of the
56 surety listed with the court in which the bond is filed. If the
57 party initiating a proceeding possesses information regarding
58 the address of a surety which would appear to be more
59 current than the address listed with the court, notice shall also
60 be mailed by registered or certified mail to the last address of
61 the surety known to the party initiating the proceeding;

62 (3) On petition of a successor guardian or conservator or
63 any interested person, a proceeding may be initiated against
64 a surety for breach of the obligation of the bond of the
65 preceding guardian or conservator; and

66 (4) The bond of the guardian or conservator is not void
67 after any recovery but may be proceeded against from time
68 to time until the whole penalty is exhausted.

69 (f) No proceeding may be commenced against the surety
70 on any matter as to which an action or proceeding against the
71 guardian or conservator is barred by adjudication or
72 limitation.

§44A-1-10. Mandatory education; written material; and forms.

1 (a) Any individual appointed to serve as a guardian or
2 conservator must receive educational material or complete
3 mandated educational training, unless the court enters an
4 order stating that the individual does not require the
5 mandated educational training because he or she has
6 completed the mandated educational training within the last
7 three years.

8 (b) Upon a determination that the individual who is the
9 subject of proceedings under this chapter is a protected
10 person, as defined in section four of this article, the required
11 educational training must be completed within thirty days of
12 the court's determination. Upon completion, the appointed
13 guardian or conservator shall provide an affidavit to the
14 court, certifying that the educational training has been
15 completed, and the court shall forthwith issue the order of
16 appointment in accordance with the provisions of section
17 thirteen, article two of this chapter.

18 (c) The West Virginia Supreme Court of Appeals shall
19 coordinate the education program for guardians and
20 conservators, shall update the program materials and requisite
21 forms at least every two years and shall also propose
22 legislative rules for promulgation, in accordance with the
23 provisions of chapter twenty-nine-a of this code, regarding
24 mandatory educational training for guardians and
25 conservators. The educational training may include the
26 following:

27 (1) Written materials;

28 (2) Recorded information, whether audio, visual or both;
29 or

30 (3) A combination of the above.

§44A-1-14. Temporary protective orders.

1 The court or mental hygiene commissioner may, at the
2 request of a petitioner or upon its own motion, issue
3 temporary protective orders freezing bank or investment
4 accounts, ordering the production of records and otherwise
5 prohibiting or limiting the expenditure, sale or other legal
6 transfer of any assets of the alleged protected person until a
7 final order is entered revoking the protective orders.

ARTICLE 2. PROCEDURE FOR APPOINTMENT.**§44A-2-1. Filing of petition; jurisdiction; fees; special revenue account established; duties of Auditor.**

1 (a) A petition for the appointment of a guardian or
2 conservator shall be filed with the clerk of the circuit court in
3 the county in which the alleged protected person resides or,
4 if an alleged protected person has been admitted to a health
5 care or correctional facility, in the county in which that
6 facility is located. A petition for the appointment of a
7 conservator for a missing person shall be filed with the clerk
8 of the circuit court in the county in which the missing person
9 last resided. The circuit clerk is not required to accept for
10 filing a petition that is not administratively complete.

11 (b) The circuit court in which the proceeding is first
12 commenced shall have exclusive jurisdiction unless that court
13 determines that a transfer of venue would be in the best
14 interests of the person alleged to need protection.

15 (c) The fee for filing a petition shall be \$110 payable
16 upon filing to the circuit clerk, \$75 of which shall be retained
17 by the circuit clerk and \$35 of which shall be remitted by the
18 circuit clerk to the special revenue account in the State
19 Treasury created in subsection (e) of this section.

20 (d) The person bringing the petition shall be responsible
21 for fees for filing the petition and other papers, for service of
22 process, and for copies of court documents and transcripts.
23 In the event that a guardian, conservator, or both, is
24 appointed by the court, such fees shall be reimbursed to the
25 individual who filed the petition from the protected person's
26 estate, if funds are available. Any person who is pecuniarily
27 unable to pay the fees and costs as set forth in article one,
28 chapter fifty-nine of this code and article two, chapter

29 fifty-one of this code will not be required to pay the fees and
30 costs.

31 (e) There is hereby created in the State Treasury a special
32 revenue account, which shall be an interest-bearing account,
33 to be known as the Enforcement of Guardianship and
34 Conservatorship Act Fund.

35 (f) The reports of guardians and inventory and
36 accountings of conservators required by this chapter shall be
37 examined semi-annually by the, fiduciary commissioner or
38 other person appointed by the court in accordance with
39 section eleven, article three of this chapter.

40 (g) The special revenue account known as the
41 Enforcement of Guardianship and Conservatorship Act Fund,
42 previously administered by the State Auditor, shall, on and
43 after the amendment and reenactment of this section, be
44 administered by the West Virginia Supreme Court of
45 Appeals. All moneys previously collected for deposit into
46 the fund pursuant to this chapter and not expended in
47 accordance with this chapter shall be transferred to the West
48 Virginia Supreme Court of Appeals. All collections shall be
49 deposited and used for payment of fiduciary commissioner or
50 other person appointed by the court for review of the reports
51 required by section eleven, article three of this chapter and
52 the education program required by section ten, article one of
53 this chapter.

§44A-2-5. Confidentiality.

1 Upon filing of a petition requesting appointment of a
2 guardian or conservator, all pleadings, exhibits and other
3 documents contained in the court file shall be considered
4 confidential and not open for public inspection, either during
5 the pendency of the case or after the case is closed. The

6 protected person, and his or her attorney, may inspect or copy
7 the file. Another party may file a petition stating the reasons
8 for inspecting or copying the file and, upon good cause
9 shown, the court or mental hygiene commissioner may
10 authorize the party, or his or her attorney, to inspect and copy
11 the file.

§44A-2-6. Notice of hearing.

1 (a) Upon the filing of the petition and evaluation report,
2 the court shall promptly issue a notice fixing the date, hour
3 and location for a hearing to take place within sixty days.

4 (b) The alleged protected person shall be personally
5 served with the notice, a copy of the petition and the
6 evaluation report not less than fourteen days before the
7 hearing. The person may not waive notice and a failure to
8 properly notify the person shall be jurisdictional.

9 (c) A copy of the notice, together with a copy of the
10 petition, shall be mailed by certified mail, return receipt
11 requested, by the petitioner, at least fourteen days before the
12 hearing to all individuals seven years of age or older and to
13 all entities whose names and post office addresses appear in
14 the petition. In the case of a missing person, a copy of the
15 petition for the appointment of a conservator shall be mailed
16 by certified mail, return receipt requested, by the petitioner,
17 at least fourteen days before the hearing to the last known
18 address of the missing person. A copy of certified mail
19 return receipts shall be filed in the office of the circuit clerk
20 on or before the date of hearing. It is the responsibility of the
21 petitioner to obtain proper service and file the appropriate
22 documentation with the circuit clerk before the hearing.

23 (d) The notice shall include a brief statement in large
24 print of the purpose of the proceedings and shall inform the

25 alleged protected person of the right to appear at the hearing,
26 the right to an attorney and the right to object to the proposed
27 appointment. Additionally, the notice shall include the
28 following statement in large print:

29 **POSSIBLE CONSEQUENCES OF A COURT**
30 **FINDING THAT YOU ARE INCAPACITATED**

31 At the hearing you may lose many of your rights. A
32 guardian may be appointed to make personal decisions for
33 you. A conservator may be appointed to make decisions
34 concerning your property and finances. The appointment
35 may affect control of how you spend your money, how your
36 property is managed and controlled, who makes your medical
37 decisions, where you live, whether you are allowed to vote
38 and other important rights.

39 (e) No person may be appointed a guardian or
40 conservator without first receiving proper notice and having
41 the opportunity to be present at a hearing.

§44A-2-7. Appointment of counsel.

1 (a) The court shall appoint legal counsel for the alleged
2 protected person to make recommendations to the court that
3 are in the best interests of the alleged protected person. In
4 appointing legal counsel, the court shall consider any known
5 preferences of the alleged protected person, or an alleged
6 protected person may hire and pay for an attorney of his or
7 her choice.

8 (b) Legal counsel shall have the following major areas of
9 concern: (1) Whether or not a guardian or conservator is
10 needed; (2) limitation of the role of the guardian or
11 conservator to the protected person's specific needs -- e.g.,
12 personal supervisor, business affairs, medical consent only;

13 (3) if needed, assure that the person or entity that will act in
14 the best interest of the protected person is appointed; (4) if
15 needed, assure the adequacy of the bond; and (5) if needed,
16 assure consideration of proper placement.

17 (c) In responsibly pursuing the major areas of concern set
18 forth in subsection (b) of this section, counsel may perform
19 any or all of the following: (1) Promptly notify the
20 individual and any caretaker of the appointment of counsel;
21 (2) contact any caretaker, review the file and all other
22 relevant information; (3) maintain contact with the client
23 throughout the case and assure that the client is receiving
24 services as are appropriate to the client's needs; (4) contact
25 persons who have or may have knowledge of the client; (5)
26 interview all possible witnesses; (6) pursue discovery of
27 evidence, formal and informal, including obtaining medical
28 and financial records; (7) file appropriate motions, including
29 temporary protective orders; (8) obtain independent
30 psychological examinations, medical examinations, home
31 studies, as needed; (9) advise the client on the ramifications
32 of the proceeding and inquire into the specific interests and
33 desires of the individual; (10) subpoena witnesses to the
34 hearing; (11) prepare testimony for cross-examination of
35 witnesses to assure relevant material is introduced; (12)
36 review all medical reports; (13) apprise the decision maker of
37 the individual's desires; (14) produce evidence on all relevant
38 issues; (15) interpose objections to inadmissible testimony;
39 (16) raise appropriate questions to all nominations for
40 guardian and conservator and the adequacy of the bond; (17)
41 take all steps to limit the scope of guardianship and
42 conservatorship to the individual's actual needs, and make all
43 arguments to limit the amount of the intervention; (18) ensure
44 that the court considers all issues as to the propriety of the
45 individual's current or intended housing or placement and
46 that the limitations are set forth in the order; (19) inform the
47 client of the right to appeal, and file an appeal to an order

48 when appropriate; (20) file a motion for modification of an
49 order or a petition for a writ of habeas corpus if a change of
50 circumstances occurs which warrants a modification or
51 termination upon counsel being reappointed by the court; and
52 (21) otherwise zealously represent the interests and desires of
53 the client while also reporting to the court what actions are in
54 the best interests of the client.

55 (d) The protected person shall have the right to an
56 independent expert of his or her choice to perform an
57 evaluation and present evidence.

58 (e) A person appointed by the court as counsel for a
59 nonindigent alleged protected person shall inform the court
60 or the mental hygiene commissioner of his or her hourly rate
61 at the onset of the case and seek approval of his or her fee for
62 the case by submitting it to the court or the mental hygiene
63 commissioner for approval using forms provided by the West
64 Virginia Supreme Court of Appeals. The hourly rate and fee
65 for the case must be reasonable in light of the going rate for
66 legal services, the complexity of the matter and the amount
67 of legal work involved. The court may set the fee at the time
68 of appointment.

§44A-2-12. Limited conservatorships.

1 A limited conservator may be appointed for an individual
2 deemed to be a protected person in need of a conservator
3 within the meaning of section four, article one of this chapter,
4 but whose property or financial affairs are so limited that
5 there is only one or more designated contexts for which a
6 limitation of the individual's legal rights is warranted.

§44A-2-13. Order of appointment; notice; notice of appointment.

1 (a) An order appointing a guardian or conservator may
2 only be issued by the court upon the following:

3 (1) The guardian or conservator has subscribed to and
4 filed an oath promising to faithfully perform the duties of the
5 office in accordance with all provisions of this chapter;

6 (2) Posting of any bond, if required; and

7 (3) The completion of mandatory education, as required
8 under the provisions of section ten, article one of this chapter,
9 unless the court enters an order stating that an individual does
10 not require educational training because he or she has
11 completed the mandatory education within the last three
12 years.

13 (b) In addition to the findings of fact and conclusions of
14 law required in section nine of this article, the order shall
15 include the specific areas of protection or assistance granted
16 in the case of a guardian and the specific areas of
17 management and assistance granted in the case of a
18 conservator and address other areas of concern pursuant to
19 the circumstances of the case.

20 (c) Within fourteen days following the entry of an order
21 of appointment, the guardian or conservator shall mail a copy
22 of the order of appointment, together with a brief statement
23 in large print of rights to seek an appeal for modification or
24 termination, to the protected person and to all individuals and
25 entities given notice of the petition.

26 (d) Within ten days following the entry of an order of
27 appointment, the circuit clerk shall mail a notice of
28 appointment for recordation in the office of the clerk of the
29 county commission to be recorded with the records of deeds
30 and records of powers of attorneys, and listed in the
31 appropriate indexes under the name of the protected person
32 stating the case name and number, the name of the protected
33 person, and the names of the guardian and conservator so that

34 persons are put on notice of the existence of a guardianship
35 or conservatorship.

§44A-2-13a. Time of entry of orders.

1 The mental hygiene commissioner or the court shall
2 prepare an order within fourteen days of the hearing directing
3 the appointees to complete the mandatory education and post
4 any required bond within thirty days of the hearing. After the
5 mandatory education is completed and the bond posted, then
6 the court shall enter a final order on the petition within
7 fourteen days.

§44A-2-14. Temporary guardians and conservators.

1 (a) The court may appoint a temporary guardian or
2 temporary conservator, or both, under this section upon a
3 finding that an immediate need exists, that adherence to the
4 procedures otherwise set forth in this chapter for the
5 appointment of a guardian or conservator may result in
6 significant harm to a person or the estate, and that no other
7 individual or entity appears to have authority to act on behalf
8 of the person, or that the individual or entity with authority to
9 act is unwilling, or has ineffectively or improperly exercised
10 the authority.

11 (b) A temporary guardian or temporary conservator shall
12 have only those powers and duties that are specifically set
13 forth in the order of appointment. The appointment of a
14 temporary guardian or temporary conservator shall expire
15 within six months unless it is terminated or extended for up
16 to six months by the court or mental hygiene commissioner
17 for good cause shown following a hearing.

18 (c) An appointment of a temporary guardian or temporary
19 conservator shall be made upon timely and adequate notice

20 to the protected person after appointment or notice of
21 appearance of counsel and after all other protections have
22 been afforded, in accordance with due process of law,
23 including any other conditions as the court may order. The
24 protected person may petition the court for a substitution of
25 a temporary guardian or temporary conservator at any time.

26 (d) Within five days following the entry of an order of
27 appointment, a temporary guardian or temporary conservator
28 shall mail a copy of the order of appointment, together with
29 a brief statement in large print of rights to seek an appeal for
30 modification or termination, to the person for whom the
31 appointment was made and to all individuals and entities that
32 would be entitled to notice of hearing on a petition for
33 appointment as set forth in section six of this article.

**§44A-2-15. Notice of hearing on petitions subsequent to the
appointment of a guardian or conservator.**

1 (a) Except as otherwise provided herein or as ordered by
2 the court for good cause shown, notice of hearing on a
3 petition for an order subsequent to the appointment of a
4 guardian or conservator shall be personally served upon the
5 protected person and mailed to an appointed counsel or
6 attorney of record, to those individuals who would be entitled
7 to notice of the filing of an original petition to appoint, to any
8 facility that is responsible for the care and custody of the
9 protected person, to the guardian or conservator, if the
10 guardian or conservator is not the petitioner, and to other
11 individuals or entities as the court may order.

12 (b) Unless otherwise ordered by the court, the notice shall
13 be personally served upon the protected person and mailed by
14 the petitioner by certified mail return receipt requested to
15 other parties entitled to notice at least fourteen days prior to
16 the hearing and shall be accompanied by a copy of the

17 petition and other relevant documents. A copy of the
18 certified mail return receipts shall be filed in the office of the
19 circuit clerk on or before the date of the hearing.

20 (c) The court or mental hygiene commissioner may
21 conduct hearings on subsequent petitions filed pursuant to
22 this chapter.

ARTICLE 3. GUARDIANSHIP AND CONSERVATORSHIP ADMINISTRATION.

§44A-3-11. Filing of reports and accountings; misdemeanor for failure to file; reporting elder abuse.

1 (a) Reports of guardians and accountings of conservators,
2 as described in this article shall be filed with the circuit clerk
3 of the county in which appointed and also with the fiduciary
4 commissioner of the county or other person if the court has
5 made a referral in its order:

6 (1) Within six months of being appointed;

7 (2) By December 31 of each year thereafter;

8 (3) When the court orders additional reports or
9 accountings to be filed;

10 (4) When the guardian or conservator resigns or is
11 removed; and

12 (5) When the appointment of the guardian or conservator
13 is terminated, except that in the case of a guardian, the court
14 may determine that there is no need for a report upon the
15 termination; and in the case of a conservator, no accounting
16 is required if all persons entitled to any proceeds of the estate
17 consent thereto.

18 (b) The circuit clerk shall notify the court if the required
19 reports are not filed or are administratively incomplete. The
20 fiduciary commissioner, or other person appointed by the
21 court or mental hygiene commissioner, shall review the
22 reports and accountings semi-annually, and may request
23 additional information from the guardian or conservator. If
24 the reports or accountings are not filed, or if there are any
25 questions or discrepancies in the reports or accountings, the
26 person reviewing the report shall notify the court or mental
27 hygiene commissioner for further investigation or action of
28 the court, including but not limited to, a court order
29 requesting copies of bank or investment records, appointing
30 counsel to investigate the matter or setting a hearing on the
31 matter.

32 (c) If the court has in its order made a referral to the
33 fiduciary commissioner of the county:

34 (1) The accounting shall be governed by and the fiduciary
35 commissioner shall handle the same under the provisions of
36 sections ten, eleven, twelve, thirteen and fourteen, article
37 four, chapter forty-four of this code, except that all
38 compensation and expenses of the conservator shall be
39 allowed and approved only by the circuit court in accordance
40 with the provisions of section thirteen, article one of this
41 chapter.

42 (2) The fiduciary commissioner may not publish any
43 notice concerning the filing of a proposed accounting, but
44 shall serve a copy of the proposed accounting of the
45 conservator together with the notice by United States mail on
46 the protected person, all individuals and entities given notice
47 of the petition and any other person or entity found to be
48 interested in the affairs of the protected person, all of whom
49 have standing to file exceptions to or falsify the accounting
50 before the fiduciary commissioner.

51 (3) In the settlement of the accounting of a conservator,
52 the fiduciary commissioner is entitled to fees as are allowed
53 for fiduciary commissioners in the handling of accountings
54 of a decedent's estate, or as otherwise set by order of the
55 circuit court.

56 (4) If the court or mental hygiene commissioner appoints
57 a person other than the fiduciary commissioner to review the
58 reports, such person shall report to the court as required by
59 this article. The court shall establish a fee for reviewing a
60 report which shall be paid by the Supreme Court of Appeals
61 from the Enforcement of Guardianship and Conservatorship
62 Act Fund.

63 (5) Any party feeling aggrieved of a settlement or
64 decision by the fiduciary commissioner concerning the
65 accounting may on motion filed within four months of the
66 settlement or decision appeal the same to the circuit court.

67 (d) Any guardian or conservator who knowingly violates
68 the provisions of this section is guilty of a misdemeanor and,
69 upon conviction thereof, shall be fined not less than \$100 nor
70 more than \$500.

71 (e) The parties, attorneys or mental hygiene
72 commissioner shall report violations of this section, or any
73 other alleged elder abuse violations, including criminal elder
74 abuse pursuant to section twenty-nine, article two, chapter
75 sixty-one of this code, to the Department of Health and
76 Human Resources or county prosecutor for further
77 investigation and action.

78 (f) The West Virginia Supreme Court of Appeals shall
79 prescribe forms for reports, accountings and inventories
80 required to be filed pursuant to the provisions of this article.

**ARTICLE 4. TERMINATION, REVOCATION AND
MODIFICATION OF
APPOINTMENTS.**

**§44A-4-1. Termination of appointment of guardian or
conservator.**

1 (a) The appointment of a guardian or conservator shall
2 terminate upon the death, resignation or removal of the
3 guardian or conservator.

4 (b) The appointment further terminates upon the death of
5 the protected person. The guardian or conservator shall file
6 the certified death certificate of the protected person with the
7 circuit clerk with a final report or accounting.

8 (c) A guardianship or conservatorship shall terminate
9 whenever jurisdiction is transferred to another state or if
10 ordered by the court following a hearing on the petition of
11 any interested person.

12 (d) In the case of a missing person, a conservatorship
13 shall terminate when the missing person is located or when
14 the person's death is established by the production of a
15 certified death certificate, or the person is presumed dead
16 pursuant to the provisions of article nine, chapter forty-four
17 of this code.

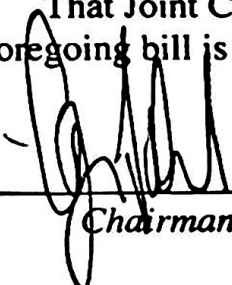
18 (e) The court or the mental hygiene commissioner shall
19 prepare a termination order dismissing the guardianship or
20 conservatorship case and discharging any bond posted by the
21 guardian or conservator.

22 (f) A termination of an appointment does not affect the
23 liability of a guardian or conservator for prior acts or the
24 responsibility of a conservator to account for the estate of the
25 protected person.

§44A-4-5. Duty of guardian or conservator subsequent to death of protected person.

1 In the absence of an advanced directive, such as a will,
2 living will or power of attorney, or preneed burial or
3 cremation contract, after the death of the protected person, a
4 guardian or a conservator, if there is no guardian, shall
5 continue to have authority to make decisions regarding the
6 body of the deceased protected person for the purposes of
7 authorizing an autopsy and making funeral arrangements.
8 The guardian's or conservator's authority shall continue until
9 an executor or executrix or an administrator or administratrix
10 has been appointed.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.



Chairman Senate Committee



Chairman House Committee

Originating in the House.

In effect ninety days from passage.



Clerk of the Senate



Clerk of the House of Delegates



President of the Senate



Speaker of the House of Delegates

The within is disapproved this the 11th
day of May 2009.



Governor

PRESENTED TO THE
GOVERNOR

MAY 5 2009

Time 2:50 pm