

1 **ENROLLED**

2 **COMMITTEE SUBSTITUTE**

3 **for**

4 **H. B. 2815**

5 (By Delegates Miley, Fleischauer, Skinner,
6 Shott and Barill)

7 (By Request of the Supreme Court of Appeals)

8 [Passed April 10, 2013; in effect ninety days from passage.]

9
10 AN ACT to amend and reenact §44-10-3 of the Code of West Virginia,
11 1931, as amended, relating generally to clarifying and
12 modifying the process of appointing and terminating guardians
13 for minors; authorizing concurrent jurisdiction of circuit and
14 family courts for appointment of guardian for a minor;
15 providing venue for petition for appointment; providing
16 proceedings to be conducted in accordance with the Rules of
17 Practice and Procedure for Minor Guardianship Proceedings;
18 providing process for appointment of guardian; setting forth
19 when the circuit clerk is to notify the court of the filing of
20 a petition and when the court is to hold a hearing; setting
21 forth what the court is to consider in appointing a guardian;
22 providing for the appointment of a temporary guardian;
23 providing for the termination or revocation of the
24 guardianship appointment; and providing for the
25 confidentiality of a guardian proceeding.

26 *Be it enacted by the Legislature of West Virginia:*

1 That §44-10-3 of the Code of West Virginia, 1931, as amended,
2 be amended and reenacted to read as follows:

3 **ARTICLE 10. GUARDIANS AND WARDS GENERALLY.**

4 **§44-10-3. Appointment and termination of guardian for a minor.**

5 (a) The circuit court and family court have concurrent
6 jurisdiction to appoint a guardian for a minor.

7 (b) Venue for a petition for appointment of guardianship is in
8 the county in which the minor has resided for the past six months
9 unless the court finds extraordinary circumstances for a sooner
10 filing. If the child is a nonresident of this state and only the
11 guardianship of the estate is sought the petition may be filed in
12 the county in which the child has an estate.

13 (c) All proceedings shall be conducted in accordance with the
14 Rules of Practice and Procedure for Minor Guardianship Proceedings.

15 (d) Any responsible person with knowledge of the facts
16 regarding the welfare and best interests of a minor may petition
17 for an appointment of a guardian except a parent or other person
18 whose rights to the minor have been terminated. No guardianship
19 petition may be considered if the child who is the subject of the
20 petition is involved in another court proceeding relating to
21 custody or guardianship or if the petitioner is a parent seeking
22 custodial rights adverse to the other parent.

23 (e) Within two days of the filing of a petition for the
24 appointment of a guardian, the circuit clerk shall notify the
25 court. The court shall hold a hearing upon the petition for the
26 appointment of a guardian within ten days after the petition is

1 filed. If all persons entitled to service in accordance with the
2 Rules of Practice and Procedure for Minor Guardianship Proceedings
3 have not been served at least five days prior to the hearing or
4 have not waived service the court shall continue the hearing but
5 may appoint a temporary guardian pursuant to subsection (g) below.

6 (f) The court may appoint a guardian for a minor if the court
7 finds by clear and convincing evidence that the appointment is in
8 the minor's best interest and:

9 (1) The parents consent;

10 (2) The parents' rights have been previously terminated;

11 (3) The parents are unwilling or unable to exercise their
12 parental rights;

13 (4) The parents have abandoned their rights by a material
14 failure to exercise them for a period of more than six months; or

15 (5) There are extraordinary circumstances that would, in all
16 reasonable likelihood, result in serious detriment to the child if
17 the petition is denied.

18 (g) Whether or not one or more of the conditions of subsection
19 (f) have been established, the court may appoint a temporary
20 guardian for a minor upon a showing that an immediate need exists
21 or that a period of transition into the custody of a parent is
22 needed so long as the appointment is in the best interest of the
23 minor. The temporary guardian has the authority of a guardian
24 appointed pursuant to subsection (f) but the duration of the
25 temporary guardianship may not exceed six months. A temporary
26 guardianship may be extended beyond six months upon further order

1 of the court finding continued need in the best interest of the
2 minor.

3 (h) Any suitable person may be appointed as the minor's
4 guardian. A parent shall receive priority subject only to the
5 provisions of subsections (d) and (f) above. However, in every
6 case the competency and fitness of the proposed guardian must be
7 established and a determination made that the appointment is in the
8 best interest of the child.

9 (i) The court, the guardian or the minor may revoke or
10 terminate the guardianship appointment when:

11 (1) The minor reaches the age of eighteen and executes a
12 release stating that the guardian's estate was properly
13 administered and that the minor has received the assets of the
14 estate from the guardian;

15 (2) The guardian or the minor dies;

16 (3) The guardian petitions the court to resign and the court
17 enters an order approving the resignation; or

18 (4) A petition is filed by the guardian, the minor, a parent
19 or an interested person or upon the motion of the court stating
20 that the minor is no longer in need of the assistance or protection
21 of a guardian due to changed circumstances and the termination of
22 the guardianship would be in the minor's best interest.

23 (j) For a petition to revoke or terminate a guardianship filed
24 by a parent, the burden of proof is on the moving party to show by
25 a preponderance of the evidence that there has been a material
26 change of circumstances and that a revocation or termination is in

1 the child's best interest.

2 (k) A guardianship may not be terminated by the court if there
3 are any assets in the estate due and payable to the minor. Another
4 guardian may be appointed upon the resignation of a guardian
5 whenever there are assets in the estate due and payable to the
6 minor.

7 (l) Other than court orders and case indexes, all other
8 records of a guardian proceeding involving a minor are confidential
9 and shall not be disclosed to anyone who is not a party to the
10 proceeding, counsel of record for the proceeding, the court
11 presiding over the proceeding or other family or circuit court
12 presiding over another proceeding involving the minor absent a
13 court order permitting examination of such records.