

HB 2732

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# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1995



# ENROLLED

HOUSE BILL No. 2732

(By Delegate Ashley)



Passed March 10, 1995

In Effect Ninety Days From Passage



ENROLLED

# H. B. 2732

(BY DELEGATE ASHLEY)

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[Passed March 10, 1995; in effect ninety days from passage.]

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AN ACT to amend and reenact section eight, article two, chapter forty-four-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend article three of said chapter by adding thereto a new section, designated section fourteen-a, all relating to the nomination or appointment of guardians or conservators of protected persons; providing for the nomination of guardians or conservators; authorizing the nomination of successor guardians or conservators; and limiting the liability of guardians or conservators and of guardians or committees appointed under prior law.

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

That section eight, article two, chapter forty-four-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that article three of said chapter be amended by adding thereto a new section, designated section fourteen-a, all to read as follows:

**ARTICLE 2. PROCEDURE FOR APPOINTMENT.**

**§44A-2-8. Nomination of guardian or conservator of alleged or adjudicated protected person; preferences.**

- 1 (a) Any person who has sufficient capacity to form a

2 preference may at any time nominate any individual or  
3 entity to serve as his or her guardian or conservator. The  
4 nomination may be made in writing, by an oral request to  
5 the court, or may be proved by any other competent  
6 evidence. The designation of a representative under a valid  
7 medical power of attorney, a living will or of a surrogate  
8 decision-maker shall constitute competent evidence of the  
9 nomination of a guardian, and the designation of an  
10 attorney under a valid durable power of attorney shall  
11 constitute competent evidence of the nomination of a  
12 conservator.

13 (b) A guardian or conservator whose appointment has  
14 not been terminated or who has not been otherwise  
15 removed pursuant to the provisions of section four or  
16 section five of this article, may nominate a successor  
17 guardian or conservator for consideration by the court.  
18 The nomination may appear in a will or other writing and  
19 shall contain a brief statement of the reason or reasons for  
20 the nomination.

21 (c) The court shall appoint the one so nominated if the  
22 nominee is otherwise eligible to act and would serve in the  
23 best interests of the alleged or adjudicated protected  
24 person.

### ARTICLE 3. GUARDIANSHIP AND CONSERVATORSHIP AD- MINISTRATION.

#### **§44A-3-14a. No liability of present conservator or guardian for prior acts or failure to act of preceding conservators, guardians or committees.**

1 No liability may accrue to any present conservator or  
2 guardian appointed pursuant to the provisions of this  
3 chapter solely for the prior acts or failure to act of any  
4 committee or guardian appointed under prior law, as  
5 defined in subsection (f), section two, article one of this  
6 chapter, or solely for the prior acts or failure to act of any  
7 preceding conservator or guardian, as defined in section  
8 four, article one of this chapter. No liability may accrue to  
9 any guardian or committee appointed under prior law, as

10 defined in subsection (f), section two, article one of this  
11 chapter, solely for the acts or failure to act of any  
12 preceding guardian and committee.

*[Faint, illegible handwritten text, possibly a signature or notes]*

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

*Randy Schenker*  
\_\_\_\_\_  
Chairman Senate Committee

*Ernest C Moore*  
\_\_\_\_\_  
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

*Carroll E. Allen*  
\_\_\_\_\_  
Clerk of the Senate

*Donald L. Kopp*  
\_\_\_\_\_  
Clerk of the House of Delegates.

*Earl Ray Tomblin*  
\_\_\_\_\_  
President of the Senate

*Rich Alden*  
\_\_\_\_\_  
Speaker of the House of Delegates

The within \_\_\_\_\_ this the \_\_\_\_\_  
day of \_\_\_\_\_, 1995.

\_\_\_\_\_  
Governor



PRESENTED TO THE

GOVERNOR

Date 3/31/95

Time 2:44 pm