

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1996



ENROLLED

HOUSE BILL No. 4798

(By Delegates Douglas, Ashley + Pined)



Passed March 9, 1996

In Effect Ninety Days From Passage



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WEST VIRGINIA LEGISLATURE
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ENROLLED
H. B. 4798

(BY DELEGATES DOUGLAS, ASHLEY AND PINO)

[Passed March 9, 1996; in effect ninety days from passage.]

OK
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3/11/96

AN ACT to amend and reenact sections seven and eight, article one, chapter forty-four^a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to transfer of venue following appointment and appointment of new guardian or conservator; appointment of adult protective services; and requirement that adult protective services accept the appointment in limited circumstances.

RECORDED
03 APR - 1 11 4:19

Be it enacted by the Legislature of West Virginia:

That sections seven and eight, article one, chapter forty-four-a of the code of West Virginia, one thousand nine hundred thirty-one as amended, be amended, to read as follows:

ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS.

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

1 Following the appointment of a full or limited guard-
2 ian or conservator or committee, the court with jurisdiction
3 over the proceeding may, upon petition, order the transfer
4 of jurisdiction to another circuit court in this state or to an
5 appropriate tribunal in another state if it appears to the
6 court that the interests of the protected person will be best
7 served by such transfer. Upon the transfer, the court shall
8 appoint a new guardian or conservator in the county as-
9 suming jurisdiction and shall discharge the original ap-
10 pointee.

§44A-1-8. Persons and entities qualified to serve as guardian or conservator.

1 (a) Any adult individual may be appointed to serve as
2 a guardian, a conservator, or both, upon determination by
3 the court that the individual is capable of providing an
4 active and suitable program of guardianship or conserva-
5 torship for the protected person: *Provided*, That such
6 individual is not employed by or affiliated with any public
7 agency, entity or facility which is providing substantial
8 services or financial assistance to the protected person.

9 (b) Any nonprofit corporation chartered in this state
10 and licensed as set forth in subsection (c) of this section or
11 a public agency that is not a provider of health care servic-
12 es to the protected person may be appointed to serve as a
13 guardian, a conservator, or both: *Provided*, That such
14 entity is capable of providing an active and suitable pro-
15 gram of guardianship or conservatorship for the protected
16 person and is not otherwise providing substantial services
17 or financial assistance to the protected person.

18 (c) A nonprofit corporation chartered in this state may
19 be appointed to serve as a guardian or conservator or as a
20 limited or temporary guardian or conservator for a pro-
21 tected person if it is licensed to do so by the secretary of
22 health and human resources. The secretary shall propose
23 legislative rules, for promulgation in accordance with the
24 provisions of chapter twenty-nine-a of this code, for the
25 licensure of such nonprofit corporations and shall provide
26 for the review of such licenses. The rules shall, at a mini-
27 mum, establish standards to assure that any corporation
28 licensed for such guardianship or conservatorship:

29 (1) Has sufficient fiscal and administrative resources to
30 perform the fiduciary duties and make the reports and
31 accountings required by this chapter;

32 (2) Will respect and maintain the dignity and privacy
33 of the protected person;

34 (3) Will protect and advocate the legal human rights of
35 the protected person;

36 (4) Will assure that the protected person is receiving
37 appropriate educational, vocational, residential and medi-
38 cal services in the setting least restrictive of the individual's

39 personal liberty;

40 (5) Will encourage the protected person to participate
41 to the maximum extent of his or her abilities in all deci-
42 sions affecting him or her and to act in his or her own
43 behalf on all matters in which he or she is able to do so;

44 (6) Does not provide educational vocational, residen-
45 tial or medical services to the protected person; and

46 (7) Has written provisions in effect for the distribution
47 of assets and for the appointment of temporary guardians
48 and conservators for any protected persons it serves in the
49 event the corporation ceases to be licensed by the depart-
50 ment of health and human resources or otherwise becomes
51 unable to serve as guardian.

52 (d) A duly licensed nonprofit corporation that has
53 been appointed to serve as a guardian or as a conservator
54 pursuant to the provisions of this article is entitled to com-
55 pensation in accordance with the provisions of section
56 thirteen of this article.

57 (e) Except as provided in section thirteen of this arti-
58 cle, no guardian or conservator nor any officer, agent,
59 director, servant or employee of any such guardian or
60 conservator shall do business with or in any way profit,
61 either directly or indirectly, from the estate or income of
62 any protected person for whom services are being per-
63 formed by such guardian or conservator.

64 (f) Any bank or trust company authorized to exercise
65 trust powers or to engage in trust business in this state may
66 be appointed as a conservator if the court determines it is
67 capable of providing suitable conservatorship for the pro-
68 tected person.

69 (g) The department of adult protective services or a
70 department designated by the secretary of health and
71 human resources may be appointed to serve as a guardian,
72 a conservator, or both, for individuals under its care or to
73 whom it is providing services or financial assistance, but
74 such appointment may only be made if there is no other
75 individual, nonprofit corporation, bank or trust company,
76 or other public agency that is equally or better qualified

77 and willing to serve: *Provided*, That when venue is trans-
78 ferred pursuant to the provisions of this article and any
79 sheriff was initially appointed as guardian or conservator
80 or committee for the person, the department may not
81 refuse to accept that appointment.

82 (h) The sheriff of the county in which a court has
83 assumed jurisdiction may be appointed as a guardian, a
84 conservator, or both.

85 (i) Other than a bank or trust company authorized to
86 exercise trust powers or to engage in trust business in this
87 state, a person who has an interest as a creditor of a pro-
88 tected person shall not be eligible for appointment as
89 either a guardian or conservator of the protected person.

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

Rudy Schooner
Chairman Senate Committee

Rudy Seavitt
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Carroll B. Adams
Clerk of the Senate

Suzanne M. Gray
Clerk of the House of Delegates

Earl Ray Tomblin
President of the Senate

Paul C. Leavell
Speaker of the House of Delegates

The within *is approved* this the *1st*
day of *April*, 1996.

Easton Carpenter
Governor

PRESENTED TO THE

GOVERNOR

Date

3/27/96

Time

2:59 pm