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SECOND REGULAR SESSION, 2000



ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 4672

(By Delegates Rowe, J. Smith, Douglas,
Compton, Capito, Smirl and Coleman)



Passed March 11, 2000

In Effect July 1, 2000

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COMMITTEE SUBSTITUTE

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H. B. 4672

(BY DELEGATES ROWE, J. SMITH, DOUGLAS,
COMPTON, CAPITO, SMIRL AND COLEMAN)

[Passed March 11, 2000; in effect July 1, 2000.]

AN ACT to amend and reenact sections three, four, eight, nine and ten, article one, chapter forty-four-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one, two, four, ten and thirteen, article two of said chapter; and to amend and reenact sections four, eight, eleven, thirteen and fourteen, article three of said chapter, all relating generally to guardians and conservators; adding definitions; adding and addressing qualifications; clarifying educational requirements; addressing de facto guardians and conservators; addressing liability of guardians and conservators and sureties; creating misdemeanor for certain violations; providing criminal penalties; creating a special revenue fund; increasing filing fees for petitions for appointment as guardian or conservator; requiring state auditor to conduct annual examination of accounts; requiring state auditor to prescribe forms for use by conservators

and guardians; requiring additional information in petitions for appointment as guardian or conservators; providing notice of sale or abandonment of property of estate of protected person; and requiring biannual reports by conservators within the first year.

Be it enacted by the Legislature of West Virginia:

That sections three, four, eight, nine and ten, article one, chapter forty-four-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections one, two, four, ten and thirteen, article two of said chapter be amended and reenacted; and that sections four, eight, eleven, thirteen and fourteen, article three of said chapter be amended and reenacted, all to read as follows:

ARTICLE 1. DEFINITIONS AND GENERAL PROVISIONS.

§44A-1-3. Advance directives.

1 The existence of a living will, medical power of attorney,
2 durable power of attorney or other advance directive, duly
3 executed by a person alleged to be a “protected person”, as
4 defined in section four of this article, or the prior appointment
5 of a surrogate decision-maker for the protected person may
6 eliminate, limit or supersede the need for the assistance or
7 protection of a guardian or conservator, and any person so
8 appointed is to be the first preferred nominee for guardian or
9 conservator, as set forth in section eight, article two of this
10 chapter.

§44A-1-4. Definitions.

1 As used in this chapter, unless a different meaning is clearly
2 required by the context:

3 (1) “Conservator” means a person appointed by the court
4 who is responsible for managing the estate and financial affairs

5 of a protected person, and, where the context plainly indicates,
6 the term “conservator” means or includes a “limited conserva-
7 tor” or a “temporary conservator.”

8 (2) “De facto guardian” means a person who is not the
9 medical power of attorney representative or appointed surrogate
10 and has assumed substantial responsibility for any of the
11 personal affairs of another person later found to be a protected
12 person.

13 (3) “De facto conservator” means a person who is not the
14 power of attorney representative or appointed surrogate and has
15 assumed substantial responsibility for managing any portion of
16 the estate and financial affairs of another person later found to
17 be a protected person.

18 (4) “Estate” means real and personal property or any
19 interest in the property and means anything that may be the
20 subject of ownership.

21 (5) “Guardian” means a person appointed by the court who
22 is responsible for the personal affairs of a protected person, and,
23 where the context plainly indicates, the term “guardian” means
24 or includes a “limited guardian” or a “temporary guardian.”

25 (6) “Interested person” means:

26 (A) An individual who is the subject of a guardianship or
27 conservatorship proceeding;

28 (B) A guardian or conservator of a protected person; and

29 (C) Any other person with an actual and substantial interest
30 in the proceeding, either generally or as to a particular matter,
31 as distinguished from a person who has only a nominal, formal,
32 or technical interest in or connection with the proceeding.

33 (7) "Limited conservator" means a person appointed by the
34 court who has only those responsibilities for managing the
35 estate and financial affairs of a protected person, as specified in
36 the order of appointment.

37 (8) "Limited guardian" means one appointed by the court
38 who has only those responsibilities for the personal affairs of a
39 protected person, as specified in the order of appointment.

40 (9) "Living will" means a living will existing and duly
41 executed in accordance with the provisions of section three,
42 article thirty, chapter sixteen of this code.

43 (10) "Medical power of attorney" means a power of
44 attorney existing and duly executed in accordance with the
45 provisions of section six, article thirty-a, chapter sixteen of this
46 code or existing and executed in accordance with the laws of
47 another state.

48 (11) "Missing person" means an adult individual, eighteen
49 years of age or older, who is absent from his or her usual place
50 of residence in the state and whose whereabouts are unknown
51 for a period of six months or more.

52 (12) "Person" means, generally, a natural person, any
53 corporation, association, partnership or other business entity,
54 any political subdivision or other public agency, public official
55 or any estate, trust or other collection of properties to which the
56 law attributes the capacity of having rights or duties.

57 (13) "Protected person" means an adult individual,
58 eighteen years of age or older, who has been found by a court,
59 because of mental impairment, to be unable to receive and
60 evaluate information effectively or to respond to people, events,
61 and environments to such an extent that the individual lacks the
62 capacity: (A) To meet the essential requirements for his or her
63 health, care, safety, habilitation, or therapeutic needs without

64 the assistance or protection of a guardian; or (B) to manage
65 property or financial affairs or to provide for his or her support
66 or for the support of legal dependents without the assistance or
67 protection of a conservator. A finding that the individual
68 displays poor judgment, alone, is not sufficient evidence that
69 the individual is a protected person within the meaning of this
70 subsection. "Protected person" also means a person whom a
71 court has determined is a missing person.

72 (14) "Surrogate decision-maker" means an individual
73 identified as such by an attending physician in accordance with
74 the provisions of section seven, article thirty-b, chapter sixteen
75 of this code.

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

1 (a) Any adult individual may be appointed to serve as a
2 guardian, a conservator, or both, upon a showing by the
3 individual of the necessary education, ability and background
4 to perform the duties of guardian or conservator and upon a
5 determination by the court that the individual is capable of
6 providing an active and suitable program of guardianship or
7 conservatorship for the protected person: *Provided*, That the
8 court may, after first determining it to be in the best interest of
9 the protected person, appoint coguardians, coconservators, or
10 both: *Provided, however*, That the individual is not employed
11 by or affiliated with any public agency, entity or facility which
12 is providing substantial services or financial assistance to the
13 protected person. Any person being considered by a court for
14 appointment as a guardian or conservator shall provide informa-
15 tion regarding any crime, other than traffic offenses, of which
16 he or she was convicted. The court shall consider this informa-
17 tion in determining the person's fitness to be appointed a
18 guardian or conservator.

19 (b) Any nonprofit corporation chartered in this state and
20 licensed as set forth in subsection (c) of this section or a public
21 agency that is not a provider of health care services to the
22 protected person may be appointed to serve as a guardian, a
23 conservator, or both: *Provided*, That the entity is capable of
24 providing an active and suitable program of guardianship or
25 conservatorship for the protected person and is not otherwise
26 providing substantial services or financial assistance to the
27 protected person.

28 (c) A nonprofit corporation chartered in this state may be
29 appointed to serve as a guardian or conservator or as a limited
30 or temporary guardian or conservator for a protected person if
31 it is licensed to do so by the secretary of health and human
32 resources. The secretary shall propose legislative rules, for
33 promulgation in accordance with the provisions of chapter
34 twenty-nine-a of this code, for the licensure of nonprofit
35 corporations and shall provide for the review of the licenses.
36 The rules shall, at a minimum, establish standards to assure that
37 any corporation licensed for guardianship or conservatorship:

38 (1) Has sufficient fiscal and administrative resources to
39 perform the fiduciary duties and make the reports and
40 accountings required by this chapter;

41 (2) Will respect and maintain the dignity and privacy of the
42 protected person;

43 (3) Will protect and advocate the legal human rights of the
44 protected person;

45 (4) Will assure that the protected person is receiving
46 appropriate educational, vocational, residential and medical
47 services in the setting least restrictive of the individual's
48 personal liberty;

49 (5) Will encourage the protected person to participate to the
50 maximum extent of his or her abilities in all decisions affecting
51 him or her and to act in his or her own behalf on all matters in
52 which he or she is able to do so;

53 (6) Does not provide educational, vocational, residential or
54 medical services to the protected person; and

55 (7) Has written provisions in effect for the distribution of
56 assets and for the appointment of temporary guardians and
57 conservators for any protected persons it serves in the event the
58 corporation ceases to be licensed by the department of health
59 and human resources or otherwise becomes unable to serve as
60 guardian.

61 (d) A duly licensed nonprofit corporation that has been
62 appointed to serve as a guardian or as a conservator pursuant to
63 the provisions of this article is entitled to compensation in
64 accordance with the provisions of section thirteen of this article.

65 (e) Except as provided in section thirteen of this article, no
66 guardian or conservator nor any officer, agent, director, servant
67 or employee of any guardian or conservator may do business
68 with or in any way profit, either directly or indirectly, from the
69 estate or income of any protected person for whom services are
70 being performed by the guardian or conservator.

71 (f) Any bank or trust company authorized to exercise trust
72 powers or to engage in trust business in this state may be
73 appointed as a conservator if the court determines it is capable
74 of providing suitable conservatorship for the protected person.

75 (g) The secretary of the department of health and human
76 resources shall designate a division or agency under his or her
77 jurisdiction which may be appointed to serve as a guardian, but
78 an appointment may only be made if there is no other individ-
79 ual, nonprofit corporation or other public agency that is equally

80 or better qualified and willing to serve: *Provided*, That when
81 any sheriff was initially appointed as guardian for the person,
82 the department may not refuse to accept the guardianship
83 appointment. If the department has been appointed as conserva-
84 tor, it may petition the circuit court to be released as conserva-
85 tor.

86 (h) The sheriff of the county in which a court has assumed
87 jurisdiction may be appointed as a conservator but the appoint-
88 ment may only be made if there is no other individual, nonprofit
89 corporation or other public agency that is equally or better
90 qualified and willing to serve: *Provided*, That when the
91 department of health and human resources was initially
92 appointed as conservator for the person, the sheriff may not
93 refuse to accept the conservatorship appointment. If the sheriff
94 has been appointed as guardian, he or she may petition the
95 circuit court to be released as guardian.

96 (i) Other than a bank or trust company authorized to
97 exercise trust powers or to engage in trust business in this state,
98 a person who has an interest as a creditor of a protected person
99 is not eligible for appointment as either a guardian or conserva-
100 tor of the protected person.

§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 necessary.
3 No bond is required of any sheriff or representative of the
4 department of health and human resources appointed as
5 conservator or guardian.

6 (b) The court shall require the posting of a bond by a
7 conservator upon appointment except where the conservator is
8 excused from posting bond under the provisions of section
9 eighteen, article four, chapter thirty-one-a of this code. In

10 determining the amount or type of a conservator's bond, the
11 court shall consider:

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

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

16 (3) Whether an order has been entered waiving the require-
17 ment that accountings be filed and presented or permitting
18 accountings to be presented less frequently than annually;

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

22 (5) The extent to which the income and receipts are derived
23 from state or federal programs that require periodic
24 accountings;

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

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

29 (c) Any required bond shall be with a surety and in an
30 amount and form as the court may order, and the court may
31 order additional bond or reduce the bond whenever the court
32 finds that a modification is in the best interests of the protected
33 person or of the estate. The court may allow a property bond in
34 lieu of a cash bond. Proof of bonding must be submitted to the
35 court within thirty days of appointment.

36 (d) In case of a breach of any condition placed on the bond
37 of any guardian or conservator, an action may be instituted by

38 any interested person for the use and benefit of the protected
39 person, for the estate of the protected person or for the benefi-
40 ciaries of the estate.

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

43 (1) Sureties are jointly and severally liable with the
44 guardian/conservator and with each other;

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

57 (3) On petition of a successor guardian or conservator or
58 any interested person, a proceeding may be initiated against a
59 surety for breach of the obligation of the bond of the preceding
60 guardian or conservator; and

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

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

§44A-1-10. Mandatory education.

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 order
4 stating that the individual does not require the mandated
5 educational training because he or she has completed the
6 mandated educational training within the last three years.

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

17 (c) The secretary of health and human resources shall
18 develop and implement an educational program for guardians
19 and conservators. The secretary shall also propose legislative
20 rules for promulgation, in accordance with the provisions of
21 chapter twenty-nine-a of this code, regarding mandatory
22 educational training for guardians and conservators. The
23 educational training may include the following:

- 24 (1) Written materials;
- 25 (2) Recorded information, whether audio, visual or both; or
- 26 (3) A combination of the above.

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 conser-
2 vator shall be filed with the clerk of the circuit court in the
3 county in which the alleged protected person resides, or, if an
4 alleged protected person has been admitted to a health care or
5 correctional facility, in the county in which that facility is
6 located. A petition for the appointment of a conservator for a
7 missing person shall be filed with the clerk of the circuit court
8 in the county in which the missing person last resided.

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

13 (c) The fee for filing a petition shall be ninety dollars,
14 payable upon filing to the circuit clerk, seventy-five dollars of
15 which shall be retained by the circuit clerk and fifteen dollars
16 of which shall be remitted by the circuit clerk to the special
17 revenue account in the state treasury created in subsection (d)
18 of this section. The person bringing the petition shall be
19 responsible for fees for filings of the petition and other papers,
20 for service of process, and for copies of court documents and
21 transcripts. In the event that a guardian, conservator, or both, is
22 appointed by the court, such fees shall be reimbursed to the
23 individual who filed the petition from the protected person's
24 estate, if funds are available. Any person who is pecuniarily
25 unable to pay such fees and costs as set forth in article one,
26 chapter fifty-nine of this code and article two, chapter fifty-one
27 of this code will not be required to pay said fees and costs.

28 (d) There is hereby created in the state treasury a special
29 revenue account, which shall be an interest bearing account, to
30 be known as the "enforcement of guardianship and conservator-
31 ship act fund".

32 (e) The accounts established pursuant to the provisions of
33 this chapter shall be examined annually by the state auditor in
34 accordance with the provisions of section seven, article nine,
35 chapter six of this code, and the state auditor shall authorize
36 payments from the fund created in subsection (d) of this section
37 for expenses incurred in performing such examinations.

§44A-2-2. Who may file petition; contents.

1 (a) A petition for the appointment of a guardian, a conser-
2 vator, or both, may be filed by the individual alleged to be a
3 protected person, by a person who is responsible for the
4 individual's care or custody, by the facility providing care to
5 the individual, by the person that the individual has nominated
6 as guardian or conservator, by a person acting as a de facto
7 guardian or de facto conservator or by any other interested
8 person, including, but not limited to, the department of health
9 and human resources.

10 (b) A petition for the appointment of a guardian, a conser-
11 vator, or both, shall state the petitioner's name, place of
12 residence, post office address, and relationship to the alleged
13 protected person, and shall, to the extent known as of the date
14 of filing, include the following:

15 (1) The alleged protected person's name, date of birth,
16 place of residence or location and post office address;

17 (2) The names and post office addresses of the alleged
18 protected person's nearest relatives, in the following order:

19 (i) The spouse and children, if any; or if none

20 (ii) The parents and brothers and sisters, if any; or if none

21 (iii) The nearest known relatives who would be entitled to
22 succeed to the person's estate by intestate succession as set
23 forth in article one, chapter forty-two of this code.

24 Once a relative or several relatives have been identified in
25 one of the aforementioned categories, relatives in a lower
26 category do not have to be listed in the petition;

27 (3) The name, place of residence or location and post office
28 address of the individual or facility that is responsible for the
29 person's care or custody, any person acting as a de facto
30 guardian or de facto conservator or any medical power of
31 attorney representative or appointed surrogate, and a detailed
32 list of the acts performed by such person on behalf of the
33 protected person.

34 (4) The name, place of residence or location and post office
35 address of any person designated as a surrogate decision-maker
36 for the alleged protected person, or of any representative or
37 representatives designated under a durable power of attorney,
38 medical power of attorney or living will, of which the alleged
39 protected person is the principal, and the petitioner shall attach
40 a copy of any of those documents, if available;

41 (5) The name, post office address and phone number of the
42 attorney representing the petitioner in the petition and appoint-
43 ment proceedings;

44 (6) Whether the person's incapacity will prevent attendance
45 at the hearing and the reasons therefor;

46 (7) The type of guardianship or conservatorship requested
47 and the reasons for the request;

48 (8) The proposed guardian or conservator's name, post
49 office address and, if the proposed guardian or conservator is an

50 individual, the individual's age, occupation, criminal history
51 and relationship to the alleged protected person;

52 (9) The name and post office address of a guardian nomi-
53 nated by the alleged protected person if different from the
54 proposed guardian or conservator, and, if the person nominated
55 as a guardian or conservator is an individual, the individual's
56 age, occupation, criminal history and relationship to the alleged
57 protected person;

58 (10) The name and post office address of any guardian or
59 conservator currently acting, whether in this state or elsewhere;

60 (11) If the appointment of a limited guardian is requested,
61 the specific areas of protection and assistance to be included in
62 the order of appointment;

63 (12) If the appointment of a limited conservator is re-
64 quested, the specific areas of management and assistance to be
65 included in the order of appointment; and

66 (13) If the appointment of a conservator is requested for a
67 missing person, the specific circumstances under which the
68 person is considered missing.

§44A-2-4. Statement of financial resources.

1 Prior to a hearing for a conservatorship, the petitioner shall
2 file a statement of the financial resources of the alleged
3 protected person which shall to the extent known list the
4 person's social security number, list with reasonable detail the
5 approximate value of the person's real and personal property,
6 and the person's anticipated annual gross income and other
7 receipts.

§44A-2-10. Factors to be considered by court.

1 (a) The court alone shall determine whether a guardian or
2 conservator should be appointed, the type of guardian or
3 conservator and the specific areas of protection, management
4 and assistance to be granted. Any determination that the
5 individual is a protected person shall contain a specific finding
6 that the person meets the definition set forth in section four,
7 article one of this chapter. In making the determination, the
8 court shall consider the suitability of the proposed guardian or
9 conservator, the limitations of the alleged protected person, the
10 development of the person's maximum self-reliance and
11 independence, the availability of less restrictive alternatives
12 including advance directives and the extent to which it is
13 necessary to protect the person from neglect, exploitation, or
14 abuse.

15 (b) Except as provided in section eight of this article, the
16 selection of the guardian or conservator is in the discretion of
17 the court. The court shall select the individual or entity best
18 qualified to act in the best interest of the protected person, after
19 consideration of the proposed guardian's or conservator's
20 geographic location, familial or other relationship with such
21 person, ability to carry out the powers and duties of the office,
22 commitment to promoting such person's welfare, any potential
23 conflicts of interest, the criminal history of the proposed
24 guardian or conservator and the recommendations of the
25 spouse, the parents, children or other interested relatives,
26 whether made by will or otherwise. The court may only appoint
27 one guardian and one conservator and it need not appoint the
28 same individual or entity to serve as both guardian and conser-
29 vator.

30 (c) A guardianship or conservatorship appointed under this
31 article shall be the least restrictive possible, and the powers
32 shall not extend beyond what is absolutely necessary for the
33 protection of the individual.

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

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

3 (1) The guardian or conservator has subscribed to and filed
4 an oath promising to faithfully perform the duties of the office
5 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 com-
11 pleted the mandatory education within the last three years.

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

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

ARTICLE 3. GUARDIANSHIP AND CONSERVATORSHIP ADMINISTRATION.

§44A-3-4. Management powers and duties of conservator.

1 (a) A conservator, in managing the estate, shall act as a
2 fiduciary and serve in the best interests of the protected person
3 and, in addition, has the following powers which may be

4 exercised without prior court authorization, except as otherwise
5 specifically provided:

6 (1) To invest and reinvest the funds of the estate in accor-
7 dance with a standard of prudent investing;

8 (2) To collect, hold, and retain assets of the estate, includ-
9 ing land in another state, and to receive additions to the estate;

10 (3) To continue or participate in the operation of any
11 unincorporated business or other enterprise;

12 (4) To deposit estate funds in a state or federally insured
13 financial institution, including one operated by the conservator;

14 (5) To manage, control and sell at public sale, for cash or
15 for credit, the personal property of the estate: *Provided*, That
16 the conservator has provided written notice by certified mail to
17 those persons named on the petition as the protected person's
18 nearest relatives at their last known address at least fourteen
19 days prior to any sale of the personal property;

20 (6) To perform a contract entered into by a protected
21 person, including, without limitation, a contract to convey or
22 purchase real property as approved by any court having
23 jurisdiction;

24 (7) To renew a lease entered into by a protected person as
25 lessor or lessee with or without an option to purchase, including
26 leases for real and personal property and leases and other
27 arrangements for exploration and removal of minerals or other
28 natural resources notwithstanding that the lease or other
29 arrangement may extend beyond the term of the conservator-
30 ship;

31 (8) To borrow money and to place, renew or extend an
32 encumbrance upon any property, real or personal, including the

33 power to borrow from a financial institution operated by the
34 conservator, subject to the provisions of section twelve of this
35 article;

36 (9) To abandon property when, in the opinion of the
37 conservator, it is valueless or is so encumbered or in a condition
38 that it is of no benefit to the estate: *Provided*, That the conser-
39 vator has provided written notice to those persons named on the
40 petition as the protected person's nearest relatives at their last
41 known address at least fourteen days prior to any abandonment
42 of the property: *Provided, however*, That any items listed in the
43 initial inventory as valueless may be abandoned no sooner than
44 thirty days following the filing of the initial inventory without
45 written notice;

46 (10) To make ordinary or extraordinary repairs or alter-
47 ations in buildings or other property and to grant easements for
48 public or private use, or both, with or without consideration;

49 (11) To vote a security, in person or by general or limited
50 proxy, and to consent to the reorganization, consolidation,
51 merger, dissolution, or liquidation of a corporation or other
52 enterprise;

53 (12) To sell or exercise stock subscription or conversion
54 rights and to pay calls, assessments, and any other sums
55 chargeable or accruing against or on account of securities;

56 (13) To hold a security in the name of a nominee or in other
57 form without disclosure of the conservatorship, so that title to
58 the security may pass by delivery, but the conservator is liable
59 for any act of the nominee in connection with a security so held;

60 (14) To insure the assets of the estate against damage or
61 loss, and the guardian and conservator against liability with
62 respect to third persons;

63 (15) To allow, pay, reject, contest or settle any claim by or
64 against the estate or protected person by compromise or
65 otherwise, and to release, in whole or in part, any claim
66 belonging to the estate to the extent it is uncollectible;

67 (16) To pay taxes, assessments and other expenses incurred
68 in the collection, care and administration of the estate;

69 (17) To pay any sum distributable for the benefit of the
70 protected person or for the benefit of a legal dependent by
71 paying the sum directly to the distributee, to the provider of
72 goods and services, to any individual or facility that is responsi-
73 ble for or has assumed responsibility for care and custody, to a
74 distributee's custodian under a Uniform Gifts or Transfers Act
75 of any applicable jurisdiction, or by paying the sum to the
76 guardian of the protected person or, in the case of a dependent,
77 to the dependent's guardian or conservator;

78 (18) To employ persons, including attorneys, accountants,
79 investment advisors, or agents; to act upon their recommenda-
80 tions without independent investigation; to delegate to them any
81 power, whether ministerial or discretionary; and to pay them
82 reasonable compensation;

83 (19) To maintain life, health, casualty and liability insur-
84 ance for the benefit of the protected person, or legal depend-
85 ents;

86 (20) To manage the estate following the termination of the
87 conservatorship and until its delivery to the protected person, or
88 successors in interest; and

89 (21) To execute and deliver all instruments and to take all
90 other actions that will accomplish or facilitate the exercise of
91 the powers conferred in accordance with the provisions of this
92 chapter.

93 (b) Any person acting as a conservator for more than one
94 protected person shall maintain funds for each protected person
95 in separate accounts.

96 (c) No conservator may make loans from the accounts of
97 the protected person to himself, herself or his or her spouse.

§44A-3-8. Conservator's inventory.

1 (a) Within sixty days following entry of an order of
2 appointment, a conservator shall file with the court an inventory
3 of the real and personal estate of the protected person which has
4 come into the conservator's possession or knowledge. The
5 inventory shall include, with reasonable detail, a listing of each
6 item of the estate, its approximate fair market value and the
7 type and amount of encumbrance to which it is subject. The
8 inventory shall list with reasonable detail any items that the
9 conservator believes are valueless and intends to abandon. If
10 any real or personal estate comes into the possession or
11 knowledge of the conservator subsequent to the filing of the
12 initial inventory, the conservator shall either amend the
13 inventory or list the same in the next accounting required to be
14 filed with the court, as described in section eight of this article.

15 (b) A conservator shall mail a copy of the inventory to the
16 individuals and entities who received notice of hearing, as
17 specified in section six, article two of this chapter, no later than
18 fourteen days following its presentation of the inventory.

19 (c) Any person who knowingly violates the provisions of
20 this section is guilty of a misdemeanor and, upon conviction
21 thereof, shall be fined not less than twenty-five dollars nor than
22 more one hundred dollars.

§44A-3-11. Filing of reports and accountings.

1 (a) Reports of guardians and accountings of conservators,
2 as described in this article shall be filed with the circuit clerk of

3 the county in which appointed, on a semi-annual basis during
4 the first twelve months of the guardian's or conservator's
5 appointment and:

6 (1) On the first day of February of each year thereafter;

7 (2) When the court orders additional reports or accountings
8 to be filed;

9 (3) When the guardian or conservator resigns or is re-
10 moved; and

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

17 (b) A guardian or conservator may elect to file a periodic
18 report or accounting on a calendar-year basis; however, in no
19 event may such a report or accounting cover a period of more
20 than one year. A calendar-year report or accounting shall be
21 filed with the circuit clerk no later than the fifteenth day of
22 April of the succeeding year.

23 (d) Any person who knowingly violates the provisions of
24 this section is guilty of a misdemeanor and, upon conviction
25 thereof, shall be fined not less than twenty-five dollars nor than
26 more one hundred dollars.

27 (e) The state auditor shall prescribe forms for reports
28 required to be filed pursuant to the provisions of this article.

§44A-3-13. Personal liability of guardians.

1 (a) A guardian shall have a fiduciary duty to the protected
2 person for whom he or she was appointed guardian and may be

3 held personally liable for a breach of that duty, including being
4 required to pay restitution for any embezzled or concealed
5 funds.

6 (b) A guardian is not liable for the acts of the protected
7 person, unless the guardian is personally negligent, nor is a
8 guardian required to expend personal funds on behalf of the
9 protected person.

§44A-3-14. Personal liability of conservators.

1 (a) A conservator shall have a fiduciary duty to the pro-
2 tected person for whom he or she was appointed conservator
3 and may be held personally liable for a breach of that duty,
4 including being required to pay restitution for any embezzled or
5 concealed funds.

6 (b) Unless otherwise provided in the contract, a conservator
7 is not personally liable on a contract entered into in a fiduciary
8 capacity in the course of administration of the estate unless the
9 conservator fails to reveal the representative capacity or to
10 identify the estate in the contract.

11 (c) A conservator is personally liable for obligations arising
12 from ownership or control of property of the estate or for torts
13 committed in the course of administration of the estate only if
14 personally negligent.

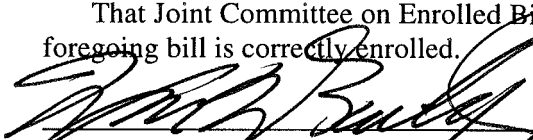
15 (d) Claims based upon contracts entered into by a conserva-
16 tor in a fiduciary capacity, obligations arising from ownership
17 or control of the estate, or torts committed in the course of
18 administration of the estate, may be asserted against the estate
19 by proceeding against the conservator in a fiduciary capacity,
20 whether or not the conservator is personally liable therefor.

21 (e) A successor conservator is not personally liable for the
22 contracts or actions of a predecessor. However, a successor

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23 conservator is not immunized from liability for a breach of
24 fiduciary duty committed by a predecessor if the successor
25 learns of the breach and fails to take reasonable corrective
26 action.

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

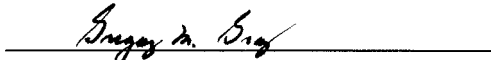

Chairman Senate Committee

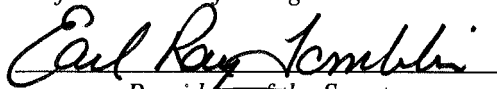

Chairman House Committee

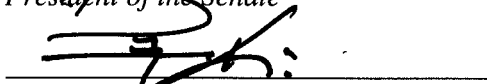
Originating in the House.

In effect July 1, 2000.

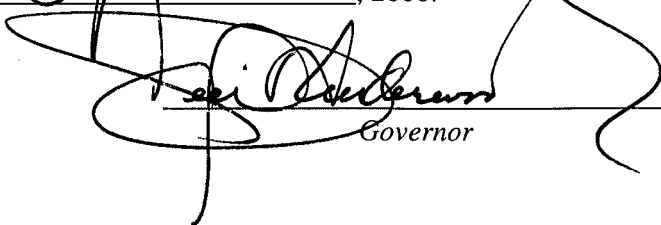

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within approved this the 4th
day of April, 2000.


Governor

PRESENTED TO THE

GOVERNOR

Date 3/29/10

Time 3:25 pm