
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2267 Session of
2000

INTRODUCED BY VANCE, FICHTER, TRUE, BUXTON, ARGALL, BATTISTO,
BISHOP, BROWNE, CAWLEY, CHADWICK, L. I. COHEN, M. COHEN,
CURRY, DALLY, DeLUCA, DeWEESE, FRANKEL, FREEMAN, GEIST,
GEORGE, HARHAI, LAUGHLIN, LYNCH, MAITLAND, MAJOR, MASLAND,
MICHLOVIC, MUNDY, NAILOR, NICKOL, ORIE, PISTELLA, PLATTS,
RAMOS, RAYMOND, READSHAW, ROEBUCK, ROSS, RUBLEY, SAYLOR,
SEMMEL, SEYFERT, SHANER, SOLOBAY, STEELMAN, E. Z. TAYLOR,
J. TAYLOR, THOMAS, TIGUE, TRELLO, TULLI, WILT AND YOUNGBLOOD,
FEBRUARY 15, 2000

REFERRED TO COMMITTEE ON AGING AND YOUTH, FEBRUARY 15, 2000

AN ACT

1 Amending Title 20 (Decedents, Estates and Fiduciaries) of the
2 Pennsylvania Consolidated Statutes, further providing for
3 persons entitled to letters of administration and for filing
4 guardian vacancies; establishing the Commonwealth
5 Guardianship Office to serve as guardian for certain
6 incapacitated persons; providing for its powers and duties;
7 waiving the defense of sovereign immunity in certain
8 instances; and making an appropriation.

9 The General Assembly of the Commonwealth of Pennsylvania
10 hereby enacts as follows:

11 Section 1. Sections 3155(b) and 5514 of Title 20 of the
12 Pennsylvania Consolidated Statutes are amended to read:

13 § 3155. Persons entitled.

14 * * *

15 (b) Letters of administration.--Letters of administration
16 shall be granted by the register, in such form as the case shall
17 require, to one or more of those hereinafter mentioned and,

1 except for good cause, in the following order:

2 (1) Those entitled to the residuary estate under the
3 will.

4 (2) The surviving spouse.

5 (3) Those entitled under the intestate law as the
6 register, in his discretion, shall judge will best administer
7 the estate, giving preference, however, according to the
8 sizes of the shares of those in this class.

9 (4) The principal creditors of the decedent at the time
10 of his death.

11 (5) Other fit persons.

12 (6) If anyone of the foregoing shall renounce his right
13 to letters of administration, the register, in his
14 discretion, may appoint a nominee of the person so renouncing
15 in preference to the persons set forth in any succeeding
16 paragraph.

17 (7) A guardianship support agency serving as guardian of
18 an incapacitated person who dies during the guardianship
19 administered pursuant to Subchapter F of Chapter 55 (relating
20 to guardianship support).

21 (8) The Commonwealth Guardianship Office in the case of
22 an incapacitated person who dies during a guardianship
23 administered by it.

24 * * *

25 § 5514. To fill vacancy; co-guardian.

26 The court, after such notice to parties in interest as it
27 shall direct, may without a hearing appoint a succeeding
28 guardian to fill a vacancy in the office of guardian or may
29 appoint a co-guardian of the estate of an incapacitated person.

30 Where the vacating guardian was a parent who is now deceased,

1 any testamentary nominee of the parent shall be given preference
2 by the court. Whenever the Commonwealth Guardianship Office
3 petitions to become the successor guardian, the court shall
4 appoint the office as guardian if it finds that the person
5 remains incapacitated and no other person or agency is willing
6 and qualified to become guardian.

7 Section 2. Chapter 55 of Title 20 is amended by adding a
8 subchapter to read:

9 SUBCHAPTER G

10 COMMONWEALTH GUARDIANSHIP OFFICE

11 Sec.

12 5561. Short title of subchapter.

13 5562. Definitions.

14 5563. Commonwealth Guardianship Office.

15 5564. Undertaking guardianships.

16 5565. Liability of office.

17 5566. Cooperation with office.

18 5567. Successor guardian.

19 5568. Transfers authorized.

20 § 5561. Short title of subchapter.

21 This subchapter shall be known and may be cited as the
22 Commonwealth Guardianship Office Act.

23 § 5562. Definitions.

24 The following words and phrases when used in this subchapter
25 shall have the meanings given to them in this section unless the
26 context clearly indicates otherwise:

27 "Office." The Commonwealth Guardianship Office established
28 by this subchapter.

29 § 5563. Commonwealth Guardianship Office.

30 (a) Establishment.--The Commonwealth Guardianship Office is

1 hereby established as an independent agency. The office shall be
2 headed by a director who shall be appointed by the Governor for
3 a term of five years. The director may not be removed from
4 office except for cause. Salary and terms of employment for the
5 director shall be established by the Executive Board. The
6 director may hire personnel necessary to carry out the duties of
7 the office, including legal counsel, and may establish regional
8 offices.

9 (b) Administrative powers and duties.--The office shall:

10 (1) Establish and maintain contacts with Federal, State
11 and local, public and private agencies which service
12 residents of this Commonwealth in need of guardianship
13 services.

14 (2) Promulgate regulations necessary to establish the
15 policies and procedures for the effective performance of its
16 responsibilities.

17 (c) Powers and duties as guardian.--In addition to section
18 5521 (relating to provisions concerning powers, duties and
19 liabilities), the office shall:

20 (1) Invest the principal and income of incapacitated
21 persons for whom it is appointed guardian of the estate. For
22 this purpose, it may pool the principal and income but shall
23 maintain an individual account for each incapacitated person
24 reflecting that person's participation therein.

25 (2) Expend and, if necessary, advance costs necessary to
26 administer guardianships for which it has been appointed
27 guardian.

28 (3) Prepare and maintain an annual report setting forth
29 the physical, mental and financial status for each
30 incapacitated person for whom the office is appointed

1 guardian.

2 (4) Petition to be discharged as guardian of an
3 incapacitated person if the person becomes capacitated.

4 (5) Apply for letters or otherwise administer the estate
5 of an incapacitated person for whom it has been appointed
6 guardian and who dies during the guardianship when no one
7 else is willing and qualified to serve.

8 § 5564. Undertaking guardianships.

9 (a) Procedure.--The office may be appointed by the court as
10 guardian of the estate or of the person, or both, of an
11 incapacitated person upon a finding by the court that no other
12 person or agency is willing and qualified to become guardian.
13 The office itself shall be appointed guardian and no specific
14 individual shall be named by the court. If appointed, the office
15 shall have all of the powers and duties of a corporate
16 fiduciary. The office shall not be required to post bond.

17 (b) Monitoring care and progress of incapacitated person.--

18 (1) The office shall monitor on a continuous basis the
19 care and progress of an incapacitated person for whom it has
20 been appointed guardian. The office shall provide such
21 reasonable and necessary monitoring periodically as is
22 required and shall have personal contact with the
23 incapacitated person at least semiannually.

24 (2) The office shall require periodic reports from all
25 individuals and public and private agencies providing care
26 and services to the incapacitated person. These reports shall
27 be maintained as confidential records and shall not be open
28 to review except as the court shall otherwise direct.

29 (c) Costs and compensation.--The office shall be reimbursed
30 from the estate of the incapacitated person for the court costs

1 and shall be allowed compensation for its services as guardian
2 in the same manner as provided in section 7185 (relating to
3 compensation). Any compensation or reimbursement for costs
4 advanced received by the office shall be paid into the General
5 Fund.

6 § 5565. Liability of office.

7 The office shall be liable for acts or omissions while
8 serving as guardian to the same extent as any other guardian
9 appointed by the court would be liable and for this purpose the
10 exception to sovereign immunity under 42 Pa.C.S. § 8522(b)(3)
11 (relating to exceptions to sovereign immunity) shall apply.

12 § 5566. Cooperation with office.

13 (a) General rule.--All individuals and Federal, State and
14 local agencies and public and private agencies which are
15 rendering services to an incapacitated person or which have
16 available services necessary for the incapacitated person's care
17 and progress shall cooperate with the office. The cooperation
18 shall include, but not be limited to, providing relevant medical
19 and other testimony, periodic reports and results of
20 investigations undertaken by it or at the request of the office.

21 (b) Construction.--This section shall not be construed to
22 require the disclosure of information that is otherwise required
23 to be kept confidential.

24 § 5567. Successor guardian.

25 (a) Incapacitated persons in State care.--Within one year
26 after the effective date of this subchapter, the office shall
27 petition the court to be substituted as successor guardian to
28 the guardian officer at any State mental hospital or center who
29 is serving as guardian of an incapacitated person.

30 (b) Incapacitated persons discharged from State care.--

1 Unless there is another person or agency willing and qualified
2 to serve as guardian, the office shall petition the court to be
3 named successor guardian to the guardian officer at a State
4 mental hospital or center when an adjudicated incapacitated
5 person for whom the guardian officer is serving as guardian is
6 discharged from the facility.

7 § 5568. Transfers authorized.

8 One year after the effective date of this subchapter, all
9 appropriations, personnel, equipment, records and all other
10 material expended, employed or used by guardian offices at State
11 mental hospitals or centers and long-term care facilities, shall
12 be transferred to the Commonwealth Guardianship Office and shall
13 have the same force and effect as if the appropriations had been
14 made to, the personnel had been employed by and the equipment,
15 records and material had been the property of the Commonwealth
16 Guardianship Office in the first instance.

17 Section 3. The sum of \$2,000,000, or as much thereof as may
18 be necessary, is hereby appropriated to the Commonwealth
19 Guardianship Office for salaries and all necessary expenses for
20 the work of the office as provided by this act.

21 Section 4. This act shall take effect in 120 days.