

BILL HISTORY FOR ASSEMBLY BILL 742 (LRB -4085)

An Act to create 880.24 (3) of the statutes; relating to: requiring payment from a ward's estate of reasonable attorney fees and costs for successful petitioners in incompetency and guardianship proceedings. (FE)

2000

- 02-10. A. Introduced by Representatives **Handrick, La Fave, Owens, Musser, Plale, Porter, Plouff** and **Sherman**; cosponsored by Senators **Darling, Panzer, Rosenzweig, Roessler** and **Schultz**.
- 02-10. A. Read first time and referred to committee on Judiciary and Personal Privacy 660
- 03-01. A. Public hearing held.
- 03-06. A. Fiscal estimate received.
- 03-16. A. Executive action taken.
- 03-22. A. Report passage recommended by committee on Judiciary and Personal Privacy, Ayes 9, Noes 0 799
- 03-22. A. Referred to committee on Rules 799
- 03-23. A. Placed on calendar 3-28-2000 by committee on Rules.
- 03-28. A. Read a second time 851
- 03-28. A. Ordered to a third reading 851
- 03-28. A. Rules suspended 851
- 03-28. A. Read a third time and passed 851
- 03-28. A. Ordered immediately messaged 851
- 03-29. S. Received from Assembly 550
- 03-29. S. Read first time and referred to committee on Judiciary and Consumer Affairs 551
- 03-30. S. Rules suspended to withdraw from committee on Judiciary and Consumer Affairs and take up 569
- 03-30. S. Read a second time 569
- 03-30. S. Senate amendment 1 offered by Senator **Chvala (LRB f105)** 569
- 03-30. S. Senate amendment 1 adopted 569
- 03-30. S. Ordered to a third reading 569
- 03-30. S. Rules suspended 569
- 03-30. S. Read a third time and concurred in as amended 569
- 03-30. S. Ordered immediately messaged 575
- 04-25. A. Received from Senate amended and concurred in as amended (Senate amendment 1 adopted) . 929
- 04-25. A. Referred to committee on Rules 929
- 04-25. A. Placed on calendar 5-2-2000 by committee on Rules.
- 05-02. A. Senate amendment 1 concurred in.
- 05-02. A. Action ordered immediately messaged.

**1999
ENROLLED BILL**

99en AB-742

ADOPTED DOCUMENTS:

Orig Engr SubAmdt

99-408511

Amendments to above (if none, write "NONE"): SA 1

Corrections - show date (if none, write "NONE"): None

Topic Attorney fees and cost for

successful petitioners in incompetency
and guardianship proceedings

5/2/02

Date

[Signature]

Enrolling Drafter

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1999 ASSEMBLY BILL 742

February 10, 2000 – Introduced by Representatives HANDRICK, LA FAVE, OWENS, MUSSER, PLALE, PORTER, PLOUFF and SHERMAN, cosponsored by Senators DARLING, PANZER, ROSENZWEIG, ROESSLER and SCHULTZ. Referred to Committee on Judiciary and Personal Privacy.

- 1 **AN ACT to create** 880.24 (3) of the statutes; **relating to:** requiring payment from
2 a ward's estate of reasonable attorney fees and costs for successful petitioners
3 in incompetency and guardianship proceedings.

Analysis by the Legislative Reference Bureau

Under current law, any relative, public official or other person may petition for a finding of incompetence and appointment of a guardian for another. When a court finds, after a hearing that is brought to review the petition, that an individual is incompetent, the court orders appointment of a guardian for the person and estate of the individual (the ward). The guardian must pay the ward's just debts from the ward's estate.

This bill provides that the court that finds a person to be incompetent and appoints a guardian also must award payment, from the ward's estate, of reasonable attorney fees and costs incurred by the person who successfully petitioned for the finding of incompetence unless, after considering specified factors, the court finds that it would be inequitable to do so. One of the specified factors is whether the ward had executed a financial power of attorney or power of attorney for health care or had engaged in other advance planning to avoid guardianship. However, under the bill the existence of only this factor may not preclude the awarding of attorney fees. This requirement first applies to guardianship petitions that are pending on the day on which the bill becomes law.

ASSEMBLY BILL 742

For further information see the *local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

2-2 (SAI)

1 SECTION 1. 880.24 (3) of the statutes is created to read:

2 880.24 (3) FEES AND COSTS OF PETITIONER. (a) When a guardian is appointed,
3 the court shall award from the ward's estate payment of the petitioner's reasonable
4 attorney fees and costs, including those fees and costs, if any, related to protective
5 placement of the ward, unless the court finds, after considering all of the following,
6 ~~except as provided in par. (b)~~ that it would be inequitable to do so:

SAI
SAI

7 1. The petitioner's interest in the matter, including any conflict of interest that
8 the petitioner may have had in pursuing the guardianship.

9 ~~2. Whether the ward had executed a durable power of attorney under s. 243.07
10 or a power of attorney for health care under s. 155.05 or had engaged in other advance
11 planning to avoid guardianship.~~

12 2. The ability of the ward's estate to pay the petitioner's reasonable attorney
13 SAI fees and costs.

14 3. Whether the guardianship was contested and, if so, the nature of the contest.

15 4. Any other factors that the court considers to be relevant.

16 ~~(b) Existence of the factor specified in par. (a) 2., without the presence of
17 another relevant factor under par. (a) 1., 3., 4. or 5., may not preclude the awarding
18 of attorney fees under par. (a).~~

19 SECTION 2. Initial applicability.

2-16 SAI

**SENATE AMENDMENT 1,
TO 1999 ASSEMBLY BILL 742**

March 30, 2000 - Offered by Senator CHVALA.

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 2, line 2: delete "When" and substitute "Except as provided in par. (b),

3 when".

4 **2.** Page 2, line 5: after "finds" insert a comma.

5 **3.** Page 2, line 6: delete "except as provided in par. (b).".

6 **4.** Page 2, line 9: delete lines 9 to 11.

7 **5.** Page 2, line 12: delete "3" and substitute "2".

8 **6.** Page 2, line 14: delete "4" and substitute "3".

9 **7.** Page 2, line 15: delete "5" and substitute "4".

10 **8.** Page 2, line 16: delete lines 16 to 18 and substitute:

11 "(b) If the court finds that the ward had executed a durable power of attorney

12 under s. 243.07 or a power of attorney for health care under s. 155.05 or had engaged

2-16



2-16

1 in other advance planning to avoid guardianship, the court may not make the award
2 specified in par. (a)?

3

(END)