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SENATE BILL NO. 261

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on the Judiciary
on February 5, 2020)

(Patrons Prior to Substitute—Senators Chafin and Stanley [SB 308])

*A BILL to amend and reenact §§ 64.2-1305 and 64.2-2020 of the Code of Virginia, relating to accounts filed by fiduciaries and reports filed by guardians; civil penalty.***Be it enacted by the General Assembly of Virginia:****1. That §§ 64.2-1305 and 64.2-2020 of the Code of Virginia are amended and reenacted as follows:**
§ 64.2-1305. Conservators, guardians of minors' estates, committees, trustees under § 64.2-2016, and receivers.

A. Within six months from the date of the qualification, conservators, guardians of minors' estates, committees, and trustees under § 64.2-2016 shall exhibit before the commissioner of accounts a statement of all money and other property that the fiduciary has received, has become chargeable with, or has disbursed within four months from the date of qualification.

B. After the first account of the fiduciary has been filed and settled, the second and subsequent accounts for each succeeding 12-month period shall be due within four months from the last day of the 12-month period commencing on the terminal date of the preceding account unless the commissioner of accounts extends the period for filing upon reasonable cause.

C. For fiduciaries acting on behalf of Medicaid recipients, the fees charged by the commissioners of accounts under subsection A or B shall not exceed \$25.

D. Any account filed with the commissioner pursuant to this section shall be signed under oath by the fiduciary making such filing. If a fiduciary makes a false entry or statement in such a filing, he shall be subject to a civil penalty of not more than \$500. Such penalty shall be collected by the attorney for the Commonwealth or the county or city attorney, and the proceeds shall be deposited into the general fund.

§ 64.2-2020. Annual reports by guardians.

A. A guardian shall file an annual report in compliance with the filing deadlines in § 64.2-1305 with the local department of social services for the jurisdiction where the incapacitated person then resides. The annual report shall be on a form prepared by the Office of the Executive Secretary of the Supreme Court and shall be accompanied by a filing fee of \$5. The local department shall retain the fee in the jurisdiction where the fee is collected for use in the provision of services to adults in need of protection. Within 60 days of receipt of the annual report, the local department shall file a copy of the annual report with the clerk of the circuit court that appointed the guardian, to be placed with the court papers pertaining to the guardianship case. Twice each year the local department shall file with the clerk of the circuit court a list of all guardians who are more than 90 days delinquent in filing an annual report as required by this section. If the guardian is also a conservator, a settlement of accounts shall also be filed with the commissioner of accounts as provided in § 64.2-1305.

B. The annual report to the local department of social services shall include:

1. A description of the current mental, physical, and social condition of the incapacitated person;
2. A description of the incapacitated person's living arrangements during the reported period;
3. The medical, educational, vocational, and other professional services provided to the incapacitated person and the guardian's opinion as to the adequacy of the incapacitated person's care;
4. A statement of the frequency and nature of the guardian's visits with and activities on behalf of the incapacitated person;
5. A statement of whether the guardian agrees with the current treatment or habilitation plan;
6. A recommendation as to the need for continued guardianship, any recommended changes in the scope of the guardianship, and any other information useful in the opinion of the guardian; and
7. The compensation requested and the reasonable and necessary expenses incurred by the guardian.

The guardian shall certify by *signing under oath* that the information contained in the annual report is true and correct to the best of his knowledge. *If a guardian makes a false entry or statement in the annual report, he shall be subject to a civil penalty of not more than \$500. Such penalty shall be collected by the attorney for the Commonwealth or the county or city attorney, and the proceeds shall be deposited into the general fund.*

C. If the local department of social services files notice that the annual report has not been timely filed in accordance with subsection A with the clerk of the circuit court, the court may issue a summons or rule to show cause why the guardian has failed to file such annual report.