

HOUSE BILL NO. 340
INTRODUCED BY J. ANDERSEN

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING A GUARDIAN TO PROVIDE FOR FINAL DISPOSITION OF A WARD'S PHYSICAL REMAINS AND PERSONAL EFFECTS AFTER THE WARD'S DEATH, UPON ORDER OF A COURT; AMENDING SECTIONS 72-5-231, 72-5-233, 72-5-321, AND 72-5-324, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 72-5-231, MCA, is amended to read:

"72-5-231. Powers and duties of guardian of minor. Unless otherwise limited by the court, a guardian of a minor has the powers and responsibilities of a parent who has not been deprived of custody of the parent's minor and unemancipated child, except that a guardian is not legally obligated to provide from the guardian's own funds for the ward and is not liable to third persons by reason of the parental relationship for acts of the ward. In particular and without qualifying the foregoing, a guardian has the following powers and duties:

(1) The guardian shall take reasonable care of the ward's personal effects and commence protective proceedings if necessary to protect other property of the ward.

(2) The guardian may receive money payable for the support of the ward to the ward's parent, guardian, or custodian under the terms of any statutory benefit or insurance system or any private contract, devise, trust, conservatorship, or custodianship. The guardian also may receive money or property of the ward paid or delivered by virtue of 72-5-104. Any sums received must be applied to the ward's current needs for support, care, and education. The guardian shall exercise due care to conserve any excess for the ward's future needs unless a conservator has been appointed for the estate of the ward, in which case the excess must be paid at least annually to the conservator. Sums received by the guardian may not be used for compensation for the guardian's services except as approved by an order of the court or as determined by a duly appointed conservator other than the guardian. A guardian may institute proceedings to compel the performance by any person of a duty to support the ward or to pay sums for the welfare of the ward.

(3) The guardian is empowered to facilitate the ward's education, social, or other activities and to authorize medical or other professional care, treatment, or advice. A guardian is not liable by reason of this consent for injury to the ward resulting from the negligence or acts of third persons unless it would have been illegal for a parent to have consented. A guardian may consent to the marriage or adoption of the ward.

(4) A guardian shall report the condition of the ward and of the ward's estate that has been subject to the guardian's possession or control, as ordered by the court on petition of any person interested in the minor's welfare or as required by court rule.

(5) Upon the death of a guardian's ward, the guardian, upon an order of the court and if there is no personal representative authorized to do so, may make necessary arrangements for the removal, transportation, and final disposition, including burial, entombment, or cremation, of the ward's physical remains and for the receipt and disposition of the ward's clothing, furniture, and other personal effects that may be in the possession of the person in charge of the ward's care, comfort, and maintenance at the time of the ward's death."

Section 2. Section 72-5-233, MCA, is amended to read:

"72-5-233. Termination of appointment -- how effected -- certain liabilities and obligations not affected. (1) A guardian's authority and responsibility terminates upon the death, resignation, or removal of the guardian or upon the minor's death, except as provided in subsection (2), adoption, marriage, or attainment of majority, but termination does not affect his a guardian's liability for prior acts or his a guardian's obligation to account for funds and assets of his the guardian's ward. Resignation of a guardian does not terminate the guardianship until it has been approved by the court. A testamentary appointment under an informally probated will terminates if the will is later denied probate in a formal proceeding.

(2) The guardian's authority and responsibility for a minor who dies while the minor is a ward of the guardian terminates when the guardian has completed arrangements for the final disposition of the ward's physical remains and personal effects as provided in 72-5-231(5)."

Section 3. Section 72-5-321, MCA, is amended to read:

"72-5-321. Powers and duties of guardian of incapacitated person. (1) The powers and duties of a limited guardian are those specified in the order appointing the guardian. The limited guardian is required to report the condition of the incapacitated person and of the estate that has been subject to his the guardian's possession and control, as required by the court or by court rule.

(2) A full guardian of an incapacitated person has the same powers, rights, and duties respecting his the ward that a parent has respecting his an unemancipated minor child, except that a guardian is not liable to third persons for acts of the ward solely by reason of the parental relationship. In particular and without qualifying the foregoing, a full guardian has the following powers and duties, except as limited by order of the court:

(a) To the extent that it is consistent with the terms of any order by a court of competent jurisdiction

relating to detention or commitment of the ward, ~~he~~ the full guardian is entitled to custody of the person of ~~his~~ the ward and may establish the ward's place of ~~abode~~ residence within or ~~without~~ outside of this state.

(b) If entitled to custody of ~~his~~ the ward, ~~he~~ the full guardian shall make provision for the care, comfort, and maintenance of ~~his~~ the ward and whenever appropriate arrange for ~~his~~ the ward's training and education. Without regard to custodial rights of the ward's person, ~~he~~ the full guardian shall take reasonable care of ~~his~~ the ward's clothing, furniture, vehicles, and other personal effects and commence protective proceedings if other property of ~~his~~ the ward is in need of protection.

(c) A full guardian may give any consents or approvals that may be necessary to enable the ward to receive medical or other professional care, counsel, treatment, or service.

(d) If ~~no~~ a conservator for the estate of the ward has not been appointed, a full guardian may:

(i) institute proceedings to compel any person under a duty to support the ward or to pay sums for the welfare of the ward to perform ~~his~~ that person's duty;

(ii) receive money and tangible property deliverable to the ward and apply the money and property for support, care, and education of the ward; ~~but he~~ However, the full guardian may not use funds from ~~his~~ the ward's estate for room and board ~~which he~~ that the full guardian, his the full guardian's spouse, parent, or child has furnished the ward unless a charge for the service is approved by order of the court made upon notice to at least one of the next of kin of the incompetent ward, if notice is possible. ~~He~~ The full guardian must exercise care to conserve any excess for the ward's needs.

(e) Unless waived by the court, a full guardian is required to report the condition of ~~his~~ the ward and of the estate which has been subject to ~~his~~ the full guardian's possession or control annually for the preceding year. A copy of the report must be served upon the ward's parent, child, or sibling if that person has made an effective request under 72-5-318.

(f) If a conservator has been appointed, all of the ward's estate received by the full guardian in excess of those funds expended to meet current expenses for support, care, and education of the ward must be paid to the conservator for management as provided in this ~~code~~ chapter, and the full guardian must account to the conservator for funds expended.

(3) Upon failure, as determined by the clerk of court, of the guardian to file an annual report, the court shall order the guardian to file the report and give good cause for ~~his~~ the guardian's failure to file a timely report.

(4) Any full guardian of one for whom a conservator also has been appointed shall control the custody and care of the ward. A limited guardian of a person for whom a conservator has been appointed shall control those aspects of the custody and care of the ward over which ~~he~~ the limited guardian is given authority by the

order establishing the limited guardianship. The full guardian or limited guardian is entitled to receive reasonable sums for ~~his~~ the guardian's services and for room and board furnished to the ward as agreed upon between ~~him~~ the guardian and the conservator, provided the amounts agreed upon are reasonable under the circumstances. The full guardian or limited guardian authorized to oversee ~~such aspects of~~ the incapacitated person's care may request the conservator to expend the ward's estate by payment to third persons or institutions for the ward's care and maintenance.

(5) ~~No~~ A full guardian or limited guardian may not involuntarily commit for mental health treatment or for treatment of a developmental disability or for observation or evaluation a ward who is ~~himself~~ unwilling or unable to give informed consent to ~~such~~ commitment, except as provided in 72-5-322, unless the procedures for involuntary commitment set forth in Title 53, chapters 20 and 21, are followed. This chapter does not abrogate any of the rights of mentally disabled persons provided for in Title 53, chapters 20 and 21.

(6) Upon the death of a full guardian's or limited guardian's ward, the full guardian or limited guardian, upon an order of the court and if there is no personal representative authorized to do so, may make necessary arrangements for the removal, transportation, and final disposition of the ward's physical remains, including burial, entombment, or cremation, and for the receipt and disposition of the ward's clothing, furniture, and other personal effects that may be in the possession of the person in charge of the ward's care, comfort, and maintenance at the time of the ward's death."

Section 4. Section 72-5-324, MCA, is amended to read:

"72-5-324. Termination of appointment -- how effected -- certain liabilities and obligations not affected. (1) (a) The ~~Except as provided in subsection (1)(b),~~ the authority and responsibility of a guardian for an incapacitated person terminates upon the death of the guardian or ward, the determination of incapacity of the guardian, or upon removal or resignation as provided in 72-5-325. Testamentary appointment under an informally probated will terminates if the will is later denied probate in a formal proceeding.

(b) The guardian's authority and responsibility for an incapacitated person, who dies while the person is a ward of the guardian, terminates when the guardian has completed arrangements for the final disposition of the ward's physical remains and personal effects, as provided in 72-5-321(6).

(2) Termination does not affect ~~his~~ the guardian's liability for prior acts ~~nor his or the guardian's~~ obligation to account for funds and assets of ~~his~~ the ward."

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