

HOUSE BILL NO. 683
INTRODUCED BY REINHART

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT A FULL GUARDIAN MAY NOT CONSENT TO THE WITHHOLDING OR WITHDRAWAL OF LIFE SUSTAINING TREATMENT OR TO A DO NOT RESUSCITATE ORDER IF THE GUARDIAN DOES NOT HAVE CONSENT AUTHORITY PURSUANT TO THE MONTANA RIGHTS OF THE TERMINALLY ILL ACT, ~~OR THE LAWS PROVIDING FOR DO NOT RESUSCITATE ORDERS, OR A COURT ORDER~~; AND AMENDING ~~SECTION~~ SECTIONS 50-9-106 AND 72-5-321, MCA."

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

SECTION 1. SECTION 50-9-106, MCA, IS AMENDED TO READ:

"50-9-106. Consent by others to withholding or withdrawal of treatment. (1) If a written consent to the withholding or withdrawal of the treatment, witnessed by two individuals, is given to the attending physician or attending advanced practice registered nurse, the attending physician or attending advanced practice registered nurse may withhold or withdraw life-sustaining treatment from an individual who:

(a) has been determined by the attending physician or attending advanced practice registered nurse to be in a terminal condition and no longer able to make decisions regarding administration of life-sustaining treatment; and

(b) has no effective declaration.

(2) The authority to consent or to withhold consent under subsection (1) may be exercised by the following individuals, in order of priority:

(a) the spouse of the individual;

(b) an adult child of the individual or, if there is more than one adult child, a majority of the adult children who are reasonably available for consultation;

(c) the parents of the individual;

(d) an adult sibling of the individual or, if there is more than one adult sibling, a majority of the adult siblings who are reasonably available for consultation; or

(e) the nearest other adult relative of the individual by blood or adoption who is reasonably available for consultation.

(3) A full guardian may consent or withhold consent under subsection (1) as provided in 72-5-321.

~~(3)~~(4) If a class entitled to decide whether to consent is not reasonably available for consultation and competent to decide or if it declines to decide, the next class is authorized to decide. However, an equal division in a class does not authorize the next class to decide.

~~(4)~~(5) A decision to grant or withhold consent must be made in good faith. A consent is not valid if it conflicts with the expressed intention of the individual.

~~(5)~~(6) A decision of the attending physician or attending advanced practice registered nurse acting in good faith that a consent is valid or invalid is conclusive.

~~(6)~~(7) Life-sustaining treatment cannot be withheld or withdrawn pursuant to this section from an individual known to the attending physician or attending advanced practice registered nurse to be pregnant so long as it is probable that the fetus will develop to the point of live birth with continued application of life-sustaining treatment."

Section 2. 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 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 the ward that a parent has respecting 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, the full guardian is entitled to custody of the person of the ward and may establish the ward's place of residence within or outside of this state.

(b) If entitled to custody of the ward, the full guardian shall make provision for the care, comfort, and maintenance of the ward and whenever appropriate arrange for the ward's training and education. Without regard to custodial rights of the ward's person, the full guardian shall take reasonable care of the ward's clothing, furniture, vehicles, and other personal effects and commence protective proceedings if other property of 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. This subsection (2)(c) does not authorize a full guardian to consent to the withholding or withdrawal of life sustaining treatment or to a do not resuscitate order if the full guardian does not have authority to consent pursuant to the Montana Rights of the Terminally Ill Act, Title 50, chapter 9, or to the do not resuscitate provisions of Title 50, chapter 10. A FULL GUARDIAN MAY PETITION THE COURT FOR AUTHORITY TO CONSENT TO THE WITHHOLDING OR WITHDRAWAL OF LIFE-SUSTAINING TREATMENT OR TO A DO NOT RESUSCITATE ORDER. THE COURT MAY GRANT THAT AUTHORITY ONLY UPON FINDING THAT CONSENT TO THE WITHHOLDING OR WITHDRAWAL OF LIFE-SUSTAINING TREATMENT OR THE DO NOT RESUSCITATE ORDER IS CONSISTENT WITH THE WARD'S WISHES TO THE EXTENT THAT THOSE WISHES CAN BE DETERMINED.

(d) If 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 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. However, the full guardian may not use funds from the ward's estate for room and board that the full guardian, 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. 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 the ward and of the estate which has been subject to 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 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 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 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 the guardian's services and for room and board furnished to the ward as agreed upon between the guardian and the conservator, provided the amounts agreed upon are reasonable under the circumstances. The full guardian or limited guardian authorized to oversee 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) 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 unwilling or unable to give informed consent to 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."

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