

SENATE BILL NO. 20
INTRODUCED BY J. SHOCKLEY

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE AUTHORITY TO APPOINT A TEMPORARY CONSERVATOR; AMENDING SECTION 72-5-421, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 72-5-421, MCA, is amended to read:

"72-5-421. Powers of court as to property and affairs of protected persons generally -- temporary conservatorship. The court has the following powers ~~which~~ that may be exercised directly or through a conservator in respect to the estate and affairs of protected persons:

(1) While a petition for appointment of a conservator or other protective order is pending and after preliminary hearing and without notice to others, the court has power to preserve and apply the property of the person to be protected as may be required for ~~his~~ the protected person's benefit or the benefit of ~~his~~ the protected person's dependents. If the court finds that the welfare of the person requires immediate action, it may, with or without notice, appoint a temporary conservator for the person for a specified period not to exceed 6 months. The court may designate the authority of the temporary conservator, depending on the needs and circumstances of the protected person. The court may not invest a temporary conservator with more powers than are required by the circumstances necessitating the appointment. The order of appointment of a temporary conservator must state the specific powers and duties of the temporary conservator.

(2) After hearing and upon determining that a basis for an appointment or other protective order exists with respect to a minor without other disability, the court has all those powers over the estate and affairs of the minor ~~which~~ that are or might be necessary for the best interests of the minor, ~~his~~ the minor's family, and members of ~~his~~ the minor's household.

(3) After hearing and upon determining that a basis for an appointment or other protective order exists with respect to a person for reasons other than minority, the court has, for the benefit of the person and members of ~~his~~ the person's household, all the powers over ~~his~~ the person's estate and affairs ~~which he~~ that the person could exercise if present and not under disability, except the power to make a will. These powers include but are not limited to the power to:

- (a) make gifts;
 - (b) convey or release ~~his~~ the person's contingent and expectant interests in property, including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entirety;
 - (c) exercise or release ~~his~~ the person's powers as trustee, personal representative, custodian for minors, conservator, or donee of a power of appointment;
 - (d) enter into contracts;
 - (e) create revocable or irrevocable trusts of property of the estate ~~which that~~ that may extend beyond ~~his~~ the person's disability or life;
 - (f) exercise options of the disabled person to purchase securities or other property;
 - (g) exercise ~~his~~ the person's rights to elect options and change beneficiaries under insurance and annuity policies and surrender the policies for their cash value;
 - (h) exercise ~~his~~ the person's right to an elective share in the estate of ~~his~~ the person's deceased spouse and renounce any interest by testate or intestate succession or by inter vivos transfer.
- (4) The court may exercise or direct the exercise of its authority to exercise or release powers of appointment of which the protected person is donee, to renounce interests, to make gifts in trust or otherwise exceeding 20% of any year's income of the estate, or to change beneficiaries under insurance and annuity policies, only if satisfied, after notice and hearing, that it is in the best interests of the protected person and that ~~he~~ the protected person either is incapable of consenting or has consented to the proposed exercise of power.
- (5) An order made pursuant to this section, determining that a basis for appointment of a conservator or other protective order exists, has no effect on the capacity of the protected person."

NEW SECTION. **Section 2. Effective date.** [This act] is effective on passage and approval.

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