

SENATE BILL NO. 294
INTRODUCED BY D. HARRINGTON

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE CIRCUMSTANCES UNDER WHICH AN AGENCY OF THE STATE MAY BE APPOINTED AS A GUARDIAN; CLARIFYING THE RESPONSIBILITY OF AN AGENCY OF THE STATE APPOINTED AS A GUARDIAN; AND AMENDING SECTIONS 72-5-312 AND 72-5-317, MCA."

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

Section 1. Section 72-5-312, MCA, is amended to read:

"72-5-312. Who may be guardian -- priorities. (1) Any competent person or a suitable institution, association, or nonprofit corporation or any of its members may be appointed guardian of an incapacitated person.

(2) Persons who are not disqualified have priority for appointment as guardian in the following order:

(a) a person, association, or private, nonprofit corporation nominated by the incapacitated person; if the court specifically finds that at the time of the nomination the incapacitated person had the capacity to make a reasonably intelligent choice;

(b) the spouse of the incapacitated person;

(c) an adult child of the incapacitated person;

(d) a parent of the incapacitated person, including a person nominated by will or other writing signed by a deceased parent;

(e) any relative of the incapacitated person with whom ~~he~~ the incapacitated person has resided for more than 6 months prior to the filing of the petition;

(f) a relative or friend who has demonstrated a sincere, longstanding interest in the welfare of the incapacitated person;

(g) a private association or nonprofit corporation with a guardianship program for incapacitated persons, a member of ~~such~~ the private association or nonprofit corporation approved by the association or corporation to act as a guardian for the incapacitated person, or a person included on an official list of ~~such~~ the association or organization as willing and suitable to act as guardian of incapacitated persons;

(h) a person nominated by the incapacitated person who is caring for ~~him~~ the incapacitated person or

is paying benefits to ~~him~~ the incapacitated person.

(3) The priorities established in subsection (2) are not binding, and the court shall select the person, association, or nonprofit corporation that is best qualified and willing to serve.

(4) Except as provided in subsection (5), the court may not appoint a person, institution, association, or nonprofit corporation to be the guardian of an incapacitated person if the person, institution, association, or nonprofit corporation:

(a) provides or is likely to provide during the guardianship substantial services to the incapacitated person in the professional or business capacity other than in the capacity of guardian;

(b) is or is likely to become during the guardianship period a creditor of the incapacitated person, other than in the capacity of guardian;

(c) has or is likely to have during the guardianship period interests that may conflict with those of the incapacitated person; or

(d) is employed by a person, institution, association, or nonprofit corporation ~~who or which~~ that would be disqualified under subsections (4)(a) through (4)(c).

(5) ~~If Subject to subsection (6), if the court determines that there is no qualified person willing and able to serve as guardian, the court may appoint an agency of the state or federal government that is authorized or required by statute to provide services to the person or to persons suffering from the kind of disability from which the incapacitated person is suffering or a designee of the agency, notwithstanding the provisions of subsection (4). Whenever~~ If an agency is appointed guardian, the court may also appoint a limited guardian to represent a specified interest of the incapacitated person. Whenever If a limited guardian is appointed pursuant to this subsection, the specified interest of the incapacitated person is the sole responsibility of the limited guardian and is removed from the responsibility of the agency.

(6) (a) The court may not appoint an agency of the state as guardian without the agency's consent.

(b) An agency of the state named as guardian is not:

(i) legally obligated to provide funds for the incapacitated person; or

(ii) liable to third persons for acts of the incapacitated person during the guardianship."

Section 2. Section 72-5-317, MCA, is amended to read:

"72-5-317. Temporary guardians. (1) If an incapacitated person ~~has no~~ does not have a guardian and an emergency exists, the court may exercise the power of a guardian pending notice and hearing.

(2) If an appointed guardian is not effectively performing ~~his~~ the guardian's duties or if there is no

appointed guardian and the court further finds that the welfare of the incapacitated person requires immediate action, it may, with or without notice, appoint a temporary guardian for the incapacitated person for a specified period not to exceed 6 months. The court may appoint either a full or a limited temporary guardian, depending on the needs and circumstances of the incapacitated person. The court may not invest a temporary guardian with more powers than are required by the circumstances necessitating the appointment. The order of appointment of a temporary guardian ~~shall~~ must state whether a full or limited temporary guardianship is being created and, in the case of a limited temporary guardian, the specific powers and duties of the limited temporary guardian.

(3) ~~In case~~ If there is no person available and willing to act as temporary guardian for an incapacitated person who is in need of a temporary guardian except a person or entity who is ineligible to act as guardian pursuant to the provisions of 72-5-312(4), the court may appoint as temporary guardian a person or entity ~~who~~ that would otherwise be ineligible under that ~~provision~~ subsection to act as guardian. This subsection does not permit the appointment of a person or entity ~~who~~ that has an actual conflict of interest in regard to the purpose for which the temporary guardianship is sought. The court may not appoint an agency of the state without the agency's consent. A temporary guardian who is otherwise ineligible shall serve until ~~a~~ an eligible person or entity ~~who is not ineligible to serve as guardian and who is otherwise qualified to be guardian~~ is appointed by the court to act as temporary guardian, but ~~in no case~~ he not serve for longer than 6 months.

(4) A temporary full guardian is entitled to the care and custody of the ward, and the authority of any permanent guardian previously appointed by the court is suspended ~~so~~ as long as a temporary guardian has authority. A temporary limited guardian is entitled to exercise ~~such~~ the powers ~~as~~ that are specifically granted ~~to~~ him in the order of appointment, and the power of any permanent guardian previously appointed by the court to exercise those powers is suspended ~~so~~ as long as the temporary limited guardian has authority. The court by specific order may suspend all authority of the permanent guardian upon appointment of a temporary limited guardian. A temporary guardian may be removed at any time. A temporary guardian shall make any report the court requires. In other respects, the provisions of this code concerning guardians apply to temporary guardians."

NEW SECTION. Section 3. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

- END -

