

**** BILL NO. ****

INTRODUCED BY ****

BY REQUEST OF THE ****

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATING TO ADULT PERSONS UNDER DISABILITY GUARDIANSHIP AND CONSERVATORSHIP; REQUIRING PLAIN LANGUAGE INFORMATION TO BE SENT TO A PERSON ALLEGED TO BE INCAPACITATED OR A PERSON TO BE PROTECTED IN ADVANCE OF A GUARDIANSHIP OR CONSERVATORSHIP PROCEEDING; ALLOWING COURTS TO REQUIRE A GUARDIAN OR CONSERVATOR TO COMPLETE TRAINING RELATED TO THE APPOINTED ROLE; AND PROVIDING AN EFFECTIVE DATE."

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 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 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 the association or organization as willing and suitable to act as guardian of incapacitated persons;

(h) a person nominated by the person who is caring for the incapacitated person or paying benefits to 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 that would be disqualified under subsections (4)(a) through (4)(c).

(5) To ensure a person is best qualified to serve as guardian, the court may require the person to receive guardianship training in prior to or after the person's appointment as a guardian. The court will consider the specific needs of the incapacitated person and the potential guardian to determine what training should be required.

(6) The court may require a person to complete a background check, including a criminal history check and credit check, before appointing that person as a guardian. The court may decline to appoint a person as guardian if the results of the background check indicate the person is not suitable to act as guardian of the

1 [incapacitated person.](#)

2 ~~(5)(7)~~ If the court determines that there is no qualified person willing and able to serve as guardian,
3 the court may appoint an agency of the state or federal government that is authorized or required by statute to
4 provide services to the person or to persons suffering from the kind of disability from which the incapacitated
5 person is suffering or a designee of the agency, notwithstanding the provisions of subsection (4). Whenever an
6 agency is appointed guardian, the court may also appoint a limited guardian to represent a specified interest of
7 the incapacitated person. Whenever a limited guardian is appointed pursuant to this subsection, the specified
8 interest of the incapacitated person is the sole responsibility of the limited guardian and is removed from the
9 responsibility of the agency."

10

11 **Section 2.** Section 72-5-314, MCA, is amended to read:

12 **"72-5-314. Notices in guardianship proceedings -- [plain language information to alleged](#)**

13 [incapacitated person.](#) (1) In a proceeding for the appointment or removal of a guardian of an incapacitated
14 person other than the appointment of a temporary guardian or temporary suspension of a guardian, notice of
15 hearing must be given to each of the following:

16 (a) the ward or the person alleged to be incapacitated and the ward's or person's spouse, parents,
17 and adult children;

18 (b) any person who is serving as the ward's or person's guardian or conservator or who has the
19 ward's or person's care and custody; and

20 (c) in case no other person is notified under subsection (1)(a), at least one of the ward's or
21 person's closest adult relatives, if any can be found.

22 (2) Notice must be served personally on the alleged incapacitated person and the person's spouse
23 and parents if they can be found within the state. Notice to the spouse and parents, if they cannot be found
24 within the state, and to all other persons except the alleged incapacitated person must be given as provided in
25 72-1-301. Waiver of notice by the person alleged to be incapacitated is not effective unless the person attends
26 the hearing or the person's waiver of notice is confirmed in an interview with the visitor. Representation of the
27 alleged incapacitated person by a guardian ad litem is not necessary.

28 [\(2\) For a proceeding for the appointment of a guardian of an incapacitated person, the court shall](#)

1 send to the alleged incapacitated person plain-language information that includes:

2 (i) the purpose and basis for guardianship established in 72-5-306;

3 (ii) the procedure for the appointment of a guardian and the procedural rights of the person alleged
4 to be incapacitated as provided for in 72-5-315;

5 (iii) the rights of a ward;

6 (iv) the powers and duties of a guardian as prescribed in 72-5-321; and

7 (v) the report process."

8
9 **Section 3.** Section 72-5-445, MCA, is amended to read:

10 **"72-5-445. Notice of hearing -- plain language information to person to be protected.** (1) Notice
11 of the hearing of the petition must be given, regardless of age, for the period and in the manner provided by 72-
12 1-301 to all of the following:

13 ~~(1)(a)~~ the persons required to be named in a petition for the appointment of a conservator;

14 ~~(2)(b)~~ so far as is known to the petitioner, beneficiaries under any document executed by the
15 protected person that may have testamentary effect unless the court for good cause dispenses with such
16 notice;

17 ~~(3)(c)~~ if the proposed action involves a trust, to all persons entitled to receive notice with respect to
18 such an action under Title 72, chapter 38;

19 ~~(4)(d)~~ so far as is known to the petitioner, the persons who, if the protected person were to die
20 immediately, would be the protected person's heirs under the laws of intestate succession unless the court for
21 good cause dispenses with the notice; and

22 ~~(5)(e)~~ other persons as the court may order.

23 (2) For a hearing regarding a petition for appointment of a conservator for reasons other than
24 minority, the court shall send to the person to be protected plain-language information that includes:

25 (i) a general overview of the proceeding, including the rights of the person to be protected and the
26 requirements of 72-5-408(2);

27 (ii) the rights of a protected person;

28 (iv) the duties and requirements of a conservator as provided for in 72-5-410, 72-5-428, and 72-5-

1 [438.](#)"

2

3 **Section 4.** Section 72-5-410, MCA, is amended to read:

4 **"72-5-410. Who may be appointed conservator -- priorities.** (1) The court may appoint an
5 individual or a corporation with general power to serve as trustee as conservator of the estate of a protected
6 person. The following are entitled to consideration for appointment in the order listed:

7 (a) a conservator, guardian of property, or other like fiduciary appointed or recognized by the
8 appropriate court of any other jurisdiction in which the protected person resides;

9 (b) an individual or corporation nominated by the protected person if the person is 14 years of age
10 or older and has, in the opinion of the court, sufficient mental capacity to make an intelligent choice;

11 (c) the spouse of the protected person;

12 (d) an adult child of the protected person;

13 (e) a parent of the protected person or a person nominated by the will of a deceased parent;

14 (f) any relative of the protected person with whom the protected person has resided for more than
15 6 months prior to the filing of the petition;

16 (g) a person nominated by the person who is caring for the person or paying benefits to the
17 person;

18 (h) a conservator corporation organized under Title 35, chapter 2;

19 (i) the public administrator.

20 (2) A person in priorities listed in subsections (1)(a) and (1)(c) through (1)(f) may nominate in
21 writing a person to serve in that person's stead.

22 (3) With respect to persons having equal priority, the court is to select the one who is best qualified
23 of those willing to serve. The court, for good cause, may pass over a person having priority and appoint a
24 person having less priority or no priority.

25 [\(4\) To ensure a person is best qualified to serve as conservator, the court may require the person](#)
26 [to receive training prior to or after the person's appointment as a conservator. The court will consider the](#)
27 [specific needs of the protected person and the potential conservator to determine what training should be](#)
28 [required.](#)

1 (6) The court may require a person to complete a background check, including a criminal history
2 check and credit check, before appointing that person as a conservator. The court may decline to appoint a
3 person as conservator if the results of the background check indicate the person is not suitable to act as
4 conservator for the protected person."

5 **Section 5. Effective date.** [This act] is effective _____.
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- END -

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