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As of: July 28, 2016 (4:29pm)

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\*\*\*\* Bill No. \*\*\*\*

Introduced By \*\*\*\*\*

By Request of the Children, Families, Health, and Human Services  
Interim Committee

A Bill for an Act entitled: "An Act requiring guardians and conservators of incapacitated persons to report suspected exploitation; and amending sections 72-5-321, and 72-5-427, MCA."

Be it enacted by the Legislature of the State of Montana:

**Section 1.** 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

**Unofficial Draft Copy**

As of: July 28, 2016 (4:29pm)

LCcf8a

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 not grant that authority if it conflicts with the ward's wishes to the extent that those wishes can be determined. To determine the ward's wishes, the court shall determine by a preponderance of evidence if the

**Unofficial Draft Copy**

As of: July 28, 2016 (4:29pm)

LCcf8a

ward's substituted judgment, as applied to the ward's current circumstances, conflicts with the withholding or withdrawal of life-sustaining treatment or a do not resuscitate order.

(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

**Unofficial Draft Copy**

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LCcf8a

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.

(g)(i) If a guardian reasonably believes that exploitation of the ward may have occurred, may have been attempted, or is being attempted, the guardian shall promptly notify the department of public health and human services for investigation pursuant to Title 52, chapter 3, part 8.

(ii) For the purposes of this subsection (2)(g), "exploitation" has the meaning provided in 52-3-803.

(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) Except as provided in subsection (6), 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) (a) If the court has found that a ward has a primary diagnosis of a major neurocognitive disorder, as defined in the fifth edition of the diagnostic and statistical manual of mental disorders adopted by the American psychiatric association, and because of this disorder the ward is unwilling or unable to give informed consent to treatment, a full guardian or limited guardian may seek admission of the ward for stabilization and treatment to a hospital, skilled nursing facility, or another appropriate treatment facility other than the Montana state hospital.

(b) If the ward is admitted to the Montana mental health nursing care center, the court shall review every 90 days whether the Montana mental health nursing care center is the appropriate placement for the ward or whether a less restrictive alternative placement exists.

(7) Upon the death of a full guardian's or limited

**Unofficial Draft Copy**

As of: July 28, 2016 (4:29pm)

LCcf8a

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."

{*Internal References to 72-5-321:*

50-9-106x    72-5-304x \*    72-5-305x    72-5-316x  
72-5-324x }

**Section 2.** Section 72-5-427, MCA, is amended to read:

**"72-5-427. Powers of conservator in administration.** (1) A conservator has all of the powers conferred in this section and any additional powers conferred by law on trustees in this state. In addition, a conservator of the estate of an unmarried minor under 18 years of age, as to whom no one has parental rights, has the duties and powers of a guardian of a minor described in 72-5-231 until the minor attains 18 years of age or marries, but the parental rights so conferred on a conservator do not preclude appointment of a guardian as provided by Title 72, chapter 5, part 2.

(2) A conservator has power, without court authorization or confirmation, to invest and reinvest funds of the estate as would a trustee.

(3) A conservator, acting reasonably in efforts to

**Unofficial Draft Copy**

As of: July 28, 2016 (4:29pm)

LCcf8a

accomplish the purpose for which the conservator was appointed, may act without court authorization or confirmation to:

(a) collect, hold, and retain assets of the estate, including land in another state, until in the conservator's judgment disposition of the assets should be made, and the assets may be retained even though they include an asset in which the conservator is personally interested;

(b) receive additions to the estate;

(c) continue or participate in the operation of any business or other enterprise;

(d) acquire an undivided interest in an estate asset in which the conservator in any fiduciary capacity holds an undivided interest;

(e) invest and reinvest estate assets in accordance with subsection (2);

(f) deposit estate funds in a bank, including a bank operated by the conservator;

(g) acquire or dispose of an estate asset, including land in another state, for cash or on credit at public or private sale and manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset;

(h) make ordinary or extraordinary repairs or alterations in buildings or other structures, demolish any improvements, raze existing or erect new party walls or buildings;

(i) subdivide, develop, or dedicate land to public use; make or obtain the vacation of plats and adjust boundaries, adjust differences in valuation on exchange or partition by

**Unofficial Draft Copy**

As of: July 28, 2016 (4:29pm)

LCcf8a

giving or receiving considerations, and dedicate easements to public use without consideration;

(j) enter for any purpose into a lease as lessor or lessee, with or without option to purchase or renew, for a term within or extending beyond the term of the conservatorship;

(k) enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;

(l) grant an option involving disposition of an estate asset or take an option for the acquisition of any asset;

(m) vote a security in person or by general or limited proxy;

(n) pay calls, assessments, and any other sums chargeable or accruing against or on account of securities;

(o) sell or exercise stock subscription or conversion rights or consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;

(p) hold a security in the name of a nominee or in other form without disclosure of the conservatorship so that title to the security may pass by delivery, but the conservator is liable for any act of the nominee in connection with the stock so held;

(q) insure the assets of the estate against damage or loss and the conservator against liability with respect to third persons;

(r) borrow money to be repaid from estate assets or otherwise or advance money for the protection of the estate or



**Unofficial Draft Copy**

As of: July 28, 2016 (4:29pm)

LCcf8a

the protected person and for all expenses, losses, and liability sustained in the administration of the estate or because of the holding or ownership of any estate assets, and the conservator has a lien on the estate as against the protected person for advances made;

(s) pay or contest any claim or settle a claim by or against the estate or the protected person by compromise, arbitration, or otherwise and release, in whole or in part, any claim belonging to the estate to the extent that the claim is uncollectible;

(t) pay taxes, assessments, compensation of the conservator, and other expenses incurred in the collection, care, administration, and protection of the estate;

(u) allocate items of income or expense to either estate income or principal, as provided by law, including creation of reserves out of income for depreciation, obsolescence, or amortization or for depletion in mineral or timber properties;

(v) pay any sum distributable to a protected person or a dependent of the person who is a minor or incompetent, without liability to the conservator, by paying the sum to the distributee or by paying the sum for the use of the distributee either to the person's guardian or, if none, to a relative or other person with custody of the person;

(w) employ persons, including attorneys, auditors, investment advisors, or agents, even though they are associated with the conservator, to advise or assist the conservator in the performance of administrative duties, act upon their

**Unofficial Draft Copy**

As of: July 28, 2016 (4:29pm)

LCcf8a

recommendation without independent investigation, and instead of acting personally, employ one or more agents to perform any act of administration, whether or not discretionary;

(x) prosecute or defend actions, claims, or proceedings in any jurisdiction for the protection of estate assets and of the conservator in the performance of the conservator's duties; and

(y) execute and deliver all instruments that will accomplish or facilitate the exercise of the powers vested in the conservator.

(4)(a) If a conservator reasonably believes that exploitation of a protected person may have occurred, may have been attempted, or is being attempted, the conservator shall promptly notify the department of public health and human services for investigation pursuant to Title 52, chapter 3, part 8.

(b) For the purposes of this subsection (4), "exploitation" has the meaning provided in 52-3-803."

{*Internal References to 72-5-427:*  
72-5-430 72-5-430 }

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