LC 0495/01

INTRODUCED BY Turney Chest 1 2 3 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING SECTION 4 914-5-303. R.C.M. 1947. TO PROVIDE FOR DISCRETIONARY RATHER 5 THAN MANDATORY APPOINTMENT OF COUNSEL IN A PROCEEDING TO 6

7 DETERMINE INCAPACITY AND THE NEED TO APPOINT A GUARDIAN FOR 8 A PERSON ALLEGED TO BE INCAPACITATED."

9

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

Section 1. Section 91A-5-303, R.C.M. 1947, is amended to read as follows:

"91A-5-303. Procedure for court appointment of a 13 quardian of an incapacitated person. (1) The incapacitated 14 15 person or any person interested in his welfare may petition 16 for a finding of incapacity and appointment of a guardian. 17 (2) Upon the filing of a petition, the court shall set a date for hearing on the issues of incapacity_ and--unless 18 19 the The allegedly incapacitated person has may have counsel of his own choice, it-shall or the court may appoint an 20 21 appropriate official or attorney to represent him in the 22 proceeding, who shall have the powers and duties of a quardian ad litem. The person alleged to be incapacitated 23 shall be examined by a physician appointed by the court who 24 shall submit his report in writing to the court and be 25

INTRODUCED BILL

interviewed by a visitor sent by the court. The visitor also 1 2 shall interview the person seeking appointment as guardian, and visit the present place of abode of the person alleged 3 to be incapacitated and the place it is proposed that he 4 5 will be detained or reside if the requested appointment is 6 made and submit his report in writing to the court. The 7 person alleged to be incapacitated is entitled to be present 8 at the hearing in person, and to see or hear all evidence 9 bearing upon his condition. He is entitled to be present by 10 counsel, to present evidence, to cross-examine witnesses, 11 including the court-appointed physician and the visitor, and 12 to trial by jury. The issue may be determined at a closed 13 hearing without a jury if the person alleged to be 14 incapacitated or his counsel so requests."

-End-

LC 0495/01

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45th Legislature

SB 0396/02

Approved by Committee on Judiciary

SENATE BILL ND. 396 L INTRODUCED BY TURNAGE, MURRAY, ROBERTS 2 3 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING SECTION 4 91A-5-303. R.C.M. 1947, TO PROVIDE FOR DISCRETIONARY RATHER 5 THAN MANDATORY APPOINTMENT OF COUNSEL IN A PROCEEDING TO 6 DETERMINE INCAPACITY AND THE NEED TO APPOINT A GUARDIAN FOR 7 A PERSON ALLEGED TO BE INCAPACITATED." 8 9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: 10 Section 1. Section 91A-5-303+ R.C.M. 1947, is amended 11 12 to read as follows: #91A-5-303. Procedure for court appointment of a 13 ovardian of an incapacitated person. (1) The incapacitated 14 person or any person interested in his welfare may petition 15 for a finding of incapacity and appointment of a guardian. 15 (2) Upon the filing of a petition, the court shall set 17 a date for hearing on the issues of incapacitys and--unless 18 the The allegedly incapacitated person has may have counsel 19 20 of his own choice +t--shall or the court way IN THE INTEREST OF JUSTICE: appoint an appropriate official or 21 attorney to represent him in the proceeding, who shall have 22 the powers and duties of a quardian ad litem. The person 23 alleged to be incapacitated shall be examined by a physician 24 appointed by the court who shall submit his report in 25

SECOND READING

1 writing to the court and be interviewed by a visitor sent by the court. The visitor also shall interview the person 2 seeking appointment as quardian, and visit the present place 3 of above of the person alleged to be incapacitated and the 4 5 place it is proposed that he will be detained or reside if the requested appointment is made and submit his report in ٨ writing to the court. The person alleged to be incapacitated 7 Ĥ is entitled to be present at the hearing in person, and to 9 see or hear all evidence bearing upon his condition. He is 10 entitled to be present by counsel, to present evidence, to 11 cross-examine witnesses, including the court-appointed 12 physician and the visitor, and to trial by jury. The issue may be determined at a closed hearing without a jury if the 13 14 person alleged to be incapacitated or his counsel so 15 requests.*

-End-

SB 0396/02

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SB 0396/02

1	SENATE BILL NO. 396
Z	INTRODUCED BY TURNAGE, MURRAY, ROBERTS
3	
4	A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING SECTION
5	91A-5-303. R.C.M. 1947. TO PROVIDE FOR DISCRETIONARY RATHER
6	THAN MANDATORY APPOINTMENT OF COUNSEL IN A PROCEEDING TO
7	DETERMINE INCAPACITY AND THE NEED TO APPOINT A GUARDIAN FOR
8	A PERSON ALLEGED TO BE INCAPACITATED."
9	
10	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
11	Section 1. Section 91A-5-303, R.C.M. 1947, is amended
12	to read as follows:
13	"91A-5-303• Procedure for court appointment of a
14	guardian of an incapacitated person. (1) The incapacitated
15	person or any person interested in his welfare may petition
15	for a finding of incapacity and appointment of a quardian.
17	(2) Upon the filing of a petition, the court shall set
18	a date for hearing on the issues of incapacity, andunless
19	the <u>The</u> allegedly incapacitated person has <u>may have</u> counsel
20	of his own choice , itshall <u>or the court may</u>. IN <u>IHE</u>
21	INTEREST OF JUSTICE: appoint an appropriate official or
22	attorney to represent him in the proceeding, who shall have
23	the powers and duties of a quardian ad litem. The person
24	alleged to be incapacitated shall be examined by a physician
25	appointed by the court who shall submit his report in

writing to the court and be interviewed by a visitor sent by 1 the court. The visitor also shall interview the person 2 seeking appointment as guardian, and visit the present place 3 of abode of the person alleged to be incapacitated and the 4 place it is proposed that he will be detained or reside if 5 the requested appointment is made and submit his report in 6 7 writing to the court. The person alleged to be incapacitated is entitled to be present at the hearing in person, and to 8 9 see or hear all evidence bearing upon his condition. He is 10 entitled to be present by counsel, to present evidence, to 11 cross-examine witnesses, including the court-appointed physician and the visitor, and to trial by jury. The issue 12 may be determined at a closed hearing without a jury if the 13 person alleged to be incapacitated or his counsel so 14 requests.* 15

-End-

THIRD READING

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SENATE SILL ND. 396 1 INTRODUCED BY TURNAGE, MURRAY, ROBERTS 2 4 A BILL FUR AN ACT ENTITLED: MAN ACT AMENDING SECTION 4 914-5-303. K.C.M. 1947. TO PROVIDE FOR DISCRETIONARY RATHER 5 THAN MANDATORY APPOINTMENT OF COUNSEL IN A PROCHEDING TO 6 DETERMINE INCAPACITY AND THE NEED TO APPOINT A GUARDIAN FOR 7 A PERSON ALLEGED TO BE INCAPACITATED." ы 4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HONTANA: 10 11 Section 1. Section 91A-5-303, R.C.M. 1947, is amended 12 to read as follows: 13 "91A-5-303. Procedure for court appointment of a 14 quardian of an incapacitated person. (1) The incapacitated person or any person interested in his welfare may petition 15 for a tinding of incapacity and appointment of a guardian. 10 (2) Upon the filing of a petition, the court shall set 17 a date for hearing on the issues of incapacity_ and-unless 18 the life allegedly incapacitated person has may have counsel 13 of his own choice, it--shall or the court may, IN IHE żυ 21 INTEREST OF JUSTICE: appoint an appropriate official or 22 attorney to represent him in the proceeding, who shall have the powers and duties of a guardian ad litem. The person 23

alleged to be incapacitated shall be examined by a physician

appointed by the court who shall submit his report in

1 writing to the court and be interviewed by a visitor sent by the court. The visitor also shall interview the person 2 3 seeking appointment as guardian, and visit the present place 4 of abode of the person alleged to be incapacitated and the place it is proposed that he will be detained or reside if 5 6 the requested appointment is made and submit his report in 7 writing to the court. The person alleged to be incapacitated я is entitled to be present at the hearing in person, and to 9 see or hear all evidence bearing upon his condition. He is 10 entitled to be present by counsel, to present evidence, to 11 cross-examine witnesses, including the court-appointed 12 physician and the visitor, and to trial by jury. The issue 13 may be determined at a closed hearing without a jury if the person alleged to be incapacitated or his counsel so 14 15 requests.*

-End-

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REFERENCE BILL