SENATE BILL NO. 404

INTRODUCED BY MAZUREK, DUSSAULT, HOLLIDAY, KEMMIS, BENGTSON

IN THE SENATE February 9, 1981 Introduced and referred to Committee on Judiciary. February 14, 1981 Committee recommend bill do pass. Report adopted. February 16, 1981 Bill printed and placed on members' desks. February 17, 1981 Second reading, do pass. Pebruary 18, 1981 Correctly engrossed. February 19, 1981 Third reading, passed. Ayes, 46; Noes, 2. Transmitted to House. IN THE HOUSE February 20, 1981 Introduced and referred to Committee on Judiciary. March 14, 1981 Committee recommend bill be concurred in. Report adopted. March 21, 1981 Second reading, pass consideration. March 24, 1981 Second reading, pass consideration. March 27, 1981 Second reading, concurred in. March 30, 1981 On motion rules suspended and bill allowed to be transmitted on 71st day. Motion adopted. March 31, 1981 Third reading, concurred in. Ayes, 92; Noes, 4.

IN THE SENATE

April 1, 1981

Returned from House. Concurred in. Sent to enrolling.

Reported correctly enrolled.

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INTRODUCED BY Maynek Alusand Lucion Emine

3 Berghon 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE 5 LAW RELATING TO THE APPOINTMENT OF GUARDIANS FOR 6 INCAPACITATED PERSONS; PROVIDING FOR LIMITED GUARDIANSHIPS; 7 DEFINING WHO MAY BE GUARDIANS AND CLARIFYING THE PROCEDURE 8 FOR APPOINTING GUARDIANS; AMENDING SECTIONS 72-5-312, 9 72-5-313, 72-5-315 THROUGH 72-5-317, AND 72-5-321, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: <u>NEW SECTION</u>, Section 1. Definitions. In this part, unless the context requires otherwise, the following definitions apply:

(1) "Full guardian" means a guardian who possesses all
the legal duties and powers enumerated in 72-5-321.

17 (2) "Limited guardian" means a guardian who possesses
18 fewer than all of the legal duties and powers of a fulls.
19 guardian and whose rights, powers, and duties have been
20 specifically enumerated by the court.

(3) "Guardian" includes a full guardian and a limitedguardian.

23 <u>NEW_SECTION</u>. Section 2. Purpose and basis for
 24 guardianship. Guardianship for an incapacitated person may
 25 be used only as is necessary to promote and protect the

well-being of the person. The quardianship must be designed 1 2 to encourage the development of maximum self-reliance and independence in the person and may be ordered only to the 3 extent that the person's actual mental and physical 4 limitations require it. An incapacitated person for whom a 5 quardian has been appointed is not presumed to be Б inconcetent and retains all legal and civil rights except 7 those that have been expressly limited by court order or 8 9 have been specifically granted to the guardian by the court. 10 Section 3. Section 72-5-312, MCA, is amended to read: #72-5-312. Who may be quardian -- priorities. (1) Any 11 12 competent person or a suitable institution, association, or 13 nonprofit corporation or any of its members may be appointed 14 quardian of an incapacitated person. (2) Persons who are not disqualified have priority for 15 16 appointment as guardian in the following order: 17 (a) a person, association, or private _____oopprofit 18 corporation nominated by the incapacitated persons if the 19 court specifically finds that at the time of the nomination 20 the incapacitated person had the capacity to make a 21 reasonably_intelligent_choice: 22 tatibl the spouse of the incapacitated person; 23 tbt(c) an adult child of the incapacitated person; te)(d) a parent of the incapacitated person, including 24 25 a person nominated by will or other writing signed by a

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1	deceased parent;
2	<pre>{dylel any relative of the incapacitated person with</pre>
3	whom he has resided for more than 6 months prior to the
4	filing of the petition;
5	(f)_a_relative_or_friend_who_bas_demonstrated_a
6	sinceres_longstanding_interest_in_the_welfare_ofthe
7	incapacitated_person:
8	(g) a private association or nonprofit corporation
9	<u>with a guardianship program for incapacitated persons, a</u>
10	<u>member of such private association or nonprofit corporation</u>
11	approvad by the association or corporation to act as a
12	<u>guardian_for_the_incapacitated_persons_or_a_person_included</u>
13	op_ap_official_list_of_such_association_or_organization_as
14	willing_and_suitable_to_act_as_guardian_of_incapacitated
15	personsi
16	<pre>(e)(h) a person nominated by the person who is caring</pre>
17	for him or paying benefits to him.
18	(3) The priorities established in subsection (2) are
19	not binding, and the court shall select the person.
20	association+ or monprofit corporation that is best qualified
21	and willing to serve, we we
22	(4) Except as provided in subsection (5), the court
23	<u>may not appoint a persone institutione associations or</u>
24	<u>nonprofit_corporation_to_be_the_guardian_of_an_incapacitated</u>
25	<u>person_if_tbe_person.institution.association.or_nonprofit</u>

1	corporation:
2	<u>(a) provides or is likely to provide during the</u>
3	guardianshipsubstantial_services_to_theincapacitated
4	person_in_the_professional_or_business_capacity_other_than
5	in the capacity of guardian;
5	(b) is or is likely to become during the guardianship
7	period_a_creditor_of_the_incapacitated_persons_other_than_in
8	the capacity of guardian:
9	(c) has or is likely to have during the guardianship
10	period_interests_that_may_conflict_with_those_of_the
11	incapacitated person: or
12	(d)is_employed_by_a_person*_institution*_association*
13	or <u>nonprofit corporation who or which would be disqualified</u>
14	under_subsections_(4)(a)_through_(4)(c).
15	151 If the court determines that there is no qualified
16	person_willing_and_able_to_serve_as_guardianthe_courtmay
17	appoint_an_agency_of_the_state_or_federal_government_that_is
18	authorized or required by statute to provide services to the
19	person_or_to_persons_suffering_from_the_kind_of_disability
20	from which the incapacitated person is suffering or a
21	designee_of_the_agency.notwithstanding_the_provisions_of
22	subsection_(4). Whenever_an_agency_is_appointed_guardian.
23	the <u>court may also appoint a limited guardian to represent</u>
24	a_specified_interest_of_the_incapacitated_person*_Whenever_a
25	limited_guardian_is_appointed_pursuant_to_this_subsection.

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1 the specified interest of the incapacitated person is the 2 sole responsibility of the limited guardian and is removed 3 from the responsibility of the agency."

4 Section 4. Section 72-5-313, MCA, is amended to read: 5 "72-5-313. Visitor in quardianship proceedings 6 defined. A visitor is, with respect to quardianship 7 proceedings, a person who is trained in law, nursing, er 8 social work, <u>medical care</u>, <u>mental bealth care</u>, <u>pastoral</u> care.__education.__or__rebabilitation and is an officer. 9. 10 employee, or special appointee of the court with no personal 11 interest in the proceedings."

12 <u>NEH_SECTION</u> Section 5. Request for notice --13 interested person. (1) Any interested person who desires to 14 be notified before any order is made in a guardianship 15 proceeding may file with the clerk a request for notice upon 16 payment of any fee required by statute or court rule. The 17 clerk shall mail a copy of the demand to the guardian, if 18 one has been appointed.

19 (2) A request is not effective unless it contains a 20 statement showing the interest of the person making it and 21 bis address or that of his attorney and is effective only as 22 to matters occurring after the filing. Any governmental 23 agency paying or planning to pay benefits to the alleged 24 incapacitated person is an interested person in guardianship 25 proceedings. I <u>NEW_SECTION</u>. Section 6. Contents of petition for 2 appointment of guardian. (1) The petition for appointment of 3 a guardian shall contain:

4 (a) the name, residence, and mailing address of the
5 petitioner, his relationship to the alleged incapacitated
6 person, and his interest in the matter;

7 (b) the name, residence, and mailing address of the
8 alleged incapacitated person;

9 (c) the nature and degree of the alleged incapacity; 10 (d) if the petition in any way affects the management 11 of the property of the alleged incapacitated person, the 12 approximate value and description of his property, including 13 any compensation, pension, insurance, or allowance to which 14 he may be entitled;

(e) whether there is: in any state; a full guardian or
limited guardian for the person or estate of the
incapacitated person or a conservator of his property;

(f) the name, residence, and mailing address of the
person whom the petitioner seeks to have appointed guardian;
(g) the names, residences, and nature of relationship,
so far as is known or can reasonably be ascertained, of the
persons most closely related by blood or marriage to the
alleged incapacitated person;

(h) the name and residence of the person orinstitution having the care and custody of the alleged

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1 incapacitated person;

2 (i) the reasons why the appointment of a guardian is
3 sought and whether a limited guardianship or full
4 quardianship is requested;

5 (j) the facts supporting the allegations of incapacity6 and the need for a guardian;

7 (k) the specific areas of protection and assistance
8 requested and the limitation of rights requested to be
9 included in the order of appointment;

10 (1) in the case of a petition for limited 11 guardianship, the particular powers and areas of authority 12 that the petition seeks to have vested in the limited 13 guardian as provided in [section 7] and the term for which 14 the limited guardianship is requested;

(m) in the case of a petition for full guardianship,the length of time the guardianship is expected to last.

(2) The petition may also include a request for 17 temporary quardianship as provided in 72-5-317 if the 18 petitioner believes that the requisites of that section are 19 20 met and that the appointment of a temporary guardian, pending, the completion of guardianship proceedings, is 21 necessary to protect the welfare of the alleged 22 23 incapacitated person. The facts requiring appointment of a temporary quardian shall be stated with specificity. 24 NEW SECTION. Section 7. Purposes for establishment of 25

limited guardianship. A petition seeking the establishment
 of a limited guardianship shall specify the particular
 powers that the limited guardian is proposed to exercise and
 the particular areas of protection and assistance required.
 The purposes for which a limited guardian may be appointed
 include:

7 (1) to care for and maintain the alleged incapacitateda person;

9 (2) to assert and protect the rights and best
10 interests of the alleged incapacitated person;

(3) to provide timely and informed consent to
 necessary medical procedures and procedures implemented in
 connection with habilitation and training programs;

14 (4) to assist in the acquisition of necessary
15 training, habilitation, and education for the incapacitated
16 person;

17 (5) to exercise any other powers, duties, or 18 limitations in regard to the care of the incapacitated 19 person or the management of his property that the petition 20 shall explicitly specify and which may be no greater than 21 the powers a full guardian can exercise.

22 Section 8. Section 72-5-315. MCA, is amended to read:
23 "72-5-315. Procedure for court appointment of guardian
24 -- hearing -- examination -- interview -- procedural rights.
25 (1) The incapacitated person or any person interested in his

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welfare, including the county attorney, may petition for a
 finding of incapacity and appointment of a guardian.

3 (2) Upon the filing of a petition, the court shall set 4 a date for hearing on the issues of incapacity. The 5 allegedly incapacitated person may have counsel of his own 6 choice or the court may, in the interest of justice, appoint 7 an appropriate official or attorney to represent him in the 8 proceeding, who shall have the powers and duties of a 9 guardian ad litem.

10 (3) The person alleged to be incapacitated shall be 11 examined by a physician appointed by the court who shall 12 submit his report in writing to the court and be interviewed 13 by a visitor sent by the court. Whenever possible, the court shall appoint as visitor a person who has particular 14 15 experience or expertise in treating, evaluating, or caring 16 for persons with the kind of disabling condition that is 17 alleged to be the cause of the incanacity. The visitor also 18 shall <u>also</u> interview the person seeking--appointment-as 19 quardian who appears to have caused the petition to be filed 20 and the person who is nominated to serve as guardian and 21 visit the present place of abode of the person-alleged to be 22 incapacitated and the place it is proposed that he will be 23 vetained or reside if the requested appointment is made and 24 submit his report in writing to the court. Whenever possible 25 without__undue_delay_or_expense_beyond_the_ability_to_pay_of

the alleged incapacitated persons the courts in formulating the indoment. shall utilize the services of any public or charitable scency that offers or is willing to evaluate the condition of the allegedly incapacitated person and make recommendations to the court recarding the most appropriate form of state intervention in his affairs. (4) The person alleged to be incapacitated is entitled to be present at the hearing in person and to see or hear all evidence hearing upon his condition. He is entitled to be present by counsel, to present evidence, to cross-examine witnesses, including the court-appointed physician and the visitor, and to trial by jury. The issue may be determined at a closed hearing without a jury if the person alleged to be incapacitated or his counsel so requests." Section 9. Section 72-5-316. MCA. is amended to read: "72-5-316+ Findings -- order of appointment. The-court mey--epocint-e-ausrdien-es-requested-if-it-it-is-setisfied-thet the-person-for-whom-a-guardian-is--sought--is--incopecitated and--that--the--appointment--is--necessary-or-desirebie-as-a means-of-providing-continuing-core-and--supervision--of--the person--of--the--incapacityted--persons---Alternativelys-the court--may--dismiss--the--proceeding--or--enter--any---other appropriate--orders (1)__1f_the_court_is_satisfied_that_the

24 person for whom a guardianship is sought is incapacitated 25 and that judicial intervention in his personal freedom of

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	1	action and decision is necessary to meet essential
	2	requirements for his physical health or safety.it may
	3	appoint_a_fullguardianbavingthepowersdescribedin
	4	72-5-321 or a limited guardian having the powers described
	5	in the order. If the court is satisfied that the ellegedly
	6	incapacitated person_could_handle_the_essential_requirements
	7	for physical health or safety if his financial resources
	8	were managed by anothers it shall order that the pstition be
	9	treated_as_a_petition_for_a_protective_order_under_part_4_of
	10	this_chapter_and_proceed_accordinglyAlternativelythe
	11	courtmaydismisstheproceedingorenteranyother
	12	appropriate_order_that_is_not_inconsistent_with_the_specific
	13	provisions of this part. In issuing its order the court
	14	shall_make_specific_findings_of_fact.
	15	(2) The court may not joyest a quardian with powers or
	16	duties_beyond_those_sought_in_the_petition_and_mays_upon
	17	petition_for_a_full_guardianship:createa_limited
	18	guardianship_or_conservatorship_when_the_court_determines
	19	that a limited guardianship or conservatorship is all that
	20	is required for the care and protection of the incapacitated
èn.	2 <u>1</u> , J	person. The order shall specify whether a full or limited
	22	guardiaoship is being created. In the case of a limited
	23	guardianshipsthe_order_shall_specify_the_particular_powers
	24	and duties yested in the limited guardian, and the period
	25	for which the limited guardianship is created.

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(3) No incapacitated person may be limited in the 1 . exercise of any civil or political rights except those that 2 are clearly inconsistent with the exercise of the powers 3 aranted to the guardian unless the court's order 44 specifically provides for such limitations. The order shell 5 state that all rights not specifically limited are retained 6 by the incapacitated person." 7 Section 10. Section 72-5-317, MCA, is amended to read: 8 If 🧿 #72-5-317. Temporary quardians. (1)Q incapacitated person has no quardian and an emergency 10 exists, the court may exercise the power of a quardian 11 pending notice and hearing. 12 (2) If an appointed guardian is not effectively 13 performing his duties or if there is no appointed guardian 14 and the court further finds that the welfare of the 15 16 incapacitated person requires immediate action, it may, with or without notice, appoint a temporary guardian for the 17 incapacitated person for a specified pariod not to exceed 6 18 19 months. The court may appoint either a full or a limited temporary quardian. depending on the needs and circumstances 20 21 of the incapacitated persons The court may not invest a 22 temporary quardian with more powers than are required by the circumstances necessitating the appointment. The order of 23 appointment of a temporary guardian shall_state_whether_a 24 full or limited temporary quardianship is being created and.

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in the case of a limited temporary quardians the specific 1 powers and duties of the limited temporary guardian. 2 (3) In case there is no person available and willing 3 4 to act as temporary guardian for an incapacitated person who 5 is in need of a temporary guardian except a person or eptity 6 who is inclicible to act as ouardian pursuant to the 7 provisions of 72-5-312(4), the court may ___appoint___as temporary guardian a person or entity who would otherwise he В 9 inelicible under that provision to act as guardian. This 10 subsection does not permit the appointment of a person or entity_who_has_an_actual_conflict_of_interest_in_regard_to 11 12 the purcose for which the temporary guardianship is _sought. 13 A temporary guardian who is otherwise inclicible shall serve 14 until _____person_or_entity_who_is_not_ineligible_to_serve_as 15 cuardian and who is otherwise qualified to be quardlan is 13 appointed by the court to act as temporary guardian. but in 17 no_case_may_he_serve_for_longer_than_6 months. (3)(4) A temporary full guardian is entitled to the 18 19 care and custody of the ward, and the authority of any permanent quardian previously appointed by the court is 20 21 suspended so long as a temporary guardian has authority. A 22 temporary limited guardian is entitled to exercise such 23 powers as are specificelly granted to him in the order of 24 appointment, and the power of any permanent ouardian 25 previously_appointed_by_the_court_to_exercise_those_powers

1 is suspended so long as the temperary limited guardian has 2 authority_____The __court__by__specific __erder_may_suspend.all authority of the permanent guardian upon appointment of a 3 temperary limited quardian. A temporary guardian may be 4 5 removed at any time. A temporary guardian shall make any A report the court requires. In other respects the provisions 7 of this code concerning quardians apply to temporary R guardians."

9 Section 11. Section 72-5-321. MCA, is amended to read: #72-5-321. Powers and duties of guardian of 10 incapacitated person. (1) The powers and duties of a limited 11 guardian are those specified in the order appointing the 12 13 guardian_____The___limited__guardian___is_required_to_report_the condition of the incapacitated person and of the estate that 14 has been subject to his possession and control, as required 15 16 by the court or by court rule.

tit(2) A full quardian of an incapacitated person has 17 **31** the same powers, rights, and duties respecting his ward that 19 a parent has respecting his unemancipated minor child, except that a guardian is not liable to third persons for 20 21 acts of the ward solely by reason of the parental 22 relationship. In particular and without qualifying the 23 foregoing, a full quardian has the following powers and 24 duties, except as modified limited by order of the court: (a) To the extent that it is consistent with the terms 25

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1 of any order by a court of competent jurisdiction relating 2 to detention or commitment of the ward, he is entitled to 3 custody of the person of his ward and may establish the 4 ward's place of abode within or without this state.

5 (b) If entitled to custody of his ward, he shall make provision for the care, comfort, and maintenance of his ward 6 and whenever appropriate arrange for his training and 7 education. Without regard to custodial rights of the ward's 8 person, he shall take reasonable care of his ward's 9 10 clothing, furniture, vehicles, and other personal effects 11 and commence protective proceedings if other property of his 12 ward is in need of protection.

(c) A <u>full</u> 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.
(d) If no conservator for the estate of the ward has
been appointed, <u>he a full guardian may:</u>

18 (i) institute proceedings to compel any person under a
19 duty to support the ward or to pay sums for the welfare of
20 the ward to perform his duty;

21 (ii) receive money and tangible property deliverable to 22 the ward and apply the money and property for support, care, 23 and education of the ward; but he may not use funds from his 24 ward's estate for room and board which he, his spouse, 25 parent, or child have 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. He must exercise care to
 conserve any excess for the ward's needs.

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5 (e) A <u>full</u> guardian is required to report the 6 condition of his ward and of the estate which has been 7 subject to his possession or control, as required by the 8 court or court rule.

9 (f) If a conservator has been appointed, all of the 10 ward's estate received by the <u>full</u> guardian in excess of 11 those funds expended to meet current expenses for support, 12 care, and education of the ward must be paid to the 13 conservator for management as provided in this code, and the 14 <u>full</u> guardian must account to the conservator for funds 15 expended.

16 121131 Any full quardian of one for whom a conservator also has been appointed shall control the custody and care 17 18 of the ward. A limited guardian of a person for whom a 19 conservator has been appointed shall control_those_aspects 20 of the custody and care of the ward over which be is given 21 authority by the order establishing the limited 27 guardianshin, and The full guardian or limited guardian is entitled to receive reasonable sums for his services and for 23 24 room and board furnished to the ward as agreed upon between 25 him and the conservator, provided the amounts agreed upon

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1 are reasonable under the circumstances. The full guardian or_limited_ouardian_authorized_to_oversee_such_aspects_of 2 the incapacitated person's care may request the conservator 3 4 to expend the ward's estate by payment to third persons or 5 institutions for the ward's care and maintenance. 6 (4) No full quardian or limited quardian may 7 involuntarily commit for mental health treatment or for treatment of a developmental disability or for observation 8 9 or evaluation a ward who is himself unwilling or unable to 10 give informed consent to such commitment, except as provided 11 in <u>72-5-322</u>, <u>unless</u> the <u>procedures</u> for <u>involuntary</u> 12 commitment_set_forth_in_litle_53. chapters_20_and_21. are 13 followed. This chapter does not abrogate any of the rights 14 of mentally_disabled_persons_provided_for_in_Title_53.

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<u>chapters_20_and_21.</u>"
Section 12. Codification instruction. Sections 1, 2,
5, 5, and 7 are intended to be codified as an integral part
of Title 72, chapter 5, part 3, and the provisions of Title
72, chapter 5, part 3, apply to sections 1, 2, 5, 6, and 7.

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Approved by Committee on Judiciary

INTRODUCED BY Mayurk Alusan Lucian Kommun 1 2 Bengtoon 3

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
LAW RELATING TO THE APPOINTMENT OF GUARDIANS FOR
INCAPACITATED PERSONS; PROVIDING FOR LIMITED GUARDIANSHIPS;
DEFINING WHO MAY BE GUARDIANS AND CLARIFYING THE PROCEDURE
FOR APPOINTING GUARDIANS; AMENDING SECTIONS 72-5-312,
72-5-313, 72-5-315 THROUGH 72-5-317, AND 72-5-321, MCA."

10

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

12 <u>NEW SECTION</u> Section 1. Definitions. In this part, 13 unless the context requires otherwise, the following 14 definitions apply:

(1) "Full guardian" means a guardian who possesses all
 the legal duties and powers enumerated in 72-5-321.

17 (2) "Limited guardian" means a guardian who possesses
18 Fewer than all of the legal duties and powers of a full
19 guardian and whose rights, powers, and duties have been
20 specifically enumerated by the court.

(3) "Guardian" includes a full guardian and a limited
 quardian.

23 <u>NEW_SECTION</u> Section 2. Purpose and basis for 24 guardianship. Guardianship for an incapacitated person may 25 be used only as is necessary to promote and protect the

1 well-being of the person. The guardianship must be designed 2 to encourage the development of maximum' self-reliance and 3 independence in the person and may be ordered only to the extent that the person's actual mental and physical 5 limitations require it. An incapacitated person for whom a quardian has been appointed is not presumed to be ۸ 7 incompetent and retains all legal and civil rights except 8 those that have been expressly limited by court order or 9 have been specifically granted to the guardian by the court. 10 Section 3. Section 72-5-312, MCA. is amended to read: 11 *72-5-312. Who may be guardian -- priorities. (1) Any 12 competent person or a suitable institution. association. or 13 Dopprofit corporation or any of its members may be appointed 14 quardian of an incapacitated person. 15 (2) Persons who are not disgualified have priority for 16 appointment as guardian in the following order: 17 (a) a person: association: or private nonprofit 18 corporation nominated by the incapacitated person, if the 19 court specifically finds that at the time of the nomination **Z**0 the incapacitated person had the capacity to make a 21 reasonably_intelligent_choice: 22 tetibl the spouse of the incapacitated person: 23 tbf(c) an adult child of the incapacitated person; 24 tet(d) a parent of the incapacitated person, including 25 a person nominated by will or other writing signed by a

-2- SECOND READING

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1	deceased parent;
2	<pre>td)(e) any relative of the incapacitated person with</pre>
3	whom he has resided for more than 6 months prior to the
4	filing of the petition;
5	<u>(fl_a_relative_or_friend_who_bas_demonstrated_a</u>
6	sincerelongstanding_interest_in_the_welfare_ofthe
7	incapacitated_person:
8	(g) a private association or nonprofit corporation
9	with a guardianship program for incapacitated persons. a
10	<pre>pemperof_such_private_association_or_popprofit_corporation</pre>
11	approved by the association or corporation to act as a
12	guardian for the incapacitated persons or a person included
13	on an official list of such association or organization as
14	willing_and_suitable_to_act_as_guardian_of_incapacitated
15	personsi
16	tetth1 a person nominated by the person who is caring
17	for him or paying benefits to him.
18	(3) The priorities established in subsection (2) are
19	not_binding,_and_tbe_court_shall_select_tbeperson.
20	association: or nonprofit corporation that is best qualified
21	and willing to serve
22	<pre>(4) Except_as_provided_in_subsection_(5), the_court</pre>
23	may notappointaperson*institution*association*or
24	nonprofit_corporation_to_be_the_guardian_of_an_incapacitated
25	person_if_the_person.institution.association.or_nongrofit

1	corporation:
2	(a) provides or is likely to provide during the
3	guardianshipsubstantial_services_to_theiocapacitated
4	person_in_the_professional_or_business_capacity_other_than
5	in the capacity of guardian:
5	<pre>(b)is_or_is_likely_to_become_during_theguardianship</pre>
7	period_a_creditor_of_the_incapacitated_person+_other_than_in
8	the capacity of guardian:
9	. (c)_has_or_ls_likely_to_have_during_the_guardianship
10	period_interests_that_may_conflict_with_those_of_the
11	incapacitated_personi_pr
12	(d) is employed by a person, institution, association.
13	ornonprofit_corporation_who_or_which_would_be_disgualified
14	under_subsections_(4)(a)_through_(4)(c)_
15	(5) If the court determines that there is no qualified
16	person willing and able to serve as guardian. the court may
17	appoint an agency of the state or federal government that is
18	authorized or required by statute to provide services to the
19	<u>person or to persons suffering from the kind of disability</u>
20	from which the incapacitated person is suffering or a
21	designee of the agency, notwithstanding the provisions of
22	subsection_(4). Whenever_an_agency_is_appointed_guardian.
23	the court may also appoint a limited guardian to represent
24	a specified interest of the incapacitated person. Whenever a

25 limited guardian is appointed pursuant to this subsection.

the specified interest of the incanacitated person is the 1 sole responsibility of the limited quardian and is removed 2 from the responsibility of the agency." 3 Section 4. Section 72-5-313, MCA, is amended to read: 4 *72-5-313. Visitor in quardianship proceedings 5 defined. A visitor is. with respect to quardianship 6 proceedings, a person who is trained in law, nursing, or 7 social works__medical_cares_mental_health_cares_pastoral 8 care. education. or rehabilitation and is an officer. 9 employee, or special appointee of the court with no personal 10 interest in the proceedings." 11

for notice --12 NEW_SECTION. Section 5. Request interested person. (1) Any interested person who desires to 13 be notified before any order is made in a quardianship 14 proceeding may file with the clerk a request for notice upon 15 16 payment of any fee required by statute or court rule. The clerk shall mail a copy of the demand to the guardian, if 17 18 one has been appointed.

(2) A request is not effective unless it contains a 19 20 statement showing the interest of the person making it and his address or that of his attorney and is effective only as 21 to matters occurring after the filing. Any governmental 22 agency paying or planning to pay benefits to the alleged 23 incapacitated person is an interested person in guardianship 24 25 proceedings.

1 NEW_SECTION. Section 6. Contents of petition for 2 appointment of guardian. (1) The petition for appointment of 3 a quardian shall contain:

(a) the name, residence, and mailing address of the 4 petitioner, his relationship to the alleged incapacitated 5 6 person, and his interest in the matter:

7 (b) the name, residence, and mailing address of the alleged incapacitated person; 8

9 (c) the nature and degree of the alleged incapacity; 10 (d) if the petition in any way affects the management 11 of the property of the alleged incapacitated person, the 12 approximate value and description of his property, including 13 any compensation, pension, insurance, or allowance to which 14 he may be entitled:

15 (e) whether there is, in any state, a full guardian or 16 limited guardian for the person or estate of the 17 incapacitated person or a conservator of his property;

18 (f) the name, residence, and mailing address of the 19 person whom the petitioner seeks to have appointed quardian;

20

(9) the names, residences, and nature of relationship, 21 so far as is known or can reasonably be ascertained, of the 22 persons most closely related by blood or marriage to the 23 alleged incapacitated person;

24 (h) the name and residence of the person or 25 institution having the care and custody of the alleged

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1 incapacitated person; limited quardianship. A petition seeking the establishment 1 2 (i) the reasons why the appointment of a guardian is of a limited quardianship shall specify the particular 2 3 sought and whether a limited quardianship or full 3 powers that the limited quardian is proposed to exercise and 4 quardianship is requested; 4 5 ()) the facts supporting the allegations of incapacity 5 6 and the need for a quardiant include: 6 7 (k) the specific areas of protection and assistance 7 8 requested and the limitation of rights requested to be person: 8 g included in the order of appointment; 9 10 (1) in the case of a petition for limited 10 11 guardianship, the particular powers and areas of authority 11 12 that the petition seeks to have vested in the limited 12 13 quardian as provided in [section 7] and the term for which 13 14 the limited guardianship is requested; 14 15 (m) in the case of a petition for full guardianship. 15 16 the length of time the guardianship is expected to last. 16 person; 17 (2) The petition may also include a request for 17 18 temporary quardianship as provided in 72-5-317 if the 18 19 petitioner believes that the requisites of that section are 19 20 met and that the appointment of a temporary guardian, 20 pending the completion of guardianship proceedings, is 21 21 22 necessary to protect the welfare of the alleged 22 23 incapacitated person. The facts requiring appointment of a 23 24 temporary guardian shall be stated with specificity. 24 25 <u>NEW_SECTION</u> Section 7. Purposes for establishment of

the particular areas of protection and assistance required. The purposes for which a limited guardian may be appointed (1) to care for and maintain the alleged incapacitated (2) to assert and protect the rights and best interests of the alleged incapacitated person; (3) to provide timely and informed consent to necessary medical procedures and procedures implemented in connection with habilitation and training programs; (4) to assist in the acoulsition of necessary training, habilitation, and education for the incapacitated (5) to exercise any other powers, duties, or limitations in regard to the care of the incapacitated person or the management of his property that the petition shall explicitly specify and which may be no greater than the powers a full quardian can exercise. Section 8. Section 72-5-315, MCA, is amended to read: #72-5-315. Procedure for court appointment of guardian

-- hearing -- examination -- interview -- procedural rights.

25 (1) The incapacitated person or any person interested in his

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welfare, including the county attorney, may petition for a
 finding of incapacity and appointment of a guardian.

3 (2) Upon the filing of a petition, the court shall set 4 a date for hearing on the issues of incapacity. The 5 allegedly incapacitated person may have counsel of his own 6 choice or the court may, in the interest of justice, appoint 7 an appropriate official or attorney to represent him in the 8 proceeding, who shall have the powers and duties of a 9 guardian ad litem.

10 (3) The person alleged to be incapacitated shall be examined by a physiclan appointed by the court who shall 11 12 submit his report in writing to the court and be interviewed 13 by a visitor sent by the court. <u>Hhenever possible, the court</u> shall appoint as visitor a person who has particular 14 experience or expertise in treating, evaluating, or caring 15 for persons with the kind of disabling condition that is 16 17 alleged to be the cause of the incapacity. The visitor also 18 shall also interview the person secking--appointment-as 19 querdian who appears to have caused the petition to be filed 20 and the person who is nominated to serve as guardian and 21 visit the present place of abode of the person alleged to be 22 incapacitated and the place it is proposed that he will be 23 detained or reside if the requested appointment is made and submit his report in writing to the court. Whenever possible 24 25 without undue delay or expense beyond the ability to pay of

1	the alleged incapacitated persons the courts in formulating
Z	thejudgment+sballutilize_the_services_of_any_public_or
3	<u>charitable_agency_that_offers_or_is_willing_to_evaluatethe</u>
4	condition_of_the_allegedly_incapacitated_person_and_make
5	recommendations_to_the_court_regarding_the_most_appropriate
6	form_of_state_intervention_in_bis_affairs.
7	(4) The person alleged to be incapacitated is entitled
8	to be present at the hearing in person and to see or hear
9	all evidence bearing upon his condition. He is entitled to
10	be present by counsel, to present evidence, to cross-examine
11	witnesses, including the court-appointed physician and the
12	visitor, and to trial by jury. The issue may be determined
13	at a closed hearing without a jury if the person alleged to
14	be incapacitated or his counsel so requests.*
15	Section 9. Section 72-5-316, MCA, is amended to read:
16	#72-5-316. Findings order of appointment. The-court
17	maysppoint-a-guardian-as-requested-if-it-is-satisfied-that
18	the-person-for-whom-a-guardian-issoughtisincopacitated
19	andthattheappointmentisnecessary-or-desirable-as-a
20	means-of-providing-continuing-core-andsupervisionofthe
21	personoftheincopacitatedpersonwAlternativelyw-the
22	courtmaydismisstheproceedingorenteranyother
23	appropriateorder* (1)_If the court is satisfied that the
24	person_for_whom_a_guardianship_issoughtisincapacitated
25	and_that_judicial_intervention_in_his_personal_freedom_of

-10-

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1	action_and_decision_is_oecessary_to_meet_essential
2	requirements for bis physical bealth or safety.it may
3	appoint_a_fullguardianhaving_thepowersdescribedin
4	72-5-321 or allmited guardian baying the powers described
5	in the order. If the court is satisfied that the ellegedly
6	incapacitated person could bandle the essential requirements
7	forphysicalhealthorsafety_if_bis_financial_resources
8	were managed by anothers it shall order that the petition be
9	treated.as a petition for a protective order_under_part_4_of
10	this chapter and proceed_accordinglyAlternativelythe
11	court may dismiss the proceeding or enter any other
12	appropriate order that is not inconsistent with the specific
13	provisions of this parts In issuing its order the court
1.4	
14	<u>shall make specific findings of fact</u>
14	<u>shall_make_specific_findings_of_fact</u> (21The_court_may_not_invest_a_guardian_with_powers_or
15	(2) The court may not invest a guardian with powers or
15 16	(2)
15 16 17	(2) The court may not invest a guardian with powers or duties beyond those sought in the petition and mays upon petition for a full guardianships create a limited
15 16 17 18	(21The_court_may_not_invest_a_guardian_with_powers_or dutiesbeyondthosesoughtin_the_petition_and_may*_upon petitionforafullguardianship*createalimited guardianshiporconservatorship_when_the_court_determines
15 16 17 18 19	(2) The court may not invest a guardian with powers or duties beyond those sought in the petition and mays upon petition for a full guardianships create a limited guardianship or conservatorship when the court determines that a limited guardianship or conservatorship is all that
15 16 17 18 19 20	(2)
15 16 17 18 19 20 21	(21. The court may not invest a guardian with powers or dutiesbeyondthosesoughtin_the getition and may: upon petitionfor _afullguardianship:createalimited guardianshiporconservatorship _when the court determines that a limited guardianship or _conservatorship isallthat is required for the care and protection of the incapacitated personsThe _ordershall specify whether a full or limited
15 16 17 18 19 20 21 22	(2) The court may not invest a guardian with powers or duties beyond those sought in the petition and may, upon petition for a full guardianship, create a limited guardianship or conservatorship when the court determines that a limited guardianship or conservatorship is all that is required for the care and protection of the incapacitated person. The order shall specify whether a full or limited guardianship is being created. In the case of a limited

1	<u>(3) No incapacitated person may be limited in the</u>
2	exercise of any civil or political rights except thosethat
3	are clearly inconsistent with the exercise of the powers
4	<u>granted to the guardian unless the court's order</u>
5	<u>specifically_provides_for_such_limitationsThe_order_shall</u>
6	state_that_all_rights_not_specifically_limited_areretained
7	by the incapacitated persons"
8	Section 10. Section 72-5-317, MCA, is amended to read:
9	"72~5-317. Temporary guardians. (1) If an
10	incapacitated person has no guardian and an emergency
11	exists, the court may exercise the power of a guardian
12	pending notice and hearing.
13	(2) If an appointed guardian is not effectively
14	performing his duties <u>or if there is no appointed quardian</u>
15	and the court further finds that the welfare of the
16	incapacitated person requires immediate action, it may, with
17	or without notice, appoint a temporary guardian for the
18	incapacitated person for a specified period not to exceed 6
19	months. <u>The court may appoint either a full or a ligited</u>
20	<u>temporary guardians depending on the needs and circumstances</u>
21	of the incapacitated persone The court may dot invest a
22	<u>temporary_guardian_with_more_powers_than_ars_required_by_the</u>
23	<u>circumstances_necessitating_the_appointments_The_order_of</u>
24	appointment of a temporary guardian shall state whether a
25	full or limited temporary guardianship is being created and:

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1	in_the_case_of_a_limited_temporary_guardians_the_specific
2	powers and duties of the limited temporary guardian.
3	(3) In case there is no person available and willing
4	to act as temporary guardian for an incapacitated person who
5	is in need of a temporary guardian except a person or entity
6	who is ingligible to act as guardian pursuant to the
7	provisions_of_72=5=312(4). the_court_may_appoint_as
8	<u>temporary_guardiao_a_person_or_entity_who_would_otherwise_be</u>
9	ineligible under that provision to act as guardian. This
10	subsection_does_not_permit_the_appointment_ofapersonor
11	entity_who_bas_an_actual_conflict_of_interest_in_regard_to
12	the purpose for which the temporary guardianship is sought.
13	A_temporary_guardian_who_is_otherwise_ineligible_shall_serve
14	untilaperson_or_entity_who_is_not_ineligible_to_serve_as
15	guardian and who is otherwise qualified to be guardian is
16	appointedby_the_court_to_act_as_temporary_guardian; but_in
17	no case may be serve for longer than 6 months.
18	t∃f<u>14</u>) A temporary <u>full</u> guardian is entitled to the
19	care and custody of the ward, and the authority of any
20	permanent guardian previously appointed by the court is
21	suspended so long as a temporary guardian has authority. A
22	<u>temporary_limited_guardianisentitledtoexercisesucb</u>
23	powers_as_are_specifically_granted_to_him_in_the_order_of
24	appointmentsand_the_power_of_any_permanentguardian
25	previously_appointed_by_the_court_to_exercise_those_powers

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1	<u>is suspended so long as the temporary limited guardian bas</u>
2	authority. The court by specific order may suspend all
3	authority of the permanent guardian upon appointment of a
4	<u>temporary_limited_guardian.</u> A temporary guardian may be
5	removed at any time. A temporary guardian shall make any
6	report the court requires. In other respects the provisions
7	of this code concerning guardians apply to temporary
8	guardians."
9	Section 11. Section 72-5-321, MCA, is amended to read:
10	■72-5-321. Powers and duties of guardian of
11	incapacitated person. (1) The powers and duties of a limited
12	guardian_are_those_specified_in_the_order_appointing_the
13	<u>guardian. The limited guardian is required to report the</u>
14	<u>condition of the incapacitated person and of the estate that</u>
15	has been subject to his possession and control. as required
16	by the court or by court rule.
17	<pre>title: A full guardian of an incapacitated person has</pre>
18	the same powers, rights, and duties respecting his ward that
19	a parent has respecting his unemancipated minor child,
20	except that a guardian is not liable to third persons for
21	acts of the ward solely by reason of the parental
22	relationship. In particular and without qualifying the
23	foregoing, a <u>full</u> guardian has the following powers and
24	duties, except as modified limited by order of the court:
25	(a) To the extent that it is consistent with the terms

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of any order by a court of competent jurisdiction relating
 to detention or commitment of the ward, he is entitled to
 custody of the person of his ward and may establish the
 ward's place of abode within or without this state.

5 (b) If entitled to custody of his ward, he shall make 6 provision for the care, comfort, and maintenance of his ward 7 and whenever appropriate arrange for his training and 8 education. Without regard to custodial rights of the ward's 9 person, he shall take reasonable care of his ward's 10 clothing, furniture, vehicles, and other personal effects 11 and commence protective proceedings if other property of his 12 ward is in need of protection.

(c) A <u>full</u> 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.
(d) If no conservator for the estate of the ward has
been appointed, he <u>a full guardian</u> may:

18 (i) institute proceedings to compel any person under a
19 duty to support the ward or to pay sums for the welfare of
20 the ward to perform his 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; but he may not use funds from his ward's estate for room and board which he, his spouse, parent, or child have 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. He must exercise care to
 conserve any excess for the ward's needs.

5 (e) A <u>full</u> guardian is required to report the 6 condition of his ward and of the estate which has been 7 subject to his possession or control, as required by the 8 court or court rule.

9 (f) If a conservator has been appointed, all of the 10 ward's estate received by the <u>full</u> guardian in excess of 11 those funds expended to meet current expenses for support, 12 care, and education of the ward must be paid to the 13 conservator for management as provided in this code, and the 14 <u>full</u> guardian must account to the conservator for funds 15 expended.

(2)(3) Any full quardian of one for whom a conservator 16 also has been appointed shall control the custody and care 17 18 of the ward. A limited quardian of a person for whom a 19 conservator has been appointed shall control those aspects 20 of the custody and care of the ward over which he is given 21 authority by the order establishing the limited quardianshine and The full quardian or limited quardian is 22 entitled to receive reasonable sums for his services and for 23 24 room and board furnished to the ward as agreed upon between 25 him and the conservator, provided the amounts agreed upon

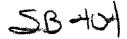
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1	are reasonable under the circumstances. The <u>full</u> guardian	
2	or_ <u>limited_guardian_authorized_to_oversee_such_aspects_of</u>	
3	the incapacitated person's care may request the conservator	
4	to expend the ward's estate by payment to third persons or	
5	institutions for the ward's care and maintenance.	
6	<u>[4]_No_full_guardian_or_limited_guardian_may</u>	
7	involuntarily commit for mental health treatment or for	
8	treatment of a developmental disability or for observation	
9	or evaluation a ward who is himself unwilling or unable to	
10	give_informed_consent_to_such_commitment+_except_as_provided	
11	in_72=5=322+_unlesstheproceduresforinvoluntary	
12	commitment_set_forth_in_Title_53*_chapters_20_and_21*_are	
13	followed. This chapter does not abrogate any of the rights	
14	of mentally_disabled_persons_provided_for_in_Title_53.	
15	chapters_20_and_21."	
16	Section 12. Codification instruction. Sections 1, 2,	
17	5, 6, and 7 are intended to be codified as an integral part	
18	of Title 72, chapter 5, part 3, and the provisions of Title	

72, chapter 5, part 3, apply to sections 1, 2, 5, 6, and 7.

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47th Legislature

Approved by Committee on Judiciary

INTRODUCED BY Maynek Alussan Luidage Eminus 1 2 Benation 3

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
LAW RELATING TO THE APPOINTMENT OF GUARDIANS FOR
INCAPACITATED PERSONS; PROVIDING FOR LIMITED GUARDIANSHIPS;
DEFINING WHO MAY BE GUARDIANS AND CLARIFYING THE PROCEDURE
FOR APPOINTING GUARDIANS; AMENDING SECTIONS 72-5-312,
72-5-313, 72-5-315 THROUGH 72-5-317, AND 72-5-321, MCA."

10

11 BE TT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 <u>NEW_SECTION</u> Section 1. Definitions. In this part, 13 unless the context requires otherwise, the following 14 definitions apply:

15 (1) "Full guardian" means a guardian who possesses all
16 the legal duties and powers enumerated in 72+5-321.

17 (2) "Limited guardian" means a guardian who possesses
18 fewer than all of the legal duties and powers of a full
19 guardian and whose rights, powers, and duties have been
20 specifically enumerated by the court.

(3) "Guardian" includes a full guardian and a limited
 ouardian.

23 <u>NEW_SECTION</u> Section 2. Purpose and basis for 24 guardianship. Guardianship for an incapacitated person may 25 be used only as is necessary to promote and protect the

1 well-being of the person. The quardianship must be designed 2 to encourage the development of maximum' self-reliance and independence in the person and may be ordered only to the 3 extent that the person's actual mental and physical 4 5 limitations require it. An incapacitated person for whom a quardian has been appointed is not presumed to 6 ha 7 incompetent and retains all legal and civil rights except 8 those that have been expressly limited by court order or 9 have been specifically granted to the guardian by the court. Section 3. Section 72-5-312, MCA. is amended to read: 10 #72-5-312. Who may be guardian -- priorities. (1) Any 11 12 competent person or a suitable institution. association. or 13 ponorofit_corporation_or_any_of_its_members_may be appointed 14 quardian of an incapacitated person. 15 (2) Persons who are not disgualified have priority for 16 appointment as guardian in the following order: 17 (a) a person association or private nonprofit 18 corporation nominated by the incapacitated person, if the 19 court_specifically_finds_that_at_the_time_of_the__nomination 20 the incapacitated person had the capacity to make a 21 reasonably_intelligent_choice: 22 tat(b) the spouse of the incapacitated person; 23 tb)(c) an adult child of the incapacitated person: 24 te)(d) a parent of the incapacitated person, including

25 a person nominated by will or other writing signed by a

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SECOND READING

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1	deceased parent;
2	<pre>(d)(e) any relative of the incapacitated person with</pre>
3	whom he has resided for more than 6 months prior to the
4	filing of the petition;
5	[f]arelativeorfriendwhobasdemonstrateda
6	sincere. longstanding interest in the welfare of the
7	incapacitated person:
8	<pre>(g)_a_private_association_or_nonprofit_corporation</pre>
9	with a guardianship program for incapacitated persons. a
10	member_of_such_private_association_or_nonprofit_corporation
11	approved by the association or corporation to act as a
12	guardianfor_the_incapacitated_person*_or_a_person_included
13	on an official list of such association or organization as
14	willing_and_suitable_to_act_as_guardian_of_incapacitated
15	personsi
16	tetch) a person nominated by the person who is caring
17	for him or paying benefits to him.
18	[3] <u>The priorities established in subsection (2) are</u>
19	not_bindingand_the_court_shall_select_the_person.
20	association: or nonprofit corporation that is best qualified
21	and willing to serve
22	(4) Except as provided in subsection (5): the court
23	may not appoint a persona institutiona associationa or
24	nonprofit corporation to be the quardian of an incapecitated
25	person_if_tbe_person_institution.association.or_nonprofit

1	<u>corporation:</u>
2	(a) provides or is likely to provide during the
3	<u>quardianship substantia) services to the incapacitated</u>
4	<u>person_io_the professional or business capacity other than</u>
5	in the capacity of guardian:
5	(b) is or is likely to become during the guardianship
7	period_a_creditor_of_the_incapacitated_persons_other_than_in
8	the capacity of guardian:
9	(c) has or is likely to have during the guardianship
10	periodinterests_thatmay_conflict_with_those_of_the
11	incapacitated_person:_or
12	(d) is employed by a person, institution, association,
13	or <u>nonprofit corporation who or which would be disqualified</u>
14	under_subsections_(4)(a)_through_(4)(c).
15	(5) If the court determines that there is no qualified
16	person willing and able to serve as guardian; the court may
17	appoint an agency of the state or federal government that is
18	authorized or required by statute to provide services to the
19	<u>person_or_to_persons_suffering_from_the_kind_of_disability</u>
20	from which the incapacitated person is suffering or a
21	designee of the agency, notwithstanding the provisions of
22	subsection (4). Whenever an agency is appointed guardian.
23	the court may also appoint a limited guardian to represent
24	a specified interest of the incapacitated person. Whenever a
25	limited guardian is appointed pursuant to _this _subsection.

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the specified interest of the incapacitated person is the

2 <u>sole responsibility of the limited guardian and is removed</u> 3 <u>from the responsibility of the agencys</u>"

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Section 4. Section 72-5-313, MCA, is amended to read: 4 ■72-5-313. Visitor in quardianship proceedings 5 defined. A visitor is, with respect to guardianship 6 proceedings, a person who is trained in law, nursing, or 7 social works__medical_cares_mental_bealtb_cares_pastoral 8 care, education, or rehabilitation and is an officer, 9 employee, or special appointee of the court with no personal 10 11 interest in the proceedings."

12 NEW SECTION. Section 5. Request for notice --interested person. (1) Any interested person who desires to 13 be notified before any order is made in a guardianship 14 15 proceeding may file with the clerk a request for notice upon payment of any fee required by statute or court rule. The 16 clerk shall mail a copy of the demand to the guardian, if 17 18 one has been appointed.

19 (2) A request is not effective unless it contains a 20 statement showing the interest of the person making it and 21 his address or that of his attorney and is effective only as 22 to matters occurring after the filing. Any governmental 23 agency paying or planning to pay benefits to the alleged 24 incapacitated person is an interested person in guardianship 25 proceedings. <u>NEW_SECTION</u> Section 6. Contents of petition for
 appointment of guardian. (1) The petition for appointment of
 a guardian shall contain:

4 (a) the name, residence, and mailing address of the
5 petitioner, his relationship to the alleged incapacitated
6 person, and his interest in the matter;

7 (b) the name, residence, and mailing address of the
8 alleged incapacitated person;

9 (c) the nature and degree of the alleged incapacity; 10 (d) if the petition in any way affects the management 11 of the property of the alleged incapacitated person, the 12 approximate value and description of his property, including 13 any compensation, pension, insurance, or allowance to which 14 he may be entitled;

15 (e) whether there is, in any state, a full guardian or
16 limited guardian for the person or estate of the
17 incapacitated person or a conservator of his property;

18 (f) the name, residence, and mailing address of the19 person whom the petitioner seeks to have appointed guardian;

(g) the names, residences, and nature of relationship.
so far as is known or can reasonably be ascertained; of the
persons most closely related by blood or marriage to the
alleged incapacitated person;

24 (h) the name and residence of the person or25 institution having the care and custody of the alleged

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1 incapacitated person;

2 (i) the reasons why the appointment of a guardian is
3 sought and whether a limited guardianship or full
4 guardianship is requested;

5 (j) the facts supporting the allegations of incapacity6 and the need for a guardian;

7 (k) the specific areas of protection and assistance
8 requested and the limitation of rights requested to be
9 included in the order of appointment;

10 (1) in the case of a petition for limited 11 guardianship, the particular powers and areas of authority 12 that the petition seeks to have vested in the limited 13 guardian as provided in [section 7] and the term for which 14 the limited guardianship is requested;

15 (m) in the case of a petition for full guardianship,
16 the length of time the guardianship is expected to last.

17 (2) The petition may also include a request for 18 temporary ouardianship as provided in 72-5-317 if the 19 petitioner believes that the requisites of that section are 20 met and that the appointment of a temporary guardian, pending the completion of guardianship proceedings, is 21 22 necessary to protect the welfare of the alleged 23 incapacitated person. The facts requiring appointment of a 24 temporary quardian shall be stated with specificity. 25 NEW_SECTION. Section 7. Purposes for establishment of

limited guardianship. A petition seeking the establishment 1 of a limited quardianship shall specify the particular 2 powers that the limited guardian is proposed to exercise and 3 the particular areas of protection and assistance required. 4 The purposes for which a limited guardian may be appointed 5 include: 6 (1) to care for and maintain the alleged incapacitated 7 8 person: (2) to assert and protect the rights and best 9 interests of the alleged incapacitated person; 10 (3) to provide timely and informed consent to 11 necessary medical procedures and procedures implemented in 12 connection with habilitation and training programs; 13 (4) to assist in the acquisition of necessary 14 training, habilitation, and education for the incapacitated 15 16 person; (5) to exercise any other powers, duties, or 17 limitations in regard to the care of the incapacitated 18 person or the management of his property that the petition 19 shall explicitly specify and which may be no greater than 20 21 the powers a full guardian can exercise. Section 8. Section 72-5-315, MCA, is amended to read: 22 #72-5-315. Procedure for court appointment of guardian 23 -- hearing -- examination -- interview -- procedural rights. 24

-7-

25

(1) The incapacitated person or any person interested in his

welfare, including the county attorney, may petition for a
 finding of incapacity and appointment of a guardian.

3 (2) Upon the filing of a petition, the court shall set 4 a date for hearing on the issues of incapacity. The 5 allegedly incapacitated person may have counsel of his own 6 choice or the court may, in the interest of justice, appoint 7 an appropriate official or attorney to represent him in the 8 proceeding, who shall have the powers and duties of a 9 guardian ad litem.

(3) The person alleged to be incapacitated shall be 10 examined by a physician appointed by the court who shall 11 12 submit his report in writing to the court and be interviewed by a visitor sent by the court. <u>Whenever possible, the court</u> 13 shall appoint as visitor a person who has particular 14 experience_or_expertise_in_treating._evaluating._or__caring 15 for persons with the kind of disabling condition that is 16 17 alleged to be the cause of the incanacity. The visitor also shall also interview the person seeking--appointment-as 18 19 querdian who appears to have caused the petition to be filed and the person who is nominated to serve as guardian and 20 visit the present place of abode of the person alleged to be 21 incapacitated and the place it is proposed that he will be 22 23 detained or reside if the requested appointment is made and submit his report in writing to the court. Whenever possible 24 25 without undue delay or expense beyond the ability to pay of

the alleged incapacitated persons the courts in formulating 1 2 the iudoment, shall_utilize_the_services_of_any_public_or charitable agency that offers or is willing to evaluate the з condition_of_the_allegedly_incapacitated_person_and_make 4 recommendations to the court reparding the most appropriate 5 form of state intervention in bis affairs. ъ (4) The person alleged to be incapacitated is entitled 7 8 to be present at the hearing in person and to see or hear all evidence bearing upon his condition. He is entitled to 9 be present by counsel, to present evidence, to cross-examine 10 11 witnesses, including the court-appointed physician and the 12 visitor, and to trial by jury. The issue may be determined 13 at a closed hearing without a jury if the person alleged to 14 be incapacitated or his counsel so requests." Section 9. Section 72-5-316, MCA, is amended to read: 15 16 "72-5-316. Findings -- order of appointment. The-court 17 may--appoint-a-quardian-as-requested-if-it-is-satisfied-that 18 the-person-for-whom-a-quardian-is--sought--is--incapacitated 19 and--that--the--appointment--is--necessary-or-desirable-as-a means-of-providing-continuing-care-and--supervision--of--the 20 21 person--of--the--incopeciteted--persons---Alternatively-the 22 court--may--dismiss--the--proceeding--or--enter--eny---other 23 appropriate--ordery (1) _If the_court_is_satisfied that the 24 person for whom a quardianship is sought is incapacitated 25 and that judicial intervention in his personal freedom of

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1	action and decision is necessary to meet essential
2	requirements for his physical health or safety. it may
3	appoint a full guardian having the powers described in
4	72-5-321 or a limited guardian having the powers described
5	in the order. If the court is satisfied that the allegedly
6	incapacitated person could handle the essential requirements
7	for physical health or safety if his financial resources
8	were managed by another, it shall order that the petition be
9	treated as a petition for a protective order under part 4 of
10	this_chapter_and_proceed_accordinglyAlternativelythe
11	courtmay_dismiss_the_proceeding_or_enter_any_other
12	appropriate order that is not inconsistent with the specific
13	provisions of this part. In Issuing its order the court
14	sball make specific findings of fact.
15	(2) The court may not invest a guardian with powers or
16	duties_beyond_those_sought_in_the_petition_and_may+_upon
17	petition_for_a_full_guardianshipcreatealimited
18	guardianship_or_conservatorship_when_the_court_determines
19	that a limited guardianship or conservatorship is all that
20	is required for the care and protection of the incapacitated
21.	person. The order shall specify whether a full or limited
22	quardianship is being created. In the case of a limited
23	guardianship. the order shall specify the particular powers
24	and duties wested in the limited guardians and the period
25	for which the limited guardianship is created.

1	<u>[3] No incapacitated person may be limited in the</u>
2	exarcise of any civil or political rights except those that
3	are clearly inconsistent with the exercise of the powers
4	<u>granted to the guardian unless the court's order</u>
5	specifically_provides_for_such_limitationsThe_order_shall
6	state that all rights not specifically limited are retained
7	by the incapacitated persons"
8	Section 10. Section 72-5-317, MCA, is amended to read:
9	¶72−5−317• Temporary guardians• (1) If an
10	incapacitated person has no guardian and an emergency
11	exists, the court may exercise the power of a guardian
12	pending notice and hearing.
13	(2) If an appointed guardian is not effectively
14	performing his duties <u>or if there is no appointed guardian</u>
15	and the court further finds that the welfare of the
16	incapacitated person requires immediate action, it may, with
17	or without notice, appoint a temporary guardian for the
18	incapacitated person for a specified period not to exceed 6
19	months. The court may appoint either a full or a limited
20	temporary guardian, depending on the needs and circumstances
21	of the incapacitated person. The court may not invest a
22	temporary guardian with more powers than are required by the
23	circusstances_necessitating_the_appointment. The order of
24	appointment of a temporary guardian shall state whether a
25	full or limited temporary guardianship is being created and:

1	in_the_case_of_a_limited_temporary_guardian. the specific
2	powers and duties of the limited temporary guardian.
3	[3] In case there is no person available_and_willing
4	<u>to_act_as_temporary_guardian_for_an_incapacitated_person_who</u>
5	is in need of a temporary guardian except a person or entity
6	who_is_ineligible_to_act_as_guardian_pursuant_to_the
7	provisions_of_72-5-312(4). the court_may_appoint_as
8	temporary guardian a person or entity who would otherwise be
9	ineligible_under_that_provision_to_act_as_guardian. This
10	subsection.does_not_permit_the_appointment_ofa_person_or
11	entitywhobas_an_actual_conflict_of_interest_in_regard_to
12	the purpose for which the temporary guardianship is sought.
13	A_temporary_guardian_who_is_otherwise_ineligible_shall_serve
14	until a person or entity who is not ineligible to serve as
15	guardian and who is otherwise qualified to be guardian is
16	appointed by the court to act as temporary guardian, but in
17	no_case_way_he_serve_for_longer_than_6_months.
18	(3)(4) A temporary <u>full</u> guardian is entitled to the
19	care and custody of the ward, and the authority of any
20	permanent guardian previously appointed by the court is
21	suspended so long as a temporary guardian has authority. A
22	temporary limited guardian is entitled to exercise such
23	powersasarespecifically_granted_to_bim_in_the_order_of
24	appointmentsandthepowerofanypermanentguardlan
25	previously_appointed_by_the_court_to_exercise_those_powers

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1	is suspended so long as the temporary limited guardian has
2	authorityIbecourt_by_specific_order_may_suspend_all
3	authority_of_the_permanent_guardian_uponappointmentofa
4	temporary_llmited_guardian. A temporary guardian may be
5	removed at any time. A temporary guardian shall make any
6	report the court requires. In other respects the provisions
7	of this code concerning guardians apply to temporary
8	guərdians."
9	Section 11. Section 72-5-321, MCA, is amended to read:
10	¶72-5-321. Powers and duties of guardian of
11	incapacitated person. <u>(1) The powers and dutles of a limited</u>
12	guardian are those specified in the order appointing the
13	guardian. The limited guardian is required to report the
14	condition of the incapacitated person and of the estate that
15	has_been_subject_to_bis_possession_and_control+_asrequired
16	by the court or by court rule.
17	<pre>figure figuration of an incapacitated person has</pre>
18	the same powers, rights, and duties respecting his ward that
19	a parent has respecting his unemancipated minor child,
20	except that a guardian is not liable to third persons for
21	acts of the ward solely by reason of the parental
22	relationship. In particular and without qualifying the
23	foregoing, a <u>full</u> guardian has the following powers and

duties, except as modified limited by order of the court:

24

25

(a) To the extent that it is consistent with the terms

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of any order by a court of competent jurisdiction relating
 to detention or commitment of the ward, he is entitled to
 custody of the person of his ward and may establish the
 ward's place of abode within or without this state.

5 (b) If entitled to custody of his ward, he shall make 6 provision for the care, comfort, and maintenance of his ward 7 and whenever appropriate arrange for his training and education. Without repard to custodial rights of the ward's 8 9 person, he shall take reasonable care of his ward's 10 clothing, furniture, vehicles, and other personal effects 11 and commence protective proceedings if other property of his 12 ward is in need of protection.

(c) A <u>full</u> 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.
(d) If no conservator for the estate of the ward has
been appointed, he <u>a full guardian</u> may:

18 (i) institute proceedings to compel any person under a
19 duty to support the ward or to pay sums for the welfare of
20 the ward to perform his 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; but he may not use funds from his ward's estate for room and board which he, his spouse, parent, or child have 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. He must exercise care to
 conserve any excess for the ward's needs.

5 (e) A <u>full</u> guardian is required to report the 6 condition of his ward and of the estate which has been 7 subject to his possession or control, as required by the 8 court or court rule.

9 (f) If a conservator has been appointed, all of the 10 ward's estate received by the <u>full</u> guardian in excess of 11 those funds expended to meet current expenses for support, 12 care, and education of the ward must be paid to the 13 conservator for management as provided in this code, and the 14 <u>full</u> guardian must account to the conservator for funds 15 expended.

(2)(3) Any full guardian of one for whom a conservator 16 17 also has been appointed shall control the custody and care of the ward. A limited quardian of a person for whom a 18 conservator has been appointed shall control those aspects 19 of the custody and care of the ward over which be is given 20 authority by the order establishing the limited 21 22 quardianship, and The full quardian or limited quardian is entitled to receive reasonable sums for his services and for 23 room and board furnished to the ward as agreed upon between 24 him and the conservator, provided the amounts agreed upon 25

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1	are reasonable under the circumstances. The <u>full</u> guardian
2	or <u>limited</u> guardian authorized to oversee such aspects of
3	the incapacitated person's care may request the conservator
4	to expend the ward's estate by payment to third persons or
5	institutions for the ward's care and maintenance.
6	[4] No full guardian or limited guardian may
7	involuntarily_commit_for_mental_health_treatment_or_for
8	treatment of a developmental disability orforobservation
.9	or evaluation a ward who is himself unwilling or unable to
10	<u>give_informed_consent_to_sucb_commitment+_except_as_provided</u>
11	in_ <u>12-5-322.unless_the_procedures_for_involuntary</u>
12	commitment_set_forth_in_litle_53. chapters_20_and_21.are
13	followed. This chapter does not abrogate any of the rights
14	of mentally_disabled_persons_provided_for_in_Title_53;
15	chapters 20 and 21."
16	Section 12. Codification instruction, Sections 1, 2,
17	5, 6, and 7 are intended to be codified as an integral part
18	of Title 72, chapter 5, part 3, and the provisions of Title
19	72, chapter 5, part 3, apply to sections 1, 2, 5, 6, and 7.

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-End-

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INTRODUCED BY Mayulk Alusance Lucien Emines 1 2 Bengtoon

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
LAW RELATING TO THE APPDINTMENT OF GUARDIANS FOR
INCAPACITATED PERSONS; PROVIDING FOR LIMITED GUARDIANSHIPS;
DEFINING WHO MAY BE GUARDIANS AND CLARIFYING THE PROCEDURE
FUR APPOINTING GUARDIANS; AMENDING SECTIONS 72-5-312,
72-5-313, 72-5-315 THROUGH 72-5-317, AND 72-5-321, MCA."

10

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

<u>NEW_SECIION</u> Section 1. Definitions. In this part,
 unless the context requires otherwise, the following
 definitions apply:

15 (1) "Full guardian" means a guardian who possesses all
16 the legal duties and powers enumerated in 72-5-321.

17 (2) "Limited guardian" means a guardian who possesses
18 fewer than all of the legal duties and powers of a full
19 guardian and whose rights, powers, and duties have been
20 specifically enumerated by the court.

(3) "Guardian" includes a full guardian and a limited
 guardian.

23 <u>NEW SECTION</u> Section 2. Purpose and basis for 24 guardianship. Guardianship for an incapacitated person may 25 be used only as is necessary to promote and protect the

well-being of the person. The quardianship must be designed 1 2 to encourage the development of maximum self-reliance and independence in the person and may be ordered only to the 3 extent that the person's actual mental and physical 4 limitations require it. An incapacitated person for whom a 5 6 quardian has been appointed is not presumed to be 7 incompetent and retains all legal and civil rights except 8 those that have been expressly limited by court order or 9 have been specifically granted to the guardian by the court. Section 3. Section 72-5-312, MCA, is amended to read: 10 11 "72-5-312. Who may be guardian -- priorities. (1) Any 12 competent person or a suitable institution.association.or 13 nonprofit corporation or any of its members may be appointed 14 quardian of an incapacitated person. 15 (2) Persons who are not disgualified have priority for 16 appointment as guardian in the following order: 17 (a) a person association or orivate nonprofit 18 corporation nominated by the incapacitated person. if the 19 court specifically finds that at the time of the nomination 20 the incapacitated person had the capacity to make a 21 reasonably intelligent choice: 22 tatibl the spouse of the incapacitated person; 23 fbt(c) an adult child of the incapacitated person: tel(d) a parent of the incapacitated person, including 24 25 a person nominated by will or other writing signed by a -2- THIRD READING

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1	deceased parent;	1	<u>corporation</u>
2	<pre>fd)(e) any relative of the incapacitated person with</pre>	- 2	(a)
3	whom he has resided for more than 6 months prior to the	- 3	guardianshir
4	filing of the petition;	4	person_in_
5	If a relative or friend who has demonstrated a	5	in_the_canad
6	Sincers, longstanding_interest_io_the_welfare_ofthe	6	<u>(b)i;</u>
7	incapacitated_person:	7	period a cri
8	(g)aprivateassociationornonprofit_corporation	8	the capacity
9	with a guardianship program for incapacitated persons. a	9	<u>(c)_b</u>
10	<pre>memberof_such_private_association_or_nonprofit_corporation</pre>	10	period_inte
11	approved by the association or corporation to act as a	11	incapacitate
12	guardian_for_the_incapacitated_persons_or_a_person_included	12	(d)i:
13	<u>oo_ao_official_list_of_such_associatioo_or_organizatiooas</u>	13	oror
14	willing_and_suitable_to_act_as_guardian_of_incapacitated	14	under_subsec
15	persons:		(5)
16	<pre>tet(b) a person nominated by the person who is caring</pre>	16	Derson willi
17	for him or paying benefits to him.	17	appoint_ap_a
18	[3] The priorities established in subsection [2] are	18	authorized of
19	not_binding. and the court_shall_select_theperson.	19	Derson or
20	associations or popprofit corporation that is best qualified	20	from which
21	and willing to serve.	21	designee of
22	141 Except as provided in subsection (5), the court	21	subsection
23	may not appoint a persone institutione associations or	23	the court
24	popprofit corporation to be the guardian of an incapacitated	23	a specified
25	person if the person: institution: association, or nonprofit	25	limited quan
			~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~

rporation:
(a) provides or is likely to provide during the
ardiansbip_substantial_services_to_the_incapacitated
<u>cson_in_the professional or business capacity other than</u>
the capacity of guardian:
(b) is or is likely to become during the guardianship
ciod a creditor of the incapacitated persons other than in
<u>capacity_of_guardian:</u>
<u>(c) has or is likely to have during the guardianship</u>
riod_interests_that_may_conflict_with_those_of_the
agacitated person: or
<pre>(d) is employed by a persons institution; association.</pre>
<u>. nonprofit_corporation_who_or_which_would_be_disqualified</u>
der_subsections_[4][a]_through_[4][c]_
[5] If the court determines that there is no qualified
son_willing and able to serve as guardian. the court_may

- - 25 limited guardlan is appointed pursuant to this subsection.

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the specified interest of the incapacitated person is the 1 sole responsibility of the limited ouardian and is removed 2 з from the responsibility of the agency." Section 4. Section 72-5-313, MCA, is amended to read: 4 "72-5-313. Visitor in quardianship proceedings 5 defined. A visitor is, with respect to quardianship 6 7 proceedings, a person who is trained in law, nursing, or social works_medical_cares_mental_health_cares_pastoral 8 care, education, or rehabilitation and is an officer, 9 10 employee, or special appointee of the court with no personal interest in the proceedings." 11 NEW SECTION. Section 5. Request for notice --12 13 interested person. (1) Any interested person who desires to be notified before any order is made in a guardianship 14 15 proceeding may file with the clerk a request for notice upon payment of any fee required by statute or court rule. The 16 clerk shall mail a copy of the demand to the quardian, if 17 18 one has been appointed. (2) A request is not effective unless it contains a 19 statement showing the interest of the person making it and 20

his address or that of his attorney and is effective only as
to matters occurring after the filing. Any governmental
agency paying or planning to pay benefits to the alleged
incapacitated person is an interested person in guardianship
proceedings.

1 NEW_SECTION. Section 6. Contents of petition for 2 appointment of quardian. (1) The petition for appointment of 3 a quardian shall contain: (a) the name, residence, and mailing address of the 4 5 petitioner, his relationship to the alleged incapacitated 6 person, and his interest in the matter; 7 (b) the name, residence, and mailing address of the 8 alleged incapacitated person; 9 (c) the nature and degree of the alleged incapacity; 10 (d) if the petition in any way affects the management 11 of the property of the alleged incapacitated person, the 12 approximate value and description of his property, including 13 any compensation, pension, insurance, or allowance to which 14 he may be entitled: 15 (e) whether there is, in any state, a full guardian or 16 limited guardian for the person or estate of the 17 incapacitated person or a conservator of his property: 18 (f) the name, residence, and mailing address of the 19 person whom the petitioner seeks to have appointed quardian: 20 (g) the names, residences, and nature of relationship, 21 so far as is known or can reasonably be ascertained, of the 22 persons most closely related by blood or marriage to the 23 alleged incapacitated person: 24 (h) the name and residence of the person or

institution having the care and custody of the alleged

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1 Incapacitated person:

(i) the reasons why the appointment of a guardian is 2 3 sought and whether a limited guardianship or full guardianship is requested; 4

5 (i) the facts supporting the allegations of incapacity 6 and the need for a quardian:

7 (k) the specific areas of protection and assistance 8 requested and the limitation of rights requested to be 9 included in the order of appointment;

10 (1) in the case of a petition for limited 11 guardianship, the particular powers and areas of authority 12 that the petition seeks to have vested in the limited 13 quardian as provided in [section 7] and the term for which the limited quardianship is requested: 14

15 (m) in the case of a petition for full guardianship, the length of time the guardianship is expected to last. 16

17 (2) The petition may also include a request for temporary quardianship as provided in 72-5-317 if the 18 petitioner believes that the requisites of that section are 19 20 met and that the appointment of a temporary guardian, pending the completion of guardianship proceedings, is 21 22. necessary to protect the welfare of the alleged **Z**3 incapacitated person. The facts requiring appointment of a 24 temporary guardian shall be stated with specificity.

25 NEW SECTION. Section 7. Purposes for establishment of

Ł limited quardianship. A petition seeking the establishment of a limited quardianship shall specify the particular 2 powers that the limited guardian is proposed to exercise and 3 the particular areas of protection and assistance required. 4 The purposes for which a limited guardian may be appointed 5 include: 6 7 (1) to care for and maintain the alleged incapacitated person: 8 9 {2} to assert and protect the rights best and interests of the alleged incapacitated person; 10 (3) to provide timely and informed consent to 11 necessary medical procedures and procedures implemented in 12 13 connection with habilitation and training programs; (4) to assist in the acquisition of necessary 14 15 training, habilitation, and education for the incapacitated 16 person: (5) to exercise any other powers, duties, or 17 limitations in regard to the care of the incapacitated 18 person or the management of his property that the petition 19 shall explicitly specify and which may be no greater than 20 21 the powers a full quardian can exercise. Section 8. Section 72-5-315, MCA, is amended to read: 22 #72-5-315. Procedure for court appointment of guardian 23

-- hearing -- examination -- interview -- procedural rights. 24 (1) The incapacitated person or any person interested in his

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welfare, including the county attorney, may petition for a
 finding of incapacity and appointment of a guardian.

3 (2) Upon the filing of a petition, the court shall set 4 a date for hearing on the issues of incapacity. The 5 allegedly incapacitated person may have counsel of his own 6 choice or the court may. In the interest of justice, appoint 7 an appropriate official or attorney to represent him in the 8 proceeding, who shall have the powers and duties of a 9 guardian ad litem.

(3) The person alleged to be incapacitated shall be 10 examined by a physician appointed by the court who shall 11 submit his report in writing to the court and be interviewed 12 by a visitor sent by the court. Whenever possible, the court 13 shall appoint as visitor a person who has particular 14 experience or expertise in treating. evaluating. or caring 15 for persons with the kind of disabling condition that is 16 alleged to be the cause of the incapacity. The visitor also 17 shall also interview the person seeking--appointment-as 18 querdian who appears to have caused the petition to be filed 19 20 and the person who is nominated to serve as guardian and visit the present place of abode of the person alleged to be 21 22 incapacitated and the place it is proposed that he will be detained or reside if the requested appointment is made and 23 submit his report in writing to the court. Whenever_possible 24 25 without undue delay or expense beyond the ability to pay of

1 the alleged incapacitated persons the courts in formulating the judgment, shall_utilize the services of any public or 2 3 charitable agency that offers or is willing to evaluate the condition of the allegedly incanacitated person and make 4 5 recommendations to the court regarding the most appropriate ٨ form of state intervention in his affairs. 7 (4) The person alleged to be incapacitated is entitled 8 to be present at the hearing in person and to see or hear all evidence bearing upon his condition. He is entitled to 9 10 be present by counsel, to present evidence, to cross-examine 11 witnesses, including the court-appointed physician and the 12 visitor, and to trial by jury. The issue may be determined 13 at a closed hearing without a jury if the person alleged to 14 be incapacitated or his counsel so requests." 15 Section 9. Section 72-5-316, MCA, is amended to read: 16 *72-5-316. Findings -- order of appointment. The-court 17 may--appoint-a-quardian-as-requested-if-it-is-satisfied-thet 18 the-person-for-whom-a-quardian-is--sought--is--incapacitated 19 and--that--the--appointment--is--necessary-or-desirable-as-a 20 means-of-providing-continuing-core-and--supervision--of--the 21 person--of--the--thcopacitated--persons---Atternatively-the 22 court--may--dishiss--the--proceeding--or--enter--any---other 23 appropriate--order* (1)__If the court is satisfied that the 24 person for whom a guardianship is sought is incapacitated 25 and that indicial intervention in his personal freedom of

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1	action and decision is necessary to meet essential
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3	appoint_a_fullguardianhavingthepowersdescribedin
4	72-5-321 or a limited guardian having the powers described
5	in the order. If the court is satisfied that the allegedly
6	incapacitated person could handle the essential requirements
7	for physical bealth or safety if his financial resources
8	ware_managed_by_anothers_it_sball_order_tbat_the_petition_be
9	treated as a petition for a protective order under part 4 of
10	this_chapter_and_proceed_accordinglys_Alternativelys_the
11	courtmay_dismiss_the_proceeding_or_enter_any_other
12	appropriate order that is not inconsistent with the specific
13	provisions of this part. In issuing its order, the court
	▝▋▙▋▋▋▓▖▓▙▖▓▙▖▓▙▖▓▙▙▓₽▓▙▓▋▝▓▖▎▖▖▌▓▊▙▓▋▖▖▖▌▓▋▖▓▖▖▖▖▓▖▌▓▖▖▖▖▓▖▌▓▖▖▖▓▊▖▌▓▖▖▓▊▋▇▇
14	shall_make_specific_findings_of_facts
14	shall_make_specific_findings_of_fact.
14 15	<pre>shall_make_specific_findings_of_facts (2)_The_court_may_not_invest_a_guardian_with_powers_or</pre>
14 15 16	<pre>shall_make_specific_findings_of_facts (2)The_court_may_not_invest_a_guardian_with_powers_or dutiesbeyond_thosesought_in_the_petition_and_mays_upon</pre>
14 15 16 17	<pre>shall_make_specific_findings_of_facts (2)_Tbe_court_may_not_invest_a_guardian_with_powers_or dutiesbeyond_thosesought_in_the_petition_and_mays_upon petition_forafull_guardianshipscreatealimited</pre>
14 15 16 17 18	<pre>shall_make_specific_findings_of_facts     (2)The_court_may_not_invest_a_guardian_with_powers_or     dutiesbeyond_thosesoughtin_the_petition_and_mays_upon     petition_forafullguardianshipscreatealimited     guardianshiporconservatorship_when_the_court_determines</pre>
14 15 16 17 18 19	<pre>shall_make_specific_findings_of_facts     (2)Tbe_court_may_not_invest_a_guardian_with_powers_or     dutiesbeyond_thosesought_in_the_petition_and_mays_upon     petition_forafull_guardianshipscreatealimited     guardianship_orconservatorship_when_the_court_determines     that_a_limited_guardianship_or_conservatorship_isallthat </pre>
14 15 16 17 18 19 20	<pre>shall_make_specific_findings_of_facts     (2)Tbe_court_may_not_invest_a_guardian_with_powers_or     dutiesbeyond_those_sought_in_the_petition_and_mays_upon     petition_for_a_full_guardianshipscreatealimited     guardianship_or_conservatorship_when_the_court_determines     that_a_limited_guardianship_or_conservatorship_is_all_that     is_required_for_the_care_and_protection_of_the_incapacitated</pre>
14 15 16 17 18 19 20 21	<pre>shall_make_specific_findings_of_fact.</pre>
14 15 16 17 18 19 20 21 22	<pre>shall_make_specific_findings_of_facts     (2)Tbe_court_may_not_invest_a_guardian_with_powers_or dutiesbeyond_thosesoughtin_the_petition_and_mays_upon petition_for_a_full_guardianshipscreatealimited guardianship_or_conservatorship_when_the_court_determines that_a_limited_guardianship_or_conservatorship_is_all_that is_required_for_the_care_and_protection_of_the_incapacitated personsThe_ordershall_specify_whether_a_full_or_limited guardianship_is_being_createds_In_the_case_of_a_limited</pre>

1	[3] No locapacitated person way be limited in the
2	<u>exercise of any civil or political rights except those that</u>
3	are clearly inconsistent with the exercise of the powers
4	granted to the guardian unless the court's order
5	specifically_provides_for_such_limitations. The order_shall
6	state_that_all_rights_not_specifically_limited_areretained
7	by_the_incapacitated_person.*
8	Section 10. Section 72-5-317, MCA, is amended to read:
9	■72-5-317• Temporary guardians• (1) If an
10	incapacitated person has no guardian and an emergency
11	exists, the court may exercise the power of a guardian
12	pending notice and hearing.
13	(2) If an appointed guardian is not effectively
14	performing his duties <u>or if there is no appointed guardian</u>
15	and the court further finds that the welfare of the
16	incapacitated person requires immediate action, it may, with
17	or without notice, appoint a temporary guardian for the
18	incapacitated person for a specified period not to exceed 6
19	months. <u>The court may appoint either a full or a limited</u>
20	temporary guardians_depending_on_the_needs_and_circumstances
21	of the incapacitated persons The court may not invest a
22	<u>temporary guardian with more powers than are required by the</u>
23	circumstances_necessitating_the_appointment. The order of
24	appointment of a temporary guardian shall state whether a
25	full or limited temporary guardianship is being created and

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1	inthecase_of_a_limited_temporary_guardian*_the_specific
2	powers and duties of the limited temporary guardian.
3	(3) In case there is no person available and willing
4.	<u>to act as temporary guardian for an incapacitated person who</u>
5	<u>is in need of a temporary guardian except a person or entity</u>
6	who_is_ineligible_to_act_as_guardian_pursuant_to_the
7	provisions of 72-5-312/4). the court may appoint as
8	<u>temporary_guardian_a_person_or_entity_who_would_otherwise_be</u>
9	ineligible_under_that_provision_to_act_as_guardianThis
10	subsection does not permit the appointment of a person or
11	entity_who_bas_an_actual_conflict_of_interest_in_regard_to
12	the purgose for which the temporary guardianship is sought.
13	A_temporary_guardian_who_is_otherwise_iceligible_shall_serve
14	until_a_person_or_entity_who_is_not_ineligible_to_serve_as
15	<u>cuardian and who is otherwise qualified to be guardian is</u>
16	appointed by the court to act as temperary guardian, but in
17	no_case_may_he_serve_for_longer_than_6_months.
18	<del>(3)[4]</del> A temporary <u>full</u> guardian is entitled to the
19	care and custody of the wards and the authority of any
20	permanent quardian previously appointed by the court is

20 permanent guardian previously appointed by the court is 21 suspended so long as a temporary guardian has authority. A 22 temporary limited guardian_is_entitled_to_exercise_such 23 powers_as_are_specifically_granted_to_him_in_the_order_of 24 appointments_and_the_power_of_any_permanent__guardian 25 previously_appointed_by_the_court_to_exercise_those_powers 1 is suspended so long as the temporary ligited guardian has 2 authority. The court by specific order may suspend all 3 authority of the permanent quardian upon appointment of a 4 temporary limited ouardian. A temporary guardian may be 5 removed at any time. A temporary guardian shall make any report the court requires. In other respects the provisions 6 7 of this code concerning guardians apply to temporary ouardians." R

9 Section 11. Section 72-5-321, MCA, is amended to read: 10 #72-5-321. Powers and duties of guardian of 11 incapacitated person. (1) The nowers and duties of a limited 12 guardian are those specified in the order appointing the 13 guardian. The limited guardian is required to report the 14 condition of the incapacitated person and of the estate that 15 has been subject to his possession and control+ as required 16 by the court or by court rule.

17 (1)(2) A full quardian of an incapacitated person has 18 the same powers, rights, and duties respecting his ward that 19 a parent has respecting his unemancipated minor child, except that a guardian is not liable to third persons for 20 21 acts of the ward solely by reason of the parental 22 relationship. In particular and without gualifying the 23 foregoing, a full quardian has the following powers and 24 suties, except as modified limited by order of the court: 25 (a) To the extent that it is consistent with the terms

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of any order by a court of competent jurisdiction relating
 to detention or commitment of the ward, he is entitled to
 custody of the person of his ward and may establish the
 ward*s place of abode within or without this state.

5 (b) If entitled to custody of his ward, he shall make 6 provision for the care, comfort, and maintenance of his ward 7 and whenever appropriate arrange for his training and 8 education. Without regard to custodial rights of the ward's person. he shall take reasonable care of his ward's 9 10 clothing, furniture, vehicles, and other personal effects and commence protective proceedings if other property of his 11 ward is in need of protection. 12

(c) A <u>full</u> 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.
(d) If no conservator for the estate of the ward has
been appointed, he <u>a full guardian may:</u>

18 (i) institute proceedings to compel any person under a
19 duty to support the ward or to pay sums for the welfare of
20 the ward to perform his 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; but he may not use funds from his
ward's estate for room and board which he, his spouse,
parent, or child have 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. He must exercise care to
 conserve any excess for the ward's needs.

5 (e) A <u>full</u> guardian is required to report the 6 condition of his ward and of the estate which has been 7 subject to his possession or control, as required by the 8 court or court rule.

9 (f) If a conservator has been appointed, all of the 10 ward's estate received by the <u>full</u> guardian in excess of 11 those funds expended to meet current expenses for support, 12 care, and education of the ward must be paid to the 13 conservator for management as provided in this code, and the 14 <u>full</u> guardian must account to the conservator for funds 15 expended.

16 (2)(3) Any full guardian of one for whom a conservator 17 also has been appointed shall control the custody and care 18 of the wards A limited guardian of a person for whom a 19 conservator has been appointed shall control those aspects 20 of the custody and care of the ward over which he is given 21 authority by the order establishing the limited quardianship, and The full quardian or limited quardian is 22 23 entitled to receive reasonable sums for his services and for 24 room and board furnished to the ward as agreed upon between 25 him and the conservator, provided the amounts agreed upon

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1 are reasonable under the circumstances. The full quardian or limited ouardian authorized to oversee such aspects of 2 the incapacitated person's care may request the conservator 3 4 to expend the ward's estate by payment to third persons or 5 institutions for the ward's care and maintenance. 6 (4) No full guardian or limited guardian may 7 involuntarily compit_for_mental_health_treatment_or_for treatment of a developmental disability or for observation 8 9 or evaluation a ward who is bimself unwilling or unable to 10 give informed consent to such commitment, except as provided 11 in_72-5-322. unless the procedures for involuntary 12 commitment_set_forth_in_Title_53. chapters_20 and 21. are 13 followed. This chapter does not abrogate any of the rights of mentally disabled persons provided for in Title 53. 14 15 chapters_20_and_21. 16 Section 12. Codification instruction. Sections 1, 2, 17 5, 6, and 7 are intended to be codified as an integral part 18 of Title 72, chapter 5, part 3, and the provisions of Title

19 72, chapter 5, part 3, apply to sections 1, 2, 5, 6, and 7.

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		1
L	SENATE BILL ND. 404	2
2	INTRODUCED BY MAZUREK, DUSSAULT, HOLLIDAY, KEMMIS, BENGTSON	3
3		4
4	A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE	5
5	LAW RELATING TO THE APPOINTMENT OF GUARDIANS FOR	6
6	INCAPACITATED PERSONS; PROVIDING FOR LIMITED GUARDIANSHIPS;	7
7	DEFINING WHO MAY BE GUARDIANS AND CLARIFYING THE PROCEDURE	8
8	FOR APPOINTING GUARDIANS; AMENDING SECTIONS 72-5-312.	9
9	72-5-313+ 72-5-315 THROUGH 72-5-317+ AND 72-5-321+ HCA+"	10
10		11
11	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:	12
12	<u>NEW SECTION.</u> Section 1. Definitions. In this part,	13
13	unless the context requires otherwise, the following	14
14	definitions apply:	15
15	(1) "Full guardian" means a guardian who possesses all	15
16	the legal duties and powers enumerated in 72-5-321.	17
17	(2) "Limited guardian" means a guardian who possesses	18
18	fewer than all of the legal duties and powers of a full	19
19	guardian and whose rights, powers, and duties have been	20
20	specifically enumerated by the court.	21
21	(3) "Guardian" includes a full guardian and a limited	22
22	guardian.	23
23	<u>NEW SECTION.</u> Section 2. Purpose and basis for	24
24	guardianship. Guardianship for an incapacitated person may	25
25	be used only as is necessary to promote and protect the	

well-being of the person. The quardianship must be designed to encourage the development of maximum self-reliance and independence in the person and may be ordered only to the extent that the person's actual mental and physical limitations require it. An incapacitated person for whom a quardian has been appointed is not presumed to be incompetent and retains all legal and civil rights except those that have been expressly limited by court order or have been specifically granted to the guardian by the court. Section 3. Section 72-5-312, NEA, 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; tet(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

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REFERENCE BILL

1	deceased parent;
2	<pre>fdyles any relative of the incapacitated person with</pre>
3	whom he has resided for more than 6 months prior to the
4	filing of the petition;
5	(f) a relative or friend who has demonstrated a
6	sincere, longstanding interest in the welfare of the
7	incapacitated_person;
8	<u>[q] a private association or nonprofit corporation</u>
9	<u>with a guardianship program for incapacitated persons, a</u>
10	member of such private association or nonprofit corporation
11	approved by the association or corporation to act as a
12	<u>guardian for the incapacitated person; or a person included</u>
13	on an official list of such association or organization as
14	willing and suitable to act as guardian of incapacitated
15	<u>persons;</u>
16	<del>(e)<u>(h)</u> a person nominated by the person who is caring</del>
17	for him or paying benefits to him.
18	(3) The priorities established in subsection (2) are
19	not binding, and the court shall select the person,
20	association; or nonprofit corporation that is best qualified
21	and willing to serve.
22	<pre>(4) Except as provided in subsection (5), the court ??</pre>
23	may not appoint a person; institution; association; or
24	<u>nonprofit corporation to be the guardian of an incapacitated</u>
25	person if the person, institution, association, or nonprofit

1	<u>Corporation:</u>
2	(a) provides or is likely to provide during the
3	<u>quardianship</u> substantial services to the incapacitated
4	person in the professional or business capacity other than
5	in the capacity of guardiani
6	<pre>(b) is or is likely to become during the guardianship</pre>
7	period a creditor of the incapacitated person, other than in
9	the capacity of guardian;
9	(c) has or is likely to have during the guardianship
10	period interests that may conflict with those of the
11	incapacitated person; or
12	<pre>(d) is employed by a person, institution, association;</pre>
13	or <u>nonprofit corporation who or which would be disqualified</u>
14	under_subsections_[4][a]_through_[4][c]•
1.5	[5] If the court determines that there is no qualified
16	person willing and able to serve as guardian, the courtmay
17	appoint an agency of the state or federal government that is
18	authorized or required by statute to provide services to the
19	person or to persons suffering from the kind of disability
20	from which the incapacitated person is suffering or a
21	designee of the agency, notwithstanding the provisions of
22	subsection [4]. Whenever an agency is appointed guardian;
23	the court may also appoint a limited guardian to represent
24	a specified interest of the incapacitated person. Whenever a
25	limited guardian is appointed pursuant to this subsection,

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Ł the specified interest of the incapacitated person is the 2 sole responsibility of the limited guardian and is removed 3 from the responsibility of the agency." 4 Section 4. Section 72-5-313, MCA, is amended to read: 5 "72-5-313. Visitor in guardianship proceedings. 6 Jefined. A visitor is, with respect to quardianship 7 proceedings, a person who is trained in law, nursing, or social work, medical care, mental health care, pastoral 8 q care, education, or rehabilitation and is an officer, 10 employee, or special appointee of the court with no personal 11 interest in the proceedings." 12 NEW SECTION. Section 5. Request for notice ---

13 interested person. (1) Any interested person who desires to 14 be notified before any order is made in a guardianship 15 proceeding may file with the clerk a request for notice upon 16 payment of any fee required by statute or court rule. The 17 clerk shall mail a copy of the demand to the quardian, if 18 one has been appointed.

19 (2) A request is not effective unless it contains a 20 statement showing the interest of the person making it and 21 his address or that of his attorney and is effective only as 22 to matters occurring after the filing. Any governmental 23 agency paying or planning to pay benefits to the alleged 24 incapacitated person is an interested person in guardianship 25 proceedings.

NEW SECTION. Section 6. Contents of petition for 1 2 appointment of guardian. (1) The petition for appointment of 3 a quardian shall contain:

(a) the name, residence, and mailing address of the 4 petitioner, his relationship to the alleged incapacitated 5 6 person, and his interest in the matter;

7 (b) the name, residence, and mailing address of the alleged incapacitated person: А

(c) the nature and degree of the alleged incapacity; 9 (d) if the petition in any way affects the management 10 11 of the property of the alleged incapacitated person, the approximate value and description of his property, including 12 13 any compensation, pension, insurance, or allowance to which 14 he may be entitled;

15 (e) whether there is, in any state, a full guardian or limited guardian for the person or estate of the 16 17 incapacitated person or a conservator of his property;

18 (f) the name, residence, and mailing address of the 19 person whom the petitioner seeks to have appointed quardian; (g) the names, residences, and nature of relationship, 20 so far as is known or can reasonably be ascertained, of the 21 22 persons most closely related by blood or marriage to the 23 alleged incapacitated person;

(h) the name and residence of the person or 24 institution having the care and custody of the alleged 25

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1 incapacitated person;

2 (i) the reasons why the appointment of a guardian is
3 sought and whether a limited guardianship or full
4 quardianship is requested;

5 (j) the facts supporting the allegations of incapacity6 and the need for a quardian;

7 (k) the specific areas of protection and assistance
8 requested and the limitation of rights requested to be
9 included in the order of appointment;

10 {1} in the case of a petition for limited 11 guardianship, the particular powers and areas of authority 12 that the petition seeks to have vested in the limited 13 guardian as provided in [section 7] and the term for which 14 the limited guardianship is requested;

15 (m) in the case of a petition for full guardianship;
16 the length of time the guardianship is expected to last.

17 (2) The petition way also include a request for 18 temporary quardianship as provided in 72-5-317 if the 19 petitioner believes that the requisites of that section are 20 met and that the appointment of a temporary guardian, pending the completion of guardianship proceedings, is 21 22 protect the welfare of the alleged necessary to 23 incapacitated person. The facts requiring appointment of a 24 temporary quardian shall be stated with specificity. 25 NEW_SECTION. Section 7. Purposes for establishment of

1 Timited quardianship. A petition seeking the establishment of a limited guardianship shall specify the particular 2 powers that the limited quardian is proposed to exercise and 3 4 the particular areas of protection and assistance required. The purposes for which a limited guardian may be appointed 5 6 include: 7 (1) to care for and maintain the alleged incapacitated 8 person: 9 (2) to assert and protect the rights best and 10 interests of the alleged incapacitated person; (3) to provide timely and informed consent to 11 12 necessary medical procedures and procedures implemented in 13 connection with habilitation and training programs; (4) to assist in the acquisition of necessary 14 training, habilitation, and education for the incapacitated 15 16 person; 17 (5) to exercise any other powers, duties, or 18 limitations in regard to the care of the incapacitated 19 person or the management of his property that the petition shall explicitly specify and which may be no greater than 20 21 the powers a full guardian can exercise. Section 8. Section 72-5-315, MCA, is amended to read: 22 23 #72-5-315. Procedure for court appointment of guardian 24 -- hearing -- examination -- interview -- procedural rights.

25 (1) The incapacitated person or any person interested in his

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1 welfare, including the county attorney, may petition for a 2 finding of incapacity and appointment of a guardian.

3 (2) Upon the filing of a petition, the court shall set 4 a date for hearing on the issues of incapacity. The 5 allegedly incapacitated person may have counsel of his own 6 choice or the court may, in the interest of justice, appoint 7 an appropriate official or attorney to represent him in the 8 proceeding, who shall have the powers and duties of a 9 guardian ad litem.

10 (3) The person alleged to be incapacitated shall be 11 examined by a physician appointed by the court who shall 12 submit his report in writing to the court and be interviewed 13 by a visitor sent by the court. Whenever possible, the court 14 shall appoint as visitor a person who has particular 15 experience or expertise in treating, evaluating, or caring 16 for persons with the kind of disabling condition that is 17 alleged to be the cause of the incapacity. The visitor also 18 shall also interview the person seeking--appointment-as 19 guardian who appears to have caused the petition to be filed 20 and the person who is nominated to serve as guardian and 21 visit the present place of abode of the person alleged to be 22 incapacitated and the place it is proposed that he will be 23 detained or reside if the requested appointment is made and 24 submit his report in writing to the court. Whenever possible 25 without undue delay or expense beyond the ability to pay of

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r	the arreged incapacitated persons the courts in formulating
2	the judgment, shall utilize the services of any public or
3	charitable agency that offers or is willing to evaluate the
4	condition of the allegedly incapacitated person and make
5	recommendations to the court regarding the most appropriate
6	form of state intervention in his affairs.
7	(4) The person alleged to be incapacitated is entitled
8	to be present at the hearing in person and to see or hear
9	all evidence bearing upon his condition. He is entitled to
10	be present by counsel, to present evidence, to cross-examine
11	witnesses, including the court-appointed physician and the
12	visitor, and to trial by jury. The issue may be determined
13	at a closed hearing without a jury if the person alleged to
14	be incapacitated or his counsel so requests.*
15	Section 9. Section 72-5-316, MCA, is amended to read:
16	<pre>"72-5-316. Findings order of appointment. The court</pre>
17	moyappoint-o-guordion-os-requested-if-it-is-satisfied-that
18	the-person-for-whom-o-guardian-issoughtisincapacitated
19	andthattheappointmentisnecessary-or-desirable-as-a
20	means-of-providing-continuing-core-andsupervisionofthe
21	personoftheincepscitatedpersonsAlternativelys-the
22	courtmoydismisstheproceedingorenteranyother
23	appropriateorder- [1] If the court is satisfied that the
24	person for whom a guardianship is sought is incapacitated
25	and that judicial intervention in his personal freedom of

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the alleged incapacitated person, the court, in formulating

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1	action and decision is necessary to meet essential
2	requirements for his physical health or safety, it may
3	appoint a full quardian having the powers described in
4	72-5-321 or a limited guardian having the powers described
5	in the order. If the court is satisfied that the allegedly
6	incapacitated_person_could_handle_the_essential_requirements
7	for physical health or safety if his financial resources
8	were managed by another, it shall order that the petition be
9	treated as a petition for a protective order under part 4 of
10	this chapter and proceed accordingly. Alternatively, the
11	court may dismiss the proceeding or enter any other
12	appropriate order that is not inconsistent with the specific
13	provisions of this part. In issuing its order the court
14	shall make specific findings of fact.
15	<u>[2] The court may not invest a guardian with powers or</u>
16	duties beyond those sought in the petition and may, upon
17	petition for a full guardianship; create a limited
18	<u>quardianship or conservatorship when the court determines</u>
19	that a limited guardianship or conservatorship is all that
20	is required for the care and protection of the incapacitated
21	person. The order shall specify whether a full or limited
22	quardianship is being created. In the case of a limited
23	guardianship; the order shall specify the particular powers
24	and duties vested in the limited guardian, and the period
. 25	for which the limited guardianship is created.

1	(3) No incapacitated person may be limited in the
2	exercise of any civil or political rights except those that
3	are clearly inconsistent with the exercise of the powers
4	granted to the guardian unless the court's order
5	specifically provides for such limitations. The order shall
6	state that all rights not specifically limited are retained
7	by the incapacitated person."
8	Section 10. Section 72-5-317, MCA, is amended to read:
9	"72-5-317• Temporary guardians• (1) If an
10	incapacitated person has no guardian and an emergency
11	exists, the court may exercise the power of a guardian
12	pending notice and hearing.
13	[2] If an appointed guardian is not effectively
14	performing his duties or if there is no appointed guardian
15	and the court further finds that the welfare of the
16	incapacitated person requires immediate action, it may, with
17	or without notice, appoint a temporary guardian for the
18	incapacitated person for a specified period not to exceed 6
19	months. The court may appoint either a full or a limited
20	<u>temporary guardiany depending on the needs and circumstances</u>
21	<u>of the incapacitated person. The court may not invest a</u>
22	temporary quardian with more powers than are required by the
23	<u>circumstances necessitating the appointment. The order of</u>
24	appointment of a temporary quardian shall state whether a
25	full or limited temporary guardianship is being created and,

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1	in the case of a limited temporary guardiant the specific
z	powers and duties of the limited temporary guardian.
3	(3) In case there is no person available and willing
4	to act as temporary guardian for an incapacitated person who
5	<u>is in need of a temporary guardian except a person or entity</u>
6	who is ineligible to act as guardian pursuant to the
7	provisions of 72-5-312(4), the court may appoint as
8	<u>temporary guardian a person or entity who would otherwise be</u>
9	ineligible under that provision to act as guardian. This
10	subsection does not permit the appointment of a person or
u	entity who has an actual conflict of interest in regard to
12	the purpose for which the temporary guardianship is sought.
13	<u>A temporary quardian who is otherwise ineligible shall serve</u>
14	until a person or entity who is not ineligible to serve as
15	guardian and who is otherwise gualified to be guardian is
16	appointed by the court to act as temporary quardian, but in
17	no case may be serve for longer than 6 months.
18	<del>(3)<u>(4)</u> A temporary <u>full</u> guardian is entitled to the</del>
19	care and custody of the ward, and the authority of any
20	permanent guardian previously appointed by the court is
21	suspended so long as a temporary guardian has authority. A
22	temporary limited quardian is entitled to exercise such
23	powers as are specifically granted to him in the order of
24	appointment, and the power of any permanent guardian
25	previously_appointed_by_the_court_to_exercise_those_powers
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1	is suspended so long as the temporary limited guardian has
2	authority. The court by specific order may suspend all
3	authority of the permanent guardian upon appointment of a
4	<u>temporary limited quardian.</u> A temporary guardian may be
5	removed at any time. A temporary guardian shall make any
6	report the court requires. In other respects the provisions
7	of this code concerning guardians apply to temporary
8	guardians."
9	Section 11. Section 72-5-321, HCA, is amended to read:
10	<b>#72-5-321.</b> Powers and duties of guardian of
11	incapacitated person. (1) The powers and duties of a limited
12	quardian are those specified in the order appointing the
13	<u>quardian. The limited guardian is required to report the</u>
14	<u>condition of the incapacitated person and of the estate that</u>
15	has been subject to his possession and control, as required
16	by the court or by court rule.
17	<pre>ft;[2] A full guardian of an incapacitated person has</pre>
18	the same powers, rights, and duties respecting his ward that
19	a parent has respecting his unemancipated minor child,
20	except that a guardian is not liable to third persons for
21	acts of the ward solely by reason of the parental
22	relationship. In particular and without qualifying the
2 <b>3</b>	foregoing, a <u>full</u> guardian has the following powers and
24	duties, except as m <del>odified</del> <u>limited</u> by order of the court:
25	(a) To the extent that it is consistent with the terms

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of any order by a court of competent jurisdiction relating
 to detention or commitment of the ward, he is entitled to
 custody of the person of his ward and may establish the
 ward's place of abode within or without this state.

5 (b) If entitled to custody of his ward, he shall make 6 provision for the care, comfort, and maintenance of his ward 7 and whenever appropriate arrange for his training and education. Without regard to custodial rights of the ward's 8 9 person. he shall take reasonable care of his ward's 10 clothing, furniture, vehicles, and other personal effects 11 and commence protective proceedings if other property of his 12 ward is in need of protection.

(c) A <u>full</u> 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.
(d) If no conservator for the estate of the ward has
been appointed, he <u>a full</u> guardian may:

18 (i) institute proceedings to compel any person under a 19 duty to support the ward or to pay sums for the welfare of 20 the ward to perform his 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; but he may not use funds from his
ward's estate for room and board which he, his spouse,
parent, or child have 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. He must exercise care to conserve any excess for the ward's needs.

5 (e) A <u>full</u> guardian is required to report the 6 condition of his ward and of the estate which has been 7 subject to his possession or control, as required by the 8 court or court rule.

9 (f) If a conservator has been appointed, all of the 10 ward's estate received by the <u>full</u> guardian in excess of 11 those funds expended to meet current expenses for support, 12 care, and education of the ward must be paid to the 13 conservator for management as provided in this code, and the 14 <u>full</u> guardian must account to the conservator for funds 15 expended.

+2+(3) Any full quardian of one for whom a conservator 16 17 also has been appointed shall control the custody and care of the ward. A limited quardian of a person for whom a 18 19 conservator has been appointed shall control_those_ aspects 20 of the custody and care of the ward over which he is given 21 authority by the order establishing the limited 22 guardianship. and The full guardian or limited guardian is 23 entitled to receive reasonable sums for his services and for 24 room and board furnished to the ward as agreed upon between 25 him and the conservator, provided the amounts agreed upon

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are reasonable under the circumstances. The <u>full</u> guardian
 or <u>limited</u> <u>guardian</u> <u>authorized to oversee such aspects of</u>
 <u>the incapacitated person's care</u> may request the conservator
 to expend the ward's estate by payment to third persons or
 institutions for the ward's care and maintenance.

6 (4) No full quardian or limited quardian may 7 involuntarily commit for mental health treatment or for 8 treatment of a developmental disability or for observation 9 or evaluation a ward who is himself unwilling or unable to 10 give informed consent to such commitment, except as provided 11 in 72-5-322, unless the procedures for involuntary 12 commitment set forth in Title 53; chapters 20 and 21; are 13 followed. This chapter does not abrogate any of the rights 14 of mentally disabled persons provided for in Title 53, 15 chapters 20 and 21.* Section 12. Codification instruction. Sections 1. 2. 16

17 5, 6, and 7 are intended to be codified as an integral part 18 of Title 72, chapter 5, part 3, and the provisions of Title 19 72, chapter 5, part 3, apply to sections 1, 2, 5, 6, and 7.

-End-

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