

HOUSE BILL NO. 811

INTRODUCED BY YARDLEY

IN THE HOUSE

February 15, 1983	Introduced and referred to Committee on Judiciary.
February 19, 1983	Committee recommend bill do pass as amended. Report adopted.
February 22, 1983	Bill printed and placed on members' desks. Second reading, do pass.
February 23, 1983	Considered correctly engrossed. Third reading, passed. Transmitted to Senate.

IN THE SENATE

March 1, 1983	Introduced and referred to Committee on Judiciary.
March 21, 1983	Committee recommend bill be concurred in. Report adopted.
March 23, 1983	Second reading, concurred in.
March 25, 1983	Third reading, concurred in. Ayes, 49; Noes, 0.

IN THE HOUSE

March 25, 1983	Returned to House.
March 26, 1983	Sent to enrolling. Reported correctly enrolled.

1 House BILL NO. 811
2 INTRODUCED BY Gardner
3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REQUIRE GUARDIANS
5 AND CONSERVATORS FOR WARDS AND PROTECTED PERSONS TO FILE AN
6 ACCOUNTING BY MARCH 31 OF EACH YEAR FOR THE PREVIOUS
7 CALENDAR YEAR; AMENDING SECTIONS 72-5-321 AND 72-5-438,
8 MCA."

9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 Section 1. Section 72-5-321, MCA, is amended to read:

12 "72-5-321. Powers and duties of guardian of
13 incapacitated person. (1) The powers and duties of a limited
14 guardian are those specified in the order appointing the
15 guardian. The limited guardian is required to report the
16 condition of the incapacitated person and of the estate that
17 has been subject to his possession and control, as required
18 by the court or by court rule.

19 (2) A full guardian of an incapacitated person has the
20 same powers, rights, and duties respecting his ward that a
21 parent has respecting his unemancipated minor child, except
22 that a guardian is not liable to third persons for acts of
23 the ward solely by reason of the parental relationship. In
24 particular and without qualifying the foregoing, a full
25 guardian has the following powers and duties, except as

1 limited by order of the court:

2 (a) To the extent that it is consistent with the terms
3 of any order by a court of competent jurisdiction relating
4 to detention or commitment of the ward, he is entitled to
5 custody of the person of his ward and may establish the
6 ward's place of abode within or without this state.

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

15 (c) A full guardian may give any consents or approvals
16 that may be necessary to enable the ward to receive medical
17 or other professional care, counsel, treatment, or service.

18 (d) If no conservator for the estate of the ward has
19 been appointed, a full guardian may:

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

23 (ii) receive money and tangible property deliverable to
24 the ward and apply the money and property for support, care,
25 and education of the ward; but he may not use funds from his

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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.

(e) ~~A Unless waived by the court, a full guardian is required to report the condition of his ward and of the estate which has been subject to his possession or control as--required--by-the-court-or-court-rule by March 31 of each year for the preceding calendar year. A copy of the report must be served upon the ward's parent, child, or sibling if that person has made an effective request under 72-5-318.~~

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

~~(3) Upon failure, as determined by the clerk of court, of the guardian to file an annual report, the court shall order the guardian to file the report and give good cause for his failure to file a timely report.~~

~~(4) Any full guardian of one for whom a conservator~~

also has been appointed shall control the custody and care of the ward. A limited guardian of a person for whom a conservator has been appointed shall control those aspects of the custody and care of the ward over which he is given authority by the order establishing the limited guardianship. The full guardian or limited guardian is entitled to receive reasonable sums for his services and for room and board furnished to the ward as agreed upon between him and the conservator, provided the amounts agreed upon are reasonable under the circumstances. The full guardian or limited guardian authorized to oversee such aspects of the incapacitated person's care may request the conservator to expend the ward's estate by payment to third persons or institutions for the ward's care and maintenance.

~~(4)(5) No full guardian or limited guardian may involuntarily commit for mental health treatment or for treatment of a developmental disability or for observation or evaluation a ward who is himself unwilling or unable to give informed consent to such commitment, except as provided in 72-5-322, unless the procedures for involuntary commitment set forth in Title 53, chapters 20 and 21, are followed. This chapter does not abrogate any of the rights of mentally disabled persons provided for in Title 53, chapters 20 and 21."~~

Section 2. Section 72-5-438, HCA, is amended to read:

1 "72-5-438. Accounts -- final and intermediate. (1)
 2 ~~Every Unless waived by the court, every~~ conservator must
 3 account to the court for his administration of the trust by
 4 ~~March 31 of each year for the preceding calendar year and~~
 5 also upon his resignation or removal and at other times as
 6 ~~the court may direct. A copy of the account must be served~~
 7 ~~upon the protected person's parents, guardians, child, or~~
 8 ~~sibling if that person has made an effective request under~~
 9 ~~72-5-404.~~ On termination of the protected person's minority
 10 or disability, a conservator may account to the court or he
 11 may account to the former protected person or his personal
 12 representative.

13 (2) Subject to appeal or vacation within the time
 14 permitted, an order made upon notice and hearing allowing an
 15 intermediate account of a conservator adjudicates as to his
 16 liabilities concerning the matters considered in connection
 17 therewith; and an order made upon notice and hearing
 18 allowing a final account adjudicates as to all previously
 19 unsettled liabilities of the conservator to the protected
 20 person or his successors relating to the conservatorship.

21 (3) In connection with any account, the court may
 22 require a conservator to submit to a physical check of the
 23 estate in his control, to be made in any manner the court
 24 may specify.

25 ~~(4) Upon failure, as determined by the clerk of court,~~

1 ~~of the conservator to file an annual account, the court~~
 2 ~~shall order the conservator to file the account and give~~
 3 ~~good cause for his failure to file a timely account."~~

-End-

Approved by Committee
on Judiciary

HOUSE BILL NO. 811

INTRODUCED BY YARDLEY

A BILL FOR AN ACT ENTITLED: "AN ACT TO REQUIRE GUARDIANS
AND CONSERVATORS FOR WARDS AND PROTECTED PERSONS TO FILE AN
ANNUAL ACCOUNTING BY-MARCH-31-OF-EACH-YEAR-FOR-THE--PREVIOUS
CALENDAR--YEAR; AMENDING SECTIONS 72-5-321 AND 72-5-438,
MCA."

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

Section 1. Section 72-5-321, MCA, is amended to read:

"72-5-321. Powers and duties of guardian of
incapacitated person. (1) The powers and duties of a limited
guardian are those specified in the order appointing the
guardian. The limited guardian is required to report the
condition of the incapacitated person and of the estate that
has been subject to his possession and control, as required
by the court or by court rule.

(2) A full guardian of an incapacitated person has the
same powers, rights, and duties respecting his ward that a
parent has respecting his unemancipated minor child, except
that a guardian is not liable to third persons for acts of
the ward solely by reason of the parental relationship. In
particular and without qualifying the foregoing, a full
guardian has the following powers and duties, except as

limited by order of the court:

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

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

(c) A full guardian may give any consents or approvals
that may be necessary to enable the ward to receive medical
or other professional care, counsel, treatment, or service.

(d) If no conservator for the estate of the ward has
been appointed, a full guardian may:

(i) institute proceedings to compel any person under a
duty to support the ward or to pay sums for the welfare of
the ward to perform 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.

(e) ~~* Unless waived by the court, a~~ full guardian is required to report the condition of his ward and of the estate which has been subject to his possession or control ~~as required by the court or court rule by March 31 of each year ANNUALLY for the preceding calendar year. A copy of the report must be served upon the ward's parents, child, or sibling if that person has made an effective request under 72-5-318.~~

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

~~(31) Upon failure, as determined by the clerk of court, of the guardian to file an annual report, the court shall order the guardian to file the report and give good cause for his failure to file a timely report.~~

~~(3)(4)~~ Any full guardian of one for whom a conservator also has been appointed shall control the custody and care of the ward. A limited guardian of a person for whom a conservator has been appointed shall control those aspects of the custody and care of the ward over which he is given authority by the order establishing the limited guardianship. The full guardian or limited guardian is entitled to receive reasonable sums for his services and for room and board furnished to the ward as agreed upon between him and the conservator, provided the amounts agreed upon are reasonable under the circumstances. The full guardian or limited guardian authorized to oversee such aspects of the incapacitated person's care may request the conservator to expend the ward's estate by payment to third persons or institutions for the ward's care and maintenance.

~~(4)(5)~~ No full guardian or limited guardian may involuntarily commit for mental health treatment or for treatment of a developmental disability or for observation or evaluation a ward who is himself unwilling or unable to give informed consent to such commitment, except as provided in 72-5-322, unless the procedures for involuntary commitment set forth in Title 53, chapters 20 and 21, are followed. This chapter does not abrogate any of the rights of mentally disabled persons provided for in Title 53, chapters 20 and 21."

Section 2. Section 72-5-438, MCA, is amended to read:

"72-5-438. Accounts -- final and intermediate. (1)

Every ~~Unless waived by the courts every~~ conservator must account to the court for his administration of the trust ~~by March 31 of each year~~ ANNUALLY for the preceding calendar year and also upon his resignation or removal and at other times as the court may direct. A copy of the account must be served upon the protected person's parents, guardian, child, or sibling if that person has made an effective request under 72-5-404. On termination of the protected person's minority or disability, a conservator may account to the court or he may account to the former protected person or his personal representative.

(2) Subject to appeal or vacation within the time permitted, an order made upon notice and hearing allowing an intermediate account of a conservator adjudicates as to his liabilities concerning the matters considered in connection therewith; and an order made upon notice and hearing allowing a final account adjudicates as to all previously unsettled liabilities of the conservator to the protected person or his successors relating to the conservatorship.

(3) In connection with any account, the court may require a conservator to submit to a physical check of the estate in his control, to be made in any manner the court may specify.

~~(4) Upon failure, as determined by the clerk of courts, of the conservator to file an annual account, the court shall order the conservator to file the account and give good cause for his failure to file a timely account."~~

-End-

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A BILL FOR AN ACT ENTITLED: "AN ACT TO REQUIRE GUARDIANS AND CONSERVATORS FOR WARDS AND PROTECTED PERSONS TO FILE AN ANNUAL ACCOUNTING BY-MARCH-31-BE-EACH-YEAR-FOR-THE--PREVIOUS CALENDAR--YEAR; AMENDING SECTIONS 72-5-321 AND 72-5-438, MCA."

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

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

(2) A full guardian of an incapacitated person has the same powers, rights, and duties respecting his ward that a parent has respecting his unemancipated minor child, except that a guardian is not liable to third persons for acts of the ward solely by reason of the parental relationship. In particular and without qualifying the foregoing, a full guardian has the following powers and duties, except as

limited by order of the court:

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

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

(c) A full guardian may give any consents or approvals that may be necessary to enable the ward to receive medical or other professional care, counsel, treatment, or service.

(d) If no conservator for the estate of the ward has been appointed, a full guardian may:

(i) institute proceedings to compel any person under a duty to support the ward or to pay sums for the welfare of the ward to perform 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.

(e) ~~A full guardian is required to report the condition of his ward and of the estate which has been subject to his possession or control, as required by the court or court rule by March 31 of each year ANNUALLY for the preceding calendar year. A copy of the report must be served upon the ward's parent, child, or sibling if that person has made an effective request under 72-5-318.~~

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

~~(3) Upon failure, as determined by the clerk of court, of the guardian to file an annual report, the court shall order the guardian to file the report and give good cause for his failure to file a timely report.~~

~~(3)(4)~~ Any full guardian of one for whom a conservator also has been appointed shall control the custody and care of the ward. A limited guardian of a person for whom a conservator has been appointed shall control those aspects of the custody and care of the ward over which he is given authority by the order establishing the limited guardianship. The full guardian or limited guardian is entitled to receive reasonable sums for his services and for room and board furnished to the ward as agreed upon between him and the conservator, provided the amounts agreed upon are reasonable under the circumstances. The full guardian or limited guardian authorized to oversee such aspects of the incapacitated person's care may request the conservator to expend the ward's estate by payment to third persons or institutions for the ward's care and maintenance.

~~(4)(5)~~ No full guardian or limited guardian may involuntarily commit for mental health treatment or for treatment of a developmental disability or for observation or evaluation a ward who is himself unwilling or unable to give informed consent to such commitment, except as provided in 72-5-322, unless the procedures for involuntary commitment set forth in Title 53, chapters 20 and 21, are followed. This chapter does not abrogate any of the rights of mentally disabled persons provided for in Title 53, chapters 20 and 21."

Section 2. Section 72-5-438, MCA, is amended to read:

"72-5-438. Accounts -- final and intermediate. (1)

Every ~~Unless waived by the court, every~~ conservator must account to the court for his administration of the trust ~~by March--21--of--each--year~~ ANNUALLY ~~for the preceding calendar year and also upon his resignation or removal and--at--other times--as--the--court--may--direct. A copy of the account must be served upon the protected person's parent, guardian, child, or sibling if that person has made an effective request under 72-5-404.~~ On termination of the protected person's minority or disability, a conservator may account to the court or he may account to the former protected person or his personal representative.

(2) Subject to appeal or vacation within the time permitted, an order made upon notice and hearing allowing an intermediate account of a conservator adjudicates as to his liabilities concerning the matters considered in connection therewith; and an order made upon notice and hearing allowing a final account adjudicates as to all previously unsettled liabilities of the conservator to the protected person or his successors relating to the conservatorship.

(3) In connection with any account, the court may require a conservator to submit to a physical check of the estate in his control, to be made in any manner the court may specify.

~~(1) Upon failure, as determined by the clerk of court, of the conservator to file an annual account, the court shall order the conservator to file the account and give good cause for his failure to file a timely account."~~

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(2) A full guardian of an incapacitated person has the same powers, rights, and duties respecting his ward that a parent has respecting his unemancipated minor child, except that a guardian is not liable to third persons for acts of the ward solely by reason of the parental relationship. In particular and without qualifying the foregoing, a full guardian has the following powers and duties, except as

limited by order of the court:

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

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(d) If no conservator for the estate of the ward has been appointed, a full guardian may:

(i) institute proceedings to compel any person under a duty to support the ward or to pay sums for the welfare of the ward to perform 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.

(e) ~~Unless waived by the court, a full guardian is required to report the condition of his ward and of the estate which has been subject to his possession or control, as required by the court or court rule by March 31 of each year ANNUALLY for the preceding calendar year. A copy of the report must be served upon the ward's parent, child, or sibling if that person has made an effective request under 72-5-318.~~

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

~~(1) Upon failure, as determined by the clerk of court, of the guardian to file an annual report, the court shall order the guardian to file the report and give good cause for his failure to file a timely report.~~

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~~(4)(5)~~ No full guardian or limited guardian may involuntarily commit for mental health treatment or for treatment of a developmental disability or for observation or evaluation a ward who is himself unwilling or unable to give informed consent to such commitment, except as provided in 72-5-322, unless the procedures for involuntary commitment set forth in Title 53, chapters 20 and 21, are followed. This chapter does not abrogate any of the rights of mentally disabled persons provided for in Title 53, chapters 20 and 21."

1 Section 2. Section 72-5-438, MCA, is amended to read:
 2 "72-5-438. Accounts -- Final and intermediate. (1)
 3 Every ~~Unless waived by the court, every~~ conservator must
 4 account to the court for his administration of the trust ~~by~~
 5 ~~March 31 of each year~~ ANNUALLY for the preceding calendar
 6 year and also upon his resignation or removal and at other
 7 times as the court may direct. ~~A copy of the account must be~~
 8 ~~served upon the protected person's parent, guardian, child,~~
 9 ~~or sibling if that person has made an effective request~~
 10 under 72-5-404. On termination of the protected person's
 11 minority or disability, a conservator may account to the
 12 court or he may account to the former protected person or
 13 his personal representative.

14 (2) Subject to appeal or vacation within the time
 15 permitted, an order made upon notice and hearing allowing an
 16 intermediate account of a conservator adjudicates as to his
 17 liabilities concerning the matters considered in connection
 18 therewith; and an order made upon notice and hearing
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 20 unsettled liabilities of the conservator to the protected
 21 person or his successors relating to the conservatorship.

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 23 require a conservator to submit to a physical check of the
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1 ~~(4) Upon failure as determined by the clerk of court,~~
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-End-