# SENATE BILL NO. 414

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### INTRODUCED BY TOWE

## IN THE SENATE

February 14	, 1985	Introduced and referred to Committee on Judiciary.
February 22	., 1985	Committee recommend bill do pass. Report adopted.
February 23	, 1985	Bill printed and placed on members' desks.
February 26	, 1985	Second reading, do pass.
		Considered correctly engrossed.
February 27	, 1985	Third reading, passed. Ayes, 50; Noes, 0.
		Transmitted to House.
	IN THE HO	DUSE
March 7, 19	85	Introduced and referred to Committee on Judiciary.
March 21, 1	985	Committee recommend bill be concurred in. Report adopted
March 23, 1	985	Second reading, concurred in.
March 26, 1	985	Third reading, concurred in.
		Returned to Senate.

## IN THE SENATE

March 26, 1985

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March 27, 1985

Received from House. Sent to enrolling. Reported correctly enrolled.

1 2 INTRODUCED BY 3 4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE 5 APPOINTMENT OF THE PUBLIC ADMINISTRATOR OR A CONSERVATOR 6 CORPORATION AS CONSERVATOR OF CERTAIN PERSONS; AMENDING 7 SECTIONS 7-4-3004, 72-5-408, 72-5-410, AND 72-15-301, MCA."

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

NEW SECTION. Section 1. Professional person to notify 10 11 public administrator of need for conservator. Whenever a professional person, as defined in 53-21-102, has reason to 12 believe that any person is in need of the appointment of a 13 conservator for the effective management of his property or 14 affairs under this part and that the person has no relative, 15 16 friend, or other appropriate person who is able and willing to serve as a conservator for the person, the professional 17 18 person must notify the public administrator.

19 <u>NEW SECTION.</u> Section 2. Public administrator to file 20 for conservator. Whenever the public administrator is 21 notified under [section 1] of the need for the appointment 22 of a conservator and reasonable cause exists, he must file a 23 petition for appointment of the public administrator as 24 conservator of the person.

25 Section 3. Section 7-4-3004, MCA, is amended to read:



"7-4-3004. Office of public administrator. The powers
 and duties of the public administrator are defined by Title
 72, chapter 15, and [section 2]."

Section 4. Section 72-5-408, MCA, is amended to read: 4 5 "72-5-408. Procedure concerning hearing and order on 6 original petition. (1) Upon receipt of a petition for 7 appointment of a conservator or other protective order 8 because of minority, the court shall set a date for hearing on the matters alleged in the petition. If, at any time in 9 the proceeding, the court determines that the interests of 10 11 the minor are or may be inadequately represented, it may appoint an attorney to represent the minor, giving 12 13 consideration to the choice of the minor if 14 years of age or older. A lawyer appointed by the court to represent a 14 minor has the powers and duties of a quardian ad litem. 15

16 (2) Upon receipt of a petition for appointment of a conservator or other protective order for reasons other than 17 minority, the court shall set a date for hearing. Unless 18 the person to be protected has counsel of his own choice, 19 the court must appoint a lawyer to represent him who then 20 has the powers and duties of a guardian ad litem. If the 21 alleged disability is mental illness, mental deficiency. 22 physical illness or disability, advanced age, chronic use of 23 drugs, or chronic intoxication, the court may or, in the 24 case of an appointment pursuant to 72-5-410(1)(h), shall 25

> -2- INTRODUCED BILL 58 414

direct that the person to be protected be examined by a physician designated by the court, preferably a physician who is not connected with any institution in which the person is a patient or is detained. The court may send a visitor to interview the person to be protected. The visitor may be a guardian ad litem or an officer or employee of the court.

8 (3) After hearing, upon finding that a basis for the
9 appointment of a conservator or other protective order has
10 been established, the court shall make an appointment or
11 other appropriate protective order."

12 Section 5. Section 72-5-410, MCA, is amended to read: 13 "72-5-410. Who may be appointed conservator --14 priorities. (1) The court may appoint an individual or a 15 corporation with general power to serve as trustee as 16 conservator of the estate of a protected person. The 17 following are entitled to consideration for appointment in 18 the order listed:

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

(b) an individual or corporation nominated by the
protected person if he is 14 or more years of age and has,
in the opinion of the court, sufficient mental capacity to

1 make an intelligent choice;

2 (c) the spouse of the protected person;

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

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

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

9 (g) a person nominated by the person who is caring for
10 him or paying benefits to him=:

11 (h) a conservator corporation organized under Title

#### 12 35, chapter 2;

#### 13 (i) the public administrator.

14 (2) A person in priorities (a), (c), (d), (e), or (f)
15 may nominate in writing a person to serve in his stead.

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

Section 6. Section 72-15-301, MCA, is amended to read:
"72-15-301. Compensation of public administrator. (1)
The public administrator shall receive and collect for his
own use as full compensation for his services <u>under\_this</u>
chapter, including attorney's fees, the amounts provided for

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1 in 72-3-631 and 72-3-633.

(2) When the public administrator is appointed 2 conservator of the estate of a protected person pursuant to 3 chapter 5, part 4, of this title, the court may order that a 4 reasonable sum be deducted from payments due to the 5 protected person or from his estate to be paid to the public 6 7 administrator as full compensation for his services, excluding court costs and attorney's fees. The total sum 8 9 deducted as compensation for the public administrator may 10 not exceed 2 1/2% of the annual periodic payments or \$100, whichever is less." 11 NEW SECTION. Section 7. Codification 12 instruction. 13 Sections 1 and 2 are intended to be codified as an integral

14 part of Title 72, chapter 5, part 4, and the provisions of

15 Title 72, chapter 5, part 4, apply to sections 1 and 2.

-End-

49th Legislature

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LC 0401/01

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19 NEW SECTION. Section 2. Public administrator to file for conservator. Whenever the public administrator is 20 notified under [section 1] of the need for the appointment 21 of a conservator and reasonable cause exists, he must file a 22 petition for appointment of the public administrator as 23 24 conservator of the person.

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(2) Upon receipt of a petition for appointment of a 16 conservator or other protective order for reasons other than 17 minority, the court shall set a date for hearing. Unless 18 the person to be protected has counsel of his own choice, 19 20 the court must appoint a lawyer to represent him who then has the powers and duties of a guardian ad litem. If the 21 alleged disability is mental illness, mental deficiency, 22 physical illness or disability, advanced age, chronic use of 23 drugs, or chronic intoxication, the court may or, in the 24 case of an appointment pursuant to 72-5-410(1)(h), shall 25

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LC 0401/01

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

(a) a conservator, guardian of property, or other like
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1 make an intelligent choice; 2 (c) the spouse of the protected person: 3 (d) an adult child of the protected person; 4 (e) a parent of the protected person or a person nominated by the will of a deceased parent; 5 (f) any relative of the protected person with whom he 6 has resided for more than 6 months prior to the filing of 7 8 the petition; 9 (q) a person nominated by the person who is caring for 10 him or paying benefits to him; (h) a conservator corporation organized under Title 11 12 35, chapter 2; 13 (i) the public administrator. 14 (2) A person in priorities (a), (c), (d), (e), or (f) 15 may nominate in writing a person to serve in his stead. (3) With respect to persons having equal priority, the 16 court is to select the one who is best gualified of those 17 18 willing to serve. The court, for good cause, may pass over a person having priority and appoint a person having less 19

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LC 0401/01

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LC 0401/01

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THIRD READING -2-SB 414

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SB 414 REFERENCE BILL

SB 414

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