

HB 95 INTRODUCED BY ADDY, ET AL.  
ELIMINATE ANNUAL ACCOUNTING BY GUARDIANS AND  
CONSERVATORS

1/07	INTRODUCED		
1/07	REFERRED TO JUDICIARY		
1/15	HEARING		
1/16	COMMITTEE REPORT--BILL PASSED		
1/19	2ND READING PASSED AS AMENDED	94	4
1/20	3RD READING PASSED	93	3
	TRANSMITTED TO SENATE		
1/22	REFERRED TO JUDICIARY		
2/10	HEARING		
3/07	ADVERSE COMMITTEE REPORT ADOPTED	47	0

1 HB BILL NO. 95  
 2 INTRODUCED BY Andy Mancini

3  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING THE  
 5 REQUIREMENT THAT GUARDIANS AND CONSERVATORS OF WARDS AND  
 6 PROTECTED PERSONS FILE AN ANNUAL ACCOUNTING; AND AMENDING  
 7 SECTIONS 72-5-321 AND 72-5-438, MCA."

8  
 9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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

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

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

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

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

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

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

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

22 (ii) receive money and tangible property deliverable to  
 23 the ward and apply the money and property for support, care,  
 24 and education of the ward; but he may not use funds from his  
 25 ward's estate for room and board which he, his spouse,

1 parent, or child has furnished the ward unless a charge for  
2 the service is approved by order of the court made upon  
3 notice to at least one of the next of kin of the incompetent  
4 ward, if notice is possible. He must exercise care to  
5 conserve any excess for the ward's needs.

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

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

20 ~~{3}--Upon--failure,--as--determined--by--the--clerk--of--court,~~  
21 ~~of--the--guardian--to--file--an--annual--report,--the--court--shall~~  
22 ~~order--the--guardian--to--file--the--report--and--give--good--cause~~  
23 ~~for--his--failure--to--file--a--timely--report.~~

24 {4}{3} Any full guardian of one for whom a conservator  
25 also has been appointed shall control the custody and care

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

14 ~~{5}{4}~~ No full guardian or limited guardian may  
15 involuntarily commit for mental health treatment or for  
16 treatment of a developmental disability or for observation  
17 or evaluation a ward who is himself unwilling or unable to  
18 give informed consent to such commitment, except as provided  
19 in 72-5-322, unless the procedures for involuntary  
20 commitment set forth in Title 53, chapters 20 and 21, are  
21 followed. This chapter does not abrogate any of the rights  
22 of mentally disabled persons provided for in Title 53,  
23 chapters 20 and 21."

24 Section 2. Section 72-5-438, MCA, is amended to read:  
25 "72-5-438. Accounts -- final and intermediate. (1)

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

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

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

24 ~~(4) Upon failure, as determined by the clerk of court,~~  
 25 ~~of the conservator to file an annual account, the court~~

1 ~~shall order the conservator to file the account and give~~  
 2 ~~good cause for his failure to file a timely account."~~

-End-

APPROVED BY COMMITTEE  
ON JUDICIARY

1 HB BILL NO. 95  
2 INTRODUCED BY Andy Mercer  
3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING THE  
5 REQUIREMENT THAT GUARDIANS AND CONSERVATORS OF WARDS AND  
6 PROTECTED PERSONS FILE AN ANNUAL ACCOUNTING; AND AMENDING  
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10 Section 1. Section 72-5-321, MCA, is amended to read:

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

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

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

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

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

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

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

22 (ii) receive money and tangible property deliverable to  
23 the ward and apply the money and property for support, care,  
24 and education of the ward; but he may not use funds from his  
25 ward's estate for room and board which he, his spouse,

1 parent, or child has furnished the ward unless a charge for  
2 the service is approved by order of the court made upon  
3 notice to at least one of the next of kin of the incompetent  
4 ward, if notice is possible. He must exercise care to  
5 conserve any excess for the ward's needs.

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7 required to report the condition of his ward and of the  
8 estate which has been subject to his possession or control  
9 ~~annually for the preceding year. A copy of the report must~~  
10 ~~be served upon the ward's parent, child, or sibling if that~~  
11 ~~person has made an effective request under 72-5-318, as~~  
12 ~~required by the court or court rule.~~

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

20 ~~{3} Upon failure, as determined by the clerk of court,~~  
21 ~~of the guardian to file an annual report, the court shall~~  
22 ~~order the guardian to file the report and give good cause~~  
23 ~~for his failure to file a timely report.~~

24 ~~{4}~~ {3} Any full guardian of one for whom a conservator  
25 also has been appointed shall control the custody and care

1 of the ward. A limited guardian of a person for whom a  
2 conservator has been appointed shall control those aspects  
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5 guardianship. The full guardian or limited guardian is  
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11 the incapacitated person's care may request the conservator  
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13 institutions for the ward's care and maintenance.

14 ~~{5}~~ {4} No full guardian or limited guardian may  
15 involuntarily commit for mental health treatment or for  
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18 give informed consent to such commitment, except as provided  
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20 commitment set forth in Title 53, chapters 20 and 21, are  
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22 of mentally disabled persons provided for in Title 53,  
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12 (2) Subject to appeal or vacation within the time  
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 14 intermediate account of a conservator adjudicates as to his  
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-End-

## 1 HOUSE BILL NO. 95

2 INTRODUCED BY ADDY, MERCER

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING, UNLESS THE  
5 WARD OR PROTECTED PERSON IS 65 YEARS OF AGE OR OLDER, THE  
6 REQUIREMENT THAT GUARDIANS AND CONSERVATORS OF WARDS AND  
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-End-