H-1067.1

HOUSE BILL 2278

State of Washington

60th Legislature

2007 Regular Session

By Representative Chase

Read first time 02/16/2007. Referred to Committee on Judiciary.

- 1 AN ACT Relating to guardianship proceedings; and amending RCW
- 2 11.88.030.
- 3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:
- 4 **Sec. 1.** RCW 11.88.030 and 1996 c 249 s 8 are each amended to read 5 as follows:
- 5 as follows:
 6 (1) Any person or entity may petition for the appointment of a
- qualified person((, trust company, national bank, or nonprofit
- 8 corporation)) authorized in RCW 11.88.020 as the guardian or limited
- 9 guardian of an incapacitated person. ((No liability for filing a
- 10 petition for guardianship or limited guardianship shall attach to a
- petitioner acting in good faith and upon reasonable basis.)) A petition for guardianship or limited guardianship may not disclose the social
- 13 security number, medicare or medicaid number, or financial account
- 14 numbers of the alleged incapacitated person or a family member of the
- 15 <u>alleged incapacitated person.</u> A petition for guardianship or limited
- 16 guardianship shall state:
- 17 (a) The name, age, residence, and post office address of the
- 18 alleged incapacitated person;

p. 1 HB 2278

1 (b) The nature of the alleged incapacity in accordance with RCW 2 11.88.010;

- (c) The approximate value and description of property, including any compensation, pension, insurance, or allowance, to which the alleged incapacitated person may be entitled;
- (d) Whether there is, in any state, a guardian or limited guardian, or pending guardianship action for the person or estate of the alleged incapacitated person;
- (e) The residence and post office address of the person whom petitioner asks to be appointed guardian or limited guardian;
- (f) The names and addresses, and nature of the relationship, so far as known or can be reasonably ascertained, of the persons most closely related by blood or marriage to the alleged incapacitated person;
- (g) The name and address of the person or facility having the care and custody of the alleged incapacitated person;
- (h) The reason why the appointment of a guardian or limited guardian is sought and the interest of the petitioner in the appointment, and whether the appointment is sought as guardian or limited guardian of the person, the estate, or both;
- (i) A description of any alternate arrangements previously made by the alleged incapacitated person, such as, but not limited to, trusts or powers of attorney, including identifying any guardianship nominations contained in a power of attorney or elsewhere, and why a guardianship is nevertheless necessary;
- (j) The nature and degree of the alleged incapacity and the specific areas of protection and assistance requested and the limitation of rights requested to be included in the court's order of appointment;
- (k) The requested term of the limited guardianship to be included in the court's order of appointment;
 - (1) Whether the petitioner is proposing a specific individual to act as guardian ad litem and, if so, the individual's knowledge of or relationship to any of the parties, and why the individual is proposed.
- (2)(a) A hospital, a facility as defined in RCW 74.34.020, or any other entity that provides long-term care services, may not petition for, or request, or induce any other person to petition for, a quardianship or limited quardianship of an alleged incapacitated person

HB 2278 p. 2

who is, was, or will be either: (i) Temporarily staying at the facility, hospital, or other entity; or (ii) a resident of the facility, hospital, or other entity.

- (b) The court shall dismiss any petition for quardianship or limited quardianship that violates (a) of this subsection.
- (3)(a) The attorney general may petition for the appointment of a guardian or limited guardian in any case in which there is cause to believe that a guardianship is necessary and no private party is able and willing to petition.
- (b) Prepayment of a filing fee shall not be required in any guardianship or limited guardianship brought by the attorney general. Payment of the filing fee shall be ordered from the estate of the incapacitated person at the hearing on the merits of the petition, unless in the judgment of the court, such payment would impose a hardship upon the incapacitated person, in which case the filing shall be waived.
- ((+3))) (4) No filing fee shall be charged by the court for filing either a petition for guardianship or a petition for limited guardianship if the petition alleges that the alleged incapacitated person has total assets of a value of less than three thousand dollars.
- ((\(\frac{4+}{1}\))) (5)(a) Notice that a guardianship proceeding has been commenced shall be personally served upon the alleged incapacitated person and the guardian ad litem along with a copy of the petition for appointment of a guardian. Such notice shall be served not more than five court days after the petition has been filed. Notice that a guardianship proceeding has been commenced, along with a copy of the petition for appointment of a quardian, shall be mailed not more than five court days after the petition is filed to the next of kin or closest known relative of the alleged incapacitated person, the family caregiver, former family caregiver, or person having the care and custody of the alleged incapacitated person, and the alleged incapacitated person's attorney and attorney-in-fact, if known.
- (b) Notice under this subsection shall include a clear and easily readable statement of the legal rights of the alleged incapacitated person that could be restricted or transferred to a guardian by a guardianship order as well as the right to counsel of choice and to a jury trial on the issue of incapacity. Such notice shall be in

p. 3 HB 2278

- 1 substantially the following form and shall be in capital letters,
- 2 double-spaced, and in a type size not smaller than ten-point type:
- 3 IMPORTANT NOTICE
- 4 PLEASE READ CAREFULLY
- 5 A PETITION TO HAVE A GUARDIAN APPOINTED FOR YOU HAS BEEN FILED IN THE
- 6 COUNTY SUPERIOR COURT BY IF A GUARDIAN IS
- 7 APPOINTED, YOU COULD LOSE ONE OR MORE OF THE FOLLOWING RIGHTS:
- 8 (1) TO MARRY OR DIVORCE;
- 9 (2) TO VOTE OR HOLD AN ELECTED OFFICE;
- 10 (3) TO ENTER INTO A CONTRACT OR MAKE OR REVOKE A WILL;
- 11 (4) TO APPOINT SOMEONE TO ACT ON YOUR BEHALF;
- 12 (5) TO SUE AND BE SUED OTHER THAN THROUGH A GUARDIAN;
- 13 (6) TO POSSESS A LICENSE TO DRIVE;
- 14 (7) TO BUY, SELL, OWN, MORTGAGE, OR LEASE PROPERTY;
- 15 (8) TO CONSENT TO OR REFUSE MEDICAL TREATMENT;
- 16 (9) TO DECIDE WHO SHALL PROVIDE CARE AND ASSISTANCE;
- 17 (10) TO MAKE DECISIONS REGARDING SOCIAL ASPECTS OF YOUR LIFE.
- 18 UNDER THE LAW, YOU HAVE CERTAIN RIGHTS.
- 19 YOU HAVE THE RIGHT TO BE REPRESENTED BY A LAWYER OF YOUR OWN CHOOSING.
- 20 THE COURT WILL APPOINT A LAWYER TO REPRESENT YOU IF YOU ARE UNABLE TO
- 21 PAY OR PAYMENT WOULD RESULT IN A SUBSTANTIAL HARDSHIP TO YOU.
- 22 YOU HAVE THE RIGHT TO ASK FOR A JURY TO DECIDE WHETHER OR NOT YOU NEED
- 23 A GUARDIAN TO HELP YOU.
- 24 YOU HAVE THE RIGHT TO BE PRESENT IN COURT AND TESTIFY WHEN THE HEARING
- 25 IS HELD TO DECIDE WHETHER OR NOT YOU NEED A GUARDIAN. IF A GUARDIAN AD
- 26 LITEM IS APPOINTED, YOU HAVE THE RIGHT TO REQUEST THE COURT TO REPLACE
- 27 THAT PERSON.
- $((\frac{5}{1}))$ (6) All petitions filed under the provisions of this
- 29 section shall be heard within sixty days unless an extension of time is
- 30 requested by a party or the guardian ad litem within such sixty day
- 31 period and granted for good cause shown. If an extension is granted,
- 32 the court shall set a new hearing date. Notice of the new hearing date
- 33 <u>must be provided in accordance with the notice requirements in RCW</u>
- 34 11.88.040.

--- END ---

HB 2278 p. 4