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HOUSE BILL 3052

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State of Washington                      58th Legislature                      2004 Regular Session

By Representatives McMahan, Moeller, Romero and Lovick

Read first time 01/27/2004. Referred to Committee on State Government.

1            AN ACT Relating to the voting rights of persons under guardianship;  
2 amending RCW 11.88.010; and creating a new section.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4            NEW SECTION.    **Sec. 1.** The legislature finds that the right to vote  
5 is a fundamental liberty and that this liberty should not be  
6 confiscated without due process. When the state chooses to use  
7 guardianship proceedings as the basis for the denial of a fundamental  
8 liberty, an individual is entitled to basic procedural protections that  
9 will ensure fundamental fairness. These basic procedural protections  
10 should include clear notice and a meaningful opportunity to be heard.  
11 The legislature further finds that the state has a compelling interest  
12 in ensuring that those who cast a ballot understand the nature and  
13 effect of voting is an individual decision, and that any restriction of  
14 voting rights imposed through guardianship proceedings should be  
15 narrowly tailored to meet this compelling interest.

16            **Sec. 2.** RCW 11.88.010 and 1991 c 289 s 1 are each amended to read  
17 as follows:

18            (1) The superior court of each county shall have power to appoint

1 guardians for the persons and/or estates of incapacitated persons, and  
2 guardians for the estates of nonresidents of the state who have  
3 property in the county needing care and attention.

4 (a) For purposes of this chapter, a person may be deemed  
5 incapacitated as to person when the superior court determines the  
6 individual has a significant risk of personal harm based upon a  
7 demonstrated inability to adequately provide for nutrition, health,  
8 housing, or physical safety.

9 (b) For purposes of this chapter, a person may be deemed  
10 incapacitated as to the person's estate when the superior court  
11 determines the individual is at significant risk of financial harm  
12 based upon a demonstrated inability to adequately manage property or  
13 financial affairs.

14 (c) A determination of incapacity is a legal not a medical  
15 decision, based upon a demonstration of management insufficiencies over  
16 time in the area of person or estate. Age, eccentricity, poverty, or  
17 medical diagnosis alone shall not be sufficient to justify a finding of  
18 incapacity.

19 (d) A person may also be determined incapacitated if he or she is  
20 under the age of majority as defined in RCW 26.28.010.

21 (e) For purposes of giving informed consent for health care  
22 pursuant to RCW 7.70.050 and 7.70.065, an "incompetent" person is any  
23 person who is (i) incompetent by reason of mental illness,  
24 developmental disability, senility, habitual drunkenness, excessive use  
25 of drugs, or other mental incapacity, of either managing his or her  
26 property or caring for himself or herself, or both, or (ii)  
27 incapacitated as defined in (a), (b), or (d) of this subsection.

28 (f) For purposes of the terms "incompetent," "disabled," or "not  
29 legally competent," as those terms are used in the Revised Code of  
30 Washington to apply to persons incapacitated under this chapter, those  
31 terms shall be interpreted to mean "incapacitated" persons for purposes  
32 of this chapter.

33 (2) The superior court for each county shall have power to appoint  
34 limited guardians for the persons and estates, or either thereof, of  
35 incapacitated persons, who by reason of their incapacity have need for  
36 protection and assistance, but who are capable of managing some of  
37 their personal and financial affairs. After considering all evidence  
38 presented as a result of such investigation, the court shall impose, by

1 order, only such specific limitations and restrictions on an  
2 incapacitated person to be placed under a limited guardianship as the  
3 court finds necessary for such person's protection and assistance. A  
4 person shall not be presumed to be incapacitated nor shall a person  
5 lose any legal rights or suffer any legal disabilities as the result of  
6 being placed under a limited guardianship, except as to those rights  
7 and disabilities specifically set forth in the court order establishing  
8 such a limited guardianship. In addition, the court order shall state  
9 the period of time for which it shall be applicable.

10 (3) Venue for petitions for guardianship or limited guardianship  
11 shall lie in the county wherein the alleged incapacitated person is  
12 domiciled, or if such person resides in a facility supported in whole  
13 or in part by local, state, or federal funding sources, in either the  
14 county where the facility is located, the county of domicile prior to  
15 residence in the supported facility, or the county where a parent or  
16 spouse of the alleged incapacitated person is domiciled.

17 If the alleged incapacitated person's residency has changed within  
18 one year of the filing of the petition, any interested person may move  
19 for a change of venue for any proceedings seeking the appointment of a  
20 guardian or a limited guardian under this chapter to the county of the  
21 alleged incapacitated person's last place of residence of one year or  
22 more. The motion shall be granted when it appears to the court that  
23 such venue would be in the best interests of the alleged incapacitated  
24 person and would promote more complete consideration of all relevant  
25 matters.

26 (4) Under RCW 11.94.010, a principal may nominate, by a durable  
27 power of attorney, the guardian or limited guardian of his or her  
28 estate or person for consideration by the court if guardianship  
29 proceedings for the principal's person or estate are thereafter  
30 commenced. The court shall make its appointment in accordance with the  
31 principal's most recent nomination in a durable power of attorney  
32 except for good cause or disqualification.

33 (5) ~~((When a court imposes a full guardianship for an incapacitated  
34 person, the person shall be considered incompetent for purposes of  
35 rationally exercising the right to vote and shall lose the right to  
36 vote, unless the court specifically finds that the person is rationally  
37 capable of exercising the franchise.))~~ Imposition of a ((limited))  
38 guardianship for an incapacitated person shall not result in the loss

1 of the right to vote unless the court determines that the person is  
2 incompetent for purposes of rationally exercising the franchise in that  
3 the individual lacks the capacity to understand the nature and effect  
4 of voting such that she or he cannot make an individual choice.

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