

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 179

BY JUDICIARY, RULES, AND ADMINISTRATION COMMITTEE

AN ACT

1 RELATING TO GUARDIANSHIPS; AMENDING SECTION 15-5-301, IDAHO CODE, TO
 2 PROVIDE FOR THE TESTAMENTARY APPOINTMENT OF A GUARDIAN FOR
 3 A DEVELOPMENTALLY DISABLED PERSON AND TO MAKE A TECHNICAL
 4 CORRECTION; AMENDING SECTION 66-404, IDAHO CODE, TO PROVIDE
 5 REQUIREMENTS FOR CERTAIN GUARDIANSHIP APPOINTMENTS BY WILL;
 6 AND AMENDING SECTION 66-405, IDAHO CODE, TO PROVIDE THAT IF AN
 7 APPOINTMENT OF A GUARDIAN IS MADE BY WILL, SUCH APPOINTMENT
 8 SHALL BE ENTITLED TO PREFERENCE AS THE GUARDIAN IF THE PERSON
 9 SO APPOINTED BY WILL IS CAPABLE OF SERVING ON BEHALF OF THE
 10 RESPONDENT AND THE COURT FINDS THAT IT IS NOT IN THE BEST
 11 INTERESTS OF THE RESPONDENT TO APPOINT A DIFFERENT PERSON AS
 12 GUARDIAN.
 13

14 Be It Enacted by the Legislature of the State of Idaho:

15 SECTION 1. That Section 15-5-301, Idaho Code, be, and the same is hereby amended to
 16 read as follows:

17 15-5-301. TESTAMENTARY APPOINTMENT OF GUARDIAN FOR
 18 INCAPACITATED PERSON OR DEVELOPMENTALLY DISABLED PERSON. (a) The
 19 parent of an incapacitated person or developmentally disabled person may by will appoint a
 20 guardian of the incapacitated person or developmentally disabled person. A testamentary
 21 appointment by a parent becomes effective when, after having given seven (7) days' prior
 22 written notice of his intention to do so to the incapacitated person or developmentally disabled
 23 person and to the person having his care or to his nearest adult relative, the guardian files
 24 acceptance of appointment in the court in which the will is informally or formally probated, if
 25 prior thereto, both parents are dead or the surviving parent is adjudged incapacitated. If both
 26 parents are dead, an effective appointment by the parent who died later has priority unless it
 27 is terminated by the denial of probate in formal proceedings.

28 (b) The spouse of a married incapacitated person or developmentally disabled person
 29 may by will appoint a guardian of the incapacitated person or developmentally disabled person.
 30 The appointment becomes effective when, after having given seven (7) days' prior written
 31 notice of his intention to do so to the incapacitated person or developmentally disabled person
 32 and to the person having his care or to his nearest adult relative, the guardian files acceptance
 33 of appointment in the court in which the will is informally or formally probated. An effective
 34 appointment by a spouse has priority over an appointment by a parent unless it is terminated by
 35 the denial of probate in formal proceedings.

36 (c) This state shall recognize a testamentary appointment effected by filing acceptance
 37 under a will probated at the testator's domicile in another state.

1 (d) On the filing with the court in which the will was probated of written objection
 2 to the appointment by the person for whom a testamentary appointment of guardian has been
 3 made, the appointment is terminated. An objection does not prevent appointment by the court
 4 in a proper proceeding of the testamentary nominee or any other suitable person upon an
 5 adjudication of incapacity in proceedings under the succeeding sections of this Part.

6 (e) If the appointment by will is for a developmentally disabled person and there is an
 7 existing guardianship proceeding under chapter 4, title 66, Idaho Code, in which the decedent
 8 was the sole guardian, the guardian appointed by will must also give seven (7) days' written
 9 notice of his intention to file an acceptance of appointment to any then serving guardian ad
 10 litem for the developmentally disabled person in such proceeding and to the department of
 11 health and welfare for the region in which the proceeding was brought.

12 (f) If the appointment by will is for an incapacitated person for whom there is an existing
 13 guardianship proceeding in which the decedent was the sole guardian, the guardian appointed
 14 by will must also give seven (7) days' written notice of his intention to file an acceptance
 15 of appointment to any then serving guardian ad litem for the incapacitated person in such
 16 proceeding.

17 SECTION 2. That Section 66-404, Idaho Code, be, and the same is hereby amended to
 18 read as follows:

19 66-404. PROCEEDINGS FOR APPOINTMENT OF GUARDIANS AND
 20 CONSERVATORS. (1) A developmentally disabled person or any person interested in his
 21 welfare may petition for a finding of legal disability or partial legal disability and appointment
 22 of a guardian and/or conservator.

23 (2) The petition shall:

24 (a) State the names and addresses of the persons entitled to notice under subsection (4) of
 25 this section;

26 (b) Describe the impairments showing the respondent is developmentally disabled,
 27 the respondent's ability to receive, evaluate and communicate information, and the
 28 respondent's ability to manage financial resources and meet essential requirements for
 29 physical health or safety;

30 (c) State the nature and scope of guardianship and/or conservatorship services sought;
 31 ~~and~~

32 (d) Describe the respondent's financial condition, including significant assets, income and
 33 ability to pay for the costs of judicial proceedings; and

34 (e) State if the appointment is made by will pursuant to section 15-5-301, Idaho Code,
 35 and the name(s) and address(es) of the person(s) named in the will to be guardian.

36 (3) Upon filing of a petition, the court shall set a date for a hearing, appoint an attorney
 37 to represent the respondent in the proceedings unless the respondent has an attorney, and
 38 authorize an evaluation committee to examine the respondent, interview the proposed guardians
 39 and/or conservators and report to the court in writing. The report shall contain:

40 (a) A description of the nature and extent of the evaluation and the alleged impairments,
 41 if any;

42 (b) A description of the respondent's mental, emotional and physical condition;
 43 educational status; and adaptive and social skills;

44 (c) A description of the services, if any, needed by the respondent to meet essential
 45 requirements for physical health and safety, and/or manage financial resources;

1 (d) A recommendation regarding the type and extent of guardianship or conservatorship
 2 assistance, if any, required by the respondent and why no less restrictive alternative would
 3 be appropriate;

4 (e) An opinion regarding the probability that the extent of the respondent's disabilities
 5 may significantly lessen, and the type of services or treatment which may facilitate
 6 improvement in the respondent's behavior, condition, or skills;

7 (f) The respondent's preference, if any, regarding the person or persons to be appointed
 8 as guardian and/or conservator;

9 (g) The suitability of the person or persons proposed as guardian and/or conservator; and

10 (h) The signature of each member of the evaluation committee with a statement of
 11 concurrence or nonconcurrence with the findings and any dissenting opinions or other
 12 comments of the members.

13 (4) Notice of the time and place of the hearing on the petition together with a copy of the
 14 petition shall be served no less than ten (10) days before the hearing on:

15 (a) The respondent;

16 (b) The respondent's spouse, parents and adult children, or if none, the respondent's
 17 closest relative, if any can be found; and

18 (c) Any person who is currently serving as guardian, conservator or who is providing
 19 care for the respondent.

20 Notice shall be served personally if the person to be served can be found within the state. If
 21 the person to be served cannot be found within the state, service shall be accomplished by
 22 registered mail to such person's last known address.

23 (5) The respondent is entitled to be present at the hearing in person, to present evidence,
 24 call and cross-examine witnesses, and to see or hear all evidence in the proceeding.

25 (6) At the hearing the court shall:

26 (a) Determine whether the respondent is developmentally disabled;

27 (b) Evaluate the respondent's ability to meet essential requirements for physical health or
 28 safety and manage financial resources;

29 (c) Evaluate the ability of the proposed guardian and/or conservator to act in the
 30 respondent's best interests to manage the respondent's financial resources and meet
 31 essential requirements for the respondent's physical health or safety;

32 (d) Determine the nature and scope of guardianship or conservatorship services necessary
 33 to protect and promote the respondent's well-being; and

34 (e) Evaluate the ability of the respondent or those legally responsible to pay the costs
 35 associated with the judicial proceedings and fix responsibility therefor.

36 SECTION 3. That Section 66-405, Idaho Code, be, and the same is hereby amended to
 37 read as follows:

38 66-405. ORDER IN PROTECTIVE PROCEEDINGS. (1) If it is determined that the
 39 respondent is not developmentally disabled but appears in need of protective services, the
 40 court may cause the proceeding to be expanded or altered for consideration under the uniform
 41 probate code.

42 (2) If it is determined that the respondent is able to manage financial resources and meet
 43 essential requirements for physical health or safety, the court shall dismiss the petition.

44 (3) If it is determined that the respondent is developmentally disabled and is unable
 45 to manage some financial resources or meet some essential requirements for physical health

1 or safety, the court may appoint a partial guardian and/or partial conservator on behalf of
2 the respondent. An order establishing partial guardianship or partial conservatorship shall
3 define the powers and duties of the partial guardian or partial conservator so as to permit the
4 respondent to meet essential requirements for physical health or safety and to manage financial
5 resources commensurate with his ability to do so, and shall specify all legal restrictions to
6 which he is subject. A person for whom a partial guardianship or partial conservatorship has
7 been appointed under this chapter retains all legal and civil rights except those which have
8 by court order been limited or which have been specifically granted to the partial guardian or
9 partial conservator by the court.

10 (4) If it is determined that the respondent is developmentally disabled and is unable to
11 manage financial resources or meet essential requirements for physical health or safety even
12 with the appointment of a partial guardian or partial conservator, the court may appoint a total
13 guardian and/or total conservator.

14 (5) In the event that more than one (1) person seeks to be appointed guardian and/or
15 conservator, the court shall appoint the person or persons most capable of serving on behalf
16 of the respondent; the court shall not customarily or ordinarily appoint the department or any
17 other organization or individual, public or private, that is or is likely to be providing services to
18 the respondent. If an appointment of a guardian is made by will pursuant to section 15-5-301,
19 Idaho Code, such appointment shall be entitled to preference as the guardian under this chapter,
20 if the person so appointed by will is capable of serving on behalf of the respondent and the
21 court finds that it is not in the best interests of the respondent to appoint a different person as
22 guardian.

23 (6) Subject to the limitations of the provisions of subsection (7) of this section, guardians
24 or conservators may have any of the duties and powers as provided in sections 15-5-312(1)(a)
25 through (d), 15-5-424 and 15-5-425, Idaho Code, and as specified in the order. Any order
26 appointing a partial or total guardian or partial or total conservator under the provisions of
27 this section must require a report to the court at least annually. In addition to such other
28 requirements imposed by law or order, the report shall include:

- 29 (a) A description of the respondent's current mental, physical and social condition;
- 30 (b) The respondent's present address and living arrangement;
- 31 (c) A description of any significant changes in the capacity of the respondent to meet
32 essential requirements for physical health or safety or to manage financial resources;
- 33 (d) A description of services being provided the respondent;
- 34 (e) A description of significant actions taken by the guardian or conservator during the
35 reporting period;
- 36 (f) Any significant problems relating to the guardianship or conservatorship;
- 37 (g) A complete financial statement of the financial resources under the control or
38 supervision of the guardian or conservator; and
- 39 (h) A description of the need for continued guardianship or conservatorship services.

40 (7) No guardian appointed under this chapter shall have the authority to refuse or
41 withhold consent for medically necessary treatment when the effect of withholding such
42 treatment would seriously endanger the life or health and well-being of the person with a
43 developmental disability. To withhold or attempt to withhold such treatment shall constitute
44 neglect of the person and be cause for removal of the guardian. No physician or caregiver shall
45 withhold or withdraw such treatment for a respondent whose condition is not terminal or whose
46 death is not imminent. If the physician or caregiver cannot obtain valid consent for medically

1 necessary treatment from the guardian, he shall provide the medically necessary treatment as
2 authorized by section 39-4504(1)(g), Idaho Code.

3 (8) A guardian appointed under this chapter may consent to withholding or withdrawal of
4 artificial life-sustaining procedures, only if the respondent:

5 (a) Has an incurable injury, disease, illness or condition, certified by the respondent's
6 attending physician and at least one (1) other physician to be terminal such that the
7 application of artificial life-sustaining procedures would not result in the possibility of
8 saving or significantly prolonging the life of the respondent, and would only serve to
9 prolong the moment of the respondent's death for a period of hours, days or weeks, and
10 where both physicians certify that death is imminent, whether or not the life-sustaining
11 procedures are used; or

12 (b) Has been diagnosed by the respondent's attending physician and at least one (1) other
13 physician as being in a persistent vegetative state which is irreversible and from which the
14 respondent will never regain consciousness.

15 (9) Any person, who has information that medically necessary treatment of a respondent
16 has been withheld or withdrawn, may report such information to adult protective services or to
17 the Idaho protection and advocacy system for people with developmental disabilities, who shall
18 have the authority to investigate the report and in appropriate cases to seek a court order to
19 ensure that medically necessary treatment is provided.

20 If adult protective services or the protection and advocacy system determines that
21 withholding of medical treatment violates the provisions of this section, they may petition the
22 court for an ex parte order to provide or continue the medical treatment in question. If the
23 court finds, based on affidavits or other evidence, that there is probable cause to believe that the
24 withholding of medical treatment in a particular case violates the provisions of this section, and
25 that the life or health of the patient is endangered thereby, the court shall issue an ex parte order
26 to continue or to provide the treatment until such time as the court can hear evidence from the
27 parties involved. Petitions for court orders under this section shall be expedited by the courts
28 and heard as soon as possible. No bond shall be required of a petitioner under this section.

29 (10) No partial or total guardian or partial or total conservator appointed under the
30 provisions of this section may without specific approval of the court in a proceeding separate
31 from that in which such guardian or conservator was appointed:

32 (a) Consent to medical or surgical treatment the effect of which permanently prohibits
33 the conception of children by the respondent unless the treatment or procedures are
34 necessary to protect the physical health of the respondent and would be prescribed for a
35 person who is not developmentally disabled;

36 (b) Consent to experimental surgery, procedures or medications; or

37 (c) Delegate the powers granted by the order.