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**SUBSTITUTE HOUSE BILL 1876**

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**State of Washington**

**59th Legislature**

**2005 Regular Session**

**By** House Committee on State Government Operations & Accountability  
(originally sponsored by Representatives Green, Haler, Moeller,  
Darneille, Haigh, Miloscia and Upthegrove)

READ FIRST TIME 03/07/05.

1           AN ACT Relating to the voting rights of persons under guardianship;  
2 amending RCW 11.88.010 and 11.88.010; creating a new section; providing  
3 an effective date; and providing an expiration date.

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

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

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

1 (1) The superior court of each county shall have power to appoint  
2 guardians for the persons and/or estates of incapacitated persons, and  
3 guardians for the estates of nonresidents of the state who have  
4 property in the county needing care and attention.

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

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

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

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

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

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

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

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

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

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

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

34 ~~(5) ((When a court imposes a full guardianship for an incapacitated~~  
35 ~~person, the person shall be considered incompetent for purposes of~~  
36 ~~rationaly exercising the right to vote and shall lose the right to~~  
37 ~~vote, unless the court specifically finds that the person is rationally~~  
38 ~~capable of exercising the franchise.)) Imposition of a ((limited))~~

1 guardianship for an incapacitated person shall not result in the loss  
2 of the right to vote unless the court determines that the person is  
3 incompetent for purposes of rationally exercising the franchise in that  
4 the individual lacks the capacity to understand the nature and effect  
5 of voting such that she or he cannot make an individual choice. The  
6 court order establishing guardianship shall specify whether or not the  
7 individual retains voting rights.

8       **Sec. 3.** RCW 11.88.010 and 2004 c 267 s 139 are each amended to  
9 read as follows:

10       (1) The superior court of each county shall have power to appoint  
11 guardians for the persons and/or estates of incapacitated persons, and  
12 guardians for the estates of nonresidents of the state who have  
13 property in the county needing care and attention.

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

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

24       (c) A determination of incapacity is a legal not a medical  
25 decision, based upon a demonstration of management insufficiencies over  
26 time in the area of person or estate. Age, eccentricity, poverty, or  
27 medical diagnosis alone shall not be sufficient to justify a finding of  
28 incapacity.

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

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

1 (f) For purposes of the terms "incompetent," "disabled," or "not  
2 legally competent," as those terms are used in the Revised Code of  
3 Washington to apply to persons incapacitated under this chapter, those  
4 terms shall be interpreted to mean "incapacitated" persons for purposes  
5 of this chapter.

6 (2) The superior court for each county shall have power to appoint  
7 limited guardians for the persons and estates, or either thereof, of  
8 incapacitated persons, who by reason of their incapacity have need for  
9 protection and assistance, but who are capable of managing some of  
10 their personal and financial affairs. After considering all evidence  
11 presented as a result of such investigation, the court shall impose, by  
12 order, only such specific limitations and restrictions on an  
13 incapacitated person to be placed under a limited guardianship as the  
14 court finds necessary for such person's protection and assistance. A  
15 person shall not be presumed to be incapacitated nor shall a person  
16 lose any legal rights or suffer any legal disabilities as the result of  
17 being placed under a limited guardianship, except as to those rights  
18 and disabilities specifically set forth in the court order establishing  
19 such a limited guardianship. In addition, the court order shall state  
20 the period of time for which it shall be applicable.

21 (3) Venue for petitions for guardianship or limited guardianship  
22 shall lie in the county wherein the alleged incapacitated person is  
23 domiciled, or if such person resides in a facility supported in whole  
24 or in part by local, state, or federal funding sources, in either the  
25 county where the facility is located, the county of domicile prior to  
26 residence in the supported facility, or the county where a parent or  
27 spouse of the alleged incapacitated person is domiciled.

28 If the alleged incapacitated person's residency has changed within  
29 one year of the filing of the petition, any interested person may move  
30 for a change of venue for any proceedings seeking the appointment of a  
31 guardian or a limited guardian under this chapter to the county of the  
32 alleged incapacitated person's last place of residence of one year or  
33 more. The motion shall be granted when it appears to the court that  
34 such venue would be in the best interests of the alleged incapacitated  
35 person and would promote more complete consideration of all relevant  
36 matters.

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12 of the right to vote unless the court determines that the person is  
13 incompetent for purposes of rationaly exercising the franchise in that  
14 the individual lacks the capacity to understand the nature and effect  
15 of voting such that she or he cannot make an individual choice. The  
16 court order establishing guardianship shall specify whether or not the  
17 individual retains voting rights. When a court determines that the  
18 person is incompetent for the purpose of rationaly exercising the  
19 right to vote, the court shall notify the appropriate county auditor.~~

20 NEW SECTION. Sec. 4. Section 2 of this act expires January 1,  
21 2006.

22 NEW SECTION. Sec. 5. Section 3 of this act takes effect January  
23 1, 2006.

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