

(3) In the absence of receipt of notice from the insured that coverage will not be continued with the existing insurer, an insurer whose agency contract has been terminated by an independent agent, or by the mutual agreement of the insurer and the agent, that elects to renew or lacks a reason not to renew, shall give the renewal notice required by chapter 48.18 RCW to affected insureds, and continue renewed coverage in accordance with the methods specified in subsection (2)(b) of this section. Agents affected by this subsection may provide the notice to an insurer that an insured does not intend to continue existing coverage with the insurer, after receiving written authority to do so from an insured.

(4) For purposes of this section an "independent agent" is a licensed insurance agent representing an insurer on an independent contractor basis and not as an employee. This term includes only those agents not obligated by contract to place insurance accounts with a particular insurer or group of insurers.

(5) This section does not apply to (a) agents or policies of an insurer or group of insurers if the business is not owned by the agent and the termination of any such contractual agreement does not result in the cancellation or nonrenewal of any policies of insurance; (b) general agents, to the extent that they are acting in that capacity; (c) life, disability, surety, ocean marine and foreign trade, and title insurance policies; (d) situations where the termination of the agency contract results from the insolvency or liquidation of the terminating insurer.

(6) No insurer may terminate its agency contract with an appointed agent unless it complies with this section.

(7) Nothing contained in this section excuses an insurer from giving cancellation and renewal notices that may be required by chapter 48.18 RCW.

NEW SECTION. Sec. 2. Section 1, chapter 286, Laws of 1986 and RCW 48.17.590 are each repealed.

Passed the Senate February 13, 1990.

Passed the House March 2, 1990.

Approved by the Governor March 21, 1990.

Filed in Office of Secretary of State March 21, 1990.

CHAPTER 122

[Substitute Senate Bill No. 6868]

GUARDIANSHIP

AN ACT Relating to guardianship; amending RCW 11.88.005, 11.88.010, 11.88.020, 11.88.030, 11.88.040, 11.88.045, 11.88.080, 11.88.090, 11.88.100, 11.88.105, 11.88.107, 11.88.120, 11.88.125, 11.88.130, 11.88.140, 11.88.150, 11.92.035, 11.92.040, 11.92.050, 11.92.053, 11.92.056, 11.92.060, 11.92.090, 11.92.100, 11.92.110, 11.92.115, 11.92.130, 11.92.140, 11.92.150, 11.92.160, 11.92.170, 11.92.180, and 11.92.185; adding new sections to chapter 11.88 RCW; adding new sections to chapter 11.92 RCW; and providing an effective date.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. Section 1, chapter 95, Laws of 1975 1st ex. sess. as amended by section 1, chapter 309, Laws of 1977 ex. sess. and RCW 11.88.005 are each amended to read as follows:

It is the intent ~~((and purpose))~~ of the legislature to ~~((recognize that disabled persons have special and unique abilities and competencies with varying degrees of disability))~~ protect the liberty and autonomy of all people of this state, and to enable them to exercise their rights under the law to the maximum extent, consistent with the capacity of each person. The legislature recognizes that people with incapacities have unique abilities and needs, and that some people with incapacities cannot exercise their rights or provide for their basic needs without the help of a guardian. However, their liberty and autonomy should be restricted through the guardianship process only to the minimum extent necessary to adequately provide for their own health or safety, or to adequately manage their financial affairs.

~~((Such persons must be legally protected without the necessity for determination of total incompetency and without the attendant deprivation of civil and legal rights that such a determination requires.))~~

Sec. 2. Section 11.88.010, chapter 145, Laws of 1965 as last amended by section 176, chapter 149, Laws of 1984 and RCW 11.88.010 are each amended to read as follows:

(1) The superior court of each county shall have power to appoint guardians for the persons and/or estates ~~((, or either thereof,))~~ of ~~((incompetent))~~ incapacitated persons, and guardians for the estates of ~~((all such persons who are))~~ nonresidents of the state ~~((but))~~ who have property in ~~((such))~~ the county needing care and attention.

~~((An "incompetent" is any person who is either:~~

~~(a) Under the age of majority, as defined in RCW 11.92.010, or~~

~~(b) Incompetent by reason of mental illness, developmental disability, senility, habitual drunkenness, excessive use of drugs, or other mental incapity, of either managing his property or caring for himself or both.))~~

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

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

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

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

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

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

(2) The superior court for each county shall have power to appoint limited guardians for the persons and estates, or either thereof, of ~~((disabled))~~ incapacitated persons, who by reason of their ~~((disability))~~ incapacity have need for protection and assistance, but who ~~((cannot be found to be fully incompetent, upon investigation as provided by RCW 11.88.090 as now or hereafter amended))~~ are capable of managing some of their personal and financial affairs. After considering all evidence presented as a result of such investigation, the court shall impose, by order, only such specific limitations and ~~((disabilities))~~ restrictions on ~~((a disabled))~~ an incapacitated person to be placed under a limited guardianship as the court finds necessary for such person's protection and assistance. A person shall not be presumed to be ~~((incompetent))~~ incapacitated nor shall a person lose any legal rights or suffer any legal disabilities as the result of being placed under a limited guardianship, except as to those rights and disabilities specifically set forth in the court order establishing such a limited guardianship. In addition, the court order shall state the period of time for which it shall be applicable.

~~((For the purposes of chapters 11.88 and 11.92 RCW the term "disabled person" means an individual who is in need of protection and assistance by reason of mental illness, developmental disability, senility, habitual drunkenness, excessive use of drugs, or other mental incapacity, but cannot be found to be fully incompetent.))~~

(3) Venue for petitions for guardianship or limited guardianship shall lie in the county wherein the alleged ~~((incompetent or disabled))~~ incapacitated person is domiciled, or if such person ~~((is a resident of a state institution for developmentally disabled persons))~~ resides in a facility supported in whole or in part by local, state, or federal funding sources, in either the county where ~~((in such institution))~~ the facility is located, the county of domicile prior to residence in the supported facility, or the county ~~((wherein))~~ where a parent or spouse of the alleged ((incompetent or disabled)) incapacitated person is domiciled.

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

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

(5) When a court imposes a full guardianship for an incapacitated person, the person shall be considered incompetent for purposes of rationally exercising the right to vote and shall lose the right to vote, unless the court specifically finds that the person is rationally capable of exercising the franchise. Imposition of a limited guardianship for an incapacitated person may result in the loss of the right to vote when in the courts discretion, the court determines that the person is incompetent for purposes of rationally exercising the franchise.

Sec. 3. Section 11.88.020, chapter 145, Laws of 1965 as last amended by section 3, chapter 95, Laws of 1975 1st ex. sess. and RCW 11.88.020 are each amended to read as follows:

Any suitable person over the age of eighteen years, or any parent under the age of eighteen years may, if not otherwise disqualified, be appointed guardian or limited guardian of the person and/or the estate of an (~~(incompetent or disabled)~~) incapacitated person; any trust company regularly organized under the laws of this state and national banks when authorized so to do may act as guardian or limited guardian of the estate of an (~~(incompetent or disabled)~~) incapacitated person; and any nonprofit corporation may act as guardian or limited guardian of the person and/or estate of an (~~(incompetent or disabled)~~) incapacitated person if the articles of incorporation or bylaws of such corporation permit such action and such corporation is in compliance with all applicable provisions of Title 24 RCW. No person is qualified to serve as a (~~(domiciliary)~~) guardian who is

- (1) under eighteen years of age except as otherwise provided herein;
- (2) of unsound mind;
- (3) convicted of a felony or of a misdemeanor involving moral turpitude;

(4) a nonresident of this state who has not appointed a resident agent to accept service of process in all actions or proceedings with respect to the estate and caused such appointment to be filed with the court;

(5) a corporation not authorized to act as a fiduciary, guardian, or limited guardian in the state;

(6) a person whom the court finds unsuitable.

Sec. 4. Section 11.88.030, chapter 145, Laws of 1965 as last amended by section 3, chapter 309, Laws of 1977 ex. sess. and RCW 11.88.030 are each amended to read as follows:

(1) Any ~~((interested))~~ person or entity may ~~((file a))~~ petition for the appointment of ~~((himself or some other))~~ a qualified person, trust company, national bank, or nonprofit corporation authorized in RCW 11.88.020 as now or hereafter amended as the guardian or limited guardian of an ~~((incompetent or disabled))~~ incapacitated person. No liability for filing a 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 shall state:

(a) The name, age, residence, and post office address of the ~~((incompetent or disabled))~~ alleged incapacitated person;

(b) The nature of ~~((his))~~ the alleged ~~((incompetency))~~ incapacity in accordance with RCW 11.88.010;

(c) The approximate value and description of ~~((his))~~ property, including any compensation, pension, insurance, or allowance, to which ~~((he))~~ 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 ~~((incompetent or disabled))~~ 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 ~~((incompetent or disabled))~~ incapacitated person;

(g) The name and address of the person or ~~((institution))~~ facility having the care and custody of the alleged ~~((incompetent or disabled))~~ 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, and why no alternative to guardianship is appropriate;

(i) The nature and degree of the alleged ~~((disability))~~ 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;

(j) The requested term of the limited guardianship to be included in the court's order of appointment;

(k) 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) 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) 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 ((incompetent or disabled)) incapacitated person has total assets of a value of less than three thousand dollars.

((3)) (4)(a) Notice that a guardianship proceeding has been commenced shall be personally served upon the alleged incapacitated person along with a copy of the petition for appointment of a guardian. Such notice shall be served not more than fifteen days after the petition has been filed.

(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 substantially the following form and shall be in capital letters, double-spaced, and in a type size not smaller than ten-point type:

IMPORTANT NOTICE

PLEASE READ CAREFULLY

A PETITION TO HAVE A GUARDIAN APPOINTED FOR YOU HAS BEEN FILED IN THE ... COUNTY SUPERIOR COURT BY IF A GUARDIAN IS APPOINTED, YOU COULD LOSE ONE OR MORE OF THE FOLLOWING RIGHTS:

(1) TO MARRY OR DIVORCE;

(2) TO VOTE OR HOLD AN ELECTED OFFICE;

(3) TO ENTER INTO A CONTRACT OR MAKE OR REVOKE A WILL;

(4) TO APPOINT SOMEONE TO ACT ON YOUR BEHALF;

(5) TO SUE AND BE SUED OTHER THAN THROUGH A GUARDIAN;

(6) TO POSSESS A LICENSE TO DRIVE;

(7) TO BUY, SELL, OWN, MORTGAGE, OR LEASE PROPERTY;

(8) TO CONSENT TO OR REFUSE MEDICAL TREATMENT;

(9) TO DECIDE WHO SHALL PROVIDE CARE AND ASSISTANCE;

(10) TO MAKE DECISIONS REGARDING SOCIAL ASPECTS OF YOUR LIFE.

UNDER THE LAW, YOU HAVE CERTAIN RIGHTS.

YOU HAVE THE RIGHT TO BE REPRESENTED BY A LAWYER OF YOUR OWN CHOOSING. THE COURT WILL APPOINT A LAWYER TO REPRESENT YOU IF YOU ARE UNABLE TO PAY OR PAYMENT WOULD RESULT IN A SUBSTANTIAL HARDSHIP TO YOU.

YOU HAVE THE RIGHT TO ASK FOR A JURY TO DECIDE WHETHER OR NOT YOU NEED A GUARDIAN TO HELP YOU.

YOU HAVE THE RIGHT TO BE PRESENT IN COURT WHEN THE HEARING IS HELD TO DECIDE WHETHER OR NOT YOU NEED A GUARDIAN.

(5) All petitions filed under the provisions of this section shall be heard within forty-five days unless an extension of time is requested by a party within such forty-five day period and granted for good cause shown. If an extension is granted, the court shall set a new hearing date.

Sec. 5. Section 11.88.040, chapter 145, Laws of 1965 as last amended by section 177, chapter 149, Laws of 1984 and RCW 11.88.040 are each amended to read as follows:

Before appointing a guardian or a limited guardian, notice of a hearing, to be held not less than ten days after service thereof, shall be given personally to the alleged ~~((incompetent or disabled))~~ incapacitated person, if over fourteen years of age.

Before appointing a guardian or a limited guardian, notice of a hearing, to be held not less than ten days after service thereof, shall be given by registered or certified mail requesting a return receipt signed by the addressee or an agent appointed by the addressee, or by personal service in the manner provided for services of summons, to the following:

(1) The alleged ~~((incompetent, disabled))~~ incapacitated person, or minor, if under fourteen years of age;

(2) A parent, if the alleged ~~((incompetent or disabled))~~ incapacitated person is a minor, all known children not residing with a notified person, and the spouse of the alleged ~~((incompetent or disabled))~~ incapacitated person if any;

(3) Any other person who has been appointed as guardian or limited guardian, or the person with whom the alleged ~~((incompetent or disabled))~~

incapacitated person resides. No notice need be given to those persons named in subsections (2) and (3) of this section if they have signed the petition for the appointment of the guardian or limited guardian or have waived notice of the hearing.

(4) If the petition is by a parent asking for ~~((his))~~ appointment as guardian or limited guardian of a minor child under the age of fourteen years, or if the petition ~~((be))~~ is accompanied by the written consent of a minor of the age of fourteen years or upward, ~~((consenting))~~ who consents to the appointment of the guardian or limited guardian asked for, or if the petition ~~((be))~~ is by a nonresident guardian of any minor or ~~((incompetent or disabled))~~ incapacitated person, then the court may appoint the guardian without notice of the hearing. The court for good cause may reduce the number of days of notice, but in every case, at least three days notice shall be given.

The alleged ~~((incompetent or disabled))~~ incapacitated person shall be present in court at the final hearing on the petition: PROVIDED, That this requirement may be waived at the discretion of the court for good cause other than mere inconvenience shown in the report to be provided by the guardian ad litem pursuant to RCW 11.88.090 as now or hereafter amended, or if no guardian ad litem is required to be appointed pursuant to RCW 11.88.090, as now or hereafter amended, at the discretion of the court for good cause shown by a party. Alternatively, the court may remove itself to the place of residence of the alleged ~~((incompetent or disabled))~~ incapacitated person and conduct the final hearing in the presence of the alleged ~~((incompetent or disabled))~~ incapacitated person. Final hearings on the petition may be held in closed court without admittance of any person other than those necessary to the action or proceeding.

If presence of the alleged ~~((incompetent or disabled))~~ incapacitated person is waived and the court does not remove itself to the place of residence of such person, the guardian ad litem shall appear in person at the final hearing on the petition.

Sec. 6. Section 7, chapter 95, Laws of 1975 1st ex. sess. as amended by section 5, chapter 309, Laws of 1977 ex. sess. and RCW 11.88.045 are each amended to read as follows:

(1) ~~((An alleged incompetent or disabled person is entitled to independent legal counsel at his own expense to represent him in the procedure: PROVIDED, That if the alleged incompetent or disabled person is unable to pay for such representation or should such payment result in substantial hardship upon such person the county shall be responsible for such costs: PROVIDED FURTHER, That when, in the opinion of the court, the rights and interests of an alleged or adjudicated incompetent or disabled person cannot otherwise be adequately protected and represented, the court on its own motion shall appoint an attorney at any time to represent such person:~~

(2)) (a) Alleged incapacitated individuals shall have the right to be represented by counsel at any stage in guardianship proceedings. The court shall provide counsel to represent any alleged incapacitated person at public expense when either: (i) The individual is unable to afford counsel, or (ii) the expense of counsel would result in substantial hardship to the individual, or (iii) the individual does not have practical access to funds with which to pay counsel. If the individual can afford counsel but lacks practical access to funds, the court shall provide counsel and may impose a reimbursement requirement as part of a final order. When, in the opinion of the court, the rights and interests of an alleged or adjudicated incapacitated person cannot otherwise be adequately protected and represented, the court on its own motion shall appoint an attorney at any time to represent such person. Counsel shall be provided as soon as practicable after a petition is filed and long enough before any final hearing to allow adequate time for consultation and preparation. Absent a convincing showing in the record to the contrary, a period of less than three weeks shall be presumed by a reviewing court to be inadequate time for consultation and preparation.

(b) Counsel for an alleged incapacitated individual shall act as an advocate for the client and shall not substitute counsel's own judgment for that of the client on the subject of what may be in the client's best interests. Counsel's role shall be distinct from that of the guardian ad litem, who is expected to promote the best interest of the alleged incapacitated individual, rather than the alleged incapacitated individual's expressed preferences.

(c) If an alleged incapacitated person is represented by counsel and does not communicate with counsel, counsel may ask the court for leave to withdraw for that reason. If satisfied, after affording the alleged incapacitated person an opportunity for a hearing, that the request is justified, the court may grant the request and allow the case to proceed with the alleged incapacitated person unrepresented.

(2) During the pendency of any guardianship, any attorney purporting to represent a person alleged or adjudicated to be incapacitated, shall enter a notice of appearance for appointment to represent the incapacitated or alleged incapacitated person. Fees for representation described in this section shall be subject to approval by the court pursuant to the provisions of RCW 11.92.180.

(3) The alleged ((incompetent or disabled)) incapacitated person is further entitled upon request to a jury trial on the issues of his or her alleged ((incompetency or disability)) incapacity. The standard of proof to be applied in a contested case, whether before a jury or the court, shall be that of clear, cogent, and convincing evidence.

((3)) (4) In all proceedings for appointment of a guardian or limited guardian, the court must be presented with a ((medical)) written report ((in writing)) from a physician or psychologist selected by the guardian ad litem

~~((appointed pursuant to RCW 11.88.090 as now or hereafter amended pertaining to the alleged incompetent or disabled persons' degree of incompetency or disability including the medical history if reasonably available, the effects of any current medication on appearance or the ability to participate fully in the proceedings, and a medical prognosis specifying the estimated length and severity of any current disability)).~~ The physician or psychologist shall have personally examined and interviewed the alleged incapacitated person within thirty days of the report to the court and shall have expertise in the type of disorder or incapacity the alleged incapacitated person is believed to have. The report shall contain the following information and shall be set forth in substantially the following format:

- (a) The name and address of the examining physician or psychologist;
- (b) The education and experience of the physician or psychologist pertinent to the case;
- (c) The dates of examinations of the alleged incapacitated person;
- (d) A summary of the relevant medical, functional, neurological, psychological, or psychiatric history of the alleged incapacitated person as known to the examining physician or psychologist;
- (e) The findings of the examining physician or psychologist as to the condition of the alleged incapacitated person;
- (f) Current medications;
- (g) The effect of current medications on the alleged incapacitated person's ability to understand or participate in guardianship proceedings;
- (h) Opinions on the specific assistance the alleged incapacitated person needs;
- (i) Identification of persons with whom the physician or psychologist has met or spoken regarding the alleged incapacitated person.

The court shall not enter an order appointing a guardian or limited guardian until a medical or psychological report meeting the above requirements is filed.

Sec. 7. Section 11.88.080, chapter 145, Laws of 1965 and RCW 11.88.080 are each amended to read as follows:

When either parent is deceased, the surviving parent of any minor child may, by ~~((his))~~ last will in writing appoint a guardian or guardians of the person, or of the estate or both, of ~~((his))~~ a minor child, whether born at the time of making ~~((such))~~ the will or afterwards, to continue during the minority of such child or for any less time~~((, and))~~. Every ~~((such))~~ testamentary guardian of the estate of ~~((such))~~ a child shall give bond in like manner and with like conditions as required by RCW 11.88.100 and 11.88.110, and he or she shall have the same powers and perform the same duties with regard to the person and estate of the minor as a guardian appointed ~~((as aforesaid))~~ under this chapter. The court shall confirm the parent's

testamentary appointment unless the court finds, based upon evidence presented at a hearing on the matter, that the individual appointed in the surviving parent's will is not qualified to serve.

Sec. 8. Section 11.88.090, chapter 145, Laws of 1965 as last amended by section 6, chapter 309, Laws of 1977 ex. sess. and RCW 11.88.090 are each amended to read as follows:

(1) Nothing contained in RCW 11.88.080 through 11.88.120, 11.92.010 through 11.92.040, 11.92.060 through 11.92.120, 11.92.170, and 11.92.180, as now or hereafter amended, shall affect or impair the power of any court to appoint a guardian ad litem to defend the interests of any ~~((incompetent or disabled))~~ incapacitated person interested in any suit or matter pending therein, or to commence and prosecute any suit in his behalf.

(2) Upon receipt of a petition for appointment of guardian or limited guardian, except as provided herein, the court shall appoint a guardian ad litem to represent the best interests of the alleged ~~((incompetent or disabled))~~ incapacitated person, who shall be a person found or known by the court to

(a) be free of influence from anyone interested in the result of the proceeding;

(b) have the requisite knowledge, training, or expertise to perform the duties required by this section.

~~((In making this determination the court shall give due consideration to the type of incompetency or disability alleged and to any recommendations made to the court by public or private agencies having appropriate experience or expertise. PROVIDED, That))~~

No guardian ad litem need be appointed ((if)) when a parent is petitioning for a guardian or a limited guardian to be appointed for his or her minor child ((if)) and the minority of the child, as defined by RCW 11.92.010, is the sole basis of the petition. The order appointing the guardian ad litem shall recite the duties set forth in subsection ((3)) (5) of this section. The appointment of a guardian ad litem shall have no effect on the legal competency of the alleged ((incompetent or disabled)) incapacitated person and ((such appointment)) shall not overcome the presumption of competency or full legal and civil rights of the alleged ((incompetent or disabled)) incapacitated person.

(3) (a) The superior court of each county shall develop by September 1, 1991, a registry of persons who are willing and qualified to serve as guardians ad litem in guardianship matters. The court shall choose as guardians ad litem only persons whose names appear on the registry, except in extraordinary circumstances.

(b) To be eligible for the registry a person shall:

(i) Present a written statement of qualifications describing the person's knowledge, training, and experience in each of the following: Needs of impaired elderly people, physical disabilities, mental illness, developmental disabilities, and other areas relevant to the needs of incapacitated persons, legal procedure, and the requirements of chapter 11.88 and 11.92 RCW; and

(ii) Complete a training program approved by the court.

(c) The superior court of each county shall approve training programs designed to:

(i) Train otherwise qualified human service professionals in those aspects of legal procedure and the requirements of chapters 11.88 and 11.92 RCW with which a guardian ad litem should be familiar;

(ii) Train otherwise qualified legal professionals in those aspects of medicine, social welfare, and social service delivery systems with which a guardian ad litem should be familiar.

(d) The superior court of each county shall approve a guardian ad litem training program on or before June 1, 1991. The department of social and health services, aging and adult services administration, shall convene an advisory group to develop a model guardian ad litem training program. The advisory group shall consist of representatives from consumer, advocacy, and professional groups knowledgeable in developmental disabilities, neurological impairment, physical disabilities, mental illness, aging, legal, court administration, and other interested parties.

(e) Any superior court that has failed to adopt a guardian ad litem training program by September 1, 1992, shall use the model program developed by the advisory group convened by the department of social and health services, aging and adult services administration.

(4) The guardian ad litem's written statement of qualifications required by RCW 11.88.090(3)(b)(i) shall be made part of the record in each matter in which the person is appointed guardian ad litem.

(5) The guardian ad litem appointed pursuant to this section shall have the following duties:

(a) To meet and consult with the alleged ((incompetent or disabled)) incapacitated person as soon as practicable following appointment and explain, in language which such person can reasonably be expected to understand, the substance of the petition, the nature of the resultant proceedings, the person's right to contest the petition, the identification of the proposed guardian or limited guardian, the right to a jury trial on the issue of his or her alleged ((incompetency or disability)) incapacity, the right to independent legal counsel as provided by RCW 11.88.045, and the right to be present in court at the hearing on the petition;

(b) To obtain a written report according to RCW 11.88.045; and such other written or oral reports from other qualified professionals as are necessary to permit the guardian ad litem to complete the report required by this section;

(c) To meet with the person whose appointment is sought as guardian or limited guardian and ascertain:

(i) The proposed guardian's knowledge of the duties, requirements, and limitations of a guardian; and

(ii) The steps the proposed guardian intends to take or has taken to identify and meet the needs of the alleged incapacitated person;

(d) To consult as necessary to complete the investigation and report required by this section with those known relatives, friends, or other persons the guardian ad litem determines have had a significant, continuing interest in the welfare of the alleged incapacitated person;

(e) To provide the court with a written report which shall include the following:

(i) A description of the nature, cause, and degree of ((incompetency or disability)) incapacity, and the basis upon which this judgment was made;

(ii) A description of the needs of the incapacitated person for care and treatment, the probable residential requirements of the alleged incapacitated person and the basis upon which these findings were made;

((~~(ii)~~)) (iii) An evaluation of the appropriateness of the guardian or limited guardian whose appointment is sought and a description of the steps the proposed guardian has taken or intends to take to identify and meet current and emerging needs of the incapacitated person;

((~~(iii)~~ In the event the limited guardianship is ordered, its appropriate duration, and the limits)) (iv) A description of the abilities of the alleged incapacitated person and a recommendation as to whether a guardian or limited guardian should be appointed. If appointment of a limited guardian is recommended, the guardian ad litem shall recommend the specific areas of authority the limited guardian should have and the limitations and disabilities to be placed on the ((disabled)) incapacitated person; ((and

(~~iv~~)) (v) An evaluation of the person's mental ability to rationally exercise the right to vote and the basis upon which the evaluation is made;

(vi) Any expression of approval or disapproval made by the alleged ((incompetent or disabled)) incapacitated person concerning the proposed guardian or limited guardian or guardianship or limited guardianship((-);

((Such report shall also include a recommendation as to whether or not counsel should be appointed to represent the alleged incompetent or disabled person, and the reasons for such recommendation.

The investigation and report shall be made and forwarded to the court, with copies to the alleged incompetent or disabled person, and his attorney, if any has appeared, and to the petitioner, or his attorney within twenty

days after appointment, unless an extension of time has been granted by the court for good cause shown;

~~(c) To arrange for a written medical report pursuant to RCW 11.88-045 as now or hereafter amended;~~

~~(4)) (vii) Identification of persons with significant interest in the welfare of the alleged incapacitated person who should be advised of their right to request special notice of proceedings pursuant to RCW 11.92.150; and~~

~~(viii) Unless independent counsel has appeared for the alleged incapacitated person, an explanation of how the alleged incapacitated person responded to the advice of the right to jury trial, to independent counsel and to be present at the hearing on the petition.~~

Within twenty days after appointment of the guardian ad litem, and at least ten days before the hearing on the petition, unless an extension or reduction of time has been granted by the court for good cause, the guardian ad litem shall file its report and send a copy to the alleged incapacitated person and his or her spouse, all children not residing with a notified person, those persons described in (d) of this subsection, and persons who have filed a request for special notice pursuant to RCW 11.92.150;

(f) To advise the court of the need for appointment of counsel for the alleged incapacitated person within five days after the meeting described in (a) of this subsection unless (i) counsel has appeared, (ii) the alleged incapacitated person affirmatively communicated a wish not to be represented by counsel after being advised of the right to representation and of the conditions under which court-provided counsel may be available, or (iii) the alleged incapacitated person was unable to communicate at all on the subject, and the guardian ad litem is satisfied that the alleged incapacitated person does not affirmatively desire to be represented by counsel.

(6) If the petition is brought by an interested person or entity requesting the appointment of some other qualified person or entity and a prospective guardian or limited guardian cannot be found, the court shall order the guardian ad litem (~~and any other qualified person or organization~~) to investigate the availability of a possible guardian or limited guardian and to include the findings in a report to the court pursuant to RCW ~~((11.88.090(3)(b)))~~ 11.88.090(5)(c) as now or hereafter amended.

~~((5)) (7) The court appointed guardian ad litem shall have the authority, in the event that the alleged (~~incompetent or disabled~~) incapacitated person is in need of emergency life-saving medical services, and is unable to consent to such medical services due to (~~incompetence or disability~~) incapacity pending the hearing on the petition to give consent for such emergency life-saving medical services on behalf of the alleged (~~incompetent or disabled~~) incapacitated person.~~

~~((6)) (8) The guardian ad litem shall receive a fee determined by the court. The fee shall be charged to the alleged (~~incompetent or disabled~~) incapacitated person unless the court finds that such payment would result~~

in substantial hardship upon such person, in which case the county shall be responsible for such costs: PROVIDED, That if no guardian or limited guardian is appointed the court may charge such fee to the petitioner or the alleged (~~incompetent or disabled~~) incapacitated person, or divide the fee, as it deems just; and if the petition is found to be frivolous or not brought in good faith, the guardian ad litem fee shall be charged to the petitioner. The court shall not be required to provide for the payment of a fee to any salaried employee of a public (~~or nonprofit~~) agency.

(9) Upon the presentation of the guardian ad litem report and the entry of an order either dismissing the petition for appointment of guardian or limited guardian or appointing a guardian or limited guardian, the guardian ad litem shall be dismissed and shall have no further duties or obligations unless otherwise ordered by the court. If the court orders the guardian ad litem to perform further duties or obligations, they shall not be performed at county expense.

NEW SECTION. Sec. 9. A new section is added to chapter 11.88 RCW to read as follows:

(1) In determining the disposition of a petition for guardianship, the court's order shall be based upon findings as to the capacities, condition, and needs of the alleged incapacitated person, and shall not be based solely upon agreements made by the parties.

(2) Every order appointing a full or limited guardian of the person or estate shall include:

(a) Findings as to the capacities, condition, and needs of the alleged incapacitated person;

(b) The amount of the bond, if any, or a bond review period;

(c) When the next report of the guardian is due;

(d) Whether the guardian ad litem shall continue acting as guardian ad litem;

(e) Whether a review hearing shall be required upon the filing of the inventory;

(f) The authority of the guardian, if any, for investment and expenditure of the ward's estate; and

(g) Names and addresses of those persons described in RCW 11.92.090(5)(d), if any, whom the court believes should receive copies of further pleadings filed by the guardian with respect to the guardianship.

(3) If the court determines that a limited guardian should be appointed, the order shall specifically set forth the limits by either stating exceptions to the otherwise full authority of the guardian or by stating the specific authority of the guardian.

(4) In determining the disposition of a petition for appointment of a guardian or limited guardian of the estate only, the court shall consider whether the alleged incapacitated person is capable of giving informed medical consent or of making other personal decisions and, if not, whether a

guardian or limited guardian of the person of the alleged incapacitated person should be appointed for that purpose.

(5) If a court determines that the person is incapacitated and that a guardian or limited guardian should be appointed, the court shall determine whether the incapacity is a result of a developmental disability as defined by RCW 71A.10.020, and if so, determine whether the incapacity due to the developmental disability can be expected to continue indefinitely.

Sec. 10. Section 11.88.100, chapter 145, Laws of 1965 as last amended by section 1, chapter 271, Laws of 1983 and RCW 11.88.100 are each amended to read as follows:

Before letters of guardianship are issued, each guardian or limited guardian shall take and subscribe an oath and, unless dispensed with by order of the court as provided in RCW 11.88.105, file a bond, with sureties to be approved by the court, payable to the state, in such sum as the court may fix, taking into account the character of the assets on hand or anticipated and the income to be received and disbursements to be made, and such bond shall be conditioned substantially as follows:

The condition of this obligation is such, that if the above bound A.B., who has been appointed guardian or limited guardian for C.D., shall faithfully discharge the office and trust of such guardian or limited guardian according to law and shall render a fair and just account of his guardianship or limited guardianship to the superior court of the county of, from time to time as he shall thereto be required by such court, and comply with all orders of the court, lawfully made, relative to the goods, chattels, moneys, care, management, and education of such (~~incompetent or disabled~~) incapacitated person, or his or her property, and render and pay to such (~~incompetent or disabled~~) incapacitated person all moneys, goods, chattels, title papers, and effects which may come into the hands or possession of such guardian or limited guardian, at such time and in such manner as the court may order (~~or adjudge~~), then this obligation shall be void, otherwise (~~to be and~~) it shall remain in (~~full force and~~) effect.

The bond shall be for the use of the (~~incompetent or disabled~~) incapacitated person, and shall not become void upon the first recovery, but may be put in suit from time to time against all or any one of the obligors, in the name and for the use and benefit of any person entitled by the breach thereof, until the whole penalty is recovered thereon. The court may require an additional bond whenever for any reason it appears to the court that an additional bond should be given.

In all guardianships or limited guardianships of the person, and in all guardianship or limited guardianships of the estate, in which the petition alleges that the alleged (~~incompetent or disabled~~) incapacitated person has total assets of a value of less than three thousand dollars, the court may dispense with the requirement of a bond pending filing of an inventory confirming that the estate has total assets of less than three thousand dollars:

PROVIDED, That the guardian or limited guardian shall swear to report to the court any changes in the total assets of the ~~((incompetent or disabled))~~ incapacitated person increasing their value to over three thousand dollars: PROVIDED FURTHER, That ~~((said))~~ the guardian or limited guardian shall file a yearly statement showing the monthly income of the ~~((incompetent or disabled))~~ incapacitated person if said monthly income, excluding moneys from state or federal benefits, is over the sum of ~~((four))~~ five hundred dollars per month for any three consecutive months.

Sec. 11. Section 11.88.105, chapter 145, Laws of 1965 as amended by section 11, chapter 95, Laws of 1975 1st ex. sess. and RCW 11.88.105 are each amended to read as follows:

In cases where all or a portion of the estate consisting of cash or securities ~~((or both,))~~ has been placed in possession of savings and loan associations or banks, trust companies, escrow corporations, or other corporations approved by the court and if a verified receipt signed by the custodian of the funds is filed by the guardian or limited guardian in court ~~((therefor))~~ stating that such corporations hold the ~~((same))~~ cash or securities subject to order of court ~~((then in such case)),~~ the court may in its discretion dispense with the ~~((giving of a))~~ bond or reduce the ~~((same))~~ amount of the bond by the amount of such deposits ~~((of cash or securities, and may order that no further reports by said guardian or limited guardian be required until such time as the guardian or limited guardian desires to withdraw such funds or change the investment thereof)).~~

Sec. 12. Section 11.88.107, chapter 145, Laws of 1965 as last amended by section 8, chapter 309, Laws of 1977 ex. sess. and RCW 11.88.107 are each amended to read as follows:

In all cases where a bank or trust company, authorized to act as guardian or limited guardian, or where a nonprofit corporation is authorized under its articles of incorporation to act as guardian or limited guardian, is appointed as guardian or limited guardian, or acts as guardian or limited guardian under an appointment as such heretofore made, no bond shall be required: PROVIDED, That in the case of appointment of a nonprofit corporation court approval shall be required before any bond requirement of this chapter may be ~~((dispensed with))~~ waived.

NEW SECTION. Sec. 13. A new section is added to chapter 11.88 RCW to read as follows:

For guardianships involving veterans see chapter 73.36 RCW.

Sec. 14. Section 11.88.120, chapter 145, Laws of 1965 as last amended by section 9, chapter 309, Laws of 1977 ex. sess. and RCW 11.88.120 are each amended to read as follows:

~~((The court in all cases shall have power to remove guardians or limited guardians for good and sufficient reasons, which shall be entered of record, and to appoint others in their place or in the place of those who may~~

die, who shall give bond and security for the faithful discharge of their duties as prescribed in RCW 11.88.100 as now or hereafter amended; and when any guardian or limited guardian shall be removed or die, and a successor be appointed, the court shall have power to compel such guardian or limited guardian removed to deliver up to such successor all goods, chattels, moneys, title papers, or other effects belonging to such incompetent or disabled person, which may be in the possession of such guardian or limited guardian so removed, or of the personal representatives of a deceased guardian or limited guardian, or in the possession of any other person or persons, or in the possession of a stand-by guardian or limited guardian and upon failure, to commit the party offending to prison, until he complies with the order of the court:)) (1) At any time after establishment of a guardianship or appointment of a guardian, the court may, upon the death of the guardian or limited guardian, or, for other good reason, modify or terminate the guardianship or replace the guardian or limited guardian.

(2) Any person, including an incapacitated person, may apply to the court for an order to modify or terminate a guardianship or to replace a guardian or limited guardian. If applicants are represented by counsel, counsel shall move for an order to show cause why the relief requested should not be granted. If applicants are not represented by counsel, they may move for an order to show cause, or they may deliver a written request to the clerk of the court.

(3) By the next judicial day after receipt of an unrepresented person's request to modify or terminate a guardianship order, or to replace a guardian or limited guardian, the clerk shall present the request to the court. The court may (a) direct the clerk to schedule a hearing, (b) appoint a guardian ad litem to investigate the issues raised by the application or to take any emergency action the court deems necessary to protect the incapacitated person until a hearing can be held, or (c) deny the application without scheduling a hearing, if it appears based on documents in the court file that the application is frivolous. Any denial of an application without a hearing shall be in writing with the reasons for the denial explained. A copy of the order shall be mailed by the clerk to the applicant, to the guardian, and to any other person entitled to receive notice of proceedings in the matter. Unless within thirty days after receiving the request from the clerk the court directs otherwise, the clerk shall schedule a hearing on the request and mail notice to the guardian, the incapacitated person, the applicant, all counsel of record, and any other person entitled to receive notice of proceedings in the matter.

(4) In a hearing on an application to modify or terminate a guardianship, or to replace a guardian or limited guardian, the court may grant such relief as it deems just and in the best interest of the incapacitated person.

(5) The court may order persons who have been removed as guardians to deliver any property or records belonging to the incapacitated person in

accordance with the court's order. Similarly, when guardians have died or been removed and property or records of an incapacitated person are being held by any other person, the court may order that person to deliver it in accordance with the court's order. Disobedience of an order to deliver shall be punishable as contempt of court.

Sec. 15. Section 6, chapter 95, Laws of 1975 1st ex. sess. as last amended by section 1, chapter 32, Laws of 1979 and RCW 11.88.125 are each amended to read as follows:

(1) The person appointed by the court as either guardian or limited guardian of the person and/or estate of an (~~incompetent or disabled~~) incapacitated person, shall file in writing with the court, a designated standby limited guardian or guardian to serve as limited guardian or guardian at the death or legal (~~incompetency or disability~~) incapacity of the court-appointed guardian or limited guardian. Notice of the guardian's designation of the standby guardian shall be given to the standby guardian, the incapacitated person and his or her spouse and adult children, any facility in which the incapacitated person resides, and any person entitled to special notice under RCW 11.92.150 or any person entitled to receive pleadings pursuant to section 9(2)(g) of this act. Such standby guardian or limited guardian shall have all the powers, duties, and obligations of the regularly appointed guardian or limited guardian and in addition shall, within a period of thirty days from the death or adjudication of (~~incompetency or disability~~) incapacity of the regularly appointed guardian or limited guardian, file with the superior court in the county in which the guardianship or limited guardianship is then being administered, a petition for appointment of a substitute guardian or limited guardian. Upon the court's appointment of a new, substitute guardian or limited guardian, the standby guardian or limited guardian shall make an accounting and report to be approved by the court, and upon approval of the court, the standby guardian or limited guardian shall be released from all duties and obligations arising from or out of the guardianship or limited guardianship.

(2) Letters of guardianship shall be issued to the standby guardian or limited guardian upon filing an oath and posting a bond as required by RCW 11.88.100 as now or hereafter amended. The oath may be filed prior to the appointed guardian or limited guardian's death. Notice of such appointment shall be provided to the standby guardian, the incapacitated person, and any facility in which the incapacitated person resides. The provisions of RCW 11.88.100 through 11.88.110 as now or hereafter amended shall apply to standby guardians and limited guardians.

(3) In addition to the powers of a standby limited guardian or guardian as noted in subsection (1) of this section, the standby limited guardian or guardian shall have the authority to provide timely, informed consent to necessary medical procedures, as authorized in RCW 11.92.040 as now or

hereafter amended, if the guardian or limited guardian cannot be located within four hours after the need for such consent arises.

Sec. 16. Section 11.88.130, chapter 145, Laws of 1965 as amended by section 15, chapter 95, Laws of 1975 1st ex. sess. and RCW 11.88.130 are each amended to read as follows:

The court of any county having jurisdiction of any guardianship or limited guardianship proceeding is authorized to transfer jurisdiction and venue of the guardianship or limited guardianship proceeding to the court of any other county of the state upon application of the guardian ~~((or)),~~ limited guardian, or incapacitated person and such notice to an alleged ~~((incompetent or disabled))~~ incapacitated person or other interested party as the court may require. Such transfers of guardianship or limited guardianship proceedings shall be made to the court of a county wherein either the guardian or limited guardian or alleged ~~((incompetent or disabled))~~ incapacitated person resides, as the court may deem appropriate, at the time of making application for such transfer. The original order providing for any such transfer shall be retained as a permanent record by the clerk of the court in which such order is entered, and a certified copy thereof together with the original file in such guardianship or limited guardianship proceeding and a certified transcript of all record entries up to and including the order for such change shall be transmitted to the clerk of the court to which such proceeding is transferred.

Sec. 17. Section 11.88.140, chapter 145, Laws of 1965 as last amended by section 11, chapter 309, Laws of 1977 ex. sess. and RCW 11.88.140 are each amended to read as follows:

(1) **TERMINATION WITHOUT COURT ORDER.** A guardianship or limited guardianship is terminated:

(a) Upon the attainment of full and legal age, as defined in RCW ~~((11.92.010))~~ 26.28.010 as now or hereafter amended, of any person defined as an ~~((incompetent or disabled))~~ incapacitated person pursuant to RCW 11.88.010 as now or hereafter amended solely by reason of youth, RCW 26.28.020 to the contrary notwithstanding;

(b) By an adjudication of ~~((competency))~~ capacity or an adjudication of termination of ~~((disability))~~ incapacity;

(c) By the death of the ~~((incompetent or disabled))~~ incapacitated person;

(d) By expiration of the term of limited guardianship specified in the order appointing the limited guardian, unless prior to such expiration a petition has been filed and served, as provided in RCW 11.88.040 as now or hereafter amended, seeking an extension of such term.

(2) TERMINATION OF GUARDIANSHIP FOR A MINOR BY DECLARATION OF COMPLETION. A guardianship for the benefit of a

minor may be terminated upon the minor's attainment of legal age, as defined in RCW 26.28.010 as now or hereafter amended, by the guardian filing a declaration that states:

(a) The date the minor attained legal age;

(b) That the guardian has paid all of the minor's funds in the guardian's possession to the minor, who has signed a receipt for the funds, and that the receipt has been filed with the court;

(c) That the guardian has completed the administration of the minor's estate and the guardianship is ready to be closed; and

(d) The amount of fees paid or to be paid to each of the following: (i) The guardian, (ii) lawyer or lawyers, (iii) accountant or accountants; and that the guardian believes the fees are reasonable and does not intend to obtain court approval of the amount of the fees or to submit a guardianship accounting to the court for approval. Subject to the requirement of notice as provided in this section, unless the minor petitions the court either for an order requiring the guardian to obtain court approval of the amount of fees paid or to be paid to the guardian, lawyers, or accountants, or for an order requiring an accounting, or both, within thirty days from the filing of the declaration of completion of guardianship, the guardian shall be automatically discharged without further order of the court. The guardian's powers will cease thirty days after filing the declaration of completion of guardianship. The declaration of completion of guardianship shall, at the time, be the equivalent of an entry of a decree terminating the guardianship, distributing the assets, and discharging the guardian for all legal intents and purposes.

Within five days of the date of filing the declaration of completion of guardianship, the guardian or the guardian's lawyer shall mail a copy of the declaration of completion to the minor together with a notice that shall be substantially as follows:

CAPTION OF CASE NOTICE OF FILING A DECLARATION OF COMPLETION OF GUARDIANSHIP

NOTICE IS GIVEN that the attached Declaration of Completion of Guardianship was filed by the undersigned in the above-entitled court on the day of, 19..; unless you file a petition in the above-entitled court requesting the court to review the reasonableness of the fees, or for an accounting, or both, and serve a copy of the petition on the guardian or the guardian's lawyer, within thirty days after the filing date, the amount of fees paid or to be paid will be deemed reasonable, the acts of the guardian will be deemed approved, the guardian will be automatically discharged without further order of the court and the Declaration of Completion of Guardianship will be final and deemed the equivalent of an Order

terminating the guardianship, discharging the guardian and decreeing the distribution of the guardianship assets.

If you file and serve a petition within the period specified, the undersigned will request the court to fix a time and place for the hearing of your petition, and you will be notified of the time and place of the hearing, by mail, or by personal service, not less than ten days before the hearing on the petition.

DATED this day of, 19...

.....
GUARDIAN

If the minor, after reaching legal age, waives in writing the notice required by this section, the guardian will be automatically discharged without further order of the court and the declaration of completion of guardianship will be effective as an order terminating the guardianship without an accounting upon filing the declaration. If the guardian has been required to furnish a bond, and a declaration of completion of guardianship is filed according to this section, any bond furnished by the guardian shall be automatically discharged upon the discharge of the guardian.

(3) TERMINATION ON COURT ORDER. A guardianship or limited guardianship may be terminated by court order after such notice as the court may require((:

~~(a) If the guardianship or limited guardianship is of the estate and the estate is exhausted;~~

~~(b)) if the guardianship or limited guardianship is no longer necessary ((for any other reason)).~~

~~((3))~~ (4) EFFECT OF TERMINATION. When a guardianship or limited guardianship terminates ~~((otherwise))~~ other than by the death of the ~~((incompetent or disabled))~~ incapacitated person, the powers of the guardian or limited guardian cease, except that a guardian or limited guardian of the estate may make disbursements for claims that are or may be allowed by the court, for liabilities already properly incurred for the estate or for the ~~((incompetent or disabled))~~ incapacitated person, and for expenses of administration. When a guardianship or limited guardianship terminates by death of the ~~((incompetent or disabled))~~ incapacitated person, the guardian or limited guardian of the estate may proceed under RCW 11.88.150 as now or hereafter amended, but the rights of all creditors against the ~~((incompetent's or disabled))~~ incapacitated person's estate shall be determined by the law of decedents' estates.

Sec. 18. Section 11.88.150, chapter 145, Laws of 1965 as last amended by section 12, chapter 309, Laws of 1977 ex. sess. and RCW 11.88.150 are each amended to read as follows:

(1) Upon the death of an incapacitated person, a guardian or limited guardian of the estate shall have authority to disburse or commit those

funds under the control of the guardian or limited guardian as are prudent and within the means of the estate for the disposition of the deceased incapacitated person's remains. Consent for such arrangement shall be secured according to RCW 68.50.160. If no person authorized by RCW 68.50.150 accepts responsibility for giving consent, the guardian or limited guardian of the estate may consent, subject to the provisions of this section and to the known directives of the deceased incapacitated person. Reasonable financial commitments made by a guardian or limited guardian pursuant to this section shall be binding against the estate of the deceased incapacitated person.

(2) Upon the death of an ~~((incompetent or disabled))~~ incapacitated person intestate the guardian or limited guardian of his estate has power under the letters issued to him and subject to the direction of the court to administer the estate as the estate of the deceased ~~((incompetent or disabled))~~ incapacitated person without further letters unless within forty days after death of the ~~((incompetent or disabled))~~ incapacitated person a petition is filed for letters of administration or for letters testamentary and the petition is granted. If the guardian or limited guardian elects to administer the estate under his letters of guardianship or limited guardianship, he shall petition the court for an order transferring the guardianship or limited guardianship proceeding to a probate proceeding, and upon court approval, the clerk of the court shall re-index the cause as a decedent's estate, using the same file number which ~~((is))~~ was assigned to the guardianship or limited guardianship proceeding. The guardian or limited guardian shall then be authorized to continue administration of the estate without the necessity for any further petition or hearing. Notice to creditors and other persons interested in the estate shall be published and may be combined with the notice of the guardian's or limited guardian's final account. This notice shall be given and published in the manner provided in ~~((RCW 11.40.010, once each week for three successive weeks, with proof by affidavit of the publication of such notice to be filed with the court. All claims which are not filed within four months after first publication or within four months after the date of filing of the copy of such notice to creditors with the clerk of the court, whichever is later, shall be barred against the estate))~~ chapter 11.40 RCW. Upon the hearing, the account may be allowed and the balance distributed to the persons entitled thereto, after the payment of such claims as may be allowed. Liability on the guardian's or limited guardian's bond shall continue until exonerated on settlement of his account, and may apply to the complete administration of the estate of the deceased ~~((incompetent or disabled))~~ incapacitated person with the consent of the surety. If letters of administration ~~((or letters testamentary))~~ are granted upon petition filed within forty days after the death of the ~~((incompetent or disabled))~~ incapacitated person, the personal representative shall supersede the guardian or limited guardian in the administration of the estate and the estate shall be administered as a decedent's estate as provided in this title, including the

publication of notice to creditors and other interested persons and the barring of creditors claims.

Sec. 19. Section 11.92.035, chapter 145, Laws of 1965 as amended by section 19, chapter 95, Laws of 1975 1st ex. sess. and RCW 11.92.035 are each amended to read as follows:

(1) DUTY OF GUARDIAN TO PAY. A guardian of the estate is under a duty to pay from the estate all just claims against the estate of ~~((his incompetent))~~ the incapacitated person, whether they constitute liabilities of the ~~((incompetent))~~ incapacitated person which arose prior to the guardianship or liabilities properly incurred by the guardian for the benefit of the ~~((incompetent))~~ incapacitated person or his or her estate and whether arising in contract or in tort or otherwise, upon allowance of the claim by the court or upon approval of the court in a settlement of the guardian's accounts. The duty of the guardian to pay from the estate shall not preclude ~~((his))~~ the guardian's personal liability for his or her own contracts and acts made and performed on behalf of the estate as it exists according to the common law. If it appears that the estate is likely to be exhausted before all existing claims are paid, preference shall be given to (a) the expenses of administration including guardian's fees, attorneys' fees, and court costs; (b) prior claims for the care, maintenance and education of the ~~((incompetent))~~ incapacitated person and of ~~((his))~~ the person's dependents ~~((and existing claims for expenses of administration))~~ over other claims. Subject to court orders limiting such powers, a limited guardian of an estate shall have the same authority to pay claims.

(2) CLAIMS MAY BE PRESENTED. Any person having a claim against the estate of an ~~((incompetent))~~ incapacitated person, or against the guardian of his or her estate as such, may file a written claim with the court for determination at any time before it is barred by the statute of limitations~~((, and,))~~. After ten days' notice to a guardian or limited guardian, a hearing on the claim shall be held, at which upon proof thereof((, procure)) and after consideration of any defenses or objections by the guardian, the court may enter an order for its allowance and payment from the estate. Any action against the guardian of the estate as such shall be deemed a claim duly filed.

~~((3) DUTY OF LIMITED GUARDIAN TO PAY. Claims against a limited guardianship estate shall be paid by the limited guardian only to the extent specified in the order appointing the limited guardian.))~~

Sec. 20. Section 9, chapter 30, Laws of 1985 and RCW 11.92.040 are each amended to read as follows:

It shall be the duty of the guardian or limited guardian of an estate:

(1) To ~~((make out and))~~ file within three months after ~~((his or her))~~ the guardian's appointment a verified inventory of all the property of the ~~((incompetent or disabled))~~ incapacitated person which comes ~~((to his or~~

her)) into the guardian's possession or knowledge, including a statement of all encumbrances, liens, and other secured charges on any item;

(2) To file annually, within thirty days after the anniversary date of the guardian's or limited guardian's appointment, and also within thirty days after termination of the appointment, a written verified account of the administration(~~(-PROVIDED, That)), which account shall contain at least the following information:~~

(a) Identification of property of the guardianship estate as of the date of the last account or, in the case of the initial account, as of the date of inventory;

(b) Identification of all additional property received into the guardianship, including income by source;

(c) Identification of all expenditures made during the account period by major categories;

(d) Any adjustments to the guardianship estate required to establish its present fair market value, including gains or losses on sale or other disposition and any mortgages, deeds of trust or other encumbrances against the guardianship estate; and

(e) Identification of all property held in the guardianship estate as of the date of account, the assessed value of any real property and the guardian's estimate of the present fair market values of other property (including the basis on which such estimate is made), and the total net fair market value of the guardianship estate. In addition, immediately following such statement of present fair market value, the account shall set forth a statement of current amount of the guardian's bond and any other court-ordered protection for the security of the guardianship assets. The court in its discretion may allow reports at intervals of up to thirty-six months(~~(, with instruction to)) for estates with assets (exclusive of real property) having a value of not more than twice the homestead exemption. Notwithstanding contrary provisions of this section, the guardian or limited guardian of an estate need not file an annual report with the court if the funds of the guardianship are held for the benefit of a minor in a blocked account unless the guardian requests a withdrawal from such account, in which case the guardian shall provide a written verified account of the administration of the guardianship estate along with the guardian's petition for the withdrawal. The guardian or limited guardian ((that)) shall report any substantial ((increase)) change in income or assets ((or substantial change in the incompetent's or disabled person's condition shall be reported)) of the guardianship estate within thirty days of the ((substantial increase or)) occurrence of the change. A hearing shall be scheduled for court review and determination of provision for increased bond or other provision in accordance with RCW 11.88.100;~~

~~(3) ((Consistent with the powers granted by the court, if he or she is a guardian or limited guardian of the person, to care for and maintain the incompetent or disabled person, assert his or her rights and best interests, and provide timely, informed consent to necessary medical procedures, and if the incompetent or disabled person is a minor, to see that the incompetent or disabled person is properly trained and educated and that the incompetent or disabled person has the opportunity to learn a trade, occupation, or profession. As provided in RCW 11.88.125 as now or hereafter amended, the standby guardian may provide timely, informed consent to necessary medical procedures if the guardian or limited guardian cannot be located within four hours after the need for such consent arises. The guardian or limited guardian of the person may be required to report the condition of his or her incompetent or disabled person to the court, at regular intervals or otherwise as the court may direct. PROVIDED, That no guardian, limited guardian, or standby guardian may involuntarily commit for mental health treatment, observation, or evaluation an alleged incompetent or disabled person who is, himself or herself, unable or unwilling to give informed consent to such commitment unless the procedures for involuntary commitment set forth in chapters 71.05 or 72.23 RCW are followed. PROVIDED FURTHER, That nothing in this section shall be construed to allow a guardian, limited guardian, or standby guardian to consent to:~~

~~(a) Therapy or other procedure which induces convulsion;~~

~~(b) Surgery solely for the purpose of psychosurgery;~~

~~(c) Amputation;~~

~~(d) Other psychiatric or mental health procedures which are intrusive on the person's body integrity, physical freedom of movement, or the rights set forth in RCW 71.05.370.~~

~~A guardian, limited guardian, or standby guardian who believes such procedures to be necessary for the proper care and maintenance of the incompetent or disabled person shall petition the court for an order unless the court has previously approved that procedure within thirty days immediately past. The court may make such order only after an attorney is appointed in accordance with RCW 11.88.045, as now or hereafter amended, if none has heretofore appeared, notice is given, and a hearing is held in accordance with RCW 11.88.040, as now or hereafter amended)) If the court has made a finding as provided in section 9(5) of this 1990 act, that the person is incapacitated as a result of a developmental disability that is expected to continue indefinitely and the incapacitated person's estate has a value, exclusive of real property, of not more than twice the homestead exemption, the court, in its discretion, may allow reports at intervals up to thirty-six months and may modify or waive certain reporting requirements in subsection (2) of this section that the court considers unduly burdensome or inapplicable. The court may not waive the requirement that the guardian or~~

limited guardian report any substantial change in the incapacitated person's income or assets;

(4) ~~((If he or she is a guardian or limited guardian of the estate,))~~ To protect and preserve ~~((it))~~ the guardianship estate, to apply it as provided in this chapter, to account for it faithfully, to perform all of the duties required by law, and at the termination of the guardianship or limited guardianship, to deliver the assets of the ~~((incompetent or disabled))~~ incapacitated person to the persons entitled thereto. Except as provided to the contrary herein, the court may authorize a guardian or limited guardian to do anything that a trustee can do under the provisions of RCW 11.98.070 for a period not exceeding one year from the date of the order or for a period corresponding to the interval in which the guardian's or limited guardian's report is required to be filed by the court pursuant to subsection (2) of this section, whichever period is longer;

(5) To invest and reinvest the property of the ~~((incompetent or disabled))~~ incapacitated person in accordance with the rules applicable to investment of trust estates by trustees as provided in chapter 11.100 RCW, except that:

(a) No investments shall be made without prior order of the court in any property other than unconditional interest bearing obligations of this state or of the United States and in obligations the interest and principal of which are unconditionally guaranteed by the United States, and in share accounts or deposits which are insured by an agency of the United States government. Such prior order of the court may authorize specific investments, or, in the discretion of the court, may authorize the guardian or limited guardian during a period not exceeding one year following the date of the order or for a period corresponding to the interval in which the guardian's or limited guardian's report is required to be filed by the court pursuant to subsection (2) of this section, whichever period is longer, to invest and reinvest as provided in chapter 11.100 RCW without further order of the court;

(b) If it is for the best interests of the ~~((incompetent or disabled))~~ incapacitated person that a specific property be used by the ~~((incompetent or disabled))~~ incapacitated person rather than sold and the proceeds invested, the court may so order;

(6) To apply to the court ~~((for))~~ no later than the filing of the inventory for an order authorizing ((any)) disbursements on behalf of the ((incompetent or disabled)) incapacitated person: PROVIDED, HOWEVER, That the guardian or limited guardian of the estate, or the person, department, bureau, agency, or charitable organization having the care and custody of an ~~((incompetent or disabled))~~ incapacitated person, may apply to the court for an order directing the guardian or limited guardian of the estate to pay to the person, department, bureau, agency, or charitable organization having the care and custody of an ~~((incompetent or disabled))~~ incapacitated

person, or if the guardian or limited guardian of the estate has the care and custody of the (~~(incompetent or disabled)~~) incapacitated person, directing the guardian or limited guardian of the estate to apply an amount weekly, monthly, quarterly, semi-annually, or annually, as the court may direct, to be expended in the care, maintenance, and education of the (~~(incompetent or disabled)~~) incapacitated person and of his or her dependents. In proper cases, the court may order payment of amounts directly to the (~~(incompetent or disabled)~~) incapacitated person for his or her maintenance or incidental expenses. The amounts authorized under this section may be decreased or increased from time to time by direction of the court. If payments are made to another under an order of the court, the guardian or limited guardian of the estate is not bound to see to the application thereof.

NEW SECTION. Sec. 21. A new section is added to chapter 11.92 RCW to read as follows:

It shall be the duty of the guardian or limited guardian of the person:

(1) To file within three months after appointment a personal care plan for the incapacitated person which shall include (a) an assessment of the incapacitated person's physical, mental, and emotional needs and of such person's ability to perform or assist in activities of daily living, and (b) the guardian's specific plan for meeting the identified and emerging personal care needs of the incapacitated person.

(2) To file annually or, where a guardian of the estate has been appointed, at the time an account is required to be filed under RCW 11.92-.040, a report on the status of the incapacitated person, which shall include:

(a) The address and name of the incapacitated person and all residential changes during the period;

(b) The services or programs which the incapacitated person receives;

(c) The medical status of the incapacitated person;

(d) The mental status of the incapacitated person;

(e) Changes in the functional abilities of the incapacitated person;

(f) Activities of the guardian for the period;

(g) Any recommended changes in the scope of the authority of the guardian;

(h) The identity of any professionals who have assisted the incapacitated person during the period.

If the court has made a finding as provided in section 9(5) of this 1990 act, that the person is incapacitated as a result of a developmental disability that is expected to continue indefinitely, the court in its discretion, may allow reports at intervals up to thirty-six months and may modify or waive certain reporting requirements in this subsection, that the court considers inapplicable or unduly burdensome. The court may not waive the requirement that the guardian or limited guardian report any substantial change in the incapacitated person's condition.

(3) To report to the court within thirty days any substantial change in the incapacitated person's condition, or any changes in residence of the incapacitated person.

(4) Consistent with the powers granted by the court, to care for and maintain the incapacitated person in the setting least restrictive to the incapacitated person's freedom and appropriate to the incapacitated person's personal care needs, assert the incapacitated person's rights and best interests, and if the incapacitated person is a minor or where otherwise appropriate, to see that the incapacitated person receives appropriate training and education and that the incapacitated person has the opportunity to learn a trade, occupation, or profession.

(5) Consistent with RCW 7.70.065, to provide timely, informed consent for health care of the incapacitated person, except in the case of a limited guardian where such power is not expressly provided for in the order of appointment or subsequent modifying order as provided in RCW 11.88.125 as now or hereafter amended, the standby guardian or standby limited guardian may provide timely, informed consent to necessary medical procedures if the guardian or limited guardian cannot be located within four hours after the need for such consent arises. No guardian, limited guardian, or standby guardian may involuntarily commit for mental health treatment, observation, or evaluation an alleged incapacitated person who is unable or unwilling to give informed consent to such commitment unless the procedures for involuntary commitment set forth in chapter 71.05 or 72.23 RCW are followed. Nothing in this section shall be construed to allow a guardian, limited guardian, or standby guardian to consent to:

- (a) Therapy or other procedure which induces convulsion;
- (b) Surgery solely for the purpose of psychosurgery;
- (c) Other psychiatric or mental health procedures that restrict physical freedom of movement, or the rights set forth in RCW 71.05.370.

A guardian, limited guardian, or standby guardian who believes these procedures are necessary for the proper care and maintenance of the incapacitated person shall petition the court for an order unless the court has previously approved the procedure within the past thirty days. The court may order the procedure only after an attorney is appointed in accordance with RCW 11.88.045 if no attorney has previously appeared, notice is given, and a hearing is held in accordance with RCW 11.88.040.

NEW SECTION. Sec. 22. A new section is added to chapter 11.92 RCW to read as follows:

(1) All banks and trust companies as defined in RCW 30.04.010, all savings banks as defined in RCW 32.04.020, all savings and loan associations as defined in RCW 31.12.005, all insurance companies holding a certificate of authority under chapter 48.05 RCW, or any agent who constitutes a salesperson or broker-dealer of securities under the definitions of RCW 21.20.005 shall, upon receipt of documentation that a guardian has

been appointed and has authority over assets held by a client or depositor of the company or agent, provide the guardian access and control over the asset; and shall at that time forward a report to the court which includes the following: (a) Cause number; (b) name of the incapacitated person; (c) account number or numbers; (d) name and address of client or depositor owning assets; (e) name of the guardian being provided assets or access to assets; (f) value of the asset or assets; and (g) the date the guardian assumed control over the assets. The report shall be signed by a representative of the agent or company and sent by the individual or organization to the clerk of the court.

(2) Any company or agent described in subsection (1) of this section that provides a guardian with access to a safe deposit box shall make an inventory of the contents of the box and attach this inventory to the report sent to the clerk of the court before releasing the contents of the box to the guardian.

Sec. 23. Section 11.92.050, chapter 145, Laws of 1965 as amended by section 21, chapter 95, Laws of 1975 1st ex. sess. and RCW 11.92.050 are each amended to read as follows:

(1) Upon the filing of any intermediate guardianship or limited guardianship account required by statute, or of any intermediate account required by court rule or order, the guardian or limited guardian may petition the court for an order settling his account with regard to any and all receipts, expenditures and investments made and acts done by the guardian or limited guardian to the date of said interim report. Upon such petition being filed, the court may in its discretion, where the size or condition of the estate warrants it, set a date for the hearing of such petition and require the service of the petition and a notice of such hearing as provided in RCW 11.88.040 as now or hereafter amended; and, in the event such a hearing be ordered, the court shall also appoint a guardian ad litem, whose duty it shall be to investigate the report of the guardian or limited guardian of the estate and to advise the court thereon at said hearing, in writing. At such hearing on said report of the guardian or limited guardian, if the court be satisfied that the actions of the guardian or limited guardian have been proper, and that the guardian or limited guardian has in all respects discharged his trust with relation to such receipts, expenditures, investments, and acts, then, in such event, the court shall enter an order approving such account, and such order shall be final and binding upon the ~~((incompetent or disabled))~~ incapacitated person, subject only to the right of appeal as upon a final order; provided that at the time of final account of said guardian or limited guardian or within one year after said ~~((incompetent or disabled))~~ incapacitated person attains his majority any such interim account may be challenged by said ~~((incompetent or disabled))~~ incapacitated person on the ground of fraud.

(2) The procedure established in subsection (1) of this section for financial accounts by guardians or limited guardians of the estate shall apply to personal care reports filed by guardians or limited guardians of the person under section 21 of this act.

Sec. 24. Section 11.92.053, chapter 145, Laws of 1965 and RCW 11.92.053 are each amended to read as follows:

Within ninety days after the termination of a guardianship for any reason other than the death of the ~~((incompetent))~~ incapacitated person intestate, the guardian or limited guardian of the estate shall petition the court for an order settling his account as filed in accordance with RCW 11.92.040(2) with regard to any and all receipts, expenditures and investments made and acts done by the guardian to the date of said termination. Upon such petition being filed, the court shall set a date for the hearing of such petition after notice has been given in accordance with RCW 11.88.040. Any person interested may file objections to such petition or may appear at the time and place fixed for the hearing thereof and present his objections thereto. The court may take such testimony as it deems proper or necessary to determine whether an order settling the account should be issued and the transactions of the guardian be approved.

At such hearing on said petition of the guardian or limited guardian, if the court be satisfied that the actions of the guardian or limited guardian have been proper, and that the guardian has in all respects discharged his trust with relation to such receipts, expenditures, investments, and acts, then, in such event, the court shall enter an order approving such account, and such order shall be final and binding upon the ~~((incompetent))~~ incapacitated person, subject only to the right of appeal as upon a final order: **PROVIDED**, That within one year after said incompetent attains his majority any such account may be challenged by ~~((said incompetent))~~ the incapacitated person on the ground of fraud.

Sec. 25. Section 11.92.056, chapter 145, Laws of 1965 as amended by section 22, chapter 95, Laws of 1975 1st ex. sess. and RCW 11.92.056 are each amended to read as follows:

If, at any hearing upon a petition to settle the account of any guardian or limited guardian, it shall appear to the court that said guardian or limited guardian has not fully accounted or that said account should not be settled, the court may continue said hearing to a day certain and may cite the surety or sureties upon the bond of said guardian or limited guardian to appear upon the date fixed in said citation and show cause why the account should not be disapproved and judgment entered for any deficiency against said guardian or limited guardian and the surety or sureties upon his or her bond. Said citation shall be personally served upon said surety or sureties in the manner provided by law for the service of summons in civil actions and shall be served not less than twenty days previous to said hearing. At said hearing any interested party, including the surety so cited, shall have the

right to introduce any evidence which shall be material to the matter before the court. If, at said hearing, the final account of said guardian or limited guardian shall not be approved and the court shall find that said guardian or limited guardian is indebted to the ~~((incompetent or disabled))~~ incapacitated person in any amount, said court may thereupon enter final judgment against said guardian or limited guardian and the surety or sureties upon his or her bond, which judgment shall be enforceable in the same manner and to the same extent as judgments in ordinary civil actions.

Sec. 26. Section 11.92.060, chapter 145, Laws of 1965 as amended by section 23, chapter 95, Laws of 1975 1st ex. sess. and RCW 11.92.060 are each amended to read as follows:

(1) GUARDIAN MAY SUE AND BE SUED. When there is a guardian of the estate, all actions between the ~~((incompetent))~~ incapacitated person or the guardian and third persons in which it is sought to charge or benefit the estate of the ~~((incompetent))~~ incapacitated person shall be prosecuted by or against the guardian of the estate as such. ~~((He))~~ The guardian shall represent the interests of the ~~((incompetent))~~ incapacitated person in the action and all process shall be served on him or her. A guardian or limited guardian of the estate shall report to the court any action commenced against the incapacitated person and shall secure court approval prior to initiating any legal action in the name of the incapacitated person.

(2) JOINDER, AMENDMENT AND SUBSTITUTION. When the guardian of the estate is under personal liability for his or her own contracts and acts made and performed on behalf of the estate ~~((he))~~ the guardian may be sued both as guardian and in his or her personal capacity in the same action. Misnomer or the bringing of the action by or against the ~~((incompetent))~~ incapacitated person shall not be grounds for dismissal of the action and leave to amend or substitute shall be freely granted. If an action was commenced by or against the ~~((incompetent))~~ incapacitated person before the appointment of a guardian of his or her estate, such guardian when appointed may be substituted as a party for the ~~((incompetent))~~ incapacitated person. If the appointment of the guardian of the estate is terminated, his or her successor may be substituted; if the ~~((incompetent))~~ incapacitated person dies, his or her personal representative may be substituted; if the ~~((incompetent becomes competent, he))~~ incapacitated person is no longer incapacitated the person may be substituted.

(3) GARNISHMENT, ATTACHMENT AND EXECUTION. When there is a guardian of the estate, the property and rights of action of the ~~((incompetent))~~ incapacitated person shall not be subject to garnishment or attachment, except for the foreclosure of a mortgage or other lien, and execution shall not issue to obtain satisfaction of any judgment against the ~~((incompetent))~~ incapacitated person or the guardian of ~~((his))~~ the persons' estate as such.

(4) **COMPROMISE BY GUARDIAN.** Whenever it is proposed to compromise or settle any claim by or against the ~~((incompetent))~~ incapacitated person or the guardian as such, whether arising as a result of personal injury or otherwise, and whether arising before or after appointment of a guardian, the court on petition of the guardian of the estate, if satisfied that such compromise or settlement will be for the best interests of the ~~((incompetent))~~ incapacitated person, may enter an order authorizing the settlement or compromise be made.

(5) **LIMITED GUARDIAN.** Limited guardians may serve and be served with process or actions on behalf of the ~~((disabled))~~ incapacitated person, but only to the extent provided for in the court order appointing a limited guardian.

Sec. 27. Section 11.92.090, chapter 145, Laws of 1965 as amended by section 24, chapter 95, Laws of 1975 1st ex. sess. and RCW 11.92.090 are each amended to read as follows:

Whenever it shall appear to the satisfaction of a court by the petition of any guardian or limited guardian, that it is necessary or proper to sell, exchange, lease, mortgage, or grant an easement, license or similar interest in any of the real or personal property of the estate of ~~((such incompetent or disabled))~~ the incapacitated person for the purpose of paying debts or for the care, support and education of ~~((such incompetent or disabled))~~ the incapacitated person, or to redeem any property of ~~((such incompetent's or disabled))~~ the incapacitated person's estate covered by mortgage or other lien, or for the purpose of making any investments, or for any other purpose which to the court may seem right and proper, the court may make an order directing such sale, exchange, lease, mortgage, or grant of easement, license or similar interest of such part or parts of the real or personal property as shall to the court seem proper.

Sec. 28. Section 11.92.100, chapter 145, Laws of 1965 as amended by section 25, chapter 95, Laws of 1975 1st ex. sess. and RCW 11.92.100 are each amended to read as follows:

Such application shall be by petition, verified by the oath of the guardian or limited guardian, and shall substantially set forth:

(1) The value and character of all personal estate belonging to ~~((such incompetent or disabled))~~ the incapacitated person that has come to the knowledge or possession of such guardian or limited guardian.

(2) The disposition of such personal estate.

(3) The amount and condition of the ~~((incompetent's or disabled))~~ incapacitated person's personal estate, if any, dependent upon the settlement of any estate, or the execution of any trust.

(4) The annual income of the real estate of the ~~((incompetent or disabled))~~ incapacitated person.

(5) The amount of rent received and the application thereof.

(6) The proposed manner of reinvesting the proceeds of the sale, if asked for that purpose.

(7) Each item of indebtedness, or the amount and character of the lien, if the sale is ~~((prayed))~~ requested for the liquidation thereof.

(8) The age of the ~~((incompetent or disabled))~~ incapacitated person, where and with whom residing.

(9) All other facts connected with the estate and condition of the ~~((incompetent or disabled))~~ incapacitated person necessary to enable the court to fully understand the same. If there is no personal estate belonging to ~~((such incompetent or disabled))~~ the incapacitated person in possession or expectancy, and none has come into the hands of such guardian or limited guardian, and no rents have been received, the fact shall be stated in the application.

Sec. 29. Section 11.92.110, chapter 145, Laws of 1965 as amended by section 26, chapter 95, Laws of 1975 1st ex. sess. and RCW 11.92.110 are each amended to read as follows:

The order directing the sale of any of the real property of the estate of ~~((such incompetent or disabled))~~ the incapacitated person shall specify the particular property affected and the method, whether by public or private sale or by negotiation, and terms thereof, and with regard to the procedure and notices to be employed in conducting such sale, the provisions of RCW 11.56.060, 11.56.070, 11.56.080, and 11.56.110 shall be followed unless the court otherwise directs.

Sec. 30. Section 11.92.115, chapter 145, Laws of 1965 as amended by section 27, chapter 95, Laws of 1975 1st ex. sess. and RCW 11.92.115 are each amended to read as follows:

The guardian or limited guardian making any sale of real estate, either at public or private sale or sale by negotiation, shall within ten days after making such sale file with the clerk of the court his return of such sale, the same being duly verified. At any time after the expiration of ten days from the filing of such return, the court may, without notice, approve and confirm such sale and direct proper instruments of transfer to be executed and delivered. Upon the confirmation of any such sale, the court shall direct the guardian or limited guardian to make, execute and deliver instruments conveying the title to the person to whom such property may be sold and such instruments of conveyance shall be deemed to convey all the estate, rights and interest of the ~~((incompetent or disabled))~~ incapacitated person and of ~~((his))~~ the persons' estate. In the case of a sale by negotiation the guardians or limited guardians shall publish a notice in one issue of a legal newspaper published in the county in which the estate is being administered; the substance of such notice shall include the legal description of the property sold, the selling price and the date after which the sale may be confirmed: PROVIDED, That such confirmation date shall be at least ten days after such notice is published.

Sec. 31. Section 11.92.130, chapter 145, Laws of 1965 as amended by section 29, chapter 95, Laws of 1975 1st ex. sess. and RCW 11.92.130 are each amended to read as follows:

If any person who is bound by contract in writing to perform shall become (~~(incompetent or become a disabled person)~~) incapacitated before making the performance, the court having jurisdiction of the guardianship or limited guardianship of such property may, upon application of the guardian or limited guardian of (~~(such incompetent or disabled)~~) the incapacitated person, or upon application of the person claiming to be entitled to the performance, make an order authorizing and directing the guardian or limited guardian to perform such contract. The application and the proceedings, shall, as nearly as may be, be the same as provided in chapter 11.60 RCW.

Sec. 32. Section 10, chapter 30, Laws of 1985 and RCW 11.92.140 are each amended to read as follows:

The court, upon the petition of a guardian of the estate of an (~~(incompetent or disabled)~~) incapacitated person (~~((collectively hereafter referred to in this section as "incompetent");~~)) other than the guardian of a minor, and after such notice as the court directs and other notice to all persons interested as required by chapter 11.96 RCW, may authorize the guardian to take any action, or to apply funds not required for the (~~(incompetent's)~~) incapacitated person's own maintenance and support, in any fashion the court approves as being in keeping with the (~~(incompetent's)~~) incapacitated person's wishes so far as they can be ascertained and as designed to minimize insofar as possible current or prospective state or federal income and estate taxes, permit entitlement under otherwise available federal or state medical or other assistance programs, and to provide for gifts to such charities, relatives, and friends as would be likely recipients of donations from the (~~(incompetent)~~) incapacitated person.

The action or application of funds may include but shall not be limited to the making of gifts, to the conveyance or release of the (~~(incompetent's)~~) incapacitated person's contingent and expectant interests in property including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entirety, to the exercise or release of the (~~(incompetent's)~~) incapacitated person's powers as donee of a power of appointment, the making of contracts, the creation of revocable or irrevocable trusts of property of the (~~(incompetent's)~~) incapacitated person's estate which may extend beyond the (~~(incompetent's)~~) incapacitated person's disability or life, the exercise of options of the (~~(incompetent)~~) incapacitated person to purchase securities or other property, the exercise of the (~~(incompetent's)~~) incapacitated person's right to elect options and to change beneficiaries under insurance and annuity policies and the surrendering of policies

for their cash value, the exercise of the ~~((incompetent's))~~ incapacitated person's right to any elective share in the estate of the ~~((incompetent's))~~ incapacitated person's deceased spouse, and the renunciation or disclaimer of any interest acquired by testate or intestate succession or by inter vivos transfer.

The guardian in the petition shall briefly outline the action or application of funds for which approval is sought, the results expected to be accomplished thereby and the ~~((tax))~~ savings expected to accrue. The proposed action or application of funds may include gifts of the ~~((incompetent's))~~ incapacitated person's personal or real property. Gifts may be for the benefit of prospective legatees, devisees, or heirs apparent of the ~~((incompetent))~~ incapacitated person, or may be made to individuals or charities in which the ~~((incompetent))~~ incapacitated person is believed to have an interest. Gifts may or may not, in the discretion of the court, be treated as advancements to donees who would otherwise inherit property from the ~~((incompetent))~~ incapacitated person under the ~~((incompetent's))~~ incapacitated person's will or under the laws of descent and distribution. The guardian shall also indicate in the petition that any planned disposition is consistent with the intentions of the ~~((incompetent))~~ incapacitated person insofar as the intentions can be ascertained, and if the ~~((incompetent's))~~ incapacitated person's intentions cannot be ascertained, the ~~((incompetent))~~ incapacitated person will be presumed to favor reduction in the incidence of the various forms of taxation and the partial distribution of the ~~((incompetent's))~~ incapacitated person's estate as provided in this section. The guardian shall not, however, be required to include as a beneficiary any person whom there is reason to believe would be excluded by the ~~((incompetent))~~ incapacitated person. No guardian may be required to file a petition as provided in this section, and a failure or refusal to so petition the court does not constitute a breach of the guardian's fiduciary duties.

Sec. 33. Section 11, chapter 30, Laws of 1985 and RCW 11.92.150 are each amended to read as follows:

At any time after the issuance of letters of guardianship in the estate of any ~~((incompetent or disabled))~~ person and/or incapacitated person, any person interested in the estate, or in the ~~((incompetent or disabled))~~ incapacitated person, or any relative of the ~~((incompetent or disabled))~~ incapacitated person, or any authorized representative of any agency, bureau, or department of the United States government from or through which any compensation, insurance, pension or other benefit is being paid, or is payable, may serve upon the guardian or limited guardian, or upon the attorney for the guardian or limited guardian, and file with the clerk of the court where the ~~((administration of the))~~ guardianship or limited guardianship of the person and/or estate is pending, a written request stating ~~((that special written notice is desired of any or all of the following matters, steps or proceedings in the administration of the estate:~~

~~(1) Filing of petition for sales, exchanges, leases, mortgages, or grants of easements, licenses, or similar interests in any property of the estate.~~

~~(2) Filing of all intermediate or final accountings or accountings of any nature whatsoever.~~

~~(3) Petitions by the guardian or limited guardian for family allowances or allowances for the incompetent or disabled person or any other allowance of every nature from the funds of the estate.~~

~~(4) Petitions for the investment of the funds of the estate.~~

~~(5) Petition to terminate guardianship or limited guardianship or petition for adjudication of competency.~~

~~(6) Petition for judicial proceedings under chapter 11.96 RCW)) the specific actions of which the applicant requests advance notice. Where the notice does not specify matters for which notice is requested, the guardian or limited guardian shall provide copies of all documents filed with the court and advance notice of his or her application for court approval of any action in the guardianship.~~

The request for special written notice shall designate the name, address and post office address of the person upon whom the notice is to be served and no service shall be required under this section and RCW 11.92.160 as now or hereafter amended other than in accordance with the designation unless and until a new designation has been made.

When any account, report, petition, or proceeding is filed in the estate of which special written notice is requested, the court shall fix a time for hearing which shall allow at least ten days for service of the notice before the hearing; and notice of the hearing shall be served upon the person designated in the written request at least ten days before the date fixed for the hearing. The service may be made by leaving a copy with the person designated, or that person's authorized representative, or by mailing through the United States mail, with postage prepaid to the person and place designated.

Sec. 34. Section 11.92.160, chapter 145, Laws of 1965 as amended by section 31, chapter 95, Laws of 1975 1st ex. sess. and RCW 11.92.160 are each amended to read as follows:

Whenever any request for special written notice is served as provided in this section and RCW 11.92.150 as now or hereafter amended, the person making such request may, upon failure of any guardian or limited guardian for any ~~((incompetent or disabled))~~ incapacitated person, to file any account or report required by law, petition the court administering such estate for a citation requiring such guardian or limited guardian to file such report or account, or to show cause for failure to do so, and thereupon the court shall issue such citation and hold a hearing thereon and enter such order as is required by the law and the facts.

Sec. 35. Section 11.92.170, chapter 145, Laws of 1965 as last amended by section 16, chapter 309, Laws of 1977 ex. sess. and RCW 11.92.170 are each amended to read as follows:

Whenever it is made to appear that it would be in the best interests of the ~~((incompetent or disabled))~~ incapacitated person, the court may order the transfer of property in this state to a guardian or limited guardian of the estate of the ~~((incompetent or disabled))~~ incapacitated person appointed in another jurisdiction, or to a person or institution having similar authority with respect to the ~~((incompetent or disabled))~~ incapacitated person.

Sec. 36. Section 11.92.180, chapter 145, Laws of 1965 as amended by section 33, chapter 95, Laws of 1975 1st ex. sess. and RCW 11.92.180 are each amended to read as follows:

A guardian or limited guardian shall be allowed such compensation for his or her services as guardian or limited guardian as the court shall deem just and reasonable. Guardians and limited guardians shall not be compensated at public expense. Additional compensation may be allowed for ~~((his necessary))~~ other administrative costs, including services ((as)) of an attorney and for other ((necessary)) services not ((required of a)) provided by the guardian or limited guardian. ((He may also be allowed compensation for necessary expenses in the administration of his trust, including reasonable attorney's fees if the employment of an attorney for the particular purpose is necessary:)) Where a guardian or limited guardian is an attorney, the guardian or limited guardian shall separately account for time for which compensation is requested for services as a guardian or limited guardian as contrasted to time for which compensation for legal services provided to the guardianship is requested. In all cases, compensation of the guardian or limited guardian and his or her expenses including attorney's fees shall be fixed by the court and may be allowed at any annual or final accounting; but at any time during the administration of the estate, the guardian or limited guardian or his or her attorney may apply to the court for an allowance upon the compensation or necessary expenses of the guardian or limited guardian and for attorney's fees for services already performed. If the court finds that the guardian or limited guardian has failed to discharge his or her duties as such in any respect, it may deny ~~((him))~~ the guardian any compensation whatsoever or may reduce the compensation which would otherwise be allowed.

Sec. 37. Section 11.92.185, chapter 145, Laws of 1965 as amended by section 34, chapter 95, Laws of 1975 1st ex. sess. and RCW 11.92.185 are each amended to read as follows:

The court shall have authority to bring before it, in the manner prescribed by RCW 11.48.070, any person or persons suspected of having in his or her possession or having concealed, embezzled, conveyed or disposed of any of the property of the estate of ~~((incompetents or disabled))~~ incapacitated persons subject to administration under this title.

NEW SECTION. Sec. 38. This act shall take effect on July 1, 1991.

Passed the Senate March 6, 1990.

Passed the House March 1, 1990.

Approved by the Governor March 21, 1990.

Filed in Office of Secretary of State March 21, 1990.

CHAPTER 123

[Substitute Senate Bill No. 6700]

MOTOR FREIGHT CARRIERS OF RECOVERED MATERIALS

AN ACT Relating to regulation of motor freight carriers transporting recovered materials; adding new sections to chapter 81.80 RCW; creating a new section; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 81.80 RCW to read as follows:

(1) It is unlawful for a motor vehicle transporting recovered materials to perform a transportation service for compensation upon the public highways of this state without first having received a permit from the commission. The permits shall be granted upon a finding that the motor carrier is fit, willing, and able to provide transportation of recovered materials, and upon payment of the appropriate filing fee authorized by this chapter for other applications for operating authority, including payment of the annual regulatory fee imposed by RCW 81.80.320. The carriers are subject to the safety of operations and insurance requirements of the commission, but are not subject to rate regulation by the commission.

(2) The provisions of this section apply to motor vehicles when:

(a) Transporting recovered materials from a site generating ten thousand or more tons of recovered materials per year to a reprocessing facility or an end-use manufacturing site;

(b) Transporting recovered materials from a reprocessing facility to another reprocessing facility or to an end-use manufacturing site; or

(c) Transporting recovered mixed waste paper from a reprocessing facility to an energy recovery facility.

(3) For the purposes of this section, the following definitions shall apply:

(a) "Recovered materials" means those commodities collected for recycling or reuse, such as papers, glass, plastics, used wood, metals, yard waste, used oil, and tires, that if not collected for recycling would otherwise be destined for disposal or incineration. "Recovered materials" shall not include any wood waste or wood byproduct generated from a logging, milling, or chipping activity;

(b) "Reprocessing facility" means a business registered under chapter 82.32 RCW or a nonprofit corporation identified under chapter 24.03 RCW