

ENROLLED ACT NO. 35, HOUSE OF REPRESENTATIVES

FIFTY-SEVENTH LEGISLATURE OF THE STATE OF WYOMING  
2004 BUDGET SESSION

AN ACT relating to guardians; specifying who may be appointed as a guardian for an incompetent person or a minor; specifying the order of preference for appointments of guardians; providing definitions; and providing for an effective date.

*Be It Enacted by the Legislature of the State of Wyoming:*

**Section 1.** W.S. 3-1-101(a)(v), (vi), (ix) and by creating new paragraphs (xvi) through (xviii), 3-2-107 and 3-2-109(a)(ii) are amended to read:

**3-1-101. Definitions.**

(a) As used in this title, unless otherwise required by the context or unless otherwise defined:

(v) "Guardian" means ~~the a~~ person ~~appointed who~~ has qualified as a guardian of a minor or incompetent person pursuant to an appointment by the court to ~~have custody of the person of the ward~~ exercise the powers granted by the court. The term includes a plenary, limited, emergency and standby guardian, but does not include a guardian ad litem;

(vi) "Guardian ad litem" means a person appointed by the court to represent the best interests of a ~~proposed ward~~ respondent during the course of litigation;

(ix) "Incompetent person" means an individual who, for reasons other than being a minor, is unable unassisted to properly manage and take care of himself or his property as a result of the infirmities of advanced age, physical disability, disease, the use of alcohol or

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controlled substances, mental illness, mental deficiency or mental retardation;

(xvi) "Minor" means an unemancipated individual under the age of majority as defined by W.S. 14-1-101(a);

(xvii) "Person" means an adult individual, or a nonprofit organization with a guardianship program;

(xviii) "Respondent" means an adult or minor individual for whom a guardianship or conservatorship or other protective order is sought.

**3-2-107. Who may be appointed as guardian; preference for appointment of guardians.**

(a) The court may appoint any qualified person as guardian of an incompetent person or a minor. The court may not appoint a person to be a guardian of an incompetent person or a minor if the person proposed to act as guardian:

(i) Provides, or is likely to provide during the guardianship period, substantial services to the ward in a professional or business capacity unrelated to the person's authority as a guardian;

(ii) Is, or is likely to become during the guardianship period, a creditor of the ward, other than in the capacity as guardian;

(iii) Has, or is likely to have during the guardianship period, interests that may conflict with those of the ward; or

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(iv) Is employed by a person who would be disqualified under paragraphs (i) through (iii) of this subsection.

(b) A person may be appointed as guardian of a respondent, notwithstanding the provisions of subsection (a) of this section that would otherwise disqualify the person, if the person is the spouse, adult child, parent or sibling of the respondent and the court determines that the potential conflict of interest is insubstantial and that the appointment would clearly be in the best interests of the respondent.

(c) Subject to subsection (e) of this section, qualified persons have priority for appointment as guardian of an incompetent person in the following order:

(i) A person nominated by the respondent if at the time of the nomination the respondent has the capacity to make a reasonably intelligent choice;

(ii) The spouse of the respondent;

(iii) A nomination in the will of the respondent's deceased spouse;

(iv) The parent of the respondent;

(v) An adult child of the respondent;

(vi) A person named in the will of the respondent's deceased parent;

(vii) A relative of the respondent with whom the respondent has resided for more than six (6) months during the year preceding the filing of the petition;

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(viii) A relative or friend who has demonstrated a sincere, longstanding interest in the welfare of the respondent;

(ix) Any other person whose appointment would be in the best interests of the respondent;

(x) A person with a guardianship program for incompetent persons.

~~(a)(d) The order of preference~~ Subject to subsection (e) of this section, qualified persons have priority for the appointment of a as guardian of a minor is as follows providing the persons are qualified and suitable in the following order:

(i) The parent or parents of the minor;

(ii) The person nominated as guardian in the will of the custodial parent;

(iii) The person requested by a minor who has reached the age of fourteen (14) years;

(iv) Any other person ~~who is willing to serve as guardian~~ whose appointment would be in the best interests of the minor.

(e) The court shall consider the priorities established in subsections (c) and (d) of this section, but shall not be bound by those priorities. The court shall appoint the person who is best qualified and willing to serve as guardian.

**3-2-109. Guardian's report.**

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(a) The guardian shall present to the court and file in the guardianship proceedings a signed, written, report on the physical condition, including level of disability or functional incapacity, principal residence, treatment, care and activities of the ward, as well as providing a description of those actions the guardian has taken on behalf of the ward:

(ii) ~~Annually, within sixty (60) days~~ Every six (6) months following the ~~anniversary date of his appointment~~ initial report;

**Section 2.** This act is effective July 1, 2004.

(END)

\_\_\_\_\_  
Speaker of the House

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Governor

TIME APPROVED: \_\_\_\_\_  
DATE APPROVED: \_\_\_\_\_

I hereby certify that this act originated in the House.

\_\_\_\_\_  
Chief Clerk