



## 2001 SENATE BILL 257

September 26, 2001 - Introduced by Senators CHVALA and BURKE, cosponsored by Representatives HUBER, LA FAVE, TURNER and RYBA. Referred to Committee on Judiciary, Consumer Affairs, and Campaign Finance Reform.

1     **AN ACT to repeal** 880.24 (3) (b); **to amend** 880.24 (3) (a) (intro.); and **to create**  
2           880.24 (3) (a) 1m. of the statutes; **relating to:** payment from a ward's estate of  
3           reasonable attorney fees and costs for successful petitioners in incompetence  
4           and guardianship proceedings.

---

### *Analysis by the Legislative Reference Bureau*

Under current law, an individual's relative, a public official, or any other person may petition for a finding of incompetence and appointment of a guardian for the individual. If a court finds, after a hearing that is brought to review the petition, that the individual is incompetent, the court orders appointment of a guardian for the person and estate of the individual (the ward). The court also must award payment, from the ward's estate, of reasonable attorney fees and costs incurred by the person who successfully petitioned for the finding of incompetence, unless, after considering specified factors, the court finds that it would be inequitable to do so. However, if the court finds that the ward had executed a financial power of attorney or power of attorney for health care or had engaged in other advance planning to avoid guardianship, the court may not award this payment from the ward's estate.

This bill eliminates the provision prohibiting a court from awarding, from a ward's estate, attorney fees and costs to the person who successfully petitioned for a finding of the ward's incompetence, if the ward had executed a financial power of attorney or power of attorney for health care or had engaged in other advance planning to avoid guardianship. Instead, the bill provides that this action on the part of the ward must be considered as a factor in determining whether it would be

