

1999 SENATE BILL 158

May 18, 1999 – Introduced by Senators DARLING, PANZER, ROSENZWEIG, HUELSMAN, ERPENBACH, ROESSLER and SCHULTZ, cosponsored by Representatives HANDRICK, LA FAVE, OWENS, MUSSER, PLALE, PORTER, PLOUFF, SHERMAN and KRUSICK. Referred to Committee on Judiciary and Consumer Affairs.

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

Analysis by the Legislative Reference Bureau

Under current law, any relative, public official or other person may petition for a finding of incompetence and appointment of a guardian for another. When a court finds, after a hearing that is brought to review the petition, that an individual is incompetent, the court orders appointment of a guardian for the person and estate of the individual (the ward). The guardian must pay the ward's just debts from the ward's estate.

This bill provides that the court that finds a person to be incompetent and appoints a guardian 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. One of the specified factors is whether 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. However, under the bill the existence of only this factor may not preclude the awarding of attorney fees. This requirement first applies to guardianship petitions that are pending on the day on which the bill becomes law.

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For further information see the *local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 880.24 (3) of the statutes is created to read:

2 **880.24 (3) FEES AND COSTS OF PETITIONER.** (a) When a guardian is appointed,
3 the court shall award from the ward's estate payment of the petitioner's reasonable
4 attorney fees and costs, including those fees and costs, if any, related to protective
5 placement of the ward, unless the court finds after considering all of the following,
6 except as provided in par. (b), that it would be inequitable to do so:

7 1. The petitioner's interest in the matter, including any conflict of interest that
8 the petitioner may have had in pursuing the guardianship.

9 2. Whether the ward had executed a durable power of attorney under s. 243.07
10 or a power of attorney for health care under s. 155.05 or had engaged in other advance
11 planning to avoid guardianship.

12 3. The ability of the ward's estate to pay the petitioner's reasonable attorney
13 fees and costs.

14 4. Whether the guardianship was contested and, if so, the nature of the contest.

15 5. Any other factors that the court considers to be relevant.

16 (b) Existence of the factor specified in par. (a) 2., without the presence of
17 another relevant factor under par. (a) 1., 3., 4. or 5., may not preclude the awarding
18 of attorney fees under par. (a).

19 **SECTION 2. Initial applicability.**

