

1999 DRAFTING REQUEST

Bill

Received: 12/15/1999

Received By: kenneda

Wanted: As time permits

Identical to LRB:

For: Joseph Handrick (608) 266-7141

By/Representing: David Volz (aide)

This file may be shown to any legislator: NO

Drafter: kenneda

May Contact:

Alt. Drafters:

Subject: Mental Health - miscellaneous
Mental Health - protect place

Extra Copies: MGD

Pre Topic:

No specific pre topic given

Topic:

Payment from ward's estate for attorney fees for incompetency and guardianship proceedings

Instructions:

See Attached; same as 1999 SB 158 (LRB-0036/3)

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	kenneda 12/15/1999	jgeller 12/15/1999		_____			Local
/1			martykr 12/15/1999	_____	lrb_docadmin 12/15/1999	lrb_docadmin 01/31/2000	

FE Sent For:

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/?	kenneda	1/12/15 jlg	1/12/15	1/12/15			

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<END>

B I L L
REQUEST FORM

LEGISLATIVE REFERENCE BUREAU
Legal Section Telephone: 266-3561
5th Floor, 100 N. Hamilton Street

Use of this form is optional. It is often better to talk directly with the LRB attorney who will draft the bill.

Use this form only for **BILL** drafts. Attach more pages if necessary.

Legislator, agency or other body requesting this draft: _____

Date: 12-13-99 Person submitting request (name, phone number): Rep. Joe Handrick

Persons to contact for questions about this draft (names, phone numbers): David Volz, Joe Handrick
6-7111

Describe the problem, including any helpful examples.

How do you want to solve the problem?

please draft an Assembly companion bill to

1999 Senate Bill 158 (LRB 0036/3)

Please attach a copy of any correspondence or other material that may help us.

If you know of any statute sections that might be affected, list them or provide a marked-up (not retyped) copy. _____

You may attach a marked-up (not retyped) copy of any LRB draft, or provide its number (e.g., 1997 LRB-2345/1 or 1995 AB-67): _____

Requests are confidential unless stated otherwise.

- May we tell others that we are working on this for you? Yes No
- If yes: Anyone who asks? Yes No Any legislator? Yes No Only the following persons: _____

Do you consider this request urgent? Yes No If yes, please indicate why: _____

Should we give this request priority over any other pending request of this legislator, agency or body? Yes No If yes, sign your name here: _____

Yes No

SOON

1999 - 2000 LEGISLATURE

4/28/11
LRB-0036/S
DAK: ~~Regen~~
↑
stays

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.

Regen

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.

SENATE BILL 158

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.**

**SUBMITTAL
FORM**

LEGISLATIVE REFERENCE BUREAU
Legal Section Telephone: 266-3561
5th Floor, 100 N. Hamilton Street

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and sign on the appropriate line(s) below.

Date: 12/15/1999

To: Representative Handrick

Relating to LRB drafting number: LRB-4085

Topic

Payment from ward's estate for attorney fees for incompetency and guardianship proceedings

Subject(s)

Mental Health - miscellaneous, Mental Health - protect place

1. **JACKET** the draft for introduction _____

in the **Senate** ____ or the **Assembly** (check only one). Only the requester under whose name the drafting request is entered in the LRB's drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. **REDRAFT**. See the changes indicated or attached _____.

A revised draft will be submitted for your approval with changes incorporated.

3. Obtain **FISCAL ESTIMATE NOW**, prior to introduction _____.

If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

Debora A. Kennedy, Managing Attorney
Telephone: (608) 266-0137