



February 20, 2004

**ENGROSSED
HOUSE BILL No. 1178**

DIGEST OF HB 1178 (Updated February 19, 2004 10:46 am - DI 106)

Citations Affected: IC 29-3; IC 34-30.

Synopsis: Volunteer advocates for seniors and guardians. Permits a court to appoint a volunteer advocate for seniors ("volunteer") to represent and protect for a limited period the interests of an incapacitated or protected person who is at least 55 years of age. Requires a volunteer to report to the court and make recommendations regarding the incapacitated or protected person. Provides civil immunity for a volunteer, a volunteer advocate for seniors program, and a guardian.

Effective: July 1, 2004.

Avery, Kuzman, Koch, Klinker

(SENATE SPONSORS — DILLON, LONG, BRODEN, ROGERS, ANTICH)

January 13, 2004, read first time and referred to Committee on Judiciary.
January 26, 2004, amended, reported — Do Pass.
January 29, 2004, read second time, amended, ordered engrossed.
January 30, 2004, engrossed.
February 5, 2004, read third time, passed. Yeas 96, nays 0.

SENATE ACTION

February 9, 2004, read first time and referred to Committee on Judiciary.
February 19, 2004, amended, reported favorably — Do Pass.

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February 20, 2004

Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

ENGROSSED HOUSE BILL No. 1178



A BILL FOR AN ACT to amend the Indiana Code concerning probate.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 29-3-1-16 IS ADDED TO THE INDIANA CODE
2 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2004]: **Sec. 16. "Volunteer advocate for seniors" means an**
4 **individual who:**
5 (1) is a volunteer;
6 (2) has completed a limited guardian training program
7 approved by a court;
8 (3) is supervised by a community volunteer advocates for
9 seniors program;
10 (4) is appointed by a court to serve as a limited guardian for
11 an incapacitated person or protected person who is at least
12 fifty-five (55) years of age; and
13 (5) provides reports and makes recommendations to a court.
14 SECTION 2. IC 29-3-8.5 IS ADDED TO THE INDIANA CODE
15 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
16 JULY 1, 2004]:
17 **Chapter 8.5. Volunteer Advocates for Seniors**

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EH 1178—LS 7286/DI 107+



- 1 **Sec. 1. A court in a proceeding under this article may appoint a**
- 2 **volunteer advocate for seniors.**
- 3 **Sec. 2. A volunteer advocate for seniors shall submit to the**
- 4 **court:**
 - 5 **(1) a progress report fifteen (15) days after the date of**
 - 6 **appointment describing the matters required by the court;**
 - 7 **and**
 - 8 **(2) a final report sixty (60) days after the date of appointment:**
 - 9 **(A) describing the matters required by the court; and**
 - 10 **(B) making recommendations to the court as to whether a**
 - 11 **need exists for continued representation of the**
 - 12 **incapacitated or protected person.**
- 13 **Sec. 3. A volunteer advocate for seniors shall:**
 - 14 **(1) serve as a limited guardian to represent and protect the**
 - 15 **interests of an incapacitated or protected person who is at**
 - 16 **least fifty-five (55) years of age;**
 - 17 **(2) investigate and gather information regarding the health,**
 - 18 **welfare and financial circumstances of the incapacitated or**
 - 19 **protected person, as directed by a court;**
 - 20 **(3) facilitate and authorize health care, social welfare, and**
 - 21 **residential placement services as needed by the incapacitated**
 - 22 **or protected person;**
 - 23 **(4) advocate for the rights of the incapacitated or protected**
 - 24 **person;**
 - 25 **(5) facilitate legal representation for the incapacitated or**
 - 26 **protected person; and**
 - 27 **(6) perform any other duty required by a court.**
- 28 **Sec. 4. A volunteer advocate for seniors may:**
 - 29 **(1) consent to medical and other professional care and**
 - 30 **treatment for the incapacitated or protected person's health**
 - 31 **and welfare;**
 - 32 **(2) secure the appointment of a guardian or coguardian in**
 - 33 **another state;**
 - 34 **(3) take custody of the incapacitated or protected person and**
 - 35 **establish the person's place of abode within Indiana or**
 - 36 **another state in accordance with IC 29-3-9-2;**
 - 37 **(4) institute proceedings or take other appropriate action to**
 - 38 **compel the performance by any person of a duty to support**
 - 39 **the incapacitated or protected person's health or welfare; and**
 - 40 **(5) delegate to the incapacitated or protected person certain**
 - 41 **responsibilities for decisions affecting the person's business**
 - 42 **affairs and well-being.**

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Sec. 5. If a court appoints an individual to serve as a volunteer advocate for seniors, the appointment shall be for a period of sixty (60) days. After the initial sixty (60) day period, the court may, upon petition by the volunteer or upon the court's own motion, extend the appointment for a period as determined by the court to be necessary to protect the interests of the incapacitated or protected person.

Sec. 6. A volunteer advocate for seniors is considered an officer of the court for the purpose of representing the interests of an incapacitated or protected person.

Sec. 7. The court may appoint an attorney to represent a volunteer advocate for seniors.

Sec. 8. Except for gross misconduct:

- (1) a volunteer advocate for seniors program that;**
- (2) an employee of a volunteer advocates for seniors program who; or**
- (3) a volunteer for a volunteer advocates for seniors program who;**

performs duties in good faith is immune from any civil liability resulting from the program's, employee's, or volunteer's performance.

Sec. 9. A volunteer advocate for seniors under this chapter is not authorized to consent to or refuse health care (as defined in IC 16-36-1-1) for an individual if:

- (1) a spouse, a parent, an adult child, or an adult sibling of the individual or the individual's religious superior, if the individual is a member of a religious order, is available, capable, and suitable to consent to or refuse the health care on behalf of the individual; or**
- (2) the individual has previously:**
 - (A) appointed a health care representative under IC 16-36-1;**
 - (B) authorized health care under IC 16-36-1.5, IC 16-36-4, or IC 16-36-5;**
 - (C) executed a power of attorney under IC 30-5-4; or**
 - (D) had a guardian appointed by the court under IC 29-3.**

SECTION 3. IC 29-3-9-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2. A guardian (other than a temporary guardian) or volunteer advocate for seniors appointed under IC 29-3-8.5 may, with the approval of and under such conditions as may be imposed by the court after notice and hearing, change the physical presence of the protected person to another place

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1 in Indiana or to another state if the court finds that such a change is in
 2 the best interests of the protected person. Upon such a change, the
 3 guardianship may be limited or terminated by the court.
 4 SECTION 4. IC 29-3-11-4 IS ADDED TO THE INDIANA CODE
 5 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 6 1, 2004]: **Sec. 4. Except as provided in section 2 of this chapter and**
 7 **except for gross misconduct, a guardian appointed under this**
 8 **article is immune from any civil liability resulting from the**
 9 **guardian's performance.**
 10 SECTION 5. IC 34-30-2-125.5 IS ADDED TO THE INDIANA
 11 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 12 [EFFECTIVE JULY 1, 2004]: **Sec. 125.5. IC 29-3-8.5-9 (Concerning**
 13 **a volunteer advocate for seniors).**
 14 SECTION 6. IC 34-30-2-126.5 IS ADDED TO THE INDIANA
 15 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 16 [EFFECTIVE JULY 1, 2004]: **Sec. 126.5. IC 29-3-11-4 (Concerning**
 17 **a guardian appointed under IC 29-3-5).**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred House Bill 1178, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 3, delete lines 12 through 16.

Page 3, line 17, delete "9." and insert "8."

and when so amended that said bill do pass.

(Reference is to HB 1178 as introduced.)

LAWSON L, Chair

Committee Vote: yeas 11, nays 0.

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1178 be amended to read as follows:

Page 3, between lines 20 and 21, begin a new paragraph and insert:

"Sec. 9. A volunteer advocate for seniors under this chapter is not authorized to consent to or refuse health care (as defined in IC 16-36-1-1) for an individual if:

(1) a spouse, a parent, an adult child, or an adult sibling of the individual or the individual's religious superior, if the individual is a member of a religious order, is available and capable to consent to or refuse the health care on behalf of the individual; or

(2) the individual has previously:

(A) appointed a health care representative under IC 16-36-1;

(B) authorized health care under IC 16-36-1.5, IC 16-36-4, or IC 16-36-5;

(C) executed a power of attorney under IC 30-5-4; or

(D) had a guardian appointed by the court under IC 29-3."

(Reference is to HB 1178 as printed January 27, 2004.)

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SENATE MOTION

Madam President: I move that Senator Antich be added as cosponsor of Engrossed House Bill 1178.

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COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred House Bill No. 1178, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 3, line 3, after "may" insert "**, upon petition by the volunteer or upon the court's own motion,**".

Page 3, line 26, after "available" insert ",".

Page 3, line 26, delete "and".

Page 3, line 27, after "capable" insert "**, and suitable**".

and when so amended that said bill do pass.

(Reference is to HB 1178 as reprinted January 30, 2004.)

BRAY, Chairperson

Committee Vote: Yeas 8, Nays 0.

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