

1 **State of Arkansas**
2 **79th General Assembly**
3 **Regular Session, 1993**
4 **By: Representative Beatty**

A Bill

HOUSE BILL 2055

For An Act To Be Entitled

8 "AN ACT TO AMEND ARKANSAS CODE § 28-65-218 TO PROVIDE FOR
9 NOTICE TO PARENTS OF MINORS FOR WHOM A TEMPORARY GUARDIAN
10 HAS BEEN APPOINTED; AND FOR OTHER PURPOSES."

Subtitle

13 "AN ACT TO PROVIDE FOR NOTICE TO PARENTS OF MINORS FOR
14 WHOM A TEMPORARY GUARDIAN HAS BEEN APPOINTED."

16 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

18 SECTION 1. Arkansas Code § 28-65-218 is hereby amended to read as
19 follows:

20 "28-65-218. Temporary guardian.

21 (a) If the court finds that there is imminent danger to the life or
22 health of the incapacitated person or of loss, damage, or waste to the
23 property of an incapacitated person and that this requires the immediate
24 appointment of a guardian of his person or of his estate, or of both, it may,
25 with or without notice, appoint a temporary guardian for the incapacitated
26 person for a specified period, which period, including all extensions, shall
27 not exceed ninety (90) days, and the court may remove or discharge him or
28 terminate the guardianship.

29 (b) Immediate notice of the temporary guardianship order shall be
30 served by the petitioner upon the following:

31 (1) The ward if over fourteen (14) years of age;

32 (2) The parents of the ward, if the ward is a minor;

33 (3) The spouse, if any, of the ward;

34 (4) (A) Any other person who is the guardian of the person or of
35 the estate of the ward, or any other person who has the care and custody of

1 the ward, and the director of any agency from which the respondent is
2 receiving services;

3 (B) The Department of Human Services where the temporary
4 guardian appointed serves as guardian of five (5) or more wards;

5 (5) If there is neither a known parent nor known spouse, at least
6 one (1) of the nearest competent relatives by blood or marriage of the ward;
7 and

8 (6) If directed by the court:

9 (A) Any department, bureau, agency, or political
10 subdivision of the United States or of this state which makes or awards
11 compensation, pension, insurance, or other allowance for the benefit of the
12 ward or his estate;

13 (B) Any department, bureau, agency, or political
14 subdivision of the United States or of this state or any charitable
15 organization, which may be charged with the supervision, control, or custody
16 of the incompetent; or

17 (C) Any other person designated by the court.

18 (c) The notice shall include:

19 (1) A copy of the petition;

20 (2) A copy of the temporary order and order of appointment;

21 (3) Notice of a hearing date; and

22 (4) Statement of rights as provided in § 28-65-207(b)(1).

23 (d) If the ward is over fourteen (14) years of age, there shall be
24 personal service upon him if personal service can be had. Service on others
25 shall be according to the Arkansas Rules of Civil Procedure or as otherwise
26 provided by the Court.

27 (e) Notice need not be given to any person listed in §28-65-207(a)(1)
28 through (6).

29 (f) Within three (3) working days of the entry of the temporary
30 guardianship order, a full hearing on the merits shall be held.

31 (g) The appointment may be to perform duties respecting specific
32 property or to perform particular acts, as stated in the order of appointment.

33 (h) The temporary guardian shall make such reports as the court shall
34 direct and shall account to the court upon termination of his authority.

35 (i) In other respects, the provisions of this chapter concerning

1 guardians shall apply to temporary guardians, and an appeal may be taken from
2 the order of appointment of a temporary guardian.

3 (j) The letters issued to a temporary guardian shall state the date of
4 expiration of the authority of the temporary guardian."

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6 SECTION 2. All provisions of this act of a general and permanent nature
7 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
8 Revision Commission shall incorporate the same in the Code.

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10 SECTION 3. If any provision of this act or the application thereof to
11 any person or circumstance is held invalid, such invalidity shall not affect
12 other provisions or applications of the act which can be given effect without
13 the invalid provision or application, and to this end the provisions of this
14 act are declared to be
15 severable.

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17 SECTION 4. All laws and parts of laws in conflict with this act are
18 hereby repealed.

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20 SECTION 5. EMERGENCY. It is hereby found and determined by the
21 Seventy-Ninth General Assembly that the existing temporary guardianship
22 statute does not provide for notice to parents of minors for whom temporary
23 guardianships have been appointed; that the constitutionality of such existing
24 law has been drawn into question by decisions of the United States Supreme
25 Court and the Arkansas Supreme Court, and that there is an urgent need to
26 insure that the law provides due process to parents of minors for whom
27 temporary guardians are appointed. Therefore, an emergency is hereby declared
28 to exist, and this act being necessary for the immediate preservation of the
29 public peace, health and safety, shall take effect and be in full force and
30 effect from the date of its passage and approval.

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/s/Rep. Beatty

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