

May 1, 1981

LB 428

Legislative Journal.)

PRESIDENT: All right, go right ahead.

CLERK: Mr. President, LB 428 was a bill introduced by Senator Vard Johnson. (Read title.) The bill was read on January 20, referred to Judiciary, Mr. President, and advanced to General File. I have no amendments on the bill.

PRESIDENT: The Chair recognizes Senator Vard Johnson.

SENATOR V. JOHNSON: Mr. Speaker and members of the body, in 1980 the American Bar Association by resolution 111, the House of Delegates made the following statement: "Be it resolved that the American Bar Association calls upon all states to assist persons of diminished mental capacity or under guardianship or conservatorship proceedings to live with maximum self-sufficiency in the general community by enacting laws allowing court appointment of limited or partial guardians, where persons of diminished capacity need some but not total assistance in making decisions concerning their personal affairs or estates, and direct the attention of the state to a special committee of the National Conference of Commissioners on Uniform State Laws, which is presently drafting an amendment to the Uniform Probate Code and a freestanding uniform act on limited guardianship". This resolution is the product of a study done by the Developmental Disability State Legislative Project of the American Bar Association Commission on the Mentally Disabled. LB 428 is a bill that would alter our guardianship practices with respect to incapacitated persons and those are person who by reason of age, by reason of physical infirmity, by reason of mental infirmity, by reason of alcoholism, or other debilitating conditions, are in need of some judicial protection. What the measure would do very simply, the type of change it would make to existing practice are these. In the first place when a petition for guardianship of such an individual is sought, there must be some inquiry made as to whether or not the alleged incapacitated person has an attorney, and if not the court must make certain that an attorney is available for the incapacitated individual. Secondly, the petitioner must set forth in his petition or her petition those acts that the individual apparently cannot engage in by virtue of the diminished capacity. Third, the court as it exists right now has the power to appoint a visitor, that is somebody who will actually go out and see the alleged incapacitated person and make a full report back to the court concerning the kinds of infirmities that incapacitated person