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State of Minnesota  
**HOUSE OF REPRESENTATIVES**

EIGHTY-SIXTH  
SESSION

**HOUSE FILE No. 804**

February 16, 2009

Authored by Thissen, Champion, Hilstrom, Mullery, Morrow and others  
The bill was read for the first time and referred to the Committee on Civil Justice

April 14, 2009

Committee Recommendation and Adoption of Report:  
To Pass as Amended and re-referred to the Committee on Finance

1.1 A bill for an act  
1.2 relating to probate; modifying provisions governing guardians and conservators;  
1.3 amending Minnesota Statutes 2008, sections 260C.331, subdivision 1; 524.5-102,  
1.4 subdivision 7, by adding a subdivision; 524.5-112; 524.5-304; 524.5-309;  
1.5 524.5-310; 524.5-315; 524.5-316; 524.5-317; 524.5-406; 524.5-409; 524.5-413;  
1.6 524.5-414; 524.5-420; proposing coding for new law in Minnesota Statutes,  
1.7 chapter 524.

1.8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.9 Section 1. Minnesota Statutes 2008, section 260C.331, subdivision 1, is amended to  
1.10 read:

1.11 Subdivision 1. **Care, examination, or treatment.** (a) Except where parental rights  
1.12 are terminated,

1.13 (1) whenever legal custody of a child is transferred by the court to a responsible  
1.14 social services agency,

1.15 (2) whenever legal custody is transferred to a person other than the responsible social  
1.16 services agency, but under the supervision of the responsible social services agency, or

1.17 (3) whenever a child is given physical or mental examinations or treatment under  
1.18 order of the court, and no provision is otherwise made by law for payment for the care,  
1.19 examination, or treatment of the child, these costs are a charge upon the welfare funds of  
1.20 the county in which proceedings are held upon certification of the judge of juvenile court.

1.21 (b) The court shall order, and the responsible social services agency shall require,  
1.22 the parents or custodian of a child, while the child is under the age of 18, to use the  
1.23 total income and resources attributable to the child for the period of care, examination,  
1.24 or treatment, except for clothing and personal needs allowance as provided in section  
1.25 256B.35, to reimburse the county for the cost of care, examination, or treatment. Income

2.1 and resources attributable to the child include, but are not limited to, Social Security  
2.2 benefits, supplemental security income (SSI), veterans benefits, railroad retirement  
2.3 benefits and child support. When the child is over the age of 18, and continues to receive  
2.4 care, examination, or treatment, the court shall order, and the responsible social services  
2.5 agency shall require, reimbursement from the child for the cost of care, examination, or  
2.6 treatment from the income and resources attributable to the child less the clothing and  
2.7 personal needs allowance. Income does not include earnings from a child over the age of  
2.8 18 who is working as part of a plan under section 260C.212, subdivision 1, paragraph (c),  
2.9 clause (8), to transition from foster care.

2.10 (c) If the income and resources attributable to the child are not enough to reimburse  
2.11 the county for the full cost of the care, examination, or treatment, the court shall inquire  
2.12 into the ability of the parents to support the child and, after giving the parents a reasonable  
2.13 opportunity to be heard, the court shall order, and the responsible social services agency  
2.14 shall require, the parents to contribute to the cost of care, examination, or treatment of  
2.15 the child. When determining the amount to be contributed by the parents, the court shall  
2.16 use a fee schedule based upon ability to pay that is established by the responsible social  
2.17 services agency and approved by the commissioner of human services. The income of  
2.18 a stepparent who has not adopted a child shall be excluded in calculating the parental  
2.19 contribution under this section.

2.20 (d) The court shall order the amount of reimbursement attributable to the parents  
2.21 or custodian, or attributable to the child, or attributable to both sources, withheld under  
2.22 chapter 518A from the income of the parents or the custodian of the child. A parent or  
2.23 custodian who fails to pay without good reason may be proceeded against for contempt, or  
2.24 the court may inform the county attorney, who shall proceed to collect the unpaid sums,  
2.25 or both procedures may be used.

2.26 (e) If the court orders a physical or mental examination for a child, the examination  
2.27 is a medically necessary service for purposes of determining whether the service is  
2.28 covered by a health insurance policy, health maintenance contract, or other health  
2.29 coverage plan. Court-ordered treatment shall be subject to policy, contract, or plan  
2.30 requirements for medical necessity. Nothing in this paragraph changes or eliminates  
2.31 benefit limits, conditions of coverage, co-payments or deductibles, provider restrictions,  
2.32 or other requirements in the policy, contract, or plan that relate to coverage of other  
2.33 medically necessary services.

2.34 (f) Notwithstanding paragraph (b), (c), or (d), a parent, custodian, or guardian of the  
2.35 child is not required to use income and resources attributable to the child to reimburse  
2.36 the county for costs of care and is not required to contribute to the cost of care of the

3.1 child during any period of time when the child is returned to the home of that parent,  
 3.2 custodian, or guardian pursuant to a trial home visit under section 260C.201, subdivision  
 3.3 1, paragraph (a).

3.4 Sec. 2. Minnesota Statutes 2008, section 524.5-102, subdivision 7, is amended to read:

3.5 Subd. 7. **Interested person.** "Interested person" includes:

3.6 (i) the ward, protected person, or respondent;

3.7 (ii) a nominated guardian or conservator, or the duly appointed guardian or  
 3.8 conservator;

3.9 (iii) legal representative;

3.10 (iv) the spouse, parent, adult children and siblings, or if none of such persons is  
 3.11 living or can be located, the next of kin of the ward, protected person, or respondent;

3.12 (v) an adult person who has lived with a ward, protected person, or respondent for a  
 3.13 period of more than six months;

3.14 (vi) an attorney for the ward or protected person;

3.15 (vii) a governmental agency paying or to which an application has been made for  
 3.16 benefits for the respondent, ward, or protected person, including the county social services  
 3.17 agency for the person's county of residence and the county where the proceeding is venued;

3.18 (viii) a representative of a state ombudsman's office or a federal protection and  
 3.19 advocacy program that has notified the court that it has a matter regarding the ward,  
 3.20 protected person, or respondent;

3.21 ~~(viii)~~ (ix) a health care agent or proxy appointed pursuant to a health care directive  
 3.22 as defined in section 145C.01, a living will under chapter 145B, or other similar document  
 3.23 executed in another state and enforceable under the laws of this state; and

3.24 ~~(ix)~~ (x) any other person designated by the court.

3.25 Sec. 3. Minnesota Statutes 2008, section 524.5-102, is amended by adding a  
 3.26 subdivision to read:

3.27 Subd. 13a. **Professional guardian or professional conservator.** "Professional  
 3.28 guardian" or "professional conservator" means a person acting as guardian or conservator  
 3.29 for three or more individuals not related by blood, adoption, or marriage.

3.30 Sec. 4. Minnesota Statutes 2008, section 524.5-112, is amended to read:

3.31 **524.5-112 TERMINATION OF OR CHANGE IN GUARDIAN'S OR**  
 3.32 **CONSERVATOR'S APPOINTMENT.**

4.1 (a) The appointment of a guardian or conservator terminates upon the death,  
4.2 resignation, or removal of the guardian or conservator or upon termination of the  
4.3 guardianship or conservatorship. A resignation of a guardian or conservator is effective  
4.4 when approved by the court. A parental or spousal appointment as guardian under  
4.5 an informally probated will terminates if the will is later denied probate in a formal  
4.6 proceeding. Termination of the appointment of a guardian or conservator does not affect  
4.7 the liability of either for previous acts or the obligation to account for money and other  
4.8 assets of the ward or protected person.

4.9 (b)(1) A ward, protected person, or interested person may petition for removal  
4.10 of a guardian or conservator on the ground that removal would be in the best interest  
4.11 of the ward or protected person or for other good cause. Notwithstanding any other  
4.12 provision of this act, a guardian or conservator may petition for permission to resign. The  
4.13 court shall approve the petition for resignation if a successor guardian or conservator  
4.14 is appointed. If a successor guardian or conservator is not appointed, the court shall  
4.15 approve the petition for resignation unless an interested person can show good cause for  
4.16 the denial of the resignation petition. In determining whether good cause exists, the court  
4.17 shall consider the best interests of the ward or protected person and the abilities of the  
4.18 guardian or conservator to fulfill the responsibilities of the appointment in light of all  
4.19 relevant circumstances.

4.20 (2) The court shall enter a final order of discharge of the guardian or conservator  
4.21 upon the approval of the final report. A petition for removal or permission to resign may  
4.22 include a request for appointment of a successor guardian or conservator. If no successor  
4.23 guardian or conservator is appointed within a reasonable time, then notwithstanding any  
4.24 other provision of this act the court may restore the ward or protected person to capacity  
4.25 and terminate the guardianship or conservatorship.

4.26 (c) The court may appoint an additional guardian or conservator at any time, to serve  
4.27 immediately or upon some other designated event, and may appoint a successor guardian  
4.28 or conservator in the event of a vacancy or make the appointment prior to a vacancy, to  
4.29 serve when a vacancy occurs. An additional or successor guardian or conservator may  
4.30 file an acceptance of appointment at any time after the appointment, but in no case later  
4.31 than 30 days after the occurrence of the vacancy or other designated event. The additional  
4.32 or successor guardian or conservator becomes eligible to act on the occurrence of the  
4.33 vacancy or designated event, or the filing of the acceptance of appointment, whichever  
4.34 occurs last. A successor guardian or conservator succeeds to the predecessor's powers, and  
4.35 a successor conservator succeeds to the predecessor's title to the protected person's assets.

5.1       Sec. 5. [524.5-120] BILL OF RIGHTS FOR WARDS AND PROTECTED  
5.2 PERSONS.

5.3       The ward or protected person retains all rights not restricted by court order and these  
5.4 rights must be enforced by the court. These rights include the right to:

5.5       (1) treatment with dignity and respect;

5.6       (2) due consideration of current and previously stated personal desires, medical  
5.7 treatment preferences, religious beliefs, and other preferences and opinions in decisions  
5.8 made by the guardian or conservator;

5.9       (3) receive timely and appropriate health care and medical treatment that does not  
5.10 violate known conscientious, religious, or moral beliefs of the ward or protected person;

5.11       (4) exercise control of all aspects of the ward or protected person's life not delegated  
5.12 specifically by court order to the guardian or conservator, while allowing the guardian or  
5.13 conservator supervisory authority power as ordered by the court;

5.14       (5) guardianship or conservatorship services individually suited to the ward or  
5.15 protected person's conditions and needs;

5.16       (6) petition the court to prevent or initiate a change in abode;

5.17       (7) care, comfort, social and recreational needs, training, education, habilitation, and  
5.18 rehabilitation care and services, within available resources;

5.19       (8) be consulted concerning, and to decide to the extent possible, the reasonable  
5.20 care and disposition of the ward or protected person's clothing, furniture, vehicles, and  
5.21 other personal effects, to object to the disposition of personal property and effects, and to  
5.22 petition the court for a review of the guardian's or conservator's proposed disposition;

5.23       (9) personal privacy;

5.24       (10) communication and visitation with persons of the ward or protected person's  
5.25 choice, except that the guardian may restrict communication or visitation if the guardian  
5.26 determines that the communication or visitation may result in harm to the ward or  
5.27 protected person's health, safety, or well-being, and then only to the extent necessary to  
5.28 prevent the harm;

5.29       (11) marry and procreate, unless court approval is required, and to consent or object  
5.30 to sterilization as provided in section 524.5-313, paragraph (c), clause (4), item (iv);

5.31       (12) petition the court for termination or modification of the guardianship or  
5.32 conservatorship or for other appropriate relief;

5.33       (13) be represented by an attorney in any proceeding or for the purpose of petitioning  
5.34 the court; and

5.35       (14) vote, unless restricted by the court.

6.1 Sec. 6. Minnesota Statutes 2008, section 524.5-304, is amended to read:

6.2 **524.5-304 JUDICIAL APPOINTMENT OF GUARDIAN: PRELIMINARIES**  
6.3 **TO HEARING.**

6.4 (a) Upon receipt of a petition to establish a guardianship, the court shall set a date  
6.5 and time for hearing the petition and may appoint a visitor. The duties and reporting  
6.6 requirements of the visitor are limited to the relief requested in the petition.

6.7 (b) A proposed ward has the right to be represented by counsel at any proceeding  
6.8 under this article. The court shall appoint counsel to represent the proposed ward for  
6.9 the initial proceeding held pursuant to section 524.5-307 if neither the proposed ward  
6.10 nor others provide counsel unless in a meeting with a visitor the proposed ward makes  
6.11 an informed decision in writing to specifically waives waive the right to counsel. Before  
6.12 appointment, and at anytime during the course of the representation when a risk of a  
6.13 conflict of interest may arise, the proposed or appointed counsel shall disclose to the  
6.14 court, the proposed ward or ward, and interested persons whether there are concurrent  
6.15 proceedings in which the counsel is the attorney for the proposed guardian or guardian and  
6.16 whether there is a risk of a conflict of interest under Rule 1.7 of the Rules of Professional  
6.17 Conduct so that the representation of the proposed ward or ward will be materially limited  
6.18 by counsel's concurrent responsibilities to the proposed guardian or guardian. If there is a  
6.19 risk of a conflict of interest, the counsel must not be appointed or new counsel must be  
6.20 appointed, unless:

6.21 (1) the court determines that the proposed ward or ward is able to give informed  
6.22 consent to the representation and, if the proposed ward or ward consents, the consent is  
6.23 confirmed in writing pursuant to Rule 1.7; or

6.24 (2) the court determines that there is not a risk of a conflict of interest under Rule 1.7  
6.25 requiring the appointment of different counsel.

6.26 Counsel must be appointed immediately after any petition under this article is served  
6.27 under section 524.5-308. Counsel has the full right of subpoena. In all proceedings under  
6.28 this article, counsel shall:

6.29 (1) consult with the proposed ward before any hearing;

6.30 (2) be given adequate time to prepare for all hearings; and

6.31 (3) continue to represent the person throughout any proceedings under section  
6.32 524.5-307, provided that such appointment shall expire upon the expiration of the appeal  
6.33 time for the order appointing guardian or the order dismissing a petition, or upon such  
6.34 other time or event as the court may direct.

6.35 The court need not appoint counsel to represent the proposed ward on a voluntary  
6.36 petition, and the court may remove a court-appointed attorney at any time if the court

7.1 finds that the proposed ward has made a knowing and intelligent waiver of the right to  
7.2 counsel or has obtained private counsel.

7.3 (c) The visitor shall personally serve the notice and petition upon the respondent  
7.4 and shall offer to read the notice and petition to the respondent, and if so requested the  
7.5 visitor shall read the notice and petition to such person. The visitor shall also interview the  
7.6 respondent in person, and to the extent that the respondent is able to understand:

7.7 (1) explain to the respondent the substance of the petition; the nature, purpose, and  
7.8 effect of the proceeding; the respondent's rights at the hearing; and the general powers  
7.9 and duties of a guardian;

7.10 (2) determine the respondent's views about the proposed guardian, the proposed  
7.11 guardian's powers and duties, and the scope and duration of the proposed guardianship;

7.12 (3) inform the respondent of the right to employ and consult with a lawyer at the  
7.13 respondent's own expense and the right to request a court-appointed lawyer; and

7.14 (4) inform the respondent that all costs and expenses of the proceeding, including  
7.15 respondent's attorneys fees, will be paid from the respondent's estate.

7.16 (d) In addition to the duties in paragraph (c), the visitor shall make any other  
7.17 investigation the court directs.

7.18 (e) The visitor shall promptly file a report in writing with the court, which must  
7.19 include:

7.20 (1) recommendations regarding the appropriateness of guardianship, including  
7.21 whether less restrictive means of intervention are available, the type of guardianship, and,  
7.22 if a limited guardianship, the powers to be granted to the limited guardian;

7.23 (2) a statement as to whether the respondent approves or disapproves of the proposed  
7.24 guardian, and the powers and duties proposed or the scope of the guardianship; and

7.25 (3) any other matters the court directs.

7.26 (f) The county social service agency may create a screening committee to review a  
7.27 petition involving an indigent person. The screening committee must consist of individuals  
7.28 selected by the agency with knowledge of alternatives that are less restrictive than  
7.29 guardianship. If the agency has created a screening committee, the court shall make its  
7.30 decision after the screening committee has reviewed the petition. For an indigent person,  
7.31 the court may appoint a guardian under contract with the county to provide these services.

7.32 (g) Before the initial appointment, and annually within 30 days after the anniversary  
7.33 date of the appointment, the proposed guardian or guardian shall file an informational  
7.34 statement with the court. The statement must be a sworn affidavit containing the following  
7.35 information:

7.36 (1) the person's educational background and relevant work and other experience;

- 8.1 (2) an address and telephone number where the guardian can be contacted;  
8.2 (3) whether the person has ever been removed for cause from serving as a guardian  
8.3 or conservator and, if so, the case number and court location;  
8.4 (4) any changes occurring that would affect the accuracy of information contained in  
8.5 the most recent criminal background study conducted pursuant to section 524.5-118; and  
8.6 (5) if applicable, the amount of reimbursement for services rendered to the ward that  
8.7 the person has received during the previous year.

8.8 Sec. 7. Minnesota Statutes 2008, section 524.5-309, is amended to read:

8.9 **524.5-309 WHO MAY BE GUARDIAN: PRIORITIES.**

8.10 (a) Subject to paragraph (c), the court, in appointing a guardian, shall consider  
8.11 persons otherwise qualified in the following order of priority:

8.12 (1) a guardian, other than a temporary or emergency guardian, currently acting for  
8.13 the respondent in this state or elsewhere;

8.14 (2) an agent appointed by the respondent under a health care directive pursuant to  
8.15 chapter 145C;

8.16 (3) the spouse of the respondent or a person nominated by will or other signed  
8.17 writing executed in the same manner as a health care directive pursuant to chapter 145C of  
8.18 a deceased spouse;

8.19 (4) an adult child of the respondent;

8.20 (5) a parent of the respondent, or an individual nominated by will or other signed  
8.21 writing executed in the same manner as a health care directive pursuant to chapter 145C  
8.22 of a deceased parent; ~~and~~

8.23 (6) an adult with whom the respondent has resided for more than six months before  
8.24 the filing of the petition;

8.25 (7) an adult who is related to the respondent by blood, adoption, or marriage; and

8.26 (8) any other adult or a professional guardian.

8.27 (b) The court, acting in the best interest of the respondent, may decline to appoint a  
8.28 person having priority and appoint a person having a lower priority or no priority. With  
8.29 respect to persons having equal priority, the court shall select the one it considers best  
8.30 qualified.

8.31 (c) Any individual or agency which provides residence, custodial care, medical care,  
8.32 employment training or other care or services for which they receive a fee may not be  
8.33 appointed as guardian unless related to the respondent by blood, marriage, or adoption.



9.1 Sec. 8. Minnesota Statutes 2008, section 524.5-310, is amended to read:

9.2 **524.5-310 FINDINGS; ORDER OF APPOINTMENT.**

9.3 (a) The court may appoint a limited or unlimited guardian for a respondent only if it  
9.4 finds by clear and convincing evidence that:

9.5 (1) the respondent is an incapacitated person; and

9.6 (2) the respondent's identified needs cannot be met by less restrictive means,  
9.7 including use of appropriate technological assistance.

9.8 (b) Alternatively, the court, with appropriate findings, may treat the petition as  
9.9 one for a protective order under section 524.5-401, enter any other appropriate order, or  
9.10 dismiss the proceeding.

9.11 (c) The court shall grant to a guardian only those powers necessitated by the ward's  
9.12 limitations and demonstrated needs and, whenever feasible, make appointive and other  
9.13 orders that will encourage the development of the ward's maximum self-reliance and  
9.14 independence. Any power not specifically granted to the guardian, following a written  
9.15 finding by the court of a demonstrated need for that power, is retained by the ward.

9.16 (d) Within 14 days after an appointment, a guardian shall send or deliver to the ward,  
9.17 and counsel if represented at the hearing, a copy of the order of appointment accompanied  
9.18 by a notice which advises the ward of the right to appeal the guardianship appointment in  
9.19 the time and manner provided by the Rules of Appellate Procedure.

9.20 (e) Each year, within 30 days after the anniversary date of an appointment, a  
9.21 guardian shall send or deliver to the ward and to interested persons of record with the  
9.22 court a notice of the right to request termination or modification of the guardianship or to  
9.23 request an order that is in the best interests of the ward or for other appropriate relief, and  
9.24 notice of the status of the ward's right to vote.

9.25 Sec. 9. Minnesota Statutes 2008, section 524.5-315, is amended to read:

9.26 **524.5-315 RIGHTS AND IMMUNITIES OF GUARDIAN; LIMITATIONS.**

9.27 (a) A guardian is entitled to reasonable compensation for services as guardian and  
9.28 to reimbursement for expenditures made on behalf of the ward, in a manner consistent  
9.29 with section 524.5-502.

9.30 (b) A guardian is not liable to a third person for acts of the ward solely by reason  
9.31 of the relationship. A guardian who exercises reasonable care in choosing a third person  
9.32 providing medical or other care, treatment, or service for the ward is not liable for injury  
9.33 to the ward resulting from the wrongful conduct of the third person.

9.34 (c) ~~A guardian, without authorization of the court, may revoke the appointment of an~~  
9.35 ~~agent of a health care directive of which the ward is the principal, but the guardian may~~

10.1 ~~not, absent a court order, revoke the health care directive itself. If a health care directive~~  
10.2 ~~is in effect, absent an order of the court to the contrary, a health care decision of the~~  
10.3 ~~guardian takes precedence over that of an agent. A guardian may not revoke the health~~  
10.4 ~~care directive of a ward or protected person absent a court order. A guardian may revoke~~  
10.5 ~~the appointment of an agent of a health care directive for which the ward is the principal~~  
10.6 ~~only under the following circumstances:~~

- 10.7 (1) the agent was appointed in the previous 60 days;  
10.8 (2) multiple agents have been appointed; or  
10.9 (3) when a court has determined that the ward lacks capacity to appoint an agent of a  
10.10 health care directive and has expressly granted the guardian the power to give necessary  
10.11 consent to enable the ward to receive medical care, treatment, or service.

10.12 In all other circumstances, the guardian may not revoke the appointment of an agent  
10.13 of a health care directive for which the ward is principal absent a court order. Unless the  
10.14 appointment of a health care directive is revoked in accordance with this section, a health  
10.15 care decision of the agent takes precedence over that of the guardian.

10.16 (d) A guardian may not initiate the commitment of a ward to an institution except in  
10.17 accordance with section 524.5-313.

10.18 Sec. 10. Minnesota Statutes 2008, section 524.5-316, is amended to read:

10.19 **524.5-316 REPORTS; MONITORING OF GUARDIANSHIP; COURT**  
10.20 **ORDERS.**

10.21 (a) A guardian shall report to the court in writing on the condition of the ward at least  
10.22 annually and whenever ordered by the court. A copy of the report must be provided to the  
10.23 ward and to interested persons of record with the court. A report must state or contain:

- 10.24 (1) the current mental, physical, and social condition of the ward;  
10.25 (2) the living arrangements for all addresses of the ward during the reporting period;  
10.26 (3) the medical, educational, vocational, and other services provided to the ward and  
10.27 the guardian's opinion as to the adequacy of the ward's care; and  
10.28 (4) a recommendation as to the need for continued guardianship and any  
10.29 recommended changes in the scope of the guardianship.

10.30 (b) A ward or interested person of record with the court may submit to the court a  
10.31 written statement disputing statements or conclusions regarding the condition of the ward  
10.32 that are contained in the report and may petition the court for an order that is in the best  
10.33 interests of the ward or for other appropriate relief.

10.34 (c) The court may appoint a visitor to review a report, interview the ward or  
10.35 guardian, and make any other investigation the court directs.

11.1           (⇨) (d) The court shall establish a system for monitoring guardianships, including the  
 11.2 filing and review of annual reports. If an annual report is not filed within 60 days of the  
 11.3 required date, the court shall issue an order to show cause.

11.4           Sec. 11. Minnesota Statutes 2008, section 524.5-317, is amended to read:

11.5                     **524.5-317 TERMINATION OR MODIFICATION OF GUARDIANSHIP;**  
 11.6 **COURT ORDERS.**

11.7           (a) A guardianship terminates upon the death of the ward or upon order of the court.

11.8           (b) On petition of any person interested in the ward's welfare the court may terminate  
 11.9 a guardianship if the ward no longer needs the assistance or protection of a guardian. The  
 11.10 court may modify the type of appointment or powers granted to the guardian if the extent  
 11.11 of protection or assistance previously granted is currently excessive or insufficient or the  
 11.12 ward's capacity to provide for support, care, education, health, and welfare has so changed  
 11.13 as to warrant that action. The court may make any other order that is in the best interests  
 11.14 of the ward or may grant other appropriate relief.

11.15           (c) Except as otherwise ordered by the court for good cause, the court, before  
 11.16 terminating a guardianship, shall follow the same procedures to safeguard the rights of  
 11.17 the ward as apply to a petition for guardianship. Upon presentation by the petitioner  
 11.18 of evidence establishing a prima facie case for termination, the court shall order the  
 11.19 termination and discharge the guardian unless it is proven that continuation of the  
 11.20 guardianship is in the best interest of the ward.

11.21           Sec. 12. Minnesota Statutes 2008, section 524.5-406, is amended to read:

11.22                     **524.5-406 ORIGINAL PETITION: PERSONS UNDER DISABILITY;**  
 11.23 **PRELIMINARIES TO HEARING.**

11.24           (a) Upon the filing of a petition for a conservatorship or other protective order for a  
 11.25 respondent for reasons other than being a minor, the court shall set a date for hearing and  
 11.26 the court may appoint a visitor. The duties and reporting requirements of the visitor are  
 11.27 limited to the relief requested in the petition.

11.28           (b) A respondent has the right to be represented by counsel at any proceeding  
 11.29 under this article. The court shall appoint counsel to represent the respondent for the  
 11.30 initial proceeding held pursuant to section 524.5-408 if neither the respondent nor others  
 11.31 provide counsel, unless in a meeting with a visitor, the proposed respondent makes an  
 11.32 informed decision in writing to specifically waives ~~waives~~ waive the right to counsel. Before  
 11.33 appointment, and at anytime during the course of the representation when a risk of a  
 11.34 conflict of interest may arise, the proposed or appointed counsel shall disclose to the

12.1 court, the proposed protected person or protected person, and interested persons whether  
12.2 there are concurrent proceedings in which the counsel is the attorney for the proposed  
12.3 conservator or conservator and whether there is a risk of a conflict of interest under  
12.4 Rule 1.7 of the Rules of Professional Conduct so that the representation of the proposed  
12.5 protected person or protected person will be materially limited by counsel's concurrent  
12.6 responsibilities to the proposed conservator or conservator. If there is a risk of a conflict of  
12.7 interest, the counsel must not be appointed, unless:

12.8 (1) the court determines that the proposed protected person or protected person is  
12.9 able to give informed consent to the representation and, if the proposed protected person  
12.10 or protected person consents, the consent is confirmed in writing pursuant to Rule 1.7; or

12.11 (2) the court determines that there is not a risk of a conflict of interest under Rule 1.7  
12.12 requiring the appointment of different counsel.

12.13 Counsel must be appointed immediately after any petition under this part is served  
12.14 pursuant to section 524.5-404. Counsel has the full right of subpoena. In all proceedings  
12.15 under this part, counsel shall:

12.16 (1) consult with the respondent before any hearing;

12.17 (2) be given adequate time to prepare for all hearings; and

12.18 (3) continue to represent the respondent throughout any proceedings under section  
12.19 524.5-408, provided that such appointment shall expire upon the expiration of the appeal  
12.20 time for the order appointing conservator or the order dismissing a petition, or upon such  
12.21 other time or event as the court may direct.

12.22 The court need not appoint counsel to represent the respondent on a voluntary  
12.23 petition, and the court may remove a court-appointed attorney at any time if the court finds  
12.24 that the respondent has made a knowing and intelligent waiver of the right to counsel  
12.25 or has obtained private counsel.

12.26 (c) The visitor shall personally serve the notice and petition upon the respondent  
12.27 and shall offer to read the notice and petition to the respondent, and if so requested, the  
12.28 visitor shall read the notice and petition to such person. The visitor shall also interview the  
12.29 respondent in person, and to the extent that the respondent is able to understand:

12.30 (1) explain to the respondent the substance of the petition and the nature, purpose,  
12.31 and effect of the proceeding;

12.32 (2) if the appointment of a conservator is requested, inform the respondent of the  
12.33 general powers and duties of a conservator and determine the respondent's views regarding  
12.34 the proposed conservator, the proposed conservator's powers and duties, and the scope and  
12.35 duration of the proposed conservatorship;

13.1 (3) inform the respondent of the respondent's rights, including the right to employ  
13.2 and consult with a lawyer at the respondent's own expense, and the right to request a  
13.3 court-appointed lawyer; and

13.4 (4) inform the respondent that all costs and expenses of the proceeding, including  
13.5 respondent's attorney fees, will be paid from the respondent's estate.

13.6 (d) In addition to the duties set out in paragraph (c), the visitor shall make any other  
13.7 investigations the court directs.

13.8 (e) The visitor shall promptly file a report with the court which must include:

13.9 (1) recommendations regarding the appropriateness of a conservatorship, including  
13.10 whether less restrictive means of intervention are available, the type of conservatorship,  
13.11 and, if a limited conservatorship, the powers and duties to be granted the limited  
13.12 conservator, and the assets over which the conservator should be granted authority;

13.13 (2) a statement as to whether the respondent approves or disapproves of the proposed  
13.14 conservator, and the powers and duties proposed or the scope of the conservatorship; and

13.15 (3) any other matters the court directs.

13.16 (f) While a petition to establish a conservatorship or for another protective order  
13.17 is pending, after preliminary hearing and without notice to others, the court may make  
13.18 orders to preserve and apply the property of the respondent as may be required for the  
13.19 support of the respondent or individuals who are in fact dependent upon the respondent,  
13.20 and may appoint an agent to assist in that task.

13.21 (g) Before the initial appointment, and annually within 30 days after the anniversary  
13.22 date of the appointment, the proposed conservator or conservator shall file an informational  
13.23 statement with the court. The statement must be a sworn affidavit containing the following  
13.24 information:

13.25 (1) the person's educational background and relevant work and other experience;

13.26 (2) the person's addresses and telephone numbers, including places of business or  
13.27 residence where the conservator can be contacted;

13.28 (3) whether the person has ever been removed for cause from serving as a guardian  
13.29 or conservator and if so, the case number and court location;

13.30 (4) any changes occurring that would affect the accuracy of information contained in  
13.31 the most recent criminal background study conducted pursuant to section 524.5-118; and

13.32 (5) if applicable, the amount of reimbursement for services rendered to the protected  
13.33 person that the person has received during the previous year.

13.34 Sec. 13. Minnesota Statutes 2008, section 524.5-409, is amended to read:

13.35 **524.5-409 FINDINGS; ORDER OF APPOINTMENT.**

14.1 (a) The court may appoint a limited or unlimited conservator for a respondent only  
14.2 if it finds that:

14.3 (1) by clear and convincing evidence, the individual is unable to manage property  
14.4 and business affairs because of an impairment in the ability to receive and evaluate  
14.5 information or make decisions, even with the use of appropriate technological assistance,  
14.6 or because the individual is missing, detained, or unable to return to the United States;

14.7 (2) by a preponderance of evidence, the individual has property that will be wasted  
14.8 or dissipated unless management is provided or money is needed for the support, care,  
14.9 education, health, and welfare of the individual or of individuals who are entitled to the  
14.10 individual's support and that protection is necessary or desirable to obtain or provide  
14.11 money; and

14.12 (3) the respondent's identified needs cannot be met by less restrictive means,  
14.13 including use of appropriate technological assistance.

14.14 (b) Alternatively, the court, with appropriate findings, may enter any other  
14.15 appropriate order, or dismiss the proceeding.

14.16 (c) The court, whenever feasible, shall grant to a conservator only those powers  
14.17 necessitated by the protected person's limitations and demonstrated needs and make  
14.18 appointive and other orders that will encourage the development of the protected person's  
14.19 maximum self-reliance and independence.

14.20 (d) Within 14 days after an appointment, the conservator shall send or deliver to the  
14.21 protected person, if the protected person has attained 14 years of age and is not missing,  
14.22 detained, or unable to return to the United States, and counsel if represented at the hearing,  
14.23 a copy of the order of appointment accompanied by a notice which advises the protected  
14.24 person of the right to appeal the conservatorship appointment in the time and manner  
14.25 provided by the Rules of Appellate Procedure.

14.26 (e) Each year, within 30 days after the anniversary date of an appointment, a  
14.27 conservator shall send or deliver to the protected person and to interested persons of  
14.28 record with the court a notice of the right to request termination or modification of the  
14.29 conservatorship or for any order that is in the best interests of the protected person or for  
14.30 other appropriate relief.

14.31 (f) The appointment of a conservator or the entry of another protective order is not a  
14.32 determination of incapacity of the protected person.

14.33 Sec. 14. Minnesota Statutes 2008, section 524.5-413, is amended to read:

14.34 **524.5-413 WHO MAY BE CONSERVATOR; PRIORITIES.**

15.1 (a) Except as otherwise provided in paragraph (d), the court, in appointing a  
15.2 conservator, shall consider persons otherwise qualified in the following order of priority:

15.3 (1) a conservator, guardian of the estate, or other like fiduciary appointed or  
15.4 recognized by an appropriate court of any other jurisdiction in which the protected person  
15.5 resides;

15.6 (2) a person nominated as conservator by the respondent, including the respondent's  
15.7 most recent nomination made in a durable power of attorney, if the respondent has attained  
15.8 14 years of age and at the time of the nomination had sufficient capacity to express  
15.9 a preference;

15.10 (3) an agent appointed by the respondent to manage the respondent's property under  
15.11 a durable power of attorney;

15.12 (4) the spouse of the respondent;

15.13 (5) an adult child of the respondent;

15.14 (6) a parent of the respondent; ~~and~~

15.15 (7) an adult with whom the respondent has resided for more than six months before  
15.16 the filing of the petition;

15.17 (8) an adult who is related to the respondent by blood, adoption, or marriage; and

15.18 (9) any other adult or a professional conservator.

15.19 (b) A person having priority under paragraph (a), clause (1), (4), (5), or (6), may  
15.20 designate in writing a substitute to serve instead and thereby transfer the priority to the  
15.21 substitute.

15.22 (c) The court, acting in the best interest of the protected person, may decline to  
15.23 appoint a person having priority and appoint a person having a lower priority or no  
15.24 priority. With respect to persons having equal priority, the court shall select the one it  
15.25 considers best qualified.

15.26 (d) In any proceeding where the value of the personal property of the estate of the  
15.27 proposed protected person, in the initial inventory of the estate filed by the conservator  
15.28 pursuant to section 524.5-419, is expected to be at least \$10,000, the court shall require  
15.29 the conservator to post a bond.

15.30 (e) Any individual or agency which provides residence, custodial care, medical care,  
15.31 employment training, or other care or services for which they receive a fee may not be  
15.32 appointed as conservator unless related to the respondent by blood, marriage, or adoption.

15.33 **EFFECTIVE DATE; APPLICABILITY.** The bond requirement provided in  
15.34 paragraph (d) does not apply to conservators appointed prior to the effective date of this  
15.35 section.

16.1 Sec. 15. Minnesota Statutes 2008, section 524.5-414, is amended to read:

16.2 **524.5-414 PETITION FOR ORDER SUBSEQUENT TO APPOINTMENT.**

16.3 (a) A protected person or an interested person may file a petition in the appointing  
16.4 court for an order:

16.5 (1) requiring bond or collateral or additional bond or collateral, or reducing bond;

16.6 (2) requiring an accounting for the administration of the protected person's estate;

16.7 (3) directing distribution;

16.8 (4) removing the conservator and appointing a temporary or successor conservator;

16.9 (5) modifying the type of appointment or powers granted to the conservator if  
16.10 the extent of protection or management previously granted is currently excessive or  
16.11 insufficient or the protected person's ability to manage the estate and business affairs  
16.12 has so changed as to warrant the action; or

16.13 (6) acting in the protected person's best interests or granting other appropriate relief.

16.14 (b) A conservator may petition the appointing court for instructions concerning  
16.15 fiduciary responsibility.

16.16 (c) On notice and hearing the petition, the court may give appropriate instructions  
16.17 and make any appropriate order.

16.18 (d) The court may, at its own discretion, waive the notice or hearing requirements  
16.19 for the relief requested in a petition filed under this section.

16.20 Sec. 16. Minnesota Statutes 2008, section 524.5-420, is amended to read:

16.21 **524.5-420 REPORTS; APPOINTMENT OF VISITOR; MONITORING;**  
16.22 **COURT ORDERS.**

16.23 (a) A conservator shall report to the court for administration of the estate annually  
16.24 unless the court otherwise directs, upon resignation or removal, upon termination of  
16.25 the conservatorship, and at other times as the court directs. An order, after notice and  
16.26 hearing, allowing an intermediate report of a conservator adjudicates liabilities concerning  
16.27 the matters adequately disclosed in the accounting. An order, after notice and hearing,  
16.28 allowing a final report adjudicates all previously unsettled liabilities relating to the  
16.29 conservatorship.

16.30 (b) A report must state or contain a listing of the assets of the estate under the  
16.31 conservator's control and a listing of the receipts, disbursements, and distributions during  
16.32 the reporting period.

16.33 (c) A protected person or an interested person of record with the court may submit to  
16.34 the court a written statement disputing account statements regarding the administration of



17.1 the estate that are contained in the report and may petition the court for any order that is in  
17.2 the best interests of the protected person and the estate or for other appropriate relief.

17.3 (d) The court may appoint a visitor to review a report or plan, interview the protected  
17.4 person or conservator, and make any other investigation the court directs. In connection  
17.5 with a report, the court may order a conservator to submit the assets of the estate to an  
17.6 appropriate examination to be made in a manner the court directs.

17.7 ~~(d)~~ (e) The court shall establish a system for monitoring of conservatorships,  
17.8 including the filing and review of conservators' reports and plans. If an annual report is  
17.9 not filed within 60 days of the required date, the court shall issue an order to show cause.