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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. 40

01/10/2013 Authored by Hilstrom and Loeffler

The bill was read for the first time and referred to the Committee on Civil Law

01/28/2013 Adoption of Report: Pass and re-referred to the Committee on Public Safety Finance and Policy

01/31/2013 Adoption of Report: Pass as Amended and re-referred to the Committee on Health and Human Services Finance

1.1 A bill for an act
1.2 relating to protected persons; guardians and conservators; modifying provisions
1.3 related to the appointment of guardians and conservators; increasing background
1.4 study fee; modifying contents of annual reports made by guardians and
1.5 conservators; amending Minnesota Statutes 2012, sections 245C.32, subdivision
1.6 2; 524.5-118, subdivision 1, by adding a subdivision; 524.5-303; 524.5-316;
1.7 524.5-403; 524.5-420.

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

1.9 Section 1. Minnesota Statutes 2012, section 245C.32, subdivision 2, is amended to read:

1.10 Subd. 2. **Use.** (a) The commissioner may also use these systems and records to
1.11 obtain and provide criminal history data from the Bureau of Criminal Apprehension,
1.12 criminal history data held by the commissioner, and data about substantiated maltreatment
1.13 under section 626.556 or 626.557, for other purposes, provided that:

1.14 (1) the background study is specifically authorized in statute; or

1.15 (2) the request is made with the informed consent of the subject of the study as
1.16 provided in section 13.05, subdivision 4.

1.17 (b) An individual making a request under paragraph (a), clause (2), must agree in
1.18 writing not to disclose the data to any other individual without the consent of the subject
1.19 of the data.

1.20 (c) The commissioner may recover the cost of obtaining and providing background
1.21 study data by charging the individual or entity requesting the study a fee of no more
1.22 than ~~\$20~~ \$22 per study. The fees collected under this paragraph are appropriated to the
1.23 commissioner for the purpose of conducting background studies.

1.24 Sec. 2. Minnesota Statutes 2012, section 524.5-118, subdivision 1, is amended to read:

2.1 Subdivision 1. **When required; exception.** (a) The court shall require a background
2.2 study under this section:

2.3 (1) before the appointment of a guardian or conservator, unless a background study
2.4 has been done on the person under this section within the previous ~~five~~ two years; and

2.5 (2) once every ~~five~~ two years after the appointment, if the person continues to serve
2.6 as a guardian or conservator.

2.7 (b) The background study must include:

2.8 (1) criminal history data from the Bureau of Criminal Apprehension, other criminal
2.9 history data held by the commissioner of human services, and data regarding whether the
2.10 person has been a perpetrator of substantiated maltreatment of a vulnerable adult and a
2.11 or minor;

2.12 (e) ~~The court shall request a search of the~~ (2) criminal history data from the National
2.13 Criminal Records Repository if the proposed guardian or conservator has not resided in
2.14 Minnesota for the previous ~~five~~ ten years or if the Bureau of Criminal Apprehension
2.15 information received from the commissioner of human services under subdivision 2,
2.16 paragraph (b), indicates that the subject is a multistate offender or that the individual's
2.17 multistate offender status is undetermined.

2.18 (3) state licensing agency data if the proposed guardian or conservator has ever been
2.19 denied a professional license in the state of Minnesota or elsewhere that is directly related
2.20 to the responsibilities of a professional fiduciary, or has ever held a professional license
2.21 directly related to the responsibilities of a professional fiduciary that was conditioned,
2.22 suspended, revoked, or canceled.

2.23 (d) ~~(c)~~ If the guardian or conservator is not an individual, the background study must
2.24 be done on all individuals currently employed by the proposed guardian or conservator
2.25 who will be responsible for exercising powers and duties under the guardianship or
2.26 conservatorship.

2.27 (e) ~~(d)~~ If the court determines that it would be in the best interests of the ward or
2.28 protected person to appoint a guardian or conservator before the background study can
2.29 be completed, the court may make the appointment pending the results of the study,
2.30 however, the background study must then be completed as soon as reasonably possible
2.31 after appointment, no later than 30 days after appointment.

2.32 (f) ~~(e)~~ The fee for conducting a background study for appointment of a professional
2.33 guardian or conservator must be paid by the guardian or conservator. In other cases,
2.34 the fee must be paid as follows:

2.35 (1) if the matter is proceeding in forma pauperis, the fee is an expense for purposes
2.36 of section 524.5-502, paragraph (a);

3.1 (2) if there is an estate of the ward or protected person, the fee must be paid from
3.2 the estate; or

3.3 (3) in the case of a guardianship or conservatorship of the person that is not
3.4 proceeding in forma pauperis, the court may order that the fee be paid by the guardian or
3.5 conservator or by the court.

3.6 ~~(g)~~ (f) The requirements of this subdivision do not apply if the guardian or
3.7 conservator is:

3.8 (1) a state agency or county;

3.9 (2) a parent or guardian of a proposed ward or protected person who has a
3.10 developmental disability, if the parent or guardian has raised the proposed ward or
3.11 protected person in the family home until the time the petition is filed, unless counsel
3.12 appointed for the proposed ward or protected person under section 524.5-205, paragraph
3.13 (d); 524.5-304, paragraph (b); 524.5-405, paragraph (a); or 524.5-406, paragraph (b),
3.14 recommends a background study; or

3.15 (3) a bank with trust powers, bank and trust company, or trust company, organized
3.16 under the laws of any state or of the United States and which is regulated by the
3.17 commissioner of commerce or a federal regulator.

3.18 Sec. 3. Minnesota Statutes 2012, section 524.5-118, is amended by adding a
3.19 subdivision to read:

3.20 Subd. 2a. **Procedure; state licensing agency data.** The court shall request the
3.21 commissioner of human services to provide the court, within 25 working days of receipt
3.22 of the court's request, with licensing agency data from the appropriate Minnesota licensing
3.23 agencies. Each Minnesota licensing agency with licensing agency data shall provide the
3.24 data to the commissioner within ten working days of the commissioner's request. The
3.25 commissioner's request may be made by e-mail. The data provided by the commissioner
3.26 to the court shall include, as applicable, license number and status; original date of issue;
3.27 last renewal date; expiration date; date of denial, condition, suspension, revocation, or
3.28 cancellation; the name of the licensing agency that denied, conditioned, suspended,
3.29 revoked, or canceled the license; and the basis for the denial, condition, suspension,
3.30 revocation, or cancellation of the license. If the proposed guardian or conservator has
3.31 resided in a state other than Minnesota in the previous ten years, licensing agency
3.32 data shall also include the licensing agency data from the other state or states where
3.33 the proposed guardian or conservator resided. If the proposed guardian or conservator
3.34 currently has or previously had a professional license in another state or states that is

4.1 directly related to the responsibilities of a professional fiduciary, state licensing agency
4.2 data shall also include data from the relevant licensing agency of that state or states.

4.3 Sec. 4. Minnesota Statutes 2012, section 524.5-303, is amended to read:

4.4 **524.5-303 JUDICIAL APPOINTMENT OF GUARDIAN: PETITION.**

4.5 (a) An individual or a person interested in the individual's welfare may petition for
4.6 a determination of incapacity, in whole or in part, and for the appointment of a limited
4.7 or unlimited guardian for the individual.

4.8 (b) The petition must set forth the petitioner's name, residence, current address if
4.9 different, relationship to the respondent, and interest in the appointment and, to the extent
4.10 known, state or contain the following with respect to the respondent and the relief requested:

4.11 (1) the respondent's name, age, principal residence, current street address, and, if
4.12 different, the address of the dwelling in which it is proposed that the respondent will
4.13 reside if the appointment is made;

4.14 (2) the name and address of the respondent's:

4.15 (i) spouse, or if the respondent has none, an adult with whom the respondent has
4.16 resided for more than six months before the filing of the petition; and

4.17 (ii) adult children or, if the respondent has none, the respondent's parents and adult
4.18 brothers and sisters, or if the respondent has none, at least one of the adults nearest in
4.19 kinship to the respondent who can be found;

4.20 (3) the name of the administrative head and address of the institution where the
4.21 respondent is a patient, resident, or client of any hospital, nursing home, home care
4.22 agency, or other institution;

4.23 (4) the name and address of any legal representative for the respondent;

4.24 (5) the name, address, and telephone number of any person nominated as guardian
4.25 by the respondent in any manner permitted by law, including a health care agent nominated
4.26 in a health care directive;

4.27 (6) the name, address, and telephone number of any proposed guardian and the
4.28 reason why the proposed guardian should be selected;

4.29 (7) the name and address of any health care agent or proxy appointed pursuant to
4.30 a health care directive as defined in section 145C.01, a living will under chapter 145B,
4.31 or other similar document executed in another state and enforceable under the laws of
4.32 this state;

4.33 (8) the reason why guardianship is necessary, including a brief description of the
4.34 nature and extent of the respondent's alleged incapacity;

5.1 (9) if an unlimited guardianship is requested, the reason why limited guardianship
 5.2 is inappropriate and, if a limited guardianship is requested, the powers to be granted to
 5.3 the limited guardian; and

5.4 (10) a general statement of the respondent's property with an estimate of its value,
 5.5 including any insurance or pension, and the source and amount of any other anticipated
 5.6 income or receipts.

5.7 (c) The petition must also set forth the following information regarding the proposed
 5.8 guardian:

5.9 (1) whether the proposed guardian has ever been removed for cause from serving as
 5.10 a guardian or conservator and, if so, the case number and court location; ~~and~~

5.11 (2) if the proposed guardian is a professional guardian or conservator, a summary of
 5.12 the proposed guardian's educational background and relevant work and other experience;₂

5.13 (3) whether the proposed guardian has ever applied for or held, at any time, any
 5.14 professional license, and if so, the name of the licensing agency, and as applicable, the
 5.15 license number and status; whether the license is active or has been denied, conditioned,
 5.16 suspended, revoked, or canceled; and the basis for the denial, condition, suspension,
 5.17 revocation, or cancellation of the license;

5.18 (4) whether the proposed guardian has ever been found civilly liable in an action
 5.19 that involved fraud, misrepresentation, material omission, misappropriation, theft, or
 5.20 conversion, and if so, the case number and court location;

5.21 (5) whether the proposed guardian has ever filed for or received protection under the
 5.22 bankruptcy laws, and if so, the case number and court location;

5.23 (6) whether the proposed guardian has any outstanding civil monetary judgments
 5.24 against the proposed guardian, and if so, the case number, court location, and outstanding
 5.25 amount owed;

5.26 (7) whether an order for protection or harassment restraining order has ever been
 5.27 issued against the proposed guardian, and if so, the case number and court location; and

5.28 (8) whether the proposed guardian has ever been convicted of a crime, and if so, the
 5.29 case number and the crime of which the guardian was convicted.

5.30 Sec. 5. Minnesota Statutes 2012, section 524.5-316, is amended to read:

5.31 **524.5-316 REPORTS; MONITORING OF GUARDIANSHIP; COURT**
 5.32 **ORDERS.**

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

- 6.1 (1) the current mental, physical, and social condition of the ward;
- 6.2 (2) the living arrangements for all addresses of the ward during the reporting period;
- 6.3 (3) any restrictions placed on the ward's right to communication and visitation with
6.4 persons of the ward's choice and the factual bases for those restrictions;
- 6.5 (4) the medical, educational, vocational, and other services provided to the ward and
6.6 the guardian's opinion as to the adequacy of the ward's care;
- 6.7 (5) a recommendation as to the need for continued guardianship and any
6.8 recommended changes in the scope of the guardianship;
- 6.9 (6) an address and telephone number where the guardian can be contacted; and
- 6.10 ~~(7) whether the guardian has ever been removed for cause from serving as a guardian~~
6.11 ~~or conservator and, if so, the case number and court location;~~
- 6.12 ~~(8) any changes occurring that would affect the accuracy of information contained~~
6.13 ~~in the most recent criminal background study of the guardian conducted under section~~
6.14 ~~524.5-118; and~~
- 6.15 ~~(9)~~ (7) if applicable, the amount of reimbursement for services rendered to the ward
6.16 that the guardian received during the previous year that were not reimbursed by county
6.17 contract.
- 6.18 (b) A guardian shall report to the court in writing within 30 days of the occurrence of
6.19 any of the events listed in this subdivision. A copy of the report must be provided to the
6.20 ward and to interested persons of record with the court. A guardian shall report when:
- 6.21 (1) the guardian is removed for cause from serving as a guardian or conservator, and
6.22 if so, the case number and court location;
- 6.23 (2) the guardian has a professional license denied, conditioned, suspended, revoked,
6.24 or canceled, and if so, the licensing agency and license number, and the basis for denial,
6.25 condition, suspension, revocation, or cancellation of the license;
- 6.26 (3) the guardian is found civilly liable in an action that involves fraud,
6.27 misrepresentation, material omission, misappropriation, theft, or conversion, and if so, the
6.28 case number and court location;
- 6.29 (4) the guardian files for or receives protection under the bankruptcy laws, and
6.30 if so, the case number and court location;
- 6.31 (5) a civil monetary judgment is entered against the guardian, and if so, the case
6.32 number, court location, and outstanding amount owed;
- 6.33 (6) the guardian is convicted of a crime, and if so, the case number and court
6.34 location; or
- 6.35 (7) an order for protection or harassment restraining order is issued against the
6.36 guardian, and if so, the case number and court location.

7.1 ~~(b)~~ (c) A ward or interested person of record with the court may submit to the court a
 7.2 written statement disputing statements or conclusions regarding the condition of the ward
 7.3 or addressing any disciplinary or legal action that are is contained in the report guardian's
 7.4 reports and may petition the court for an order that is in the best interests of the ward or
 7.5 for other appropriate relief.

7.6 ~~(e)~~ (d) An interested person may notify the court in writing that the interested person
 7.7 does not wish to receive copies of reports required under this section.

7.8 ~~(d)~~ (e) The court may appoint a visitor to review a report, interview the ward or
 7.9 guardian, and make any other investigation the court directs.

7.10 ~~(e)~~ (f) The court shall establish a system for monitoring guardianships, including the
 7.11 filing and review of annual reports. If an annual report is not filed within 60 days of the
 7.12 required date, the court shall issue an order to show cause.

7.13 (g) If a guardian fails to comply with this section, the court may decline to appoint that
 7.14 person as a guardian or conservator, or may remove a person as guardian or conservator.

7.15 Sec. 6. Minnesota Statutes 2012, section 524.5-403, is amended to read:

7.16 **524.5-403 ORIGINAL PETITION FOR APPOINTMENT OR PROTECTIVE**
 7.17 **ORDER.**

7.18 (a) The following may petition for the appointment of a conservator or for any
 7.19 other appropriate protective order:

7.20 (1) the person to be protected;

7.21 (2) an individual interested in the estate, affairs, or welfare of the person to be
 7.22 protected; or

7.23 (3) a person who would be adversely affected by lack of effective management of
 7.24 the property and business affairs of the person to be protected.

7.25 (b) The petition must set forth the petitioner's name, residence, current address
 7.26 if different, relationship to the respondent, and interest in the appointment or other
 7.27 protective order, and, to the extent known, state or contain the following with respect to
 7.28 the respondent and the relief requested:

7.29 (1) the respondent's name, age, principal residence, current street address, and, if
 7.30 different, the address of the dwelling where it is proposed that the respondent will reside if
 7.31 the appointment is made;

7.32 (2) if the petition alleges impairment in the respondent's ability to receive and
 7.33 evaluate information, a brief description of the nature and extent of the respondent's
 7.34 alleged impairment;

8.1 (3) if the petition alleges that the respondent is missing, detained, or unable to
8.2 return to the United States, a statement of the relevant circumstances, including the time
8.3 and nature of the disappearance or detention and a description of any search or inquiry
8.4 concerning the respondent's whereabouts;

8.5 (4) the name and address of the respondent's:

8.6 (i) spouse, or if the respondent has none, an adult with whom the respondent has
8.7 resided for more than six months before the filing of the petition; and

8.8 (ii) adult children or, if the respondent has none, the respondent's parents and adult
8.9 brothers and sisters or, if the respondent has none, at least one of the adults nearest in
8.10 kinship to the respondent who can be found;

8.11 (5) the name of the administrative head and address of the institution where the
8.12 respondent is a patient, resident, or client of any hospital, nursing home, home care
8.13 agency, or other institution;

8.14 (6) the name and address of any legal representative for the respondent;

8.15 (7) the name and address of any health care agent or proxy appointed pursuant to
8.16 a health care directive as defined in section 145C.01, a living will under chapter 145B,
8.17 or other similar document executed in another state and enforceable under the laws of
8.18 this state;

8.19 (8) a general statement of the respondent's property with an estimate of its value,
8.20 including any insurance or pension, and the source and amount of other anticipated
8.21 income or receipts; and

8.22 (9) the reason why a conservatorship or other protective order is in the best interest
8.23 of the respondent.

8.24 (c) If a conservatorship is requested, the petition must also set forth to the extent
8.25 known:

8.26 (1) the name, address, and telephone number of any proposed conservator and the
8.27 reason why the proposed conservator should be selected;

8.28 (2) the name, address, and telephone number of any person nominated as conservator
8.29 by the respondent if the respondent has attained 14 years of age; and

8.30 (3) the type of conservatorship requested and, if an unlimited conservatorship,
8.31 the reason why limited conservatorship is inappropriate or, if a limited conservatorship,
8.32 the property to be placed under the conservator's control and any limitation on the
8.33 conservator's powers and duties.

8.34 (d) The petition must also set forth the following information regarding the proposed
8.35 conservator:

9.1 (1) whether the proposed conservator has ever been removed for cause from serving
 9.2 as a guardian or conservator and, if so, the case number and court location; ~~and~~

9.3 (2) if the proposed conservator is a professional guardian or conservator, a summary
 9.4 of the proposed conservator's educational background and relevant work and other
 9.5 experience;

9.6 (3) whether the proposed conservator has ever applied for or held, at any time, any
 9.7 professional license, and if so, the name of the licensing agency, and as applicable, the
 9.8 license number and status; whether the license is active or has been denied, conditioned,
 9.9 suspended, revoked, or canceled; and the basis for the denial, condition, suspension,
 9.10 revocation, or cancellation of the license;

9.11 (4) whether the proposed conservator has ever been found civilly liable in an action
 9.12 that involved fraud, misrepresentation, material omission, misappropriation, theft, or
 9.13 conversion, and if so, the case number and court location;

9.14 (5) whether the proposed conservator has ever filed for or received protection under
 9.15 the bankruptcy laws, and if so, the case number and court location;

9.16 (6) whether the proposed conservator has any outstanding civil monetary judgments
 9.17 against the proposed conservator, and if so, the case number, court location, and
 9.18 outstanding amount owed;

9.19 (7) whether an order for protection or harassment restraining order has ever been
 9.20 issued against the proposed conservator, and if so, the case number and court location; and

9.21 (8) whether the proposed conservator has ever been convicted of a crime, and if so,
 9.22 the case number and the crime of which the conservator was convicted.

9.23 Sec. 7. Minnesota Statutes 2012, section 524.5-420, is amended to read:

9.24 **524.5-420 REPORTS; APPOINTMENT OF VISITOR; MONITORING;**
 9.25 **COURT ORDERS.**

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

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

9.35 (c) The report must also state:

10.1 ~~(1)~~ an address and telephone number where the conservator can be contacted;

10.2 ~~(2)~~ whether the conservator has ever been removed for cause from serving as a
10.3 guardian or conservator and, if so, the case number and court locations; and

10.4 ~~(3)~~ any changes occurring that would affect the accuracy of information contained in
10.5 the most recent criminal background study of the conservator conducted under section
10.6 524.5-118.

10.7 (d) A conservator shall report to the court in writing within 30 days of the occurrence
10.8 of any of the events listed in this subdivision. A copy of the report must be provided to
10.9 the protected person and to interested persons of record with the court. A conservator
10.10 shall report when:

10.11 (1) the conservator is removed for cause from serving as a guardian or conservator,
10.12 and if so, the case number and court location;

10.13 (2) the conservator has a professional license denied, conditioned, suspended,
10.14 revoked, or canceled, and if so, the licensing agency and license number, and the basis for
10.15 denial, condition, suspension, revocation, or cancellation of the license;

10.16 (3) the conservator is found civilly liable in an action that involves fraud,
10.17 misrepresentation, material omission, misappropriation, theft, or conversion, and if so, the
10.18 case number and court location;

10.19 (4) the conservator files for or receives protection under the bankruptcy laws, and
10.20 if so, the case number and court location;

10.21 (5) a civil monetary judgment is entered against the conservator, and if so, the case
10.22 number, court location, and outstanding amount owed;

10.23 (6) the conservator is convicted of a crime, and if so, the case number and court
10.24 location; or

10.25 (7) an order for protection or harassment restraining order is issued against the
10.26 conservator, and if so, the case number and court location.

10.27 ~~(d)~~ (e) A protected person or an interested person of record with the court may
10.28 submit to the court a written statement disputing account statements regarding the
10.29 administration of the estate or addressing any disciplinary or legal action that are is
10.30 contained in the report reports and may petition the court for any order that is in the best
10.31 interests of the protected person and the estate or for other appropriate relief.

10.32 ~~(e)~~ (f) An interested person may notify the court in writing that the interested person
10.33 does not wish to receive copies of reports required under this section.

10.34 ~~(f)~~ (g) The court may appoint a visitor to review a report or plan, interview the
10.35 protected person or conservator, and make any other investigation the court directs. In

11.1 connection with a report, the court may order a conservator to submit the assets of the
11.2 estate to an appropriate examination to be made in a manner the court directs.

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

11.6 (i) If a conservator fails to comply with this section, the court may decline to appoint
11.7 that person as a guardian or conservator, or may remove a person as guardian or conservator.