

Subd. 20. CONTINGENT PROVISION. This subdivision applies if it is determined that the legislature does not have authority to ratify a labor agreement with the exceptions stated in this section, or if it is determined that there is no longer a contract between the state and an exclusive representative of state employees due to this section. If this subdivision applies, then until the parties enter into a subsequent labor agreement, the terms and conditions of employment for employees covered by the proposed labor agreement are as contained in the agreement submitted to the legislative coordinating commission subcommittee on employee relations, except that any provision in conflict with subdivision 19 is not effective and must not be implemented.

**Sec. 2. RELATION TO OTHER LAW.**

Section 1 supersedes Minnesota Statutes, chapter 179A, and any other provision of law.

**Sec. 3. EFFECTIVE DATE.**

Sections 1 and 2 are effective the day following final enactment. A person receiving insurance coverage on that day due to the person's status as a same-sex domestic partner of a state employee may continue that coverage until June 30, 2003. A person receiving a tuition waiver on that date due to the person's status as a same-sex domestic partner of a state employee may continue to receive the waiver until the completion of the semester next ending after the effective date of sections 1 and 2.

Presented to the governor April 7, 2003

Signed by the governor April 9, 2003, 3:45 p.m.

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**CHAPTER 12—S.F.No. 112**

*An act relating to probate; adopting article 5 of the Uniform Probate Code relating to guardianship and conservatorship; amending Minnesota Statutes 2002, sections 145C.09, by adding a subdivision; 201.014, subdivision 2; 201.15, subdivision 1; 245A.041; 507.04; 524.2-502; 524.3-203; proposing coding for new law in Minnesota Statutes, chapter 524; repealing Minnesota Statutes 2002, sections 524.5-505; 525.539; 525.54; 525.541; 525.542; 525.543; 525.544; 525.545; 525.55; 525.5501; 525.551; 525.5515; 525.552; 525.56; 525.561; 525.562; 525.57; 525.58; 525.581; 525.582; 525.583; 525.59; 525.591; 525.60; 525.61; 525.615; 525.6155; 525.616; 525.6165; 525.617; 525.6175; 525.618; 525.6185; 525.619; 525.6192; 525.6194; 525.6195; 525.6196; 525.6197; 525.6198; 525.6199; 525.62; 525.63; 525.64; 525.641; 525.642; 525.65; 525.651; 525.652; 525.66; 525.661; 525.662; 525.67; 525.68; 525.69; 525.691; 525.692; 525.70; 525.702; 525.703; 525.705.*

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

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**ARTICLE 1****ADOPTION OF UNIFORM****GUARDIANSHIP AND PROTECTIVE PROCEEDINGS ACT****PART 1****GENERAL PROVISIONS****Section 1. [524.5-101] SHORT TITLE.**

Sections 524.5-101 to 524.5-502 may be cited as the Uniform Guardianship and Protective Proceedings Act.

**Sec. 2. [524.5-102] DEFINITIONS.**

Subdivision 1. SCOPE. As used in sections 524.5-101 to 524.5-502, the terms defined in this section have the meanings given them.

Subd. 2. CLAIM. "Claim," with respect to a protected person, includes a claim against an individual, whether arising in contract, tort, or otherwise, and a claim against an estate which arises at or after the appointment of a conservator, including expenses of administration.

Subd. 3. CONSERVATOR. "Conservator" means a person who is appointed by a court to manage the estate of a protected person and includes a limited conservator.

Subd. 4. COURT. "Court" means the district court.

Subd. 5. GUARDIAN "Guardian" means a person who has qualified as a guardian of a minor or incapacitated person pursuant to appointment by a parent or spouse, or by the court, and includes a limited, emergency, or temporary substitute guardian but not a guardian ad litem.

Subd. 6. INCAPACITATED PERSON. "Incapacitated person" means an individual who, for reasons other than being a minor, is impaired to the extent of lacking sufficient understanding or capacity to make or communicate responsible personal decisions, and who has demonstrated deficits in behavior which evidence an inability to meet personal needs for medical care, nutrition, clothing, shelter, or safety, even with appropriate technological assistance.

Subd. 7. INTERESTED PERSON. "Interested person" includes:

- (i) the ward, protected person, or respondent;
- (ii) a nominated guardian or conservator, or the duly appointed guardian or conservator;
- (iii) legal representative;

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

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

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

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

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

(ix) any other person designated by the court.

Subd. 8. LEGAL REPRESENTATIVE. "Legal representative" includes a representative payee, a guardian or conservator acting for a respondent in this state or elsewhere, or a trustee or custodian of a trust or custodianship of which the respondent is a beneficiary.

Subd. 9. LETTERS. "Letters" includes letters of guardianship and letters of conservatorship.

Subd. 10. MINOR. "Minor" means an unemancipated individual who has not attained 18 years of age.

Subd. 11. NEXT OF KIN. "Next of kin" shall be determined by the court.

Subd. 12. PARENT. "Parent" means a parent whose parental rights have not been terminated.

Subd. 13. PERSON. "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

Subd. 14. PROTECTED PERSON. "Protected person" means a minor or other individual for whom a conservator has been appointed or other protective order has been made.

Subd. 15. RESPONDENT. "Respondent" means an individual for whom the appointment of a guardian or conservator or other protective order is sought.

Subd. 16. STATE. "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or a territory or insular possession subject to the jurisdiction of the United States.

Subd. 17. WARD. "Ward" means an individual for whom a guardian has been appointed.

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**Sec. 3. [524.5-103] SUPPLEMENTAL GENERAL PRINCIPLES OF LAW APPLICABLE.**

Unless displaced by the particular provisions of this article, the principles of law and equity supplement its provisions.

**Sec. 4. [524.5-104] FACILITY OF TRANSFER.**

(a) A person required to transfer money or personal property to a minor may do so, as to an amount or value not exceeding \$5,000 per year, by transferring it to:

(1) a person who has the care and custody of the minor and with whom the minor resides;

(2) a guardian of the minor;

(3) a custodian under the Uniform Transfers To Minors Act or custodial trustee under the Uniform Custodial Trust Act; or

(4) a financial institution as a deposit in an interest-bearing account or certificate in the sole name of the minor and giving notice of the deposit to the minor.

(b) This section does not apply if the person making payment or delivery knows that a conservator has been appointed or that a proceeding for appointment of a conservator of the minor is pending.

(c) A person who transfers money or property in compliance with this section is not responsible for its proper application.

(d) A guardian or other person who receives money or property for a minor under paragraph (a), clause (1) or (2), may only apply it to the support, care, education, health, and welfare of the minor, and may not derive a personal financial benefit except for reimbursement for necessary expenses. Any excess must be preserved for the future support, care, education, health, and welfare of the minor and any balance must be transferred to the minor upon emancipation or attaining majority.

**Sec. 5. [524.5-106] SUBJECT-MATTER JURISDICTION.**

This article applies to, and the court has jurisdiction over, guardianship and related proceedings for individuals domiciled or present in this state, protective proceedings for individuals domiciled in or having property located in this state, and property coming into the control of a guardian or conservator who is subject to the laws of this state. This article does not apply to any matters or proceedings arising under or governed by chapters 252A, 259, and 260C. Notwithstanding anything else to the contrary, chapters 252A, 259, and 260C exclusively govern the rights, duties, and powers of social service agencies, the commissioner of human services, licensed child placing agencies, and parties with respect to all matters and proceedings arising under those chapters.

**Sec. 6. [524.5-107] TRANSFER OF JURISDICTION.**

(a) Following the appointment of a guardian or conservator or entry of another protective order, the court making the appointment or entering the order may transfer

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the proceeding to a court in another county in this state or to another state if the court is satisfied that a transfer will serve the best interest of the ward or protected person.

(b) A guardian, conservator, or like fiduciary appointed in another state may petition the court for appointment as a guardian or conservator in this state if the state has jurisdiction. The appointment may be made upon proof of appointment in the other state and presentation of a certified copy of the portion of the court record in the other state specified by the court in this state. Notice of hearing on the petition, together with a copy of the petition, must be given to the ward or protected person, if the ward or protected person has attained 14 years of age, and to the persons who would be entitled to notice if the regular procedures for appointment of a guardian or conservator under this article were applicable. The court shall make the appointment in this state unless it concludes that the appointment would not be in the best interest of the ward or protected person. Upon the filing of an acceptance of office and any required bond, the court shall issue appropriate letters of guardianship or conservatorship. Within 14 days after an appointment, the guardian or conservator shall send or deliver a copy of the order of appointment to the ward or protected person, if the ward or protected person has attained 14 years of age, and to all persons given notice of the hearing on the petition.

**Sec. 7. [524.5-108] VENUE.**

(a) Venue for a guardianship proceeding for a minor is in the county of this state in which the minor resides or is present at the time the proceeding is commenced.

(b) Venue for a guardianship proceeding for an incapacitated person is in the county of this state in which the respondent resides and, if the respondent has been admitted to an institution by order of a court of competent jurisdiction, in the county in which that court is located. Venue for the appointment of an emergency or a temporary guardian of an incapacitated person is also in the county in which the respondent is present.

(c) Venue for a protective proceeding is in the county of this state in which the respondent resides, whether or not a guardian has been appointed in another place or, if the respondent does not reside in this state, in any county of this state in which property of the respondent is located.

(d) If a proceeding under this article is brought in more than one county in this state, the court of the county in which the proceeding is first brought has the exclusive right to proceed unless that court determines that venue is properly in another court or that the interests of justice otherwise require that the proceeding be transferred.

(e) If it is in the best interest of the ward or protected person, the venue may be transferred to another county. Upon the filing of a petition by any interested person, or upon the court's own motion, the court shall fix a time and place for the hearing on the transfer. Notice must be given to interested persons, the district court of the county to which venue is proposed to be transferred, and any other party the court designates. Upon proof that a transfer of venue is in the best interest of the ward or protected person or the ward or protected person's estate, and upon settlement and allowance of

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the conservator's accounts, if any, to the time of the hearing, the court shall transmit the entire file to the court of the other county, where all subsequent proceedings must be held.

**Sec. 8. [524.5-109] PRACTICE IN COURT.**

(a) Except as otherwise provided in this article, the rules of civil procedure, including the rules concerning appellate review, govern proceedings under this article.

(b) If guardianship and protective proceedings as to the same individual are commenced or pending in the same court, the proceedings may be consolidated.

**Sec. 9. [524.5-110] LETTERS OF OFFICE.**

The court shall issue appropriate letters of guardianship upon the guardian's filing of an acceptance of office. The court shall issue appropriate letters of conservatorship upon the conservator's filing of an acceptance of office and any required bond. Letters of guardianship must indicate whether the guardian was appointed by the court, a parent, or the spouse. Any limitation on the powers of a guardian or conservator or of the assets subject to a conservatorship must be endorsed on the guardian's or conservator's letters.

**Sec. 10. [524.5-111] EFFECT OF ACCEPTANCE OF APPOINTMENT.**

By accepting appointment as guardian or conservator, a guardian or conservator submits personally to the jurisdiction of the court in any proceeding relating to the guardianship or conservatorship. The petitioner shall send or deliver notice of any proceeding to the guardian or conservator at the guardian's or conservator's address shown in the court records and at any other address then known to the petitioner.

**Sec. 11. [524.5-112] TERMINATION OF OR CHANGE IN GUARDIAN'S OR CONSERVATOR'S APPOINTMENT.**

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

(b) A ward, protected person, or interested person may petition for removal of a guardian or conservator on the ground that removal would be in the best interest of the ward or protected person or for other good cause. A guardian or conservator may petition for permission to resign. A petition for removal or permission to resign may include a request for appointment of a successor guardian or conservator.

(c) The court may appoint an additional guardian or conservator at any time, to serve immediately or upon some other designated event, and may appoint a successor guardian or conservator in the event of a vacancy or make the appointment prior to a

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vacancy, to serve when a vacancy occurs. An additional or successor guardian or conservator may file an acceptance of appointment at any time after the appointment, but in no case later than 30 days after the occurrence of the vacancy or other designated event. The additional or successor guardian or conservator becomes eligible to act on the occurrence of the vacancy or designated event, or the filing of the acceptance of appointment, whichever occurs last. A successor guardian or conservator succeeds to the predecessor's powers, and a successor conservator succeeds to the predecessor's title to the protected person's assets.

**Sec. 12. [524.5-113] NOTICE.**

(a) Except for notice for which specific requirements are otherwise provided in this article or as otherwise ordered by the court for good cause, notice of a hearing on a petition is required for all petitions in the manner prescribed by this section. The petitioner shall give notice of the time and place of the hearing to all interested persons. Notice must be given by mail postmarked at least 14 days before the hearing.

(b) Proof of notice must be made before or at the hearing and filed in the proceeding.

(c) A notice under this article must be given in plain language.

(d) If a patient of a state hospital, regional center, or any state-operated service has a guardianship or conservatorship established, modified, or terminated, the head of the state hospital, regional center, or state-operated service shall be notified. The notice shall require the institution to advise the court of the existence, if known, of a health care directive as defined in section 145C.01, executed by the proposed ward, incapacitated person, or protected person, a living will executed under chapter 145B, or any other similar document executed in another state and enforceable under the laws of this state. If a ward, incapacitated person, or protected person is under the guardianship or conservatorship of the commissioner of human services as mentally retarded or dependent and neglected or is under the temporary custody of the commissioner of human services, the court shall notify the commissioner of human services if the public guardianship or conservatorship is established, modified, or terminated.

(e) If a conservator is required to file a bond pursuant to section 524.5-415, notice of any proceeding must be sent or delivered to the surety at the address shown in the court records at the place where the bond is filed and to any other address then known to the petitioner.

**Sec. 13. [524.5-114] WAIVER OF NOTICE.**

A person may waive notice by a writing signed by the person or the person's attorney and filed in the proceeding. However, a respondent, ward, or protected person may not waive notice.

**Sec. 14. [524.5-115] GUARDIAN AD LITEM.**

At any stage of a proceeding, a court may appoint a guardian ad litem if the court determines that representation of the interest otherwise would be inadequate. If not

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precluded by a conflict of interest, a guardian ad litem may be appointed to represent several individuals or interests. The court shall state on the record the duties of the guardian ad litem and its reasons for the appointment.

**Sec. 15. [524.5-117] MULTIPLE APPOINTMENTS OR NOMINATIONS.**

If a respondent or other person makes more than one written appointment or nomination of a guardian or a conservator, the most recent controls.

**Sec. 16. [524.5-118] BACKGROUND STUDY.**

**Subdivision 1. WHEN REQUIRED; EXCEPTION.** (a) The court shall require a background study under this section:

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

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

(b) The background study must include criminal history data from the bureau of criminal apprehension, other criminal history data held by the commissioner of human services, and data regarding whether the person has been a perpetrator of substantiated maltreatment of a vulnerable adult and a minor.

(c) The court shall request a search of the National Criminal Records Repository if the proposed guardian or conservator has not resided in Minnesota for the previous five years or if the bureau of criminal apprehension information received from the commissioner of human services under subdivision 2, paragraph (b), indicates that the subject is a multistate offender or that the individual's multistate offender status is undetermined.

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

(e) If the court determines that it would be in the best interests of the ward or protected person to appoint a guardian or conservator before the background study can be completed, the court may make the appointment pending the results of the study.

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

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

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

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

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

(1) a state agency or county;

(2) a parent or guardian of a proposed ward or protected person who has mental retardation or a related condition, if the parent or guardian has raised the proposed ward or protected person in the family home until the time the petition is filed, unless counsel appointed for the proposed ward or protected person under section 524.5-205, paragraph (d); 524.5-304, paragraph (b); 524.5-405, paragraph (a); or 524.5-406, paragraph (b), recommends a background study; or

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

**Subd. 2. PROCEDURE; CRIMINAL HISTORY AND MALTREATMENT RECORDS BACKGROUND CHECK.** (a) The court shall request the commissioner of human services to complete a background study under section 245A.041. The request must be accompanied by the applicable fee and the signed consent of the subject of the study authorizing the release of the data obtained to the court. If the court is requesting a search of the National Criminal Records Repository, the request must be accompanied by a set of classifiable fingerprints of the subject of the study. The fingerprints must be recorded on a fingerprint card provided by the commissioner of human services.

(b) The commissioner of human services shall provide the court with information from the bureau of criminal apprehension's criminal justice information system, other criminal history data held by the commissioner of human services, and data regarding substantiated maltreatment of vulnerable adults under section 626.557 and substantiated maltreatment of minors under section 626.556 within 15 working days of receipt of a request. If the subject of the study has been the perpetrator of substantiated maltreatment of a vulnerable adult or minor, the response must include a copy of the public portion of the investigation memorandum under section 626.557, subdivision 12b, or the public portion of the investigation memorandum under section 626.556, subdivision 10f. If the court did not request a search of the National Criminal Records Repository and information from the bureau of criminal apprehension indicates that the subject is a multistate offender or that multistate offender status is undetermined, the response must include this information. The commissioner shall provide the court with information from the National Criminal Records Repository within three working days of the commissioner's receipt of the data.

(c) Notwithstanding section 626.557, subdivision 12b, or 626.556, subdivision 10f, if the commissioner of human services or a county lead agency has information that a person on whom a background study was previously done under this section has been determined to be a perpetrator of maltreatment of a vulnerable adult or minor, the commissioner or the county may provide this information to the court that requested the background study. The commissioner may also provide the court with additional

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criminal history or substantiated maltreatment information that becomes available after the background study is done.

**Subd. 3. FORM.** The commissioner of human services shall develop a form to be used for requesting a background study under this section, which must include:

- (1) a notification to the subject of the study that the court will request the commissioner to perform a background study under this section;
- (2) a notification to the subject of the rights in subdivision 4; and
- (3) a signed consent to conduct the background study.

**Subd. 4. RIGHTS.** The court shall notify the subject of a background study that the subject has the following rights:

- (1) the right to be informed that the court will request a background study on the subject for the purpose of determining whether the person's appointment or continued appointment is in the best interests of the ward or protected person;
- (2) the right to be informed of the results of the study and to obtain from the court a copy of the results; and
- (3) the right to challenge the accuracy and completeness of information contained in the results under section 13.04, subdivision 4, except to the extent precluded by section 256.045, subdivision 3.

## PART 2

### GUARDIAN OF MINOR

#### Sec. 17. [524.5-201] APPOINTMENT AND STATUS OF GUARDIAN.

A person becomes a guardian of a minor by parental appointment, by designation of a standby guardian pursuant to chapter 257B, or upon appointment by the court. The guardianship continues until terminated, without regard to the location of the guardian or minor ward.

#### Sec. 18. [524.5-202] PARENTAL APPOINTMENT OF GUARDIAN.

(a) A guardian may be appointed by will, by designation of a standby guardian pursuant to chapter 257B, or by other signed writing executed in the same manner as a health care directive under chapter 145C by a parent for any minor child the parent has or may have in the future. The appointment may specify the desired limitations on the powers to be given to the guardian. The appointing parent may revoke or amend the appointment prior to court confirmation.

(b) Upon petition of an appointing parent and a finding that the appointing parent will likely become unable to care for the child within two years or less, and after notice as provided in section 524.5-205, paragraph (b), the court, before the appointment becomes effective, may confirm the parent's selection of a guardian and terminate the rights of others to object.

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(c) Subject to section 524.5-203, the appointment of a guardian becomes effective upon the appointing parent's death, an adjudication that the parent is an incapacitated person, or a written determination by a physician who has examined the parent that the parent is no longer able to care for the child, whichever occurs first.

(d) The guardian becomes eligible to act upon the filing of an acceptance of appointment, which must be filed within 30 days following the effective date of the guardian's appointment. The guardian shall:

(1) file the acceptance of appointment and a copy of the will with the court of the county in which the will was or could be probated or, in the case of another appointing instrument, file the acceptance of appointment and the appointing instrument with the court of the county in which the minor resides or is present; and

(2) give written notice of the acceptance of appointment to the appointing parent, if living, the minor, if the minor has attained 14 years of age, and a person other than the parent having care and custody of the minor.

(e) Unless the appointment was previously confirmed by the court, the notice given under paragraph (d), clause (2), must include a statement of the right of those notified to terminate the appointment by filing a written objection in the court as provided in section 524.5-203.

(f) Unless the appointment was previously confirmed by the court, within 30 days after filing the notice and the appointing instrument, a guardian shall petition the court for confirmation of the appointment, giving notice in the manner provided in section 524.5-205, paragraph (b).

(g) The appointment of a guardian by a parent does not supersede the parental rights of either parent. If both parents are dead or have been adjudged incapacitated persons, an appointment by the last parent who dies or was adjudged incapacitated has priority. An appointment by a parent which is effected by filing the guardian's acceptance under a will probated in the state of the testator's domicile is effective in this state.

(h) The powers of a guardian who timely complies with the requirements of paragraphs (d) and (e) relate back to give acts by the guardian which are of benefit to the minor and occurred on or after the date the appointment became effective the same effect as those that occurred after the filing of the acceptance of the appointment.

(i) The authority of a guardian appointed under this section terminates upon the first to occur of the appointment of a guardian by the court or the giving of written notice to the guardian of the filing of an objection pursuant to section 524.5-203.

#### **Sec. 19. [524.5-203] OBJECTION BY MINOR OR OTHERS TO PARENTAL APPOINTMENT.**

Until the court has confirmed an appointee under section 524.5-202, a minor who is the subject of an appointment by a parent and who has attained 14 years of age, the other parent, or a person other than a parent or guardian having custody or care of the minor may prevent or terminate the appointment at any time by filing in the court in

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which the appointing instrument is filed a written objection and by giving notice of the objection to the guardian and any other persons entitled to notice of the acceptance of the appointment. An objection may be withdrawn, and if withdrawn is of no effect. An objection does not preclude an appointment of the appointee by the court. The court may treat the filing of an objection as a petition for the appointment of an emergency or a temporary guardian under section 524.5-204, and proceed accordingly.

**Sec. 20. [524.5-204] JUDICIAL APPOINTMENT OF GUARDIAN: CONDITIONS FOR APPOINTMENT.**

(a) The court may appoint a guardian for a minor if the court finds the appointment is in the minor's best interest, and:

(i) both parents are deceased; or

(ii) all parental rights have been terminated by court order.

If a guardian is appointed by a parent pursuant to section 524.5-202 and the appointment has not been prevented or terminated under section 524.5-203, that appointee has priority for appointment. However, the court may proceed with another appointment upon a finding that the appointee under section 524.5-202 has failed to accept the appointment within 30 days after notice of the guardianship proceeding.

(b) If necessary and on petition or motion and whether or not the conditions of paragraph (a) have been established, the court may appoint a temporary guardian for a minor upon a showing that an immediate need exists and that the appointment would be in the best interest of the minor. Notice must be given to the parents and to a minor who has attained 14 years of age. Except as otherwise ordered by the court, the temporary guardian has the authority of an unlimited guardian, but the duration of the temporary guardianship may not exceed six months. Within five days after the appointment, the temporary guardian shall send or deliver a copy of the order to all individuals who would be entitled to notice of hearing under section 524.5-205.

(c) If the court finds that following the procedures of this article will likely result in substantial harm to a minor's health or safety and that no other person appears to have authority to act in the circumstances, the court, on appropriate petition, may appoint an emergency guardian for the minor. The duration of the guardian's authority may not exceed 30 days and the guardian may exercise only the powers specified in the order. Reasonable notice of the time and place of a hearing on the petition for appointment of an emergency guardian must be given to the minor, if the minor has attained 14 years of age, to each living parent of the minor, and a person having care or custody of the minor, if other than a parent. The court may dispense with the notice if it finds from affidavit or other sworn testimony that the minor will be substantially harmed before a hearing can be held on the petition. If the guardian is appointed without notice, notice of the appointment must be given within 48 hours after the appointment and a hearing on the appropriateness of the appointment held within five days after the appointment.

**Sec. 21. [524.5-205] JUDICIAL APPOINTMENT OF GUARDIAN: PROCEDURE.**

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(a) A person interested in the welfare of a minor may petition for appointment of a guardian.

(b) After a petition is filed, the court shall set a date for hearing, and the petitioner shall give notice of the time and place for hearing the petition, together with a copy of the petition, to:

(1) the minor, if the minor has attained 14 years of age and is not the petitioner;

(2) any person alleged to have had the primary care and custody of the minor during the 60 days before the filing of the petition;

(3) each living parent of the minor or, if there is none, the adult nearest in kinship that can be found;

(4) any person nominated as guardian by the minor if the minor has attained 14 years of age;

(5) any appointee of a parent whose appointment has not been prevented or terminated under section 524.5-203; and

(6) any guardian or conservator currently acting for the minor in this state or elsewhere.

(c) The court, upon hearing, shall make the appointment if it finds that a qualified person seeks appointment, venue is proper, the required notices have been given, the conditions of section 524.5-204, paragraph (a), have been met, and the best interest of the minor will be served by the appointment. In other cases, the court may dismiss the proceeding or make any other disposition of the matter that will serve the best interest of the minor.

(d) If the court determines at any stage of the proceeding, before or after appointment, that the interests of the minor are or may be inadequately represented, it may appoint a lawyer to represent the minor, giving consideration to the choice of the minor if the minor has attained 14 years of age, provided that such appointment shall expire upon the expiration of the appeal time for the order appointing guardian or the order dismissing a petition or upon such other time or event as the court may direct.

(e) Within 14 days after an appointment, a guardian shall send or deliver to the minor ward, and counsel if represented at the hearing, a copy of the order of appointment accompanied by a notice which advises the minor ward of the right to appeal the guardianship appointment in the time and manner provided by the rules of appellate procedure.

**Sec. 22. [524.5-206] JUDICIAL APPOINTMENT OF GUARDIAN: PRIORITY OF MINOR'S NOMINEE, LIMITED GUARDIANSHIP.**

(a) The court shall appoint as guardian a person whose appointment will be in the best interest of the minor. The court shall appoint a person nominated by the minor, if the minor has attained 14 years of age, unless the court finds the appointment will be contrary to the best interest of the minor.

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(b) In the interest of developing self-reliance of a ward or for other good cause, the court, at the time of appointment or later, on its own motion or on motion of the minor ward or other interested person, may limit the powers of a guardian otherwise granted by this article and thereby create a limited guardianship. Following the same procedure, additional powers may be granted or existing powers may be withdrawn.

**Sec. 23. [524.5-207] POWERS AND DUTIES OF GUARDIAN.**

Subdivision 1. GENERAL STATEMENT. A guardian of a minor has the powers and responsibilities of a parent who has not been deprived of custody of the minor and unemancipated child, except that a guardian is not legally obligated to provide from the guardian's own funds for the ward.

Subd. 2. PARTICULAR DUTIES. In particular, and without qualifying subdivision 1, a guardian has the duties and powers in this subdivision.

(a) The guardian must take reasonable care of the ward's personal effects and commence protective proceedings if necessary to protect other property of the ward.

(b) The guardian may receive money payable for the support of the ward to the ward's parent, guardian, or custodian under the terms of any statutory benefit or insurance system, or any private contract, devise, trust, conservatorship, or custodianship and also may receive money or property of the ward paid or delivered by virtue of section 524.5-104. Any sums received must be applied to the ward's current needs for support, care, and education.

The guardian must exercise due care to conserve any excess for the ward's future needs unless a conservator has been appointed for the estate of the ward, in which case the excess must be paid at least annually to the conservator. Money received by the guardian under this paragraph must not be used for compensation for the guardian's services except as approved by court order or as determined by a duly appointed conservator other than the guardian.

A guardian may institute proceedings to compel the performance by any person of a duty to support the ward or to pay sums for the welfare of the ward.

(c) The guardian is empowered to facilitate the ward's education, social, or other activities and to authorize medical or other professional care, treatment, or advice. A ward who is less than 16 years of age may be admitted to a treatment facility as an informal patient according to section 253B.04 but may not be committed to any state institution except pursuant to chapter 253B. No guardian may give consent for psychosurgery, electroshock, sterilization, or experimental treatment of any kind unless the procedure is first approved by the order of the court, after a hearing as prescribed by section 524.5-313, paragraph (c), clause (4). A guardian is not liable by reason of consent for injury to the ward resulting from the negligence or acts of third persons unless it would have been illegal for a parent to have consented, or unless the guardian fails to comply with the requirements of this section which provide that a court order is necessary for commitment and for certain types of medical procedures. A guardian may consent to the marriage or adoption of the ward.

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(d) A guardian must report the condition of the ward and of the ward's estate which has been subject to the guardian's possession or control, as ordered by the court on its own motion or on petition of any interested person and as required by court rule.

(e) If there is no acting conservator of the estate for the ward, the guardian has the power to apply on behalf of the ward for any assistance, services, or benefits available to the ward through any unit of government.

**Sec. 24. [524.5-209] RIGHTS AND IMMUNITIES OF GUARDIAN.**

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

(b) A guardian of a minor ward is not liable to a third person for acts of the ward solely by reason of the relationship. A guardian of a minor ward is not liable for injury to the ward resulting from the negligence or act of a third person providing medical or other care, treatment, or service for the ward except to the extent that a parent would be liable under the circumstances.

(c) A guardian of a minor ward may not initiate the commitment of a ward to an institution except in accordance with section 524.5-207.

**Sec. 25. [524.5-210] TERMINATION OF GUARDIANSHIP; OTHER PROCEEDINGS AFTER APPOINTMENT.**

(a) A guardianship of a minor terminates upon the minor's death, adoption, emancipation, attainment of majority, or as ordered by the court.

(b) A ward or an interested person may petition for any order that is in the best interest of the ward. The petitioner shall give notice of the hearing on the petition to interested persons pursuant to section 524.5-113 and to any other person as ordered by the court, except notice is not required for the ward if the ward has not attained 14 years of age and is not the petitioner.

**Sec. 26. [524.5-211] DELEGATION OF POWER BY PARENT OR GUARDIAN.**

(a) A parent, legal custodian, or guardian of a minor or incapacitated person, by a properly executed power of attorney, may delegate to another person, for a period not exceeding one year, any powers regarding care, custody, or property of the minor or ward, except the power to consent to marriage or adoption of a minor ward.

(b) A parent who executes a delegation of powers under this section must mail or give a copy of the document to any other parent within 30 days of its execution unless:

(1) the other parent does not have parenting time or has supervised parenting time;  
or

(2) there is an existing order for protection under chapter 518B or a similar law of another state in effect against the other parent to protect the parent, legal custodian, or guardian executing the delegation of powers or the child.

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(c) A parent, legal custodian, or guardian of a minor child may also delegate those powers by designating a standby or temporary custodian under chapter 257B.

### PART 3

#### GUARDIAN OF INCAPACITATED PERSON

##### Sec. 27. [524.5-301] APPOINTMENT AND STATUS OF GUARDIAN.

A person becomes a guardian of an incapacitated person by a parental or spousal appointment or upon appointment by the court. The guardianship continues until terminated, without regard to the location of the guardian or ward.

##### Sec. 28. [524.5-302] APPOINTMENT OF GUARDIAN BY WILL OR OTHER WRITING.

(a) A parent, by will or other signed writing executed in the same manner as a health care directive pursuant to chapter 145C, may appoint a guardian for an unmarried child who the parent believes is an incapacitated person, may specify the desired limitations on the powers to be given to the guardian, and may revoke or amend the appointment prior to court confirmation.

(b) An individual by will or other signed writing executed in the same manner as a health care directive pursuant to chapter 145C may appoint a guardian for his or her spouse who the appointing spouse believes is an incapacitated person, may specify the desired limitations on the powers to be given to the guardian, and may revoke or amend the appointment prior to court confirmation.

(c) Subject to the right of the incapacitated person, the person having custody or care of the incapacitated person if other than the appointing parent or spouse or the adult nearest in kinship to the incapacitated person to object, the guardian's appointment becomes effective upon the death of the appointing parent or spouse, the adjudication of incapacity of the appointing parent or spouse, or a written determination by a physician who has examined the appointing parent or spouse that the appointing parent or spouse is no longer able to care for the incapacitated person, whichever occurs first.

(d) Upon petition of the appointing parent or spouse, and a finding that the appointing parent or spouse will likely become unable to care for the incapacitated person within two years or less, and after notice as provided in this section, the court, before the appointment becomes effective, may confirm the appointing parent's or spouse's selection of a guardian and terminate the rights of others to object.

(e) The guardian becomes eligible to act upon the filing of an acceptance of appointment, which must be filed within 30 days following the effective date of the guardian's appointment. The guardian shall:

(1) file the notice of acceptance of appointment and a copy of the will with the court of the county in which the will was or could be probated or, in the case of another appointing instrument, file the acceptance of appointment and the appointing instru-

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ment with the court in the county in which the incapacitated person resides or is present; and

(2) give written notice of the acceptance of appointment to the appointing parent or spouse if living, the incapacitated person, a person having custody or care of the incapacitated person other than the appointing parent or spouse, and the adult nearest in kinship.

(f) Unless the appointment was previously confirmed by the court, the notice given under paragraph (e), clause (2), must include a statement of the right of those notified to terminate the appointment by filing a written objection as provided in this section.

(g) An appointment effected by filing the guardian's acceptance under a will probated in the state of the testator's domicile is effective in this state.

(h) The filing of a written objection to an appointment by the alleged incapacitated person or another interested person in the court in which the guardian's written acceptance was filed terminates the appointment. An objection may be withdrawn and, if withdrawn, is of no effect. An objection does not preclude the court from appointing the parental or spousal appointee as guardian. The court may treat the filing of an objection as a petition for the appointment of an emergency guardian under section 524.5-311 or for the appointment of a limited or unlimited guardian under section 524.5-303 and proceed accordingly.

(i) Unless the appointment was previously confirmed by the court, within 30 days after filing the notice and the appointing instrument, a guardian appointed under this section shall file a petition in the court for confirmation of the appointment, giving notice in the manner provided in section 524.5-308, and, if necessary, for an appointment as conservator.

(j) The authority of a guardian appointed under this section terminates upon the first to occur of the appointment of a guardian by the court or the giving of written notice to the guardian of the filing of an objection pursuant to paragraph (h).

(k) The appointment of a guardian under this section is not a determination of incapacity.

(l) The powers of a guardian who timely complies with the requirements of paragraphs (e) and (f) relate back to give acts by the guardian which are of benefit to the incapacitated person and occurred on or after the date the appointment became effective the same effect as those that occurred after the filing of the acceptance of appointment.

#### **Sec. 29. [524.5-303] JUDICIAL APPOINTMENT OF GUARDIAN: PETITION.**

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

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

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

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

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

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

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

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

(5) the name and address of any person nominated as guardian by the respondent;

(6) the name and address of any proposed guardian and the reason why the proposed guardian should be selected;

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

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

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

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

**Sec. 30. [524.5-304] JUDICIAL APPOINTMENT OF GUARDIAN: PRELIMINARIES TO HEARING.**

(a) Upon receipt of a petition to establish a guardianship, the court shall set a date and time for hearing the petition and appoint a visitor. The duties and reporting requirements of the visitor are limited to the relief requested in the petition. The visitor must be an individual having training or experience in the type of incapacity alleged.

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(b) A proposed ward has the right to be represented by counsel at any proceeding under this article. The court shall appoint counsel to represent the proposed ward for the initial proceeding held pursuant to section 524.5-307 if neither the proposed ward nor others provide counsel unless in a meeting with a visitor the proposed ward specifically waives the right to counsel. Counsel must be appointed immediately after any petition under this article is served under section 524.5-308. Counsel has the full right of subpoena. In all proceedings under this article, counsel shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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(3) any other matters the court directs.

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

**Sec. 31. [524.5-307] JUDICIAL APPOINTMENT OF GUARDIAN; PRESENCE AND RIGHTS AT HEARING.**

(a) Unless excused by the court for good cause, the petitioner and the proposed guardian shall attend the hearing. The respondent shall attend and participate in the hearing, unless excused by the court for good cause. The petitioner and respondent may present evidence and subpoena witnesses and documents; examine witnesses, including the visitor; and otherwise participate in the hearing. The hearing may be held in a location convenient to the respondent and may be closed upon the request of the respondent and a showing of good cause.

(b) Any person may request permission to participate in the proceeding. The court may grant the request, with or without hearing, upon a showing of good cause and after determining that the best interest of the respondent will be served. The court may attach appropriate conditions to the participation.

**Sec. 32. [524.5-308] NOTICE.**

(a) A copy of the petition and notice of the hearing on a petition for guardianship must be served personally on the respondent pursuant to section 524.5-304, paragraph (c). The notice must include a statement that the respondent must be physically present unless excused by the court; inform the respondent of the respondent's rights at the hearing; and include a description of the nature, purpose, and consequences of an appointment. A failure to serve the respondent with a notice substantially complying with this paragraph precludes the court from granting the petition.

(b) In a proceeding to establish a guardianship, notice of the hearing shall also be given to the persons listed in the petition. Failure to give notice under this paragraph does not preclude the appointment of a guardian or the making of a protective order.

(c) Notice of the hearing on a petition for an order after appointment of a guardian shall be given to interested persons pursuant to section 524.5-113 and to any other person as ordered by the court, except notice to the ward is not required if the ward has not attained 14 years of age and is not the petitioner.

(d) The guardian shall give notice of the filing of the guardian's report, together with a copy of the report, to the ward and any other person the court directs. The notice must be sent or delivered within 14 days after the filing of the report.

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**Sec. 33. [524.5-309] WHO MAY BE GUARDIAN: PRIORITIES.**

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

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

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

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

(4) an adult child of the respondent;

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

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

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

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

**Sec. 34. [524.5-310] FINDINGS; ORDER OF APPOINTMENT.**

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

(1) the respondent is an incapacitated person; and

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

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

(c) The court shall grant to a guardian only those powers necessitated by the ward's limitations and demonstrated needs and, whenever feasible, make appointive and other orders that will encourage the development of the ward's maximum self-reliance and independence. Any power not specifically granted to the guardian,

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following a written finding by the court of a demonstrated need for that power, is retained by the ward.

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

(e) Each year, within 30 days after the anniversary date of an appointment, a guardian shall send or deliver to the ward a notice of the right to request termination or modification of the guardianship.

#### **Sec. 35. [524.5-311] EMERGENCY GUARDIAN.**

(a) If the court finds that compliance with the procedures of this article will likely result in substantial harm to the respondent's health, safety, or welfare, and that no other person appears to have authority and willingness to act in the circumstances, the court, on petition by a person interested in the respondent's welfare, may appoint an emergency guardian whose authority may not exceed 60 days and who may exercise only the powers specified in the order. A county that is acting under section 626.557, subdivision 10, by petitioning for appointment of an emergency guardian on behalf of a vulnerable adult may be granted authority to act for a period not to exceed 90 days. Immediately upon receipt of the petition for an emergency guardianship, the court shall appoint a lawyer to represent the respondent in the proceeding. Except as otherwise provided in paragraph (b), reasonable notice of the time and place of a hearing on the petition must be given to the respondent and any other persons as the court directs.

(b) An emergency guardian may be appointed without notice to the respondent and the respondent's lawyer only if the court finds from affidavit or other sworn testimony that the respondent will be substantially harmed before a hearing on the appointment can be held. If the court appoints an emergency guardian without notice to the respondent, the respondent must be given notice of the appointment within 48 hours after the appointment. The court shall hold a hearing on the appropriateness of the appointment within five days after the appointment.

(c) Appointment of an emergency guardian, with or without notice, is not a determination of the respondent's incapacity.

(d) The court may remove an emergency guardian at any time. An emergency guardian shall make any report the court requires. In other respects, the provisions of this article concerning guardians apply to an emergency guardian.

#### **Sec. 36. [524.5-312] TEMPORARY SUBSTITUTE GUARDIAN.**

(a) If the court finds that a guardian is not effectively performing the guardian's duties and that the welfare of the ward requires immediate action, it may appoint a temporary substitute guardian for the ward for a specified period not exceeding six months. Except as otherwise ordered by the court, a temporary substitute guardian so appointed has the powers set forth in the previous order of appointment. The authority of any unlimited or limited guardian previously appointed by the court is suspended as

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long as a temporary substitute guardian has authority. If an appointment is made without previous notice to the ward or the affected guardian, within five days after the appointment, the court shall inform the ward or guardian of the appointment.

(b) The court may remove a temporary substitute guardian at any time. A temporary substitute guardian shall make any report the court requires. In other respects, the provisions of this article concerning guardians apply to a temporary substitute guardian.

**Sec. 37. [524.5-313] POWERS AND DUTIES OF GUARDIAN.**

(a) A guardian shall be subject to the control and direction of the court at all times and in all things.

(b) The court shall grant to a guardian only those powers necessary to provide for the demonstrated needs of the ward.

(c) The court may appoint a guardian if it determines that all the powers and duties listed in this section are needed to provide for the needs of the incapacitated person. The court may also appoint a guardian if it determines that a guardian is needed to provide for the needs of the incapacitated person through the exercise of some, but not all, of the powers and duties listed in this section. The duties and powers of a guardian or those which the court may grant to a guardian include, but are not limited to:

(1) the power to have custody of the ward and the power to establish a place of abode within or outside the state, except as otherwise provided in this clause. The ward or any interested person may petition the court to prevent or to initiate a change in abode. A ward may not be admitted to a regional treatment center by the guardian except:

(i) after a hearing under chapter 253B;

(ii) for outpatient services; or

(iii) for the purpose of receiving temporary care for a specific period of time not to exceed 90 days in any calendar year;

(2) the duty to provide for the ward's care, comfort, and maintenance needs, including food, clothing, shelter, health care, social and recreational requirements, and, whenever appropriate, training, education, and habilitation or rehabilitation. The guardian has no duty to pay for these requirements out of personal funds. Whenever possible and appropriate, the guardian should meet these requirements through governmental benefits or services to which the ward is entitled, rather than from the ward's estate. Failure to satisfy the needs and requirements of this clause shall be grounds for removal of a private guardian, but the guardian shall have no personal or monetary liability;

(3) the duty to take reasonable care of the ward's clothing, furniture, vehicles, and other personal effects, and, if other property requires protection, the power to seek appointment of a conservator of the estate. The guardian must give notice by mail to interested persons prior to the disposition of the ward's clothing, furniture, vehicles, or

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other personal effects. The notice must inform the person of the right to object to the disposition of the property within ten days of the date of mailing and to petition the court for a review of the guardian's proposed actions. Notice of the objection must be served by mail or personal service on the guardian and the ward unless the ward is the objector. The guardian served with notice of an objection to the disposition of the property may not dispose of the property unless the court approves the disposition after a hearing;

(4)(i) The power to give any necessary consent to enable the ward to receive necessary medical or other professional care, counsel, treatment, or service, except that no guardian may give consent for psychosurgery, electroshock, sterilization, or experimental treatment of any kind unless the procedure is first approved by order of the court as provided in this clause. The guardian shall not consent to any medical care for the ward which violates the known conscientious, religious, or moral belief of the ward.

(ii) a guardian who believes a procedure described in item (i) requiring prior court approval to be necessary for the proper care of the ward, shall petition the court for an order and, in the case of a public guardianship under chapter 252A, obtain the written recommendation of the commissioner of human services. The court shall fix the time and place for the hearing and shall give notice to the ward in such manner as specified in section 524.5-308 and to interested persons. The court shall appoint an attorney to represent the ward who is not represented by counsel, provided that such appointment shall expire upon the expiration of the appeal time for the order issued by the court under this section or the order dismissing a petition, or upon such other time or event as the court may direct. In every case the court shall determine if the procedure is in the best interest of the ward. In making its determination, the court shall consider a written medical report which specifically considers the medical risks of the procedure, whether alternative, less restrictive methods of treatment could be used to protect the best interest of the ward, and any recommendation of the commissioner of human services for a public ward. The standard of proof is that of clear and convincing evidence.

(iii) In the case of a petition for sterilization of a mentally retarded ward, the court shall appoint a licensed physician, a psychologist who is qualified in the diagnosis and treatment of mental retardation, and a social worker who is familiar with the ward's social history and adjustment or the case manager for the ward to examine or evaluate the ward and to provide written reports to the court. The reports shall indicate why sterilization is being proposed, whether sterilization is necessary and is the least intrusive method for alleviating the problem presented, and whether it is in the best interest of the ward. The medical report shall specifically consider the medical risks of sterilization, the consequences of not performing the sterilization, and whether alternative methods of contraception could be used to protect the best interest of the ward.

(iv) Any ward whose right to consent to a sterilization has not been restricted under this section or section 252A.101 may be sterilized only if the ward consents in writing or there is a sworn acknowledgment by an interested person of a nonwritten

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consent by the ward. The consent must certify that the ward has received a full explanation from a physician or registered nurse of the nature and irreversible consequences of the sterilization.

(v) A guardian or the public guardian's designee who acts within the scope of authority conferred by letters of guardianship under section 252A.101, subdivision 7, and according to the standards established in this chapter or in chapter 252A shall not be civilly or criminally liable for the provision of any necessary medical care, including, but not limited to, the administration of psychotropic medication or the implementation of aversive and deprivation procedures to which the guardian or the public guardian's designee has consented.

(5) In the event there is no duly appointed conservator of the ward's estate, the guardian shall have the power to approve or withhold approval of any contract, except for necessities, which the ward may make or wish to make.

(6) The duty and power to exercise supervisory authority over the ward in a manner which limits civil rights and restricts personal freedom only to the extent necessary to provide needed care and services.

(7) If there is no acting conservator of the estate for the ward, the guardian has the power to apply on behalf of the ward for any assistance, services, or benefits available to the ward through any unit of government.

(8) Unless otherwise ordered by the court, the ward retains the right to vote.

#### **Sec. 38. [524.5-315] RIGHTS AND IMMUNITIES OF GUARDIAN; LIMITATIONS.**

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

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

(c) A guardian, without authorization of the court, may revoke the appointment of an agent of a health care directive of which the ward is the principal, but the guardian may not, absent a court order, revoke the health care directive itself. If a health care directive is in effect, absent an order of the court to the contrary, a health care decision of the guardian takes precedence over that of an agent.

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

#### **Sec. 39. [524.5-316] REPORTS; MONITORING OF GUARDIANSHIP.**

(a) A guardian shall report to the court in writing on the condition of the ward at least annually and whenever ordered by the court. A report must state or contain:

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(1) the current mental, physical, and social condition of the ward;

(2) the living arrangements for all addresses of the ward during the reporting period;

(3) the medical, educational, vocational, and other services provided to the ward and the guardian's opinion as to the adequacy of the ward's care; and

(4) a recommendation as to the need for continued guardianship and any recommended changes in the scope of the guardianship.

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

(c) The court shall establish a system for monitoring guardianships, including the filing and review of annual reports.

**Sec. 40. [524.5-317] TERMINATION OR MODIFICATION OF GUARDIANSHIP.**

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

(b) On petition of any person interested in the ward's welfare the court may terminate a guardianship if the ward no longer needs the assistance or protection of a guardian. The court may modify the type of appointment or powers granted to the guardian if the extent of protection or assistance previously granted is currently excessive or insufficient or the ward's capacity to provide for support, care, education, health, and welfare has so changed as to warrant that action.

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

**PART 4**

**PROTECTION OF PROPERTY OF PROTECTED PERSON**

**Sec. 41. [524.5-401] PROTECTIVE PROCEEDING.**

Upon petition and after notice and hearing, the court may appoint a limited or unlimited conservator or make any other protective order provided in this part in relation to the estate and affairs of:

(1) a minor, if the court determines that the minor owns money or property requiring management or protection that cannot otherwise be provided or has or may have business affairs that may be jeopardized or prevented because of the minor's age, or that money is needed for support and education and that protection is necessary or desirable to obtain or provide money; and

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(2) any individual, including a minor, if the court determines that, for reasons other than age:

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

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

**Sec. 42. [524.5-402] JURISDICTION OVER BUSINESS AFFAIRS OF PROTECTED PERSON.**

After the service of notice in a proceeding seeking a conservatorship or other protective order and until termination of the proceeding, the court in which the petition is filed has:

(1) exclusive jurisdiction to determine the need for a conservatorship or other protective order;

(2) exclusive jurisdiction to determine how the estate of the protected person which is subject to the laws of this state must be managed, expended, or distributed to or for the use of the protected person, individuals who are in fact dependent upon the protected person, or other claimants; and

(3) concurrent jurisdiction to determine the validity of claims against the person or estate of the protected person and questions of title concerning assets of the estate.

**Sec. 43. [524.5-403] ORIGINAL PETITION FOR APPOINTMENT OR PROTECTIVE ORDER.**

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

(1) the person to be protected;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) the name and address of any proposed conservator and the reason why the proposed conservator should be selected;

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

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

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**Sec. 44. [524.5-404] NOTICE.**

(a) A copy of the petition and the notice of hearing on a petition for conservatorship or other protective order must be served personally on the respondent pursuant to section 524.5-406, paragraph (c), but if the respondent's location is unknown or personal service cannot be made, service on the respondent must be made by substituted service or publication. The notice must include a statement that the respondent must be physically present unless excused by the court, inform the respondent of the respondent's rights at the hearing, and, if the appointment of a conservator is requested, include a description of the nature, purpose, and consequences of an appointment. A failure to serve the respondent with a notice substantially complying with this paragraph precludes the court from granting the petition.

(b) In a proceeding to establish a conservatorship or for another protective order, notice of the hearing shall also be given to the persons listed in the petition. Failure to give notice under this paragraph does not preclude the appointment of a conservator or the making of another protective order.

(c) Notice of the hearing on a petition for an order after appointment of a conservator or making of another protective order, shall be given to interested persons pursuant to section 524.5-113 and to any other person as ordered by the court, except notice to the protected person is not required if the protected person has not attained 14 years of age and is not missing, detained, or unable to return to the United States.

(d) The conservator shall give notice of the filing of the conservator's inventory, together with a copy of the inventory, to the protected person and any other person the court directs. The notice must be sent or delivered within 14 days after the filing of the inventory.

**Sec. 45. [524.5-405] ORIGINAL PETITION: MINORS; PRELIMINARIES TO HEARING.**

(a) Upon the filing of a petition to establish a conservatorship or for another protective order for the reason that the respondent is a minor, the court shall set a date for hearing. If the court determines at any stage of the proceeding that the interests of the minor are or may be inadequately represented, it may appoint a lawyer to represent the minor, giving consideration to the choice of the minor if the minor has attained 14 years of age.

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

**Sec. 46. [524.5-406] ORIGINAL PETITION: PERSONS UNDER DISABILITY; PRELIMINARIES TO HEARING.**

(a) Upon the filing of a petition for a conservatorship or other protective order for a respondent for reasons other than being a minor, the court shall set a date for hearing.

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The court shall appoint a visitor. The duties and reporting requirements of the visitor are limited to the relief requested in the petition. The visitor must be an individual having training or experience in the type of incapacity alleged.

(b) A respondent has the right to be represented by counsel at any proceeding under this article. The court shall appoint counsel to represent the respondent for the initial proceeding held pursuant to section 524.5-408 if neither the respondent nor others provide counsel, unless in a meeting with a visitor, the proposed respondent specifically waives the right to counsel. Counsel must be appointed immediately after any petition under this part is served pursuant to section 524.5-404. Counsel has the full right of subpoena. In all proceedings under this part, counsel shall:

- (1) consult with the respondent before any hearing;
- (2) be given adequate time to prepare for all hearings; and

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

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

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

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

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

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

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

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

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

(1) recommendations regarding the appropriateness of a conservatorship, including whether less restrictive means of intervention are available, the type of conserva-

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torship, and, if a limited conservatorship, the powers and duties to be granted the limited conservator, and the assets over which the conservator should be granted authority;

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

(3) any other matters the court directs.

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

**Sec. 47. [524.5-408] ORIGINAL PETITION: PROCEDURE AT HEARING.**

(a) Unless excused by the court for good cause, the petitioner and a proposed conservator shall attend the hearing. The respondent shall attend and participate in the hearing unless excused by the court for good cause. The petitioner and respondent may present evidence and subpoena witnesses and documents, examine witnesses, including the visitor, and otherwise participate in the hearing. The hearing may be held in a location convenient to the respondent and may be closed upon request of the respondent and a showing of good cause.

(b) Any person may request permission to participate in the proceeding. The court may grant the request, with or without hearing, upon a showing of good cause and after determining that the best interest of the respondent will be served. The court may attach appropriate conditions to the participation.

**Sec. 48. [524.5-409] FINDINGS; ORDER OF APPOINTMENT.**

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

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

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

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

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

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

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

(e) Each year, within 30 days after the anniversary date of an appointment, a conservator shall send or deliver to the protected person a notice of the right to request termination or modification of the conservatorship.

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

#### **Sec. 49. [524.5-410] POWERS OF COURT.**

(a) After hearing and upon determining that a basis for a conservatorship or other protective order exists, the court has the following powers, which may be exercised directly or through a conservator:

(1) with respect to a minor for reasons of age, all the powers over the estate and business affairs of the minor which may be necessary for the best interest of the minor and members of the minor's immediate family; and

(2) with respect to an adult, or to a minor for reasons other than age, for the benefit of the protected person and individuals who are in fact dependent on the protected person for support, all the powers over the estate and business affairs of the protected person which the protected person could exercise if an adult, present, and not under conservatorship or other protective order.

(b) Subject to the provisions of section 524.5-110 relating to letters of office, the court may at any time limit the powers of a conservator otherwise conferred and may remove or modify any limitation.

#### **Sec. 50. [524.5-411] REQUIRED COURT APPROVAL.**

(a) After notice to affected persons as provided in this section, and after hearing, and upon express authorization of the court, a conservator may:

(1) make gifts;

(2) convey, release, or disclaim contingent and expectant interests in property, including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entirety;

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(3) exercise or release a power of appointment;

(4) create a revocable or irrevocable trust of property of the estate, whether or not the trust extends beyond the duration of the conservatorship, or to revoke or amend a trust revocable by the protected person;

(5) subject to the terms of the plan document, contract, or agreement, exercise rights to elect options and change beneficiaries under insurance policies and annuities or surrender the policies and annuities for their cash value, and any change pursuant to this clause, shall invalidate the existing elections and beneficiary designations;

(6) exercise any right to exempt property and an elective share in the estate of the protected person's deceased spouse and to renounce or disclaim any interest by testate or intestate succession or by transfer inter vivos;

(7) subject to the terms of the plan document, contract, or agreement, exercise rights to elect options and change beneficiaries under any qualified or nonqualified retirement plan including, but not limited to, defined benefit plans, defined contribution plans, plans governed by sections 401(k), 403, 408, or 457 of the Internal Revenue Code and the regulations thereto, and the right to exercise the options provided a plan participant or beneficiary under section 401 and related provisions of the Internal Revenue Code and the regulations thereto, and any change pursuant to this clause, shall invalidate the existing elections and beneficiary designations;

(8) exercise the power to create, terminate, or alter the beneficial interests and beneficiaries of, a payable on death (POD) account, a transfer on death (TOD) security registration or account, or joint tenancy interests with rights of survivorship; and

(9) make, amend, or revoke the protected person's will.

(b) Notice of any hearing pursuant to this section shall not be given pursuant to section 524.5-113. Notice of any hearing under this section shall be given to all affected persons, in plain language, and shall provide the time and place of the hearing and be given by mail postmarked at least 14 days before the hearing. Proof of notice must be made before or at the hearing and filed in the proceeding. For purposes of this section, notice to "affected persons":

(1) shall always include (i) the protected person, (ii) the duly appointed conservator, (iii) the protected person's heirs-at-law, (iv) any state agency or county social services agency paying benefits to or for the benefit of the protected person, (v) any state agency to which an application for benefits has been submitted and any state or county agency that has prepared an asset assessment or could prepare an asset assessment under section 256B.059, subdivision 2, for the protected person or spouse, and (vi) subject to the limitations of paragraph (c), all beneficiaries of the protected person's existing will or revocable trust;

(2) shall also include, subject to the limitations of paragraph (c), any person who has a beneficial vested or contingent interest that may be affected by the exercise of the power under this section; and

(3) shall also include any other persons designated by the court.

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(c) For purposes of this section, when giving notice, or for purposes of giving consent or approval, or objecting with regard to any proceedings under this section, the sole holder or all coholders of a presently exercisable or testamentary general power of appointment, power of revocation, or unlimited power of withdrawal, under an existing will or trust, are deemed to represent and act for beneficiaries to the extent that their interests as objects, takers in default, or otherwise, are subject to the power.

(d) A conservator, in making, amending, or revoking the protected person's will, shall comply with section 524.2-501 to 524.2-517 acting on behalf of the protected person.

(e) The court, in exercising or in approving a conservator's exercise of the powers listed in paragraph (a), shall consider primarily the decision that the protected person would have made, to the extent that the decision can be ascertained. The court shall also consider:

(1) the financial needs of the protected person and the needs of individuals who are dependent on the protected person for support and the interests of creditors;

(2) possible effect on income, estate, gift, inheritance, or other tax liabilities;

(3) eligibility for governmental assistance with the goal of avoiding reliance on such programs;

(4) the protected person's previous pattern of giving or level of support;

(5) the existing estate plan;

(6) the protected person's life expectancy and the probability that the conservatorship will terminate before the protected person's death;

(7) whether the protected person's needs can be met from the person's remaining assets after any transfer is made, taking into account the effect of any transfer on eligibility for medical assistance long term care services; and

(8) any other factors the court considers relevant.

(f) If an affected person, as defined in this article, is a minor or an incapacitated person as defined by this article and has no guardian or conservator within the state, or if an affected person is unborn, unascertained, or a person whose identity or address is unknown to the petitioner, the court shall represent that person, unless the court, upon the application of the guardian, conservator or any other affected person, appoints a guardian ad litem to represent the affected person.

(g) Notwithstanding the power granted to the conservator by the court under this section, the conservator owes no duty to any person other than the protected person. The conservator shall not be held liable for the exercise or the failure to exercise, or the decision to exercise or the decision to decline to exercise, the powers granted by this section. The conservator, however, may be held liable to the protected person's estate for gross negligence related to the implementation of any action approved by the court under this section.

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(h) The Uniform Guardianship and Protective Proceedings Act does not repeal section 524.2-215 as it applies to wards, protected persons, or respondents, expressly or by implication. If there is a conflict between the act and section 524.2-215, section 524.2-215 controls and the guardian or conservator shall exercise the rights of the ward, protected person, or respondent under section 524.2-215 without the need for any court order.

**Sec. 51. [524.5-412] PROTECTIVE ARRANGEMENTS AND SINGLE TRANSACTIONS.**

(a) If a basis is established for a protective order with respect to an individual, the court, without appointing a conservator, may:

(1) authorize, direct, or ratify any transaction necessary or desirable to achieve any arrangement for security, service, or care meeting the foreseeable needs of the protected person, including:

(i) subject to the procedural and notice requirements of section 524.5-418, the sale, mortgage, lease, or other transfer of property;

(ii) purchase of an annuity;

(iii) making a contract for lifetime care, a deposit contract, or a contract for training and education; or

(iv) addition to or establishment of a suitable trust, including a trust created under the Uniform Custodial Trust Act; and

(2) authorize, direct, or ratify any other contract, trust, will, or transaction relating to the protected person's property and business affairs, including a settlement of a claim, upon determining that it is in the best interest of the protected person.

(b) In deciding whether to approve a protective arrangement or other transaction under this section, the court shall consider the factors listed in section 524.5-411, paragraph (e).

(c) The court may appoint an agent to assist in the accomplishment of any protective arrangement or other transaction authorized under this section. The agent has the authority conferred by the order and shall serve until discharged by order after report to the court; provided, however, that if a conservator is appointed, only the conservator has the power to sign all real estate deeds.

**Sec. 52. [524.5-413] WHO MAY BE CONSERVATOR; PRIORITIES.**

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

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

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

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

(4) the spouse of the respondent;

(5) an adult child of the respondent;

(6) a parent of the respondent; and

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

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

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

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

**Sec. 53. [524.5-414] PETITION FOR ORDER SUBSEQUENT TO APPOINTMENT.**

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

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

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

(3) directing distribution;

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

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

(6) granting other appropriate relief.

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

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

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

**Sec. 54. [524.5-415] BOND.**

The court may require a conservator to furnish a bond conditioned upon faithful discharge of all duties of the conservatorship according to law, with sureties as it may specify.

**Sec. 55. [524.5-416] TERMS AND REQUIREMENTS OF BOND.**

(a) The following rules apply to any bond required:

(1) Except as otherwise provided by the terms of the bond, sureties and the conservator are jointly and severally liable.

(2) By executing the bond of a conservator, a surety submits to the jurisdiction of the court that issued letters to the primary obligor in any proceeding pertaining to the fiduciary duties of the conservator in which the surety is named as a party. Notice of any proceeding must be sent or delivered to the surety at the address shown in the court records at the place where the bond is filed and to any other address then known to the petitioner.

(3) On petition of a successor conservator or any interested person, a proceeding may be brought against a surety for breach of the obligation of the bond of the conservator.

(4) The bond of the conservator may be proceeded against until liability under the bond is exhausted.

(b) A proceeding may not be brought against a surety on any matter as to which an action or proceeding against the primary obligor is barred.

**Sec. 56. [524.5-417] GENERAL POWERS AND DUTIES OF CONSERVATOR.**

(a) A conservator shall be subject to the control and direction of the court at all times and in all things.

(b) The court shall grant to a conservator only those powers necessary to provide for the demonstrated needs of the protected person.

(c) The court may appoint a conservator of the estate if it determines that all the powers and duties listed in this section are needed to provide for the needs of the protected person. The court may also appoint a conservator if it determines that a conservator is necessary to provide for the needs of the protected person through the exercise of some, but not all, of the powers and duties listed in this section. The duties and powers of a conservator include, but are not limited to:

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(1) the duty to pay the reasonable charges for the support, maintenance, and education of the protected person in a manner suitable to the protected person's station in life and the value of the estate. Nothing herein contained shall release parents from obligations imposed by law for the support, maintenance, and education of their children. The conservator has no duty to pay for these requirements out of personal funds. Wherever possible and appropriate, the conservator should meet these requirements through governmental benefits or services to which the protected person is entitled, rather than from the protected person's estate. Failure to satisfy the needs and requirements of this section shall be grounds for removal, but the conservator shall have no personal or monetary liability;

(2) the duty to pay out of the protected person's estate all lawful debts of the protected person and the reasonable charges incurred for the support, maintenance, and education of the protected person's spouse and dependent children and, upon order of the court, pay such sum as the court may fix as reasonable for the support of any person unable to earn a livelihood who is legally entitled to support from the protected person;

(3) the duty to possess and manage the estate, collect all debts and claims in favor of the protected person, or, with the approval of the court, compromise them, institute suit on behalf of the protected person and represent the protected person in any court proceedings, and invest all funds not currently needed for the debts and charges named in clauses (1) and (2) and the management of the estate, in accordance with the provisions of sections 48A.07, subdivision 6, and 501B.151, or as otherwise ordered by the court. The standard of a fiduciary shall be applicable to all investments by a conservator. A conservator shall also have the power to purchase certain contracts of insurance as provided in section 50.14, subdivision 14, clause (b);

(4) where a protected person has inherited an undivided interest in real estate, the court, on a showing that it is for the best interest of the protected person, may authorize an exchange or sale of the protected person's interest or a purchase by the protected person of any interest other heirs may have in the real estate, subject to the procedures and notice requirements of section 524.5-418;

(5) the power to approve or withhold approval of any contract, except for necessities, which the protected person may make or wish to make; and

(6) the power to apply on behalf of the protected person for any assistance, services, or benefits available to the protected person through any unit of government.

(d) The conservator shall have the power to revoke, suspend, or terminate all or any part of a durable power of attorney of which the protected person is the principal with the same power the principal would have if the principal were not incapacitated. If a durable power of attorney is in effect, a decision of the conservator takes precedence over that of an attorney-in-fact.

(e) Transaction set aside. If a protected person has made a financial transaction or gift or entered into a contract during the two-year period before establishment of the conservatorship, the conservator may petition for court review of the transaction, gift, or contract. If the court finds that the protected person was incapacitated or subject to

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duress, coercion, or undue influence when the transaction, gift, or contract was made, the court may declare the transaction, gift, or contract void except as against a bona fide transferee for value and order reimbursement or other appropriate relief. This paragraph does not affect any other right or remedy that may be available to the protected person with respect to the transaction, gift, or contract.

(f) After the filing of the petition, a certificate of the district court certified to that fact may be filed for record with the Minnesota secretary of state in the same manner as provided in section 336.9-501. The certificate shall state that a petition is pending and the name and address of the person for whom a conservator is sought. If a conservator is appointed on the petition, and if the conservatorship order removes or restricts the right of the protected person to transfer property or to contract, then all contracts except for necessities, and all transfers of personal property, tangible or intangible, including, but not limited to, cash or securities transfers at banks, brokerage houses, or other financial institutions, or transfers of cash or securities, made by the protected person after the filing and before the termination of the conservatorship shall be voidable.

#### **Sec. 57. [524.5-418] GENERAL POWERS AND DUTIES OF CONSERVATOR WITH RESPECT TO REAL PROPERTY.**

This section is applicable only to conservatorships and not to decedents' estates. As used in this section, the word "mortgage" includes an extension of an existing mortgage, subject to the provisions of this section, and the word "lease" means a lease for one or more years, unless the context indicates otherwise. The conservator shall have the following powers and duties with respect to conservatorship real property:

(a) The court may direct a sale, mortgage, or lease of any real estate of a protected person when the personal property is insufficient to pay debts and other charges against the estate, or to provide for the support, maintenance, and education of the protected person, a spouse, and dependent children, or when it shall determine the sale, mortgage, or lease to be for the best interest of the protected person. The homestead of a protected person shall not be sold, mortgaged, or leased unless the written consent of the spouse has been filed.

(b) A conservator may file a petition to sell, mortgage, or lease alleging briefly the facts constituting the reasons for the application and describing the real estate involved therein. The petition may include all the real estate of the protected person or any part or parts thereof. It may apply for different authority as to separate parcels. It may apply in the alternative for authority to sell, mortgage, or lease.

(1) Upon the filing of such petition, the court shall fix the time and place for the hearing thereof. Notice of the hearing shall be given to interested persons and shall state briefly the nature of the application made by the petition. If publication of notice is required by the court, published notice shall be given by publication once a week for two consecutive weeks in a legal newspaper designated by the petitioner in the county wherein the proceedings are pending, or, if no such designation be made, in any legal newspaper in the county, or, if the city of the protected person's residence is situated in more than one county, in any legal newspaper in the city. The first publication shall

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be had within two weeks after the date of the order fixing the time and place for the hearing. Proof of publication and mailing shall be filed before the hearing. No defect in any notice or in the publication or service thereof shall invalidate any proceedings.

(2) Upon the hearing, the court shall have full power to direct the sale, mortgage, or lease of all the real estate described in the petition, or to direct the sale, mortgage, or lease of any one or more parcels thereof, provided that any such direction shall be within the terms of the application made by the petition. The order shall describe the real estate to be sold, mortgaged, or leased, and may designate the sequence in which the several parcels shall be sold, mortgaged, or leased. If the order be for a sale, it shall direct whether the real estate shall be sold at private sale or public auction. An order to mortgage shall fix the maximum amount of the principal and the maximum rate of interest and shall direct the purpose for which the proceeds shall be used. An order for sale, mortgage, or lease shall remain in force until terminated by the court, but no private sale shall be made after one year from the date of the order unless the real estate shall have been reappraised under order of the court within six months preceding the sale.

(3) The court may order a sale of real estate for cash, part cash, and a purchase-money mortgage of not more than 50 percent of the purchase price, or on contract for deed. The initial payment under a sale on contract shall not be less than ten percent of the total purchase price, and the unpaid purchase price shall bear interest at a rate of not less than four percent per annum and shall be payable in reasonable monthly, quarterly, semiannual, or annual payments, and the final installment shall become due and payable not later than ten years from the date of the contract. Such contract shall provide for conveyance by conservator's or quit claim deed, which deed shall be executed and delivered upon full performance of the contract without further order of the court. In the event of termination of the interest of the purchaser and assigns in such contract, the real estate may be resold under the original order and a reappraisal within six months preceding the sale. A sale of the vendor's interest in real estate sold by the conservator on contract may be made under order of the court, with or without notice, upon an appraisal of such interest within six months preceding the sale; no such sale shall be made for less than its value as fixed by such appraisal.

(4) If a sale at public auction is ordered, two weeks' published notice of the time and place of sale shall be given. Proof of publication shall be filed before the confirmation of the sale. Such publication and sale may be made in the county where the real estate is situated or in the county of the proceedings. If the parcels to be sold are contiguous and lie in more than one county, notice may be given and the sale may be made in either of such counties or in the county of the proceedings. The conservator may adjourn the sale from time to time, if for the best interests of the estate and the persons concerned, but not exceeding six months in all. Every adjournment shall be announced publicly at the time and place fixed for the sale and, if for more than one day, further notice thereof shall be given as the court may direct.

(5) If a private sale be ordered, the real estate shall be reappraised by two or more disinterested persons under order of the court unless a prior appraisal of the real estate has been made by two or more disinterested persons not more than six months before

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the sale, which reappraisal shall be filed before the confirmation of the sale. No real estate shall be sold at private sale for less than its value as fixed by such appraisal.

(6) If the bond is insufficient, before confirmation of a sale or lease, or before execution of a mortgage, the conservator shall file an additional bond in such amount as the court may require.

(7) Upon making a sale or lease, the conservator shall file a report thereof. Upon proof of compliance with the terms of the order, the court may confirm the sale or lease and order the conservator to execute and deliver the proper instrument.

(c) When a protected person is entitled under contract of purchase to any interest in real estate, such interest may be sold for the same reasons and in the same manner as other real estate of a protected person. Before confirmation, the court may require the filing of a bond conditioned to save the estate harmless. Upon confirmation, the conservator shall assign the contract and convey by conservator's or quit claim deed.

(d) When the estate of a protected person is liable for any charge, mortgage, lien, or other encumbrance upon the real estate therein, the court may refuse to confirm the sale or lease until after the filing of a bond in such amount as the court may direct conditioned to save the estate harmless.

(e) When any real estate of a protected person is desired by any person, firm, association, corporation, or governmental agency having the power of eminent domain, the conservator may agree, in writing, upon the compensation to be made for the taking, injuring, damaging, or destroying thereof, subject to the approval of the court. When the agreement has been made, the conservator shall file a petition, of which the agreement shall be a part, setting forth the facts relative to the transaction.

(1) The court, with notice to interested persons, shall hear, determine, and act upon the petition. If publication of notice is required by the court, published notice shall be given by publication once a week for two consecutive weeks in a legal newspaper designated by the petitioner in the county wherein the proceedings are pending, or, if no such designation be made, in any legal newspaper in the county, or, if the city of the protected person's residence is situated in more than one county, in any legal newspaper in the city. The first publication shall be within two weeks after the date of the order fixing the time and place for the hearing. Proof of publication and mailing shall be filed before the hearing. No defect in any notice or in the publication or service thereof shall invalidate any proceedings.

(2) If the court approves the agreement, the conservator, upon payment of the agreed compensation, shall convey the real estate sought to be acquired and execute any release which may be authorized.

(f) When it is for the best interests of the estate of a protected person, real estate may be platted by the conservator under such conditions and upon such notice as the court may order.

(g) When any protected person is legally bound to make a conveyance or lease, the court, without further notice, may direct the conservator to make the conveyance

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or lease to the person entitled thereto. The petition may be made by any person claiming to be entitled to the conveyance or lease, or by the conservator, or by any interested person or person claiming an interest in the real estate or contract, and shall show the description of the land and the facts upon which the claim for conveyance or lease is based. Upon proof of the petition, the court may order the conservator to execute and deliver an instrument of conveyance or lease upon performance of the contract.

(h) A conservator without order of the court may make an extension of an existing mortgage for a period of five years or less, if the extension agreement contains the same prepayment privileges and the rate of interest does not exceed the lowest rate in the mortgage extended.

(i) No conservator shall be liable personally on any mortgage note or by reason of the covenants in any instrument or conveyance executed in the capacity of conservator.

(j) No sale, mortgage, lease, or conveyance by a conservator shall be subject to collateral attack on account of any irregularity in the proceedings if the court which ordered the same had jurisdiction of the estate.

(k) No proceeding to have declared invalid the sale, mortgage, lease, or conveyance by a conservator shall be maintained by any person claiming under or through the protected person unless such proceeding is begun within five years immediately succeeding the date of such sale, mortgage, lease, or conveyance; provided, however, that in case of real estate sold by a conservator, no action for its recovery shall be maintained by or under the protected person unless it is begun within five years after the termination of the protective proceedings and that, in cases of fraud, minors, and others under legal disability to sue when the right of action first accrues may begin such action at any time within five years after the disability is removed.

(l) After the filing of the petition, a certificate of the district court certified to that fact may be filed for record in the office of the county recorder for abstract property, or with the registrar of titles for registered property, of any county in which any real estate owned by the proposed protected person is situated and, if the protected person is a resident of this state, in the county of residence. The certificate shall state that a petition is pending and the name and address of the person for whom a conservator is sought. If a conservator is appointed on the petition, and if the conservatorship order removes or restricts the right of the protected person to transfer property or to contract, then all contracts and all transfers of real property made by the protected person after the filing and before the termination of the conservatorship shall be void.

#### **Sec. 58. [524.5-419] INVENTORY; RECORDS.**

(a) Within 60 days after appointment, a conservator shall prepare and file with the appointing court a detailed inventory of the estate subject to the conservatorship, together with an oath or affirmation that the inventory is believed to be complete and accurate as far as information permits.

(b) A conservator shall keep records of the administration of the estate and make them available for examination on reasonable request of the court, ward, protected person, or any attorney representing such persons.

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**Sec. 59. [524.5-420] REPORTS; APPOINTMENT OF VISITOR; MONITORING.**

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

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

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

(d) The court shall establish a system for monitoring of conservatorships, including the filing and review of conservators' reports and plans.

**Sec. 60. [524.5-421] TITLE AFTER APPOINTMENT.**

(a) The appointment of a conservator does not vest title of the protected person's property in the conservator.

(b) Letters of conservatorship are evidence of the conservator's power to act on behalf of the protected person. An order terminating a conservatorship terminates the conservator's powers to act on behalf of the protected person.

(c) Subject to the requirements of general statutes governing the filing or recordation of documents of title to land or other property, letters of conservatorship and orders terminating conservatorships may be filed or recorded to give notice of title as between the conservator and the protected person.

**Sec. 61. [524.5-422] PROTECTED PERSON'S INTEREST NONALIENABLE.**

(a) Except as otherwise provided in paragraphs (c) and (d), the interest of a protected person in property is not transferable or assignable by the protected person. An attempted transfer or assignment by the protected person, although ineffective to affect property rights, may give rise to a claim against the protected person for restitution or damages which, subject to presentation and allowance, may be satisfied as provided in section 524.5-429.

(b) Upon appointment of a conservator, property vested in a protected person is not subject to levy, garnishment, or similar process for claims against the protected person unless allowed pursuant to section 524.5-429.

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(c) A person without knowledge of the conservatorship who in good faith and for security or substantially equivalent value receives delivery from a protected person of tangible personal property of a type normally transferred by delivery of possession is protected as if the protected person or transferee had valid title.

(d) A third party who deals with the protected person with respect to property subject to a conservatorship is entitled to any protection provided in other law.

(e) Nothing in this section or in this article shall prevent the imposition, enforcement, or collection of a lien under sections 514.980 to 514.985.

**Sec. 62. [524.5-423] SALE, ENCUMBRANCE, OR OTHER TRANSACTION INVOLVING CONFLICT OF INTEREST.**

Any transaction involving the conservatorship estate which is affected by a conflict between the conservator's fiduciary and personal interests is voidable unless the transaction is expressly authorized by the court after notice to interested persons. A transaction affected by a conflict between personal and fiduciary interests includes any sale, encumbrance, or other transaction involving the conservatorship estate entered into by the conservator, the spouse, descendant, agent, or lawyer of a conservator, or corporation or other enterprise in which the conservator has a beneficial interest.

**Sec. 63. [524.5-424] PROTECTION OF PERSON DEALING WITH CONSERVATOR.**

(a) A person who assists or deals with a conservator in good faith and for value in any transaction other than one requiring a court order under section 524.5-410 or 524.5-411 is protected as though the conservator properly exercised the power. The fact that a person knowingly deals with a conservator does not alone require the person to inquire into the existence of a power or the propriety of its exercise, but restrictions on powers of conservators which are endorsed on letters as provided in section 524.5-110 are effective as to other persons. A person need not see to the proper application of assets of the estate paid or delivered to a conservator.

(b) Protection provided by this section extends to any procedural irregularity or jurisdictional defect that occurred in proceedings leading to the issuance of letters and is not a substitute for protection provided to persons assisting or dealing with a conservator by comparable provisions in other law relating to commercial transactions or to simplifying transfers of securities by fiduciaries.

**Sec. 64. [524.5-426] DELEGATION.**

(a) A conservator may not delegate to an agent or another conservator the entire administration of the estate, but a conservator may otherwise delegate the performance of functions that a prudent person of comparable skills may delegate under similar circumstances.

(b) The conservator shall exercise reasonable care, skill, and caution in:

(1) selecting an agent;

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(2) establishing the scope and terms of a delegation, consistent with the purposes and terms of the conservatorship;

(3) periodically reviewing an agent's overall performance and compliance with the terms of the delegation; and

(4) redressing an action or decision of an agent which would constitute a breach of fiduciary duty if performed by the conservator.

(c) A conservator who complies with paragraphs (a) and (b) is not liable to the protected person or to the estate for the decisions or actions of the agent to whom a function was delegated.

(d) In performing a delegated function, an agent shall exercise reasonable care to comply with the terms of the delegation.

(e) By accepting a delegation from a conservator subject to the laws of this state, an agent submits to the jurisdiction of the courts of this state.

**Sec. 65. [524.5-427] PRINCIPLES OF DISTRIBUTION BY CONSERVATOR.**

(a) Unless otherwise specified in the order of appointment and endorsed on the letters of appointment, a conservator may expend or distribute income or principal of the estate of the protected person without further court authorization or confirmation for the support, care, education, health, and welfare of the protected person and individuals who are in fact dependent on the protected person, including the payment of child or spousal support, in accordance with paragraphs (b) to (e).

(b) The conservator shall consider recommendations relating to the appropriate standard of support, care, education, health, and welfare for the protected person or an individual who is in fact dependent on the protected person made by a guardian, if any, and, if the protected person is a minor, the conservator shall consider recommendations made by a parent.

(c) The conservator may not be surcharged for money paid to persons furnishing support, care, education, or benefit to the protected person or an individual who is in fact dependent on the protected person pursuant to the recommendations of a parent or guardian of the protected person unless the conservator knows that the parent or guardian derives personal financial benefit therefrom, including relief from any personal duty of support, or the recommendations are not in the best interest of the protected person.

(d) In making distributions under this section, the conservator shall consider:

(1) the size of the estate, the estimated duration of the conservatorship, and the likelihood that the protected person, at some future time, may be fully self-sufficient and able to manage business affairs and the estate;

(2) the accustomed standard of living of the protected person and individuals who are in fact dependent on the protected person; and

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(3) other money or sources used for the support of the protected person.

(e) Money expended under this section may be paid by the conservator to any person, including the protected person, to reimburse for expenditures that the conservator might have made or in advance for services to be rendered to the protected person if it is reasonable to expect the services will be performed and advance payments are customary or reasonably necessary under the circumstances.

**Sec. 66. [524.5-428] DEATH OF PROTECTED PERSON.**

(a) If a protected person dies, the conservator shall deliver to the court for safekeeping any will of the deceased protected person which may have come into the conservator's possession, inform the personal representative named in the will of the delivery, and retain the estate for delivery to a duly appointed personal representative of the decedent or other persons entitled thereto.

(b) If a personal representative has not been appointed within 90 days after the death of a protected person and an application or petition for appointment is not before the court, the conservator may apply or petition for appointment as personal representative in order to administer and distribute the decedent's estate.

**Sec. 67. [524.5-429] CLAIMS AGAINST PROTECTED PERSON.**

(a) A conservator may pay, or secure by encumbering assets of the estate, claims against the estate or against the protected person arising before or during the conservatorship upon their presentation and allowance in accordance with the priorities stated in paragraph (d). A claimant may present a claim by:

(1) sending or delivering to the conservator a written statement of the claim, indicating its basis, the name and address of the claimant, and the amount claimed; or

(2) filing a written statement of the claim, in the form prescribed by rule, with the clerk of court and sending or delivering a copy of the statement to the conservator.

(b) A claim is deemed presented on receipt of the written statement of claim by the conservator or the filing of the claim with the court, whichever occurs first. A presented claim is allowed if it is not disallowed by written statement sent or delivered by the conservator to the claimant within 60 days after its presentation. The conservator before payment may change an allowance to a disallowance in whole or in part, but not after allowance by a court order or judgment or an order directing payment of the claim. The presentation of a claim tolls the running of any statute of limitations relating to the claim until 30 days after its disallowance.

(c) A claimant whose claim has not been paid may petition the court for determination of the claim at any time before it is barred by a statute of limitations and, upon due proof, procure an order for its allowance, payment, or security by encumbering assets of the estate. If a proceeding is pending against a protected person at the time of appointment of a conservator or is initiated against the protected person thereafter, the moving party shall give to the conservator notice of any proceeding that could result in creating a claim against the estate.

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(d) If it appears that the estate is likely to be exhausted before all existing claims are paid, the conservator shall distribute the estate in money or in kind in payment of claims in the following order:

(1) costs and expenses of administration;

(2) claims of the federal or state government having priority under other law;

(3) reasonable and necessary medical, hospital, or nursing home expenses of the protected person, including compensation of persons attending the ward, protected person, or respondent;

(4) claims incurred by the conservator for support, care, education, health, and welfare previously provided to the protected person or individuals who are in fact dependent on the protected person;

(5) claims arising before the conservatorship; and

(6) all other claims.

(e) Preference may not be given in the payment of a claim over any other claim of the same class, and a claim due and payable may not be preferred over a claim not due.

(f) If assets of the conservatorship are adequate to meet all existing claims, the court, acting in the best interest of the protected person, may order the conservator to give a mortgage or other security on the conservatorship estate to secure payment at some future date of any or all claims.

#### Sec. 68. **[524.5-430] PERSONAL LIABILITY OF CONSERVATOR.**

(a) Except as otherwise agreed, a conservator is not personally liable on a contract properly entered into in a fiduciary capacity in the course of administration of the estate unless the conservator fails to reveal in the contract the representative capacity and identify the estate.

(b) A conservator is personally liable for obligations arising from ownership or control of property of the estate or for other acts or omissions occurring in the course of administration of the estate only if personally at fault.

(c) Claims based on contracts entered into by a conservator in a fiduciary capacity, obligations arising from ownership or control of the estate, and claims based on torts committed in the course of administration of the estate may be asserted against the estate by proceeding against the conservator in a fiduciary capacity, whether or not the conservator is personally liable therefor.

(d) A question of liability between the estate and the conservator personally may be determined in a proceeding for accounting, surcharge, or indemnification, or in another appropriate proceeding or action.

(e) A conservator is not personally liable for any environmental condition on or injury resulting from any environmental condition on land solely by reason of being appointed conservator.

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**Sec. 69. [524.5-431] TERMINATION OF PROCEEDINGS.**

(a) A conservatorship terminates upon the death of the protected person or upon order of the court. Unless created for reasons other than that the protected person is a minor, a conservatorship created for a minor also terminates when the protected person attains majority or is emancipated.

(b) Upon the death of a protected person, the conservator shall conclude the administration of the estate by distribution of probate property to the personal representative of the protected person's estate. The conservator shall distribute nonprobate property to the successor in interest. The conservator shall file a final report and petition for discharge no later than 30 days after distribution, and notice of hearing for allowance of said report shall be given to interested persons and to the personal representative of the protected person's estate.

(c) On petition of any person interested in the protected person's welfare, the court may terminate the conservatorship if the protected person no longer needs the assistance or protection of a conservator. Termination of the conservatorship does not affect a conservator's liability for previous acts or the obligation to account for funds and assets of the protected person.

(d) Except as otherwise ordered by the court for good cause, before terminating a conservatorship, the court shall follow the same procedures to safeguard the rights of the protected person that apply to a petition for conservatorship. Upon the establishment of a prima facie case for termination, the court shall order termination unless it is proved that continuation of the conservatorship is in the best interest of the protected person.

(e) Upon termination of a conservatorship, whether or not formally distributed by the conservator, title to assets of the estate remains vested in the formerly protected person or passes to the person's successors subject to administration, including claims of creditors and allowances of surviving spouse and dependent children, and subject to the rights of others resulting from abatement, retainer, advancement, and ademption. The order of termination must provide for expenses of administration and direct the conservator to execute appropriate instruments to evidence the transfer of title or confirm a distribution previously made and to file a final report and a petition for discharge upon approval of the final report.

(f) The court shall enter a final order of discharge upon the approval of the final report and satisfaction by the conservator of any other conditions placed by the court on the conservator's discharge.

**Sec. 70. [524.5-432] PAYMENT OF DEBT AND DELIVERY OF PROPERTY TO FOREIGN CONSERVATOR WITHOUT LOCAL PROCEEDING.**

(a) A person who is indebted to or has the possession of tangible or intangible property of a protected person may pay the debt or deliver the property to a foreign conservator, guardian of the estate, or other court-appointed fiduciary of the state of residence of the protected person. Payment or delivery may be made only upon proof of appointment and presentation of an affidavit made by or on behalf of the fiduciary

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stating that a protective proceeding relating to the protected person is not pending in this state and the foreign fiduciary is entitled to payment or to receive delivery.

(b) Payment or delivery in accordance with paragraph (a) discharges the debtor or possessor, absent knowledge of any protective proceeding pending in this state.

**Sec. 71. [524.5-433] FOREIGN CONSERVATOR: PROOF OF AUTHORITY; BOND; POWERS.**

If a conservator has not been appointed in this state and a petition in a protective proceeding is not pending in this state, a conservator appointed in the state in which the protected person resides may file in a court of this state, in a county in which property belonging to the protected person is located, authenticated copies of letters of appointment and of any bond. Thereafter, the conservator may exercise all powers of a conservator appointed in this state as to property in this state and may maintain actions and proceedings in this state subject to any conditions otherwise imposed upon nonresident parties.

**PART 5**

**MISCELLANEOUS PROVISIONS**

**Sec. 72. [524.5-501] GUARDIANSHIP, CONSERVATORSHIP; WORKERS' COMPENSATION PROCEEDINGS.**

(a) When a matter is referred under section 176.092, subdivision 3, the court shall determine whether the employee or dependent is a minor or an incapacitated person, shall appoint a guardian or conservator if the employee or dependent is a minor or an incapacitated person, and shall return the matter to the source of referral.

(b) The court shall oversee the use of monetary benefits paid to a conservator as provided in this article or under rule 145 of the General Rules of Practice for the district courts. There is a rebuttable presumption that a settlement or award approved by the commissioner of the department of labor and industry or a compensation judge is reasonable and fair to the employee or dependent.

(c) Subject to the approval of the court, the insurer or self-insured employer shall pay the costs and guardian, conservator, and attorney fees of the employee or dependent associated with the appointment of a guardian or conservator and as required under section 176.092.

**Sec. 73. [524.5-502] COMPENSATION AND EXPENSES.**

(a) The court may authorize a proceeding under this article to proceed in forma pauperis, as provided in chapter 563.

(b) In proceedings under this article, a lawyer or health professional rendering necessary services with regard to the appointment of a guardian or conservator, the administration of the protected person's estate or personal affairs, or the restoration of that person's capacity or termination of the protective proceeding shall be entitled to compensation from the protected person's estate or from the county having jurisdiction

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over the proceedings if the ward or protected person is indigent. When the court determines that other necessary services have been provided for the benefit of the ward or protected person by a lawyer or health professional, the court may order fees to be paid from the estate of the protected person or from the county having jurisdiction over the proceedings if the ward or protected person is indigent. If, however, the court determines that a petitioner, guardian, or conservator has not acted in good faith, the court shall order some or all of the fees or costs incurred in the proceedings to be borne by the petitioner, guardian, or conservator not acting in good faith. In determining compensation for a guardian or conservator of an indigent person, the court shall consider a fee schedule recommended by the board of county commissioners. The fee schedule may also include a maximum compensation based on the living arrangements of the ward or protected person. If these services are provided by a public or private agency, the county may contract on a fee-for-service basis with that agency.

(c) When the court determines that a guardian or conservator has rendered necessary services or has incurred necessary expenses for the benefit of the ward or protected person, the court may order reimbursement or compensation to be paid from the estate of the protected person or from the county having jurisdiction over the guardianship or protective proceeding if the ward or protected person is indigent. The court may not deny an award of fees solely because the ward or protected person is a recipient of medical assistance. In determining compensation for a guardian or conservator of an indigent person, the court shall consider a fee schedule recommended by the board of county commissioners. The fee schedule may also include a maximum compensation based on the living arrangements of the ward or protected person. If these services are provided by a public or private agency, the county may contract on a fee-for-service basis with that agency.

(d) The court shall order reimbursement or compensation if the guardian or conservator requests payment and the guardian or conservator was nominated by the court or by the county adult protection unit because no suitable relative or other person was available to provide guardianship or protective proceeding services necessary to prevent maltreatment of a vulnerable adult, as defined in section 626.5572, subdivision 15. In determining compensation for a guardian or conservator of an indigent person, the court shall consider a fee schedule recommended by the board of county commissioners. The fee schedule may also include a maximum compensation based on the living arrangements of the ward or protected person. If these services are provided by a public or private agency, the county may contract on a fee-for-service basis with that agency.

(e) When a county employee serves as a guardian or conservator as part of employment duties, the court shall order compensation if the guardian or conservator performs necessary services that are not compensated by the county. The court may order reimbursement to the county from the protected person's estate for compensation paid by the county for services rendered by a guardian or conservator who is a county employee but only if the county shows that after a diligent effort it was unable to arrange for an independent guardian or conservator.

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## ARTICLE 2

## CONFORMING AMENDMENTS AND TRANSITION

Section 1. Minnesota Statutes 2002, section 145C.09, is amended by adding a subdivision to read:

Subd. 3. **POWER OF A GUARDIAN.** The powers of a guardian to revoke the appointment of a health care agent in a health care directive of which the ward is the principal or to revoke the health care directive itself are specified in section 524.5-315.

Sec. 2. Minnesota Statutes 2002, section 201.014, subdivision 2, is amended to read:

Subd. 2. **NOT ELIGIBLE.** The following individuals are not eligible to vote. Any individual:

- (a) Convicted of treason or any felony whose civil rights have not been restored;
- (b) Under a guardianship of the person in which the court order provides that the ward does not retain the right to vote; or
- (c) Found by a court of law to be legally incompetent.

Sec. 3. Minnesota Statutes 2002, section 201.15, subdivision 1, is amended to read:

Subdivision 1. **GUARDIANSHIPS AND INCOMPETENTS.** The state court administrator shall report monthly to the secretary of state the name, address, and date of birth of each individual 18 years of age or over, who during the month preceding the date of the report:

- (a) was placed under a guardianship of the person in which the court order provides that the ward does not retain the right to vote; or
- (b) was adjudged legally incompetent.

The court administrator shall also report the same information for each individual transferred to the jurisdiction of the court who meets a condition specified in clause (a) or (b). The secretary of state shall determine if any of the persons in the report is registered to vote and shall prepare a list of those registrants for the county auditor. The county auditor shall change the status on the record in the statewide registration system of any individual named in the report to indicate that the individual is not eligible to register or vote.

Sec. 4. Minnesota Statutes 2002, section 245A.041, is amended to read:

**245A.041 SYSTEMS AND RECORDS.**

Subdivision 1. **ESTABLISHMENT; USE.** (a) The commissioner may establish systems and records to fulfill the requirements of section 245A.04. The commissioner may also use these systems and records to obtain and provide criminal history data

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from the bureau of criminal apprehension, criminal history data held by the commissioner, and data about substantiated maltreatment under section 626.556 or 626.557, for other purposes, provided that:

- (1) the background study is specifically authorized in statute; or
- (2) the request is made with the informed consent of the subject of the study as provided in section 13.05, subdivision 4.

A person making a request under clause (2) must agree in writing not to disclose the data to any other person without the consent of the subject of the data.

(b) The commissioner may recover the cost of obtaining and providing background study data by charging the person or entity requesting the study a fee of no more than \$12 per study. The fees collected under this paragraph are appropriated to the commissioner for the purpose of conducting background studies.

**Subd. 2. NATIONAL RECORDS SEARCH.** (a) When specifically required by statute, the commissioner shall also obtain criminal history data from the National Criminal Records Repository. To obtain criminal history data from the National Criminal Records Repository, the commissioner shall require classifiable fingerprints of the data subject and must submit these fingerprint requests through the bureau of criminal apprehension. The commissioner may recover the cost of obtaining and providing criminal history data from the National Criminal Records Repository by charging the person or entity requesting the study a fee of no more than \$30 per study. The fees collected under this subdivision are appropriated to the commissioner for the purpose of obtaining criminal history data from the National Criminal Records Repository.

(b) To obtain criminal history data from the National Criminal Records Repository under this chapter, the commissioner may require the background study subject to submit fingerprint images electronically. The commissioner may not require electronic fingerprint images until the electronic recording and transfer system is available for non-criminal-justice purposes and the necessary equipment is in use in the law enforcement agency in the background study subject's local community.

Sec. 5. Minnesota Statutes 2002, section 507.04, is amended to read:

**507.04 CONVEYANCE BY SPOUSE OF INSANE OR INCOMPETENT PERSON OF PROTECTED PERSON'S REAL PROPERTY.**

**Subdivision 1. WITH GUARDIAN'S NO CONVEYANCE EXCEPT BY COURT APPROVAL.** The spouse of any person who is adjudged by a court of competent jurisdiction to be insane or incompetent to transact business or manage that person's estate, and for whose person or estate, or both, a guardian is appointed by a district court of this state, may, with the guardian's approval, by separate deed convey any real estate, the title to which is in such spouse, as fully as the spouse could do if unmarried. A duly certified copy of the letters of guardianship of the guardian shall be recorded in the office of the county recorder of the county in which the real estate is situated. The approval of the conveyance by the guardian shall be in writing, after

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being first authorized to do so by an order of the district court, and shall be endorsed on the instrument of the conveyance. Without the approval of the guardian, Except as otherwise provided by this section, if a protected person's right to convey an interest in real property is restricted under sections 524.5-401 to 524.5-433, no conveyance of the interest is effective unless ordered by the court pursuant to section 524.5-418. A conveyance of an interest in real property owned by the incompetent spouse does not affect of a protected person remains subject to the marital rights of the insane or incompetent spouse protected person unless the protected person's conservator joins in the conveyance on behalf of the protected person pursuant to a court order under section 524.5-418. This section does not revive marital rights in real property extinguished as part of a property agreement or settlement between the spouses approved by a court of competent jurisdiction, including but not limited to a valid pre-nuptial or post-nuptial agreement, a legal separation, or any other court approved division of assets between the spouses.

Subd. 2. **DISABILITY FOR THREE YEARS.** Where no guardian has been appointed of the person or estate of such insane or incompetent spouse and such insanity or incompetency has existed or may exist for three years subsequent to the adjudication of the insanity or incompetency of the insane or incompetent spouse, the spouse of the insane or incompetent person may convey any real estate, the title to which is in the spouse, as fully as the spouse could do if unmarried.

Subd. 3. **HOMESTEAD.** This section does not authorize the conveyance of a homestead unless the guardian of the person or estate of the insane or incompetent person appointed by the district court of the proper county consents in writing to the conveyance by endorsement thereon after being first authorized so to do by order of the district court.

Subd. 4. **NONRESIDENT WITH DISABILITY.** The provisions of subdivisions 2 and 3 do not apply to a nonresident insane or incompetent person.

Subd. 5. **INCHOATE INTEREST IN SPOUSE'S SHARE REAL PROPERTY OF PROTECTED PERSON'S SPOUSE.** In all cases where the district court under section 524.5-418 has directed ordered a sale conveyance of the interest of an insane or incompetent interest in real property owned by a protected person in real estate or has ordered a protected person's joinder in the conveyance of an interest in real property owned by the protected person's spouse, the sale conveyance includes the inchoate interest of the protected person in any share or part of the real estate property owned by such the protected person's spouse whether or not specifically mentioned in the proceedings or conveyance, when the interest of the spouse is also conveyed to the same grantee.

Subd. 6. **VALIDITY OF HOMESTEAD CONVEYANCE.** No conveyance of the homestead is valid unless made by both spouses in a joint deed each spouse or the duly authorized legal representative of each spouse joins in the conveyance by joint deed or by separate deeds.

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Sec. 6. Minnesota Statutes 2002, section 524.2-502, is amended to read:

**524.2-502 EXECUTION; WITNESSED WILLS.**

Except as provided in sections 524.2-506 and 524.2-513, a will must be:

- (1) in writing;
- (2) signed by the testator or in the testator's name by some other individual in the testator's conscious presence and by the testator's direction or signed by the testator's conservator pursuant to a court order under section 524.5-411; and
- (3) signed by at least two individuals, each of whom signed within a reasonable time after witnessing either the signing of the will as described in clause (2) or the testator's acknowledgment of that signature or acknowledgment of the will.

Sec. 7. Minnesota Statutes 2002, section 524.3-203, is amended to read:

**524.3-203 PRIORITY AMONG PERSONS SEEKING APPOINTMENT AS PERSONAL REPRESENTATIVE.**

(a) Whether the proceedings are formal or informal, persons who are not disqualified have priority for appointment in the following order:

- (1) the person with priority as determined by a probated will including a person nominated by a power conferred in a will;
- (2) the surviving spouse of the decedent who is a devisee of the decedent;
- (3) other devisees of the decedent;
- (4) the surviving spouse of the decedent;
- (5) other heirs of the decedent;
- (6) 45 days after the death of the decedent, any creditor;
- (7) 90 days after the death of the decedent and pursuant to section 524.5-428, paragraph (b), any conservator of the decedent who has not been discharged.

(b) An objection to an appointment can be made only in formal proceedings. In case of objection the priorities stated in (a) apply except that

- (1) if the estate appears to be more than adequate to meet exemptions and costs of administration but inadequate to discharge anticipated unsecured claims, the court, on petition of creditors, may appoint any qualified person;
- (2) in case of objection to appointment of a person other than one whose priority is determined by will by an heir or devisee appearing to have a substantial interest in the estate, the court may appoint a person who is acceptable to heirs and devisees whose interests in the estate appear to be worth in total more than half of the probable distributable value, or, in default of this accord any suitable person.

(c) A person entitled to letters under (2) to (5) of (a) above may nominate a qualified person to act as personal representative. Any person aged 18 and over may renounce the right to nominate or to an appointment by appropriate writing filed with the court. When two or more persons share a priority, those of them who do not

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renounce must concur in nominating another to act for them, or in applying for appointment.

(d) Conservators of the estates of protected persons, or if there is no conservator, any guardian except a guardian ad litem of a minor or incapacitated person, may exercise the same right to nominate, to object to another's appointment, or to participate in determining the preference of a majority in interest of the heirs and devisees that the protected person or ward would have if qualified for appointment.

(e) Appointment of one who does not have priority, including priority resulting from disclaimer, renunciation or nomination determined pursuant to this section, may be made only in formal proceedings. Before appointing one without priority, the court must determine that those having priority, although given notice of the proceedings, have failed to request appointment or to nominate another for appointment, and that administration is necessary.

(f) No person is qualified to serve as a personal representative who is:

- (1) under the age of 18;
- (2) a person whom the court finds unsuitable in formal proceedings;

(g) A personal representative appointed by a court of the decedent's domicile has priority over all other persons except as provided in (b)(1) or where the decedent's will nominates different persons to be personal representative in this state and in the state of domicile. The domiciliary personal representative may nominate another, who shall have the same priority as the domiciliary personal representative.

(h) This section governs priority for appointment of a successor personal representative but does not apply to the selection of a special administrator.

#### Sec. 8. REPEALER.

Minnesota Statutes 2002, sections 524.5-505; 525.539; 525.54; 525.541; 525.542; 525.543; 525.544; 525.545; 525.55; 525.5501; 525.551; 525.5515; 525.552; 525.56; 525.561; 525.562; 525.57; 525.58; 525.581; 525.582; 525.583; 525.59; 525.591; 525.60; 525.61; 525.615; 525.6155; 525.616; 525.6165; 525.617; 525.6175; 525.618; 525.6185; 525.619; 525.6192; 525.6194; 525.6195; 525.6196; 525.6197; 525.6198; 525.6199; 525.62; 525.63; 525.64; 525.641; 525.642; 525.65; 525.651; 525.652; 525.66; 525.661; 525.662; 525.67; 525.68; 525.69; 525.691; 525.692; 525.70; 525.702; 525.703; and 525.705, are repealed.

#### Sec. 9. TRANSITION PROVISIONS.

(a) Articles 1 and 2 apply to each guardianship or conservatorship proceeding and each appointment of guardian or conservator commenced on or after the effective date of articles 1 and 2. Except as otherwise provided in this section, articles 1 and 2 apply to each guardianship or conservatorship approved by the court prior to the effective date of articles 1 and 2, and to any guardianship or conservatorship proceeding pending in court on the effective date of articles 1 and 2, unless the court finds for good cause or in the interests of judicial economy that the proceeding should be completed under

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the provisions of Minnesota Statutes, chapter 525, as it existed prior to the effective date of articles 1 and 2.

(b) A guardian or conservator who is not discharged prior to the effective date of articles 1 and 2 shall continue to hold the appointment but shall have only the powers specified in the order of appointment and in Minnesota Statutes, chapter 525, as it existed prior to the effective date of articles 1 and 2. Each guardian or conservator holding an appointment on the effective date of articles 1 and 2 shall continue to be bound by the duties imposed by the order of appointment; by Minnesota Statutes, chapter 525, as it existed prior to the effective date of articles 1 and 2; and by article 1, section 50; and shall be bound by any additional duties imposed by articles 1 and 2 starting on the first day of the next month starting after the effective date of articles 1 and 2 or on the next anniversary date of the appointment, whichever occurs later.

(c) Any act done prior to the effective date of articles 1 and 2 in any proceeding and any right accrued under Minnesota Statutes, chapter 525, prior to the effective date of articles 1 and 2 shall not be impaired by articles 1 and 2. If a right is acquired, extinguished, or barred upon the expiration of a prescribed period of time which has commenced to run in accordance with the provisions of any statute before the effective date of articles 1 and 2, the provisions of the prior statute shall remain in force with respect to that right notwithstanding the statute's amendment or repeal by articles 1 and 2.

(d) An order of the court or letters of guardianship or conservatorship issued by the court prior to the effective date of articles 1 and 2 shall remain in full force and effect in accordance with its terms and conditions and in accordance with the provisions of prior law until the court modifies the order or letters in accordance with the provisions of articles 1 and 2. Upon request for a certified copy of an order or letters which remains in full force and effect under this paragraph, the court administrator shall certify that the order or letters remains in full force and effect pursuant to this paragraph.

(e) The court, without hearing or notice to any person, may issue new letters of guardianship or conservatorship under articles 1 and 2 to replace similar letters issued prior to the effective date of articles 1 and 2. The new letters shall be effective under articles 1 and 2 with the same force and effect as the prior letters and shall remain in full force and effect until modified by the court in accordance with the provisions of articles 1 and 2.

(f) A power of attorney executed in accordance with Minnesota Statutes, section 524.5-505, prior to the effective date of articles 1 and 2, or any surety bond, deed, or other instrument, report, or other undertaking executed in accordance with Minnesota Statutes, chapter 525, prior to the effective date of articles 1 and 2, shall remain in full force and effect for all purposes in accordance with its terms and conditions and the provisions of the applicable statutes under which the power of attorney, surety bond, deed, or other instrument, report, or other undertaking was executed, until the power of attorney, surety bond, deed, or other instrument, report, or other undertaking expires according to its terms or pursuant to the statutes governing its execution, or is

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modified, terminated, or superseded by a new power of attorney, surety bond, deed, or other instrument, report, or other undertaking executed in accordance with the provisions of articles 1 and 2.

Presented to the governor April 10, 2003

Signed by the governor April 11, 2003, 5:45 p.m.

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### CHAPTER 13—S.F.No. 1001

*An act relating to environment; modifying requirements for solid waste plans; amending Minnesota Statutes 2002, section 115A.46, subdivision 1.*

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

Section 1. Minnesota Statutes 2002, section 115A.46, subdivision 1, is amended to read:

Subdivision 1. **GENERAL.** (a) Plans shall address the state policies and purposes expressed in section 115A.02 and may not be inconsistent with state law.

(b) Plans for the location, establishment, operation, maintenance, and postclosure use of facilities and facility sites, for ordinances, and for licensing, permit, and enforcement activities shall be consistent with the rules adopted by the agency pursuant to chapter 116.

(c) Plans shall address:

(1) the resolution of conflicting, duplicative, or overlapping local management efforts;

(2) the establishment of joint powers management programs or waste management districts where appropriate; and

(3) other matters as the rules of the office may require consistent with the purposes of sections 115A.42 to 115A.46.

(d) Political subdivisions preparing plans under sections 115A.42 to 115A.46 shall consult with persons presently providing solid waste collection, processing, and disposal services.

(e) Plans must be submitted to the director for approval. When a county board is ready to have a final plan approved, the county board shall submit a resolution requesting review and approval by the director. After receiving the resolution, the director shall notify the county within 45 days whether the plan as submitted is complete and, if not complete, the specific items that need to be submitted to make the plan complete. Within 90 days after a complete plan has been submitted, the director

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