

APR 13 1979

SENATE FILE 400

By COMMITTEE ON JUDICIARY  
*Approved 3/15 (p 764)*

Passed Senate, Date 3-21-79 (p 893) Passed House, Date 4-17-79 (p 1577)  
Vote: Ayes 45 Nays 0 Vote: Ayes 87 Nays 1  
Approved April 26, 1979

### A BILL FOR

1 An Act providing for limited guardianships under the state  
2 probate code.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:  
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1 Section 1. Chapter six hundred thirty-three (633), Code  
2 1979, is amended by adding the following new section:

3 NEW SECTION. RESPONSIBILITIES OF GUARDIAN. Unless  
4 otherwise directed by order of court, the guardian shall have  
5 custody of a minor ward and general supervisory responsibility  
6 for the care of a ward who has attained the age of majority.  
7 However, the court may take into account all available  
8 information concerning the capabilities of the ward and any  
9 additional evaluation deemed necessary, and may direct that  
10 the guardian have only a specially limited responsibility  
11 for the ward. In such event, the court shall state those  
12 areas of responsibility which shall be supervised by the  
13 guardian and all others shall be retained by the ward. From  
14 time to time, upon a proper showing, the court may alter the  
15 respective responsibilities of the guardian and the ward,  
16 after notice to the ward and an opportunity to be heard.

17 Sec. 2. Section six hundred thirty-three point six hundred  
18 thirty-seven (633.637), Code 1979, is amended to read as  
19 follows:

20 633.637 POWERS OF WARD. A ward for whom a conservator  
21 has been appointed shall not have the power to convey, encumber  
22 or dispose of property in any manner, other than by will if  
23 he the ward possesses the requisite testamentary capacity,  
24 unless the court determines that the ward has a limited ability  
25 to handle his or her own funds. If the court makes such a  
26 finding, it shall specify to what extent the ward may possess  
27 and use his or her own funds.

28 Sec. 3. Section six hundred thirty-three point six hundred  
29 thirty-eight (633.638), Code 1979, is amended to read as  
30 follows:

31 633.638 PRESUMPTION OF FRAUD. If a conservator be  
32 appointed, all contracts, transfers and gifts made by the  
33 ward after the filing of the petition shall be presumed to  
34 be a fraud against the rights and interest of the ward except  
35 as otherwise directed by the court pursuant to section six



S-3254

1 Amend Senate File 400 as follows:

2 1. Page 1, by inserting after line 16 the  
3 following:

4 "Sec. \_\_\_\_\_. Section six hundred thirty-three point  
5 five hundred sixty-six (633.566), Code 1979, is amended  
6 by adding the following new subsections:

7 NEW SUBSECTION. The nature of the proposed ward's  
8 alleged incompetency.

9 NEW SUBSECTION. The names and addresses, so far  
10 as is known or can be reasonably ascertained, of the  
11 persons most closely related to the proposed ward.

12 NEW SUBSECTION. The requested term of the limited  
13 guardianship to be included in the court's order of  
14 appointment.

15 Sec. \_\_\_\_\_. Section six hundred thirty-three point  
16 five hundred sixty-six (633.566), subsections two  
17 (2) and four (4), Code 1979, are amended to read as  
18 follows:

19 2. ~~That the proposed ward is a minor or is~~  
20 ~~incapable of managing his property~~ The nature and  
21 degree of the alleged disability, the specific areas  
22 of protection and assistance requested, and the  
23 limitation of rights requested to be included in the  
24 court's order of appointment.

25 4. The estimated present value and description  
26 of the real estate, the estimated value and description  
27 of the personal property, and the estimated gross  
28 annual income of the estate including any compensation,  
29 pension, insurance, or allowance to which the proposed  
30 ward may be entitled. If any money is payable, or  
31 to become payable, to the proposed ward by the United  
32 States through the veterans administration, the  
33 petition shall so state.

34 Sec. \_\_\_\_\_. Section six hundred thirty-three point  
35 five hundred sixty-eight (633.568), Code 1979, is  
36 amended to read as follows:

37 633.568 NOTICE GOVERNED BY RULES OF CIVIL  
38 PROCEDURE. In all other cases, ~~notice~~ the proposed  
39 ward and his or her parents, if the parents can be  
40 found within this state, or the conservator or any  
41 person having control of the care and welfare of the  
42 proposed ward, shall be personally served the petition  
43 for the appointment of a conservator. Notwithstanding  
44 the foregoing, all persons then living who stand in  
45 the first degree of consanguinity or affinity to an  
46 alleged mentally retarded person shall be given notice  
47 if their whereabouts are known or can be reasonably  
48 ascertained. Notice of the filing of such petition  
49 shall be served upon the proposed ward in the manner  
50 of an original notice and the Rules of Civil Procedure

1 governing original notice shall also govern such  
2 notice as to content.

3 Sec. \_\_\_\_ . Section six hundred thirty-three point  
4 five hundred sixty-nine (633.569), Code 1979, is  
5 amended by adding the following new unnumbered  
6 paragraph:

7 NEW UNNUMBERED PARAGRAPH. The proposed ward shall  
8 be present at the hearing, unless the court determines  
9 that such personal appearance would not be in the  
10 person's best interest. The proposed ward is entitled  
11 to be represented by counsel. If the proposed ward  
12 is unable to pay for counsel, the county is responsible  
13 for costs of counsel. The proposed ward is entitled  
14 to a jury trial on request. The hearing may be closed  
15 if the proposed ward or his or her counsel requests  
16 a closed hearing. At the hearing, the court shall  
17 do all of the following:

18 1. Inquire into the nature and extent of the  
19 general intellectual functioning of the individual  
20 asserted to need a conservator.

21 2. Evaluate the extent of the impairment in the  
22 proposed ward's behavior.

23 3. Ascertain the proposed ward's capacity to care  
24 for himself or herself and manage his or her property.

25 4. Inquire into the qualifications, abilities,  
26 and capabilities of the person seeking to be appointed  
27 conservator.

28 Sec. \_\_\_\_ . Section six hundred thirty-three point  
29 five hundred seventy (633.570), Code 1979, is amended  
30 to read as follows:

31 633.570 APPOINTMENT OF CONSERVATOR. If the  
32 allegations of the petition as to the status of the  
33 proposed ward and the necessity for the appointment  
34 of a conservator are proved, the court may appoint  
35 a conservator. An order appointing a conservator  
36 shall contain findings of fact and shall also specify:

37 1. The properties of the ward to which the  
38 conservator is entitled to possession and management,  
39 giving the description of the properties that will  
40 be sufficient to identify them.

41 2. The debts, rentals, wages, or other claims  
42 due the ward which the conservator is entitled to  
43 collect, or file suit with respect to, if necessary,  
44 and thereafter to possess and manage.

45 3. The contractual or other obligations which  
46 the conservator may incur on behalf of the ward.

47 4. The claims against the ward which the  
48 conservator may pay, compromise, or defend, if  
49 necessary.

50 5. Any other powers, limitations, or duties with

S-3254  
Page 3

1 respect to the care of the ward or the management  
2 of the ward's property by the conservator which the  
3 court shall specifically and explicitly specify."  
4 2. Page 2, by inserting after line 2 the following:  
5 "Sec. \_\_\_\_ . Section six hundred thirty-three point  
6 six hundred seventy-nine (633.679), Code 1979, is  
7 amended to read as follows:  
8 633.679 PETITION TO TERMINATE. At any time, not  
9 less than six months after the appointment of a  
10 guardian or conservator, the person under guardianship  
11 or conservatorship or any person interested in the  
12 welfare of the person under guardianship or  
13 conservatorship, may apply to the court by petition,  
14 alleging that he the person is no longer a proper  
15 subject thereof, and asking that the guardianship  
16 or conservatorship be terminated. On the petition  
17 of the guardian or the conservator, the court may  
18 accept his or her resignation."  
19 3. By renumbering to conform to this amendment.

S-3254 FILED & WITHDRAWN (✓ 892) BY SUE YENGER  
MARCH 21, 1979

HOUSE CLIP SHEET

MONDAY, MARCH 26, 1979

SENATE FILE 400

H-3540

1 Amend Senate File 400, as passed by the Senate,  
2 as follows:

3 1. Page 1, by inserting after line 16 the  
4 following:

5 "Sec. \_\_\_\_\_. Section six hundred thirty-three point  
6 five hundred sixty-six (633.566), Code 1979, is amended  
7 by adding the following new subsections:

8 NEW SUBSECTION. The nature of the proposed ward's  
9 alleged incompetency.

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11 as is known or can be reasonably ascertained, of the  
12 persons most closely related to the proposed ward.

13 NEW SUBSECTION. The requested term of the limited  
14 guardianship to be included in the court's order of  
15 appointment.

16 Sec. \_\_\_\_\_. Section six hundred thirty-three point  
17 five hundred sixty-six (633.566), subsections two  
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19 follows:

20 2. ~~That the proposed ward is a minor or is~~  
21 ~~incapable of managing his property~~ The nature and  
22 degree of the alleged disability, the specific areas  
23 of protection and assistance requested, and the  
24 limitation of rights requested to be included in the  
25 court's order of appointment.

26 4. The estimated present value and description  
27 of the real estate, the estimated value and description  
28 of the personal property, and the estimated gross  
29 annual income of the estate including any compensation,  
30 pension, insurance, or allowance to which the proposed  
31 ward may be entitled. If any money is payable, or  
32 to become payable, to the proposed ward by the United  
33 States through the veterans administration, the  
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35 Sec. \_\_\_\_\_. Section six hundred thirty-three point  
36 five hundred sixty-eight (633.568), Code 1979, is  
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39 PROCEDURE. In all other cases, ~~notice~~ the proposed  
40 ward and his or her parents, if the parents can be  
41 found within this state, or the conservator or any  
42 person having control of the care and welfare of the  
43 proposed ward, shall be personally served the petition  
44 for the appointment of a conservator. Notwithstanding  
45 the foregoing, all persons then living who stand in  
46 the first degree of consanguinity or affinity to an  
47 alleged mentally retarded person shall be given notice  
48 if their whereabouts are known or can be reasonably  
49 ascertained. Notice of the filing of such petition  
50 shall be served upon the proposed ward in the manner

age Two  
- 540

1 of an original notice and the Rules of Civil Procedure  
2 governing original notice shall also govern such  
3 notice as to content.

4 Sec. \_\_\_\_\_. Section six hundred thirty-three point  
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12 to be represented by counsel. If the proposed ward  
13 is unable to pay for counsel, the county is responsible  
14 for costs of counsel. The proposed ward is entitled  
15 to a jury trial on request. The hearing may be closed  
16 if the proposed ward or his or her counsel requests  
17 a closed hearing. At the hearing, the court shall  
18 do all of the following:

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20 general intellectual functioning of the individual  
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23 proposed ward's behavior.

24 3. Ascertain the proposed ward's capacity to care  
25 for himself or herself and manage his or her property.

26 4. Inquire into the qualifications, abilities,  
27 and capabilities of the person seeking to be appointed  
28 conservator.

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41 be sufficient to identify them.

42 2. The debts, rentals, wages, or other claims  
43 due the ward which the conservator is entitled to  
44 collect, or file suit with respect to, if necessary,  
45 and thereafter to possess and manage.

46 3. The contractual or other obligations which  
47 the conservator may incur on behalf of the ward.

48 4. The claims against the ward which the  
49 conservator may pay, compromise, or defend, if  
0 necessary.

1        5. Any other powers, limitations, or duties with  
 2 respect to the care of the ward or the management  
 3 of the ward's property by the conservator which the  
 4 court shall specifically and explicitly specify."  
 5        2. Page 2, by inserting after line 2 the following:  
 6        "Sec. \_\_\_\_ . Section six hundred thirty-three point  
 7 six hundred seventy-nine (633.679), Code 1979, is  
 8 amended to read as follows:  
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 11 guardian or conservator, the person under guardianship  
 12 or conservatorship or any person interested in the  
 13 welfare of the person under guardianship or  
 14 conservatorship, may apply to the court by petition,  
 15 alleging that he the person is no longer a proper  
 16 subject thereof, and asking that the guardianship  
 17 or conservatorship be terminated. On the petition  
 18 of the guardian or the conservator, the court may  
 19 accept his or her resignation."  
 20        3. By renumbering to conform to this amendment.

H-3540 FILED  
MARCH 23, 1979

BY RAPP of Black Hawk

SENATE FILE 400

H-3940

1        Amend amendment H-3540 to Senate File 400 as  
 2 follows:  
 3        1. Page 1, line 14, by striking the word  
 4 "guardianship" and inserting in lieu thereof the  
 5 word "conservatorship".

H-3940 FILED  
APRIL 17, 1979

BY RAPP of Black Hawk

ADOPTED BY UNANIMOUS CONSENT (p. 15 77)

for the care of a ward who has attained the age of majority. However, the court may take into account all available information concerning the capabilities of the ward and any additional evaluation deemed necessary, and may direct that the guardian have only a specially limited responsibility for the ward. In such event, the court shall state those areas of responsibility which shall be supervised by the guardian and all others shall be retained by the ward. From time to time, upon a proper showing, the court may alter the respective responsibilities of the guardian and the ward, after notice to the ward and an opportunity to be heard.

Sec. 2. Section six hundred thirty-three point six hundred thirty-seven (633.637), Code 1979, is amended to read as follows:

633.637 POWERS OF WARD. A ward for whom a conservator has been appointed shall not have the power to convey, encumber or dispose of property in any manner, other than by will if he the ward possesses the requisite testamentary capacity, unless the court determines that the ward has a limited ability to handle his or her own funds. If the court makes such a finding, it shall specify to what extent the ward may possess and use his or her own funds.

Sec. 3. Section six hundred thirty-three point six hundred thirty-eight (633.638), Code 1979, is amended to read as follows:

633.638 PRESUMPTION OF FRAUD. If a conservator be appointed, all contracts, transfers and gifts made by the ward after the filing of the petition shall be presumed to be a fraud against the rights and interest of the ward except as otherwise directed by the court pursuant to section six hundred thirty-three point six hundred thirty-seven (633.637) of the Code.

SENATE FILE 400

AN ACT

PROVIDING FOR LIMITED GUARDIANSHIPS UNDER THE STATE PROBATE CODE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Chapter six hundred thirty-three (633), Code 1979, is amended by adding the following new section:

NEW SECTION. RESPONSIBILITIES OF GUARDIAN. Unless otherwise directed by order of court, the guardian shall have custody of a minor ward and general supervisory responsibility

Sec. 4. This Act is effective January first following its enactment.

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TERRY E. BRANSTAD  
President of the Senate

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FLOYD H. MILLEN  
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 400, Sixty-eighth General Assembly.

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FRANK J. STORK  
Secretary of the Senate

Approved 4/26/, 1979

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ROBERT D. RAY  
Governor