

Senate Amendment 5270

Amendment Text

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1 1 Amend [Senate File 2038](#) as follows:
1 2 #1. Page 1, by striking lines 3 through 6 and
1 3 inserting the following:
1 4 "3. "Person who is mentally incompetent to vote"
1 5 means a person who has been

~~legally determined to be~~

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~~severely or profoundly mentally retarded, or has been~~

1 7 found incompetent to vote in a proceeding held
1 8 pursuant to section 229.27, or found to lack the
1 9 mental capacity to vote pursuant to section 222.31 or
1 10 633.556."

1 11 #2. Page 2, by inserting before line 1 the
1 12 following:

1 13 "Sec. ____ Section [222.16](#), Code 1997, is amended
1 14 by adding the following new unnumbered paragraph:
1 15 NEW UNNUMBERED PARAGRAPH. Commitment of a person
1 16 pursuant to section 222.31 does not constitute a
1 17 finding or raise a presumption that the person is
1 18 incompetent to vote. The court shall make a separate
1 19 determination as to the person's competency to vote.
1 20 The court shall find a person incompetent to vote only
1 21 upon determining that the person lacks sufficient
1 22 mental capacity to comprehend and exercise the right
1 23 to vote.

1 24 Sec. ____ Section [222.31](#), Code 1997, is amended by
1 25 adding the following new subsection:
1 26 NEW SUBSECTION. 3. In its order, the court shall
1 27 include a finding as to whether the person has
1 28 sufficient mental capacity to comprehend and exercise
1 29 the right to vote.

1 30 Sec. ____ Section [222.45](#), Code 1997, is amended to
1 31 read as follows:

1 32 222.45 POWER OF COURT.

1 33 On the hearing, the court may discharge the person
1 34 with mental retardation from all supervision, control,
1 35 and care, or may transfer the person from a public
1 36 institution to a private institution, or vice versa,
1 37 or transfer the person from a special unit to a
1 38 hospital-school, or vice versa, as the court deems
1 39 appropriate under all the circumstances. If the
1 40 person has been determined to lack the mental capacity
1 41 to vote, the court shall include in its order a
1 42 finding that this determination remains in force or is
1 43 revoked.

1 44 Sec. ____ Section [229.27](#), subsection 2, Code 1997,
1 45 is amended to read as follows:

1 46 2. The applicant may, in initiating a petition for
1 47 involuntary hospitalization of a person under section
1 48 229.6 or at any subsequent time prior to conclusion of
1 49 the involuntary hospitalization proceeding, also
1 50 petition the court for a finding that the person is
2 1 incompetent by reason of mental illness. The test of

2 2 competence for the purpose of this section shall be
2 3 whether the person possesses sufficient mind to
2 4 understand in a reasonable manner the nature and
2 5 effect of the act in which the person is engaged; the
2 6 fact that a person is mentally ill and in need of
2 7 treatment for that illness but because of the illness
2 8 lacks sufficient judgment to make responsible
2 9 decisions with respect to the person's hospitalization
2 10 or treatment does not necessarily mean that that
2 11 person is incapable of transacting business on any
2 12 subject. The court shall also make a finding as to
2 13 whether the person has sufficient mental capacity to
2 14 comprehend and exercise the right to vote.

2 15 Sec. _____. Section [229.27](#), Code 1997, is amended by
2 16 adding the following new subsection:

2 17 NEW SUBSECTION. 4A. If the person has been
2 18 determined to lack the mental capacity to vote, the
2 19 court shall include in its order a finding that this
2 20 determination remains in force or is revoked."

2 21 #3. Page 2, by inserting after line 7 the
2 22 following:

2 23 "Sec. _____. Section [633.556](#), subsection 1, Code
2 24 Supplement 1997, is amended to read as follows:

2 25 1. If the allegations of the petition as to the
2 26 status of the proposed ward and the necessity for the
2 27 appointment of a guardian are proved by clear and
2 28 convincing evidence, the court may appoint a guardian.
2 29 If the court appoints a guardian based upon mental
2 30 incapacity of the proposed ward, the court shall make
2 31 a separate determination as to the ward's competency
2 32 to vote. The court shall find a ward incompetent to
2 33 vote only upon determining that the person lacks
2 34 sufficient mental capacity to comprehend and exercise
2 35 the right to vote.

2 36 Sec. _____. Section [633.679](#), Code 1997, is amended
2 37 to read as follows:

2 38 633.679 PETITION TO TERMINATE.

2 39 At any time after the appointment of a guardian or
2 40 conservator, the person under guardianship or
2 41 conservatorship may apply to the court by petition,
2 42 alleging that the person is no longer a proper subject
2 43 thereof, and asking that the guardianship or
2 44 conservatorship be terminated. A person under an
2 45 order appointing a guardian which order found the
2 46 person incompetent to vote may include a request for
2 47 reinstatement of the person's voting rights in a
2 48 petition to terminate the guardianship or by filing a
2 49 separate petition for modification of this
2 50 determination."

3 1 #4. By renumbering as necessary.

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3 5 PATRICK J. [DELUHERY](#)

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3 9 MAGGIE [TINSMAN](#)

3 10 [SF 2038.202](#) 77

3 11 sc/jl/28