

Senate File 348

H-8269

1 Amend Senate File 348, as amended, passed, and reprinted by
2 the Senate, as follows:

3 1. By striking everything after the enacting clause and
4 inserting:

5 <DIVISION I

6 MINOR GUARDIANSHIPS

7 Section 1. NEW SECTION. 232D.305A Guardian ad litem.

8 The court shall order the appointment of a guardian ad litem,
9 with the powers, duties, and qualifications consistent with the
10 provisions of section 598.12, for a guardianship of a minor
11 opened under this chapter.

12 Sec. 2. Section 232D.501, Code 2022, is amended by adding
13 the following new subsections:

14 NEW SUBSECTION. 01. The court shall assign a guardianship
15 created under this chapter, and may reassign as necessary in
16 the court's discretion, to one of following reporting tiers:

17 a. Tier I, in which a guardian shall file an initial care
18 plan and an annual report, and the court shall order the annual
19 report to be filed annually, biennially, or triennially.

20 b. Tier II, in which a guardian shall file an initial care
21 plan and an annual report, and the court shall order the annual
22 report to be filed at least once per year.

23 NEW SUBSECTION. 04. The minor's guardian ad litem shall
24 review every report filed with the court.

25 Sec. 3. Section 232D.501, subsection 1, unnumbered
26 paragraph 1, Code 2022, is amended to read as follows:

27 A guardian appointed by the court under this chapter shall
28 file the following reports, which shall not be waived by the
29 court, in accordance with the assigned tier of reporting:

30 DIVISION II

31 ADULT GUARDIANSHIPS AND MINOR AND ADULT CONSERVATORSHIPS

32 Sec. 4. NEW SECTION. 633.562A Appointment of guardian ad
33 litem.

34 The court shall appoint a guardian ad litem for a protected
35 person in a guardianship or conservatorship. The guardian

1 ad litem shall be a practicing attorney and shall be solely
2 responsible for representing the best interests of the
3 protected person. The guardian ad litem shall be independent
4 of the court and other parties to the proceeding and shall
5 be unprejudiced and uncompromised in the guardian ad litem's
6 independent actions. The protected person's attorney shall not
7 also serve as the guardian ad litem.

8 Sec. 5. Section 633.642, Code 2022, is amended by adding the
9 following new subsection:

10 NEW SUBSECTION. 9. Incur any extraordinary expense.

11 Sec. 6. Section 633.669, Code 2022, is amended by adding the
12 following new subsections:

13 NEW SUBSECTION. 01. The court shall assign a guardianship
14 created under this chapter, and may reassign as necessary in
15 the court's discretion, to one of following reporting tiers:

16 a. Tier I, in which a guardian shall file an initial care
17 plan and an annual report, and the court shall order the annual
18 report to be filed annually, biennially, or triennially.

19 b. Tier II, in which a guardian shall file an initial plan,
20 and an annual report, and the court shall order the annual
21 report to be filed at least once per year.

22 NEW SUBSECTION. 04. The protected person's guardian ad
23 litem shall review every report filed with the court.

24 Sec. 7. Section 633.669, subsection 1, unnumbered paragraph
25 1, Code 2022, is amended to read as follows:

26 A guardian appointed by the court under [this chapter](#) shall
27 file with the court the following written verified reports,
28 which shall not be waived by the court, in accordance with the
29 assigned tier of reporting, and:

30 Sec. 8. Section 633.670, Code 2022, is amended by adding the
31 following new subsections:

32 NEW SUBSECTION. 01. The court shall assign a
33 conservatorship created under this chapter, and may reassign
34 as necessary in the court's discretion, to one of following
35 reporting tiers:

1 a. Tier I, in which a conservator shall file an inventory
2 and an annual report, and the court shall order the annual
3 report may be ordered to be filed annually, biennially, or
4 triennially.

5 b. Tier II, in which a conservator shall file an
6 inventory and an annual report, and the court shall order
7 the annual report to be filed at least once per year. A
8 conservatorship is presumed to be a tier II conservatorship if
9 the conservatorship estate's assets are more than one hundred
10 thousand dollars or if the conservatorship estate's annual
11 income is more than fifty thousand dollars.

12 NEW SUBSECTION. 04. The protected person's guardian ad
13 litem shall review every report filed with the court.

14 Sec. 9. Section 633.670, subsection 3, paragraph b,
15 subparagraph (1), Code 2022, is amended to read as follows:

16 (1) ~~On an annual~~ In accordance with the assigned tier of
17 reporting basis within sixty days of the end of the reporting
18 period unless the court orders an extension for good cause
19 shown in accordance with the rules of probate procedure.

20 DIVISION III

21 CONFORMING CHANGES

22 Sec. 10. Section 633.3, subsections 9, 17, 22, and 23, Code
23 2022, are amended to read as follows:

24 9. *Conservator* — means a person appointed by the court
25 to have the custody and control of the property of a ~~ward~~
26 protected person under the provisions of this probate code.

27 17. *Estate* — the real and personal property of either a
28 decedent or a ~~ward~~ protected person, and may also refer to the
29 real and personal property of a trust described in section
30 633.10.

31 22. *Guardian* — means the person appointed by the court to
32 have the custody of the person of the ~~ward~~ protected person
33 under the provisions of this probate code.

34 23. *Guardian of the property* — at the election of the
35 person appointed by the court to have the custody and care of

1 the property of a ~~ward~~ protected person, the term "*guardian of*
2 *the property*" may be used, which term shall be synonymous with
3 the term "*conservator*".

4 Sec. 11. Section 633.78, subsection 1, unnumbered paragraph
5 1, Code 2022, is amended to read as follows:

6 A fiduciary under this chapter may present a written request
7 to any person for the purpose of obtaining property owned by
8 a decedent or by a ~~ward~~ protected person of a conservatorship
9 for which the fiduciary has been appointed, or property to
10 which a decedent or ~~ward~~ protected person is entitled, or
11 for information about such property needed to perform the
12 fiduciary's duties. The request must contain statements
13 confirming all of the following:

14 Sec. 12. Section 633.78, subsection 1, paragraph b, Code
15 2022, is amended to read as follows:

16 b. The request has been signed by all fiduciaries acting on
17 behalf of the decedent or ~~ward~~ protected person.

18 Sec. 13. Section 633.78, subsection 4, paragraph a, Code
19 2022, is amended to read as follows:

20 a. Damages sustained by the decedent's or ~~ward's~~ protected
21 person's estate.

22 Sec. 14. Section 633.80, Code 2022, is amended to read as
23 follows:

24 **633.80 Fiduciary of a fiduciary.**

25 A fiduciary has no authority to act in a matter wherein the
26 fiduciary's decedent or ~~ward~~ protected person was merely a
27 fiduciary, except that the fiduciary shall file a report and
28 accounting on behalf of the decedent or ~~ward~~ protected person
29 in said matter.

30 Sec. 15. Section 633.93, Code 2022, is amended to read as
31 follows:

32 **633.93 Limitation on actions affecting deeds.**

33 No action for recovery of any real estate sold by any
34 fiduciary can be maintained by any person claiming under the
35 deceased, the ~~ward~~ protected person, or a beneficiary, unless

1 brought within five years after the date of the recording of
2 the conveyance.

3 Sec. 16. Section 633.112, Code 2022, is amended to read as
4 follows:

5 **633.112 Discovery of property.**

6 The court may require any person suspected of having
7 possession of any property, including records and documents,
8 of the decedent, ~~ward~~ protected person, or the estate, or of
9 having had such property under the person's control, to appear
10 and submit to an examination under oath touching such matters,
11 and if on such examination it appears that the person has the
12 wrongful possession of any such property, the court may order
13 the delivery thereof to the fiduciary. Such a person shall be
14 liable to the estate for all damages caused by the person's
15 acts.

16 Sec. 17. Section 633.123, subsection 1, paragraph b,
17 subparagraph (3), Code 2022, is amended to read as follows:

18 (3) The needs and rights of the beneficiaries or the ~~ward~~
19 protected person.

20 Sec. 18. Section 633.580, subsections 1 and 4, Code 2022,
21 are amended to read as follows:

22 1. The name, age, and last known post office address of the
23 proposed ~~ward~~ protected person.

24 4. A general description of the property of the proposed
25 ~~ward~~ protected person within this state and of the proposed
26 ~~ward's~~ protected person's right to receive property; also, the
27 estimated present value of the real estate, the estimated value
28 of the personal property, and the estimated gross annual income
29 of the estate. If any money is payable, or to become payable,
30 to the proposed ~~ward~~ protected person by the United States
31 through the United States department of veterans affairs, the
32 petition shall so state.

33 Sec. 19. Section 633.591A, Code 2022, is amended to read as
34 follows:

35 **633.591A Voluntary petition for appointment of conservator**

1 for a minor — standby basis.

2 A person having physical and legal custody of a minor
3 may execute a verified petition for the appointment of a
4 standby conservator of the proposed ~~ward's~~ protected person's
5 property, upon the express condition that the petition shall
6 be acted upon by the court only upon the occurrence of an event
7 specified or the existence of a described condition of the
8 mental or physical health of the petitioner, the occurrence
9 of which event, or the existence of which condition, shall be
10 established in the manner directed in the petition.

11 Sec. 20. Section 633.603, Code 2022, is amended to read as
12 follows:

13 **633.603 Appointment of foreign conservators.**

14 When there is no conservatorship, nor any application
15 therefor pending, in this state, the duly qualified foreign
16 conservator or guardian of a nonresident ~~ward~~ protected
17 person may, upon application, be appointed conservator of the
18 property of such person in this state; provided that a resident
19 conservator is appointed to serve with the foreign conservator;
20 and provided further, that for good cause shown, the court
21 may appoint the foreign conservator to act alone without the
22 appointment of a resident conservator.

23 Sec. 21. Section 633.604, Code 2022, is amended to read as
24 follows:

25 **633.604 Application.**

26 The application for appointment of a foreign conservator
27 or guardian as conservator in this state shall include the
28 name and address of the nonresident ~~ward~~ protected person, and
29 of the nonresident conservator or guardian, and the name and
30 address of the resident conservator to be appointed. It shall
31 be accompanied by a certified copy of the original letters
32 or other authority conferring the power upon the foreign
33 conservator or guardian to act as such. The application
34 shall also state the cause for the appointment of the foreign
35 conservator to act as sole conservator, if such be the case.

1 Sec. 22. Section 633.605, Code 2022, is amended to read as
2 follows:

3 **633.605 Personal property.**

4 A foreign conservator or guardian of a nonresident may
5 be authorized by the court of the county wherein such ~~ward~~
6 protected person has personal property to receive the same upon
7 compliance with the provisions of [sections 633.606, 633.607](#) and
8 633.608.

9 Sec. 23. Section 633.607, Code 2022, is amended to read as
10 follows:

11 **633.607 Order for delivery.**

12 Upon the filing of the bond as above provided, and the court
13 being satisfied with the amount thereof, it shall order the
14 personal property of the ~~ward~~ protected person delivered to
15 such conservator or guardian.

16 Sec. 24. Section 633.633, Code 2022, is amended to read as
17 follows:

18 **633.633 Provisions applicable to all fiduciaries shall**
19 **govern.**

20 The provisions of this probate code applicable to all
21 fiduciaries shall govern the appointment, qualification, oath
22 and bond of guardians and conservators, except that a guardian
23 shall not be required to give bond unless the court, for good
24 cause, finds that the best interests of the ~~ward~~ protected
25 person require a bond. The court shall then fix the terms and
26 conditions of such bond.

27 Sec. 25. Section 633.633B, Code 2022, is amended to read as
28 follows:

29 **633.633B Tort liability of guardians and conservators.**

30 The fact that a person is a guardian or conservator shall not
31 in itself make the person personally liable for damages for the
32 acts of the ~~ward~~ protected person.

33 Sec. 26. Section 633.636, Code 2022, is amended to read as
34 follows:

35 **633.636 Effect of appointment of guardian or conservator.**

1 The appointment of a guardian or conservator shall not
2 constitute an adjudication that the ward protected person is of
3 unsound mind.

4 Sec. 27. Section 633.637, Code 2022, is amended to read as
5 follows:

6 **633.637 Powers of ward protected person.**

7 1. A ward protected person for whom a conservator has been
8 appointed shall not have the power to convey, encumber, or
9 dispose of property in any manner, other than by will if the
10 ward protected person possesses the requisite testamentary
11 capacity, unless the court determines that the ward protected
12 person has a limited ability to handle the ward's protected
13 person's own funds. If the court makes such a finding, the
14 court shall specify to what extent the ward protected person
15 may possess and use the ward's protected person's own funds.

16 2. Any modification of the powers of the ward protected
17 person that would be more restrictive of the ward's protected
18 person's control over the ward's protected person's financial
19 affairs shall be based upon clear and convincing evidence
20 and the burden of persuasion is on the conservator. Any
21 modification that would be less restrictive of the ward's
22 protected person's control over the ward's protected person's
23 financial affairs shall be based upon proof in accordance with
24 the requirements of [section 633.675](#).

25 Sec. 28. Section 633.637A, Code 2022, is amended to read as
26 follows:

27 **633.637A Rights of ward protected person under guardianship.**

28 An adult ward protected person under a guardianship has the
29 right of communication, visitation, or interaction with other
30 persons upon the consent of the adult ward protected person,
31 subject to [section 633.635, subsection 2](#), paragraph "i", and
32 [section 633.635, subsection 3, paragraph "c"](#). If an adult ward
33 protected person is unable to give express consent to such
34 communication, visitation, or interaction with a person due
35 to a physical or mental condition, consent of an adult ward

1 protected person may be presumed by a guardian or a court based
2 on an adult ~~ward's~~ protected person's prior relationship with
3 such person.

4 Sec. 29. Section 633.638, Code 2022, is amended to read as
5 follows:

6 **633.638 Presumption of fraud.**

7 If a conservator be appointed, all contracts, transfers and
8 gifts made by the ~~ward~~ protected person after the filing of the
9 petition shall be presumed to be a fraud against the rights
10 and interest of the ~~ward~~ protected person except as otherwise
11 directed by the court pursuant to [section 633.637](#).

12 Sec. 30. Section 633.639, Code 2022, is amended to read as
13 follows:

14 **633.639 Title to ~~ward's~~ protected person's property.**

15 The title to all property of the ~~ward~~ protected person is
16 in the ~~ward~~ protected person and not the conservator subject,
17 however, to the possession of the conservator and to the
18 control of the court for the purposes of administration,
19 sale or other disposition, under the provisions of the
20 law. Any real property titled at any time in the name of a
21 conservatorship shall be deemed to be titled in the ~~ward's~~
22 protected person's name subject to the conservator's right of
23 possession.

24 Sec. 31. Section 633.640, Code 2022, is amended to read as
25 follows:

26 **633.640 Conservator's right to possession.**

27 Every conservator shall have a right to, and shall take,
28 possession of all of the real and personal property of the
29 ~~ward~~ protected person. The conservator shall pay the taxes
30 and collect the income therefrom until the conservatorship is
31 terminated. The conservator may maintain an action for the
32 possession of the property, and to determine the title to the
33 same.

34 Sec. 32. Section 633.643, Code 2022, is amended to read as
35 follows:

1 **633.643 Disposal of will by conservator.**

2 When an instrument purporting to be the will of the ~~ward~~
3 protected person comes into the hands of a conservator, the
4 conservator shall immediately deliver it to the court.

5 Sec. 33. Section 633.644, Code 2022, is amended to read as
6 follows:

7 **633.644 Court order to preserve testamentary intent of ward**
8 **protected person.**

9 Upon receiving an instrument purporting to be the will of a
10 living ~~ward~~ protected person under the provisions of section
11 633.643, the court may open said will and read it. The court
12 with or without notice, as it may determine, may enter such
13 orders in the conservatorship as it deems advisable for the
14 proper administration of the conservatorship in light of the
15 expressed testamentary intent of the ~~ward~~ protected person.

16 Sec. 34. Section 633.645, Code 2022, is amended to read as
17 follows:

18 **633.645 Court to deliver will to clerk.**

19 An instrument purporting to be the will of a ~~ward~~ protected
20 person coming into the hands of the court under the provisions
21 of [section 633.643](#), shall thereafter be resealed by the court
22 and be deposited with the clerk to be held by said clerk as
23 provided in [sections 633.286 through 633.289](#).

24 Sec. 35. Section 633.653A, Code 2022, is amended to read as
25 follows:

26 **633.653A Claims for cost of medical care or services.**

27 The provision of medical care or services to a ~~ward~~ protected
28 person who is a recipient of medical assistance under chapter
29 249A creates a claim against the conservatorship for the amount
30 owed to the provider under the medical assistance program for
31 the care or services. The amount of the claim, after being
32 allowed or established as provided in this part, shall be paid
33 by the conservator from the assets of the conservatorship.

34 Sec. 36. Section 633.654, Code 2022, is amended to read as
35 follows:

1 **633.654 Form and verification of claims — general**
2 **requirements.**

3 No claim shall be allowed against the estate of a ~~ward~~
4 protected person upon application of the claimant unless
5 it shall be in writing, filed in duplicate with the clerk,
6 stating the claimant's name and address, and describing the
7 nature and the amount thereof, if ascertainable. It shall be
8 accompanied by the affidavit of the claimant, or of someone for
9 the claimant, that the amount is justly due, or if not due,
10 when it will or may become due, that no payments have been
11 made thereon which are not credited, and that there are no
12 offsets to the same, to the knowledge of the affiant, except as
13 therein stated. The duplicate of said claim shall be mailed
14 by the clerk to the conservator or the conservator's attorney
15 of record; however, valid contract claims arising in the
16 ordinary course of the conduct of the business or affairs of
17 the ~~ward~~ protected person by the conservator may be paid by the
18 conservator without requiring affidavit or filing.

19 Sec. 37. Section 633.656, Code 2022, is amended to read as
20 follows:

21 **633.656 How claim entitled.**

22 All claims filed against the estate of the ~~ward~~ protected
23 person shall be entitled in the name of the claimant against
24 the conservator as such, naming the conservator, and in all
25 further proceedings thereon, this title shall be preserved.

26 Sec. 38. Section 633.660, Code 2022, is amended to read as
27 follows:

28 **633.660 Execution and levy prohibited.**

29 No execution shall issue upon, nor shall any levy be made
30 against, any property of the estate of a ~~ward~~ protected person
31 under any judgment against the ~~ward~~ protected person or a
32 conservator, but the provisions of **this section** shall not be so
33 construed as to prevent the enforcement of a mortgage, pledge,
34 or other lien upon property in an appropriate proceeding.

35 Sec. 39. Section 633.661, Code 2022, is amended to read as

1 follows:

2 **633.661 Claims of conservators.**

3 If the conservator is a creditor of the ward, the conservator
4 shall file the claim as other creditors, and the court shall
5 appoint some competent person as temporary conservator to
6 represent the ward protected person at the hearing on the
7 conservator's claim. The same procedure shall be followed in
8 the case of coconservators where all such conservators are
9 creditors of the ward protected person; but if one of the
10 coconservators is not a creditor of the ward protected person,
11 such disinterested conservator shall represent the ward at the
12 hearing on any claim against the ward protected person by a
13 coconservator.

14 Sec. 40. Section 633.662, Code 2022, is amended to read as
15 follows:

16 **633.662 Claims not filed.**

17 The conservator may pay any valid claim against the estate of
18 the ward protected person even though such claim has not been
19 filed, but all such payments made by the conservator shall be
20 at the conservator's own peril.

21 Sec. 41. Section 633.664, Code 2022, is amended to read as
22 follows:

23 **633.664 Liens not affected by failure to file claim.**

24 Nothing in [sections 633.654](#) and [633.658](#) shall affect or
25 prevent an action or proceeding to enforce any mortgage,
26 pledge, or other lien upon the property of the ward protected
27 person.

28 Sec. 42. Section 633.665, Code 2022, is amended to read as
29 follows:

30 **633.665 Separate actions and claims.**

31 1. Any action pending against the ward protected person at
32 the time the conservator is appointed shall also be considered
33 a claim filed in the conservatorship if notice of substitution
34 is served on the conservator as defendant and a duplicate of
35 the proof of service of notice of such proceeding is filed in

1 the conservatorship proceeding.

2 2. A separate action based on a debt or other liability
3 of the ~~ward~~ protected person may be commenced against the
4 conservator in lieu of filing a claim in the conservatorship.
5 Such an action shall be commenced by serving an original notice
6 on the conservator and filing a duplicate of the proof of
7 service of notice of such proceeding in the conservatorship
8 proceeding. Such an action shall also be considered a claim
9 filed in the conservatorship. Such an action may be commenced
10 only in a county where the venue would have been proper if
11 there were no conservatorship and the action had been commenced
12 against the ~~ward~~ protected person.

13 Sec. 43. Section 633.667, Code 2022, is amended to read as
14 follows:

15 **633.667 Payment of claims in insolvent conservatorships.**

16 When it appears that the assets in a conservatorship are
17 insufficient to pay in full all the claims against such
18 conservatorship, the conservator shall report such matter to
19 the court, and the court shall, upon hearing, with notice to
20 all persons who have filed claims in the conservatorship, make
21 an order for the pro rata payment of claims giving claimants
22 the same priority, if any, as they would have if the ~~ward~~
23 protected person were not under conservatorship.

24 Sec. 44. Section 633.668, Code 2022, is amended to read as
25 follows:

26 **633.668 Conservator may make gifts.**

27 For good cause shown and under order of court, a conservator
28 may make gifts on behalf of the ~~ward~~ protected person out of
29 the assets under a conservatorship to persons or religious,
30 educational, scientific, charitable, or other nonprofit
31 organizations to whom or to which such gifts were regularly
32 made prior to the commencement of the conservatorship, or on
33 a showing to the court that such gifts would benefit the ~~ward~~
34 protected person or the ~~ward's~~ protected person's estate from
35 the standpoint of income, gift, estate or inheritance taxes.

1 The making of gifts out of the assets must not foreseeably
2 impair the ability to provide adequately for the best interests
3 of the ~~ward~~ protected person.

4 Sec. 45. Section 633.673, Code 2022, is amended to read as
5 follows:

6 **633.673 Court costs in guardianships.**

7 The ~~ward~~ protected person or the ~~ward's~~ protected person's
8 estate shall be charged with the court costs of a ward's
9 guardianship, including the guardian's fees and the fees of the
10 attorney for the guardian. The court may, upon application,
11 enter an order waiving payment of the court costs in indigent
12 cases. However, if the ~~ward~~ protected person or ~~ward's~~
13 protected person's estate becomes financially capable of paying
14 any waived costs, the costs shall be paid immediately.

15 Sec. 46. Section 633.676, Code 2022, is amended to read as
16 follows:

17 **633.676 Assets exhausted.**

18 At any time that the assets of the ~~ward's~~ protected person's
19 estate do not exceed the amount of the charges and claims
20 against it, the court may direct the conservator to proceed to
21 terminate the conservatorship.

22 Sec. 47. Section 633.677, Code 2022, is amended to read as
23 follows:

24 **633.677 Accounting to ~~ward~~ protected person — notice.**

25 Upon the termination of a conservatorship, the conservator
26 shall pay the costs of administration and shall render a full
27 and complete accounting to the ~~ward~~ protected person or the
28 ~~ward's~~ protected person's personal representative and to the
29 court. Notice of the final report of a conservator shall be
30 served on the ~~ward~~ protected person or the ~~ward's~~ protected
31 person's personal representative, in accordance with section
32 633.40, unless notice is waived. An order prescribing notice
33 may be made before or after the filing of the final report.

34 Sec. 48. Section 633.682, Code 2022, is amended to read as
35 follows:

1 **633.682 Discharge of conservator and release of bond.**

2 Upon settlement of the final accounting of a conservator,
3 and upon determining that the property of the ~~ward~~ protected
4 person has been delivered to the person or persons lawfully
5 entitled thereto, the court shall discharge the conservator and
6 exonerate the surety on the conservator's bond.>

7 2. Title page, by striking lines 1 and 2 and inserting <An
8 Act relating to reporting requirements and guardian ad litem
9 in adult and minor guardianships and conservatorships.>

HITE of Mahaska