

*reprinted*

MAR 18 1989

Place On Calendar

HOUSE FILE 585

BY COMMITTEE ON JUDICIARY  
AND LAW ENFORCEMENT

(SUCCESSOR TO HSE 279)

Passed House, Date 3-29-89 (p.110) Passed Senate, Date 3/25/89 (p.)  
Vote: Ayes 77 Nays 19 Vote: Ayes 49 Nays 0

*Motion to Reconsider 3-29-89 (p.110) motion prevailed*  
Approved May 22, 1989

*Bill Repassed*  
A BILL FOR  
have Ayes 94 NAYS 0 3-30-89 (p.1121)

- 1 An Act relating to guardians and conservators, by providing for
- 2 notice to proposed wards, formation of state and local
- 3 emergency medical boards, immunity from liability, waiver of
- 4 filing fees and costs, training of guardians and conservators,
- 5 and implementation of a representative payee project.
- 6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

HOUSE FILE 585

- H-3425
- 1 Amend House File 585 as follows:
- 2 1. By striking page 3, line 30, through page 4,
- 3 line 6.
- 4 2. By renumbering as necessary.

By CLARK of Cerro Gordo  
H-3425 FILED MARCH 16, 1989  
*withdrawn 3-29-89 (p.1099)*

HOUSE FILE 585

- H-3425
- 1 Amend House File 585 as follows:
- 2 1. By striking page 3, line 30, through page 4,
- 3 line 6.
- 4 2. By renumbering as necessary.

By CLARK of Cerro Gordo  
H-3425 FILED MARCH 21, 1989

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HF 585

1 Section 1. NEW SECTION. 217.40 TRAINING FOR GUARDIANS  
2 AND CONSERVATORS.

3 The department of human services, or a person designated by  
4 the director, shall establish training programs designed to  
5 ~~3610~~ assist duly appointed guardians and conservators in  
6 understanding their fiduciary duties and liabilities, the  
7 special needs of the ward, and how to best serve the ward and  
8 the ward's interests.

9 Sec. 2. NEW SECTION. 217.41 REPRESENTATIVE PAYEE  
10 PROJECT.

11 1. The department of human services shall provide  
12 appropriate public and private organizations with written  
13 notice of the department's intent to serve as sponsor of the  
14 representative payee project in Iowa. The director shall  
15 designate a departmental staff person to serve as the project  
16 staff coordinator.

17 2. The department shall provide logistical support for the  
18 project including office space, telephone communications,  
19 office supplies, and postage.

20 3. The department shall provide for the training of  
21 representative payees.

22 4. The department shall establish and maintain an advisory  
23 council for the project which shall hold meetings quarterly.  
24 The department shall determine the council's membership by  
25 rule.

26 5. The department shall meet at least quarterly with the  
27 representative payees, and shall negotiate banking services  
28 for the project.

29 6. The department shall designate a volunteer, who may be  
30 a representative payee, as the public liaison to inform  
31 interested agencies and persons about the project, and to  
32 undertake to increase public awareness and referral of  
33 potential clients.

34 7. A person acting as a representative payee shall be  
35 considered acting in a fiduciary capacity, and shall be liable

1 for acts or omissions of the representative payee constituting  
2 a breach of the fiduciary duty imposed by chapter 633.

3 8. For purposes of this section, "representative payee"  
4 means a person appointed by the Social Security administration  
5 to provide financial management services, without  
6 compensation, to individuals receiving Social Security  
7 administration or other government benefits, who are medically  
8 incapable of making responsible financial decisions.

9 Sec. 3. NEW SECTION. 217.42 STATE EMERGENCY MEDICAL  
10 BOARD.

11 A state emergency medical board is established to formulate  
12 policy and guidelines for the operations of local emergency  
13 medical boards, and to act if a local board does not exist.

14 The state board is comprised of medical professionals and  
15 lay persons appointed by the director and the council on human  
3642-16 services according to rules adopted by the department.

17 Sec. 4. NEW SECTION. 217.43 LOCAL EMERGENCY MEDICAL  
18 BOARD.

19 1. Each county in this state may establish and fund a  
20 local emergency medical board. The local board shall be  
21 comprised of medical professionals and lay persons appointed  
22 pursuant to the guidelines established by the state emergency  
23 medical board.

3643-24 2. The local board shall act as a surrogate decision maker  
25 for patients incapable of making their own medical care  
26 decisions if no other surrogate decision maker is available to  
27 act. The local board may exercise decision-making authority  
28 in medical emergencies where the life of a patient is  
29 endangered, and a reasonably prudent person would consider a  
30 decision to be medically necessary. Such medically necessary  
31 decisions shall constitute good cause for subsequently filing  
32 a petition in the district court for appointment of a guardian  
33 ad litem pursuant to chapter 633, but the local board shall  
34 continue to act in the patient's best interests until a  
35 guardian ad litem is appointed.

3042-1 3. The local board shall not be held liable, jointly or  
2 severally, for any actions or omissions taken or made in the  
3 official discharge of its duties, except those acts or  
4 omissions constituting willful or wanton misconduct. A  
5 physician or other health care provider who acts on a decision  
6 or directive of the local board shall not be held liable for  
7 any damages resulting from that act, unless such physician's  
8 or other health care provider's actions or omissions  
9 constitute negligence in the practice of the profession or  
10 occupation, or willful or wanton misconduct.

11 Sec. 5. Section 237.13, subsection 5, Code 1989, is  
12 amended to read as follows:

13 5. Except as provided in this section, the fund shall pay,  
14 on behalf of a guardian or conservator, the reasonable and  
15 necessary legal costs incurred in defending against a suit  
16 filed by a ward or the ward's representative and the damages  
17 awarded as a result of the suit, so long as it is determined  
18 that the guardian or conservator acted in good faith in the  
19 performance of their duties. A payment shall not be made if  
20 there is evidence of intentional misconduct or a knowing  
21 violation of the law by the guardian or conservator,  
22 including, but not limited to, failure to carry out the  
23 responsibilities required under sections 633.633 through  
24 633.635 and 633.641 through ~~633.651~~ 633.650.

25 Sec. 6. Section 602.8102, Code 1989, is amended by adding  
26 the following new subsection:

27 NEW SUBSECTION. 105A. Provide written notice to all duly  
28 appointed guardians and conservators of their liability as  
29 provided in sections 633.633A and 633.633B.

3042, 344530 Sec. 7. Section 633.63, subsection 3, Code 1989, is  
31 amended to read as follows:

3042-32 3. A private nonprofit corporation organized under chapter  
33 504 or 504A is qualified to act as a guardian, as defined in  
34 section 633.3, subsection 19, or a conservator, as defined in  
35 section 633.3, subsection 7, where the assets subject to the

1 conservatorship are less than fifteen thousand dollars, ~~if the~~  
2 ~~department of human services, under rules established by the~~  
3 ~~department, finds the corporation a suitable agency to perform~~  
4 ~~such duties and determines that the corporation does not~~  
5 ~~possess a proprietary or legal interest in an organization~~  
6 ~~which provides direct services to the individual.~~

3642-7 Sec. 8. Section 633.561, subsection 2, Code 1989, is  
8 amended to read as follows:

9 2. The court shall ensure that all proposed wards entitled  
10 to representation have been provided with notice of the right  
11 to representation and right to be personally present at all  
12 proceedings and shall make findings of fact in any order of  
13 disposition setting out the manner in which notification was  
14 provided.

3642-15 Sec. 9. NEW SECTION. 633.562 NOTIFICATION OF  
16 GUARDIANSHIP POWERS.

3642-17 Service of process upon the proposed ward in involuntary or  
18 voluntary guardianship proceedings shall be accompanied by a  
19 notice which advises the proposed ward that if a guardian is  
20 appointed, the guardian may, without court approval, provide  
21 for the care of the ward, manage the ward's personal property  
22 and effects, assist the ward in developing self-reliance and  
23 receiving professional care, counseling, treatment or services  
24 as needed, and ensure that the ward receives necessary  
25 emergency medical services. The notice shall also advise the  
26 proposed ward that, upon the court's approval, the guardian  
27 may change the ward's permanent residence to a more  
28 restrictive residence, and arrange for major elective surgery  
29 or any other nonemergency major medical procedure. The notice  
30 shall clearly advise the proposed ward in boldfaced type of a  
31 minimum size of ten points, of the right to counsel and the  
32 potential deprivation of the proposed ward's civil rights.

3642-33 Sec. 10. Section 633.575, subsection 2, Code 1989, is  
34 amended to read as follows:

35 2. The court shall ensure that all proposed wards entitled

1 to representation have been provided with notice of the right  
2 to representation and right to be personally present at all  
3 proceedings and shall make findings of fact in any order of  
4 disposition setting out the manner in which notification was  
5 provided.

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6 Sec. 11. NEW SECTION. 633.576 NOTIFICATION OF  
7 CONSERVATORSHIP POWERS.

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8 Service of process upon the proposed ward in involuntary or  
9 voluntary conservatorship proceedings shall be accompanied by  
10 a notice which advises the proposed ward that if a conservator  
11 is appointed, the conservator may, without court approval,  
12 manage the proposed ward's principal, income, and investments,  
13 sue and defend any claim by or against the ward, sell and  
14 transfer personal property, and vote at corporate meetings.  
15 The notice shall also advise the proposed ward that, upon the  
16 court's approval, the conservator may invest the ward's funds,  
17 execute leases, make payments to or for the benefit of the  
18 ward, support the ward's legal dependents, compromise or  
19 settle any claim, and do any other thing that the court  
20 determines is in the ward's best interests. The notice shall  
21 clearly advise the proposed ward, in boldfaced type of a  
22 minimum size of ten points, of the right to counsel and the  
23 potential deprivation of the proposed ward's civil rights.

24 Sec. 12. NEW SECTION. 633.629 PETITION CAPTIONS --  
25 SEPARATE FILINGS.

26 1. A petition filed under this division shall clearly  
27 indicate in the caption the following:

- 28 a. Whether the petition is filed for appointment of a  
29 guardian or conservator.
- 30 b. Whether the petition is voluntary or involuntary.

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31 2. The clerk of the district court shall maintain separate  
32 filings for guardianship and conservatorship proceedings, and  
33 indicate on the filings whether the proceedings are voluntary  
34 or involuntary.

35 Sec. 13. NEW SECTION. 633.633A LIABILITY OF GUARDIANS

1 AND CONSERVATORS.

2 Guardians and conservators shall not be held personally  
3 liable for actions or omissions taken or made in the official  
4 discharge of the guardian's or conservator's duties, except  
5 for any of the following:

- 6 1. A breach of fiduciary duty imposed by this Code.
- 7 2. Willful or wanton misconduct in the official discharge  
8 of the guardian's or conservator's duties.

9 Sec. 14. NEW SECTION. 633.633B TORT LIABILITY OF  
10 GUARDIANS AND CONSERVATORS.

11 The fact that a person is a guardian or conservator shall  
12 not in itself make the person personally liable for damages  
13 for the acts of the ward.

14 Sec. 15. Section 633.672, Code 1989, is amended to read as  
15 follows:

16 633.672 PAYMENT OF COURT COSTS IN CONSERVATORSHIPS.

17 No order shall be entered approving an annual report of a  
18 conservator until the court costs which have been docketed  
19 have been paid or provided for. The court may, upon  
20 application, enter an order waiving payment of the court costs  
21 in indigent cases. However, if the conservatorship  
22 subsequently becomes financially capable of paying any waived  
23 costs, the conservator shall immediately pay the costs.

24 Sec. 16. Section 633.673, Code 1989, is amended to read as  
25 follows:

26 633.673 COURT COSTS IN GUARDIANSHIPS.

27 The ward or the ward's estate shall be charged with the  
28 court costs of a ward's guardianship, including the guardian's  
29 fees and the fees of the attorney for the guardian. The court  
30 may, upon application, enter an order waiving payment of the  
31 court costs in indigent cases. However, if the ward or ward's  
32 estate becomes financially capable of paying any waived costs,  
33 the costs shall be paid immediately.

34 Sec. 17. Section 633.651, Code 1989, is repealed.

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EXPLANATION

1 This bill relates to guardians and conservators, and  
2 surrogate decision makers. The bill provides for specific  
3 notification to a proposed ward of the ward's right to  
4 counsel, right to be personally present at all hearings, and  
5 the potential deprivation of rights which may result if a  
6 guardian or conservator is appointed.

7 The bill establishes a state emergency medical board and  
8 authorizes the establishment of local boards to provide for a  
9 surrogate decision-maker mechanism for medical care decisions.  
10 The department of human services is to provide training for  
11 guardians and conservators, and is to implement a  
12 representative payee project. Filing fees and court costs in  
13 guardianship and conservatorship proceedings are made waivable  
14 in indigent cases. Guardians and conservators are immunized  
15 from liability in the official discharge of their duties, and  
16 the clerk of the district court is to notify such guardians  
17 and conservators of their immunity.

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HOUSE FILE 585

H-3717

1 Amend the amendment ,H-3642, to House File 585 as

2 follows:

- A 3 1. Page 1, by striking lines 31 through 34.
- B 4 2. Page 1, by striking line 35 through page 2,
- B 5 line 1.
- A 6 3. Page 2, by striking lines 15 through 18.
- B 7 4. Page 2, by striking lines 19 through 35.

By KREMER of Buchanan

H-3717 FILED MARCH 30, 1989  
DIVISIONS A & B ADOPTED 3-30-89(p.1120)

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HOUSE FILE 585  
FISCAL NOTE

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A fiscal note for HOUSE FILE 585 is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note is available from the Legislative Fiscal Bureau to members of the Legislature upon request.

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House file 585 relates to guardians, conservators, and surrogate decision makers. The bill provides for specific notification to a proposed ward of the ward's right to counsel, right to be personally present at all hearings, and the potential deprivation of rights which may result if a guardian or conservator is appointed.

The bill establishes a state emergency medical board and authorizes the establishment of local boards to provide for a surrogate decision-maker mechanism for medical care decisions. The Department of Human Services is to provide training for guardians and conservators, and is to implement a representative payee project. Filing fees and court costs in guardianship and conservatorship proceedings are made waivable in indigent cases. Guardians and conservators are immunized from liability in the official discharge of their duties, and the clerk of the district court is to notify such guardians and conservators of their immunity.

Fiscal Effect:

House File 585 is estimated to cost \$169,845. This includes \$109,731 for 3.5 FTE positions, \$15,000 for guardian and conservator training, \$15,000 for statewide telephone listings for the state emergency medical board, and \$30,114 for miscellaneous support.

Source: Department of Human Services

(LSB 1708hv, JMN)

FILED MARCH 29, 1989

BY DENNIS PROUTY, FISCAL DIRECTOR

Judiciary & Law Enforcement

*7-2-11*

HOUSE FILE 585

BY (PROPOSED STATE POLICY  
FOR GUARDIANS AND  
CONSERVATORS STUDY  
COMMITTEE BILL)

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

A BILL FOR

1 An Act relating to guardians and conservators, by providing for  
2 notice to proposed wards, formation of state and local  
3 emergency medical boards, immunity from liability, waiver of  
4 filing fees and costs, training of guardians and conservators,  
5 and implementation of a representative payee project.

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

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1 Section 1. NEW SECTION. 217.40 TRAINING FOR GUARDIANS  
2 AND CONSERVATORS.

3 The department of human services, or a person designated by  
4 the director, shall establish training programs designed to  
5 assist duly appointed guardians and conservators in  
6 understanding their fiduciary duties and liabilities, the  
7 special needs of the ward, and how to best serve the ward and  
8 the ward's interests.

9 Sec. 2. NEW SECTION. 217.41 REPRESENTATIVE PAYEE  
10 PROJECT.

11 1. The department of human services shall provide  
12 appropriate public and private organizations with written  
13 notice of the department's intent to serve as sponsor of the  
14 representative payee project in Iowa. The director shall  
15 designate a departmental staff person to serve as the project  
16 staff coordinator.

17 2. The department shall provide logistical support for the  
18 project including office space, telephone communications,  
19 office supplies, and postage.

20 3. The department shall establish and maintain an advisory  
21 council for the project which shall hold meetings quarterly.  
22 The department shall determine the council's membership by  
23 rule.

24 4. The department shall meet at least quarterly with the  
25 representative payees, and shall negotiate banking services  
26 for the project.

27 5. The department shall designate a volunteer as the  
28 public liaison to inform interested agencies and persons about  
29 the project, and to undertake to increase public awareness and  
30 referral of potential clients.

31 6. A person acting as a representative payee shall be  
32 considered acting in a fiduciary capacity, and shall be liable  
33 for acts or omissions of the representative payee constituting  
34 a breach of the fiduciary duty imposed by chapter 633.

35 Sec. 3. NEW SECTION. 217.42 STATE EMERGENCY MEDICAL

1 BOARD.

2 A state emergency medical board is established to formulate  
3 policy and guidelines for the operations of local emergency  
4 medical boards, and to act if a local board does not exist.

5 The state board is comprised of medical professionals and  
6 lay persons appointed by the director and the council on human  
7 services according to rules adopted by the department.

8 Sec. 4. NEW SECTION. 217.43 LOCAL EMERGENCY MEDICAL  
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10 1. Each county in this state may establish and fund a  
11 local emergency medical board. The local board shall be  
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15 2. The local board shall act as a surrogate decision maker  
16 for patients incapable of making their own medical care  
17 decisions if no other surrogate decision maker is available to  
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19 in medical emergencies where the life of a patient is  
20 endangered, and a reasonably prudent person would consider a  
21 decision to be medically necessary. Such medically necessary  
22 decisions shall constitute good cause for subsequently filing  
23 a petition in the district court for appointment of a guardian  
24 ad litem pursuant to chapter 633, but the local board shall  
25 continue to act in the patient's best interests until a  
26 guardian ad litem is appointed.

27 3. The local board shall not be held liable, jointly or  
28 severally, for any actions or omissions taken or made in the  
29 official discharge of its duties, except those acts or  
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32 or directive of the local board shall not be held liable for  
33 any damages resulting from that act, unless such physician's  
34 or other health care provider's actions or omissions  
35 constitute negligence in the practice of the profession or

1 occupation, or willful or wanton misconduct.

2 Sec. 5. Section 237.13, subsection 5, Code 1989, is  
3 amended to read as follows:

4 5. Except as provided in this section, the fund shall pay,  
5 on behalf of a guardian or conservator, the reasonable and  
6 necessary legal costs incurred in defending against a suit  
7 filed by a ward or the ward's representative and the damages  
8 awarded as a result of the suit, so long as it is determined  
9 that the guardian or conservator acted in good faith in the  
10 performance of their duties. A payment shall not be made if  
11 there is evidence of intentional misconduct or a knowing  
12 violation of the law by the guardian or conservator,  
13 including, but not limited to, failure to carry out the  
14 responsibilities required under sections 633.633 through  
15 633.635 and 633.641 through ~~633.651~~ 633.650.

16 Sec. 6. Section 602.8102, Code 1989, is amended by adding  
17 the following new subsection:

18 NEW SUBSECTION. 105A. Provide written notice to all duly  
19 appointed guardians and conservators of their liability as  
20 provided in sections 633.633A and 633.633B.

21 Sec. 7. Section 633.63, subsection 3, Code 1989, is  
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23 3. A private nonprofit corporation organized under chapter  
24 504 or 504A is qualified to act as a guardian, as defined in  
25 section 633.3, subsection 19, or a conservator, as defined in  
26 section 633.3, subsection 7, where the assets subject to the  
27 conservatorship are less than fifteen thousand dollars, ~~if the~~  
28 ~~department of human services, under rules established by the~~  
29 ~~department, finds the corporation a suitable agency to perform~~  
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31 ~~possess a proprietary or legal interest in an organization~~  
32 ~~which provides direct services to the individual.~~

33 Sec. 8. Section 633.561, subsection 2, Code 1989, is  
34 amended to read as follows:

35 2. The court shall ensure that all proposed wards entitled

1 to representation have been provided with notice of the right  
2 to representation and right to be personally present at all  
3 proceedings and shall make findings of fact in any order of  
4 disposition setting out the manner in which notification was  
5 provided.

6 Sec. 9. NEW SECTION. 633.562 NOTIFICATION OF  
7 GUARDIANSHIP POWERS.

8 Service of process upon the proposed ward in involuntary or  
9 voluntary guardianship proceedings shall be accompanied by a  
10 notice which advises the proposed ward that if a guardian is  
11 appointed, the guardian may, without court approval, provide  
12 for the care of the ward, manage the ward's personal property  
13 and effects, assist the ward in developing self-reliance and  
14 receiving professional care, counseling, treatment or services  
15 as needed, and ensure that the ward receives necessary  
16 emergency medical services. The notice shall also advise the  
17 proposed ward that, upon the court's approval, the guardian  
18 may change the ward's permanent residence to a more  
19 restrictive residence, and arrange for major elective surgery  
20 or any other nonemergency major medical procedure. The notice  
21 shall clearly advise the proposed ward in boldfaced type of a  
22 minimum size of ten points, of the right to counsel and the  
23 potential deprivation of the proposed ward's civil rights.

24 Sec. 10. Section 633.575, subsection 2, Code 1989, is  
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26 2. The court shall ensure that all proposed wards entitled  
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30 disposition setting out the manner in which notification was  
31 provided.

32 Sec. 11. NEW SECTION. 633.576 NOTIFICATION OF  
33 CONSERVATORSHIP POWERS.

34 Service of process upon the proposed ward in involuntary or  
35 voluntary conservatorship proceedings shall be accompanied by

1 a notice which advises the proposed ward that if a conservator  
2 is appointed, the conservator may, without court approval,  
3 manage the proposed ward's principle, income, and investments,  
4 sue and defend any claim by or against the ward, sell and  
5 transfer personal property, and vote at corporate meetings.  
6 The notice shall also advise the proposed ward that, upon the  
7 court's approval, the conservator may invest the ward's funds,  
8 execute leases, make payments to or for the benefit of the  
9 ward, support the ward's legal dependents, compromise or  
10 settle any claim, and do any other thing that the court  
11 determines is in the ward's best interests. The notice shall  
12 clearly advise the proposed ward, in boldfaced type of a  
13 minimum size of ten points, of the right to counsel and the  
14 potential deprivation of the proposed ward's civil rights.

15 Sec. 12. NEW SECTION. 633.629 PETITION CAPTIONS --  
16 SEPARATE FILINGS.

17 1. A petition filed under this division shall clearly  
18 indicate in the caption the following:

19 a. Whether the petition is filed for appointment of a  
20 guardian or conservator.

21 b. Whether the petition is voluntary or involuntary.

22 2. The clerk of the district court shall maintain separate  
23 filings for guardianship and conservatorship proceedings, and  
24 indicate on the filings whether the proceedings are voluntary  
25 or involuntary.

26 Sec. 13. NEW SECTION. 633.633A LIABILITY OF GUARDIANS  
27 AND CONSERVATORS.

28 Guardians and conservators shall not be held personally  
29 liable for actions or omissions taken or made in the official  
30 discharge of the guardian's or conservator's duties, except  
31 for any of the following:

32 1. A breach of fiduciary duty imposed by this Code.

33 2. Willful or wanton misconduct in the official discharge  
34 of the guardian's or conservator's duties.

35 Sec. 14. NEW SECTION. 633.633B TORT LIABILITY OF

1 GUARDIANS AND CONSERVATORS.

2 The fact that a person is a guardian or conservator shall  
3 not in itself make the person personally liable for damages  
4 for the acts of the ward.

5 Sec. 15. Section 633.672, Code 1989, is amended to read as  
6 follows:

7 633.672 PAYMENT OF COURT COSTS IN CONSERVATORSHIPS.

8 No order shall be entered approving an annual report of a  
9 conservator until the court costs which have been docketed  
10 have been paid or provided for. The court may, upon  
11 application, enter an order waiving payment of the court costs  
12 in indigent cases. However, if the conservatorship  
13 subsequently becomes financially capable of paying any waived  
14 costs, the conservator shall immediately pay the costs.

15 Sec. 16. Section 633.673, Code 1989, is amended to read as  
16 follows:

17 633.673 COURT COSTS IN GUARDIANSHIPS.

18 The ward or the ward's estate shall be charged with the  
19 court costs of a ward's guardianship, including the guardian's  
20 fees and the fees of the attorney for the guardian. The court  
21 may, upon application, enter an order waiving payment of the  
22 court costs in indigent cases. However, if the ward or ward's  
23 estate becomes financially capable of paying any waived costs,  
24 the costs shall be paid immediately.

25 Sec. 17. Section 633.651, Code 1989, is repealed.

26 EXPLANATION

27 This bill relates to guardians and conservators, and  
28 surrogate decision makers. The bill provides for specific  
29 notification to a proposed ward of the ward's right to  
30 counsel, right to be personally present at all hearings, and  
31 the potential deprivation of rights which may result if a  
32 guardian or conservator is appointed.

33 The bill establishes a state emergency medical board and  
34 authorizes the establishment of local boards to provide for a  
35 surrogate decision-maker mechanism for medical care decisions.

1 The department of human services is to provide training for  
2 guardians and conservators, and is to implement a  
3 representative payee project. Filing fees and court costs in  
4 guardianship and conservatorship proceedings are made waivable  
5 in indigent cases. Guardians and conservators are immunized  
6 from liability in the official discharge of their duties, and  
7 the clerk of the district court is to notify such guardians  
8 and conservators of their immunity.

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## HOUSE FILE 585

H-3642

- 1 Amend House File 585 as follows:
- 2 1. Page 1, line 5, by inserting after the word  
3 "assist" the following: "all".
- 4 2. Page 2, line 16, by inserting after the word  
5 "department." the following: "The state board and its  
6 members are not liable, jointly or severally, for  
7 actions or omissions taken or made in the official  
8 discharge of their duties, except those acts or  
9 omissions constituting willful or wanton misconduct."
- 10 3. Page 2, line 24, by striking the word "shall"  
11 and inserting the following: "may".
- 12 4. Page 2, by striking lines 28 and 29 and  
13 inserting the following: "in situations where there  
14 is sufficient time to review the patient's condition,  
15 and a reasonably prudent person would consider a".
- 16 5. Page 2, line 33, by striking the words "ad  
17 litem".
- 18 6. Page 2, line 35, by striking the words "ad  
19 litem".
- 20 7. Page 3, line 1, by inserting after the word  
21 "board" the following: "and its members".
- 22 8. Page 3, line 3, by striking the word "its" and  
23 inserting the following: "their".
- 24 9. Page 3, line 6, by inserting after the word  
25 "board" the following: "or state board".
- 26 10. Page 4, by striking lines 4 through 6 and  
27 inserting the following: "~~such duties and determines~~  
28 ~~that the corporation does not possess a proprietary or~~  
29 ~~legal interest in an organization which provides~~  
30 ~~direct services to the individual.~~"
- 31 11. Page 4, by striking line 7 and inserting the  
32 following:  
33 "Sec. 8. Section 633.561, subsections 2 and 3,  
34 Code 1989, are".
- 35 12. Page 4, by inserting after line 14 the  
36 following:  
37 "3. If the proposed ward is entitled to  
38 representation and is indigent or incapable of  
39 requesting counsel, the court shall appoint an  
40 attorney to represent the proposed ward. The cost of  
41 court appointed counsel for indigents, and any court  
42 costs that are waived pursuant to section 633.673,  
43 shall be assessed against the county in which the  
44 proceedings are pending. For the purposes of this  
45 subsection, the court shall find a person is indigent  
46 if the person's income and resources do not exceed one  
47 hundred fifty percent of the federal poverty level or  
48 the person would be unable to pay such costs without  
49 prejudicing the person's financial ability to provide  
50 economic necessities for the person or the person's

H-3642

Page 2

1 dependents."

2 13. Page 4, by striking lines 17 and 18 and  
3 inserting the following:

4 "In a proceeding for the appointment of a guardian,  
5 the proposed ward shall be given written".

6 14. Page 4, line 32, by inserting after the word  
7 "rights." the following: "In an involuntary

8 guardianship proceeding, the notice shall be served  
9 upon the proposed ward with the notice of the filing  
10 of the petition as provided in section 633.554. In a  
11 proceeding for appointment of a guardian on a  
12 voluntary petition, the notice shall be served upon  
13 the proposed ward prior to the appointment of a  
14 guardian."

15 15. Page 4, by striking lines 33 and 34 and  
16 inserting the following:

17 "Sec. 10. Section 633.575, subsections 2 and 3,  
18 Code 1989, are".

19 16. Page 5, by inserting after line 5 the  
20 following:

21 "3. If the proposed ward is entitled to  
22 representation and is indigent or incapable of  
23 requesting counsel, the court shall appoint an  
24 attorney to represent the proposed ward. The cost of  
25 court appointed counsel for indigents, and any court  
26 costs that are waived pursuant to section 633.672,  
27 shall be assessed against the county in which the  
28 proceedings are pending. For the purposes of this  
29 subsection, the court may find a person is indigent if  
30 the person's income and resources do not exceed one  
31 hundred fifty percent of the federal poverty level or  
32 the person would be unable to pay such costs without  
33 prejudicing the person's financial ability to provide  
34 economic necessities for the person or the person's  
35 dependents."

36 17. Page 5, by striking lines 8 and 9, and  
37 inserting the following:

38 "In a proceeding for the appointment of a  
39 conservator, the proposed ward shall be given  
40 written".

41 18. Page 5, line 10, by striking the words "a  
42 notice" and inserting the following: "notice".

43 19. Page 5, line 23, by inserting after the word  
44 "rights." the following: "In an involuntary  
45 conservatorship proceeding, the notice shall be served  
46 upon the proposed ward with the notice of the filing  
47 of the petition as provided in section 633.568. In a  
48 proceeding for appointment of a conservator on a  
49 voluntary petition, the notice shall be served upon  
50 the proposed ward prior to the appointment of a

-2-

1 conservator."

2 20. Page 5, line 32, by inserting after the word  
3 "proceedings," the following: "except where the  
4 petitions are combined,".

H-3642 FILED MARCH 28, 1989

By MCKINNEY of Dallas

3042A & 3042B - Adopted 3-29-89 (p. 1099)  
Both motions to reconsider 3-30-89 (p. 1120)  
Both adopted as amended 3-30-89 (p. 1120)

HOUSE FILE 585  
BY COMMITTEE ON JUDICIARY  
AND LAW ENFORCEMENT

(SUCCESSOR TO HSB 279)

(As Amended and Passed by the House March 30, 1989)

re Passed House, Date 5-1-89 (p. 2227) Passed Senate, Date 3-25-89 (p. 1653)  
Vote: Ayes 94 Nays 0 Vote: Ayes 49 Nays 0  
Approved May 22, 1989

A BILL FOR

1 An Act relating to guardians and conservators, by providing for  
2 notice to proposed wards, formation of state and local  
3 emergency medical boards, immunity from liability, waiver of  
4 filing fees and costs, training of guardians and conservators,  
5 and implementation of a representative payee project.

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

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House Amendments \_\_\_\_\_  
Deleted Language \*

3863 >

1 Section 1. NEW SECTION. 217.40 TRAINING FOR GUARDIANS  
2 AND CONSERVATORS.

3 The department of human services, or a person designated by  
4 the director, shall establish training programs designed to  
5 assist all duly appointed guardians and conservators in  
6 understanding their fiduciary duties and liabilities, the  
7 special needs of the ward, and how to best serve the ward and  
8 the ward's interests.

3863 9

9 Sec. 2. NEW SECTION. 217.41 REPRESENTATIVE PAYEE  
10 PROJECT.

11 1. The department of human services shall provide  
12 appropriate public and private organizations with written  
13 notice of the department's intent to serve as sponsor of the  
14 representative payee project in Iowa. The director shall  
15 designate a departmental staff person to serve as the project  
16 staff coordinator.

17 2. The department shall provide logistical support for the  
18 project including office space, telephone communications,  
19 office supplies, and postage.

20 3. The department shall provide for the training of  
21 representative payees.

22 4. The department shall establish and maintain an advisory  
23 council for the project which shall hold meetings quarterly.  
24 The department shall determine the council's membership by  
25 rule.

26 5. The department shall meet at least quarterly with the  
27 representative payees, and shall negotiate banking services  
28 for the project.

29 6. The department shall designate a volunteer, who may be  
30 a representative payee, as the public liaison to inform  
31 interested agencies and persons about the project, and to  
32 undertake to increase public awareness and referral of  
33 potential clients.

34 7. A person acting as a representative payee shall be  
35 considered acting in a fiduciary capacity, and shall be liable

1 for acts or omissions of the representative payee constituting  
2 a breach of the fiduciary duty imposed by chapter 633.

3 8. For purposes of this section, "representative payee"  
4 means a person appointed by the Social Security administration  
5 to provide financial management services, without  
6 compensation, to individuals receiving Social Security  
7 administration or other government benefits, who are medically  
8 incapable of making responsible financial decisions.

3828 9 Sec. 3. NEW SECTION. 217.42 STATE EMERGENCY MEDICAL  
10 BOARD.

11 A state emergency medical board is established to formulate  
12 policy and guidelines for the operations of local emergency  
13 medical boards, and to act if a local board does not exist.

14 The state board is comprised of medical professionals and  
15 lay persons appointed by the director and the council on human  
16 services according to rules adopted by the department. The  
17 state board and its members are not liable, jointly or  
18 severally, for actions or omissions taken or made in the  
19 official discharge of their duties, except those acts or  
20 omissions constituting willful or wanton misconduct.

21 Sec. 4. NEW SECTION. 217.43 LOCAL EMERGENCY MEDICAL  
22 BOARD.

23 1. Each county in this state may establish and fund a  
24 local emergency medical board. The local board shall be  
25 comprised of medical professionals and lay persons appointed  
26 pursuant to the guidelines established by the state emergency  
27 medical board.

28 2. The local board may act as a surrogate decision maker  
29 for patients incapable of making their own medical care  
30 decisions if no other surrogate decision maker is available to  
31 act. The local board may exercise decision-making authority  
32 in situations where there is sufficient time to review the  
33 patient's condition, and a reasonably prudent person would  
34 consider a decision to be medically necessary. Such medically  
35 necessary decisions shall constitute good cause for

1 subsequently filing a petition in the district court for  
2 appointment of a guardian pursuant to chapter 633, but the  
3 local board shall continue to act in the patient's best  
4 interests until a guardian is appointed.

5 3. The local board and its members shall not be held  
6 liable, jointly or severally, for any actions or omissions  
7 taken or made in the official discharge of their duties,  
8 except those acts or omissions constituting willful or wanton  
9 misconduct. A physician or other health care provider who  
10 acts on a decision or directive of the local board or state  
11 board shall not be held liable for any damages resulting from  
12 that act, unless such physician's or other health care  
13 provider's actions or omissions constitute negligence in the  
14 practice of the profession or occupation, or willful or wanton  
15 misconduct.

16 Sec. 5. Section 237.13, subsection 5, Code 1989, is  
17 amended to read as follows:

18 5. Except as provided in this section, the fund shall pay,  
19 on behalf of a guardian or conservator, the reasonable and  
20 necessary legal costs incurred in defending against a suit  
21 filed by a ward or the ward's representative and the damages  
22 awarded as a result of the suit, so long as it is determined  
23 that the guardian or conservator acted in good faith in the  
24 performance of their duties. A payment shall not be made if  
25 there is evidence of intentional misconduct or a knowing  
26 violation of the law by the guardian or conservator,  
27 including, but not limited to, failure to carry out the  
28 responsibilities required under sections 633.633 through  
29 633.635 and 633.641 through ~~633-651~~ 633.650.

30 3863 Sec. 6. Section 602.8102, Code 1989, is amended by adding  
31 the following new subsection:

32 NEW SUBSECTION. 105A. Provide written notice to all duly  
33 appointed guardians and conservators of their liability as  
34 provided in sections 633.633A and 633.633B.

35 3863 Sec. 7. Section 633.63, subsection 3, Code 1989, is

1 amended to read as follows:

2 3. A private nonprofit corporation organized under chapter  
3 504 or 504A is qualified to act as a guardian, as defined in  
4 section 633.3, subsection 19, or a conservator, as defined in  
5 section 633.3, subsection 7, where the assets subject to the  
6 conservatorship are less than fifteen thousand dollars, ~~if the~~  
7 ~~department of human services, under rules established by the~~  
8 ~~department, finds the corporation a suitable agency to perform~~  
9 such duties and determines that the corporation does not  
10 possess a proprietary or legal interest in an organization  
11 which provides direct services to the individual.

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12 Sec. 8. Section 633.561, subsection 2, Code 1989, is  
13 amended to read as follows:

14 2. The court shall ensure that all proposed wards entitled  
15 to representation have been provided with notice of the right  
16 to representation and right to be personally present at all  
17 proceedings and shall make findings of fact in any order of  
18 disposition setting out the manner in which notification was  
19 provided.

20 Sec. 9. NEW SECTION. 633.562 NOTIFICATION OF  
21 GUARDIANSHIP POWERS.

22 In a proceeding for the appointment of a guardian, the  
23 proposed ward shall be given written notice which advises the  
24 proposed ward that if a guardian is appointed, the guardian  
25 may, without court approval, provide for the care of the ward,  
26 manage the ward's personal property and effects, assist the  
27 ward in developing self-reliance and receiving professional  
28 care, counseling, treatment or services as needed, and ensure  
29 that the ward receives necessary emergency medical services.  
30 The notice shall also advise the proposed ward that, upon the  
31 court's approval, the guardian may change the ward's permanent  
32 residence to a more restrictive residence, and arrange for  
33 major elective surgery or any other nonemergency major medical  
34 procedure. The notice shall clearly advise the proposed ward  
35 in boldfaced type of a minimum size of ten points, of the

1 right to counsel and the potential deprivation of the proposed  
2 ward's civil rights. In an involuntary guardianship  
3 proceeding, the notice shall be served upon the proposed ward  
4 with the notice of the filing of the petition as provided in  
5 section 633.554. In a proceeding for appointment of a  
6 guardian on a voluntary petition, the notice shall be served  
7 upon the proposed ward prior to the appointment of a guardian.

3863 8 Sec. 10. Section 633.575, subsection 2, Code 1989, is  
9 amended to read as follows:

10 2. The court shall ensure that all proposed wards entitled  
11 to representation have been provided with notice of the right  
12 to representation and right to be personally present at all  
13 proceedings and shall make findings of fact in any order of  
14 disposition setting out the manner in which notification was  
15 provided.

16 Sec. 11. NEW SECTION. 633.576 NOTIFICATION OF  
17 CONSERVATORSHIP POWERS.

2863 18 In a proceeding for the appointment of a conservator, the  
19 proposed ward shall be given written notice which advises the  
20 proposed ward that if a conservator is appointed, the  
21 conservator may, without court approval, manage the proposed  
22 ward's principal, income, and investments, sue and defend any  
23 claim by or against the ward, sell and transfer personal  
24 property, and vote at corporate meetings. The notice shall  
25 also advise the proposed ward that, upon the court's approval,  
26 the conservator may invest the ward's funds, execute leases,  
27 make payments to or for the benefit of the ward, support the  
28 ward's legal dependents, compromise or settle any claim, and  
29 do any other thing that the court determines is in the ward's  
30 best interests. The notice shall clearly advise the proposed  
31 ward, in boldfaced type of a minimum size of ten points, of  
32 the right to counsel and the potential deprivation of the  
33 proposed ward's civil rights. In an involuntary  
34 conservatorship proceeding, the notice shall be served upon  
35 the proposed ward with the notice of the filing of the

1 petition as provided in section 633.568. In a proceeding for  
2 appointment of a conservator on a voluntary petition, the  
3 notice shall be served upon the proposed ward prior to the  
4 appointment of a conservator.

38235 Sec. 12. NEW SECTION. 633.629 PETITION CAPTIONS --  
6 SEPARATE FILINGS.

7 1. A petition filed under this division shall clearly  
8 indicate in the caption the following:

9 a. Whether the petition is filed for appointment of a  
10 guardian or conservator.

11 b. Whether the petition is voluntary or involuntary.

12 2. The clerk of the district court shall maintain separate  
13 filings for guardianship and conservatorship proceedings,  
14 except where the petitions are combined, and indicate on the  
15 filings whether the proceedings are voluntary or involuntary.

38237 Sec. 13. NEW SECTION. 633.633A LIABILITY OF GUARDIANS  
17 AND CONSERVATORS.

18 Guardians and conservators shall not be held personally  
19 liable for actions or omissions taken or made in the official  
20 discharge of the guardian's or conservator's duties, except  
21 for any of the following:

22 1. A breach of fiduciary duty imposed by this Code.

23 2. Willful or wanton misconduct in the official discharge  
24 of the guardian's or conservator's duties.

25 Sec. 14. NEW SECTION. 633.633B TORT LIABILITY OF  
26 GUARDIANS AND CONSERVATORS.

27 The fact that a person is a guardian or conservator shall  
28 not in itself make the person personally liable for damages  
29 for the acts of the ward.

30 Sec. 15. Section 633.672, Code 1989, is amended to read as  
31 follows:

32 633.672 PAYMENT OF COURT COSTS IN CONSERVATORSHIPS.

33 No order shall be entered approving an annual report of a  
34 conservator until the court costs which have been docketed  
35 have been paid or provided for. The court may, upon

1 application, enter an order waiving payment of the court costs  
2 in indigent cases. However, if the conservatorship  
3 subsequently becomes financially capable of paying any waived  
4 costs, the conservator shall immediately pay the costs.

5 Sec. 16. Section 633.673, Code 1989, is amended to read as  
6 follows:

7 633.673 COURT COSTS IN GUARDIANSHIPS.

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

3823 15 Sec. 17. Section 633.651, Code 1989, is repealed.

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## HOUSE FILE 585

S-3863

1 Amend House File 585, as amended, passed, and  
2 reprinted by the House, as follows:

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

5 "Sec. \_\_\_\_ . NEW SECTION. 135.39A STATE EMERGENCY  
6 MEDICAL BOARD.

7 A state emergency medical board is established to  
8 formulate policy and guidelines for the operations of  
9 local emergency medical boards, and to act if a local  
10 board does not exist.

11 The state board is comprised of medical  
12 professionals and lay persons appointed by the  
13 director and the council on human services according  
14 to rules adopted by the department. The state board  
15 and its members are not liable, jointly or severally,  
16 for actions or omissions taken or made in the official  
17 discharge of their duties, except those acts or  
18 omissions constituting willful or wanton misconduct."

19 2. By striking page 1, line 9, through page 2,  
20 line 8.

21 3. Page 2, by striking lines 9 through 20.

22 4. Page 3, by inserting after line 29, the  
23 following:

24 Sec. \_\_\_\_ . NEW SECTION. 249D.60 REPRESENTATIVE  
25 PAYEE PROJECT.

26 1. The department of elder affairs shall provide  
27 appropriate public and private organizations with  
28 written notice of the department's intent to serve as  
29 sponsor of the representative payee project in Iowa.  
30 The director shall designate a departmental staff  
31 person to serve as the project staff coordinator.

32 2. The department shall provide logistical support  
33 for the project including office space, telephone  
34 communications, office supplies, and postage.

35 3. The department shall provide for the training  
36 of representative payees.

37 4. The department shall establish and maintain an  
38 advisory council for the project which shall hold  
39 meetings quarterly. The department shall determine  
40 the council's membership by rule.

41 5. The department shall assist representative  
42 payees, and shall negotiate banking services for the  
43 project.

44 6. The department shall designate a volunteer, who  
45 may be a representative payee, as the public liaison  
46 to inform interested agencies and persons about the  
47 project, and to undertake to increase public awareness  
48 and referral of potential clients.

49 7. A person acting as a representative payee shall  
50 be considered acting in a fiduciary capacity, and

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Page 2

1 shall be liable for acts or omissions of the  
2 representative payee constituting a breach of the  
3 fiduciary duty imposed by chapter 633.

4 8. For purposes of this section, "representative  
5 payee" means a person appointed by the social security  
6 administration to provide financial management  
7 services, without compensation, to individuals  
8 receiving social security administration or other  
9 government benefits, who are medically incapable of  
10 making responsible financial decisions."

11 5. Page 3, by inserting after line 34, the  
12 following:

13 "Sec. \_\_\_\_ . NEW SECTION. 633.27A DOCKETING  
14 GUARDIANSHIP AND CONSERVATORSHIP PROCEEDINGS.

15 When a petition is filed for a conservatorship or  
16 guardianship, or a combined petition as provided in  
17 section 633.627, the administration thereof shall be  
18 treated as a separate proceeding, with a separate  
19 docket number, from the date of the filing of the  
20 petition. The clerk shall clearly indicate on the  
21 docket whether the proceedings are voluntary or  
22 involuntary and whether a guardianship, a  
23 conservatorship, or combined."

24 6. Page 4, by inserting after line 11, the  
25 following:

26 "Sec. \_\_\_\_ . Section 633.557, Code 1989, is amended  
27 to read as follows:

28 633.557 APPOINTMENT OF GUARDIAN ON VOLUNTARY  
29 PETITION.

30 A guardian may also be appointed by the court upon  
31 the verified petition of the proposed ward, without  
32 further notice, if the proposed ward is other than a  
33 minor under the age of fourteen years, provided the  
34 court determines that such an appointment will inure  
35 to the best interest of the applicant. However, if an  
36 involuntary petition is pending, the court shall be  
37 governed by section 633.634. The petition shall  
38 provide the proposed ward notice of a guardian's  
39 powers as provided in section 633.562."

40 7. Page 5, by striking lines 5 through 7, and  
41 inserting the following: "section 633.554."

42 8. Page 5, by inserting before line 8, the  
43 following:

44 "Sec. \_\_\_\_ . Section 633.572, Code 1989, is amended  
45 to read as follows:

46 633.572 APPOINTMENT OF CONSERVATOR ON VOLUNTARY  
47 PETITION.

48 A conservator may also be appointed by the court  
49 upon the verified petition of the proposed ward,  
50 without further notice, if the proposed ward is other

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Page 3

1 than a minor under the age of fourteen years, provided  
2 the court determines that such an appointment will  
3 inure to the best interest of the applicant. However,  
4 if an involuntary petition is pending, the court shall  
5 be governed by section 633.634. The petition shall  
6 provide the proposed ward notice of a conservator's  
7 powers as provided in section 633.576."

8 9. Page 6, by striking lines 1 through 15, and  
9 inserting the following: "petition as provided in  
10 section 633.568."

11 10. Page 6, by inserting before line 16 the  
12 following:

13 "Sec. \_\_\_\_\_. Section 633.591, Code 1989, is amended  
14 to read as follows:

15 633.591 VOLUNTARY PETITION FOR APPOINTMENT OF  
16 CONSERVATOR -- STANDBY BASIS.

17 Any person of full age and sound mind may execute a  
18 verified petition for the voluntary appointment of a  
19 conservator of the person's property upon the express  
20 condition that such petition shall be acted upon by  
21 the court only upon the occurrence of an event  
22 specified or the existence of a described condition of  
23 the mental or physical health of the petitioner, the  
24 occurrence of which event, or the existence of which  
25 condition, shall be established in the manner directed  
26 in said petition. The petition shall advise the  
27 proposed ward of a conservator's powers as provided in  
28 section 633.576."

29 11. Page 7, by inserting after line 14, the  
30 following:

31 "Sec. \_\_\_\_\_. Section 633.679, Code 1989, is amended  
32 to read as follows:

33 633.679 PETITION TO TERMINATE.

34 At any time, ~~not less than six months~~ after the  
35 appointment of a guardian or conservator, the person  
36 under guardianship or conservatorship may apply to the  
37 court by petition, alleging that the person is no  
38 longer a proper subject thereof, and asking that the  
39 guardianship or conservatorship be terminated."

40 12. By renumbering as necessary.

By RICHARD VARN

S-3863 FILED APRIL 24, 1989

Adopted 4-25-89 (p.1102)

## SENATE AMENDMENT TO HOUSE FILE 585

H-4227

1 Amend House File 585, as amended, passed, and  
2 reprinted by the House, as follows:

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

5 "Sec. \_\_\_\_ . NEW SECTION. 135.39A STATE EMERGENCY  
6 MEDICAL BOARD.

7 A state emergency medical board is established to  
8 formulate policy and guidelines for the operations of  
9 local emergency medical boards, and to act if a local  
10 board does not exist.

11 The state board is comprised of medical  
12 professionals and lay persons appointed by the  
13 director and the council on human services according  
14 to rules adopted by the department. The state board  
15 and its members are not liable, jointly or severally,  
16 for actions or omissions taken or made in the official  
17 discharge of their duties, except those acts or  
18 omissions constituting willful or wanton misconduct."

19 2. By striking page 1, line 9, through page 2,  
20 line 8.

21 3. Page 2, by striking lines 9 through 20.

22 4. Page 3, by inserting after line 29, the  
23 following:

24 Sec. \_\_\_\_ . NEW SECTION. 249D.60 REPRESENTATIVE  
25 PAYEE PROJECT.

26 1. The department of elder affairs shall provide  
27 appropriate public and private organizations with  
28 written notice of the department's intent to serve as  
29 sponsor of the representative payee project in Iowa.  
30 The director shall designate a departmental staff  
31 person to serve as the project staff coordinator.

32 2. The department shall provide logistical support  
33 for the project including office space, telephone  
34 communications, office supplies, and postage.

35 3. The department shall provide for the training  
36 of representative payees.

37 4. The department shall establish and maintain an  
38 advisory council for the project which shall hold  
39 meetings quarterly. The department shall determine  
40 the council's membership by rule.

41 5. The department shall assist representative  
42 payees, and shall negotiate banking services for the  
43 project.

44 6. The department shall designate a volunteer, who  
45 may be a representative payee, as the public liaison  
46 to inform interested agencies and persons about the  
47 project, and to undertake to increase public awareness  
48 and referral of potential clients.

49 7. A person acting as a representative payee shall  
50 be considered acting in a fiduciary capacity, and

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Page 2

1 shall be liable for acts or omissions of the  
2 representative payee constituting a breach of the  
3 fiduciary duty imposed by chapter 633.

4 8. For purposes of this section, "representative  
5 payee" means a person appointed by the social security  
6 administration to provide financial management  
7 services, without compensation, to individuals  
8 receiving social security administration or other  
9 government benefits, who are medically incapable of  
10 making responsible financial decisions."

11 5. Page 3, by inserting after line 34, the  
12 following:

13 "Sec. \_\_\_\_ . NEW SECTION. 633.27A DOCKETING  
14 GUARDIANSHIP AND CONSERVATORSHIP PROCEEDINGS.

15 When a petition is filed for a conservatorship or  
16 guardianship, or a combined petition as provided in  
17 section 633.627, the administration thereof shall be  
18 treated as a separate proceeding, with a separate  
19 docket number, from the date of the filing of the  
20 petition. The clerk shall clearly indicate on the  
21 docket whether the proceedings are voluntary or  
22 involuntary and whether a guardianship, a  
23 conservatorship, or combined."

24 6. Page 4, by inserting after line 11, the  
25 following:

26 "Sec. \_\_\_\_ . Section 633.557, Code 1989, is amended  
27 to read as follows:

28 633.557 APPOINTMENT OF GUARDIAN ON VOLUNTARY  
29 PETITION.

30 A guardian may also be appointed by the court upon  
31 the verified petition of the proposed ward, without  
32 further notice, if the proposed ward is other than a  
33 minor under the age of fourteen years, provided the  
34 court determines that such an appointment will inure  
35 to the best interest of the applicant. However, if an  
36 involuntary petition is pending, the court shall be  
37 governed by section 633.634. The petition shall  
38 provide the proposed ward notice of a guardian's  
39 powers as provided in section 633.562."

40 7. Page 5, by striking lines 5 through 7, and  
41 inserting the following: "section 633.554."

42 8. Page 5, by inserting before line 8, the  
43 following:

44 "Sec. \_\_\_\_ . Section 633.572, Code 1989, is amended  
45 to read as follows:

46 633.572 APPOINTMENT OF CONSERVATOR ON VOLUNTARY  
47 PETITION.

48 A conservator may also be appointed by the court  
49 upon the verified petition of the proposed ward,  
50 without further notice, if the proposed ward is other

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Page 3

1 than a minor under the age of fourteen years, provided  
2 the court determines that such an appointment will  
3 inure to the best interest of the applicant. However,  
4 if an involuntary petition is pending, the court shall  
5 be governed by section 633.634. The petition shall  
6 provide the proposed ward notice of a conservator's  
7 powers as provided in section 633.576."

8 9. Page 6, by striking lines 1 through 15, and  
9 inserting the following: "petition as provided in  
10 section 633.568."

11 10. Page 6, by inserting before line 16 the  
12 following:

13 "Sec. \_\_\_\_ . Section 633.591, Code 1989, is amended  
14 to read as follows:

15 633.591 VOLUNTARY PETITION FOR APPOINTMENT OF  
16 CONSERVATOR -- STANDBY BASIS.

17 Any person of full age and sound mind may execute a  
18 verified petition for the voluntary appointment of a  
19 conservator of the person's property upon the express  
20 condition that such petition shall be acted upon by  
21 the court only upon the occurrence of an event  
22 specified or the existence of a described condition of  
23 the mental or physical health of the petitioner, the  
24 occurrence of which event, or the existence of which  
25 condition, shall be established in the manner directed  
26 in said petition. The petition shall advise the  
27 proposed ward of a conservator's powers as provided in  
28 section 633.576."

29 11. Page 7, by inserting after line 14, the  
30 following:

31 "Sec. \_\_\_\_ . Section 633.679, Code 1989, is amended  
32 to read as follows:

33 633.679 PETITION TO TERMINATE.

34 At any time, ~~not less than six months~~ after the  
35 appointment of a guardian or conservator, the person  
36 under guardianship or conservatorship may apply to the  
37 court by petition, alleging that the person is no  
38 longer a proper subject thereof, and asking that the  
39 guardianship or conservatorship be terminated."

40 12. By renumbering as necessary.

RECEIVED FROM THE SENATE

H-4227 FILED APRIL 25, 1989

*House Concurred 5-1-89 (p. 2226)*

HOUSE FILE 585

AN ACT

RELATING TO GUARDIANS AND CONSERVATORS, BY PROVIDING FOR NOTICE TO PROPOSED WARDS, FORMATION OF STATE AND LOCAL EMERGENCY MEDICAL BOARDS, IMMUNITY FROM LIABILITY, WAIVER OF FILING FEES AND COSTS, TRAINING OF GUARDIANS AND CONSERVATORS, AND IMPLEMENTATION OF A REPRESENTATIVE PAYEE PROJECT.

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

Section 1. NEW SECTION. 135.39A STATE EMERGENCY MEDICAL BOARD.

A state emergency medical board is established to formulate policy and guidelines for the operations of local emergency medical boards, and to act if a local board does not exist.

The state board is comprised of medical professionals and lay persons appointed by the director and the council on human services according to rules adopted by the department. The state board and its members are not liable, jointly or severally, for actions or omissions taken or made in the official discharge of their duties, except those acts or omissions constituting willful or wanton misconduct.

Sec. 2. NEW SECTION. 217.40 TRAINING FOR GUARDIANS AND CONSERVATORS.

The department of human services, or a person designated by the director, shall establish training programs designed to assist all duly appointed guardians and conservators in understanding their fiduciary duties and liabilities, the special needs of the ward, and how to best serve the ward and the ward's interests.

Sec. 3. NEW SECTION. 217.43 LOCAL EMERGENCY MEDICAL BOARD.

1. Each county in this state may establish and fund a local emergency medical board. The local board shall be comprised of medical professionals and lay persons appointed pursuant to the guidelines established by the state emergency medical board.

2. The local board may act as a surrogate decision maker for patients incapable of making their own medical care decisions if no other surrogate decision maker is available to act. The local board may exercise decision-making authority in situations where there is sufficient time to review the patient's condition, and a reasonably prudent person would consider a decision to be medically necessary. Such medically necessary decisions shall constitute good cause for subsequently filing a petition in the district court for appointment of a guardian pursuant to chapter 633, but the local board shall continue to act in the patient's best interests until a guardian is appointed.

3. The local board and its members shall not be held liable, jointly or severally, for any actions or omissions taken or made in the official discharge of their duties, except those acts or omissions constituting willful or wanton misconduct. A physician or other health care provider who acts on a decision or directive of the local board or state board shall not be held liable for any damages resulting from that act, unless such physician's or other health care

provider's actions or omissions constitute negligence in the practice of the profession or occupation, or willful or wanton misconduct.

Sec. 4. Section 237.13, subsection 5, Code 1989, is amended to read as follows:

5. Except as provided in this section, the fund shall pay, on behalf of a guardian or conservator, the reasonable and necessary legal costs incurred in defending against a suit filed by a ward or the ward's representative and the damages awarded as a result of the suit, so long as it is determined that the guardian or conservator acted in good faith in the performance of their duties. A payment shall not be made if there is evidence of intentional misconduct or a knowing violation of the law by the guardian or conservator, including, but not limited to, failure to carry out the responsibilities required under sections 633.633 through 633.635 and 633.641 through ~~633.651~~ 633.650.

Sec. 5. NEW SECTION. 249D.60 REPRESENTATIVE PAYEE PROJECT.

1. The department of elder affairs shall provide appropriate public and private organizations with written notice of the department's intent to serve as sponsor of the representative payee project in Iowa. The director shall designate a departmental staff person to serve as the project staff coordinator.
2. The department shall provide logistical support for the project including office space, telephone communications, office supplies, and postage.
3. The department shall provide for the training of representative payees.
4. The department shall establish and maintain an advisory council for the project which shall hold meetings quarterly. The department shall determine the council's membership by rule.

5. The department shall assist representative payees, and shall negotiate banking services for the project.

6. The department shall designate a volunteer, who may be a representative payee, as the public liaison to inform interested agencies and persons about the project, and to undertake to increase public awareness and referral of potential clients.

7. A person acting as a representative payee shall be considered acting in a fiduciary capacity, and shall be liable for acts or omissions of the representative payee constituting a breach of the fiduciary duty imposed by chapter 633.

8. For purposes of this section, "representative payee" means a person appointed by the social security administration to provide financial management services, without compensation, to individuals receiving social security administration or other government benefits, who are medically incapable of making responsible financial decisions.

Sec. 6. Section 602.8102, Code 1989, is amended by adding the following new subsection:

NEW SUBSECTION. 105A. Provide written notice to all duly appointed guardians and conservators of their liability as provided in sections 633.633A and 633.633B.

Sec. 7. NEW SECTION. 633.27A DOCKETING GUARDIANSHIP AND CONSERVATORSHIP PROCEEDINGS.

When a petition is filed for a conservatorship or guardianship, or a combined petition as provided in section 633.627, the administration thereof shall be treated as a separate proceeding, with a separate docket number, from the date of the filing of the petition. The clerk shall clearly indicate on the docket whether the proceedings are voluntary or involuntary and whether a guardianship, a conservatorship, or combined.

Sec. 8. Section 633.63, subsection 3, Code 1989, is amended to read as follows:

3. A private nonprofit corporation organized under chapter 504 or 504A is qualified to act as a guardian, as defined in section 633.3, subsection 19, or a conservator, as defined in section 633.3, subsection 7, where the assets subject to the conservatorship are less than fifteen thousand dollars; ~~if the department of human services, under rules established by the department, finds the corporation a suitable agency to perform such duties and determines that the corporation does not possess a proprietary or legal interest in an organization which provides direct services to the individual.~~

Sec. 9. Section 633.557, Code 1989, is amended to read as follows:

633.557 APPOINTMENT OF GUARDIAN ON VOLUNTARY PETITION.

A guardian may also be appointed by the court upon the verified petition of the proposed ward, without further notice, if the proposed ward is other than a minor under the age of fourteen years, provided the court determines that such an appointment will inure to the best interest of the applicant. However, if an involuntary petition is pending, the court shall be governed by section 633.634. The petition shall provide the proposed ward notice of a guardian's powers as provided in section 633.562.

Sec. 10. Section 633.561, subsection 2, Code 1989, is amended to read as follows:

2. The court shall ensure that all proposed wards entitled to representation have been provided with notice of the right to representation and right to be personally present at all proceedings and shall make findings of fact in any order of disposition setting out the manner in which notification was provided.

Sec. 11. NEW SECTION. 633.562 NOTIFICATION OF GUARDIANSHIP POWERS.

In a proceeding for the appointment of a guardian, the proposed ward shall be given written notice which advises the proposed ward that if a guardian is appointed, the guardian

may, without court approval, provide for the care of the ward, manage the ward's personal property and effects, assist the ward in developing self-reliance and receiving professional care, counseling, treatment or services as needed, and ensure that the ward receives necessary emergency medical services. The notice shall also advise the proposed ward that, upon the court's approval, the guardian may change the ward's permanent residence to a more restrictive residence, and arrange for major elective surgery or any other nonemergency major medical procedure. The notice shall clearly advise the proposed ward in boldfaced type of a minimum size of ten points, of the right to counsel and the potential deprivation of the proposed ward's civil rights. In an involuntary guardianship proceeding, the notice shall be served upon the proposed ward with the notice of the filing of the petition as provided in section 633.554.

Sec. 12. Section 633.572, Code 1989, is amended to read as follows:

633.572 APPOINTMENT OF CONSERVATOR ON VOLUNTARY PETITION.

A conservator may also be appointed by the court upon the verified petition of the proposed ward, without further notice, if the proposed ward is other than a minor under the age of fourteen years, provided the court determines that such an appointment will inure to the best interest of the applicant. However, if an involuntary petition is pending, the court shall be governed by section 633.634. The petition shall provide the proposed ward notice of a conservator's powers as provided in section 633.576.

Sec. 13. Section 633.575, subsection 2, Code 1989, is amended to read as follows:

2. The court shall ensure that all proposed wards entitled to representation have been provided with notice of the right to representation and right to be personally present at all proceedings and shall make findings of fact in any order of disposition setting out the manner in which notification was provided.

Sec. 14. NEW SECTION. 633.576 NOTIFICATION OF CONSERVATORSHIP POWERS.

In a proceeding for the appointment of a conservator, the proposed ward shall be given written notice which advises the proposed ward that if a conservator is appointed, the conservator may, without court approval, manage the proposed ward's principal, income, and investments, sue and defend any claim by or against the ward, sell and transfer personal property, and vote at corporate meetings. The notice shall also advise the proposed ward that, upon the court's approval, the conservator may invest the ward's funds, execute leases, make payments to or for the benefit of the ward, support the ward's legal dependents, compromise or settle any claim, and do any other thing that the court determines is in the ward's best interests. The notice shall clearly advise the proposed ward, in boldfaced type of a minimum size of ten points, of the right to counsel and the potential deprivation of the proposed ward's civil rights. In an involuntary conservatorship proceeding, the notice shall be served upon the proposed ward with the notice of the filing of the petition as provided in section 633.560.

Sec. 15. Section 633.591, Code 1989, is amended to read as follows:

633.591 VOLUNTARY PETITION FOR APPOINTMENT OF CONSERVATOR -- STANDBY BASIS.

Any person of full age and sound mind may execute a verified petition for the voluntary appointment of a conservator of the person's property upon the express condition that such petition shall be acted upon by the court only upon the occurrence of an event specified or the existence of a described condition of the mental or physical health of the petitioner, the occurrence of which event, or the existence of which condition, shall be established in the manner directed in said petition. The petition shall advise the proposed ward of a conservator's powers as provided in section 633.576.

Sec. 16. NEW SECTION. 633.633A LIABILITY OF GUARDIANS AND CONSERVATORS.

Guardians and conservators shall not be held personally liable for actions or omissions taken or made in the official discharge of the guardian's or conservator's duties, except for any of the following:

1. A breach of fiduciary duty imposed by this Code.
2. Willful or wanton misconduct in the official discharge of the guardian's or conservator's duties.

Sec. 17. NEW SECTION. 633.633B TORT LIABILITY OF GUARDIANS AND CONSERVATORS.

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

Sec. 18. Section 633.672, Code 1989, is amended to read as follows:

633.672 PAYMENT OF COURT COSTS IN CONSERVATORSHIPS.

No order shall be entered approving an annual report of a conservator until the court costs which have been docketed have been paid or provided for. The court may, upon application, enter an order waiving payment of the court costs in indigent cases. However, if the conservatorship subsequently becomes financially capable of paying any waived costs, the conservator shall immediately pay the costs.

Sec. 19. Section 633.673, Code 1989, is amended to read as follows:

633.673 COURT COSTS IN GUARDIANSHIPS.

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

Sec. 20. Section 633.679, Code 1989, is amended to read as follows:

633.679 PETITION TO TERMINATE.

At any time, ~~not less than six months~~ after the appointment of a guardian or conservator, the person under guardianship or conservatorship may apply to the court by petition, alleging that the person is no longer a proper subject thereof, and asking that the guardianship or conservatorship be terminated.

Sec. 21. Section 633.651, Code 1989, is repealed.

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DONALD D. AVENSON  
Speaker of the House

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JO ANN ZIMMERMAN  
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 585, Seventy-third General Assembly.

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JOSEPH O'HERN  
Chief Clerk of the House

Approved May 22, 1989

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TERRY E. BRANSTAD  
Governor