

2/9/95 Judiciary
2/14/95 Do Pass
FILED FEB 9 1995
H. 2/21/95 Judiciary

SENATE FILE 130
BY VILSACK

Passed Senate, Date (p. 3A1) 2/20/95 Passed House, Date _____
Vote: Ayes 48 Nays 0 Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to limiting the manner in which an order
2 appointing a guardian or conservator is subject to attack by
3 third parties.

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

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S.F. 130

1 Section 1. Section 633.36, Code 1995, is amended to read
2 as follows:

3 633.36 ORDERS IN PROBATE.

4 All orders and decrees of the court sitting in probate and
5 all orders appointing a guardian or conservator under section
6 633.557, 633.560, 633.572, or 633.591 are final decrees as to
7 the parties having notice and those who have appeared without
8 notice and are not subject to collateral attack in another
9 proceeding.

10 Sec. 2. Section 633.557, Code 1995, is amended to read as
11 follows:

12 633.557 APPOINTMENT OF GUARDIAN ON VOLUNTARY PETITION.

13 A guardian may also be appointed by the court upon the
14 verified petition of the proposed ward, without further
15 notice, if the proposed ward is other than a minor under the
16 age of fourteen years, provided the court determines that such
17 an appointment will ~~inure to~~ be in the best interest of the
18 applicant. The appointment of a guardian under this section
19 shall be an absolute defense to an involuntary petition under
20 section 633.552 for appointment of a guardian and the court
21 shall dismiss a petition under that section upon a showing by
22 the voluntary guardian that a valid order under this section
23 exists. However, if an involuntary petition is pending, the
24 court shall be governed by section 633.634. The petition
25 shall provide the proposed ward notice of a guardian's powers
26 as provided in section 633.562.

27 Sec. 3. Section 633.560, Code 1995, is amended to read as
28 follows:

29 633.560 APPOINTMENT OF GUARDIAN ON A STANDBY BASIS.

30 A petition for the appointment of a guardian on a standby
31 basis may be filed by any person under the same procedure and
32 requirements as provided in sections 633.591 to 633.597, for
33 appointment of standby conservator, insofar as applicable.
34 The appointment of a guardian under this section shall be an
35 absolute defense to an involuntary petition under section

1 633.552 for appointment of a guardian and the court shall
2 dismiss a petition under that section upon a showing by the
3 voluntary guardian that a valid order under this section
4 exists.

5 Sec. 4. Section 633.572, Code 1995, is amended to read as
6 follows:

7 633.572 APPOINTMENT OF CONSERVATOR ON VOLUNTARY PETITION.

8 A conservator may also be appointed by the court upon the
9 verified petition of the proposed ward, without further
10 notice, if the proposed ward is other than a minor under the
11 age of fourteen years, provided the court determines that such
12 an appointment will ~~inure to~~ be in the best interest of the
13 applicant. The appointment of a conservator under this
14 section shall be an absolute defense to an involuntary
15 petition under section 633.566 for appointment of a
16 conservator and the court shall dismiss a petition under that
17 section upon a showing by the voluntary conservator that a
18 valid order under this section exists. However, if an
19 involuntary petition is pending, the court shall be governed
20 by section 633.634. The petition shall provide the proposed
21 ward notice of a conservator's powers as provided in section
22 633.576.

23 Sec. 5. Section 633.591, Code 1995, is amended to read as
24 follows:

25 633.591 VOLUNTARY PETITION FOR APPOINTMENT OF CONSERVATOR
26 -- STANDBY BASIS.

27 Any person of full age and sound mind may execute a
28 verified petition for the voluntary appointment of a
29 conservator of the person's property upon the express
30 condition that such petition shall be acted upon by the court
31 only upon the occurrence of an event specified or the
32 existence of a described condition of the mental or physical
33 health of the petitioner, the occurrence of which event, or
34 the existence of which condition, shall be established in the
35 manner directed in the petition. The petition, if executed on

1 or after January 1, 1991, shall advise the proposed ward of a
2 conservator's powers as provided in section 633.576. The
3 appointment of a conservator under this section shall be an
4 absolute defense to an involuntary petition under section
5 633.566 for appointment of a conservator and the court shall
6 dismiss a petition under that section upon a showing by the
7 voluntary conservator that a valid order under this section
8 exists.

9 Sec. 6. Section 633.634, Code 1995, is amended to read as
10 follows:

11 633.634 COMBINATION OF VOLUNTARY AND STANDBY PETITIONS
12 WITH INVOLUNTARY PETITION FOR HEARING.

13 If prior to the time of hearing on a petition for the
14 appointment of a guardian or a conservator, a petition is
15 filed under the provisions of section 633.557, 633.560,
16 633.572, or 633.591, the court shall combine the hearing on
17 such petitions and determine who shall be appointed guardian
18 or conservator, and such petition shall be triable to the
19 court. However, if a petition is filed under the provisions
20 of section 633.557, 633.560, 633.572, or 633.591, a later-
21 filed involuntary petition shall not be joined with the
22 voluntary or standby petition, and a person other than the
23 person named in the voluntary or standby petition as guardian
24 or conservator shall not be allowed to intervene.

25 EXPLANATION

26 This bill specifies that orders appointing voluntary
27 guardians and conservators are final orders and provides that
28 those orders cannot be set aside in another proceeding, for
29 example, a subsequent petition to appoint an involuntary
30 guardian or conservator. The bill also provides that a valid
31 order appointing a guardian or conservator on a voluntary or
32 standby basis is a defense to an action to appoint a guardian
33 or conservator on an involuntary basis and requires an
34 involuntary petition to be dismissed if a valid voluntary or
35 standby order exists. In addition, the bill prohibits the

1 joinder of an involuntary petition for appointment of a
2 guardian or conservator with a previously filed voluntary
3 petition or the intervention in a proceeding to appoint a
4 guardian or conservator on a voluntary or standby basis by any
5 person other than the person named in the petition as the
6 voluntary or standby guardian or conservator.

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