

3/25/96 Judiciary

FILED MAR 4 1996

SENATE FILE 2414  
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 2278)

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

A BILL FOR

1 An Act relating to guardianships and conservatorships and  
2 providing penalties.

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

- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23

S.F. 2414

1 Section 1. Section 237.13, subsection 1, paragraph b, Code  
2 1995, is amended to read as follows:

3 b. ~~A guardian-appointed-on-a-voluntary-petition-of-a-ward~~  
4 ~~pursuant-to-section-633-557,-or-a~~ conservator appointed on a  
5 voluntary petition of a ward pursuant to section 633.572,  
6 provided the ward has an income that does not exceed one  
7 hundred fifty percent of the current federal office of  
8 management and budget poverty guidelines and who does not have  
9 resources in excess of the criteria for resources under the  
10 federal supplemental security income program. However, the  
11 ward's ownership of one residence and one vehicle shall not be  
12 considered in determining resources.

13 Sec. 2. Section 633.3, Code 1995, is amended by adding the  
14 following new subsections:

15 NEW SUBSECTION. 9A. "Court evaluator" means a person with  
16 knowledge of personal care skills, the problems associated  
17 with disabilities and functional limitations, and the private  
18 and public resources available to address the type of alleged  
19 limitations of the proposed ward, including but not limited to  
20 an attorney at law or a health care professional. "Court  
21 evaluator" may include a staff representative of the place of  
22 residence of a proposed ward if the proposed ward resides in a  
23 health care facility, a hospital, a school, or a chemical  
24 substance abuse facility, and if the staff representative has  
25 the specified knowledge required under this subsection.

26 NEW SUBSECTION. 18A. "Functional limitations" means the  
27 behavior or condition of a person which impairs the person's  
28 ability to care for the person's personal safety or to attend  
29 to or provide for necessities for the person.

30 NEW SUBSECTION. 20A. "Health care professional" means a  
31 person licensed to practice medicine and surgery pursuant to  
32 chapter 148, physical therapy pursuant to chapter 148A,  
33 osteopathy pursuant to chapter 150, osteopathic medicine and  
34 surgery pursuant to chapter 150A, nursing pursuant to chapter  
35 152, psychology pursuant to chapter 154B, social work pursuant

1 to chapter 154C, or marital and family therapy or mental  
2 health counseling pursuant to chapter 154D.

3 NEW SUBSECTION. 24A. "Legal settlement" means legal  
4 settlement as acquired pursuant to section 252.16.

5 Sec. 3. Section 633.3, subsection 22, Code 1995, is  
6 amended to read as follows:

7 22. Incompetent ~~---includes~~ means the condition of any  
8 person who has been adjudicated by a court to ~~be incapable of~~  
9 ~~managing the person's property, or caring for the person's own~~  
10 ~~self, or both~~ have a decision-making capacity which is so  
11 impaired that the person is unable to care for the person's  
12 personal safety or to attend to or provide for necessities for  
13 the person such as food, shelter, clothing, or medical care,  
14 without which physical injury or illness may occur.

15 Sec. 4. Section 633.12, Code 1995, is amended to read as  
16 follows:

17 633.12 COUNTY OF JURISDICTION.

18 The court of each county shall have original and exclusive  
19 jurisdiction to administer the estates of all persons who are  
20 residents of the county, or who were residents at the time of  
21 their death, and all nonresidents of the state who have  
22 property, or who die leaving property in the county subject to  
23 administration, or whose property is afterwards brought into  
24 the county; to appoint conservators for nonresidents having  
25 property in the county; and to appoint conservators and  
26 guardians of residents of the county or of persons present in  
27 the county.

28 Sec. 5. Section 633.22, subsection 1, Code 1995, is  
29 amended to read as follows:

30 1. The appointment of personal representatives who are  
31 residents of the state, ~~guardians and conservators for minors,~~  
32 the fixing and determining of the amount of the bond, or  
33 waiving the same when permitted by law or by will, and the  
34 approval of any and all bonds given by fiduciaries in the  
35 discharge of their duties.

1 Sec. 6. Section 633.552, Code 1995, is amended to read as  
2 follows:

3 633.552 PETITION FOR APPOINTMENT OF GUARDIAN.

4 Any person may file with the clerk a verified petition for  
5 the appointment of a guardian. The petition shall state the  
6 following information so far as known to the petitioner.

7 1. The name, age date of birth, and post office address of  
8 the proposed ward.

9 2. That the proposed ward is in either of the following  
10 categories:

11 ~~a. By reason of mental, physical or other incapacity is~~  
12 ~~unable to make or carry out important decisions concerning the~~  
13 ~~proposed ward's person or affairs, other than financial~~  
14 ~~affairs.~~

15 b. a. Is a minor.

16 b. Is a person whose decision-making capacity is so  
17 impaired that the person is unable to care for the person's  
18 personal safety or to attend to or provide for necessities for  
19 the person such as food, shelter, clothing, or medical care  
20 without which physical injury or illness might occur.

21 3. The name, telephone number, and post office address of  
22 the proposed guardian, and that such person is qualified to  
23 serve in that capacity, and the identity of any ward for whom  
24 the person is currently acting as guardian or seeking to  
25 become guardian.

26 4. That the proposed ward is a resident of the state of  
27 Iowa or is present in the state, ~~and that the ward's best~~  
28 ~~interests require the appointment of a guardian in this state.~~

29 5. The name and address of the person or institution, if  
30 any, having the care, custody, or control of the proposed  
31 ward.

32 6. The name, telephone number, and post office address of  
33 any nearest relatives or friends of the proposed ward as  
34 follows:

35 a. If the proposed ward is a minor, all of the following,

1 if applicable:

2 (1) Any parent of the minor, if any.

3 (2) Any adult with whom the minor resides, if any.

4 b. If the proposed ward is an adult, all of the following,

5 if applicable:

6 (1) Any spouse and adult children of the proposed ward, if  
7 any.

8 (2) Any adult siblings and any parent of the proposed  
9 ward, if any.

10 (3) Any person with whom the proposed ward resides, if  
11 any.

12 7. If the proposed ward is an adult, the petition shall  
13 include a brief description of the nature and degree of the  
14 alleged incompetency including any functional limitations and  
15 a description of any acts or behavior of the proposed ward  
16 which warrant the appointment of a guardian.

17 8. Any standby, current, or prior guardianship, in any  
18 state, concerning the proposed ward, including the name of the  
19 guardian and the current status of the guardianship.

20 9. The name, telephone number, and post office address of  
21 any agent designated under a durable power of attorney of  
22 which the proposed ward is the principal. The petitioner  
23 shall attach a copy of any power of attorney, if available.

24 10. Any other information which the petitioner believes  
25 will assist the court in determining the need for the  
26 appointment of a guardian.

27 Sec. 7. NEW SECTION. 633.552A EVALUATION OF PROPOSED  
28 WARD.

29 An evaluation by a health care professional of the proposed  
30 ward's physical and mental condition, including a description  
31 of the nature, type, and extent of the proposed ward's  
32 functional limitations, shall be attached to the petition or  
33 filed with the court at least fourteen days prior to the  
34 hearing on the petition.

35 Sec. 8. Section 633.554, Code 1995, is amended to read as

1 follows:

2 633.554 NOTICE ~~TO~~-PROPOSED-WARD.

3 1. If the proposed ward is an adult,--notice:

4 a. Notice of the filing of the petition shall be served  
5 upon proposed ward in the manner of an original notice and the  
6 content of the notice is governed by the rules of civil  
7 procedure governing original notice.

8 b. Notice shall be provided to all persons designated in  
9 the petition pursuant to section 633.552, subsections 6, 8, 9,  
10 and 10, unless the person designated is the petitioner.

11 2. If the proposed ward is a minor, notice in the manner  
12 of original notice shall be provided to the parents or  
13 guardian of the proposed ward and to any adult persons with  
14 whom the minor resides, unless the parent or adult person is  
15 the petitioner.

16 3. If the proposed ward is a minor or if the proposed ward  
17 is an adult under a standby petition and the court determines,  
18 pursuant to section 633.561, subsection 1, that the proposed  
19 ward is entitled to representation, notice in the manner of  
20 original notice, or another form of notice ordered by the  
21 court, given to the attorney appointed to represent the ward  
22 is notice to the proposed ward.

23 Sec. 9. Section 633.555, Code 1995, is amended to read as  
24 follows:

25 633.555 PLEADINGS AND TRIAL ---RULES-OF-CIVIL-PROCEDURE  
26 EVALUATION.

27 1. After the petition has been filed, the court shall set  
28 a date for hearing on the issue of incompetency, and shall  
29 provide notice of the hearing in the manner provided for  
30 notice of the filing of the petition pursuant to section  
31 633.554.

32 2. The court may appoint a court evaluator who shall  
33 submit a written report to the court following completion of  
34 the court evaluator's duties. The court may appoint  
35 additional court evaluators as necessary. The duties of the

1 court evaluator include all of the following:

2 a. Retaining a medical expert to evaluate the proposed  
3 ward. If the petition includes an evaluation by a health care  
4 professional who is a medical expert, the court evaluator may  
5 submit the previously completed evaluation. The court  
6 evaluator may review and inspect the records of any previously  
7 completed evaluation or any other medical, psychological, or  
8 psychiatric examinations of the proposed ward if the court  
9 determines that the records will assist the court evaluator in  
10 completing the report.

11 b. Meeting with the proposed ward and discussing, in a  
12 manner which the proposed ward is reasonably expected to  
13 understand, the nature and possible consequences of the  
14 proceedings, the general powers and duties of a guardian, and  
15 the rights of the proposed ward, including the right to  
16 counsel.

17 c. Interviewing the petitioner, or, if the petitioner is a  
18 facility or agency, an individual within the facility or  
19 agency who is familiar with the proposed ward's condition,  
20 affairs, and situation.

21 d. Interviewing other persons listed in the petition.

22 e. Interviewing or consulting with professionals having  
23 specialized knowledge in the area of geriatrics or in the  
24 proposed ward's alleged incompetency including functional  
25 limitations including but not limited to mental retardation,  
26 developmental disabilities, and chemical or substance abuse  
27 dependency.

28 f. Preparing a report for the court, which is dated and  
29 signed by the court evaluator, which includes all of the  
30 following recommendations or information:

31 (1) The need for legal counsel for the proposed ward.

32 (2) The proposed ward's ability to be present at or to  
33 participate in any hearing on the petition.

34 (3) Third-party assistance resources available to the  
35 proposed ward and the sufficiency and reliability of the

1 resources to meet the proposed ward's needs.

2 (4) The functional limitations of the proposed ward with  
3 respect to activities of daily living and any prognosis as to  
4 the possibility of improvement or possibility of reversibility  
5 of any physical or mental disability or chemical or substance  
6 abuse dependency.

7 (5) The proposed ward's understanding and appreciation of  
8 the nature and consequences of an inability to manage the  
9 activities of daily living.

10 (6) The proposed ward's preferences, wishes, and values  
11 with regard to managing the activities of daily living.

12 (7) The least restrictive form of intervention consistent  
13 with the proposed ward's functional limitations and the  
14 recommended extent of the powers to be assigned to the  
15 guardian.

16 (8) The financial resources and approximate value of the  
17 proposed ward's property.

18 (9) The existence, if any, of persons financially  
19 dependent on the proposed ward and the assistance they  
20 require.

21 (10) The suitability of the petitioner in identifying and  
22 meeting the needs of the proposed ward.

23 (11) Potential conflicts of interest, including but not  
24 limited to, financial interests if any, existing between or  
25 among family members and other interested parties.

26 (12) Additional parties who should be provided notice and  
27 the opportunity to be heard.

28 (13) Any other issues to be addressed at the request of  
29 the court.

30 g. The notes, records, and reports collected by the court  
31 evaluator shall be available to the court, to the proposed  
32 ward or the ward's legal counsel, to the petitioner or the  
33 petitioner's legal counsel, and to any other person who the  
34 court determines has a need.

35 h. The cost of the court evaluator and the expenses

1 associated with performing the evaluator's duties shall be  
2 paid by the proposed ward, or, if the proposed ward is  
3 indigent, by the county of legal settlement. If no county of  
4 legal settlement exists, the costs shall be borne by the  
5 state.

6 3. The proposed ward shall be present at any hearing on  
7 the petition, unless there is good cause shown for the  
8 absence. The hearing may be closed upon the request of the  
9 proposed ward for good cause shown.

10 4. All other pleadings and the trial of the cause shall be  
11 governed by the Rules of Civil Procedure. The cause shall be  
12 tried as a law action, and either party shall be entitled to a  
13 jury trial if demand is made therefor as provided by the Rules  
14 of Civil Procedure.

15 Sec. 10. NEW SECTION. 633.555A JURISDICTION AND VENUE.

16 1. If the court appoints a guardian, the court shall  
17 appoint a guardian who is a resident of this state.

18 2. Venue for a guardianship proceeding is in the district  
19 court of the county of residence of the proposed ward or where  
20 the proposed ward is present.

21 3. The court may transfer the proceeding to another court  
22 if the court finds that it is in the interest of justice.

23 4. Any guardianship involving a minor shall meet the  
24 requirements of the uniform child custody jurisdiction Act  
25 pursuant to chapter 598A.

26 Sec. 11. Section 633.556, Code 1995, is amended to read as  
27 follows:

28 633.556 APPOINTMENT OF GUARDIAN.

29 ~~If the allegations of the petition as to the status of the~~  
30 ~~proposed ward and the necessity for the appointment of a~~  
31 ~~guardian are proved, the court may appoint a guardian.~~

32 The determination as to the appointment of a guardian, the  
33 type of guardianship, and the specific areas of protection,  
34 management, and assistance to be granted, shall be the  
35 exclusive decision of the court. In order to appoint a

1 guardian, the court must find that the proposed ward meets the  
2 criteria of section 633.552, subsection 2. In making the  
3 determination, the court shall consider the proposed ward's  
4 functional limitations and the extent to which any functional  
5 limitations impair the proposed ward's ability to care for the  
6 person's personal safety or to attend to or provide for  
7 necessities. The court shall grant specific powers to the  
8 guardian which constitute the least restrictive form of  
9 intervention consistent with the findings regarding the  
10 proposed ward's functional limitations. Prior to  
11 establishing, modifying, or terminating a guardianship, the  
12 court shall consider whether a guardianship pursuant to  
13 section 633.635 is appropriate and whether third-party  
14 assistance is available to meet a ward's or proposed ward's  
15 need for necessities, if credible evidence of third-party  
16 assistance is adduced from any source.

17 Sec. 12. NEW SECTION. 633.556A STANDARD OF PROOF AND  
18 BURDEN OF PERSUASION.

19 1. The determination of incompetency of the proposed ward  
20 or ward and the determination of the need for the appointment  
21 of a guardian or of the modification or termination of a  
22 guardianship shall be supported by clear and convincing  
23 evidence.

24 2. The burden of persuasion is on the petitioner in an  
25 initial proceeding to appoint a guardian. Following a prima  
26 facie showing that the proposed ward or ward has some  
27 decision-making capacity, the burden of persuasion is on the  
28 guardian in a proceeding to modify or terminate a  
29 guardianship.

30 Sec. 13. Section 633.559, Code 1995, is amended by adding  
31 the following new unnumbered paragraph:

32 NEW UNNUMBERED PARAGRAPH. A person who is qualified and  
33 suitable or who is nominated as a proposed guardian in a  
34 standby petition may be appointed as the guardian of an adult  
35 ward.

1     Sec. 14. Section 633.560, Code 1995, is amended by  
2 striking the section and inserting in lieu thereof the  
3 following:

4     633.560 GUARDIANSHIP -- STANDBY BASIS.

5     1. An individual who has sufficient capacity to form a  
6 preference may at any time nominate another person to act as  
7 the individual's guardian on a standby basis.

8     2. The individual may execute a petition for the  
9 appointment of a standby guardian upon the express condition  
10 that the petition shall be acted upon by the court only upon  
11 the occurrence of an event specified in the petition or if the  
12 individual is determined to meet the criteria pursuant to  
13 section 633.552, subsection 2, paragraph "b".

14     3. The standby petition may be deposited with the clerk of  
15 the county in which the individual resides or with any other  
16 person. The standby petition may be revoked at any time prior  
17 to the appointment of a guardian by destruction of the  
18 petition by the petitioner or by executing an acknowledged  
19 instrument of revocation.

20     4. If the petition is filed with the clerk, the petition  
21 may be brought for hearing upon the filing of a verified  
22 statement that the requisite event has occurred or the  
23 requisite criteria have been met. If the petition has not  
24 been filed with the clerk, the petition may be brought for  
25 hearing by filing with the clerk both the petition and the  
26 verified statement.

27     5. Following the filing of both the petition and the  
28 verified statement, the court, without notice, may support the  
29 person nominated as guardian or may set the petition for  
30 hearing.

31     6. The powers of the guardian shall be limited to the  
32 powers specified in the petition or by the court following a  
33 hearing on the petition.

34     Sec. 15. Section 633.561, subsection 4, Code 1995, is  
35 amended by adding the following new paragraph after paragraph

1 d and by relettering the subsequent paragraphs:

2 NEW PARAGRAPH. e. Provide notice to all persons  
3 identified in the petition pursuant to section 633.552,  
4 subsections 6, 8, 9, and 10. In the course of representation,  
5 an attempt shall be made to identify and inform persons within  
6 the categories specified in the petition who have not been  
7 included in the petition. Notice may also be provided to any  
8 other person who has information which will assist the court.

9 Sec. 16. Section 633.562, Code 1995, is amended to read as  
10 follows:

11 633.562 NOTIFICATION OF GUARDIANSHIP POWERS.

12 In a proceeding for the appointment of a guardian, the  
13 proposed ward shall be given written notice which advises the  
14 proposed ward that if a guardian is appointed, the guardian  
15 ~~may, without court approval, make decisions regarding the~~  
16 ~~ward's personal safety or provide for the care of the ward,~~  
17 ~~manage the ward's personal property and effects, assist the~~  
18 ~~ward in developing self-reliance and receiving professional~~  
19 ~~care, counseling, treatment or services as needed, and ensure~~  
20 ~~that the ward receives necessary emergency medical services~~  
21 necessities. The notice shall also advise the proposed ward  
22 that, upon the court's approval, the guardian may change the  
23 ~~ward's permanent residence to a more restrictive residence,~~  
24 and arrange for major elective surgery or any other  
25 nonemergency major medical procedure or consent to the  
26 withholding or withdrawal of life-sustaining procedures  
27 pursuant to chapter 144A. The notice shall clearly advise the  
28 proposed ward in boldfaced type of a minimum size of ten  
29 fourteen points, of the right to counsel and the potential  
30 deprivation of the proposed ward's civil rights. ~~In an~~  
31 ~~involuntary guardianship proceeding, the~~ The notice shall be  
32 served upon the proposed ward with the notice of the filing of  
33 the petition as provided in section 633.554.

34 Sec. 17. Section 633.634, Code 1995, is amended to read as  
35 follows:

1 633.634 COMBINATION OF VOLUNTARY-AND STANDBY PETITIONS  
2 WITH INVOLUNTARY PETITION FOR HEARING APPOINTMENT OF GUARDIAN.

3 If prior to the time of hearing on a petition for the  
4 appointment of a guardian or a conservator, a petition is  
5 filed under the provisions of section 633-557 633.560,  
6 633.572, or 633.591, the court shall combine the hearing on  
7 such petitions and determine who shall be appointed guardian  
8 or conservator, and such petition shall be triable to the  
9 court.

10 Sec. 18. Section 633.635, Code 1995, is amended to read as  
11 follows:

12 633.635 RESPONSIBILITIES OF GUARDIAN.

13 ~~1.---A-guardian-may-be-granted-the-following-powers-and~~  
14 ~~duties-which-may-be-exercised-without-prior-court-approval:~~

15 ~~a.---Providing-for-the-care,-comfort-and-maintenance-of-the~~  
16 ~~ward,-including-the-appropriate-training-and-education-to~~  
17 ~~maximize-the-ward's-potential.~~

18 ~~b.---Taking-reasonable-care-of-the-ward's-clothing,~~  
19 ~~furniture,-vehicle-and-other-personal-effects.~~

20 ~~c.---Assisting-the-ward-in-developing-maximum-self-reliance~~  
21 ~~and-independence.~~

22 ~~d.---Ensuring-the-ward-receives-necessary-emergency-medical~~  
23 ~~services.~~

24 ~~e.---Ensuring-the-ward-receives-professional-care,~~  
25 ~~counseling,-treatment-or-services-as-needed.~~

26 ~~f.---Any-other-powers-or-duties-the-court-may-specify.~~

27 ~~2.---A-guardian-may-be-granted-the-following-powers-which~~  
28 ~~may-only-be-exercised-upon-court-approval:~~

29 ~~a.---Changing,-at-the-guardian's-request,-the-ward's~~  
30 ~~permanent-residence-if-the-proposed-new-residence-is-more~~  
31 ~~restrictive-of-the-ward's-liberties-than-the-current~~  
32 ~~residence.~~

33 1. A guardian shall have only the powers specified by the  
34 court, consistent with the findings of the court regarding the  
35 proposed ward's or ward's functional limitations.

1 2. In addition to the powers of the guardian specified  
2 pursuant to subsection 1, the guardian may be granted  
3 additional powers, only with the prior approval of the court,  
4 including any of the following:

5 ~~b-~~ a. Arranging the provision of major elective surgery or  
6 any other nonemergency major medical procedure.

7 ~~c-~~ b. Consent Consenting to the withholding or withdrawal  
8 of life-sustaining procedures in accordance with chapter 144A.

9 ~~3--The court may take into account all available~~  
10 ~~information concerning the capabilities of the ward and any~~  
11 ~~additional evaluation deemed necessary, and may direct that~~  
12 ~~the guardian have only a specially limited responsibility for~~  
13 ~~the ward. In that event, the court shall state those areas of~~  
14 ~~responsibility which shall be supervised by the guardian and~~  
15 ~~all others shall be retained by the ward. The court may make~~  
16 ~~a finding that the ward lacks the capacity to contract a valid~~  
17 ~~marriage.~~

18 ~~4--From time to time, upon a proper showing, the court may~~  
19 ~~alter the respective responsibilities of the guardian and the~~  
20 ~~ward, after notice to the ward and an opportunity to be heard.~~

21 3. A ward retains all rights not delegated to a guardian  
22 by the court, including but not limited to any rights to legal  
23 representation and the right to provide records to the ward's  
24 attorney.

25 Sec. 19. NEW SECTION. 633.668A GUARDIAN EDUCATION  
26 REQUIREMENTS.

27 1. A ward is entitled to a guardian whom the court  
28 determines to be sufficiently competent to perform the duties  
29 of a guardian necessary to protect the interests of the ward.

30 2. A person appointed by the court as guardian shall  
31 receive a minimum of two hours of instruction and training  
32 related to, but not limited to, all of the following:

- 33 a. The legal duties and responsibilities of a guardian.
- 34 b. The rights of a ward.
- 35 c. The availability of local resources to aid the ward.

1 d. The preparation of habilitation plans and annual  
2 guardianship reports.

3 3. A person appointed by the court as a guardian shall  
4 complete the two required hours of instruction and training  
5 within the three-month period following the appointment as  
6 guardian. The instruction and training shall be completed  
7 through a course approved by the Iowa supreme court.

8 4. Expenses incurred by the guardian in satisfying the  
9 education and training requirements under this section may be  
10 reimbursed by the ward's estate.

11 5. The court, for good cause shown, may waive the  
12 education and training requirements or may impose additional  
13 education and training requirements.

14 Sec. 20. Section 633.669, subsection 2, Code 1995, is  
15 amended to read as follows:

16 2. Reports required by this section must include:

17 a. The current mental and physical condition of the ward,  
18 including the necessity for any physical, dental, or mental  
19 health examinations to determine the current needs of the  
20 ward.

21 b. The present living arrangement of the ward, including a  
22 description of each residence where the ward has resided  
23 during the reporting period as well as a statement as to the  
24 suitability of the ward's current residence in meeting the  
25 needs of the ward.

26 c. A summary of the medical, educational, vocational,  
27 dental, habilitative, and other professional services provided  
28 for the ward and a plan for provision of those services during  
29 the subsequent year.

30 d. A description of the guardian's visits with and  
31 activities on behalf of the ward.

32 e. A recommendation as to the need for continued  
33 guardianship and any recommendations relating to the scope of  
34 the guardianship.

35 f. A statement of the social and personal services

1 utilized by the ward, including the social skills of the ward  
2 and maintenance of interpersonal relationships.

3 f- g. Other information requested by the court or useful  
4 in the opinion of the guardian.

5 Sec. 21. Section 633.669, Code 1995, is amended by adding  
6 the following new subsections:

7 NEW SUBSECTION. 7. If the annual report sets forth any  
8 reason for modification of the powers authorized by the court,  
9 the guardian shall make an application for modification within  
10 ten days of the filing of the report and shall provide notice  
11 to the persons entitled to notice in accordance with section  
12 633.554.

13 NEW SUBSECTION. 8. Any interested person may request a  
14 hearing on the report. The court may order the guardian to  
15 attend the hearing on the report on the court's own motion or  
16 on the petition of any interested person.

17 Sec. 22. NEW SECTION. 633.669A EXAMINATION OF INITIAL  
18 AND ANNUAL REPORTS.

19 1. Within thirty days of the filing of the initial and  
20 annual reports, the chief judge of the judicial district shall  
21 examine, or cause to be examined by a person designated by the  
22 presiding judge, all reports filed by the guardian.

23 2. a. If the guardian fails to file the initial or annual  
24 report, the person authorized to examine the report shall  
25 demand that the guardian file the report within fifteen days  
26 after the service of the demand upon the guardian. A copy of  
27 the demand shall be served upon the guardian by certified  
28 mail.

29 b. If the person authorized to examine the report  
30 determines that a more complete or satisfactory report should  
31 be filed, the person authorized to examine the report shall  
32 demand that the guardian file a revised report within fifteen  
33 days of the service of the demand upon the guardian. A copy  
34 of the demand shall be served upon the guardian by certified  
35 mail.

1 c. If the guardian fails to comply with a demand under  
2 this subsection, the court may enter an order requiring  
3 compliance with the demand and may deny or reduce the amount  
4 of compensation of the guardian or may remove the guardian.

5 Sec. 23. Section 633.675, Code 1995, is amended to read as  
6 follows:

7 633.675 CAUSE FOR MODIFICATION OR TERMINATION.

8 A guardianship shall cease or shall be subject to  
9 modification, and a conservatorship shall terminate, upon the  
10 occurrence of any of the following circumstances:

11 1. If the ward is a minor, when the ward reaches full age.

12 2. The death of the ward.

13 3. A In the case of a conservatorship, upon a  
14 determination by the court that the ward is competent and  
15 capable of managing the ward's property and affairs, and that  
16 the continuance of the guardianship-or conservatorship would  
17 not be in the ward's best interests.

18 4. In the case of a guardianship, upon a determination by  
19 the court that the ward is not incompetent. Additionally, the  
20 court shall consider the availability of third-party  
21 assistance in meeting the ward's necessities if credible  
22 evidence of such assistance is provided by any source.

23 5. Upon the disability, illness, or death of the guardian.

24 6. Upon the removal of the ward from this state or if  
25 reasonable access to the ward by the guardian is not possible.

26 4- 7. Upon determination by the court that the  
27 conservatorship or guardianship is no longer necessary for any  
28 other reason.

29 Sec. 24. Section 633.679, Code 1995, is amended to read as  
30 follows:

31 633.679 PETITION TO MODIFY OR TERMINATE.

32 At any time after the appointment of a guardian or  
33 conservator, the person under guardianship or conservatorship,  
34 the guardian, the conservator, or any interested party may  
35 apply to the court by petition, ~~alleging that the person is no~~

1 ~~longer-a-proper-subject-thereof,-and~~ asking that the  
2 guardianship or conservatorship be modified or terminated.

3 Upon the filing of a petition, the court may order  
4 modification or termination of the guardianship, the  
5 conservatorship, or both. Prior to the issuance of the order,  
6 notice of the petition to modify or terminate shall be  
7 provided to all persons entitled to notice pursuant to section  
8 633.554 and all persons entitled to notice shall be provided  
9 the opportunity to provide evidence supporting continuance,  
10 modification, or termination of the conservatorship or  
11 guardianship at a hearing on the petition. The action shall  
12 be triable as a proceeding in equity. The ward is entitled to  
13 representation in the same manner as provided in section  
14 633.561 and the court shall make every reasonable effort to  
15 enable the ward to be present and to participate in the  
16 proceedings. In making a determination, the court may appoint  
17 a court evaluator to investigate the situation. A  
18 determination to continue, modify, or terminate a guardianship  
19 or conservatorship shall be based upon clear and convincing  
20 evidence. The burden of persuasion in the continuation,  
21 modification, or termination of a guardianship or  
22 conservatorship is on the petitioner. In a petition to  
23 terminate a guardianship or conservatorship, a ward shall make  
24 a prima facie showing that the ward has decision-making  
25 capacity. Following the initial showing by the ward, the  
26 guardian or conservator shall have the burden of persuasion to  
27 demonstrate by clear and convincing evidence any incompetency  
28 on the part of the ward.

29 Sec. 25. NEW SECTION. 633.680A PETITION TO REMOVE  
30 GUARDIAN OR CONSERVATOR -- BASIS FOR REMOVAL.

31 Upon a petition by any interested person or on the court's  
32 own motion, the court may remove a guardian or conservator or  
33 order other appropriate relief if the guardian or conservator  
34 meets any of the following:

35 1. Is acting under letters secured by material

1 misrepresentation or mistake, whether fraudulent or innocent.

2 2. Is incapacitated or is suffering from an illness,  
3 including substance abuse, which affects fitness for office,  
4 or is a ward in this state or any other jurisdiction.

5 3. Is convicted of a crime which reflects on fitness for  
6 office.

7 4. Wastes or mismanages the estate, unreasonably withholds  
8 distributions or makes distributions in a negligent manner, or  
9 otherwise abuses powers or fails to discharge duties.

10 5. Neglects the care and custody of the ward.

11 6. Has an interest adverse to the faithful performance of  
12 duties such that there is a substantial risk that the guardian  
13 or conservator will fail to properly perform specified duties.

14 7. Fails to file reports or accountings when required, or  
15 fails to comply with any order of court.

16 8. Acts in a manner which threatens the personal or  
17 financial security of a co-guardian or co-conservator or  
18 endangers surety on the bond.

19 9. Fails to file sufficient bond after being ordered by  
20 the court to do so.

21 10. Avoids service of process or notice.

22 11. Becomes incapable of or unsuitable for the discharge  
23 of duties.

24 12. Is not acting in the best interests of the ward.

25 Sec. 26. NEW SECTION. 633.682A COURT EVALUATOR EDUCATION  
26 REQUIREMENTS.

27 A ward or proposed ward is entitled to a court evaluator  
28 whom the court finds to be sufficiently capable of performing  
29 the duties of a court evaluator necessary to ensure that all  
30 the relevant information regarding a petition for the  
31 appointment, modification, or termination of a guardian comes  
32 before the court and to assist the court in reaching a  
33 decision regarding the appointment, modification, or  
34 termination of a guardian. A person appointed as a court  
35 evaluator shall complete a training program approved by the

1 Iowa supreme court. The supreme court may waive some or all  
2 requirements if the proposed court evaluator demonstrates an  
3 educational background or experience sufficient to meet the  
4 requirements. The training program shall include all of the  
5 following:

6 1. The legal duties and responsibilities of the court  
7 evaluator.

8 2. The rights of a ward with an emphasis on due process  
9 rights to aid the court evaluator in determining  
10 recommendations regarding the appointment of counsel and the  
11 conduct of the hearing.

12 3. The available resources to aid the ward or proposed  
13 ward.

14 4. An orientation relating to medical terminology,  
15 particularly medical terminology related to the diagnostic and  
16 assessment procedures used to characterize the extent and  
17 reversibility of any impairment.

18 5. Entitlements.

19 6. Psychological and social concerns relating to disabled  
20 elders and frail elders as defined by rule of the department  
21 of elder affairs.

22 Sec. 27. NEW SECTION. 633.682B FILING.

23 The supreme court administrator shall establish a system of  
24 notification for the following:

25 1. The filing of guardianship cases and records which  
26 distinguish these cases from probate cases.

27 2. Monitoring the filing of annual reports to assure that  
28 the court will be notified of annual reports as the reports  
29 become due and whether the reports are filed.

30 Sec. 28. NEW SECTION. 633.682C CREATION OF OFFICE OF  
31 PUBLIC GUARDIAN -- APPOINTMENTS, POWERS, DUTIES, COSTS.

32 1. The general assembly finds that private guardianship is  
33 inadequate if there is no willing and responsible person  
34 available to serve as guardian for an incompetent person, and  
35 if the incompetent person does not have adequate income or

1 wealth for the compensation of a private guardian. It is the  
2 intent of the general assembly to establish the office of  
3 public guardian for the purpose of providing guardianship  
4 services for incompetent persons when no private guardian is  
5 available. The general assembly further finds that  
6 alternatives to guardianship and less intrusive means of  
7 assistance should always be explored before a person's  
8 incompetency rights are limited through an adjudication of  
9 incapacity. A public guardian shall be provided only to  
10 persons whose needs cannot be met through less drastic means  
11 of intervention.

12 2. The chief judge of the judicial district, after  
13 consultation with the other judges within the district and  
14 with appropriate advocacy groups and individuals and  
15 organizations with knowledge of the needs of incompetent  
16 persons, may establish, within the judicial district, an  
17 office of public guardian and create a list of persons best  
18 qualified to serve as the public guardian. The public  
19 guardian shall have knowledge of the legal process and  
20 knowledge of social services available to meet the needs of  
21 incompetent persons. A nonprofit corporation may be appointed  
22 a public guardian only if all of the following conditions are  
23 met:

24 a. The corporation provides no services other than  
25 guardianship.

26 b. The corporation has been granted tax-exempt status from  
27 the United States internal revenue service.

28 c. The corporation maintains a staff of professionally  
29 qualified individuals to carry out the guardianship functions.

30 3. The chief judge shall appoint the public guardian. A  
31 public guardian shall meet the qualifications for a guardian  
32 prescribed in section 633.668A.

33 4. If a district does not require a full-time public  
34 guardian, a part-time guardian may be appointed at reduced  
35 compensation.

1 5. A public guardian shall not hold any other public  
2 position in any city, county, or state government or federal  
3 agency, or any other position which would create a conflict of  
4 interest.

5 6. A public guardian may serve as a guardian of a person  
6 adjudicated incompetent under this chapter under the following  
7 conditions and with the following powers:

8 a. No other person is willing and qualified to serve as  
9 guardian.

10 b. The public guardian is vested with all the powers and  
11 duties of a guardian under this chapter, except as otherwise  
12 provided by law.

13 c. The public guardian may employ sufficient staff to  
14 carry out the duties of the office.

15 d. The public guardian may delegate to assistants and  
16 other members of the staff the powers and duties of the office  
17 of public guardian, except as otherwise limited by law. The  
18 public guardian shall retain ultimate responsibility for the  
19 discharge of duties and responsibilities.

20 e. To the extent that the guardian is granted  
21 responsibilities pursuant to section 633.635.

22 7. a. Each public guardian shall annually prepare a  
23 budget for the operation of the office to be submitted to the  
24 chief judge of the district for inclusion in the courts'  
25 budget request. This shall not be construed to preclude the  
26 financing of the office of the public guardian through local  
27 funding sources.

28 b. All costs of administration of the office of public  
29 guardian, including filing fees, shall be paid through  
30 expenditure of the budget of the office of public guardian.  
31 In any proceeding for appointment of a public guardian, or in  
32 any proceeding involving the estate of a ward for whom a  
33 public guardian has been appointed guardian, the court may  
34 waive any court costs or filing fees.

35 Sec. 29. Sections 633.557 and 633.680, Code 1995, are

1 repealed.

2

EXPLANATION

3 This bill amends the portions of the Code relating to  
4 guardianship. The bill includes many changes based upon the  
5 Iowa Supreme Court decision in In Re Guardianship of Hedin,  
6 528 N.W.2d 567 (Iowa 1995). In Hedin, the court held all of  
7 the following:

8 1. In proceedings to establish, modify, or terminate a  
9 guardianship, the district court may make a finding of  
10 incompetency only if the ward's or proposed ward's decision-  
11 making capacity is so impaired that the ward is unable to care  
12 for the ward's or proposed ward's personal safety or to attend  
13 to and provide for such necessities as food, shelter,  
14 clothing, and medical care, without which physical injury or  
15 illness may occur. Additionally, in making the determination  
16 of incompetency, the court is required to consider credible  
17 evidence from any source of the effect of third-party  
18 assistance.

19 2. In determining whether a guardianship is to be  
20 established, modified, or terminated, the district court shall  
21 consider if a limited guardianship is appropriate.

22 3. The standard of proof for determining incompetency in a  
23 proceeding to establish, modify, or terminate a guardianship  
24 is clear and convincing evidence.

25 4. The burden of persuasion is on the party petitioning  
26 for guardianship and remains with the guardian in proceedings  
27 to modify or terminate the guardianship. If the ward  
28 petitions to terminate the guardianship, the ward must make a  
29 prima facie showing that the ward has some decision-making  
30 capacity. Once the prima facie showing is made, the guardian  
31 has the burden of persuasion to show by clear and convincing  
32 evidence that the ward is incompetent.

33 The bill provides definitions of "court evaluator",  
34 "functional limitations", "health care professional", and  
35 "legal settlement", and redefines the term "incompetent" to

1 reflect the holding of the court.

2 The bill amends the section relating to the petition for  
3 guardianship to include new information and to change the  
4 basis upon which a person is alleged to require a guardian:  
5 that the person is a minor or that the person is incompetent  
6 as redefined in the bill. The new information required also  
7 includes the providing of the names and addresses of  
8 additional interested parties and of any additional  
9 information which might assist the court in making its  
10 determination. The bill requires that an evaluation by a  
11 health care professional of the proposed ward's physical and  
12 mental condition be attached to the petition or provided at  
13 least 14 days prior to the hearing on the petition.

14 The notice provisions include that if the proposed ward is  
15 an adult, notice of the filing of the petition is to be  
16 provided to the proposed ward and to all persons included in  
17 the petition as interested parties; if the proposed ward is a  
18 minor, notice is to be provided to the parents or guardian and  
19 to any adult person with whom the minor resides unless any of  
20 these is the petitioner.

21 The bill amends the pleadings and trial portion of the  
22 proceedings to include provisions which allow the court to  
23 appoint a court evaluator to provide for the evaluation of the  
24 proposed ward to carry out additional information-gathering  
25 duties to assist the court in its determination. The costs of  
26 the court evaluator are to be paid by the proposed ward or if  
27 the proposed ward is indigent, by the county of legal  
28 settlement and if there is no county of legal settlement, then  
29 by the state. The bill requires that the proposed ward be  
30 present at the hearing unless good cause is shown for the  
31 absence and provides that the hearing may be closed upon  
32 request of the proposed ward for good cause shown.

33 The bill provides that if a guardian is appointed, the  
34 court shall appoint a resident of this state as guardian, that  
35 venue for the proceeding is in the district court of the

1 county of residence of the proposed ward or where the proposed  
2 ward is present, that the court may transfer the proceeding to  
3 another court if in the interest of justice, and that any  
4 guardianship involving a minor is to meet the requirements of  
5 the uniform child custody jurisdiction Act.

6 Regarding the appointment of a guardian, instead of the  
7 current provision that if the allegations of the petition for  
8 the appointment of a guardian are proved, the court may  
9 appoint a guardian, the bill provides that it is the exclusive  
10 decision of the court to make a determination as to the  
11 appointment of a guardian, the type of guardianship, and the  
12 specific areas of protection, management, and assistance to be  
13 granted the guardian. The court is directed to make its  
14 determination based upon its consideration of the proposed  
15 ward's functional limitations, is to grant specific powers to  
16 the guardian which are the least restrictive, and is to  
17 consider a limited guardianship and the appropriateness of  
18 third-party assistance.

19 The bill provides that the determination of incompetence of  
20 a proposed ward and the determination of the appointment of a  
21 guardian is to be supported by clear and convincing evidence.  
22 Regarding the burden of persuasion, in an initial proceeding  
23 to appoint a guardian, the burden of persuasion is on the  
24 petitioner and in a proceeding to modify or terminate a  
25 guardianship, following a prima facie showing that the ward  
26 has some decision-making capacity, the burden is on the  
27 guardian to prove by clear and convincing evidence the ward's  
28 incompetency, if any.

29 The bill provides that in the preference as to appointment  
30 of a guardian for an adult ward, any person who is qualified  
31 and suitable or any person nominated by a ward in a standby  
32 guardianship petition may be appointed. The bill replaces the  
33 current standby guardianship language by stating that any  
34 person with sufficient capacity to form a preference may  
35 petition for a standby guardianship. The bill provides that

1 the petition must specify the event or conditions which must  
2 occur for the petition to be filed, provides for deposit of  
3 the petition, provides for revocation of the petition prior to  
4 the appointment of a guardian, provides for the filing upon  
5 the receipt by the clerk of court of both the petition and a  
6 verified statement that the event or condition has occurred,  
7 provides for the appointment of the person nominated as  
8 guardian without a hearing or the setting of the petition for  
9 hearing, and provides that the powers of the guardian are to  
10 be limited to only those powers expressed in the petition or  
11 only those powers specified by the court following a hearing  
12 on the petition.

13 The bill provides that an attorney appointed to represent a  
14 proposed ward, in addition to existing duties, is to provide  
15 notice to all interested parties specified in the petition and  
16 to notify other interested parties not included in the  
17 petition but who are identified during the course of the  
18 representation.

19 The notification of guardianship powers provisions are  
20 amended to limit the powers of the guardian to making  
21 decisions regarding the ward's personal safety or providing  
22 for necessities and including powers which must receive  
23 approval including arranging for major elective surgery or any  
24 other nonemergency major medical procedure or consent to the  
25 withholding or withdrawal of life-sustaining procedures. The  
26 notice provided to the proposed ward is to be in 14 point type  
27 rather than the existing 10 point.

28 The bill deletes the provisions for the appointment of a  
29 guardian under a voluntary guardianship petition, so that a  
30 guardian may only be appointed under involuntary or standby  
31 provisions.

32 The bill amends the provisions which specify the powers  
33 which may be granted to a guardian by limiting the powers  
34 without court approval to those powers specified by the court,  
35 consistent with the findings of the court regarding the ward's

1 or proposed ward's functional limitations and by limiting the  
2 powers with court approval to those related to major elective  
3 surgery or nonemergency major medical procedures and  
4 consenting to the withholding or withdrawal of life-sustaining  
5 procedures. The bill also specifies that the ward retains all  
6 rights not delegated to the guardian by the court.

7 The bill provides new requirements for education of a  
8 guardian which consist of a minimum of two hours of  
9 instruction and training in specified subjects, to be  
10 completed by the guardian within the three-month period  
11 following the appointment. The bill provides for waiver of  
12 the education requirements for good cause shown and provides  
13 for payment of expenses by the ward's estate.

14 The bill expands the reporting requirements of the  
15 guardian, provides that if an annual report sets forth any  
16 reason for modification of the powers authorized, the guardian  
17 is to make application for modification within 10 days of the  
18 filing of the report and provide notice of the filing to all  
19 interested parties, and provides that any interested party may  
20 request a hearing on the report. The bill includes new  
21 provisions for the examination of the initial and annual  
22 reports by the chief judge of the judicial district or a  
23 designee of the presiding judge, provides that the person  
24 authorized to examine the report may demand that a report be  
25 filed if the guardian fails to do so, and provides that the  
26 person authorized to examine the reports may demand a revised  
27 report if the report submitted is incomplete or  
28 unsatisfactory. Failure of a guardian to comply with a demand  
29 is grounds for entry of an order of compliance, denial, or  
30 reduction in the compensation of the guardian, or removal of  
31 the guardian.

32 The bill provides new grounds for the modification or  
33 removal of a guardian including a determination that the ward  
34 is not incompetent, that the guardian has become disabled,  
35 ill, or has died, or that the ward has been removed from the

1 state or if reasonable access to the ward by the guardian is  
2 not possible.

3 The bill provides that any interested party may petition  
4 for modification or termination of a guardianship and that all  
5 of the procedural requirements that apply to an initial  
6 guardianship appointment apply to the modification or  
7 termination proceedings. The bill provides several grounds  
8 for the removal of a guardian or conservator including  
9 incapacity, criminal conviction, wasting or mismanaging the  
10 estate, neglecting the ward, failure to file required reports,  
11 and others.

12 The bill provides court evaluator education requirements,  
13 provides for the establishment of an office of public guardian  
14 at the discretion of the chief judge of each judicial district  
15 and provides the required qualifications for a public  
16 guardian.

17 The bill requires the supreme court administrator to  
18 establish a system of notification for the filing of  
19 guardianship cases and records distinct from probate cases and  
20 for the monitoring of the filing of annual reports so that the  
21 court will be notified of annual reports as they become due  
22 and whether the reports have been filed.

23 The bill repeals the section of the Code providing for the  
24 appointment of a guardian on a voluntary petition and the  
25 section which limits the applications to terminate a  
26 guardianship or conservatorship by stating that if a petition  
27 is denied, no other petition shall be filed until at least 6  
28 months following the date of the denial of the petition.

29  
30  
31  
32  
33  
34  
35

## SENATE FILE 2414

S-5448

1 Amend Senate File 2414 as follows:

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

4 "Section 1. Section 633.3, Code 1995, is amended  
5 by adding the following new subsection:

6 NEW SUBSECTION. 18A. "Functional limitations"  
7 means the behavior or condition of a person which  
8 impairs the person's ability to care for the person's  
9 personal safety or to attend to or provide for  
10 necessities for the person.

11 Sec. 2. Section 633.3, subsection 22, Code 1995,  
12 is amended to read as follows:

13 22. Incompetent ~~---includes means the condition of~~  
14 any person who has been adjudicated by a court to be  
15 ~~incapable of managing the person's property, or caring~~  
16 ~~for the person's own self, or both~~ have a decision-  
17 making capacity which is so impaired that the person  
18 is unable to care for the person's personal safety or  
19 to attend to or provide for necessities for the person  
20 such as food, shelter, clothing, or medical care,  
21 without which physical injury or illness may occur.

22 Sec. 3. Section 633.552, subsection 2, paragraphs  
23 a and b, Code 1995, are amended by striking the  
24 paragraphs and inserting in lieu thereof the  
25 following:

26 a. Is a minor.

27 b. Is a person whose decision-making capacity is  
28 so impaired that the person is unable to care for the  
29 person's personal safety or to attend to or provide  
30 for necessities for the person such as food, shelter,  
31 clothing, or medical care without which physical  
32 injury or illness might occur.

33 Sec. 4. Section 633.556, Code 1995, is amended to  
34 read as follows:

35 633.556 APPOINTMENT OF GUARDIAN.

36 ~~If the allegations of the petition as to the status~~  
37 ~~of the proposed ward and the necessity for the~~  
38 ~~appointment of a guardian are proved, the court may~~  
39 ~~appoint a guardian.~~

40 The determination as to the appointment of a  
41 guardian, the type of guardianship, and the specific  
42 areas of protection, management, and assistance to be  
43 granted, shall be the exclusive decision of the court.  
44 In order to appoint a guardian, the court must find  
45 that the proposed ward meets the criteria of section  
46 633.552, subsection 2. In making the determination,  
47 the court shall consider the proposed ward's  
48 functional limitations and the extent to which any  
49 functional limitations impair the proposed ward's  
50 ability to care for the person's personal safety or to

S-5448

-1-

S-5448

Page 2

1 attend to or provide for necessities. The court shall  
2 grant specific powers to the guardian which constitute  
3 the least restrictive form of intervention consistent  
4 with the findings regarding the proposed ward's  
5 functional limitations. Prior to establishing,  
6 modifying, or terminating a guardianship, the court  
7 shall consider whether a guardianship pursuant to  
8 section 633.635 is appropriate and whether third-party  
9 assistance is available to meet a ward's or proposed  
10 ward's need for necessities, if credible evidence of  
11 third-party assistance is adduced from any source.

12 Sec. 5. NEW SECTION. 633.556A STANDARD OF PROOF  
13 AND BURDEN OF PERSUASION.

14 1. The determination of incompetency of the  
15 proposed ward or ward and the determination of the  
16 need for the appointment of a guardian or of the  
17 modification or termination of a guardianship shall be  
18 supported by clear and convincing evidence.

19 2. The burden of persuasion is on the petitioner  
20 in an initial proceeding to appoint a guardian.  
21 Following a prima facie showing that the proposed ward  
22 or ward has some decision-making capacity, the burden  
23 of persuasion is on the guardian in a proceeding to  
24 modify or terminate a guardianship.

25 Sec. 6. Section 633.562, Code 1995, is amended to  
26 read as follows:

27 633.562 NOTIFICATION OF GUARDIANSHIP POWERS.

28 In a proceeding for the appointment of a guardian,  
29 the proposed ward shall be given written notice which  
30 advises the proposed ward that if a guardian is  
31 appointed, the guardian may, ~~without court approval,~~  
32 make decisions regarding the ward's personal safety or  
33 provide for the care of the ward, manage the ward's  
34 personal property and effects, assist the ward in  
35 developing self-reliance and receiving professional  
36 care, counseling, treatment or services as needed, and  
37 ensure that the ward receives necessary emergency  
38 medical services necessities. The notice shall also  
39 advise the proposed ward that, upon the court's  
40 approval, the guardian may ~~change the ward's permanent~~  
41 ~~residence to a more restrictive residence, and~~ arrange  
42 for major elective surgery or any other nonemergency  
43 major medical procedure or consent to the withholding  
44 or withdrawal of life-sustaining procedures pursuant  
45 to chapter 144A. The notice shall clearly advise the  
46 proposed ward in boldfaced type of a minimum size of  
47 ten fourteen points, of the right to counsel and the  
48 potential deprivation of the proposed ward's civil  
49 rights. ~~In an involuntary guardianship proceeding,~~  
50 the The notice shall be served upon the proposed ward

S-5448

-2-

S-5448

Page 3

1 with the notice of the filing of the petition as  
2 provided in section 633.554.

3 Sec. 7. Section 633.566, subsection 2, paragraphs  
4 a and b, Code 1995, are amended by striking the  
5 paragraphs and inserting in lieu thereof the  
6 following:

7 a. Is a minor.

8 b. Is a person whose decision-making capacity is  
9 so impaired that the person is unable to make,  
10 communicate, or carry out important decisions  
11 concerning the person's own financial affairs.

12 Sec. 8. Section 633.570, Code 1995, is amended to  
13 read as follows:

14 633.570 APPOINTMENT OF CONSERVATOR.

15 1. If the allegations of the petition as to the  
16 status of the proposed ward and the necessity for the  
17 appointment of a conservator are proved by clear and  
18 convincing evidence, the court may appoint a  
19 conservator.

20 2. In the determination as to the appointment of a  
21 conservator, the court shall consider whether a  
22 limited conservatorship is appropriate.

23 Sec. 9. Section 633.635, Code 1995, is amended to  
24 read as follows:

25 633.635 RESPONSIBILITIES OF GUARDIAN.

26 ~~1.--A guardian may be granted the following powers~~  
27 ~~and duties which may be exercised without prior court~~  
28 ~~approval:~~

29 ~~a.--Providing for the care, comfort and maintenance~~  
30 ~~of the ward, including the appropriate training and~~  
31 ~~education to maximize the ward's potential.~~

32 ~~b.--Taking reasonable care of the ward's clothing,~~  
33 ~~furniture, vehicle and other personal effects.~~

34 ~~c.--Assisting the ward in developing maximum self-~~  
35 ~~reliance and independence.~~

36 ~~d.--Ensuring the ward receives necessary emergency~~  
37 ~~medical services.~~

38 ~~e.--Ensuring the ward receives professional care,~~  
39 ~~counseling, treatment or services as needed.~~

40 ~~f.--Any other powers or duties the court may~~  
41 ~~specify.~~

42 ~~2.--A guardian may be granted the following powers~~  
43 ~~which may only be exercised upon court approval:~~

44 ~~a.--Changing, at the guardian's request, the ward's~~  
45 ~~permanent residence if the proposed new residence is~~  
46 ~~more restrictive of the ward's liberties than the~~  
47 ~~current residence.~~

48 1. A guardian shall have only the powers specified  
49 by the court, consistent with the findings of the  
50 court regarding the proposed ward's or ward's

S-5448

-3-

S-5448

Page 4

1 functional limitations.

2 2. In addition to the powers of the guardian  
3 specified pursuant to subsection 1, the guardian may  
4 be granted additional powers, only with the prior  
5 approval of the court, including any of the following:

6 b- a. Arranging the provision of major elective  
7 surgery or any other nonemergency major medical  
8 procedure.

9 c- b. Consent Consenting to the withholding or  
10 withdrawal of life-sustaining procedures in accordance  
11 with chapter 144A.

12 ~~3.--The court may take into account all available~~  
13 ~~information concerning the capabilities of the ward~~  
14 ~~and any additional evaluation deemed necessary, and~~  
15 ~~may direct that the guardian have only a specially~~  
16 ~~limited responsibility for the ward.--In that event,~~  
17 ~~the court shall state those areas of responsibility~~  
18 ~~which shall be supervised by the guardian and all~~  
19 ~~others shall be retained by the ward.--The court may~~  
20 ~~make a finding that the ward lacks the capacity to~~  
21 ~~contract a valid marriage.~~

22 ~~4.--From time to time, upon a proper showing, the~~  
23 ~~court may alter the respective responsibilities of the~~  
24 ~~guardian and the ward, after notice to the ward and an~~  
25 ~~opportunity to be heard.~~

26 3. A ward retains all rights not delegated to a  
27 guardian by the court.

28 Sec. 10. Section 633.675, Code 1995, is amended to  
29 read as follows:

30 633.675 CAUSE FOR MODIFICATION OR TERMINATION.

31 A guardianship shall cease or shall be subject to  
32 modification, and a conservatorship shall terminate,  
33 upon the occurrence of any of the following  
34 circumstances:

35 1. If the ward is a minor, when the ward reaches  
36 full age.

37 2. The death of the ward.

38 3. A In the case of a conservatorship, upon a  
39 determination by the court that the decision-making  
40 capacity of the ward is competent and capable of  
41 managing the ward's property and affairs, and that the  
42 continuance of the guardianship or conservatorship  
43 would not be in the ward's best interests no longer  
44 impaired to the extent alleged in the petition  
45 pursuant to section 633.566, subsection 2.

46 4. In the case of a guardianship, upon a  
47 determination by the court that the ward is not  
48 incompetent. Additionally, the court shall consider  
49 the availability of third-party assistance in meeting  
50 the ward's necessities if credible evidence of such

S-5448

-4-

S-5448

Page 5

1 assistance is provided by any source.

2 ~~4. 5.~~ Upon determination by the court that the  
3 conservatorship or guardianship is no longer necessary  
4 for any other reason.

5 Sec. 11. Section 633.679, Code 1995, is amended to  
6 read as follows:

7 633.679 PETITION TO MODIFY OR TERMINATE.

8 At any time after the appointment of a guardian or  
9 conservator, the person under guardianship or  
10 conservatorship may apply to the court by petition,  
11 ~~alleging that the person is no longer a proper subject~~  
12 ~~thereof, and~~ asking that the guardianship or  
13 conservatorship be modified or terminated.

14 Upon the filing of a petition, the court may order  
15 modification or termination of the guardianship, the  
16 conservatorship, or both. The action shall be triable  
17 as a proceeding in equity. A determination to  
18 continue, modify, or terminate a guardianship or  
19 conservatorship shall be based upon clear and  
20 convincing evidence. The burden of persuasion in the  
21 continuation, modification, or termination of a  
22 guardianship or conservatorship is on the petitioner.  
23 In a petition to terminate a guardianship or  
24 conservatorship, a ward shall make a prima facie  
25 showing that the ward has some decision-making  
26 capacity. Following the initial showing by the ward,  
27 the guardian or conservator shall have the burden of  
28 persuasion to demonstrate by clear and convincing  
29 evidence any incompetency on the part of the ward."

30 2. Title page, line 2, by striking the words "and  
31 providing penalties".

By JOHNIE HAMMOND

S-5448 FILED MARCH 20, 1996

Hammond  
Vilsack  
Diannetto  
MS Kean  
Redfern

SSB-2278  
Judiciary  
Succeeded By

SENATE/HOUSE FILE SP/HF 2414  
BY (PROPOSED DEPARTMENT OF  
ELDER AFFAIRS BILL)

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

A BILL FOR

1 An Act relating to guardianships and conservatorships and  
2 providing penalties.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

1 Section 1. Section 237.13, subsection 1, paragraph b, Code  
2 1995, is amended to read as follows:

3 b. ~~A guardian-appointed-on-a-voluntary-petition-of-a-ward~~  
4 ~~pursuant-to-section-633-5577,-or-a~~ conservator appointed on a  
5 voluntary petition of a ward pursuant to section 633.572,  
6 provided the ward has an income that does not exceed one  
7 hundred fifty percent of the current federal office of  
8 management and budget poverty guidelines and who does not have  
9 resources in excess of the criteria for resources under the  
10 federal supplemental security income program. However, the  
11 ward's ownership of one residence and one vehicle shall not be  
12 considered in determining resources.

13 Sec. 2. Section 633.3, Code 1995, is amended by adding the  
14 following new subsections:

15 NEW SUBSECTION. 9A. "Court evaluator" means a person with  
16 knowledge of personal care skills, the problems associated  
17 with disabilities and functional limitations, and the private  
18 and public resources available to address the type of alleged  
19 limitations of the proposed ward, including but not limited to  
20 an attorney at law or a health care professional. "Court  
21 evaluator" may include a staff representative of the place of  
22 residence of a proposed ward if the proposed ward resides in a  
23 health care facility, a hospital, a school, or a chemical  
24 substance abuse facility, and if the staff representative has  
25 the specified knowledge required under this subsection.

26 NEW SUBSECTION. 18A. "Functional limitations" means the  
27 behavior or condition of a person which impairs the person's  
28 ability to care for the person's personal safety or to attend  
29 to or provide for necessities for the person.

30 NEW SUBSECTION. 20A. "Health care professional" means a  
31 person licensed to practice medicine and surgery pursuant to  
32 chapter 148, physical therapy pursuant to chapter 148A,  
33 osteopathy pursuant to chapter 150, osteopathic medicine and  
34 surgery pursuant to chapter 150A, nursing pursuant to chapter  
35 152, psychology pursuant to chapter 154B, social work pursuant

1 to chapter 154C, or marital and family therapy or mental  
2 health counseling pursuant to chapter 154D.

3 NEW SUBSECTION. 24A. "Legal settlement" means legal  
4 settlement as acquired pursuant to section 252.16.

5 Sec. 3. Section 633.3, subsection 22, Code 1995, is  
6 amended to read as follows:

7 22. Incompetent ~~---includes~~ means the condition of any  
8 person who has been adjudicated by a court to be incapable of  
9 managing the person's property, or caring for the person's own  
10 self, or both have a decision-making capacity which is so  
11 impaired that the person is unable to care for the person's  
12 personal safety or to attend to or provide for necessities for  
13 the person such as food, shelter, clothing, or medical care,  
14 without which physical injury or illness may occur.

15 Sec. 4. Section 633.12, Code 1995, is amended to read as  
16 follows:

17 633.12 COUNTY OF JURISDICTION.

18 The court of each county shall have original and exclusive  
19 jurisdiction to administer the estates of all persons who are  
20 residents of the county, or who were residents at the time of  
21 their death, and all nonresidents of the state who have  
22 property, or who die leaving property in the county subject to  
23 administration, or whose property is afterwards brought into  
24 the county; to appoint conservators for nonresidents having  
25 property in the county; and to appoint conservators and  
26 guardians of residents of the county or of persons present in  
27 the county.

28 Sec. 5. Section 633.22, subsection 1, Code 1995, is  
29 amended to read as follows:

30 1. The appointment of personal representatives who are  
31 residents of the state, ~~guardians and conservators for minors,~~  
32 the fixing and determining of the amount of the bond, or  
33 waiving the same when permitted by law or by will, and the  
34 approval of any and all bonds given by fiduciaries in the  
35 discharge of their duties.

1 Sec. 6. Section 633.552, Code 1995, is amended to read as  
2 follows:

3 633.552 PETITION FOR APPOINTMENT OF GUARDIAN.

4 Any person may file with the clerk a verified petition for  
5 the appointment of a guardian. The petition shall state the  
6 following information so far as known to the petitioner.

7 1. The name, age date of birth, and post office address of  
8 the proposed ward.

9 2. That the proposed ward is in either of the following  
10 categories:

11 ~~a.---By-reason-of-mental,-physical-or-other-incapacity-is~~  
12 ~~unable-to-make-or-carry-out-important-decisions-concerning-the~~  
13 ~~proposed-ward's-person-or-affairs,-other-than-financial~~  
14 ~~affairs.~~

15 ~~b. a.~~ Is a minor.

16 b. Is a person whose decision-making capacity is so  
17 impaired that the person is unable to care for the person's  
18 personal safety or to attend to or provide for necessities for  
19 the person such as food, shelter, clothing, or medical care  
20 without which physical injury or illness might occur.

21 3. The name, telephone number, and post office address of  
22 the proposed guardian, and that such person is qualified to  
23 serve in that capacity, and the identity of any ward for whom  
24 the person is currently acting as guardian or seeking to  
25 become guardian.

26 4. That the proposed ward is a resident of the state of  
27 Iowa or is present in the state, ~~and-that-the-ward's-best~~  
28 ~~interests-require-the-appointment-of-a-guardian-in-this-state.~~

29 5. The name and address of the person or institution, if  
30 any, having the care, custody, or control of the proposed  
31 ward.

32 6. The name, telephone number, and post office address of  
33 any nearest relatives or friends of the proposed ward as  
34 follows:

35 a. If the proposed ward is a minor, all of the following,

1 if applicable:

2 (1) Any parent of the minor, if any.

3 (2) Any adult with whom the minor resides, if any.

4 b. If the proposed ward is an adult, all of the following,

5 if applicable:

6 (1) Any spouse and adult children of the proposed ward, if  
7 any.

8 (2) Any adult siblings and any parent of the proposed  
9 ward, if any.

10 (3) Any person with whom the proposed ward resides, if  
11 any.

12 7. If the proposed ward is an adult, the petition shall  
13 include a brief description of the nature and degree of the  
14 alleged incompetency including any functional limitations and  
15 a description of any acts or behavior of the proposed ward  
16 which warrant the appointment of a guardian.

17 8. Any standby, current, or prior guardianship, in any  
18 state, concerning the proposed ward, including the name of the  
19 guardian and the current status of the guardianship.

20 9. The name, telephone number, and post office address of  
21 any agent designated under a durable power of attorney of  
22 which the proposed ward is the principal. The petitioner  
23 shall attach a copy of any power of attorney, if available.

24 10. Any other information which the petitioner believes  
25 will assist the court in determining the need for the  
26 appointment of a guardian.

27 Sec. 7. NEW SECTION. 633.552A EVALUATION OF PROPOSED  
28 WARD.

29 An evaluation by a health care professional of the proposed  
30 ward's physical and mental condition, including a description  
31 of the nature, type, and extent of the proposed ward's  
32 functional limitations, shall be attached to the petition or  
33 filed with the court at least fourteen days prior to the  
34 hearing on the petition.

35 Sec. 8. Section 633.554, Code 1995, is amended to read as

1 follows:

2 633.554 NOTICE TO-PROPOSED-WARD.

3 1. If the proposed ward is an adult, notice:

4 a. Notice of the filing of the petition shall be served  
5 upon proposed ward in the manner of an original notice and the  
6 content of the notice is governed by the rules of civil  
7 procedure governing original notice.

8 b. Notice shall be provided to all persons designated in  
9 the petition pursuant to section 633.552, subsections 6, 8, 9,  
10 and 10, unless the person designated is the petitioner.

11 2. If the proposed ward is a minor, notice in the manner  
12 of original notice shall be provided to the parents or  
13 guardian of the proposed ward and to any adult persons with  
14 whom the minor resides, unless the parent or adult person is  
15 the petitioner.

16 3. If the proposed ward is a minor or if the proposed ward  
17 is an adult under a standby petition and the court determines,  
18 pursuant to section 633.561, subsection 1, that the proposed  
19 ward is entitled to representation, notice in the manner of  
20 original notice, or another form of notice ordered by the  
21 court, given to the attorney appointed to represent the ward  
22 is notice to the proposed ward.

23 Sec. 9. Section 633.555, Code 1995, is amended to read as  
24 follows:

25 633.555 PLEADINGS AND TRIAL ---RULES-OF-CIVIL-PROCEDURE  
26 EVALUATION.

27 1. After the petition has been filed, the court shall set  
28 a date for hearing on the issue of incompetency, and shall  
29 provide notice of the hearing in the manner provided for  
30 notice of the filing of the petition pursuant to section  
31 633.554.

32 2. The court may appoint a court evaluator who shall  
33 submit a written report to the court following completion of  
34 the court evaluator's duties. The court may appoint  
35 additional court evaluators as necessary. The duties of the

1 court evaluator include all of the following:

2 a. Retaining a medical expert to evaluate the proposed  
3 ward. If the petition includes an evaluation by a health care  
4 professional who is a medical expert, the court evaluator may  
5 submit the previously completed evaluation. The court  
6 evaluator may review and inspect the records of any previously  
7 completed evaluation or any other medical, psychological, or  
8 psychiatric examinations of the proposed ward if the court  
9 determines that the records will assist the court evaluator in  
10 completing the report.

11 b. Meeting with the proposed ward and discussing, in a  
12 manner which the proposed ward is reasonably expected to  
13 understand, the nature and possible consequences of the  
14 proceedings, the general powers and duties of a guardian, and  
15 the rights of the proposed ward, including the right to  
16 counsel.

17 c. Interviewing the petitioner, or, if the petitioner is a  
18 facility or agency, an individual within the facility or  
19 agency who is familiar with the proposed ward's condition,  
20 affairs, and situation.

21 d. Interviewing other persons listed in the petition.

22 e. Interviewing or consulting with professionals having  
23 specialized knowledge in the area of geriatrics or in the  
24 proposed ward's alleged incompetency including functional  
25 limitations including but not limited to mental retardation,  
26 developmental disabilities, and chemical or substance abuse  
27 dependency.

28 f. Preparing a report for the court, which is dated and  
29 signed by the court evaluator, which includes all of the  
30 following recommendations or information:

31 (1) The need for legal counsel for the proposed ward.

32 (2) The proposed ward's ability to be present at or to  
33 participate in any hearing on the petition.

34 (3) Third-party assistance resources available to the  
35 proposed ward and the sufficiency and reliability of the

1 resources to meet the proposed ward's needs.

2 (4) The functional limitations of the proposed ward with  
3 respect to activities of daily living and any prognosis as to  
4 the possibility of improvement or possibility of reversibility  
5 of any physical or mental disability or chemical or substance  
6 abuse dependency.

7 (5) The proposed ward's understanding and appreciation of  
8 the nature and consequences of an inability to manage the  
9 activities of daily living.

10 (6) The proposed ward's preferences, wishes, and values  
11 with regard to managing the activities of daily living.

12 (7) The least restrictive form of intervention consistent  
13 with the proposed ward's functional limitations and the  
14 recommended extent of the powers to be assigned to the  
15 guardian.

16 (8) The financial resources and approximate value of the  
17 proposed ward's property.

18 (9) The existence, if any, of persons financially  
19 dependent on the proposed ward and the assistance they  
20 require.

21 (10) The suitability of the petitioner in identifying and  
22 meeting the needs of the proposed ward.

23 (11) Potential conflicts of interest, including but not  
24 limited to, financial interests if any, existing between or  
25 among family members and other interested parties.

26 (12) Additional parties who should be provided notice and  
27 the opportunity to be heard.

28 (13) Any other issues to be addressed at the request of  
29 the court.

30 g. The notes, records, and reports collected by the court  
31 evaluator shall be available to the court, to the proposed  
32 ward or the ward's legal counsel, to the petitioner or the  
33 petitioner's legal counsel, and to any other person who the  
34 court determines has a need.

35 h. The cost of the court evaluator and the expenses

1 associated with performing the evaluator's duties shall be  
2 paid by the proposed ward, or, if the proposed ward is  
3 indigent, by the county of legal settlement. If no county of  
4 legal settlement exists, the costs shall be borne by the  
5 state.

6 3. The proposed ward shall be present at any hearing on  
7 the petition, unless there is good cause shown for the  
8 absence. The hearing may be closed upon the request of the  
9 proposed ward for good cause shown.

10 4. All other pleadings and the trial of the cause shall be  
11 governed by the Rules of Civil Procedure. The cause shall be  
12 tried as a law action, and either party shall be entitled to a  
13 jury trial if demand is made therefor as provided by the Rules  
14 of Civil Procedure.

15 Sec. 10. NEW SECTION. 633.555A JURISDICTION AND VENUE.

16 1. If the court appoints a guardian, the court shall  
17 appoint a guardian who is a resident of this state.

18 2. Venue for a guardianship proceeding is in the district  
19 court of the county of residence of the proposed ward or where  
20 the proposed ward is present.

21 3. The court may transfer the proceeding to another court  
22 if the court finds that it is in the interest of justice.

23 4. Any guardianship involving a minor shall meet the  
24 requirements of the uniform child custody jurisdiction Act  
25 pursuant to chapter 598A.

26 Sec. 11. Section 633.556, Code 1995, is amended to read as  
27 follows:

28 633.556 APPOINTMENT OF GUARDIAN.

29 ~~If the allegations of the petition as to the status of the~~  
30 ~~proposed ward and the necessity for the appointment of a~~  
31 ~~guardian are proved, the court may appoint a guardian.~~

32 The determination as to the appointment of a guardian, the  
33 type of guardianship, and the specific areas of protection,  
34 management, and assistance to be granted, shall be the  
35 exclusive decision of the court. In order to appoint a

1 guardian, the court must find that the proposed ward meets the  
2 criteria of section 633.552, subsection 2. In making the  
3 determination, the court shall consider the proposed ward's  
4 functional limitations and the extent to which any functional  
5 limitations impair the proposed ward's ability to care for the  
6 person's personal safety or to attend to or provide for  
7 necessities. The court shall grant specific powers to the  
8 guardian which constitute the least restrictive form of  
9 intervention consistent with the findings regarding the  
10 proposed ward's functional limitations. Prior to  
11 establishing, modifying, or terminating a guardianship, the  
12 court shall consider whether a guardianship pursuant to  
13 section 633.635 is appropriate and whether third-party  
14 assistance is available to meet a ward's or proposed ward's  
15 need for necessities, if credible evidence of third-party  
16 assistance is adduced from any source.

17 Sec. 12. NEW SECTION. 633.556A STANDARD OF PROOF AND  
18 BURDEN OF PERSUASION.

19 1. The determination of incompetency of the proposed ward  
20 or ward and the determination of the need for the appointment  
21 of a guardian or of the modification or termination of a  
22 guardianship shall be supported by clear and convincing  
23 evidence.

24 2. The burden of persuasion is on the petitioner in an  
25 initial proceeding to appoint a guardian. Following a prima  
26 facie showing that the proposed ward or ward has some  
27 decision-making capacity, the burden of persuasion is on the  
28 guardian in a proceeding to modify or terminate a  
29 guardianship.

30 Sec. 13. Section 633.559, Code 1995, is amended by adding  
31 the following new unnumbered paragraph:

32 NEW UNNUMBERED PARAGRAPH. A person who is qualified and  
33 suitable or who is nominated as a proposed guardian in a  
34 standby petition may be appointed as the guardian of an adult  
35 ward.

1 Sec. 14. Section 633.560, Code 1995, is amended by  
2 striking the section and inserting in lieu thereof the  
3 following:

4 633.560 GUARDIANSHIP -- STANDBY BASIS.

5 1. An individual who has sufficient capacity to form a  
6 preference may at any time nominate another person to act as  
7 the individual's guardian on a standby basis.

8 2. The individual may execute a petition for the  
9 appointment of a standby guardian upon the express condition  
10 that the petition shall be acted upon by the court only upon  
11 the occurrence of an event specified in the petition or if the  
12 individual is determined to meet the criteria pursuant to  
13 section 633.552, subsection 2, paragraph "b".

14 3. The standby petition may be deposited with the clerk of  
15 the county in which the individual resides or with any other  
16 person. The standby petition may be revoked at any time prior  
17 to the appointment of a guardian by destruction of the  
18 petition by the petitioner or by executing an acknowledged  
19 instrument of revocation.

20 4. If the petition is filed with the clerk, the petition  
21 may be brought for hearing upon the filing of a verified  
22 statement that the requisite event has occurred or the  
23 requisite criteria have been met. If the petition has not  
24 been filed with the clerk, the petition may be brought for  
25 hearing by filing with the clerk both the petition and the  
26 verified statement.

27 5. Following the filing of both the petition and the  
28 verified statement, the court, without notice, may support the  
29 person nominated as guardian or may set the petition for  
30 hearing.

31 6. The powers of the guardian shall be limited to the  
32 powers specified in the petition or by the court following a  
33 hearing on the petition.

34 Sec. 15. Section 633.561, subsection 4, Code 1995, is  
35 amended by adding the following new paragraph after paragraph

1 d and by relettering the subsequent paragraphs:

2 NEW PARAGRAPH. e. Provide notice to all persons  
3 identified in the petition pursuant to section 633.552,  
4 subsections 6, 8, 9, and 10. In the course of representation,  
5 an attempt shall be made to identify and inform persons within  
6 the categories specified in the petition who have not been  
7 included in the petition. Notice may also be provided to any  
8 other person who has information which will assist the court.

9 Sec. 16. Section 633.562, Code 1995, is amended to read as  
10 follows:

11 633.562 NOTIFICATION OF GUARDIANSHIP POWERS.

12 In a proceeding for the appointment of a guardian, the  
13 proposed ward shall be given written notice which advises the  
14 proposed ward that if a guardian is appointed, the guardian  
15 ~~may, without court approval, make decisions regarding the~~  
16 ~~ward's personal safety or provide for the care of the ward,~~  
17 ~~manage the ward's personal property and effects, assist the~~  
18 ~~ward in developing self-reliance and receiving professional~~  
19 ~~care, counseling, treatment or services as needed, and ensure~~  
20 ~~that the ward receives necessary emergency medical services~~  
21 necessities. The notice shall also advise the proposed ward  
22 that, upon the court's approval, the guardian may ~~change the~~  
23 ~~ward's permanent residence to a more restrictive residence,~~  
24 and arrange for major elective surgery or any other  
25 nonemergency major medical procedure or consent to the  
26 withholding or withdrawal of life-sustaining procedures  
27 pursuant to chapter 144A. The notice shall clearly advise the  
28 proposed ward in boldfaced type of a minimum size of ten  
29 fourteen points, of the right to counsel and the potential  
30 deprivation of the proposed ward's civil rights. ~~In an~~  
31 ~~involuntary guardianship proceeding, the~~ The notice shall be  
32 served upon the proposed ward with the notice of the filing of  
33 the petition as provided in section 633.554.

34 Sec. 17. Section 633.634, Code 1995, is amended to read as  
35 follows:

1 633.634 COMBINATION OF VOLUNTARY-AND STANDBY PETITIONS  
2 WITH INVOLUNTARY PETITION FOR HEARING APPOINTMENT OF GUARDIAN.

3 If prior to the time of hearing on a petition for the  
4 appointment of a guardian or a conservator, a petition is  
5 filed under the provisions of section 633-557 633.560,  
6 633.572, or 633.591, the court shall combine the hearing on  
7 such petitions and determine who shall be appointed guardian  
8 or conservator, and such petition shall be triable to the  
9 court.

10 Sec. 18. Section 633.635, Code 1995, is amended to read as  
11 follows:

12 633.635 RESPONSIBILITIES OF GUARDIAN.

13 ~~1.--A-guardian-may-be-granted-the-following-powers-and  
14 duties-which-may-be-exercised-without-prior-court-approval:~~

15 ~~a.--Providing-for-the-care,comfort-and-maintenance-of-the  
16 ward,-including-the-appropriate-training-and-education-to  
17 maximize-the-ward's-potential:~~

18 ~~b.--Taking-reasonable-care-of-the-ward's-clothing,  
19 furniture,-vehicle-and-other-personal-effects.~~

20 ~~c.--Assisting-the-ward-in-developing-maximum-self-reliance  
21 and-independence.~~

22 ~~d.--Ensuring-the-ward-receives-necessary-emergency-medical  
23 services.~~

24 ~~e.--Ensuring-the-ward-receives-professional-care,  
25 counseling,-treatment-or-services-as-needed.~~

26 ~~f.--Any-other-powers-or-duties-the-court-may-specify.~~

27 ~~2.--A-guardian-may-be-granted-the-following-powers-which  
28 may-only-be-exercised-upon-court-approval:~~

29 ~~a.--Changing,-at-the-guardian's-request,-the-ward's  
30 permanent-residence-if-the-proposed-new-residence-is-more  
31 restrictive-of-the-ward's-liberties-than-the-current  
32 residence.~~

33 1. A guardian shall have only the powers specified by the  
34 court, consistent with the findings of the court regarding the  
35 proposed ward's or ward's functional limitations.

1     2. In addition to the powers of the guardian specified  
2 pursuant to subsection 1, the guardian may be granted  
3 additional powers, only with the prior approval of the court,  
4 including any of the following:

5     b- a. Arranging the provision of major elective surgery or  
6 any other nonemergency major medical procedure.

7     e- b. Consent Consenting to the withholding or withdrawal  
8 of life-sustaining procedures in accordance with chapter 144A.

9     ~~3--The court may take into account all available~~  
10 ~~information concerning the capabilities of the ward and any~~  
11 ~~additional evaluation deemed necessary, and may direct that~~  
12 ~~the guardian have only a specially limited responsibility for~~  
13 ~~the ward.--In that event, the court shall state those areas of~~  
14 ~~responsibility which shall be supervised by the guardian and~~  
15 ~~all others shall be retained by the ward.--The court may make~~  
16 ~~a finding that the ward lacks the capacity to contract a valid~~  
17 ~~marriage.~~

18     ~~4--From time to time, upon a proper showing, the court may~~  
19 ~~alter the respective responsibilities of the guardian and the~~  
20 ~~ward, after notice to the ward and an opportunity to be heard.~~

21     3. A ward retains all rights not delegated to a guardian  
22 by the court, including but not limited to any rights to legal  
23 representation and the right to provide records to the ward's  
24 attorney.

25     Sec. 19. NEW SECTION. 633.668A GUARDIAN EDUCATION  
26 REQUIREMENTS.

27     1. A ward is entitled to a guardian whom the court  
28 determines to be sufficiently competent to perform the duties  
29 of a guardian necessary to protect the interests of the ward.

30     2. A person appointed by the court as guardian shall  
31 receive a minimum of two hours of instruction and training  
32 related to, but not limited to, all of the following:

33     a. The legal duties and responsibilities of a guardian.

34     b. The rights of a ward.

35     c. The availability of local resources to aid the ward.

1 d. The preparation of habilitation plans and annual  
2 guardianship reports.

3 3. A person appointed by the court as a guardian shall  
4 complete the two required hours of instruction and training  
5 within the three-month period following the appointment as  
6 guardian. The instruction and training shall be completed  
7 through a course approved by the Iowa supreme court.

8 4. Expenses incurred by the guardian in satisfying the  
9 education and training requirements under this section may be  
10 reimbursed by the ward's estate.

11 5. The court, for good cause shown, may waive the  
12 education and training requirements or may impose additional  
13 education and training requirements.

14 Sec. 20. Section 633.669, subsection 2, Code 1995, is  
15 amended to read as follows:

16 2. Reports required by this section must include:

17 a. The current mental and physical condition of the ward,  
18 including the necessity for any physical, dental, or mental  
19 health examinations to determine the current needs of the  
20 ward.

21 b. The present living arrangement of the ward, including a  
22 description of each residence where the ward has resided  
23 during the reporting period as well as a statement as to the  
24 suitability of the ward's current residence in meeting the  
25 needs of the ward.

26 c. A summary of the medical, educational, vocational,  
27 dental, habilitative, and other professional services provided  
28 for the ward and a plan for provision of those services during  
29 the subsequent year.

30 d. A description of the guardian's visits with and  
31 activities on behalf of the ward.

32 e. A recommendation as to the need for continued  
33 guardianship and any recommendations relating to the scope of  
34 the guardianship.

35 f. A statement of the social and personal services

1 utilized by the ward, including the social skills of the ward  
2 and maintenance of interpersonal relationships.

3 f. g. Other information requested by the court or useful  
4 in the opinion of the guardian.

5 Sec. 21. Section 633.669, Code 1995, is amended by adding  
6 the following new subsections:

7 NEW SUBSECTION. 7. If the annual report sets forth any  
8 reason for modification of the powers authorized by the court,  
9 the guardian shall make an application for modification within  
10 ten days of the filing of the report and shall provide notice  
11 to the persons entitled to notice in accordance with section  
12 633.554.

13 NEW SUBSECTION. 8. Any interested person may request a  
14 hearing on the report. The court may order the guardian to  
15 attend the hearing on the report on the court's own motion or  
16 on the petition of any interested person.

17 Sec. 22. NEW SECTION. 633.669A EXAMINATION OF INITIAL  
18 AND ANNUAL REPORTS.

19 1. Within thirty days of the filing of the initial and  
20 annual reports, the chief judge of the judicial district shall  
21 examine, or cause to be examined by a person designated by the  
22 presiding judge, all reports filed by the guardian.

23 2. a. If the guardian fails to file the initial or annual  
24 report, the person authorized to examine the report shall  
25 demand that the guardian file the report within fifteen days  
26 after the service of the demand upon the guardian. A copy of  
27 the demand shall be served upon the guardian by certified  
28 mail.

29 b. If the person authorized to examine the report  
30 determines that a more complete or satisfactory report should  
31 be filed, the person authorized to examine the report shall  
32 demand that the guardian file a revised report within fifteen  
33 days of the service of the demand upon the guardian. A copy  
34 of the demand shall be served upon the guardian by certified  
35 mail.

1 c. If the guardian fails to comply with a demand under  
2 this subsection, the court may enter an order requiring  
3 compliance with the demand and may deny or reduce the amount  
4 of compensation of the guardian or may remove the guardian.

5 Sec. 23. Section 633.675, Code 1995, is amended to read as  
6 follows:

7 633.675 CAUSE FOR MODIFICATION OR TERMINATION.

8 A guardianship shall cease or shall be subject to  
9 modification, and a conservatorship shall terminate, upon the  
10 occurrence of any of the following circumstances:

11 1. If the ward is a minor, when the ward reaches full age.

12 2. The death of the ward.

13 3. A In the case of a conservatorship, upon a  
14 determination by the court that the ward is competent and  
15 capable of managing the ward's property and affairs, and that  
16 the continuance of the guardianship-or conservatorship would  
17 not be in the ward's best interests.

18 4. In the case of a guardianship, upon a determination by  
19 the court that the ward is not incompetent. Additionally, the  
20 court shall consider the availability of third-party  
21 assistance in meeting the ward's necessities if credible  
22 evidence of such assistance is provided by any source.

23 5. Upon the disability, illness, or death of the guardian.

24 6. Upon the removal of the ward from this state or if  
25 reasonable access to the ward by the guardian is not possible.

26 ~~4~~ 7. Upon determination by the court that the  
27 conservatorship or guardianship is no longer necessary for any  
28 other reason.

29 Sec. 24. Section 633.679, Code 1995, is amended to read as  
30 follows:

31 633.679 PETITION TO MODIFY OR TERMINATE.

32 At any time after the appointment of a guardian or  
33 conservator, the person under guardianship or conservatorship,  
34 the guardian, the conservator, or any interested party may  
35 apply to the court by petition, ~~alleging that the person is no~~

1 ~~longer-a-proper-subject-thereof,-and~~ asking that the  
2 guardianship or conservatorship be modified or terminated.

3 Upon the filing of a petition, the court may order  
4 modification or termination of the guardianship, the  
5 conservatorship, or both. Prior to the issuance of the order,  
6 notice of the petition to modify or terminate shall be  
7 provided to all persons entitled to notice pursuant to section  
8 633.554 and all persons entitled to notice shall be provided  
9 the opportunity to provide evidence supporting continuance,  
10 modification, or termination or the conservatorship or  
11 guardianship at a hearing on the petition. The action shall  
12 be triable as a proceeding in equity. The ward is entitled to  
13 representation in the same manner as provided in section  
14 633.561 and the court shall make every reasonable effort to  
15 enable the ward to be present and to participate in the  
16 proceedings. In making a determination, the court may appoint  
17 a court evaluator to investigate the situation. A  
18 determination to continue, modify, or terminate a guardianship  
19 or conservatorship shall be based upon clear and convincing  
20 evidence. The burden of persuasion in the continuation,  
21 modification, or termination of a guardianship or  
22 conservatorship is on the petitioner. In a petition to  
23 terminate a guardianship or conservatorship, a ward shall make  
24 a prima facie showing that the ward has decision-making  
25 capacity. Following the initial showing by the ward, the  
26 guardian or conservator shall have the burden of persuasion to  
27 demonstrate by clear and convincing evidence any incompetency  
28 on the part of the ward.

29 Sec. 25. NEW SECTION. 633.680A PETITION TO REMOVE  
30 GUARDIAN OR CONSERVATOR -- BASIS FOR REMOVAL.

31 Upon a petition by any interested person or on the court's  
32 own motion, the court may remove a guardian or conservator or  
33 order other appropriate relief if the guardian or conservator  
34 meets any of the following:

35 1. Is acting under letters secured by material

1 misrepresentation or mistake, whether fraudulent or innocent.

2 2. Is incapacitated or is suffering from an illness,  
3 including substance abuse, which affects fitness for office,  
4 or is a ward in this state or any other jurisdiction.

5 3. Is convicted of a crime which reflects on fitness for  
6 office.

7 4. Wastes or mismanages the estate, unreasonably withholds  
8 distributions or makes distributions in a negligent manner, or  
9 otherwise abuses powers or fails to discharge duties.

10 5. Neglects the care and custody of the ward.

11 6. Has an interest adverse to the faithful performance of  
12 duties such that there is a substantial risk that the guardian  
13 or conservator will fail to properly perform specified duties.

14 7. Fails to file reports or accountings when required, or  
15 fails to comply with any order of court.

16 8. Acts in a manner which threatens the personal or  
17 financial security of a co-guardian or co-conservator or  
18 endangers surety on the bond.

19 9. Fails to file sufficient bond after being ordered by  
20 the court to do so.

21 10. Avoids service of process or notice.

22 11. Becomes incapable of or unsuitable for the discharge  
23 of duties.

24 12. Is not acting in the best interests of the ward.

25 Sec. 26. NEW SECTION. 633.682A COURT EVALUATOR EDUCATION  
26 REQUIREMENTS.

27 A ward or proposed ward is entitled to a court evaluator  
28 whom the court finds to be sufficiently capable of performing  
29 the duties of a court evaluator necessary to ensure that all  
30 the relevant information regarding a petition for the  
31 appointment, modification, or termination of a guardian comes  
32 before the court and to assist the court in reaching a  
33 decision regarding the appointment, modification, or  
34 termination of a guardian. A person appointed as a court  
35 evaluator shall complete a training program approved by the

S.F. \_\_\_\_\_ H.F. \_\_\_\_\_

1 Iowa supreme court. The supreme court may waive some or all  
2 requirements if the proposed court evaluator demonstrates an  
3 educational background or experience sufficient to meet the  
4 requirements. The training program shall include all of the  
5 following:

6 1. The legal duties and responsibilities of the court  
7 evaluator.

8 2. The rights of a ward with an emphasis on due process  
9 rights to aid the court evaluator in determining  
10 recommendations regarding the appointment of counsel and the  
11 conduct of the hearing.

12 3. The available resources to aid the ward or proposed  
13 ward.

14 4. An orientation relating to medical terminology,  
15 particularly medical terminology related to the diagnostic and  
16 assessment procedures used to characterize the extent and  
17 reversibility of any impairment.

18 5. Entitlements.

19 6. Psychological and social concerns relating to disabled  
20 elders and frail elders as defined by rule of the department  
21 of elder affairs.

22 Sec. 27. NEW SECTION. 633.682B FILING.

23 The supreme court administrator shall establish a system of  
24 notification for the following:

25 1. The filing of guardianship cases and records which  
26 distinguish these cases from probate cases.

27 2. Monitoring the filing of annual reports to assure that  
28 the court will be notified of annual reports as the reports  
29 become due and whether the reports are filed.

30 Sec. 28. NEW SECTION. 633.682C CREATION OF OFFICE OF  
31 PUBLIC GUARDIAN -- APPOINTMENTS, POWERS, DUTIES, COSTS.

32 1. The general assembly finds that private guardianship is  
33 inadequate if there is no willing and responsible person  
34 available to serve as guardian for an incompetent person, and  
35 if the incompetent person does not have adequate income or

1 wealth for the compensation of a private guardian. It is the  
2 intent of the general assembly to establish the office of  
3 public guardian for the purpose of providing guardianship  
4 services for incompetent persons when no private guardian is  
5 available. The general assembly further finds that  
6 alternatives to guardianship and less intrusive means of  
7 assistance should always be explored before a person's  
8 incompetency rights are limited through an adjudication of  
9 incapacity. A public guardian shall be provided only to  
10 persons whose needs cannot be met through less drastic means  
11 of intervention.

12 2. The chief judge of the judicial district, after  
13 consultation with the other judges within the district and  
14 with appropriate advocacy groups and individuals and  
15 organizations with knowledge of the needs of incompetent  
16 persons, may establish, within the judicial district, an  
17 office of public guardian and create a list of persons best  
18 qualified to serve as the public guardian. The public  
19 guardian shall have knowledge of the legal process and  
20 knowledge of social services available to meet the needs of  
21 incompetent persons. A nonprofit corporation may be appointed  
22 a public guardian only if all of the following conditions are  
23 met:

24 a. The corporation provides no services other than  
25 guardianship.

26 b. The corporation has been granted tax-exempt status from  
27 the United States internal revenue service.

28 c. The corporation maintains a staff of professionally  
29 qualified individuals to carry out the guardianship functions.

30 3. The chief judge shall appoint the public guardian. A  
31 public guardian shall meet the qualifications for a guardian  
32 prescribed in section 633.668A.

33 4. If a district does not require a full-time public  
34 guardian, a part-time guardian may be appointed at reduced  
35 compensation.

1 5. A public guardian shall not hold any other public  
2 position in any city, county, or state government or federal  
3 agency, or any other position which would create a conflict of  
4 interest.

5 6. A public guardian may serve as a guardian of a person  
6 adjudicated incompetent under this chapter under the following  
7 conditions and with the following powers:

8 a. No other person is willing and qualified to serve as  
9 guardian.

10 b. The public guardian is vested with all the powers and  
11 duties of a guardian under this chapter, except as otherwise  
12 provided by law.

13 c. The public guardian may employ sufficient staff to  
14 carry out the duties of the office.

15 d. The public guardian may delegate to assistants and  
16 other members of the staff the powers and duties of the office  
17 of public guardian, except as otherwise limited by law. The  
18 public guardian shall retain ultimate responsibility for the  
19 discharge of duties and responsibilities.

20 e. To the extent that the guardian is granted  
21 responsibilities pursuant to section 633.635.

22 7. a. Each public guardian shall annually prepare a  
23 budget for the operation of the office to be submitted to the  
24 chief judge of the district for inclusion in the courts'  
25 budget request. This shall not be construed to preclude the  
26 financing of the office of the public guardian through local  
27 funding sources.

28 b. All costs of administration of the office of public  
29 guardian, including filing fees, shall be paid through  
30 expenditure of the budget of the office of public guardian.  
31 In any proceeding for appointment of a public guardian, or in  
32 any proceeding involving the estate of a ward for whom a  
33 public guardian has been appointed guardian, the court may  
34 waive any court costs or filing fees.

35 Sec. 29. Sections 633.557 and 633.680, Code 1995, are

1 repealed.

2 EXPLANATION

3 This bill amends the portions of the Code relating to  
4 guardianship. The bill includes many changes based upon the  
5 Iowa Supreme Court decision in In Re Guardianship of Hedin,  
6 528 N.W.2d 567 (Iowa 1995). In Hedin, the court held all of  
7 the following:

8 1. In proceedings to establish, modify, or terminate a  
9 guardianship, the district court may make a finding of  
10 incompetency only if the ward's or proposed ward's decision-  
11 making capacity is so impaired that the ward is unable to care  
12 for the ward's or proposed ward's personal safety or to attend  
13 to and provide for such necessities as food, shelter,  
14 clothing, and medical care, without which physical injury or  
15 illness may occur. Additionally, in making the determination  
16 of incompetency, the court is required to consider credible  
17 evidence from any source of the effect of third-party  
18 assistance.

19 2. In determining whether a guardianship is to be  
20 established, modified, or terminated, the district court shall  
21 consider if a limited guardianship is appropriate.

22 3. The standard of proof for determining incompetency in a  
23 proceeding to establish, modify, or terminate a guardianship  
24 is clear and convincing evidence.

25 4. The burden of persuasion is on the party petitioning  
26 for guardianship and remains with the guardian in proceedings  
27 to modify or terminate the guardianship. If the ward  
28 petitions to terminate the guardianship, the ward must make a  
29 prima facie showing that the ward has some decision-making  
30 capacity. Once the prima facie showing is made, the guardian  
31 has the burden of persuasion to show by clear and convincing  
32 evidence that the ward is incompetent.

33 The bill provides definitions of "court evaluator",  
34 "functional limitations", "health care professional", and  
35 "legal settlement", and redefines the term "incompetent" to

1 reflect the holding of the court.

2 The bill amends the section relating to the petition for  
3 guardianship to include new information and to change the  
4 basis upon which a person is alleged to require a guardian:  
5 that the person is a minor or that the person is incompetent  
6 as redefined in the bill. The new information required also  
7 includes the providing of the names and addresses of  
8 additional interested parties and of any additional  
9 information which might assist the court in making its  
10 determination. The bill requires that an evaluation by a  
11 health care professional of the proposed ward's physical and  
12 mental condition be attached to the petition or provided at  
13 least 14 days prior to the hearing on the petition.

14 The notice provisions include that if the proposed ward is  
15 an adult, notice of the filing of the petition is to be  
16 provided to the proposed ward and to all persons included in  
17 the petition as interested parties; if the proposed ward is a  
18 minor, notice is to be provided to the parents or guardian and  
19 to any adult person with whom the minor resides unless any of  
20 these is the petitioner.

21 The bill amends the pleadings and trial portion of the  
22 proceedings to include provisions which allow the court to  
23 appoint a court evaluator to provide for the evaluation of the  
24 proposed ward to carry out additional information-gathering  
25 duties to assist the court in its determination. The costs of  
26 the court evaluator are to be paid by the proposed ward or if  
27 the proposed ward is indigent, by the county of legal  
28 settlement and if there is no county of legal settlement, then  
29 by the state. The bill requires that the proposed ward be  
30 present at the hearing unless good cause is shown for the  
31 absence and provides that the hearing may be closed upon  
32 request of the proposed ward for good cause shown.

33 The bill provides that if a guardian is appointed, the  
34 court shall appoint a resident of this state as guardian, that  
35 venue for the proceeding is in the district court of the

1 county of residence of the proposed ward or where the proposed  
2 ward is present, that the court may transfer the proceeding to  
3 another court if in the interest of justice, and that any  
4 guardianship involving a minor is to meet the requirements of  
5 the uniform child custody jurisdiction Act.

6 Regarding the appointment of a guardian, instead of the  
7 current provision that if the allegations of the petition for  
8 the appointment of a guardian are proved, the court may  
9 appoint a guardian, the bill provides that it is the exclusive  
10 decision of the court to make a determination as to the  
11 appointment of a guardian, the type of guardianship, and the  
12 specific areas of protection, management, and assistance to be  
13 granted the guardian. The court is directed to make its  
14 determination based upon its consideration of the proposed  
15 ward's functional limitations, is to grant specific powers to  
16 the guardian which are the least restrictive, and is to  
17 consider a limited guardianship and the appropriateness of  
18 third-party assistance.

19 The bill provides that the determination of incompetence of  
20 a proposed ward and the determination of the appointment of a  
21 guardian is to be supported by clear and convincing evidence.  
22 Regarding the burden of persuasion, in an initial proceeding  
23 to appoint a guardian, the burden of persuasion is on the  
24 petitioner and in a proceeding to modify or terminate a  
25 guardianship, following a prima facie showing that the ward  
26 has some decision-making capacity, the burden is on the  
27 guardian to prove by clear and convincing evidence the ward's  
28 incompetency, if any.

29 The bill provides that in the preference as to appointment  
30 of a guardian for an adult ward, any person who is qualified  
31 and suitable or any person nominated by a ward in a standby  
32 guardianship petition may be appointed. The bill replaces the  
33 current standby guardianship language by stating that any  
34 person with sufficient capacity to form a preference may  
35 petition for a standby guardianship. The bill provides that

1 the petition must specify the event or conditions which must  
2 occur for the petition to be filed, provides for deposit of  
3 the petition, provides for revocation of the petition prior to  
4 the appointment of a guardian, provides for the filing upon  
5 the receipt by the clerk of court of both the petition and a  
6 verified statement that the event or condition has occurred,  
7 provides for the appointment of the person nominated as  
8 guardian without a hearing or the setting of the petition for  
9 hearing, and provides that the powers of the guardian are to  
10 be limited to only those powers expressed in the petition or  
11 only those powers specified by the court following a hearing  
12 on the petition.

13 The bill provides that an attorney appointed to represent a  
14 proposed ward, in addition to existing duties, is to provide  
15 notice to all interested parties specified in the petition and  
16 to notify other interested parties not included in the  
17 petition but who are identified during the course of the  
18 representation.

19 The notification of guardianship powers provisions are  
20 amended to limit the powers of the guardian to making  
21 decisions regarding the ward's personal safety or providing  
22 for necessities and including powers which must receive  
23 approval including arranging for major elective surgery or any  
24 other nonemergency major medical procedure or consent to the  
25 withholding or withdrawal of life-sustaining procedures. The  
26 notice provided to the proposed ward is to be in 14 point type  
27 rather than the existing 10 point.

28 The bill deletes the provisions for the appointment of a  
29 guardian under a voluntary guardianship petition, so that a  
30 guardian may only be appointed under involuntary or standby  
31 provisions.

32 The bill amends the provisions which specify the powers  
33 which may be granted to a guardian by limiting the powers  
34 without court approval to those powers specified by the court,  
35 consistent with the findings of the court regarding the ward's

1 or proposed ward's functional limitations and by limiting the  
2 powers with court approval to those related to major elective  
3 surgery or nonemergency major medical procedures and  
4 consenting to the withholding or withdrawal of life-sustaining  
5 procedures. The bill also specifies that the ward retains all  
6 rights not delegated to the guardian by the court.

7 The bill provides new requirements for education of a  
8 guardian which consist of a minimum of two hours of  
9 instruction and training in specified subjects, to be  
10 completed by the guardian within the three-month period  
11 following the appointment. The bill provides for waiver of  
12 the education requirements for good cause shown and provides  
13 for payment of expenses by the ward's estate.

14 The bill expands the reporting requirements of the  
15 guardian, provides that if an annual report sets forth any  
16 reason for modification of the powers authorized, the guardian  
17 is to make application for modification within 10 days of the  
18 filing of the report and provide notice of the filing to all  
19 interested parties, and provides that any interested party may  
20 request a hearing on the report. The bill includes new  
21 provisions for the examination of the initial and annual  
22 reports by the chief judge of the judicial district or a  
23 designee of the presiding judge, provides that the person  
24 authorized to examine the report may demand that a report be  
25 filed if the guardian fails to do so, and provides that the  
26 person authorized to examine the reports may demand a revised  
27 report if the report submitted is incomplete or  
28 unsatisfactory. Failure of a guardian to comply with a demand  
29 is grounds for entry of an order of compliance, denial, or  
30 reduction in the compensation of the guardian, or removal of  
31 the guardian.

32 The bill provides new grounds for the modification or  
33 removal of a guardian including a determination that the ward  
34 is not incompetent, that the guardian has become disabled,  
35 ill, or has died, or that the ward has been removed from the

1 state or if reasonable access to the ward by the guardian is  
2 not possible.

3 The bill provides that any interested party may petition  
4 for modification or termination of a guardianship and that all  
5 of the procedural requirements that apply to an initial  
6 guardianship appointment apply to the modification or  
7 termination proceedings. The bill provides several grounds  
8 for the removal of a guardian or conservator including  
9 incapacity, criminal conviction, wasting or mismanaging the  
10 estate, neglecting the ward, failure to file required reports,  
11 and others.

12 The bill provides court evaluator education requirements,  
13 provides for the establishment of an office of public guardian  
14 at the discretion of the chief judge of each judicial district  
15 and provides the required qualifications for a public  
16 guardian.

17 The bill requires the supreme court administrator to  
18 establish a system of notification for the filing of  
19 guardianship cases and records distinct from probate cases and  
20 for the monitoring of the filing of annual reports so that the  
21 court will be notified of annual reports as they become due  
22 and whether the reports have been filed.

23 The bill repeals the section of the Code providing for the  
24 appointment of a guardian on a voluntary petition and the  
25 section which limits the applications to terminate a  
26 guardianship or conservatorship by stating that if a petition  
27 is denied, no other petition shall be filed until at least 6  
28 months following the date of the denial of the petition.

29 BACKGROUND STATEMENT

30 SUBMITTED BY THE AGENCY

31 Imposition of full guardianship may entail extensive  
32 limitation of personal rights. A person for whom a guardian  
33 is appointed may lose the most fundamental rights: the choice  
34 of where to live; the authority to consent to or refuse  
35 medical treatment; control over personal care matters; and

1 many other personal, contractual, and legal rights. The  
2 significance of these limitations increase as the population  
3 grows older and the number of persons under guardianship  
4 increases.

5 Because of these serious consequences, advocates for the  
6 elderly and disabled continue to voice concerns about  
7 guardianships. Concerns about the guardianship process  
8 include issues of due process, procedural protections, and  
9 alternatives to and limited guardianships. Concerns about the  
10 monitoring of guardianships focus on the lack of oversight  
11 actually exercised by a majority of courts and have led to  
12 recommendations for more detailed reporting forms, better  
13 scrutiny of reports, training of guardians as to their  
14 responsibilities and periodic review of the need for  
15 guardianships.

16 In recognition of these concerns, several events have  
17 occurred which precipitated the introduction of this bill:

18 1. In 1990, the Iowa task force on substitute decision  
19 making began meeting to discuss difficult guardianship cases  
20 and areas of concern with the guardianship statute. The group  
21 continues to meet and assists in the development and review of  
22 this proposal. The task force created a problem/concern  
23 statement which identifies problems with and suggests  
24 resolutions of problems with the current statute. Many of  
25 these suggestions were reviewed in developing this legislative  
26 proposal.

27 2. National organizations and other states identified  
28 concerns and developed recommendations on guardianship issues  
29 including:

30 a. A 1987 associated press study which revealed many of  
31 the shortcomings of the guardianship process.

32 b. A 1987 American bar association commission on the  
33 mentally disabled and commission on legal problems of the  
34 elderly meeting which resulted in the development of a report  
35 containing 31 recommendations for reform.

1 c. The legal counsel for the elderly published articles  
2 concerning guardianship, the overdue implementation of limited  
3 guardianships, and several areas of concern and reform  
4 including due process, guardianship participants, the  
5 definition of incapacity, functional assessment, self-  
6 autonomy, limited powers, monitoring, and emergency  
7 guardianships.

8 d. A 1989 house of representatives select committee on  
9 aging report which outlined model standards to ensure quality  
10 guardianship and representative payee services.

11 e. A survey of state guardianship laws completed by  
12 advocacy and protection services in Columbus, Ohio, found that  
13 many state legislatures have focused upon several key areas of  
14 reform including: limited guardianship, temporary or  
15 emergency guardianship and other alternatives to full  
16 guardianship; establishment of public guardians; the  
17 determination of incapacity; procedural due process; and  
18 enhanced guardian accountability and monitoring.

19 f. The commission on national probate court standards  
20 which recognize the important liberty interests at stake in a  
21 guardianship proceeding and the due process protections  
22 appropriately afforded a respondent in conjunction with such a  
23 proceeding.

24 g. The center for social gerontology, national study of  
25 guardianship systems recommendations including use of  
26 alternatives to guardianship; education of judges; education  
27 of investigators; guardians ad litem and counsel for the  
28 respondents; use of functional assessment to ensure least  
29 restrictive decisions in the respondent's appointment of a  
30 guardian; participation of respondents in the process;  
31 ensuring effective respondent representation; appropriate use  
32 of limited guardianships; and the use of adult guardianship  
33 mediation, where appropriate.

34 3. The Iowa supreme court decided In Re Hedin, 528 N.W.2nd  
35 567 (Iowa 1995). In Hedin the court established new standards

1 for Iowa's guardianship law. In the decision, Justice Louis  
2 Lavorato noted "guardianship involves such a significant loss  
3 of liberty that we now hold that the ward is entitled to the  
4 full panoply of procedural due process rights comparable to  
5 those present in involuntary civil commitment proceedings."  
6 These rights include the standards for determining whether a  
7 guardianship is appropriate, the standards of proof used in  
8 the hearing, and how much power the guardian should have over  
9 the ward.

10 In an attempt to codify Hedin and incorporate changes which  
11 would resolve the concerns identified above, the department  
12 submits this proposal.

13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35