

FILED MAR 17 1997

SENATE FILE

**493**

BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 118)

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

**A BILL FOR**

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

4

**SENATE FILE 493**

**S-3313**

1 Amend Senate File 493 as follows:  
 2 1. Page 1, by striking lines 9 through 16 and  
 3 inserting the following:  
 4 "22. INCOMPETENT ~~---includes~~ means the condition  
 5 of any person who has been adjudicated by a court to  
 6 ~~be-incapable-of-managing-the-person's-property,-or~~  
 7 ~~caring-for-the-person's-own-self,-or-both~~ as follows:  
 8 a. To have a decision-making capacity which is so  
 9 impaired that the person is unable to care for the  
 10 person's personal safety or to attend to or provide  
 11 for necessities for the person such as food, shelter,  
 12 clothing, or medical care, without which physical  
 13 injury or illness may occur.  
 14 b. To have a decision-making capacity which is so  
 15 impaired that the person is unable to make,  
 16 communicate, or carry out important decisions  
 17 concerning the person's financial affairs.  
 18 c. To have a decision-making capacity which is so  
 19 impaired that both paragraphs "a" and "b" are  
 20 applicable to the person."

By DONALD B. REDFERN

**S-3313 FILED APRIL 1, 1997**

1 Section 1. Section 633.3, Code 1997, is amended by adding  
2 the following new subsection:

3 NEW SUBSECTION. 18A. FUNCTIONAL LIMITATIONS -- means the  
4 behavior or condition of a person which impairs the person's  
5 ability to care for the person's personal safety or to attend  
6 to or provide for necessities for the person.

7 Sec. 2. Section 633.3, subsection 22, Code 1997, is  
8 amended to read as follows:

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

17 Sec. 3. NEW SECTION. 633.551A GUARDIANSHIPS AND  
18 CONSERVATORSHIPS -- GENERAL PROVISIONS.

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 conservator or of the modification or  
22 termination of a guardianship or conservatorship shall be  
23 supported by clear and convincing evidence.

24 2. The burden of persuasion is on the petitioner in an  
25 initial proceeding to appoint a guardian or conservator. In a  
26 proceeding to modify or terminate a guardianship or  
27 conservatorship, if the guardian or conservator is the  
28 petitioner, the burden of persuasion remains with the guardian  
29 or conservator. In a proceeding to terminate a guardianship  
30 or conservatorship, if the ward is the petitioner, the ward  
31 shall make a prima facie showing of some decision-making  
32 capacity. Once a prima facie showing is made, the burden of  
33 persuasion is on the guardian or conservator to show by clear  
34 and convincing evidence that the ward is incompetent.

35 3. In determining whether a guardianship or

1 conservatorship is to be established, modified, or terminated,  
2 the district court shall consider if a limited guardianship or  
3 conservatorship pursuant to section 633.635 or 633.637 is  
4 appropriate. In making the determination, the court shall  
5 make findings of fact to support the powers conferred on the  
6 guardian or conservator.

7 4. In proceedings to establish, modify, or terminate a  
8 guardianship or conservatorship, in determining if the  
9 proposed ward or ward is incompetent as defined in section  
10 633.3, the court shall consider credible evidence from any  
11 source to the effect of third-party assistance in meeting the  
12 needs of the proposed ward or ward. However, neither party to  
13 the action shall have the burden to produce such evidence  
14 relating to third-party assistance.

15 Sec. 4. Section 633.552, subsection 2, paragraph a, Code  
16 1997, is amended to read as follows:

17 ~~a.--By-reason-of-mental,-physical-or-other-incapacity-is~~  
18 ~~unable-to-make-or-carry-out-important-decisions-concerning-the~~  
19 ~~proposed-ward's-person-or-affairs,-other-than-financial~~  
20 ~~affairs.~~

21 a. Is a person whose decision-making capacity is so  
22 impaired that the person is unable to care for the person's  
23 personal safety or to attend to or provide for necessities for  
24 the person such as food, shelter, clothing, or medical care,  
25 without which physical injury or illness might occur.

26 Sec. 5. Section 633.556, Code 1997, is amended to read as  
27 follows:

28 633.556 APPOINTMENT OF GUARDIAN.

29 1. If the allegations of the petition as to the status of  
30 the proposed ward and the necessity for the appointment of a  
31 guardian are proved by clear and convincing evidence, the  
32 court may appoint a guardian.

33 2. In all proceedings to appoint a guardian, the court  
34 shall consider the functional limitations of the proposed ward  
35 and whether a limited guardianship, as authorized in section

1 633.635, is appropriate.

2 3. Section 633.551A applies to the appointment of a  
3 conservator.

4 Sec. 6. Section 633.557, Code 1997, is amended to read as  
5 follows:

6 633.557 APPOINTMENT OF GUARDIAN ON VOLUNTARY PETITION.

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

16 2. In all proceedings to appoint a guardian, the court  
17 shall consider whether a limited guardianship, as authorized  
18 in section 633.635, is appropriate.

19 Sec. 7. Section 633.560, Code 1997, is amended to read as  
20 follows:

21 633.560 APPOINTMENT OF GUARDIAN ON A STANDBY BASIS.

22 A petition for the appointment of a guardian on a standby  
23 basis may be filed by any person under the same procedure and  
24 requirements as provided in sections 633.591 to 633.597, for  
25 appointment of standby conservator, insofar as applicable. In  
26 all proceedings to appoint a guardian, the court shall  
27 consider whether a limited guardianship, as authorized in  
28 section 633.635, is appropriate.

29 Sec. 8. Section 633.566, subsection 2, paragraph a, Code  
30 1997, is amended to read as follows:

31 ~~a.--By-reason-of-mental,-physical-or-other-incapacity-is~~  
32 ~~unable-to-make-or-carry-out-important-decisions-concerning-the~~  
33 ~~proposed-ward's-financial-affairs-~~

34 a. Is a person whose decision-making capacity is so  
35 impaired that the person is unable to make, communicate, or

1 carry out important decisions concerning the person's  
2 financial affairs.

3 Sec. 9. Section 633.570, Code 1997, is amended to read as  
4 follows:

5 633.570 APPOINTMENT OF CONSERVATOR.

6 1. If the allegations of the petition as to the status of  
7 the proposed ward and the necessity for the appointment of a  
8 conservator are proved by clear and convincing evidence, the  
9 court may appoint a conservator.

10 2. In all proceedings to appoint a conservator, the court  
11 shall consider the functional limitations of the person and  
12 whether a limited conservatorship, as authorized in section  
13 633.637, is appropriate.

14 3. Section 633.551A applies to the appointment of a  
15 conservator.

16 Sec. 10. Section 633.572, Code 1997, is amended to read as  
17 follows:

18 633.572 APPOINTMENT OF CONSERVATOR ON VOLUNTARY PETITION.

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

28 2. In all proceedings to appoint a conservator, the court  
29 shall consider whether a limited conservatorship, as  
30 authorized in section 633.637, is appropriate.

31 Sec. 11. Section 633.596, Code 1997, is amended to read as  
32 follows:

33 633.596 ~~TIME-OF~~ CONSIDERATIONS -- APPOINTMENT OF  
34 CONSERVATOR.

35 At the time such a standby petition is filed under this

1 ~~part, the court, without any notice, may appoint the~~  
2 ~~conservator nominated in such petition or may set the petition~~  
3 ~~for hearing on such notice as the court may prescribe shall~~  
4 consider whether a limited conservatorship, as authorized in  
5 section 633.637, is appropriate.

6 Sec. 12. Section 633.635, subsection 1, unnumbered  
7 paragraph 1, Code 1997, is amended to read as follows:

8 A Based upon the evidence produced at the hearing, the  
9 court may grant a guardian may-be-granted the following powers  
10 and duties which may be exercised without prior court  
11 approval:

12 Sec. 13. Section 633.635, subsections 3 and 4, Code 1997,  
13 are amended to read as follows:

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

25 4. From time to time, upon a proper showing, the court may  
26 ~~alter~~ modify the respective responsibilities of the guardian  
27 and the ward, after notice to the ward and an opportunity to  
28 be heard. Any modification that would be more restrictive or  
29 burdensome for the ward shall be based on clear and convincing  
30 evidence that the ward continues to fall within the categories  
31 of section 633.552, subsection 2, paragraph "a" or "b", and  
32 that the facts justify a modification of the guardianship.  
33 Section 633.551A applies to the modification proceedings. Any  
34 modification that would be less restrictive for the ward shall  
35 be based upon proof in accordance with the requirements of

1 section 633.675.

2 Sec. 14. Section 633.637, Code 1997, is amended to read as  
3 follows:

4 633.637 POWERS OF WARD.

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

12 Any modification of the powers of the ward that would be  
13 more restrictive of the ward's control over the ward's  
14 financial affairs shall be based upon clear and convincing  
15 evidence and the burden of persuasion is on the conservator.  
16 Any modification that would be less restrictive of the ward's  
17 control over the ward's financial affairs shall be based upon  
18 proof in accordance with the requirements of section 633.675.

19 Sec. 15. Section 633.675, subsection 3, Code 1997, is  
20 amended to read as follows:

21 3. A determination by the court that the ward is competent  
22 ~~and-capable-of-managing-the-ward's-property-and-affairs,-and~~  
23 ~~that-the-continuance-of-the-guardianship-or-conservatorship~~  
24 ~~would-not-be-in-the-ward's-best-interests~~ no longer a person  
25 whose decision-making capacity is so impaired as to bring the  
26 ward within the categories of section 633.552, subsection 2,  
27 paragraph "a", or section 633.566, subsection 2, paragraph  
28 "a". In a proceeding to terminate a guardianship or a  
29 conservatorship, the ward shall make a prima facie showing  
30 that the ward has some decision-making capacity. Once the  
31 ward has made that showing, the guardian or conservator has  
32 the burden to prove by clear and convincing evidence that the  
33 ward's decision-making capacity is so impaired, as provided in  
34 section 633.552, subsection 2, paragraph "a", or section  
35 633.566, subsection 2, paragraph "a", that the guardianship or

1 conservatorship should not be terminated.

2 EXPLANATION

3 This bill amends the portions of the Code relating to  
4 guardianships and conservatorships. The bill includes many  
5 changes based upon the Iowa Supreme Court decision in In Re  
6 Guardianship of Hedin, 528 N.W.2d 567 (Iowa 1995). In Hedin,  
7 the court held all of 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 or conservatorship,  
29 the ward must make a prima facie showing that the ward has  
30 some decision-making capacity. Once the prima facie showing  
31 is made, the guardian or conservator has the burden of  
32 persuasion to show by clear and convincing evidence that the  
33 ward is incompetent.

34 The bill provides a definition of "functional limitations"  
35 and redefines the term "incompetent".

1 The bill provides general provisions which apply to all  
2 guardianship and conservatorship proceedings. In the  
3 appointment, modification, or termination of a guardianship,  
4 incompetency of the proposed ward or ward must be supported by  
5 clear and convincing evidence. The bill establishes the  
6 burden of persuasion in guardianship and conservatorship  
7 proceedings, requires the court to consider establishment of a  
8 limited guardianship or conservatorship, and requires the  
9 court to consider credible evidence from any source as to the  
10 effect of third-party assistance in meeting the needs of the  
11 proposed ward or ward.

12 The bill amends Code sections 633.552 and 633.566 relating  
13 to petitions for guardianships or conservatorships to change  
14 the bases upon which a person is alleged to require a guardian  
15 or conservator to be that the proposed ward is a minor or is  
16 incompetent as redefined in the bill.

17 The bill also provides that if a guardianship or  
18 conservatorship is modified, any modification which would be  
19 more restrictive for the ward must be based on clear and  
20 convincing evidence that the ward still falls into the  
21 category noted in the petition and that the facts justify the  
22 modification.

23 The bill provides that in a termination proceeding the ward  
24 must only make a prima facie showing of some decision-making  
25 capacity and then the guardian or conservator must prove the  
26 ward's incompetency by clear and convincing evidence.

27 The bill also makes conforming changes in other  
28 guardianship and conservatorship sections to reflect the new  
29 requirements relating to burden of persuasion and the  
30 considerations of the court.

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## SENATE FILE 493

S-3328

1 Amend the amendment, S-3313, to Senate File 493 as  
2 follows:

3 1. Page 1, line 7, by striking the word "follows"  
4 and inserting the following: "provided in either or  
5 both of the following paragraphs".

6 2. Page 1, by striking lines 18 through 20.

By DONALD B. REDFERN

S-3328 FILED APRIL 2, 1997

## SENATE FILE 493

S-3350

1 Amend Senate File 493 as follows:

2 1. Page 1, by striking lines 9 through 16 and  
3 inserting the following:

4 "22. INCOMPETENT ~~---includes~~ means the condition  
5 of any person who has been adjudicated by a court to  
6 be-incapable-of-managing-the-person's-property,-or  
7 caring-for-the-person's-own-self,-or-both to meet at  
8 least one of the following conditions:

9 a. To have a decision-making capacity which is so  
10 impaired that the person is unable to care for the  
11 person's personal safety or to attend to or provide  
12 for necessities for the person such as food, shelter,  
13 clothing, or medical care, without which physical  
14 injury or illness may occur.

15 b. To have a decision-making capacity which is so  
16 impaired that the person is unable to make,  
17 communicate, or carry out important decisions  
18 concerning the person's financial affairs.

19 c. To have a decision-making capacity which is so  
20 impaired that both paragraphs "a" and "b" are  
21 applicable to the person."

By DONALD B. REDFERN

S-3350 FILED APRIL 2, 1997

Redfern, Chair  
Boettger  
Neuhauer

SSB 118

Judiciary  
Succeeded By  
(SF) HF 493

SENATE FILE  
BY (PROPOSED COMMITTEE ON  
JUDICIARY BILL BY  
CHAIRPERSON MCKEAN)

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

A BILL FOR

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

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1 Section 1. Section 633.3, Code 1997, is amended by adding  
2 the following new subsection:

3 NEW SUBSECTION. 18A. FUNCTIONAL LIMITATIONS -- means the  
4 behavior or condition of a person which impairs the person's  
5 ability to care for the person's personal safety or to attend  
6 to or provide for necessities for the person.

7 Sec. 2. Section 633.3, subsection 22, Code 1997, is  
8 amended to read as follows:

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

17 Sec. 3. NEW SECTION. 633.551A GUARDIANSHIPS AND  
18 CONSERVATORSHIPS -- GENERAL PROVISIONS.

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 conservator or of the modification or  
22 termination of a guardianship or conservatorship shall be  
23 supported by clear and convincing evidence.

24 2. The burden of persuasion is on the petitioner in an  
25 initial proceeding to appoint a guardian or conservator. In a  
26 proceeding to modify or terminate a guardianship or  
27 conservatorship, if the guardian or conservator is the  
28 petitioner, the burden of persuasion remains with the guardian  
29 or conservator. In a proceeding to terminate a guardianship  
30 or conservatorship, if the ward is the petitioner, the ward  
31 shall make a prima facie showing of some decision-making  
32 capacity. Once a prima facie showing is made, the burden of  
33 persuasion is on the guardian or conservator to show by clear  
34 and convincing evidence that the ward is incompetent.

35 3. In determining whether a guardianship or

1 conservatorship is to be established, modified, or terminated,  
2 the district court shall consider if a limited guardianship or  
3 conservatorship pursuant to section 633.635 or 633.637 is  
4 appropriate. In making the determination, the court shall  
5 make findings of fact to support the powers conferred on the  
6 guardian or conservator.

7 4. In proceedings to establish, modify, or terminate a  
8 guardianship or conservatorship, in determining if the  
9 proposed ward or ward is incompetent as defined in section  
10 633.3, the court shall consider credible evidence from any  
11 source to the effect of third-party assistance in meeting the  
12 needs of the proposed ward or ward. However, neither party to  
13 the action shall have the burden to produce such evidence  
14 relating to third-party assistance.

15 Sec. 4. Section 633.552, subsection 2, paragraph a, Code  
16 1997, is amended to read as follows:

17 ~~a. By reason of mental, physical or other incapacity is~~  
18 ~~unable to make or carry out important decisions concerning the~~  
19 ~~proposed ward's person or affairs, other than financial~~  
20 ~~affairs.~~

21 a. Is a person whose decision-making capacity is so  
22 impaired that the person is unable to care for the person's  
23 personal safety or to attend to or provide for necessities for  
24 the person such as food, shelter, clothing, or medical care,  
25 without which physical injury or illness might occur.

26 Sec. 5. Section 633.556, Code 1997, is amended to read as  
27 follows:

28 633.556 APPOINTMENT OF GUARDIAN.

29 1. If the allegations of the petition as to the status of  
30 the proposed ward and the necessity for the appointment of a  
31 guardian are proved by clear and convincing evidence, the  
32 court may appoint a guardian.

33 2. In all proceedings to appoint a guardian, the court  
34 shall consider the functional limitations of the proposed ward  
35 and whether a limited guardianship, as authorized in section

1 633.635, is appropriate.

2 3. Section 633.551A applies to the appointment of a  
3 conservator.

4 Sec. 6. Section 633.557, Code 1997, is amended to read as  
5 follows:

6 633.557 APPOINTMENT OF GUARDIAN ON VOLUNTARY PETITION.

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

16 2. In all proceedings to appoint a guardian, the court  
17 shall consider whether a limited guardianship, as authorized  
18 in section 633.635, is appropriate.

19 Sec. 7. Section 633.560, Code 1997, is amended to read as  
20 follows:

21 633.560 APPOINTMENT OF GUARDIAN ON A STANDBY BASIS.

22 A petition for the appointment of a guardian on a standby  
23 basis may be filed by any person under the same procedure and  
24 requirements as provided in sections 633.591 to 633.597, for  
25 appointment of standby conservator, insofar as applicable. In  
26 all proceedings to appoint a guardian, the court shall  
27 consider whether a limited guardianship, as authorized in  
28 section 633.635, is appropriate.

29 Sec. 8. Section 633.566, subsection 2, paragraph a, Code  
30 1997, is amended to read as follows:

31 ~~a. By reason of mental, physical or other incapacity is~~  
32 ~~unable to make or carry out important decisions concerning the~~  
33 ~~proposed ward's financial affairs.~~

34 a. Is a person whose decision-making capacity is so  
35 impaired that the person is unable to make, communicate, or

1 carry out important decisions concerning the person's  
2 financial affairs.

3 Sec. 9. Section 633.570, Code 1997, is amended to read as  
4 follows:

5 633.570 APPOINTMENT OF CONSERVATOR.

6 1. If the allegations of the petition as to the status of  
7 the proposed ward and the necessity for the appointment of a  
8 conservator are proved by clear and convincing evidence, the  
9 court may appoint a conservator.

10 2. In all proceedings to appoint a conservator, the court  
11 shall consider the functional limitations of the person and  
12 whether a limited conservatorship, as authorized in section  
13 633.637, is appropriate.

14 3. Section 633.551A applies to the appointment of a  
15 conservator.

16 Sec. 10. Section 633.572, Code 1997, is amended to read as  
17 follows:

18 633.572 APPOINTMENT OF CONSERVATOR ON VOLUNTARY PETITION.

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

28 2. In all proceedings to appoint a conservator, the court  
29 shall consider whether a limited conservatorship, as  
30 authorized in section 633.637, is appropriate.

31 Sec. 11. Section 633.596, Code 1997, is amended to read as  
32 follows:

33 633.596 ~~TIME-OF~~ CONSIDERATIONS -- APPOINTMENT OF  
34 CONSERVATOR.

35 At the time such a standby petition is filed under this

1 ~~part, the court, without any notice, may appoint the~~  
2 ~~conservator nominated in such petition or may set the petition~~  
3 ~~for hearing on such notice as the court may prescribe shall~~  
4 ~~consider whether a limited conservatorship, as authorized in~~  
5 ~~section 633.637, is appropriate.~~

6 Sec. 12. Section 633.635, subsection 1, unnumbered  
7 paragraph 1, Code 1997, is amended to read as follows:

8 A Based upon the evidence produced at the hearing, the  
9 court may grant a guardian may-be-granted the following powers  
10 and duties which may be exercised without prior court  
11 approval:

12 Sec. 13. Section 633.635, subsections 3 and 4, Code 1997,  
13 are amended to read as follows:

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

25 4. From time to time, upon a proper showing, the court may  
26 ~~alter~~ modify the respective responsibilities of the guardian  
27 and the ward, after notice to the ward and an opportunity to  
28 be heard. Any modification that would be more restrictive or  
29 burdensome for the ward shall be based on clear and convincing  
30 evidence that the ward continues to fall within the categories  
31 of section 633.552, subsection 2, paragraph "a" or "b", and  
32 that the facts justify a modification of the guardianship.  
33 Section 633.551A applies to the modification proceedings. Any  
34 modification that would be less restrictive for the ward shall  
35 be based upon proof in accordance with the requirements of

1 section 633.675.

2 Sec. 14. Section 633.637, Code 1997, is amended to read as  
3 follows:

4 633.637 POWERS OF WARD.

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

12 Any modification of the powers of the ward that would be  
13 more restrictive of the ward's control over the ward's  
14 financial affairs shall be based upon clear and convincing  
15 evidence and the burden of persuasion is on the conservator.  
16 Any modification that would be less restrictive of the ward's  
17 control over the ward's financial affairs shall be based upon  
18 proof in accordance with the requirements of section 633.675.

19 Sec. 15. Section 633.675, subsection 3, Code 1997, is  
20 amended to read as follows:

21 3. A determination by the court that the ward is competent  
22 ~~and-capable-of-managing-the-ward's-property-and-affairs,-and~~  
23 ~~that-the-continuance-of-the-guardianship-or-conservatorship~~  
24 ~~would-not-be-in-the-ward's-best-interests~~ no longer a person  
25 whose decision-making capacity is so impaired as to bring the  
26 ward within the categories of section 633.552, subsection 2,  
27 paragraph "a", or section 633.566, subsection 2, paragraph  
28 "a". In a proceeding to terminate a guardianship or a  
29 conservatorship, the ward shall make a prima facie showing  
30 that the ward has some decision-making capacity. Once the  
31 ward has made that showing, the guardian or conservator has  
32 the burden to prove by clear and convincing evidence that the  
33 ward's decision-making capacity is so impaired, as provided in  
34 section 633.552, subsection 2, paragraph "a", or section  
35 633.566, subsection 2, paragraph "a", that the guardianship or

1 conservatorship should not be terminated.

2 EXPLANATION

3 This bill amends the portions of the Code relating to  
4 guardianships and conservatorships. The bill includes many  
5 changes based upon the Iowa Supreme Court decision in In Re  
6 Guardianship of Hedin, 528 N.W.2d 567 (Iowa 1995). In Hedin,  
7 the court held all of 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 or conservatorship,  
29 the ward must make a prima facie showing that the ward has  
30 some decision-making capacity. Once the prima facie showing  
31 is made, the guardian or conservator has the burden of  
32 persuasion to show by clear and convincing evidence that the  
33 ward is incompetent.

34 The bill provides a definition of "functional limitations"  
35 and redefines the term "incompetent".

1 The bill provides general provisions which apply to all  
 2 guardianship and conservatorship proceedings. In the  
 3 appointment, modification, or termination of a guardianship,  
 4 incompetency of the proposed ward or ward must be supported by  
 5 clear and convincing evidence. The bill establishes the  
 6 burden of persuasion in guardianship and conservatorship  
 7 proceedings, requires the court to consider establishment of a  
 8 limited guardianship or conservatorship, and requires the  
 9 court to consider credible evidence from any source as to the  
 10 effect of third-party assistance in meeting the needs of the  
 11 proposed ward or ward.

12 The bill amends Code sections 633.552 and 633.566 relating  
 13 to petitions for guardianships or conservatorships to change  
 14 the bases upon which a person is alleged to require a guardian  
 15 or conservator to be that the proposed ward is a minor or is  
 16 incompetent as redefined in the bill.

17 The bill also provides that if a guardianship or  
 18 conservatorship is modified, any modification which would be  
 19 more restrictive for the ward must be based on clear and  
 20 convincing evidence that the ward still falls into the  
 21 category noted in the petition and that the facts justify the  
 22 modification.

23 The bill provides that in a termination proceeding the ward  
 24 must only make a prima facie showing of some decision-making  
 25 capacity and then the guardian or conservator must prove the  
 26 ward's incompetency by clear and convincing evidence.

27 The bill also makes conforming changes in other  
 28 guardianship and conservatorship sections to reflect the new  
 29 requirements relating to burden of persuasion and the  
 30 considerations of the court.

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