

Senate Study Bill 118

Bill Text

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1 1 Section 1. Section [633.3](#), Code 1997, is amended by adding
1 2 the following new subsection:

1 3 NEW SUBSECTION. 18A. FUNCTIONAL LIMITATIONS - means the
1 4 behavior or condition of a person which impairs the person's
1 5 ability to care for the person's personal safety or to attend
1 6 to or provide for necessities for the person.

1 7 Sec. 2. Section [633.3](#), subsection 22, Code 1997, is
1 8 amended to read as follows:

1 9 22. INCOMPETENT -

~~includes~~

~~means the condition of any~~

1 10 person who has been adjudicated by a court to

~~be incapable of~~

1 11

~~managing the person's property, or caring for the person's own~~

1 12

~~self, or both~~

~~have a decision-making capacity which is so~~

1 13 impaired that the person is unable to care for the person's
1 14 personal safety or to attend to or provide for necessities for
1 15 the person such as food, shelter, clothing, or medical care,
1 16 without which physical injury or illness may occur.

1 17 Sec. 3. NEW SECTION. 633.551A GUARDIANSHIPS AND
1 18 CONSERVATORSHIPS - GENERAL PROVISIONS.

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

1 24 2. The burden of persuasion is on the petitioner in an
1 25 initial proceeding to appoint a guardian or conservator. In a
1 26 proceeding to modify or terminate a guardianship or
1 27 conservatorship, if the guardian or conservator is the
1 28 petitioner, the burden of persuasion remains with the guardian
1 29 or conservator. In a proceeding to terminate a guardianship
1 30 or conservatorship, if the ward is the petitioner, the ward
1 31 shall make a prima facie showing of some decision-making
1 32 capacity. Once a prima facie showing is made, the burden of
1 33 persuasion is on the guardian or conservator to show by clear
1 34 and convincing evidence that the ward is incompetent.

1 35 3. In determining whether a guardianship or
2 1 conservatorship is to be established, modified, or terminated,
2 2 the district court shall consider if a limited guardianship or
2 3 conservatorship pursuant to section 633.635 or 633.637 is
2 4 appropriate. In making the determination, the court shall
2 5 make findings of fact to support the powers conferred on the
2 6 guardian or conservator.

2 7 4. In proceedings to establish, modify, or terminate a
2 8 guardianship or conservatorship, in determining if the
2 9 proposed ward or ward is incompetent as defined in section

2 10 633.3, the court shall consider credible evidence from any
2 11 source to the effect of third-party assistance in meeting the
2 12 needs of the proposed ward or ward. However, neither party to
2 13 the action shall have the burden to produce such evidence
2 14 relating to third-party assistance.

2 15 Sec. 4. Section [633.552](#), subsection 2, paragraph a, Code
2 16 1997, is amended to read as follows:
2 17

~~a. By reason of mental, physical or other incapacity is~~

2 18

~~unable to make or carry out important decisions concerning the~~

2 19

~~proposed ward's person or affairs, other than financial~~

2 20

~~affairs.~~

2 21 a. Is a person whose decision-making capacity is so
2 22 impaired that the person is unable to care for the person's
2 23 personal safety or to attend to or provide for necessities for
2 24 the person such as food, shelter, clothing, or medical care,
2 25 without which physical injury or illness might occur.

2 26 Sec. 5. Section [633.556](#), Code 1997, is amended to read as
2 27 follows:

2 28 633.556 APPOINTMENT OF GUARDIAN.

2 29 1. If the allegations of the petition as to the status of
2 30 the proposed ward and the necessity for the appointment of a
2 31 guardian are proved by clear and convincing evidence, the
2 32 court may appoint a guardian.

2 33 2. In all proceedings to appoint a guardian, the court
2 34 shall consider the functional limitations of the proposed ward
2 35 and whether a limited guardianship, as authorized in section
3 1 633.635, is appropriate.

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

3 4 Sec. 6. Section [633.557](#), Code 1997, is amended to read as
3 5 follows:

3 6 633.557 APPOINTMENT OF GUARDIAN ON VOLUNTARY PETITION.

3 7 1. A guardian may also be appointed by the court upon the
3 8 verified petition of the proposed ward, without further
3 9 notice, if the proposed ward is other than a minor under the
3 10 age of fourteen years, provided the court determines that such
3 11 an appointment will inure to the best interest of the
3 12 applicant. However, if an involuntary petition is pending,
3 13 the court shall be governed by section 633.634. The petition
3 14 shall provide the proposed ward notice of a guardian's powers
3 15 as provided in section 633.562.

3 16 2. In all proceedings to appoint a guardian, the court
3 17 shall consider whether a limited guardianship, as authorized
3 18 in section 633.635, is appropriate.

3 19 Sec. 7. Section [633.560](#), Code 1997, is amended to read as
3 20 follows:

3 21 633.560 APPOINTMENT OF GUARDIAN ON A STANDBY BASIS.

3 22 A petition for the appointment of a guardian on a standby
3 23 basis may be filed by any person under the same procedure and
3 24 requirements as provided in sections 633.591 to 633.597, for
3 25 appointment of standby conservator, insofar as applicable. In
3 26 all proceedings to appoint a guardian, the court shall
3 27 consider whether a limited guardianship, as authorized in
3 28 section 633.635, is appropriate.

3 29 Sec. 8. Section [633.566](#), subsection 2, paragraph a, Code

3 30 1997, is amended to read as follows:
3 31

~~a. By reason of mental, physical or other incapacity is~~

3 32

~~unable to make or carry out important decisions concerning the~~

3 33

~~proposed ward's financial affairs.~~

3 34 a. Is a person whose decision-making capacity is so
3 35 impaired that the person is unable to make, communicate, or
4 1 carry out important decisions concerning the person's
4 2 financial affairs.

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

4 5 633.570 APPOINTMENT OF CONSERVATOR.

4 6 1. If the allegations of the petition as to the status of
4 7 the proposed ward and the necessity for the appointment of a
4 8 conservator are proved by clear and convincing evidence, the
4 9 court may appoint a conservator.

4 10 2. In all proceedings to appoint a conservator, the court
4 11 shall consider the functional limitations of the person and
4 12 whether a limited conservatorship, as authorized in section
4 13 633.637, is appropriate.

4 14 3. Section 633.551A applies to the appointment of a
4 15 conservator.

4 16 Sec. 10. Section 633.572, Code 1997, is amended to read as
4 17 follows:

4 18 633.572 APPOINTMENT OF CONSERVATOR ON VOLUNTARY PETITION.

4 19 1. A conservator may also be appointed by the court upon
4 20 the verified petition of the proposed ward, without further
4 21 notice, if the proposed ward is other than a minor under the
4 22 age of fourteen years, provided the court determines that such
4 23 an appointment will inure to the best interest of the
4 24 applicant. However, if an involuntary petition is pending,
4 25 the court shall be governed by section 633.634. The petition
4 26 shall provide the proposed ward notice of a conservator's
4 27 powers as provided in section 633.576.

4 28 2. In all proceedings to appoint a conservator, the court
4 29 shall consider whether a limited conservatorship, as
4 30 authorized in section 633.637, is appropriate.

4 31 Sec. 11. Section 633.596, Code 1997, is amended to read as
4 32 follows:

4 33 633.596

~~TIME OF~~

~~CONSIDERATIONS - APPOINTMENT OF~~

4 34 CONSERVATOR.

4 35 At the time

~~such~~

~~a standby petition is filed under this~~
5 1 part, the court

~~, without any notice, may appoint the~~

5 2

~~conservator nominated in such petition or may set the petition~~

5 3

~~for hearing on such notice as the court may prescribe~~

~~- shall~~

5 4 consider whether a limited conservatorship, as authorized in
5 5 section 633.637, is appropriate.
5 6 Sec. 12. Section 633.635, subsection 1, unnumbered
5 7 paragraph 1, Code 1997, is amended to read as follows:
5 8

~~- A~~

~~- Based upon the evidence produced at the hearing, the~~
5 9 court may grant a guardian

~~- may be granted~~

~~- the following powers~~

5 10 and duties which may be exercised without prior court
5 11 approval:
5 12 Sec. 13. Section 633.635, subsections 3 and 4, Code 1997,
5 13 are amended to read as follows:
5 14 3. The court may take into account all available
5 15 information concerning the capabilities of the ward and any
5 16 additional evaluation deemed necessary, including the
5 17 availability of third-party assistance to meet the needs of
5 18 the ward or proposed ward, and may direct that the guardian
5 19 have only a specially limited responsibility for the ward. In
5 20 that event, the court shall state those areas of
5 21 responsibility which shall be supervised by the guardian and
5 22 all others shall be retained by the ward. The court may make
5 23 a finding that the ward lacks the capacity to contract a valid
5 24 marriage.
5 25 4. From time to time, upon a proper showing, the court may
5 26

~~- alter~~

~~- modify~~ the respective responsibilities of the guardian
5 27 and the ward, after notice to the ward and an opportunity to
5 28 be heard. Any modification that would be more restrictive or
5 29 burdensome for the ward shall be based on clear and convincing
5 30 evidence that the ward continues to fall within the categories
5 31 of section 633.552, subsection 2, paragraph "a" or "b", and
5 32 that the facts justify a modification of the guardianship.
5 33 Section 633.551A applies to the modification proceedings. Any
5 34 modification that would be less restrictive for the ward shall
5 35 be based upon proof in accordance with the requirements of
6 1 section 633.675.

6 2 Sec. 14. Section 633.637, Code 1997, is amended to read as
6 3 follows:

6 4 633.637 POWERS OF WARD.

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

6 12 Any modification of the powers of the ward that would be
6 13 more restrictive of the ward's control over the ward's
6 14 financial affairs shall be based upon clear and convincing
6 15 evidence and the burden of persuasion is on the conservator.
6 16 Any modification that would be less restrictive of the ward's
6 17 control over the ward's financial affairs shall be based upon
6 18 proof in accordance with the requirements of section 633.675.

6 19 Sec. 15. Section 633.675, subsection 3, Code 1997, is
6 20 amended to read as follows:

6 21 3. A determination by the court that the ward is

~~- competent~~

~~and capable of managing the ward's property and affairs, and~~

6 23

~~that the continuance of the guardianship or conservatorship~~

6 24

~~would not be in the ward's best interests~~

~~no longer a person~~

6 25 whose decision-making capacity is so impaired as to bring the
6 26 ward within the categories of section 633.552, subsection 2,
6 27 paragraph "a", or section 633.566, subsection 2, paragraph
6 28 "a". In a proceeding to terminate a guardianship or a
6 29 conservatorship, the ward shall make a prima facie showing
6 30 that the ward has some decision-making capacity. Once the
6 31 ward has made that showing, the guardian or conservator has
6 32 the burden to prove by clear and convincing evidence that the
6 33 ward's decision-making capacity is so impaired, as provided in
6 34 section 633.552, subsection 2, paragraph "a", or section
6 35 633.566, subsection 2, paragraph "a", that the guardianship or
7 1 conservatorship should not be terminated.

7 2 EXPLANATION

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

7 8 1. In proceedings to establish, modify, or terminate a
7 9 guardianship, the district court may make a finding of
7 10 incompetency only if the ward's or proposed ward's decision-
7 11 making capacity is so impaired that the ward is unable to care
7 12 for the ward's or proposed ward's personal safety or to attend
7 13 to and provide for such necessities as food, shelter,
7 14 clothing, and medical care, without which physical injury or
7 15 illness may occur. Additionally, in making the determination
7 16 of incompetency, the court is required to consider credible
7 17 evidence from any source of the effect of third-party
7 18 assistance.

7 19 2. In determining whether a guardianship is to be
7 20 established, modified, or terminated, the district court shall
7 21 consider if a limited guardianship is appropriate.

7 22 3. The standard of proof for determining incompetency in a
7 23 proceeding to establish, modify, or terminate a guardianship
7 24 is clear and convincing evidence.

7 25 4. The burden of persuasion is on the party petitioning
7 26 for guardianship and remains with the guardian in proceedings
7 27 to modify or terminate the guardianship. If the ward
7 28 petitions to terminate the guardianship or conservatorship,
7 29 the ward must make a prima facie showing that the ward has
7 30 some decision-making capacity. Once the prima facie showing
7 31 is made, the guardian or conservator has the burden of
7 32 persuasion to show by clear and convincing evidence that the
7 33 ward is incompetent.

7 34 The bill provides a definition of "functional limitations"
7 35 and redefines the term "incompetent".

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

8 11 proposed ward or ward.

8 12 The bill amends Code sections 633.552 and 633.566 relating
8 13 to petitions for guardianships or conservatorships to change
8 14 the bases upon which a person is alleged to require a guardian
8 15 or conservator to be that the proposed ward is a minor or is
8 16 incompetent as redefined in the bill.

8 17 The bill also provides that if a guardianship or
8 18 conservatorship is modified, any modification which would be
8 19 more restrictive for the ward must be based on clear and
8 20 convincing evidence that the ward still falls into the
8 21 category noted in the petition and that the facts justify the
8 22 modification.

8 23 The bill provides that in a termination proceeding the ward
8 24 must only make a prima facie showing of some decision-making
8 25 capacity and then the guardian or conservator must prove the
8 26 ward's incompetency by clear and convincing evidence.

8 27 The bill also makes conforming changes in other
8 28 guardianship and conservatorship sections to reflect the new
8 29 requirements relating to burden of persuasion and the
8 30 considerations of the court.

8 31 LSB 1729SC 77

8 32 pf/sc/14