

HSB 563

JUDICIARY

Succeeded By

SF/HF 2242

HOUSE FILE _____
BY (PROPOSED COMMITTEE ON
JUDICIARY BILL BY
CHAIRPERSON LARSON)

Boddicher, Chair
Tager
Holwick

Passed House, Date _____ Passed Senate, Date _____

Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

1 An Act relating to notice and the appointment of counsel in
2 guardianship and conservatorship proceedings.

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

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1 Section 1. Section 633.554, Code 1999, is amended to read
2 as follows:

3 633.554 NOTICE TO PROPOSED WARD.

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

9 b. Except where the proposed ward is the petitioner,
10 notice shall also be served upon the ward's spouse. If the
11 proposed ward has no spouse, notice shall be served upon the
12 proposed ward's adult children, if any.

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

21 b. Notice shall also be served upon:

22 (1) The parents of the proposed ward, if the proposed ward
23 is a minor.

24 (2) The spouse of the proposed ward, if the proposed ward
25 is an adult. If the proposed ward has no spouse, notice shall
26 be served upon the proposed ward's adult children, if any.

27 3. Service of notice under this section upon persons other
28 than the proposed ward shall be made pursuant to section
29 633.40, subsection 5. Proof of service shall be made by
30 affidavit, to which copies of all documents served shall be
31 attached.

32 Sec. 2. Section 633.561, subsection 1, Code 1999, is
33 amended to read as follows:

34 1. In a proceeding for the appointment of a guardian~~7~~-if:

35 a. If the proposed ward is an adult and is not the

1 petitioner, the proposed ward is entitled to representation.
2 ~~In a proceeding for the appointment of a guardian, if~~ Upon the
3 filing of the petition, the court shall appoint an attorney to
4 represent the proposed ward, set a hearing on the petition,
5 and provide for notice of the appointment of counsel and the
6 date for hearing.

7 b. If the proposed ward is either a minor or if the
8 ~~proposed ward is~~ an adult under a standby petition, the court
9 shall determine whether, under the circumstances of the case,
10 the proposed ward is entitled to representation. The
11 determination regarding representation ~~shall~~ may be made only
12 after with or without notice to the proposed ward, is made as
13 the court deems necessary. If the court determines that the
14 proposed ward is entitled to representation, the court shall
15 appoint an attorney to represent the proposed ward. After
16 making the determination regarding representation, the court
17 shall set a hearing on the petition, and provide for notice on
18 the determination regarding representation and the date for
19 hearing.

20 c. The court may take action under paragraph "a" or "b"
21 prior to the service of the original notice upon the proposed
22 ward.

23 d. The court may reconsider the determination regarding
24 representation upon application by any interested person.

25 e. The court may discharge the attorney appointed by the
26 court if it appears upon the application of the proposed ward
27 or any other interested person that the ward has privately
28 retained an attorney who has filed an appearance on behalf of
29 the proposed ward.

30 Sec. 3. Section 633.562, Code 1999, is amended to read as
31 follows:

32 633.562 NOTIFICATION OF GUARDIANSHIP POWERS.

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

1 may, without court approval, provide for the care of the ward,
2 manage the ward's personal property and effects, assist the
3 ward in developing self-reliance and receiving professional
4 care, counseling, treatment or services as needed, and ensure
5 that the ward receives necessary emergency medical services.
6 The notice shall also advise the proposed ward that, upon the
7 court's approval, the guardian may change the ward's permanent
8 residence to a more restrictive residence, and arrange for
9 major elective surgery or any other nonemergency major medical
10 procedure. The notice shall clearly advise the proposed ward
11 in boldfaced type of a minimum size of ten points, of the
12 right to counsel and the potential deprivation of the proposed
13 ward's civil rights. The notice shall also state that the
14 proposed ward may use the ward's own attorney instead of an
15 attorney appointed by the court. In an involuntary
16 guardianship proceeding, the notice shall be served upon the
17 proposed ward with the notice of the filing of the petition as
18 provided in section 633.554.

19 Sec. 4. Section 633.568, Code 1999, is amended to read as
20 follows:

21 633.568 NOTICE TO PROPOSED WARD.

22 1. a. If the proposed ward is an adult, notice of the
23 filing of the petition shall be served upon the proposed ward
24 in the manner of an original notice and the content of the
25 notice is governed by the rules of civil procedure governing
26 original notice.

27 b. Except where the ward is the petitioner, notice shall
28 also be served upon the ward's spouse. If the ward has no
29 spouse, notice shall be served upon the ward's adult children,
30 if any.

31 2. a. If the proposed ward is a minor and the court
32 determines, pursuant to section 633.575, subsection 1,
33 paragraph "b", that the proposed ward is entitled to
34 representation, notice in the manner of original notice, or
35 another form of notice ordered by the court, given to the

1 attorney appointed to represent the ward is notice to the
2 proposed ward.

3 b. Notice shall also be served upon the parents of the
4 proposed ward.

5 3. Service of notice under this section upon persons other
6 than the proposed ward shall be made pursuant to section
7 633.40, subsection 5. Proof of service shall be made by
8 affidavit, to which copies of all documents served shall be
9 attached.

10 Sec. 5. Section 633.575, subsection 1, Code 1999, is
11 amended to read as follows:

12 1. In a proceeding for the appointment of a conservator,
13 ~~if~~:

14 a. If the proposed ward is an adult and is not the
15 petitioner, the proposed ward is entitled to representation.
16 Upon the filing of the petition, the court shall appoint an
17 attorney to represent the proposed ward, set a hearing on the
18 petition, and provide for notice of the appointment of counsel
19 and the date for hearing.

20 ~~b. In a proceeding for the appointment of a conservator,~~
21 ~~if~~ If the proposed ward is either a minor or ~~where the~~
22 ~~proposed ward is~~ an adult under a standby petition, the court
23 shall determine whether, under the circumstances of the case,
24 the proposed ward is entitled to representation. The
25 determination regarding representation ~~shall~~ may be made ~~only~~
26 ~~after with or without~~ notice to the proposed ward, ~~is made~~ as
27 the court deems necessary. If the court determines that the
28 proposed ward is entitled to representation, the court shall
29 appoint an attorney to represent the proposed ward. After
30 making the determination regarding representation, the court
31 shall set a hearing on the petition, and provide for notice on
32 the determination regarding representation and the date for
33 hearing.

34 c. The court may take action under paragraph "a" or "b"
35 prior to the service of the original notice upon the proposed

1 ward.

2 d. The court may reconsider the determination regarding
3 representation upon application by any interested person.

4 e. The court may discharge the attorney appointed by the
5 court if it appears upon the application of the proposed ward
6 or any other interested person that the ward has privately
7 retained an attorney who has filed an appearance on behalf of
8 the proposed ward.

9 Sec. 6. Section 633.576, Code 1999, is amended to read as
10 follows:

11 633.576 NOTIFICATION OF CONSERVATORSHIP POWERS.

12 In a proceeding for the appointment of a conservator, the
13 proposed ward shall be given written notice which advises the
14 proposed ward that if a conservator is appointed, the
15 conservator may, without court approval, manage the proposed
16 ward's principal, income, and investments, sue and defend any
17 claim by or against the ward, sell and transfer personal
18 property, and vote at corporate meetings. The notice shall
19 also advise the proposed ward that, upon the court's approval,
20 the conservator may invest the ward's funds, execute leases,
21 make payments to or for the benefit of the ward, support the
22 ward's legal dependents, compromise or settle any claim, and
23 do any other thing that the court determines is in the ward's
24 best interests. The notice shall clearly advise the proposed
25 ward, in boldfaced type of a minimum size of ten points, of
26 the right to counsel and the potential deprivation of the
27 proposed ward's civil rights. The notice shall also state
28 that the proposed ward may use the ward's own attorney instead
29 of an attorney appointed by the court. In an involuntary
30 conservatorship proceeding, the notice shall be served upon
31 the proposed ward with the notice of the filing of the
32 petition as provided in section 633.568.

33 EXPLANATION

34 This bill amends certain parallel Code sections relating to
35 notice and the appointment of counsel in guardianship and

1 conservatorship proceedings.

2 The amendments specify the timing for the appointment of
3 counsel and provide for notice of the hearing, both to the
4 proposed ward and certain other interested parties. The
5 amendments also provide the court with certain rights to
6 reconsider the determination of counsel and to discharge
7 court-appointed counsel.

8 The amendments to Code sections 633.562 and 633.576 require
9 specific notice to the proposed ward that private counsel can
10 be retained.

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REPRINTED

FEB 11 2000

Place On Calendar

HOUSE FILE 2240
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HSB 563)

Passed House, ^(p. 453) Date 2/28/00 Passed Senate, ^(p. 729) Date 3/20/00
Vote: Ayes 97 Nays 0 Vote: Ayes 42 Nays 0
Approved 3/31/00

A BILL FOR

1 An Act relating to notice and the appointment of counsel in
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3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

4

HOUSE FILE 2240

H-8052

- 1 Amend House File 2240 as follows:
- 2 1. Page 1, line 28, by inserting after the word
- 3 "made" the following: "upon such persons whose
- 4 identities are reasonably ascertainable".
- 5 2. Page 4, line 6, by inserting after the word
- 6 "made" the following: "upon such persons whose
- 7 identities are reasonably ascertainable".

By BODDICKER of Cedar

H-8052 FILED FEBRUARY 22, 2000

adopted 2/28/00 (p. 452)

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2240

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9 b. Except where the proposed ward is the petitioner,
10 notice shall also be served upon the ward's spouse. If the
11 proposed ward has no spouse, notice shall be served upon the
12 proposed ward's adult children, if any.

13 2. a. If the proposed ward is a minor or if the proposed
14 ward is an adult under a standby petition and the court
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20 proposed ward.

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23 is a minor.

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19 hearing.

20 c. The court may take action under paragraph "a" or "b"
21 prior to the service of the original notice upon the proposed
22 ward.

23 d. The court may reconsider the determination regarding
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9 major elective surgery or any other nonemergency major medical
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11 in boldfaced type of a minimum size of ten points, of the
12 right to counsel and the potential deprivation of the proposed
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19 and the date for hearing.

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S-3/15/00 Do Pass

HOUSE FILE **2240**
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HSB 563)

(As Amended and Passed by the House, February 28, 2000)

Passed House, Date _____ Passed Senate, Date ^(p. 729) 3/20/00
Vote: Ayes _____ Nays _____ Vote: Ayes 42 Nays 0
Approved 3/31/00

A BILL FOR

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

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House Amendments _____

HF 2240

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20 property, and vote at corporate meetings. The notice shall
21 also advise the proposed ward that, upon the court's approval,
22 the conservator may invest the ward's funds, execute leases,
23 make payments to or for the benefit of the ward, support the
24 ward's legal dependents, compromise or settle any claim, and
25 do any other thing that the court determines is in the ward's
26 best interests. The notice shall clearly advise the proposed
27 ward, in boldfaced type of a minimum size of ten points, of
28 the right to counsel and the potential deprivation of the
29 proposed ward's civil rights. The notice shall also state
30 that the proposed ward may use the ward's own attorney instead
31 of an attorney appointed by the court. In an involuntary
32 conservatorship proceeding, the notice shall be served upon
33 the proposed ward with the notice of the filing of the
34 petition as provided in section 633.568.

35

HOUSE FILE 2240

AN ACT

RELATING TO NOTICE AND THE APPOINTMENT OF COUNSEL IN GUARDIANSHIP AND CONSERVATORSHIP PROCEEDINGS.

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

Section 1. Section 633.554, Code 1999, is amended to read as follows:

633.554 NOTICE TO PROPOSED WARD.

1. a. If the proposed ward is an adult, notice of the filing of the petition shall be served upon the proposed ward in the manner of an original notice and the content of the notice is governed by the rules of civil procedure governing original notice.

b. Except where the proposed ward is the petitioner, notice shall also be served upon the ward's spouse. If the proposed ward has no spouse, notice shall be served upon the proposed ward's adult children, if any.

2. a. If the proposed ward is a minor or if the proposed ward is an adult under a standby petition and the court determines, pursuant to section 633.561, subsection 1, paragraph "b", that the proposed ward is entitled to representation, notice in the manner of original notice, or another form of notice ordered by the court, given to the attorney appointed to represent the ward is notice to the proposed ward.

b. Notice shall also be served upon:

(1) The parents of the proposed ward, if the proposed ward is a minor.

(2) The spouse of the proposed ward, if the proposed ward is an adult. If the proposed ward has no spouse, notice shall be served upon the proposed ward's adult children, if any.

3. Service of notice under this section upon persons other than the proposed ward shall be made upon such persons whose identities are reasonably ascertainable pursuant to section 633.40, subsection 5. Proof of service shall be made by affidavit, to which copies of all documents served shall be attached.

Sec. 2. Section 633.561, subsection 1, Code 1999, is amended to read as follows:

1. In a proceeding for the appointment of a guardian~~-if:~~
a. If the proposed ward is an adult and is not the petitioner, the proposed ward is entitled to representation. In a proceeding for the appointment of a guardian, if Upon the filing of the petition, the court shall appoint an attorney to represent the proposed ward, set a hearing on the petition, and provide for notice of the appointment of counsel and the date for hearing.

b. If the proposed ward is either a minor or if the proposed ward is an adult under a standby petition, the court shall determine whether, under the circumstances of the case, the proposed ward is entitled to representation. The determination regarding representation shall may be made only after with or without notice to the proposed ward, is made as the court deems necessary. If the court determines that the proposed ward is entitled to representation, the court shall appoint an attorney to represent the proposed ward. After making the determination regarding representation, the court shall set a hearing on the petition, and provide for notice on the determination regarding representation and the date for hearing.

c. The court may take action under paragraph "a" or "b" prior to the service of the original notice upon the proposed ward.

d. The court may reconsider the determination regarding representation upon application by any interested person.

e. The court may discharge the attorney appointed by the court if it appears upon the application of the proposed ward or any other interested person that the ward has privately retained an attorney who has filed an appearance on behalf of the proposed ward.

Sec. 3. Section 633.562, Code 1999, is amended to read as follows:

633.562 NOTIFICATION OF GUARDIANSHIP POWERS.

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

Sec. 4. Section 633.568, Code 1999, is amended to read as follows:

633.568 NOTICE TO PROPOSED WARD.

1. a. If the proposed ward is an adult, notice of the filing of the petition shall be served upon the proposed ward in the manner of an original notice and the content of the

notice is governed by the rules of civil procedure governing original notice.

b. Except where the ward is the petitioner, notice shall also be served upon the ward's spouse. If the ward has no spouse, notice shall be served upon the ward's adult children, if any.

2. a. If the proposed ward is a minor and the court determines, pursuant to section 633.575, subsection 1, paragraph "b", that the proposed ward is entitled to representation, notice in the manner of original notice, or another form of notice ordered by the court, given to the attorney appointed to represent the ward is notice to the proposed ward.

b. Notice shall also be served upon the parents of the proposed ward.

3. Service of notice under this section upon persons other than the proposed ward shall be made upon such persons whose identities are reasonably ascertainable pursuant to section 633.40, subsection 5. Proof of service shall be made by affidavit, to which copies of all documents served shall be attached.

Sec. 5. Section 633.575, subsection 1, Code 1999, is amended to read as follows:

1. In a proceeding for the appointment of a conservator if:

a. If the proposed ward is an adult and is not the petitioner, the proposed ward is entitled to representation. Upon the filing of the petition, the court shall appoint an attorney to represent the proposed ward, set a hearing on the petition, and provide for notice of the appointment of counsel and the date for hearing.

b. In-a-proceeding-for-the-appointment-of-a-conservator, if If the proposed ward is either a minor or where-the proposed-ward-is an adult under a standby petition, the court shall determine whether, under the circumstances of the case,

the proposed ward is entitled to representation. The determination regarding representation ~~shall~~ may be made only after with or without notice to the proposed ward, is made as the court deems necessary. If the court determines that the proposed ward is entitled to representation, the court shall appoint an attorney to represent the proposed ward. After making the determination regarding representation, the court shall set a hearing on the petition, and provide for notice on the determination regarding representation and the date for hearing.

c. The court may take action under paragraph "a" or "b" prior to the service of the original notice upon the proposed ward.

d. The court may reconsider the determination regarding representation upon application by any interested person.

e. The court may discharge the attorney appointed by the court if it appears upon the application of the proposed ward or any other interested person that the ward has privately retained an attorney who has filed an appearance on behalf of the proposed ward.

Sec. 6. Section 633.576, Code 1999, is amended to read as follows:

633.576 NOTIFICATION OF CONSERVATORSHIP POWERS.

In a proceeding for the appointment of a conservator, the proposed ward shall be given written notice which advises the proposed ward that if a conservator is appointed, the conservator may, without court approval, manage the proposed ward's principal, income, and investments, sue and defend any claim by or against the ward, sell and transfer personal property, and vote at corporate meetings. The notice shall also advise the proposed ward that, upon the court's approval, the conservator may invest the ward's funds, execute leases, make payments to or for the benefit of the ward, support the ward's legal dependents, compromise or settle any claim, and do any other thing that the court determines is in the ward's

best interests. The notice shall clearly advise the proposed ward, in boldfaced type of a minimum size of ten points, of the right to counsel and the potential deprivation of the proposed ward's civil rights. The notice shall also state that the proposed ward may use the ward's own attorney instead of an attorney appointed by the court. In an involuntary conservatorship proceeding, the notice shall be served upon the proposed ward with the notice of the filing of the petition as provided in section 633.568.

BRENT SIEGRIST
Speaker of the House

MARY E. KRAMER
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 2240, Seventy-eighth General Assembly.

ELIZABETH ISAACSON
Chief Clerk of the House

Approved 3/31, 2000

THOMAS J. VILSACK
Governor