

House File 2564 - Introduced

HOUSE FILE 2564
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HSB 578)

A BILL FOR

1 An Act relating to the opening, administration, and termination
2 of adult guardianships and conservatorships, including
3 conforming changes, and including effective date and
4 retroactive applicability provisions.

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

1

DIVISION I

2

ADULT GUARDIANSHIPS AND CONSERVATORSHIPS

3 Section 1. Section 633.556, subsections 4, 5, and 8, Code
4 2020, are amended to read as follows:

5 4. The petition shall list the name and address of the
6 ~~petitioner and the petitioner's relationship to the respondent.~~
7 following:

8 a. The respondent.

9 b. The petitioner and the petitioner's relationship to the
10 respondent.

11 c. The proposed guardian or conservator and the reason the
12 proposed guardian or conservator should be selected.

13 5. The petition shall list the name and address, to the
14 extent known, of the following:

15 a. The name and address of the proposed guardian and the
16 reason the proposed guardian should be selected.

17 b. a. Any spouse of the respondent.

18 c. b. Any adult children of the respondent.

19 d. c. Any parents of the respondent.

20 e. d. Any adult, who has had the primary care of the
21 respondent or with whom the respondent has lived for ~~at least~~
22 any time during the six months prior to immediately preceding
23 the filing of the petition, or any institution or facility
24 where the respondent has resided ~~for at least six months prior~~
25 ~~to any time during the six months immediately preceding~~ the
26 filing of the petition.

27 f. e. Any legal representative or representative payee of
28 the respondent.

29 g. f. Any person designated as an attorney in fact in a
30 durable power of attorney for health care which is valid under
31 chapter 144B, or any person designated as an agent in a durable
32 power of attorney which is valid under **chapter 633B**.

33 8. The A petition for conservator shall provide a brief
34 description of the respondent's alleged functional limitations
35 that make the respondent unable to communicate or carry out

1 important decisions concerning the respondent's financial
2 affairs. A petition for guardianship shall provide a brief
3 description of the respondent's alleged functional limitations
4 that make the respondent unable to provide for the respondent's
5 safety, care, or necessities.

6 Sec. 2. Section 633.561, subsection 6, Code 2020, is amended
7 to read as follows:

8 6. If the court determines that it would be in the
9 respondent's best interest to have legal representation
10 with respect to any further proceedings in a guardianship
11 or conservatorship, the court may appoint an attorney to
12 represent the respondent at the expense of the respondent or
13 the respondent's estate, or if the respondent is indigent the
14 cost of the court appointed attorney shall be assessed against
15 the county in which the proceedings are pending.

16 Sec. 3. Section 633.562, subsection 1, Code 2020, is amended
17 to read as follows:

18 1. If the court determines that the appointment of a court
19 visitor would be in the best interest of the respondent, the
20 court shall appoint a court visitor at the expense of the
21 respondent or the respondent's estate, or, if the respondent
22 is indigent, the cost of the court visitor shall be assessed
23 against the county in which the proceedings are pending. The
24 court may appoint any qualified person as a court visitor in
25 a guardianship or conservatorship proceeding. A person is
26 qualified to serve in this capacity if the court determines the
27 person has demonstrated sufficient knowledge of guardianships
28 or conservatorships to adequately perform the duties in
29 subsection 3.

30 Sec. 4. Section 633.562, Code 2020, is amended by adding the
31 following new subsection:

32 NEW SUBSECTION. 7. A court visitor shall be discharged
33 from all further duties upon appointment of a guardian or
34 conservator, unless otherwise ordered by the court. The court
35 may order a court visitor to continue to serve if the court

1 determines continued service would be in the best interest of
2 the protected person. If the court continues the service of
3 the court visitor, the court may limit the direct duties of the
4 court visitor as the court deems necessary. The court visitor
5 shall thereafter continue to serve until discharged by the
6 court.

7 Sec. 5. Section 633.563, subsection 7, unnumbered paragraph
8 1, Code 2020, is amended to read as follows:

9 The results of the evaluation ordered by the court shall be
10 ~~made available to~~ filed with the court and made available to
11 the following:

12 Sec. 6. Section 633.564, subsection 2, Code 2020, is amended
13 to read as follows:

14 2. The court shall review the results of background checks
15 in determining the suitability of a proposed guardian or
16 conservator for appointment, and may, for good cause, share
17 with the respondent, the respondent's attorney, and the
18 protected person's attorney, the results of background checks.

19 Sec. 7. Section 633.569, Code 2020, is amended to read as
20 follows:

21 **633.569 Emergency appointment of temporary guardian or
22 conservator.**

23 1. A person authorized to file a petition under section
24 ~~633.552, 633.553, or 633.554~~ 633.556 or 633.557 may file an
25 application for the emergency appointment of a temporary
26 guardian or conservator.

27 2. Such application shall state all of the following:

28 a. The name and address of the respondent.

29 b. The name and address of the petitioner and the
30 petitioner's relationship to the respondent.

31 b. The name and address of the proposed guardian or
32 conservator and the reason the proposed guardian or conservator
33 should be selected.

34 c. The names and addresses, to the extent known, of any
35 other persons who must be named in the petition for appointment

1 of a guardian or conservator under section 633.556 or 633.557.

2 c. The reason the emergency appointment of a temporary
3 guardian or conservator is sought.

4 3. The court may enter an ex parte order appointing a
5 temporary guardian or conservator on an emergency basis
6 under this section if the court finds by clear and convincing
7 evidence that all of the following conditions are met:

8 a. There is not sufficient time to file a petition and hold
9 a hearing pursuant to section 633.552, 633.553, or 633.554
10 633.556, 633.557, or 633.560.

11 b. The appointment of a temporary guardian or conservator
12 is necessary to avoid immediate or irreparable harm to the
13 respondent before a hearing with notice to the respondent can
14 be held.

15 c. There is reason to believe that the basis for appointment
16 of guardian or conservator exists under section 633.552,
17 633.553, or 633.554 633.556 or 633.557.

18 04. Immediately on filing of an application for the
19 emergency appointment of a temporary guardian or conservator,
20 the court shall appoint an attorney to represent the respondent
21 in the proceeding.

22 4. Notice of a petition for the appointment of a temporary
23 guardian or conservator and the issuance of an ex parte
24 order appointing a temporary guardian or conservator shall be
25 provided not later than forty-eight hours after the issuance of
26 the order of appointment to the respondent, the respondent's
27 attorney, and any other person the court determines should
28 receive notice. Notice shall be provided by personal service
29 unless otherwise directed by the court.

30 5. Upon the issuance of an ex parte order, if the respondent
31 is an adult, the respondent may file a request for a hearing.
32 If the respondent is a minor, the respondent, a parent having
33 legal custody of the respondent, or any other person having
34 legal custody of the respondent may file a written request for
35 a hearing. Such hearing shall be held no later than seven days

1 ~~after the filing of a written request A hearing shall be held~~
2 ~~not more than seven days after the issuance of an ex parte~~
3 ~~order appointing a temporary guardian or conservator.~~

4 6. The powers of the temporary guardian or conservator
5 set forth in the order of the court shall be limited to those
6 necessary to address the emergency situation requiring the
7 appointment of a temporary guardian or conservator.

8 7. The temporary guardianship or conservatorship shall
9 terminate within ~~thirty sixty~~ days after the order is issued.

10 8. The court may extend the duration of the temporary
11 guardianship or conservatorship for good cause beyond the sixty
12 days if the court determines after a hearing that the temporary
13 guardianship or conservatorship should continue. An extension
14 shall not be for more than sixty days at a time.

15 9. The temporary guardian or conservator shall submit any
16 report the court requires.

17 Sec. 8. Section 633.635, subsection 1, Code 2020, is amended
18 to read as follows:

19 1. The order by the court appointing a guardian shall state
20 the basis for the guardianship pursuant to section 633.552
21 and the date on which the first reporting period for the
22 guardianship shall end.

23 Sec. 9. Section 633.641, subsection 3, Code 2020, is amended
24 to read as follows:

25 3. ~~If a protected person has executed a valid power of~~
26 ~~attorney under chapter 633B, the conservator shall act in~~
27 ~~accordance with the applicable provisions of chapter 633B~~
28 ~~If the court appoints a conservator for a protected person~~
29 ~~who has previously executed a valid power of attorney under~~
30 ~~chapter 633B, the power of attorney is suspended unless the~~
31 ~~power of attorney provides otherwise or the court appointing~~
32 ~~the conservator orders that the power of attorney should~~
33 ~~continue. If the power of attorney continues, the agent is~~
34 ~~accountable to the conservator as well as the principal. The~~
35 ~~power of attorney shall be reinstated upon termination of the~~

1 conservatorship for reasons other than the protected person's
2 death.

3 Sec. 10. Section 633.642, unnumbered paragraph 1, Code
4 2020, is amended to read as follows:

5 Except as otherwise ordered by the court, and except
6 for those powers relating to all fiduciaries as set out in
7 sections 633.63 through 633.162 which may be exercised without
8 approval of the court unless expressly modified by the court,
9 a conservator must give notice to persons entitled to notice
10 and receive specific prior authorization by the court before
11 the conservator may take any other action on behalf of the
12 protected person. ~~These other powers~~ Powers requiring court
13 approval include, but are not limited to the authority of the
14 conservator to:

15 Sec. 11. Section 633.669, subsection 1, Code 2020, is
16 amended to read as follows:

17 1. A guardian appointed by the court under **this chapter**
18 shall file with the court the following written verified
19 reports which shall not be waived by the court:

20 a. An initial care plan filed within sixty days of
21 appointment. The information in the initial care plan shall
22 include but not be limited to the following information:

23 (1) The current residence of the protected person and the
24 guardian's plan for the protected person's living arrangements.

25 (2) The current sources of payment for the protected
26 person's living expenses and other expenses, and the guardian's
27 plan for payment of the protected person's living expenses and
28 other expenses.

29 (3) The protected person's health status and health care
30 needs, and the guardian's plan for meeting the protected
31 person's ~~needs for medical, dental, and other~~ health care
32 needs.

33 (3A) Whether the protected person has a living will or
34 health care power of attorney, if any.

35 (4) If applicable, the protected person's need for other

1 professional services for mental, behavioral, or emotional
2 health, and the guardian's plan for other professional services
3 needed by the protected person.

4 (5) If applicable, the protected person's employment
5 status, the protected person's need for educational, training,
6 or vocational services, and the guardian's plan for meeting the
7 educational, training, and vocational needs of the protected
8 person.

9 (6) If applicable, the guardian's plan for facilitating the
10 participation of the protected person in social activities.

11 (7) The guardian's plan for facilitating contacts between
12 the protected person and the protected person's family members
13 and other significant persons significant in the life of the
14 protected person.

15 (8) The guardian's plan for contact with, and activities on
16 behalf of, the protected person.

17 (9) The powers that the guardian requests to carry out the
18 initial care plan.

19 (10) The guardian shall file an amended plan when there
20 has been a significant change in the circumstances or the
21 guardian seeks to deviate significantly from the plan. The
22 guardian must obtain court approval of the amended plan before
23 implementing any of its provisions.

24 b. An annual report, filed within sixty days of the close
25 of the reporting period, ~~unless the court otherwise orders on~~
26 ~~good cause shown.~~ The ~~information in the~~ annual report shall
27 include but not be limited to the following information:

28 (1) The current living arrangements of the protected
29 person.

30 (2) The sources of payment for the protected person's living
31 expenses and other expenses.

32 (3) A description, if applicable, of the following:

33 (a) The protected person's ~~physical and mental health~~
34 ~~status and the medical, dental, and other professional health~~
35 services provided to the protected person.

1 (b) If applicable, the protected person's employment status
2 and the educational, training, and vocational services provided
3 to the protected person.

4 (0c) The guardian's facilitation of the participation of
5 the protected person in social activities.

6 (c) The contact of the protected person with family members
7 and other significant persons.

8 (d) The nature and extent of the guardian's visits with, and
9 activities on behalf of, the protected person.

10 (04) The guardian's changes to the care plan for the
11 protected person for the next annual reporting period.

12 (004) The powers that the guardian requests to carry out
13 the care plan for the protected person for the next annual
14 reporting period.

15 (4) The guardian's recommendation as to the need for
16 continuation of the guardianship.

17 (5) The ability of the guardian to continue as guardian.

18 (6) The need of the guardian for assistance in providing or
19 arranging for the provision of the care and protection of the
20 protected person.

21 c. A final report within thirty days of the termination
22 of the guardianship under **section 633.675** unless that time is
23 extended by the court.

24 Sec. 12. Section 633.669, Code 2020, is amended by adding
25 the following new subsection:

26 NEW SUBSECTION. 5. A copy of the initial care plan and
27 annual reports shall be provided by the court to the protected
28 person.

29 Sec. 13. Section 633.670, Code 2020, is amended to read as
30 follows:

31 **633.670 Reports by conservators.**

32 1. A conservator shall file an a written verified initial
33 financial management plan for protecting, managing, investing,
34 expending, and distributing the assets of the conservatorship
35 estate within ninety days after appointment which shall not be

1 waived by the court. The plan must be based on the needs of
2 the protected person and take into account the best interest
3 of the protected person as well as the protected person's
4 preference, values, and prior directions to the extent known
5 to, or reasonably ascertainable by, the conservator.

6 a. The initial plan shall include all of the following: The
7 initial financial management plan shall state the protected
8 person's age, residence, living arrangements, and sources of
9 payment for living expenses.

10 (1) A budget containing projected expenses and resources,
11 including an estimate of the total amount of fees the
12 conservator anticipates charging per year and a statement or
13 list of the amount the conservator proposes to charge for each
14 service the conservator anticipates providing to the protected
15 person.

16 (2) A statement as to how the conservator will involve
17 the protected person in decisions about management of the
18 conservatorship estate.

19 (3) If ordered by the court, any step the conservator plans
20 to take to develop or restore the ability of the protected
21 person to manage the conservatorship estate.

22 (4) An estimate of the duration of the conservatorship.

23 b. If applicable, the protected person's will shall be filed
24 with the court clerk and the protected person's prepaid burial
25 trust and powers of attorney shall be described.

26 c. The conservator shall include a proposed budget for the
27 protected person and budget-related information for the next
28 annual reporting period including all of the following:

29 (1) The protected person's receipts and income and the
30 projected source of income, if applicable, and the total
31 estimated receipts and income.

32 (2) The protected person's liabilities and debts and the
33 total estimated liabilities and debts; a list and explanation
34 of any liability or debt owed by the protected person to the
35 conservator; a list and explanation of the liability of any

1 other person for a liability of the protected person.

2 (3) The protected person's estimated expenses on a
3 monthly and annual basis including conservator fees and other
4 administrative expenses.

5 d. The conservator shall include a list of the protected
6 person's assets and the conservator's plan for management of
7 these assets.

8 e. The conservator shall include a statement as to how the
9 conservator will involve the protected person in decisions
10 about management of the conservatorship estate.

11 f. If ordered by the court, the conservator shall include
12 any action the conservator plans to take to develop or
13 restore the ability of the protected person to manage the
14 conservatorship estate.

15 g. The conservator shall include the authority that the
16 conservator requests to carry out the initial financial plan
17 including expenditures in accordance with the proposed budget
18 for the protected person and the plan for the management of the
19 assets of the protected person for the next annual reporting
20 period.

21 b. h. Within two days after filing the initial plan, the
22 The conservator shall give provide notice of the filing of
23 the initial plan with and a copy of the initial plan to the
24 protected person, the protected person's attorney, if any, and
25 court advisor visitor, if any, and others as directed by the
26 court. The notice must state that any person entitled to a
27 copy of the plan must file any objections to the plan not later
28 than fifteen days after it is filed twenty days from the date
29 of mailing notice of filing the initial plan.

30 e. i. At least If no objections have been filed within
31 twenty days after the plan has been filed, the court shall
32 review and determine whether the plan should be approved or
33 revised, after considering objections filed and whether the
34 plan is consistent with the conservator's powers and duties
35 mailing notice of filing the initial plan, the conservator

1 shall submit a proposed order to the court approving the
2 initial plan. Upon the court's approval of the plan under
3 this subsection, the conservator shall provide a copy of the
4 approved plan and order approving the plan to the protected
5 person, the protected person's attorney, if any, and court
6 visitor, if any, and others as directed by the court.

7 d. j. After approval by the court, the conservator shall
8 provide a copy of the approved plan and order approving the
9 plan to the protected person, the protected person's attorney
10 and court advisor, if any, and others as directed by the court
11 If any objections to the proposed plan are filed within twenty
12 days after the conservator has mailed notice of filing the
13 plan, the court shall set the matter for hearing and provide
14 notice of the hearing date, time, and place to the same parties
15 who were sent copies of the initial plan. Following the
16 hearing on the conservator's proposed plan, the conservator
17 shall provide a copy of the approved plan and order approving
18 the plan to the protected person, the protected person's
19 attorney, if any, and court visitor, if any, and others as
20 directed by the court.

21 e. k. The conservator shall file an amended plan when
22 there has been a significant change in circumstances or the
23 conservator seeks to deviate significantly from the plan.
24 Before the amended plan is implemented, the provisions for
25 court approval of the plan shall be followed as provided in
26 paragraphs "b", "c", and "d" the initial financial management
27 plan.

28 2. A conservator shall file attach an inventory of the
29 protected person's assets within ninety days after appointment
30 and debts to the initial financial management plan, which
31 includes an oath or affirmation that the inventory is believed
32 to be complete and accurate as far as information permits.
33 Copies of the inventory shall be provided to the protected
34 person, the protected person's attorney, if any, and court
35 adviser visitor, if any, and others as directed by the

1 court. When the conservator receives additional property
2 of the protected person, or becomes aware of its existence,
3 a description of the property shall be included in the
4 conservator's next annual report.

5 3. A conservator shall file a written and verified report on
6 an annual basis for the period since the end of the preceding
7 report period. The court which shall not waive these reports
8 be waived by the court.

9 a. These reports shall include all of the following: The
10 annual report shall state the age, the residence and the living
11 arrangements of the protected person, and sources of payment
12 for the protected person's living expenses during the reporting
13 period.

14 (1) Balance of funds on hand at the beginning and end of the
15 period.

16 (2) Disbursements made.

17 (3) Changes in the conservator's plan.

18 (4) List of assets as of the end of the period.

19 (5) Bond amount and surety's name.

20 (6) Residence and physical location of the protected
21 person.

22 (7) General physical and mental condition of the protected
23 person.

24 (8) Other information reflecting the condition of the
25 conservatorship estate.

26 b. These reports shall be filed: The conservator shall
27 submit with the annual report an inventory of the assets of the
28 protected person as of the last day of the reporting period the
29 total value of assets at the beginning and end of the reporting
30 period.

31 (1) On an annual basis within sixty days of the end of the
32 reporting period unless the court orders an extension for good
33 cause shown in accordance with the rules of probate procedure.

34 c. The annual report shall include an itemization of all
35 income or funds received and all expenditures made by the

1 conservator on behalf of the protected person. If any of
2 the expenditures were made to provide support for or pay the
3 debts of another person, the annual report shall include an
4 explanation of these expenditures. If any of the expenditures
5 were made to pay any liability or debt owed by the protected
6 person to the conservator, the annual report shall include an
7 explanation of these expenditures. If any of the expenditures
8 were made to pay any liability or debt that is also owed by
9 another person or entity, the annual report shall include an
10 explanation of these expenditures.

11 d. The annual report shall include the following budget and
12 information related to the budget for the protected person:
13 (1) A description of changes, if any, made in the budget
14 approved by the court for the preceding reporting period.

15 (2) A proposed budget and budget-related information for
16 the next reporting period containing the information set forth
17 in subsection 1, paragraph "c".

18 (3) A request for approval of the proposed budget and
19 authority to make expenditures in accordance with the proposed
20 budget.

21 e. The annual report shall include the following information
22 related to the management of the assets of the protected
23 person:

24 (1) A description of changes, if any, in the plan for
25 management of the assets of the protected person approved by
26 the court for the preceding reporting period.

27 (2) A proposed plan for management of the assets of the
28 protected person for the next reporting period.

29 (3) A request for approval of the proposed plan for
30 management of the assets of the protected person and the
31 authority to carry out the plan.

32 f. The annual report shall describe, if applicable, how the
33 protected person was involved and will be involved in decisions
34 about management of assets.

35 g. The annual report shall describe, if ordered by the

1 court, the actions that have been taken and that will be taken
2 by the conservator to develop or restore the ability of the
3 protected person to manage the conservatorship's assets.

4 h. The conservator may request court approval of fees
5 provided by an attorney on behalf of the conservatorship or the
6 protected person during the preceding reporting period.

7 i. The conservator may request court approval of fees
8 provided the conservator on behalf of the conservatorship or
9 the protected person during the preceding reporting period.

10 4. The conservator shall file a written verified final
11 report with the court as follows:

12 {2} a. Within thirty days following removal of the
13 conservator.

14 {3} b. Upon the conservator's filing of a resignation and
15 before the resignation is accepted by the court.

16 {4} c. Within sixty days following the termination of the
17 conservatorship.

18 {5} d. At other times as ordered by the court.

19 e. 5. Reports required by this section shall be served
20 on the protected person, the protected person's attorney,
21 if any, and court advisor visitor, if any, and the veterans
22 administration if the protected person is receiving veterans
23 veterans' benefits.

24 Sec. 14. Section 633.675, subsections 2, 3, and 4, Code
25 2020, are amended to read as follows:

26 2. The court shall terminate a guardianship for an adult if
27 ~~it the court finds by clear and convincing evidence that the~~
28 basis for appointing a guardian pursuant to section 633.552 is
29 not satisfied.

30 3. The court shall terminate a conservatorship for an adult
31 ~~if the court finds by clear and convincing evidence that the~~
32 basis for appointing a conservator pursuant to section 633.553
33 or 633.554 is not satisfied.

34 4. The standard of proof and the burden of proof to be
35 applied in a termination proceeding to terminate a guardianship

1 or conservatorship for an adult shall be the same as set forth
2 in section 633.551, subsection 2.

3 Sec. 15. REPEAL. Section 633.671, Code 2020, is repealed.

4 Sec. 16. EFFECTIVE DATE. The following, being deemed of
5 immediate importance, take effect upon enactment:

6 1. The section of this division of this Act amending section
7 633.669, subsection 1.

8 2. The section of this division of this Act amending section
9 633.670.

10 Sec. 17. RETROACTIVE APPLICABILITY. The following apply
11 retroactively to January 1, 2020:

12 1. The section of this division of this Act amending section
13 633.669, subsection 1.

14 2. The section of this division of this Act amending section
15 633.670.

16 DIVISION II

17 CONFORMING CHANGES

18 Sec. 18. Section 633.3, subsections 9, 17, 22, and 23, Code
19 2020, are amended to read as follows:

20 9. *Conservator* — a person appointed by the court to have
21 the custody and control of the property of a ward protected
22 person under the provisions of this probate code.

23 17. *Estate* — the real and personal property of either a
24 decedent or a ward protected person, and may also refer to the
25 real and personal property of a trust described in section
26 633.10.

27 22. *Guardian* — the person appointed by the court to have
28 the custody of the person of the ward protected person under
29 the provisions of this probate code.

30 23. *Guardian of the property* — at the election of the
31 person appointed by the court to have the custody and care of
32 the property of a ward protected person, the term “*guardian of*
33 *the property*” may be used, which term shall be synonymous with
34 the term “*conservator*”.

35 Sec. 19. Section 633.78, subsection 1, unnumbered paragraph

1 1, Code 2020, is amended to read as follows:

2 A fiduciary under **this chapter** may present a written request
3 to any person for the purpose of obtaining property owned by
4 a decedent or by a ward protected person of a conservatorship
5 for which the fiduciary has been appointed, or property to
6 which a decedent or ward protected person is entitled, or
7 for information about such property needed to perform the
8 fiduciary's duties. The request must contain statements
9 confirming all of the following:

10 Sec. 20. Section 633.78, subsection 1, paragraph b, Code
11 2020, is amended to read as follows:

12 b. The request has been signed by all fiduciaries acting on
13 behalf of the decedent or ward protected person.

14 Sec. 21. Section 633.78, subsection 4, paragraph a, Code
15 2020, is amended to read as follows:

16 a. Damages sustained by the decedent's or ward's protected
17 person's estate.

18 Sec. 22. Section 633.80, Code 2020, is amended to read as
19 follows:

20 **633.80 Fiduciary of a fiduciary.**

21 A fiduciary has no authority to act in a matter wherein the
22 fiduciary's decedent or ward protected person was merely a
23 fiduciary, except that the fiduciary shall file a report and
24 accounting on behalf of the decedent or ward protected person
25 in said matter.

26 Sec. 23. Section 633.93, Code 2020, is amended to read as
27 follows:

28 **633.93 Limitation on actions affecting deeds.**

29 No action for recovery of any real estate sold by any
30 fiduciary can be maintained by any person claiming under the
31 deceased, the ward protected person, or a beneficiary, unless
32 brought within five years after the date of the recording of
33 the conveyance.

34 Sec. 24. Section 633.112, Code 2020, is amended to read as
35 follows:

1 633.112 **Discovery of property.**

2 The court may require any person suspected of having
3 possession of any property, including records and documents,
4 of the decedent, ward protected person, or the estate, or of
5 having had such property under the person's control, to appear
6 and submit to an examination under oath touching such matters,
7 and if on such examination it appears that the person has the
8 wrongful possession of any such property, the court may order
9 the delivery thereof to the fiduciary. Such a person shall be
10 liable to the estate for all damages caused by the person's
11 acts.

12 Sec. 25. Section 633.123, subsection 1, paragraph b,
13 subparagraph (3), Code 2020, is amended to read as follows:

14 (3) The needs and rights of the beneficiaries or the ward
15 protected person.

16 Sec. 26. Section 633.558, subsection 3, Code 2020, is
17 amended to read as follows:

18 3. Notice of the filing of a petition given to persons under
19 subsections subsection 2 and 3 shall include a statement that
20 such persons may register to receive notice of the hearing
21 on the petition and other proceedings and the manner of such
22 registration.

23 Sec. 27. Section 633.560, subsection 3, Code 2020, is
24 amended to read as follows:

25 3. The court shall require the proposed guardian or
26 conservator to attend the hearing on the petition but the court
27 may excuse the proposed guardian's or conservator's attendance
28 for good cause shown.

29 Sec. 28. Section 633.561, subsection 4, paragraphs c and f,
30 Code 2020, are amended to read as follows:

31 c. Ensure that the respondent has been properly advised of
32 the respondent's rights in a guardianship or conservatorship
33 proceeding.

34 f. Ensure that the guardianship or conservatorship
35 procedures conform to the statutory and due process

1 requirements of Iowa law.

2 Sec. 29. Section 633.561, subsection 5, paragraphs a and b,
3 Code 2020, are amended to read as follows:

4 a. Inform the respondent of the effects of the order entered
5 for appointment of guardian or conservator.

6 b. Advise the respondent of the respondent's rights to
7 petition for modification or termination of the guardianship
8 or conservatorship.

9 Sec. 30. Section 633.562, subsection 5, paragraphs a and b,
10 Code 2020, are amended to read as follows:

11 a. A recommendation regarding the appropriateness of a
12 limited guardianship or conservatorship for the respondent,
13 including whether less restrictive alternatives are available.

14 b. A statement of the qualifications of the guardian or
15 conservator together with a statement of whether the respondent
16 has expressed agreement with the appointment of the proposed
17 guardian or conservator.

18 Sec. 31. Section 633.580, subsections 1 and 4, Code 2020,
19 are amended to read as follows:

20 1. The name, age, and last known post office address of the
21 proposed ward protected person.

22 4. A general description of the property of the proposed
23 ward protected person within this state and of the proposed
24 ward's protected person's right to receive property; also, the
25 estimated present value of the real estate, the estimated value
26 of the personal property, and the estimated gross annual income
27 of the estate. If any money is payable, or to become payable,
28 to the proposed ward protected person by the United States
29 through the United States department of veterans affairs, the
30 petition shall so state.

31 Sec. 32. Section 633.591A, Code 2020, is amended to read as
32 follows:

33 633.591A Voluntary petition for appointment of conservator
34 for a minor — standby basis.

35 A person having physical and legal custody of a minor

1 may execute a verified petition for the appointment of a
2 standby conservator of the proposed ~~ward's~~ protected person's
3 property, upon the express condition that the petition shall
4 be acted upon by the court only upon the occurrence of an event
5 specified or the existence of a described condition of the
6 mental or physical health of the petitioner, the occurrence
7 of which event, or the existence of which condition, shall be
8 established in the manner directed in the petition.

9 Sec. 33. Section 633.603, Code 2020, is amended to read as
10 follows:

11 **633.603 Appointment of foreign conservators.**

12 When there is no conservatorship, nor any application
13 therefor pending, in this state, the duly qualified foreign
14 conservator or guardian of a nonresident ~~ward~~ protected
15 person may, upon application, be appointed conservator of the
16 property of such person in this state; provided that a resident
17 conservator is appointed to serve with the foreign conservator;
18 and provided further, that for good cause shown, the court
19 may appoint the foreign conservator to act alone without the
20 appointment of a resident conservator.

21 Sec. 34. Section 633.604, Code 2020, is amended to read as
22 follows:

23 **633.604 Application.**

24 The application for appointment of a foreign conservator
25 or guardian as conservator in this state shall include the
26 name and address of the nonresident ~~ward~~ protected person, and
27 of the nonresident conservator or guardian, and the name and
28 address of the resident conservator to be appointed. It shall
29 be accompanied by a certified copy of the original letters
30 or other authority conferring the power upon the foreign
31 conservator or guardian to act as such. The application
32 shall also state the cause for the appointment of the foreign
33 conservator to act as sole conservator, if such be the case.

34 Sec. 35. Section 633.605, Code 2020, is amended to read as
35 follows:

1 **633.605 Personal property.**

2 A foreign conservator or guardian of a nonresident may
3 be authorized by the court of the county wherein such ward
4 protected person has personal property to receive the same upon
5 compliance with the provisions of sections **633.606, 633.607** and
6 633.608.

7 Sec. 36. Section 633.607, Code 2020, is amended to read as
8 follows:

9 **633.607 Order for delivery.**

10 Upon the filing of the bond as above provided, and the court
11 being satisfied with the amount thereof, it shall order the
12 personal property of the ward protected person delivered to
13 such conservator or guardian.

14 Sec. 37. Section 633.633, Code 2020, is amended to read as
15 follows:

16 **633.633 Provisions applicable to all fiduciaries shall
17 govern.**

18 The provisions of this probate code applicable to all
19 fiduciaries shall govern the appointment, qualification, oath
20 and bond of guardians and conservators, except that a guardian
21 shall not be required to give bond unless the court, for good
22 cause, finds that the best interests of the ward protected
23 person require a bond. The court shall then fix the terms and
24 conditions of such bond.

25 Sec. 38. Section 633.633B, Code 2020, is amended to read as
26 follows:

27 **633.633B Tort liability of guardians and conservators.**

28 The fact that a person is a guardian or conservator shall not
29 in itself make the person personally liable for damages for the
30 acts of the ward protected person.

31 Sec. 39. Section 633.636, Code 2020, is amended to read as
32 follows:

33 **633.636 Effect of appointment of guardian or conservator.**

34 The appointment of a guardian or conservator shall not
35 constitute an adjudication that the ward protected person is of

1 unsound mind.

2 Sec. 40. Section 633.637, Code 2020, is amended to read as
3 follows:

4 **633.637 Powers of ward protected person.**

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

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

23 Sec. 41. Section 633.637A, Code 2020, is amended to read as
24 follows:

25 **633.637A Rights of ward protected person under guardianship.**
26 An adult ward protected person under a guardianship has the
27 right of communication, visitation, or interaction with other
28 persons upon the consent of the adult ward protected person,
29 subject to **section 633.635, subsection 2**, paragraph "i", and
30 section 633.635, subsection 3, paragraph "c". If an adult ward
31 protected person is unable to give express consent to such
32 communication, visitation, or interaction with a person due
33 to a physical or mental condition, consent of an adult ward
34 protected person may be presumed by a guardian or a court based
35 on an adult ward's protected person's prior relationship with

1 such person.

2 Sec. 42. Section 633.638, Code 2020, is amended to read as
3 follows:

4 **633.638 Presumption of fraud.**

5 If a conservator be appointed, all contracts, transfers and
6 gifts made by the ward protected person after the filing of the
7 petition shall be presumed to be a fraud against the rights
8 and interest of the ward protected person except as otherwise
9 directed by the court pursuant to section 633.637.

10 Sec. 43. Section 633.639, Code 2020, is amended to read as
11 follows:

12 **633.639 Title to ward's protected person's property.**

13 The title to all property of the ward protected person is
14 in the ward protected person and not the conservator subject,
15 however, to the possession of the conservator and to the
16 control of the court for the purposes of administration,
17 sale or other disposition, under the provisions of the
18 law. Any real property titled at any time in the name of a
19 conservatorship shall be deemed to be titled in the ward's
20 protected person's name subject to the conservator's right of
21 possession.

22 Sec. 44. Section 633.640, Code 2020, is amended to read as
23 follows:

24 **633.640 Conservator's right to possession.**

25 Every conservator shall have a right to, and shall take,
26 possession of all of the real and personal property of the
27 ward protected person. The conservator shall pay the taxes
28 and collect the income therefrom until the conservatorship is
29 terminated. The conservator may maintain an action for the
30 possession of the property, and to determine the title to the
31 same.

32 Sec. 45. Section 633.643, Code 2020, is amended to read as
33 follows:

34 **633.643 Disposal of will by conservator.**

35 When an instrument purporting to be the will of the ward

1 protected person comes into the hands of a conservator, the
2 conservator shall immediately deliver it to the court.

3 Sec. 46. Section 633.644, Code 2020, is amended to read as
4 follows:

5 **633.644 Court order to preserve testamentary intent of ward**
6 protected person.

7 Upon receiving an instrument purporting to be the will of a
8 living ward protected person under the provisions of section
9 633.643, the court may open said will and read it. The court
10 with or without notice, as it may determine, may enter such
11 orders in the conservatorship as it deems advisable for the
12 proper administration of the conservatorship in light of the
13 expressed testamentary intent of the ward protected person.

14 Sec. 47. Section 633.645, Code 2020, is amended to read as
15 follows:

16 **633.645 Court to deliver will to clerk.**

17 An instrument purporting to be the will of a ward protected
18 person coming into the hands of the court under the provisions
19 of **section 633.643**, shall thereafter be resealed by the court
20 and be deposited with the clerk to be held by said clerk as
21 provided in **sections 633.286 through 633.289**.

22 Sec. 48. Section 633.653A, Code 2020, is amended to read as
23 follows:

24 **633.653A Claims for cost of medical care or services.**

25 The provision of medical care or services to a ward protected
26 person who is a recipient of medical assistance under chapter
27 249A creates a claim against the conservatorship for the amount
28 owed to the provider under the medical assistance program for
29 the care or services. The amount of the claim, after being
30 allowed or established as provided in this part, shall be paid
31 by the conservator from the assets of the conservatorship.

32 Sec. 49. Section 633.654, Code 2020, is amended to read as
33 follows:

34 **633.654 Form and verification of claims — general**
35 **requirements.**

1 No claim shall be allowed against the estate of a ward
2 protected person upon application of the claimant unless
3 it shall be in writing, filed in duplicate with the clerk,
4 stating the claimant's name and address, and describing the
5 nature and the amount thereof, if ascertainable. It shall be
6 accompanied by the affidavit of the claimant, or of someone for
7 the claimant, that the amount is justly due, or if not due,
8 when it will or may become due, that no payments have been
9 made thereon which are not credited, and that there are no
10 offsets to the same, to the knowledge of the affiant, except as
11 therein stated. The duplicate of said claim shall be mailed
12 by the clerk to the conservator or the conservator's attorney
13 of record; however, valid contract claims arising in the
14 ordinary course of the conduct of the business or affairs of
15 the ward protected person by the conservator may be paid by the
16 conservator without requiring affidavit or filing.

17 Sec. 50. Section 633.656, Code 2020, is amended to read as
18 follows:

19 **633.656 How claim entitled.**

20 All claims filed against the estate of the ward protected
21 person shall be entitled in the name of the claimant against
22 the conservator as such, naming the conservator, and in all
23 further proceedings thereon, this title shall be preserved.

24 Sec. 51. Section 633.660, Code 2020, is amended to read as
25 follows:

26 **633.660 Execution and levy prohibited.**

27 No execution shall issue upon, nor shall any levy be made
28 against, any property of the estate of a ward protected person
29 under any judgment against the ward protected person or a
30 conservator, but the provisions of **this section** shall not be so
31 construed as to prevent the enforcement of a mortgage, pledge,
32 or other lien upon property in an appropriate proceeding.

33 Sec. 52. Section 633.661, Code 2020, is amended to read as
34 follows:

35 **633.661 Claims of conservators.**

1 If the conservator is a creditor of the ward protected
2 person, the conservator shall file the claim as other
3 creditors, and the court shall appoint some competent person as
4 temporary conservator to represent the ward protected person
5 at the hearing on the conservator's claim. The same procedure
6 shall be followed in the case of coconservators where all
7 such conservators are creditors of the ward protected person;
8 but if one of the coconservators is not a creditor of the
9 ward protected person, such disinterested conservator shall
10 represent the ward protected person at the hearing on any claim
11 against the ward protected person by a coconservator.

12 Sec. 53. Section 633.662, Code 2020, is amended to read as
13 follows:

14 **633.662 Claims not filed.**

15 The conservator may pay any valid claim against the estate of
16 the ward protected person even though such claim has not been
17 filed, but all such payments made by the conservator shall be
18 at the conservator's own peril.

19 Sec. 54. Section 633.664, Code 2020, is amended to read as
20 follows:

21 **633.664 Liens not affected by failure to file claim.**

22 Nothing in **sections 633.654 and 633.658** shall affect or
23 prevent an action or proceeding to enforce any mortgage,
24 pledge, or other lien upon the property of the ward protected
25 person.

26 Sec. 55. Section 633.665, Code 2020, is amended to read as
27 follows:

28 **633.665 Separate actions and claims.**

29 1. Any action pending against the ward protected person at
30 the time the conservator is appointed shall also be considered
31 a claim filed in the conservatorship if notice of substitution
32 is served on the conservator as defendant and a duplicate of
33 the proof of service of notice of such proceeding is filed in
34 the conservatorship proceeding.

35 2. A separate action based on a debt or other liability

1 of the ward protected person may be commenced against the
2 conservator in lieu of filing a claim in the conservatorship.
3 Such an action shall be commenced by serving an original notice
4 on the conservator and filing a duplicate of the proof of
5 service of notice of such proceeding in the conservatorship
6 proceeding. Such an action shall also be considered a claim
7 filed in the conservatorship. Such an action may be commenced
8 only in a county where the venue would have been proper if
9 there were no conservatorship and the action had been commenced
10 against the ward protected person.

11 Sec. 56. Section 633.667, Code 2020, is amended to read as
12 follows:

13 **633.667 Payment of claims in insolvent conservatorships.**
14 When it appears that the assets in a conservatorship are
15 insufficient to pay in full all the claims against such
16 conservatorship, the conservator shall report such matter to
17 the court, and the court shall, upon hearing, with notice to
18 all persons who have filed claims in the conservatorship, make
19 an order for the pro rata payment of claims giving claimants
20 the same priority, if any, as they would have if the ward
21 protected person were not under conservatorship.

22 Sec. 57. Section 633.668, Code 2020, is amended to read as
23 follows:

24 **633.668 Conservator may make gifts.**

25 For good cause shown and under order of court, a conservator
26 may make gifts on behalf of the ward protected person out of
27 the assets under a conservatorship to persons or religious,
28 educational, scientific, charitable, or other nonprofit
29 organizations to whom or to which such gifts were regularly
30 made prior to the commencement of the conservatorship, or on
31 a showing to the court that such gifts would benefit the ward
32 protected person or the ward's protected person's estate from
33 the standpoint of income, gift, estate or inheritance taxes.
34 The making of gifts out of the assets must not foreseeably
35 impair the ability to provide adequately for the best interests

1 of the ward protected person.

2 Sec. 58. Section 633.673, Code 2020, is amended to read as
3 follows:

4 **633.673 Court costs in guardianships.**

5 The ward protected person or the ward's protected person's
6 estate shall be charged with the court costs of a ward's
7 protected person's guardianship, including the guardian's fees
8 and the fees of the attorney for the guardian. The court
9 may, upon application, enter an order waiving payment of the
10 court costs in indigent cases. However, if the ward protected
11 person or ward's protected person's estate becomes financially
12 capable of paying any waived costs, the costs shall be paid
13 immediately.

14 Sec. 59. Section 633.676, Code 2020, is amended to read as
15 follows:

16 **633.676 Assets exhausted.**

17 At any time that the assets of the ward's protected person's
18 estate do not exceed the amount of the charges and claims
19 against it, the court may direct the conservator to proceed to
20 terminate the conservatorship.

21 Sec. 60. Section 633.677, Code 2020, is amended to read as
22 follows:

23 **633.677 Accounting to ward protected person — notice.**

24 Upon the termination of a conservatorship, the conservator
25 shall pay the costs of administration and shall render a full
26 and complete accounting to the ward protected person or the
27 ward's protected person's personal representative and to the
28 court. Notice of the final report of a conservator shall be
29 served on the ward protected person or the ward's protected
30 person's personal representative, in accordance with section
31 633.40, unless notice is waived. An order prescribing notice
32 may be made before or after the filing of the final report.

33 Sec. 61. Section 633.681, Code 2020, is amended to read as
34 follows:

35 **633.681 Assets of minor ward protected person exhausted.**

When the assets of a minor ward's protected person's conservatorship are exhausted or consist of personal property only of an aggregate value not in excess of twenty-five thousand dollars, the court, upon application or upon its own motion, may terminate the conservatorship. The order for termination shall direct the conservator to deliver any property remaining after the payment of allowed claims and expenses of administration to a custodian under any uniform transfers to minors Act. Such delivery shall have the same force and effect as if delivery had been made to the ward protected person after attaining majority.

12 Sec. 62. Section 633.682, Code 2020, is amended to read as
13 follows:

14 633.682 Discharge of conservator and release of bond.

15 Upon settlement of the final accounting of a conservator,
16 and upon determining that the property of the ward protected
17 person has been delivered to the person or persons lawfully
18 entitled thereto, the court shall discharge the conservator and
19 exonerate the surety on the conservator's bond.

EXPLANATION

The inclusion of this explanation does not constitute agreement with the explanation's substance by the members of the general assembly.

23 This bill relates to the opening, administration, and
24 termination of adult guardianships and conservatorships and
25 includes effective date and applicability provisions.

26 DIVISION I — ADULT GUARDIANSHIPS AND CONSERVATORSHIPS. The
27 bill amends current law to provide that Code sections apply to
28 both guardianships and conservatorships of adults.

29 The bill provides that a court visitor will be discharged
30 upon the appointment of a guardian or conservator unless
31 ordered by the court to continue.

32 The bill provides that a petition for guardianship shall
33 provide a brief description of the respondent's alleged
34 functional limitations which make the respondent unable to
35 provide for their safety, care, or necessities.

1 The bill provides that the court, for good cause, may share
2 the results of background checks related to the suitability
3 of a proposed guardian with the respondent, the respondent's
4 attorney, and the attorney of the protected person.

5 The bill provides that a court, for good cause and after a
6 hearing, may extend the duration of a temporary guardianship or
7 conservatorship beyond 60 days. An extension shall not be for
8 more than 60 days at a time.

9 The bill specifies that a court-ordered professional
10 evaluation conducted at or before a hearing on a petition for
11 the appointment of a guardian or conservator must be filed with
12 the court.

13 The bill amends the information required to be contained in
14 a guardian's written verified reports including the initial
15 care plan and annual reports, and information required to be
16 included in reports by conservators including the initial
17 financial management plan, the annual report, and the final
18 report.

19 The bill amends reporting requirements for guardians, and
20 requires that guardians must obtain court approval prior to any
21 significant deviation from the initial care plan filed with the
22 court. These changes are immediately effective and retroactive
23 to January 1, 2020.

24 The bill amends reporting requirements for conservators.
25 The conservator must give notice of filing a plan, and if no
26 objection is made within 20 days, the conservator must submit
27 a proposed order to the court approving the initial plan. If
28 there are objections to the plan, the court must set the matter
29 for hearing. These changes are immediately effective and
30 retroactive to January 1, 2020.

31 DIVISION II — CONFORMING CHANGES. The bill makes
32 conforming changes to the probate code by changing the term
33 "ward" to "protected person".