

Senate Study Bill 1035 - Introduced

SENATE FILE _____
BY (PROPOSED COMMITTEE
ON JUDICIARY BILL BY
CHAIRPERSON ZAUN)

A BILL FOR

1 An Act relating to the creation, administration, and
2 termination of minor and adult guardianships and
3 conservatorships.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

DIVISION I

MINOR GUARDIANSHIPS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35

Section 1. Section 232D.301, subsection 2, paragraph d, subparagraph (3), Code 2021, is amended to read as follows:

(3) Any adult who has had the primary care of the minor or with whom the minor has lived for ~~at least~~ any time during the six months prior to immediately preceding the filing of the petition.

Sec. 2. Section 232D.301, subsection 4, Code 2021, is amended to read as follows:

4. The petition shall state whether a limited guardianship is appropriate, and whether a conservatorship for the minor already exists.

Sec. 3. Section 232D.302, subsection 2, Code 2021, is amended to read as follows:

2. Notice shall be served upon the minor's known parents listed in the petition in accordance with the rules of civil procedure. If the parent has not filed a consent to the appointment of a guardian, the notice shall inform any parent named in the petition that the parent may be entitled to an attorney under the conditions described in section 232D.304.

Sec. 4. Section 232D.305, subsection 1, Code 2021, is amended to read as follows:

1. The court may appoint a court visitor for the minor. A person is qualified to serve as a court visitor if the person has demonstrated sufficient knowledge of guardianships to adequately perform the duties in subsection 3.

Sec. 5. Section 232D.305, subsection 3, paragraph b, Code 2021, is amended to read as follows:

~~b. Explaining~~ Providing to the minor, if the minor's age is appropriate, the substance of the petition, the purpose and effect of the guardianship proceeding, information regarding the rights of the minor at the hearing, and the general powers and duties of a guardian.

Sec. 6. Section 232D.305, Code 2021, is amended by adding

1 the following new subsection:

2 NEW SUBSECTION. 6. The court may order a court visitor to
3 continue to serve if the court determines continued service
4 would be in the best interest of the minor. If the court
5 continues the service of the court visitor, the court may limit
6 the direct duties of the court visitor as the court deems
7 necessary, in which case the court visitor shall thereafter
8 continue to serve until discharged by the court. In the
9 event the court does not order the court visitor to continue,
10 the order appointing the guardian shall discharge the court
11 visitor.

12 Sec. 7. Section 232D.307, subsections 1 and 2, Code 2021,
13 are amended to read as follows:

14 1. The court shall request criminal record checks and checks
15 of the child abuse, dependent adult abuse, and sex offender
16 registries in this state for all proposed guardians other than
17 financial institutions with Iowa trust powers unless a proposed
18 guardian has undergone the required background checks in this
19 section within the ~~twelve~~ six months prior to the filing of a
20 petition and the background checks have been provided to the
21 court.

22 2. The court shall review the results of background checks
23 in determining the suitability of a proposed guardian for
24 appointment, and may, for good cause, share the results of the
25 background check with the proposed guardian.

26 Sec. 8. Section 232D.401, subsections 1 and 3, Code 2021,
27 are amended to read as follows:

28 1. The order by the court appointing a guardian for a minor
29 shall state the basis for the order and the date on which the
30 first reporting period for the guardianship will end.

31 3. An order by the court appointing a guardian for a minor
32 shall state the powers granted to the guardian. Except as
33 otherwise limited by court order, the court may grant the
34 guardian the following powers, which may be exercised without
35 prior further court approval:

1 *a.* Taking custody of the minor and establishing the minor's
2 permanent residence if otherwise consistent with the terms of
3 any order of competent jurisdiction relating to the custody,
4 placement, detention, or commitment of the minor within the
5 state.

6 *b.* Consenting to medical, dental, and other health care
7 treatment and services for the minor.

8 *c.* Providing or arranging for the provision of education
9 for the minor including but not limited to preschool education,
10 primary education and secondary education, special education
11 and related services, and vocational services.

12 *d.* Consenting to professional services for the minor to
13 ensure the safety and welfare of the minor.

14 *e.* Applying for and receiving funds and benefits payable
15 for the support of the minor if the minor does not have a
16 conservator. If the minor has a conservator, the guardian
17 shall notify the conservator at least ten days before applying
18 for funds or benefits for the support of the minor.

19 *f.* Any other powers the court may specify.

20 Sec. 9. Section 232D.501, subsection 1, paragraph a, Code
21 2021, is amended by adding the following new subparagraph:

22 NEW SUBPARAGRAPH. (2A) The guardian's plan, if any, for
23 applying for and receiving funds and benefits payable for the
24 support of the minor.

25 Sec. 10. Section 232D.501, subsection 1, paragraph b, Code
26 2021, is amended by adding the following new subparagraph:

27 NEW SUBPARAGRAPH. (11) The results of the guardian's
28 efforts to apply for funds or benefits for the minor, and
29 an accounting for the use of such funds or benefits by the
30 guardian.

31 Sec. 11. Section 232D.503, Code 2021, is amended by adding
32 the following new subsection:

33 NEW SUBSECTION. 6. If the court orders termination of a
34 guardianship established under this chapter and the guardian
35 has custody of the minor's assets, the court shall order

1 delivery of the minor's assets to the minor or a fiduciary
2 acting under one or more of the following accounts:

3 a. A uniform transfer to minors Act account established for
4 the minor pursuant to chapter 565B or other state law.

5 b. An educational savings plan trust account established for
6 the minor pursuant to section 529 of the Internal Revenue Code
7 or chapter 12D.

8 c. An ABLE savings plan trust account established for the
9 minor pursuant to section 529A of the Internal Revenue Code or
10 chapter 12I.

11 DIVISION II

12 ADULT GUARDIANSHIPS AND CONSERVATORSHIPS

13 Sec. 12. Section 633.556, subsection 5, paragraph a, Code
14 2021, is amended to read as follows:

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

18 Sec. 13. Section 633.556, subsection 8, Code 2021, is
19 amended to read as follows:

20 8. The A petition for conservator shall provide a brief
21 description of the respondent's alleged functional limitations
22 that make the respondent unable to communicate or carry out
23 important decisions concerning the respondent's financial
24 affairs. A petition for guardian shall provide a brief
25 description of the respondent's alleged functional limitations
26 that make the respondent unable to provide for the respondent's
27 safety, or to provide for necessities.

28 Sec. 14. Section 633.562, subsections 1 and 3, Code 2021,
29 are amended to read as follows:

30 1. If the court determines that the appointment of a court
31 visitor would be in the best interest of the respondent,
32 the court shall appoint a court visitor at the expense
33 of the respondent or the respondent's estate, or, if the
34 respondent is indigent, the cost of the court visitor shall
35 be assessed against the county in which the proceedings are

1 pending. The court may appoint any qualified person as a court
2 visitor in a guardianship or conservatorship proceeding. A
3 person is qualified to serve in this capacity if the person
4 has demonstrated sufficient knowledge of guardianships or
5 conservatorships to adequately perform the duties in subsection
6 3.

7 3. Unless otherwise enlarged or circumscribed by the court,
8 the duties of a court visitor with respect to the respondent
9 shall include all of the following:

10 a. Conducting an ~~initial~~ in-person interview with the
11 respondent.

12 b. Explaining to the respondent the substance of the
13 petition, and the purpose and effect of the guardianship or
14 conservatorship proceeding, ~~the rights of the respondent at~~
15 ~~the hearing, and the general powers and duties of a guardian~~
16 ~~or conservator.~~

17 c. Determining, to the extent possible, the views of the
18 respondent regarding the proposed guardian or conservator,
19 ~~the proposed guardian's or conservator's powers and duties,~~
20 and the scope and duration of the proposed guardianship or
21 conservatorship.

22 Sec. 15. Section 633.562, Code 2021, is amended by adding
23 the following new subsection:

24 NEW SUBSECTION. 7. A court visitor shall be discharged
25 from all further duties upon appointment of a guardian or
26 conservator, unless otherwise ordered by the court. The court
27 may order a court visitor to continue to serve if the court
28 determines continued service would be in the best interest of
29 the protected person. If the court continues the service of
30 the court visitor, the court may limit the direct duties of
31 the court visitor as the court deems necessary, in which case
32 the court visitor shall thereafter continue to serve until
33 discharged by the court.

34 Sec. 16. Section 633.641, subsection 3, Code 2021, is
35 amended to read as follows:

1 3. If a protected person has executed a valid power of
2 attorney under [chapter 633B](#), the conservator shall act in
3 accordance with the applicable power of attorney provisions
4 of [chapter 633B](#) and the valid power of attorney controls the
5 conservator's powers and duties.

6 Sec. 17. Section 633.669, subsection 1, Code 2021, is
7 amended by adding the following new paragraph:

8 NEW PARAGRAPH. *Ob.* The guardian shall file an amended plan
9 when there has been a substantial change in circumstances or
10 the guardian seeks to deviate significantly from the plan.
11 The guardian must obtain approval of the amended plan before
12 implementing any of its provisions.

13 Sec. 18. Section 633.670, subsection 1, paragraph b, Code
14 2021, is amended to read as follows:

15 ~~b. Within two days after filing the initial plan, the~~ The
16 conservator shall give notice of the filing of the initial plan
17 with a copy of the plan to the protected person, the protected
18 person's attorney and court visitor, if any, and others as
19 directed by the court. The notice must state that any person
20 entitled to a copy of the plan must file any objections to the
21 plan not later than ~~fifteen~~ twenty days after it is filed.

22 Sec. 19. Section 633.675, subsections 2 and 3, Code 2021,
23 are amended to read as follows:

24 2. The court shall terminate a guardianship if it finds ~~by~~
25 ~~clear and convincing evidence~~ that the basis for appointing a
26 guardian pursuant to [section 633.552](#) has not been established.

27 3. The court shall terminate a conservatorship if the court
28 finds ~~by clear and convincing evidence~~ that the basis for
29 appointing a conservator pursuant to [section 633.553](#) or [633.554](#)
30 is not satisfied.

31 Sec. 20. REPEAL. Section 633.71, Code 2021, is repealed.

32 DIVISION III

33 CONFORMING CHANGES

34 Sec. 21. Section 633.3, subsections 9, 17, 22, and 23, Code
35 2021, are amended to read as follows:

1 9. *Conservator* — means a person appointed by the court
2 to have the custody and control of the property of a ~~ward~~
3 protected person under the provisions of this probate code.

4 17. *Estate* — the real and personal property of either a
5 decedent or a ~~ward~~ protected person, and may also refer to the
6 real and personal property of a trust described in section
7 633.10.

8 22. *Guardian* — means the person appointed by the court to
9 have the custody of the person of the ~~ward~~ protected person
10 under the provisions of this probate code.

11 23. *Guardian of the property* — at the election of the
12 person appointed by the court to have the custody and care of
13 the property of a ~~ward~~ protected person, the term "*guardian of*
14 *the property*" may be used, which term shall be synonymous with
15 the term "*conservator*".

16 Sec. 22. Section 633.78, subsection 1, unnumbered paragraph
17 1, Code 2021, is amended to read as follows:

18 A fiduciary under **this chapter** may present a written request
19 to any person for the purpose of obtaining property owned by
20 a decedent or by a ~~ward~~ protected person of a conservatorship
21 for which the fiduciary has been appointed, or property to
22 which a decedent or ~~ward~~ protected person is entitled, or
23 for information about such property needed to perform the
24 fiduciary's duties. The request must contain statements
25 confirming all of the following:

26 Sec. 23. Section 633.78, subsection 1, paragraph b, Code
27 2021, is amended to read as follows:

28 **b.** The request has been signed by all fiduciaries acting on
29 behalf of the decedent or ~~ward~~ protected person.

30 Sec. 24. Section 633.78, subsection 4, paragraph a, Code
31 2021, is amended to read as follows:

32 **a.** Damages sustained by the decedent's or ~~ward's~~ protected
33 person's estate.

34 Sec. 25. Section 633.80, Code 2021, is amended to read as
35 follows:

1 **633.80 Fiduciary of a fiduciary.**

2 A fiduciary has no authority to act in a matter wherein the
3 fiduciary's decedent or ~~ward~~ protected person was merely a
4 fiduciary, except that the fiduciary shall file a report and
5 accounting on behalf of the decedent or ~~ward~~ protected person
6 in said matter.

7 Sec. 26. Section 633.93, Code 2021, is amended to read as
8 follows:

9 **633.93 Limitation on actions affecting deeds.**

10 No action for recovery of any real estate sold by any
11 fiduciary can be maintained by any person claiming under the
12 deceased, the ~~ward~~ protected person, or a beneficiary, unless
13 brought within five years after the date of the recording of
14 the conveyance.

15 Sec. 27. Section 633.112, Code 2021, is amended to read as
16 follows:

17 **633.112 Discovery of property.**

18 The court may require any person suspected of having
19 possession of any property, including records and documents,
20 of the decedent, ~~ward~~ protected person, or the estate, or of
21 having had such property under the person's control, to appear
22 and submit to an examination under oath touching such matters,
23 and if on such examination it appears that the person has the
24 wrongful possession of any such property, the court may order
25 the delivery thereof to the fiduciary. Such a person shall be
26 liable to the estate for all damages caused by the person's
27 acts.

28 Sec. 28. Section 633.123, subsection 1, paragraph b,
29 subparagraph (3), Code 2021, is amended to read as follows:

30 (3) The needs and rights of the beneficiaries or the ~~ward~~
31 protected person.

32 Sec. 29. Section 633.580, subsections 1 and 4, Code 2021,
33 are amended to read as follows:

34 1. The name, age, and last known post office address of the
35 proposed ~~ward~~ protected person.

1 4. A general description of the property of the proposed
2 ward protected person within this state and of the proposed
3 ward's protected person's right to receive property; also, the
4 estimated present value of the real estate, the estimated value
5 of the personal property, and the estimated gross annual income
6 of the estate. If any money is payable, or to become payable,
7 to the proposed ward protected person by the United States
8 through the United States department of veterans affairs, the
9 petition shall so state.

10 Sec. 30. Section 633.591A, Code 2021, is amended to read as
11 follows:

12 **633.591A Voluntary petition for appointment of conservator**
13 **for a minor — standby basis.**

14 A person having physical and legal custody of a minor
15 may execute a verified petition for the appointment of a
16 standby conservator of the proposed ward's protected person's
17 property, upon the express condition that the petition shall
18 be acted upon by the court only upon the occurrence of an event
19 specified or the existence of a described condition of the
20 mental or physical health of the petitioner, the occurrence
21 of which event, or the existence of which condition, shall be
22 established in the manner directed in the petition.

23 Sec. 31. Section 633.603, Code 2021, is amended to read as
24 follows:

25 **633.603 Appointment of foreign conservators.**

26 When there is no conservatorship, nor any application
27 therefor pending, in this state, the duly qualified foreign
28 conservator or guardian of a nonresident ward protected
29 person may, upon application, be appointed conservator of the
30 property of such person in this state; provided that a resident
31 conservator is appointed to serve with the foreign conservator;
32 and provided further, that for good cause shown, the court
33 may appoint the foreign conservator to act alone without the
34 appointment of a resident conservator.

35 Sec. 32. Section 633.604, Code 2021, is amended to read as

1 follows:

2 **633.604 Application.**

3 The application for appointment of a foreign conservator
4 or guardian as conservator in this state shall include the
5 name and address of the nonresident ward protected person, and
6 of the nonresident conservator or guardian, and the name and
7 address of the resident conservator to be appointed. It shall
8 be accompanied by a certified copy of the original letters
9 or other authority conferring the power upon the foreign
10 conservator or guardian to act as such. The application
11 shall also state the cause for the appointment of the foreign
12 conservator to act as sole conservator, if such be the case.

13 Sec. 33. Section 633.605, Code 2021, is amended to read as
14 follows:

15 **633.605 Personal property.**

16 A foreign conservator or guardian of a nonresident may
17 be authorized by the court of the county wherein such ward
18 protected person has personal property to receive the same upon
19 compliance with the provisions of [sections 633.606](#), [633.607](#) and
20 [633.608](#).

21 Sec. 34. Section 633.607, Code 2021, is amended to read as
22 follows:

23 **633.607 Order for delivery.**

24 Upon the filing of the bond as above provided, and the court
25 being satisfied with the amount thereof, it shall order the
26 personal property of the ward protected person delivered to
27 such conservator or guardian.

28 Sec. 35. Section 633.633, Code 2021, is amended to read as
29 follows:

30 **633.633 Provisions applicable to all fiduciaries shall**
31 **govern.**

32 The provisions of this probate code applicable to all
33 fiduciaries shall govern the appointment, qualification, oath
34 and bond of guardians and conservators, except that a guardian
35 shall not be required to give bond unless the court, for good

1 cause, finds that the best interests of the ward protected
2 person require a bond. The court shall then fix the terms and
3 conditions of such bond.

4 Sec. 36. Section 633.633B, Code 2021, is amended to read as
5 follows:

6 **633.633B Tort liability of guardians and conservators.**

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

10 Sec. 37. Section 633.636, Code 2021, is amended to read as
11 follows:

12 **633.636 Effect of appointment of guardian or conservator.**

13 The appointment of a guardian or conservator shall not
14 constitute an adjudication that the ward protected person is of
15 unsound mind.

16 Sec. 38. Section 633.637, Code 2021, is amended to read as
17 follows:

18 **633.637 Powers of ward protected person.**

19 1. A ward protected person for whom a conservator has been
20 appointed shall not have the power to convey, encumber, or
21 dispose of property in any manner, other than by will if the
22 ward protected person possesses the requisite testamentary
23 capacity, unless the court determines that the ward protected
24 person has a limited ability to handle the ward's protected
25 person's own funds. If the court makes such a finding, the
26 court shall specify to what extent the ward protected person
27 may possess and use the ward's protected person's own funds.

28 2. Any modification of the powers of the ward protected
29 person that would be more restrictive of the ward's protected
30 person's control over the ward's protected person's financial
31 affairs shall be based upon clear and convincing evidence
32 and the burden of persuasion is on the conservator. Any
33 modification that would be less restrictive of the ward's
34 protected person's control over the ward's protected person
35 financial affairs shall be based upon proof in accordance with

1 the requirements of [section 633.675](#).

2 Sec. 39. Section 633.637A, Code 2021, is amended to read as
3 follows:

4 **633.637A Rights of ward protected person under guardianship.**

5 An adult ward protected person under a guardianship has the
6 right of communication, visitation, or interaction with other
7 persons upon the consent of the adult ward protected person,
8 subject to [section 633.635, subsection 2](#), paragraph "i", and
9 [section 633.635, subsection 3, paragraph "c"](#). If an adult ward
10 protected person is unable to give express consent to such
11 communication, visitation, or interaction with a person due
12 to a physical or mental condition, consent of an adult ward
13 protected person may be presumed by a guardian or a court based
14 on an adult ward's protected person's prior relationship with
15 such person.

16 Sec. 40. Section 633.638, Code 2021, is amended to read as
17 follows:

18 **633.638 Presumption of fraud.**

19 If a conservator be appointed, all contracts, transfers and
20 gifts made by the ward protected person after the filing of the
21 petition shall be presumed to be a fraud against the rights
22 and interest of the ward protected person except as otherwise
23 directed by the court pursuant to [section 633.637](#).

24 Sec. 41. Section 633.639, Code 2021, is amended to read as
25 follows:

26 **633.639 Title to ward's protected person's property.**

27 The title to all property of the ward protected person is
28 in the ward protected person and not the conservator subject,
29 however, to the possession of the conservator and to the
30 control of the court for the purposes of administration,
31 sale or other disposition, under the provisions of the
32 law. Any real property titled at any time in the name of a
33 conservatorship shall be deemed to be titled in the ward's
34 protected person's name subject to the conservator's right of
35 possession.

1 Sec. 42. Section 633.640, Code 2021, is amended to read as
2 follows:

3 **633.640 Conservator's right to possession.**

4 Every conservator shall have a right to, and shall take,
5 possession of all of the real and personal property of the
6 ward protected person. The conservator shall pay the taxes
7 and collect the income therefrom until the conservatorship is
8 terminated. The conservator may maintain an action for the
9 possession of the property, and to determine the title to the
10 same.

11 Sec. 43. Section 633.643, Code 2021, is amended to read as
12 follows:

13 **633.643 Disposal of will by conservator.**

14 When an instrument purporting to be the will of the ward
15 protected person comes into the hands of a conservator, the
16 conservator shall immediately deliver it to the court.

17 Sec. 44. Section 633.644, Code 2021, is amended to read as
18 follows:

19 **633.644 Court order to preserve testamentary intent of ward**
20 **protected person.**

21 Upon receiving an instrument purporting to be the will of a
22 living ward protected person under the provisions of section
23 633.643, the court may open said will and read it. The court
24 with or without notice, as it may determine, may enter such
25 orders in the conservatorship as it deems advisable for the
26 proper administration of the conservatorship in light of the
27 expressed testamentary intent of the ward protected person.

28 Sec. 45. Section 633.645, Code 2021, is amended to read as
29 follows:

30 **633.645 Court to deliver will to clerk.**

31 An instrument purporting to be the will of a ward protected
32 person coming into the hands of the court under the provisions
33 of [section 633.643](#), shall thereafter be resealed by the court
34 and be deposited with the clerk to be held by said clerk as
35 provided in [sections 633.286 through 633.289](#).

1 Sec. 46. Section 633.653A, Code 2021, is amended to read as
2 follows:

3 **633.653A Claims for cost of medical care or services.**

4 The provision of medical care or services to a ~~ward~~ protected
5 person who is a recipient of medical assistance under chapter
6 249A creates a claim against the conservatorship for the amount
7 owed to the provider under the medical assistance program for
8 the care or services. The amount of the claim, after being
9 allowed or established as provided in this part, shall be paid
10 by the conservator from the assets of the conservatorship.

11 Sec. 47. Section 633.654, Code 2021, is amended to read as
12 follows:

13 **633.654 Form and verification of claims — general**
14 **requirements.**

15 No claim shall be allowed against the estate of a ~~ward~~
16 protected person upon application of the claimant unless
17 it shall be in writing, filed in duplicate with the clerk,
18 stating the claimant's name and address, and describing the
19 nature and the amount thereof, if ascertainable. It shall be
20 accompanied by the affidavit of the claimant, or of someone for
21 the claimant, that the amount is justly due, or if not due,
22 when it will or may become due, that no payments have been
23 made thereon which are not credited, and that there are no
24 offsets to the same, to the knowledge of the affiant, except as
25 therein stated. The duplicate of said claim shall be mailed
26 by the clerk to the conservator or the conservator's attorney
27 of record; however, valid contract claims arising in the
28 ordinary course of the conduct of the business or affairs of
29 the ~~ward~~ protected person by the conservator may be paid by the
30 conservator without requiring affidavit or filing.

31 Sec. 48. Section 633.656, Code 2021, is amended to read as
32 follows:

33 **633.656 How claim entitled.**

34 All claims filed against the estate of the ~~ward~~ protected
35 person shall be entitled in the name of the claimant against

1 the conservator as such, naming the conservator, and in all
2 further proceedings thereon, this title shall be preserved.

3 Sec. 49. Section 633.660, Code 2021, is amended to read as
4 follows:

5 **633.660 Execution and levy prohibited.**

6 No execution shall issue upon, nor shall any levy be made
7 against, any property of the estate of a ward protected person
8 under any judgment against the ward protected person or a
9 conservator, but the provisions of **this section** shall not be so
10 construed as to prevent the enforcement of a mortgage, pledge,
11 or other lien upon property in an appropriate proceeding.

12 Sec. 50. Section 633.661, Code 2021, is amended to read as
13 follows:

14 **633.661 Claims of conservators.**

15 If the conservator is a creditor of the ward protected
16 person, the conservator shall file the claim as other
17 creditors, and the court shall appoint some competent person as
18 temporary conservator to represent the ward protected person
19 at the hearing on the conservator's claim. The same procedure
20 shall be followed in the case of coconservators where all
21 such conservators are creditors of the ward protected person;
22 but if one of the coconservators is not a creditor of the
23 ward protected person, such disinterested conservator shall
24 represent the ward protected person at the hearing on any claim
25 against the ward protected person by a coconservator.

26 Sec. 51. Section 633.662, Code 2021, is amended to read as
27 follows:

28 **633.662 Claims not filed.**

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

33 Sec. 52. Section 633.664, Code 2021, is amended to read as
34 follows:

35 **633.664 Liens not affected by failure to file claim.**

1 Nothing in sections 633.654 and 633.658 shall affect or
2 prevent an action or proceeding to enforce any mortgage,
3 pledge, or other lien upon the property of the ~~ward~~ protected
4 person.

5 Sec. 53. Section 633.665, Code 2021, is amended to read as
6 follows:

7 **633.665 Separate actions and claims.**

8 1. Any action pending against the ~~ward~~ protected person at
9 the time the conservator is appointed shall also be considered
10 a claim filed in the conservatorship if notice of substitution
11 is served on the conservator as defendant and a duplicate of
12 the proof of service of notice of such proceeding is filed in
13 the conservatorship proceeding.

14 2. A separate action based on a debt or other liability
15 of the ~~ward~~ protected person may be commenced against the
16 conservator in lieu of filing a claim in the conservatorship.
17 Such an action shall be commenced by serving an original notice
18 on the conservator and filing a duplicate of the proof of
19 service of notice of such proceeding in the conservatorship
20 proceeding. Such an action shall also be considered a claim
21 filed in the conservatorship. Such an action may be commenced
22 only in a county where the venue would have been proper if
23 there were no conservatorship and the action had been commenced
24 against the ~~ward~~ protected person.

25 Sec. 54. Section 633.667, Code 2021, is amended to read as
26 follows:

27 **633.667 Payment of claims in insolvent conservatorships.**

28 When it appears that the assets in a conservatorship are
29 insufficient to pay in full all the claims against such
30 conservatorship, the conservator shall report such matter to
31 the court, and the court shall, upon hearing, with notice to
32 all persons who have filed claims in the conservatorship, make
33 an order for the pro rata payment of claims giving claimants
34 the same priority, if any, as they would have if the ~~ward~~
35 protected person were not under conservatorship.

1 Sec. 55. Section 633.668, Code 2021, is amended to read as
2 follows:

3 **633.668 Conservator may make gifts.**

4 For good cause shown and under order of court, a conservator
5 may make gifts on behalf of the ward protected person out of
6 the assets under a conservatorship to persons or religious,
7 educational, scientific, charitable, or other nonprofit
8 organizations to whom or to which such gifts were regularly
9 made prior to the commencement of the conservatorship, or on
10 a showing to the court that such gifts would benefit the ward
11 protected person or the ward's protected person estate from the
12 standpoint of income, gift, estate or inheritance taxes. The
13 making of gifts out of the assets must not foreseeably impair
14 the ability to provide adequately for the best interests of the
15 ward protected person.

16 Sec. 56. Section 633.673, Code 2021, is amended to read as
17 follows:

18 **633.673 Court costs in guardianships.**

19 The ward protected person or the ward's protected person's
20 estate shall be charged with the court costs of a ward's
21 protected person's guardianship, including the guardian's fees
22 and the fees of the attorney for the guardian. The court
23 may, upon application, enter an order waiving payment of the
24 court costs in indigent cases. However, if the ward protected
25 person or ward's protected person's estate becomes financially
26 capable of paying any waived costs, the costs shall be paid
27 immediately.

28 Sec. 57. Section 633.676, Code 2021, is amended to read as
29 follows:

30 **633.676 Assets exhausted.**

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

35 Sec. 58. Section 633.677, Code 2021, is amended to read as

1 follows:

2 **633.677 Accounting to ward protected person — notice.**

3 Upon the termination of a conservatorship, the conservator
4 shall pay the costs of administration and shall render a full
5 and complete accounting to the ward protected person or the
6 ward's protected person's personal representative and to the
7 court. Notice of the final report of a conservator shall be
8 served on the ward protected person or the ward's protected
9 person's personal representative, in accordance with section
10 633.40, unless notice is waived. An order prescribing notice
11 may be made before or after the filing of the final report.

12 Sec. 59. Section 633.681, Code 2021, is amended to read as
13 follows:

14 **633.681 Assets of minor ward protected person exhausted.**

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

26 Sec. 60. Section 633.682, Code 2021, is amended to read as
27 follows:

28 **633.682 Discharge of conservator and release of bond.**

29 Upon settlement of the final accounting of a conservator,
30 and upon determining that the property of the ward protected
31 person has been delivered to the person or persons lawfully
32 entitled thereto, the court shall discharge the conservator and
33 exonerate the surety on the conservator's bond.

34 **EXPLANATION**

35 The inclusion of this explanation does not constitute agreement with

1 the explanation's substance by the members of the general assembly.

2 Guardians are persons and entities appointed by the
3 court to make decisions for persons regarding the person's
4 care, maintenance, health, education, welfare, and safety.
5 Conservators are appointed by the court to make decisions for
6 persons regarding management of their financial affairs.

7 This bill amends Code provisions governing guardianships and
8 conservatorships.

9 DIVISION I — MINOR GUARDIANSHIPS. Under current law, a
10 petition for guardianship only requires the address and name
11 of any adult who was the primary caregiver or lived with the
12 minor for the six months prior. The bill provides that a
13 petition for guardianship must include the name and address of
14 the primary caregiver or adult with whom the minor has lived
15 anytime during the six months immediately before the filing.
16 Under the bill, the petition must also include whether there is
17 already a conservatorship in place for the minor.

18 The bill provides that notice of a filed petition for
19 guardianship shall inform parents, who have not filed a
20 consent to the appointment of a guardian with the court that
21 the parents may be entitled to an attorney under current Code
22 section 232D.304.

23 The bill provides the qualifications and term of service of
24 a court visitor for the minor.

25 The bill provides that results of background checks of
26 the proposed guardian in the 6 months prior to filing of the
27 petition may be used; current law permits the use of background
28 checks within the prior 12 months. Results of the background
29 checks may be shared with good cause to the proposed guardian.

30 The bill provides that the order appointing a guardian for a
31 minor shall state the date that the first reporting period for
32 the guardianship will end.

33 The bill provides that the initial care plan shall include
34 the guardian's plan for funds and benefits payable for the
35 support of the minor and the verified annual report shall

1 include the results of the guardian's efforts to receive
2 funds or benefits and the account for the use of the funds or
3 benefits.

4 The bill provides that upon termination of guardianship
5 in which the guardian has custody of the minor's assets, the
6 assets must be returned to the minor or a fiduciary for the
7 minor for any of the following accounts: a uniform transfer to
8 minors Act account, an educational savings plan trust account,
9 or an ABLE savings plan trust account.

10 DIVISION II — ADULT GUARDIANSHIPS. The bill changes the
11 petition for appointment of guardian or conservator for an
12 adult to have the same requirement for both guardianship and
13 conservatorships. Currently, conservatorships are not required
14 to provide the name and address of the proposed conservator and
15 the reason why the conservator was chosen.

16 The bill provides qualifications of who is qualified to
17 serve as a court visitor and when they are discharged. current
18 law does not provide specific qualifications of a court
19 visitor.

20 The bill specifies that when a valid power of attorney has
21 been executed prior to an appointment of a conservator, the
22 power of attorney controls and the conservator must adhere to
23 the relevant provisions of Code chapter 633B.

24 The bill provides that a protected person has 20 days to
25 contest the initial financial plan for conservatorships. Under
26 current law, the protected individual only has 15 days.

27 The bill removes the standard of clear and convincing
28 evidence to prove cause for termination of a guardianship or
29 conservatorship.

30 DIVISION III — CONFORMING CHANGES. The current Code uses
31 the term "ward" to refer to a person for whom the court has
32 appointed a guardian or conservator. The bill substitutes the
33 term "protected person" for the term "ward".