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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-FOURTH SESSION

H. F. No. 1909

03/05/2025

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The bill was read for the first time and referred to the Committee on Judiciary Finance and Civil Law

1.1 A bill for an act
1.2 relating to civil law; modifying provisions relating to guardians; amending
1.3 Minnesota Statutes 2024, sections 524.5-120; 524.5-311; 524.5-313.

1.4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.5 Section 1. Minnesota Statutes 2024, section 524.5-120, is amended to read:

1.6 **524.5-120 BILL OF RIGHTS FOR PERSONS SUBJECT TO GUARDIANSHIP**
1.7 **OR CONSERVATORSHIP.**

1.8 The person subject to guardianship or person subject to conservatorship retains all rights
1.9 not restricted by court order and these rights must be enforced by the court. These rights
1.10 include the right to:

1.11 (1) treatment with dignity and respect;

1.12 (2) due consideration of current and previously stated personal desires and preferences,
1.13 including but not limited to medical treatment preferences, cultural practices, religious
1.14 beliefs, and other preferences and opinions in decisions made by the guardian or conservator;

1.15 (3) participate in decision making about and receive timely and appropriate health care
1.16 and medical treatment that does not violate known preferences or conscientious, religious,
1.17 or moral beliefs of the person subject to guardianship or person subject to conservatorship;

1.18 (4) exercise control of all aspects of life unless delegated specifically to the guardian or
1.19 conservator by court order;

1.20 (5) guardianship or conservatorship services individually suited to the conditions and
1.21 needs of the person subject to guardianship or the person subject to conservatorship;

- 2.1 (6) petition the court to prevent or initiate a change in abode;
- 2.2 (7) care, comfort, social and recreational needs, employment and employment supports,
2.3 training, education, habilitation, and rehabilitation care and services, within available
2.4 resources;
- 2.5 (8) be consulted concerning, and to decide to the extent possible, the reasonable care
2.6 and disposition of the clothing, furniture, vehicles, and other personal property and effects
2.7 of the person subject to guardianship or person subject to conservatorship, to object to the
2.8 disposition of personal property and effects, and to petition the court for a review of the
2.9 guardian's or conservator's proposed disposition;
- 2.10 (9) personal privacy;
- 2.11 (10) communicate, visit, or interact with others, including receiving visitors ~~or~~, making
2.12 or receiving telephone calls, sending or receiving personal mail, or sending or receiving
2.13 electronic communications including through social media, or participating in social activities;
2.14 ~~unless. If the guardian has good cause to believe a restriction of communication, visitation,~~
2.15 or interaction is necessary because interaction with the person poses a risk of significant
2.16 physical, psychological, or financial harm to the person subject to guardianship, and there
2.17 is no other means to avoid the significant harm, the guardian must submit to the court a
2.18 written petition supporting the guardian's belief. The court may order a restriction of
2.19 communication, visitation, or interaction with the person who is the subject of the guardian's
2.20 petition to the extent necessary to prevent the risk of significant harm. In all cases, the
2.21 guardian shall provide written notice of the restrictions imposed ~~to~~ by the court, to the person
2.22 subject to guardianship, and to the person subject to restrictions. The person subject to
2.23 guardianship or the person subject to restrictions may petition the court to remove or modify
2.24 the restrictions;
- 2.25 (11) marry and procreate, unless court approval is required;
- 2.26 (12) elect or object to sterilization as provided in section 524.5-313, paragraph (c), clause
2.27 (4), item (iv);
- 2.28 (13) at any time, petition the court for termination or modification of the guardianship
2.29 or conservatorship, and any decisions made by the guardian or conservator in relation to
2.30 powers granted, or for other appropriate relief;
- 2.31 (14) be represented by an attorney in any proceeding or for the purpose of petitioning
2.32 the court;
- 2.33 (15) vote, unless restricted by the court;

3.1 (16) be consulted concerning, and make decisions to the extent possible, about personal
3.2 image and name, unless restricted by the court; and

3.3 (17) execute a health care directive, including both health care instructions and the
3.4 appointment of a health care agent, if the court has not granted a guardian any of the powers
3.5 or duties under section 524.5-313, paragraph (c), clause (1), (2), or (4).

3.6 Sec. 2. Minnesota Statutes 2024, section 524.5-311, is amended to read:

3.7 **524.5-311 EMERGENCY GUARDIAN.**

3.8 (a) If the court finds that compliance with the procedures of this article will likely result
3.9 in substantial harm to the respondent's health, safety, or welfare, and that no other person
3.10 appears to have authority and willingness to act in the circumstances, the court, on petition
3.11 by a person interested in the respondent's welfare, may appoint an emergency guardian
3.12 whose authority may not exceed 60 days and who may exercise only the powers specified
3.13 in the order. A county that is acting under section 626.557, subdivision 10, by petitioning
3.14 for appointment of an emergency guardian on behalf of a vulnerable adult may be granted
3.15 authority to act for a period not to exceed 90 days. An emergency guardian's appointment
3.16 under this section may only be extended once for a period not to exceed 60 days if the court
3.17 finds good cause for the continuation of the guardianship. Immediately upon receipt of the
3.18 petition for an emergency guardianship, the court shall appoint a lawyer to represent the
3.19 respondent in the proceeding. ~~Except as otherwise provided in paragraph (b),~~ Reasonable
3.20 notice of the time and place of a hearing on the petition must be given to the respondent,
3.21 interested parties, and any other persons as the court directs.

3.22 ~~(b) An emergency guardian may be appointed without notice to the respondent and the~~
3.23 ~~respondent's lawyer only if the court finds from affidavit or other sworn testimony that the~~
3.24 ~~respondent will be substantially harmed before a hearing on the appointment can be held.~~
3.25 ~~If the court appoints an emergency guardian without notice to the respondent, the respondent~~
3.26 ~~must be given notice of the appointment within 48 hours after the appointment. The court~~
3.27 ~~shall hold a hearing on the appropriateness of the appointment within five days after the~~
3.28 ~~appointment.~~

3.29 ~~(e) (b)~~ Appointment of an emergency guardian, ~~with or without notice,~~ is not a
3.30 determination of the respondent's incapacity.

3.31 ~~(d) (c)~~ The court may remove an emergency guardian at any time. An emergency guardian
3.32 shall make any report the court requires. In other respects, the provisions of this article
3.33 concerning guardians apply to an emergency guardian.

4.1 ~~(e)~~ (d) Any documents or information disclosing or pertaining to health or financial
4.2 information shall be filed as confidential documents, consistent with the bill of particulars
4.3 under section 524.5-121.

4.4 (e) If the respondent is a patient in a hospital or a resident of a care facility, a rebuttable
4.5 presumption exists that there is no risk of substantial harm to the respondent's health, safety,
4.6 or welfare.

4.7 Sec. 3. Minnesota Statutes 2024, section 524.5-313, is amended to read:

4.8 **524.5-313 POWERS AND DUTIES OF GUARDIAN.**

4.9 (a) A guardian shall be subject to the control and direction of the court at all times and
4.10 in all things.

4.11 (b) The court shall grant to a guardian only those powers necessary to provide for the
4.12 demonstrated needs of the person subject to guardianship.

4.13 (c) The court may appoint a guardian if it determines that all the powers and duties listed
4.14 in this section are needed to provide for the needs of the incapacitated person. The court
4.15 may also appoint a guardian if it determines that a guardian is needed to provide for the
4.16 needs of the incapacitated person through the exercise of some, but not all, of the powers
4.17 and duties listed in this section. The duties and powers of a guardian or those which the
4.18 court may grant to a guardian include, but are not limited to:

4.19 (1) the power to have custody of the person subject to guardianship and the power to
4.20 establish a place of abode within or outside the state, except as otherwise provided in this
4.21 clause. The person subject to guardianship or any interested person may petition the court
4.22 to prevent or to initiate a change in abode. A person subject to guardianship may not be
4.23 admitted to a regional treatment center by the guardian except:

4.24 (i) after a hearing under chapter 253B;

4.25 (ii) for outpatient services; or

4.26 (iii) for the purpose of receiving temporary care for a specific period of time not to
4.27 exceed 90 days in any calendar year;

4.28 (2) the duty to provide for the care, comfort, and maintenance needs of the person subject
4.29 to guardianship, including food, clothing, shelter, health care, social and recreational
4.30 requirements, and, whenever appropriate, training, education, and habilitation or
4.31 rehabilitation. The guardian has no duty to pay for these requirements out of personal funds.
4.32 Whenever possible and appropriate, the guardian should meet these requirements through

5.1 governmental benefits or services to which the person subject to guardianship is entitled,
5.2 rather than from the estate of the person subject to guardianship;

5.3 (3) the duty to take reasonable care of the clothing, furniture, vehicles, and other personal
5.4 effects of the person subject to guardianship, and, if other property requires protection, the
5.5 power to seek appointment of a conservator of the estate. The guardian must give notice by
5.6 mail to interested persons prior to the disposition of the clothing, furniture, vehicles, or
5.7 other personal effects of the person subject to guardianship. The notice must inform the
5.8 person of the right to object to the disposition of the property within ten days of the date of
5.9 mailing and to petition the court for a review of the guardian's proposed actions. Notice of
5.10 the objection must be served by mail or personal service on the guardian and the person
5.11 subject to guardianship unless the person subject to guardianship is the objector. The guardian
5.12 served with notice of an objection to the disposition of the property may not dispose of the
5.13 property unless the court approves the disposition after a hearing;

5.14 (4)(i) the power to give any necessary consent to enable the person subject to guardianship
5.15 to receive necessary medical or other professional care, counsel, treatment, or service, except
5.16 that no guardian may give consent for psychosurgery, electroshock, sterilization, or
5.17 experimental treatment of any kind unless the procedure is first approved by order of the
5.18 court as provided in this clause. The guardian shall not consent to any medical care for the
5.19 person subject to guardianship which violates the known conscientious, religious, or moral
5.20 belief of the person subject to guardianship;

5.21 (ii) a guardian who believes a procedure described in item (i) requiring prior court
5.22 approval to be necessary for the proper care of the person subject to guardianship, shall
5.23 petition the court for an order and, in the case of a public guardianship under chapter 252A,
5.24 obtain the written recommendation of the commissioner of human services. The court shall
5.25 fix the time and place for the hearing and shall give notice to the person subject to
5.26 guardianship in such manner as specified in section 524.5-308 and to interested persons.
5.27 The court shall appoint an attorney to represent the person subject to guardianship who is
5.28 not represented by counsel, provided that such appointment shall expire upon the expiration
5.29 of the appeal time for the order issued by the court under this section or the order dismissing
5.30 a petition, or upon such other time or event as the court may direct. In every case the court
5.31 shall determine if the procedure is in the best interest of the person subject to guardianship.
5.32 In making its determination, the court shall consider a written medical report which
5.33 specifically considers the medical risks of the procedure, whether alternative, less restrictive
5.34 methods of treatment could be used to protect the best interest of the person subject to

6.1 guardianship, and any recommendation of the commissioner of human services for a public
6.2 person subject to guardianship. The standard of proof is that of clear and convincing evidence;

6.3 (iii) in the case of a petition for sterilization of a person with developmental disabilities
6.4 subject to guardianship, the court shall appoint a licensed physician, a psychologist who is
6.5 qualified in the diagnosis and treatment of developmental disability, and a social worker
6.6 who is familiar with the social history and adjustment of the person subject to guardianship
6.7 or the case manager for the person subject to guardianship to examine or evaluate the person
6.8 subject to guardianship and to provide written reports to the court. The reports shall indicate
6.9 why sterilization is being proposed, whether sterilization is necessary and is the least intrusive
6.10 method for alleviating the problem presented, and whether it is in the best interest of the
6.11 person subject to guardianship. The medical report shall specifically consider the medical
6.12 risks of sterilization, the consequences of not performing the sterilization, and whether
6.13 alternative methods of contraception could be used to protect the best interest of the person
6.14 subject to guardianship;

6.15 (iv) any person subject to guardianship whose right to consent to a sterilization has not
6.16 been restricted under this section or section 252A.101 may be sterilized only if the person
6.17 subject to guardianship consents in writing or there is a sworn acknowledgment by an
6.18 interested person of a nonwritten consent by the person subject to guardianship. The consent
6.19 must certify that the person subject to guardianship has received a full explanation from a
6.20 physician or registered nurse of the nature and irreversible consequences of the sterilization;

6.21 (v) a guardian or the public guardian's designee who acts within the scope of authority
6.22 conferred by letters of guardianship under section 252A.101, subdivision 7, and according
6.23 to the standards established in this chapter or in chapter 252A shall not be civilly or criminally
6.24 liable for the provision of any necessary medical care, including, but not limited to, the
6.25 administration of psychotropic medication or the implementation of aversive and deprivation
6.26 procedures to which the guardian or the public guardian's designee has consented;

6.27 (5) in the event there is no duly appointed conservator of the estate of the person subject
6.28 to guardianship, the guardian shall have the power to approve or withhold approval of any
6.29 contract, except for necessities, which the person subject to guardianship may make or wish
6.30 to make;

6.31 (6) the duty and power to exercise supervisory authority over the person subject to
6.32 guardianship in a manner which limits civil rights and restricts personal freedom only to
6.33 the extent necessary to provide needed care and services. A guardian may not restrict the
6.34 ability of the person subject to guardianship to communicate, visit, or interact with others,

7.1 including receiving visitors ~~or~~, making or receiving telephone calls, sending or receiving
 7.2 personal mail, or sending or receiving electronic communications including through social
 7.3 media, or participating in social activities; ~~unless~~. If the guardian has good cause to believe
 7.4 a restriction of communication, visitation, or interaction is necessary because interaction
 7.5 with the person poses a risk of significant physical, psychological, or financial harm to the
 7.6 person subject to guardianship, and there is no other means to avoid such significant harm,
 7.7 the guardian must submit to the court a written petition supporting the guardian's belief.
 7.8 The court may order a restriction of communication, visitation, or interaction with the person
 7.9 who is the subject of the guardian's petition to the extent necessary to prevent the risk of
 7.10 significant harm. In all cases, the guardian shall provide written notice of the restrictions
 7.11 imposed ~~to~~ by the court; to the person subject to guardianship; and to the person subject to
 7.12 restrictions. The person subject to guardianship or the person subject to restrictions may
 7.13 petition the court to remove or modify the restrictions;

7.14 (7) if there is no acting conservator of the estate for the person subject to guardianship,
 7.15 the guardian has the power to apply on behalf of the person subject to guardianship for any
 7.16 assistance, services, or benefits available to the person subject to guardianship through any
 7.17 unit of government;

7.18 (8) unless otherwise ordered by the court, the person subject to guardianship retains the
 7.19 right to vote;

7.20 (9) the power to establish an ABLE account for a person subject to guardianship or
 7.21 conservatorship. By this provision a guardian only has the authority to establish an ABLE
 7.22 account, but may not administer the ABLE account in the guardian's capacity as guardian.
 7.23 The guardian may appoint or name a person to exercise signature authority over an ABLE
 7.24 account, including the individual selected by the eligible individual or the eligible individual's
 7.25 agent under a power of attorney; conservator; spouse; parent; sibling; grandparent; or
 7.26 representative payee, whether an individual or organization, appointed by the SSA, in that
 7.27 order; and

7.28 (10) if there is no conservator appointed for the person subject to guardianship, the
 7.29 guardian has the duty and power to institute suit on behalf of the person subject to
 7.30 guardianship and represent the person subject to guardianship in expungement proceedings,
 7.31 harassment proceedings, and all civil court proceedings, including but not limited to
 7.32 restraining orders, orders for protection, name changes, conciliation court, housing court,
 7.33 family court, probate court, and juvenile court, provided that a guardian may not settle or
 7.34 compromise any claim or debt owed to the estate without court approval.