

(SENATE AUTHORS: LIMMER)

DATE	D-PG	OFFICIAL STATUS
03/14/2011	504	Introduction and first reading Referred to Judiciary and Public Safety

1.1

A bill for an act

1.2

relating to the judiciary; providing for payment of examiner fees in civil

1.3

commitment cases; limiting the right to counsel in paternity proceedings;

1.4

eliminating jury trials in eviction actions; providing for payment of costs by

1.5

parents in certain guardianship or conservatorship proceedings; amending

1.6

Minnesota Statutes 2010, sections 253B.07, subdivision 3; 253B.17, subdivision

1.7

3; 253B.23, subdivision 1; 257.69, subdivision 1; 504B.335; 504B.345,

1.8

subdivision 1; 504B.355; 524.5-502; repealing Minnesota Statutes 2010, section

1.9

504B.351.

1.10

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

1.11

Section 1. Minnesota Statutes 2010, section 253B.07, subdivision 3, is amended to read:

1.12

Subd. 3. **Examiners.** After a petition has been filed, the court shall appoint an

1.13

examiner. Prior to the hearing, the court shall inform the proposed patient of the right to

1.14

an independent second examination. At the proposed patient's request, the court shall

1.15

appoint a second examiner of the patient's choosing to be paid for by the county ~~at a rate~~

1.16

~~of compensation fixed by the court~~ as provided in section 253B.23, subdivision 1.

1.17

Sec. 2. Minnesota Statutes 2010, section 253B.17, subdivision 3, is amended to read:

1.18

Subd. 3. **Examiners.** The court shall appoint an examiner and, at the patient's

1.19

request, shall appoint a second examiner of the patient's choosing to be paid for by the

1.20

county ~~at a rate of compensation to be fixed by the court~~ as provided in section 253B.23,

1.21

subdivision 1. Unless otherwise agreed by the parties, the examiners shall file a report

1.22

with the court not less than 48 hours prior to the hearing under this section.

1.23

Sec. 3. Minnesota Statutes 2010, section 253B.23, subdivision 1, is amended to read:

Subdivision 1. **Costs of hearings.** (a) In each proceeding under this chapter the court shall allow and order paid to each witness subpoenaed the fees and mileage prescribed by law; to each examiner a reasonable sum for services and for travel; to persons conveying the patient to the place of detention, disbursements for the travel, board, and lodging of the patient and of themselves and their authorized assistants; and to the patient's counsel, when appointed by the court, a reasonable sum for travel and for the time spent in court or in preparing for the hearing. Upon the court's order, the county auditor of the county of financial responsibility shall issue a warrant on the county treasurer for payment of the amounts allowed, ~~excluding the costs of the examiner,~~ which must be paid by the ~~state courts~~ county.

(b) Whenever venue of a proceeding has been transferred under this chapter, the costs of the proceedings shall be reimbursed to the county where the proceedings were conducted by the county of financial responsibility.

(c) The state court administrator shall establish a fee schedule or rate of compensation to be used for determining the payment of examiners under this chapter.

Sec. 4. Minnesota Statutes 2010, section 257.69, subdivision 1, is amended to read:

Subdivision 1. **Representation by counsel.** In all proceedings under sections 257.51 to 257.74, any party may be represented by counsel. The county attorney shall represent the public authority. The court ~~shall~~ may appoint counsel for a party who is unable to pay timely for counsel in ~~proceedings~~ a proceeding or the portion of a proceeding under sections 257.51 to 257.74 that involves the determination of the parent and child relationship.

Sec. 5. Minnesota Statutes 2010, section 504B.335, is amended to read:

**504B.335 ANSWER; TRIAL.**

(a) At the court appearance specified in the summons, the defendant may answer the complaint, and the court shall hear and decide the action, unless it grants a continuance of the trial as provided in section 504B.341.

~~(b) Either party may demand a trial by jury.~~

~~(c)~~ The proceedings in the action are the same as in other civil actions, except as provided in sections 504B.281 to 504B.371.

~~(d)~~ (c) The court, in scheduling appearances and hearings under this section, shall give priority to any eviction brought under section 504B.171, or on the basis that the defendant is a tenant and is causing a nuisance or seriously endangers the safety of other residents, their property, or the landlord's property.

Sec. 6. Minnesota Statutes 2010, section 504B.345, subdivision 1, is amended to read:

Subdivision 1. **General.** (a) If the court ~~or jury~~ finds for the plaintiff, the court shall immediately enter judgment that the plaintiff shall have recovery of the premises, and shall tax the costs against the defendant. The court shall issue execution in favor of the plaintiff for the costs and also immediately issue a writ of recovery of premises and order to vacate.

(b) The court shall give priority in issuing a writ of recovery of premises and order to vacate for an eviction action brought under section 504B.171 or on the basis that the tenant is causing a nuisance or seriously endangers the safety of other residents, their property, or the landlord's property.

(c) If the court ~~or jury~~ finds for the defendant, the court shall enter judgment for the defendant, tax the costs against the plaintiff, and issue execution in favor of the defendant.

(d) Except in actions brought: (1) under section 504B.291 as required by section 609.5317, subdivision 1; (2) under section 504B.171; or (3) on the basis that the tenant is causing a nuisance or seriously endangers the safety of other residents, their property, or the landlord's property, upon a showing by the defendant that immediate restitution of the premises would work a substantial hardship upon the defendant or the defendant's family, the court shall stay the writ of recovery of premises and order to vacate for a reasonable period, not to exceed seven days.

Sec. 7. Minnesota Statutes 2010, section 504B.355, is amended to read:

**504B.355 FORM OF VERDICT.**

The ~~verdict of the jury or the~~ finding of the court in favor of the plaintiff in an eviction action shall be substantially in the following form:

At a court held at ....., on the ..... day of ....., year ....., before ....., a judge in and for the county of ..... in an action between ....., plaintiff, and ....., defendant, the ~~jury (or, if the action be tried without a jury, the court) find~~ court finds that the facts alleged in the complaint are true, and the plaintiff shall recover possession of the premises and the defendant(s) shall vacate the premises immediately.

.....

If the ~~verdict or~~ finding is for the defendant, it shall be sufficient to find that the facts alleged in the complaint are not true.

Sec. 8. Minnesota Statutes 2010, section 524.5-502, is amended to read:

**524.5-502 COMPENSATION AND EXPENSES.**

(a) The court may authorize a proceeding under this article to proceed in forma pauperis, as provided in chapter 563.

(b) In proceedings under this article, a lawyer or health professional rendering necessary services with regard to the appointment of a guardian or conservator, the administration of the protected person's estate or personal affairs, or the restoration of that person's capacity or termination of the protective proceeding shall be entitled to compensation from the protected person's estate or from the county having jurisdiction over the proceedings if the ward or protected person is indigent. When the court determines that other necessary services have been provided for the benefit of the ward or protected person by a lawyer or health professional, the court may order fees to be paid from the estate of the protected person or from the county having jurisdiction over the proceedings if the ward or protected person is indigent. If, however, the court determines that a petitioner, guardian, or conservator has not acted in good faith, the court shall order some or all of the fees or costs incurred in the proceedings to be borne by the petitioner, guardian, or conservator not acting in good faith. In determining compensation for a guardian or conservator of an indigent person, the court shall consider a fee schedule recommended by the Board of County Commissioners. The fee schedule may also include a maximum compensation based on the living arrangements of the ward or protected person. If these services are provided by a public or private agency, the county may contract on a fee-for-service basis with that agency.

(c) When the court determines that a guardian or conservator has rendered necessary services or has incurred necessary expenses for the benefit of the ward or protected person, the court may order reimbursement or compensation to be paid from the estate of the protected person or from the county having jurisdiction over the guardianship or protective proceeding if the ward or protected person is indigent. The court may not deny an award of fees solely because the ward or protected person is a recipient of medical assistance. In determining compensation for a guardian or conservator of an indigent person, the court shall consider a fee schedule recommended by the Board of County Commissioners. The fee schedule may also include a maximum compensation based on the living arrangements of the ward or protected person. If these services are provided by a public or private agency, the county may contract on a fee-for-service basis with that agency.

(d) The court shall order reimbursement or compensation if the guardian or conservator requests payment and the guardian or conservator was nominated by the court or by the county adult protection unit because no suitable relative or other person was available to provide guardianship or protective proceeding services necessary to prevent maltreatment of a vulnerable adult, as defined in section 626.5572, subdivision 15. In determining compensation for a guardian or conservator of an indigent person, the court shall consider a fee schedule recommended by the Board of County Commissioners. The

fee schedule may also include a maximum compensation based on the living arrangements of the ward or protected person. If these services are provided by a public or private agency, the county may contract on a fee-for-service basis with that agency.

(e) When a county employee serves as a guardian or conservator as part of employment duties, the court shall order compensation if the guardian or conservator performs necessary services that are not compensated by the county. The court may order reimbursement to the county from the protected person's estate for compensation paid by the county for services rendered by a guardian or conservator who is a county employee but only if the county shows that after a diligent effort it was unable to arrange for an independent guardian or conservator.

(f) Notwithstanding paragraphs (a) to (e), if the petitioner or an individual who is seeking appointment as a guardian or conservator is a parent of the proposed ward or protected person, the court may order the parent to pay some or all of the fees, costs, or expenses that would otherwise be paid by the county under this subdivision.

Sec. 9. **REPEALER.**

Minnesota Statutes 2010, section 504B.351, is repealed.