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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-SEVENTH SESSION

H. F. No. **2188**

02/13/2012 Authored by Kiffmeyer, Shimanski, Lohmer and LeMieur
The bill was read for the first time and referred to the Committee on Government Operations and Elections
03/07/2012 Adoption of Report: Pass as Amended and re-referred to the Committee on Judiciary Policy and Finance
03/19/2012 Adoption of Report: Pass as Amended and re-referred to the Committee on Ways and Means

1.1 A bill for an act
1.2 relating to elections; conforming certain voter eligibility provisions for
1.3 individuals under guardianship to constitutional requirements; modifying other
1.4 related procedures; appropriating money; amending Minnesota Statutes 2010,
1.5 sections 201.014, subdivision 2; 201.091, subdivision 9; 201.15, subdivision 1;
1.6 204C.10; 524.5-102, by adding subdivisions; 524.5-120; 524.5-310; 524.5-313;
1.7 524.5-316; proposing coding for new law in Minnesota Statutes, chapter 524.

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

1.9 Section 1. Minnesota Statutes 2010, section 201.014, subdivision 2, is amended to read:

1.10 Subd. 2. **Not eligible.** The following individuals are not eligible to vote. Any
1.11 individual:

1.12 (a) convicted of treason or any felony whose civil rights have not been restored;

1.13 (b) under a guardianship ~~in which the court order revokes the ward's right to vote~~; or

1.14 (c) found by a court of law to be legally incompetent.

1.15 Sec. 2. Minnesota Statutes 2010, section 201.091, subdivision 9, is amended to read:

1.16 Subd. 9. **Restricted data.** A list provided for public inspection or purchase, ~~for jury~~
1.17 ~~selection~~, or in response to a law enforcement inquiry, must not include a voter's date of
1.18 birth or any part of a voter's Social Security number, driver's license number, identification
1.19 card number, military identification card number, or passport number.

1.20 Sec. 3. Minnesota Statutes 2010, section 201.15, subdivision 1, is amended to read:

1.21 Subdivision 1. **Guardianships and incompetents.** Pursuant to the Help America
1.22 Vote Act of 2002, Public Law 107-252, the state court administrator shall report regularly
1.23 by electronic means to the secretary of state the name, address, date of birth, and, if

2.1 available, driver's license or state identification card number of each individual 18 years
2.2 of age or over, who since the last report:

2.3 (1) was placed under a guardianship ~~in which the court order revokes the ward's~~
2.4 ~~right to vote~~; or

2.5 (2) was adjudged legally incompetent.

2.6 The court administrator shall also report the same information for each individual
2.7 transferred to the jurisdiction of the court who meets a condition specified in clause (1) or
2.8 (2). The secretary of state shall determine if any of the persons in the report is registered to
2.9 vote and shall prepare a list of those registrants for the county auditor. The county auditor
2.10 shall change the status on the record in the statewide registration system of any individual
2.11 named in the report to indicate that the individual is not eligible to reregister or vote.

2.12 Sec. 4. Minnesota Statutes 2010, section 204C.10, is amended to read:

2.13 **204C.10 PERMANENT REGISTRATION; VERIFICATION OF**
2.14 **REGISTRATION.**

2.15 (a) An individual seeking to vote shall sign a polling place roster which states
2.16 that the individual is at least 18 years of age, a citizen of the United States, has resided
2.17 in Minnesota for 20 days immediately preceding the election, maintains residence at
2.18 the address shown, is not under a guardianship ~~in which the court order revokes the~~
2.19 ~~individual's right to vote~~, has not been found by a court of law to be legally incompetent to
2.20 vote or has the right to vote because, if the individual was convicted of a felony, the felony
2.21 sentence has expired or been completed or the individual has been discharged from the
2.22 sentence, is registered and has not already voted in the election. The roster must also state:
2.23 "I understand that deliberately providing false information is a felony punishable by not
2.24 more than five years imprisonment and a fine of not more than \$10,000, or both."

2.25 (b) A judge may, before the applicant signs the roster, confirm the applicant's name,
2.26 address, and date of birth.

2.27 (c) After the applicant signs the roster, the judge shall give the applicant a voter's
2.28 receipt. The voter shall deliver the voter's receipt to the judge in charge of ballots as proof
2.29 of the voter's right to vote, and thereupon the judge shall hand to the voter the ballot. The
2.30 voters' receipts must be maintained during the time for notice of filing an election contest.

2.31 Sec. 5. Minnesota Statutes 2010, section 524.5-102, is amended by adding a
2.32 subdivision to read:

3.1 Subd. 5a. **Guardianship.** "Guardianship" means that a ward is under a court
3.2 order that restricts the right to vote due to the ward lacking sufficient understanding or
3.3 capacity to vote.

3.4 Sec. 6. Minnesota Statutes 2010, section 524.5-102, is amended by adding a
3.5 subdivision to read:

3.6 Subd. 9a. **Limited guardianship.** "Limited guardianship" means that a ward
3.7 is under a court order that restricts some rights due to the ward lacking sufficient
3.8 understanding or capacity but does not restrict the right to vote.

3.9 Sec. 7. Minnesota Statutes 2010, section 524.5-120, is amended to read:

3.10 **524.5-120 BILL OF RIGHTS FOR WARDS AND PROTECTED PERSONS.**

3.11 The ward or protected person retains all rights not restricted by court order and these
3.12 rights must be enforced by the court. These rights include the right to:

3.13 (1) treatment with dignity and respect;

3.14 (2) due consideration of current and previously stated personal desires, medical
3.15 treatment preferences, religious beliefs, and other preferences and opinions in decisions
3.16 made by the guardian or conservator;

3.17 (3) receive timely and appropriate health care and medical treatment that does not
3.18 violate known conscientious, religious, or moral beliefs of the ward or protected person;

3.19 (4) exercise control of all aspects of life not delegated specifically by court order
3.20 to the guardian or conservator;

3.21 (5) guardianship, limited guardianship, or conservatorship services individually
3.22 suited to the ward's or protected person's conditions and needs;

3.23 (6) petition the court to prevent or initiate a change in abode;

3.24 (7) care, comfort, social and recreational needs, training, education, habilitation, and
3.25 rehabilitation care and services, within available resources;

3.26 (8) be consulted concerning, and to decide to the extent possible, the reasonable
3.27 care and disposition of the ward's or protected person's clothing, furniture, vehicles, and
3.28 other personal effects, to object to the disposition of personal property and effects, and to
3.29 petition the court for a review of the guardian's or conservator's proposed disposition;

3.30 (9) personal privacy;

3.31 (10) communication and visitation with persons of the ward's or protected person's
3.32 choice, provided that if the guardian has found that certain communication or visitation
3.33 may result in harm to the ward's or protected person's health, safety, or well-being, that

4.1 communication or visitation may be restricted but only to the extent necessary to prevent
4.2 the harm;

4.3 (11) marry and procreate, unless court approval is required, and to consent or object
4.4 to sterilization as provided in section 524.5-313, paragraph (c), clause (4), item (iv);

4.5 (12) petition the court for termination or modification of the guardianship or
4.6 conservatorship or for other appropriate relief;

4.7 (13) be represented by an attorney in any proceeding or for the purpose of petitioning
4.8 the court; and

4.9 ~~(14) vote, unless restricted by the court; and~~

4.10 ~~(15)~~ (14) execute a health care directive, including both health care instructions and
4.11 the appointment of a health care agent, if the court has not granted a guardian any of the
4.12 powers or duties under section 524.5-313, paragraph (c), clause (1), (2), or (4).

4.13 Pursuant to the Minnesota Constitution, article VII, an individual placed under a
4.14 guardianship shall not be entitled or permitted to vote at any election in this state.

4.15 Sec. 8. Minnesota Statutes 2010, section 524.5-310, is amended to read:

4.16 **524.5-310 FINDINGS; ORDER OF APPOINTMENT.**

4.17 (a) The court may appoint a limited or unlimited guardian for a respondent only if it
4.18 finds by clear and convincing evidence that:

4.19 (1) the respondent is an incapacitated person; and

4.20 (2) the respondent's identified needs cannot be met by less restrictive means,
4.21 including use of appropriate technological assistance.

4.22 (b) Alternatively, the court, with appropriate findings, may treat the petition as
4.23 one for a protective order under section 524.5-401, enter any other appropriate order, or
4.24 dismiss the proceeding.

4.25 (c) The court shall grant to a guardian only those powers necessitated by the ward's
4.26 limitations and demonstrated needs and, whenever feasible, make appointive and other
4.27 orders that will encourage the development of the ward's maximum self-reliance and
4.28 independence. Any power not specifically granted to the guardian, following a written
4.29 finding by the court of a demonstrated need for that power, is retained by the ward.

4.30 In making an order, the court shall explicitly declare whether the order establishes a
4.31 guardianship or a limited guardianship, and the effect of the order on the ward's right to
4.32 vote.

4.33 (d) If the court grants the guardian any of the powers or duties under section
4.34 524.5-313, paragraph (c), clause (1), (2), or (4), the authority of a previously appointed
4.35 health care agent to make health care decisions, as defined in section 145C.01, subdivision

5.1 5, is suspended until further order of the court or as otherwise provided by this section.

5.2 The court may declare a health care directive unenforceable as provided in section
5.3 145C.09, subdivision 3. The court may declare that a health care directive has been
5.4 revoked by the ward if the court finds, by clear and convincing evidence, that the ward has
5.5 revoked the health care directive as provided in section 145C.09, subdivision 1.

5.6 (e) A health care agent or other person legally appointed by the ward to control final
5.7 disposition of the ward's remains under section 145C.05, subdivision 2, clause (7), or
5.8 149A.80, or a health care agent authorized to make organ or tissue donations under section
5.9 525A.04 or 525A.09, may make health care decisions as defined in section 145C.01,
5.10 subdivision 5, on behalf of the ward for the purpose of preparing the ward's body for organ
5.11 or tissue donation or final disposition of the ward's remains, as applicable.

5.12 (f) Within 14 days after an appointment, a guardian shall send or deliver to the ward,
5.13 and counsel if represented at the hearing, a copy of the order of appointment accompanied
5.14 by a notice which advises the ward of the right to appeal the guardianship appointment in
5.15 the time and manner provided by the Rules of Appellate Procedure.

5.16 (g) Each year, within 30 days after the anniversary date of an appointment, a
5.17 guardian shall send or deliver to the ward and to interested persons of record with the
5.18 court a notice of the right to request termination or modification of the guardianship or to
5.19 request an order that is in the best interests of the ward or for other appropriate relief, and
5.20 notice of the status of the ward's right to vote.

5.21 (h) Within 14 days after an appointment, a guardian shall send, by certified mail, a
5.22 copy of the order of appointment to the ward's current residential address. The mailing
5.23 must be addressed to the ward and, if applicable, the administrator or other responsible
5.24 person at the facility in which the ward resides. If a ward's residential address changes, the
5.25 guardian must send a new copy of the original order of appointment and, if applicable,
5.26 any modification to the order made by the court to the new residential address by certified
5.27 mail within 30 days of the change of address. The requirements of this paragraph do not
5.28 apply if the guardian resides at the same address as the ward.

5.29 Sec. 9. Minnesota Statutes 2010, section 524.5-313, is amended to read:

5.30 **524.5-313 POWERS AND DUTIES OF GUARDIAN.**

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

5.33 (b) The court shall grant to a guardian only those powers necessary to provide
5.34 for the demonstrated needs of the ward.

6.1 (c) The court may appoint a guardian if it determines that all the powers and duties
6.2 listed in this section are needed to provide for the needs of the incapacitated person. The
6.3 court may also appoint a guardian if it determines that a guardian is needed to provide
6.4 for the needs of the incapacitated person through the exercise of some, but not all, of the
6.5 powers and duties listed in this section. The duties and powers of a guardian or those
6.6 which the court may grant to a guardian include, but are not limited to:

6.7 (1) the power to have custody of the ward and the power to establish a place of
6.8 abode within or outside the state, except as otherwise provided in this clause. The ward or
6.9 any interested person may petition the court to prevent or to initiate a change in abode. A
6.10 ward may not be admitted to a regional treatment center by the guardian except:

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

6.12 (ii) for outpatient services; or

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

6.15 (2) the duty to provide for the ward's care, comfort, and maintenance needs,
6.16 including food, clothing, shelter, health care, social and recreational requirements, and,
6.17 whenever appropriate, training, education, and habilitation or rehabilitation. The guardian
6.18 has no duty to pay for these requirements out of personal funds. Whenever possible and
6.19 appropriate, the guardian should meet these requirements through governmental benefits
6.20 or services to which the ward is entitled, rather than from the ward's estate. Failure to
6.21 satisfy the needs and requirements of this clause shall be grounds for removal of a private
6.22 guardian, but the guardian shall have no personal or monetary liability;

6.23 (3) the duty to take reasonable care of the ward's clothing, furniture, vehicles,
6.24 and other personal effects, and, if other property requires protection, the power to seek
6.25 appointment of a conservator of the estate. The guardian must give notice by mail to
6.26 interested persons prior to the disposition of the ward's clothing, furniture, vehicles, or
6.27 other personal effects. The notice must inform the person of the right to object to the
6.28 disposition of the property within ten days of the date of mailing and to petition the court
6.29 for a review of the guardian's proposed actions. Notice of the objection must be served
6.30 by mail or personal service on the guardian and the ward unless the ward is the objector.
6.31 The guardian served with notice of an objection to the disposition of the property may not
6.32 dispose of the property unless the court approves the disposition after a hearing;

6.33 (4)(i) the power to give any necessary consent to enable the ward to receive
6.34 necessary medical or other professional care, counsel, treatment, or service, except that no
6.35 guardian may give consent for psychosurgery, electroshock, sterilization, or experimental
6.36 treatment of any kind unless the procedure is first approved by order of the court as

7.1 provided in this clause. The guardian shall not consent to any medical care for the ward
7.2 which violates the known conscientious, religious, or moral belief of the ward;

7.3 (ii) a guardian who believes a procedure described in item (i) requiring prior court
7.4 approval to be necessary for the proper care of the ward, shall petition the court for an
7.5 order and, in the case of a public guardianship under chapter 252A, obtain the written
7.6 recommendation of the commissioner of human services. The court shall fix the time
7.7 and place for the hearing and shall give notice to the ward in such manner as specified
7.8 in section 524.5-308 and to interested persons. The court shall appoint an attorney to
7.9 represent the ward who is not represented by counsel, provided that such appointment
7.10 shall expire upon the expiration of the appeal time for the order issued by the court under
7.11 this section or the order dismissing a petition, or upon such other time or event as the court
7.12 may direct. In every case the court shall determine if the procedure is in the best interest
7.13 of the ward. In making its determination, the court shall consider a written medical report
7.14 which specifically considers the medical risks of the procedure, whether alternative, less
7.15 restrictive methods of treatment could be used to protect the best interest of the ward, and
7.16 any recommendation of the commissioner of human services for a public ward. The
7.17 standard of proof is that of clear and convincing evidence;

7.18 (iii) in the case of a petition for sterilization of a developmentally disabled ward, the
7.19 court shall appoint a licensed physician, a psychologist who is qualified in the diagnosis
7.20 and treatment of developmental disability, and a social worker who is familiar with the
7.21 ward's social history and adjustment or the case manager for the ward to examine or
7.22 evaluate the ward and to provide written reports to the court. The reports shall indicate
7.23 why sterilization is being proposed, whether sterilization is necessary and is the least
7.24 intrusive method for alleviating the problem presented, and whether it is in the best
7.25 interest of the ward. The medical report shall specifically consider the medical risks of
7.26 sterilization, the consequences of not performing the sterilization, and whether alternative
7.27 methods of contraception could be used to protect the best interest of the ward;

7.28 (iv) any ward whose right to consent to a sterilization has not been restricted under
7.29 this section or section 252A.101 may be sterilized only if the ward consents in writing
7.30 or there is a sworn acknowledgment by an interested person of a nonwritten consent
7.31 by the ward. The consent must certify that the ward has received a full explanation
7.32 from a physician or registered nurse of the nature and irreversible consequences of the
7.33 sterilization;

7.34 (v) a guardian or the public guardian's designee who acts within the scope of
7.35 authority conferred by letters of guardianship under section 252A.101, subdivision 7, and
7.36 according to the standards established in this chapter or in chapter 252A shall not be

8.1 civilly or criminally liable for the provision of any necessary medical care, including,
 8.2 but not limited to, the administration of psychotropic medication or the implementation
 8.3 of aversive and deprivation procedures to which the guardian or the public guardian's
 8.4 designee has consented;

8.5 (5) in the event there is no duly appointed conservator of the ward's estate, the
 8.6 guardian shall have the power to approve or withhold approval of any contract, except for
 8.7 necessities, which the ward may make or wish to make;

8.8 (6) the duty and power to exercise supervisory authority over the ward in a manner
 8.9 which limits civil rights and restricts personal freedom only to the extent necessary to
 8.10 provide needed care and services;

8.11 (7) if there is no acting conservator of the estate for the ward, the guardian has the
 8.12 power to apply on behalf of the ward for any assistance, services, or benefits available to
 8.13 the ward through any unit of government;

8.14 ~~(8) unless otherwise ordered by the court, the ward retains the right to vote.~~

8.15 Pursuant to the Minnesota Constitution, article VII, an individual placed under a
 8.16 guardianship shall not be entitled or permitted to vote at any election in this state.

8.17 Sec. 10. Minnesota Statutes 2010, section 524.5-316, is amended to read:

8.18 **524.5-316 REPORTS; MONITORING OF GUARDIANSHIP; COURT**
 8.19 **ORDERS.**

8.20 Subdivision 1. Annual report of guardian. (a) A guardian shall report to the
 8.21 court in writing on the condition of the ward at least annually and whenever ordered by
 8.22 the court. A copy of the report must be provided to the ward and to interested persons
 8.23 of record with the court. A report must state or contain:

8.24 (1) the current mental, physical, and social condition of the ward;

8.25 (2) the living arrangements for all addresses of the ward during the reporting period;

8.26 (3) any restrictions placed on the ward's right to communication and visitation with
 8.27 persons of the ward's choice and the factual bases for those restrictions;

8.28 (4) the medical, educational, vocational, and other services provided to the ward and
 8.29 the guardian's opinion as to the adequacy of the ward's care;

8.30 (5) a recommendation as to the need for continued guardianship and any
 8.31 recommended changes in the scope of the guardianship, including whether, in the view of
 8.32 the guardian, the ward's eligibility to vote should be restored or continue unchanged;

8.33 (6) an address and telephone number where the guardian can be contacted;

8.34 (7) whether the guardian has ever been removed for cause from serving as a guardian
 8.35 or conservator and, if so, the case number and court location;

9.1 (8) any changes occurring that would affect the accuracy of information contained
9.2 in the most recent criminal background study of the guardian conducted under section
9.3 524.5-118; and

9.4 (9) if applicable, the amount of reimbursement for services rendered to the ward
9.5 that the guardian received during the previous year that were not reimbursed by county
9.6 contract.

9.7 (b) A ward or interested person of record with the court may submit to the court a
9.8 written statement disputing statements or conclusions regarding the condition of the ward
9.9 that are contained in the report and may petition the court for an order that is in the best
9.10 interests of the ward or for other appropriate relief.

9.11 (c) An interested person may notify the court in writing that the interested person
9.12 does not wish to receive copies of reports required under this section.

9.13 (d) The court may appoint a visitor to review a report, interview the ward or
9.14 guardian, and make any other investigation the court directs.

9.15 (e) The court shall establish a system for monitoring guardianships, including the
9.16 filing and review of annual reports. If an annual report is not filed within 60 days of the
9.17 required date, the court shall issue an order to show cause.

9.18 Subd. 2. Annual review; ward's capacity to vote. (a) If the well-being report of a
9.19 limited guardian under subdivision 1 indicates a change in conditions affecting a ward's
9.20 capacity to make independent voting decisions at an election, the court may issue a written
9.21 order as to the ward's eligibility to vote. If the court makes a determination regarding
9.22 a ward's capacity or incapacity to vote, the court must consider the limited guardian's
9.23 recommendation, any documents submitted in the annual well-being report, and previous
9.24 court orders and records related to the ward's capacity as evidence of the ward's capacity
9.25 or incapacity to make independent voting decisions, and must affirmatively order that the
9.26 ward's eligibility to vote is rescinded or continues unchanged, provided that the right to
9.27 vote may not be rescinded without a hearing. An order by the court under this paragraph
9.28 may be modified by the court at any time. A copy of the written order shall be sent to the
9.29 guardian by standard United States mail within 30 days of the date it is issued.

9.30 (b) The limited guardian shall send, by certified mail, a copy of the court order or
9.31 notification made by the court under this subdivision to the ward's current residential
9.32 address within 30 days after it is made or the order is received. The mailing must be
9.33 addressed to the ward and, if applicable, the administrator or other responsible person
9.34 at the facility in which the ward resides. If a ward's residential address changes, the
9.35 guardian shall send a new copy of the court's most recent order by certified mail to the

10.1 new residential address within 30 days of the change of address. The requirements of this
10.2 paragraph do not apply if the guardian resides at the same address as the ward.

10.3 **Sec. 11. [524.5-318] DUTIES OF FACILITIES PROVIDING HOUSING TO A**
10.4 **WARD.**

10.5 (a) The administrator or other responsible person overseeing a residential facility
10.6 housing one or more wards must:

10.7 (1) maintain all documents submitted to the facility by a guardian related to a ward's
10.8 guardianship status and eligibility to vote;

10.9 (2) maintain a written list of wards who reside in the facility and the current voting
10.10 eligibility status of each, as stated in the court order of appointment provided under section
10.11 524.5-310 or a review determination provided under section 524.5-316, subdivision 2; and

10.12 (3) ensure that staff directly assisting wards in the voting process only assist those
10.13 who are eligible to vote.

10.14 (b) As used in this section, "residential facility" has the meaning provided in section
10.15 201.061, subdivision 3, paragraph (c).

10.16 **EFFECTIVE DATE.** This section is effective June 1, 2012. The initial list required
10.17 by paragraph (a), clause (2), may be compiled on an ongoing basis as documentation is
10.18 received from guardians as required by law.

10.19 **Sec. 12. NOTIFICATION OF VOTING ELIGIBILITY STATUS; CURRENT**
10.20 **GUARDIANS.**

10.21 No later than August 1, 2012, the state court administrator shall provide to each
10.22 guardian, by standard United States mail, a notice restating the current voting eligibility
10.23 status of any ward subject to the guardian's supervision. A ward's voting eligibility
10.24 status for purposes of the notice shall be based on the order of the court establishing
10.25 the guardianship or any subsequent order of the court affecting the ward's right to vote,
10.26 provided that nothing in this section requires the court to reconsider a previous order or
10.27 issue a new order related to the ward's right to vote for the sole purpose of providing the
10.28 notice required under this section.

10.29 **EFFECTIVE DATE.** This section is effective the day following final enactment.

10.30 **Sec. 13. ELECTION MATERIALS; USE OF EXISTING SUPPLY.**

10.31 The secretary of state, county auditors, and municipal clerks may exhaust existing
10.32 supplies of voter registration applications and any other affected election materials before

11.1 producing materials with the modifications required by this act. Necessary updates to any
11.2 informational guide prepared by the secretary of state shall be published as an addendum
11.3 and distributed by the secretary of state by electronic means.

11.4 Sec. 14. **APPROPRIATIONS.**

11.5 (a) \$13,600 is appropriated from the general fund to the secretary of state for costs
11.6 associated with this act.

11.7 (b) \$..... is appropriated from the general fund to the supreme court for the cost of
11.8 providing notifications under section 12.

11.9 **EFFECTIVE DATE.** This section is effective June 1, 2012.

11.10 Sec. 15. **EFFECTIVE DATE.**

11.11 Except where otherwise provided, this act is effective August 1, 2012, and applies to
11.12 eligibility to vote in elections occurring on or after that date.