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State of Minnesota

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HOUSE OF REPRESENTATIVES

NINETY-FIRST SESSION

H. F. No. 298

01/24/2019 Authored by Lien
The bill was read for the first time and referred to the Judiciary Finance and Civil Law Division
02/17/2020 Adoption of Report: Placed on the General Register as Amended
Read for the Second Time

1.1 A bill for an act
1.2 relating to guardians; amending the background study requirements for parents of
1.3 proposed wards; amending Minnesota Statutes 2018, section 524.5-118, subdivision
1.4 1.

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

1.6 Section 1. Minnesota Statutes 2018, section 524.5-118, subdivision 1, is amended to read:

1.7 Subdivision 1. When required; exception. (a) The court shall require a background
1.8 study under this section:

1.9 (1) before the appointment of a guardian or conservator, unless a background study has
1.10 been done on the person under this section within the previous two years; and

1.11 (2) once every two years after the appointment, if the person continues to serve as a
1.12 guardian or conservator.

1.13 (b) The background study must include:

1.14 (1) criminal history data from the Bureau of Criminal Apprehension, other criminal
1.15 history data held by the commissioner of human services, and data regarding whether the
1.16 person has been a perpetrator of substantiated maltreatment of a vulnerable adult or minor;

1.17 (2) criminal history data from the National Criminal Records Repository if the proposed
1.18 guardian or conservator has not resided in Minnesota for the previous ten years or if the
1.19 Bureau of Criminal Apprehension information received from the commissioner of human
1.20 services under subdivision 2, paragraph (b), indicates that the subject is a multistate offender
1.21 or that the individual's multistate offender status is undetermined; and

2.1 (3) state licensing agency data if a search of the database or databases of the agencies  
2.2 listed in subdivision 2a shows that the proposed guardian or conservator has ever held a  
2.3 professional license directly related to the responsibilities of a professional fiduciary from  
2.4 an agency listed in subdivision 2a that was conditioned, suspended, revoked, or canceled.

2.5 (c) If the guardian or conservator is not an individual, the background study must be  
2.6 done on all individuals currently employed by the proposed guardian or conservator who  
2.7 will be responsible for exercising powers and duties under the guardianship or  
2.8 conservatorship.

2.9 (d) If the court determines that it would be in the best interests of the ward or protected  
2.10 person to appoint a guardian or conservator before the background study can be completed,  
2.11 the court may make the appointment pending the results of the study, however, the  
2.12 background study must then be completed as soon as reasonably possible after appointment,  
2.13 no later than 30 days after appointment.

2.14 (e) The fee for conducting a background study for appointment of a professional guardian  
2.15 or conservator must be paid by the guardian or conservator. In other cases, the fee must be  
2.16 paid as follows:

2.17 (1) if the matter is proceeding in forma pauperis, the fee is an expense for purposes of  
2.18 section 524.5-502, paragraph (a);

2.19 (2) if there is an estate of the ward or protected person, the fee must be paid from the  
2.20 estate; or

2.21 (3) in the case of a guardianship or conservatorship of the person that is not proceeding  
2.22 in forma pauperis, the court may order that the fee be paid by the guardian or conservator  
2.23 or by the court.

2.24 (f) The requirements of this subdivision do not apply if the guardian or conservator is:

2.25 (1) a state agency or county;

2.26 (2) a parent or guardian of a proposed ward or protected person who has a developmental  
2.27 disability, if:

2.28 (i) the parent or guardian has raised the proposed ward or protected person in the family  
2.29 home until the time the petition is filed or the proposed ward enters a licensed facility prior  
2.30 to turning 18 years of age and the parent or guardian has raised the proposed ward until the  
2.31 time the proposed ward entered the facility; and

3.1 (ii) ~~unless~~ counsel appointed for the proposed ward or protected person under section  
3.2 524.5-205, paragraph (d); 524.5-304, paragraph (b); 524.5-405, paragraph (a); or 524.5-406,  
3.3 paragraph (b), ~~recommends~~ does not recommend a background study; or

3.4 (3) a bank with trust powers, bank and trust company, or trust company, organized under  
3.5 the laws of any state or of the United States and which is regulated by the commissioner of  
3.6 commerce or a federal regulator.

3.7 **EFFECTIVE DATE.** This section is effective August 1, 2020, and applies to background  
3.8 checks required on or after that date.