

that the respondent has engaged in harassment. When a petition alleges harassment as defined by subdivision 1, paragraph (a), clause (1), the petition must further allege an immediate and present danger of harassment before the court may issue a temporary restraining order under this section. When signed by a referee, the temporary order becomes effective upon the referee's signature.

(b) Notice need not be given to the respondent before the court issues a temporary restraining order under this subdivision. A copy of the restraining order must be served on the respondent along with the order for hearing and petition, as provided in subdivision 3. If the respondent is a juvenile, whenever possible, a copy of the restraining order, along with notice of the pendency of the case and the time and place of the hearing, shall also be served by mail at the last known address upon any parent or guardian of the juvenile respondent who is not the petitioner. A temporary restraining order may be entered only against the respondent named in the petition.

(c) The temporary restraining order is in effect until a hearing is held on the issuance of a restraining order under subdivision 5. The court shall hold the hearing on the issuance of a restraining order if the petitioner requests a hearing. The hearing may be continued by the court upon a showing that the respondent has not been served with a copy of the temporary restraining order despite the exercise of due diligence or if service is made by published notice under subdivision 3 and the petitioner files the affidavit required under that subdivision.

(d) If the temporary restraining order has been issued and the respondent requests a hearing, the hearing shall be scheduled by the court upon receipt of the respondent's request. Service of the notice of hearing must be made upon the petitioner not less than five days prior to the hearing. The court shall serve the notice of the hearing upon the petitioner by mail in the manner provided in the Rules of Civil Procedure for pleadings subsequent to a complaint and motions and shall also mail notice of the date and time of the hearing to the respondent. In the event that service cannot be completed in time to give the respondent or petitioner the minimum notice required under this subdivision, the court may set a new hearing date.

(e) A request for a hearing under this subdivision must be made within 45 days after the temporary restraining order is issued.

EFFECTIVE DATE. This section is effective August 1, 2004.

Presented to the governor March 26, 2004

Signed by the governor March 26, 2004, 6:50 p.m.

CHAPTER 146—S.F.No. 1745

An act relating to civil law; changing certain provisions of trust law; clarifying procedures and terms; providing an effective date; making technical changes to guardianship and

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conservatorship law and correcting certain references; amending Minnesota Statutes 2002, sections 144.343, subdivision 2; 145B.03, subdivision 3; 145C.05, subdivision 2; 145C.07, subdivisions 2, 4; 147.091, subdivision 2; 147A.13, subdivision 2; 148.10, subdivision 6; 148.75; 153.22, subdivision 4; 156.122; 176.092, subdivision 1; 196.051, subdivision 2; 252A.01, subdivision 1; 252A.03, subdivision 3; 252A.06, subdivision 2; 252A.081; 252A.111; 252A.171; 252A.19; 253B.03, subdivisions 4a, 6, 6a, 6d, 11; 257B.02; 257B.04, subdivision 4; 257B.06, subdivision 2; 257C.02; 260C.325, subdivision 3; 270B.03, subdivision 2; 501B.08; 501B.14, subdivision 3; 501B.16; 501B.47; 501B.49, subdivision 2; 501B.50; 501B.51, subdivision 1; 501B.53, subdivision 4; 519.07; 523.03; 524.1-201; 524.2-606; 524.3-715; 525.71; 609.2325, subdivision 2; 609.233, subdivision 2; 626.557, subdivision 10; 626.5572, subdivision 17; Minnesota Statutes 2003 Supplement, sections 256J.14; 524.5-104; 524.5-118, subdivision 2; 524.5-304; 524.5-308; 524.5-406; 524.5-408; 524.5-417; Laws 2002, chapter 347, section 5; proposing coding for new law in Minnesota Statutes, chapter 501B.

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

ARTICLE 1

TRUSTS

Section 1. **[501B.012] MEMORIAL FUND.**

Subdivision 1. ESTABLISHMENT. A trust may be created for the purpose of establishing a fund for the benefit of one or more individuals with a single transfer under the Minnesota Uniform Custodial Trust Act in the manner and form provided by section 529.17. A trust authorized under this section must be created and administered and is subject to the Minnesota Uniform Custodial Trust Act.

Subd. 2. ADDITIONAL FUNDS. Notwithstanding subdivision 1, after a fund has been created, additional funds may be transferred to the fund without the formalities required by chapter 529 if the transferor manifests a reasonable expression of intent to make the transfer, together with a reasonable form of delivery of the property including, but not limited to, the following:

(1) a check payable to the name of the fund and delivered to the trustee or the trustee's custodial agent;

(2) delivery of cash or tangible personal property to the trustee or to the trustee's custodial agent;

(3) delivery and recording of title of stock or other registered security in the name of the fund;

(4) delivery of a deed and acceptance of the deed by the trustee of the fund, or the recording of a deed in the name of the trustee of the fund with the applicable county recorder or registrar of titles for real property; and

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(5) any other means of transfer and delivery so that a reasonable person would conclude that the transferor intended the property be titled in the name of, and used for the benefit of the beneficiaries of, the fund.

Sec. 2. Minnesota Statutes 2002, section 501B.08, is amended to read:

501B.08 APPOINTMENT OF AND ACQUISITION OF TITLE BY SUCCESSOR TRUSTEES AND CONFIRMATION OF ACTS PERFORMED DURING VACANCIES IN TRUSTEESHIP.

If the terms of a trust provide for the appointment of a successor trustee and direct how the successor is to qualify, title to the trust assets vests in the successor trustee upon qualification, unless the terms of the trust expressly provide otherwise.

If the terms of a trust do not effectively provide for the appointment of a successor trustee and appointment of a successor is required, or if title to the trust assets does not vest in a successor trustee, the district court may appoint a successor trustee or vest title in a successor trustee.

Whenever the district court appoints a successor trustee, it is presumed that a corporate trustee must be replaced by another corporate trustee unless the court finds it would best serve the interests of all the beneficiaries and is not inconsistent with a material purpose of the trust to not appoint a corporate trustee.

The district court may confirm an act performed by a person in execution of the trust while there was no acting trustee.

Sec. 3. Minnesota Statutes 2002, section 501B.14, subdivision 3, is amended to read:

Subd. 3. **APPLICATION.** (a) Except as provided in paragraph (b), this section applies to any exercise of any powers of the trustee after May 14, 1993, under any trust created before, on, or after May 14, 1993, unless the terms of the trust refer specifically to this section and provide that this section does not apply.

(b) This section does not apply to a trustee:

(1) who retains or is granted an unlimited lifetime or testamentary power, exercisable in a capacity other than as trustee, to revoke the trust, or to withdraw all of the income and principal of the trust, or to appoint all of the income and principal of the trust to the trustee individually or the trustee's estate;

(2) of a trust created on or before May 14, 1993, if the entire principal of the trust would be included in the gross estate of the trustee for federal estate tax purposes if the trustee had died on May 14, 1993, without regard to any power described in subdivision 1;

(3) of a trust created on or before May 14, 1993, if no part of the principal of the trust would be included in the gross estate of the trustee for federal estate tax purposes if the trustee had died on May 14, 1993, without exercising the power; or

(4) of a trust created on or before May 14, 1993, if (i) the trust is not exempt from generation-skipping transfer tax under chapter 13 of the Internal Revenue Code of

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1986, as amended through December 31, 1992, because of Public Law 99-514, section 1433(b) to (d); (ii) there would be a taxable termination with respect to the assets held in the trust if the trustee and all beneficiaries of the trust who are assigned to the trustee's generation or a higher generation had died on May 14, 1993; and (iii) the trust would have an inclusion ratio, as defined in section 2642(c) of the Internal Revenue Code of 1986, as amended through December 31, 1992, of one with respect to the taxable termination; or

(5) of a trust created on or before May 14, 1993, if (i) on May 14, 1993, there is no person with the power to amend or revoke the trust, and (ii) on May 14, 1993, there is only one trustee of the trust.

(c) This section has no effect on an action taken by a trustee on or before May 14, 1993.

Sec. 4. [501B.154] NONJUDICIAL SETTLEMENT AGREEMENTS.

(a) The trustee and all beneficiaries of a trust not under court supervision may enter into a binding nonjudicial settlement agreement with respect to the matters listed in paragraph (c).

(b) A nonjudicial settlement agreement is valid only to the extent it does not violate a material purpose of the trust, subject to paragraph (c), clause (5), and includes terms and conditions that could be properly approved by the court under applicable law.

(c) Matters that may be resolved by nonjudicial settlement agreement are:

- (1) the approval of a trustee's accounting;
- (2) the resignation of a trustee;
- (3) the determination of a trustee's compensation;
- (4) the transfer of the trust's situs; and

(5) the termination of a noncharitable trust and distribution of the trust property if the fair market value of the trust is less than \$50,000, as determined on the date of the nonjudicial settlement agreement, and it has been determined that relative to the costs of administering the trust, continuance pursuant to its existing terms will defeat or substantially impair the accomplishment of its purposes. The trust property must be distributed in a manner which conforms as nearly as possible to the intention of the grantor. The existence of a spendthrift or similar protective provision in the trust does not conclusively make this clause inapplicable.

Sec. 5. [501B.155] REPRESENTATION; PLEADINGS; WHEN PARTIES ARE BOUND BY OTHERS; NOTICE.

Subdivision 1. APPLICABILITY. Subdivisions 2 to 4 apply in judicial proceedings involving trusts and in nonjudicial settlement agreements under section 501B.154.

Subd. 2. DESCRIPTION TO GIVE REASONABLE NOTICE. Interests to be affected must be described in the agreement or pleadings which give reasonable

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information to owners by name or class, by reference to the instrument creating the interests, or in another appropriate manner.

Subd. 3. **BINDING EFFECT OF ORDERS AND AGREEMENTS.** (a) Persons are bound by orders and nonjudicial settlement agreements binding others in the cases in paragraphs (b) to (d).

(b) Orders and agreements binding the sole holder or all coholders of a power of revocation or a presently exercisable general power of appointment, including one in the form of a power of amendment, bind all persons to the extent that their interests, as objects, takers in default, or otherwise are subject to the power.

(c) To the extent there is no conflict of interest between them or among persons represented:

(1) orders and agreements binding a conservator of the property bind the protected person;

(2) orders and agreements binding a guardian bind the ward if no conservator of the estate has been appointed; and

(3) orders imposed upon and agreements entered into by an agent having authority to represent and act on behalf of the principal with respect to a particular question or dispute bind the principal.

(d) An unborn or unascertained person, a person whose identity or location is unknown and not reasonably ascertainable, a minor, or any other person under a legal disability who is not otherwise represented is bound by an order or nonjudicial settlement agreement to the extent that the person's interest is represented by another party having a substantially identical interest, but only to the extent there is no conflict of interest between them or among persons represented. A person's identity or location is not reasonably ascertainable if the identity or location is unable to be determined or ascertained after a diligent search is made.

Subd. 4. **REQUIRED NOTICE.** In judicial proceedings involving trusts, notice is required as follows:

(1) notice as prescribed by section 501B.18 must be given to every interested person or to one who can bind an interested person as described in subdivision 3, paragraph (c), clause (1), (2), or (3), and may be given both to a person and to another who may bind the person;

(2) notice is given to unborn or unascertained persons, who are not represented under subdivision 3, paragraph (c), clause (1), (2), or (3), by giving notice to all known persons whose interests in the proceedings are substantially identical to those of the unborn or unascertained persons.

Sec. 6. Minnesota Statutes 2002, section 501B.16, is amended to read:

501B.16 PETITION FOR COURT ORDER.

A trustee of an express trust by will or other written instrument or a person interested in the trust may petition the district court for an order:

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- (1) to confirm an action taken by a trustee;
- (2) upon filing of an account, to settle and allow the account;
- (3) to determine the persons having an interest in the income or principal of the trust and the nature and extent of their interests;
- (4) to construe, interpret, or reform the terms of a trust, or authorize a deviation from the terms of a trust, including a proceeding involving section 501B.31;
- (5) to approve payment of the trustee's fees, attorneys' fees, accountants' fees, or any other fees to be charged against the trust;
- (6) to confirm the appointment of a trustee;
- (7) to accept a trustee's resignation and discharge the trustee from the trust;
- (8) to require a trustee to account;
- (9) to remove a trustee for cause; or if the court finds that removal of the trustee best serves the interests of all of the beneficiaries, is not inconsistent with a material purpose of the trust, and one or more of the following elements is found:
 - (i) the trustee has committed a serious breach of trust;
 - (ii) lack of cooperation among cotrustees substantially impairs the administration of the trust;
 - (iii) the unfitness, unwillingness, or persistent failure of the trustee to administer the trust effectively;
 - (iv) there has been a substantial change of circumstances; or
 - (v) removal is requested by all of the beneficiaries not under disability who, on the date the petition is signed, either are current permissible distributees of trust income or principal, or would be permissible distributees of trust income or principal if the trust terminated on that date;
- (10) to appoint a successor trustee when required by the terms of the trust instrument or when by reason of death, resignation, removal, or other cause there is no acting trustee;
- (11) to confirm an act performed in execution of the trust by a person while there was no acting trustee;
- (12) to subject a trust to continuing court supervision under section 501B.23;
- (13) to remove a trust from continuing court supervision under section 501B.23;
- (14) to mortgage, lease, sell, or otherwise dispose of real property held by the trustee notwithstanding any contrary provision of the trust instrument;
- (15) to suspend the powers and duties of a trustee in military service or war service in accordance with section 525.95 and to order further action authorized in that section;

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(16) to secure compliance with the provisions of sections 501B.33 to 501B.45, in accordance with section 501B.41;

(17) to determine the validity of a disclaimer filed under section 501B.86;

(18) to change the situs of a trust;

(19) to redress a breach of trust;

(20) to terminate a trust;

(21) to divide a trust under section 501B.15;

(22) to merge two or more trusts under section 501B.15; or

(23) to instruct the trustee, beneficiaries, and any other interested parties in any matter relating to the administration of the trust and the discharge of the trustee's duties.

Sec. 7. Laws 2002, chapter 347, section 5, is amended to read:

Sec. 5. EFFECTIVE DATE.

Section 2 applies to decedents dying after July 31, 2002. Section 4 applies to proceedings for a decree of descent commenced after July 31, 2002.

ARTICLE 2

GUARDIANS AND CONSERVATORS

Section 1. Minnesota Statutes 2003 Supplement, section 524.5-104, is amended to read:

524.5-104 FACILITY OF TRANSFER.

(a) A person required to transfer money or personal property to a minor may do so, as to an amount or value not exceeding \$5,000 per year or a different amount that is approved by the court, by transferring it to:

(1) a person who has the care and custody of the minor and with whom the minor resides;

(2) a guardian of the minor;

(3) a custodian under the Uniform Transfers To Minors Act or custodial trustee under the Uniform Custodial Trust Act; or

(4) a financial institution as a deposit in an interest-bearing account or certificate in the sole name of the minor and giving notice of the deposit to the minor.

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(b) This section does not apply if the person making payment or delivery knows that a conservator has been appointed or that a proceeding for appointment of a conservator of the minor is pending.

(c) A person who transfers money or property in compliance with this section is not responsible for its proper application.

(d) A guardian or other person who receives money or property for a minor under paragraph (a), clause (1) or (2), may only apply it to the support, care, education, health, and welfare of the minor, and may not derive a personal financial benefit except for reimbursement for necessary expenses. Any excess must be preserved for the future support, care, education, health, and welfare of the minor and any balance must be transferred to the minor upon emancipation or attaining majority.

Sec. 2. Minnesota Statutes 2003 Supplement, section 524.5-118, subdivision 2, is amended to read:

Subd. 2. PROCEDURE; CRIMINAL HISTORY AND MALTREATMENT RECORDS BACKGROUND CHECK. (a) The court shall request the commissioner of human services to complete a background study under section ~~245A.044~~ 245C.32. The request must be accompanied by the applicable fee and the signed consent of the subject of the study authorizing the release of the data obtained to the court. If the court is requesting a search of the National Criminal Records Repository, the request must be accompanied by a set of classifiable fingerprints of the subject of the study. The fingerprints must be recorded on a fingerprint card provided by the commissioner of human services.

(b) The commissioner of human services shall provide the court with information from the Bureau of Criminal Apprehension's criminal justice information system, other criminal history data held by the commissioner of human services, and data regarding substantiated maltreatment of vulnerable adults under section 626.557 and substantiated maltreatment of minors under section 626.556 within 15 working days of receipt of a request. If the subject of the study has been the perpetrator of substantiated maltreatment of a vulnerable adult or minor, the response must include a copy of the public portion of the investigation memorandum under section 626.557, subdivision 12b, or the public portion of the investigation memorandum under section 626.556, subdivision 10f. If the court did not request a search of the National Criminal Records Repository and information from the Bureau of Criminal Apprehension indicates that the subject is a multistate offender or that multistate offender status is undetermined, the response must include this information. The commissioner shall provide the court with information from the National Criminal Records Repository within three working days of the commissioner's receipt of the data.

(c) Notwithstanding section 626.557, subdivision 12b, or 626.556, subdivision 10f, if the commissioner of human services or a county lead agency has information that a person on whom a background study was previously done under this section has been determined to be a perpetrator of maltreatment of a vulnerable adult or minor, the commissioner or the county may provide this information to the court that requested the background study. The commissioner may also provide the court with additional

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criminal history or substantiated maltreatment information that becomes available after the background study is done.

Sec. 3. Minnesota Statutes 2003 Supplement, section 524.5-304, is amended to read:

524.5-304 JUDICIAL APPOINTMENT OF GUARDIAN: PRELIMINARIES TO HEARING.

(a) Upon receipt of a petition to establish a guardianship, the court shall set a date and time for hearing the petition and may appoint a visitor. The duties and reporting requirements of the visitor are limited to the relief requested in the petition. ~~The visitor must be an individual having training or experience in the type of incapacity alleged.~~

(b) A proposed ward has the right to be represented by counsel at any proceeding under this article. The court shall appoint counsel to represent the proposed ward for the initial proceeding held pursuant to section 524.5-307 if neither the proposed ward nor others provide counsel unless in a meeting with a visitor the proposed ward specifically waives the right to counsel. Counsel must be appointed immediately after any petition under this article is served under section 524.5-308. Counsel has the full right of subpoena. In all proceedings under this article, counsel shall:

(1) consult with the proposed ward before any hearing;

(2) be given adequate time to prepare for all hearings; and

(3) continue to represent the person throughout any proceedings under section 524.5-307, provided that such appointment shall expire upon the expiration of the appeal time for the order appointing guardian or the order dismissing a petition, or upon such other time or event as the court may direct.

The court need not appoint counsel to represent the proposed ward on a voluntary petition, and the court may remove a court-appointed attorney at any time if the court finds that the proposed ward has made a knowing and intelligent waiver of the right to counsel or has obtained private counsel.

(c) The visitor shall personally serve the notice and petition upon the respondent and shall offer to read the notice and petition to the respondent, and if so requested the visitor shall read the notice and petition to such person. The visitor shall also interview the respondent in person, and to the extent that the respondent is able to understand:

(1) explain to the respondent the substance of the petition; the nature, purpose, and effect of the proceeding; the respondent's rights at the hearing; and the general powers and duties of a guardian;

(2) determine the respondent's views about the proposed guardian, the proposed guardian's powers and duties, and the scope and duration of the proposed guardianship;

(3) inform the respondent of the right to employ and consult with a lawyer at the respondent's own expense and the right to request a court-appointed lawyer; and

(4) inform the respondent that all costs and expenses of the proceeding, including respondent's attorneys fees, will be paid from the respondent's estate.

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(d) In addition to the duties in paragraph (c), the visitor shall make any other investigation the court directs.

(e) The visitor shall promptly file a report in writing with the court, which must include:

(1) recommendations regarding the appropriateness of guardianship, including whether less restrictive means of intervention are available, the type of guardianship, and, if a limited guardianship, the powers to be granted to the limited guardian;

(2) a statement as to whether the respondent approves or disapproves of the proposed guardian, and the powers and duties proposed or the scope of the guardianship; and

(3) any other matters the court directs.

(f) The county social service agency may create a screening committee to review a petition involving an indigent person. The screening committee must consist of individuals selected by the agency with knowledge of alternatives that are less restrictive than guardianship. If the agency has created a screening committee, the court shall make its decision after the screening committee has reviewed the petition. For an indigent person, the court may appoint a guardian under contract with the county to provide these services.

Sec. 4. Minnesota Statutes 2003 Supplement, section 524.5-308, is amended to read:

524.5-308 NOTICE.

(a) A copy of the petition and notice of the hearing on a petition for guardianship must be served personally on the respondent pursuant to section 524.5-304, paragraph (c). The notice must include a statement that the respondent must be physically present unless excused by the court; inform the respondent of the respondent's rights at the hearing; and include a description of the nature, purpose, and consequences of an appointment. A failure to serve the respondent with a notice substantially complying with this paragraph precludes the court from granting the petition.

(b) In a proceeding to establish a guardianship, notice of the hearing shall also be given to the persons listed in the petition. Failure to give notice under this paragraph does not preclude the appointment of a guardian or the making of a protective order.

(c) Notice of the hearing on a petition for an order after appointment of a guardian shall be given to interested persons pursuant to section 524.5-113 and to any other person as ordered by the court, except notice to the ward is not required if the ward has not attained 14 years of age and is not the petitioner.

(d) The guardian shall give notice of the filing of the guardian's report, together with a copy of the report, to the ward, ~~the court~~, and any other person the court directs. The notice must be sent or delivered within 14 days after the filing of the report.

Sec. 5. Minnesota Statutes 2003 Supplement, section 524.5-406, is amended to read:

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524.5-406 ORIGINAL PETITION: PERSONS UNDER DISABILITY; PRELIMINARIES TO HEARING.

(a) Upon the filing of a petition for a conservatorship or other protective order for a respondent for reasons other than being a minor, the court shall set a date for hearing, and the court shall may appoint a visitor. The duties and reporting requirements of the visitor are limited to the relief requested in the petition. The visitor must be an individual having training or experience in the type of incapacity alleged.

(b) A respondent has the right to be represented by counsel at any proceeding under this article. The court shall appoint counsel to represent the respondent for the initial proceeding held pursuant to section 524.5-408 if neither the respondent nor others provide counsel, unless in a meeting with a visitor, the proposed respondent specifically waives the right to counsel. Counsel must be appointed immediately after any petition under this part is served pursuant to section 524.5-404. Counsel has the full right of subpoena. In all proceedings under this part, counsel shall:

- (1) consult with the respondent before any hearing;
- (2) be given adequate time to prepare for all hearings; and

(3) continue to represent the respondent throughout any proceedings under section 524.5-408, provided that such appointment shall expire upon the expiration of the appeal time for the order appointing conservator or the order dismissing a petition, or upon such other time or event as the court may direct.

The court need not appoint counsel to represent the respondent on a voluntary petition, and the court may remove a court-appointed attorney at any time if the court finds that the respondent has made a knowing and intelligent waiver of the right to counsel or has obtained private counsel.

(c) The visitor shall personally serve the notice and petition upon the respondent and shall offer to read the notice and petition to the respondent, and if so requested, the visitor shall read the notice and petition to such person. The visitor shall also interview the respondent in person, and to the extent that the respondent is able to understand:

(1) explain to the respondent the substance of the petition and the nature, purpose, and effect of the proceeding;

(2) if the appointment of a conservator is requested, inform the respondent of the general powers and duties of a conservator and determine the respondent's views regarding the proposed conservator, the proposed conservator's powers and duties, and the scope and duration of the proposed conservatorship;

(3) inform the respondent of the respondent's rights, including the right to employ and consult with a lawyer at the respondent's own expense, and the right to request a court-appointed lawyer; and

(4) inform the respondent that all costs and expenses of the proceeding, including respondent's attorney fees, will be paid from the respondent's estate.

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(d) In addition to the duties set out in paragraph (c), the visitor shall make any other investigations the court directs.

(e) The visitor shall promptly file a report with the court which must include:

(1) recommendations regarding the appropriateness of a conservatorship, including whether less restrictive means of intervention are available, the type of conservatorship, and, if a limited conservatorship, the powers and duties to be granted the limited conservator, and the assets over which the conservator should be granted authority;

(2) a statement as to whether the respondent approves or disapproves of the proposed conservator, and the powers and duties proposed or the scope of the conservatorship; and

(3) any other matters the court directs.

(f) While a petition to establish a conservatorship or for another protective order is pending, after preliminary hearing and without notice to others, the court may make orders to preserve and apply the property of the respondent as may be required for the support of the respondent or individuals who are in fact dependent upon the respondent, and may appoint an agent to assist in that task.

Sec. 6. Minnesota Statutes 2003 Supplement, section 524.5-408, is amended to read:

524.5-408 ORIGINAL PETITION: PROCEDURE AT HEARING.

(a) Unless excused by the court for good cause, the petitioner and a the proposed conservator shall attend the hearing. The respondent shall attend and participate in the hearing unless excused by the court for good cause. The petitioner and respondent may present evidence and subpoena witnesses and documents, examine witnesses, including the visitor, and otherwise participate in the hearing. The hearing may be held in a location convenient to the respondent and may be closed upon request of the respondent and a showing of good cause.

(b) Any person may request permission to participate in the proceeding. The court may grant the request, with or without hearing, upon a showing of good cause and after determining that the best interest of the respondent will be served. The court may attach appropriate conditions to the participation.

Sec. 7. Minnesota Statutes 2003 Supplement, section 524.5-417, is amended to read:

524.5-417 GENERAL POWERS AND DUTIES OF CONSERVATOR.

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

(b) The court shall grant to a conservator only those powers necessary to provide for the demonstrated needs of the protected person.

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(c) The court may appoint a conservator of the estate if it determines that all the powers and duties listed in this section are needed to provide for the needs of the protected person. The court may also appoint a conservator if it determines that a conservator is necessary to provide for the needs of the protected person through the exercise of some, but not all, of the powers and duties listed in this section. The duties and powers of a conservator include, but are not limited to:

(1) the duty to pay the reasonable charges for the support, maintenance, and education of the protected person in a manner suitable to the protected person's station in life and the value of the estate. Nothing herein contained shall release parents from obligations imposed by law for the support, maintenance, and education of their children. The conservator has no duty to pay for these requirements out of personal funds. Wherever possible and appropriate, the conservator should meet these requirements through governmental benefits or services to which the protected person is entitled, rather than from the protected person's estate. Failure to satisfy the needs and requirements of this section shall be grounds for removal, but the conservator shall have no personal or monetary liability;

(2) the duty to pay out of the protected person's estate all lawful debts of the protected person and the reasonable charges incurred for the support, maintenance, and education of the protected person's spouse and dependent children and, upon order of the court, pay such sum as the court may fix as reasonable for the support of any person unable to earn a livelihood who is legally entitled to support from the protected person;

(3) the duty to possess and manage the estate, collect all debts and claims in favor of the protected person, or, with the approval of the court, compromise them, institute suit on behalf of the protected person and represent the protected person in any court proceedings, and invest all funds not currently needed for the debts and charges named in clauses (1) and (2) and the management of the estate, in accordance with the provisions of sections 48A.07, subdivision 6, and 501B.151, or as otherwise ordered by the court. The standard of a fiduciary shall be applicable to all investments by a conservator. A conservator shall also have the power to purchase certain contracts of insurance as provided in section 50.14, subdivision 14, clause (b);

(4) where a protected person has inherited an undivided interest in real estate, the court, on a showing that it is for the best interest of the protected person, may authorize an exchange or sale of the protected person's interest or a purchase by the protected person of any interest other heirs may have in the real estate, subject to the procedures and notice requirements of section 524.5-418;

(5) the power to approve or withhold approval of any contract, except for necessities, which the protected person may make or wish to make; and

(6) the power to apply on behalf of the protected person for any assistance, services, or benefits available to the protected person through any unit of government.

(d) The conservator shall have the power to revoke, suspend, or terminate all or any part of a durable power of attorney of which the protected person is the principal with the same power the principal would have if the principal were not incapacitated.

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If a durable power of attorney is in effect, a decision of the conservator takes precedence over that of an attorney-in-fact.

(e) Transaction set aside. If a protected person has made a financial transaction or gift or entered into a contract during the two-year period before establishment of the conservatorship, the conservator may petition for court review of the transaction, gift, or contract. If the court finds that the protected person was incapacitated or subject to duress, coercion, or undue influence when the transaction, gift, or contract was made, the court may declare the transaction, gift, or contract void except as against a bona fide transferee for value and order reimbursement or other appropriate relief. This paragraph does not affect any other right or remedy that may be available to the protected person with respect to the transaction, gift, or contract.

(f) After the filing of the petition, a certificate of the district court certified to that fact may be filed for record with the Minnesota secretary of state in the same manner as provided in section 336.9-501. The certificate shall state that a petition is pending and the name and address of the person for whom a conservator is sought. If a conservator is appointed on the petition, and if the conservatorship order removes or restricts the right of the protected person to transfer property or to contract, then all contracts except for necessities, and all transfers of personal property, tangible or intangible, including, but not limited to, cash or securities transfers at banks, brokerage houses, or other financial institutions, or transfers of cash or securities, made by the protected person after the filing and before the termination of the conservatorship shall be voidable.

Sec. 8. Minnesota Statutes 2002, section 525.71, is amended to read:

525.71 APPEALABLE ORDERS.

(a) Appeals to the Court of Appeals may be taken from any of the following orders, judgments, and decrees issued by a judge of the court under this chapter or chapter 524:

- (1) an order admitting, or refusing to admit, a will to probate;
- (2) an order appointing, or refusing to appoint, or removing, or refusing to remove, a representative other than a special administrator or special guardian, temporary or emergency guardian, agent, or conservator;
- (3) an order authorizing, or refusing to authorize, the sale, mortgage, or lease of real estate, or confirming, or refusing to confirm, the sale or lease of real estate;
- (4) an order directing, or refusing to direct, a conveyance or lease of real estate under contract;
- (5) an order permitting, or refusing to permit, the filing of a claim, or allowing or disallowing a claim or counterclaim, in whole or in part, when the amount in controversy exceeds \$100;
- (6) an order setting apart, or refusing to set apart, property, or making, or refusing to make, an allowance for the spouse or children;

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(7) an order determining, or refusing to determine, venue; an order transferring, or refusing to transfer, venue;

(8) an order directing, or refusing to direct, the payment of a bequest or distributive share when the amount in controversy exceeds \$100;

(9) an order allowing, or refusing to allow, an account of a representative or any part of it when the amount in controversy exceeds \$100;

(10) an order adjudging a person in contempt;

(11) an order vacating, or refusing to vacate, a previous appealable order, judgment, or decree alleged to have been procured by fraud or misrepresentation, or through surprise or excusable inadvertence or neglect;

(12) a judgment or decree of partial or final distribution or an order determining or confirming distribution or any order of general protection;

(13) an order entered pursuant to section 576.142;

(14) an order granting or denying restoration to capacity;

(15) an order made directing, or refusing to direct, the payment of representative's fees or attorneys' fees, and in such case the representative and the attorney shall each be deemed an aggrieved party and entitled to appeal;

(16) an order, judgment, or decree relating to or affecting estate taxes or refusing to amend, modify, or vacate such an order, judgment, or decree; and

(17) an order extending the time for the settlement of the estate beyond five years from the date of the appointment of the representative.

(b) Appeals to the Court of Appeals may also be taken from any other properly appealable order pursuant to the Rules of Civil Appellate Procedure.

(c) An order appointing, refusing to appoint, removing, or refusing to remove a temporary or emergency guardian under sections 524.5-204, paragraphs (b) and (c), 524.5-311, and 524.5-312, or temporary or emergency conservator or agent under sections 524.5-406, paragraph (f), and 524.5-412, or a special administrator under section 524.3-614, is not an appealable order under this section or the Rules of Civil Appellate Procedure.

ARTICLE 3

TECHNICAL CORRECTIONS

Section 1. Minnesota Statutes 2002, section 144.343, subdivision 2, is amended to read:

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Subd. 2. **NOTIFICATION CONCERNING ABORTION.** Notwithstanding the provisions of section 13.02, subdivision 8, no abortion operation shall be performed upon an unemancipated minor or upon a woman for whom a guardian ~~or conservator~~ has been appointed pursuant to sections ~~525.54~~ 524.5-101 to ~~525.551~~ 524.5-502 because of a finding of ~~incompetency~~ incapacity, until at least 48 hours after written notice of the pending operation has been delivered in the manner specified in subdivisions 2 to 4.

(a) The notice shall be addressed to the parent at the usual place of abode of the parent and delivered personally to the parent by the physician or an agent.

(b) In lieu of the delivery required by clause (a), notice shall be made by certified mail addressed to the parent at the usual place of abode of the parent with return receipt requested and restricted delivery to the addressee which means postal employee can only deliver the mail to the authorized addressee. Time of delivery shall be deemed to occur at 12 o'clock noon on the next day on which regular mail delivery takes place, subsequent to mailing.

Sec. 2. Minnesota Statutes 2002, section 145B.03, subdivision 3, is amended to read:

Subd. 3. **GUARDIAN ~~OR~~ CONSERVATOR.** Except as otherwise provided in the living will, designation of a proxy is considered a nomination of a guardian ~~or conservator~~ of the person for purposes of section ~~525.544~~ sections 524.5-101 to 524.5-502.

Sec. 3. Minnesota Statutes 2002, section 145C.05, subdivision 2, is amended to read:

Subd. 2. **PROVISIONS THAT MAY BE INCLUDED.** (a) A health care directive may include provisions consistent with this chapter, including, but not limited to:

(1) the designation of one or more alternate health care agents to act if the named health care agent is not reasonably available to serve;

(2) directions to joint health care agents regarding the process or standards by which the health care agents are to reach a health care decision for the principal, and a statement whether joint health care agents may act independently of one another;

(3) limitations, if any, on the right of the health care agent or any alternate health care agents to receive, review, obtain copies of, and consent to the disclosure of the principal's medical records;

(4) limitations, if any, on the nomination of the health care agent as guardian ~~or conservator~~ of the person for purposes of section ~~525.544~~ sections 524.5-202, 524.5-211, 524.5-302, and 524.5-303;

(5) a document of gift for the purpose of making an anatomical gift, as set forth in sections 525.921 to 525.924, or an amendment to, revocation of, or refusal to make an anatomical gift;

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(6) a declaration regarding intrusive mental health treatment under section 253B.03, subdivision 6d, or a statement that the health care agent is authorized to give consent for the principal under section 253B.04, subdivision 1a;

(7) a funeral directive as provided in section 149A.80, subdivision 2;

(8) limitations, if any, to the effect of dissolution or annulment of marriage or termination of domestic partnership on the appointment of a health care agent under section 145C.09, subdivision 2;

(9) specific reasons why a principal wants a health care provider or an employee of a health care provider attending the principal to be eligible to act as the principal's health care agent;

(10) health care instructions by a woman of child bearing age regarding how she would like her pregnancy, if any, to affect health care decisions made on her behalf; and

(11) health care instructions regarding artificially administered nutrition or hydration.

(b) A health care directive may include a statement of the circumstances under which the directive becomes effective other than upon the judgment of the principal's attending physician in the following situations:

(1) a principal who in good faith generally selects and depends upon spiritual means or prayer for the treatment or care of disease or remedial care and does not have an attending physician, may include a statement appointing an individual who may determine the principal's decision-making capacity; and

(2) a principal who in good faith does not generally select a physician or a health care facility for the principal's health care needs may include a statement appointing an individual who may determine the principal's decision-making capacity, provided that if the need to determine the principal's capacity arises when the principal is receiving care under the direction of an attending physician in a health care facility, the determination must be made by an attending physician after consultation with the appointed individual.

If a person appointed under clause (1) or (2) is not reasonably available and the principal is receiving care under the direction of an attending physician in a health care facility, an attending physician shall determine the principal's decision-making capacity.

(c) A health care directive may authorize a health care agent to make health care decisions for a principal even though the principal retains decision-making capacity.

Sec. 4. Minnesota Statutes 2002, section 145C.07, subdivision 2, is amended to read:

Subd. 2. **HEALTH CARE AGENT AS GUARDIAN.** Unless the principal has otherwise specified in the health care directive, the appointment of the health care agent in a health care directive is considered a nomination of a guardian or conservator

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of the person for purposes of section ~~525.544~~ sections 524.5-101 to 524.5-502.

Sec. 5. Minnesota Statutes 2002, section 145C.07, subdivision 4, is amended to read:

Subd. 4. **INCONSISTENCIES AMONG DOCUMENTS.** In the event of inconsistency between the appointment of a proxy under chapter 145B or section 253B.03, subdivision 6d, or of a health care agent under this chapter, the most recent appointment takes precedence. In the event of other inconsistencies among documents executed under this chapter, under chapter 145B, or under ~~section~~ sections 253B.03, subdivision 6d, or ~~525.544~~ 524.5-101 to 524.5-502, or other legally sufficient documents, the provisions of the most recently executed document take precedence only to the extent of the inconsistency.

Sec. 6. Minnesota Statutes 2002, section 147.091, subdivision 2, is amended to read:

Subd. 2. **AUTOMATIC SUSPENSION.** (a) A license to practice medicine is automatically suspended if (1) a guardian of the person of a licensee is appointed by order of a court pursuant to sections ~~525.54~~ 524.5-101 to 525.61 524.5-502, for reasons other than the minority of the licensee; or (2) the licensee is committed by order of a court pursuant to chapter 253B. The license remains suspended until the licensee is restored to capacity by a court and, upon petition by the licensee, the suspension is terminated by the board after a hearing.

(b) Upon notice to the board of a judgment of, or a plea of guilty to, a felony reasonably related to the practice of patient care, the credentials of the regulated person shall be automatically suspended by the board. The credentials shall remain suspended until, upon petition by the regulated person and after a hearing, the suspension is terminated by the board. The board shall indefinitely suspend or revoke the credentials of the regulated person if, after a hearing, the board finds that the felonious conduct would cause a serious risk of harm to the public.

(c) For credentials that have been suspended or revoked pursuant to paragraphs (a) and (b), the regulated person may be reinstated to practice, either with or without restrictions, by demonstrating clear and convincing evidence of rehabilitation, as provided in section 364.03. If the regulated person's conviction is subsequently overturned by court decision, the board shall conduct a hearing to review the suspension within 30 days after receipt of the court decision. The regulated person is not required to prove rehabilitation if the subsequent court decision overturns previous court findings of public risk.

(d) The board may, upon majority vote of a quorum of its members, suspend the credentials of a regulated person without a hearing if the regulated person fails to maintain a current name and address with the board, as described in paragraph (e), while the regulated person is: (1) under board investigation, and a notice of conference has been issued by the board; (2) party to a contested case with the board; (3) party to an agreement for corrective action with the board; or (4) under a board order for disciplinary action. The suspension shall remain in effect until lifted by the board

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pursuant to the board's receipt of a petition from the regulated person, along with the regulated person's current name and address.

(e) A person regulated by the board shall maintain a current name and address with the board and shall notify the board in writing within 30 days of any change in name or address. If a name change only is requested, the regulated person must request revised credentials and return the current credentials to the board. The board may require the regulated person to substantiate the name change by submitting official documentation from a court of law or agency authorized under law to receive and officially record a name change. If an address change only is requested, no request for revised credentials is required. If the regulated person's current credentials have been lost, stolen, or destroyed, the person shall provide a written explanation to the board.

Sec. 7. Minnesota Statutes 2002, section 147A.13, subdivision 2, is amended to read:

Subd. 2. **EFFECTIVE DATES, AUTOMATIC SUSPENSION.** A suspension, revocation, condition, limitation, qualification, or restriction of a registration shall be in effect pending determination of an appeal unless the court, upon petition and for good cause shown, orders otherwise.

A physician assistant registration is automatically suspended if:

(1) a guardian of the person of a registrant is appointed by order of a court pursuant to sections ~~525.54~~ 524.5-101 to ~~525.61~~ 524.5-502, for reasons other than the minority of the registrant; or

(2) the registrant is committed by order of a court pursuant to chapter 253B. The registration remains suspended until the registrant is restored to capacity by a court and, upon petition by the registrant, the suspension is terminated by the board after a hearing.

Sec. 8. Minnesota Statutes 2002, section 148.10, subdivision 6, is amended to read:

Subd. 6. **EFFECT OF APPEAL.** A suspension, revocation, condition, limitation, qualification, or restriction of a license shall be in effect pending determination of an appeal unless the court, upon petition and for good cause shown, shall otherwise order.

A license to practice chiropractic is automatically suspended if (1) a guardian of the person of a licensee is appointed by order of a court under sections ~~525.54~~ 524.5-101 to ~~525.61~~ 524.5-502, for reasons other than the minority of the licensee; or (2) the licensee is committed by order of a court under chapter 253B. The license remains suspended until the licensee is restored to capacity by a court and, upon petition by the licensee, the suspension is terminated by the board after a hearing.

Sec. 9. Minnesota Statutes 2002, section 148.75, is amended to read:

148.75 LICENSES; DENIAL, SUSPENSION, REVOCATION.

(a) The state Board of Physical Therapy may refuse to grant a license to any physical therapist, or may suspend or revoke the license of any physical therapist for any of the following grounds:

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- (1) using drugs or intoxicating liquors to an extent which affects professional competence;
- (2) conviction of a felony;
- (3) conviction for violating any state or federal narcotic law;
- (4) obtaining a license or attempting to obtain a license by fraud or deception;
- (5) conduct unbecoming a person licensed as a physical therapist or conduct detrimental to the best interests of the public;
- (6) gross negligence in the practice of physical therapy as a physical therapist;
- (7) treating human ailments by physical therapy after an initial 30-day period of patient admittance to treatment has lapsed, except by the order or referral of a person licensed in this state in the practice of medicine as defined in section 147.081, the practice of chiropractic as defined in section 148.01, the practice of podiatry as defined in section 153.01, or the practice of dentistry as defined in section 150A.05 and whose license is in good standing; or when a previous diagnosis exists indicating an ongoing condition warranting physical therapy treatment, subject to periodic review defined by board of physical therapy rule;
- (8) treating human ailments, without referral, by physical therapy treatment without first having practiced one year under a physician's orders as verified by the board's records;
- (9) failing to consult with the patient's health care provider who prescribed the physical therapy treatment if the treatment is altered by the physical therapist from the original written order. The provision does not include written orders to "evaluate and treat";
- (10) treating human ailments other than by physical therapy unless duly licensed or registered to do so under the laws of this state;
- (11) inappropriate delegation to a physical therapist assistant or inappropriate task assignment to an aide or inadequate supervision of either level of supportive personnel;
- (12) practicing as a physical therapist performing medical diagnosis, the practice of medicine as defined in section 147.081, or the practice of chiropractic as defined in section 148.01;
- (13) failing to comply with a reasonable request to obtain appropriate clearance for mental or physical conditions that would interfere with the ability to practice physical therapy, and that may be potentially harmful to patients;
- (14) dividing fees with, or paying or promising to pay a commission or part of the fee to, any person who contacts the physical therapist for consultation or sends patients to the physical therapist for treatment;
- (15) engaging in an incentive payment arrangement, other than that prohibited by clause (14), that tends to promote physical therapy overuse, that allows the referring person or person who controls the availability of physical therapy services to a client

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to profit unreasonably as a result of patient treatment;

(16) practicing physical therapy and failing to refer to a licensed health care professional a patient whose medical condition at the time of evaluation has been determined by the physical therapist to be beyond the scope of practice of a physical therapist; and

(17) failing to report to the board other licensed physical therapists who violate this section.

(b) A license to practice as a physical therapist is suspended if (1) a guardian of the person of the physical therapist is appointed by order of a court pursuant to sections ~~525.54~~ 524.5-101 to ~~525.61~~ 524.5-502, for reasons other than the minority of the physical therapist; or (2) the physical therapist is committed by order of a court pursuant to chapter 253B. The license remains suspended until the physical therapist is restored to capacity by a court and, upon petition by the physical therapist, the suspension is terminated by the Board of Physical Therapy after a hearing.

Sec. 10. Minnesota Statutes 2002, section 153.22, subdivision 4, is amended to read:

Subd. 4. **AUTOMATIC SUSPENSION.** A license to practice podiatric medicine is automatically suspended if (1) a guardian of the person of a licensee is appointed by order of a court under sections ~~525.54~~ 524.5-101 to ~~525.61~~ 524.5-502, for reasons other than the minority of the licensee; or (2) the licensee is committed by order of a court under chapter 253B. The license remains suspended until the licensee is restored to capacity by a court and, upon petition by the licensee, the suspension is terminated by the board after a hearing.

Sec. 11. Minnesota Statutes 2002, section 156.122, is amended to read:

156.122 COURTS TO REPORT.

The court administrator shall report to the board a judgment or finding by a court that a person regulated by the board:

(1) is a person who is mentally ill, chemically dependent, mentally ill and dangerous to the public, or is a sexual psychopathic personality or sexually dangerous person under chapter 253B or other applicable law;

(2) is guilty of a felony or gross misdemeanor; violation of a law involving the use, possession, or sale of a controlled substance; or operating a motor vehicle under the influence of alcohol or a controlled substance; or

(3) is in need of a guardian of the person under sections ~~525.54~~ 524.5-101 to ~~525.61~~ 524.5-502.

Sec. 12. Minnesota Statutes 2002, section 176.092, subdivision 1, is amended to read:

Subdivision 1. **WHEN REQUIRED.** An injured employee or a dependent under section 176.111 who is a minor or an incapacitated person as that term is defined in

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section ~~525.54~~ 524.5-102, subdivision ~~2~~ or 3 ~~6~~, shall have a guardian or conservator to represent the interests of the employee or dependent in obtaining compensation according to the provisions of this chapter. This section applies if the employee receives or is eligible for permanent total disability benefits, supplementary benefits, or permanent partial disability benefits totaling more than \$3,000 or a dependent receives or is eligible for dependency benefits, or if the employee or dependent receives or is offered a lump sum that exceeds five times the statewide average weekly wage.

Sec. 13. Minnesota Statutes 2002, section 196.051, subdivision 2, is amended to read:

Subd. 2. **BONDING.** Notwithstanding section ~~525.551~~ or any other law, the commissioner is not required to file a bond when acting as guardian pursuant to authority granted by this section.

Sec. 14. Minnesota Statutes 2002, section 252A.01, subdivision 1, is amended to read:

Subdivision 1. **POLICY.** (a) It is the policy of the state of Minnesota to provide a coordinated approach to the supervision, protection, and habilitation of its adult mentally retarded citizens. In furtherance of this policy, sections 252A.01 to 252A.21 are enacted to authorize the commissioner of human services to:

(1) supervise those adult mentally retarded citizens who are unable to fully provide for their own needs and for whom no qualified person is willing and able to seek private guardianship or conservatorship under sections ~~525.539~~ 524.5-101 to ~~525.705~~ 524.5-502; and

(2) to protect adult mentally retarded persons from violation of their human and civil rights by assuring that they receive the full range of needed social, financial, residential, and habilitative services to which they are lawfully entitled.

(b) Public guardianship or conservatorship is the most restrictive form of guardianship or conservatorship and should be imposed only when no other acceptable alternative is available.

Sec. 15. Minnesota Statutes 2002, section 252A.03, subdivision 3, is amended to read:

Subd. 3. **STANDARD FOR ACCEPTANCE.** The commissioner shall accept the nomination if the comprehensive evaluation concludes that:

(1) the person alleged to have mental retardation is, in fact, mentally retarded;

(2) the person is in need of the supervision and protection of a conservator or guardian; and

(3) no qualified person is willing to assume private guardianship or conservatorship under sections ~~525.539~~ 524.5-101 to ~~525.705~~ 524.5-502.

Sec. 16. Minnesota Statutes 2002, section 252A.06, subdivision 2, is amended to read:

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Subd. 2. **CONTENTS.** The petition shall set forth:

(1) the name and address of the petitioner, and, in the case of a petition brought by a person other than the commissioner, whether the petitioner is a parent, spouse, or relative of the proposed ward;

(2) whether the commissioner has accepted a nomination to act as public conservator or public guardian;

(3) the name, address, and date of birth of the proposed ward;

(4) the names and addresses of the nearest relatives and spouse, if any, of the proposed ward;

(5) the probable value and general character of the proposed ward's real and personal property and the probable amount of the proposed ward's debts;

(6) the facts supporting the establishment of public conservatorship or guardianship, including that no family member or other qualified individual is willing to assume private guardianship or conservatorship responsibilities under sections ~~525.539~~ 524.5-101 to ~~525.705~~ 524.5-502; and

(7) if conservatorship is requested, the powers the petitioner believes are necessary to protect and supervise the proposed conservatee.

Sec. 17. Minnesota Statutes 2002, section 252A.081, is amended to read:

252A.081 NOTICE OF HEARING.

Subdivision 1. **GENERAL.** Except as otherwise provided in this section, ~~section 525.55~~ applies sections 524.5-113, 524.5-205, and 524.5-304 apply to a notice of hearing for public guardianship.

Subd. 2. **SERVICE OF NOTICE.** Service of notice on the ward or proposed ward must be made by a nonuniformed person. To the extent possible, the process server or visitor shall explain the document's meaning to the proposed ward. In addition to the persons required to be served under ~~section 525.55, subdivision 1~~ sections 524.5-113, 524.5-205, and 524.5-304, the mailed notice of the hearing must be served on the commissioner, the local agency, and the county attorney.

Subd. 3. **ATTORNEY.** In place of the notice of attorney provisions in ~~section 525.55, subdivision 2~~ sections 524.5-205 and 524.5-304, the notice must state that the court will appoint an attorney for the proposed ward unless an attorney is provided by other persons.

Subd. 4. **SERVICE OF PETITION ON COMMISSIONER.** When a petition has been filed by a person other than the commissioner, the court shall promptly forward a copy of the petition and any other documents filed with or issued by the court to the commissioner.

Subd. 5. **DEFECTIVE NOTICE OF SERVICE.** A defect in the service of notice or process, other than personal service upon the proposed ward or conservatee or service upon the commissioner and local agency within the time allowed and the form

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prescribed in this section and ~~section 525.55~~ sections 524.5-113, 524.5-205, and 524.5-304, does not invalidate any public guardianship or conservatorship proceedings.

Sec. 18. Minnesota Statutes 2002, section 252A.111, is amended to read:

252A.111 POWERS AND DUTIES OF PUBLIC GUARDIAN OR CONSERVATOR.

Subdivision 1. **GENERAL.** Except as otherwise provided in this section, ~~section 525.56, subdivisions 1 to 3~~ sections 524.5-207 and 524.5-313, apply to the powers and duties of a public guardian or conservator.

Subd. 2. **ADDITIONAL POWERS.** In addition to the powers contained in ~~section 525.56, subdivision 3~~ sections 524.5-207 and 524.5-313, the powers of a public guardian or those that the court may grant to a public conservator include:

- (1) the power to permit or withhold permission for the ward to marry;
- (2) the power to begin legal action or defend against legal action in the name of the ward; and
- (3) the power to consent to the adoption of the ward as provided in section 259.24.

Subd. 4. **APPOINTMENT OF GUARDIAN OR CONSERVATOR OF THE ESTATE.** If the ward has a personal estate beyond that which is necessary for the ward's personal and immediate needs, the commissioner shall determine whether a guardian of the estate conservator should be appointed. The commissioner shall consult with the parents, spouse, or nearest relative of the ward. The commissioner may petition the court for the appointment of a private guardian or conservator of the estate of the ward. The commissioner cannot act as guardian or conservator of the estate for public wards or public conservatees protected persons.

Subd. 5. **LOCAL AGENCIES.** The commissioner may carry out the powers and duties prescribed by this chapter directly or through local agencies.

Subd. 6. **SPECIAL DUTIES.** In exercising powers and duties under this chapter, the commissioner shall:

- (1) maintain close contact with the ward, visiting at least twice a year;
- (2) protect and exercise the legal rights of the ward;
- (3) take actions and make decisions on behalf of the ward that encourage and allow the maximum level of independent functioning in a manner least restrictive of the ward's personal freedom consistent with the need for supervision and protection; and
- (4) permit and encourage maximum self-reliance on the part of the ward and permit and encourage input by the nearest relative of the ward in planning and decision making on behalf of the ward.

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Sec. 19. Minnesota Statutes 2002, section 252A.171, is amended to read:

252A.171 TRANSFER OF VENUE.

Section ~~525.57~~ 524.5-108 applies to the transfer of venue in proceedings under this chapter. Notice of a transfer of venue petition must be given to the persons and in the manner required by section 252A.081.

Sec. 20. Minnesota Statutes 2002, section 252A.19, is amended to read:

252A.19 MODIFICATION OF CONSERVATORSHIP; RESTORATION TO LEGAL CAPACITY.

Subdivision 1. **COMMISSIONER TO SERVE.** The commissioner shall serve as public guardian ~~or conservator~~ with all the powers awarded pursuant to the guardian-ship ~~or conservatorship~~, until termination or modification by the court.

Subd. 2. **PETITION.** The commissioner, ward, or any interested person may petition the appointing court or the court to which venue has been transferred for an order to remove the guardianship or to limit or expand the powers of the ~~conservatorship~~ guardianship or to appoint a guardian or conservator under sections ~~525.539~~ 524.5-101 to 525.705 ~~524.5-502~~ or to restore the ward or ~~conservatee~~ protected person to full legal capacity or to review de novo any decision made by the public guardian or public conservator for or on behalf of a ward or ~~conservatee~~ protected person or for any other order as the court may deem just and equitable. ~~Section 525.61, subdivision 3, does not apply to a petition to remove a public guardian.~~

Subd. 3. **NOTICE OF TIME AND PLACE.** Upon the filing of the petition the court shall fix the time and place for the hearing. Notice of the filing of the petition and of the hearing shall be provided in the manner set forth in section 252A.081.

Subd. 4. **COMPREHENSIVE EVALUATION.** The commissioner shall, at the court's request, arrange for the preparation of a comprehensive evaluation of the ward or ~~conservatee~~ protected person.

Subd. 5. **COURT ORDER.** Upon proof of the allegations of the petition the court shall enter an order removing the guardianship or limiting or expanding the powers of the ~~conservatorship~~ guardianship or restoring the ward or ~~conservatee~~ protected person to full legal capacity or may enter such other order as the court may deem just and equitable.

Subd. 6. **COUNTY ATTORNEY PARTICIPATION.** The county attorney may attend the hearing and may oppose the petition in the court and in the appellate courts if the county attorney deems it for the best interest of the public.

Subd. 7. **ATTORNEY GENERAL'S ROLE; COMMISSIONER'S ROLE.** The attorney general may appear and represent the commissioner in such proceedings. The commissioner shall support or oppose the petition if the commissioner deems such action necessary for the protection and supervision of the ward or ~~conservatee~~ protected person.

Subd. 8. **COURT APPOINTED COUNSEL.** In all such proceedings, the ~~conservatee~~ protected person or ward shall be afforded an opportunity to be

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represented by counsel, and if neither the ~~conservatee~~ protected person or ward nor others provide counsel the court shall appoint counsel to represent the ~~conservatee~~ protected person or ward.

Subd. 9. **COSTS FOR PRIVATE GUARDIANSHIP.** In proceedings where private guardianship or conservatorship is being sought under sections ~~525.539~~ 524.5-101 to ~~525.705~~ 524.5-502, costs are reimbursable under section ~~525.703~~, subdivision 3, paragraph (b) 524.5-502.

Sec. 21. Minnesota Statutes 2002, section 253B.03, subdivision 4a, is amended to read:

Subd. 4a. **DISCLOSURE OF PATIENT'S ADMISSION.** Upon admission to a facility where federal law prohibits unauthorized disclosure of patient or resident identifying information to callers and visitors, the patient or resident, or the legal guardian or conservator of the patient or resident, shall be given the opportunity to authorize disclosure of the patient's or resident's presence in the facility to callers and visitors who may seek to communicate with the patient or resident. To the extent possible, the legal guardian or conservator of a patient or resident shall consider the opinions of the patient or resident regarding the disclosure of the patient's or resident's presence in the facility.

Sec. 22. Minnesota Statutes 2002, section 253B.03, subdivision 6, is amended to read:

Subd. 6. **CONSENT FOR MEDICAL PROCEDURE.** A patient has the right to prior consent to any medical or surgical treatment, other than treatment for chemical dependency or nonintrusive treatment for mental illness.

The following procedures shall be used to obtain consent for any treatment necessary to preserve the life or health of any committed patient:

(a) The written, informed consent of a competent adult patient for the treatment is sufficient.

(b) If the patient is subject to guardianship or conservatorship which includes the provision of medical care, the written, informed consent of the guardian or conservator for the treatment is sufficient.

(c) If the head of the treatment facility determines that the patient is not competent to consent to the treatment and the patient has not been adjudicated incompetent, written, informed consent for the surgery or medical treatment shall be obtained from the nearest proper relative. For this purpose, the following persons are proper relatives, in the order listed: the patient's spouse, parent, adult child, or adult sibling. If the nearest proper relatives cannot be located, refuse to consent to the procedure, or are unable to consent, the head of the treatment facility or an interested person may petition the committing court for approval for the treatment or may petition a court of competent jurisdiction for the appointment of a guardian or conservator. The determination that the patient is not competent, and the reasons for the determination, shall be documented in the patient's clinical record.

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(d) Consent to treatment of any minor patient shall be secured in accordance with sections 144.341 to 144.346. A minor 16 years of age or older may consent to hospitalization, routine diagnostic evaluation, and emergency or short-term acute care.

(e) In the case of an emergency when the persons ordinarily qualified to give consent cannot be located, the head of the treatment facility may give consent.

No person who consents to treatment pursuant to the provisions of this subdivision shall be civilly or criminally liable for the performance or the manner of performing the treatment. No person shall be liable for performing treatment without consent if written, informed consent was given pursuant to this subdivision. This provision shall not affect any other liability which may result from the manner in which the treatment is performed.

Sec. 23. Minnesota Statutes 2002, section 253B.03, subdivision 6a, is amended to read:

Subd. 6a. CONSENT FOR TREATMENT FOR MENTAL RETARDATION.

A patient with mental retardation, or the patient's guardian or conservator, has the right to give or withhold consent before:

(1) the implementation of any aversive or deprivation procedure except for emergency procedures permitted in rules of the commissioner adopted under section 245.825; or

(2) the administration of psychotropic medication.

Sec. 24. Minnesota Statutes 2002, section 253B.03, subdivision 6d, is amended to read:

Subd. 6d. ADULT MENTAL HEALTH TREATMENT. (a) A competent adult may make a declaration of preferences or instructions regarding intrusive mental health treatment. These preferences or instructions may include, but are not limited to, consent to or refusal of these treatments.

(b) A declaration may designate a proxy to make decisions about intrusive mental health treatment. A proxy designated to make decisions about intrusive mental health treatments and who agrees to serve as proxy may make decisions on behalf of a declarant consistent with any desires the declarant expresses in the declaration.

(c) A declaration is effective only if it is signed by the declarant and two witnesses. The witnesses must include a statement that they believe the declarant understands the nature and significance of the declaration. A declaration becomes operative when it is delivered to the declarant's physician or other mental health treatment provider. The physician or provider must comply with it to the fullest extent possible, consistent with reasonable medical practice, the availability of treatments requested, and applicable law. The physician or provider shall continue to obtain the declarant's informed consent to all intrusive mental health treatment decisions if the declarant is capable of informed consent. A treatment provider may not require a person to make a declaration under this subdivision as a condition of receiving services.

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(d) The physician or other provider shall make the declaration a part of the declarant's medical record. If the physician or other provider is unwilling at any time to comply with the declaration, the physician or provider must promptly notify the declarant and document the notification in the declarant's medical record. If the declarant has been committed as a patient under this chapter, the physician or provider may subject a declarant to intrusive treatment in a manner contrary to the declarant's expressed wishes, only upon order of the committing court. If the declarant is not a committed patient under this chapter, the physician or provider may subject the declarant to intrusive treatment in a manner contrary to the declarant's expressed wishes, only if the declarant is committed as mentally ill or mentally ill and dangerous to the public and a court order authorizing the treatment has been issued.

(e) A declaration under this subdivision may be revoked in whole or in part at any time and in any manner by the declarant if the declarant is competent at the time of revocation. A revocation is effective when a competent declarant communicates the revocation to the attending physician or other provider. The attending physician or other provider shall note the revocation as part of the declarant's medical record.

(f) A provider who administers intrusive mental health treatment according to and in good faith reliance upon the validity of a declaration under this subdivision is held harmless from any liability resulting from a subsequent finding of invalidity.

(g) In addition to making a declaration under this subdivision, a competent adult may delegate parental powers under section ~~524.5-505~~ 524.5-211 or may nominate a guardian or conservator under section ~~525.544~~ sections 524.5-101 to 524.5-502.

Sec. 25. Minnesota Statutes 2002, section 253B.03, subdivision 11, is amended to read:

Subd. 11. **PROXY.** A legally authorized health care proxy, agent, or guardian, ~~or conservator~~ may exercise the patient's rights on the patient's behalf.

Sec. 26: Minnesota Statutes 2003 Supplement, section 256J.14, is amended to read:

256J.14 ELIGIBILITY FOR PARENTING OR PREGNANT MINORS.

(a) The definitions in this paragraph only apply to this subdivision.

(1) "Household of a parent, legal guardian, or other adult relative" means the place of residence of:

(i) a natural or adoptive parent;

(ii) a legal guardian according to appointment or acceptance under sections 260C.325, ~~525.615,~~ or ~~525.6165~~ 524.5-201 to 524.5-317, and related laws;

(iii) a caregiver as defined in section 256J.08, subdivision 11; or

(iv) an appropriate adult relative designated by a county agency.

(2) "Adult-supervised supportive living arrangement" means a private family setting which assumes responsibility for the care and control of the minor parent and

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minor child, or other living arrangement, not including a public institution, licensed by the commissioner of human services which ensures that the minor parent receives adult supervision and supportive services, such as counseling, guidance, independent living skills training, or supervision.

(b) A minor parent and the minor child who is in the care of the minor parent must reside in the household of a parent, legal guardian, other adult relative, or in an adult-supervised supportive living arrangement in order to receive MFIP unless:

(1) the minor parent has no living parent, other adult relative, or legal guardian whose whereabouts is known;

(2) no living parent, other adult relative, or legal guardian of the minor parent allows the minor parent to live in the parent's, other adult relative's, or legal guardian's home;

(3) the minor parent lived apart from the minor parent's own parent or legal guardian for a period of at least one year before either the birth of the minor child or the minor parent's application for MFIP;

(4) the physical or emotional health or safety of the minor parent or minor child would be jeopardized if the minor parent and the minor child resided in the same residence with the minor parent's parent, other adult relative, or legal guardian; or

(5) an adult supervised supportive living arrangement is not available for the minor parent and child in the county in which the minor parent and child currently reside. If an adult supervised supportive living arrangement becomes available within the county, the minor parent and child must reside in that arrangement.

(c) The county agency shall inform minor applicants both orally and in writing about the eligibility requirements, their rights and obligations under the MFIP program, and any other applicable orientation information. The county must advise the minor of the possible exemptions under section 256J.54, subdivision 5, and specifically ask whether one or more of these exemptions is applicable. If the minor alleges one or more of these exemptions, then the county must assist the minor in obtaining the necessary verifications to determine whether or not these exemptions apply.

(d) If the county worker has reason to suspect that the physical or emotional health or safety of the minor parent or minor child would be jeopardized if they resided with the minor parent's parent, other adult relative, or legal guardian, then the county worker must make a referral to child protective services to determine if paragraph (b), clause (4), applies. A new determination by the county worker is not necessary if one has been made within the last six months, unless there has been a significant change in circumstances which justifies a new referral and determination.

(e) If a minor parent is not living with a parent, legal guardian, or other adult relative due to paragraph (b), clause (1), (2), or (4), the minor parent must reside, when possible, in a living arrangement that meets the standards of paragraph (a), clause (2).

(f) Regardless of living arrangement, MFIP must be paid, when possible, in the form of a protective payment on behalf of the minor parent and minor child according to section 256J.39, subdivisions 2 to 4.

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Sec. 27. Minnesota Statutes 2002, section 257B.02, is amended to read:

257B.02 APPLICATION OF OTHER LAW; CONSTRUCTION.

Chapters 257 and 518 and sections ~~525.539~~ 524.5-101 to ~~525.705~~ 524.5-502 apply to standby custodians, temporary custodians, co-custodians, custodians, and alternates unless otherwise specified in this chapter.

Nothing in this chapter may be construed to deprive a parent of any parental rights or responsibilities. A designator does not lose any custodial rights by the appointment of a standby or temporary custodian.

Nothing in this chapter may be construed to relieve any parent of a duty to support the parent's children. A preexisting child support order is not suspended or terminated during the time a child is cared for by a standby or temporary custodian, unless otherwise provided by court order. A standby custodian or temporary custodian has a cause of action for child support against an absent parent under section 256.87, subdivision 5.

Sec. 28. Minnesota Statutes 2002, section 257B.04, subdivision 4, is amended to read:

Subd. 4. **RECOMMENDED FORM.** A designation may, but need not, be in the following form: "I (insert name of designator) do hereby appoint (insert name, address, and telephone number of standby or temporary custodian) as the standby or temporary custodian of (insert name(s) of child(ren)) to take effect upon the occurrence of the following triggering event or events (insert specific triggering events).

I am the (insert designator's relationship to child(ren)) of (insert name(s) of child(ren)). (Insert name(s) of child(ren)'s other parent) is the other parent of (insert name(s) of child(ren)). The other parent's address is:

(check all that apply):

.... The other parent died on (insert date of death).

.... The other parent's parental rights were terminated on (insert date of termination).

.... The other parent's whereabouts are unknown. I understand that all living parents whose rights have not been terminated must be given notice of this designation pursuant to the Minnesota Rules of Civil Procedure or a petition to approve this designation may not be granted by the court.

.... The other parent is unwilling and unable to make and carry out day-to-day child-care decisions concerning the child(ren).

.... The other parent consents to this designation and has signed this form below.

By this designation I am granting (insert name of standby or temporary custodian) the authority to act for 60 days following the occurrence of the triggering event as a co-custodian with me, or in the event of my death, as custodian of my child(ren).

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A temporary custodian appointment terminates upon the death of the designator.

(Optional) I hereby nominate (insert name, address, and telephone number of alternate standby custodian) as the alternate standby custodian to assume the duties of the standby custodian named above if the standby custodian is unable or unwilling to act as a standby custodian.

If I have indicated more than one triggering event, it is my intent that the triggering event which occurs first shall take precedence. If I have indicated "my death" as the triggering event, it is my intent that the person named in the designation to be standby custodian for my child(ren) in the event of my death shall be appointed as guardian of my child(ren) under Minnesota Statutes, ~~section 525.551~~ sections 524.5-201 to 524.5-317, upon my death.

It is my intention to retain full parental rights to the extent consistent with my condition and to retain the authority to revoke the appointment of a standby or temporary custodian if I so choose.

This designation is made after careful reflection, while I am of sound mind.

..... (Date) (Designator's Signature)
..... (Witness' Signature) (Witnesses' Signature)
..... (Number and Street) (Number and Street)
..... (City, State, and Zip Code) (City, State, and Zip Code)

IF APPLICABLE: I (insert name of other parent) hereby consent to this designation.

..... (Date) (Signature of Other Parent)
..... (Address of Other Parent)	

I, (insert name of standby or temporary custodian), hereby accept my nomination as standby or temporary custodian of (insert child(ren)'s name(s)). I understand that my rights and responsibilities toward the child(ren) named above will become effective upon the occurrence of the above-stated triggering event or events. I further understand that in order to continue caring for the child(ren), I must file a petition with the court within 60 days of the occurrence of the triggering event.

..... (Date) (Signature of Standby or Temporary Custodian)"
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Sec. 29, Minnesota Statutes 2002, section 257B.06, subdivision 2, is amended to read:

Subd. 2. **DEATH OF DESIGNATOR.** The commencement of the standby custodian's authority to act as custodian because of the death of the designator does not

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confer upon the standby custodian more than legal and physical custody of the child as defined in chapter 518. On the death of the designator, the standby custodian shall be appointed a guardian pursuant to ~~section 525.551~~ sections 524.5-201 to 524.5-317. No separate petition is required. No bond or accounting is required except as specified in this chapter.

Sec. 30. Minnesota Statutes 2002, section 257C.02, is amended to read:

257C.02 APPLICATION OF OTHER LAW; CONSTRUCTION.

(a) Chapters 256, 257, and 518 and ~~section 525.551~~ sections 524.5-201 to 524.5-317 apply to third-party and de facto custody proceedings unless otherwise specified in this chapter. De facto or third-party child custody proceedings concerning an Indian child are child custody proceedings governed by the Indian Child Welfare Act, United States Code, title 25, sections 1901 to 1963; by the Minnesota Indian Family Preservation Act, sections 260.751 to 260.835; and by this chapter when not inconsistent with the Indian Child Welfare Act or the Minnesota Indian Family Preservation Act.

(b) Nothing in this chapter relieves a parent of a duty to support the parent's child. A preexisting child support order is not suspended or terminated when a third party takes custody of a child unless otherwise provided by court order. A de facto or third-party custodian has a cause of action against a parent for child support under section 256.87, subdivision 5, and the public authority has a cause of action against a parent for child support under section 256.87, subdivision 1.

(c) Nothing in this chapter prohibits the establishment of parentage under chapter 257.

Sec. 31. Minnesota Statutes 2002, section 260C.325, subdivision 3, is amended to read:

Subd. 3. **BOTH PARENTS DECEASED.** If upon petition to the juvenile court by a reputable person, including but not limited to an agent of the commissioner of human services, and upon hearing in the manner provided in section 260C.163, the court finds that both parents are deceased and no appointment has been made or petition for appointment filed pursuant to ~~sections 525.615~~ 524.5-201 to 525.6185 524.5-317, the court shall order the guardianship and legal custody of the child transferred to:

- (a) the commissioner of human services;
- (b) a licensed child-placing agency; or
- (c) an individual who is willing and capable of assuming the appropriate duties and responsibilities to the child.

Sec. 32. Minnesota Statutes 2002, section 270B.03, subdivision 2, is amended to read:

Subd. 2. **INCAPACITATION.** If an individual is legally ~~incapacitated~~ subject to guardianship or conservatorship under ~~sections 525.539~~ 524.5-101 to 525.61

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524.5-502, or similar laws of another state, that individual's return and return information is, upon written request, open to inspection by or disclosure to the guardian or conservator appointed for the individual or the individual's estate.

Sec. 33. Minnesota Statutes 2002, section 501B.47, is amended to read:

501B.47 PETITION BY OWNER OF PRESENT OR FUTURE INTEREST FOR COURT ORDER TO SELL, MORTGAGE, OR LEASE INTERESTS IN REAL PROPERTY.

Notwithstanding a contrary provision in the instrument creating the interests, when the ownership of real property situated in this state is divided into one or more possessory interests and one or more future interests, the owner of an interest may petition the district court for the county in which any of the real property is situated for an order directing that the real property or part of the real property be sold, mortgaged, or leased. If an owner is a minor or incapacitated person as defined in section ~~525.54~~ 524.5-102, subdivision 6 or 10, or otherwise under conservatorship, the petition may be made on behalf of the owner by a custodian, conservator, or guardian.

Sec. 34. Minnesota Statutes 2002, section 501B.49, subdivision 2, is amended to read:

Subd. 2. **NOTICE.** Notice of hearing must be given by publishing a copy of the order for hearing one time in a legal newspaper for the county in which the petition is filed at least 20 days before the date of the hearing, and by mailing copies of the order for hearing in the manner specified in this subdivision or in another manner ordered by the court. In the case of a petition under section 501B.46, mailed notice must be given by mailing a copy of the order for hearing to those beneficiaries of the trust then in being who are known to or reasonably ascertainable by the petitioner and, in the case of a beneficiary who is a minor or an incapacitated person as defined in section ~~525.54~~ 524.5-102, subdivision 6 or 10, or otherwise under conservatorship, to the conservator or guardian, or if none is acting within the state, to the guardian ad litem of the beneficiary, at least 15 days before the date of the hearing. In the case of a petition under section 501B.47, mailed notice must be given by mailing a copy of the order for hearing to those persons owning an interest in the real property then in being who are known to or reasonably ascertainable by the petitioner and, in the case of a person who is a minor or an incapacitated person as defined in section ~~525.54~~ 524.5-102, subdivision 6 or 10, or otherwise under conservatorship, to the conservator or guardian, or if none is acting within the state, to the guardian ad litem of the person, at least 15 days before the date of the hearing.

Sec. 35. Minnesota Statutes 2002, section 501B.50, is amended to read:

501B.50 REPRESENTATION OF PERSONS WHO ARE UNBORN, UN-ASCERTAINED, UNKNOWN, OR MINORS OR INCAPACITATED PERSONS.

If an interested person is a minor or an incapacitated person as defined in section ~~525.54~~ 524.5-102, subdivision 6 or 10, or otherwise under conservatorship, and does not have a guardian or conservator within the state, the court shall appoint a guardian ad litem for the person. If an interested person is unborn, unascertained, or a person

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whose identity or address is unknown to the petitioner, the court shall represent the person, but the court may, upon the application of the petitioner or another interested person or on its own motion, appoint a guardian ad litem to represent the person.

Sec. 36. Minnesota Statutes 2002, section 501B.51, subdivision 1, is amended to read:

Subdivision 1. **FORM OF ORDER; CONCLUSIVENESS.** At a hearing under section 501B.49, the court shall make an order it considers appropriate. If the petition is granted in whole or in part, the order must specify the real property to be sold, mortgaged, or leased and the terms and conditions on which the transaction is to be consummated. The order is final and conclusive as to all matters determined by it and binding in rem on all persons interested in the real property, whether their interests are vested or contingent, even though the person is a minor, incapacitated as defined in section ~~525.54~~ 524.5-102, subdivision 6 or 10, or otherwise subject to conservatorship, unascertained, or not in being, except that appeal may be taken in the manner provided in the Rules of Appellate Procedure.

Sec. 37. Minnesota Statutes 2002, section 501B.53, subdivision 4, is amended to read:

Subd. 4. **HEARING ON CONFIRMATION ORDER.** The trustee or receiver shall obtain from the court a time and place for the court's hearing on the confirmation of the agreement and shall give mailed notice of the time and place of the hearing to the interested parties described in section 501B.51 at least 15 days before the date of that hearing. The order of confirmation is final and conclusive as to all matters determined by it and binding in rem on all persons interested in the real property, whether their interests are vested or contingent, even though a person is a minor, or incapacitated, as defined in section ~~525.54~~ 524.5-102, subdivision 6 or 10, or otherwise under conservatorship, unascertained, or not in being, except that appeal may be taken in the manner provided in the Rules of Appellate Procedure.

Sec. 38. Minnesota Statutes 2002, section 519.07, is amended to read:

519.07 BARRING INTEREST OF SPOUSE; RIGHTS RECIPROCAL.

A person who has an interest in real estate may bring an action in any county in which all or a part of the real estate is located, seeking a decree that will bar any inchoate interest of the person's spouse in the real estate. The court may grant such a petition if the court finds by clear and convincing evidence that the person's spouse is an incapacitated person as defined in section ~~525.54~~ 524.5-102, subdivision 6, that the person has been deserted by the spouse for a period of at least one year, or that other similar circumstances warrant. The decree may grant the person full control of all the person's real estate located in Minnesota, with power to sell, convey, mortgage, lease, or transfer title to it, subject to any limitations the court considers proper in the circumstances. The decree may not be granted or must be vacated if the petitioner caused or contributed to the incapacity or disappearance of the petitioner's spouse. A certified copy of such decree may be recorded in the office of the county recorder or filed in the office of registrar of titles in any county wherever such real estate, or any part thereof, may be situated.

New language is indicated by underline, deletions by ~~strikeout~~.

Sec. 39. Minnesota Statutes 2002, section 523.03, is amended to read:

523.03 INTERPRETATION.

As used in this chapter:

(1) "incapacity" means cause for appointment of a guardian or conservator of the person or estate of an adult under ~~section 525.54~~ sections 524.5-101 to 524.5-502;

(2) "~~incompetence~~" has the meaning given in ~~section 525.54~~;

(3) "principal" includes a guardian or conservator of the estate appointed for the principal at any time; and

(4) (3) "power of attorney" means a validly executed power of attorney.

Sec. 40. Minnesota Statutes 2002, section 524.1-201, is amended to read:

524.1-201 GENERAL DEFINITIONS.

Subject to additional definitions contained in the subsequent articles which are applicable to specific articles or parts, and unless the context otherwise requires, in chapters 524 and 525:

(2) "Application" means a written request to the registrar for an order of informal probate or appointment under article III, part 3.

(3) "Beneficiary," as it relates to trust beneficiaries, includes a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer and as it relates to a charitable trust, includes any person entitled to enforce the trust.

(5) "Child" includes any individual entitled to take as a child under law by intestate succession from the parent whose relationship is involved and excludes any person who is only a stepchild, a foster child, a grandchild or any more remote descendant.

(6) "Claims" includes liabilities of the decedent whether arising in contract or otherwise and liabilities of the estate which arise after the death of the decedent including funeral expenses and expenses of administration. The term does not include taxes, demands or disputes regarding title of a decedent to specific assets alleged to be included in the estate, tort claims, foreclosure of mechanic's liens, or to actions pursuant to section 573.02.

(7) "Court" means the court or branch having jurisdiction in matters relating to the affairs of decedents. This court in this state is known as the district court.

(8) "Conservator" means a person who is appointed by a court to manage the estate of a protected person.

(9) "Descendant" of an individual means all of the individual's descendants of all generations, with the relationship of parent and child at each generation being determined by the definition of child and parent contained in this section.

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(10) "Devise," when used as a noun, means a testamentary disposition of real or personal property and when used as a verb, means to dispose of real or personal property by will.

(11) "Devisee" means any person designated in a will to receive a devise. In the case of a devise to an existing trust or trustee, or to a trustee on trust described by will, the trust or trustee is the devisee and the beneficiaries are not devisees.

(12) "Disability" means cause for appointment of a protective order conservator as described by in section ~~525.54~~ 524.5-401, or a protective order as described in section 524.5-412.

(13) "Distributee" means any person who has received or who will receive property of a decedent from the decedent's personal representative other than as a creditor or purchaser. A testamentary trustee is a distributee with respect to property which the trustee has received from a personal representative only to the extent of distributed assets or their increment remaining in the trustee's hands. A beneficiary of a testamentary trust to whom the trustee has distributed property received from a personal representative is a distributee of the personal representative. For purposes of this provision, "testamentary trustee" includes a trustee to whom assets are transferred by will, to the extent of the devised assets.

(14) "Estate" includes all of the property of the decedent, trust, or other person whose affairs are subject to this chapter as originally constituted and as it exists from time to time during administration.

(16) "Fiduciary" includes personal representative, guardian, conservator and trustee.

(17) "Foreign personal representative" means a personal representative of another jurisdiction.

(18) "Formal proceedings" means those conducted before a judge with notice to interested persons.

(20) "Guardian" means a person who has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment, but excludes one who is merely a guardian ad litem.

(21) "Heirs" means those persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the property of a decedent.

(22) "Incapacitated person" is as described in section ~~525.54~~ 524.5-102, subdivision 6, other than a minor.

(23) "Informal proceedings" means those conducted by the judge, the registrar, or the person or persons designated by the judge for probate of a will or appointment of a personal representative in accordance with sections 524.3-301 to 524.3-311.

(24) "Interested person" includes heirs, devisees, children, spouses, creditors, beneficiaries and any others having a property right in or claim against the estate of a decedent, ward or protected person which may be affected by the proceeding. It also

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includes persons having priority for appointment as personal representative, and other fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any proceeding.

(27) "Lease" includes an oil, gas, or other mineral lease.

(28) "Letters" includes letters testamentary, letters of guardianship, letters of administration, and letters of conservatorship.

(30) "Mortgage" means any conveyance, agreement or arrangement in which property is used as security.

(31) "Nonresident decedent" means a decedent who was domiciled in another jurisdiction at the time of death.

(32) "Organization" includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal entity.

(35) "Person" means an individual, a corporation, an organization, or other legal entity.

(36) "Personal representative" includes executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status. "General personal representative" excludes special administrator.

(37) "Petition" means a written request to the court for an order after notice.

(38) "Proceeding" includes action at law and suit in equity.

(39) "Property" includes both real and personal property or any interest therein and means anything that may be the subject of ownership.

(40) "Protected person" is as described in section ~~525.54~~ 524.5-102, subdivision ~~1-14~~.

(42) "Registrar" refers to the judge of the court or the person designated by the court to perform the functions of registrar as provided in section 524.1-307.

(43) "Security" includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under such a title or lease, collateral trust certificate, transferable share, voting trust certificate or, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation, any temporary or interim certificate, receipt or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of the foregoing.

(44) "Settlement," in reference to a decedent's estate, includes the full process of administration, distribution and closing.

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(45) "Special administrator" means a personal representative as described by sections 524.3-614 to 524.3-618.

(46) "State" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

(47) "Successor personal representative" means a personal representative, other than a special administrator, who is appointed to succeed a previously appointed personal representative.

(48) "Successors" means those persons, other than creditors, who are entitled to property of a decedent under the decedent's will, this chapter or chapter 525. "Successors" also means a funeral director or county government that provides the funeral and burial of the decedent, or a state or county agency with a claim authorized under section 256B.15.

(49) "Supervised administration" refers to the proceedings described in sections 524.3-501 to 524.3-505.

(51) "Testacy proceeding" means a proceeding to establish a will or determine intestacy.

(53) "Trust" includes any express trust, private or charitable, with additions thereto, wherever and however created. It also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. "Trust" excludes other constructive trusts, and it excludes resulting trusts, conservatorships, personal representatives, trust accounts as defined in chapter 528, custodial arrangements pursuant to sections 149A.97, 318.01 to 318.06, 527.21 to 527.44, business trusts providing for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind, and any arrangement under which a person is nominee or escrowee for another.

(54) "Trustee" includes an original, additional, or successor trustee, whether or not appointed or confirmed by court.

(55) "Ward" is as described in section ~~525.54~~ 524.5-102, subdivision ~~4~~ 17.

(56) "Will" includes codicil and any testamentary instrument which merely appoints an executor or revokes or revises another will.

Sec. 41. Minnesota Statutes 2002, section 524.2-606, is amended to read:

524.2-606 NONADEMPTION OF SPECIFIC DEVICES; UNPAID PROCEEDS OF SALE, CONDEMNATION, OR INSURANCE; SALE BY CONSERVATOR OR GUARDIAN.

(a) A specific devisee has a right to the specifically devised property in the testator's estate at death and:

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(1) any balance of the purchase price, together with any security agreement, owing from a purchaser to the testator at death by reason of sale of the property;

(2) any amount of a condemnation award for the taking of the property unpaid at death;

(3) any proceeds unpaid at death on fire or casualty insurance on or other recovery for injury to the property; and

(4) property owned by the testator at death and acquired as a result of foreclosure, or obtained in lieu of foreclosure, of the security interest for a specifically devised obligation.

(b) If specifically devised property is sold or mortgaged by a conservator or guardian or by an agent acting within the authority of a durable power of attorney for an incapacitated principal, or if a condemnation award, insurance proceeds, or recovery for injury to the property are paid to a conservator or guardian or to an agent acting within the authority of a durable power of attorney for an incapacitated principal, the specific devisee has the right to a general pecuniary devise equal to the net sale price, the amount of the unpaid loan, the condemnation award, the insurance proceeds, or the recovery.

(c) The right of a specific devisee under paragraph (b) is reduced by any right the devisee has under paragraph (a).

(d) For the purposes of the references in paragraph (b) to a conservator or guardian or an agent acting within the authority of a durable power of attorney, paragraph (b) does not apply if after the sale, mortgage, condemnation, casualty, or recovery;

(1) in the case of a conservator or guardian, it was adjudicated that the testator's incapacity ceased and the testator survived the adjudication by one year; or

(2) in the case of an agent acting within the authority of a durable power of attorney, the testator's incapacity ceased and the testator survived for one year after the incapacity ceased.

(e) For the purposes of the references in paragraph (b) to an agent acting within the authority of a durable power of attorney for an incapacitated principal, (i) "incapacitated principal" means a principal who is an incapacitated person as defined in section ~~525.54~~ 524.5-102, subdivision ~~3~~ 6, and (ii) a finding of the principal's incapacity need not occur during the principal's life.

Sec. 42. Minnesota Statutes 2002, section 524.3-715, is amended to read:

524.3-715 TRANSACTIONS AUTHORIZED FOR PERSONAL REPRESENTATIVES; EXCEPTIONS.

Except as restricted or otherwise provided by the will or by an order in a formal proceeding and subject to the priorities stated in section 524.3-902, a personal representative, acting reasonably for the benefit of the interested persons, may properly:

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(1) retain assets owned by the decedent pending distribution or liquidation including those in which the representative is personally interested or which are otherwise improper for trust investment;

(2) receive assets from fiduciaries, or other sources;

(3) perform, compromise or refuse performance of the decedent's contracts that continue as obligations of the estate, as the personal representative may determine under the circumstances. In performing enforceable contracts by the decedent to convey or lease land, the personal representative, among other possible courses of action, may:

(i) execute and deliver a deed of conveyance for cash payment of all sums remaining due or the purchaser's note for the sum remaining due secured by a mortgage or deed of trust on the land; or

(ii) deliver a deed in escrow with directions that the proceeds, when paid in accordance with the escrow agreement, be paid to the successors of the decedent, as designated in the escrow agreement;

(4) satisfy written charitable pledges of the decedent irrespective of whether the pledges constituted binding obligations of the decedent or were properly presented as claims, if in the judgment of the personal representative the decedent would have wanted the pledges completed under the circumstances;

(5) if funds are not needed to meet debts and expenses currently payable and are not immediately distributable, deposit or invest liquid assets of the estate, including moneys received from the sale of other assets, in federally insured interest-bearing accounts, readily marketable secured loan arrangements or other prudent investments which would be reasonable for use by trustees generally;

(6) acquire or dispose of an asset, including land in this or another state, for cash or on credit, at public or private sale; and manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset;

(7) make ordinary or extraordinary repairs or alterations in buildings or other structures, demolish any improvements, raze existing or erect new party walls or buildings;

(8) subdivide, develop or dedicate land to public use; make or obtain the vacation of plats and adjust boundaries; or adjust differences in valuation on exchange or partition by giving or receiving considerations; or dedicate easements to public use without consideration;

(9) enter for any purpose into a lease as lessor or lessee, with or without option to purchase or renew, for a term within or extending beyond the period of administration;

(10) enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;

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(11) abandon property when, in the opinion of the personal representative, it is valueless, or is so encumbered, or is in condition that it is of no benefit to the estate;

(12) vote stocks or other securities in person or by general or limited proxy;

(13) pay calls, assessments, and other sums chargeable or accruing against or on account of securities, unless barred by the provisions relating to claims;

(14) hold a security in the name of a nominee or in other form without disclosure of the interest of the estate but the personal representative is liable for any act of the nominee in connection with the security so held;

(15) insure the assets of the estate against damage, loss and liability and the personal representative against liability as to third persons;

(16) borrow money with or without security to be repaid from the estate assets or otherwise; and advance money for the protection of the estate;

(17) effect a fair and reasonable compromise with any debtor or obligor, or extend, renew or in any manner modify the terms of any obligation owing to the estate. The personal representative on holding a mortgage, pledge or other lien upon property of another person may, in lieu of foreclosure, accept a conveyance or transfer of encumbered assets from the owner thereof in satisfaction of the indebtedness secured by lien;

(18) pay in compliance with section 524.3-805, but without the presentation of a claim, the reasonable and necessary last illness expenses of the decedent (except as provided in section 524.3-806 (a)), reasonable funeral expenses, debts and taxes with preference under federal or state law, and other taxes, assessments, compensation of the personal representative and the personal representative's attorney, and all other costs and expenses of administration although the same may be otherwise barred under section 524.3-803;

(19) sell or exercise stock subscription or conversion rights; consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;

(20) allocate items of income or expense to either estate income or principal, as permitted or provided by law;

(21) employ persons, including attorneys, auditors, investment advisors, or agents, even if they are associated with the personal representative, to advise or assist the personal representative in the performance of administrative duties; act without independent investigation upon their recommendations; and instead of acting personally, employ one or more agents to perform any act of administration, whether or not discretionary;

(22) prosecute or defend claims, or proceedings in any jurisdiction for the protection of the estate and of the personal representative in the performance of duties;

(23) sell, mortgage, or lease any real or personal property of the estate or any interest therein for cash, credit, or for part cash and part credit, and with or without

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security for unpaid balances, provided, however, that the homestead of a decedent when the spouse takes any interest therein shall not be sold, mortgaged or leased unless the written consent of the spouse has been obtained;

(24) continue any unincorporated business or venture in which the decedent was engaged at the time of death (i) in the same business form for a period of not more than four months from the date of appointment of a general personal representative if continuation is a reasonable means of preserving the value of the business including good will, (ii) in the same business form for any additional period of time that may be approved by order of the court in a formal proceeding to which the persons interested in the estate are parties; or (iii) throughout the period of administration if the business is incorporated by the personal representative and if none of the probable distributees of the business who are competent adults object to its incorporation and retention in the estate;

(25) incorporate any business or venture in which the decedent was engaged at the time of death;

(26) provide for exoneration of the personal representative from personal liability in any contract entered into on behalf of the estate;

(27) satisfy and settle claims and distribute the estate as provided in this chapter;

(28) foreclose a mortgage, lien, or pledge or collect the debts secured thereby, or complete any such proceeding commenced by the decedent;

(29) exercise all powers granted to guardians and conservators by sections ~~525.67~~ and ~~525.68~~ 524.5-101 to 524.5-502.

Sec. 43. Minnesota Statutes 2002, section 609.2325, subdivision 2, is amended to read:

Subd. 2. **EXEMPTIONS.** For the purposes of this section, a vulnerable adult is not abused for the sole reason that:

(1) the vulnerable adult or a person with authority to make health care decisions for the vulnerable adult under sections 144.651, 144A.44, chapter 145B, 145C, or 252A, or ~~section~~ sections 253B.03, or ~~525.539~~ 524.5-101 to ~~525.6199~~ 524.5-502, refuses consent or withdraws consent, consistent with that authority and within the boundary of reasonable medical practice, to any therapeutic conduct, including any care, service, or procedure to diagnose, maintain, or treat the physical or mental condition of the vulnerable adult or, where permitted under law, to provide nutrition and hydration parenterally or through intubation; this paragraph does not enlarge or diminish rights otherwise held under law by:

(i) a vulnerable adult or a person acting on behalf of a vulnerable adult, including an involved family member, to consent to or refuse consent for therapeutic conduct; or

(ii) a caregiver to offer or provide or refuse to offer or provide therapeutic conduct;

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(2) the vulnerable adult, a person with authority to make health care decisions for the vulnerable adult, or a caregiver in good faith selects and depends upon spiritual means or prayer for treatment or care of disease or remedial care of the vulnerable adult in lieu of medical care, provided that this is consistent with the prior practice or belief of the vulnerable adult or with the expressed intentions of the vulnerable adult; or

(3) the vulnerable adult, who is not impaired in judgment or capacity by mental or emotional dysfunction or undue influence, engages in consensual sexual contact with: (i) a person, including a facility staff person, when a consensual sexual personal relationship existed prior to the caregiving relationship; or (ii) a personal care attendant, regardless of whether the consensual sexual personal relationship existed prior to the caregiving relationship.

Sec. 44. Minnesota Statutes 2002, section 609.233, subdivision 2, is amended to read:

Subd. 2. **EXEMPTIONS.** A vulnerable adult is not neglected for the sole reason that:

(1) the vulnerable adult or a person with authority to make health care decisions for the vulnerable adult under sections 144.651, 144A.44, 253B.03, or ~~525.539~~ 524.5-101 to ~~525.6199~~ 524.5-502, or chapter 145B, 145C, or 252A, refuses consent or withdraws consent, consistent with that authority and within the boundary of reasonable medical practice, to any therapeutic conduct, including any care, service, or procedure to diagnose, maintain, or treat the physical or mental condition of the vulnerable adult or, where permitted under law, to provide nutrition and hydration parenterally or through intubation; this paragraph does not enlarge or diminish rights otherwise held under law by:

(i) a vulnerable adult or a person acting on behalf of a vulnerable adult, including an involved family member, to consent to or refuse consent for therapeutic conduct; or

(ii) a caregiver to offer or provide or refuse to offer or provide therapeutic conduct;

(2) the vulnerable adult, a person with authority to make health care decisions for the vulnerable adult, or a caregiver in good faith selects and depends upon spiritual means or prayer for treatment or care of disease or remedial care of the vulnerable adult in lieu of medical care, provided that this is consistent with the prior practice or belief of the vulnerable adult or with the expressed intentions of the vulnerable adult; or

(3) the vulnerable adult, who is not impaired in judgment or capacity by mental or emotional dysfunction or undue influence, engages in consensual sexual contact with: (i) a person including a facility staff person when a consensual sexual personal relationship existed prior to the caregiving relationship; or (ii) a personal care attendant, regardless of whether the consensual sexual personal relationship existed prior to the caregiving relationship.

Sec. 45. Minnesota Statutes 2002, section 626.557, subdivision 10, is amended to read:

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Subd. 10. **DUTIES OF COUNTY SOCIAL SERVICE AGENCY.** (a) Upon receipt of a report from the common entry point staff, the county social service agency shall immediately assess and offer emergency and continuing protective social services for purposes of preventing further maltreatment and for safeguarding the welfare of the maltreated vulnerable adult. In cases of suspected sexual abuse, the county social service agency shall immediately arrange for and make available to the vulnerable adult appropriate medical examination and treatment. When necessary in order to protect the vulnerable adult from further harm, the county social service agency shall seek authority to remove the vulnerable adult from the situation in which the maltreatment occurred. The county social service agency may also investigate to determine whether the conditions which resulted in the reported maltreatment place other vulnerable adults in jeopardy of being maltreated and offer protective social services that are called for by its determination.

(b) County social service agencies may enter facilities and inspect and copy records as part of an investigation. The county social service agency has access to not public data, as defined in section 13.02, and medical records under section 144.335, that are maintained by facilities to the extent necessary to conduct its investigation. The inquiry is not limited to the written records of the facility, but may include every other available source of information.

(c) When necessary in order to protect a vulnerable adult from serious harm, the county social service agency shall immediately intervene on behalf of that adult to help the family, vulnerable adult, or other interested person by seeking any of the following:

(1) a restraining order or a court order for removal of the perpetrator from the residence of the vulnerable adult pursuant to section 518B.01;

(2) the appointment of a guardian or conservator pursuant to sections ~~525.539~~ 524.5-101 to ~~525.6198~~ 524.5-502, or guardianship or conservatorship pursuant to chapter 252A;

(3) replacement of a guardian or conservator suspected of maltreatment and appointment of a suitable person as guardian or conservator, pursuant to sections ~~525.539~~ 524.5-101 to ~~525.6198~~ 524.5-502; or

(4) a referral to the prosecuting attorney for possible criminal prosecution of the perpetrator under chapter 609.

The expenses of legal intervention must be paid by the county in the case of indigent persons, under section ~~525.703~~ 524.5-502 and chapter 563.

In proceedings under sections ~~525.539~~ 524.5-101 to ~~525.6198~~ 524.5-502, if a suitable relative or other person is not available to petition for guardianship or conservatorship, a county employee shall present the petition with representation by the county attorney. The county shall contract with or arrange for a suitable person or organization to provide ongoing guardianship services. If the county presents evidence to the court exercising probate jurisdiction that it has made a diligent effort and no other suitable person can be found, a county employee may serve as guardian or conservator. The county shall not retaliate against the employee for any action taken on

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behalf of the ward or ~~conservatee~~ protected person even if the action is adverse to the county's interest. Any person retaliated against in violation of this subdivision shall have a cause of action against the county and shall be entitled to reasonable attorney fees and costs of the action if the action is upheld by the court.

Sec. 46. Minnesota Statutes 2002, section 626.5572, subdivision 17, is amended to read:

Subd. 17. **NEGLECT.** "Neglect" means:

(a) The failure or omission by a caregiver to supply a vulnerable adult with care or services, including but not limited to, food, clothing, shelter, health care, or supervision which is:

(1) reasonable and necessary to obtain or maintain the vulnerable adult's physical or mental health or safety, considering the physical and mental capacity or dysfunction of the vulnerable adult; and

(2) which is not the result of an accident or therapeutic conduct.

(b) The absence or likelihood of absence of care or services, including but not limited to, food, clothing, shelter, health care, or supervision necessary to maintain the physical and mental health of the vulnerable adult which a reasonable person would deem essential to obtain or maintain the vulnerable adult's health, safety, or comfort considering the physical or mental capacity or dysfunction of the vulnerable adult.

(c) For purposes of this section, a vulnerable adult is not neglected for the sole reason that:

(1) the vulnerable adult or a person with authority to make health care decisions for the vulnerable adult under sections 144.651, 144A.44, chapter 145B, 145C, or 252A, or ~~section~~ sections 253B.03, or ~~525.539~~ 524.5-101 to ~~525.6199~~ 524.5-502, refuses consent or withdraws consent, consistent with that authority and within the boundary of reasonable medical practice, to any therapeutic conduct, including any care, service, or procedure to diagnose, maintain, or treat the physical or mental condition of the vulnerable adult, or, where permitted under law, to provide nutrition and hydration parenterally or through intubation; this paragraph does not enlarge or diminish rights otherwise held under law by:

(i) a vulnerable adult or a person acting on behalf of a vulnerable adult, including an involved family member, to consent to or refuse consent for therapeutic conduct; or

(ii) a caregiver to offer or provide or refuse to offer or provide therapeutic conduct; or

(2) the vulnerable adult, a person with authority to make health care decisions for the vulnerable adult, or a caregiver in good faith selects and depends upon spiritual means or prayer for treatment or care of disease or remedial care of the vulnerable adult in lieu of medical care, provided that this is consistent with the prior practice or belief of the vulnerable adult or with the expressed intentions of the vulnerable adult;

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(3) the vulnerable adult, who is not impaired in judgment or capacity by mental or emotional dysfunction or undue influence, engages in sexual contact with:

(i) a person including a facility staff person when a consensual sexual personal relationship existed prior to the caregiving relationship; or

(ii) a personal care attendant, regardless of whether the consensual sexual personal relationship existed prior to the caregiving relationship; or

(4) an individual makes an error in the provision of therapeutic conduct to a vulnerable adult which does not result in injury or harm which reasonably requires medical or mental health care; or

(5) an individual makes an error in the provision of therapeutic conduct to a vulnerable adult that results in injury or harm, which reasonably requires the care of a physician, and:

(i) the necessary care is provided in a timely fashion as dictated by the condition of the vulnerable adult;

(ii) if after receiving care, the health status of the vulnerable adult can be reasonably expected, as determined by the attending physician, to be restored to the vulnerable adult's preexisting condition;

(iii) the error is not part of a pattern of errors by the individual;

(iv) if in a facility, the error is immediately reported as required under section 626.557, and recorded internally in the facility;

(v) if in a facility, the facility identifies and takes corrective action and implements measures designed to reduce the risk of further occurrence of this error and similar errors; and

(vi) if in a facility, the actions required under items (iv) and (v) are sufficiently documented for review and evaluation by the facility and any applicable licensing, certification, and ombudsman agency.

(d) Nothing in this definition requires a caregiver, if regulated, to provide services in excess of those required by the caregiver's license, certification, registration, or other regulation.

(e) If the findings of an investigation by a lead agency result in a determination of substantiated maltreatment for the sole reason that the actions required of a facility under paragraph (c), clause (5), item (iv), (v), or (vi), were not taken, then the facility is subject to a correction order. An individual will not be found to have neglected or maltreated the vulnerable adult based solely on the facility's not having taken the actions required under paragraph (c), clause (5), item (iv), (v), or (vi). This must not alter the lead agency's determination of mitigating factors under section 626.557, subdivision 9c, paragraph (c).

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Sec. 47. INSTRUCTION TO REVISOR.

The revisor of statutes shall change “sections 525.54 to 525.61” to “sections 524.5-101 to 524.5-502” in the following sections of Minnesota Statutes: 146A.03, subdivision 6; 146A.09, subdivision 6; 147.111, subdivision 6; 147A.14, subdivision 6; 148.102, subdivision 4; 148.262, subdivision 2; 148.263, subdivision 5; 148B.07, subdivision 6; 148B.175, subdivision 8; 148B.281, subdivision 9; 148B.283, subdivision 7; 148B.63, subdivision 6; 148B.69, subdivision 5; 148C.091, subdivision 4; 150A.13, subdivision 6; and 153.24, subdivision 5.

Presented to the governor March 25, 2004

Signed by the governor March 26, 2004, 7:05 p.m.

CHAPTER 147—S.F.No. 1903

An act relating to municipalities; including counties in the definition of municipality for purposes of removal of hazardous buildings or hazardous property; amending Minnesota Statutes 2002, sections 463.15, by adding a subdivision; 463.151; 463.152, subdivision 2; 463.16; 463.161; 463.25.

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

Section 1. Minnesota Statutes 2002, section 463.15, is amended by adding a subdivision to read:

Subd. 3a. MUNICIPALITY. “Municipality” means a county, city, or town.

Sec. 2. Minnesota Statutes 2002, section 463.151, is amended to read:

463.151 REMOVAL BY MUNICIPALITY; CONSENT; COST.

The governing body of any city or town municipality may remove or raze any hazardous building or remove or correct any hazardous condition of real estate upon obtaining the consent in writing of all owners of record, occupying tenants, and all lien holders of record; the cost shall be charged against the real estate as provided in section 463.21, except the governing body may provide that the cost so assessed may be paid in not to exceed five equal annual installments with interest thereon, at eight percent per annum.

Sec. 3. Minnesota Statutes 2002, section 463.152, subdivision 2, is amended to read:

Subd. 2. ACQUISITION; PROCEDURE. In furtherance of the public policy declared in subdivision 1, the governing body of any city or town municipality may acquire any hazardous building, real estate on which any such building is located, or vacant or undeveloped real estate by eminent domain in the manner provided by chapter 117.

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