

SENATE
STATE OF MINNESOTA
EIGHTY-SEVENTH LEGISLATURE

S.F. No. 1753

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DATE	D-PG	OFFICIAL STATUS
02/09/2012	3771	Introduction and first reading Referred to Local Government and Elections
03/13/2012		Comm report: To pass as amended and re-refer to Judiciary and Public Safety

A bill for an act
relating to elections; conforming certain voter eligibility provisions for
individuals under guardianship to constitutional requirements; modifying other
related procedures; amending Minnesota Statutes 2010, sections 201.014,
subdivision 2; 201.071, subdivision 1; 201.15, subdivision 1; 204C.10;
524.5-120; 524.5-310; 524.5-313; 524.5-316; proposing coding for new law in
Minnesota Statutes, chapter 524.

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

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

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

- (a) convicted of treason or any felony whose civil rights have not been restored;
- (b) under a guardianship;
- (c) under a limited guardianship in which the court order revokes the ward's right
to vote; or
- ~~(e)~~ (d) found by a court of law to be legally incompetent.

Sec. 2. Minnesota Statutes 2010, section 201.071, subdivision 1, is amended to read:

Subdivision 1. **Form.** A voter registration application must be of suitable size and
weight for mailing and contain spaces for the following required information: voter's first
name, middle name, and last name; voter's previous name, if any; voter's current address;
voter's previous address, if any; voter's date of birth; voter's municipality and county
of residence; voter's telephone number, if provided by the voter; date of registration;
current and valid Minnesota driver's license number or Minnesota state identification
number, or if the voter has no current and valid Minnesota driver's license or Minnesota

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state identification, the last four digits of the voter's Social Security number; and voter's signature. The registration application may include the voter's e-mail address, if provided by the voter, and the voter's interest in serving as an election judge, if indicated by the voter. The application must also contain the following certification of voter eligibility:

"I certify that I:

(1) will be at least 18 years old on election day;

(2) am a citizen of the United States;

(3) will have resided in Minnesota for 20 days immediately preceding election day;

(4) maintain residence at the address given on the registration form;

(5) am not under court-ordered guardianship, or I am not under a court-ordered limited guardianship in which the court order revokes my right to vote;

(6) have not been found by a court to be legally incompetent to vote;

(7) have the right to vote because, if I have been convicted of a felony, my felony sentence has expired (been completed) or I have been discharged from my sentence; and

(8) have read and understand the following statement: that giving false information is a felony punishable by not more than five years imprisonment or a fine of not more than \$10,000, or both."

The certification must include boxes for the voter to respond to the following questions:

"(1) Are you a citizen of the United States?" and

"(2) Will you be 18 years old on or before election day?"

And the instruction:

"If you checked 'no' to either of these questions, do not complete this form."

The form of the voter registration application and the certification of voter eligibility must be as provided in this subdivision and approved by the secretary of state. Voter registration forms authorized by the National Voter Registration Act must also be accepted as valid. The federal postcard application form must also be accepted as valid if it is not deficient and the voter is eligible to register in Minnesota.

An individual may use a voter registration application to apply to register to vote in Minnesota or to change information on an existing registration.

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

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

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

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

(2) was adjudged legally incompetent.

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

(b) The secretary of state shall report, at least annually, to the chairs and ranking minority members of the house of representatives and senate committees with oversight over elections on the number of individuals whose registration status is changed pursuant to this subdivision.

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

204C.10 PERMANENT REGISTRATION; VERIFICATION OF REGISTRATION.

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

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

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

Sec. 5. Minnesota Statutes 2010, section 524.5-120, is amended to read:

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

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

(1) treatment with dignity and respect;

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

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

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

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

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

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

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

(9) personal privacy;

(10) communication and visitation with persons of the ward's or protected person's choice, provided that if the guardian has found that certain communication or visitation may result in harm to the ward's or protected person's health, safety, or well-being, that communication or visitation may be restricted but only to the extent necessary to prevent the harm;

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

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

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

(14) ~~vote, unless restricted by the court, and pursuant to the Minnesota Constitution,~~
article VII: an individual placed under a guardianship shall not be entitled or permitted to

vote at any election in this state; an individual placed under a limited guardianship retains the right to vote unless otherwise ordered by the court; and

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

Sec. 6. Minnesota Statutes 2010, section 524.5-310, is amended to read:

524.5-310 FINDINGS; ORDER OF APPOINTMENT.

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

(1) the respondent is an incapacitated person; and

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

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

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

In making an order, the court shall explicitly declare whether the order establishes a guardianship or a limited guardianship.

(d) If the court grants the guardian any of the powers or duties under section 524.5-313, paragraph (c), clause (1), (2), or (4), the authority of a previously appointed health care agent to make health care decisions, as defined in section 145C.01, subdivision 5, is suspended until further order of the court or as otherwise provided by this section. The court may declare a health care directive unenforceable as provided in section 145C.09, subdivision 3. The court may declare that a health care directive has been revoked by the ward if the court finds, by clear and convincing evidence, that the ward has revoked the health care directive as provided in section 145C.09, subdivision 1.

(e) A health care agent or other person legally appointed by the ward to control final disposition of the ward's remains under section 145C.05, subdivision 2, clause (7), or 149A.80, or a health care agent authorized to make organ or tissue donations under section 525A.04 or 525A.09, may make health care decisions as defined in section 145C.01,

subdivision 5, on behalf of the ward for the purpose of preparing the ward's body for organ or tissue donation or final disposition of the ward's remains, as applicable.

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

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

(h) Within 14 days after an appointment, a guardian shall send, by certified mail, a copy of the order of appointment to the ward's current residential address. If a ward's residential address changes, the guardian must send a new copy of the original order of appointment and, if applicable, any modification to the order made by the court, to the new residential address by certified mail within 30 days of the change of address. The requirements of this paragraph do not apply if the guardian resides at the same address as the ward.

Sec. 7. Minnesota Statutes 2010, section 524.5-313, is amended to read:

524.5-313 POWERS AND DUTIES OF GUARDIAN.

(a) A guardian 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 guardian only those powers necessary to provide for the demonstrated needs of the ward.

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

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

(i) after a hearing under chapter 253B;

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

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

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

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

(ii) a guardian who believes a procedure described in item (i) requiring prior court approval to be necessary for the proper care of the ward, shall petition the court for an order and, in the case of a public guardianship under chapter 252A, obtain the written recommendation of the commissioner of human services. The court shall fix the time and place for the hearing and shall give notice to the ward in such manner as specified in section 524.5-308 and to interested persons. The court shall appoint an attorney to represent the ward who is not represented by counsel, provided that such appointment shall expire upon the expiration of the appeal time for the order issued by the court under this section or the order dismissing a petition, or upon such other time or event as the court

may direct. In every case the court shall determine if the procedure is in the best interest of the ward. In making its determination, the court shall consider a written medical report which specifically considers the medical risks of the procedure, whether alternative, less restrictive methods of treatment could be used to protect the best interest of the ward, and any recommendation of the commissioner of human services for a public ward. The standard of proof is that of clear and convincing evidence;

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

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

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

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

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

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

~~(8) unless otherwise ordered by the court, the ward retains the right to vote pursuant to the Minnesota Constitution, article VII: an individual placed under a guardianship shall not be entitled or permitted to vote at any election in this state; an individual placed under a limited guardianship retains the right to vote unless otherwise ordered by the court.~~

Sec. 8. Minnesota Statutes 2010, section 524.5-316, is amended to read:

524.5-316 REPORTS; MONITORING OF GUARDIANSHIP; COURT ORDERS.

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

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

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

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

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

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

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

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

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

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

(b) A ward or interested person of record with the court may submit to the court a written statement disputing statements or conclusions regarding the condition of the ward

that are contained in the report and may petition the court for an order that is in the best interests of the ward or for other appropriate relief.

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

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

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

Subd. 2. Ward's eligibility to vote; determination and annual notice to guardian.

(a) If a report of the guardian under subdivision 1 indicates a change in conditions affecting the ward's capacity to make independent voting decisions at an election, or upon petition of an interested person at any time, the court shall issue a written determination as to the ward's eligibility to vote. In making a determination under this paragraph, the court must consider the recommendation and any documents submitted in the annual report of the guardian, previous court orders and records, and any other evidence indicating a change in conditions affecting the ward's capacity to make independent voting decisions at an election. A determination by the court under this paragraph may be modified by the court at any time. A copy of the written determination shall be sent to the guardian by certified mail within ten business days of the date the determination is issued.

(b) If a report of the guardian under subdivision 1 does not indicate a change in conditions affecting the ward's capacity to make independent voting decisions at an election, the court shall notify the guardian of the ward's eligibility status and that, absent a showing of a change in conditions, the ward's status continues unchanged. The notice shall be sent by certified mail within 30 days of the date the annual report is submitted.

(c) The guardian shall send, by certified mail, a copy of a written determination or notification made by the court under this subdivision to the ward's current residential address within 30 days after the determination is made or the notice is received. If a ward's residential address changes, the guardian shall send a new copy of the court's most recent determination or notice by certified mail to the new residential address within 30 days of the change of address. The requirements of this paragraph do not apply if the guardian resides at the same address as the ward.

EFFECTIVE DATE. This section is effective June 1, 2012. Notification to guardians required under paragraph (b) in cases where a previous court order exists related to voting capacity must be sent no later than August 1, 2012.

Sec. 9. [524.5-318] DUTIES OF INDIVIDUALS PROVIDING HOUSING TO A WARD.

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

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

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

(3) require any staff assisting residents in the voting process to sign a form prior to providing that assistance acknowledging:

(i) receipt of notice of each ward's voting eligibility status, as indicated by the court order and annual review determinations provided by the resident's guardian; and

(ii) knowledge of the laws governing voting by individuals under guardianship or limited guardianship.

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

EFFECTIVE DATE. This section is effective June 1, 2012. The initial list required by clause (2) may be compiled on an ongoing basis as documentation is received from guardians as required by law. Current staff required to sign the acknowledgment contained in clause (3) must do so no later than August 1, 2012, affirming their knowledge of the eligibility status of wards whose information is received from a guardian as required by this act on or before that date.

Sec. 10. **EFFECTIVE DATE.**

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