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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-NINTH SESSION

H. F. No. 2551

03/08/2016 Authored by Laine

The bill was read for the first time and referred to the Committee on Civil Law and Data Practices

1.1 A bill for an act
1.2 relating to civil law; amending portions of the Uniform Probate Code; creating a
1.3 right of action to seek visitation with a ward or incapacitated person; amending
1.4 Minnesota Statutes 2014, sections 524.5-120; 524.5-313; proposing coding for
1.5 new law in Minnesota Statutes, chapter 524.

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

1.7 Section 1. Minnesota Statutes 2014, section 524.5-120, is amended to read:

1.8 **524.5-120 BILL OF RIGHTS FOR WARDS AND PROTECTED PERSONS.**

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

- 1.11 (1) treatment with dignity and respect;
- 1.12 (2) due consideration of current and previously stated personal desires, medical
1.13 treatment preferences, religious beliefs, and other preferences and opinions in decisions
1.14 made by the guardian or conservator;
- 1.15 (3) receive timely and appropriate health care and medical treatment that does not
1.16 violate known conscientious, religious, or moral beliefs of the ward or protected person;
- 1.17 (4) exercise control of all aspects of life not delegated specifically by court order
1.18 to the guardian or conservator;
- 1.19 (5) guardianship or conservatorship services individually suited to the ward's or
1.20 protected person's conditions and needs;
- 1.21 (6) petition the court to prevent or initiate a change in abode;
- 1.22 (7) care, comfort, social and recreational needs, training, education, habilitation, and
1.23 rehabilitation care and services, within available resources;

- 2.1 (8) be consulted concerning, and to decide to the extent possible, the reasonable
 2.2 care and disposition of the ward's or protected person's clothing, furniture, vehicles, and
 2.3 other personal effects, to object to the disposition of personal property and effects, and to
 2.4 petition the court for a review of the guardian's or conservator's proposed disposition;
 2.5 (9) personal privacy;
- 2.6 (10) communication and visitation with persons of the ward's or protected person's
 2.7 choice, provided that if the guardian has found that certain communication or visitation
 2.8 may result in harm to the ward's or protected person's health, safety, or well-being, that
 2.9 communication or visitation may be restricted but only to the extent necessary to prevent
 2.10 the harm or as directed by court order pursuant to section 524.5-318;
- 2.11 (11) marry and procreate, unless court approval is required, and to consent or object
 2.12 to sterilization as provided in section 524.5-313, paragraph (c), clause (4), item (iv);
- 2.13 (12) petition the court for termination or modification of the guardianship or
 2.14 conservatorship or for other appropriate relief;
- 2.15 (13) be represented by an attorney in any proceeding or for the purpose of petitioning
 2.16 the court;
- 2.17 (14) vote, unless restricted by the court; and
- 2.18 (15) execute a health care directive, including both health care instructions and the
 2.19 appointment of a health care agent, if the court has not granted a guardian any of the
 2.20 powers or duties under section 524.5-313, paragraph (c), clause (1), (2), or (4).

2.21 Sec. 2. Minnesota Statutes 2014, section 524.5-313, is amended to read:

2.22 **524.5-313 POWERS AND DUTIES OF GUARDIAN.**

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

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

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

2.33 (1) the power to have custody of the ward and the power to establish a place of
 2.34 abode within or outside the state, except as otherwise provided in this clause. The ward or

3.1 any interested person may petition the court to prevent or to initiate a change in abode. A
3.2 ward may not be admitted to a regional treatment center by the guardian except:

3.3 (i) after a hearing under chapter 253B;
3.4 (ii) for outpatient services; or
3.5 (iii) for the purpose of receiving temporary care for a specific period of time not
3.6 to exceed 90 days in any calendar year;

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

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

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

3.31 (ii) a guardian who believes a procedure described in item (i) requiring prior court
3.32 approval to be necessary for the proper care of the ward, shall petition the court for an
3.33 order and, in the case of a public guardianship under chapter 252A, obtain the written
3.34 recommendation of the commissioner of human services. The court shall fix the time
3.35 and place for the hearing and shall give notice to the ward in such manner as specified
3.36 in section 524.5-308 and to interested persons. The court shall appoint an attorney to

4.1 represent the ward who is not represented by counsel, provided that such appointment
4.2 shall expire upon the expiration of the appeal time for the order issued by the court under
4.3 this section or the order dismissing a petition, or upon such other time or event as the court
4.4 may direct. In every case the court shall determine if the procedure is in the best interest
4.5 of the ward. In making its determination, the court shall consider a written medical report
4.6 which specifically considers the medical risks of the procedure, whether alternative, less
4.7 restrictive methods of treatment could be used to protect the best interest of the ward, and
4.8 any recommendation of the commissioner of human services for a public ward. The
4.9 standard of proof is that of clear and convincing evidence;

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

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

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

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

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

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

5.7 (8) unless otherwise ordered by the court, the ward retains the right to vote;

5.8 (9) the duty to inform the ward's spouse, adult children, adult grandchildren, parents,
 5.9 and siblings, or the persons identified by the ward to be notified in a will or health care
 5.10 directive, as soon as reasonably possible if the disabled person dies or has been hospitalized
 5.11 in a hospital, as defined in section 144.50, subdivision 2, for a period of three days; and

5.12 (10) the duty to inform the ward's spouse, adult children, adult grandchildren,
 5.13 parents, and siblings, or the persons identified by the ward to be notified in a will or
 5.14 health care directive, as soon as reasonably possible of the death of the ward, the funeral
 5.15 arrangements, and the location of the ward's final resting place.

5.16 Sec. 3. **[524.5-318] VISITATION.**

5.17 **Subdivision 1. Petition to compel visitation or communication; investigation.** (a)
 5.18 A spouse, parent, sibling, child, or grandchild of the ward may file a petition to compel
 5.19 visitation or communication with the ward or with an adult the petitioner reasonably
 5.20 believes is incapacitated due to a medical condition or age. The petition shall be filed
 5.21 pursuant to section 524.5-108. The petition shall state, to the extent known:

5.22 (1) the condition of the ward or incapacitated adult's health;

5.23 (2) the names and addresses of the ward or incapacitated adult's attorney, guardian,
 5.24 spouse, parents, siblings, children, or grandchildren;

5.25 (3) the type and manner of visitation or communication that is sought;

5.26 (4) the efforts made to obtain visitation and communication with the ward or
 5.27 incapacitated person; and

5.28 (5) whether there is any deficit in the ward or incapacitated person's mental
 5.29 functioning that affects the ward or incapacitated person's ability to respond knowingly to
 5.30 questions about the proposed visitation.

5.31 (b) Absent the consent of the petitioner, the court shall set the matter for a hearing
 5.32 within 14 days of the filing of the petition. The petition shall be served and notice of the
 5.33 hearing shall be provided pursuant to section 524.5-308.

6.1 (c) The court may appoint an attorney for an unrepresented ward or incapacitated
6.2 adult. The court may direct the petitioner to pay some or all of the costs of the attorney in
6.3 the order appointing the attorney.

6.4 (d) The court may appoint an independent investigator, guardian ad litem, or other
6.5 third party to conduct an investigation and report to the court. The court may direct the
6.6 petitioner to pay some or all of the costs for the investigation in the order appointing a
6.7 guardian ad litem or other third-party investigator. The investigator, guardian ad litem,
6.8 or other third party must:

6.9 (1) interview the ward or incapacitated person, the petitioner, and the ward or
6.10 incapacitated person's guardian, primary caretaker, or attorney-in-fact;

6.11 (2) to the extent practicable, interview any other individual who has knowledge
6.12 about the relationship between the petitioning party and the ward or incapacitated person;

6.13 (3) inform the ward or incapacitated person about the contents of the petition and the
6.14 visitation or communication the petitioner is requesting;

6.15 (4) collect and provide any information that pertains to the ward or incapacitated
6.16 person's ability to consent to the requested visitation; and

6.17 (5) at least three days before the hearing on the petition, provide a written report
6.18 of the above findings to the court, the petitioner, and the ward or incapacitated person or
6.19 their attorney, and any party or individual the court indicates in the order appointing the
6.20 guardian ad litem or third-party investigator.

6.21 (e) A report submitted to the court under paragraph (d), and any supplemental
6.22 documents accompanying the report, are confidential and shall be made available and
6.23 distributed pursuant to the order of the court.

6.24 Subd. 2. **Findings; order for visitation or communication.** (a) The court shall
6.25 grant reasonable visitation and communication between the petitioning party and the ward
6.26 or incapacitated person if the court determines that the ward or incapacitated person has
6.27 the capacity to make a knowing and intentional decision and agrees to the visitation or
6.28 communication, unless the court finds that the visitation or communication will harm the
6.29 ward or incapacitated person. The court may grant visitation and communication between
6.30 the petitioning party and the ward or incapacitated person when the court determines
6.31 the ward or incapacitated person does not have the capacity to make a knowing and
6.32 intentional decision if the court finds that the ward or incapacitated person would want
6.33 visitation or communication with the petitioning party if they had the capacity to make the
6.34 decision and the court determines that the visitation or communication will not harm the
6.35 ward or incapacitated person. The court shall consider and provide written findings on the

7.1 following factors when the ward or incapacitated person does not have the capacity to
7.2 make a knowing and intentional decision:

7.3 (1) the history of the relationship between the petitioner and the ward or
7.4 incapacitated person;

7.5 (2) any statements made by the ward or incapacitated person expressing a desire
7.6 to have visitation or communication with the petitioner;

7.7 (3) evidence of a preference of the ward or incapacitated person regarding visitation or
7.8 communication with the petitioner in a will, health care directive, or power of attorney; and

7.9 (4) when available, a report submitted to the court under subdivision 1, paragraph (d).

7.10 (b) A determination of capacity under this section is not admissible as evidence of
7.11 capacity for any other legal proceeding.

7.12 (c) The court has continuing jurisdiction to vacate or modify an order issued under
7.13 this section.