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State of Minnesota

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HOUSE OF REPRESENTATIVES

EIGHTY-NINTH SESSION

H. F. No. 239

- 01/20/2015 Authored by Anderson, P.; Swedzinski; Backer and Sanders
The bill was read for the first time and referred to the Committee on Civil Law and Data Practices
- 01/29/2015 Adoption of Report: Amended and re-referred to the Committee on Public Safety and Crime Prevention Policy and Finance
- 02/23/2015 Adoption of Report: Placed on the General Register as Amended
Read Second Time

1.1 A bill for an act
 1.2 relating to conservatorships; providing an exception for conservators to post
 1.3 bond for the assets of a protected person; amending Minnesota Statutes 2014,
 1.4 sections 524.5-413; 524.5-416.

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

1.6 Section 1. Minnesota Statutes 2014, section 524.5-413, is amended to read:

1.7 **524.5-413 WHO MAY BE CONSERVATOR; PRIORITIES.**

1.8 (a) Except as otherwise provided in paragraph (d), the court, in appointing a
 1.9 conservator, shall consider persons otherwise qualified in the following order of priority:

1.10 (1) a conservator, guardian of the estate, or other like fiduciary appointed or
 1.11 recognized by an appropriate court of any other jurisdiction in which the protected person
 1.12 resides;

1.13 (2) a person nominated as conservator by the respondent, including the respondent's
 1.14 most recent nomination made in a durable power of attorney, if the respondent has attained
 1.15 14 years of age and at the time of the nomination had sufficient capacity to express
 1.16 a preference;

1.17 (3) an agent appointed by the respondent to manage the respondent's property under
 1.18 a durable power of attorney;

1.19 (4) the spouse of the respondent;

1.20 (5) an adult child of the respondent;

1.21 (6) a parent of the respondent;

1.22 (7) an adult with whom the respondent has resided for more than six months before
 1.23 the filing of the petition;

1.24 (8) an adult who is related to the respondent by blood, adoption, or marriage; and

2.1 (9) any other adult or a professional conservator.

2.2 (b) A person having priority under paragraph (a), clause (1), (4), (5), or (6), may
2.3 designate in writing a substitute to serve instead and thereby transfer the priority to the
2.4 substitute.

2.5 (c) The court, acting in the best interest of the protected person, may decline to
2.6 appoint a person having priority and appoint a person having a lower priority or no
2.7 priority. With respect to persons having equal priority, the court shall select the one it
2.8 considers best qualified.

2.9 ~~(d) In any proceeding where the value of the personal property of the estate of the~~
2.10 ~~proposed protected person in the initial inventory of the estate filed by the conservator~~
2.11 ~~under section 524.5-419 is expected to be at least \$10,000, the court shall require the~~
2.12 ~~conservator to post a bond. The bond requirement under this paragraph does not apply to~~
2.13 ~~conservators appointed before August 1, 2009, but shall apply as current conservatorships~~
2.14 ~~are reviewed by the court after August 1, 2009.~~

2.15 ~~(e)~~ (d) Any individual or agency which provides residence, custodial care, medical
2.16 care, employment training, or other care or services for which they receive a fee may not be
2.17 appointed as conservator unless related to the respondent by blood, marriage, or adoption.

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

2.19 Sec. 2. Minnesota Statutes 2014, section 524.5-416, is amended to read:

2.20 **524.5-416 TERMS AND REQUIREMENTS OF BOND.**

2.21 (a) The following rules apply to any bond required:

2.22 (1) Except as otherwise provided by the terms of the bond, sureties and the
2.23 conservator are jointly and severally liable.

2.24 (2) By executing the bond of a conservator, a surety submits to the jurisdiction of the
2.25 court that issued letters to the primary obligor in any proceeding pertaining to the fiduciary
2.26 duties of the conservator in which the surety is named as a party. Notice of any proceeding
2.27 must be sent or delivered to the surety at the address shown in the court records at the
2.28 place where the bond is filed and to any other address then known to the petitioner.

2.29 (3) On petition of a successor conservator or any interested person, a proceeding
2.30 may be brought against a surety for breach of the obligation of the bond of the conservator.

2.31 (4) The bond of the conservator may be proceeded against until liability under the
2.32 bond is exhausted.

2.33 (5) Except as otherwise provided in this section, in any proceeding where the value
2.34 of the personal property of the estate of the proposed protected person in the initial

3.1 inventory of the estate filed by the conservator under section 524.5-419 is expected to be
3.2 at least \$10,000, the court shall require the conservator to furnish a bond in an amount that
3.3 the court determines is necessary to reasonably protect the protected person's assets. Joint
3.4 conservators may unite in a bond or each may give a separate bond.

3.5 (b) In lieu of executing and filing a bond, the conservator may request that access
3.6 to certain assets of the protected person be blocked. The court may grant the request if
3.7 sufficient evidence is filed with the court to establish that those assets are being held in a
3.8 manner that prevents the conservator from accessing the assets without a specific court
3.9 order or the court finds that the manner in which the assets are held is sufficient to protect
3.10 the assets. To the extent that assets not placed in blocked accounts are expected to be at
3.11 least \$10,000, the bond requirement under paragraph (a) applies.

3.12 (c) A proceeding may not be brought against a surety on any matter as to which an
3.13 action or proceeding against the primary obligor is barred.

3.14 **EFFECTIVE DATE.** This section is effective the day following final enactment
3.15 and applies to conservators appointed, or conservatorships reviewed by the court, on or
3.16 after that date.